
**In the Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)**

Appeal No. 104 of 2015

Dated: 2nd June, 2016

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

IN THE MATTER OF:

Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam
Thiruvananthapuram
Kerala State – 695004

.....Appellant/Petitioner

VERSUS

1. Kerala State Electricity Regulatory Commission
KPFC Bhavanam, CV Raman Pillai Road
Vellayambalam
Thiruvananthapuram – 695010
Kerala State

2. M/s. Kinesco Power and
Utilities Private Limited
2nd Floor, CFC Building
KINFRA Park, Kusumagiri.P.O.
Kakkanad, Kochi – 682030
Kerala State

...Respondent(s)

Counsel for the Appellant(s) : Mr. M.T. George
Ms. M.G. Yogamaya

Counsel for the Respondent(s): Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Sandeep Raj Purohit

Ms. Neha Garg for R-2
Mr. Ramesh Babu for R-1
Mr. Ishaan Mukherjee for R.2
Ms. Mukti Chowdhary
Ms. Akshi Some for R.2

JUDGMENT

Per Hon'ble T. Munikrishnaiah, Technical Member

1. The present Appeal being Appeal No. 104 of 2015 has been filed by the Appellant/Petitioner Kerala State Electricity Board Ltd., under section 111 of the Electricity Act, 2003 against the Impugned Order dated 22.01.2015 passed by the Kerala State Electricity Regulatory Commission (hereinafter referred to as "KSERC") in Petition No. 6 of 2014.

In the impugned order of the Chairman, KSERC the contract demand of KPUGL was allowed to be reckoned as 11 MVA in KINFRA Industrial Park, Kakkanad, 1 MW in High Tech Park, Kalamassery and 1 MW at KINFRA Integrated Textile Park, Palakkad with effect from 17-03-2011, the date of the meeting convened by the Chief Secretary, Government of Kerala to discuss on the matter, instead of from 01-09-2014, the date of effect of the Power Purchase Agreement (PPA) signed on 01-10-2014. Whereas in the dissenting order of the Member, KSERC held that

the arrears on account of penal demand charges on account of drawl of power in excess of the contracted power of 9 MVA along with interest is payable by M/s. KPUPL till 31st August 2014 based on the then existing contract between KSEB and KINFRA Export Promotion Industrial Parks (KEPIP in short), who was the predecessor in interest of KPUPL.

2. The Appellant/Petitioner – Kerala State Electricity Board Ltd., is a Government Company to which Government re-vested through Order No. 46/2013/PD dated 31-10-2013 all functions, properties, interests, rights, obligations and liabilities of the erstwhile Kerala State Electricity Board. The Appellant/Petitioner is a deemed licensee in terms of the fifth proviso to Section 14 of the Electricity Act, 2003. The Appellant/Petitioner also undertakes generation of electricity besides the above licensed activities.
3. The Respondent No.1 herein, the Kerala State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) is the Regulatory Commission for the State of Kerala, empowered to discharge functions under Electricity Act, 2003.
4. The Respondent No. 2, M/s. Kinesco Power and Utilities Private Limited (KPUPL) is a licensee w.e.f 01-02-2010 by virtue of

transfer of license for distribution of electricity from KINFRA Export Promotion Industrial Parks (KEPIP) vide KSERC order No. 1/2009 dated 30-11-2009.

5. Brief Facts of the Case

5.1 The Government of Kerala vide G.O. (P) No. 18/2003/PD dated 08-05-2003 (Gazatte Notification No. 908 dated 29-05-2003) granted license for distribution of electricity at KINFRA Parks, Kakkanad to KINFRA Export Promotion Industrial Parks “herein after referred as KEPIP in short.”

5.2 KEPIP entered into an agreement with KSEB on 24-02-2006 for purchase of power to the tune of 9 MVA for distribution of electricity at the licensed area of 180 acres at Kakkanad for a period of 20 years.

5.3 KSERC vide order No. KSERC/II/LP-6 of 2007 dated 23-10-2008 included new areas at Kakkanad, Kalamassery and Palakkad in the distribution license of KEPIP.

5.4 KSERC transferred the licensee for distribution of electricity from KEPIP to M/s. Kinesco Power and Utilities Private Limited (KPUPL) w.e.f 01-02-2010 vide KSERC order No. 1/2009 dated 30-11-2009.

- 5.5 On 03-03-2010, KSEB forwarded a draft Power Purchase Agreement (PPA) to KPUPL. KPUPL vide letter 05-03-2010 dated informed their unwillingness on the terms and conditions of the PPA forwarded by KSEB to KPUPL.
- 5.6 On 27-07-2010, KSERC disposed petition No. DP 82 of 2010 filed by KPUPL against the terms of the proposed PPA.
- 5.7 KPUPL vide letter dated 16-08-2010 sought additional power enhancing the total requirement to 11 MVA (10000 kVA at Kakkanad, 500 kVA at Kalamaassery and 250 kVA at Palakkad).
- 5.8 On 13-12-2010, KSERC revised the Bulk Supply Tariff (BST) applicable for purchase of power by licensees from KSEB w.e.f 01-12-2010.
- 5.9 On 17-12-2010, KSEB filed W.P.(C) 37700 of 2010 before Hon. High Court of Kerala against KSERC order in Petition No. DP 82 of 2010.
- 5.10 Chief Secretary, Government of Kerala convened a meeting on 17-03-2011 wherein it was decided that *“(i) KSEB should sign PPA with KINESCO for the supply of 11 MW power in KEPIP (ii) In the case of High Tech Park, KINESCO should*

act as a franchisee. Meanwhile KINESCO should take step for finding alternate sources of power for distribution.”

5.11 On 28-04-2011, based on the decisions arrived at during the meeting dated 17-03-2011, Board intimated KPUGL that Board had in principle decided to provide 11 MVA at Kakkanad subject to technical feasibility and had authorized Chief Engineer (Transmission – South) to process the application of KPUGL for enhancing the contracted demand to 11 MVA at Industrial Parks of KEIP at Kakkanad and also requested KPUGL to provide an undertaking indicating their willingness to act as a franchise of KSEB at Kalamassery. However, KPUGL did not come forward to fulfill the preconditions thereby delayed the execution of the power purchase agreement.

