

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**

File No. 1473/D(T)/KSERC/2020

In the matter of : Review Petition against the order of the Commission dated 01.02.2018 in OP No.17 in the matter of approval of capital investment for the proposed 110 kV substation at Kaottappuram, Thrissur..

Petitioner : Thrissur Corporation Electricity Department (TCED)

Petitioner represented by : Shri. Jose T.S, Electrical Engineer, TCED

Respondent : KSEB Ltd.

Respondent represented by : Sri. Manoj. G., Asst: Executive Engineer

Order dated 06.10.2020

1. M/s Thrissur Corporation Electricity Department (herein after referred to as the petitioner or TCED), on 25.08.2020, filed a Review Petition before the Commission for reviewing the Order of the Commission dated 01.02.2018 in OP No.11/2017 in the matter of approval of Capital investment of 110kV Substation of TCED.

2. The summary of the petition filed by TCED is give below.

(1) The Commission vide Order dated 01/02/2018 in OP No.11/2017 Ordered as follows:

“20. The Commission, based on the deliberations of the subject matter and also duly considering the materials and other documents placed before it, has decided and ordered as follows.

(i) *There is no immediate requirement for the construction of a second 110 kV s/s within the distribution area of TCED at Kottappuram, extending 110kV supply from the existing substation.*

(ii) *KSEB Ltd as the State Transmission Utility (STU) of the State has the responsibility to provide alternate feeding*

- arrangements to M/s TCED in line with the increase in electricity demand of the distribution area of TCED.*
- (iii) *KSEB Ltd and TCED may discuss and finalise the alternate cost effective proposals submitted by KSEB Ltd to cater the additional load requirement up 18 MVA at the western side of the distribution area of TCED.*

The proposal to construct a 110 kV s/s at Kottapuram by M/s TCED, within their distribution area, is disposed as above”

- (2) M/s. TCED, in the Review Petition submitted that the Commission erred in the order by not going in detail to the load requirement of TCED at its Western side. The Commission without considering the merit and genuineness of the proposal passed the order. Hence the Order has to be reviewed in the interest of justice and to consider it in true spirit for better service to the general public.

The Commission came into the conclusion by accepting the proposal made by KSEB Ltd for making alternate arrangements for providing electricity to TCED. But the proposals of KSEB Ltd are not at all practical, financially and technically unviable, and metering solution will be an additional burden.

K S E B Ltd. proposal for 11 kV supply from Pullazhi substation can meet TCEDs requirement for two years only. TCED cannot access the requirement of 18 MVA power from three 11 kV feeders at Pullazhi. Moreover 11 kV supply is not sufficient for the future load requirement. Laying 33 kV cable from Viyyur substation to Kottapuram is not economical.

The second proposal of KSEB Ltd to upgrade 66 kV substation to 110 kV substation is acceptable to TCED. The existing three numbers of 10 MVA 66kV/11kV power transformers can be upgraded to two numbers of 110 kV/ 11 kV transformers. But this proposal has an advantage of 10 MVA only which is insufficient for future load requirements. Actually TCED requires backup for existing substation - 16 MVA, 110 kV/33kV additional transformer as spare for 33 kV substation. Another additional 110 kV/11 kV spare for 110 kV substation concentrating substation to single location is not acceptable. Hence TCED need 110 kV substation at Kottapuram for backup and load needs.

The load requirement of Western side projected by TCED is based on the application/load requirement for the prospective consumers.

TCED is the only Licensee which does not have any alternate source of supply. Several rounds of discussions were held between K S E B Ltd. and TCED before the Order of the Commission dated 01.02.2018, wherein KSEB has stated that there is no possibility for giving alternate source of supply. Moreover the load concentrating to a single location will affect the entire town in case of any accident, natural calamity or

fire as TCED has no other source of supply. The TCED license area was also badly affected by the flood in 2018 and TCED substation were water logged. TCED cannot manage such a situation again and does not have a backup substation for meeting any emergency for the Thrissur town power supply.

TCED also submitted an application for condonation of delay along with the petition.

3. KSEB Ltd vide its Affidavit dated 28.02.2020 submitted the following regarding the admissibility of the petition filed by M/s TCED.
 - (i) Maintainability of the Review Petition: Being a quasi-judicial authority having powers under Section 94 of the Electricity Act, 2003, the State Commission is vested with the same powers of a Civil Court under the Code of Civil Procedure, 1908 in the matter of reviewing its orders. As per the Order 47 Rule I of the said Code, an application for review of an order is maintainable only on account of discovery of new matter and evidence which after the exercise of due diligence was not within the knowledge of the petitioner or could not be produced by him at the time of order was made on account of some mistake or error apparent on the face of record or on account of any other sufficient reason. But the petitioner miserably failed to establish the discovery of any new and important matter of evidence or any mistake or error apparent on the face of record as required to seek a review of the impugned order. In the absence of new and important matter or evidence or mistake or error apparent, the Review Petition is not maintainable.
 - (ii) KSEB Ltd further submitted that as per the Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003 and its amendments, the petitioner has to file the Review Petition within 45 days from the date of the order or direction. The present Review Petition is seeking the review of the Order dated 01.12.2018 and hence the petition is delayed for more than one and half years and the reasons stated by TCED for the delay is not justifiable.
 - (iii) The Commission vide the Order dated 01.02.2018, followed due process, conducted public hearing, examined all aspects and issued a detailed order. TCED could not establish any apparent error or mistake in the order. Due to none justifiable delay in filing Review Petition and in the absence of the new and important matter, evident or mistake or error apparent, the Review Petition may not be admitted.
4. The Commission conducted the admissibility hearing on the petition on 29.09.2020 through Video Conference. During the hearing Shri. Jose.T.S, Electrical Engineer, TCED presented the matter on behalf of the petitioner and Sri. Manoj. G, Assistant Executive Engineer, KSEB Ltd presented the counter arguments on behalf of the respondent.

