

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Shri T K Jose, Chairman
Shri B Pradeep, Member
Adv. A.J Wilson, Member

OP No 54/2023

In the matter of : Petition seeking exemption from signing the Power Purchase Agreement (PPA).

Petitioner : Thrissur Corporation Electricity Department (TCED)

Petitioner represented by : Adv Arun Thomas, Counsel for the petitioner
Shri M. K. Varghese, Hon'ble Mayor Thrissur Corporation
Shri Jose T.S, Electrical Engineer, TCED

Respondent : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by : Shri. Rajan M.P, Dy. Chief Engineer
Shri Ajithkumar K.N, Executive Engineer

Date of hearing : 12.12.2023, 11:30 AM

Venue : Court Hall of the Commission

Interim Order dated 03.01.2024

1. The Thrissur Corporation Electricity Department (hereinafter referred as M/s TCED or petitioner), on 19.07.2023, filed a petition before the Commission with the following prayers;

“
a) *This Hon'ble Commission may be pleased to exempt the petitioner from entering power purchase agreement with Kerala State Electricity Board Ltd. based on Exhibit P5 Government Order No. L.S2-346/21 dated 24th April,1947;*
b) *Pass such other orders, which this Hon'ble Commission may deem, fit in the facts and circumstances of the case.*”
2. Summary of the petition filed by the petitioner, M/s TCED is given below;

(1) The project for electrification of erstwhile Thrissur Corporation started as per the Royal decree No:44 issued by the Maharaja of Cochin. As per the license conditions, a company was constituted as Cochin State Power and Light Corporation Ltd and also a power house was established at

Kottappuram, Thrissur. Government granted permission to M/s Chandrie and Company Ltd to supply electricity in Thrissur Area as per Cochin State Trichur Electric License, 1111(1936AD).

- (2) The Municipal Council, Thrissur on 31.07.1937 decided to take over the electricity supply from M/s Chandrie and Company Ltd and permission was accorded by the Government of His Highness Maharaja of Cochin as per Order PW-5.17279/1199 dated 7th August, 1937 to the Cochin State Power and Light Corporation. Ltd for the assignment of the Thrissur Electric License of 1111 to Thrissur Municipality.
- (3) On 14th August 1937 a sale deed was executed between Director, Chandrie and Company Ltd, the Cochin State Power and Light Corporation Ltd and the Chairman of Thrissur Municipal Council on behalf of the Thrissur Municipal Council.
- (4) The Petitioner, M/s Thrissur Corporation Electricity Department (TCED) was established as per Government Order No.D7.16849/12 dated 7th August 1937 by Government of His Highness Maharaja of Cochin. As per the Order dated 19th August 1937, the Government issued an Order to prepare a separate budget and maintain a separate account of electricity department as if the concern is a separate entity.
- (5) The petitioner further submitted that the **power production in the Thrissur Power House has become insufficient to meet the requirement of the town consumers**, the Municipal Council has decided that the power house may be sold to Government on the following terms and conditions;
 - (i) *All the power necessary for the Town will be made available to the Municipality, which should be made the solo licensee for distributing the power within the town to any limit, even exceeding the 200 K.W limit.*
 - (ii) *In case of any breakdown to the bulk supply, the power generated from this Power House should exclusively be utilized to the Town supply. Subsequently the council has dropped this item on the assurance of the Executive Engineer that if any differential treatment has to be made between the consumers, the better treatment and preference will be shown to this licensee, the Municipality.*
 - (iii) *The Power House compound, buildings and plant and the distributing system outside the Town limits should be purchased by them, for the original value paid by the Municipality (including 25% premium paid to the assignor) less depreciation, as charged, plus 20% surcharge. The council has also resolved to modify this by the statement that 20% surcharge need not be paid in the case of purchase for which 25% premium has already been included as paid.*

