

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Adv. A.J Wilson, Member
Shri B Pradeep, Member

RP No: 07/2022

In the matter of : Re-hearing on Review Petition filed by M/s. Vodafone Idea Ltd, seeking for reconsidering the tariff Order dated 25.06.2022 in OP No.11/2022 as per the directions of the Hon'ble High Court in the Judgment dated 19th June 2023 in petition WP(C) No. 17746 of 2023.

Petitioner : M/s. Vodafone Idea Ltd

Petitioner represented by : Adv P.Sathisan, Counsel for the petitioner

Respondents : Kerala State Electricity Board Ltd (KSEB Ltd)

Respondents represented by : Shri. M.P.Rajan, Deputy Chief Engineer, TRAC, KSEB Ltd

Date of hearing : 14.09.2023, 10:30 AM

Venue : Court Hall of the Commission

Order dated 21.12.2023

1. M/s Vodafone Idea Limited (herein referred as petitioner) on 20.09.2022 has filed a Review petition before the Commission with the following prayer:

“this Hon'ble Commission may be pleased to reconsider the Tariff Order dated 25-06-2022 in OP No. 11 of 2022 and place the petitioner under LT-IVA or LT-IVB category under Industrial Tariff or under IT/IT enabled services category.”

2. The review petition was filed against the Order of the Commission dated 25.06.2022 in petition OP No. 11/2022, in the matter of approval of ARR,ERC and Tariff proposals for the control period 2022-23 to 2026-27. The Order dated 25.06.2022 was heard and signed by the then Hon'ble Chairman, Sri Preman Dinaraj and the Hon'ble Member (Law), Adv. A.J.Wilson.

Subsequently, Sri Preman Dinaraj, Hon'ble Chairman was retired on superannuation on 17.07.2022. At the time of filing Review Petition on 20.09.2022, the position of Chairperson and the Member (Technical) was lying vacant. Hence as per the provisions of the EA-2003 and KSERC (Conduct of Business) Regulations, 2003, Hon'ble Member (Law), Adv. A.J.Wilson is holding the Commission. The Hon'ble Member (Law), Adv. A.J.Wilson heard

the review petition RP No. 07/2022 and pronounced the Order on 31.03.2023. The Commission vide the Order dated 31.03.2023 has rejected the review petition citing the reason that, it is not maintainable as per the provisions of the Electricity Act, 2003.

3. The petitioner M/s Vodafone Idea Ltd has filed a writ petition before the Hon'ble High Court in WP (C) No.17746 of 2023 against the Order of the Commission dated 31.03.2023. Hon'ble High Court vide the judgment dated 19th June 2023 has set aside the Order of the Commission dated 31.03.2023 and remand the matter to the Commission with the direction to reconsider the review petition RP No.07/2022 in accordance with the Regulations 16 and 18 of the KSERC (Conduct of Business) Regulations, 2003. The relevant portion of the judgment of the Hon'ble High Court dated 19.06.2023 is extracted below.

"7. Regulations 16 and 18 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, reads as follows:

"16. Quorum for meetings.- The quorum for the meeting shall be two with the Chairperson present in person or a Member duly nominated by him/her to chair the meeting. If there is no quorum, the meeting shall stand adjourned.

18. Decisions at meetings.- The decision of the Commission shall be taken on the basis of majority of Members present including the Chairperson. In case the votes in favour of or against any proposal are equal, the Chairperson, or the Member presiding over the meeting, shall have a casting vote."

8. The above regulations unambiguously mandates that the quorum for a meeting shall be two, with the Chairperson or his duly authorised being present in person. And, if there is no quorum, the meeting has to be adjourned. Similarly, the decision of the Commission shall be taken on the basis of majority of members present, including the Chairperson.

9. On a plain reading of the above regulations, I have no doubt in my mind that business of the Commission is regulated by the said regulations and the same cannot be watered down in the light of Section 93 of the Act, as argued by the learned Standing Counsel appearing for the first respondent. If such an interpretation is given, it would render Regulations 16 and 18, otiose and redundant.

10. In the above legal analysis and background, I am of the definite view that the Ext.P5 order passed by one of the members of the Commission is in flagrant violation of Regulations 16 and 18 and the same is bad in the eyes of law. In the above conspectus, I have no hesitation to quash Ext.P5 order and direct Ext.P4 to be reconsidered by the Commission, following the mandate under Regulations 16 and 18.

