

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

**(APPELLATE JURISDICTION)**

**APPEAL NO. 114 OF 2018**

**Dated: 18<sup>th</sup> June, 2020**

**Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member**  
**Hon'ble Mr. Justice R.K. Gauba, Judicial Member**

**In the matter of:**

**M/s Rubber Park India Private Limited**

Through its Managing Director

2A, Kautileeyam,

Valanchirangara – 683556

Ernakulam District, Kerala

... Appellant

*Versus*

**1. Kerala State Electricity Regulatory Commission**

Through its Secretary

C.V. Raman Pillai Road,

Vellayambalam,

Thiruvananthapuram – 695 010

**2. Kerala State Electricity Board Limited**

Through its Chairman & Managing Director

Vydyuthi Bhawanam, Pattom,

Thiruvananthapuram – 695 004

... Respondents

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Shashwat Singh for R-1  
Mr. P.V. Dinesh  
Mr. Mukund P. Unny for R-2

# **J U D G M E N T**

## **PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER (ORAL)**

1. This matter was taken up upon request on application for urgent hearing by video conference, physical presence being not possible due to National Lockdown imposed for containing spread of coronavirus (Covid-19).

2. The Appellant is a distribution licensee, existing under the provisions of the Companies Act, 2013, operating within the specified area of operation of Ernakulam District in the State of Kerala in terms of the provisions of the Electricity Act, 2003, purchasing electricity for such purposes from the second Respondent i.e. Kerala State Electricity Board Limited ("*State Electricity Board*", for short). It is stated that it had commenced its operations in FY 2006-07, putting together its system with the help of its own equity to the extent of 100%. For clarity, we may add that, the appellant has not depended till date on any borrowed funds (loans).

3. The first respondent i.e. Kerala State Electricity Regulatory Commission (hereinafter referred to variously as "*KSERC*" or "*State Commission*" or "*Commission*"), in exercise of its power and jurisdiction under Section 181 of the Electricity Act, 2003 had framed and notified

Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006 (hereinafter referred to as “2006 Regulations”). The Regulation nos. 17 and 18 of 2006 Regulations (falling in *Chapter III – Principles for Computation of ARR and Tariff*) provided thus:

*“17. Debt-Equity Ratio.- (1) For financing of future capital cost of projects, a Debt : Equity ratio of 70:30 should be adopted. The Distribution Licensee would be free to have higher quantum of equity investments. The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project after ascertaining the reasonableness of the interest rates and taking into account the effect of debt restructuring done, if any. In case of equity below the normative level, the actual equity would be used for determination of Return on Equity in tariff computations.*

*(2) Debt including its tenure shall be structured with a view to reduce the tariff. Savings in cost on account of subsequent restructuring of debt shall be allowed to be shared between the Licensee and the Consumers in the ratio of 70:30 during the first Control Period and in such proportion as may be decided by the Commission in the subsequent Control period.*

*18. Interest on loan Capital.- (1) Interest on loan capital shall be computed loan wise on the loans arrived at in the manner indicated in sub clause 17(1) above.*

*(2) The loan outstanding as on 1.4.2007 shall be worked out as the gross loan minus cumulative repayment as admitted by the Commission up to 31.3.2007. The repayment for the period FY08 to FY 10 shall be worked out on normative basis.*

*(3) In case any moratorium period is availed of by the Distribution Licensee, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.*

*(4) Foreign exchange variation risk, if any, shall not be a pass through. In the case of projects where tariff has not been determined*

*on the basis of competitive bids, appropriate costs of hedging and swapping to take care of foreign exchange variation will be allowed for debt obtained in foreign currencies.”*

4. It is the case of the appellant that no claim on account of interest on normative loan in terms of the above provisions of the 2006 Regulations was claimed during the relevant period of operation of such Regulations.

5. On 14.11.2014, the State Commission notified the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Regulations”). In this new set of Regulations, (2014 Regulations), the above mentioned subjects were covered by Regulation nos. 27 and 30 which would read thus:

*“27. Debt-equity ratio. – (1) For the purpose of determination of tariff, debt equity ratio as on date of commercial operation in the case of a new generating station, transmission line and distribution line or substation commissioned or capacity expanded on or after the First day of April 2015, shall be 70:30 of the capital cost approved by the Commission: `*

*Provided that the debt-equity ratio shall be applied only to the balance of such approved capital cost after deducting the financial support provided through consumer contribution, deposit work, capital subsidy or grant, if any.*

*(2) Where equity employed is more than thirty percent of the approved capital cost, the amount of equity for the purpose of tariff shall be limited to thirty percent and the balance amount shall be considered as normative loan and interest on the same may be allowed at the weighted average rate of interest of the actual loan portfolio.*

(3) *Where actual equity employed is less than thirty percent of the approved capital cost, the actual equity shall be considered.*

(4) *If any fixed asset is capitalised on account of capital expenditure incurred prior to the First day of April, 2015, debt-equity ratio allowed by the Commission for determination of tariff for the period ending the Thirty First day of March, 2015 shall be considered.*

(5) *The equity invested in foreign currency shall be designated in equivalent Indian rupees as on the date of each investment.*

(6) *In the case of retirement or replacement of assets, the equity capital approved as mentioned above, shall be reduced to the extent of thirty percent or actual equity component based on documentary evidence, if it is lower than thirty percent of the original cost of the retired or replaced asset.*

(7) (a) *Swapping of foreign currency loans shall be permitted provided it does not have the effect of increasing the tariff;*

(b) *Cost of swapping and interest expenses thereon, shall be allowed by the Commission only after prudence check;*

(c) *The generating business/company or transmission business/licensee or distribution business/licensee shall provide full particulars of the swapped loans.*

(8) (a) *Restructuring of capital in terms of relative share of equity and loan shall be permitted during the life of the project provided it does not have the effect of increasing the tariff.*

(b) *Any benefit from such restructuring shall be shared in the ratio 1:1 among,-*

(i) *the generating business/company and the persons sharing the capacity charge; or*

(ii) *transmission business/licensee and long-term intra-State open access customers including distribution business/licensee; or*

(iii) *distribution business/licensee and consumers.*

...