- (iv) *Municipal Institution outside the Town limits should be excluded from the operation of the principle in condition (i).*
 - (v) *The price per unit of the bulk supply should not exceed 7 ½ pies, The price per unit will be the sanctioned tariff rate, subject to such surcharge as fixed by the Government from time to time not exceeding 25%.*
 - (vi) *The existing staff of the generating station should be absorbed into the Government technical service.*
 - (vii) *The amount necessary for extending the distributing system in the Town, for which a loan has been asked for from the Government, will be temporarily appropriated from the purchase money, after ear-marking the same for payment of the debenture loan.*
 - (viii) *Without prejudice to our claims against the Cochin textiles in the matter of the supply of power to them, the liability of the Municipality for the supply of power under the existing contract has to be taken over by the Government.*
- (6) The petitioner submitted that the Government has considered the above condition of Thrissur Municipal council for sale of the Power House as agreed by the Municipal Council. Regarding the terms and conditions, the Government approved the proposal (i), (iii), (v) (vii) and (viii) and as per proposal (ii), the Government assured that the Municipality will not be a loser on this account. The Government further ordered that all institutions outside the town limit be supplied by the Government directly irrespective of whether they belongs to Municipality or not. As per the first proposal approved by the Government, ' all the power necessary for the Town will be made available to the Municipality and the Thrissur Corporation is entitled for unlimited supply of electricity as needed to the Thrissur Corporation Electricity Department.
- (7) The petitioner submitted that, TCED has been established prior to the establishment of KSEBL in the year 1957. Since then, the petitioner has been purchasing power in bulk from KSEBL. The assets transferred to Government has been retransferred to the KSEB by the Government and the same is held by KSEBL now. As per the bulk supply tariff approved by the Commission from time to time, the petitioner is distributing power to the consumers of old municipal area. TCED being a deemed distribution licensee as per the EA-2003, the petitioner has been remitting license fee to the Commission as per the conditions of license.
- (8) The petitioner submitted that, the Commission vide the Order dated 31.12.2016 in petition No. OA No. 08/2017 in the matter of Truing Up of accounts for the FY 2015-16, directed to complete the formalities of signing the PPA with KSEBL at the earliest and submit the initialled PPA before the Commission for approval.

The petitioner preferred another petition (OP 02/2020) before the Commission for waiving power factor penalty imposed by KSEBL. The Commission rejected the same vide the Order dated 23.04.2020 and also directed the TCED to sign the PPA with KSEBL within three months from the date of the Order,

Immediately, the petitioner preferred a review petition RP 3 of 2020, before the Commission and vide the Order dated 03.09.2020, the Commission had rejected the petition and directed to sign the PPA with KSEBL within 60 days from the Order.

Thereafter, the petitioner filed the petition No. OP 72/2021 for the truing up of accounts for FY 2020-21 on 26.11.2021. The above petition was disposed by the Commission on 16.01.2023, with the direction to comply with the Order in OP 02/2020 within 60 days and report the compliance to the Commission.

- (9) The petitioner submitted that, the Commission had directed the petitioner to sign the PPA with KSEBL, without taking into consideration of Order L.S2- 346/21 dated 24th April 1947. As per the Government Order, the KSEBL is bound to provide unlimited electricity to the petitioner. The petitioner further submitted that, the above Government Order is protected under Section 185 of the Electricity Act, 2003.

Section 185(2)(e) says all directives issued, before the commencement of this Act, by a State Government under enactment specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

Section 185(3) says the provisions of the enactment specified in the Schedule, not inconsistent with the provisions of the EA-2003, shall apply to the States in which such enactments are applicable. In this case, the Government Order is inconsistent with the provisions of the EA-2003. Hence the respondent KSEBL cannot unilaterally demand PPA from the petitioner. **The petitioner is immune from signing PPA as per the above GO.**

In the above circumstances, the petitioner TCED may be pleased to allow exempting from signing PPA with KSEBL.

3. The respondent KSEBL filed its counter affidavit on 09.11.2023 and its summary is given below:
- (1) The petitioner M/s TCED is one among the 10 small distribution licensees in the State, who purchase power from KSEBL and distribute electricity within their licensed area. Except TCED, KSEB Ltd has valid PPA with all other small licensees.

- (2) Though TCED has been purchasing power from KSEB Ltd and availing power at 110KV and 66KV, it does not have any connectivity agreement with SBU-T of KSEB Ltd and PPA with SBU-D of KSEBL. Even without having a valid PPA, KSEBL has been supplying power to TCED at the BST approved by the Commission from time to time.
- (3) Though KSEB Ltd has forwarded draft initialled PPA in the year 2015 and 2017, but TCED is reluctant to sign PPA with KSEB Ltd.
- (4) As per the records, the Contract Demand (CD) of TCED is only 8MVA, however, the actual billing demand is more than 35MVA. Without valid PPA, KSEBL is founding difficulty for regulating the power supply, especially during the evening peak hours.

