

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**
Shri. S. Venugopal, Member
Shri. K. Vikraman Nair, Member

OP No. 49/19

In the matter of : WP (C) 37629/18 of High Court of Kerala filed by
Sri M.Chempakamuthu

Petitioner : Sri. M. Chempakamuthu, S/o. Marippan, Managing
Partner, Representing Thasleej Ice and Cold Storage,
Kallekkad P.O Shornour Road, Palakkad.

Petitioner represented by : Sri M. Chempakamuthu
Adv. Rajendrakumar M

Respondent : Kerala State Electricity Board Limited

Respondent represented by : Sri. KGP Namboothiri, EE (TRAC), KSEBL
Sri. Rajesh R, AEE (TRAC), KSEBL

Daily Order dated 18.07.2019

1. The Principal Secretary to Government, Power Department, Government of Kerala, vide the letter dated 18.02.2019, forwarded a copy of the judgment of the Hon'ble High Court dated 22.11.2018 in WP(C) No. 37629 of 2018 for further necessary action. The relevant portion of the judgment of the Hon'ble High Court is extracted below for ready reference.

“ 10. For the afore reason, though I do not feel it necessary to set aside Ext.P7, since I had not gone into the merits of its contents, I deem it appropriate to refer this matter to the Commission who can decide upon the validity of Ext.P7 order, taking note of the specific factual factors involved and after affording an opportunity of being heard to the petitioner as well as to the competent Authority of the KSEB, as expeditiously as

possible but not later than two months from the date of receipt of WP(C).No. 37629 of 2018 6 a copy of this judgment. It is so ordered.

11. Once the Commission takes a decision as to the validity of Ext.P7, taking note of the petitioner's contentions that they are entitled to the lower tariff under LT-IV A because the cold storage is not a commercial venture, the parties will adhere to and abide by such decision, subject to their available remedies; and needless to say, if the decision is in favour of the KSEB, they will be entitled to enforce Ext.P7 order, again subject to the remedies available to the petitioner in law against such orders.

At this time, the learned standing counsel for the KSEB points out that the petitioner is still enjoying the lower tariff under interim orders of this Court and therefore, that if the Commission takes a view against the petitioner, they will be at liberty to enforce the higher tariff against him. I am certain that it does not require this Court to clarify this because, it goes without saying that the parties will stand regulated by the order of the Commission to be passed in terms of this judgment, subject to their available remedies in law.”

2. The Commission examined the judgment in detail and noted the following.
 - (i) Sri. Chempakamuthu, an electricity consumer of KSEB Ltd with consumer No. 6793 in Parali Section, Palakkad District, running a cold storage is the petitioner in the WP(C) No. 37629/2018.
 - (ii) KSEB Ltd, the incumbent distribution licensee is the 1st respondent.
 - (iii) The Exhibit P7 is the proceedings No. LA/7940/2012/2014 dated 02.11.2018 of the Secretary (Administration) of the 1st respondent KSEB Ltd, consequent to the Judgment in WP (c) No. 10516/2018 dated 5.7.2019
3. The Commission vide its letters dated 12.03.2019, forwarded a copy of the judgement of the Hon'ble High Court of Kerala to the petitioner Mr. Chempakamuthu, and respondent KSEB Ltd to submit a copy of the Exhibit P7 and other documents presented before the Hon'ble High Court of Kerala in WP(C) No. 37629 of 2018.
4. First hearing on the matter has held on 26.03.2019. During the hearing, the Advocate of Sri. Chempakamuthu submitted an application for leave and the Commission granted the same. KSEB Ltd requested some more time to submit the details sought by the Commission. The Commission granted two week time to submit the details.
5. In compliance of the directions of the Commission, the respondent KSEB Ltd submitted the details on 03.04.2019. The petitioner in WP(C) 37629/2018 submitted the details on 20.05.2019. KSEB Ltd, vide the letter dated 05.07.2019

submitted the comments on the details submitted by the petitioner Mr. Chempakamuthu.

