

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**
Shri. S. Venugopal, Member
Shri. K. Vikraman Nair, Member

OP No. 49/19

In the matter of : WP (C) 37629/18 of High Court of Kerala filed by
Sri M. Chempakamuthu

Petitioner : Sri. M. Chempakamuthu, S/o. Marippan, Managing
Partner, Representing Thasleej Ice and Cold Storage,
Kallekkad P.O Shornour Road, Palakkad.

Petitioner represented by : Sri M. Chempakamuthu
Adv. Rajendrakumar M

Respondent : Kerala State Electricity Board Limited

Respondent represented by : Sri. KGP Namboothiri, EE (TRAC), KSEBL
Sri. Rajesh R, AEE (TRAC), KSEBL

Order dated 3.12. 2019

1. The Principal Secretary to the Government, Power Department, Government of Kerala, vide the letter dated 18.02.2019, forwarded a copy of the judgment of the Hon'ble High Court dated 22.11.2018 in WP(C) No. 37629 of 2018 before the Commission for further necessary action. The relevant portion of the judgment of the Hon'ble High Court is extracted below for ready reference.

“ 10. For the afore reason, though I do not feel it necessary to set aside Ext.P7, since I had not gone into the merits of its contents, I deem it appropriate to refer this matter to the Commission who can decide upon the validity of Ext.P7 order, taking note of the specific factual factors involved and after affording an opportunity of being heard to the petitioner as well as to the competent Authority of the KSEB, as expeditiously as possible but not later than two months from the date of receipt of WP(C).No. 37629 of 2018 6 a copy of this judgment. It is so ordered.

11. Once the Commission takes a decision as to the validity of Ext.P7, taking note of the petitioner's contentions that they are entitled to the lower tariff under LT-IV A because the cold storage is not a commercial venture, the parties will adhere to and abide by such decision, subject to their available remedies; and needless to say, if the decision is in favour of the KSEB, they will be entitled to enforce Ext.P7 order, again subject to the remedies available to the petitioner in law against such orders.

At this time, the learned standing counsel for the KSEB points out that the petitioner is still enjoying the lower tariff under interim orders of this Court and therefore, that if the Commission takes a view against the petitioner, they will be at liberty to enforce the higher tariff against him. I am certain that it does not require this Court to clarify this because, it goes without saying that the parties will stand regulated by the order of the Commission to be passed in terms of this judgment, subject to their available remedies in law.”

2. The Commission examined the judgment in detail and noted the following.
 - (i) Sri. Chempakamuthu, the petitioner in the WP(C) No. 37629/2018 (hereinafter referred to as the petitioner) is an electricity consumer of KSEB Ltd (herein after referred to as the respondent) with consumer No. 6793 in Parali Section, Palakkad District, running a cold storage.
 - (ii) KSEB Ltd, the incumbent distribution licensee is the 1st respondent supplying power to the petitioner.
 - (iii) The Exhibit P7 is the proceedings No. LA/7940/2012/2014 dated 02.11.2018 of the Secretary (Administration) of the 1st respondent KSEB Ltd, consequent to the Judgment in WP (c) No. 10516/2018 dated 5.7.2018.
3. The Commission vide its letters dated 12.03.2019, forwarded a copy of the judgement of the Hon'ble High Court of Kerala to the petitioner Mr. Chempakamuthu, and respondent KSEB Ltd, and directed the petitioner and respondent to submit a copy of the Exhibit P7 and other documents presented before the Hon'ble High Court of Kerala in WP(C) No. 37629 of 2018.
4. First hearing on the matter has held on 26.03.2019. During the hearing, the Advocate of Sri. Chempakamuthu submitted an application for leave and the Commission granted the same. Sri. Bipin Sankar, Deputy Chief Engineer, KSEB Ltd requested some more time to submit the details sought by the Commission. The Commission granted two weeks time to submit the details.
5. In compliance of the directions of the Commission, the respondent KSEB Ltd submitted the details on 03.04.2019. The petitioner in WP(C) 37629/2018 submitted the details on 20.05.2019. KSEB Ltd, vide the letter dated 05.07.2019

submitted the comments on the details submitted by the petitioner Mr. Chempakamuthu.

