

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

Petition OA 26/2019

In the matter of : Compliance of the directions of the Hon'ble High Court of Kerala, in the Judgment in WP (C) No. 39396/2015.

Petitioner in the Writ Petition : Sri. P.P. Jose, S/O. Paulose (Late), Proprietor, M/s Paramun Engineering Corporation, Vengoor, Angamaly.

Petitioner represented by : Adv. Firoz K Robin

Respondent : Kerala State Electricity Board Limited.

Respondent represented by : Sri. Sasankan Nair, DCE (TRAC), KSEB Ltd.
Sri. K.G.P Nampoothiri, EE, KSEB Ltd.
Sri. Edward P.B, AEE (TRAC), KSEB Ltd.
Sri. Shiju. K.T, AE, Angamaly, KSEB Ltd.
Sri. M.V Devassy, SS, Angamaly, KSEB Ltd.

Order dated 03.12.2019

1. Sri P.P. Jose, an electricity consumer of KSEB Ltd under electrical section, Angamaly filed a petition before the Hon'ble High Court of Kerala as WP (C) No. 39396 of 2015, for treating his industrial unit as "Deemed HT Connection" and assessing his electric consumption charges based on Regulation 9, Part B of the Tariff Order for KSEB Ltd for 2014-15. Hon'ble High Court vide the judgment dated 24th June 2019, disposed the matter with the following observations and directions.

“ 5. As matters now stand, even though the phrase “Deemed HT Consumer” is not defined anywhere, some customers are treated as such by the Commission on the basis that they are consuming more than an LT connection.

6. I am afraid that this stand of the Commission cannot find favour with this Court since, when a tariff is specified to a particular category, it is a fundamental principle that such category will have to be first defined under the Tariff Orders or under the applicable Regulations.

7. In such view of the matter, **I am firm in my mind that the Kerala State Electricity Regulatory Commission must hear the petitioner again and then take a decision as to the classification under which they will have to be placed** and that **if the Commission is of the view that they cannot continue under the category of LT because they are consuming more than 1000 volts,** then necessary orders will have to be issued bringing them under the suitable category, also taking note of their contention that they have been allowed to consume more than 1000 volts from the year 2008.

8. Since I am of the view that no consumer can be subjected to a tariff without a proper classification, the contention of the petitioner against Regulation 9 of the Tariff Order of the KSEB 2014-15 would be not necessary for me to consider at this point of time, since this is also an issue that will certainly have to be considered by the Commission in terms of the afore directions because once the classification is properly done, then the impugned Regulation in the Tariff Order will also require to have concomitant changes.

9. The exercise as afore shall be completed by the Kerala State Electricity Regulatory Commission as expeditiously as is possible but not later than four months from the date of receipt of a copy of this judgment.

10. Until **such time as the afore action is completed, the petitioner will continue to pay as per the assessment made on them under clause 9 of the Tariff Order;** however, with the specific understanding that if the Commission finds to their benefit, all excess amounts will be adjusted against the future bills.

After I dictated this judgment, Sri.Julian Xavier, the learned counsel for the petitioner submitted that in paragraph 8 of the counter affidavit of the Electricity Commission, they virtually say that the impugned Regulation has been withdrawn and that a new one, namely Regulation 13 under General Conditions in Part A - Low Tension Tariff, has been introduced. He prays that this may also be directed to be adverted to by the Commission while acting in terms of this judgment, since all the amounts remitted by his client earlier will also require to be reckoned for adjustment in future. I certainly find that this submission worthy of the attention of the Electricity Regulatory Commission and they shall, therefore, take note of this also while issuing the resultant order in terms of this judgment.”

2. The Commission admitted the petition as OP No. 26/2019, and issued notices to the petitioner Mr. P.P Jose and respondent KSEB Ltd, and directed them to file the documents presented before the Hon'ble High Court and other relevant documents. The Commission conducted detailed hearing on the matter on 20.08.2019.

