

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. Preman Dinaraj, Chairman

In the matter of : Extension of the relief and concessions offered by KSEB Ltd to industrial/commercial consumers and private hospitals to the petitioners and changing the status of petitioners as 'Industrial' category.

OP.No.22 / 2020

Petitioners : M/s. Vodafone Idea Ltd., VJ Tower, Vyttila P.O. Ernakulam

Respondents : M/s. Kerala State Electricity Board Ltd. (KSEB Ltd)
represented by Shri. K.G.P. Namboothiri, Exe. Engineer

OP.No.24 / 2020

Petitioners . M/s. Indus Towers Ltd. Palarivattom, Kochi

Respondents : M/s. Kerala State Electricity Board Ltd. (KSEB Ltd)

OP.No. 25 / 2020

Petitioners . M/s. ATC Telecom Infrastructure Pvt. Ltd., Kaloor, Kochi

Respondents : M/s. Kerala State Electricity Board Ltd. (KSEB Ltd)

Petitioners 1 to 3 represented by Shri. Sathisan, Advocate

Respondent KSEB Ltd represented by Shri. K.G.P. Namboothiri, Exe. Eng.

Dates of Hearing : 15-09-2020, 28-10-2020, 26-11-2020

Order dated 08-01-2021

1. The first petitioner in OP No. 22/2020, M/s Vodafone Idea Limited is a telecom service provider having licence under Section. 4 of the Indian Telegraph Act 1885. The petitioner is a company provides telecommunication services across India applicable to respective circles. The services are rendered and the revenue is shared with the Central Government. The petitioner in OP No.24/2020 is M/s Indus Towers Limited is also a company providing infrastructure service to M/s Bharti Airtel Limited, Vodafone Idea Limited, Reliance Jio infocom Limited etc., The petitioner is also a classified Telegraph Authority under Indian Telegraph Act. The

petitioners are also classified as an essential service as per Disaster Management Act 2005 as well as under the Essential Services Maintenance Act .

2. The petitioner in the Petition OP No.25/2020 M/s ATC Telecom Infrastructure Private Limited is also a telecom infrastructure service provider registered under Government of India. The company acquired as per due legal proceedings through amalgamation the telecom infrastructure of ATC Telecom Tower Corporation, VIOM Networks Ltd, M/s Essar Telecom Infrastructure Private limited, Tata Mobile Towers, Wireless TT info Service Limited and Tata Teleservices. The petitioner is also a classified as Telegraph Authority under Indian Telegraph Act.
3. The petitioners in common stated that during the days of Covid-19 pandemic the services provided by the petitioners and other telecom service providers became the backbone in the fight against the pandemic. The petitioner M/s Vodafone stated that they have provided special concessions and subsidies to subscribers as suggested by the Government which *inter alia* included specified free top-ups and deferment of bill payments for substantial length of time. The company lost substantial fresh acquisitions and sustained rental loss both under prepaid and post paid regime. The other petitioners M/s Indus Towers and M/s.ATC Telecom have also stated that they have provided much needed support to the Government for combating the Covid-19 pandemic. The petitioners further submitted that at present the installations of cellular telecommunications are classified as LT VI General (F) but they are eligible for industrial tariff under LT IV(A) or LTIV(B) or HT I (A) or (B) since the definition of industry is quite extensive to take within its ambit the telecommunication industry as well.
4. The representation submitted by the petitioner to the Government seeking waiver of deferment of fixed charges has been rejected or refused. However, without due application of mind, the respondent KSEB Ltd issued an Order dated 30-05-2020 subject to the approval of this Commission, whereby it had extended substantial benefits to the industrial and commercial consumers and domestic consumers, hospitals etc. in the form of waiver of 25% of the fixed charges for March, April and May 2020 and deferment of balance fixed charges till December 2020.
5. According to the petitioners allowing certain concessions to certain categories is a discrimination and extremely irrational, irregular and inappropriate. The petitioner is entitled to get the same benefits as those given to industrial and commercial consumers, but this has been refused. Under the Disaster Management Act and Essential Services Maintenance Act, petitioner is treated

as an 'essential service' hence eligible for the rebates. The discrimination while treating the petitioners and other consumers in the same pedestal in spite of petitioner having rendered substantial services to the required government organs is extremely irrational, irregular and inappropriate. Petitioner requested to allow the rebates to them also. The common prayers in the petitions are as given below:

