

BEFORE THE HONORABLE KERALA STATE ELECTRICITY REGULATORY COMMISSION

AT THIRUVANANTHAPURAM

OA No. /2020

IN THE MATTER OF:

Application filed in compliance of the judgment dated 16.10.2018 of the Hon'ble High Court of Kerala in Writ Appeal Nos. 1448 and 1482 of 2017 for determination of tariff of individual consumers.

Kerala State Electricity Board Limited

Vydyuthi Bhavanam, Pattom

Thiruvananthapuram,

Kerala – 695004

.....Applicant

VERSUS

1. Mujeeb Rahman. A

Proprietor, The Xtra Food Products,

Vaduthala, Naduvath Nagar P.O,

Aroorkutty-688526

2. Radhakrishnan. T.K

Rayiga House, Thenhilapalam P.O,

Malappuram-673636.

.....Respondents

SYNOPSIS

The present Application is being filed by the Kerala State Electricity Board Limited (KSEBL) as directed by the Hon'ble High Court of Kerala, in Writ Appeal Nos. 1448 and 1482 of 2017, for determination of tariff of individual consumers namely the Respondents. The said Writ Appeals had been filed by KSEBL challenging the common judgment dated 26.10.2016 of the Hon'ble High Court in WP© Nos.37708 of 2015 and 9967 of 2016. The Division Bench has found that the relevant provision applicable in the disputed matter is Regulation 35 of the Supply Code as found by the Single Bench. However, the Division Bench has made it clear that, as per Regulation 35, though the expenditure for providing new connection/ additional demand would be borne by the distribution licensee, the same can be recovered from the consumers through Tariff as approved by the Commission. Hence, the Board was directed to approach the Commission for the purpose of determination of higher Tariff in the case of individual consumers namely the respondents in the present application. The Division Bench has also made it clear that, this would not in any way affect the general Tariff determination for the individual respondents which has to be under that category of the consumer, as brought out by the Commission periodically. It is also held that, the applicant would have to pay the Tariff under such general Tariff determination order but would also have to pay the additional amounts for the purpose of setting off the expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide on the amounts with reference to the expenditure incurred, with notice to the respondents. Accordingly, in view of the direction of the Hon'ble High Court, this applicant had already approached this Commission as per its letter dated 2.08.2019. However, the matter is still pending disposal in the Commission.

Hence this Application.

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FACT OF THE CASE

The Applicant respectfully submits as follows:

1. The Applicant herein, Kerala State Electricity Board Limited (KSEBL) is a wholly owned company of the Govt. of Kerala incorporated under the Companies Act, 1956, for the purpose of Generation, Transmission and Distribution of electricity in the State of Kerala.

2. The First Respondent herein is an LT consumer under electrical section Arookutty in Alappuzha District, running an industrial unit in the name and style 'The Xtra Food Products'
3. The Second Respondent herein is a new applicant under electrical section Chelari in Kozhikode District, applied for supply to start a catering unit.
4. The first Respondent Sri. Mujeeb Rahman has approached the Assistant Engineer Electrical Section, Arookutty, KSEBL for additional power allocation of 20 KW to his unit. The KSEBL, in order to provide the additional power allocation as requested, demanded the charges for installing a new transformer or for enhancing the capacity of the existing transformer as the capacity of the existing transformer was not sufficient to meet the required additional demand of the consumer. Aggrieved by this, the consumer has approached the CGRF, Ernakulam. The CGRF as per its order dated 29.7.2015 found that in view of Regulation 35 and 36 of the Kerala Electricity Supply Code, 2014 the obligation to incur the charges is on the licensee and hence directed the Board to give additional power accordingly. A copy of the order dated 29.7.2015 of the CGRF is produced and marked as **Annexure-A1**
5. The second respondent Sri. Radhakrishnan T.K has approached the Assistant Engineer Electrical Section, Chelari, KSEBL for power allocation of 40 KW to his business unit. The KSEBL has demanded an amount of Rs.2, 75,250/- for installation of a new 100 KVA transformer at the premises of the consumer for giving supply as the capacity of the existing transformer was not sufficient to meet the required demand of the consumer. Aggrieved by this, the consumer has approached the CGRF, Kozhikode. The CGRF as per its order dated 24.3.2015 found that, in view of Regulation 37 of the Kerala Electricity Supply Code, 2014 the consumer shall bear the expenditure for the service line or of the plant or of both provided exclusively for him by the licensee. Accordingly, upheld the demand of the KSEBL. A copy of the order dated 24.3.2015 of the CGRF is produced and marked as **Annexure-A2**.
6. Challenging the above order of the CGRF, Sri.Radhakrishnan T.K has preferred an appeal before the Electricity Ombudsman. The Ombudsman as per order dated 30.10.2015 found that, in view of Regulation 35 and 36 of the Supply Code,2014 there is no ground for issuing such a demand by the Board. Accordingly the demand was quashed and directed the

