

**KERALA STATE ELECTRICITY REGULATORY
COMMISSION**

THIRUVANANTHAPURAM

Petition No: RP 3/ 2021

Present : **Shri. Preman Dinaraj, Chairman.**
: **Adv. A. J. Wilson, Member (Law).**

In the matter of : **Review petition filed by M/s KSEB Ltd against the Order of the Commission dated 08.07.2021 in OP 21/2021 in the matter of petition filed by M/s Bennett Coleman & Co Ltd seeking tariff applicability for Media Services (Pre-press activities) – Industrial Tariff and waiver of retrospective demand charged from 2014 till 2020**

Petitioner : M/s Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004

Petitioner Represented by : Sri. Edward, AEE, TRAC

Respondent : M/s Bennett Coleman & Co Ltd
Imperial Trade Centre, M.G Road
Kochi – 682035

Respondent represented by : Sri.Sanjeev P ,Regional Head of South, Times of India;
Sri. Aarjay Prakashan,Chief Manager (Legal);
Sri. Shibu, Manager, Kochi

Date of E- Hearing : **18.10.2021, 10.30 AM**

Order dated 15.11.2021 in RP No 3/2021

1. M/s Bennett Coleman & Co Ltd, Times of India Group, is one of the largest media services conglomerates in India having a heritage of over 182 years of publishing and printing the world's largest read English Daily – The Times of India and The Economic Times. They had filed a petition on 16-03-2021 seeking tariff applicability for Media Services (Pre-press activities) – Industrial Tariff and to waive the retrospective demand charges from 2014 till 2020. Following were the prayers of the petitioner:

- (i) *To exempt BCCL being considered as a Consumer under the Commercial category and instead extend the benefits of the revised tariff under Industrial, which has otherwise already been effectuated w.e.f 16.08.2014 and categorize as such (HT/LT Industrial).*
- (ii) *To waive off the Demand Charges of Rs. 32,40,602/- raised by KSEB Ltd vide their Demand Notice No. SOR/HTB 24/5919/2020-21 dated 29.04.2020.*
2. Commission admitted the petition as OP No.21/2021 and conducted hearings on 04.05.2021 and 26.05.2021. The Commission after examining; the petition, the submissions & documents provided by the petitioner and the respondent licensee, the views expressed during hearing, the provisions of the Electricity Act, 2003, Kerala Electricity Supply Code 2014 and the relevant Tariff Orders issued by the Commission, disposed off the petition vide the Order dated 08.07.2021.
3. The order portion of the Commission in Para 34 of the order is quoted below.
- 1) *The tariff applicable to the petitioner consumer from the date of connection (12/2011) is HT IV – Commercial and the tariff fixed by KSEB Ltd. in the Agreement dated 12.12.2011 is correct and in order.*
- 2) *The petitioner and similar industries can raise their concern regarding the tariff categorization, if any, during the tariff determination process for finalizing the tariff for the next 5-year control period (2022-2027).*
- 3) *The Arrear bill issued to the consumer for Rs. 32, 40,602/- vide demand notice dated 29.04.2020 is not in order and is quashed.*
- 4) *KSEB Ltd shall issue a new demand notice/ supplementary bill to the petitioner for collecting the arrear for the revision of tariff, limiting the prior period to two (2) years from 02/2020, without any penal charges. The consumer should remit the revised amount within the next 30 days of issue of the demand without fail.”*
4. Thereafter M/s KSEB Ltd filed a review petition on 18.08.2021 against the Order dated 08.07.2021, in which KSEB Ltd has stated that the Commission has not considered the Judgement of the Hon’ble Supreme Court of India in Civil Appeal No. 1672 of 2020 dated 18.02.2020 - Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla, wherein the following points are discussed: -
- a. the meaning to be ascribed to the term “first due” in Section 56(2) of the Electricity Act, 2003;
- b. In the case of a wrong tariff billing having been applied on account of a mistake, when would the amount become “first due”;