3. During the hearing held on 20.08.2019, Adv. Feroz. K. Robin, presented the matter on behalf of Sri. P. P. Jose, the petitioner in WP (C) No. 39396/2015. Sri. K.G.P Nampoothiri, presented the matter on behalf of the respondent KSEB Ltd. During the hearing, both the petitioner and respondent submitted argument notes before the Commission.
4. The summary of the issues raised on behalf of the petitioner is given below.
 - (i) The petitioner, Sri. P.P. Jose, is the proprietor of M/s Paramun Engineering Corporation, Vengoor, Angamaly engaged in manufacture of cast iron products. At the time of availing electric connection in the year 1999, the connected load was 23 kW, which was enhanced to 127 kW on 24.06.2009.
 - (ii) As per the terms and conditions of supply notified by the KSEB, the load limit for providing supply at LT was 100kW till 30.6.1999, and then it was enhanced to 150 kW. However, the Commission vide the Kerala Electricity Supply Code, 2005, prescribed the limit for the maximum load than can be connected at LT as 100kW. However, the Commission permitted the consumers existing as on the date of implementation of Kerala Electricity Supply Code, 2005, to operate in LT upto a load of 150 kVA.
 - (iii) Subsequently, as per the Regulation 6 of the Kerala Electricity Supply Code, 2014, the petitioner is an LT consumer and accordingly the petitioner has been remitting electricity charges at the LT tariff till September 2015. However, in the bill for the month of October 2015, KSEB Ltd increased the fixed charge portion from Rs 17250/- to Rs 36180/-, without having any change in connected load. KSEB Ltd enhanced the fixed charge, relying on the General Conditions of the HT&EHT tariff published by the KSERC for the year 2014-15. As per the clause 9 of the General Conditions of the HT&EHT tariff, in the case of deemed HT consumers, the tariff applicable shall be the demand charge of the respective HT category and energy charge of the respective LT category. The General Conditions of HT&EHT tariff is applicable to only those units to which HT&EHT tariff is applied. Though the petitioner is allegedly considered as deemed HT consumer, as per the definition given in the Supply Code, 2014 the petitioner comes under LT and the petitioner can be categorized only as LT consumer so long as the voltage of supply is below 1000 volts. So long, as there is no definition for deemed HT, there is no question of any additional demand on the petitioner.
 - (iv) The petitioner is forced to pay higher tariff as an HT consumer, without getting the benefit of HT supply at higher volts. Due to the change in tariff, the petitioner is not only facing the additional expenditure for manufacturing but also is unable to compete in the market. The

Commission may direct the respondent to charge the petitioner only under LT tariff so long as there is no hike in the connected load.

- (v) In the tariff order dated 17.04.2017, a new clause 13 under General Conditions in Part-A low tension (LT) tariff, the low voltage surcharge was introduced. Before issuing said surcharge and penalty, individual notices ought to have been issued since it is not a tariff but a penalty.
- (vi) The demand under HT tariff while continuing under LT tariff is legally impermissible and is considered as a misclassification and hence liable to be set aside by the Commission.
- (vii) Admittedly, the respondent has no case that, while fixing the liability of surcharge, the individual notices have been issued to such consumers since it is not a general guidelines published. Hence the challenge is against the violation of 'principles of natural justice'.
- (viii) The petitioner prayers before the Commission the following.
 - i. Direct the respondent KSEB Ltd to issue monthly bills to the petitioner treating the petitioner as LT consumer in the light of the fact that the supply to the premises of the petitioner is below 1000 volts.
 - ii. Direct the respondent KSEB Ltd not to charge the petitioner under deemed HT tariff and further direct to refund/adjust the excess amount collected from the petitioner within a time frame fixed by the Commission.
 - iii. Grant such other reliefs that may be just and proper by the Commission.

5. The summary of the issues raised by the respondent KSEB Ltd is given below.

- (i) As per tariff revision order issued by the Commission on 25.07.2012, ToD tariff was introduced for LT IV industrial consumer having connected load of and above 20 kW, w.e.f 01.07.2012. As the ToD billing system requires billing demand for computing demand charges, KSEB Ltd has issued notices to all consumers to specify their contract demand and to execute supplementary agreement. Since the petitioner failed to do so, bills were issued to the petitioner on the basis of connected load up to November 2014 and thereafter with a contract demand of 99.99 kVA up to October 2015. From November 2015 onwards, bills were issued for contract demand of 141.1 kVA, corresponding to 127 kW with a power factor of 0.90. Also low voltage supply surcharge is being levied from the petitioner with effect from 18.04.2017, as per tariff order dated 17.04.2017.

- (ii) KSEB Ltd, as per its Order dated 31.07.1999 stipulated that “Connection at low tension shall be provided for connected load not exceeding 150kVA and where connected load exceeds 150kVA but not exceed 3000kVA, the connection shall be provided at High tension”. This is in force till the implementation of the Kerala Electricity Supply Code, 2005. As per the sub Regulation (5) of Regulation (4) of the Kerala Electricity Supply Code 2005, new connections of LT supply will be given for connected load upto 100 kVA only. New connections with connected load above 100kVA will be given only at HT. The Commission vide the Kerala Electricity Supply Code (fourth amendment) Regulation 2008, permitted the existing consumers as on the date of implementation of the Kerala Electricity Supply Code, 2005 on 02.03.2005, to operate upto a load of 150kW. The Commission vide the letter dated 16.12.2008 further clarified that, all the consumers existing as on 02.03.2005, i.e., on the date of implementation of the Kerala Electricity Supply Code, 2005 may be permitted to operate at LT upto 150 kVA.
- (iii) Subsequently, the Commission repealed the Supply Code, 2005 and notified Supply Code 2014 on 31.01.2014. As per Regulation 11 (1) of Supply Code, 2014, the maximum load that can be connected at LT is limited to 100kVA. Further as per the proviso to Regulation 11(1), ‘low tension consumer who, as on the date of implementation of the Kerala Electricity Supply Code, 2005, had a sanctioned load exceeding the limit of 100kVA, may be permitted to continue at LT, subject to realization of low voltage supply surcharge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer.

As per Regulation 11 (2) of the Supply Code, 2014, “the maximum contract demand permissible for low tension consumer who avails power under demand based metering shall be 100kVA, irrespective of his connected load.”

The Commission vide the Kerala Electricity Supply Code (Removal of difficulties) third order, 2014, the following proviso has been inserted.