Resultantly, in exercise of the powers under Article 226 of the Constitution of India, I order the writ petition as follows:

- i) Ext.P5 order is set aside.*
- ii) The Commission is directed to consider Ext.P4 application, in accordance with law and as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment, after affording the petitioner and all persons an opportunity of being heard."*

4. In compliance of the direction of the Hon'ble High Court vide its judgment dated 19.06.2023 in WP (C) No.17746 of 2023, the Commission has decided to hear the petitioner M/s Vodafone Idea Ltd and the respondent KSEBL again to take appropriate decision.
5. The petition was scheduled for hearing on 26.07.2023 at Court Hall of the Commission at Thiruvananthapuram. But as requested by the petitioner, the hearing was postponed and re-scheduled on 14.09.2023. Adv P.Sathisan, Counsel for the petitioner presented the matter on behalf of M/s. Vodafone Idea Ltd. Shri. M.P.Rajan, Deputy Chief Engineer, TRAC presented on behalf of KSEB Ltd. The summary of the deliberations during the hearing is given below;
6. The petitioner, M/s Vodafone Idea Ltd submitted the following during the hearing;
 - (1) M/s Vodafone Idea Limited is a Telecom Service Provider (TSP) having due registration with the Central Government as per Section 4 of the Indian Telegraph Act, 1885. Further the petitioner is a notified Telegraph Authority as per Section 19B of the Indian Telegraph Act, 1885 and a classified Essential Service Provider (ESP) as per Essential Services Maintenance Act, 2005 and Disaster Management Act as well. The service of Telecom is a Public Utility Service as per Industrial Disputes Act.
 - (2) The petitioner provide and render Information Technology services and Information Technology enabled services to its subscribers as of Telecom. The telecom towers and switch room operating as a telephone exchange and the like are managed through information technology. The activities in the telecom sector like tele calling, data provisioning and data usages can be treated as IT and IT enabled services. The telecom services are rendered to innumerable customers and provided free of cost to many Public/Government institutions and security agencies 24*7 as directed by the State Government.
 - (3) The petitioner further submitted that they are carrying out the activities related to IT and IT enabled services. As per Section 62(3) of the Electricity Act, 2003, non- discriminatory and equal treatment is required for consumers included under IT enabled industries and telecom industry. The telecom sector specifically providing essential services of telecom as recognized by the Government. The Order of Hon'ble APTEL also mandates that the tariff discrimination should be strictly in accordance with Section 62(3) of the Electricity Act-2003.
 - (4) The petitioner further submitted that tariff applicable to them as per the latest tariff Order is LT VI F(General) and the cross-subsidy percentage for the category is 137%, which is near to the cross subsidy of highest tariff category. The Order and observations of the Hon'ble APTEL also

mandates that the cross subsidy should be within the plus or minus 20 percentage range.

- (5) The petitioner further submitted that as the Telecom service renders service for National development and public service including Health services, especially during the COVID 19 pandemic as well as provides special services to the Law agencies, Defence Services and the like, telecom sector deserves a special consideration at least at par with IT and IT enabled industries.
- (6) The special treatment for Telecom service while fixing tariff category is essentially unavoidable. The same is obviously not applied in the present tariff fixation by the Commission, which necessitates a reconsideration of the tariff category applied to Telecom sector. The omission in this regard is an error apparent on the face of the order. At present, the average cost applicable to LT-VI F category is more than Rs. 10.57 per unit. The consumer under the specified category of telecom uses about 4800 units per month and base rate is Rs. 9/- and added with fixed charges or the like the average rate per unit comes to Rs. 10.57 which will be on incremental, year after year and finally the same shall reach Rs. 11.29 per unit.
- (7) The Petitioner further submitted that the average sanction load for a mobile tower is 23 KW and the fixed charges are paid on that basis. The actual deployment is less than 7 KW per tower. This obviously improves the average revenue of KSEB Ltd as huge fixed charges are paid by the telecom consumers.
- (8) It is to be noted that the fixed charges are proposed to be increased from Rs 210/- to Rs. 220/- ,since financial year 2023-24 in the proposal. The same is shown against financial year 2024-25 as well which apparently is an error which may lead to future confusions.
- (9) The energy charge shown as being incremental from 9.1 to 9.2 is repeatedly shown for the financial year 2025-26 and in financial year 2026-27, which also is an obvious error.
- (10) It is also submitted that the load factor is 1 throughout the period as tower sites are unmanned and load is not changed as per requirement. The power factor for the towers is also 1 as the load is mainly SMPS. Hence, KSEB Ltd is benefitted from telecom consumption.
- (11) It was submitted that the above matters were not considered in the tariff Order dated 25.06.2022 and the due consideration of the above would have extended the benefit of the Tariff under IT and IT enabled service to petitioner as well.
- (12) The Petitioner further submitted that, the review petition is filed as per the Regulation 67 of the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003. The Order of the Hon'ble

