

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No 37/2020

First Hearing on :29.12.2020
Second hearing on :28.01.2021

In the matter of : Petition filed in compliance to the judgement of the Hon'ble High Court dated 16-10-2018 in Writ Appeals WA Nos.1448 & 1482 of 2017 for determination of tariff of individual consumers..

Petitioner : Kerala State Electricity Board Ltd.

Petitioner represented by: Sri.K.G.P. Nampoothiri, Executive Engineer

Respondents : 1. Sri. Mujeeb Rehman. A, Proprietor, The Xtra Food Products, Aroorkutty.
2. Sri Radhakrishnan. T. K, Rayiga House, Thenhilapalam P.O.

Respondents represented by : 1. Sri. Mujeeb Rehman. A
2. Sri. Radhakrishnan. T.K

Order dated 25.02.2021

1. Ms. Kerala State Electricity Board Ltd (hereinafter referred to as the petitioner or KSEB Ltd), on 18.11.2020, filed a petition before the Commission with the following prayers.

*“The Hon'ble Commission may be pleased to allow the Applicant to realise the reasonable expenditure incurred for providing electric supply **to the respondents as well as all similarly placed applicant/consumers** as per the methodology described under paragraph 10.19 of this application in order to meet the ends of justice as held by the Hon'ble High Court. “*

KSEB Ltd filed the petition, in compliance of the judgment of the Division Bench of the Hon'ble High Court dated 16.10.2018 in Writ Appeal Petitions WA No. 1448 of 2017 and 1482 of 2017. The relevant portion of the judgment of Hon'ble High Court is extracted below.

“5. Regulation 35 speaks of expenditure for extension or upgradation or both of the distribution system to be borne by the licensee. Regulation 37 speaks of expenditure for service line, plant etc., for providing supply. We are of the opinion that the distinction is in so far as the expenditure incurred for extension or upgradation of the distribution system has to be under Regulation 35. We do not get a clear definition of the plant from any of the enactments or the Regulation. Though in general terms transformer is a plant; it is also a part of the distribution system. Hence the expenditure incurred for installation of a dedicated transformer is for the purpose of upgradation of the distribution system which is covered under Regulation 35 and 36. We also notice that the requirement for an additional dedicated transformer arises from the finding of the Board under Regulation 36 of the Supply Code. Hence the provision applicable insofar as reimbursement of expenditure is Regulation 35.

6. Though the learned Single Judge found the case of the units covered by Regulation 35; it was also found that the Board has to meet the expenses. Regulation 35 as extracted in the judgment of the learned Single Judge itself indicates that the expenditure would be borne by the distribution licensee which can be recovered from the consumers through Tariff as approved by the Commission. The Board hence would have to approach the Commission for the purpose of determination of higher Tariff in the case of the writ petitioners who have a dedicated transformer set up for their demand/additional demand. This would not in any way affect the general Tariff determination for the individual respondents which has to be under that category of the consumer; as brought out by the Commission, periodically. The writ petitioners would have to pay the Tariff under such general Tariff determination Order but would also have to pay the additional amounts for the purpose of setting off the expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide on the amounts with reference to the expenditure incurred; with notice to the units. In such circumstances, the Board has to install the transformer at their costs and then approach the Commission for determination of individual Tariffs with respect to the two units.

7. The Judgment of the learned Single Judge is interfered with to the above extent. The respondents shall give consent to the Board for fixation of Tariff as indicated herein above, in their individual cases for the purpose of reimbursement of expenses on which the Board shall carry out installation of the transformer and then approach the Commission for fixation of Tariff. Even when the matter is pending before the Commission, the writ petitioners shall pay Tariff on the general fixation by the Commission under the category in which they are covered.”

2. Summary of the petition filed by KSEB Ltd is given below.

- (1) 1st respondent Sri Mujeeb Rahman is an LT industrial consumer with a contract demand of 50 kVA, under Electrical Section, Arookutty in Alappuzha District, running an industrial unit in the name and style 'The Xtra Food Products'.

- (2) 2nd respondent, Sri. Radhakrishnan T.K, herein a new applicant for electrical connection under Electrical Section, Chelari in Kozhikode District, applied for electricity supply to start a catering unit.
- (3) The 1st respondent Sri Mujeeb Rahman is having a rice pulverizing mill bearing consumer number 15377 of Vaduthala under Electrical Section, Arookutty. The Consumer originally applied for a power requirement of 63kW on 21.02.2015 from the existing 100kVA Transformer at Vaduthala – Kundenkkadavu Road which is at 40m from his premises. However, KSEB Ltd has provided only 50kVA power from the exiting transformer citing the existing loading of the transformer. KSEB Ltd further informed that the additional demand can be provided by installing a new 100kVA transformer at the cost of the petitioner.

Subsequently, the 1st respondent approached the Assistant Engineer, Electrical Section, Arookutty, KSEB Ltd for additional power allocation of 20 KW to his unit. Since the capacity of the existing transformer is not sufficient, KSEB Ltd informed that the additional power allocation can be granted only after upgrading the existing transformer, and demanded charges for upgrading the transformer from the respondent.

Aggrieved by the action of KSEB Ltd, the 1st Respondent approached the CGRF, Ernakulam, and the CGRF vide Order dated 29.7.2015 ordered that as per the Regulation 35 and 36 of the Kerala Electricity Supply Code, 2014 (hereinafter referred to as Supply Code, 2014), the obligation to incur the expenses for providing supply to the LT consumers is on the licensee and hence directed the Board to give additional power by installing new transformer at the cost of the licensee.

