

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

**Present: Shri. Preman Dinaraj, Chairman**

**OP No 37/2020**

**Hearing date: 29.12.2020**

In the matter of : Petition filed in compliance of the judgement of the Hon'ble High Court dated 16-10-2018 in Writ Appeals WA Nos.1448 & 1482 of 2017 for determination of tariff of individual consumers..

Petitioner : Kerala State Electricity Board Ltd.  
Petitioner represented by: Sri. K. G.P. Nampoothiri, Executive Engineer

Respondents : 1. Sri. Mujeeb Rehman. A, Proprietor,  
The Xtra Food Products, Aroorkutty.  
2. Sri Radhakrishnan. T. K, Rayiga  
House, Thenhilapalam P.O.

Respondents represented by : Sri. Mujeeb Rehman.A

**Daily Order dated 01.01.2021**

1. M/s. Kerala State Electricity Board Ltd (hereinafter referred to as the petitioner or KSEB Ltd), on 18.11.2020, filed a petition before the Commission with the following prayers.

*“The Hon'ble Commission may be pleased to allow the Applicant to realise the reasonable expenditure incurred for providing electric supply **to the respondents as well as all similarly placed applicant/consumers** as per the methodology described under paragraph 10.19 of this application in order to meet the ends of justice as held by the Hon'ble High Court. “*

The petition is filed in compliance of the judgment of the Division Bench of the Hon'ble High Court dated 16.10.2018 in Writ Appeal Petitions WA No. 1448 of 2017 and 1482 of 2017. The relevant portion of the judgment of Hon'ble High Court is extracted below.

*“5. Regulation 35 speaks of expenditure for extension or upgradation or both of the distribution system to be borne by the licensee. Regulation 37 speaks of expenditure for service line, plant etc., for providing supply. We are of the opinion that the distinction is insofar as the expenditure incurred*

*for extension or upgradation of the distribution system has to be under Regulation 35. We do not get a clear definition of the plant from any of the enactments or the Regulation. Though in general terms transformer is a plant; it is also a part of the distribution system. Hence the expenditure incurred for installation of a dedicated transformer is for the purpose of upgradation of the distribution system which is covered under Regulation 35 and 36. We also notice that the requirement for an additional dedicated transformer arises from the finding of the Board under Regulation 36 of the Supply Code. Hence the provision applicable insofar as reimbursement of expenditure is Regulation 35.*

*6. Though the learned Single Judge found the case of the units covered by Regulation 35; it was also found that the Board has to meet the expenses. Regulation 35 as extracted in the judgment of the learned Single Judge itself indicates that the expenditure would be borne by the distribution licensee which can be recovered from the consumers through Tariff as approved by the Commission. The Board hence would have to approach the Commission for the purpose of determination of higher Tariff in the case of the writ petitioners who have a dedicated transformer set up for their demand/additional demand. This would not in any way affect the general Tariff determination for the individual respondents which has to be under that category of the consumer; as brought out by the Commission, periodically. The writ petitioners would have to pay the Tariff under such general Tariff determination Order but would also have to pay the additional amounts for the purpose of setting off the expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide on the amounts with reference to the expenditure incurred; with notice to the units. In such circumstances, the Board has to install the transformer at their costs and then approach the Commission for determination of individual Tariffs with respect to the two units.*

*7. The Judgment of the learned Single Judge is interfered with to the above extent. The respondents shall give consent to the Board for fixation of Tariff as indicated herein above, in their individual cases for the purpose of reimbursement of expenses on which the Board shall carry out installation of the transformer and then approach the Commission for fixation of Tariff. Even when the matter is pending before the Commission, the writ petitioners shall pay Tariff on the general fixation by the Commission under the category in which they are covered.”*

2. Summary of the petition filed by KSEB Ltd is given below.

- (1) 1<sup>st</sup> respondent Sri Mujeeb Rahman is an LT industrial consumer with a contract demand of 50 kVA, under electrical section, Arookutty in Alappuzha District, running an industrial unit in the name and style 'The Xtra Food Products'.
- (2) 2<sup>nd</sup> respondent, Sri. Radhakrishnan T.K, herein is a new applicant for electrical connection under electrical section Chelari in Kozhikode District, applied for electricity supply to start a catering unit.

