

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Adv. A.J Wilson, Member (Law)

RP No 06/2022

In the matter of : Review Petition against the Order dated 24.03.2022 in OP 53/2021 in the matter of seeking approval of incentive applicable for lagging power factor to Cochin Port Authority

Petitioner : M/s Cochin Port Authority (CoPA)

Respondent : Kerala State Electricity Board Ltd.

Petitioner represented by : Shri. V.Thuraipandian, Chief Mechanical Manager
Shri. R.S. Ajayakumar, Executive Engineer
Shri. Ajithkumar, Executive Engineer
Smt. S.Jayalakshmi, Assistant Executive Engineer

KSEB Ltd represented by : Shri. Jayaraj, Chief Engineer.
Shri. M.P.Rajan, Deputy Chief Engineer,
Shri Rajesh AEE, TRAC, KSEB Ltd.

Date of hearing : 13.01.2023, 11:00 AM

Venue : e-hearing through video conferencing

Order dated 15.02.2023

1. M/s Cochin Port Authority (hereinafter referred to as CoPA or the petitioner), filed a petition before the Commission on 05.07.2022, with the following prayers;

“Hon'ble Commission may kindly

1. *Condone the delay of 51 days in filing review petition on Hon'ble Commission's Order Dtd-24/03/2022 in OP no 53/2021.*
2. *Review the Order Dtd- 24/03/2022 in O.P no 53/2021 and allow power factor incentive to Cochin Port Authority in respect of Consumer no. 21/1135 (EHT supply to Cochin Port Authority at W. Island) and Consumer no. 5/5403 (11 kV to Cochin Port Authority at Vallarpadam) as per act or incentive / disincentive Order of the Hon'ble Commission Dtd - 08/07/2019 in OP no 15/2018 in accordance with KSERC (Terms and Conditions for Determination of Tariff) Regulations 2018.”*

2. The summary of the petition filed by the petitioner is given below.

- (1) The Commission, vide the Order dated 24.03.2022 had issued the following Orders;

“(1) The power factor incentive and power penalty payable by the licensees purchasing power from KSEB Ltd shall be determined as per the provisions of the Regulation 85(11) of the Tariff Regulations, 2021, in the next tariff Order approved for the next MYT period from 2022-23 to 2026-27.”

- (2) As per Regulation 65 (2) of Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2018 dated 26-10-2018, the users of the transmission system shall be subjected to incentive / disincentive for maintaining the reactive energy balance in the transmission system. M/s CoPA is maintaining reactive energy balance in the transmission system using capacitor banks. Also, onload tap changing transformers are used in the 110 kV substation to maintain nominal voltage at the required level.
- (3) M/s CoPA further submitted that, the Commission vide Tariff Order dated 08/07/2019 has ordered PF incentive/disincentive as follows;

Annexure - B

Power factor incentive / disincentive

The following incentive and disincentive shall be applicable to LT industrial consumers with a connected load of and above 20 kW, HT&EHT Consumers for power factor improvement.

<u>PF range (lag)</u>	<u>Incentive/ Penalty</u>
<u>Incentive</u>	
<i>Above 0.95 and upto 1.00</i>	<i>0.50% of the Energy Charge for each 0.01 unit increase in power factor from 0.95</i>
<u>Penalty</u>	
<i>0.90 and upto 0.95</i>	<i>0.50% of the energy charges for every 0.01 fall in PF below 0.95 and upto 0.90</i>
<i>below 0.90</i>	<i>1% of the energy charge for every 0.01 fall in PF from 0.90</i>

Note: No penalty and incentives for consumers with leading power factor.

- (4) M/s CoPA has also submitted that, KSEBL’s submission as per para 4(2) of the Order dated 24.03.2020 is not in correct due to the following reasons;

- (a) PPA executed between KSEB Ltd and CoPT provided only for the Power Factor Penalty and not incentive.
 - (b) The HT agreement is executed between the licensee and consumer in accordance with prevailing Rules and Regulations. PPA was executed with KSEB Ltd in the year 2008 when minimum PF was 0.85 lag. Clause 19(b) of the said agreement "Rules" and/or "Regulations" where ever they occur shall mean the Rules and Regulations for the time being in force made by the Government and/or by the Board.
 - (c) As a distribution licensee M/s CoPA is giving incentive to the eligible consumers as per the tariff orders. Hence M/s CoPA submitted that they may be allowed PF incentive with effect from the tariff Order dated 08/07/2019 in accordance with KSERC (Terms and conditions for Determination of Tariff) Regulation 2018.
3. M/s Cochin Port Authority has also filed the petition for condonation of delay on 19.07.2022 and remitted the fee of ₹10000. The application for the condonation of delay was admitted as OP No. 44/2022
The petitioner submitted that, there was a delay of 51 days in filing the review petition, due to the reasons that, the employees engaged in Regulatory affairs is meagre and doing other port related works. The employees also engaged in other works including preparation of ARR, capital asset additions. Hence the petitioner requested to condone the delay in filing the review petition.
4. KSEB Ltd vide the submission dated 12.01.2023 submitted the following;
 - (1) As per the Section 94 of the Electricity Act 2003, the State Commission has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in the matter of reviewing its orders. As per Order 47, Rule 1 of the said Code, an application for review of an Order is maintainable only on account of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the order was made or on account of some mistake or error apparent on the face of the record or on account of any other sufficient reason.
 - (2) The petitioner has miserably failed to establish the discovery of any new and important matter of evidence or any mistake or error apparent on the face of record as required for reviewing the impugned order. In the absence of new and important matter or evidence or mistake or error apparent, the review petition is not maintainable.