5.12 During June, 2011, KPUGL filed appeal petition before the Appellate Tribunal for Electricity, New Delhi (APTEL) against tariff revision order dated 13-12-2010 effective from 01.12.2010.

5.13 On 22-12-2011, Special Officer (Revenue), KSEB addressed KEIP to clear the arrears accrued due to excess drawl of

power from 3/2011 to 11/2011 along with applicable interest totaling to Rs. 10.73 Lakhs.

5.14 KPUGL vide letter dated 05-01-2012 requested Special Officer (Revenue), KSEB not to disconnect supply for non-payment of above dues.

5.15 KSERC issued revised BST order on 25-07-2012 effective from 01-07-2012.

5.16 On 10-01-2013, KPUGL paid Rs. 3,38,04,131/- towards payment of arrears amounting to Rs. 4,11,58,952/- accrued due to short remittance of revised tariff effective from 01-07-2012.

5.17 On 19-02-2014, KPUGL filed petition No. 6 of 2014 before KSERC in the matter of refund of penalty remitted to KSEB on account of drawing power in excess of contracted quantum of 9 MVA.

5.18 On 01-09-2014, KPUGL provided required Bank Guarantee as Security Deposit meeting the pre-condition for executing PPA and requesting the Board to inform them the convenient date and time to execute the PPA.

5.19 On 01-10-2014, KSEB signed the PPA with KPUGL w.e.f 01-09-2014.

5.20 On 22-12-2014, KSEB after deducting arrear dues amounting to Rs. 1,46,25,292/- (Arrear due to BST revision – Rs. 299010/-, Excess Demand Charges – Rs. 13310595/-, Interest for delay in remittance – Rs. 1015687/-) from the security deposit of KEPIP, returned an amount of Rs. 42,62,356/- to KEPIP.

5.21 The State Commission consisting of the Chairman and a member passed the impugned Order directing inter alias that the contract demand of KPUPL shall be reckoned as 11 MW in KINFRA Industrial Park, Kakkanad 1 MW in High Teek Park, Kalamassery and 1 MW at KINFRA Industrial Textile park, Palakkad w.e.f. 17.03.2011 the date of decision in the meeting convened by the Chief Secretary which was disagreed by the Member by writing a dissenting order. The impugned order is unjust, illegal and improper for the reason that it is the combined impact of personal and institutional bias and is against the principles of natural justice and hence the present appeal.

6. Aggrieved by the order dated 22.01.2015, communicated to the Appellant/Petitioner on 02.02.2015, the Appellant/Petitioner filed this Appeal and prayed for following relief:

- (a) Allow the appeal and set aside the order dated 22-01-2015 passed by the State Commission through its Chairman.
- (b) Pass such other order or orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.

7. We have heard the arguments of Ld. Counsel, Mr. M.T. George, for the Appellant/Petitioner and Ld. Counsel Mr. Anand K. Ganesan of the Respondent. We have gone through the submissions of the rival parties, the following issues arise for our consideration & conclusion:

Issue No. 1: Whether the State Commission erred in considering for increasing the contact demand from 9000 kVA to 11000 kVA based on the decision on 17.03.2011 in the meeting conveyed by the Chief Secretary?

Issue No. 2: Whether the Petitioner, KSEB is right in claiming the penal charges for the recorded demand over and above the sanctioned demand of 9000 kVA without considering the Chief Secretary's decision in the meeting held on 17.03.2011?

Issue No. 3: Whether the penal charges for exceeding the demand of 9000 kVA is applicable as per the decision of the Member of the State Commission given in his dissent order on 22.01.2015 i.e. penal charges from February, 2011 to 31.08.2014.

- 8. **All the three issues are inter-related and hence we will decide all the three issues together**
- 9. **The following are the submission of the Counsel of the Appellant/Petitioner:**

9.1 that the approach of the Commission is contrary to Section 7, 8 and 9 of the Indian Contract Act, which are reproduced hereunder:

“Section 7 Acceptance must be absolute

In order to convert a proposal into a promise the acceptance must

- (1) *Be absolute and unqualified*
- (2) *Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted; and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner and not otherwise; but; if he fails to do so, he accepts the acceptance”.*

“Section 8 Acceptance performing conditions, or receiving consideration:

“Performance of the conditions of proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal”.

Section 9 Promises, express and implied:

In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied”.

9.2 that the findings in the order of the Hon. Chairman, KSERC is without any basis and is unwarranted. The finding of the

Hon. Chairman, KSERC on the issue of date of effect of contractual agreement between KSEB and KPUPL vide para 59 (vii) of the order dated 22-01-2015 that “*KSEB Ltd. continued supply of electricity to KPUPL during the period from 01-02-2010 to 01-09-2014 and this fact indicates that there was an implied contract by conduct during the above period.*” is against the settled legal position as provided in the judgment of this Hon. Tribunal in Appeal No. 46 of 2012 in M/s. Karamchand Thaper & Bros (C.S.) Ltd. vs. M/s. M.P. Power Trading Co. Ltd and M.P. Electricity Regulatory Commission, dealing with the ingredients necessary for a concluded contract. First of all, KSEB continued to raise penal bill whenever, KPUPL draws power in excess of 9 MVA during the entire period of dispute and thus the finding that there was an implied contract for 11 MVA is against facts.

- 9.3 that the principal issue, that is raised herein is whether the direction issued by the Chairman that, the contract demand of KPUPL shall be reckoned as 11 MW in KINFRA Industrial Park, Kakkanad, 1 MW in High Tech Park, Kalamassery and 1 MW at KINFRA integrated Textile park, Palakkad with

effect from 17.03.2011, the date of decision in the meeting convened by the Chief Secretary and KSEB Limited shall be based on the above decision, re assess the penal charges, if any, due from KPUGL on account of its exceeding the recorded maximum demand over 9000 KVA is legally valid or sustainable in law in the admitted facts of the case. OR

9.4 that the finding rendered by the member of the KSERC that “the agreement for supply of the revised demand of 11 MVA by KSEBL to KPUGL takes effect only from 01.09.2014 the date mentioned in Article 2.1 of the PPA executed between the parties on 01.10.2014, and the demand charges till; then will be governed by the terms and conditions of the existing contract between KSEB and KEPIP which was agreed to be extended to KPUGL on the same terms and conditions by KSEB just and legal.

