

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Present : Adv. A.J Wilson, Member**  
**Shri B Pradeep, Member**

**OP No 20/2023**

In the matter of : Reviewing the Demand Notice No. SOR/HTB. 18/ 7176/ 2020-21 dated 21.01.2021 issued by KSEB Ltd to M/s Trinity Movie Max Ltd by changing the Tariff from HT-IV(A) category to HT-IV(B)- Suo motu proceedings initiated by the Commission as per the judgement of the Hon'ble High Court WP(C ) No.15884 of 2022.

Petitioner : M/s Trinity Movie Max Ltd

Respondent : Kerala State Electricity Board Ltd.

Petitioner represented by : Adv Rajeev.K.Pillai, Counsel for the petitioner  
Shri. Rajendra Prasad, Trinity Movie Max

KSEB Ltd represented by : Shri. M.P.Rajan, Deputy Chief Engineer,  
Shri Rajesh, AEE, TRAC, KSEB Ltd

Date of hearing : 04.05.2023, 11:00 AM

Venue : Court Hall of the Commission

**Order dated 11.05.2023**

1. Hon'ble High Court of Kerala vide the judgement dated 23<sup>rd</sup> May 2022 has issued the following direction to the Commission in writ petition WP(C ) No.15884 of 2022 filed by Trinity movie Max, Pathanamthitta. The relevant portion of the judgment is extracted below;

*"In this view of the matter by exercising the power under Section 94 of the Electricity Act, petitioner has filed a review application which has been acknowledged by the Commission as evident from Ext.P4. As an apprehension that till such time it is being decided that coercive measures of non deposit like disconnection of the electricity may not be initiated.*

*This Court considering the aforementioned fact on 13.5.2022 Issued notice; standing counsel to get instructions and till such time had passed an interim order for stay of the coercive action for recovery. Today counsel for the respondent seeks further time. I am of the view that it*

*would be a farcical exercise in keeping the case pending. It would be appropriate to have a decision on the review application filed by the petitioner as to whether any case is made out on the grounds taken therein or not instead of pondering on the issue by this Court. In this view of the matter, I dispose of the writ petition by issuing directions to the Regulatory Commission, R4 to decide the review petition, Ext.P3 acknowledged by Ext.P4 **within a period of two months from the date of receipt of a copy of this judgment in accordance with law after affording an opportunity of hearing to the petitioner.** Petitioner shall be at liberty to place on record all the materials in support of the review petition as well as the additional material. Interim order with regard to the coercive action shall continue till the decision in the review petition.”*

2. The background of the Issue is detailed below;
- (1) The petitioner Trinity movie Max, Pathanamthitta is a High Tension (HT) consumer of the respondent KSEB Ltd. Trinity Movie Max consist of three (3) mini theatres having seating capacity of 250,110,110 seats respectively, comprised in 3 floors with total plinth area of 15263 Sq.ft.
  - (2) The contract demand of the consumer is 160 KVA and connected load is 207.3 KW. The consumer has been availing HT supply at HT IV commercial tariff from KSEB Ltd since 8<sup>th</sup> December 2014.
  - (3) In the meanwhile, KSEB Ltd on 25.01.2021 has re-categorized the tariff of the petitioner to HT IV(B) commercial tariff w.e.f 01.12.2020 as per the Tariff Order of the Commission dated 08.07.2019 in petition OA No.15/2018. KSEB Ltd also issued a revised short assessment bill of ₹5,41,790 by categorizing them under HT IV(B) commercial tariff from 07-2019 to 11-2020.
  - (4) The petitioner raised a complaint before the KSEB Ltd authorities to cancel the revision bill due to tariff change issued to the petitioner and also requested to restore their tariff at HT IV(A) category. But KSEB Ltd rejected their request and informed that the revision bill was issued as per the Tariff Order of the Commission dated 08.07.2019 in petition OA No.15/2018.
  - (5) Subsequently the petitioner filed a review petition dated 28.09.21 before this Commission against the short assessment bill dated 21.01.2021 issued by the KSEB Ltd with the prayer to review the short assessment bill dated 21.01.2021 issued by KSEB Ltd. The petitioner also requested to reinstate the arbitrary and unsustainable tariff change effected to Trinity movie Max from HT IV(A) category to HT IV(B) category. The petitioner may be heard in person or through the council before the matter taken for disposal.
  - (6) The review petition filed by the petitioner is for reviewing the Tariff Order of the Commission dated 08.07.2019 in petition OA No.15/2018. As per the provisions of the Electricity Act, 2003 tariff determination is a quasi-

legislative process, which involves pre-publication, stakeholder consultation and the public hearings etc.