“Provided that the consumers existed on the date of implementation of the Kerala Electricity Supply Code, 2005, and who were permitted to operated at low tension up to a connected load or contract demand of 150kVA in accordance with clause (b) of sub-regulation (5) of the regulation 4 of the Kerala Electricity Supply Code(Fourth Amendment) Regulations, 2008) shall be allowed to operate at the same voltage level and connected load or contract demand subject to realization of low voltage surcharge until an upward revision of connected load or contract demand is granted on application submitted by the consumer or become otherwise necessary.”

- (iv) The petitioner is a consumer, originally registered with a connected load of 23 kW, later in 2009 enhanced the load to 127 kW. Duly considering the provisions of the fourth amendment to the Kerala Electricity Supply Code, 2005, the petitioner is allowed to continue at LT, but if the petitioner is a new consumer, he has to avail supply at HT.
 - (v) The term deemed HT denotes that the said groups of consumers are bound to avail HT supply as per Regulation, but are being allowed to continue at LT due to various compelling circumstances. As per the fourth amendment to Kerala Electricity Supply Code, 2005, the petitioner consumer enjoying the benefit of the clarification, though the Regulation mandate to avail supply at HT when the load exceeds 100 kW for new consumers.
 - (vi) Though the term Deemed HT was not defined in the Supply Code and in the Schedule of Tariff issued by the Commission, the term Deemed HT has been used in the statutory tariff notification issued by KSEB since the year 2001, and in the subsequent tariff orders issued by this Commission since the FY 2003-04.
 - (vii) The Commission has given legal clarity to this issue by introducing low voltage surcharge for consumers having connected load/ contract demand above 100kVA availing supply at LT in accordance with the provisions of the Supply Code, 2014. The petitioner consumer falls under this category and eligible for low voltage supply surcharge.
6. During the hearing, the petitioner submitted that, they had already submitted application to KSEB Ltd to convert their supply category from LT supply to HT supply. KSEB Ltd also confirmed that, they had received application from the petitioner to convert their supply from LT to HT and submitted that it shall be processed without delay.

Analysis and Decision

7. In compliance of the judgment of the Hon'ble High Court dated 24th June 2019 in writ petition WP(C) No. 39396 of 2015, the Commission has examined in detail the issues raised by the petitioner, the counter arguments of the respondent KSEB Ltd and other documents submitted during the deliberations of the subject petition in terms of the provisions of the Electricity Act, 2003, the Regulations notified by the Commission, and decided as follows.
8. The summary of the issues raised by the petitioner before the Commission is given below.
- (i) The term 'deemed HT category' is not properly defined in the in the Tariff Order for the FY 2014-15.

- (ii) Individual notices have to be issued to the consumers while fixing the liability of surcharge, hence the challenge is against the 'Principles of Natural Justice'.
 - (iii) Demand under HT tariff while continuing under LT tariff is legally impermissible and it is to be considered as mis-classification.
 - (iv) The petitioner has to be considered as LT consumer so long as the voltage of supply is below 1000 volts.
9. The Commission has examined the issues raised by the petitioner in detail, with respect to the statutory powers and authority conferred on it as per the provisions of the Electricity Act, 2003.

Kerala State Electricity Regulatory Commission (KSERC) (herein after referred as KSERC or Commission) is a quasi judicial body functioning as per the provisions of the Electricity Act, 2003. The Government of Kerala established the KSERC in November 2002 as per the Section 17 of the Electricity Regulatory Commission Act 1998. Subsequently, after the enactment of the Electricity Act, 2003 in June 2003, as per the first proviso to the Section 82 of the Electricity Act, 2003, KSERC has been continuing as the State Commission for the purposes of the Electricity Act, 2003.

As per the Section 86 (1) (a) of the Electricity Act, 2003 read along with the Section 61, 62 and 64 of the Electricity Act, 2003, determination of tariff is one of the statutory functions of the Commission. Section 61 of the Electricity Act, 2003 prescribe the guiding factors to be considered by the Commission while specifying the terms and conditions of determination of tariff. Section 62 of the Electricity Act, 2003 prescribe the conditions for determination of tariff.

Section 64 of the Electricity act, 2003 prescribe the procedure for issuing tariff order by the Commission, which is extracted below for ready reference.

"64. (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public, -

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor:

(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

10. The Commission, vide the notification No. 1/1/KERC-2003/I dated 03.01.2004 had notified the KSERC (Conduct of Business) Regulations, 2003 (herein after referred as Business Regulations). Regulations 21 to 36 of the said Regulations deals with the procedure to be followed by the Commission in holding the proceedings before the Commission. The Regulation 27 of the Business Regulations specifies the procedures for 'Services of notices and process issued by the Commission', which is extracted below.

27. Service of notices and processes issued by the Commission.-

(1) Any notice or process issued by the Commission may be in any one or more of the following modes as may be directed by the Commission:-

(a) by hand delivery or courier;

(b) under certificate of posting;

(c) by registered post, with acknowledgement due;

(d) by facsimile transmission or electronic mail (e-mail);

(e) by publication in newspaper in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices, processes, etc; on any person in the manner mentioned above;

(f) in any other manner as may be considered appropriate by the Commission.

