

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**ORDER ON REVIEW PETITION NO. 3 OF 2016 & IA 53 OF 2016
IN APPEAL NO. 247 OF 2015**

Dated: 5th February, 2016

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

IN THE MATTER OF

**The Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram,
Kerala State – 695 004**

Rep. by its Secretary

**Through Smt. Sheela M. Daniel, Resident Engineer,
KSEBL, Travancore Place,
K.G. Marg, New Delhi-110 001**

**..... Appellant/
Review Petitioner**

VERSUS

**1. The Kerala High Tension & Extra High Tension
Industrial Electricity Consumers' Association
Productivity House, Jawaharlal Nehru Road,
Kalamassery-683104 Kerala State
Rep. by its Secretary**

**2. The Kerala State Electricity Regulatory Commission,
C.V. Raman Pillai Road, Vellambalam,
Thiruvananthapuram
Kerala – 695004
Rep. by its Secretary**

..... Respondents

Counsel for the Appellant ... Mr. M.T. George
Ms. R.S. Sreeja

Counsel for the Respondent(s)... Mr. Joseph Kodianthara, Sr. Adv
Mr. Atul Shankar Vinod
Mr. M.P. Vinod
Ms. Neelam Saini

ORDER OF THE BENCH

The Kerala State Electricity Board Limited (in short, ‘KSEBL’), a Review Petitioner, who was Respondent No.2 in Appeal No. 247 of 2014 decided by us, vide our Judgment, dated 18.11.2015, has preferred this Review Petition, being R.P. No. 3 of 2016, in Appeal No. 247 of 2014, submitting that this Appellate Tribunal ignoring its earlier decisions in Appeal No. 1 of 2013 and 19 of 2013, in the instant appeal has directed to calculate the rate of return on equity at 14% as against 15.5% which had been allowed in the earlier appeals, being Appeal No. 1 of 2013 and 19 of 2013.

2. Further ground to file the instant review petition is that this Appellate Tribunal has failed to identify what should be the equity amount to be considered by the State Commission while remanding back the matter to the State Commission for considering the equity amount at the rate of 14% return on the said amount. Further, this Appellate Tribunal has failed to see that the consultant appointed by the State Commission did not provide any specific amount as seen from the conclusions arrived by the State Commission that the consultant recommended that the Commission may allow return on equity either on the equity capital allowed earlier by the Commission or on the reduced equity capital of Rs.283.91 crores (Rs. 1553 crores – Rs. 1260 crores). Hence, the consultant was not specific or concrete on the amount of equity capital that has to be recognized by the State Commission. Further, the State Commission recognized Rs. 3499 crores as the equity base for calculating on the return on equity for the FY 2014-15.

3. The learned counsel has argued on the provisions of Section 131(3)(b) of the Electricity Act, 2003 submitting that the State Commission is bound to accept Rs. 3499 crores as the equity base of Review Petitioner/KSEBL and the opinion tendered by the consultant cannot supersede the equity

base stipulated in the transfer scheme by the competent parties to the said scheme.

4. On our query, the learned counsel for the Review Petitioner has replied that the earlier decisions of this Appellate Tribunal in Appeal No. 1 of 2013 and 19 of 2013 were not brought to the notice of this Appellate Tribunal during arguments on this Appeal. Though, the learned counsel has not pointed out one more contention though mentioned in its review petition to the effect that since the consultant was not appointed by the State Commission without the knowledge of the review petitioner hence, the report of the consultant is not binding upon the review petitioner/ Electricity Board.

5. We have considered the grounds taken in the review petition in their entirety but, we do not find any substance or merit in the said submissions of the review petitioner as the requirements of entertaining the review petition are clearly mentioned in Section 114 and order XLVII of the Code of Civil Procedure, 1908.

6. We have also gone through the judgment of this Appellate Tribunal in the aforesaid Appeals but the said return on equity at 15.5% had been granted on the basis of the facts and circumstances of the reported cases and the same analogy is not squarely applicable to the matter before us.

7. After discussing the suggestions of the consultant engaged by the State Commission, we in our judgment, dated 18.11.2015, in Appeal No. 247 of 2014 has observed as under:

“14.6 We find controversy regarding the equity amount i.e. the amount specified by the Consultant and the amount submitted by the KSEB in the ARR.

The Commission considered the amount proposed by the KSEB. Further, the Appellant is contesting that as per the website of the Ministry of Corporate Affairs, Govt of India, the equity of KSEB is only Rs. 5.00 lakhs.

14.7 We are of the view that since the consultant appointed by the State Commission has studied the whole system and recommended the equity value, hence, we direct the Commission to consider the equity amount specified by the Consultant and 14% rate of return on this amount has to be considered.

14.8 Accordingly, this issue is remanded back to the Commission to go through and compute accordingly instead of accepting the figures of KSEB.”

8. We simply took the view that since the consultant appointed by the State Commission has studied the whole system and recommended the equity value hence, the Commission is required to consider the equity amount specified by the consultant and 14% rate of return on this amount has to be considered and directed the State Commission accordingly. We remanded back the matter to the State Commission to go through and compute accordingly instead of accepting the figures of the Review Petitioner/Electricity Board. Thus, the submissions are sans merits and liable to be rejected.

9. In this view of the matter, the instant Review Petition, being R.P. No. 3 of 2016 & IA No. 53 of 2016 in Appeal No. 247 of 2014, has no force and is hereby dismissed. There shall be no order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 5TH DAY OF FEBRUARY, 2016.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

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