6. Based on the details submitted by the petitioner and KSEB Ltd, the issues involved in the subject matter is summarised below.
- (i) Sri. Chempakamuthu, an electricity consumer of KSEB Ltd with consumer No. 6793 in Parali Section, Palakkad District, running a cold storage is the petitioner in the WP(C) No. 37629/2018. The service connection was availed in the year 1999.
 - (ii) As per the tariff order dated 14.05.1999, the ice factories with or without cold storage was categorised under LT-IV Industrial tariff. Further, the cold storage also categorised under LT-IV Industrial tariff. But the 'commercial cold storages' are categorised under LT-VII A commercial tariff. This categorisation of tariff was in force till 30.11.2007.
 - (iii) The Commission vide the tariff order dated 26th November 2007 in petition TP No. 23 of 2006 and TP 30 of 2007, had re-categorised the cold storages including the commercial cold storages under LT-VII (A). The Commission had approved the tariff, based on the petition filed by KSEB Ltd and after completing all the procedure formalities including pre-publication for inviting comments of the stake holders, conducting public hearings etc. The Commission had re-categorised the tariff, as per the statutory powers conferred on it as per the Section 62(3) of the Electricity Act, 2003. The revised tariff was applicable from 01.12.2007 onwards.
 - (iv) The petitioner challenged the Tariff order dated 26th November 2007 categorising the cold storages under LT-VII (A) category, before the Hon'ble High Court as WP(c) No. 10516/2008. Hon'ble High Court stayed the operation of the change in tariff as far as the petitioner is concerned.
 - (v) In the meanwhile , the APTS wing of KSEB on 06.03.2008 conducted an inspection at the premises of the petitioner and detected that the cold storage of the consumer was for stocking the fruits and vegetables in cold storages for leading fruit trading companies such as M/s AFRA traders, M/s Mithu Traders and M/s Minnu traders. The rent for renting the item was Rs 1100/- per ton per month. According to KSEB, the consumer was engaged in commercial activity and the petitioner is liable to pay electricity charges at LT-VII (A) from the date of connection on 19.10.1999. Accordingly, a short assessment bill for an amount of Rs 85,94,906/- has been issued to the consumer on 27.03.2008, being the difference in tariff of LT-IV to LT-VII(A) for the period from 12.10.1999 to 31.10.2008.
 - (vi) According to the petitioner, the short assessment dated 27.03.2008 were issued without notice and without hearing the affected party. The findings

of the APTS and the rules applied are erroneous. So, the petitioner challenged the bill dated 27.03.2008 before the Hon'ble High Court as IA 0715/2008 in the same WP (c) No. 10516/2008.

- (vii) In the meantime, the petitioner approached KSEB Ltd to change the supply voltage from LT to HT. However, KSEB Ltd rejected the same on the ground that the petitioner had arrears with KSEB, and as per the Regulation 99(4) of the Supply Code, 2014, 'the application for enhancement of load shall not be considered if the consumer is in arrears of payment of dues payable to the licensee'.
- (viii) Subsequently, Hon'ble High Court vide the judgment dated 5th June 2018 in WP (C) No. 10516 of 2008 disposed the petition with the following directions.

4. This Court is of the view that, if there is a category change, the Board has to intimate the petitioner about such category change and thereafter only a demand can be raised. There is no doubt that such demand can be raised only after giving notice to the petitioner. The Honourable Supreme Court in the case of B.K Srinivasan v. State of Karnataka [1987 AIR 1059] held "Where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and conditions made to it by various processes."

Therefore, this Court is of the view that appropriate decision shall be taken in the light of the change of tariff, after hearing the petitioner. Till then petitioner shall be permitted to continue to pay at the old tariff rate (LT-IV).

- (ix) In compliance of the judgment of the Hon'ble High Court dated 5th June 2018, the Secretary (Administration) of the respondent KSEB Ltd, heard the petitioner and taken the following decisions vide the proceedings LA.V/7940/2012 dated 02.11.2018.