- (a) The waiver of 25% of the fixed charges and the deferment of balance 75% of fixed charges upto December 2020 for the months of March, April and May 2020 without interest needs to be extended to the petitioners as well and petitioners are entitled for non-discriminatory treatment.
- (b) The petitioners are entitled for industrial tariff and petitioners may also be declared under industrial category in the light of inclusion of Telecom as an 'essential service'

Hearings on the petition

6. In the meantime, the Commission has received on 1-10-2020 a copy of the Judgment of the Hon. High Court of Kerala in WP(C) No.11960 of 2020 dated 17-07-2020 where the 1st Petitioner had approached the Hon High Court for getting the rebates and relaxations. Hon. High Court had disposed of the matter stating that :

“without expressing any further opinion with regard to the claim or counter claim, I deem it appropriate to dispose of the writ petition by issuing directions to the 3rd respondent to take a call on the petition /representation Ext p8 wherein the request as noticed above, ie., for change of category and extension of benefit have been submitted. Let this exercise be undertaken according to the procedure of law, ie., affording an opportunity to the petitioner and as well as the electricity board and pass a speaking order thereon within a period of 2 months from the receipt of a certified copy of this judgment.”

However, the petitioner has not mentioned any reference on the above direction in their petition.

7. After admitting the petition. the first hearing on the petitions were held on 15-09-2020 through video conference mode. Advocate Shri.P.Sathisan appeared on behalf of all the three petitioners. He submitted that the petitioner (1) is a telecom service provider and petitioner (2) & (3) are telecom infrastructure providers to the leading telecom service provider companies. He further submitted that presently these companies are classified under LT VI General (F) category for the tariff

purpose and denial of reliefs and concessions in tariff during the Covid-19 period extended to industrial/commercial consumers and private hospitals based on this classification is a case of pure discrimination and need to be looked in to. He also added that these companies are providing telecom services which are classified as an 'essential service' under the Essential Service Maintenance Act. He further added that the telecom sector should be categorized as industrial and several judicial pronouncements are available categorizing telecom as an industry and requested the Commission to consider this aspect also while disposing of the petition. Advocate also brought to the notice of the Commission the judgement dated 12.02.2020 of Hon. APTEL in Appeal No. 337 of 2016 in a batch of petitions classifying Telecom as "industrial".

8. The respondent KSEB Ltd represented by Shri. K.G.P. Namboothiri, Exe. Engineer submitted that the concessions/reliefs are extended to the industrial/commercial consumers and private hospitals to ease the financial burden, as these establishments remains closed during the lock-down period. He further submitted that all these concessions are extended after considering the Government directions issued in this regard.
9. The Commission after hearing the parties directed the petitioner/s to submit immediately the additional written submissions, if any, with regard to the classification of telecom as industry along with the references/copies of judgements in this regard.
10. The matter was again heard on 28.10.2020 through video conference mode. During the hearing the counsel for the petitioners submitted that the letter issued by the Ministry of Power, Govt. of India specifically requires KSEB Ltd to extend the benefit from the Central Generating Station/ Central transmission utility to the Distribution companies to be transferred to the end consumers irrespective of the category. Accordingly, being an end consumer, the petitioners are also eligible for the reliefs/concessions offered by KSEB Ltd in view of the Covid-19 pandemic.
11. The counsel for the petitioners, Shri. P. Sathisan requested the Commission to allow time to submit a detailed submission quantifying the loss suffered by the petitioners due to lockdown. KSEB Ltd also did not object to the adjournment sought for by the petitioner. Accordingly, the matter was adjourned till 26.11.2020 with a direction to the petitioners to submit the revenue loss details and to the respondents to clarify the issues involved in view of the Ministry of Power (MoP), GoI directive.

