

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri.T.M. Manoharan, Chairman
Sri.K.Vikraman Nair, Member
Sri.S. Venugopal, Member

In the matter of Petition filed by KSEB Ltd regarding the ‘implementation of the directions of the Hon’ble APTEL vide its judgment dated 10-11-2014 in appeal petitions No. 01 of 2013 and 19 of 2013’ .

Petitioner : Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram.

Order No : 1464/CT/2015 dated 07.01.2016

1. KSEB Ltd has, vide its petition no 1464/CT/2015 dated 21-07-2015, submitted the following prayer before the Commission,-

“Considering the facts and details submitted in the preceding paragraphs, Hon’ble Commission may kindly re-consider the truing up petitions for the year 2010-11, as per the directions of the Hon’ble APTEL vide its judgment dated 10-11-2014 in appeal petition No, 01 of 2013 and 19 of 2013.”

2. Further, KSEB Ltd vide paragraph-6 of the petition has submitted as follows,-

‘KSEBL has already filed the petitions on truing up of C&AG audited accounts for the year 2011-12 before the Hon’ble Commission on 19-11-2014 and the truing up petitions for the year 2012-13 on 21-04-2015. Hon’ble Commission is yet to initiate proceedings on the above truing up petitions for the year 2011-12 and 2012-13. Hence, KSEBL may humbly request before the Hon’ble Commission that, for the years 2011-12 and 2012-13, the matters decided by the Hon’ble APTEL may kindly be considered along with the truing up of accounts of KSEB for the year 2011-12 and 2012-13.’

3. The Commission has already examined the judgment of the Hon'ble APTEL dated 10th November-2014 in Appeal No 1 of 2013 and Appeal no 19 of 2013. The Appeal no 1 of 2013 was filed by KSEB Ltd against the Commission's order dated 30-10-2012 in the matter of 'truing up of accounts of KSEB for the year 2010-11' and the Appeal no 19 of 2013 was filed against the order of the Commission dated 28-04-2012 in the matter of 'ARR&ERC of KSEB for the year 2012-13.

4. The Hon'ble APTEL has, vide its common judgment dated 10th November-2014, decided the matter and partially allowed the claims raised by the appellant KSEB Ltd. The summary of the findings of the Hon'ble APTEL in the judgment dated 10th November-2014 is extracted below,-

"21. Summary of our findings.

A) Issues common to Appeal no. 1 of 2013 and Appeal no. 19 of 2013

- i) Employees cost: We direct the State Commission to true up the employees cost from FY 2010-11 to FY 2012-13 as per the directions given in paragraphs 8.5 and 8.6.*
- ii) Repair and Maintenance cost:
We do not find any reason to interfere with the findings of the State Commission.*
- iii) Administrative and General Expenses:
We do not find any infirmity in the findings of the State Commission.*
- iv) Return on Equity:
We direct the State Commission to allow Return on Equity at the rate of 15.5% as per the Central Commission's Regulations.*
- v) Depreciation:
In the absence of the data to be furnished by the Appellant, the State Commission has allowed the depreciation as per the 2004 Tariff Regulations. The State Commission has also estimated the consumer contribution in the absence of the separate data. Therefore, we are not inclined to interfere with the impugned orders of the State Commission. However, we grant liberty to the Appellant*

to file the complete data as per the CERC Regulations 2009 and the State Commission shall reconsider the same as per the Central Commission's 2009 Regulations.

Capitalization of Assets:

Capitalization will be subjected to true-up as per actuals on the submissions of the accounts by the Court at the true up stage. In view of this, we do not find reason to interfere with the impugned order.

B) Appeal no. 1 of 2013

i) Inconsistent approach in the absence of the Regulations:

We have given certain directions to the Appellant as well as the State Commission under paragraphs 14.4 and 14.5

(ii) Subsidy from Government

We grant liberty to the Appellant to approach the State Commission with full details and the State Commission shall consider the same to examine if there has been double accounting of the Government subsidy of Rs. 54 crores, and if it is so, necessary adjustment will be carried out in the ARR of the subsequent year with carrying cost by the State Commission.