- c. Whether recourse to disconnection of electricity supply may be taken by the licensee company after the lapse of two years in case of a mistake.
5. KSEB Ltd has submitted that in the Judgement of the Hon'ble Supreme Court in the aforesaid Civil Appeal, it is stated that even though, the limitation period of two years under Section 56 (2) had expired, Section 56 (2) did not preclude the respondent KSEB Ltd. to raise the additional demand based on the actual consumption and appropriate tariff. Even after the expiry of the limitation period under Section 56(2), KSEB Ltd can realise the short fall in the electricity charges from the petitioner consumer.
6. KSEB Ltd, in the petition highlighted the term "first due" in para 6.6 from Hon'ble Supreme Court Order in Civil Appeal No 1672 of 2020 (Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla). The relevant portion of Judgement is below:

6. Findings and Analysis

The Electricity Act, 2003 is a consumer-friendly statute. The Statement of Objects and Reasons to the Act notes that over a period of time, the performance of State Electricity Boards had deteriorated on account of various factors, and the need was felt to frame a self-contained comprehensive legislation, which led to the enactment of the Electricity Act, 2003.

6.1 Electricity has been held to be "goods" by a Constitution Bench in State of Andhra Pradesh v. National Thermal Power Corporation Ltd. Under the Sale of Goods Act, 1930 a purchaser of goods is liable to pay for it at the time of purchase or consumption. The quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute.

In the case of electricity, the charges are ascertained and recovered as per the tariff notified by the State Electricity Board, or under an electricity supply agreement between the parties read with the tariff under Section 62(1)(d), and the Electricity Supply Code framed under Section 50.

6.2 The present Civil Appeal pertains to the interpretation of Section 56 of the Act which reads as follows: –

"Section 56. Disconnection of supply in default of payment -
(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and

without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

*a) an amount equal to the sum claimed from him, or
b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,
whichever is less, pending disposal of any dispute between him and the licensee.*

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

Section 56 provides for disconnection of supply in the case of default in payment of electricity charges. Sub-section (1) of Section 56 provides that where any person “neglects” to pay “any charge” for electricity, or “any sum” other than a charge for electricity due from him to a licensee or generating company, the licensee after giving 15 days’ written notice, may disconnect the supply of electricity, until such charges or other sums due, including the expenses incurred, are paid. However, the disconnection cannot continue after the amounts are paid.

6.3 *The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried forward to the next bill as arrears.*

6.4 *The proviso to Section 56(1) carves out an exception by providing that the disconnection will not be effected if the consumer either deposits the amount “under protest”, or deposits the average charges paid during the preceding six months.*

6.5 *Sub-section (2) of Section 56 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being*

in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became “first due”, unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.

The effect of a non obstante clause was explained by this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram. It was held that: –

“69. A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment.”

6.6 The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.

Electricity charges would become “first due” only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

7. The Commission admitted the petition as RP No. 3/2021 and hearing was held through Video Conference on 18.10.2021 at 10:30 AM. KSEB Ltd was represented by Shri. Edward, Assistant Executive Engineer, TRAC and other officers of KSEB Ltd. M/s BCCL was represented by Shri. Sanjeev. P, Regional Head of South, Times of India, Shri. Aarjay Prakashan Chief Manager (Legal) and Shri. Shibu, Manager, Kochi.

Hearing of the Review Petition and the arguments presented

8. Sri Edward, AEE, TRAC, KSEB Ltd made a detailed presentation regarding their arguments for filing the review petition. The arguments put forward by KSEB Ltd are detailed below:

- 1) KSEB Ltd submitted that the Order of the Commission in OP No.21/2021, which limits the collection of arrears for revision of tariff to two years, leads to a loss of Rs. 22.00 lakhs to KSEB Ltd and the Commission will not allow KSEB Ltd to pass on this loss to other consumers.