- (4) The Second Respondent Sri. Radhakrishnan T.K has approached the Assistant Engineer, Electrical Section, Chelari, KSEB Ltd for power allocation of 40 KW for his new business unit. KSEB Ltd had demanded an amount of Rs.2,75,250/- for installation of a new 100 KVA transformer for providing supply, as the capacity of existing transformer was not sufficient to meet the additional load. Hence, the second Respondent approached the CGRF, Kozhikode against the demand of KSEB Ltd.

The CGRF, Kozhikode in its Order dated 24.03.2015 ordered that, in view of Regulation 37 of the Supply Code, 2014 the consumer shall bear the expenditure for the service line or of the plant or of both provided exclusively for him by the licensee. Accordingly, CGRF Kozhikode upheld the demand of KSEB Ltd.

Challenging the Order of the CGRF, the second Respondent had approached Electricity Ombudsman. The Ombudsman, in its Order dated 30.10.2015 ordered that, in view of Regulation 35 and 36 of the Supply Code,2014, KSEB Ltd has to install the transformer at its own cost and directed KSEB Ltd to provide supply accordingly.

- (5) KSEB Ltd filed a Writ petition WP (C) No. 37708 of 2015 before the Hon. High Court against the Order of the CGRF Ernakulam dated 29.07.2015, and also filed the Writ Petition, WP(C) No 9967 of 2016 before the Hon. High Court against the Order of the Electricity Ombudsman dated 30.10.2015.

Single bench of Hon. High Court, vide the common judgment dated 26.10.2016, dismissed the Writ petitions. Aggrieved by this, KSEB Ltd filed Writ Appeal No.1448 and 1482 of 2017 before the Division Bench. The Division Bench of the Hon'ble High Court of Kerala vide the common judgment dated 16.10.2018, delivered the present judgment, which is extracted under paragraph-2 above.

- (6) KSEB Ltd, further submitted that, it has decided to comply with the judgment of the Hon'ble High Court dated 16.10.2018 and to provide supply accordingly. It further submitted that, it incurred an amount of Rs 6,43,477.00 for installing new transformers to provide supply to the two respondents, as detailed below.

Name of consumer	Electrical Section	Amount incurred.
Mujeeb Rehman.A (W.A No. 1448/2017)	Arookutty	Rs.2,32,000
Radhakrishnan(W.A No. 1482/2017)	Chelari	Rs.4,11,477
	TOTAL	Rs.6,43,477/-

As per the judgment of the Division Bench of the Hon'ble High Court dated 16.10.2018, the above expenditure has to be recovered from the respondents through tariff at the rate approved by the Commission, in addition to the normal tariff as per the Tariff Order issued by the Commission from time to time. KSEB Ltd also proposed the following methodology to recover the expenses along with the regular monthly/ bi-monthly bills of the above consumers and other similarly placed applicants and also proposed to provide monthly installment facility for repayment upto a maximum period of 60 equal months at their option, @interest linked to MCLR, as given below.

Repayment in months. (At the option of the consumer; maximum 60 months)	Principal Amount (Rs.)	Yearly Interest (To be related to MCLR) %	Monthly Interest (To be related to MCLR) %	$EMI = P \times \frac{r(1+r)^N}{[(1+r)^N - 1]}$
				(Rs.)
12	1000	10	0.8333	87.92
24	1000	10	0.8333	46.14
36	1000	10	0.8333	32.22
48	1000	10	0.8333	25.36
60	1000	10	0.8333	21.25

The monthly amount payable by the respondents in WA No. 1448/2017 and WA No. 1482/2017 as per the proposal of KSEB Ltd is given below.

	Total Amount (Rs)	Opting 12 EMIs (RS)	Opting 24 EMIs (Rs)	Opting 36 EMIs (Rs)	Opting 48 EMIs (Rs)	Opting 60 EMIs (Rs)
Respondent in W.A No. 1448/2017	2,32,000	20,398	10,705	7,487	5,884	4,930
Respondent in W.A No. 1482/2017	4,11,477	36,177	18,986	13,278	10,435	8,744

3. The 1st respondent Sri Mujeeb Rahman, vide letter dated 21.12.2020 submitted their counter affidavit and its summary is given below.

(1) *As against the application dated 21.02.2015 for 63.05 KW power, KSEB Ltd could allocate 49 kVA load only citing the insufficient capacity of the 100 kVA transformer situated near to the premise of the applicant. When he applied for additional power allocation of 20kW, KSEBL informed that the additional demand can be met only by installing a new transformer at the cost of the consumer. This stand of KSEB Ltd is against the provisions of the Supply Code,2014.*

As per the Regulation 35 of the Supply Code, 2014, the extension or upgradation or both of the distribution system upto and including the distributing main has to be borne by the licensee at their own cost.

(2) *As per the Regulation 37 of the Supply Code, 2014, the consumer has to bear the expenditure for the service line or of the plant, or of the both provided exclusively for him by the licensee and the expenditure for the above shall be determined as per the cost data approved by the Commission. The cost of service line i.e., Rs 23750/- demanded by KSEBL was remitted by the respondent. The word 'plant' referred in the Regulation 37 is not meant to distribution transformer. The Commission vide Order dated 03.05.2016 ordered that, the transformer is not to be taken as a plant in the LT service line.*