C. Appeal No. 19 of 2013

i) Interest and Finance Charges

We find that the State Commission in the absence of Regulations have decided the Interest and Finance charges and interest on working capital arbitrarily. The interest on working capital is also decided on adhoc basis only. We feel that there is a need to make Regulations for the financial parameters. Till the Regulations are framed, the State Commission should follow the Central Commissions Regulations. As the FY 2012-13 is already over, we direct the State Commission to true up Interest and Finance charges for the FY 2012-13 based on the audited accounts.

ii) T&D Loss Reductions Target:

We feel that no interference is warranted in regard to T&D losses.

- iii) *Cost of generation:*
We direct the State Commission to true-up the generating cost of the LSHS based power plant of the Appellant as per the directions given in paragraph 18.3.
- iv) *Energy sales approved:*
The State Commission is directed to true-up of the energy sales and Power Purchase Cost after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any, as per the directions given in paragraph 19.2.
- v) *Energy available from Kudankulam:*
We have already directed for truing up of Power Purchase Cost and for allowing carrying cost for additional Power Purchase Cost. 21.
The Appeals are allowed in part as indicated above. The State Commission is directed to pass consequential orders in terms of our findings at the earliest.”.

5. **The paragraphs 8.4, 8.5 and 8.6 of the judgment** dated 10-11-2014 in Appeal Nos. 01 of 2013 and 19 of 2013 are regarding the employee cost claimed by KSEB Ltd. The said paragraphs are extracted below,-

“8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the management and the unions have also to be honoured. The terminal benefits have also to be provided for.

8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13. The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench

of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed.

8.6 Accordingly, we direct the State Commission to true-up the employees cost from FY 2010-11 to FY 2012-13, as per the above directions.”.

6. Regarding the issue raised by the KSEB Ltd that the Commission has been following inconsistent approach in the absence of the regulations, the Hon'ble APTEL has observed as follows,-

“14.4 We are in agreement with the State Commission that the accounts of the generation, transmission and distribution functions have to be separately maintained by the Appellant Without maintenance of separate accounts for generation, transmission and transmission functions, it may not be possible to apply the norms specified in the Regulations fully. The Regulations have to be formulated for generation, transmission and distribution. There is no justification in blaming the State Commission when the Appellant itself is not maintaining separate accounts for its generation, transmission and distribution function. We feel that there is need for early notification of a transfer scheme for assets and liabilities of the Board in separate companies with separate accounts for generation, transmission and distribution as per the provisions of the Electricity Act, 2003. We hope that the State Government will take expeditious steps for the same.

14.5 We also feel that the State Commission in the meantime should initiate framing of Regulations for generation, transmission and distribution. The existing Regulations for Retail Supply Tariff of 2006 are only general Regulations and there is a need to have more specific Regulations and norms for operational and financial parameters in accordance with the provisions of the Electricity Act. State Commission has also to specify the manner in which the Appellant has to furnish the information for approval of ARR and determination of tariff. We, therefore, direct the State Commission to initiate the formulation of Regulations for generation, transmission and distribution. The Appellant is also directed to give the requisite date for the generation, transmission and distribution functions as desired by the State Commission.

14.6 With the above directions, this issue is disposed of.”.

7. The above judgment of the Hon'ble Appellate Tribunal for Electricity and the directions contained therein, were carefully examined by the Commission even before the petitioner filed this petition. Commission had, vide its letter No. 356/CL/2013/ KSERC dated 13-07-2015, directed the KSEBL as follows,-