Supreme Court in 1970 (1) SCC 764 and 2010 (9) SCC 493 states that when a conclusion is reached on a disputed matter, even it is according to law, it must be ensure that, it has to be recorded the entire process leading from the dispute to its solution.

- (13) The petitioner submitted that, though they are providing essential services, they are placed along with hotels category and other commercial establishments which comes under LT VI (F) Category. It is very atrocious that they are placed along with other categories without the relevance of providing essential services. This classification is totally erroneous, which should be reconsidered.
- (14) As per the judgment of Hon'ble APTEL in Appeal No. 195 of 2009 Mumbai International Airport Pvt Lt Vs MERC & others, categorically states the way for the tariff categorization. Classification of similarly placed services under the same category is unavoidable and essential. Providing IT enable service or IT service as considered under Information Technology Act, data service and mobile service at least have to be placed at par with or classified together with, IT or IT enable service or industrial tariff i.e., LT IV B and IV A.

7. The respondent M/s KSEB Ltd has submitted the following during the deliberations of the subject matter;

- (1) The petitioner has LT & HT connections from KSEB Ltd and is billed under LT VI (F) & HT II(B) General Tariff as per the Tariff Order dated 25.06.2022 in OP No.11/2022.
- (2) Tariff determination is a quasi-legislative process and individual consumer/ consumer groups petitions cannot be considered for reclassification, it affects the delicate balance created through public consultation process.
- (3) KSEB Ltd further submitted that the petitioner had already approached the Commission twice with the same plea, once in 2020
- (4) The petitioner had approached the Commission during the last tariff revision to change tariff of Telecom sector to LT IV (B) tariff. The Commission vide the ARR, ERC & Tariff Order dated 25.06.2022 has noted the suggestions of the Stake holders and fixed the tariff in accordance with the law.
- (5) Hon'ble Appellate Tribunal for Electricity vide judgments below had settled the issues raised by the petitioner through that the telephone towers cannot be equated to Industrial tariff.

Appeal No	Order date	Petitioner	Respondents
116 of 2016	04.10.2007	BSNL,Punjab Circle	PSEC & PSEB
88 of 2012	20.05.2013	Tata Tele Services Ltd.	RERC& Distribution companies in Rajasthan

42 of 2013	11.04.2013	Bharati Hexacom Limited	RERC & vidyuit Nigam Ltd.	Jaipur Vitaran
------------	------------	-------------------------------	---------------------------------	-------------------

All the above cases had been filed before the Hon'ble APTEL by the telecom providers against the decision of the respective SERCs in assigning non-domestic tariff rather than assigning industrial category, for their Base Transceiver Station (BTS) Towers, Telephone /Mobile Exchanges/switches.

- (6) The Commission vide Order dated 25.10.2019 in petition OP No.59/2018 in petition filed by M/s. BSNL had ordered that in view of the judgment (Appeal No.116 of 2016 filed by M/s. BSNL before Hon'ble APTEL), it is a settled position that the activities of BSNL cannot be treated as an industry.