(3) *For availing LT supply upto 100kVA, the respondent is not bound to remit expenditure towards the cost of capacity enhancement of transformer hence the request of the petitioner for special tariff to recover the expenditure is not in Order. In the tariff Order approved by the Commission, different rates for different category of consumers have been arrived after taking into account all the anticipated expenditure including the strengthening of the distribution network. In addition to the above, high rate of energy charge at ToD basis, KSEBL is also collecting fixed charge for kVA demand, power factor compensation penalty, compensation for T&D loss, surcharge from industrial consumers etc. In the above circumstances, the request made by the petitioner for the sanction of the additional tariff for the recovery of expenditure is legally unsustainable and hence the respondent is not liable to pay such additional instalment amount towards the expenditure for the upgradation of transformer and distributing main.*

- (4) *The Writ Petition and Appeal Petition filed by the petitioner before the Hon'ble High Court of Kerala is only with the purpose of delaying the execution of the Order of the CGRF, Ernakulam.*
4. The Respondent-2, vide letter dated 24th December 2020 submitted his comments and its summary is given below.
- (1) When the petitioner applied for power allocation of 40 KW for his new catering unit at Chelari, KSEB Ltd demanded Rs 2,75,250/- for installation of a new transformer. An appeal was filed before CGRF against the demand of KSEB Ltd, but CGRF upheld the demand. Aggrieved by the Order of the CGRF, the respondent filed appeal before the Electricity Ombudsman, and Ombudsman ordered that, in view of Regulation 35 and 36 of the Supply Code, 2014, KSEBL have to provide facilities for additional power allocation at their cost. Aggrieved by this, KSEB Ltd filled a writ petition before the Hon. High Court and the judgment of single bench dated 26/10/2016 upheld the decision of Ombudsman. Aggrieved by the this, KSEB Ltd filled a Writ Appeal before Division Bench of the Hon'ble Hight Court, and the Hon'ble Court on 16.10.2018 pronounced present judgment. As per the judgment, KSEB Ltd would have to install transformer at their cost and then approach the Commission to determine individual tariff to be recovered from the respondent. KSEB Ltd is demanding an amount of Rs 4,11,477/- from the respondent purportedly in furtherance of the judgment of the Hon'ble High Court.
- (2) The methodology proposed by KSEB Ltd in the petition is devoid of any legal basis and cannot be sustained in law.
- (3) The respondent has the requirement of 40kW power, and the people in this locality have been clamoring for upgradation of transformer due to voltage fluctuations. The 100 kVA transformer is in excess of the requirement of the respondent. The respondent is not liable to pay for the expenditure incurred by KSEB Ltd for installing 100kVA transformer when the demand of the respondent is only 40 kW. The purported computation of Rs 4,11,477/- payable by this respondent alone is erroneous and legally unsustainable. KSEB Ltd cannot charge the respondent the entire cost of installing the transformer. The manner in which the amount of Rs 4,11,477/- is arrived is not explained anywhere in the petition.
- (4) The second respondent requested to dismiss the petition filed by KSEB Ltd.
5. The Commission admitted the petition as OP 37/2020 and the first hearing of the petition conducted through video conference on 29.12.2020. Sri. K.G.P Nampoothiri, presented the petition on behalf of KSEB Ltd and Sri. Mujeeb Rehman. A, appeared on behalf of the respondent of the respondent-1. The summary of the deliberations during the hearing is given below.

- (1) KSEBL submitted that the petition is filed in compliance to the judgement of the Division Bench of the Hon. High Court of Kerala in Writ Appeal Petitions WA No. 1448 of 2017 and 1482 of 2017. In compliance to the judgment of the Hon'ble High Court, KSEB Ltd installed the transformers at Arookutty at a cost of Rs 2,32,000/- and at Chelari at a cost of Rs 4,11,477/-. The representative of KSEB Ltd informed that, as per his information, the electric supply is effected to the respondents.

KSEB Ltd further submitted that, the cost of installation of the transformers was prepared as per the cost data approved by the Commission. On a specific query of the Commission to provide the split-up details of the costs, KSEB Ltd submitted that the same will be collected from the field offices and submitted before the Commission.

- (2) Sri Mujeeb Rahman, submitted that, as per the Regulation 35 of the Supply Code 2014, and Order of the Commission dated 03.05.2016, KSEB Ltd has to provide the supply to the respondent by installing the transformer without recovering the cost from the respondents. While approving the normal tariff from time to time, the Commission has been taking into account these cost also. Hence, the respondent requested to dismiss the petition.
- (3) No person appeared for the hearing on behalf of the respondent No.2.

6. Based on the deliberations during the hearing, the Commission directed the petitioner M/s KSEB Ltd to submit the following details, latest by 11.01.2021.

- (1) Details of the estimate including split up details, and the basis of cost of the transformers installed at Arookutty and Chelari.
- (2) Whether the entire cost of the transformers is proposed to be recovered from the respondents alone?
- (3) Date of service connection effected to the respondents.
- (4) Details of the present loading of the transformers (number of service connections so far effected from these transformers and the spare capacity available as of now).
- (5) Whether the respondents has given consent as per the Judgment of the Hon'ble High Court dated 16.10.2018 for reimbursement of the expenses at the tariff approved by the Commission? If so, provide a copy of the consent before the Commission.

7. In compliance to the directions of the Commission, KSEB Ltd on 23.01.2021, submitted the following details and its summary is given below.

I. Details of the cost incurred for uprating the existing 100kVA transformer to 160kVA transformer at Arookutty to provide supply to the Sri.Mujeeb Rehman – first Respondent

- (1) Total cost incurred.
Cost of transformer (160KVA) and installation charges after adjusting

the depreciated value of the existing transformer (100KVA)
= **Rs.2,49,574.00**

- (2) The connected load of the respondent has been enhanced from the existing load of 63.05 kW to 88kW on 14.10.2020.
- (3) Present loading of the transformer is as follows.
 - (a) Number of service connection effected = 62 Nos
 - (b) Total connected load = 166744 W (167 kW).