Without prejudice to the contentions raised above on the maintainability, KSEB Ltd submitted the following remarks;

- (3) Part IV, Amendment regulation 2019 to CEA (Technical standards for connectivity to Grid) regulations 2007, Kerala State Electricity Grid Code, 2005 (KSEGC 2005), Section(7),all indicates that distribution licensee and bulk consumers are responsible for maintaining adequate reactive power compensation to avoid dependance on reactive power support from the grid and hence all distribution licensees shall maintain power factor as specified in the regulations. As per the CEA Regulations, the power factor to be maintained is at 0.95 and licensees are bound to keep the power factor not below the specified level of 0.95.
- (4) The Commission vide the tariff Order dated 08.07.2019 in Petition OP No 15/2018, specifies the power factor penalty/incentive to consumers, however, the incentive applicable to licensees was not mentioned in the tariff Order dated 08.07.2019. Since there is no clause in power purchase agreement and tariff Order in force at the time of filing of the petition OP No 53/2021, KSEB Ltd has not allowed incentive to any licensee and restricted the incentive only to KSEB Ltds Bulk Consumers. The Commission vide the Order dated 23.04.2020 in OP No 02/2020 and Order dated 03.09.2020 in RP 03/2020, has specified that KSEB Ltd has every right to levy the power factor penalty as applicable to all other licensees of the State who procure power from KSEB Ltd at Bulk Supply Tariff.
- (5) KSEB Ltd submitted that, the HT agreement between the petitioner and the respondent was executed in accordance with prevailing rules and regulations. The Commission vide the tariff Order dated 25.06.2022, in petition OP No 11/2022, has specified the incentive and disincentive applicable to LT industrial consumers with a connected load of and above 20 kW, HT&EHT Consumers, and Bulk consumers and distribution licensees for power factor improvement.

Accordingly, KSEB Ltd is giving incentive to Distribution Licensees for power factor improvement from the effective date of the prevailing tariff Order, ie from 26.06.2022.

- (6) The Commission vide Order dated 24.03.2022 in OP No 53/2021 has ordered that "the power factor incentive and power penalty payable by the licensees purchasing power from KSEB Ltd shall be determined as per the provisions of the Regulation 85(11) of the Tariff Regulations 2021, in the next tariff order approved for the next MYT period from 2022-23 to 2026-27". KSEB Ltd has complied with all the conditions in the tariff Order including providing incentive to Licensees for power factor improvement.
 - (7) Hence KSEB Ltd requested before the Commission to reject the review petition submitted by the petitioner.
5. The Commission admitted the petition as RP No. 06/2022. The hearing of the petition was held on 13.01.2023 through video conference. Smt. S.Jayalakshmi, Assistant Executive Engineer presented the matter on behalf of M/s CoPA. Shri.

Rajesh, AEE, TRAC presented the petition on behalf of KSEB Ltd. The summary of the deliberations during the hearing is given below;

- (1) The petitioner M/s CoPA submitted that, the Commission vide the Order dated 24.03.2022 had ordered that the power factor incentive and penalty payable by the licensees purchasing power from KSEB Ltd shall be determined as per the provisions of the Regulations 85(11) of the Tariff Regulations 2022, in the tariff Order approved for the next MYT period from 2022-23 to 2026-27.

The Commission vide the tariff Order dated 25.06.2022 in OP No.11/2022 has approved the power factor incentive and penalty for the small licensees purchasing power from KSEB Ltd also. CoPA is getting PF incentive as per the tariff order dated 25.06.2022.

As per Regulation 65 (2) of KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018 dtd-05-10-2018, the users of the transmission system shall be subjected to incentive / disincentive for maintaining the reactive energy balance in the transmission system.

As per tariff order dtd-08/07/2019, Incentive and disincentive shall be applicable to HT & EHT consumers. As a distribution licensee, CoPA is giving incentive to the eligible consumers as per the Commission's tariff orders.

