

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No 42/2021

In the matter of : Petition to retain the electricity tariff category applicable to IHRD institutions under LT-VI(A) tariff.

Petitioner : Institute of Human Resources Development (IHRD)

IHRD represented by : Dr. P Suresh Kumar, Director, IHRD
Sri. Sreekumar, Executive Engineer, IHRD.

Respondent : Kerala State Electricity Board Ltd.

KSEB Ltd represented by : Sri. Rajesh., Assistant Executive Engineer
Sri Edward Boniface, Assistant Executive Engineer

Date of the hearing : 06.09.2021

Order dated 29.09.2021

1. Institute of Human Resources Development (hereinafter referred to as IHRD or the petitioner) filed a petition before the Commission on 05.08.2021, with the request to retain the electricity tariff category applicable to IHRD institutions under LT VI (A) General tariff category.
2. Summary of the petition filed by IHRD is given below:
 - (1) Government of Kerala vide GO (Ms) No:55/2017/HEDN dated 14.02.2017 issued orders treating all institutions under IHRD at par with Government / Aided Colleges for specific purposes, including for charging electricity tariff by KSEB Ltd.
 - (2) Kerala State Electricity Regulatory Commission (KSERC) vide Order dated 17.04.2017, brought the IHRD institutions under LT-VI(A) General tariff category, the tariff applicable to Government and aided educational institutions. This had been continued till 07.07.2019.
 - (3) However, KSEB Ltd, vide its Circular No: KSEBL/TRAC/Tariff Revision/ 2019-2020/230 dated 11.07.2019, re-categorised the educational

institutions run by autonomous bodies including educational institutions run by IHRD and LBS under LT-VI(F) Tariff category applicable to self financing educational institutions with effect from 08.07.2019.

- (4) IHRD took up the matter with the State Government with the request to retain the electricity tariff of IHRD Institutions under LT-VI(A) Tariff. In reply the Government informed them that the tariff determination in the State is vested with the State Electricity Regulatory Commission and State Government has no legitimate role in the tariff reform process.
- (5) In the above background, IHRD further submitted before the Commission that, IHRD is an educational institution established and being run by the Government of Kerala. IHRD has been receiving both Plan fund and Non Plan fund from Government as provided in the State Budget annually. As a Government run educational institution with social commitment, IHRD caters the higher education aspirations of the student community of the State, and charging only moderate fees prescribed by the Government from time to time. IHRD also implementing social schemes like fee waiver to SC/ST students. IHRD presently facing severe financial crisis and finding difficulty to pay salary to its employees. IHRD presently run 87 institutions including 'Engineering Colleges, Applied Science, Model Polytechnical Colleges, Technical Higher Secondary Schools etc across the length and breadth of the State. Hence the enhancement of the electricity tariff by the KSERC added an enormous burden to IHRD which is already crisis driven.

In the above circumstances, IHRD vide petition dated 03.08.2021 requested to retain electricity tariff applicable to IHRD Institutions as LT-VI(A) General Tariff.

3. The Commission admitted the petition as OP 42/2021 and forwarded a copy of the petition to KSEB Ltd for its comments. KSEB Ltd vide letter dated 03.09.2021, submitted its written comments and its summary is given below.

- (1) As per tariff Order dated 14.08.2014, self-financing educational institutions were categorized under LT VI (F) applicable to self financing educational institutions, and Government or aided educational institutions categorized under LT VI A tariff. Since IHRD institutions does not come under Government or aided educational institutions, these institutions also charged under LT-VI(F) Tariff.
- (2) The State Government vide GO dated 14.02.2017 ordered that all institutions under IHRD is to be treated at par with Government for assigning electricity tariff. IHRD has taken up the Order with the Commission, and the Commission vide tariff Order dated 17.04.2017, categorized the educational institutions run by IHRD under LT-VI(A) tariff at par with the Government and aided educational institutions.

- (3) Later the Government has issued similar orders in case of LBS institutions, SI-MET institutions and Co-operative Academy for Professional Education (CAPE) for treating the electricity tariff at par with the Government/ aided educational institutions. The Commission vide tariff Order dated 08.07.2019 in OP No. 15/2018 rejected the request for giving the request of LBS institutions to provide them the tariff applicable to the Government/ aided educational institutions. The relevant portion of the Order of the Commission is extracted below.