- (1) *The back arrear from date of connection (12.10.1999) up to the date of detection of error (06.03.2008) in tariff shall be limited to the principle amount payable.*
- (2) *The interest on arrears from the date of connection up to the date of detection of error shall be fixed as the personal liability of officials who made the mistake by categorizing the firm in wrong tariff and to recover from them.*
- (3) *The tariff applicable to commercial Cold Storage in LT VII (A) category shall be levied from 6.3.2008 the date of detection of error.*
- (4) *The interest at the rate applicable shall be levied on the arrear after the detection of error in tariff categorization.*

(5) *The petitioner consumer shall be given an opportunity to avail the benefit of One Time Settlement to settle the entire arrears, if he desires so.*

(x) The petitioner challenged the proceedings of the KSEB Ltd dated 02.11.2018 before the Hon'ble High Court of Kerala, as WP(C) No. 37629 of 2018. Hon'ble High Court vide the judgment dated 22.11.2018 has disposed the matter, and the relevant portion of the judgment of the Hon'ble High Court is extracted under paragraph-1 above.

7. The Commission conducted second hearing on the matter 09.07.2019 at the Court hall of the Commission. Adv. Rajendra Kumar, presented the petition on behalf of the petitioner and Sri. K.G.P Nampoothiri, Executive Engineer, presented the matter on behalf of KSEB Ltd.

8. During the hearing, the petitioner submitted the following.

(i) The cold storage established by the petitioner is the sole unit in the State which stores, the agricultural products, viz, fruits and vegetables. In certain other states like Tamil Nadu such cold storage are classified under agricultural tariff. The agricultural products of the farmers are kept for one or two months and no deep freezing carried out. The temperature is maintained at around 4⁰C.

(ii) Till the Commission re-classifying the cold storages under LT-VII (A) vide the tariff order dated 26.11.2007, LT IV tariff was assigned to cold storages. Only from 01.12.2007, these cold storages come under commercial category.

(iii) The findings of the APTS inspection held in March 2008, and decision to levy electricity charges at LT VII A commercial tariff from the date of connection in 1999 is wrong. Further, the Commission in its order dated 28.1.2013, has clarified that, back arrears cannot be recovered based on the inspection of the APTS.

(iv) Though the petitioner had approached KSEB Ltd to change the connection from LT to HT, KSEB Ltd rejected the request since the petitioner is having arrears with the licensee.

It is also submitted that the HT connection requested by the consumer is also not sanctioned due to pending arrears.

9. The representative of KSEB Ltd submitted the following.
- (i) The petitioner admitted the fact that, as per the Tariff Order dated 26.11.2007, applicable from 01.12.2007, the petitioner is categorised under LT-VII (A) Commercial tariff.
 - (ii) As per Kerala Electricity Supply Code, 2005, if the licensee establishes that the consumer is undercharged, the licensee can claim the difference in tariff from the consumer. On Inspection, it is found that from beginning itself the consumer is engaged in the same activity of storing materials from different uses on rental basis.
10. Based on the deliberations during the hearing, the Commission directed the petitioner in WP(C) No. 37629 of 2019 and the respondent KSEB Ltd for immediate compliance as below:
- (1) *From the date of connection in 1999, to till date, the petitioner and KSEB Ltd shall submit, the Month wise details of the connected load, energy consumption, fixed charge & energy charge payable at LT IV Industrial tariff, the fixed charge and energy charge payable at LT VII (A) Commercial tariff.*
 - (2) *The monthly details of the arrears claimed by KSEB till date as per the invoices raised so far (the principal and interest including the rate of interest claimed shall be shown separately).*
 - (3) *The Writ Petitions so far filed by the petitioner, before the Hon'ble High Court against the Tariff Orders of the Commission dated 26.11.2007 and against the back arrears claimed by KSEB Ltd in March 2008 and other related issues. The details of the disposals of the Writ Petition by the Hon'ble High Court including the copy of the judgment of the Writ Petition shall be submitted to the Commission.*
 - (4) *Date of application and other details submitted by the petitioner to KSEB Ltd to change the tariff category from LT to HT.*
 - (5) *Any other details deem fit for disposing the matter.*
11. In compliance of the daily order, KSEB Ltd submitted the details on 16.09.2019 and the petitioner submitted the details on 16.10.2019.