Subsequently vide order dated 23.04.2020 in O.P No. 02/2020, the Commission directed that all distribution licensees of the State shall maintain a minimum power factor of 0.95 as specified in the Order of the Commission dated 08.07.2019 in OA No. 15/2018. The Commission in the above order has not clarified that, whether the incentive is not applicable to distribution licensees. Hence, CoPA requested to review the order dated 24/03/2022 in O.P No. 53/2021 and allow the power factor incentive to CoPA.

- (2) KSEB Ltd submitted that the petitioner has miserably failed to establish the discovery of any new and important matter of evidence or any mistake or error apparent on the face of record as required for reviewing the impugned order. Hence, the review petition is not maintainable.

KSEB Ltd further submitted that the Commission vide the tariff Order dated 08.07.2019 in Petition OP No 15/2018, specifies the power factor penalty/incentive to consumers, however, incentive applicable to licensees was not mentioned in the tariff Order dated 08.07.2019.

KSEB Ltd further submitted that since there is no clause in power purchase agreement and tariff Order in force at the time of filing of the petition OP No 53/2021, KSEB Ltd has not allowed incentive to any licensee and restricted the incentive only to the LT industrial consumers having connected load of and above 20kW and HT&EHT consumers.

The Commission vide the Order dated 23.04.2020 in OP No 02/2020 and Order dated 03.09.2020 in RP 03/2020, has specified that KSEB Ltd has every right to levy the power factor penalty as applicable to all other licensees of the State who procure power from KSEB Ltd at Bulk Supply Tariff.

The Commission vide the tariff Order dated 25.06.2022, in petition OP No 11/2022, has specified the incentive and disincentive applicable to LT industrial consumers with a connected load of and above 20 kW, HT&EHT Consumers, and Bulk consumers and distribution licensees for power factor improvement. Accordingly, KSEB Ltd has been giving incentive to Distribution Licensees who purchase power from KSEB Ltd also, for power factor improvement from the effective date of the prevailing tariff order, ie from 26.06.2022.

The Commission vide Order dated 24.03.2022 in OP No 53/2021 had ordered that "the power factor incentive or power penalty payable by the licensees purchasing power from KSEB Ltd shall be determined as per the provisions of the Regulation 85(11) of the Tariff Regulations 2021, in the next tariff order approved for the next MYT period from 2022-23 to 2026-27".

Considering the above facts, KSEB Ltd requested before the Commission to reject the review petition submitted by the petitioner.

Analysis and Decision

6. The Commission has examined in detail the petition filed by Cochin Port Authority (CoPA), counter affidavit of the respondent M/s KSEB Ltd, deliberations of the subject matter during the hearing held on 13.01.2023, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, other Regulations and Orders issued by the Commission and hereby decides as follows: -
7. The present review petition is filed to review the Original Order of the Commission dated 24.03.2022 in Petition OP No.53/2021, with the prayer to allow power factor incentive to CoPA as per the Act or incentive/ disincentive order of the Commission dated 08.07.2019 in OP No. 15/2018 in accordance with the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018.
8. The Commission has examined the Order dated 24.03.2022 in Petition OP No. 53/2021, and its background in detail and noted the following.
 - (1) M/s CoPA, on 29.09.2021, filed a petition before the Commission with the prayer to allow the power factor incentive to Cochin Port Trust in respect of Consumer no. 21/1135 (EHT supply to Cochin Port Trust at W. Island) and

Consumer no. 5/5403 (11 kV to Cochin Port Trust at Vallarpadam) in accordance with power factor incentive / disincentive order of the Hon'ble Commission dated 08/07/2019 in OP no. 15/2018”.

- (2) The Commission after detailed examination of the petition, counter affidavit of the respondent KSEB Ltd and submissions of the petitioner M/s CoPA and the respondent KSEB Ltd, vide the Order dated 24.03.2022 in Petition OP No. 53/2021 ordered as follows;

“(1) The power factor incentive and power penalty payable by the licensees purchasing power from KSEB Ltd shall be determined as per the provisions of the Regulation 85(11) of the Tariff Regulations, 2021, in the next tariff Order approved for the next MYT period from 2022-23 to 2026-27. “

- (3) The Commission during the deliberations of the subject petition OP No. 53/2021 has appraised the entire issues raised in the present petition by the petitioner M/s CoPA. The relevant portion of the Order is extracted below.

“6. The Commission vide the Tariff order dated 08.07.2019 in Petition OP No. 15/2018 approved the power factor incentive and disincentive as follows.

“Power factor incentive / disincentive

The following incentive and disincentive shall be applicable to LT industrial consumers with a connected load of and above 20 kW, HT&EHT Consumers for power factor improvement.