Analysis and Decision of the Commission

8. The Commission having examined in detail the petition filed by M/s Vodafone Idea Ltd, counter affidavit of the respondent KSEB Ltd, deliberations of the subject matter during the hearing held on 14.09.2023, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, other Rules, Regulations and Orders issued by the Commission, hereby decides as follows;
9. The present petition filed by M/s Vodafone Idea Ltd is for reviewing the Order dated 25.06.2022 in petition OP No. 11/2022 in the matter of ARR, ERC and Tariff for the MYT period from 2022-23 to 2026-27.
10. The Commission has examined the review jurisdiction as per the provisions of the Electricity Act, 2003, for reviewing its orders and decisions. The relevant portions are discussed below;
- (1) As per the Section 94 of the EA-2003, the review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Section of the EA-2003 is extracted below:

“Section 94. (Powers of Appropriate Commission): --- (1) *The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

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

- (2) Order 47 Rule 1 of the Code of Civil Procedure 1908, dealing with review of the orders and decisions of a Civil court, which is extracted 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.*

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, 2003 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. The Commission has noted that, the entire issues raised in the review petition was discussed in detail in the earlier Tariff Orders of the Commission. The petitioner failed to produce new facts or evidence or mistakes or error apparent on record, as per the Section 94 of the Electricity Act, 2003 read along the Code of Civil Procedure, 1908, for reviewing the Order of the Commission dated 25.06.2022 in petition OP No. 11/2022. Hence, the Commission is liable to reject the review petition.

11. However, the Commission has decided to examine the grounds raised by the petitioner in the review petition, and noted the following;

- (i) Historically, the electricity tariff of the installations of cellular mobile communications was under Commercial category. But, after detailed examination of the activities of the installations of the cellular mobile communications, the Commission vide the Order dated 14.08.2014 in petition OP No. 09 of 2014 had brought the installations of cellular mobile communications under 'LT-VI (F) Category', which is a 'Non domestic, Non Commercial Category'.

In all subsequent Tariff Orders implemented in the State on 17.04.2017, 08.07.2019 and in 25.06.2022, the Commission had retained the tariff of the installations of the mobile communications, satellite communications and offices and/or exchanges of telecom companies under LT-VI(F) category.

- (ii) Regarding the request of the petitioner to classify the cellular mobile communications under 'industrial category', the Commission vide the Order dated 25.10.2019 in Petition OP No. 59/2018 filed by M/s BSNL Ltd, ordered that the activities of the BSNL, which is the PSU engaged in mobile communications, cannot be treated as an industrial activity. The relevant portion of the Order of the Commission is extracted below.

"17. The prayer of the petitioner in the original petition is to classify the petitioner under 'Industrial category' instead of LT-VI General (F) category and HT- II General B category.

In this matter, Hon'ble Appellate Tribunal for Electricity vide the judgment dated 4 th October 2007 in Appeal Petition No. 116 of 2006, in an appeal filed by BSNL against the order of the Punjab Electricity Regulatory Commission, clearly ordered that the activities of the BSNL cannot be accepted as Industry. The relevant portion of the judgment of the Hon'ble APTEL is extracted below.

“9. The question whether the appellant is carrying out any process of manufacturing of goods or supply of any goods is no longer res-integra. In Bharat Sanchar Nigam Ltd. & Anr. Vs. Union of India & Ors., (2006) 3 SCC 1, the principal question to be decided was the nature of the transaction by which mobile phone connection is made available by the telecom company to the consumers, namely, is it sale or is it a service or is it both.

The Supreme Court held that the appellant was not carrying out any process of manufacturing of goods or supply of any goods, it was simply rendering service to customers. In this connection, it was held as follows:-

“61. We will proceed on the basis that incorporeal rights may be goods for the purposes of levying sales tax. Assuming it to be so, the question is whether these electromagnetic waves can fulfil the criteria laid down in Tata Consultancy for goods. In our opinion the question must be answered in the negative. Electromagnetic waves have been described in David Gilles & Roger Marshal: Telecommunications Law: Butterworths: “1.14. Electromagnetic waves travel through free space from one point to another but can be channeled through waveguides which may be metallic cables, optical fibres or even simple tubes. All electromagnetic waves are susceptible to interference from one another and unrelated electrical energy can distort or destroy the information they carry. To reduce these problems they have been organized within the spectrum into bands of frequencies or wavelengths for the transmission of particular types of services and information.

