

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

OP No. 33/2015

PRESENT : Shri. T.M.Manoharan, Chairman
Shri K.Vikraman Nair, Member
Shri. S. Venugopal, Member

**In the matter of Interest on security deposit of Cochin Port Trust adjusted by
M/s. KSEBL towards the share of cost of construction of
Kataribagh substation**

Applicant : M/s Cochin Port Trust
Respondent : Special Officer (Revenue)
Kerala State Electricity Board Limited
Vydyuthy Bhavanam, Pattom
Thiruvananthapuram

ORDER DATED 05.01.2016

T.M.Manoharan, Chairman

1. Cochin Port Trust (hereinafter referred to as CoPT) has filed OP No. 33/2015 before the Commission with the prayer to review the cases mentioned therein and to issue an order to KSEB Ltd to refund to the petitioner, an amount of Rs.19,85,232/- being the excess amount claimed to have been collected by KSEB Ltd. CoPT is a deemed distribution licensee for distribution of electricity in Cochin Port Trust area.

Background of the case

2. OP No.33/2015 filed by Cochin Port Trust is the latest among the series of litigations between Cochin Port Trust and Kerala State Electricity Board Ltd for settling the disputes between them on the dues payable to each other. The main issues in these disputes were the following.

- (i) Whether or not Cochin Port Trust is liable to pay the share in the cost of construction of 110 kV substation, Kataribagh, Kochi as claimed by Kerala State Electricity Board Ltd / Kerala State Electricity Board.
 - (ii) Whether or not Cochin Port Trust is liable to pay the service connection charges as claimed by Kerala State Electricity Board Ltd / Kerala State Electricity Board.
3. Regarding the first issue the Chief Engineer (Commercial & Tariff), KSEB had filed OP No. 6/2011, before the Commission claiming that the petitioner had to pay its share of the cost of construction of the 110 kV Kataribagh substation, amounting to Rs.201.5 lakh. The Commission had, vide its order dated 03.08.2011 in OP No.6/2011, ordered that Cochin Port Trust was liable to pay an amount of Rs.201.50 lakh towards its share of the cost of construction of Kataribagh substation. However an amount of Rs.121.24 lakh, which had been paid by Cochin Port Trust on 07.01.1992 towards the cost of laying underground cable from Perumanoor to Mattanchery Halt should be adjusted from this liability of Rs.201.50 lakh. The net amount of Rs.80.26 lakhs (Rs.201.5 lakhs minus 121.24 lakhs) should be paid by Cochin Port Trust to KSEB within one month from the date of the order. Cochin Port Trust had filed an appeal petition before the Hon'ble Appellate Tribunal for Electricity (APTEL), New Delhi against the above order. Hon'ble APTEL had, vide its order dated 11.04.2012 upheld the order of the Commission. Thus the first issue relating to payment of the share of the cost of construction of Kataribagh substation stands finally settled and CoPT has to pay a net amount of Rs.80.26 lakh to KSEB on this account.
4. The second issue relates to the payment of service connection charges by CoPT to KSEB Ltd. CoPT filed DP No. 74/ 2009 before the Commission claiming that it is not liable to pay service connection charges since it is a licensee not a consumer, though it had remitted under protest, the amount claimed by KSEB Ltd towards the service connection charges. In the order dated 15.07.2009 in DP No.74/2009 the Commission decided that the claim of service connection charges by KSEB Ltd from CoPT was not legally sustainable since CoPT is a licensee. It was decided by the Commission that Cochin Port Trust, being a licensee and not a consumer, is not liable to pay the service connection charges. Further it was also

found that the changeover of supply of electricity to CoPT from 11 kV feeder to the 110 kV sub-station did not involve any change in contract demand. Only the source of supply was changed. In this regard the Commission had observed as follows,-

The Commission would like to point out that the respondent (KSEB LTd) has not only claimed an amount which has no justification, but also has tried to confuse with the issue of consumer / licensee status. Commission summarily dismisses the claim on service charge from the petitioner (CoPT).