9.5 that the finding recorded by the member of the KSERC is the only valid, and legally sustainable one, on the basis of the undisputed facts of the case.

9.6 that the Appellant/Petitioner herein is the distribution license for the entire State of Kerala in accordance with Section 26 of the Electricity Supply Act, 1948 and on enforcement of the

Electricity Act, 2003 (herein after referred as the Act KSEBL) is the deemed licensee for the entire State as per Section 14 of the Act.

9.7 that the Government of Kerala by an order dated 08.05.2003 granted license to KINFRA Export Promotion Industrial Parks Limited (KEPIP) under the Indian Electricity Act 1910 for distribution of Power within the specified areas at Kakkanad.

9.8 that while KEPIP was distributing the electricity in the specified areas on 27.07.2008 Government of Kerala issued sanction for the formation of a joint venture Company between KINFRA and NTPC Electricity Company Limited (NESCL) known as KPUPL.

9.9 that thereafter on 23.10.2008, the Kerala State Electricity Regulatory Commission extended the specified areas of distribution at Kakkanad by 100 acres, 240 acres at KNFRA Tech Park, Kalamassery and 350 acres at KINFRA Integrated Textile Park, Palakkad in the existing distribution license of KEPIP under the provisions of the 2003 Act.

9.10 that though the license in favour of KEPIP was transferred to KPUPL ON 30.11.2009, the successor Company KPUPL could not execute any power purchase agreement with

KSEB, for one reason or other and there were discussions and meetings at departmental level. The parties had approached KSERC as well as Hon'ble High court of Kerala. That on the basis of the interim directions issued by the Hon'ble High Court of Kerala in W.P.(Civil) NBo.37700/2010, a meeting was convened on 09.08.2012 by the Additional Chief Secretary (Power Transport) Government of Kerala and in the said meeting it was decided to provide the power sought by KPUPL on provisional basis for a period of one year on the basis of a PPA. In order to arrive at mutually agreed terms and conditions the parties took further time and finally the power purchase agreement could be executed between KPUPL and KSEBL on 01.10.2014 with effect from 01.09.2014. It is also pertinent to note the relevant decisions were taken on 09.08.2012 between the parties, which read as under:

- (a) KSEB agreed to provide the power sought by KINESCO on a provisional basis.
- (b) KINESCO will make payments based on revised BST s order by KSERC.
- (c) KINESCO will clear the arrears immediately.
- (d) The matter of recovery of higher infrastructural cost within the parks shall be addressed when KSERC finalizes the regulations of small licensees.

- (e) Draft provisional PPA for a period of one year shall be forwarded by KSEB to KINESCO. A provision may be incorporated in the PPA to the effect that the agreement could be extended or amended based on mutually agreed terms and conditions, after notification of applicable regulations by KSERC.
- (f) Classification of consumers within the parks shall be same as that of KSEB.”

9.11 that the power purchase agreement dated 24.02.2006 executed between KEPIP and KSEB for the supply of Power to KEPIP was formally terminated with effect from 31.05.2013 only . Therefore it is evidently clear that till 31.05.2013 the power purchase agreement dated 24.02.2006, between KSEB and KEPIP was valid and holding the field and KSEB was legally entitled to enforce the PPA as a matter of right and nobody can find fault with it.

9.12 that neither the Court nor the arbitrator or any other agency create a contract if the parties have not made it themselves that the terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely.

9.13 that Hon'ble Supreme Court has held in 2013 (5) SCC 470, Rajasthan Sate Industrial Development and Investment

Corporation Limited Vs. Diamond and Gem Development

Corporation Limited that:

“15. A party cannot be permitted “blow hot” “blow cold”, “fast and loose” or “appropriate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is stopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience.

9.14 that the KPUPL is a joint venture of NTPC Electricity Supply Company (a subsidiary of NTPC) and KEPIP. NTPC is a generating company supplying power to many distribution licensees in the country. Government of Kerala have granted permission for the joint venture with NESCL considering among others that the said Joint Venture partner can arrange power from its own generating units or through trading and thus can supplement the efforts of existing distribution company(KEPIP).KSEB's statutory obligation is only to supply power to its consumers and not to other licensees.

9.15 that the open access regime created by Electricity Act 2003 has enabled distribution licensee like KPUPL to purchase power from sources of its own. The intra-state open access

regulations were in force from 2006 in the State. Consumers of KSEBL are already purchasing power from different sources through inter-state and intra state open access. Even while this facility was available, KPUPL chose to avail power in excess of the power contracted by its predecessor M/s KEPIP, from KSEB. But KSEB can supply power to another licensee only if terms and conditions including payment security mechanism for such supply of power is mutually agreed upon.

9.16 that judicial propriety required the recusal of the hearing of this case by the Chairman of KSERC, because the present Chairman of the Kerala State Electricity Regulatory Commission was the Chairman of KSEBL and serious aspects of the present dispute was dealt by him as the Chairman of KSEB. It is in fact, the present Chairman of KSERC who had directed on 14.10.2011 that “the present availability of power does not permit giving additional power. When the power position improves, their request (KPUPL) can be considered. Inform accordingly.” Therefore, the respectful submission of this Appellant is that the

observations made against the officers of the KSERC were not required.

9.17 that the reasoning and finding recorded by the Member of the KSERC is just fair, reasonable and legal. Hence the said reasoning and finding is extracted hereunder.

“12. The transfer of license from KINFRA Export Promotion Industrial Park (KEPIP) to Kinesco Power and Utilities Pvt.Ltd (KPUPL) has taken place with effect from 1st February 2010. Thus from that date KPUPL is the new licensee of the area of supply though the power purchase agreement (PPA) was between KSEB and KEPIP. However the records show that it was agreed by KSEB to extend the benefit of PPA to KPUPL on the same terms and conditions. The monthly bills were issued in the name of KEPIP and such bills 37 were settled by KPUPL. KEPIP has also not raised any issue on this arrangement. Thus there was an implied agreement to honour the terms and conditions of the existing agreement which was never questioned by any of the parties. This kind of interim arrangements till the fresh PPA is signed by the new licensee is usually resorted to so that power supply to ultimate consumers is not interrupted. The same kind of arrangement is followed by KSEB in the case of Kannan Devan Hill Plantations Company Private Ltd. Munnar where the original PPA is still in the name of M/s. Tata Tea Ltd. and bills are issued in the name of Tata Tea Ltd. though the demands are settled by Kannan Devan Hill Plantations Company Private Ltd. In such cases all the commercial and other conditions of the existing agreement will be applicable to the new licensee till the new agreement is signed. Thus in the case of KPUPL too the demand charges till then will be governed by the terms and conditions of the existing contract between KSEB and KEPIP. In the light of the above position the agreement for supply of the revised demand of 11 MVA by KSEBL to KPUPL takes effect only from 01-09-2014 the date mentioned in article 2.1 of the PPA signed between the parties on 1st October 2014.