12. KSEB Ltd represented by Shri. K.G.P. Namboothiri, Exe. Engineer submitted that the concessions/reliefs are extended to the industrial/ commercial consumers and private hospitals, as the rebate form CGS/CTU is based on the unscheduled power and the reduction in the power consumption due to the closure of these establishments during the lock-down period.
13. The Commission sought clarification from KSEB Ltd as to why these consumers do not qualify as “end consumers” and whether the present proposal of extending the benefit only to some consumers will not amount to discrimination between the consumers of KSEB Ltd and contrary to Ministry of Power (MoP) , Gol directive.
14. During the Hearing held on 26.11.2020, the Commission mentioned that as per the directions of Hon. High Court of Kerala, the present matter is to be disposed of within 2 months from the date of receipt of certified copy. However, as per the direction of the State Election Commission, final orders on these petitions can be issued only after the cessation of the model code of conduct which is now operational due to ensuing Kerala Local Body Elections.
15. Shri. P. Sathisan, the counsel representing the petitioners requested that the first prayer, ie., inclusion of the petitioner as ‘industrial category’ may be closed with the liberty to take up the issue during the next tariff hearing proceedings. Learned counsel for the petitioner further stated that already submissions showing the losses suffered by the petitioner representing the telecom infrastructure have been filed. The losses suffered are due to delay in energisation of towers during lockdown period and the free talk time given to the subscribers. Further the petitioners have extended all support to the government machinery for handling the pandemic. As per the provisions of Disaster Management Act, telecom is treated as essential service. Though as contented by KSEB Ltd, the rebates and concessions are allowed by the Government, the final approval of such concessions are to be issued by the Commission. Hence it is fit to approach the Commission for rebates.
16. The petitioners also pointed out that rebates are given not from the public money, but from the reliefs extended by the central generating companies. The counsel further submitted that the petitioners should be considered as “end consumers” mentioned in the MoP, Gol letter and thus the petitioners are entitled for the concessions specified in the said letter. He further added that extending the benefits only to certain category of consumers will amount to discrimination and a

clear violation of Article-14 of the Constitution of India. The petitioner also mentioned that penalty was imposed by KSEB Ltd for the late payment even though bills were not issued on time.

17. Shri. K.G.P. Namboothiri, Exe. Engineer submitted that the written remarks of KSEB Ltd is submitted and the concessions/reliefs are extended to the industrial/commercial consumers and private hospitals, as per the directions of Government of Kerala. KSEB Ltd also agreed to examine the issue of penalty imposed on the petitioners during the lock down period. He further submitted that the comments/remarks of the Commission are noted and will be placed before the Board of Directors of the KSEB Ltd. A final reply will be submitted to the Commission after taking the opinion of the BoD on these comments/remarks. KSEB Ltd agreed to furnish the details by 21-12-2020. The Commission directed KSEB Ltd to furnish the above details as agreed to by KSEB Ltd.

Written submission of the parties

18. Shri. P. Sathisan, Advocate representing the petitioner has submitted a brief argument note dated 15-09-2020 in support of their claim to classify Telecom as an Industry and for claiming the relief extended to industrial and commercial consumers. According to the petitioners, the Order dated 30-05-2020 of KSEB Ltd extending the rebate of 25% in fixed charges is per se discriminatory and anomalous. The petitioner's outlets were closed for long periods during the lockdown and they sustained heavy revenue loss. The petitioners provided impeccable service to law enforcement agencies. However, the benefits of rebates were not extended to the petitioners. Hon. APTEL in the Order dated 12-02-2020 in Appeal No. 337 of 2016 and batch of cases ruled that telecom is nothing but an industry under IT and entitled for industrial tariff. The present classification of the petitioners under LT VI(F) is against the Article 14 of the Constitution of India. The State Government classified telecom under IT industries and IT enabled industries as readable from IT policy 2017 of Government of Kerala. Special reference is made in the policy relating to telecom tower network and OFC network. The reference in the Indian Telegraph Right of Ways Rules 2016 on the active and passive IT infrastructure further fortifies the status of petitioners under IT and to be classified under LT IV (A) or (B) tariff. With the above arguments, the petitioners claimed industrial tariff and rebates as ordered by KSEB Ltd vide Order dated 30-05-2020.

19. The respondent KSEB Ltd also submitted their written comments vide submission dated 14.09.2020 and 07-10-2020. KSEB Ltd in their written remarks the petition is not maintainable under law and hence requires to be rejected. The relief under the consideration granted by the Government is based on the discretion of the Government to tackle extra ordinary situations. KSEB Ltd as an instrumentality of the Government has extended the relief in electricity sector duly considering the grievance of the closed units/shut down units during the lockdowns. The petitioner should have approached the Government for the reliefs. According to KSEB Ltd, based on the announcement of the Hon. Chief Minister during the press conference held on 22-05-2020, the Hon. Minister for Electricity convened a meeting on 28-05-2020 where the quantum of relief to be extended was discussed. It was decided that consumers who lost income due to closure of their institutions may be given relaxation. Accordingly, it was decided to waive 25% of the fixed charges applicable to industrial /commercial consumers and private hospitals and to defer the payment of fixed charges upto December 2020 without levying interest. Government vide Order dated 01-06-2020 has issued the direction in public interest to KSEB Ltd to pass on the above relief/rebate as per Article 55 of the Articles of the Association of the Company. KSEB Ltd also stated that in other States also relief/rebates were extended to certain group of consumers only.