There is no spare capacity available as of now.

- (4) The respondent has given consent to reimburse the expenditure incurred by KSEB Ltd at the tariff approved by the Commission as per the judgment of the High Court.
- (5) KSEB Ltd submitted that, since the uprating of the transformer was done for providing supply to the Respondent-1, the entire cost is proposed to be recovered from the Respondent-1.

KSEB Ltd vide their clarification dated 23.01.20 21 submitted that though in the original petition they had claimed rupees 2,32,000, on actual execution of the work, the expenditure incurred is seen to be ₹ 2,49,574 after deducting the depreciated value of the 100 kVA transformer at ₹ 70,626.

II. Details of the cost of the 100 kVA transformer installed at Chelari for providing supply to Sri. Radhakrishnan.T.K. Second Respondent.

- (1) Total cost incurred for installing the transformer.
= Rs. 3, 85,192.00

KSEB Ltd further submitted that, the respondent had remitted only an amount of Rs.50370/- while availing the connection as detailed below, which is exclusive of the above amount incurred by the Board.

1. Effecting 3 phase service connection (35 KW)	= Rs.21750.00
2. Conversion of LT line 116m	= Rs.19140.00
3. Providing LT stay set	= Rs. 1750.00
4. LT pole insertion (3 phase)	= Rs. 7730.00
Total	= Rs. 50370.00

- (2) Since the transformer was installed to provide the service connection to Respondent- 2, the entire amount of Rs. 3, 85,192/- is proposed to be realized from the respondent as ordered by the High Court.
- (3) The service connection to the respondent has been effected on **20.09.2019**.
- (4) The details of the present loading of the transformer is as follows;
 - a. Number of service connection effected = 15 No
 - b. Total connected load effected = 57427 W (57.43 kW)
 - c. Spare capacity now available = 50 KVA

- (5) The respondent has given consent to reimburse the expenditure incurred by the Board at the tariff approved by the Commission as per the judgment of the High Court.

KSEBL further submitted that, they claimed Rs. 4,11,477/- from the second respondent as expenditure towards installation of the transformer. But on actual expense incurred was only Rs.3,85,192/- and hence the claim may be read as Rs.3,85,192/- as against Rs.4,11,477/-.

8. Second hearing on the petition was conducted on 28.01.2021 through video conference. Sri K G P Nampoothiri, Executive Engineer, presented the matter on behalf of the petitioner KSEB Ltd. Sri Mujeeb Rahman represented the respondent-1 and Sri. T.K. Radhakrishnan represented the respondent-2. The summary of the deliberations during the hearing is given below.

- (i) KSEB Ltd incurred a total cost of Rs 2,49,574.00 for replacing the existing 100 kVA transformer with 160 kVA at Kadavuadavu under Electrical Section, Arookutty. The cost claimed for upgrading the transformer is after adjusting the depreciated value of the existing 100 kVA transformer, which was manufactured in the year 2010. The connected load of the Respondent-1 was enhanced from 63.05 kW to 88 kW on 14.10.2020. Since the existing 100 kVA transformer was replaced with 160 kVA for enhancing the load of the respondent-1, KSEB Ltd proposed to collect the entire cost from respondent-1.

KSEB Ltd also submitted that, the Respondent-1 had given consent to reimburse the expense at the tariff approved by the Commission as per the Judgement of the Hon'ble High Court dated 16.10.2018 in WA 1448 & 1482 of 2017.

As on date, KSEB Ltd has effected 62 numbers of service connections from the transformer, and at present no spare capacity is available.

- (ii) KSEB Ltd incurred a total cost of Rs 3,85,192.00 for installing a new 100 kVA transformer at Kohinoor under Electrical Section, Chelari for providing power supply to the respondent-2. Service connections to the Respondent-2 was effected on 20.09.2019 with a connected load of 35 kW.

At present 15 nos of service connections have been effected from the transformer with a total connected load of 57.4kW, and spare capacity of 50kVA available as of now.

The Respondent-2 has given consensus to reimburse the expenditure incurred by KSEB Ltd for installing the transformer at the tariff approved by the Commission as per the Judgement of the Hon'ble High Court dated 16.10.2018 in WA 1448 & 1482 of 2017.

- (iii) On a query by the Commission, whether KSEB Ltd is agreeable for collecting the cost from the respondents on proportionate basis of the connected load allocated to them out of the total capacity of the new transformers, KSEB Ltd replied that they are agreeable for the same provided the balance cost may be allowed to be claimed at the time of truing up or be allowed to be collected from other prospective consumers availing supply from the same transformer on proportionate basis.
- (iv) Sri. Mujeeb Rahman, representing respondent-1 submitted that, as per the Judgment of the Hon'ble High Court, KSEB Ltd can collect the cost of the transformer only if the transformer is installed as a dedicated transformer for supplying power to the consumer. However, in the present case, KSEB Ltd has given supply to 61 other consumers also from the same transformer and hence the transformer is not a dedicated one for the exclusive use of the respondent.

Further, as per the Regulation 35 of the Supply Code, 2014, the extension or upgradation or both of the distribution system upto and including the distributing main has to be borne by the licensee at their own cost. As per the Regulation 36, the respondent is bound to remit the expenditure for the above work only if the power requirement is above 1MW. As such the licensee is bound to give power supply from the existing transformer or by installing a new transformer at the cost of KSEB Ltd.

- (v) Sri. T.K Radhakrishnan, representing the Respondent-2 explained the difficulties faced by him in getting power supply for his small business. He further submitted that, as per the provisions of the Kerala Electricity Supply Code, 2014, KSEB Ltd has to provide supply to the respondent by installing a new transformer if required.