13. *Contracting adequate power for redistribution among its consumers is one of the primary duties of a distribution licensee. For safeguarding the interests of its consumers the licensee has to also ensure that such procurement of power is done at the best price through a transparent bidding process. Clause 22 (3) of the license dated 30-11-2009 issued by the Commission in favour of KPUPL reads as follows: "The Licensee shall in all circumstances purchase electrical power and/or energy in an economical and efficient manner under a transparent procurement process." KPUPL, the distribution licensee in KINFRA Export Promotion Industrial Park Kakkanad, KINFRA Hi Tech Park Kalamassery and KINFRA Textile Park Palakkad failed in fulfilling this basic duty cast on the licensee. The financial consequence of such a failure should not be allowed to be passed on to KSEB. It will also be unfair to allow these penal charges as a 'pass on' expenditure while determining the bulk supply tariff (BST) of the licensee, which will again reflect on the retail tariff of the consumers of KSEB. Any kind of expenditure resulting from the negligent action of the licensee cannot pass the test of prudence check by the regulator.*

14. *In the light of the above position the agreement for supply of the revised demand of 11MVA by KSEBL to KPUPL takes effect only from 01-09-2014 the date mentioned in article 2.1 of the power purchase agreement signed between the parties on 1st October 2014."*

9.18 that, the arrears on account of penal demand charges of drawal of power in excess of 9000 KVA till 31.08.2014 along with interest is payable by M/s. KPUPL based on the existing contract between KSEBL and the KEPIP which was agreed to be extended to KPUPL on the same terms and conditions by the KSEB is the right approach and valid decision.

10. **Per Contra the following are the submissions of the Respondent No. 2:**

10.1 that at the time of take-over by the Respondent of the distribution activities from KEPIP, the actual peak load at Kakkanad had already reached a level of 8200 KVA. The contract demand of 9000 KVA was insufficient consider the future network expansion and the expected load growth. In the circumstances, the Respondent on 22.12.2009 applied to the Appellant/Petitioner for execution of a Power Purchase Agreement for a contract demand of 11 MVA.

10.2 that far from allowing the Respondent a contract demand of 11 MVA, the Appellant/Petitioner did not even transfer in favour of the Respondent the existing PPA with KEPIP which was then for a contract demand of 9 MVA. The Appellant/Petitioner not only wanted to change the entire voltage of supply to supply at 33 KV instead of 110 KV in which supply was being given, but also levy tariff as per its unilateral decision without any approval of the State Commission.

10.3 that the entire objective of the Appellant/Petitioner was only to prevent the Respondent from starting or running

successfully its operations in the State of Kerala. The object for the incorporation of the Respondent and the vesting of distribution functions pursuant to the policy of the Government of Kerala and the Government of India was for the Respondent to operate as a distribution licensee in the specified areas, which was sought to be frustrated by the Appellant/Petitioner.

10.4 that it is evident from the above sequence of events, the Appellant/Petitioner sought to delay and avoid execution of the PPA on one reason or the other and continue to charge the penal charges on the Respondent. While on 17/03/2011 the Appellant/Petitioner had agreed to provide 11 MVA for the Kakkanad area without any reservation or condition, the Appellant/Petitioner subsequently sought to introduce additional conditions which by their very nature was impossible to agree to, the entire object only to frustrate the implementation of the agreement between the parties. Further, the challenge of the Appellant/Petitioner to the order dated 27/07/2010 of the State Commission before the High Court was also kept pending and for this reason the

execution of the PPA was also not undertaken by the Appellant/Petitioner.

10.5 that the High Court by Interim Order dated 12/06/2012 had directed a conciliatory meeting to be convened by the ACS (Power) of the Government of Kerala to resolve all issues. In pursuance of the above direction, a meeting was convened between the parties by the ACS (Power) on 09/08/2012. In the said meeting, the Appellant/Petitioner once again agreed to provide the power as sought for by the Respondent on a provisional basis. It was further agreed that the Respondent shall make payments for the same as per the bulk supply tariff as determined by the State Commission. The arrears amounted of Rs. 3.38 crores pursuant to the revision of the bulk supply tariff by the State Commission, which had been challenged by the Respondent before the Tribunal and which was subsequently disposed of by the Tribunal with a direction to the State Commission to true of the financials.

10.6 that while the Respondent had duly and fully complied with the above agreement, the Appellant/Petitioner once again sought on to drag the matter and avoid execution of the PPA.

As stated above, the entire objective of the

Appellant/Petitioner from the beginning has been to in some manner ensure that the Respondent does not function in a successful manner as the distribution licensee. The Respondent was incorporated as a joint venture pursuant to a policy decision take by the State Government and the Central Government to focus on distribution in the specified areas of operation and to ensure industrial development. However the same has been sought to be thwarted by the Appellant/Petitioner on one ground or the other.

10.7 that pursuant to the meeting held on 09/08/2012, the Respondent duly paid the arrears amount claim of Rs. 3.38 crores. However even from this payment, the Appellant/Petitioner deducted an amount of Rs. 73.54 Lacs claiming penal interest and once again issued a demand notice dated 23/09/2013 for an aggregate amount of Rs. 258.67 lakhs. Out of the above, a sum of Rs. 82.37 lakhs was claimed as principal amount allegedly due and unpaid by the Respondent. The balance amount of Rs. 1.76 crores was claimed as arrears on account of non-payment of penal demand charges for exceeding the contract demand including interest thereon.

10.8 that pursuant to this demand, the Appellant/Petitioner issued notice dated 06/11/2013 stating that the electricity connection of the Respondent would be disconnected by 08/11/2013 without any notice.

