

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**

Petition No. RP 03/2020

In the matter of : Review Petition against Order dated 23.4.2020 in OP No 02/2020.

Petitioner : Thrissur Corporation Electricity Department, Thrissur.

Petitioner represented by : Sri. T.S. Jose, Electrical Engineer, TCED

Respondent : Kerala State Electricity Board Limited.

Respondent represented by : Sri. G. Manoj, AEE

Order dated 03.09.2020

1. M/s Thrissur Corporation Electricity Department (hereinafter referred to as the petitioner or M/s TCED) on 08.06.2020, filed a petition before the Commission to review the Order of the Commission dated 23.04.2020 in OP No 02/2020 and pass appropriate orders to waive the power factor penalty for TCED as Local Self Government Body and a small licensee.
2. The following is the background and the grounds raised by the petitioner to review the Commission's Order dated 23.04.2020 in OP No. 02/2020.
 - (i) M/s M/s TCED, on 12.12.2019, filed a petition before the Commission with the following prayer:
"Pass appropriate orders to waive the power factor penalty as the Commission may deem fit and proper, for TCED as a Local Self Government Body and a small licensee".
 - (ii) Commission, after examining the petition in detail after the provisions of the Electricity Act, 2003, applicable Regulations notified by the Central Electricity Authority and this Commission, ordered the following vide the Order dated 23.04.2020 in OP No. 02/2020.
 - (1) *M/s TCED is hereby directed to maintain the power factor at 0.95. They shall also provide adequate reactive power compensation to avoid dependence on reactive power support from the Grid.*
 - (2) *The power factor penalty imposed by M/s KSEB Ltd, for non-maintenance of this power factor is upheld and M/s TCED shall pay M/s KSEB Ltd. the penalty forthwith. M/s KSEB Ltd. can*

also impose power factor penalty on M/s TCED for such periods during which M/s TCED do not maintain the power factor at 0.95, at the penalty rates approved by the Commission from time to time.

- (3) *The Commission hereby once again directs M/s TCED to sign the PPA with M/s KSEB Ltd for the purchase of power, within three months from the date of this Order. Non-compliance to this Order shall lead to Suo-motu proceedings against M/s TCED as per the provisions of the Electricity Act, 2003.*
- (iii) In the review petition dated 08.06.2020, M/s TCED submitted the following grounds for reviewing the Order dated 23.04.2020.
- (1) The CEA Regulation referred to by the Commission does not pertain to monetary compensation, but refers only to a technical parameter required to be addressed by the distribution licensee to compensate the reactive power requirement. Unless there are specific provisions or Regulations imposing liability upon distribution licensees to pay penalty TCED is not bound to pay the same.
- (2) Maharaja of Cochin has ordered that all the power necessary will be made available to TCED. This was the condition of the sale transaction of power house to the Government, which can be evidenced in the orders. If it is part of the conditions of sale then it is irrevocable at the instance of KSEB, the power supplier. The Government direction is saved by Section 185(2)(a) of the Electricity Act,2003. Section 185(2)(a) of the Electricity Act, 2003 is extracted below.
185(2)(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.
- (3) Since PPA having any provision for power factor penalty is not signed by TCED, no penalty can be imposed upon TCED.
- (4) TCED cannot be considered similar to other licensees as they purchase power for their commercial venture. In the case of TCED, corrective steps to maintain the power factor has to initially come from the consumer end. Hence the condition concerning imposition of Power Factor penalty requires modifications, to the extent of granting a compliance period to TCED for maintain the power factor limit.

Commission admitted the review petition as RP 03/2020.

3. KSEB Ltd vide their affidavit dated 15.07.2020 submitted their counter and its summary is extracted below.

(1) Maintainability of the review petition

KSEB Ltd submitted that, *being a quasi-judicial authority, under Section 94 of the Electricity Act, 2003 the State Commission has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in the matter of reviewing its orders. As per Order 47, Rule.1 of the said Code, an application for review of an order is maintainable only on account of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the order was made or on account of some mistake or error apparent on the face of the record or on account of any other sufficient reason. The petitioner in the present review petition has miserably failed to establish the discovery of any new and important matter of evidence or any mistake or error apparent on the face of record as required for reviewing the impugned order. On the other hand, the petitioner has actually filed an appeal in the name and style of a review petition to set aside the impugned order without any grounds for reviewing the original order. Further, all the grounds raised in the present petitions were examined by this Hon'ble Commission on its merits in the original side itself and found that they are not maintainable and ordered accordingly. Thus, it may please be seen that, in the absence of new and important matter or evidence or mistake or error apparent, the review petition is not maintainable.*

However, without prejudice to the contentions raised above on the maintainability of this petition, the following remarks are offered as against the grounds raised in the petition.