Board to give electric connection to the consumer. A copy of the order dated 30.10.2015 of the Ombudsman is produced and marked as **Annexure-A3**.

7. Challenging Annexure A1 and A3 orders of the CGRF, Ernakulam and the Electricity Ombudsman, KSEBL has filed Writ Petition Nos.37708 of 2015 and 9967 of 2016 respectively before the Hon'ble High Court of Kerala. The Hon'ble High Court as per common judgment dated 26.10.2016 dismissed the above writ petitions holding that, in view of Regulations 35,36 and 37 of the Supply Code, 2014 there is justification on the part of the authorities to have allowed the complaint made by the respondent consumers. A copy of the common judgment dated 26.10.2016 of the High Court is produced and marked as **Annexure-A4**.
8. Aggrieved by Annexure-A4 judgment of the learned Single Judge, the KSEBL filed Writ Appeal No.1448 and 1482 of 2017 before the Division Bench. The Hon'ble Division Bench as per judgment dated 16.10.2018 has also found that the relevant provision applicable in the disputed matter is Regulation 35 of the Supply Code as found by the Single Bench. However, the Division Bench has made it clear that, as per Regulation 35, though the expenditure for providing new connection/additional demand would be borne by the distribution licensee, the same can be recovered from the consumers through Tariff as approved by the Commission. Hence, the Board was directed to approach the Commission for the purpose of determination of higher Tariff in the case of individual consumers. The Division Bench has also made it clear that, this would not in any way affect the general Tariff determination for the individual applicant which has to be under that category of the consumer, as brought out by the Commission periodically. It is held that, the applicant would have to pay the Tariff under such general Tariff determination order but would also have to pay the additional amounts for the purpose of setting off the expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide on the amounts with reference to the expenditure incurred, with notice to the units. In such circumstances, the Board has to install the transformer at their cost and then approach the Commission for determination of individual Tariff with respect to the units. It is further held that, the consumers shall give consent to the Board for fixation of Tariff as above, in their individual cases for the purpose of reimbursement of expenses on which the Board shall carry out installation of the transformer and then approach the Commission for fixation of Tariff. It is also held that, even when the matter is pending before the Commission, the

consumers shall pay Tariff on the general fixation by the Commission under the category in which they are covered. A copy of the judgment dated 16.10.2018 of the Division Bench is produced and marked as **Annexure-A5**

9. The KSEBL has decided to comply with Annexure –A5 judgment and the field officers were instructed accordingly. It is reported that, as far as the request of Sri. Radhakrishnan. T.K, the second respondent herein, connection has already been given and that of Sri. Mujeeb Rehman .A, the first respondent, is under process.
- 10.1. Besides the facts and circumstances as explained above, this Applicant respectfully submits the following statutory as well as settled legal positions so as to establish the claim of the applicant permitting to realise the reasonable expenditure to be incurred for providing electric connection as envisaged in the Electricity Act, 2003.
- 10.2. After the enactment of the Electricity Act, 2003 the power sector in India being governed by the provisions contained therein and the Rules and Regulations made there under. The Electricity Act, 2003 is a special enactment to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for the development of the industry. It is the prime responsibility of the State Commission to keep the State Electricity Boards in a financially viable position by permitting them to realise the actual expenditure incurred for distribution of electricity as envisaged in the Electricity Act, 2003.
- 10.3. The Applicant KSEBL is a Government company engaged in Generation, Transmission and Distribution of electrical energy all over Kerala which is a deemed licensee under section 14 of the Electricity Act, 2003. Section 50 of the Act empowers the State Commission to frame Electricity Supply Code to provide recovery of electricity charges by the licensee.
- 10.4. Section 42(1) of the Electricity Act,2003 provides that it shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in the Act. Section43(1) casts a duty on the licensee to provide supply of electricity to such premises, in respect of which the owner or occupier thereof has made an application and ordinary, such supply is to be made within one month after receipt of the application requiring such supply. Sub Section (2) provides that it shall be duty of every

distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1). Sub section (3) provides that if a distribution licensee fails to supply electricity within the period stipulated in sub section (1), he shall be liable to penalty which may be extended to Rs.1,000/- for each day of default.

