

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

**Present: Shri Mathew George, Member
Shri. K.Vikraman Nair, Member**

OP No 21/ 2014

In the matter of: Reconfirmation of Electricity Tariff in Industrial Category which was changed from Industrial to commercial as per the Tariff Order 2011-12 in confirmation with KSEB's comments and objections on the 'Response of Stake Holders on ARR/ERC and Tariff petition filed by KSEB for the year 2014-15' in the ARR and ERC Tariff Order for KSEBL – 2014-15 dated 14th Aug 2014

Petitioner : Sri James Jose, Cochin Hallmark Company Private Ltd,
Cochin.

Respondents : (1) Kerala State Electricity Board Limited, Trivandrum
(2) The Chairman, Kerala State Electricity Board Ltd,
Trivandrum

Order Dated: 06th January 2015

1. Sri James Jose, Cochin Hallmark Company Private Limited filed a petition as per Clause 67 of KSERC(Conduct of Business) Regulations, 2003

“ The Commission may, either on its own motion or on an application made by any interested or affected party , within 90 days of the making or issuing of any decision , direction, order, notice or other document or the taking of any action in pursuance of these regulations , review, revise, modify, amend, alter or otherwise change such decision , direction, order, notice and or other document issued or action taken by the Commission or any of its officers.”

2. It is stated in the petition that the members of Association of Hall Marking Centers, work as per norms and conditions fixed by the Government of India. The rates for hallmarking of all items are fixed by the Government of India and the rate at present is a meager Rs 25/piece. This rate, it is stated in the petition, was fixed 15 years ago and there is no increase since then even though the operational costs have increased many fold. It is stated in the petition that it is not fair and just that they are categorized under LT VI (F).

3. It is further stated in the petition that their tariff during 2013-14 was categorized under LT VII A Commercial which during the revision has been re-categorized under LT VI (F) category which is not much different from earlier LT VII A tariff. The petitioner company is a manufacturing unit, and hence is to be categorized under LT IV A or at least under LT IV B considering them at par with consumers engaged in Information Technology (IT) business who do not even have MSME Part II Registration.

Prayer

4. The prayer of the petitioner is to direct KSEB Ltd to categorize Hall Marking Centers under LT IV A or LT IV B category on production of valid MSME part II certificate as industry.

Hearing of Petition

5. The public hearing was conducted on 19-12-2014 after duly notifying the same in the website of the Commission and in the media. Shri.PV.Sivaprasad, Executive Engineer (TRAC), represented KSEB Ltd.
6. In the public hearing Shri. Sijo Joy, Manager of Cochin Hall Mark Co. Pvt Ltd who represented the petitions reiterated the arguments they had submitted in the written petition. The submission in the petition are as follows:

1. *“ Ours is Association of Hallmarking Centres which works as per the norms and conditions put forth by the Government of India. It is the Government who fixes the rates for all the items hallmarked by us. As per Government the rate fixed for hallmarking an item is Rs.25/- per piece, which in itself is a meager value. This rate was fixed by Government 15 years ago and there is no increment till this date even though the operation cost have increased in manifold. It is not fair and just to categorize us as LT VI (F). We have also raised these contentions during the time of KSERC Tariff hearing held at Calicut, Ernakulam and Thiruvananthapuram.*

2. *Our tariff during 2013-14 was categorized under LT VIIA Commercial Tariff which during the revision have been re-categorized as LT VI (F) category with not much difference from the earlier LT VIIA*

Tariff. Since ours too is a manufacturing industry and have only limited profit, we humbly request the Commission to categorize the Tariff as LT IV A or at least LT IV B considering us at par with 'Information technology (IT), and IT enabled services including Akshaya Centres, Computer consultancy services unit, Software services, Data processing activities, Desktop publishing (DTP), Software development units and such IT enabled services' who do not even have MSME Part II registration from Industries Department.

3. Our industries are registered under MSME Part II which is the SSI registration. In the 'KSEB's comments and objections on the Responses of Stake Holders on ARR/ERC and Tariff Order for KSEBL 2014-15' of the ARR and ERC Tariff Order for KSEBL 2014-15 in petition O.P. No.9 of 2014 dated 14.08.2014 even the KSEB have agreed to categorize us under LT IV provided we have SSI registration and submit the valid registration certificate.

4. Our work is a service to the general public since we ensure the purity of the gold they purchase and they enjoy the maximum benefit through quality assurance.