“LBS Centre for Science and Technology is an autonomous body registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Act XII of 1955, established by the Government of Kerala in 1976. The administrative expenses of the autonomous bodies are not met by the State Government, though grants are provide by the Government to such institutions. The fees for studying at the LBS centre is much higher than the that prevailing at similar Government/Aided Educational Institutions.

Hence the Commission is of the view that, the electricity tariff applicable to the Government/Aided Educational Institutions cannot be extended to the educational institutions run by the autonomous bodies under the State Government. The request of the LBS centre is rejected. “

The Commission also removed IHRD institutions from the LT-VI(A) Tariff category. Aggrieved by this, IHRD filed the present petition.

- (4) KSEB Ltd further submitted that, as per the petition, IHRD prayed for revision of tariff from the one approved by the Commission. Tariff determination is a quasi-judicial process as per Sectio-64 of the EA-2003, process of determination of tariff includes pre-publication and public hearings. The petitions of individual consumers against the tariff Order after the expiry of the time limits specified cannot be considered as the same can disturb the delicate balance achieved by the tariff revision process.

KSEB Ltd further submitted that, the petitioner’s plea for having LT VI(A) tariff on IHRD Institutions can only be seen as an individual request, and adjudication of a dispute by this Hon’ble Commission under Section 86(1)(f) does not cover individual complaints of consumers. This position has been set out very clearly by the Hon’ble Supreme Court of India as well as by the Appellate Tribunal for Electricity in various judgments.

The Hon’ble Supreme Court in Maharastra State Electricity Distribution co. Ltd Vs Lloyd’s steel Industries limited (Appeal (civil) 3551 of 2006) held “Therefore, now by virtue of sub-Section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The

*matter should have been left to the said forum.”(Para 7). “Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances”. (Para 8) “In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-Section (1) (f) of the said Section lays down the **adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers**. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer”.*

- (5) KSEB Ltd also raised the issue that, ‘as per section 67 of Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 and its amendment dated 07.08.2014, the petitioner had to file the review petition before the State Commission within 45 days from the date of Order i.e., the petitioner has to file the review latest by 23.08.2019 against the KSERC Order dated 08.07.2019. However, the petitioner has filed the review on 03rd of August 2021 and hence it is badly delayed.

KSEB Ltd also submitted that, if the petitioner is aggrieved by the existing tariff Order dated 08-07-2019, the petitioner had to prefer an appeal before the Hon’ble Appellate Tribunal for Electricity under section-111 of the Electricity Act-2003. Without availing the above legal provisions, the petitioner has now approached before the Hon’ble Commission for re-classification. Hence the petition itself is not legally sustainable.

- (6) KSEB Ltd also submitted that, the tariff of autonomous educational institutions inclusive of the petitioner had been duly considered in the tariff determination process and the Hon’ble Commission had rejected the plea for considering them along with the Government/Aided institutions. The Commission observed that administration and the fee structure followed in the autonomous institution is entirely different from that of Government institution and hence the tariff of autonomous bodies cannot be considered at par with the Government institutions.
- (7) KSEB Ltd further submitted that, the apprehensions of the petitioner can be considered in the next tariff revision process which is on the onset.

4. Hearing of the petition was held on 06.09.2021 through video conference. Dr. Suresh Kumar, Director, IHRD, presented the petition on behalf of the petitioner IHRD. Sri. Rajesh, Asst Executive Engineer, presented the comments of KSEB Ltd. The summary of the deliberations during the hearing is given below:

- (i) The petitioner submitted that, IHRD is a State Government institution with budgetary support from State Government with both plan and non-plan fund. IHRD runs 87 educational institutions in the State. The fees to be collected from students are fixed by the Government. Moreover, such

fee is much lower than that of private self-financing institutions. However, on a query to the Commission, the petitioner submitted that, the fee collected by IHRD is higher than that of Government and aided educational institutions. A slight variation in fees from that of Govt institutions cannot be considered as a reason for categorizing the IHRD Institutions along with private institutions.

KSEB Ltd had changed the tariff of IHRD institutions from LT VI (A) to LT VI (F) subsequent issue of tariff Order dated 08.07.2019.