Analysis and Decision

12. The Commission examined in detail the directions contained in the Judgment of the Hon'ble High Court dated 22nd November 2018 in WP(C) No. 37629 of 2008 , and the documents submitted by the petitioner in WP(C) No. 37629 of 2008 and the respondent KSEB Ltd.
13. Before going into the issues specific issues related to the petitioner, the Commission hereby clarify the powers and authority of the Commission as per the provisions of the Electricity Act, 2003 for tariff determination.

- (i) Kerala State Electricity Regulatory Commission (KSERC) (herein after referred as KSERC or Commission) is a quasi judicial body functioning as per the provisions of the Electricity Act, 2003. The Government of Kerala established the KSERC in November 2002 as per the Section 17 of the Electricity Regulatory Commission Act 1998. Subsequently, after the enactment of the Electricity Act, 2003 in June 2003, as per the first proviso to the Section 82 of the Electricity Act, 2003, KSERC has been continuing as the State Commission for the purposes of the Electricity Act, 2003.
- (ii) As per the Section 86 (1) (a) of the Electricity Act, 2003 read along with the Section 61, 62 and 64 of the Electricity Act, 2003, determination of tariff is one of the statutory functions of the Commission. Section 86(1) (a) of the EA-2003 is extracted below for ready reference.

“86. (1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State”

- (iii) Section 64 of the Electricity act, 2003 prescribe the procedure for issuing tariff order by the Commission, which is extracted below for ready reference.

“64. (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public, -

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor:

(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

- (iv) Section 62(3) of the EA-2003 empower the Commission to differentiate the electricity consumers based on the purpose of the usage of electricity etc. The relevant Section is extracted below.

“62(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

14. After the constitution of this Commission in November, 2002, KSEB filed a detailed proposal for revision and recategorization of tariff in the State on 23.04.2007. The Commission admitted the petition as TP 30 of 2007 and published its abstract in two Malayalam dailies and one English dailies. The Commission conducted Public hearings on the petition at three places viz., MNR Hall, TB Road, Palakkad on 16-10-07 , Municipal Conference Hall, Aluva on 17-10-2007 and Commission's Office at Thiruvananthapuram on 18-10-07. Duly considering the deliberations during the public hearing, written comments of the stake holders as per the provisions of the Electricity Act, 2003, the Commission

on 26.11.2007, approved the retail tariff applicable to all consumers with effect from 01.12.2007. The Commission uploaded the order at its website, published its abstract through dailies, directed the licensees also to upload it at their website.

15. As per the Section 45 of the Electricity Act, 2003, the distribution licensees has to levy the electricity charges from the consumers at the Tariff determined by the Commission from time to time. The relevant Section is extracted below for ready reference.

“45. (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include - (a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.”

16. As per the details available before the Commission, there are about 83 lakhs consumers availing electricity supply from KSEB during the year 2006-07. It is not practical and possible to issue notice to each consumers before raising invoices for electricity charges as ordered by the Commission from time to time. As per the Section 45(2)(b) of the Electricity Act, 2003, the Commission and the licensee has to publish the details of the electricity charges and prices for the information of the consumers of the State.

The Schedule and Terms and Conditions for Retail Supply by KSEB with effect from 01.12.2007 was published in the official Gazette of the State Government on 27th November 2007 (Kerala Gazette Vol. 52, No. 2148, Extra Ordinary dated 27.11.2007). Further, the tariff orders dated 26.11.2007 and the schedule and terms and conditions are available in the websites of the Commission and the licensee has also published the same in its website. Hence, individual notices are not required to issue to the consumers before raising invoices of the electricity charges to the consumers as per the tariff orders issued by the Commission from time to time.

Subsequently, the Commission made full-fledged tariff revisions, vide its orders dated 25.07.2012, 30.04.2013, 14.08.2014, 17.04.2017 and 08.07.2019. In all these tariff orders, the cold storages are classified under LT-VII (A) commercial category.

Tariff applicable to cold storages before the tariff order dated 26.11.2007 and after the tariff order dated 26.11.2007

17. As stated earlier, the State Government constituted this Commission in November 2002. Before the constitution of the Commission, KSEB had been determining the tariff as per the provisions of the Electricity (Supply) Act, 1948, with the approval of the State Government.
18. As per the tariff order dated 14.05.1999, notified by KSEB, the ice factories with or without cold storage is categorised under LT-IV Industrial tariff. Further, the cold storage also categorised under LT-IV Industrial tariff. But the 'commercial cold storages' are categorised under LT-VII A commercial tariff. This categorisation of tariff was in force till 30.11.2007.