6. Based on the details submitted by the petitioner and KSEB Ltd, the issues involved in the subject matter is summarised below.
- (i) Sri. Chempakamuthu, an electricity consumer of KSEB Ltd with consumer No. 6793 in Parali Section, Palakkad District, running a cold storage is the petitioner in the WP(C) No. 37629/2018. The service connection was availed in the year 1999.
 - (ii) As per the tariff order dated 14.05.1999, the ice factories with or without cold storage is categorised under LT-IV Industrial tariff. Further, the cold storage also categorised under LT-IV Industrial tariff. But the 'commercial cold storages' are categorised under LT-VII A commercial tariff. This categorisation of tariff was in force till 30.11.2007.
 - (iii) The Commission vide the tariff order dated 26th November 2007 in petition TP No. 23 of 2006 and TP 30 of 2007, had re-categorised the cold storages including the commercial cold storages under LT-VII (A). The Commission had approved the tariff, based on the petition filed by KSEB Ltd and after completing all the procedure formalities including pre-publication for inviting comments of the stake holders, conducting public hearings etc. The Commission had re-categorised the tariff, as per the statutory powers conferred on it as per the Section 62(3) of the Electricity Act, 2003. The revised tariff was applicable from 01.12.2007 onwards.
 - (iv) The petitioner challenged the Tariff order dated 26th November 2007 categorising the cold storages under LT-VII (A) category. Hon'ble High Court in an interim order has allowed the petitioner to be in old tariff.
 - (v) Subsequently, the APTS wing of KSEB on 06.03.2008 conducted an inspection at the premises of the petitioner and detected that the cold storage of the consumer was for stocking the fruits and vegetables in cold storages for leading fruit trading companies such as M/s AFRA traders, M/s Mithu Traders and M/s Minnu traders. The rent for renting the item was Rs 1100/- per ton per month. According to KSEB, the consumer was engaged in commercial activity and the petitioner is liable to pay electricity charges at LT-VII (A) from the date of connection on 19.10.1999. Accordingly, a short assessment bill for an amount of Rs 85,94,906/- has been issued to the consumer on 27.03.2008, being the difference in tariff of LT-IV to LT-VII(A) for the period from 12.10.1999 to 31.10.2008.
 - (vi) According to the petitioner, the short assessment dated 27.03.2008 were issued without notice and without hearing the affected party. The findings of the APTS and the rules applied are erroneous. So, the petitioner

challenged the bill dated 27.03.2008 before the Hon'ble High Court and the Hon'ble Court granted stay and the bill is kept in abeyance.

- (vii) KSEB Ltd vide the letter dated 04.07.2019 produced a copy of the judgment of the Hon'ble High Court dated 4th February 2014, filed by the petitioner.

“4. Heard.

It has been held by this Court in the decision reported in Bell Foods Marine Division v. K.S.E.B (supra) that, where a Cold Storage or a Freezing Unit is conducted as a business activity, the charges for consumption of energy would have to be billed at the LT VII (A) tariff. It is only when a Cold Storage is used for storing a person's own goods that, the concessional tariff rate, LT IV would become applicable. In view of the above dictum, I do not find any illegality in the levy of charges on the petitioner at the LT VII(A) tariff rates. Since the petitioner's electric connection has already been restored pursuant to the interim order granted by this Court on 30.04.09, I am not satisfied that the petitioner is entitled to any further reliefs in this Writ Petition.

In view of the above, this Writ Petition is disposed of in terms of the interim order dated 30.04.2009.”

According to KSEB Ltd, as per the above judgment of the Hon'ble High Court, when the cold storage is used for storing a persons own goods, only when the concessional LT-IV tariff applicable. When the cold storage is used to store other person's product, then the cold storage can be considered as commercial cold storage and then LT-VII (A) tariff is applicable.

- (viii) In the meantime, the petitioner approached KSEB Ltd to change the supply voltage from LT to HT. However, KSEB Ltd rejected the same on the ground that the petitioner had arrears with KSEB Ltd, and as per the Regulation 99 (4) of the Supply Code, 2014, 'the application for enhancement of load shall not be considered if the consumer is in arrears of payment of dues payable to the licensee'.
- (ix) Subsequently, Hon'ble High Court vide the judgment dated 5th June 2018 in WP (C) No. 10516 of 2008, expressed its view that, if there is a category change, the Board has to intimate the petitioner about the category change and there after only a demand can be raised. The Hon'ble Court further view that, appropriate decision shall be taken in the light of change in tariff, after hearing the petitioner. Till then the petitioner shall be permitted to continue to pay at the old tariff rate LT-IV.
- (x) In compliance of the judgment of the Hon'ble High Court dated 5th June 2018, the Secretary (Administration) of the respondent KSEB Ltd, heard

the petitioner and taken the following decisions vide the proceedings LA.V/7940/2012 dated 02.11.2018.