“Your immediate attention is invited to the orders cited in reference. In para 8.5 and 8.6 the Hon'ble Appellate Tribunal for Electricity has directed the Commission to true up the employee cost from the financial year 2010-11 to the financial year 2012-13 as per the directions contained in para 8.4. In para 8.4 of the order the Hon'ble Appellate Tribunal for Electricity has observed that the State Commission has taken the actual expenses trued up for the financial year 2008-09 as the base and therefore the Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in man power from 2008-09 to 2012-13. The Hon'ble Appellate Tribunal for Electricity has further directed that the gratuity directed to be paid as per the judgment of the Hon'ble High Court dated 10.03.2003 as the Division Bench of the High Court had dismissed the appeal filed against this judgment, and which were disallowed by the State Commission should also be allowed. In para 11.3 the Hon'ble Appellate Tribunal for Electricity has directed that the State Commission should follow Central Electricity Regulatory Commission Regulations and allow return on equity of 15.5%. In para 14.4 it has been observed that the Hon'ble Appellate Tribunal for Electricity is in agreement with the State Commission that the accounts for generation, transmission and distribution functions have to be separately maintained by KSEB Ltd. and that without maintenance of separate accounts for generation, transmission and distribution functions it may not be possible to apply the norms specified in the regulations fully. In para 14.3 it has been clarified by the Hon'ble Appellate Tribunal for Electricity that there is absolutely no need for framing rules and regulations for a transient entity like the Managing Committee constituted by the Government to administer the assets and liabilities of the erstwhile Kerala State Electricity Board. In para 14.5 the Hon'ble Appellate Tribunal for Electricity has directed to give requisite data for generation, transmission and distribution functions as desired by the State Commission. In paras 15.1, 15.2 and 15.3 the Hon'ble Appellate Tribunal for Electricity has observed that KSEB Ltd. is at liberty to approach the State Commission with full details of

subsidy received from Government so that the Commission can examine whether or not there had been any double accounting. With regard to the depreciation, the Hon'ble Appellate Tribunal for Electricity has directed KSEB Ltd to file complete data as per Central Electricity Regulatory Commission Regulations, 2009 for the consideration of the State Commission. With regard to the claim for interest and finance charges in Appeal No.19/2013 the Commission has been directed to true up the interest and finance charges for the financial year 2012-13 based on the audited accounts. In para 18.3 the Commission has been directed to true up the generating cost of LSHS based power plants of KSEB Ltd after examining the annual data for this plants and after prudence check. With regard to the energy sales the Commission has been directed to true up the energy sales and power purchase cost after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level as per the directions given in para 19.2. In view of the directions indicated above and the other directions contained in the order of the Hon'ble Appellate Tribunal for Electricity KSEB Ltd is hereby directed to submit detailed proposals with all necessary data for substantiating its claims so that the Commission can examine them and conduct prudence check where ever necessary and issue appropriate orders. KSEB Ltd is also directed to submit proposals as to how the excess amount in ARR, if any approved by the Commission, has to be recovered from the consumers. The above proposals with all necessary details shall be submitted within one month from the date of receipt of this letter.”.

8. On a careful appraisal of the petition dated 20-07-2015, it is found that,-

- (i) KSEB Ltd has submitted the number of employees in different categories during the years 2008-09, 2010-11, 2011-12 and 2012-13. The abstract of the same is given below,-

Number of employees during the year 2008-09 and the increase there after.

Particulars	Employees existing (Nos)					Increase over 2008-09 (Nos)			
	2008-09	2009-10	2010-11	2011-12	2012-13	2009-10	2010-11	2011-12	2012-13
Technical officers	2824	2920	3341	3412	3469	96	517	588	645
Workmen category	17925	18574	19933	21212	21797	649	2008	3287	3872
Ministerial Cadre	6426	6513	6590	6489	6517	87	164	63	91
Total	27175	28007	29864	31113	31783	832	2689	3938	4608

(ii) However, KSEBL has not submitted the following details which are required to assess the actual employee cost with reference to the man power in the base year (2008-09),-

- a) actual basic pay
- b) increase in DA over the base year 2008-09
- c) the rate of increase in DA during the period from 2008-09 to 2012-13
- d) pay revision granted during the above years,
- e) the terminal benefits granted to the retire employees and
- f) such other details.

(iii) Without these details, the Commission cannot assess the additional employee cost that has to be allowed as per the findings in paragraphs 8.5 and 8.6 of the judgment of the Hon'ble APTEL dated 10th November-2014.