The Commission had ordered that the claim of service connection charges amounting to Rs 26,32,500/- from Cochin Port Trust is not correct and the same has to be refunded to Cochin Port Trust within 2 months from the date of the order and that the same could be done by way of adjustment of monthly electricity charges due from CoPT. KSEB Ltd had filed appeal No.152/2009 against the said order of the Commission before the Hon'ble APTEL . The Hon'ble APTEL had upheld the order of the Commission vide its judgment dated 13.07.2010 in Appeal No. 152/ 2009. Thus this issue does also stand settled finally.

5. KSEB had issued a demand notice to remit an amount of Rs.80.26 lakh vide letter no. COMI/EHT/CPT/360 dated 04.06.2012 on or before 15.06.2012. Cochin Port Trust had remitted an amount of Rs.18,68,731/- on 15.06.2012 as the final settlement of share of cost of Kataribagh Substation after adjusting the service connection charges of Rs. 26,32,500/- and the interest on Security Deposit of Rs.3524769/- as shown below.

Sl.No	Description	Amount
1	Amount payable to KSEB towards the share cost of Kataribagh substation as per Hon'ble ATE's order dated 11-04-2012.	Rs 80,26,000/-
2	Amount due from KSEB as the refund of service connection charge as per APTEL's order dated 13-07-2010	Rs 26,32,500/-
3	Interest on security deposit receivable from KSEB Ltd as per the enclosed statement .	Rs 35,24,769/-
4	Net amount payable to KSEB (1-2 +3) as per Annexure-I	Rs 18,68,731/-

6. KSEB Ltd, vide letter dated 03.12.2014 informed that the Cochin Port Trust should remit an amount of Rs.20,17,491/- being the short remittance. for settling the claims. According to KSEB, the interest on security deposit can be allowed on bank rate i.e., @ 6% from 01-04-2005 onwards up to the FY 2012-13 and @ 8% during 2012-13. The KSEB further contended that as per the relevant Board Order, a consumer has to provide security deposit in cash only for an amount equal to 50% of the security deposit. The CoPT had remitted the cash portion of security deposit more than 50% of total security deposit. Therefore KSEB Ltd is not liable to pay interest on the cash deposited by CoPT in excess of 50% of the total security deposit. CoPT contended that it is eligible to get interest on the entire amount of cash remitted towards security deposit since such remittance was made as demanded by KSEB Ltd. Subsequently vide letter dated 25.02.2015, KSEB Ltd has agreed to pay interest for the entire cash deposit remitted by CoPT. Now the only issue which remains to be settled in this petition is the rate at which interest is payable by KSEB Ltd to CoPT for the amount of cash remitted by CoPT towards the security deposit.

Hearing

7. A hearing was conducted on 17.09.2015 in the Court Hall of the Commission. Shri. K.Kunjali, Deputy Chief Mechanical Engineer of CoPT represented the petitioner and Shri. B.Pradeep, Deputy Chief Engineer (Tariff Regulatory Affairs Cell) represented KSEB Ltd. During the hearing CoPT claimed that they are eligible to get interest at twice the bank rate on the security deposit in accordance with regulation 16 (3) of the Supply Code, 2005 since the payment of interest by KSEB Ltd was delayed. After the hearing the Commission issued the following daily order.

K.S.E.B. Ltd submitted that the provisions of the Supply Code should not be relied upon to resolve the issue since CoPT is a licensee and not a consumer of K.S.E.B. Ltd. The provisions in the concluded PPA only are binding on CoPT and K.S.E.B. Ltd. The prevailing PPA executed between them in 2008, valid for 25 years

does not have any reference on allowing interest on security deposit. However, Board has taken a considered decision to give interest on SD, just as benevolence.

K.S.E.B. Ltd has issued disconnection notice to CoPT, citing the provisions in Kerala Electricity Supply Code, 2014. The Commission has observed that both the parties have erred in relying on the legal provisions of the Supply Code in the context of the issue on hand. The Commission directed CoPT to submit a modified petition for their claim of refund citing the provisions in the executed PPA between CoPT and K.S.E.B.Ltd. since the provisions of Supply Code cannot be made applicable to CoPT as far as power purchase from other licensee / source for supply to their consumers is concerned. The Commission vide order dated 30-03-2010 has ordered to revise and submit the draft PPA for approval within 3 months. CoPT submitted that the draft PPA presented before K.S.E.B. Ltd is yet to be submitted to the Commission.