- (1) The back arrear from date of connection (12.10.1999) up to the date of detection of error (06.03.2008) in tariff shall be limited to the principle amount payable.
 - (2) The interest on arrears from the date of connection up to the date of detection of error shall be fixed as the personal liability of officials who made the mistake by categorizing the firm in wrong tariff and to recover from them.
 - (3) The tariff applicable to commercial Cold Storage in LT VII (A) category shall be levied from 6.3.2008 the date of detection of error.
 - (4) The interest at the rate applicable shall be levied on the arrear after the detection of error in tariff categorization.
 - (5) The petitioner consumer shall be given an opportunity to avail the benefit of One Time Settlement to settle the entire arrears, if he desires so.
- (xi) The petitioner challenged the proceedings of the KSEB Ltd dated 02.11.2018 before the Hon'ble High Court of Kerala, as WP(C) No. 37629 of 2018. Hon'ble High Court vide the judgment dated 22.11.2018 has decided on the matter and the operating part of the judgment extracted under paragraph -1 above. The Exhibit P7 refereed in the judgment is the proceedings of the KSEB Ltd dated 02.11.2018, detailed under sub paragraph (ix) above.
7. The Commission conducted second hearing on the matter 09.07.2019 at the court hall of the Commission. Adv. Rajendra Kumar, presented the petition on behalf of the petitioner and Sri. K.G.P Nampoothiri, Executive Engineer, presented the matter on behalf of KSEB Ltd.
8. During the hearing, the petitioner submitted the following.
- (i) The cold storage established by the petitioner is the sole unit in the State which stores, the agricultural products, viz, fruits and vegetables. In certain other states like Tamil Nadu such cold storage are classified under agricultural tariff. The agricultural products of the farmers are kept for one

or two months and no deep freezing carried out. The temperature is maintained at around 4⁰C.

- (ii) Till the Commission re-classifying the cold storages under LT-VII (A) vide the tariff order dated 26.11.2007, LT IV tariff was assigned to cold storages. Only from 01.12.2007, these cold storages come under commercial category.
- (iii) The findings of the APTS inspection held in March 2008, and decision to levy electricity charges at LT VII A commercial tariff from the date of connection in 1999 is wrong. Further, the Commission in its order dated 28.1.2013, has clarified that, back arrears cannot be recovered based on the inspection of the APTS.
- (iv) Though the petitioner had approached KSEB Ltd to change the connection from LT to HT, KSEB Ltd rejected the request since the petitioner is having arrears with the licensee.

It is also submitted that the HT connection requested by the consumer is also not sanctioned due to pending arrears.

9. The representative of KSEB Ltd submitted the following.

- (i) The petitioner admitted the fact that, as per the Tariff Order dated 26.11.2007, applicable from 01.12.2007, the petitioner is categorised under LT-VII (A) Commercial tariff.
- (ii) As per Kerala Electricity Supply Code, 2005, if the licensee establishes that the consumer is undercharged, the licensee can claim the difference in tariff from the consumer. On Inspection, it is found that from beginning itself the consumer is engaged in the same activity of storing materials from different uses on rental basis.

10. Based on the deliberations during the hearing, the Commission hereby orders to the petitioner in WP(C) No. 37629 of 2019 and the respondent KSEB Ltd for immediate compliance, within 10 days from the date of this order.

- (1) From the date of connection in 1999, to till date, the petitioner and KSEB Ltd shall submit, the Month wise details of the connected load, energy consumption, fixed charge & energy charge payable at LT IV Industrial

tariff, the fixed charge and energy charge payable at LT VII (A) Commercial tariff.

- (2) The monthly details of the arrears claimed by KSEB till date as per the invoices raised so far (the principal and interest including the rate of interest claimed shall be shown separately).
- (3) The Writ Petitions so far filed by the petitioner, before the Hon'ble High Court against the Tariff Orders of the Commission dated 26.11.2007 and the against the back arrears claimed by KSEB Ltd in March 2008 and other related issues. The details of the disposals of the Writ Petition by the Hon'ble High Court including the copy of the judgment of the Writ Petition shall be submitted to the Commission.
- (4) Date of application and other details submitted by the petitioner to KSEB Ltd to change the tariff category from LT to HT.
- (5) Any other details deem fit for disposing the matter.

Sd/-

**K. Vikraman Nair
Member**

Sd/-

**S. Venugopal
Member**

Sd/-

**Preman Dinaraj
Chairman**

Approved for Issue

**G. Jyothichudan
Secretary**