Since, TCED had not executed PPA, KSEB Ltd could not impose excess demand charge even though the actual Maximum demand is many times more than Contract Demand of 8MVA. Though the date of connection of 110KV substation was on 05.04.2008, the Contract Demand at 110KV is yet to be specified. Hence, KSEB Ltd is preparing the bill without specifying Contact Demand.

- (5) KSEB Ltd submitted that considering the difficulty faced by KSEB Ltd, the Commission at multiple occasions has directed TCED to execute PPA, but TCED ignored all such directions
- (6) KSEB Ltd further submitted that, the execution of PPA is only for legalizing existing power supply arrangements, however they are not shown any interest in signing the agreement.
- (7) TCED argument for, not signing the PPA seems to be built on a misconceived legal perception on the interpretation of Section 185 of the Electricity Act 2003. It is their contention that as per the Order No.L.S2-346/21 dated 24.04.1947 issued by the then Maharaja of Cochin, KSEBL is bound to provide them with unlimited electricity on the presumption that the said Order is protected under Section 185 of the Electricity Act, 2003 and hence they are not inclined to execute PPA with KSEBL.
- (8) KSEBL further submitted that the above argument by the petitioner already examined by the Commission in the Order dated 03.09.2020 in RP 03/2020 which is extracted below:

“

8. ***Adherence to the Maharaja's Order regarding making power available to TCED:*** *The Commission notes that TCED has been repeatedly, violating the orders and directions of this Commission issued under the relevant provisions of the Electricity Act, 2003 and Regulations and Orders issued thereof. TCED cannot take undue advantage of the Order referred to by the petitioner dated 23.04.1947, of the Government of His Highness, the Maharaja of Cochin. A plain reading of the Maharaja's Order clearly reveals that it pertains only to*

*making power available to TCED beyond 200 kW (0.20 MW). It does not, by any stretch of imagination deal with matters such as entering into PPA for purchasing electricity, compliance to the technical standards for connectivity to the grid or safety requirements for construction, operation and maintenance of electrical plants and lines which TCED is required to comply with as per the Statutes. The Commission further notes that the requirement of adequate power to TCED is at present being satisfactorily fulfilled by KSEB Ltd. **Hence, TCED's reliance on the Order of the Maharaja of Cochin for not complying with the provisions of the Electricity Act, 2003 and Regulations made thereunder by the appropriate and duly empowered bodies is totally misplaced and inappropriate and is rejected.***

As above the matter was already examined and settled by the Commission. But TCED again submitted that, as per the Order of the Maharaja, they may be exempted from executing the PPA.

- (9) KSEB Ltd further submitted that, currently, the power sector in India is being governed by the Electricity Act, 2003 and vide Regulation 86(1)(b) of the Electricity Act, 2003, the Hon'ble Commission shall discharge the function to regulate the power purchase and procurement process of the distribution licensees through PPA, including the terms and conditions of the PPA. The relevant clause is reproduced below.

Section 86. (Functions of State Commission):-

.....

*1. (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources **through agreements** for purchase of power for distribution and supply within the State;*

- (10) By virtue of Section 14 of the Electricity Act, 2003, the above provision is applicable to all licensees including deemed licensees, owned and operated by the Government. No exception is given to any licensee from the execution of such an agreement. Hence, the Hon'ble Commission in Para 9 of the Order dated 03.09.2020 in Review Petition RP 03/2020 filed by M/s TCED, clearly observed that "*the Commission does not have the power to grant any exemption to the above provision to any distribution licensee operating in the State.*
- (11) Section 185 of the Electricity Act, 2003 deals with 'Repeal and Savings'. In para 7 of the petition, they have relied on Section 185(2) (e) and Section 185(3) of the said Act to substantiate their claim that the Order No.L.S2-

346/21 dated 24.04.1947 is consistent with the provisions of the Act, 2003 and hence the same allows them exception to sign PPA with KSEBL.

- (12) The relevant portion of Section 185(2)(e) of the EA-2003 is extracted below;

Section 185(2) (e)

'all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government',

Section 185(3)

'The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.'

The enactments specified in the Schedule are

THE SCHEDULE.