(2) Ground (i). The applicability of CEA Regulation

KSEB Ltd submitted that, *as per the CEA (Technical Standards for Connectivity to Grid) Regulations 2007, provides that the distribution licensee shall provide adequate reactive compensation to compensate the inductive reactive power requirement in their system. The KSERC Grid Code, 2005 also provides that the distribution licensees shall maintain high Power Factor to minimize the reactive power drawal. Further, Regulation 65(2) of the Terms and Conditions of Tariff Regulations, 2018 also provides that, the person responsible for reactive energy compensation shall be the distribution licensee/open access user directly connected to the state transmission network. All these aspects were examined by the Hon'ble commission in the original petition and decided on its merits.*

(3) Ground (ii)- PPA fixing upper limit.

KSEB Ltd submitted the following remarks on the ground raised by the petitioner.

"The contentions raised in Ground (2) of the petition have no relevance to the prayer in the Review Petition. The petitioner pointed out that, as per the Order of the Government of His Highness, the Maharaja of Cochin dated 24.04.1947, the power required for the town was to be made available without any limit. This was a condition of the sale of power house to the Government.

On a plain reading of this ground it can easily be seen that, it is not a valid ground for denying penalty for low power factor. The availability of power without limit and penalty for low power factor are two different issues and the same are not compared to each other.

*The saving clause viz. Section 185(2)(a) of the Electricity Act.2003 has no relevance in the case at hand. It is true that as per the said provision any action done as per the repealed laws shall remain valid **only so far as it is not inconsistent with the provisions of the new act viz. the 2003 Act.***

***However**, after the enactment of Electricity Act, 2003 the power sector in the country is being governed by the provisions contained therein and the Rules and Regulations made there under. The continuance of the petitioner as a deemed licensee is as per the provisions of the said Act. The State Commission has every right to issue relevant regulations to regulate the power sector in the State in order to protect the interest of both the consumers and the licensees. Accordingly, the Central as well as the State Commission had issued various Regulations which are applicable to the petitioner also so far as it is not inconsistent with the present Act. Here, the petitioner has failed to establish that the relevant regulations are inconsistent with the provisions of the existing laws. As such, in the absence of inconsistency of any provisions of the relevant Regulations with the Act,2003 the petitioner has no legal right to claim that they are free from executing the PPA as required in the Act and orders issued by this Hon'ble Commission."*

(4) Ground (iii)- Non signing of PPA with power factor penalty.

KSEB Ltd submitted that, '*the contention raised in ground (iii) is baseless and totally against the very objectives of the Electricity Act, 2003 as well as disobedience to the orders issued by this Hon'ble Commission to execute necessary the PPA with the respondent KSEBL. The petitioner is trying to evade from their statutory obligation to execute the PPA even after repeated orders of this Commission and at the same time claiming the benefit as there is no PPA executed. In legal parlance one cannot be an approbate and reprobate at the same time. Further the non-compliance of the order issued by the Commission to execute the PPA is a clear case attracting Section 142 of E. Act, 2003 and hence the Hon'ble Commission may please proceed with accordingly*'.

(5) Ground (iv) and Ground (v)- TCED cannot be considered on the same footing as that other distribution licensees

KSEB Ltd submitted the following remarks on this issue.

"The TCED's contention that other distribution licensees themselves are the consumers purchasing power as part of their commercial venture. The contention is not correct. Distribution licensees functioning inside development parks are intended to promote various industries and sectors as decided by government and functioning as licensees adhering to the regulations of the Appropriate Commissions. There are other licensees in the state that supply power to public also. As per Electricity Act 2003 and other regulations in force, all distribution licensees have to be treated at par with other licensees and a distinct status cannot be given to TCED for not complying with the technical standard stipulated by CEA and other techno economic conditions specified in the relevant regulations in force.