- (ii) KSEB Ltd submitted that, to consider the request of the petitioner, revision of tariff is required. The Commission while issuing tariff Order dated 08.07.2019 has analyzed the issue in detail. IHRD has not raised any new issues now in this petition. The present petition is only a review to the existing tariff Order dated 08.07.2019, and the same cannot be considered now. However, the petitioner can present their case in the next tariff revision, applicable from 01.04.2022.
- (iii) The Commission during the hearing clarified that, the present tariff Order dated 08.07.2019 applicable for the current MYT control period from 2018-19 to 2021-22 is going to expire on 31st March 2022, i.e the applicability of the current tariff Order is at its fag end of the control period. The Commission already initiated the process of notifying the Tariff Regulations as per the Section 61 of the Electricity Act, 2003, applicable for the next control period starting from 01.04.2022 to 31.03.2027. IHRD can represent their issue during the deliberations of the finalization of the Tariff Regulations and the subsequent tariff determination process.

Analysis and Decision of the Commission

5. The Commission, examined the petition filed by IHRD as per the provisions of the Electricity Act, 2003 and the Regulations in force, and decided the following.

The only issue raised by the IHRD is to re-categorize the electricity tariff applicable to IHRD institutions from LT-VI(F) General category applicable to self-financing educational institutions to LT-VI(A) General category applicable to Government/aided educational institutions.

6. As per the Electricity Act 2003, electricity tariff determination is one of the statutory functions of the State Electricity Regulatory Commissions. Further, the tariff determination is a quasi-judicial process, which includes pre-publication, stakeholder consultation, public hearing etc.
7. The Commission, based on the petition filed by KSEB Ltd on 31.10.2018 for the approval of the Aggregate Revenue Requirement, Expected Revenue from Charges and Tariff determination, issued Order dated 08.07.2019 in Petition

OA No. 15/2018, determined the retail tariff of all categories of consumers in the State with effect from 08.07.2019. The Commission had determined the relevant tariff for the period after completing all the procedures prescribed in the Electricity Act, 2003 including prepublication, stakeholder consultation and public hearings.

8. In the Tariff Order dated 08.07.2019, the Commission as per the Section 62(3) of the Electricity Act, 2003 had determined LT-VI(A) General tariff for all the Government owned educational institutions and also for Government aided educational institutional. However, the self-financing educational institutions are categorized under LT-VI(F) general category, duly considering the aspects that all the administrative expenses of such institutions are met by such institutions themselves from the fees collected from their students. It is a fact that, the LT-VI(F) tariff is slightly higher than the LT-VI(A) tariff, as detailed below.

LT - VI GENERAL (A) (applicable also to Government and Government aided educational institutions ...)	
(a) Fixed Charge (Rs. per kW or part thereof per Month)	6 5
(b) Energy Charge (Rs/kWh)	
(i) Of and Below 500 kWh (all units)	5.70
(ii) Above 500 kWh (all units)	6.50

LT VI GENERAL (F) (applicable also to self financing educational institutions..)	
Fixed charge (Rs/ kW or part thereof per month)	
Single Phase	70
Three phase	140
Energy Charge (Rs per unit) (Non- telescopic)	
0 to 100 units per month	5.80
0 to 200 units per month	6.50
0 to 300 units per month	7.20
0 to 500 units per month	7.80
above 500 units per month	9.00

9. The Commission also observed that in the tariff already determined, institutions such as IHRD, LBS etc are considered as autonomous bodies. The administrative expenses of such autonomous bodies are not by the State Government, though grants are provided by the State Government to such institutions. The fees for studying in such institutions are also much higher than that prevailing in similar Government/ aided educational institutions. **Considering these reasons, the Commission in the Tariff Order dated 08.07.2019, decided that the electricity tariff applicable to the Government/**

aided educational institutions cannot be extended to the educational institutions run by the autonomous bodies under the State Government.

The Commission vide Order dated 19.03.2021 extended the validity of the tariff Order till 31.03.2022.

10. IHRD in the petition dated 05.08.2021 has requested to re-categorise the electricity tariff applicable to the IHRD institutions at LT-VI(A) General tariff, the tariff applicable to the Government/ aided educational institutions. The present petition filed by the IHRD can be considered as review petition to the Tariff Order dated 08.07.2019 in Petition OA No. 15/2018.
11. IHRD filed this review petition against the Order dated 08.07.2019 on 05.08.2021 i.e, after a gap of 760 days from the date of the Order. As per the Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003, and its amendments, the Review Petition against the Order/direction of the Commission has to be filed within 45 days from the date of the Order. The relevant Regulations is extracted below.