ENACTMENTS

[See sub-section (3) of section 185]

The schedule to this Act mentions the State Reforms Acts. Originally 8 enactments were incorporated:

- a. The Orissa Electricity Reform Act, 1995 (Orissa Act No. 2 of 1996)*
- b. The Haryana Electricity Reform Act, 1997 (Haryana Act No. 10 of 1998)*
- c. The Andhra Pradesh Electricity Reform Act, 1998 (Andhra Pradesh Act No. 30 of 1998)*
- d. The Uttar Pradesh Electricity Reform Act, 1999 (Uttar Pradesh Act No. 24 of 1999)*
- e. The Karnataka Electricity Reform Act, 1999 (Karnataka Act No. 25 of 1999)*
- f. The Rajasthan Electricity Reform Act, 1999 (Rajasthan Act No. 23 of 1999)*
- g. The Delhi Electricity Reforms Act, 2000 (Delhi Act No.2 of 2001)*
- h. The Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 (Madhya Pradesh Act No. 4 of 2001)*

KSEB Ltd submitted that, on a close reading of the said Sections, it can safely be concluded that the said Sections envisages a different scenario and the same do not have any bearing on the argument of the petitioner that the Order dated 24.4.1947 is saved by Section 185 of the Act. An Order issued by the erstwhile Princely State of Cochin which is not protected by the Electricity Act, 2003 from signing PPA. Hence their petition built on the Order LS2-346/21 dated 24th April 1947, and Section 185 of the Act is devoid of any merit and hence is liable to be rejected.

- (13) Being a distribution licensee, KSEBL is duty bound to follow the provisions of Electricity Act 2003 and the Rules and Regulations made thereunder

and hence sale of energy to another entity without a proper agreement would be prejudicial to the interest of the KSEBL. Hence KSEBL will be constrained to restrict the supply to TCED in the absence of a valid agreement.

(14) The request of M/s TCED for exemption from executing PPA for the purchase of power is purely relying on the Order of the Maharaja of Cochin which is for providing power required for the town is devoid of any merit and is not legally maintainable. The saving clause of Sections 185(2)(e) and 185(3) of the Electricity Act, 2003 also have no relevance in this case. After the enactment of Electricity Act, 2003, the power sector in the country is being governed by the provisions contained therein and the continuance of the petitioner as a deemed licensee itself is as per the provisions of the said Act. Hence, the petitioner has no legal right to claim that they are free from executing the PPA and the petition may be rejected. Moreover, the arguments pointed out in the petition has already been examined and rejected by the Commission in the order dated 03.09.2020 in RP 03/2020.

4. The Commission admitted the petition as OP 54/2023. Hearing on the petition was held on 12.12.2023 at the Court hall of the Commission. Adv Arun Thomas, Counsel for the petitioner appeared on behalf of the Petitioner. Shri Ajithkumar K.N, Executive Engineer, appeared on behalf of the respondent KSEB Ltd. The deliberations during the hearing are summarized below.

(1) The petitioner submitted the following during the hearing;

- (i) The project for electrification of erstwhile Thrissur Corporation started as per the Royal decree No:44 issued by the Maharaja of Cochin. As per the license conditions, a company was constituted as Cochin State Power and Light Corporation Ltd and also a power house was established at Kottappuram, Thrissur. The Government granted permission to M/s Chandrie and Company Ltd to supply electricity in Thrissur Area as per Cochin State Trichur Electric License, 1111(1936AD). On 01.07.1937 the 1st electric connection was issued in Thrissur corporation.
- (ii) The Municipal Council, Thrissur on 31.07.1937 decided to take over the electricity supply from M/s Chandrie and Company Ltd and permission was accorded by the Government of His Highness Maharaja of Cochin as per Order PW 5.17279/1199 dated 7th August, 1937 to the Cochin State Power and Light Corporation.
- (iii) On 14th August 1937 a sale deed was executed between Director, Chandrie and Company Ltd, the Cochin State Power and Light Corporation Ltd and the Chairman of Thrissur Municipal Council on behalf of the Thrissur Municipal Council.
- (iv) The entire property had been transferred to the cochin corporation through the subsequent sale deed.