10.9 that it is evident that the Appellant/Petitioner was only seeking to coerce the Respondent to agree to its illegal demands. On account of the threat of disconnection, the Respondent was forced to make the payment of Rs. 82.37 lakhs under protest. In regard to the other charges of Rs. 1.76 crores as alleged penal demand charges claimed by the Appellant/Petitioner, it was stated that the same were not due and payable by the Respondent. It is in these circumstances that the Respondent was constrained to approach the State Commission for adjudication of disputes and differences between the parties in regard to the demand notice for Rs. 2.58 crores and for refund of the amount of Rs. 82.37 lakhs paid under protest by the Respondent.

10.10 that in a meeting convened on 05/04/2013 to discuss the terms of the PPA which was already approved by the State Commission on certain modifications and suggestions, the Appellant/Petitioner took the stand that past arrears were

required to be cleared prior to execution of the PPA. This was a new condition which was imposed at this stage, which the Respondent stated that should not be linked with execution of the PPA. Further, by communication dated 24/05/2013 the Appellant/Petitioner while seeking a security deposit of Rs. 5 crores also sought another condition that the consent of KEPIP should be obtained prior to execution of the PPA.

10.11 that by communication dated 02/12/2013, the Appellant/Petitioner informed the Respondent that a bank guarantee of about Rs. 6 crores should be provided. It was further stated that the PPA shall only be for one year. This was despite the State Commission specifically observing that a PPA of one year between two licensees was too short in the facts and circumstances of the case.

10.12 that the State Commission by the impugned order has upheld the contention of the Respondent. The State Commission has clearly noted and commented on the conduct of Appellant/Petitioner as elaborated hereinabove. The entire object of Appellant/Petitioner has been to delay, defer and avoid the execution of the PPA and prevent the

Respondent from discharging its obligations of distribution of electricity in a successful and viable manner. Each of the facts have been noted and dealt with by the State Commission in the impugned order.

10.13 that it is stated that the Appellant/Petitioner has been successful in ensuring that the Joint Venture which was intended between a Central Government company and a State Government Company does not survive. With effect from 15/12./2015, NTPC Limited has withdrawn from its shareholding in the Respondent and at present the entire shareholding is held by KINFRA which is a State Government company. The distribution activities are continued to be undertaken by the Respondent.

11. Our Consideration and Conclusion on the above issues:

We have stated above the facts of the case, the issues involved and contentions of the rival parties in the upper part of the Judgment. Hence, we directly proceed to our own discussion and conclusion on these issues.

11.1 The main issue in this Appeal is whether the Respondent, M/s KINESCO Power and Utilities Limited (KPUPL), a

Distribution Licensee, having area of supply in the KINFRA Export Promotion Park Limited, KINFRA Hi-Techpark, Kalamassery and KINFRA Textile Park Palakkad, is liable to pay penal charges to the Appellant/Petitioner, Kerala State Electricity Board (KSEB), for the consumption of excess contracted demand of 9000 kVA from February, 2011 to 31.08.2014, as per the tariff approved by the Kerala State Electricity Regulatory Commission (KSERC).

11.2 The KPUPL had taken over the distribution operations as a Distribution Licensee from 01.02.2010 after the transfer of distribution license from M/s KINFRA Export Promotion Industrial Parks (KEPIP), through an order of the Commission for transfer of license. The erstwhile licensee, which is KEPIP, had executed a PPA with Respondent for 9000 KVA on 24.02.2006 for 20 years.

11.3 Let us examine whether KPUPL is liable to pay the penal charges due to delay in execution of PPA with the Appellant/Petitioner for the additional load sought for release by the Appellant/Petitioner to meet the demand of the licensed area.

Before proceeding further, let us examine the relevant Clauses of the Agreement entered on 24.02.2006 between Chief Engineer (Transmission-South) on behalf of the Kerala State Electricity Board and the KINFRA Export Promotion Industrial Parks Ltd., Kochi (hereinafter referred to as the Licensee):

Clause 1 (a) *The Board shall supply to the Licensee and the latter shall take from the Board power upto a total quantity of 9000 KVA (Nine thousand KVA only) for the purpose of supply by virtue of the license given to them by the Government of Kerala under the provision of the Electricity Act, 1910 to other consumers within the area of supply as provided in the license. The supply to the Licensee shall be in the form of three Phases alternating current at a frequency of approximately 50 cycles per second. Power upto a maximum of 9000 KVA (Contract Demand) will be supplied at a voltage (pressure) of approximately 110000 volts. This Agreement shall come into force for a period of twenty years from the date of the said license.*

Clause 2 (a) *The point of delivery of power at 11000 Volts shall continue to be at the Licensee's side of the 11000 Volts metering Current-Potential Transformers in the outdoor switch gear station at the Licensee's premises. The Licensee shall maintain, do the repair and replacement of meter(s) and Current-Potential Transformer at its cost and they shall be the properties of the Licensee.*

Clause 16 (a) *If the Licensee desire an increase or decrease in the supply of contract demand in excess of what is provided for under this Agreement, the Board shall consider the request of the Licensee and the Board shall upon execution of a fresh Agreement for the whole supply on terms and conditions mutually agreed upon, supply such additional requirement provided sufficient surplus power is available at the corresponding point of supply at the specified*

time subject to the condition that the Licensee shall bear the cost of works for modification/alternation/enhancement of capacity of the existing transmission lines/substations owned by the Board necessitated to supply the increased contract demand.

Clause 17. *The Licensee also agrees that when the recorded maximum demand of any month exceeds the contract demand as specified in the Agreements entered into between the Licensee and the Board, and the Board and the Licensee have not signed any new Agreement as envisaged in Clause 16 (a) of this Agreement, the excess demand will be charged at 150% of the grid tariff rate of the demand charge shown in the schedule to this Agreement or such other revised rates or percentages fixed by the Board from time to time in which case the revised rates or percentages shall be binding on the Licensee.*

11.4 According to Clause 1 (a) of the Agreement, the Board has agreed to supply 9000 KVA power to the Licensee, KINFRA for the distribution of power in their licensed area.