” 62. The process of sending a signal is as follows: “Data is superimposed on a carrier current or wave by means of a process called modulation. Signal modulation can be done in either of two main ways: analog and digital. In recent years, digital modulation has been getting more common, while analog modulation methods have been used less and less. There are still plenty of analog signals around, however, and they will probably never become totally extinct. Except for DC signals such as telegraph and baseband, all signal carriers have a definable frequency or frequencies. Signals also have a property called wavelength, which is inversely proportional to the frequency”. (Encyclopedia of Technology Terms of Techmedia)

63. It is clear, electromagnetic waves are neither abstracted nor are they consumed in the sense that they are not extinguished by their user. They are not delivered, stored or possessed. Nor are they marketable. They are merely the medium of communication. What is transmitted is not an electromagnetic wave but the signal through such means. The signals are generated by the subscribers themselves. In telecommunication what is transmitted is the message by means of the telegraph. No part of the telegraph itself is transferable or deliverable to the subscribers.

64. The second reason is more basic. A subscriber to a telephone service could not reasonably be taken to have intended to purchase or obtain any right to use electromagnetic waves or radio frequencies when a telephone connection is given. Nor does the subscriber intend to use any portion of the wiring, the cable, the satellite, the telephone exchange, etc. At the most the concept of the sale in a subscriber's mind would be limited to the handset that may have been purchased for the purposes of getting a telephone connection. As far as the subscriber is concerned, no right to the use of any other goods, incorporeal or corporeal, is given to him or her with the telephone connection.

65. We cannot anticipate what may be achieved by scientific and technological advances in future. No one has argued that at present electromagnetic waves are abstractable or are capable of delivery. It would, therefore, appear that an electromagnetic wave (or radio frequency as contended by one of the counsel for the respondents), does not fulfil the parameters applied by the Supreme Court in Tata, Consultancy for determining whether they are goods, right to use of which would be a sale for the purpose of Article 366(29-A)(d).”

10. Thus, it needs to be noted that there is no consumption of electromagnetic waves by the customer. The mere fact that electrical energy is converted into electro-magnetic waves does not detract from the fact that the appellant is providing only service to its customers and nothing more. In the process, no goods are being manufactured. Unlike goods the electro-magnetic waves are neither delivered to the customers nor consumed by them.

11. In view of the above mentioned decision of the Supreme Court, we cannot accept the argument that the appellant is an industry and ought not to be placed in the category of NRS category.”

In view of the above judgment of the Hon'ble APTEL, it is a settled position that the activities of BSNL cannot be treated as an Industrial Activity.”

The activities of the petitioner also is same as that of BSNL. The petitioner also is categorized under LT-VI(F) Tariff along with the BSNL and other similar entities engaged in the installations of cellular mobile communications. Considering the above settled position taken by this Commission in the Order dated 25.10.2019 in OP No. 59/2018, it cannot take a different tariff categorization for the petitioner as requested.

12. The Commission has also noted that, Hon'ble Appellate Tribunal for Electricity vide the judgement dated 20th May 2013 in Appeal Petition No.88 of 2012, in an appeal filed by Tata Teleservices Limited against Order of Rajasthan Electricity Regulatory Commission, observed that the categorization of telecom service provider under Non domestic tariff is correct. The relevant portion of the judgment is extracted below.

“58. In view of the above decisions, it cannot be concluded that the Appellant who is telecom service provider, which is an essential service, cannot automatically claim to have a concessional tariff determination. As a matter of fact, as indicated earlier, the predominant object of the Appellant and other telecom operators is to earn profit. Moreover, as mentioned earlier, telecommunication is only one part of the services provided by the Appellant and other telecom operators. The other services provided by the telecom operators are services purely of commercial nature and offered with the main object of earning profit. The fundamental ground for fixing different tariff for domestic category and commercial category is motive of profit earning.

59. The Appellant has cited one more judgment of this Tribunal in Appeal No.195 of 2009 in the Case of Mumbai International Airport Vs Maharashtra State Commission in support of its claim. That judgment would also not apply to the present case because in that case, this Tribunal has held that even in respect of Airport which is a public utility service, the differential tariff would be charged for purely aviation services and the commercial activities carried out at the airport. Therefore, none of the judgments cited by the learned counsel for the Appellant would be of any help to the Appellant's stand.