- (v) The Petitioner, M/s Thrissur Corporation Electricity Department was established as per Government Order No. D7.16849/12 dated 7th August 1937 by Government of His Highness Maharaja of Cochin.
- (vi) The petitioner further submitted that the power production in the Thrissur Power House has become insufficient to meet the requirement of the town consumers, the Municipal Council has decided that the power house may be sold to Government on the following terms and conditions;
- (i) *All the power necessary for the Town will be made available to the Municipality, which should be made the solo licensee for distributing the power within the town to any limit, even exceeding the 200 K.W limit.*
 - (ii) *In case of any breakdown to the bulk supply, the power generated from this Power House should exclusively be utilized to the Town supply. Subsequently the council has dropped this item on the assurance of the Executive Engineer that if any differential treatment has to be made between the consumers, the better treatment and preference will be shown to this licensee, the Municipality.*
 - (iii) *The Power House compound, buildings and plant and the distributing system outside the Town limits should be purchased by them, for the original value paid by the Municipality (including 25% premium paid to the assignor) less depreciation, as charged, plus 20% surcharge. The council has also resolved to modify this by the statement that 20% surcharge need not be paid in the case of purchase for which 25% premium has already been included as paid.*
 - (iv) *Municipal Institution outside the Town limits should be excluded from the operation of the principle in condition (i).*
 - (v) *The price per unit of the bulk supply should not exceed 7 ½ pies, The price per unit will be the sanctioned tariff rate, subject to such surcharge as fixed by the Government from time to time not exceeding 25%. The existing staff of the generating station should be absorbed into the Government technical service.*
 - (vi) *The amount necessary for extending the distributing system in the Town, for which a loan has been asked for from the Government, will be temporarily appropriated from the purchase money, after earmarking the same for payment of the debenture loan.*
 - (vii) *Without prejudice to our claims against the Cochin textiles in the matter of the supply of power to them, the liability of the Municipality for the supply of power under the existing contract has to be taken over by the Government.*
- (vii) As per Section 185(3), the provisions of the enactment specified in the Schedule, not inconsistent with the provisions of the EA-2003, shall apply to the States in which such enactments are applicable. In this case, the Government Order is inconsistent with the provisions of the EA-2003. Hence the respondent KSEBL cannot unilaterally demand PPA from the petitioner. The petitioner is immune from signing PPA as per the GO dated

- (viii) The petitioner further submitted that, KSEB Ltd cannot consider the Thrissur Corporation as an ordinary consumer. Since the property owned by the Thrissur Corporation is transferred to the Government on certain conditions and the KSEB Ltd cannot unilaterally terminate it. As per the G.O dated 24.04.1947, they need a perpetual arrangement with KSEB Ltd, whenever the TCED requires additional power, KSEB Ltd have to supply the additional power without hesitation.
- (2) KSEB Ltd submitted the following during the hearing;
- (i) KSEB Ltd submitted that the argument of TCED for, not signing the PPA seems to be built on a misconceived legal perception on the interpretation of Section 185 of the Electricity Act 2003.
- (ii) The Section 185 of the Electricity Act, 2003 deals with 'Repeal and Savings'. M/s TCED have relied on Section 185(2) (e) and Section 185(3) of the said Act to substantiate their claim that the Order No.L. S2-346/21 dated 24.04.1947 is consistent with the provisions of the Electricity Act, 2003.
- (iii) KSEB Ltd further submitted that, the said Sections envisages a different scenario and do not have any bearing on the argument of the petitioner that the Order dated 24.4.1947 is saved by Section 185 of the Act. An order issued by the erstwhile Princely State of Cochin which is not protected by the Electricity Act, 2003 does not cast a duty on KSEBL, a distribution licensee, to supply energy without executing a PPA. Hence the petition filed by TCED is built on the Order issued by the Princely State of Cochin and Section 185 of the Act is devoid of any merit and is liable to be rejected.
- (iv) KSEBL being a distribution licensee, is duty bound to follow the provisions of EA 2003. Hence sale of energy to another entity without a proper agreement would be prejudicial to the interest of the KSEBL and KSEBL will be constrained to restrict the supply to TCED in the absence of a valid agreement.
- (v) KSEB Ltd submitted that the Commission vide the truing up Order of the TCED for the year 2015-16 dated 02.06.2017 had already considered this matter and has repeatedly directed TCED to execute a PPA. Further the Commission through the various orders had also directed M/s TCED to execute a PPA with KSEB Ltd.
- (vi) KSEBL is supplying power to 137.5 Lakh consumers and 10 distribution Licensees and every consumer and distribution licensee except TCED has executed agreements with KSEBL specifying their contract demand. Hence, it is not wise to give exemption to TCED from executing the agreement for purchase of power.