- (3) The 1<sup>st</sup> respondent Sri Mujeeb Rahman is having a rice pulverizing mill bearing consumer number 15377 of Vaduthala under Electrical Section, Arookutty. The Consumer originally applied for a power requirement of 63kW on 21.02.2015 from the existing 100kVA Transformer at Vaduthala – Kundenkkadavu Road which is at 40m from his premises. However, KSEB Ltd has provided only 50kVA power from the exiting transformer citing the existing loading of the transformer. KSEB Ltd further informed that the additional demand can be provided by installing a new 100kVA transformer at the cost of the petitioner.

Subsequently, the 1<sup>st</sup> respondent approached the Assistant Engineer, Electrical Section, Arookutty, KSEB Ltd for additional power allocation of 20 KW to his unit. Since the capacity of the existing transformer is not sufficient, KSEB Ltd mentioned the requirement to install a new transformer and demanded the charges for installing this new transformer from the respondent.

Aggrieved by the action of KSEB Ltd, the 1<sup>st</sup> Respondent approached the CGRF, Ernakulam, and the CGRF as per its Order dated 29.7.2015 ordered that as per the Regulation 35 and 36 of the Kerala Electricity Supply Code, 2014, the obligation to incur the expenses for providing supply to the LT consumers is on the licensee and hence directed the Board to give additional power by installing new transformer at the cost of the licensee.

- (4) The Second Respondent Sri. Radhakrishnan T.K has approached the Assistant Engineer, Electrical Section, Chelari, KSEB Ltd for power allocation of 40 KW for his new business unit. KSEB Ltd has demanded an amount of Rs.2,75,250/- for installation of a new 100 KVA transformer at the premises, as the existing transformer is not sufficient to meet the additional load. Then the second Respondent approached the CGRF, Kozhikode.

The CGRF Kozhikode as per its Order dated 24.3.2015 ordered that, in view of Regulation 37 of the Kerala Electricity Supply Code, 2014 the consumer shall bear the expenditure for the service line or of the plant or of both provided exclusively for him by the licensee. Accordingly they upheld the demand of KSEB Ltd.

Challenging the Order of the CGRF, the second respondent had approached Electricity Ombudsman. The Ombudsman as per Order dated 30.10.2015 ordered that, in view of Regulation 35 and 36 of the Supply Code,2014, KSEB Ltd has to install the transformer at its cost and directed KSEB Ltd to provide supply accordingly.

- (5) KSEB Ltd filed a Writ petition WP (C) No. 37708 of 2015 before the Hon. High Court against the Order of the CGRF Ernakulam dated 29.07.2015, and also filed the Writ petition, WP(C) No 9967 of 2016 before the Hon. High Court against the Order of the Electricity Ombudsman dated 30.10.2015.

Single bench of Hon. High Court vide the common judgment dated 26.10.2016, dismissed the Writ petitions. Aggrieved by this, KSEB Ltd

filed Writ Appeal No.1448 and 1482 of 2017 before the Division Bench. The Division Bench of the Hon'ble High Court of Kerala vide the common judgment dated 16.10.2018, delivered the present judgment, which is extracted under paragraph-2 above.

- (6) KSEB Ltd submitted that, it has decided to comply with the judgment of the Hon'ble High Court. KSEB Ltd had incurred an amount of Rs 6,43,477.00 for installing new transformers to provide supply to the respondent, as detailed below.

Name of consumer	Electrical Section	Amount incurred.
Mujeeb Rehman.A (W.A No. 1448/2017)	Arookutty	Rs.2,32,000
Radhakrishnan(W.A No. 1482/2017)	Cheelari	Rs.4,11,477
	TOTAL	Rs.6,43,477/-

As per the judgment of the Division Bench of the Hon'ble High Court dated 16.10.2018, the above expenditure has to be recovered from the respondents through tariff at the rate approved by this Commission, in addition to the normal tariff as per the tariff order issued by the Commission from time to time. KSEB Ltd also proposed the following methodology to recover the expenses along with the regular monthly/ bi-monthly bills of the above consumers and other similarly placed applicants and also proposed to provide monthly installment facility for repayment upto a maximum period of 60 equal months at their option, @interest linked to MCLR, as given below.