The Commission directed to submit a copy of the draft PPA as directed in 2010, duly concurred by both the parties on or before 31-10-2015.

8. CoPT has, as per the directions of the Commission, submitted modified petition vide letter No.D3/KSERC/KSEB – S.C/Katari/2015 dated 30.10.2015. In the modified petition CoPT has submitted that the supply of power to Wellington Island at 110 kV system was extended by KSEB Ltd in accordance with the power purchase agreement dated 17.11.2008. The Commission, vide its order dated 30.03.2010 in TP No.68/2009 had directed to revise the said PPA incorporating the changes suggested by the Commission. As per item No.7 of the said order, the Commission had directed that the reference to the terms and conditions of supply should be substituted with the Supply Code, 2005. Accordingly CoPT had forwarded a revised draft of the PPA to the Chief Engineer, Distribution (Central) as early as on 12.05.2010. The area of distribution by CoPT was subsequently extended to Vallarpadam and Puthuvypin areas, with the approval of the Commission. In its order dated 16.08.2010 in DP No.83/2010 the Commission had noted that CoPT had already submitted the draft PPA to KSEB Ltd. Further CoPT had forwarded the draft PPA to the Chief Engineer (Commercial and Tariff), KSEB

Ltd on 06.09.2010 for the concurrence of KSEB Ltd. So far no reply has been received from KSEB Ltd. In letter dated 09.11.2012 CoPT had submitted proposal to augment the supply system at Vallarpadam and to execute PPA for the additional load at Vallarpadam and Puthuvypin. This proposal was approved by KSEB Ltd subject to the condition that the tariff of consumers in the Wellington Island area should be the same as that of KSEB and the recovery of higher distribution cost of CoPT should be sorted out as per the regulations issued by the KSERC. It is also informed by the CoPT that it has dropped the proposal for augmenting the supply at Vallarpadam since the sole consumer of CoPT at Vallarpadam namely, M/s DP World had backed out from their earlier stand and made it clear that they would not be in a position to take more power than the allotted quantum of 3 MVA. CoPT has contended that the provisions of Supply Code were applied to the agreement between it and KSEB Ltd as per the directions of the Commission. As per letter dated 03.12.2014, KSEB Ltd has admitted that the interest on security deposit is admissible at 6% up to 2012-13 and at 8% for 2013-14 and at 8.5% for the remaining period. KSEB Ltd has finally computed an amount of Rs.48,90,915/- towards the interest on security deposit payable to CoPT. The claim of the petitioner for interest at double the bank rate was denied by the KSEB Ltd on the ground that some arrears were pending against the petitioner and not because of violation of any statute / contract. It is also submitted by CoPT that sub-section(4) of Section 47 of the Electricity Act, 2003, provides for interest on security deposit to its consumers as per the relevant clauses in Kerala Electricity Supply Code, 2005 and Kerala Electricity Supply Code, 2014. As per the provisions in the Supply Code CoPT is eligible for interest at double the rate since KSEB Ltd has failed to pay interest within the specified period. CoPT has further submitted that in the ARR &ERC approved by the Commission, interest on security deposit has been accounted as amount receivable from KSEB Ltd. For the period from 2004-05 to 2014-15, the Commission has approved Rs.73.99 lakh towards interest on security deposit. In its order dated 16.05.2011 the Commission had directed CoPT to follow up with KSEB Ltd, the issue relating to interest on security deposit. Hence CoPT has prayed to grant its request for interest on security deposit.

9. Further as per letter No. D3/KSERC/KSEB – S.C/Katari/2015 dated 22.12.2015, CoPT has submitted a copy of the draft PPA which was forwarded as per its letter dated 06.09.2010 to the Chief Engineer, (Commercial and Tariff), KSEB Ltd in compliance of the order No. KSERC/C.Eng/DP-83/2010/832 dated 17.08.2010 of the Commission.