(2) The Commission shall be entitled to decide in each case the person or persons who shall bear the cost of such service and publications.

(3) Every notice or process required to be served on or delivered to any person may be sent to that person or his agent empowered to accept service at the address furnished by him for service or at the place where the person or his agent ordinarily resides or carries on business or personally works for gain.

(4) In the event any matter is pending before the Commission and the person to be served has authorised an agent or representative to appear for and represent him or her in the matter, such agent or representative shall be deemed to be duly empowered to take service of the notice and processes on behalf of the party concerned in all matters

and the service on such agent or representative shall be taken as due service on the person to be served.

(5) Where a notice is served by a party to the proceedings on any other party either in person or through registered post, an affidavit of service shall be filed by the party with the Commission giving details of the date and manner of service of notices and processes.

(6) Where any petition is required to be published, it shall be published within such time as the Commission may direct and, unless otherwise directed by the Commission, in one issue each of a daily newspaper in English language and two daily newspapers in Malayalam language having wide circulation in the State

(7) In default of compliance with the requirements of the Regulations or directions of the Commission as regards the service of notices, summons or processes or the publication thereof, the Commission may either dismiss the petition or give such other or further directions, as the Commission considers appropriate.

(8) No service or publication required to be done shall be deemed invalid by reason of any defect in the name or description of a person provided that the Commission is satisfied that such service is in other respects sufficient and no proceedings shall be invalidated by reason of a defect or irregularity in the service or publication unless the Commission, on an objection taken, is of the opinion that substantial injustice has been caused by such defect or irregularity or there are otherwise sufficient reasons for doing so.

11. The Commission has been determining the Aggregate Revenue Requirement (ARR), Expected Revenue from Charges (ERC) and Retail Tariff of KSEB and other licensees since the year 2003-04 onwards. The Commission vide the order dated 14.08.2014 in petition OP No. 09/2014 had approved the ARR, ERC and Tariff Order of KSEB Ltd. The paragraph 1.17 of the said order detailed the procedural formalities followed by the Commission while approving the order dated 14.08.2014, and its summary is given below.

(i) After admitting the petition, a copy of the petition filed by KSEB Ltd is placed at the website of the Commission for the information of the stakeholders.

(ii) A summary of the petition was published in the following dailies.

- Kerala Kaumudi daily dated 05.06.2014
- Deshabimani daily dated 05.06.2014
- The New Indian Express dated 05.06.2014.
- The Hindu daily dated 05.06.2014.

(iii) Public hearing on the petition were held at following three places in the State.

- At Kozhikode on 30.06.2014
- At Ernakulam on 02.07.2014
- At Thiruvananthapuram on 04.07.2014

- (iv) Immediately, after approving the ARR, ERC and Tariff Order on 14.08.2014, the Commission has placed the copy of the order at the website of the Commission.

As detailed above, the Commission approved the ARR, ERC and Tariff Order, after duly considering the views expressed by all stake holders including electricity consumers in the State. There are about 120 lakh electricity consumers in the State in the year 2014-15. It is not practicable to issue individual notices to each electricity consumers of the State. Considering these difficulties, the petition was uploaded at the website of the Commission and also published the summary at the website of the Commission.

The Commission had approved the tariff order dated 14.08.2014, duly considering the views of all stake holders and uploaded the order at the website of the Commission and adequate publicity of the approval of the tariff order was given through print and visual media. The tariff order dated 14.08.2014 is effective from 16.08.2014.

KSEB Ltd and other distribution licensees was duty bound to implement the tariff order dated 14.08.2014, from 16.08.2014, i.e., from the date of implementation specified in the Tariff order.

The Commission had followed the similar procedures while determining the ARR, ERC and Tariff orders issued by the Commission since the FY 2003-04 onwards.

12. The clause-9 of the General conditions for HT&EHT Tariff, under Part-B - HT&EHT Tariff of the Tariff order dated 14.08.2014, provides as follows.

“9. In the case of Deemed HT consumers, the tariff applicable shall be demand charges of respective HT category and energy charges of respective LT category”

The petitioner raised the issue that, while issuing monthly bill for the month of October, 2015, KSEB Ltd demanded fixed charges at HT tariff and energy charges at LT tariff, based on the clause clause-9 of the General conditions for HT&EHT Tariff, under Part-B HT&EHT Tariff of the Tariff order dated 14.08.2014.

According to the petitioner, clause-9 of the General conditions for HT&EHT Tariff, under Part-B HT&EHT Tariff of the Tariff order dated 14.08.2014 is applicable to those units to which HT &EHT tariff is applicable. Further, according to the petitioner, he is allegedly considered as deemed HT consumer, though the term is not defined in the tariff order dated 14.08.2014.

13. The Commission has examined the above issue in detail. Prima facie, the tariff for deemed HT consumers was specified in the previous tariff order dated 30.04.2013, which was applicable in the State from 01.05.2013 till the date of

implementation of the tariff order dated 14.08.2014. The relevant provisions in the Tariff order dated 30.04.2013 is extracted below.

“clause-9 of the General Conditions for HT and EHT tariff under Part-A – EHT and HT Tariff of the Tariff Order dated 30.04.2013.