- (vii) KSEB Ltd submitted that Requesting exemption from executing PPA, purely relying on the Order of the Maharaja of Cochin is not legally maintainable.

Hence, the petition filed by M/s TCED may be rejected and appropriate directions may be issued to M/s TCED for executing the PPA with KSEBL for the purchase of power from KSEBL.

- (viii) KSEB Ltd further submitted their willingness to supply additional power as per the requirement of M/s TCED, subject to the prior intimation within the stipulated time frame, and also submitted willingness for the incorporation of these conditions in the PPA.
- (3) Commission further directed the KSEB Ltd to clarify whether they are willing to meet the power requirements of M/s TCED in future, considering that the TCED is own and operated by the Local Self Government. KSEBL clarified their willingness to supply additional power as per the requirement of M/s TCED, subject to the prior intimation within the stipulated time frame, and also the willingness to incorporate these conditions in the PPA.

Analysis and Decisions of the Commission

5. The Commission having examined the petition filed by TCED dated 19.07.2023, the counter argument of the KSEB Ltd, the provisions of the Electricity Act,2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, deliberations of the subject matter during the hearing on 12.12.2023, other documents and evidences, here by decided as follows.
6. The petitioner Thrissur Corporation Electricity Department (TCED) is a small distribution licensee in the State, managed by the Local Self Government namely Thrissur Corporation. TCED has been distributing electricity within a small area of 12.65 sq.km out of the total area of 102 sq.km of Thrissur Corporation and supplying electricity to about 40000 consumers with in the Thrissur Town limit.
7. KSEB Ltd is the incumbent distribution licensee in the State, which is fully owned by the State Government. KSEBL is the successor entity to the erstwhile Kerala State Electricity Board (KSEB) established in 1957.
8. Since the constitution of KSEB in 1957 by the State Government as per the provisions of the Electricity (Supply) Act, 1948, TCED had been procuring electricity from KSEB for distributing electricity in the town area of Thrissur Corporation covering 12.65 sq.km. KSEB/KSEBL is directly distributing electricity outside the town limit of Thrissur Corporation, which comprises about 102 sq.km except the license area of TCED (12.65 sq.km).
9. As per the details before the Commission, the total power requirement of TCED is about 35 to 40 MVA and the annual energy requirement is about 150 to 160 MU. As mentioned earlier, the entire electricity requirement of the TCED is being met by procuring electricity from KSEBL, i.e., the TCED is the 'buyer' and KSEBL is the 'supplier' in terms of the electricity transaction between the TCED and KSEBL is concerned.

10. Though the TCED is procuring the electricity requirement from KSEBL, they are yet to be sign Power Purchase Agreement (PPA) with KSEB Ltd, detailing the terms and conditions regulating this supply. The supplier KSEBL has submitted the difficulties faced by them in the absence of a valid PPA between the TCED as the buyer of electricity and KSEBL as the supplier of the electricity, especially for managing the load generation balances in the State. Moreover, the Commission has noted that, dispute regarding power factor incentive, penalties etc, have aroused, in the absence of a properly executed Agreement, which usually regulates various matter related to supply. KSEBL also submitted that, except TCED, it have valid PPA with all other small distribution licenses including those owned by the State Government.
11. After the enactment of the Electricity Act, 2003, all the distribution licensees in the State including the deemed licensees in the State is governed by the provisions of the Electricity Act, 2003. Further, as per the Section 86(1)(b) of the Electricity Act, 2003, regulating the electricity purchase including the approval of the agreements of power purchase from generation companies or licensees by the distribution licensees is one of the statutory functions of this Commission. Further, the Regulation 78 of the KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2021 also mandates the approval of the power purchase agreements by the distribution licensees and generating companies/ licenses or from other sources, by the Commission. However, in the case of TCED, the power purchase agreements for purchasing power from KSEBL is yet to be signed between them.
12. The Commission has also examined the argument of TCED for not signing the agreement, citing the Order LS2-346/21 dated 24th April 1947 submitted along with the petition. This issue was appraised by the Commission in detail its Order dated 03.09.2020 in RP No. 03/2020, and decided as follows.