Analysis and decisions

10. The Commission has already indicated its view during the hearing in OP 33/15 on 17.09.2015, that Kerala State Electricity Board Ltd has been considering Cochin Port Trust as consumer for claiming security deposit, service connection charges etc, whenever it is advantageous to Kerala State Electricity Board Ltd. When Cochin Port Trust claimed interest on security deposit at double the applicable rates as per the provisions of Supply Code, 2005, KSEB Ltd has contended that CoPT is not a consumer and that only the terms of PPA will apply since CoPT is another licensee which purchases electricity from KSEB Ltd. Similarly, Cochin Port Trust also, claimed interest on security deposit at double the applicable rates as per the provisions of Supply Code, 2005 when it is advantageous for it to assume the position of consumer. When KSEB Ltd had claimed service connection charges from CoPT, it had contended that KSEB Ltd was not entitled to claim service connection charges from CoPT since it was another licensee which purchases electricity from KSEB Ltd. The Commission has made it clear beyond any doubt that Cochin Port Trust is a licensee and that the purchase of power by Cochin Port Trust from KSEB Ltd is governed only by the terms and conditions of PPA executed between them. Both CoPT and KSEB Ltd cannot assume their roles according to their convenience. It is true that the Commission had directed to adopt the conditions of Supply Code, 2005 while executing PPA. This direction does only mean that conditions similar to or identical to the provisions in Supply Code may be incorporated in the PPA with mutual consent. The regulations in Supply Code, 2005 cannot be applied to the purchase of power by one licensee from another licensee, unless they are incorporated in the PPA.
11. The Commission has examined the draft PPA forwarded by CoPT to KSEB Ltd for its approval as per its letter dated 06.09.2010 which has been submitted by CoPT

to the Commission as per letter dated 22.12.2015. The conditions No.3 and 4 of the said draft PPA are quoted hereunder,-

3. The licensee shall furnish security to the extent to two months current charges as fixed by the Chief Engineer. This is fixed in the first instance as Rs.2,36,83,400/- for 6500 kVA 110 kV system at Wellington Island area and Rs.79,35,000/- for 3000 kVA at 11 kV system. The license shall on demand in writing replenish or enhance within ten days such security in the event of the same being found by the Chief Engineer or his authorized representative to be insufficient or exhausted and the decision of the Chief Engineer or his authorized representative in that regard shall be final and conclusive between both the parties. A demand for the purpose of this clause shall be sufficient if a notice is sent by registered post giving ten days time to comply with it. The Board is at liberty at any time to appropriate and apply any security so furnished in or towards payment or satisfaction of all or any money which shall become due from or owing by the licensee to the Board in respect of supply of energy or otherwise under the agreement. The security shall be in the form of 50% cash or Demand Draft and balance as Bank Guarantee from any Nationalised Bank. In the event of the licensee failing to replenish or enhance the security even after demand as stated above it shall be lawful for the Board to disconnect the service even without any further notice and in that event the Board shall not be liable for the loss, if any, sustained by the licensee on that account. The interest on security deposit at Bank rate prevailing as on 1st April of the financial year for which interest is due to CoPT.

4. The Board shall pay the interest on security deposit as mentioned in clause No.3 above at bank rate prevailing as on 1st April of the financial year for which the interest is due to the licensee.

From the above conditions in the draft PPA submitted by CoPT, it can easily be found that there is no provision in the PPA which entitles CoPT for interest on security deposit at double the bank rates. In fact KSEB Ltd has agreed to pay interest on the amount of security deposit provided by CoPT in cash or as Demand Draft irrespective of whether or not the said amount is above 50% of the total cash deposit. It should also be noted that CoPT has not provided for interest on security deposit at double the bank rate, while computing its non-tariff income in the application for approval of ARR and ERC. Therefore the issue raised by CoPT stands settled in accordance with the regulations and the terms and conditions of PPA.

Orders of the Commission

12. In view of the facts and circumstances explained above the Commission issues the following orders.

- (1) CoPT is entitled to get interest on the amount of security deposit provided by it to KSEB Ltd in cash or as Demand Draft irrespective of whether or not the said amount is above 50% of the total security deposit to be provided by CoPT.
- (2) CoPT is not entitled to get interest at double the bank rate as claimed by it and it can claim interest only as per conditions No. 3 and 4 of the PPA proposed by it.

The petition is disposed of with the above directions.

Sd/-

K. Vikraman Nair
Member

Sd/-

S. Venugopal
Member

Sd/-

T.M.Manoharan
Chairman

Approved for issue

Santhosh Kumar.K.B
Secretary