60. On the other hand, the learned Counsel for the State Commission has cited the judgment of Hon'ble Supreme Court in the case of W.B. vs Rash Behari reported in (1993) 1 SCC 479. In this judgment, the Hon'ble Supreme Court has held that a commercial or profit making venture has always been considered to be a class different from the one engaged in non commercial activities. It is further held that the

classification based on such distinction is well recognised as valid for the purposes of revenue. The relevant extract from the said judgment is quoted below:

“6.A commercial or profit making venture has always been considered to be a class different than the one engaged in non-commercial activities. Classification based on such distinction is well recognized and is accepted as valid for purposes of revenue.”

61. As stated above, the State Commission has got full right to categorise various consumers u/s 62 (3) of the Act, 2003 wherein the nature of supply is one of the factors as laid down by this Tribunal as well as Hon’ble Supreme Court.

62. In view of the above discussions, we do not find any merit in the contention urged by the learned Counsel for the Appellant that re-categorisation is wrong”

.....
76. Summary of the findings:

.....
(ii) In the present case, the nature and purpose of supply has been taken into consideration while determining the tariff. We do not find any infirmity in the order re-categorizing the Appellant and all telecom operators in Non Domestic Service Category.”

13. The Commission has also noted that, all the issues raised in the present review petition was raised during the deliberations of the impugned Order dated 25.06.2022 in petition OP 11/2022. The relevant portion of the Order is extracted below.

“ **Chapter-2**
Comments of the stakeholders

.....

.....

Tariff of Telecom Sector

2.78 **Adv. P. Sathisan representing M/s Vodafone Idea Limited, M/s Bharti Airtel Ltd, and Indus Towers Limited** submitted that as the entire telecom network including towers, switch centres etc and the various services provided with the help of Information technology, telecom shall be treated as IT or IT enabled service to be brought under LT-IV B at least if not LT-IV A. Information technology Act defines information as an inclusive definition of data, message, text, image, sound, voice, codes, computer programme, software and data base or micro film or computer generated micro fiche. It was also submitted that telecom is classified as an essential service as per Essential Services Maintenance Act and Disaster Management Act. As per Section 62(3) of the Electricity Act, 2003 provides non-discriminatory and equal treatment to consumers. Telecommunication service providers, has to provide services whenever asked for by the Government agencies, that too even free of cost. Vodafone also requested that the cross subsidy shall be substantially reduced for telecom sector too. APTEL in Appeal No 102 of 2010 has specified that tariff of all consumers except BPL shall be in 20% band. They provide free of cost service to Government and public utilities in various fields including in Security segment, Law enforcement, Health care, educational development and the like. On the other hand it is mulcted with exemplary high cost for the supply of electricity to it

as against IT enabled industries which are not providing any of these public services. Therefore, the treatment of telecom sector in a substantially discriminatory pedestal compared to IT enabled industries is an anathema to the Article 14 of the Constitution of India. What is needed is to incentivize the telecom sector.

Vodafone further pointed out that the consumption is uniform throughout for all the telecom towers whereas the same is ranging from 0 to peak consumption for commercial consumers, particularly during holidays in comparison with other working days. As, telecom sector is providing social service and essential service to the public it requires a tariff category change from the present LT VI F(G) to LT IV B in the said standards.

- 2.79** *M/s. Vodafone Idea Limited* submitted that it is a Telecom Service Provider and is in the business of telecom service industry having Central Government Licenses. Petitioner is classified Telegraph Authority as per Sec. 19 (B) of Indian Telegraph Act, 1885, pursuant to due notification. Further, M/s. Vodafone Idea Limited submitted that they are classified as an essential service provider as per ESMA Act and had been classified so by the Order of the Secretary, Disaster Management No. G.O. (MS) No. 49/2020/GAD dated 23/03/2020. M/s. Vodafone Idea Limited submitted that it is in Telecom Service Industry and is entitled to have tariff classification under industrial tariff. Hon'ble Appellate Tribunal for Electricity vide the judgement in the Appeal No. 337 of 2016 reiterates the need for industrial tariff for Telecom Service Industry.