However, the term 'commercial cold storage' was not defined clearly in the tariff order notified by the KSEB.

19. After the constitution of the Commission in November 2002, only on 23.04.2007, the incumbent licensee KSEB filed a full fledged petition for tariff revision before the Commission, wherein KSEB has proposed to classify all the cold storages, which was earlier categorised under industrial LT-IV categories also under LT-VII commercial category. The consumers grouped under LT-VII (A) Commercial categories as per the Tariff order of the Commission dated 26.11.2007, which is extracted below.

"Tariff for commercial consumers such as display lights, cinema studios, commercial premises, hotels and restaurants (having connected load exceeding 1000 W), showrooms, business houses, private hostels/ lodges/guest/rest houses, freezing plants, cold storages, milk chilling plants, bakeries (without manufacturing process), audio/video cassette recording/duplication units, CD recording units, self financing educational institutions (including hotels), petrol/diesel/LPG/CNG bunks, automobile service stations, all construction works, installations of cellular mobile communications/cable TV networks, satellite communications, offices/exchanges of telecom companies, offices or institutions of AIR, Doordarshan, radio stations, insurance companies, call centers and marble cutting units, agricultural nurseries (with sale) and units carrying out filtering and packing and other associated activities using extracted oil brought from outside."

Accordingly, from 01.12.2007 onwards, all the cold storages are categorised under LT-VII (A) Commercial category.

20. As per the Section 111 of the Electricity Act, 2003, any person aggrieved by the tariff order of the Commission dated 26.11.2007 has to prefer an appeal before Hon'ble Appellate Tribunal for Electricity, New Delhi. The relevant Section of the Electricity Act, 2003 is extracted below.

"111. (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:"

M/s Binani Zinc, an EHT consumer only filed appeal before the Appellate Tribunal for Electricity against the tariff order of the Commission dated 26.11.2007, as Appel No. 08 of 2008. Hon'ble Appellate Tribunal vide the judgement dated 8th November 2010 dismissed the appeal petition. Accordingly, there was no statutory stay on the operation of the Tariff order dated 26.11.2007, except few individual stay granted by the Hon'ble High Court till final disposal of the appeal filed against the invoices raised by the licensees as per the revised tariff as per the order dated 26.11.2007.

21. As mentioned earlier, in the subsequent tariff orders dated 25.07.2012, 30.04.2013, 14.08.2014, 17.04.2017 and 08.07.2019, the cold storages are classified under LT-VII (A) commercial category. All these tariff orders are issued after previous publication, public hearings and duly considering the views expressed by the stakeholders. Implementation of any of these tariff orders were not stayed by the higher courts including the Hon'ble High Court and Hon'ble Appellate Tribunal for Electricity, New Delhi.

Issues raised by the petitioner in WP (C) No. 37629 of 2018

22. Sri. Chempakamuthu, the writ petitioner WP(C) No. 37629/2018 is an electricity consumer with consumer No. 6793 in Parali Section, Palakkad District, running a cold storage. The service connection was effected on 12.10.1999, and the petitioner is categorised under LT-IV Industrial tariff.
23. As stated earlier, the Commission vide the tariff order dated 26.11.2007, re-categorised all cold storages from LT-IV Industrial tariff to LT-VII (A) Commercial tariff. Accordingly, the cold storage run by the petitioner also brought under Commercial category. The petitioner challenged the Tariff order dated 26th November 2007 categorising the cold storages under LT-VII (A) category, before the Hon'ble High Court as WP(c) No. 10516/2008. Hon'ble High Court stayed the operation of the change in tariff as far as the petitioner is concerned.