Further, the review petition was filed against the demand notice issued by the licensee KSEB Ltd. As per the provisions of the EA-2003, individual complaints of the electricity consumers cannot be entertained by the Regulatory Commissions. Separate legal remedies such as CGRF, OMBUDSMAN are available to the consumers to file complaints against the electricity bills/orders issued by officers of licensees (here KSEB) to the Consumers.

Also, since the matter involves the recategorization of tariff as per the Order of the Commission dated 08.07.2019, the Commission vide the letter dated 15.12.20 21 has directed the petitioner to present their grievance, if any, with regard to tariff recategorization in the public hearing to be conducted for the determination of tariff for the years 2022-23 to 2026-27.

- (7) The Commission had conducted the public hearings on the tariff petition for the MYT period from 2022-23 to 2026- 27 as per the following schedule;

| SL No | Date       | Place      |
|-------|------------|------------|
| 1     | 01.04.2022 | Ernakulam  |
| 2     | 06.04.2022 | Trivandrum |
| 3     | 11.04.2022 | Kozhikode  |
| 4     | 13.04.2022 | Palakkad   |

However, the petitioner has not appeared and presented their case at any of the venues of the public hearing as detailed above

- (8) In the mean time, the petitioner had also filed a writ petition WP(C ) No.15884 of 2022 before the Hon'ble High Court against the demand notice dated 25.01.2021 by KSEB limited and the recategorization of tariff from HT IV(A) to HT IV(B). The matter came before the Hon'ble High Court on admission on 23.05.2022 and on the same day the Hon'ble High Court issued the following orders;

*"In this view of the matter by exercising the power under Section 94 of the Electricity Act, petitioner has filed a review application which has been acknowledged by the Commission as evident from Ext.P4. As an apprehension that till such time it is being decided that coercive measures of non deposit like disconnection of the electricity may not be initiated.*

*This Court considering the aforementioned fact on 13.5.2022 Issued notice; standing counsel to get instructions and till such time had passed an interim order for stay of the coercive action for recovery. Today counsel for the respondent. seeks further time. I am of the view that it would be a farcical exercise in keeping the case pending. It would be appropriate to have a decision on the review application filed by the petitioner as to whether any case is made out on the grounds taken*

*therein or not instead of pondering on the issue by this Court. In this view of the matter, I dispose of the writ petition by issuing directions to the Regulatory Commission, R4 to decide the review petition, Ext.P3 acknowledged by Ext.P4 **within a period of two months from the date of receipt of a copy of this judgment in accordance with law after affording an opportunity of hearing to the petitioner.** Petitioner shall be at liberty to place on record all the materials in support of the review petition as well as the additional material. Interim order with regard to the coercive action shall continue till the decision in the review petition.”*

- (9) The Commission noted that, though the Commission is included as the 4<sup>th</sup> respondent to the petition WP(C) No. 15884 of 2022, the council of the Commission could not appear before the Hon’ble High Court on the admission day on 23.05.2022. Further a copy of the judgement dated 23.05.2022 was not served to the Commission. Neither the petitioner nor the respondent KSEB Ltd had produced a copy of the judgement before this Commission for further compliance. Hence the Commission was totally unaware of the directions issued by the Hon’ble High court in the judgement dated 23.05.2022 in WP(C) No.15884 of 2022 till the subsequent Writ Petition WP(C) No. 43013 of 2022 was filed by the same respondent before the Hon’ble High Court of Kerala.

- (10) In the meanwhile the petitioner filed the writ petition WP(C) No.43013 of 2022(B) before the Hon’ble High Court of Kerala. The Hon’ble High Court vide the interim Order dated 03.02.2023 in WP(C) No.43013 of 2022(B) issued the following direction;

*“Sri. B. Pramod, the learned Standing Counsel, submits that as the order passed by the Kerala State Electricity Regulatory Commission has not stayed, the petitioner has to pay the energy charges at the revised tariff.*

*In response, the learned counsel for the petitioner points out that the petitioner has preferred a Review Petition before the Regulatory Commission, and this Court, by Ext.P8 judgment, had directed the 4th respondent to take a decision on the review petition within a period of two months from 23.05.2022. However, no orders have been passed to date. It is submitted by the learned counsel that the petitioner shall continue to pay the energy charges at the pre-revised rate.*