9. In the case of Deemed HT Consumers tariff applicable shall be demand charges of respective HT category and energy charge of respective LT category’.

As above the clause-9 of the General conditions for HT&EHT Tariff, under Part-B HT&EHT Tariff of the Tariff order dated 14.08.2014, is not a new condition inserted by the Commission in the tariff order dated 14.08.2014, but it is then an existing provision in the previous tariff order dated 30.04.2013.

14. The Commission also examined the argument of the petitioner that, the term ‘Deemed HT’ was not defined in the Tariff Order.

The term ‘deemed HT’ was used in the Tariff orders notified in the State since the year 2001, i.e., in all the tariff orders issued by the KSEB before the constitution of the State Commission during the years 2001 and 2002, and in the tariff orders approved by the State Commission after its constitution in November 2002.

Before the constitution of the State Commission in November 2002 by the State Government, the erstwhile KSEB has been determining the tariff with the approval of the State Government as per the provisions of the Electricity (Supply) Act, 1948. “DEEMED HT” is the terminology used by KSEB in the tariff determined by it with the approval of the State Government. The term ‘Deemed HT’ is used for categorizing the consumers ‘those who are availing supply at LT level, though as per the prevailing rules and regulations they have to avail supply at HT level’. This term can be seen in the tariff orders dated 7th August 2001 and 24th October 2002 notified by KSEB with the approval of the State Government. Subsequently, in the tariff orders dated 26th November 2007, 25th July 2012, 30th April 2013 and 14th August 2014 approved by the Commission as per the provisions of the Electricity Act, 2003, the term ‘deemed HT’ was used to classify such consumers, ‘who were availing supply at LT though as per the prevailing rules they have to avail supply at HT’.

15. The Rules and Regulations prevailed in the State for providing supply at LT and HT over the past is discussed below.
- (i) Till 30.07.1999, the electricity consumers in the State can avail supply at Low Tension (LT) for the connected load up to 100kVA, and if the load is more than 100 kVA the consumers has to avail supply at High Tension level.

- (ii) Subsequently, KSEB vide its order dated 31.07.1999, ordered that LT supply can be provided for connected load upto 150 kVA.
 - (iii) The Commission, as per the Section 50 of the Electricity Act, 2003 has notified the Kerala Electricity Supply Code, 2005 (herein after referred as Supply Code, 2005) on 2nd March 2005, wherein it is specified that, for new connections at LT the maximum load permitted is only 100 kVA. If the load is more than 100kVA, such consumers has to avail supply at HT.
 - (iv) Subsequently, the Commission vide the fourth amendment to the Supply Code, 2005 dated 24th October 2008, ordered to permit all the consumers exists as on date of implementation of the Supply Code, 2005 to operate in LT upto a connected load/ contract demand of 150 kVA. However, all the new consumers, the maximum load permitted for availing supply at LT is limited to 100 kVA.
 - (v) The Commission vide the notification dated 31.01.2014, completely revised and updated the supply code and notified the Kerala Electricity Supply Code 2014 (herein after referred as Supply Code, 2014). The Supply Code, 2014 was notified after completing all the procedural formalities including previous publication as per the Electricity (Procedure for Previous Publication) Rules, 2005 notified by the Central Government vide the notification dated 9th June 2005, public hearing at various places and duly incorporating the comments and suggestions of the all the stake holders.
 - (vi) Further as per the Regulation 9 of the Supply Code, 2014, the consumers availing supply at voltage lower than the limit specified under Regulation 8 above has to pay low voltage surcharge to the licensee, which is extracted below.

“9. Low voltage supply surcharge.- Consumers availing supply at voltage lower than the one specified in regulation 8 for the respective limits of connected load or contract demand shall pay the low voltage supply surcharge to the licensee at the rates as approved by the Commission from time to time in the tariff order”.
 - (vii) The Regulation 11 of the Supply Code 2014, permits the consumers with sanctioned load exceeding 100 kVA as on the date of implementation of the ‘Supply Code, 2005’ to continue to avail supply at LT, subject to the realization of low voltage supply surcharge as specified under Regulation-9, till an upward revision of connected load is sought by the consumer.
16. The Commission vide order dated 09.10.2014 in OP No. 08/2014, in the matter of ‘enhancement of the maximum Contract Demand from 100 kVA to 150 kVA for LT Industrial Consumers, installing own Transformer of 160 kVA’ has appraised

in detail the pros and cons relating to the enhancement of the limit of connected load for LT consumers from 100 kVA to 150 kVA. The relevant paragraphs of the order is extracted below.

“8. The Commission has considered the pros and cons relating to enhancement of the limit of connected load for LT consumers from 100 kVA to 150 kVA. The model Supply Code circulated by the Forum of Regulators suggested to provide LT supply only up to contract demand of 50 kW. It is found that in most of the other States, the limit specified for providing LT supply is of and below 100 kVA, with a view to minimizing distribution loss.

