

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT

Shri. S. Venugopal, Member
Shri. K. Vikraman Nair, Member

RP No.5/2017

IN THE MATTER OF: Review Petition filed by Kerala State Electricity Board Ltd against the order dated 09-05-2017 in terms of order dated 06-05-2016 on Appeal No.135 of 2014 of APTEL

Petitioner : Kerala State Electricity Board Limited
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram

ORDER DATED 25/9/2017

1. KSEB filed a review petition dated 22-06-2017 on the order of the Commission dated 09-05-2017, on the remand order of Hon'ble APTEL in appeal No 135/2014 relating to the truing up of accounts of KSEB for the financial year 2009-10. The Commission placed the petition in its website and also issued a press release for inviting the objections from the public. Public hearing on the matter was held on 18-07-2017 at the Court Room, Office of the Commission, Thiruvananthapuram.
2. In the public hearing, Petitioner KSEB Ltd was represented by Shri. Bipin Shankar, Deputy Chief Engineer (TRAC), Sri. Biju.R, Finance Advisor, Sri. K.G.P Namboothiri, Executive Engineer (TRAC) and Sri. Girish Kumar V.S, Finance Officer, (TRAC). Sri. Bipin Shankar, Deputy Chief Engineer (TRAC) presented the details of the review petition before the Commission. Sri. Bipin Shankar and Sri. Biju, responded to the queries of the Commission on the review petition.
3. Shri. Bipin Shankar, Deputy CE, presented the grounds for the petition. During the hearing the Commission specifically sought from KSEB Ltd, the grounds on the maintainability of the Review Petition under 94(1)(f) of the Electricity Act 2003 and

the Code of Civil Procedure, 1908. The petitioner KSEB Ltd has argued the maintainability of the petition on the ground that there is apparent error on the face of the record in the matter.

4. KSEB Ltd submitted that the Commission since 2003-04, had allowed the entire power purchase cost except the excess cost of power purchase on account of underachievement of T&D loss target. But Rs.174.24 crore was not allowed to be recovered from the power purchase cost for 2009-10. According to KSEB Ltd, the petitioner has argued that the power purchase bills are generally paid within one month lag i.e., power purchased for the month of March will be paid in the month of April and so on. The liabilities would remain in the books till the same is discharged and there can be no ceiling limit fixed on the liabilities. It may go up in the years of drought due to shortage in hydro generation and consequent purchase from other sources. The power purchase cost as well as year end liability towards power purchases for the period from 2001-02 to 2014-15 submitted by the petitioner is given below.

(Rs in Crore)

Year	Liability towards power purchase at the beginning of the year	Power purchase cost as per P&L Account	Average monthly expenses	Power purchase liability at the end of the year	Actual payments effected/ adjusted	Yearly payment as a % of expense	Outstanding liability as a % of expense	Outstanding liability equivalent to Monthly expenses (times)
1	2	3	4=(3/12)	5	6=(2+3-5)	7=(6/3)	8=(5/3)	9=(5/4)
2001-02	423.03	1451.55	120.96	1234.74	639.84	44	85	10.2
2002-03	1234.74	1872.07	156.01	405.50	2701.31	144	22	2.6
2003-04	405.5	1887.11	157.26	344.63	1947.98	103	18	2.2
2004-05	344.63	1463.03	121.92	436.29	1371.37	94	30	3.6
2005-06	436.29	1533.93	127.83	543.36	1426.86	93	35	4.3
2006-07	543.36	1629.30	135.78	417.41	1755.25	108	26	3.1
2007-08	417.41	2101.07	175.09	473.74	2044.74	97	23	2.7
2008-09	473.74	3417.22	284.77	552.11	3338.85	98	16	1.9
2009-10	552.11	3384.51	282.04	726.37	3210.25	95	21	2.6
2010-11	726.37	3721.58	310.13	768.59	3679.36	99	21	2.5
2011-12	768.59	4375.3	364.61	727.14	4416.75	101	17	2.0
2012-13	727.14	7199.61	599.97	1626.1	6300.65	88	23	2.7
2013-14	1626.1	6902.65	575.22	847.66	7681.09	111	12	1.5
2014-15	847.66	6782.76	565.23	609.48	7020.94	104	9	1.1