- 2) In their detailed presentation, KSEB Ltd highlighted the similarities of the issues in the Judgement of the Hon'ble Supreme Court in Civil Appeal No 1672 of 2020 and the Order of the Commission in OP No 21/2021. In the case of Assistant Engineer(D1), Ajmer Vidyut Vitran Nigam Limited in which the wrong tariff billing is for a period of 25 months, the Hon'ble Supreme Court had allowed the Assistant Engineer(D1), Ajmer Vidyut Vitran Nigam Limited to issue additional demand notice to Rahamatullah Khan for the entire period of the wrong tariff billing. But in OP No 21/2021 the wrong tariff billing is for a period of 66 months. However, the Hon'ble Commission in their Order dated 08-07-2021 in OP No.21/2021 had limited the demand notice to 2 years from the date of discovery of wrong tariff.
- 3) The definition of the terms *Limitation period, raising of supplementary demand, recovery of additional demand and additional demand* which is described in Para 8 and 9 of the Hon'ble Supreme Court Order in Civil Appeal No 1672 of 2020 (Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla) is highlighted by KSEB Ltd in detail, which is quoted hereunder:

(8) *Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.*

(9) *Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.*

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

*In Mahabir Kishore and Ors. v. State of Madhya Pradesh,*⁵ this Court held that: –

“Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.”

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e., 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.”

- 4) In the Judgement of the Hon'ble Supreme Court of India dated 5th October 2021 in Civil Appeal No 7235 of 2009 (M/s Prem Cottex vs Uttar Haryana Bijli Vitran Nigam Ltd & Ors.) filed against the Order of National Commission in which wrong application of Multiplication factor, the period accounted for is 3 years.
- 5) The term “first due” is clearly mentioned in the Judgement of the Hon'ble Supreme Court of India dated 5th October 2021 in Civil Appeal No 7235 of 2009, which is quoted hereunder:

*16. Be that as it may, once it is held that **the term “first due” would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that “the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under subsection (2) of Section 56 of the Act”.***

- 6) KSEB Ltd quoted the Judgement of Hon'ble Supreme Court in para 18 of Civil Appeal no 7235 of 2009 which mentions about recovery of additional demand by the Licensee, which is below:

(18).Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in Rahamatullah Khan (supra) is distinguishable on facts.

- 7) In their presentation, it is further stated that any claim made by a licensee after detection of their mistake won't fall within the mischief under section 56(2) as per the Judgement of Hon'ble Supreme Court in para 25 of Civil Appeal no 7235 of 2009. The relevant portion is below:

(25).In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Subsection (2).

- 8) KSEB Ltd quoted the relevant portion of the Hon'ble Supreme Court Judgement in para 22 of Civil Appeal no 7235 of 2009: -

(22). In fact, even before going into the question of Section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that the recourse taken by the licensee for recovery of the amount, can be put to test in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

- 9) Accordingly, M/s KSEB Ltd prayed before the Commission to review "*limiting the prior period to two (2) years from 02/2020, without any penal charges.*" from the Order in O.P No 21/2021, in view of the Judgements of the Supreme Court in Civil Appeal No 1672 of 2020 and Civil Appeal no 7235 of 2009.

9. After the submission of KSEB Ltd before the Commission, M/s BCCL placed the following prayers before the Commission: -

- (i) Allow 15 days' time period for studying the Judgement of the Hon'ble Supreme Court dated 5th October 2021 for filing their counter arguments;
- (ii). KSEB Ltd should not charge interest on M/s BCCL for the belated payments for the arrear charges based on KSEB Ltd demand notice.

10. Based on the request of the parties, the Commission in its daily Order dated 25-10-2021 directed M/s BCCL and KSEB Ltd to submit their counter affidavit and additional details, if any, before the Commission before 29-10-2021, with a copy to the other party and no further time will be allowed.