24. In the meanwhile, the APTS wing of KSEB on 06.03.2008 conducted an inspection at the premises of the petitioner and detected that the cold storage of the consumer was for stocking the fruits and vegetables for leading fruit trading companies such as M/s AFRA traders, M/s Mithu Traders and M/s Minnu traders. The income for renting the item was Rs 1100/- per ton per month. According to KSEB, the consumer was engaged in commercial activity and the petitioner is liable to pay electricity charges at LT-VII (A) from the date of connection on 19.10.1999. Accordingly, a short assessment bill for an amount of Rs 85,94,906/- has been issued to the consumer on 27.03.2008, being the difference in tariff of LT-IV to LT-VII(A) for the period from 12.10.1999 to 31.10.2008.
25. According to the petitioner, the short assessment dated 27.03.2008 were issued without notice and without hearing the affected party. The findings of the APTS and the rules applied are erroneous. So, the petitioner challenged the bill dated 27.03.2008 before the Hon'ble High Court as IA 0715/2008 in the same WP (c) No. 10516/2008.
26. Hon'ble High Court vide the judgment dated 5th June 2018 in WP (C) No. 10516 of 2008 disposed the petition with the following directions.

This Court is of the view that, if there is a category change, the Board has to intimate the petitioner about such category change and thereafter only a demand can be raised. There is no doubt that such demand can be raised only after giving notice to the petitioner. The Honourable Supreme Court in the case of B.K Srinivasan v. State of Karnataka [1987 AIR 1059] held "Where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and conditions made to it by various processes."

Therefore, this Court is of the view that appropriate decision shall be taken in the light of the change of tariff, after hearing the petitioner. Till then petitioner shall be permitted to continue to pay at the old tariff rate (LT-IV).

27. In compliance of the judgment of the Hon'ble High Court dated 5th June 2018, the Secretary (Administration) of the respondent KSEB Ltd, heard the petitioner and taken the following decisions vide the proceedings LA.V/7940/2012 dated 02.11.2018.

(1) The back arrear from date of connection (12.10.1999) up to the date of detection of error (06.03.2008) in tariff shall be limited to the principle amount payable.

(2) The interest on arrears from the date of connection up to the date of detection of error shall be fixed as the personal liability of officials who made the mistake by categorizing the firm in wrong tariff and to recover from them.

(3) The tariff applicable to commercial Cold Storage in LT VII (A) category shall be levied from 6.3.2008 the date of detection of error.

(4) The interest at the rate applicable shall be levied on the arrear after the detection of error in tariff categorization.

(5) The petitioner consumer shall be given an opportunity to avail the benefit of One Time Settlement to settle the entire arrears, if he desires so.

28. The petitioner challenged the proceedings of the KSEB Ltd dated 02.11.2018 before the Hon'ble High Court of Kerala, as WP(C) No. 37629 of 2018. Hon'ble High Court vide the judgment dated 22.11.2018 has disposed the matter, with the following directions to the Commission.

“ 10. For the afore reason, though I do not feel it necessary to set aside Ext.P7, since I had not gone into the merits of its contents, I deem it appropriate to refer this matter to the Commission who can decide upon the validity of Ext.P7 order, taking note of the specific factual factors involved and after affording an opportunity of being heard to the petitioner as well as to the competent Authority of the KSEB, as expeditiously as possible but not later than two months from the date of receipt of WP(C).No. 37629 of 2018 6 a copy of this judgment. It is so ordered.

11. Once the Commission takes a decision as to the validity of Ext.P7, taking note of the petitioner's contentions that they are entitled to the lower tariff under LT-IV A because the cold storage is not a commercial venture, the parties will adhere to and abide by such decision, subject to their available remedies; and needless to say, if the decision is in favour of the KSEB, they will be entitled to enforce Ext.P7 order, again subject to the remedies available to the petitioner in law against such orders.

At this time, the learned standing counsel for the KSEB points out that the petitioner is still enjoying the lower tariff under interim orders of this Court and therefore, that if the Commission takes a view against the petitioner, they will be at liberty to enforce the higher tariff against him. I am certain that it does not require this Court to clarify this because, it goes without saying that the parties will stand regulated by the order of the Commission to be passed in terms of this judgment, subject to their available remedies in law.”

29. Accordingly, as per the direction of the Hon'ble High Court in WP (C) No. 37629 of 2018, the Commission has to examine the validity of the Exhibit P7, i.e, the proceedings of the Secretary, Administration of KSEB Ltd, which is extracted under paragraph 26 above.