20. Regarding the request for allowing industrial tariff, KSEB Ltd stated that the plea in the petition is akin to a disguised appeal. The prayer in the petition is against the Tariff Order of the Commission dated 08-07-2019. The option which was available to the petitioner was to seek review within 45 days from the date of the Order. However, this was not done. KSEB Ltd also pointed out that Hon. APTEL has settled the issues raised by the petitioner through several judgments viz., Appeal no. 116 of 2016 (BSNL Vs PSEC), Appeal No. 88 of 2012 (Tata teleservices Vs RERC), and Appeal No 42 of 2013 (Bharathi Hexacom Limited Vs RERC). Further, the Commission vide Order dated 25-10-2019 in the case of BSNL has ordered that in view of the Judgment of APTEL in Appeal No. 116 of 2016, it is a settled position that activities of BSNL cannot be treated as an industry. Hence there is no justification in classifying the use of electricity by the petitioners as for industrial purpose. Regarding the Order dated 12-02-2020 in Appeal No.337 of 2016, KSEB Ltd stated that Hon. Tribunal has not specified any tariff to be applied to Telecom services. The fact matrix considered by the Hon APTEL is entirely different and thus the outcome of the Judgment cannot be blindly followed in the instant matter. After giving the detailed justification KSEB Ltd

concluded that the matter of reclassification as sought by the petitioner cannot be considered under law.

21. The petitioners have reported that the losses suffered during the lockdown period as shown below: M/s Vodafone Idea Limited furnished the following estimate of losses due to lockdown and resultant loss of revenue as part of their petition.

Loss of Prepaid tertiary	Unit	Feb-20	Mar-20	Apr-20	May-20	Total
Tertiary/day	Rs.Mn	85.53	80.93	76.08	80.4	
Loss/day	Rs.Mn		-4.6	-9.4	-5.1	
Prepaid revenue loss value excl.GST	Rs.Mn		-121	-240	-135	-495
Loss of Post paid Acquisition						
Gross Add	Nos	14935	8323	848	4462	
Loss of fresh acquisition	Nos		-6612	-14087	-10743	
Rental loss value for 6 months	Rs.Mn		-11	-22	-17	-60
Total loss due to lockdown	Rs.Mn		-131	-262	-151	-546

22. M/s Indus Towers as per the Commission's direction issued during the hearing held on 26-11-2020 furnished the details of loss due to the bills issued late or where readings were taken late which led to payment of late payment surcharge. The petitioner furnished a summary of the said details considering the volume of bills vide submission dated 16-12-2020.

	No. of bills with late penalty	Total late payment charges
March	3984	234840
April	3122	109041
May	54	4386
June	2551	177237
July	3881	342958
August	4488	236884
September	3310	307510
October	3280	217846
November	1938	193084
Total	26608	1823786

23. M/s ATC Telecom in their submission dated 16-11-2020 stated that on account of delayed reading and late dispatch of bills on account of Covid-19 issues, delayed payment charges of about Rs.10 lakh was imposed by KSEB Ltd. The specimen of heads of losses incurred as submitted by the petitioner is enumerated as follows:

	Rs.
loss on account of delay in issuance of building permit @25000 per month	8,25,000
loss on account of delay in energisation of telecom tower	3,54,000
loss on account of delay in installation of additional pole structure etc., @25,000 per month	10,50,000
Total	22,29,000

24. KSEB Ltd in their letter dated 22-12-2020 gave reply to the contention of the 2nd and 3rd petitioners that they have paid additional amount towards penalty/delayed charges on account of delayed reading of consumption on account of Covid 19 lock down issues and delayed energisation of telecom towers by KSEB Ltd. KSEB Ltd stated that such issues if any will be resolved once the petitioners furnish the list of such cases at the earliest. Further, KSEB Ltd stated that in order to assess the loss as far as supply of electricity is concerned, service connection details and bill details are required for assessing late payment surcharge of the consumers of each of the petitioners. Hence, KSEB Ltd requested vide letters dated 21-12-2020 to M/s Vodafone Idea limited and vide letters dated 22-12-2020 to ATC Telecom and Indus Towers for providing the details of delayed energisation of towers during the lockdown period and surcharge paid for the belated payment of electricity bills during the lockdown period.