9. KSEB Ltd has provided the details of depreciation including vintage of assets, in similar lines as decided by the Commission vide the order dated 28th October-2013 in petition RP No. 1/2013. Regarding the double accounting of subsidy receivable from Government, the licensee has provided the orders on implementation of fuel surcharge and the details of the fuel surcharge demanded and accounted during the year 2010-11. Though the Commission has directed KSEB Ltd to submit the proposals as to how the excess amount in ARR, if any approved by the Commission, has to be recovered from consumers, KSEB Ltd has not submitted any proposals on the same.
10. KSEB Ltd has also not submitted the other details called for by the Commission in its letter dated 13.07.2015.
11. In the meanwhile, KSEB Ltd has, as per the Section 125 of the Electricity Act, 2003, filed second appeal before Hon'ble Supreme Court, against the judgment of the Hon'ble APTEL dated 10th November-2014 in Appeal No.1 of 2013 and Appeal No. 19 of 2013. Hon'ble Supreme Court has admitted the second appeal

as Civil Appeal Nos. 5473 and 5474 of 2015. The Commission has received the notice of the above appeals on 14-08-2015.

12. The major issues raised by KSEB Ltd before the Hon'ble Supreme Court are: -
- (i) KSEB Ltd has questioned the methodology adopted by the Commission in approving 'Repair and Maintenance expenses', 'Administration & General expenses', and 'Employee cost'.
 - (ii) KSEB Ltd had raised the issue that, *"the State Commission has not considered the business growth including asset addition, increase in consumer strength and energy sales etc beyond 2008-09 while approving the 'Repair & Maintenance Expenses', 'Administration and General Expenses' etc' and the Hon'ble APTEL has endorsed the methodology adopted by the State Commission in approving R&M expenses and A&G expenses, vide the judgment dated 10-11-2014 in appeal petition Nos.1 of 2013 and 19 of 2013."*
 - (iii) Regarding employee cost, according to KSEB Ltd, Hon'ble APTEL has committed a mistake while directing to re-consider the employee cost without accounting increase in man power from 2008-09 to 2012-13.
13. The judgment of the Hon'ble APTEL dated 10-11-2014 in Appeal No. 1 of 2013 and Appeal No.19 of 2013, has been challenged by KSEB Ltd mainly on the grounds pointed out above. The civil appeals 5473 and 5474 of 2015 are under the consideration of the Hon'ble Supreme Court. The Hon'ble Supreme Court has not issued any order staying the implementation of the judgment dated 10.11.2014 of the Hon'ble APTEL even though the KSEB Ltd has applied for the same. The Commission has already issued orders on truing up of accounts relating to the financial year 2010-11. The judgment of the Hon'ble APTEL can be implemented only by reviewing the order issued by the Commission on truing up of accounts relating to the financial year 2010-11. The applications filed by

KSEB Ltd for truing up of accounts relating to 2011-12 and 2012-13 are pending before the Commission. Therefore the directions contained in the judgment of the Hon'ble APTEL dated 10.11.2014 in appeal petitions Nos. 1/2013 and 19/2013 can be followed while passing orders on truing up of accounts relating to the financial years 2011-12 and 2012-13. For reviewing the order issued on truing up of accounts relating to 2010-11 and for passing orders on truing up of accounts relating to the financial years 2011-12 and 2012-13, the detailed proposals as called for by the Commission in its letter dated 13.07.2015 are required. As soon as KSEB Ltd submits the detailed proposals with necessary data required for taking appropriate decisions by the Commission in accordance with the directions of the Hon'ble APTEL, orders subject to the judgment of the Hon'ble Supreme Court in civil appeals Nos.5473 and 5474 of 2015, can be issued in the petitions filed by KSEB Ltd for truing up of the accounts relating to the financial years 2011-12 and 2012-13 and in the petition to be submitted by the KSEB Ltd for reviewing the order issued by the Commission on truing up of accounts relating to 2010-11.

The petition dated 21.07.2015 filed by KSEB Ltd is disposed of as above.

Sd/-

K.Vikraman Nair
Member

Sd/-

S. Venugopal
Member

Sd/-

T.M.Manoharan
Chairman

Approved for issue,

Santhosh Kumar.K.B
Secretary