30. The Commission examined the entire issue in detail, and its findings are given below.

(1) As per the Tariff order dated 26.11.2007, published in the official Gazette of the State Government on 27th November 2007 (Kerala Gazette Vol. 52, No. 2148, Extra Ordinary dated 27.11.2007), with effect from 01.12.2007

onwards, all the cold storages in the State are categorised under LT-VII (A) Commercial tariff.

As already stated, in the subsequent tariff orders dated 25.07.2012 applicable from 01.07.2012, tariff order 30.04.2013 applicable from 01.05.2013, tariff order dated 14.08.2014 applicable from 16.08.2014, tariff order dated 17.04.2017 applicable from 18.04.2017 and tariff order dated 08.07.2019 applicable from 08.07.2019, the cold storages are classified under LT-VII (A) commercial category. All these tariff orders are issued after previous publication, public hearings and duly considering the views expressed by the stakeholders. During the deliberations of these tariff orders, the petitioner or similarly placed consumers have not raised any issues on categorising the cold storages under LT-VII (A) Commercial category. As per the available information, implementation of these tariff orders were not stayed by the higher courts including the Hon'ble High Court and Hon'ble Appellate Tribunal for Electricity, New Delhi. Hence applicability of all the above tariff orders reaches finality with respect to period of its applicability is concerned.

Accordingly, the tariff applicable for the cold storage run by the petitioner in WP(C) No. 37629 of 2018, Mr. Chempakamuthu, with consumer No.6793 in Parali Section, Palakkad district, shall be LT-VII(A) Tariff with effect from 01.12.2007 onwards.

- (2) The petitioner Mr. Chempakamuthu, running a cold storage at Parali, Palkkad, bearing consumer No. 6793, had availed the service connection on 12.10.1999. Since the date of connection, the licensee KSEB categorised the consumer under LT-IV Industrial tariff.

As already mentioned, as per the tariff order dated 14.05.1999, the ice factories with or without cold storage is categorised under LT-IV Industrial tariff. Further, the cold storage also categorised under LT-IV Industrial tariff. But the 'commercial cold storages' are categorised under LT-VII A commercial tariff. This categorisation of tariff was in force till 30.11.2007.

Hence, if the petitioner in WP(C) 37629 of 2018 or similarly placed consumers engaged in commercial cold storage, the licensee KSEB could have changed their tariff from LT-IV Industrial tariff to LT-VII (A) commercial tariff.

It is also a fact that, the officials of the licensee KSEB in the rank of sub Engineer, has been visiting the premises of the consumer every month since the date of connection. Further, the licensee KSEB Ltd has full fledged Anti Power Theft Squad with them. However, the licensee could not detect any unauthorised use till the Commission re-categorised the cold storages from LT-IV Industrial category to LT-VII (A) commercial category vide the tariff order dated 26.11.2007.

Accordingly, the applicable tariff of the petitioner from the date of connection i.e., from 12.10.1999 till the date of the implementation of the tariff order dated 26.11.2007, i.e. upto 30.11.2007 is LT-IV Industrial tariff.

31. Commission noted that, the entire controversy aroused mainly on account of the inspection of the APTS wing of KSEB on 06.03.2008 and subsequent short assessment bills of Rs 85,94,906/- (Rupees eighty five lakh ninety four thousand nine hundred six only) charging the petitioner at LT VII (A) Commercial category from the date of inspection. The main issue here is that, the APTS wing of the licensee carried out the inspection after the Commission re-categorised the consumer from the LT-IV Industrial to LT-VII (A) Commercial category.

The Commission noted that, the APTS wing of the licensee could not convincingly establish that, the petitioner is being carrying out any commercial cold storage. Since the date of connection, the tariff order dated 14.05.1999 was notified by KSEB itself with the approval of the State Government, wherein the term 'commercial cold storage' was not properly defined anywhere. With the details placed before the Commission, the licensee could not establish the fact that a commercial activity is being carried on by the petitioner.

Considering these reasons, the applicable tariff for the cold storage run by the petitioner in WP(C) No. 37629 of 2018, Mr. Chempakamuthu, with consumer No.6793 in Parali Section, Palakkad district is LT-IV Industrial Tariff from the date of connection from 12.10.1999 till 30.11.2007.