During the hearing TCED submitted that the proposal to construct the 110 kV substation was mainly for a backup to ensure power supply in case of any emergency situation or natural calamity to the licenced area of TCED. Further in the flood which occurred in 2018, Thrissur town was badly affected and if there is one more 110 kV substation, the interruption could have been avoided. On a query raised by the Commission on the reason for delay, TCED submitted that the delay was mainly on account of administrative reasons.

KSEB Ltd during the hearing submitted that the petition is not maintainable since the petitioner could not produce any new evidence or mistake or error apparent. There was inordinate delay by more than two years in filing the Review Petition. As the State Transmission Utility, KSEB Ltd shall provide necessary backup supply to TCED, if they approach KSEB Ltd.

Analysis and Decision of the Commission

5. The Commission has examined in detail the review petition filed by M/s TCED as per the provisions of the Electricity Act, 2003 and KSERC (Conduct of Business) Regulations, 2003, and noted the following.
6. The Commission vide the Order dated 01.02.2018 in OP No.11/2018 in the matter of the proposal to construct 110 kV substation of at Kottappuram, Thrissur by TCED, ordered the following.

“20. The Commission, based on the deliberations of the subject matter and also duly considering the materials and other documents placed before it, has decided and ordered as follows.

- (i) There is no immediate requirement for the construction of a second 110 kV s/s within the distribution area of TCED at Kottappuram, extending 110kV supply from the existing substation.*
- (ii) KSEB Ltd as the State Transmission Utility (STU) of the State has the responsibility to provide alternate feeding arrangements to M/s TCED in line with the increase in electricity demand of the distribution area of TCED.*
- (iii) KSEB Ltd and TCED may discuss and finalise the alternate cost effective proposals submitted by KSEB Ltd to cater the additional load requirement up 18 MVA at the western side of the distribution area of TCED.*

The proposal to construct a 110 kV s/s at Kottapuram by M/s TCED, within their distribution area, is disposed as above”

The above Order of the Commission was after a detailed examination of the proposal of the TCED, including the demand growth and load profile at the western side of the TCED licensed area and the alternate options submitted by the KSEB Ltd as the State Transmission Utility to provide alternate feeding arrangements to cater to the increase in electricity demand of TCED.

7. M/s TCED filed this review petition against the Order dated 01.02.2018, on 25.08.2020, i.e, after a gap of 939 days from the date of the Order. As per the Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003, and its amendments, the Review Petition against the order/direction of the Commission has to be filed within 45 days from the date of the Order. The relevant Regulations is extracted below.

*“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”.

During the hearing held on 29.09.2020, the petitioner submitted that the delay in filing the review petition occurred due to the administrative reasons. The administrative delays of a licensee of (939-45) 894 days cannot be considered as a valid reason and hence the Commission cannot condone the delay of 894 days in filing the review petition due to the administrative reasons. Hence, the Commission, hereby rejects the application to condone the delay in filing the review petition on 25.08.2020 against the order of the Commission dated 01.02.2018.

8. Further, as per the Section 94 of the EA-2003, the review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Sections is extracted below:

“(i) Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(ii) Order 47 Rule 1 of the Code of Civil Procedure dealing with review of the orders and decisions of a Civil court is quoted below:

“

Application for review of judgment.-(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, the review jurisdiction of the Commission is very limited. For reviewing its decisions, discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason.

The petitioner has not submitted any new facts in this review petition before the Commission. They have also not pointed out any apparent mistake or error on the face of records. Hence, it is observed that neither the provisions of the EA, 2003 nor the review jurisdiction of the Commission under Order 47, Rule 1 of the Code of Civil Procedure is violated while passing the original Order dated 01.02.2018 in OP No.11/2017.

9. Considering the above reasons, the Commission orders that the Review Petition filed by M/s TCED on 25.08.2020 against the Order of the Commission dated 01.02.2018 in OP No.11/2017 is not maintainable as per law. Hence the Commission reject the petition at the admissibility stage itself.

Orders of the Commission

10. The Commission after examining the Review Petition dated 25.08.2020 filed by the licensee M/s TCED against the order of the Commission dated 01.02.2018 in petition OP No.11/2017, and also the application for condonation of delay, as per the provisions of the Electricity Act, 2003 and

KSERC (Conduct of Business) Regulations 2003 and its amendments, orders the following.

- (1) Reject the Review Petition dated 25.08.2020 filed by M/s TCED against the order dated 01.02.2018 in OP No. 11/2017 as not maintainable due to the reasons explained under paragraphs 7 and 8 above.
- (2) M/s TCED shall comply with the directions in the Order dated 01.02.2018 in OP No. 11/2017 and shall not proceed with the proposed investment for establishing a 110 kV Substation at Kottappuram, Thrissur.

The petition disposed off.

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary