

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

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

**Review Petition No. RP 5/2020**

- In the matter of : Petition filed by M/s Viyyat Power Pvt Ltd, in the matter Review of the order dated 28.4.2020 in OA No 30/2019 for determination of Compensatory Tariff for rehabilitation of Iruttukanam Small Hydro Power Project Stage I (2 X 1.5) MW and Stage II (1 X 1.5) MW destroyed in the MahaPralayam on the 9<sup>th</sup> August and 14<sup>th</sup> August 2018.
- Petitioner : M/s. Viyyat Power Pvt Limited.
- Petitioner represented by : 1. Sri. Adv. C. K. Vidyasagar  
2. Smt. S. Syamala Nair, Chairperson, Viyyat Power Pvt Ltd  
3. Sri. P.D. Nair, Managing Director, Viyyat Power Pvt Ltd
- Respondent : 1. Kerala State Electricity Board Limited  
2. Government of Kerala  
3. Energy Management Centre
- KSEB Ltd represented by : 1. Sri. K.G.P. Nampoothiri, EE, KSEB Ltd

**Daily Order dated 20.08.2020**

1. M/s Viyyar Power Private Ltd (hereinafter referred to as the petitioner or M/s Viyyat), on 15.06.2020, filed a review petition against the order of the Commission dated 28.04.2020 in Petition OA No. 30/2019.

The Order of the Commission dated 28.4.2020 was issued based on the petition filed by M/s. Viyyat Power Pvt Limited, on 17.09.2019, before the Commission with the following prayers.

*“ Considering the fact that the Petitioner has rehabilitated the power project Stage I & II against heavy odds in a record time of 322 days after the disaster with almost all new equipments including new generators by spending an*

*additional investment of Rs. 9,69,34,511.80 over and above the insurance cover benefit of Rs. 8.00 Crore, the petitioner humbly prays for the following.*

- (i) The Hon'ble Commission may be pleased to pass on order granting an additional "Compensatory Tariff" for Stage I and Stage II, commensurate with the new investment made by the petitioner as done by the Hon'ble CERC in Order dated 21.02.2014 in the case of Petition No. 155/MP/2012 of Adani Power Limited Vs. Uttar Haryana Bijli Vidyut Nigam Limited and Others.*
- (ii) Any other Order the Hon'ble Commission may be pleased to deem fit considering the fact that the tariff of Iruttukanam Stage I and Stage II of the Petitioner as existing before the disaster, are much below the APPC of KSEBL and if the Petitioner had abandoned the project after the disaster, KSEBL has to purchase the same measure of power from elsewhere at the rate above APPC'.*

The Commission, after detailed deliberations including public hearing, vide the Order dated 28.4.2020 ordered as follows.

- (1) The request of the petitioner to grant additional compensatory tariff for Iruttukkanam Stage-I and Stage-II is rejected, due to the reasons detailed in the preceeding paragraphs.*
- (2) The petitioner may, approach the State Government, who allotted the project to the Company, to extend the BOOT period if the petitioner so desires.*

2. Grounds raised by the petitioner in the petition dated 15.06.2020 to review the Order dated 28.04.2020 in Petition OA No. 30/2019 is summarized below.

- (1) The Commission lost sight of the crass reality that, the petitioner could have legally terminated the agreement by proceeding under Article 6.5 of the Implementation Agreement grabbing whatever insurance amount obtainable, in which event the State would have been burdened to invest huge amounts to the tune of 17.97 Crores to rehabilitate the project and that by the tremendous endeavour of the Review petitioner company, the State and the KSEB Ltd stands to gain considerably, for on the termination of the BOOT period the project in running condition with replaced new generators and other machinery is going to vest with them.
- (2) The argument that the petitioner got immense gain due to the delay in implementing the Sengulam Augmentation scheme, is not correct due to the following reasons:
  - (i) The project cost was gone up from Rs 12.00 crore in the Detailed Investigation Report (DIR) to Rs 19.34 crore at the time of truing up. (61.20% increase over approved cost)

- (ii) The petitioner has been making use of the additional flow, first by overloading the machines of Stage-1 by 20% and second by going for Stage-II expansion, compensating the increase in cost.
- (iii) The increase in project cost was not due to the fault of the petitioner, but due to the delay in approving the tariff by KSERC and later the delay that occurred in the Government sanction for the same.
- (iv) By making use of the additional generation, the petitioner could avoided insolvency.
- (v) The petitioner also produced audited accounts upto the FY 2017-18.
- (vi) State of Kerala through its Power Secretary, practically acceded to the genuine needs of the petitioner, for the State and never raised any objection in the matter at all.
- (vii) KSERC has violated the principles of natural justice and fair procedure by relying upon the calculations projected at Page 41 and 42 of its Order, rendering the Order dated 24.04.2020 illegal and unsustainable.

3. The Commission admitted the petition as RP 5/2020 and conducted hearing on 05.08.2020 through video conference.

During the hearing, Adv. Vidyasagar, counsel of the petitioner, presented the petition on behalf of the petitioner company and explained in detail as submitted in the petition, the grounds for reviewing the Order dated 28.04.2020. The Counsel explained the efforts made by a small company like Viyyat to rebuild the generating station without having walked away with the insurance proceeds.

Sri P D Nair, the Managing Director of the Company, made a detailed presentation on the background of the Iruttukkanam project from its inception, execution and also various hurdles faced by them for implementing the project. The petitioner submitted that, a compensatory tariff @ Rs 1.00 per unit make the project sustainable after rehabilitation.

Smt. Syamala Nair, Chairperson of the company submitted that the project was established and maintained as if a child of their own. The project is totally destroyed in the MahaPralayam during 2018. With the wholehearted involvement of the employees and all others concerned, the project could re-commission within 322 days. The project now is as good as new project. The generating station is very new leading to an extended life.

4. Sri K G P Nampoothiri representing KSEB Ltd submitted that, KSEB Ltd reiterates the stand taken in the original petition. It is pointed out that the

project is selected and awarded by the State Government through tariff based bidding. The Company has entered into an Implementation Agreement with the State Government for the implementation of the project. Commission cannot re-determine the tariff of the project as prayed by the petitioner. Detailed comments of KSEB Ltd on the petitioner shall be submitted immediately.

5. Adv Vidyasagar requested for one more hearing after obtaining the comments of KSEB Ltd.
6. Based on the deliberations during the hearing, Commission hereby direct the petitioner M/s Viyyat Power Limited and the respondent KSEB Ltd the following.
  - (i) KSEB Ltd shall submit its detailed comments on the petition on or before 19<sup>th</sup> August 2020, with a copy to the petitioner
  - (ii) The Petitioner shall submit the counter arguments, if any, on or before 27<sup>th</sup> August 2020, with copy to KSEB Ltd.

**Sd/-  
Preman Dinaraj  
Chairman**

Approved for issue,

C.R.Satheesh Chandran,  
Secretary-in-charge