Response from M/s BCCL Ltd

11. M/s Bennet Coleman & Co Ltd has filed their counter affidavit dated 26th October 2021 in compliance with the Daily Order dated 25-10-2021 of the Commission. M/s BCCL in their counter affidavit submits that the Amicus Curie in the Rahamatulla Khan case has rightly submitted before the Supreme Court that the words "first due" used in the first part of sub-section (2) of Section 56 is used in the context of the sum quantified by the licensee in the bill; while the second part of subsection (2) of Section 56 indicates the date when the first bill for the supply of electricity was raised by the licensee under the applicable State Electricity Supply Code. By treating the words "first due" to mean the date of detection of mistake, would dilute the mandate of the two years limitation period provided by Section 56(2), since a mistake may be detected at any point of time.

12. M/s BCCL further pointed out that as per the Order of Hon'ble Commission dated 08-07-2021 in OP No.21/2021, first due cannot be treated from the date of discovery of mistake and the bill issued after the limitation period of 2 years as per section 56(2) can be treated as a Supplementary bill. M/s BCCL further stated that in these 6 years they have never neglected, nor ignored to pay the sum charged for the energy so consumed as per the original bills issued by the petitioner KSEB Ltd at regular intervals. The order of the Commission is indicated below:

33(ii) Here the arrear bill was issued consequent to the detection of application of wrong tariff after a lapse of 6 years. This arrear bill cannot be considered as a bill of 'first due', since the bill for these months were issued by the licensee in time and the consumer remitted the same then itself. Treating the words 'first due' to mean the date of detection of mistake would be grossly incorrect and contrary to the mandate of the two-year limitation period provided by Section 56(2) of the Electricity Act, 2003. Furthermore, the words 'recoverable as arrears of charges' would

be rendered completely otiose and nugatory. Hence the Commission is of the view that the bill raised in 2020 is a 'Supplementary bill'.

13. The Respondent M/s BCCL in their counter affidavit has also highlighted the portion regarding the recovery of additional demand, pointed out in the Report of the Standing Committee of Energy from para 7.1 of the Hon'ble Supreme Court Order in Civil Appeal No 1672 of 2020 (Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla). The para is reproduced below:

7. *The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.*

7.1 *Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows :-*

"24. Discontinuance of supply to consumer neglecting to pay charge.

(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision: Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act.

The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers, unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that: –

“It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings.”

7.2 *In Swastic Industries v. Maharashtra State Electricity Board,*⁴ this Court while interpreting Section 24 of the Indian Electricity Act, 1910 held that:

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“5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it.”

7.3 *Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues.*

This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.

7.4 *The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.*

If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became “first due”, it would defeat the object of Section 56(2).

14. The respondent M/s BCCL in response to the petitioner KSEB Ltd, stating that with regard to para 8 of the Hon’ble Supreme Court adjudication in Civil Appeal No 1672 of 2020, the Court has only directed that the Appellant Corporation would not be entitled to recover the additional demand for consumption of electricity for the past period from the Respondent and instead only the questions of law would be determined. The relevant portions of the judgement is as below:

(8) Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect

electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

15. It is further stated that, with regard to para 15 of the Hon'ble Supreme Court adjudication in Civil Appeal No 7235 of 2009, the second part of Section 56(2) is an exception to the law of limitation. It further went on to suggest that Sub Section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect.
16. M/s BCCL in their counters highlighted Regulation 152(1) of the Kerala Electricity supply code, 2014 in which the electricity charges short collected should be limited for a maximum period of twenty-four months. The regulation 152 in Electricity Supply Code is reproduced below:

Regulation 152. Anomalies attributable to the licensee which are detected at the premises of the consumer. -

(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period

during which such anomaly persisted is found to be more than twenty-four months.

17. M/s Bennet Coleman & Co Ltd prayed before the Commission to dismiss the review petition in the interest of justice, equity and fair play and to direct KSEB Ltd to refund or adjust the amount recovered and the belated charges with the subsequent bills.