9. The distribution loss is computed using formula, $loss = I^2R$ where I is the current and R is the resistance of the conductor. When voltage is stepped up, the current reduces proportionately. Therefore the distribution loss will be high at higher values of current. When the supply voltage is at low tension (220 V), the value of current flow in the distribution lines will be proportionately high when compared to the operation of the same load at high tension (11000 V). In order to maintain an efficient distribution system, the distribution loss shall be minimized. Moreover, increase the distribution loss is in geometric progression and it will lead to increase in average cost of supply resulting increase in the retail tariff of all consumers in the State. Therefore in the interest of the consumers in general, availing electricity at higher voltages should be encouraged and enforced.

10. The attempt of the petitioner to draw comparison and equality with the consumers in multi storeyed buildings does not appear to be well founded. The consumers in multi storeyed normally belong to commercial and domestic categories where the diversity factor / load factor is often between 0.3 to 0.7. Whereas in the case of an industrial units, the loads are continuous in nature and have higher diversity factor / load factor i.e, between 0.5 to 0.9. In the case of consumers in a multi storeyed building the developer incurs the cost of the entire installation of the transformer, protecting devices and such other equipment including internal distribution system. Also, the provision for availing supply at LT level in high rise buildings is only to alleviate the technical difficulties in drawing 11 kV lines to the upper floors and installing transformers in different floors of the building.

11. Even if the LT metering system is placed adjacent to the transformer, the transformer loss (the sum of copper loss in the transformer primary and secondary) will be accounted under the distribution loss of the licensee, which will ultimately result in increase in average cost of supply and in burdening the entire consumers of the respondents, leading to avoidable tariff hike.

.....

Order of the Commission:

16. The maximum connected load or contract demand permissible for low tension consumer who avails power under low tension shall be 100 kVA as already specified in the Kerala Electricity Supply Code, 2014.

17. However, the existing consumers on the date of implementation of Kerala Electricity Supply Code 2005, who were permitted to operate at low tension up to a connected load of 150 kVA in accordance with clause (b) of Regulation 3 of Kerala Electricity Supply Code (Fourth Amendment) Regulations, 2008 shall be allowed to operate at the same voltage level and connected load or contract demand subject to realisation of low voltage surcharge, until an upward revision of connected load or contract demand is

granted on application by the consumer or otherwise. Necessary orders in this regard are being issued by the Commission, exercising its powers conferred by Regulation 179 of the Kerala Electricity Supply Code 2014."

17. As discussed above, as per the provisions of the Supply Code, 2014 and its subsequent amendments, and also as per the order of the Commission dated 09.10.2014, it is a settled position that;
- (1) In the case of new connections after the notification of the Supply Code, 2014, the maximum load that can be connected/ maximum contract demand at LT is limited to 100 kVA, as the case may be.
 - (2) Consumers availing supply at voltage lower than the one specified in the Regulation 8 of the connected load or contract demand shall pay the low voltage surcharge to the licensee at the rate approved by the Commission.
 - (3) The existing consumers as on the date of implementation of the Supply Code, 2005 is permitted to operate at LT upto a connected load/ contract demand of 150 kVA subject to the realisation of the low voltage surcharge, until an upward revision of connected load or contract demand is granted on application by the consumer.
 - (4) The distribution loss associated with providing supply at LT is much higher than that for providing supply at HT. In order to compensate a part of the distribution loss contributed by those consumers who has to avail supply at HT as per the provisions of the Supply Code, 2014, but continuing at LT, has to pay low voltage surcharge to the distribution licensee.
 - (5) No consumer is allowed to avail supply at voltage lower than the supply voltage specified in the Supply Code, 2014 without paying low voltage surcharge. The low voltage surcharge is not a penalty, but an additional charge to compensate the loss caused by the consumer on account of availing supply at a voltage lower than that specified in the Supply Code, 2014
18. The specific issues related to the petitioner in WP (C) 39396 of 2015 is discussed below.
- (i) Sri. P. P. Jose, the petitioner in WP (C) 39396 of 2015 is an Industrial consumer of KSEB Ltd, availed the electricity connection in the year 1999 with a connected load of 23 KW. Subsequently on 24.06.2009, the consumer has enhanced the connected load to 127 kW from 23 kW. As per the provisions of the Kerala Electricity Supply Code (Fourth amendment) Regulation, 2008 dated 24.10.2008, the petitioner is allowed to continue at LT considering that the petitioner is an existing consumer as on the date of implementation of the Supply Code, 2005 on 2nd March 2005.

- (ii) Subsequently, the Commission completely revised and modified the Supply Code and notified the new Supply Code, 2014 on 31.01.2014. As per the Regulation 9 read along with the Regulation 11 of the Supply Code, 2014, all the existing consumers with connected load/ contract demand above 100kVA as on the date of implementation of the Supply Code, 2005 is allowed to continue under LT subject to the payment of low voltage surcharge. The Supply Code, 2014 came into force from 01.04.2014. Accordingly, as per the Regulation 9 and Regulation 11 of the Supply Code, 2014, the petitioner can continue as LT consumer, subject to the payment of low voltage surcharge approved by the Commission as per the Regulation 9 of the Supply Code, 2014.
- (iii) Though the Supply Code, 2014 provides for levying low voltage surcharge from those consumers availing supply at voltage lower than the one specified in Regulation 8, the Commission could not determine the low voltage surcharge while approving the tariff order dated 14.08.2014 applicable w.e.f 16.08.2014 of the FY 2014-15. This is because, the Commission has initiated the process of determining the ARR, ERC and Tariff Petition for the year 2014-15 much before the full implementation of the Supply Code, 2014. So, the Commission, retained the provisions in the then existing tariff order dated 30.04.2013, in the tariff order dated 14.08.2014 approved for the year 2014-15.
- (iv) The conditions in the tariff orders dated 30.04.2013 and 14.08.2014 permits the licensees to charge demand charge at the rate for availing supply at HT and energy charge at the rate applicable to LT consumers, for deemed HT consumers. A comparison of the provisions in the Tariff order dated 30.04.2013 and the provisions in the Tariff order dated 14.08.2014 is extracted below.