Repayment in months. (At the option of the consumer; maximum 60 months)	Principal Amount (Rs.)	Yearly Interest (To be related to MCLR) %	Monthly Interest (To be related to MCLR) %	$EMI = P \times \frac{r(1+r)^N}{(1+r)^N - 1}$
				(Rs.)
12	1000	10	0.8333	87.92
24	1000	10	0.8333	46.14
36	1000	10	0.8333	32.22
48	1000	10	0.8333	25.36
60	1000	10	0.8333	21.25

The monthly amount payable by the respondents in WA No. 1448/2017 and WA No. 1482/2017 as per the proposal of KSEB Ltd is given below.

	Total Amount (Rs)	Opting 12 EMIs (RS)	Opting 24 EMIs (Rs)	Opting 36 EMIs (Rs)	Opting 48 EMIs (Rs)	Opting 60 EMIs (Rs)
Respondent in W.A No. 1448/2017	2,32,000	20,398	10,705	7,487	5,884	4,930
Respondent in W.A No. 1482/2017	4,11,477	36,177	18,986	13,278	10,435	8,744

3. The 1<sup>st</sup>respondent Sri Mujeeb Rahman, vide letter dated 21.12.2020 submitted their counter affidavit and its summary is given below.

(1) *As against the application dated 21.02.2015 for 63.05 KW power, KSEB Ltd could allocate 49 kVA load only citing the insufficient capacity of the 100 kVA transformer situated near to the premise of the applicant. When he applied for additional power allocation of 20kW, KSEBL informed that the additional demand can be met only by installing a new transformer at the cost of the consumer. This stand of KSEB Ltd is against the provisions of the Supply Code,2014.*

*As per the Regulation 35 of the Supply Code, 2014, the extension or upgradation or both of the distribution system upto and including the distributing main has to be borne by the licensee at their own cost.*

(2) *As per the Regulation 37 of the Supply Code, 2014, the consumer has to bear the expenditure for the service line or of the plant, or of the both provided exclusively for him by the licensee and the expenditure for the above shall be determined as per the cost data approved by the Commission. The cost of service line i.e., Rs 23750/- demanded by KSEBL was remitted by the respondent. The word 'plant' referred in the Regulation 37 is not meant to distribution transformer. The Commission vide Order dated 03.05.2016 ordered that, the transformer is not to be taken as a plant in the LT service line.*

(3) *For availing LT supply upto 100kVA, the respondent is not bound to remit expenditure towards the cost of capacity enhancement of transformer hence the request of the petitioner for special tariff to recover the expenditure is not in Order. In the tariff Order approved by the Commission, different rates for different category of consumers have been arrived after taking into account all the anticipated expenditure including the strengthening of the distribution network. In addition to the above, high rate of energy charge at ToD basis, KSEBL is collecting fixed charge for kVA demand, power factor compensation penalty, compensation for T&D loss, surcharge from industrial consumers etc. In the above circumstances, the request made by the petitioner for the sanction of the additional tariff for the recovery of expenditure is legally unsustainable and hence the respondent is not liable to pay such additional instalment amount towards the expenditure for the upgradation of transformer and distributing main.*

(4) *The Writ Petition and Appeal Petition filed by the petitioner before the Hon'ble High Court of Kerala is only with the purpose of delay the execution of the Order of the CGRF, Ernakulam.*

4. The Respondent-2, vide letter dated 24<sup>th</sup> December 2020 submitted his comments and its summary is given below.