Further, as per Clause 16(a), if the Licensee desires an increase or decrees in the supply of contract demand in excess of what is provided for under this Agreement, the Board shall consider the request of the Licensee and the Board shall upon execution of a fresh Agreement for the whole supply on terms and conditions mutually agreed upon, supply such additional requirement provided sufficient surplus power is available at the corresponding point of supply at the specified time and shall bear the cost of works

for modification/alternation/enhancement of capacity of the existing transmission lines and sub-stations owned by the Board.

11.5 The State Commission by its Order dated 30.11.2009 transferred the distribution licensee in industrial parks of KINFRA at Kakkanad, Kalamassery and Palakkad, as per the Government of Kerala for the formation of a joint venture company between KINFRA and NTPC Electric Supply Company Ltd. Vide Order dated G.O. (MS) No. 88/2008/ID dated 27th June 2008. Accordingly, in the transfer of license, extra areas approved by the Government of Kerala such as KINFRA Parks at Kakkanad (new area), Kalamassery, Palakkad are added to the existing licensed area Kakkanad in the original license given to KEPIP. The boundaries of the areas were mentioned in the Order on 23.10.2008. The Joint Venture Company M/s KINFRA Export Promotion Park Limited and NTPC are having 50:50% equity shares and the name of the Licensee is changed as KPUPL.

11.6 Due to inclusion of new area, the Licensee anticipated load growth in the new licensed area over the sanctioned demand of 9000KVA and accordingly KPUPL applied for extra load

with the Respondent for a contracted demand of 11000 kVA on 16.08.2010 (10000 kVA at Kakkanad, 500 kVA at Kalammasery and 250 kVA at Palakkad. As anticipated, the load in the licensed area had exceeded the contracted demand of 9 MVA in February, 2011 and 11 MVA in March, 2011. In anticipation of load growth in the licensed area, the Respondent applied for contract demand of 11 MVA (existing 9 MVA + additional 2 MVA) in November, 2009 and Respondent requested Appellant/Petitioner for PPA but the Appellant/Petitioner has not executed the PPA with the Respondent at that time.

In view of this, the Respondent filed a Petition being Petition No. DP 82 of 2010 captioned as KINESCO Power and Utilities Pvt. Ltd. Vs. Kerala State Electricity Board with the State Commission and the State Commission passed an Order on 27.07.2010 which is as under:

*“The bulk supply rate to be included in the PPA to be executed by KINESCO Power and Utilities Pvt. Ltd. and KSEB shall be the rates now in force. The same will continue till a revision of rates is ordered by the Commission and **KPUPL shall forward a copy of the executed PPA in due course”**.*

11.7 When the Appellant/Petitioner delayed the process, with a view to resolve the issue, a meeting was convened by the Chief Secretary, Govt. of Kerala, on 10.01.2011, to discuss and settle the issue of execution of PPA and due to difference of opinion in the decision of this meeting, the Chief Secretary convened another meeting on 17.03.2011, the following decisions were taken in the meeting:

- i) KSEB should sign PPA with KINESCO for the supply of 11 MW power in KEPIP.
- ii) In case of the Hi-Tech Park, KINESCO should act as a franchisee. Meanwhile KINESCO should take steps for finding alternate sources of power for distribution.

Thus, the matter between the Appellant/Petitioner and Respondent towards signing of PPA was settled in the high-level meeting.

11.8 From the correspondence made between the Appellant/Petitioner and the Respondent, we noticed the following informative points after the high-level meeting on 17.03.2011:

- a) The Appellant/Petitioner, Kerala State Electricity Board in their letter dated 28.04.2011 addressed to KINESCO that as per the decision taken in the meeting dated 17.03.2011, "KSEB decided in principle to provide power allocation for 11 MVA to KPUPL at Kakkand, subject to realization of applicable fees and charges after examining the technical feasibility". The Chief

Engineer (Transmission-South) has authorized by the Board to process the application accordingly.

Further, the Appellant/Petitioner directed the Respondent to furnish an undertaking indicating their willingness to act as a franchisee of KSEB in that area.

- b) The Appellant/Petitioner in his letter dated 06.06.2011 informed that it was the responsibility of the Respondent to procure power required for distribution to their consumers in the licensed area.
- c) On 17.08.2011, KPUPL had forwarded a draft PPA to the Appellant/Petitioner, KSEB for availing 11 MVA power and the Chief Engineer (Transmission South), KSEB had sought for certain clarifications.

Further, it was informed by the Chief Engineer that entering into PPA would be considered only after KPUPL withdrew the Appeal filed by it before this Tribunal against the revision of tariff with effect from 01.12.2010 and also the Chief Engineer insisted that PPA would be signed only after receiving an undertaking from KINESCO indicating willingness to function as a franchisee of KSEB for distribution of power at High Tech Park.

Further, it was informed that KSEB was formulating standard PPA to be submitted for approval of KSERC. Even if a PPA was to be signed between KSEB and KPUPL before the approval of the standard PPA, a Clause prescribing execution of revised PPA after getting approval for the standard PPA, should be included in the present format. The Chief Engineer, KSEB had also informed that decision of the Board had to be obtained regarding the authority for signing the PPA on behalf of KSEB.

- d) In the letter dated 09.11.2011, the Chief Engineer (Transmission-South) mentioned that it has been decided by the Board that the availability of power in the State does not permit giving additional power

allocation and when the power position improves, the request of KPUPL could be considered.

After going through the above, we feel that when the State Commission issued a license to distribute a power in a particular area, then asking for undertaking from the Respondent to agree for franchisee of the Appellant is legally not correct. Initially, a license was granted by Government of Kerala and a Power Purchase Agreement was entered on 24.02.2006 between KSEB and KINFRA Export Promotional Industrial Park, it is not tenable to ask the Respondent to be franchisee of KSEB.

Further, Clause 16(a) of the PPA dated 24.02.2006 clearly specifies that if the Respondent requesting for extra supply over and above agreement quantity of 9000 kVA, the Board shall consider by entering into fresh agreement for the total power.

We feel that even after taking decision in the high-level meeting convened by Chief Secretary of the State, Govt. of Kerala, the Appellant did not consider the request of the Respondent.

11.9 The Appellant/Petitioner, KSEB aggrieved by the Order dated 27.07.2010 passed by the State Commission, in DP No. 82 of 2010, filed a Writ Petition (C) 37700/10 on 17.12.2010. The Hon'ble High Court passed an Interim Order directing the Appellant to convene a meeting with KSEB and KPUPL to take a decision assigning of PPA and file an affidavit regarding the decision taken in the meeting.