10.5. The KSEBL being a licensee to distribute electricity to consumers requiring electric energy is bound to supply the same in time as mandated by the Electricity Act. However, it cannot be done without realising the reasonable cost approved by the Commission. Section 43 of the Act makes it obligatory on the part of the distribution licensee to supply electricity on application being made by the owner or occupier of any premises, however, subject to the provisions under Sections 45 & 46 to recover the expenses reasonably incurred in providing any electric line or any electric plant as well as charges for electricity as approved by the State Commission. While the distribution licensee has thus been made statutorily duty bound to provide supply of electricity and also to provide electric plant and electric line for providing such supply, the proviso to section 43(2) stipulates that no person shall be entitled to demand, or to continue to receive, from a licensee supply of electricity to any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission. Section 46 empowers the Commission to make Regulations authorising the distribution licensee to charge from a person requiring supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or plant used for the purpose of giving that supply.

10.6. Invoking all the above said provisions, the Commission notified the Kerala Electricity Supply Code, 2014. Regulation 35 of the said Supply Code, 2014 specifies that expenditure for extension or up gradation or both of the distribution system to be borne by the licensee. The said Regulation is quoted below for easy reference:

“35. Expenditure for extension or up gradation or both of the distribution system to be borne by the licensee.- The expenditure for extension or up gradation or both of the distribution system up to and including the distributing main, for meeting the demand of new consumers and the additional demand of existing consumers shall normally be borne by the distribution licensee and this expenditure shall be recovered from the consumers through tariff as approved by the Commission.”

10.7. So also Regulation 37 of the Code specifies that the consumer shall bear the expenditure of service line or of the plant or both provided exclusively for him by the licensee and the expenditure for line and plant shall be determined as per the cost data approved by the Commission. Regulation 37 is also quoted for easy reference:

“37. Expenditure for service line, plant etc., for providing supply. - (1) The consumer shall bear the expenditure for the service line or of the plant or of both, provided exclusively for him by the licensee.

(2) The expenditure for line and plant mentioned in sub regulation (1) above shall be determined as per the cost data approved by the Commission.”

10.9. It is pertinent to note that, even the above regulation is in force this Commission is passing orders restraining the applicant from realising the actual expenses from the consumers on the strength of Regulation 35 of the Supply Code. For instance, one Sri. Biju Joseph made an application for electric connection to the Asst. Engineer, Electrical Section, Muthalamada with a connected load of 75 KW. The A.E had given a demand notice for Rs.2, 75,250/- towards the cost of installation of one 100KVA transformer for giving the connection as requested. Challenging the demand the consumer approached the Commission and the Commission passed an order in 255/Com.Ex/2015/KSERC dated 14.05.2015 in which it has been directed that, the expenses for providing electric connection shall not be collected in view of Regulation 35 of the Electricity Supply Code, 2014. Even though this applicant had pointed out that Regulation 35 deals with different situation and Regulation 37 is the relevant provision dealing with giving electric connection to a consumer and therefore the expenditure as specified by the Commission could be realised, the Commission took the stand that no expenses can be recovered and ordered accordingly. The said order was challenged before the Honble High Court in WPC. No. 22439 of 2015 and the Honble High Court was pleased to stay the operation of the order of the Commission.

10.10. While so, this Commission initiated a *suo-motu* proceeding purportedly under Section 129 of the Electricity Act, 2003 and issued notice under Section 130 thereof. In the notice it was alleged that the Compliance Examiner of the Commission after his inspections of Electrical Circles, Kozhikode, Pathanamthitta, Ernakulam, Manjeri and Kottarakara had reported that the KSEBL is realising from the applicants the amount of expenditure for installation of

transformer and augmentation of the distribution main necessitated for meeting the requirement under Low Tension Supply. As per Regulation 35 of the Supply Code the expenditure for the extension or up-gradation or both of the distribution system up to and including the distribution main for meeting the load demand of the new consumer and for the additional demand of the existing consumers has to be borne by the KSEBL and the expenditure can be recovered from the consumers through tariff as approved by the Commission.

