

- i. *The petitioner utility KSEBL be heard, allowed to adduce evidence and the dispute be settled, as per the Hon'ble High Court order so as to prevent loss sustained by KSEBL.*
- ii. *Supply to photo studio and sales counter along with the colour printing facility be allowed to be charged at commercial rate as per the respective ruling tariff and for back periods.*

2. The summary of the petition filed by KSEB Ltd is given below:

(a) The respondent, M/s Ajantha Colour Lab, is a low-tension electricity consumer under electrical section, Edappal running a colour lab and digital studio under the commercial name 'Ajantha Colour Lab'. The tariff assigned to them at the time of providing electric connection was under LT IV Industrial tariff. The respondent premises was inspected by the Anti Power Theft Squad of KSEB on 15.03.2003 and was penalized for following irregularities.

(i) The supply given for the computerized photo printing under LT IV industrial tariff being used for running photo studio and a sales counter for which higher tariff of LT VIIA is applicable.

(ii) Unauthorised load of 12KW was seen connected in the premises.

KSEB had issued a penal invoice for Rs 3,53,052/- (Rupees three lakh fifty three thousand and fifty two only), the reassessed amount under LT-VII(A) tariff at the three times the rate for previous six months.

(b) The respondent filed petition (WP(C) No.37357 of 2007) before the Hon'ble High Court. The Hon'ble Court on 11.01.2008 suspended enforcement of the impugned demand and directed the KSERC to decide on the appropriate tariff applicable to the respondent Ajantha Colour Lab, within four months from the date of receipt of a copy of the judgment. The order is extracted below:

*“ Under such circumstances, the impugned orders would stand suspended and the parties will stand regulated by the force of this judgment to the Tariff Regulatory Commission for consideration of the issue regarding the appropriate tariff under which the petitioner has to come. **A final decision shall be taken within a period of four months from the date of receipt of a copy of this Judgment. Petitioner shall be heard in relation to the issue. Until a decision is taken as aforesaid, enforcement of the impugned demand against the petitioner would stand suspended.**”*

(c) Since KSEB being the affected party, it approached KSERC to take the decision on the appropriate tariff applicable to M/s Ajantha Colour Lab, Edappal based on the judgment of the Hon'ble High Court. However, the Commission took the stand that the petitioner consumer M/s Ajantha

Colour Lab, Edappal has to approach the Commission as per the judgment of the Hon'ble High Court. However, the petitioner has not approached the Commission till date and is enjoying the fruit of the stay order. KSEBL, on the contrary has been losing the revenue from the consumer. The stay order issued by the Hon'ble High Court is still in force.

3. The Commission scheduled the admissibility hearing on the petition on 18.01.2018 at the office of the Commission. Sri K G P Namboodiri, Executive Engineer, KSEB Ltd presented summary of the petition and submitted that KSEB Ltd is suffering losses on account of the wrong application of tariff to the M/s Ajantha Colour Lab, Edappal. But the respondent M/s Ajantha Colour Lab is enjoying the benefit of stay order for all these time. He prayed before the Commission to kindly admit the petition and take an appropriate decision on tariff applicable to the respondent as per the direction of the Hon'ble High Court in its judgment dated 11.01.2018.
4. Adv. Unnikrishnan, appearing on behalf of Ajantha Colour Lab submitted as follows;
 - (i) On the subject issue, the Commission had issued an order on 20.05.2009. Hence the present petition filed by KSEB Ltd can be considered as a review petition against the order dated 20.05.2009. As per the provisions in the Code of Civil Procedure 1908, the review against the order of the Commission can be entertained only on the following grounds.
 - (a) *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,*
 - (b) *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*
 - (ii) The petition filed by KSEB Ltd is against a consumer. The petitioner has to filed this application before the CGRF or Electricity Ombudsman. The Commission has no jurisdiction to entertain the petition.
5. During the hearing, the Commission clarified the following.
 - (i) The petition filed by KSEB Ltd is not a review petition and the same was filed based on the direction of the Hon. High Court of Kerala in the judgment dated 11.01.2008.

- (ii) As per the provisions of the Electricity Act, 2003, Kerala State Electricity Regulatory Commission (KSERC) is the statutory authority for determining the electricity tariff in the State.

The Commission also noted the lapses from the part of the M/s Ajantha Colour Lab, Edappal, in not taking up the matter for classification of tariff with supporting details as per the direction of the Hon'ble High Court in its judgments dated 11.01.2008.

6. Based on the petition filed by KSEB Ltd, and deliberations of the subject petition during the hearing held on 18.01.2018, the Commission here by ordered that,

- (i) The petition stands admitted.
(ii) The petitioner KSEB Ltd and the respondent M/s Ajantha colour Lab, Edappall shall submit additional details/ documents if any, latest by 31.01.2018.
(iii) KSEB Ltd shall submit the month wise details of the connected load, energy consumption, the tariff applied for raising the invoice, fixed charge, energy charge etc, for the entire disputed period since the year 2003 till date.

The Commission decided to schedule the next hearing on the petition on 20-03-2018.

Sd/-

K.Vikraman Nair
Member

Sd/-

S.Venugopal
Member

Sd/-

Preman Dinaraj
Chairman

Approved for issue

K B Santhosh Kumar
Secretary