32. As already stated under paragraph 30(1) above, the petitioner has to be charged under LT-VII (A) Tariff with effect from 01.12.2007, as per the Tariff order dated 26.11.2007 applicable from 01.12.2007, and subsequent tariff orders dated 25.07.2012 applicable from 01.07.2012, tariff order 30.04.2013 applicable from 01.05.2013, tariff order dated 14.08.2014 applicable from 16.08.2014, tariff order dated 17.04.2017 applicable from 18.04.2017 and tariff order dated 08.07.2019 applicable from 08.07.2019.

However, on account of the stay granted by the Hon'ble High Court, the petitioner is still charged under LT-IV (A) Industrial tariff instead of LT-VII (A) commercial tariff from 01.12.2007 till date. Hence it is clarified that, the respondent KSEB Ltd shall raise the arrears of electricity charges with effect from 01.12.2007 onwards, on monthly basis, till date as the difference in tariff between LT-VII(A)Commercial Tariff and LT-IV Industrial tariff. The respondent KSEB Ltd may also levy simple interest at the rate specified in the order of the Commission dated 17.09.2019. It is also directed that, as a special case, KSEB Ltd may grant instalment facility to the consumer up to 24months at the interest rates specified in the order dated 17.09.2019.

33. During the deliberations of the subject matter, the petitioner submitted that, KSEB Ltd rejected their request to change the supply voltage from LT to HT. During the hearing KSEB Ltd clarified that, as per the Regulation 99(4) of the Supply Code, 2014 provide as follows.

'the application for enhancement of load shall not be considered if the consumer is in arrears of payment of dues payable to the licensee'.

However, in the case of the petitioner, the arrears mainly on account of the stay on the implementation of the tariff orders issued by the Hon'ble High Court. It is not justifiable to deny the petitioner the opportunity to convert his supply voltage from LT to HT, because of the stay order issued by an appeal authority. Hence, it is directed that, within one month from the date of this order, KSEB Ltd shall take steps to convert the supply voltage of the petitioner from LT to HT and levy electricity charges at the appropriate tariff as per the Tariff order dated 08.07.2019. KSEB Ltd shall report the compliance within 45 days from the date of this order.

KSEB Ltd shall also convert the petitioner's connection from LT to HT once an application for the conversion is received from the petitioner.

Order of the commission

34. The Commission after examining the Judgment of the Hon'ble High Court dated 22nd November 2018 in WP(C) No. 37629 of 2008 , and the documents and other details placed by the petitioner in WP(C) No. 37629 of 2008 and the respondent KSEB Ltd, and also duly considering the deliberations during the hearings conducted on 09.07.2019, the Commission hereby orders the following.

- (1) The tariff applicable for the cold storage run by the petitioner in WP(C) No. 37629 of 2018, Mr. Chempakamuthu, with consumer No.6793 in Parali Section, Palakkad district is 'LT-IV Industrial Tariff' from the date of connection on 12.10.1999 till 30.11.2007.
- (2) The tariff applicable for the cold storage run by the petitioner in WP(C) No. 37629 of 2018, Mr. Chempakamuthu, with consumer No.6793 in Parali Section, Palakkad district, shall be LT-VII(A) Commercial Tariff with effect from 01.12.2007 onwards.
- (3) KSEB Ltd shall raise the arrears of electricity charges on monthly basis from 01.12.2007 onwards as the difference between the applicable LT-VII (A) Commercial Tariff and LT-IV Industrial tariff.
- (4) KSEB Ltd shall also levy simple interest on the arrears of electricity charges from 01.12.2007 onwards at the interest rate specified in the OTS order dated 17.09.2019
- (5) KSEB Ltd shall also grant installment facility upto 24 months if requested by the petitioner, at the interest rate of 14% specified in the OTS order dated 17.09.2019.

The petition disposed off.

Sd/-

**K. Vikraman Nair
Member**

Sd/-

**S. Venugopal
Member**

Sd/-

**Preman Dinaraj
Chairman**

Approved for issue

G Jyothichudan

Secretary