Tariff order dated 30.04.2013	Tariff Order dated 14.08.2014
Clause-9 of General Conditions of HT and EHT tariff under Part- A- EHT and HT Tariff	Clause-9 of General Conditions of HT and EHT tariff under Part-B- EHT and HT Tariff
<i>"9. In the case of Deemed HT consumers tariff applicable shall be demand charges of respective HT category and energy charge of respective LT category".</i>	<i>"9. In the case of Deemed HT consumers tariff applicable shall be demand charges of respective HT category and energy charge of respective LT category".</i>

- (v) As extracted above, the provisions in the Tariff order dated 30.04.2013 and 14.08.2014 are the same for charging the 'Deemed HT consumers.

As stated earlier, though the term 'Deemed HT category' is not defined in the tariff orders issued by the Commission and the Supply Code notified by the Commission, the term had been used in all the Tariff orders issued in the State since the year 2001. Out of the above, the tariff orders issued in the year 2001 and 2002 was notified by the KSEB with the approval of the State Government before the constitution of this Commission in November, 2002. The term 'deemed HT' was used for categorising those consumers 'who are availing supply at LT, though as per the rules and Regulations they have to avail supply at HT'.

After the establishment of the Commission in November 2002, the term 'deemed HT' had been used by this Commission for the same meaning and categorisation as was done by KSEB before the constitution of the Commission.

In the absence of the proper definition of the term 'Deemed HT', it has to be interpreted in the way the term was used over the years since the year 2001 in various tariff orders notified in the State. So considering the dictionary meaning of the word 'Deemed' and the circumstance in which it has been used in the Tariff orders since the year 2001, the 'Deemed HT' is the term used for classifying the consumers availing supply at LT, but they have to avail supply at HT' as per the rules and Regulations.

- (vi) As already mentioned earlier, it is fact that, the cost of providing supply at LT and the system loss associated with providing supply at LT are higher than that for providing supply at HT. Further, considering safety and reliability of the electrical distribution system, as and when the load of a consumer exceed the limit specified in the statutes, the consumer has to avail supply at higher voltages. Considering all these aspects, the Commission has specified the Regulation-8 of the Supply Code 2014, which provides the 'supply voltages for different connected load or contract demand.

As per the Regulation 8 of the Supply Code, 2014, the maximum connected load/ contract demand that can be connected at LT is limited to 100 kVA. Accordingly, as per the Regulation 8, when the connected load/ contract demand of a consumer exceeds 100 kVA, he has to avail supply at HT.

- (vii) The connected load of the petitioner was 127 kW since 24th June 2009. The recorded maximum demand of the petitioner during the period from November 2014 to June 2017 is given below.

Consumption month	Recorded Maximum Demand (RMD) (in kVA)
Nov-14	138
Dec-14	138
Jan-15	138
Feb-15	138
Mar-15	140
Apr-15	139
May-15	140
Jun-15	138
Jul-15	141
Aug-15	142
Sep-15	138
Oct-15	138
Nov-15	139
Dec-15	135
Jan-16	135
Feb-16	136
Mar-16	139
Apr-16	132
May-16	132
Jun-16	137
Jul-16	122
Aug-16	137
Sep-16	137
Oct-16	145
Nov-16	143
Dec-16	128
Jan-17	126
Feb-17	128
Mar-17	128
Apr-17	128
May-17	128
Jun-17	128

It can be seen that, the recorded maximum demand of the petitioner is consistently higher than 100 kVA since November 2014.

Accordingly, if the petitioner is a new consumer, definitely he has to avail supply at HT only. However, in fourth amendment to the Supply Code, 2005, the Commission has allowed all the consumers existed as on the date of implementation of the Supply Code, 2005, i.e. on 2nd March 2005,

to avail supply at LT for a connected load/ contract demand upto 150 kVA. Accordingly, the petitioner had been allowed to continue at LT even though his connected load was 127 kW.

The Supply Code, 2014 also permit the petitioner, as a consumer exists as on the date of implementation of the Supply Code, 2005, to continue at LT, however as per the Regulation 9 of the Supply Code, 2014, the petitioner and such consumers has to pay an additional charge namely the 'low voltage surcharge' determined by the Commission.

