

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Petition No: RP 3/ 2021**

**Present** : Shri. Preman Dinaraj, Chairman.  
: Adv. A. J. Wilson, Member (Law).

**In the matter of** : Review petition filed by M/s KSEB Ltd against the Order of the Commission dated 08.07.2021 in OP 21/2021 in the matter of petition filed by M/s Bennett Coleman & Co Ltd seeking tariff applicability for Media Services (Pre-press activities) – Industrial Tariff and to waiver of retrospective demand charges charged from 2014 till 2020

**Petitioner** : M/s Kerala State Electricity Board Ltd.,  
Vydyuthi Bhavanam, Pattom,  
Thiruvananthapuram-695004

**Petitioner Represented by** : Sri. Edward, AEE, TRAC

**Respondent** : M/s Bennett Coleman & Co Ltd  
Imperial Trade Centre, M.G Road  
Kochi – 682035

**Respondent represented by** : Sri.Sanjeev P ,Regional Head of South, Times Of India  
Sri. Aarjay Prakashan,Chief Manager (Legal)  
Sri. Shibu, Manager, Kochi

**Date of E- Hearing** : **18.10.2021, 10.30 AM**

**Daily Order dated 25.10.2021**

1. M/s Bennett Coleman & Co Ltd had filed a petition on 16-03-2021 seeking tariff applicability for Media Services (Pre-press activities) – Industrial Tariff and to waive the retrospective demand charge from 2014 till 2020. Following were the prayers of the petitioner:
  - (i) *To exempt BCCL being considered as a Consumer under the Commercial category and instead extend the benefits of the revised tariff under Industrial, which has otherwise already been effectuated w.e.f 16.08.2014 and categorize as such (HT/LT Industrial).*

(ii) *To waive off the Demand Charges of Rs. 32,40,602/- raised by KSEB Ltd vide their Demand Notice No. SOR/HTB 24/5919/2020-21 dated 29.04.2020.*

2. Commission admitted the petition as OP No.21/2021 and conducted hearings on 04.05.2021 and 26.05.2021. The Commission after examining the petition, the submissions & documents provided by the petitioner and the respondent licensee, the views expressed during hearing the provisions of the Electricity Act, 2003, Kerala Electricity Supply Code 2014, the relevant Tariff Orders issued by the Commission issued the Final Order on 08.07.2021.
3. M/s KSEB Ltd has now filed a review petition on 18.08.2021 against the Final Order dated 08.07.2021. In the review petition, KSEB Ltd has stated that the Commission has not considered the Judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020 dated 18.02.2020 - Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla.
4. KSEB Ltd has submitted that in the Judgement of the Hon'ble Supreme Court in the aforesaid Civil Appeal, it is stated that even though, the limitation period of two years under section 56 (2) had expired, Section 56 (2) did not preclude the respondent KSEB Ltd. to raise the additional demand based on the actual consumption and appropriate tariff. Even after the expiry of the limitation period under Section 56(2), KSEB Ltd can realise the short fall in the electricity charges from the petitioner consumer.
5. KSEB Ltd during the hearing submitted that as per the Order of the Commission in OP No.21/2021, which limits the arrear for revision of tariff to two years, leads to a loss of Rs. 22.00 lakhs to KSEB Ltd. KSEB Ltd highlighted the similarity of the cases between the Civil Appeal No 1672 of 2020 of the Supreme Court of India and that in OP No 21/2021. It is further submitted that the appeal filed before the Hon'ble Supreme Court was for the wrong tariff billing for a period of 25 months, whereas in the case of KSEB Ltd it was for 66 months.
6. KSEB Ltd submitted that in the Judgement of the Hon'ble Supreme Court in Civil Appeal No 1672 of 2020, the court had allowed Assistant Engineer(D1), Ajmer Vidyut Vitran Nigam Limited to issue additional demand notice to Rahamatullah Khan for the entire period of the wrong tariff period.

7. The petitioner also pointed out that the Supreme Court had highlighted the matter with regard to 'Limited period' which is mentioned in para 9 of Civil Appeal No 1672 of 2020. The relevant portion of the Judgement is quoted hereunder.

*“As per Section 17(1)(c) of the limitation Act 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.”*

8. The petitioner also highlighted para 13 and para 16 of Supreme court Judgement dated October 5<sup>th</sup> of 2021 in Civil Appeal No 7235 of 2009 (M/s Apex Cottex versus Uttar Haryana Bijli Vitran Nigam Ltd) which is quoted below:

*“13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).”*

*“16. Be that as it may, once it is held that the term “first due” would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that “the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of Section 56 of the Act”.*

9. Accordingly, M/s KSEB Ltd prayed before the Commission to review the Order in O.P No 21/2021 in view of the Judgements of the Supreme Court in Civil Appeal No 1672 of 2020 and Civil Appeal no 7235 of 2009.

10. After the submissions of KSEB Ltd before the Commission, M/s BCCL placed the following prayers before the Commission: -

- (i) Allow 15 days' time period for studying the Judgement of the Hon'ble Supreme Court dated 5<sup>th</sup> October 2021 for filing their counter arguments;
- (ii) KSEB Ltd should not charge interest on M/s BCCL for the belated payments for the arrear charges based on KSEB Ltd demand notice.

11. Commission after duly considering the arguments of M/s KSEB Ltd and the requests of M/s BCCL directed the parties to submit their counter affidavit and additional details, if any, before the Commission before 29.10.2021 and no further time will be allowed. After receiving the above Submissions, the Commission will issue the final orders on the Review petition.

Sd/-  
**Adv. A. J. Wilson**  
Member (Law)

Sd/-  
**Preman Dinaraj**  
Chairman

Approved for issue

Sd/-  
C R Satheesh Chandran  
Secretary (i/c)