*“67. Powers of review,- (1) Any person or party affected by a decision, direction or order of the Commission may, **within forty five days from the date of making such decision, direction or order apply for the review of the same.***

(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.

(3)The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application: Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing: Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”.

12. During the hearing held on 06.09.2021, IHRD submitted that they were not aware of the procedure for filing review petition against the Order of the Commission. The Chairman pointed out that all the Regulations and Orders of the Commission are published at the website of the Commission for the information and awareness of all the electricity consumers and other stakeholders of the State. Hence, there is no merit in the submission of the petitioner that the delay was caused due to ignorance of the procedure for filing review petitions against the orders of the Commission.
13. Further, as per the Section 94 of the EA-2003, review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Sections is extracted below:

“(i) Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have

the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record;
- (e) issuing commission for the examination of witnesses;
- (f) reviewing its decisions, directions and orders;
- (g) any other matter which may be prescribed.

(ii) Order 47 Rule 1 of the Code of Civil Procedure dealing with review of the orders and decisions of a Civil court is quoted below:

“

Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

14. As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, the review jurisdiction of the Commission is very limited. For reviewing its decisions, discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason.
15. The petitioner has not submitted any new facts in this review petition before the Commission. They have also not pointed out any apparent mistake or error on the face of records. Hence, it is observed that neither the provisions of the EA, 2003 nor the review jurisdiction of the Commission under Order 47, Rule 1 of the Code of Civil Procedure is violated while passing the original Order dated 08.07.2019 in Petition OA No. 15/2018.

Considering the above reasons, the Commission ordered that the petition filed by IHRD dated 05.08.2021 is not maintainable as per law. Hence the Commission rejects the petition.

16. However, the Commission hereby clarify that, the prevailing tariff Order dated 08.07.2019 is valid only upto 31.03.2022. The Commission already initiated the process of notifying the Tariff Regulations as per the Section 61 of the Electricity Act, 2003, applicable for the next Control Period starting from 01.04.2022 to 31.03.2027. Once the Tariff Regulations applicable to the next Control Period from 01.04.2022 to 31.03.2027 is finalized, the Commission may, based on the petition for approval of ARR, ERC and Tariff determination, determine the retail tariff applicable to the all consumers in the State through separate proceedings including pre-publication, stakeholder consultation and public hearings. IHRD, at its liberty can take up and present their issues during the proceedings of the next tariff revision exercise. The Commission will consider the issues raised as per the provisions of the Electricity Act, 2003 and Regulations in force and take a considered decision. Till then, the prevailing tariff categorization applicable to the IHRD and other similarly placed institutions shall continue as such. Accordingly, the present petition filed by IHRD stand disposed off.

Orders of the Commission

17. The Commission, after examining the petition filed by IHRD, the remarks of KSEB Ltd, deliberations during the hearing held on 06.09.2021, other materials and records, as per the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018, KSERC (Conduct of Business) Regulations, 2003 and other Rules and Regulations in force orders as follows.
 - (1) The petition filed by IHRD for recategorisation of their electricity tariff to LT-VI(A) is filed after a gap of 760 days from the date of the original Order. As per Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003, as amended vide KSERC (Conduct of Business) Amendment Regulations, 2014, Review Petition is to be filed within Forty Five days of issue of the Order. Since this provision has not been adhered, the Commission cannot consider the present petition of IHRD.
 - (2) The recategorising of the electricity tariff of IHRD institutions under LT-VI(A) Tariff at par with the electricity tariff of the Government/ aided educational intuitions is rejected as not maintainable as brought out in Para 9 of this Order.

IHRD may, at its liberty, take up their issues during the deliberations of the next tariff revision exercise applicable for the Control Period commencing from 01.04.2022 to 31.03.2027. The Commission, will consider any such request as

per the provisions of the Electricity Act, 2003 and the Regulations in force and take a considered decision in the next tariff revision process.

The petition disposed off. Ordered accordingly.

Sd/-
Adv A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)