The respondent further submitted that, the people in the locality was facing voltage fluctuations and demanding for installation of a new transformer to improve the voltage in the area. He further submitted that, since his demand is only 40 kW, and KSEB Ltd is giving new connections from the balance capacity of the 100 kVA transformer, he could not bear the entire cost of the new 100 kVA transformer.

- (vi) On the issue raised by the Respondents that as per the Regulation 35 of the Supply Code, 2014, KSEB Ltd has to provide supply to the consumers by installing transformers at the cost of the KSEB Ltd, KSEB Ltd clarified that the Division Bench of the Hon'ble High Court as per the judgment dated 16.10.2018 in WA Nos 1448/2017 & 1482/2017 had given detailed interpretation on Regulation 35 of the Supply Code, 2014 and the respondent had also agreed to be bound by the same. Further, if the respondents are exempted from reimbursing the cost, the liability shall fall on the all the existing consumers of KSEB Ltd through tariff.

KSEB Ltd further submitted that, the present petition was filed in compliance to the judgment of the High Court dated 16.10.2018 in Writ Appeal Petitions WA No. 1448 of 2017 and 1482 of 2017.

9. Based on the deliberations during the hearing, the Commission directed the petitioner M/s KSEB Ltd and the respondents to comply the following.
- (i) KSEB Ltd shall share a copy of the additional details submitted before the Commission on 27.01.2021 with the respondents immediately for their comments.
 - (ii) M/s KSEB Ltd, shall further submit the following details on or before 10.02.2021, before the Commission, with a copy to the respondents.
 - (a) Whether there was any spare capacity available at the 100 KVA transformer under Electrical Section, Arookutty when the Respondent-1 filed application for enhancing the load?

Provide the details with supporting evidence.
 - (b) When was the 100 kVA transformer (which was manufactured in 2010) installed at Arookutty, and the cost of the installation of the transformer as per the asset register of the KSEB Ltd and its depreciated cost at the time of capacity enhancement by new transformer.
 - (c) Actual cost for replacing the existing 100 kVA transformer with 160 kVA transformer as per the 'asset register' of KSEB td.
 - (d) Actual cost of installation of the new transformer at Kohinoor under Chelari Section.
 - (iii) The respondents may submit its comments, if any, on or before 17.2.2021, with copy to KSEB Ltd.
10. In compliance to the direction of the Commission, KSEB Ltd vide letter dated 16.02.2021 submitted the following.
- (a) The details of the spare capacity available at the time of request of enhancement of connected load could not be traced out.
 - (b) The transformer at Arookutty was installed on 15.01.2011. The cost of installation of the transformer was Rs 1,41,251/-. The depreciated cost of transformer was Rs 70,625/-, arrived by depreciating the cost of transformer @5%.
 - (c) The actual cost of installation of the transformer is arrived at after deducting the depreciated cost of the transformer from the estimated amount. The estimated cost of the 160kVA transformer was Rs 3,20,000/- and the actual cost after deducting the depreciated cost of the 100kVA transformer is Rs 2,49,574/-.

- (d) The actual cost of installation of the new transformer under Electrical Section, Chelari is Rs 4,35,562.00, against which an amount of Rs 50,370/- is only remitted by the consumer. Thus the total amount due from the consumer is Rs 3,85,192/- (4,35,562-50,370).

Analysis and Decision

11. The Commission examined the petition filed by KSEB Ltd dated 18.11.2020, in compliance to the directions of the Hon'ble High Court dated 16.10.2018 in writ appeal petitions in WA No. 1448/2018 & WA No. 1482 of 2017, the comments of the respondents, the additional details submitted by KSEB Ltd and decided as follows.
12. Division Bench of the Hon'ble High Court vide Judgment dated 16.10.2018, decided and ordered as follows.

“5. Regulation 35 speaks of expenditure for extension or upgradation or both of the distribution system to be borne by the licensee. Regulation 37 speaks of expenditure for service line, plant etc., for providing supply. We are of the opinion that the distinction is insofar as the expenditure incurred for extension or upgradation of the distribution system has to be under Regulation 35. We do not get a clear definition of the plant from any of the enactments or the Regulation. Though in general terms transformer is a plant; it is also a part of the distribution system. Hence the expenditure incurred for installation of a dedicated transformer is for the purpose of upgradation of the distribution system which is covered under Regulation 35 and 36. We also notice that the requirement for an additional dedicated transformer arises from the finding of the Board under Regulation 36 of the Supply Code. Hence the provision applicable insofar as reimbursement of expenditure is Regulation 35.

*6. Though the learned Single Judge found the case of the units covered by Regulation 35; it was also found that the Board has to meet the expenses. Regulation 35 as extracted in the judgment of the learned Single Judge itself indicates that the expenditure would be borne by the distribution licensee which can be recovered from the consumers through Tariff as approved by the Commission. **The Board hence would have to approach the Commission for the purpose of determination of higher Tariff in the case of the writ petitioners who have a dedicated transformer set up for their demand/additional demand.** This would not in any way affect the general Tariff determination for the individual respondents which has to be under that category of the consumer; as brought out by the Commission, periodically. The writ petitioners would have to pay the Tariff under such general Tariff determination Order **but would also have to pay the additional amounts for the purpose of setting off the expenditure incurred by the Board, for which the Board has to approach the Commission and the Commission has to decide on the amounts with reference to the expenditure incurred; with notice to the units. In such circumstances, the Board has to install the transformer at their costs and then approach the Commission for determination of individual Tariffs with respect to the two units.***

*7. The Judgment of the learned Single Judge is interfered with to the above extent. **The respondents shall give consent to the Board for fixation of Tariff as indicated herein above, in their individual cases for the purpose of reimbursement of expenses on which the Board shall carry out installation of the transformer and***

then approach the Commission for fixation of Tariff. Even when the matter is pending before the Commission, the writ petitioners shall pay Tariff on the general fixation by the Commission under the category in which they are covered.”