*Having considered the submissions, while issuing the bill for energy charges, the KSEB shall separately show the energy charges at the pre-revised rate as well as the rate fixed by the Regulatory Commission, and the petitioner shall continue to pay the charges at the pre-revised rate. It is made clear that if the issue is decided against the petitioner herein, they shall be bound to pay the difference.”*

- (11) Subsequently, the petitioner vide the letter dated 20.02.2023 has produced the order of Hon'ble High Court in WP(C) 15884 of 2022 and informed that the review petition filed by the petitioner against the demand notice of the KSEB Ltd dated 25.12.2022 is still pending before

the Commission and the petitioner requested for an early disposal of the same. The petitioner also informed that as per the definition of the Multiplex given in the Income Tax Rules,1962 and Kerala Municipality Building Rules,1999 that the Trinity movie Max will not come under the category of HT IV(B) category hence the petitioner requested to categorise them under HT IV(A) tariff category.

- (12) The review petition was neither filed in the specified format nor the specified fees was remitted by the petitioner. At the same time, the Commission is bound by the direction of Hon'ble High Court in WP(C) 15884.
  - (13) Duly considering the above facts, the Commission decided to conduct an in person hearing with the petitioner M/s Trinity Movie Max and respondent KSEB Ltd. A copy of the review petition filed by the petitioner was forwarded to KSEB Ltd for comments.
3. KSEB Ltd vide the Counter Affidavit dated 03.05.2023 had submitted the following;
- (1) The tariff determination including tariff revision exercise is initiated as per section-64 of the Electricity Act-2003. Tariff determination process has to be done in accordance with the procedures specified for it which include pre-publication of tariff proposal and public hearing.
  - (2) The tariff is determined for all the consumers of the licensee and the tariff petition is not a dispute between two contending parties. The Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court have clarified that the tariff determination process is a quasi- legislative process. Therefore, petitions of individual consumers against tariff order after the expiry of the limits prescribed in the regulations cannot be considered as the same can disturb the delicate balance achieved by the above tariff revision process.
  - (3) The contention of the petitioner that, since the tariff change has been effected from 01.12.2020, the backward revision has no legal footing cannot be accepted. KSEB Ltd submitted that as per regulation 152 of Kerala Electricity Supply Code 2014, anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee etc, can be rectified by issuing revised bills. Evenwhile there is no change in purpose of the consumer and inaccuracies in meter, the licensee is authorized to realize from the consumer the short collected electricity charges under normal tariff from the consumers. However, as per the proviso of the said regulation, if the period of such short collection due to anomalies is not known then the period of short assessment shall be limited to twelve months and if it is

known then the same may be limited to maximum period of twenty four months.

Here in this case, since there is no change in purpose of usage the anomaly period can be correctly assessed as from 07/2019 to 11/2020 which is well within 24 months limit. Hence, the short assessment bill issued on the consumer is in order.

- (4) The contention of the petitioner to consider the definition given to Multiplex in the Income Tax Rules, 1962, KSEB Ltd submitted that the same cannot be valid in the instant case. It has specifically told in Rule 18DB of Income Tax Rules, 1962 that for the purpose of subsection (7A) and clause (da) of subsection (14) of section 80-1B, the multiplex theatre shall have the area, facilities and amenities which has been specified. The above definition of Multiplex relied by the petitioner in the petition is for a specific matter in the Income Tax Rules and hence cannot be made applicable in the present case.

The Commission while classifying the consumers under Section 62(3) of the EA-2003, need not be going on with any other classification done by the Government, any other utility or any classification made by any other statutes for different purposes. The above matter has been made clear in the orders issued by the Hon'ble APTEL in appeal no 131 of 2013 filed by M/s Vianney Enterprises in a tariff re-categorization case. The relevant part of the order is extracted below;

*"23. The Appellant has also raised the following issues for continuation of their classification under LT IV Industrial category: i) Unit being recognized as industry under Factory's Act etc. ii) Bottling and packing activity is being considered as industrial in other States for the purpose of electricity tariff.*

*24. In our view the above two arguments are not valid. The categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission under the Electricity Act, 2003. Under Section 62(3) of the Electricity Act, the State Commission can differentiate between the tariffs based on interalia, purpose for which the supply is required. Accordingly, the State Commission is empowered to differentiate in tariff based on a purpose for which the supply is required. In this case the State Commission has differentiated between the units which use electricity for extracting oil from seeds which is a manufacturing activity and those units which are only engaged in packing of oil brought from outside which has been considered as commercial activity. Secondly, each State Commission is empowered to decide the retail supply tariff and categorization of consumers for its State. It is not binding for the State Commission to follow the categorization of consumers for tariff purpose decided by the Regulatory Commissions of other States."*

- (5) KSEB Ltd further submitted that, the term 'Multi' refers to more than one, and hence such theatres who were having more than one screens were categorized under Multiplex and had been assigned HT IV(B) tariff by KSEBL in compliance to the tariff order dated 08.07.2019. However, the ambiguity in assigning HT IV(B) tariff to theatre complexes having two or more screens had been taken up by KSEBL during the last tariff revision exercise. The Commission vide the tariff order dated 25.06.2022, had examined the proposal of KSEB Ltd and had approved to categorize multiplexes under HT IV(B) tariff as proposed by KSEBL. Accordingly, it can be seen that the Commission having examined the matter in detail and then only had decided to place the theatres having two or more screens under HT IV(B) tariff. In view of the above stand taken by the Commission, there is no point in the argument made by the petitioner that the definition given to Multiplex in the Income Tax Rules needs to be taken.
- (6) KSEB Ltd submitted that, any revision made in tariff at a later stage will give negative impact in the recovery of ARR for the operational year. It may also be noted that the realization of the amount through the current tariff revision is only much less than the ARR of KSEBL.
4. The Commission had conducted the hearing on the petition on 04.05.2023. Adv Rajeev.K.Pillai, Counsel for the petitioner presented the matter on behalf of M/s. Trinity Movie Max. Shri Rajesh, Asst: Executive Engineer, TRAC presented the counter on behalf of KSEB Ltd. The summary of the deliberations during the hearing is given below;
- (1) Trinity Movie Max submitted the following during the hearing;
- (i) Trinity Movie Max theaters consists of three mini theaters having seating capacity 250,110,110 seats respectively, comprised in three floors with a total plinth area of 15,263 Sq.ft. Trinity Movie Max is a consumer of KSEB Ltd, which is categorized under HT-IV(A) since 04.09.2014. Subsequently, KSEB Ltd vide the demand notice dated 21.01.2021 informed that the Commission vide the Tariff Order dated 08.07.2019 in petition OA No.08/2019 introduced new tariff category LT – IV(B) for Multiplex theaters and the Trinity Movie Max falls under this category. The petitioner further submitted that, this classification by KSEB Ltd is arbitrary, unreasonable and not sustainable in law.
- (ii) The petitioner further submitted that the term Multiplex is not defined in the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018 or any other Regulations/ Rules notified by the Commission. But the expression Multiplex is clearly mentioned in the Income Tax Rules, 1962 and Kerala Municipality Building Rules, 1999.

As against the Rule – 18DB of the Income Tax Rules,1962, there is no entertainment facility in M/s Trinity Movie Max other than Cinema. The total built-up area occupied by all the three Cinema Theatres comprised in the Trinity Movie Max is 15,263 Sq ft, which is less than 22,500 sqft., the minimum total built-up area mandated by the Income Tax Rules, 1962. There are no commercial shops in the Trinity Movie Max. As per the rule multiplex theatres shall be comprised of at least three commercial shops. The total seating capacity of all three theatres in Trinity Movie Max is 470 seats. As per the Rules, the total seating capacity of all the cinema theatres comprised in the multiplex shall be at least 900 seats. As per the Rule, the total built-up area occupied by all the commercial shops comprised in the multiplex theatre shall not be less than 3,000 sq. ft., and the minimum built-up area of each shop shall not be less than 250 sq.ft., whereas in the case of Trinity Movie Max there are no commercial shops in the premises. As per the Rule, in every multiplex there shall be at least one lobby or foyer in the cinema theatres, whose area shall be at least 3 sq.ft. per seat and in the case of Trinity Movie Max, there is only a small lobby area. Petitioner further submitted that as per the Income Tax Rules,1962, the Trinity Movie Max will never come under the purview of Multiplex as defined in the Income Tax Rules,1962.

As per the Kerala Municipality Building Rules,1999 Multiplex complex shall mean an integrated entertainment and shopping centre/shopping complex or a shopping complex or a shopping mall, having more than one cinema hall/ screens each with a seating capacity of 300 or less. Apart from cinema halls the entertainment area may have restaurants, cafeteria, hotels etc. are permissible under this group. The total built up area of the Multiplex shall not be less than 12000 Sq.meters and the height of the building shall not exceed 50 meters.

- (iii) The petitioner submitted that there are three screens in the Trinity Movie Max and there are no other activities. Further total area of all the three screens in the Trinity Movie Max is only 15,263 Sq.ft. Hence, as per the Kerala Municipality Building Rules,1999 Trinity Movie Max will not come under the Multiplex.
- (iv) The petitioner submitted that as per the Income Tax Rules,1962 and Kerala Municipality Building Rules,1999 the Trinity Movie Max will not come under the category Multiplex. Hence requested before the Commission that Trinity Movie Max may be categorized under HT IV(A) category instead of HT IV(B) category.

- (2) The respondent M/s KSEB Ltd has submitted the following;



- (1) M/s Trinity Movie Max is an HT consumer of KSEB Ltd under Electrical Section Pathanamthitta. HT connection provided on 15.12.2014 under HT IV tariff for a Contract Demand of 160kVA. The Commission as per tariff order dated 08.07.2019 had introduced a new tariff category HT IV(B), which is applicable to Hotels, Marriage halls, Convention Centre, Shopping malls and Multiplexes. The said classification was upheld in the latest tariff order dated 25.06.2022 also.
- (2) Since the petitioner is operating a multiplex theater with more than one screen, the petitioner was also categorized under HT-IV (B) tariff category from 08.07.2019 onwards. Petitioner contented that, there is no legal footing for the backward revision of the tariff category from 08.07.2019 onwards. However, the Regulation 152 of Kerala Electricity Supply Code, 2014, allows the licensee to realize from the consumer the short assessment of collected electricity charges under normal tariff. In case the period of anomaly is known then the same had to be limited to 24 months as per the above Regulation.
- (3) Petitioner also contented that the definition of Multiplex in the Income Tax Rules, 1962 to be considered in assigning tariff. KSEB Ltd submitted that, since the said definition of Multiplex is for a specific matter in Income Tax Rules and hence cannot be made applicable in the present case. The Commission, while classifying consumers need not go by any other classification done by Government or other statutes. This matter made clear by Hon'ble APTEL in the order issued in Appeal No 131 of 2013 filed by M/s Vianney Enterprises challenging KSERC Order.
- (4) Petitioner further contented that Trinity Movie Max doesn't come under category of 'Multiplex' and so the change of tariff has no legal footing. KSEB Ltd submitted that the term 'MULTI' refers to more than one and hence theatres having more than one screens were categorized as Multiplex and assigned HT IV(B) tariff by KSEBL in compliance to tariff order dated 08.07.2019. The clarity needed in Multiplex had been taken in the last tariff revision by KSEBL with recommendation to consider theatres having two or more screens under HT IVB tariff. The Commission vide the Order dated 25.06.2022 had upheld the earlier decision of multiplex theater, i.e., the theatre having more than one screen under HT-IV (B) category.
- (5) KSEB Ltd further submitted that the realization of amount through the current tariff revision is much less than the ARR of KSEBL. Any revision made at a later stage will have a negative effect on the recovery of ARR. There are 104 HT consumers under the category of Multiplex and billed under HT IV(B) tariff. Hence, KSEB Ltd requested before the Commission that the petitioner plea to consider them under HT IVA tariff from the tariff order dated 08.07.2019 may summarily be rejected.

- (3) Based on the deliberations during the hearing, the Commission directed the petitioner to clarify the following;
- (i) Which provisions of the EA-2003 and Regulations notified by the Commission are invoked by the petitioner to claim reliefs sought?
  - (ii) Whether the petitioner had served a copy of the Writ Petition WP(C) No. 15884 of 2022 filed before the Hon'ble High Court, to the Commission?
  - (iii) Whether the petitioner has served a copy of the judgement WP(C) No.15884 of 2022 before the Commission for compliance?
- (4) In response to the clarifications sought by the Commission, the petitioner clarified the following during the deliberations of the hearings.
- (i) Petitioner conceded that the petition was not filed based on the provisions of the Act nor the Regulations notified thereunder. They approached the Commission as KSEB has not reviewed its decision to recategorise the tariff.
  - (ii) Against the demand notice issued by the KSEB Ltd dated 21.01.2021, the petitioner vide letter dated 29.03.2021 had requested before the licensee KSEB Ltd for the review of the demand notice dated 21.01.2021. Subsequently, KSEB Ltd vide letter dated 27.07.2021 had informed that the KSEB Ltd as a distribution licensee is bounded under the EA-2003 to levy and collect the electricity tariff determined and approved by the Commission. Based on the directions of the KSEB Ltd, the petitioner had filed the review petition against the demand notice issued by KSEB Ltd.