<u>PF range (lag)</u>	<u>Incentive/ Penalty</u>
<u>Incentive</u>	
Above 0.95 and upto 1.00	0.50% of the Energy Charge for each 0.01 unit increase in power factor from 0.95
<u>Penalty</u>	
0.90 and upto 0.95	0.50% of the energy charges for every 0.01 fall in PF below 0.95 and upto 0.90
below 0.90	1% of the energy charge for every 0.01 fall in PF from 0.90

Note: No penalty and incentive for consumers with leading power factor. “

7. The Commission vide Order dated 23.04.2020 in Petition No. OP 02/2020, clarified that the Licensees purchasing power from KSEB Ltd at the Bulk Supply Tariff approved by the Commission also shall maintain the power factor @ 0.95, and if they failed to maintain the power factor @0.95, such licensees not maintaining the power factor @0.95 is bound to pay penalty at the rates specified in the Tariff Order dated 08.07.2019. The relevant portion of the Order of the Commission is extracted below:

“18. Based on the above considerations, the Commission directs that all distribution licensees of the State shall maintain a minimum power factor of 0.95 as prescribed in Commissions Order dated 08.07.2019 in OA No. 15/2018. The Commission further directs that as long as M/s TCED do not maintain the minimum pf of 0.95, M/s KSEB Ltd. has every right to levy the power factor penalty as applicable to all other distribution licensees of the State, who procure power from M/s KSEB Ltd. at bulk supply tariff. “

However, there is no clarity regarding the power factor incentive payable by the licensees purchasing power from KSEB Ltd through PPA.

8. Subsequently, the Commission vide the Regulation 85(11) of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, provide as follows.

“(11) The Commission shall prescribe in the Tariff Order, appropriate incentive/disincentive for maintaining the power factor of the distribution system, at a level between 0.95 lag and 0.95 lead as specified in the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations 2007, as amended from time to time, to certain category of consumers including Bulk consumers/ distribution licensees in the State.”

These Regulations are applicable from 01.4.2022.

9. KSEB Ltd has already filed the ARR, ERC and Tariff Petitions for the MYT period from 2022-23 to 2026-27 and is under process. The Commission, while issuing Tariff Order will be specifying the appropriate incentive/ disincentive for maintaining the power factor by consumers including Bulk consumers and distribution licensees availing power from KSEB Ltd. Hence the Commission close the petition filed by CoPT for the time being and issue appropriate orders on the same in the next tariff revision exercise based on the Tariff Regulations, 2021.”

- (4) The Commission further noted that, though M/s CoPA is a small licensee within the State of Kerala, the entire power requirement of M/s CoPA is being met from KSEB Ltd, similar to other small licensees in the State, at the BST tariff approved by the Commission from time to time. These small licensees do not have ‘intra-state power transmission agreement’ with the STU KSEB Ltd, and also not scheduling power independently. Hence these licensees are also treated at par with the HT/EHT consumers for the purposes of scheduling, however HT/EHT consumers have ‘Supply Agreement with KSEB Ltd’ where as the small licensees had entered into ‘Power Purchase Agreement’ with KSEB Ltd. Hence the Regulation 65(2) of the KSERC (Terms and Conditions of Tariff) Regulations, 2018 cannot be made applicable to CoPA and other licensees till they have separate user agreement with the STU KSEB Ltd. All these aspects were already clarified by the Commission in its earlier orders on uniform RST and separate BST and related aspects. CoPA also aware of all these facts.

9. As discussed in the paragraph 8 above, all the issues raised in the present petition was appraised in detail in the Original Order dated 24.03.2022 in petition OP No. 53/2021. The Commission has examined the review jurisdiction provided in the Electricity Act -2003 for reviewing its Order and decisions. The relevant portions are discussed below;

(1) As per the provisions of the EA-2003, review jurisdiction of the Commission is very limited. The relevant Section of the EA-03 is extracted below.

Section 94 of the Electricity Act-2003, provide as follows:

“(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.:*

(2) 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.”

- (3) The Regulations 67 of the KSERC (Conduct of Business) Regulations, 2010 and its amendments specified as follows.

“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”.

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, the 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. Hence, the Commission is liable to reject the review petition

Order of the Commission

10. The Commission, after examining the Review Petition filed by M/s CoPA, counter affidavit of the respondent M/s KSEB Ltd, deliberations of the subject matter during the hearing held on 13.01.2023, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, other Regulations and Orders issued by the Commission and, hereby orders that, the review petition dated 05.07.2022 filed against the order of the Commission dated 24.03.2022 in OP No. 53/2021 is not maintainable. Accordingly, the review petition is here by rejected.

The petitions RP No. 06/2022 and delay condonation petition OP 44/2022 disposed of. Ordered accordingly.

**Sd/-
Adv. A J Wilson
Member (Law)**

Approved for issue

**Sd/-
C R Satheeshchandran
Secretary**