Analysis and decision of the Commission

25. The Commission has carefully considered the views of the petitioners as well as of KSEB Ltd. The petitioners have sought two prayers in the petition viz., extending the rebate in the fixed charges as allowed by KSEB Ltd in its Order dated 30-5-2020 and to categorise them under the 'industrial' tariff. During the course of the hearing, the learned advocate appearing for the petitioners have given a written submission requesting that the prayer to change the tariff to industrial be closed in the present petition reserving their liberty to take up these issues in the future proceedings in relation to tariff fixation by the Commission. ***Considering the request of the petitioner, the Commission allows the request for withdrawing the prayer for categorisation of the petitioners under industrial tariff. The petitioners are free to take up the matter during the next tariff hearing proceedings if required.***

26. The prayer left in the petition is for extending the relief as made available to the industrial and commercial consumers as per the Order dated 30-5-2020 of KSEB Ltd in line with the Orders of Government of Kerala vide G.O dated 01-06-

2020. KSEB Ltd in their reply stated that the relief in fixed charges were allowed to the consumers who were forced to shut down during the lock downs and did not have any revenue for paying electricity charges. However, since the petitioners have been working even during the lockdown period, the Government did not include such consumers for providing relief. KSEB Ltd further stated that the Government of India Order did not mention that the rebates are to be given to the entire consumers, but was intended to only allow the manner of releasing rebates to the end consumers at the discretion of the respective State Governments. In the case of other States also relief / rebates in electricity charges are seen to be extended only to one or two group of consumers rather than for the entire end consumers.

27. The petitioners have stated that they have suffered losses on account of lockdowns due to shut down of their retail outlets and also due to delay in energisation of towers. Further, KSEB Ltd had charged penalty for the bills which they had issued late due to lockdown. As per the details given by the M/s Vodafone Idea Limited, they have lost an estimated Rs.49.50 crore on account of prepaid revenue and Rs.54.60 crore on account of post-paid connections during the lock down. M/s ATC Telecom estimated their loss to the tune of Rs.22.29 lakh on account of delay in commissioning towers. M/s Indus Towers has estimated the loss at Rs.15 lakh on account delayed payment charges/ delay in commissioning towers.

28. The pertinent issue arise here is whether the petitioner is eligible for rebates as applicable to that of industrial/commercial and private hospitals and whether the petitioners fall in the category of the 'end consumers' as mentioned in the letter of Government of India dated 15-05-2020. The contention of the petitioner is that in spite of providing necessary support to the Government for containing the pandemic, rebates have not been allowed to them. It is a fact that the advisory of Government of India does not discriminate among the end consumers. However, as per the Government of Kerala directions, KSEB Ltd has allowed the rebates only to industrial and commercial consumers /private hospitals. As submitted by KSEB Ltd, the criteria used by the Government is that whether the consumer is to shutdown their business during the lockdown, and hence not able to generate income to pay the electricity charges.

29. The Commission in its Order dated 31-12-2020 had examined the rebates received from the Central Generating Stations and Transmission Licensees and the benefits already extended by KSEB Ltd to its consumers as per the

Government Orders. As per the present estimates, there is a shortfall in the amount received from the Central Utilities vis-à-vis and the rebates allowed to consumers. It is also true that extending the benefits to other consumers will increase this deficit. If such a deficit is allowed as a pass through in the ARR of future years, it would result in a situation where the burden will again fall back on the consumers. The Commission has taken up the matter with Government of Kerala vide letter dated 20-08-2020 and the final decision of the Government is yet to be communicated. The Commission also noted the fact that there is substantial accumulated revenue gap in KSEB Ltd' accounts. Considering all these factors and most importantly the fact that the Government of Kerala's G.O. dated 01-06-2020 had limited the extension of these benefits to selected categories only, in the present circumstances, extension of rebates in fixed charges to the petitioners is not possible, unless the Government revises its Order dated 01-06-2020.

30. However, the Commission has noted the complaints raised by the petitioners regarding delayed issue of bills and consequent penal charges levied in their bills. KSEB Ltd in their reply dated 22-12-2020 and in the hearing on 26-11-2020 have agreed to resolve this issue, provided the details are furnished to KSEB Ltd. Considering the submissions of the petitioners regarding the loss sustained, the order of the Government allowing rebates and extension of due dates without penal charges till 15-12-2020, submission of KSEB Ltd regarding examination of the cases regarding the levy of penalty in the bills on account of delayed reading of bills, the Commission considered hereby issues the following orders:

Orders of the Commission

31. KSEB Ltd shall examine the penalty charged on account of delay in preparation / issue of the bill of the petitioners during the lock down period and make suitable adjustments on the penalty amount as may be necessary. The petitioners shall furnish the necessary details to KSEB Ltd in this regard.

32. Petition disposed of. Ordered accordingly.

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue

**Sd/-
Secretary(i/c)**