The petitioner clarified that, the registry of the Hon'ble High Court ensures the serving of the copy of the Writ Petition to the respondents. The petitioner clarified that, they are not authorized to serve copy of the Judgment of the Hon'ble High Court dated 23<sup>rd</sup> May 2022 before the Commission for compliance. However, the petitioner on 20.02.2023 had informed the Commission regarding the pendency of the Review Petition filed before the Commission, along with the direction from the Hon'ble High Court and also submitted a copy of the judgment and requested before the Commission to take an action regarding the matter.

### **Analysis and Decision**

5. The Commission having examined in detail the petition filed by M/s Trinity Movie Max, counter affidavit of the respondent KSEB Ltd, deliberations of the subject matter during the hearing held on 04.05.2023, the provisions of the Electricity Act, 2003, Supply Code 2014, other Rules, Regulations notified by

the Commission in consistent with the Electricity Act, 2003 and arrived at the following conclusions and decisions on the issues raised by the petitioner in the review petition dated 23.09.2021.

6. Though the review petition was filed against the demand notice dated 25.01.2021, the basic issue raised in the review petition is regarding the recategorization of the electricity tariff of the petitioner from HT-IV (A) tariff to HT-IV (B) tariff applicable to 'hotels, marriage halls, convention centers, shopping malls, multiplexes etc' vide the Order dated 08.07.2019 in petition OA No. 15/2018 in the matter of approval of 'ARR,ERC and Tariff Proposals for the control period 2018-19 to 2021-22'.

As extracted under paragraphs-1 of this Order, Hon'ble High Court also observed that, the review petition filed by the petitioner has to be appraised in exercise of the powers vested with this Commission as per the Section 94 of the Electricity Act, 2003 for reviewing its decisions, directions and Orders.

7. The Commission has examined the review jurisdiction as per the provisions of the Electricity Act, 2003, for reviewing its orders and decisions. The relevant portions are discussed below;

- (1) 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 Section of the EA-2003 is extracted below:

*"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. "*

- (2) Order 47 Rule 1 of the Code of Civil Procedure 1908, dealing with review of the orders and decisions of a Civil court, which is extracted 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.*

*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.”*

- (3) The Regulations 67 of the KSERC (Conduct of Business) Regulations, 2010 and its amendments specified as follows.

*“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”.*

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, the 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 Commission has noted that, the entire issues raised in the review petition was discussed in detail in the earlier Tariff Orders of the Commission. Noting his requests in the representation, styled as a review petition sans the requisite fees nor in the specified format, the Commission provided him an opportunity to present his views vide letter dated 15-12-2021 and disposed the matter. The petitioner failed to use that opportunity and in the present proceedings initiated in compliance of Hon'ble High Court order, also failed to produce new facts or evidence or mistakes or error apparent on record, as per the Section 94 of the Electricity Act, 2003 read along the Code of Civil Procedure, 1908, for reviewing the Order of the Commission dated 08.07.2019 in petition OA No.15/2018. Meanwhile, similarly placed consumers viz Managing

Partners, United Film Exhibitors, Managing Director, Issac and Maria A/C Movie House, Managing Partner Vallakkalil Cine Complex raised similar matters related to classification of Multiplex. The Commission after detailed consideration of the matter has decided that, theaters having more than one screen etc come under the category of Multiplex Hence, the Commission is liable to reject the review petition.

8. The tariff determination is a quasi-legislature process involving pre-publication, stakeholder consultation and publication and public hearings. The Commission vide the Order dated 08.07.2019 had determined the retail tariff of the consumers in the State for the period from 08.07.2019, after pre-publication for the information and for getting the comments and suggestions of the electricity consumers and other stake holders. The Commission has also conducted public hearings at following places for getting the oral comments of the stake holders.
- (i) Kozhikde on 26.11.2018
  - (ii) Ernakulam on 27.11.2018
  - (iii) Kattappana on 28.11.2018
  - (iv) Thiruvananthapuram on 10.12.2018

The Commission, in exercise of the powers vested on it under Section 62, 64 and 86 of the Electricity Act, 2003 had determined the tariff of the various categories of the Consumers of the State.

9. The State Electricity Regulatory Commission is a quasi-judicial body functioning as per the provisions of the Electricity Act-2003 (Central Act 36 of 2003). As per the Section 62 and Section 86 (1)(a) of the Electricity Act, 2003, the tariff determination is one of the statutory functions of the SERCs. The subsection (3) of Section 62 of the EA-2003 which is extracted hereunder provides the various factors to be considered while categorizing the consumers while determining the tariff.