- 10.11. On receipt of the above notice of this Commission the present applicant had filed its response stating that the applicants for electric supply shall bear the expenditure incurred for providing from the distribution main any electric line or electric plant required for the purpose of giving that supply on the rates as approved by the Commission as per Regulation 32 and 37 of the Supply Code. It was also stated in the reply that, in respect of an applicant with a connected load less than 5 KVA, the distribution main to be considered for the purpose of estimating expenses to be recovered is the 230 Volts single phase LT line close to the premises.
- 10.12. This Commission thereafter passed an order on 03.05.2016 without detailed discussion holding that the cost of the transformer if required for giving a Low Tension Supply up to 100 KVA should not be realised from the applicant even if it is erected exclusively for giving that supply since transformer is not to be taken as plant in the Low Tension service line. However this Commission has allowed recovering expenditure reasonably incurred by the licensee for conversion of a single phase low tension service line to a three phase low tension service line on the specific request of the consumer. Since the order of the Commission contradicts the very objectives of the provisions of the Electricity Act, 2003 the same was challenged before the Honble High Court in WPC. No.25347 of 2016 and the Honble High Court stayed the operation of the order of the Commission.
- 10.13. Besides the above interventions of the Honble High Court in the matter of realising reasonable expenditure to provide supply, a Division Bench of the High Court has deeply examined the matter in its judgment dated 30.06.2014 in W.A. No. 900 of 2013 and connected matters. Though the disputes involved in these groups of cases are with respect to the realisation of transmission side development charges, the rationale of the judgment is

squarely applicable to the present issue. The Division Bench has rightly held that, it is not proper to exclude the consumers/applicant from the liability to pay development charges as ordered by the Commission. The relevant paragraph of the judgment is quoted for ready reference:

“21. In this context, we cannot also ignore the reality that if the writ petitioners are held absolved from this liability, the ultimate financial burden to bear the development charges incurred by the Board for giving supply to such bulk consumers, the number of which is increasing steadily in this power starved state, will ultimately fall on the ordinary consumers of the Board, in as much as the cost incurred by the Board to develop infrastructure and to supply electricity to bulk consumers will also get loaded in to the tariff fixed by it. We, therefore, cannot accept the case of the writ petitioners that either expressly or by implication, Ext.R1 (a) order dated 23.05.2011 of the Commission referred to above exclude them from the liability to pay development charges on the transmission side.”

For the above reason, among others the Division Bench uphold that, the distribution licensee is entitled to recover the expenses incurred for providing supply specifically to a consumer. A copy of the judgment dated 30.06.2014 of the High Court is produced and marked as **Annexure-A6**.

10.14. On perusal of Annexure-A6 judgment, it can easily be inferred that, the Honble Division Bench has come to the conclusion that, it is not just and proper to load the expenses incurred for providing supply to an individual consumer to the general tariff to be fixed. It is the general principle of natural justice that one cannot be permitted to enrich by shifting his responsibilities to others especially when the law mandates such responsibilities. In Annexure A5 judgment also the Division Bench has come to the conclusion on the principle and held that individual consumers are liable to bear the expenditure incurred for providing electricity to such consumers. Besides the above judgments of the Honble High Court of Kerala, the Appellate Tribunal for Electricity, High Courts of other states and the Apex Court of the Land in its various judicial pronouncements reiterated the above principle and held that it is the primary duty of the applicant to remit the expenditure for providing individual connection as mandated under Section 46 read with other provisions of the Electricity Act 2003.

10.15 On perusal of Annexure-A5 judgment, the Division Bench has interpreted Regulation 35 of the Kerala Electricity Supply Code, 2014 to the effect that the expenditure for individual applicant can be recovered from the individual applicant itself through separate Tariff as approved by the Commission for that individual applicant. The principle lay down by the Hon'ble Division Bench that, the expenditure to be borne by the KSEB Ltd. to provide electric connection to an applicant has to be reimbursed by the applicant has fully validated the position held by KSEB Ltd. in all related matters. The Hon'ble High Court has reiterated in its several judgments that, it is unfair to load the financial burden, to bear the expenses incurred by the Board for giving supply to individual consumers, on the shoulders of ordinary consumers. Thus it is an admitted fact that, the Electricity Act, 2003 envisages to realise reasonable expenditure incurred by the licensee for giving supply to an individual consumer from the consumer himself and not loaded the same in to the tariff fixed to all consumers.