5. According to the petitioner, the year end power purchase liability represents the unpaid amount and it does not confine to the liability for power purchase in the month of march or to that of average power purchase cost for one month. The petitioner further stated that the increase in liabilities on power purchase was not due to creation of higher provisions of power purchase, but due to the delayed payment of the power purchase bills and the admitted liability as on 31-3-2009 was furnished to the Commission, though the same was not considered. Hence mentioning that the KSEB Ltd has not submitted the details is not true and hence the decision taken in this regard based on the incorrect observation is to be reviewed that the power purchase cost curtailed to the tune of Rs.174.24 crore to the extent of increase in outstanding liabilities may be allowed.
6. Regarding A&G expenses, KSEB Ltd stated that Hon. APTEL has directed to consider the A&G expenses as per audited accounts and allow the same after prudence check. The Commission observed that the expenses should be limited to the approved level in ARR hence the stand of the Commission is contrary to the directions of APTEL.
7. KSEB Ltd further stated that the additional revenue gap of Rs.107.90 crore allowed by the Commission may be treated as regulatory assets to be discharged in the subsequent tariff revision.
8. Sri. Dijo Kappan representing the Consumer Education Trust presented the view and objections on the review petitions filed by KSEB Ltd. He stated that there is no urgency in disposing of the review petitions when the Post of the Chairperson of the Commission is vacant. He also stated that there is delay in filing the petition and such petitions shall not be a reason for allowing unreasonable expenses which are ultimately borne by the consumers. Further allowing controllable expenses over and above the approved limit is not correct. He also pointed out that there is a need to expedite the collection of arrears of electricity charges and submitted that proper and effective measures may be initiated for the same. He further pointed out that the Commission should have a look into the unnecessary expenses incurred by the licensee and ensure that directions issued by the Commission are properly complied with. Sri, Ratheesh Kumar A, on behalf of the HT-EHT Association stated that the Commission may issue order on the review petition only after the appeal filed by the Association before the APTEL is finalized.

9. During the hearing the Commission sought certain additional details to adduce further confirmations on the review petition from KSEB Ltd and allowed time till 4-8-2017. The Commission sought details such as actual amount paid against the bills accounted for power purchase for the years 2007-08 to 2010-11, split up bill wise details of closing balance of power purchase liabilities for the years 2007-08, 2009-10 and 2010-11. KSEB Ltd has furnished the details only on 21-8-2017, but could not produce the bill wise details sought by the Commission.

Analysis and decision of the Commission

10. The Commission considered the arguments given by KSEB Ltd in the review petition and the objections raised by the stakeholders. At the outset, it needs to be mentioned that the Commission functions as per the powers conferred upon it under the provisions of the Electricity Act 2003 and the Regulations issued thereon. It is to be noted that the power of review available with the Commission is as per the provisions of Section 94(1)(f) of the Electricity Act, 2003 and Regulation 67(1) of KSERC (Conduct of Business) Regulations, 2003. As per section 94(1)(f) of the Electricity Act 2003, the Commission may review of decisions, directions and orders as per the provisions of Code of Civil Procedure 1908. The provisions of the KSERC (Conduct of Business) Regulations 2003 provides that:

“67. Powers of review,-

(1) Any person or party affected by a decision, direction or order of the Commission may, within forty five days from the date of making such decision, direction or order apply for the review of the same.

(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.

(3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application:

Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing:

Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”

11. As per section 94(1)(f) of the Electricity Act 2003, review of decisions, directions and orders is to be as per the Code of Civil Procedure 1908. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure. The scope of review, at the very outset, is much restricted. The Court of review has only a limited jurisdiction under Order 47, Rule 1. The review power, under the aforesaid provision are re-produced as 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”.

12. The above mentioned provisions of CPC mandates that a Court of review may allow a review only on specific grounds such as (a) 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 (b) Mistake or error apparent on the face of the record; or (c) For any other sufficient reason which is analogous to the above two grounds. Hon. Supreme Court in *Parrison Devi & Ors V. Sumitri Devi & Ors* [1997] RD-SC 768 (14 October 1997) has noted that :

“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to

exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

13. The Hon Supreme Court in Smt. Meera Bhanja Vs. Nirmala Kumari Choudhury (Order dated (16-11-1994) reported in AIR 1995 SC 455, has held that the scope and jurisdiction of mistake apparent as :

"It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC."

.....

"it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions"

14. Hence, the review proceedings under Order 47, Rule 1, to be used for the for the rectification of an error, which is self evident, apparent and glaring on the face which would warrant reconsideration of the judgment/order so pronounced. The Review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record. While the first can be corrected by a higher forum, the latter can be corrected by exercise of review jurisdiction. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise.

15. Prima facie, the Commission notes that the issues raised were addressed in the original proceedings itself. KSEB Ltd could not provide any additional details or any new facts before the Commission for enabling review of the matter. Though review proceeding is not a forum for agitating on merit on issues which are already raised in the original proceedings, the Commission has decided to examine the issues raised in the petition.