*(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".*

10. Therefore the Commission has to consider the purpose for which electricity is used, while determining tariff for various categories of consumers. The Commission has been authorized by the provisions of Electricity Act, 2003, to formulate consumer categories and to determine tariff according to section 62(3) of the Act. The categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission under the Electricity Act-2003. Under Section 62(3) of the Electricity Act, 2003, the Commission is empowered to differentiate between consumers based on the purpose for which electricity is required. Hon'ble APTEL in judgment dated 20<sup>th</sup> October 2011 (in Appeal No. 110 of 2009 & Ors), has expressed the view that,

*“30. The real meaning of expression ‘purpose for which the supply is required’ as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The purpose is the design of effecting something to be achieved or accomplished. The overt act of the person must be looked at so as to find out the effect of the transaction.*

*31. Webster’s New International Dictionary defines the work ‘purpose’ as that which one sets before him as an object to be attained; the end or aim has to be kept in view of any plan, measure, exertion or operation. Therefore, it is beyond doubt that ‘purpose’ has to be determined with regard to the ultimate object of the consumer for the use of electricity. While determining the purpose for which supply is required by a consumer, it is ultimately the end objective of the user that has to be ascertained.”*

11. The request of the petitioner is to re-classify their electricity tariff at HT-IV(A) category instead of HT-IV(B). Such reclassification would amount to re-determination and reduction of tariff. Determination of tariff for electricity has to be done by the Commission in accordance with Sections 61, 62 and 64 of the Electricity Act, 2003, read with the provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, notified from time to time. It has been clarified by the Hon’ble Supreme Court and the Hon’ble APTEL that the tariff determination is a quasi-legislative process. As per the procedures specified by the Tariff Regulations, the tariff can be determined only after notifying the proposal for the information of the public and after conducting public hearing thereon. Further, Section 62 (4) of the Electricity Act 2003 provides that,

*(4) “No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified”.*

12. The tariff order dated 08.07.2019 was valid only upto 25.06.2022. subsequently, the Commission vide the Order dated 25.06.2022 has approved the ARR, ERC and Tariff for the control period from 2022-23 to 2026-27. The Commission has determined the tariff for the control period from 2022-23 to 2026-27, after completing all the procedures including pre-publication, stake holder consultation and public hearings. The Commission had conducted public hearings on the petition at following places.

- (i) Ernakulam on 01.04.2022
- (ii) Thiruvananthapuram on 06.04.2022
- (iii) Kozhikode on 11.04.2022
- (iv) Palakkad on 13.04.2022

The Commission vide the letter dated 15.12.2021 had intimated the petitioner that, the grievance if any regarding the recategorization of tariff applicable to the petitioner may be presented in the public hearings on the next tariff revision for the control period from 2022-23 to 2026-27 before the Commission. However, as per the records available, the petitioner had not availed the

opportunity and not presented their grievances before the Commission during the tariff determination of the period from 2022-23 to 2026-27.

The Commission, vide the Order dated 25.06.2022 had upheld the tariff re-categorization of 'multiplex' under HT-IV(B) tariff approved vide the Order dated 08.07.2019 in petition OA No. 15/2018. In the said Order, the Commission had clarified that, multiplex theaters in shopping malls with more than one screen etc shall be billed under HT-IV (B) Commercial category.

13. As above, since 08.07.2019 onwards till date, along with Hotels, marriage halls, convention centers, shopping malls etc, the multiplex cinema theaters were categorized under HT-IV (B) Commercial tariff.
14. As discussed in the preceding paragraphs, the tariff determination is a quasi-legislature process involving pre-publication, stake holder consultation and public hearings. Further as per Section 64(2) of the Electricity Act, 2003, the retail tariff cannot be determined more than once an year. Further, as per the Section 94 of the Electricity Act, 2003 read along with the Code of Civil Procedure 1908, the review jurisdiction of the Commission is very limited. The Commission cannot review the decision taken in the Tariff Orders dated 08.07.2019 and 25.06.2022 at this stage, since it will affect the delicate balance between the subsidized and cross subsidized tariff categories in the State of Kerala. **However, if the petitioner has grievance regarding tariff re-categorisation of multiplex theaters, they have the option to present their case in the public hearing on the Tariff Determination for the tariff period from 2023-24 to 2026-27 scheduled on 15.05.2023 at Thiruvananthapuram.**
15. The Commission also has examined the definition of the 'multiplex theatre' given under Rule-18 B, Income Tax Rules, 1962, which is extracted below.