Opinion of the Commission

2.80 *The Commission has noted the suggestion of the stakeholders”*

14. The Commission, in the Order dated 25.06.2022 in OP No. 11/2022, while determining the tariff of different categories of consumers in the State of Kerala for the year 2022-23, had carefully examined the issues raised by the petitioner. The rationale and principles of tariff determination, the cross subsidy and related issues of each categories of consumers, the cost of supply at various voltage levels etc were appraised in detail in Chapter-7 of the Order dated 25.06.2022 in OP No. 11/2022. The Commission after appraising the electricity used by cellular mobile communications in detail as per the Section 62(3) of the EA-2003, the Commission vide the Order dated 25.06.2022 in petition OP No.11/2022, has decided to continue with the stand taken by the Commission to retain the electricity tariff of cellular mobile communications under LT-VI (F) tariff.
15. The petitioner further raised the issue that, the cellular service providers including the petitioner is categorised along with the Hotels and others engaged in commercial establishments.

The Commission has examined the issue raised by petitioner. As per the Tariff Order dated 25.06.2022, the following categories of consumers are included in the LT-VI(F) and HT-II(B) tariff categories.

“LT VI GENERAL (F)

The tariff under LT- VI (F) is applicable to:

- (i) *Computer training institutes, private coaching or tuition centres, self-financing educational institutions including the hostels run by them,*

- (ii) *Cinema studios, audio/video cassette recording/duplication units, CD recording units, cinema dubbing and animation studios,*
- (iii) *All construction works,*
- (iv) ***Installations of cellular mobile communications, satellite communications, offices and / or exchanges of telecom companies,***
- (v) ***Offices or institutions of All India Radio (AIR), Doordarshan and other television broadcasting companies, cable TV networks, radio stations,***
- (vi) *Hall marking centres.*
- (vii) *Offices of the advocates or chartered accountants or company secretary or consulting engineers or tax consultants or architects or cost accountants or of management consultants.*
- (viii) *Offices of the 'on line news channels and on line portals'.*
- (ix) *Printing press engaged in printing dailies along with online media channels.*

HIGH TENSION – II - GENERAL (B) {HT-II (B)}

Tariff applicable to all classes of consumers listed in LT-VI(C), LT-VI (F) and LT-VI (G) categories availing supply of electricity at high tension."

As detailed above, the Commission has also included satellite communication services such as 'All India Radio', 'radio stations', 'television broad casting companies including Doordarshan', cable TV networks etc under LT-VI (F) Tariff category in LT and HT-II(B) tariff category in HT.

16. The Commission may further clarify that, it may be difficult and not practical for determining the tariff for each consumer or consumer groups in the State. Hence, similarly placed consumers based on the purpose of usage of electricity is being grouped into one category. It may also noted that, among other Indian States, Kerala is one of the State having more number of electricity tariff categories and thus introducing more number of tariff categories will lead to practical difficulties and is against the mandate of tariff policy.

It is a settled position of law that, the activities of cellular mobile communications and Telecom Service Providers cannot be considered as industrial category and tariff assigned to industrial categories including that of IT and IT enabled industries cannot be made applicable to them.

17. As discussed in the preceding paragraphs, the entire issues raised by the petitioner in the present petition was already discussed and finalized in the earlier orders on tariff notified by this Commission since the year 2014-15 onwards. The petitioner has not produced new facts or evidence or mistakes or error apparent on record, as per the Section 94 of the Electricity Act, 2003 read along the Code of Civil Procedure, 1908, for reviewing the Order of the Commission dated 25.06.2022 in petition OP No. 11/2022. Hence the Commission decided to reject the review petition filed by M/s Vodafone Idea Ltd against Order of the Commission dated 25.06.2022 in petition OP No.11/2022.

Order of the Commission

18. The Commission, after examining the Review Petition filed by M/s. Vodafone Idea Ltd, counter affidavit of the respondent M/s KSEB Ltd, deliberations of the

subject matter during the hearing held on 14.09.2023, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, other Rules and Regulations in force, hereby orders that, the review petition dated 20.09.2022 filed against the order of the Commission dated 25.06.2022 in OP No. 11/2022 is not maintainable. Accordingly, the review petition is here by rejected.

The petitions RP No. 07/2022 is disposed of. Ordered accordingly.

Sd/-
Adv. A J Wilson
Member

Sd/-
B Pradeep
Member

Approved for issue
Sd/-
C R Satheesh Chandran
Secretary