5. The contention that hallmarking cannot be considered as a manufacturing process is entirely false because we go through a 4 hour process to hallmark and ensure purity. The procedure includes,

- 1. Gold jewellery is accepted for hallmarking from goldsmiths, weighed and segregated into Sub lots based on design and workmanship.*
- 2. All the articles are scanned on X-ray spectrometer to detect the gold content in each item as well as to verify the presence of prohibited elements such as iridium, ruthenium, cadmium etc.*

3. *Based on BIS sampling plan and ratio, random samples are drawn from the articles, either by scraping, drilling or cutting and the samples are sent for fire assay to the lab.*
4. *200 mgm of alloy is drawn and weighed on micro balances with 0.0000001 gm accuracy, placed on anti-vibration tables. Sufficient quantities of silver and copper are added to lead foils and converted to small balls, to assist the cupellation.*
5. *These balls weighing around 5 gms are placed on, magnetite cupels, inside the heating chamber of the cupellation furnaces, at 1200 degree C for 15 minutes. In this stage all other impurities other than silver is removed and a small button of gold and silver is obtained.*
6. *These buttons are then heated on strip heaters and flattened to sheets on hydraulic presses, and the flattened sheets are then annealed and rolled on strip rollers to 0.14mm thickness cornets.*
7. *These cornets are then subjected to chemical treatment twice on nitric acid 1.2 and nitric acid 1.3 on heaters placed inside fumes hoods to remove the silver content and subsequently it is washed in distilled water.*
8. *These cornets are then taken to the acid parting area.*
9. *The fumes from the furnaces and chemical parting area are taken out by suction blowers through the fumes scrubber for neutralization and further released through the exhaust chimneys.*
10. *The cornets are then placed inside the annealing furnaces at 750 degree for 10 minutes, and after annealing its mass weight is checked once again on the micro balance.*
11. *From this rate on the micro balance, the software calculates the purity of the gold sample and if found correct, the entire lot of jewellery is sent for hall marking.*
12. *Hallmarking on jewellery is done using laser machines with diode laser source and chilling units, with power supply from UPS.*

13. *The Hall marked articles are then sent to the safety locker for safe custody and further delivery to the gold smith.*
14. *Our input raw materials are Magnesia cuples, Silver, lead, copper, nitric Acid etc.*
15. *The machines which are being used are Melting Furnace, Cuppellation Furnace, Annealing Furnace, Cornet Roller Strip heater, hydraulic press 2 HP, Acid heaters, Fumes Scrubber, Laser machine, UPS, A/c for laser machine, A/c for Xray machine, A/c for microbalance.*

6. *All Hallmarking Centres in Kerala are engaged in melting of gold, silver and their alloys, assaying of precious metals, Laser/Hallmarking of gold and silver Jewellery articles, Production and sale of laser machine cut gold and silver jewellery articles, such as medals, lockets etc., laser engraving on various articles of PVC such as pen, buttons etc., wooden items such as pen stand etc metal items such as coining dies, bearings, machine components etc. The Hallmarking Centres are having SSI registration certificates issued by Government of Kerala and considered as Small Scale Industry. The activities as elaborated earlier are also coming under the category of industry. The machineries used like Furnaces, Blowers, Heaters, Laser Machines etc. are also machineries used in an industry. They are also having Bureau of Indian Standards approval.*

Since the KSERC have re-categorized the Tariff as LT VI (F) the Hallmarking Centres are finding it difficult to survive. The Hon. Commission was even kind enough to create a new category of tariff as LT IV B for service sectors like 'IT and IT enabled services'. Hence the Commission may direct KSEB Ltd to charge us in LT IV A / LT IV B tariff provided we produce the valid MSME part II certificate as industry (SSI registration certificate)

7. KSEB Ltd has filed a written submission during the public hearing held on 19-12-2014. In the said submission they have stated as follows:

1. *The petition was filed against the Order dated 14-08-2014 in the matter of ARR&ERC petition of KSEBL for the year 2014-15.*
2. *As per the section-61, 62 and 86 of the Electricity Act-2003, Hon'ble Commission has statutory authority for the tariff determination including tariff re-categorisation based on the purpose of usage of Electricity. Further, Honourable Commission after completing all the procedural formalities including public hearings and considering the remarks of stake holders including the petitioner has finally issued the ARR & ERC & Tariff order dated 14th August 2014. After duly considering the objections and comments of the petitioner, Hon'ble Commission has re-categorised the Hallmarking centers from LT-VII (A) Commercial category to LT-VI-General (F) category. The tariff of the LT-VI(E) – General Category is less by Rs 0.20 per unit to Rs 0.30 per unit.*
3. *The revised tariff was applicable in the State from 16-08-2014 onwards and accordingly KSEBL had implemented the tariff revision w.e.f 16-08-2014. Hon'ble Commission has approved the revenue from tariff revision duly considering the tariff revision ordered with effect from 14-08-2014.*
4. *Section-111 of the Electricity Act-2003 provides for filing appeal by the aggrieved parties against the orders issued by the Hon'ble Commission before the Hon'ble Appellate Tribunal for Electricity (APTEL). Hence, if the petitioner is aggrieved by the order dated 14th August-2014 of the Hon'ble Commission, they can prefer appeal before APTEL.*
5. *However, instead of filing appeal petition before APTEL, the petitioner has preferred to file review petition before this Hon'ble Commission against the order dated 14-08-2014. In this matter, the following points may kindly be noted.*
 - (i) *The review jurisdiction of the Hon'ble Commission against its orders is prescribed under section 94(1) (f) of the Electricity Act-2003.*

(ii) As per the order 47, Rule 1 of the Code of Civil Procedure 1908, the review jurisdiction of the Hon'ble Commission against its orders is very limited. The review jurisdiction under the aforesaid provision 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; or

(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 of 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 of the Court which passed the decree or made the order”.