Response from KSEB Ltd

18. In compliance with the Daily Order dated 25-10-2021 of the Commission, the petitioner KSEB Ltd waived off the interests on which M/s BCCL has to be paid for belated payment charges in the demand notice for September 2021 and new demand notice vide number 2102811920205 for Rs. 121097.00 was issued on 21st October 2021.

19. In response to the counter affidavit filed by M/s Bennet Coleman & Co Ltd dated 26th October 2021, KSEB Ltd has further filed their response on 2nd November 2021, which highlighted their initial arguments from the hearing dated 18-10-2021 regarding limitation period, first due and raising additional demand.

Analysis and Comments of the Commission

20. The Commission examined the review petition filed by M/s KSEB Ltd within the stipulated time 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 decisions, directions and orders as per the Code of Civil procedure 1908. The provisions of 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”.

21. The Commission has reviewed the Order of the Hon'ble Supreme Court in the Judgement dated 5th October 2021 in Civil Appeal No 7235 of 2009 (M/s Apex Cottex versus Uttar Haryana Bijli Vitran Nigam Ltd); which clearly describes the definition of the terms 'first due' and 'limitation period'. The Commission has also noted the Hon'ble Supreme Court Order in Civil Appeal No 1672 of 2020 (Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla).

22. The Hon'ble Supreme Court vide Judgement dated 5th October 2021 in Civil Appeal No 7235 of 2009 (M/s Apex Cottex versus Uttar Haryana Bijli Vitran Nigam Ltd) clearly describes that '*first due of electricity charges would come only after bill is issued*' and '*limitation period will commence from date of discovery of mistake*'. The relevant portions mentioning the same in the Judgement, from para 13 and 16 is quoted below:

*13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), **this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).***"

*16. Be that as it may, once it is held that **the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the***

***mistake** (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that “the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under subsection (2) of Section 56 of the Act”.*

23. In para 15 and 18 of the Hon’ble Supreme Court Judgement dated 5th October 2021 in Civil Appeal No 7235 of 2009 mentions about the law of limitation and regarding the recovery of additional demand. The relevant portion is indicated below:

(15) Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.

(18) *Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in Rahamatullah Khan (supra) is distinguishable on facts.*

24. On reviewing the above judgements of the Hon’ble Supreme Court, it is seen that the restriction of 2 years imposed under Section 56(2) of the Electricity Act 2003, does not preclude the licensee from raising and recovering an amount genuinely due, even for periods prior to 2 years. As such the Order of the Commission dated 08-07-2021 in OP No 21/2021, under clause 3 and 4 of para 34, issued in compliance of the provisions of Electricity Act, 2003 and the Kerala Electricity Supply Code, 2014 need to be reviewed. Accordingly, the arrear bill dated 29-04-2020 issued by KSEB Ltd, for a prior period of 66 months need to be treated as in order and the consumer is liable to remit the same.

Orders of the Commission

25. After due consideration of the review petition filed by KSEB Ltd, counter affidavit dated 26-10-2021 filed by M/s Bennet Coleman & Co Ltd, the deliberations during the hearing, Judgement dated 05-10-2021 of the Hon'ble Supreme Court in Civil Appeal No 7235 of 2009, together with the Judgement dated 18-02-2020 of the Hon'ble Supreme Court in Civil Appeal No. 1672 of 2020, the provisions of Electricity Act, 2003 and the related rules/regulations in force, the Commission hereby orders as follows:

- 1) The review petition filed by KSEB Ltd against the Order dated 08-07-2021 in OP No 21/2021 is allowed.
- 2) The Arrear bill issued to the Consumer vide the demand notice dated 29-04-2020 is in order and the same is to be paid by the consumer within 30 days time.
- 3) Interest as per rules will be applicable for the amount due from the date of issuance of the demand notice dated 29-04-2020.
- 4) If the Consumer request for instalment facility to remit the amount, KSEB Ltd may consider the same on usual applicable terms and conditions.

The review petition is disposed off as ordered above.

Sd/-
Adv. A. J. Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
C R Satheesh Chandran
Secretary(i/c)