***“Prescribed area, facilities and amenities for multiplex theatres and particulars of audit report, for deduction under sub-section (7A) and clause (da) of sub-section (14) of section 80-IB.***

***18DB. (1) For the purpose of sub-section (7A) and clause (da) of sub-section (14) of section 80-IB, the multiplex theatre shall have the following area, facilities and amenities :—***

- (a) The total built-up area occupied by all the cinema theatres comprised in the multiplex shall not be less than 22,500 square feet, and shall consist at least 50% of the total built-up area of the multiplex excluding the area specified for parking.*
- (b) The multiplex theatres shall be comprised of at least three cinema theatres and at least three commercial shops.*
- (c) Total seating capacity of all the cinema theatres comprised in the multiplex shall be at least 900 seats, and no cinema theatre should consist of less than 100 seats.*
- (d) The total built-up area occupied by all the commercial shops comprised in the multiplex theatre shall not be less than 3000 sq. ft., and the minimum built-up area of each shop shall not be less than 250 sq. ft.*

- (e) *There shall be at least one lobby or foyer in the cinema theatres, whose area shall be at least 3 sq. ft. per seat.*
- (f) *The multiplex theatre shall have adequate parking, toilet blocks and other public conveniences, as per local building or cinema regulations, and shall also fulfil all local building or cinema regulations in respect of fire and safety.*
- (g) *The cinema theatres comprised in the multiplex theatre shall use modern stereo projection systems with at least two screen speakers per screen and one surround speaker per 25 seats in a theatre.”*

It is clearly specified under Rule-18B of the Income Tax, 1962 that, the said definition of multiplex theatre is applicable for the purpose of sub-section 7(A) and clause (da) of sub-section (14) of section 80-IB. The above definition of the multiplex relied by the petitioner is for a specific matter, that is deduction of profit or gains from the income of certain multiplexes meeting prescribed qualifications for taxation under the Income Tax Rules and cannot be made applicable to the preset case.

16. The Commission has also examined the meaning of the ‘Multiplex’ as per the Kerala Municipality Building Rules, 2019. The said Rules are applicable for classifying the buildings based on the use or character of occupancy. The said Rules also cannot be made applicable for tariff categorization under Section 62(3) of the EA-2003, which is extracted under paragraph-9 above.
17. The categorization of consumers depends upon the factors which are relevant to the Electricity Act, 2003 particularly, sub section (3) of Section 62 i.e. consumer load factor, power factor, voltage, total consumption of electricity during any specified period or at time at which supplies are required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

This Commission is of the view that, each of the Act/ Rules has a different object to be achieved, and has different requirement for the purposes and objects provided therein. The definition in one statute cannot be used for interpreting the same expression used in another statute. Meaning assigned to certain words in one statute cannot be imported to define the meaning of the same word in a different statute.

Hon’ble APTEL in various judgments including the appeal petitions filed against the Orders of this Commission (Judgment dated 7<sup>th</sup> August 2014 in Appeal No. 131 of 2013 and Judgment dated 08.09.2014 in Appeal No. 265 of 2014) held that, the categorization of consumer tariff is under the domain of the State Commission under Section 62(3) of the Electricity Act, 2003. It is also clearly specified therein that, it is not binding on the State Commission to follow the categorisation of consumer for the tariff purpose decided by the Regulatory Commissions of other States.

As discussed above, It is a settled position that, the State Electricity Regulatory Commission as a quasi judicial body, is authorized to differentiate tariff as per



the Section 62(3) of the EA-2003, which is extracted under paragraph 9 of this Order.

Considering the above, there is no merit in the argument of the petitioner to review its tariff recategorization based on the definition provided in Income Tax Rules, 1962 and Kerala Municipality Rules, 2019. Hence the plea of the petitioner is liable to be rejected.

### **Order of the Commission**

18. The Commission, after examining the Review Petition filed by M/s Trinity Movie Max, counter affidavit of the respondent M/s KSEB Ltd, deliberations of the subject matter during the hearing held on 04.05.2023, the provisions of the Electricity Act, 2003, other Rules and Regulations in force, hereby orders that, the review petition dated 23.09.2021 filed is not maintainable. Accordingly, the petition is hereby rejected.

The petition OP No. 20/2023 is disposed of. Ordered accordingly.

Sd/-  
**B Pradeep**  
Member

Sd/-  
**Adv. A J Wilson**  
Member

Approved for Issue

Sd/-  
C R Satheeshchandran  
Secretary