- 6. As detailed above, unless there is some mistake or apparent error in the order of the Hon'ble Commission, there is no scope for reviewing the order dated 14-08-2014 issued by the Hon'ble Commission.*
- 7. The petitioner has not produced any additional information on supporting their claim that, they are carrying out industrial activities. Further, as per the details furnished by the petitioner, they are carrying out the testing procedures for assessing the purity of the gold and it cannot be considered as an industrial activity.*
- 8. So far KSEBL has not challenged the tariff revision approved by the Hon'ble Commission vide its order dated 14-08-2014 and already implemented the order at field level. The electricity tariff of all consumers has been levying at the*

revised tariff with effect from 16-08-2014. KSEBL humbly requests before the Hon'ble Commission not to revise or modify the tariff at this juncture. If the petitioner has to raise additional evidence to support the claim that, they are essentially carrying out industrial activity, the same may be considered during the next tariff revision exercise during the year 2015-16.

Considering the facts and submission as detailed above, KSEBL humbly requests before the Hon'ble Commission that, the petition is not maintainable and cannot be admitted as per law and, hence the same may be dismissed.

Analysis

8. Before going into the merits of the petitions on various issues, the Commission would like to look into the powers vested in it to review its orders for taking a decision on maintainability of the Petition. As per Section 94(1)(f) of the Electricity Act, 2003 which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court exercises such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908(CPC). The powers available to the Commission in this connection have been defined in section 114 and Order 47 of the CPC.
9. In accordance with the provisions under order 47 Rule 1 of the Code of Civil Procedure a Court of review may allow a review only on three specific grounds which are stated as under:-
 - (i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
 - (ii) Mistake or error apparent on the face of the record; or
 - (iii) For any other sufficient reason which is analogous to the above two grounds.

- 10.** Under Order 47, Rule 1, CPC, order or judgment may be open to review, if there is a mistake or an error apparent on the face of the record. An error, which is not self-evident, has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions.
- 11.** An error apparent on the face of the record may not be defined precisely and exhaustively, as there is an element of indefiniteness inherited in the term so used and it must be left to the Court to determine judicially, on the basis of the facts of each case. However, an error must be one which speaks of itself and it glares at the face, which renders it difficult to be ignored. The error is not one limited to one of facts but it also included obvious error of law. A Review Petition has a limited purpose and that cannot be allowed to be an appeal in disguise.
- 12.** The application for review on the discovery of new evidence should be considered with great caution. The applicant should show: -

 - (i) that such evidence was available and of un-doubtable character.
 - (ii) that it was such material that the absence might cause miscarriage of justice.
 - (iii) that it could not with reasonable care and diligence has been brought forward at the time of decree/order. It is well settled that new evidence discovered must be relevant and of such character that it has clear possibility of altering the judgment and just not merely reopening the case for the sake of it.
- 13.** There are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on any analogous ground. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise.
- 14.** The tariff order dated 14.8.2014, wherein 'hall marking centres' was included under LT VI – General (F) category, which is now sought to be reviewed by the petitioner was issued after due process of public hearing, inviting objections and

allowing enough opportunities for all the stakeholders to express their views and comments. The association of hallmarking centres had also filed their objections and presented their views at the time of hearing of the tariff petition. Almost all the grounds which are now raised by the petitioner M/s. Cochin Hall Mark Co. Pvt Ltd were raised at the time of hearing of the tariff petition also and the Commission had issued the orders after taking into consideration their views. There was no error in judgment, facts or on issues of laws while taking the said decision.

15. The Commission has examined the relevant provisions of the Act, Rules and Regulations made there under and the records placed before the Commission. The Commission has also considered the arguments advanced by Cochin Hallmark Company Private Ltd, Cochin, the review petitioners ,who argued in depth to convince the Commission to re categorize hall marking centres from LT VI General (F) category in the impugned order to LT IV A/LT IV B category.
16. However, Commission is not convinced with the pleas raised by the petitioners. The Commission is of the considered view that the petitioner has not been able to make out a case for review of the impugned order dated 14-08-2014 in petition OP No 9 of 2014 approving ARR&ERC and Tariff Order of KSEB for the year 2014-15. Further, the Petitioner has not been able to show that there is any error apparent on the face of the record which would require re-consideration of the impugned order by the Commission. Since the Review Petition does not meet the basic criteria for entertaining such petitions, it is liable to be dismissed at the admission stage itself. The Commission disposes of the petition with the following orders The Commission orders accordingly.

Order of the Commission

17. The review Petition is dismissed.

Sd/-
K.Vikraman Nair
Member (E)

Sd/-
Mathew George
Member (F)

Approved for issue

Secretary