13. The summary of the decisions of the Division bench of the Hon'ble High Court in its judgment dated 16.10.2018 is given below.

- “
- (1) *As per the Regulation 35 of the Supply Code, 2014, the cost of the installation of transformer providing supply to the respondents has to be borne by the distribution licensee which can be recovered from the consumers through tariff as approved by the Commission. Hence the Board would have to approach the Commission for the purpose of determination of higher tariff in the case of respondents who have a dedicated transformer set up for their demand/ additional demand.*
 - (2) *The respondents would have to pay additional amounts for the purpose of setting off the expenditure incurred by the Board, for which Board has to approach the Commission and the Commission has to decide on the amounts with reference to the expenditure incurred; with notice to the units.*
 - (3) *Board has to install the transformer at their costs and then approach the Commission for determination of individual Tariffs with respect to the two units.*
 - (4) *Respondents shall give consent to the Board for fixation of Tariff, in their individual cases for the purpose of reimbursement of expenses on which the Board shall carry out installation of transformer and then approach the Commission for fixation of Tariff.*
 - (5) *Even when the matter is pending before the Commission, the writ petitioners sha pay Tariff on the general fixation by the Commission under the category in which they are covered.”*

14. KSEB Ltd filed the petition dated 18.11.2020, before the Commission in compliance to the directions of the Division Bench of the High Court dated 16.10.2018. The issues addressed in the judgment dated 16.10.2018 deals with providing power supply to two respondents, first respondent Sri. Mujeeb Rahman A, under Electrical Section, Arookutty, Alapuzha District and second respondent Sri. T. K. Radhakrishnan, under Electrical Section, Chelari.

15. The first respondent Sri. Mujeeb Rehman is an existing consumer of KSEB Ltd under Electrical Section, Arookutty, Alappuzha, District, is running a rice pulverizing unit. Originally, the service connection to the respondent was effected on 21.03.2015 with connected load of 63.05 kW and contract demand of 50 kVA. Subsequently, the respondent applied for additional power allocation of 20 kW, however KSEB Ltd informed that there is no spare capacity available in the existing transformer, and hence, the additional power requirement of 20 kW can be granted only by upgrading the existing 100 kVA transformer to 160 kVA, at the cost of the respondent. However, the respondent disputed the

proposal of the licensee to recover the entire cost the upgradation from the respondent, and according to him the licensee has to bear the cost and claim the same through tariff.

16. In the year 2014, the second respondent Mr. Radhakrishnan, T.K, applied for power allocation of 40kW at Electricity Section, Chelari for starting a new catering unit. KSEB Ltd intimated that, since the existing nearby 160 kVA transformer at Kohinoor, under Chelari Section office do not have spare capacity, the licensee proposed to install a new 100kVA transformer at the cost of respondent for providing supply. However, the respondent disputed the same and according to him the licensee has to install the transformer at the cost of the licensee and provide power supply to the respondent.
17. The Division Bench of the Hon'ble High Court vide judgment dated 16.10.2018 in Writ Appeal petitions WA Nos. 1448/2017 & 1482/2017 ordered that, in both cases, the licensee KSEB Ltd shall install the transformers for providing supply to the respondents at the cost of the licensee. However, the respondents would have to pay additional amounts for setting off the expenditure incurred by the licensee for the dedicated transformer set up for their demand/ additional demand at the tariff determined by the Commission. For determining the tariff, KSEB Ltd would have to approach the Commission after installing the transformer. The Commission has to decide on the amounts with reference to the expenditure incurred, with notice to the respondents. The respondents shall give consent to KSEBL for reimbursement of the expenses at the tariff determined by the Commission.

In compliance to the directions of the Hon'ble High Court, KSEB Ltd upgraded the existing 100kVA transformer at Arookutty to 160 kVA for providing additional power allocation of 20 kW to Sri. Mujeeb Rehman, Respondent -1, at the cost of Rs 2,49,574/- (net cost after adjusting the depreciated value of the existing 100 kVA transformer). Similarly, for providing power allocation of 40kW to the respondent Sri. Radhakrishnan T.K, KSEB Ltd installed new 100kVA transformer at Chelari, at the cost of Rs 3,85,192.00/-. Both the respondents, had given consent to the KSEB Ltd for reimbursement of the expenses incurred by KSEB Ltd for the installation of transformers at the tariff determined by the Commission, in their individual cases. Accordingly, after installation of the transformers and effecting the service connections to the respondents, KSEB Ltd filed this instant petition before the Commission for determining the expenses to be reimbursed by the respondents.

18. As discussed in the previous paragraphs, the Commission has to determine the tariff for recovering the expenses incurred by KSEB Ltd for the upgradation of the existing 100kVA transformer to 160kVA transformer at Arookutty for providing additional power allocation of 20kW to the respondent Sri. Mujeeb Rehman A, and installation of the new transformer at Chelari for providing power allocation of 40kW to the respondent Sri. Radhakrishnan T.K. The details of the tariff determined by the Commission as per the judgement of the Hon'ble High Court dated 16.10.2018 is detailed in the following paragraphs, for each case separately.

I. Tariff for reimbursement of the expense incurred by KSEB Ltd for upgrading the 100 kVA transformer to 160MVA transformer for providing additional power allocation of 20 kW to Sri. Mujeeb Rahman A- the respondent-1.

19. KSEBL submitted that, the total cost incurred for installing the 160kVA transformer after adjusting the depreciated value of the existing 100 kVA transformer is Rs 2,49,574.00. KSEB Ltd further submitted that, as requested by the respondent, the connected load of the respondent was increased from 63.05 kW to 88kW, i.e., an additional load of 24.95kW was allotted to the Respondent from the new transformer as on 14.10.2020. It is further submitted that, at present 62 number of service connections is effected from the 160kVA transformer and there is no spare capacity available. KSEB Ltd requested before the Commission that, since the new 160kVA transformer is installed for providing supply to the Respondent, the additional cost incurred has to be recovered from the Respondent as per the judgment of the Hon'ble High Court.

However, in his submissions to the Commission, the Respondent argued that, since the 160kVA transformer is not a dedicated transformer for the exclusive use of the Respondent, the cost of the transformer cannot be recovered from him.

20. The Commission has examined in detail the submission of KSEB Ltd and the Respondent Sri. Mujeeb Rehman. The Commission also examined the details of the cost incurred by KSEB Ltd for installing the new 160kVA transformer in place of the existing 100kVA transformer.

There is no dispute between the petitioner KSEB Ltd and the Respondent on the facts that, the licensee has allotted 24.95 kW power (enhanced the load from 63.05kW to 88 kW) from the newly installed 160 kVA transformer, as on 14.10.2020. As per the details submitted by the licensee, when the respondent applied for additional power of 20kW, there was no spare capacity available in the then existing 100kVA transformer at Arookutty. Hence, KSEB Ltd had to install the new 160 kVA transformer at the same place, replacing the old 100kVA transformer.

21. As per the directions contained in the judgment dated 16.10.2018 of the Hon'ble High Court, the only issue now before the Commission as far as the Respondent-1 is concerned is to examine whether the entire cost of the new transformer is to be recovered from the Respondent alone.

Here, the additional power required by the Respondent is only 24.95 kW. However, the standard ratings of the distribution transformers is 100kVA, 160kVA, 250kVA, 315 kVA, 500kVA and so on. Since the existing 100kVA transformer did not have spare capacity, the licensee installed the next higher capacity 160kVA transformer at an additional cost of Rs 2,49,574.00. By, replacing the existing 100 kVA transformer with 160kVA transformer at a cost of Rs 2,49,574.00, the additional capacity available to the licensee is about 57kW with a power factor of 0.95, and out of it, 24.95 kW was allotted to the Respondent for meeting his additional power requirement, and the balance

capacity of 32.05 kW is already allotted to other consumers who had applied for power in the same locality.

As detailed above, it is a fact that only 24.95kW capacity out of the 57kW additional capacity available in the new 160kVA transformer was allotted to the Respondent for his use. Also, this 24.95kW cannot be re-allotted by the licensee to other consumers as long as the Respondent maintains the same level of electricity requirement with the licensee.

Considering these aspects in detail, the Commission is of the considered view that, out of the total cost of Rs 2,49,574.00 incurred for creating the additional capacity of 57kW by replacing the 100kVA transformer with 160kVA transformer, the proportionate cost corresponding to the dedicated capacity of 24.95kW only is to be reimbursed by the respondent to KSEB Ltd. This proportionate cost is worked out as $(2,49,574.00/57 \times 24.95) = \text{Rs } 1,09,243/-$ [@0.95 power factor, the additional power availability is 57 kW] and the respondent has to reimburse the same to KSEB Ltd as expenditure. KSEB Ltd has to account the expense collected from the consumer under the head 'consumer contribution' and the proportional cost of the asset so created shall be treated as per the provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018 and its amendments.

In the petition dated 18.11.2020, KSEB Ltd proposed to provide installment facility up to 60 months at the interest @10% linked to MCLR to the respondents to reimburse the expense so arrived. The Commission is of the considered view that, the interest rate for such monthly installment facility shall be the weighted average interest rate of existing loans of KSEB Ltd. Hence, if the respondent desires to avail monthly installment facility for reimbursing the expense, KSEB Ltd shall provide the same, for a maximum period upto 60months at the weighted average interest of the existing loans of KSEB Ltd as on 31.03.2020.

Treatment of balance cost of the transformer: KSEB Ltd has already allotted the balance spare capacity of 32.05 kW out of the additional capacity of 57kW to other consumers without recovering the cost of the transformers. The service connections have also been effected to such consumers. Commission is of the view that, it is not reasonable and justifiable to recover the balance expense from those consumers, to whom service connections are already effected. Hence, KSEB Ltd is allowed to treat the balance cost of the transformer of Rs 1,40,331/- lakh as part of its capital assets and allowed to recover the cost components such as interest on borrowing, depreciation etc. on these assets.

II. Tariff for reimbursement of the expense incurred by KSEB Ltd for installing a new 100kVA transformer at Chelari for allotting 40KW power to Mr. Radhakrishnan.T.K, the Respondent-2 as per the judgment dated 16.10.2018 of Hon'ble High Court.

22. As per the details submitted, KSEB Ltd had incurred Rs 3,85,192.00 for installing 100kVA transformer at Chelari. KSEB Ltd further submitted that, 35kW power is allotted to Sri. Radhakrishan.T.K, Respondent-2 from the newly installed 100kVA transformer. KSEB Ltd also submitted that, as on date, 15 number of connections with a total load of 57.43kW including the load allotted to the Respondent is connected to the new transformer. The balance capacity available is about 50kVA as on date. KSEB Ltd claimed that, since the new transformer was installed for providing power connections to the respondent-2, the entire cost of installation of the transformer has to be recovered from the respondent.

But the respondent submitted that, the newly installed 100kVA is not a dedicated transformer for his own use alone. The area has been facing voltage fluctuations before the installation of the new transformer, and many new connections was also effected from the transformer. Hence, KSEB Ltd cannot claim reimbursement of the entire cost of the transformer from the respondent alone.

23. The Commission has examined in detail the argument of the KSEB Ltd and also the respondent. It is true that, the immediate necessity of installation of 100kVA transformer at Kohinoor under electrical section Chelari was for allotting 40kW power to the respondent. But, the following facts also has to be considered while determining the expense to be recovered from the respondent by KSEB Ltd out of the expense incurred for installing the 100 kVA transformer.
- (i) With the power factor of 0.95, the maximum load can be connected to the new 100 KVA transformer is about 95 kW.
 - (ii) Out of the capacity of 95 KW, 35 kW power only was allotted to the Respondent and KSEB Ltd can allot the balance capacity of 60 kW to the prospective consumers seeking power connection in the surrounding area.
 - (iii) As on date, KSEB Ltd allotted 57.43 kW load to various consumers including the Respondent from the newly installed transformer.

As detailed above, out of the total capacity of 95kW, on 20.09.2019, 35 kW only is allotted to the Respondent-2 for his exclusive use. The licensee is empowered to allot the balance capacity to the other prospective consumers seeking power supply in the nearby areas. Hence, the Commission is of the considered view that, the Respondent-2 is required to reimburse only the proportionate cost corresponding to the allotted capacity of 35 kW out of the total capacity of 95 kW of the newly installed 100 kVA transformer at a total cost of Rs 3,85,192.00.

The proportionate cost payable by the Respondent-2 to KSEB Ltd is worked out as $(Rs\ 3,85,192.00 / 95 \times 35) = Rs\ 1,41,913.00$. The amount so collected from the Respondent shall be accounted as 'consumer contribution' and the proportionate cost of the asset so created i.e. Rs. 1,41,913/- lakh shall be treated as per the provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018 and its amendments.

As already mentioned, in the petition dated 18.11.2020, KSEB Ltd proposed to provide installment facility up to 60months at the interest @ 10% linked to MCLR to the respondents to reimburse the cost. The Commission is of the considered view that, the interest rate for such monthly installment facility shall be the weighted average interest rate of existing loans of KSEB Ltd. Hence, if the Respondent desires to avail monthly installment facility for reimbursing the expense, KSEB Ltd shall provide the same, for a maximum period upto 60 months at the weighted average interest of the existing loans of KSEB Ltd as on 31.03.2020.

Treatment of balance cost of the transformer: KSEB Ltd has already allotted a capacity of 57.43 kW including that of the petitioner. Further, spare capacity is available in the transformer to provide power allocation to new prospective consumers. However, the present Judgment of the Hon'ble High Court dated 16.10.2018 only deals with the determination of the tariff for the cost of the transformers installed for providing power to the two Respondents as discussed in the preceding paragraphs. Commission is of the view that, it is not reasonable and justifiable to recover the balance expense from those consumers, to whom service connections are already effected or new consumers who seek power allocation from the balance spare capacity available. Hence, KSEB Ltd is allowed to treat the balance cost of the transformers of Rs. 2,43,279/- lakh as part of its capital assets and allowed to recover the cost components such as interest on borrowing, depreciation etc on such assets.

24. KSEB Ltd vide the petition dated 18.11.2020 has also prayed before the Commission to allow them to realise the reasonable expenditure incurred for providing electricity supply to all similarly placed applicants / consumers as per the methodology described by them in the petition. The Commission has also examined this prayer of the petitioner KSEB Ltd in detail in terms of the judgment of the Hon'ble High Court dated 16.10.2018.

As discussed in the preceding paragraphs, the Judgement of the Hon'ble High Court dated 16.10.2018 deals with two specific cases, wherein installation of new transformers were essential for providing power allocation/additional power allocation to the applicants. ***The directions of the Hon'ble High Court in these two cases cannot be generalized and hence this prayer of the KSEB Ltd is rejected.***

Orders of the Commission

25. The Commission, after examining the petition filed by KSEB Ltd dated 18.11.2020, the directions of the Hon'ble High Court dated 16.10.2018 in Writ Appeal petitions WA Nos 1448 of 2017 and 1482 of 2017, the comments of the respondents, and other documents and materials wherever necessary, hereby orders the following.

- (1) The first respondent Sri. Mujeeb Rehman shall reimburse Rs 1,09,243/- as expense towards the cost of the 24.95 kW dedicated capacity allotted from the newly installed 160 kVA transformer at Kundekkadavu, Arookutty to enhance his load from 63.05kW to 88 kW.
- (2) The second respondent Sr. Radhakrishnan. T.K, shall reimburse Rs 1,41,913/- as expense towards the cost of the 35kW dedicated capacity allotted from the newly installed 100kVA transformer at Kohinoor under Electrical Section, Chelari.
- (3) KSEB Ltd can permit monthly installment facilities up to 60 months at the weighted average interest rate of loans outstanding as on 31.03.2020, for remitting the expenses arrived at as above under sub-para (1) & (2) by the Respondents, if they so desire.
- (4) The prayer of the KSEB Ltd to make applicable the above methodology to other similarly placed applicants/consumers is rejected due to the reasons specified under paragraph 24 above.

The petition is disposed off.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)