- (viii) As discussed earlier, the Commission in the order dated 09.10.2014 in OP No. 08/2014 has very clearly stated the reasons for 'low voltage surcharge' for those consumers availing power at lower voltage than the one specified in the Regulation-8.
 - (ix) The Commission vide the suo-motu tariff order dated 17.04.2017, has determined explicitly the 'low voltage surcharge for each category of consumers, those who continue at lower voltage than the limit specified under Regulation-8 of the Supply Code, 2014.
19. As discussed in the preceding paragraph, since the connected load of the petitioner is 127kW and his recorded maximum demand is more than 100 kVA the petitioner has to avail supply at HT as per the Regulation 8 of the Supply Code, 2014. However, the petitioner has been availing supply at LT, hence the petitioner is a deemed HT consumer, as the term 'deemed HT' construed in the tariff orders prevailing in the State since the year 1999. i.e., the petitioner is a consumer availing supply at LT though as per the rules and Regulations the petitioner has to avail supply at HT.

As per the provisions of the Supply Code, 2014, the petitioner as a consumer having connected load of 127kW and recorded maximum demand more than 100 kVA, has to pay low voltage surcharge to compensate the additional loss caused by him. The Commission explicitly determined the low voltage surcharge in the suo-motu tariff order dated 17.04.2017. Prior to the tariff order dated 17.04.2017, the petitioner has to pay the electricity charges as per the clause-9 of the General Conditions of the HT and EHT Tariff under Part-B EHT and HT tariff of the Tariff order dated 14.08.2014.

20. As already stated, the tariff determination is a quasi judicial process as per Section 64 of the Electricity Act, 2003, which include previous publication, stakeholder consultation including public hearings etc. Further, once the Commission approve the tariff, it is being uploaded in the website of the Commission and vide publicity on issuance of the tariff order is given through print, audio and visual media for the information of the general public and other stakeholders. It is not practical to issue individual notices to each of 120 lakh plus electricity consumers of the State regarding the tariff revision exercise. So there

is no meaning in the issue raised by the petitioner that, no notice was issued to the petitioner individually and his views was not heard while finalising the tariff orders. The Commission has issued all the tariff orders after completing all the required procedure formalities.

21. It is true that, as per the Regulation 6 read with Regulation 2 (54) of the Supply Code, 2014, the maximum voltage permitted to avail supply at LT is 1000 volts. However, as per the Regulation 8 of the Supply Code, 2014, the maximum connected load/ contract demand that can be connected at LT is specified as 100 kVA. If the connected load/ contract demand of the consumer exceeds 100 KVA, such consumer has to avail supply at HT. However, the Regulation 11 of the Supply Code, 2014 permits the consumers existed as on date of implementation of the Supply Code, 2005 i.e. on 02.03.2005, to continue to avail supply at LT for a connected load/ contract demand upto 150 kVA, subject to the payment of low voltage surcharge as per Regulation 9 of the Supply Code, 2014. This does not mean that, since the petitioner is availing supply at voltage less than 1000 volts, he has to be treated as LT consumer and issue electricity bill at the LT tariff only. So, the prayer of the petitioner to treat him as LT since the petitioner has been availing supply at voltage less than 1000 volts is rejected.
22. During the deliberations of the subject matter, the petitioner submitted that, they had already submitted applications before KSEB Ltd to convert their electricity connection from LT to HT. The Commission appreciate the decision of the petitioner. KSEB Ltd shall immediately process the application and convert his electricity connection from LT to HT within the time limit specified in the Supply Code, 2014 and report the status of compliance within two months from the date of this order.

Order of the Commission

23. The Commission, in compliance of the judgment of the Hon'ble High Court dated 24th June 2019 in WP(C) No. 39396 of 2015, and after examining the issues raised by the petitioner as per the provisions of the Electricity Act, 2003 and the Regulations notified by the Commission, hereby issues following orders for the compliance of the petitioner and the respondent KSEB Ltd.
 - (1) The petitioner as a consumer having connected load and recorded maximum demand more than 100 kVA, has to pay low voltage surcharge as determined by the Commission as per the Regulation 9 of the Kerala Electricity Supply Code, 2014, to continue availing supply at LT.
 - (2) Till the Commission explicitly determined the low voltage surcharge vide the tariff order dated 17.04.2017, the petitioner has to pay electricity charge, at the rate applicable to 'Deemed HT consumers, as per the " clause-9 of the General Conditions for HT and EHT tariff under Part-B – EHT

and HT Tariff of the Tariff Order dated 14.08.2014, i.e., demand charges applicable for HT-I (A) Industry and energy charge at LT-IV (A) Industrial tariff.

- (3) With effect from 18.04.2017 onwards, in addition to the electricity charges approved by the Commission for LT Industrial consumers including the demand charge and energy charge, the petitioner has to pay low voltage surcharge also as determined by the Commission from time to time.
- (4) KSEB Ltd shall immediately process the application filed by the petitioner for converting the electricity connection to HT connection within the time limit specified in the Kerala Electricity Supply Code, 2014 and report the compliance to the Commission.

The petition is disposed of accordingly.

Sd/-

**K. Vikraman Nair
Member**

Sd/-

**S. Venugopal
Member**

Sd/-

**Preman Dinaraj
Chairman**

Approved for issue

**G Jyothichudan
Secretary**