4. Hearing on the petition was conducted on 17.07.2020 through video conference. Sri T.S. Jose, Electrical Engineer, TCED presented the petition on behalf of M/s TCED and Sri. Manoj.G, Asst: Executive Engineer presented the remarks of KSEB Ltd.

Summary of the presentation of M/s TCED is given below.

- (i) KSEB Ltd has claimed Rs 9.40 Lakh as penalty on power factor after the issue of Tariff Order dated 8.7.2019, in spite of the repeated requests from TCED not to levy the same on TCED, it being a licensee. The penalty became applicable since the PF limit was raised from 0.90 to 0.95.
- (ii) CEA Regulation provides for reactive power to be maintained and no penalty is specified. The Annexure-B of the Tariff Order dated 08.07.2019 specify the power factor incentive/ disincentives applicable to LT, HT and EHT consumers of the State, which does not include Licensees. The tariff of licensees are included under Part C of the Order and no penalty is specified therein. As such, the application of power factor penalty to licensees are not as per the Order of the Commission.
- (iii) TCED is paying fixed charges on per kVA rate, which covers the reactive part also.
- (iv) On the issue of signing the PPA, the same is under consideration of the Municipal Council.
- (v) Further, TCED being the only distribution licensee in the State run by a local body and since the licensee came into existence even before KSEB Ltd, may be considered as having a special status.

Summary of the counter arguments of the respondent KSEB Ltd is extracted below.

- (i) All the grounds raised in the petition are included in the original order issued by the Commission. Since the review jurisdiction of the Commission is only as per Order 47, Rule 1 of the Code of Civil Procedure, 1908 and no new facts are brought to the notice of the Commission, the review petition is not maintainable.
- (ii) Even though CEA Regulation does not specify any penalty, the Commission had issued the Order considering the techno economic aspects of the same.
- (iii) In case of signing of PPA, the contention of TCED that Maharaja of Cochin has ordered to give required power. There is no inconsistency with Electricity Act, 2003 or any other earlier Acts. The Commission

have issued directions to TCED to sign the PPA with KSEB Ltd for purchase of power.

- (iv) The demand charge per kVA is fixed only for the contract demand. The power factor penalty as per Annexure B is applicable to the energy drawn. Further, KSEB Ltd has to pay reactive energy charges for inter-state power.

Analysis and Decision of the Commission

- 5. The Commission examined in detail the petitioner's submissions and KSEB Ltd.'s counter to the review petition filed by TCED against the Order dated 23.04.2020 in OP No. 02/2020 as per the provisions of the Electricity Act, 2003 and Regulations made thereunder. The Commission notes that TCED in the Review Petition raised the following issues:
 - (a) CEA Regulation do not provide for any monetary compensation for non-fulfillment of inductive reactive power requirement by the distribution licensee. In the absence of any specific provisions or Regulations for imposing penalty upon the distribution licensees, TCED is not bound to pay the same.
 - (b) Maharaja of Cochin has ordered that all the power necessary will be made available to TCED. This was the condition of the sale transaction of power house to the Government, and it is irrevocable at the instance of KSEB.
 - (c) Section 185(2)(a) of the Electricity Act, 2003 provides that anything done or any action taken under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.
 - (d) TCED is yet to sign any PPA with KSEB Ltd. having any provision for power factor penalty. Hence, no penalty can be imposed upon TCED.
 - (e) TCED cannot be compared with other licensees since they purchase power for their commercial venture. In the case of TCED, corrective steps to maintain the power factor has to be taken by the consumers, the condition imposition Power Factor Penalty requires modifications, by granting a compliance period to TCED for maintaining the power factor limit.

The Commission has carefully considered the issues and arrived at conclusions as mentioned below:

- 6. ***Review jurisdiction of the Commission:*** As per the provisions of the EA-2003, review jurisdiction of the Commission is very limited. The relevant Section of the EA-03 is extracted below.

(i) Section 94 of the Electricity Act-2003, provide as follows:

"(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.:*

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

(2) 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."