Accordingly, Additional Chief Secretary (Power & Transport), Government of Kerala convened a meeting on 09.08.2012

regarding the Power Purchase Agreement between KSEB and KINESCO. The following decisions were taken after the discussions:

- a) *KSEB agreed to provide the power sought by KINESCO on a provisional basis.*
- b) *KINESCO will make payments based on revised BST as ordered by KSERC.*
- c) *KINESCO will clear the arrears immediately.*
- d) *The matter of recovery of higher infrastructural cost within the parks shall be addressed when KSERC finalizes the regulations of small licensees.*
- e) *Draft provisional PPA for a period of one year shall be forwarded by KSEB to KINESCO. A provision may be incorporated in the PPA to the effect that the agreement could be extended or amended based on mutually agreed terms and conditions after notification of applicable regulations by KSERC.*
- f) *Classification of consumers within the parks shall be same as that of KSEB.*

Accordingly, KPUPL remitted an amount of Rs. 338 lakhs on 10.01.2013. The Respondent also filed a Petition being OP No. 6/2013 for approval of the PPA. In its Order dated 28.02.2013, the Commission had approved the PPA with certain modifications and suggestions. After the approval, a meeting has been convened by the Chief Engineer,

Commercial and Tariff on 05.04.2013 to discuss the modifications and suggestions given by the Commission with regard to the PPA. Further, the Chief Engineer, Commercial and Tariff had taken the following stand in the said meeting:

“Since PPA is being entered with a new licensee, KSEB required that the past dues be cleared before entering into the PPA. Also, KSEB has difficulties in providing additional power when payments for existing quantity is blocked”

11.10 M/s. KPUGL requested that the matter of signing PPA and arrear issues might be delinked. After a lot of correspondence, finally the PPA was signed between the Appellant/Petitioner, KSEB and Respondent, KPUGL on 01.10.2014 and was effective from 01.09.2014.

11.11 Before proceeding further, let us examine the Impugned Order dated 22.01.2015 passed by the State Commission in Petition No. OP 6 of 2014:

- i) *The demand notice for Rs. 2,58,67,485/- and interest thereon, as per Ext P5 notice issued by KSEB Ltd. is quashed.*
- ii) *The contract demand of KPUGL shall be reckoned as 11 MW in KINFRA Industrial Park, Kakkanad, 1 MW in High Tech Park, Kalamassery and 1 MW at KINFRA Integrated Textile Park, Palakkad with effect from 17.03.2011, the date of decision in the meeting convened by the Chief Secretary.*

- iii) *KSEB Ltd. shall, based on the above decision, re-assess the penal charges, if any, due from M/s KPUPL on account of its exceeding the recorded maximum demand over 9000 kVA.*
- iv) *KSEB Ltd is entitled to realize from M/s KPUPL, the electricity charges at the revised BST rates with effect from 12/2010 as per the order of the Commission in this regard.*
- v) *KSEB Ltd. is also entitled to realize from M/s KPUPL, the penal interest at the simple interest rate of 18% per annum on the arrears of electricity charges caused due to the delay in making payment at revised BST.*
- vi) *The power purchase agreement dated 24.02.2006 between KSEB and KEPIP shall be determined as on 01.02.2010, the date on which the said agreement became inoperative due to the transfer of distribution license to M/s KPUPL by the Commission.*
- vii) *The request of M/s KPUPL to pay back the amount of Rs. 82,37,397/- remitted by it under protest on 08.11.2013 with 24% or else, to adjust in future bills, the said amount with interest, is rejected.*
- viii) *The payments due from M/s KPUPL to M/s KSEB Ltd. During the period from 01.02.2010 to 01.09.2014 shall be re-assessed and settled in view of the above decisions.*
- ix) *The terms and conditions of supply of electricity by M/s KSEB Ltd. To M/s KPUPL with effect from 01.09.2014 shall be governed by the PPA entered into between them.*

11.12 The Hon'ble Member of the State Commission, Shri Mathew

George disagreed with the findings of the Chairman on the

issue regarding relaxation of levy of penal demand charges for the period from February, 2011 to August, 2014 pronounced a dissenting order. The order of the Member is as under:

“The arrears on account of penal demand charges on account of drawal of power in excess of 9000 kVA till 31st August 2014 along with interest is payable by M/s KPUPL based on the existing contract between KSEB and KEPIP which was agreed to be extended to KPUPL on the same terms and conditions by KSEB. This amount shall not be treated as an allowable expenditure of the licensee KPUPL while considering the truing up of the accounts for the year in which it is actually paid to KSEB Ltd. As agreed by KSEB Ltd. the excess amount charged during the power restriction period from 15.12.2012 to 31.05.2013 shall be withdrawn”.

11.13 We have gone through the Impugned Order dated 22.01.2015, passed by Chairperson of the State Commission. The State Commission held that during the meeting convened by Chief Secretary, Govt. of Kerala on 17.03.2011 agreed to supply 11 MW power to KINFRA Industrial Park, Kakkanad. This stand has not been withdrawn or modified by KSEB Ltd. in any of the subsequent meetings at government level and ultimately PPA has been signed on 01.10.2014 and is effective from 01.09.2014.

According to Clause 16 (a) of the PPA entered on 24.02.2006, if the Licensee desires an increase or decrease in the supply of contract demand in excess of what is provided in the PPA dated 24.02.2006, the Board should consider the request of the Licensee and the Board shall execute a fresh Agreement for the whole supply on terms and conditions mutually agreed upon. Accordingly, the demand charges till then will be governed by the terms and conditions of the existing contract between KSEB and KEPIP which was agreed to be extended to KPUPL on same terms and conditions by KSEB.

11.14 As per the Interim Order of the Hon'ble High Court, a meeting was convened on 09.08.2012 by the Additional Chief Secretary, Power and Transport. In the meeting, the Appellant/Petitioner, KSEB agreed to provide the power sought by KINESCO, on a provisional basis and put a condition that KINESCO has to make all the payments based on revised bulk supply tariff as ordered by the KSERC. Subsequently, a model PPA was submitted by the Respondent to the Appellant/Petitioner, KSEB. The Appellant/Petitioner, KSEB after certain modifications

submitted the draft PPA to the State Commission, KSERC for approval. The KSERC approved the draft PPA and directed the parties to sign PPA.