“8. Adherence to the Maharaja’s Order regarding making power available to TCED: The Commission notes that TCED has been repeatedly, violating the orders and directions of this Commission issued under the relevant provisions of the Electricity Act, 2003. TCED cannot take undue advantage of the Order referred to by the petitioner dated 23.04.1947, of the Government of His Highness, the Maharaja of Cochin. A plain reading of the Maharaja’s Order clearly reveals that it pertains only to making power available to TCED beyond 200kW (0.20 MW). It does not, by any stretch of imagination deal with matters such as entering into PPA for purchasing electricity, compliance to the technical standards for connectivity to the grid or safety requirements for construction, operation and maintenance of electrical plants and lines which TCED is required to comply with as per the Statutes. The Commission further notes that the requirement of adequate power to TCED is at present being satisfactorily fulfilled by KSEB Ltd. **Hence, TCED’s reliance on the Order of the Maharaja of Cochin for not complying with the provisions of the Electricity Act, 2003 and Regulations made thereunder by the appropriate and duly empowered bodies is totally misplaced and inappropriate and is rejected.**

9.Non-signing of PPA by TCED with KSEB in spite of the Commission’s specific direction in this regard: Vide Regulation 86(1)(b) of the Electricity Act, 2003, this Commission is vested with the powers to regulate the power purchase of the distribution licensees, including the terms and conditions of the PPA. By virtue of Section 14 of the Electricity Act, 2003, this provision is applicable to all licensees including deemed licensees, owned and operated by the Government. This Commission does not have the power to grant any exemption to the above provision to any distribution licensee operating in the State.

The Commission noted that TCED has been purchasing electricity from KSEB Ltd at the Bulk Supply Tariff approved by this Commission. However, till date TCED has been delaying the signing of a power purchase agreement with KSEB Ltd. The Commission vide its Order in Petition OA No. 8/2017 dated 02.06.2017 and OP No.02/2020 dated 23.04.2020 had clearly directed TCED to enter into a PPA with KSEB Ltd. However, TCED is yet to comply with this direction of the Commission on some pretext or the other. Instead, TCED has now taken the excuse that since it has not signed any PPA with KSEB Ltd, it is not bound to pay any power factor penalty to KSEB Ltd for not maintaining the minimum power factor prescribed by the Commission.

The Commission hereby directs TCED that all its Orders, Regulations, Codes etc are uniformly applicable to all distribution licensees and no exemptions were sought for nor will be given. Further, the Commission reiterates its earlier Order dated 23.04.2020 that TCED must enter into a proper agreement with KSEB Ltd with proper terms and conditions of supply. TCED may also note that in the absence of a valid PPA with the bulk power supplier i.e. KSEB Ltd there is no obligation to supply power by KSEB Ltd to TCED. The Commission also cannot adjudicate any dispute(s), as per Section 86(1)(f) of the Electricity Act, 2003, if it arises between TCED and KSEB Ltd.”

13. The Commission has once again examined the conditions stipulated in the Order No. L.S2-346/21 dated 24th April 2017 of the Government of His Highness the Maharaja of Cochin regarding the 'sale of Power House of Trichur Municipality to the Government. A comparison of the proposals resolved by the Council of Trichur Municipality and the approval granted by the Government on the resolution of the council is given below.

<u>Terms and conditions resolved by the Municipal Council of Trichur Municipality for taking over of Trichur Power House by Government of His Highness the Maharaja of Cochin</u>	<u>Approval granted by the Government vide the Order dated 24.04.1947 on the proposals of Trichur Municipal Council</u>
(i) All the power necessary for the Town will be made available to the Municipality, which should be made the solo licensee for distributing the power within the town to any limit, even	Approved
(ii) In case of any breakdown to the bulk supply, the power generated from this Power House should exclusively be utilized to the Town supply. Subsequently the council has cropped this item on the assurance of the Executive Engineer that if any differential treatment has to be made between the consumers, the better treatment and preference will be shown to this licensee, the	The council has subsequently dropped this item. The Executive Engineer has however assured that Municipality will not be a loser on this account
(iii) The Power House compound, buildings and plant and the distributing system outside the Town limits should be purchased by them, for the original value paid by the Municipality (including 25% premium paid to the assignor) less depreciation, as charged, plus 20% surcharge. The council has also resolved to modify this by the statement that 20% surcharge need not be paid in the case of purchase for which 25% premium has already	Approved
(iv) Municipal Institution outside the Town limits should be excluded from the operation of the principle in condition (i).	All institutions outside the town limits will be supplied by Government directly, no matter whether they belong to the Municipality or not. Government does not find any reason to make any exemption in this case
(v) The price per unit of the bulk supply should not exceed 7 ½ pies, The price per unit will be the sanctioned tariff rate, subject to such surcharge as fixed by the Government from time	Approved
(vi) The existing staff of the generating station should be absorbed into the Government technical service.	Orders regarding the staff will be issued in due course after the purchase of the Power House is actually affected.
(vii) The amount necessary for extending the distributing system in the Town, for which a loan has been asked for from the Government, will be temporarily appropriated from the purchase money, after ear-marking the same for payment of the debenture	Approved.
(viii) Without prejudice to our claims against the Cochin textiles in the matter of the supply of power to them, the liability of the Municipality for the supply of power under the existing contract has to be taken over by the Government.	Approved