As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, 1908, 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 petitioner has not submitted any new facts in this review petition before the Commission. They have also not pointed out any apparent mistake or

error on the face of records. Hence, the Commission observes that neither the provisions of the EA, 2003 nor the review jurisdiction of the Commission under Order 47, Rule 1 of the Code of Civil Procedure, 1908 is violated while passing the original Order dated 23.4.2020 in OP No 02/2020. Hence, this review petition is not sustainable as per the above provisions and ***accordingly, the Commission rejects this Review Petition.***

7. ***Applicability of CEA Regulations vis - a - vis the correctness of imposing power factor penalty by this Commission:*** There is no doubt that TCED is a deemed licensee functioning as per the Section 14 of the Electricity Act, 2003. As a deemed licensee, M/s TCED is required to function strictly as per the provisions of the Electricity Act, 2003, Regulations notified by Central Electricity Authority (CEA), Kerala State Electricity Regulatory Commission and the Rules prescribed by the Central and State Government.

As per the Section 73 of the Electricity Act, 2003, Central Electricity Authority (CEA) is vested with the powers to specify the ‘technical standards for construction of electrical plants, electrical lines and connectivity to the grid’. Further, as per the Section 73(n) of the Electricity Act, 2003, CEA is vested with powers to advise the Appropriate Government and the Appropriate Commission on ‘all technical matters relating to generation, transmission and distribution of electricity’. In all the Regulations and Orders issued by the Commission, it is clearly specified that all the distribution licensees, consumers and other stakeholders shall strictly follow the Rules and Regulations notified by CEA as per the statutory powers conferred on it under Section 73 of the EA-2003.

The Commission, in exercise of the powers conferred on it as per the provisions of the Electricity Act, 2003 had notified the Kerala State Electricity Grid Code, 2005, KSERC (Conditions of License for Existing Distribution Licensees) Regulations 2006, KSERC (Licensing) Regulations, 2006, Kerala Electricity Supply Code, 2005, and 2014, KSERC (Terms and Conditions for determination of Tariff) Regulations, 2014 and 2018 and various orders and directions issued by the Commission from time to time.

The Commission notes that TCED as a deemed licensee, has to function as per the provisions of the Electricity Act, 2003, and shall also comply with the various Regulations and Orders issued by this Commission as well as other statutory bodies including CEA. The Commission cannot exempt TCED or other licensees from the compliance of the provisions of the Electricity Act, 2003 and Regulations made thereunder including safety standards issued by the CEA, CERC and this Commission.

Since CEA jurisdiction is limited to technical and grid related matters, this Commission in exercise of powers conferred under Section 86 of the Electricity Act, 2003, has vide the Commission’s Order OA No. 15/2018 dated 08.07.2019 notified the minimum power factor to be maintained by all the distribution licensees and the incentives and penalties thereof. It is important to note that these provisions were notified only after the due process of prior publication, public hearing, eliciting written response from stake holders etc.

TCED has also not challenged these provisions till date. Consequently, TCED as a deemed distribution licensee is required to comply with the Commission's Orders and in its absence, KSEB Ltd is well within its power to impose power factor penalties for non-compliance to the Commission's Orders. **TCED's raising of these objections at this stage and that too in a review petition is neither correct nor sustainable as per the CPC provisions.**

8. ***Adherence to the Maharaja's Order regarding making power available to TCED:*** The Commission notes that TCED has been repeatedly, violating the orders and directions of this Commission issued under the relevant provisions of the Electricity Act, 2003 and Regulations and Orders issued thereof. TCED cannot take undue advantage of the Order referred to by the petitioner dated 23.04.1947, of the Government of His Highness, the Maharaja of Cochin. A plain reading of the Maharaja's Order clearly reveals that it pertains only to making power available to TCED beyond 200kW (0.20 MW). It does not, by any stretch of imagination deal with matters such as entering into PPA for purchasing electricity, compliance to the technical standards for connectivity to the grid or safety requirements for construction, operation and maintenance of electrical plants and lines which TCED is required to comply with as per the Statutes. The Commission further notes that the requirement of adequate power to TCED is at present being satisfactorily fulfilled by KSEB Ltd. **Hence, TCED's reliance on the Order of the Maharaja of Cochin for not complying with the provisions of the Electricity Act, 2003 and Regulations made thereunder by the appropriate and duly empowered bodies is totally misplaced and inappropriate and is rejected.**
9. ***Non-signing of PPA by TCED with KSEB in spite of the Commission's specific direction in this regard:*** Vide Regulation 86(1)(b) of the Electricity Act, 2003, this Commission is vested with the powers to regulate the power purchase of the distribution licensees, including the terms and conditions of the PPA. By virtue of Section 14 of the Electricity Act, 2003, this provision is applicable to all licensees including deemed licensees, owned and operated by the Government. This Commission does not have the power to grant any exemption to the above provision to any distribution licensee operating in the State.