We have seen from the above discussions even after approval of the draft PPA, it took more than one year for signing of the PPA.

11.15 We have also seen that as per the Minutes of the Meeting held on 09.08.2012, the Respondent has cleared an amount of Rs. 338 lakhs towards principal amount on 10.01.2013. Even then the Appellant/Petitioner took lot of time for entering into PPA and going on levying the excess demand charges up to 01.09.2014.

11.16 It is agreed by the Respondent No. 2, as per Clause 17 of the Agreement dated 24.02.2006, the Respondent KPUPL is liable to pay the excess demand charges over and above the sanctioned demand of 9000 kVA, whenever the recorded demand is more than the sanctioned demand. It is also a fact that the Appellant, KSEB agreed during the meeting of Chief Secretary on 17.03.2011 that the Board will consider the request for release of additional load over and above 9 MVA.

Further, when the Appellant/Petitioner filed Writ Petition (37700/10 dated 07.12.2010) before the Hon'ble High Court of Kerala against the order of the State Commission dated 27.07.2010. The Hon'ble High Court passed an Interim Order and directed the Board to resolve the dispute by mutual agreement. Accordingly, a meeting was convened by Additional Chief Secretary (Power & Transport), Government of Kerala on 09.08.2012 to provide power sought by KINESCO on a provisional basis but the Appellant/Petitioner, KSEB failed to keep the promise made during this meeting also.

11.17 The Appellant/Petitioner put a condition to clear all the dues.

The Respondent is bound to pay the arrears for the power consumed as per the tariff fixed by the State Commission for purchase of bulk power supply. Accordingly, the Respondent No. 2, cleared an amount of Rs. 338 lakhs towards principal amount.

11.18 We find gross negligence on the part of the Appellant/Petitioner, even after agreeing to release the additional load provisionally during the meeting held on 09.08.2012, the Appellant took more than one year for

signing the Power Purchase Agreement i.e. on 01.10.2014, with effect from 01.09.2014.

Further, the view of Member of the State Commission's is that the Appellant/Petitioner can claim penal charges on the excess demand charges from the Respondent No. 2 upto the date of entering into Power Purchase Agreement i.e. 01.10.2014 effect from 01.09.2014 as per terms and conditions of the supply. But at the same, the Respondent No. 2 should not be made to suffer for the lapses of the Appellant taking a lot of time for entering into PPA Agreement.

11.19 Even after agreeing in the high-level meetings conducted by Chief Secretary of the State and to promote the industrialization of the State, the Appellant has to take positive steps to cooperate with the new licensee. The new licensee, KPUGL may be a competitor to the Appellant/Petitioner but as per Clause 1 (a), the Board shall supply to the Licensee and the latter shall take from the Board power by virtue of the license given to it by the Government of Kerala, it is obligation of the Board to supply the power as requested by the Respondent to meet the

demand of the consumers of licensed area and the same area is under the control of the Appellant/Petitioner before issue of license by the State Commission to KPUPL.

11.20 It is pertinent to mention here that selling of power to bulk purchase Licensee is beneficial to the Appellant/Petitioner by way of (i) the transmission losses to a bulk supplier (one consumer) is less compared to the same quantity is distributed to various consumers of the Board at a different voltages in the vast licensed area and (ii) the Appellant gets revenue from sale of bulk power to the licensee compared to risk of collecting revenue from various consumers.

Thus, the Appellant is benefited with less transmission and distribution losses and getting an assured revenue from a single Licensee.

11.21 We have observed that the Appellant Board has taken long time in preparing the draft PPA and getting approval of draft PPA from the State Commission. The Appellant is supplying power as per the demand of the licensed area of KPUPL and the Respondent No. 2, KPUPL is drawing the excess power apart from approved demand of 9000 kVA.

It is the responsibility of the new Licensee also to procure required power from the outside sources to meet their demand. In view of the capital expenditure to be spent by the Respondent No. 2, KPUPL for expansion of its network in the licensed area, preferred to have extra power from the Appellant/Petitioner, KSEB, so that immediate expenditure on power purchase can be postponed.

Further, we have observed that due to lapses of the Appellant's side, the joint venture partner, NTPC has withdrawn from its shareholding with effect from 15.12.2015 onwards.

11.22 After going through the above submissions and after analyzing the facts and circumstances, we deem it proper to consider the date of acceptance i.e. 09.08.2012 by the Appellant/Petitioner, KSEB as a deemed date provisionally regarding release of additional power of 11000 kVA.

11.23 Accordingly, we deem it proper to direct the Appellant to restrict the penal demand charges from February, 2011 to 09.08.2012 i.e. date on which the meeting was conducted by

Additional Chief Secretary (Power & Transport) as per the Interim Order of the Hon'ble High Court of Kerala.

11.24 We find it proper to order the State Commission to issue suitable directions to the Appellant/Petitioner Board to arrive at/compute the penal charges upto 09.08.2012 instead of 01.09.2014 and compute the actual amount due to the Appellant/Petitioner after deducting the already paid amount. Further, as agreed by KSEB Ltd, the excess amount charged during the power restriction period from 15.12.2012 to 31.05.2013 has to be withdrawn. Accordingly, the issues are partly allowed in favour of the Appellant.

ORDER

The instant appeal being Appeal No. 104 of 2015 is partly allowed to the extent indicated above and the Impugned Order dated 22.01.2015 in Petition No. 6 of 2014 is hereby modified. The Appellant/Petitioner is hereby directed to restrict the penal demand charges from February 2011 to 09.08.2012 i.e. date on which the meeting was conducted by Additional Chief Secretary (Power and Transport) as per Interim Order of the High Court of Kerala and to compute the penal charges from February, 2011 to 09.08.2012 and adjust

the amount already paid by the Respondent No. 2, another distribution licensee, within three months from today under intimation to the Ld. State Commission and the Ld. State Commission is further directed to ensure compliance of this Judgment and Order in letter and spirit by the Appellant/Petitioner, namely, KSEB Limited without any excuse on any ground whatsoever.

No order as to costs.

Pronounced in open Court on this **2nd day of June, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

√ REPORTABLE/NON-REPORTABLE