10.16 Now the Hon'ble High Court as per Annexure-A5 has directed the Commission to determine individual tariff to the respondent enabling the Board to realise the expenditure from the respondent for providing electric connection. The Court has also directed the Board to approach the Commission for the purpose of determination of higher tariff in the case of the respondents who have a dedicated transformer set up for their demand/additional demand. The Court has also made it clear that the respondents would have to pay tariff under the general tariff determination order issued by the Commission periodically but would also have to pay the additional amounts for the purpose of setting off expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide on the amount with reference to the expenditure incurred; with notice to the respondents. It is also made clear that, in such circumstances, the Board has to install the transformer at their cost and then approach the Commission for determination of individual tariff with respect to the respondents. Accordingly, in view of the direction of the Honb'le High Court, this applicant had already approached this Commission as per application dated 2.08.2019. However, the matter is still pending disposal in the Commission. A copy of the application dated 2.08.2019 of the Board is produced and marked as **Annexure - A7**.

10.17. In the meantime, the respondents had approached the Board as directed by the Court and the Board has decided to comply with the judgment and the field officers are instructed accordingly. Now it is reported that, in compliance of the above judgment, the Board has incurred an amount of Rs. 6, 43,711 in compliance of the judgment directives as detailed below.

Name of consumer	Electrical Section	Amount incurred.
MujeebRehman.A(Respondent in W.A No. 1448/2017)	Arookutty	Rs.2,32,000
Radhakrishnan(Respondent in W.A No. 1482/2017)	Cheelari	Rs.4,11,477
	TOTAL	Rs.6,43,477/-

10.18 As per the judgment of the Honble High Court the above expenditure incurred by the Board can be recovered from the consumers through Tariff as approved by the Commission. To facilitate transparent and dispute free determination of such tariff , it is proposed that, the expenditure can be realised from the consumers by providing instalment facility to remit the same and thus the ratio held by the judgment can be fully honoured.

10.19. To assist the Honble Commission in this process KSEBL is proposing the following methodology for recovery of the expenses as part of regular monthly/bimonthly bill of the above consumers and other similarly placed applicants. The applicants/consumers can avail monthly installment facility for repayment of the amount incurred by KSEBL for a maximum period of sixty equal months at their option. Interest @ MCLR is also applicable for the amount due to the KSEBL.

Repayment in months. (At the option of the consumer; maximum 60 months)	Principal Amount (Rs.)	Yearly Interest (To be related to MCLR) %	Monthly Interest (To be related to MCLR) %	EMI= $P \times \frac{r(1+r)^N}{[(1+r)^N-1]}$ (Rs.)
12	1000	10.00	0.8333	87.92
24	1000	10.00	0.8333	46.14
36	1000	10.00	0.8333	32.22
48	1000	10.00	0.8333	25.36
60	1000	10.00	0.8333	21.25

As per the above methodology, the monthly amount payable by the respondents in W.A No.1448/2017 and W.A No. 1482/2017 are given below.

	Total Amount	Opting 12 EMIs	Opting 24 EMIs	Opting 36 EMIs	Opting 48 EMIs	Opting 60 EMIs
Respondent in W.A No. 1448/2017	Rs.2,32,000	Rs. 2,0398	Rs.10,705	Rs. 7,487	Rs. 5 884	Rs.4,930
Respondent in W.A No. 1482/2017	Rs.4,11,477	Rs. 36,177	Rs. 18,986	Rs. 13,278	Rs. 10,435	Rs. 8,744

10.20. It is most respectfully submitted that, since the ratio set in the judgment is general in nature the same can be made applicable to all similarly placed consumers/applicants so as

to avoid unnecessary litigation in future and to obviate the requirement to approach the Commission for each and every case separately.

11. In view of the facts and circumstances and the statutory as well as settled legal positions as explained above and in obedience of Annexure A5 judgment, the present Application is filed with the following prayer.

12. Prayer

The Hon'ble Commission may be pleased to allow the Applicant to realise the reasonable expenditure incurred for providing electric supply to the respondents as well as all similarly placed applicant/consumers as per the methodology described under paragraph 10.19 of this application in order to meet the ends of justice as held by the Hon'ble High Court.

Dated this day of November, 2020

Deputy Chief Engineer (Commercial & Planning)

With full powers of the Chief Engineer, KSEBL.