The Commission noted that TCED has been purchasing electricity from KSEB Ltd at the Bulk Supply Tariff approved by this Commission. However, till date TCED has been delaying the signing of a power purchase agreement with KSEB Ltd. The Commission vide its Order in Petition OA No. 8/2017 dated 02.06.2017 and OP No.02/2020 dated 23.04.2020 had clearly directed TCED to enter into a PPA with KSEB Ltd. However, TCED is yet to comply with this direction of the Commission on some pretext or the other. Instead, TCED has now taken the excuse that since it has not signed any PPA with KSEB Ltd, it is not bound to pay any power factor penalty to KSEB Ltd for not maintaining the minimum power factor prescribed by the Commission.

The Commission hereby directs TCED that all its Orders, Regulations, Codes etc are uniformly applicable to all distribution licensees and no

exemptions were sought for nor given. Further, the Commission reiterates its earlier Order dated 23.04.2020 that TCED must enter into a proper power purchase agreement with KSEB Ltd with proper terms and conditions of supply. TCED may also note that in the absence of a valid PPA with the bulk power supplier i.e. KSEB Ltd, there is no obligation to supply power by KSEB Ltd to TCED. The Commission also cannot adjudicate any dispute(s), as per Section 86(1)(f) of the Electricity Act, 2003, if it arises between TCED and KSEB Ltd.

10. The Commission further notes that while disposing the petition No. OP 02/2020 vide the Order dated 23.04.2020 pertaining to 'power factor penalty charged on bulk supply licensee TCED by KSEB Ltd', this Commission had appraised the following issues in detail.

- (1) Whether the distribution licensee, M/s Thrissur Corporation Electricity Department (M/s TCED) is required to maintain adequate reactive power compensation to avoid dependence on reactive power support from the grid? (Paragraph 11 to 13 of the order dated 23.04.2020)
- (2) Whether KSEB Ltd as the seller of electricity to the licensee M/s TCED, can impose power factor penalty on them? (Paragraph 14 to 18 of the order dated 23.04.2020)
- (3) Whether in the absence of a valid PPA due to M/s TCED's reluctance to sign the draft PPA proposed, KSEB Ltd can impose the power Factor Penalty on M/s TCED? (Paragraph 19 to 23 of the order dated).

While appraising the above issues in the Order dated 23.04.2020, this Commission had examined all these issues raised by the petitioner in this Review Petition in detail. However, the petitioner has again raised the same issues in this Review petition for reconsideration of the Commission. Since the present review petition does not fulfill the relevant provisions of the Code of Civil Procedure, 1908, Electricity Act, 2003, various Regulations made thereunder by the Central Electricity Authority or this Commission as referred to in the foregoing paras, the Commission ***once again reiterate its original decision and order TCED to comply with the Order of the Commission dated 23.04.2020, within sixty days of the issue of this Order and to report compliance thereof to the Commission.***

Order of the Commission

11. Commission, after examined in detail the review petition filed by TCED against the order dated 23.04.2020 as per the provisions of the Electricity Act, 2003 and Regulations made there under, hereby orders the following.

- (1) Reject the Review Petition RP 03/2020 filed by TCED against the order dated 23.04.2020 in OP No.02/2020 due to the reasons cited in the preceding paragraphs.

- (2) M/s TCED shall comply with the Order of the Commission dated 23.04.2020 in OP No. 02/2020 within 60 days of the issue of this Order and report compliance to the Commission. Any refusal to comply with this Order shall be considered as a serious violation of TCED's License conditions and this Commission shall be constrained to initiate appropriate action against TCED under Section 142 of the Electricity Act, 2003.

The petition disposed off as above.

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue.

**Satheeshchandran.C.R
Secretary (i/c)**