14. The Commission, has carefully examined the conditions approved by the Government of Kochi vide the Order dated 25.04.1947 in the sale of the Power House owned by the then Trichur Municipality, to the Government of Cochin, as detailed in the paragraph-13 above. However, the petitioner has not produced any records or evidence showing that the said responsibilities/liabilities undertaken by the erstwhile princely State of Cochin has been legally transferred to KSEB Ltd. Also the reliance of Section 185 of the EA-2003 is of no purpose as the above undertakings does not form part of schedule of the Act.
15. At the same time, as the incumbent distribution licensee, STU and also owning generation assets, and also fully owned by the State Government, KSEBL has been fulfilling power requirements of Thrissur Municipal Corporation as detailed below.
 - (i) KSEBL has been meeting the entire requirement of TCED for supplying electricity within the licence area of 12.65 sq.km within the town limit of Thrissur Corporation.
 - (ii) KSEBL has been supplying electricity outside the town limit of Thrissur Corporation within the corporation area.

During the hearing of the subject matter also, KSEBL has clarified their willingness to fully meet the electricity requirements of TCED at the BST approved by this Commission, however a formal Power Purchase Agreement has to be signed with them for legalising the power purchase arrangements.

16. Sale and purchase of electric power is a commercial activity, the terms of which are necessarily to be clearly spelt out in a well drafted commercial contract. The terms need to include such details as quantum, place of supply, metering, rates for supply, intervals for raising of invoices for supply, time period for making payments, dealing with delays in payment, effects of default in payment, steps for changing the agreed quantum over the period, recourse available to buyer incase seller defaults in the supply, dispute resolution etc.

The Order relied up on by M/s TCED does not specify none of these matters and cannot substitute a legally executed agreement. It is thus, in the interest of TCED as well, to have a properly spelt out PPA, which needs to be discussed and finalized between the parties, with the help of legal counsel, as may be required.

17. Considering all these aspects in detail, the Commission is of the considered view that, there is no provisions in the Electricity Act, 2003 and KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2021 to exempt the distribution licensee M/s TCED from signing Power Purchase Agreement with the supply licensee KSEBL. Hence TCED shall sign formal power purchase agreement with KSEB Ltd with immediate effect. The terms and conditions of the PPA shall be finalised through mutual consensus between M/s TCED and KSEBL. While finalising the terms and conditions, KSEBL shall give due consideration be the conditions stipulated in the Order No. L.S2-346/21 dated 24th April 1947 of the Government of Cochin, specifically regarding meeting the entire power requirements of TCED for supplying in the licensed area.

Order of the Commission

18. The Commission, after examining the petition filed by M/s TCED dated 19.07.2023, the comments of the respondent KSEBL, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2021, the prudent practices followed by the distribution licensees in the Country and other documents and records placed before the Commission during the deliberations of the subject matter, hereby Orders the following;
- (1) M/s TCED and KSEBL shall finalise terms and terms and conditions of the PPA through mutual consensus through discussion. While finalising the terms and conditions of contract, KSEBL shall give due consideration to the conditions stipulated in the Order No. L.S2-346/21 dated 24th April 1947 of the Government of Cochin.
 - (2) M/s TCED and KSEBL shall submit the initialled PPA as above, within one month from the date of this Order. If there is any unresolved issues in finalising the terms and conditions of the PPA, both the parties at its liberty may brought such matter before the Commission well in advance before the next hearing with their comments and suggestions.
 - (3) Next hearing of the petition may be communicated separately.

Sd/-
T K Jose
Chairman

Sd/-
Adv. A J Wilson
Member

Sd/-
B Pradeep
Member

Approved for issue

Sd/-
C R Satheesh Chandran
Secretary