16. The main issue raised in the petition is on the disallowance of power purchase cost of Rs.174.24 crore. In the Order dated 9-5-2017, the Commission mentioned shown below:

“Over the years, complete power purchase cost has been allowed by the Commission except the cost of excess power purchase, if any, on account of the under achievement of T&D losses. KSEB Ltd has not submitted the split up details of the Rs 552.11 crore outstanding current liability as on 31-03-2009 under the head ‘liability for power from central stations and purchase of power’. If the amount booked in each year under power purchase is completely paid, then there will not be any outstanding amount under current liabilities. In the present case, the outstanding liability arose because either KSEB did not pay the complete amount booked under power purchase over the years or excess amount was booked under the head and hence a balance amount of Rs.552.11 crore was outstanding as on 1-4-2009. Since the power purchase cost booked in such years has been fully allowed to pass through in the ARR after truing up, the amount outstanding of Rs.552 crore is the excess booked over the actual payment. The Commission in the impugned order dated 25.10.2012 has stated that, since there is already a balance provision of Rs 552.11 crore as on 31.03.2009 meeting the short term liability towards power purchase, there is no need to provide additional provision under this head for the year 2009-10. Hence, in the absence of details furnished by KSEB on the outstanding liability of Rs.552.11 crore, the Commission finds no evidence that the net cost of power purchase as approved in the impugned order dated 25.10.2012, for the year 2009-10 at Rs 3210.25 crore is insufficient.”

17. Thus, the Commission has sought the details on the split up and bill wise details of power purchase cost outstanding at the end of 2008-09 and 2009-10. Though KSEB Ltd in its letter dated 21-8-2017 had furnished some information, the Commission notes that the required information was not furnished and only the outstanding balance from various sources at the end of 2007-08 to 2010-11 were furnished. In the absence of the sufficient details furnished by KSEB Ltd, the Commission could not examine in detail the arguments furnished by KSEB Ltd in the review petition. Further to this, based on the information furnished by KSEB Ltd in its letter dated 21-8-2017, the following fact is evident.

Year	Liability at the beginning of the year (Rs. Crore)	Power purchase cost for the year (Rs. Crore)	Power purchase cost approved by the Commission Less disallowance on excess T&D loss	Actual payment (Rs. Crore)	Difference in payment over actual (Rs. Crore)	Cumulative (Rs. Crore)
(1)	(2)	(3)	(4)	(5)	6=(3)-(5)	(7)
2007-08	417.41	2101.07	2080.73*	2044.74	-56.33	-56.33
2008-09	473.74	3417.22	3390.36*	3338.85	-78.37	-134.7
2009-10	552.11	3384.51	3210.28**	3210.25	-174.26	-308.96
2010-11	726.37	3721.58	3721.58	3679.36	-42.22	-351.18
2011-12	768.59	4375.31	4352.32*	4416.76	41.45	-309.73

* Power purchase cost (col 3) minus power purchase cost disallowed on account of excess T&D loss

** Power purchase cost minus Rs.174.26 crore on account of excess provisions already available

18. As shown in the table above, from 2007-08, though the Commission had approved the entire power purchase cost booked by KSEB Ltd in its books, except for the disallowance on account of underachievement of T&D loss, it is seen that KSEB Ltd actually paid less than the cost of power purchase booked. From 2007-08 to 2011-12, an amount of Rs.309.73 crore has been the difference over the actual amount booked and paid. Thus as mentioned in the impugned order, the outstanding amount of Rs.552.11 crore is sufficient to meet the provisions of Rs.174.26 crore made in the year 2009-10.

19. Further to this, as per the order dated 6-5-2016 in appeal no.135 of 2013 the APTEL has directed that

“19.2 The FY 2012-13 is already over. The accounts of FY 2012-13 are required to be tried up. The Appellant shall submit the audited accounts along with the Application for true-up. The State commission shall approve the true-up energy sales and cost of power purchase after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any. Accordingly, directed.”

20. Based on the said decision, the Commission is of the view that there is no merit in the arguments placed before Commission for review of the order dated 09-05-2017 regarding power purchase. Similarly in the case of A&G expenses also there is no ground furnished for enabling review.

Orders of the Commission

21. In the light of the above analysis of all the points raised by KSEB Ltd as well as the objectors, the Commission is of the view that there are no sufficient grounds placed by the petitioner for a review of the Order dated 09-05-2017 on the truing up of accounts of the Kerala State Electricity Board for 2009-10, under Section 94(1)(f) of Electricity Act 2003.

22. With the above, the petition disposed of, ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
Santhosh Kumar.K.B
Secretary