- (i) When the petitioner applied for power allocation of 40 KW for his new rice mill, KSEB Ltd demanded Rs 2,75,250/- for installation of a new transformer. An appeal was filed before CGRF against the demand of KSEB Ltd, but CGRF upheld the demand of KSEB Ltd. Aggrieved by the order of the CGRF, the respondent filed appeal before the Electricity Ombudsman, and Ombudsman ordered that, in view of regulation 35 and 36 of the Supply Code, 2014, KSEBL have to provide facilities for additional power allocation at their cost. Aggrieved by this, KSEB Ltd filled a writ petition before the Hon. High Court and the judgment of single bench dated 26/10/2016 upheld the decision of Ombudsman. Aggrieved by the this, KSEB Ltd filled a Writ Appeal before Division Bench of the Hon'ble High Court, and the Hon'ble Court on 16.10.2018 pronounced present judgment. As per the judgment, KSEB Ltd would have to install transformer at their cost and then approach the Commission to determine individual tariff to be recovered from the respondent. KSEB Ltd is demanding an amount of Rs 4,11,477/- from the respondent purportedly in furtherance of the judgment of the Hon'ble High Court.
- (ii) The methodology proposed by KSEB Ltd in the petition is devoid of any legal basis and cannot be sustained in law.
- (iii) The respondent has the requirement of 40kW power, and the people in this locality have been clamoring for upgradation of transformer due to voltage fluctuations. The 100 kVA transformer is in excess of the requirement of the respondent. The respondent is not liable to pay for the expenditure incurred by KSEB Ltd for installing 100kVA transformer when the demand of the respondent is only 40 kW. The purported computation of Rs 4,11,477/- payable by this respondent alone is erroneous and legally unsustainable. KSEB Ltd cannot charge the respondent the entire cost of installing the transformer. The manner in which the amount of Rs 4, 11, 477/- is arrived is not explained anywhere in the petition.

The second respondent requested to dismiss the petition filed by KSEBL.

5. The Commission admitted the petition as OP 37/2020 and hearing conducted through video conference on 29.12.2020. Sri. K.G.P Nampoothiri, presented the petition on behalf of KSEB Ltd and Sri. Mujeeb Rehman.A, appeared on behalf of the respondent of the respondent-1. No person appeared before the hearing on behalf of the respondent-2. The summary of the deliberations during the hearing is given below.

- (i) KSEBL submitted that the petition is filed in compliance of the judgement of the division bench if the Hon. High Court of Kerala in Writ Appeal Petitions WA No. 1448 of 2017 and 1482 of 2017. KSEB Ltd installed the transformers at Arookutty at the cost of Rs 2,32,000/- and at Cheelari at the cost of Rs 4,11,477/-. The representative of KSEB Ltd informed that, as per his information, the electric supply is effected to the respondents.

KSEB Ltd further submitted that, the cost of installation of the transformers was prepared as per the cost data approved by the Commission. On a specific query of the Commission to provide the splitup details of the costs, KSEB Ltd submitted that the same will be collected from the field offices and submitted before the Commission.

- (ii) Sri Mujeeb Rahman, submitted that, as per the Regulation 35 of the Supply Code, and order of the Commission dated 03.05.2016, KSEB Ltd has to provide the supply to the respondent by installing the transformer without recovering the cost from the respondents. While approving the normal tariff from time to time, the Commission has been taking into account these cost also. Hence, the respondent requested to dismiss the petition.
- (iii) No person appeared for the hearing on behalf of the respondent No.2.

6. Based on the deliberations during the hearing, the Commission hereby directs the petitioner M/s KSEB Ltd to submit the following latest by 11.01.2021.

- (1) Details of the estimate including split up details, and the basis of cost of the transformers installed at Arookutty and Cheelari.
- (2) Whether the entire cost of the transformers is proposed to be recovered from the respondents alone?
- (3) Date of service connection effected to the respondents.
- (4) Details of the present loading of the transformers (number of service connections so far effected from these transformers and the spare capacity available as of now).
- (5) Whether the respondents has given consent as per the Judgment of the Hon'ble High Court dated 16.10.2018 for reimbursement of the expenses at the tariff approved by the Commission?. If so, provide a copy of the consent before the Commission.

**Sd/-**  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C R Satheeshchandran  
Secretary