**30. Interest and finance charges.** – (1) (a) *The loans arrived at in the manner indicated in regulation 27 shall be considered as gross normative loan for calculation of interest on loan.*

*(b) The interest and finance charges on capital works in progress shall be excluded from such consideration.*

*(c) In the case of retirement or replacement of assets, the loan amount approved by the Commission shall be reduced to the extent of outstanding loan component of the original cost of the retired or replaced assets, based on documentary evidence.*

*(2) The normative loan outstanding as on the First day of April, 2015, shall be worked out by deducting the amount of cumulative repayment as approved by the Commission up to the Thirty First day of March, 2015, from the normative loan.*

*(3) Notwithstanding any moratorium period availed by the generating business/company or the transmission business/licensee or the distribution business/licensee, the repayment of loan shall be considered from the first financial year of commercial operation of the project and shall be equal to the depreciation allowed for that financial year.*

*(4) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each financial year applicable to the generating business/company or the transmission business/licensee or the distribution business/licensee or state load despatch centre: Provided that if there is no actual loan for a particular financial year but normative loan is still outstanding, the weighted average rate of interest on the last available loan shall be considered:*

*Provided further that if the regulated business of the generating business/company or the transmission business/licensee or the distribution business/licensee or state load despatch centre does not have actual loan, then interest shall be allowed at the base rate.*

*(5) The interest on loan shall be calculated on the normative average loan for the financial year by applying the weighted average rate of interest.*

*(6) The generating business/company or the transmission business/licensee or the distribution business/licensee or the state load despatch centre, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and any benefit from such refinancing shall be shared in the ratio 1:1 among,-*

(i) the generating business/company and the persons sharing the capacity charge; or

(ii) transmission business/licensee and long-term intra-State open access customers including distribution business/licensee; or

(iii) distribution business/licensee and consumers.

(7) The changes to the terms and conditions of the loans during the financial year, if any, shall be effective from the date of coming into force of such changes.

(8) Interest shall be allowed on the amount held as security deposit in cash from users of the transmission system or distribution system and consumers at the bank rate as on the First day of April of the financial year in which the application is filed: Provided that interest on security deposit actually paid to the users of the transmission system or distribution system and to the consumers during the financial year, shall be considered at the time of truing up for the financial year.”

6. In the petition, being Application No. OA 10/2015, for determination of ARR & ERC for the first control period (FYs 2015-16 to 2017-18), the appellant claimed the benefit of interest on normative loan which was considered and granted by the State Commission, by its Order dated 03.09.2015, it reading thus:-

**“Interest and Finance Charges**

26. The licensee has not obtained any loans so far and no interest has been claimed so far. However, in the present application, the licensee claims interest on normative basis as provided in the regulations. According to the licensee, entire assets are financed by the equity capital. The licensee has shown proper journal entries for accounting the fixed assets. The licensee proposes interest on normative loan at Rs. 66.94 lakhs for the year 2015-16, Rs.77.29 lakhs for the year 2016-17 and Rs.80.44 lakhs for the year 2017-18. This is based on the normative interest of 9% on the opening GFA for the three years of control period. The details are given below:

Table.15

Interest on normative loan proposed by the licensee for the control period

|  | 2015-16 | 2016-17 | 2017-18 |
|--|---------|---------|---------|
|  |         |         |         |

|                                  |       |        |        |
|----------------------------------|-------|--------|--------|
| Opening level of GFA (Rs. Crore) | 9.721 | 10.871 | 11.221 |
| Rate of Interest (%)             | 9.00% | 9.00%  | 9.00%  |
| Interest (Rs. Lakhs)             | 87.49 | 97.84  | 100.99 |

27. The Commission has examined the proposal of the licensee. The licensee has revised the GFA from Rs.7.44 crores in 2015-16 to Rs.9.721 crores, mainly due to inclusion of other assets, which was not included in the original proposal.

28. The licensee sought interest on normative loan based on the provisions in the KSERC (Terms and Conditions for Determination of Tariff) Regulations 2014. As per the details given by the licensee, the distribution business is completely funded through equity contribution from promoters. As per regulation 27, the normative debt equity ratio of 70:30 has to be considered and where equity is more than 30%, the equity for the purpose is to be limited to 30% and the balance amount has to be treated as normative loan and interest on the same has to be allowed at the weighted average rate of interest of the actual loan portfolio. As per regulation 30, if there is no loan portfolio available, interest shall be allowed at the base rate.

29. Based on the above provisions, the licensee is eligible for the normative interest for the excess portion of the equity i.e., equity beyond the normative level of 30%. Since the loan is treated on a normative basis, while calculating the interest to be allowed, sufficient amount should be factored in to reflect the repayment of the principal amount of the normative loan, such that the interest liability gets reduced on a year to year basis, based on the repayment of the principal part. If this is not done, at the end of the estimated life of the asset, if the gross fixed asset (GFA) is not withdrawn from the books of accounts and the new asset too is accounted, there can be double counting of interest on the old asset figures too. Hence, it would be prudent to assume that the principal amount will be reduced based on the accumulated depreciation provided and interest be calculated on the net assets. Hence interest is provided on the proportion of net assets financed by the normative loan (ie 70%). Since the licensee has no actual loan portfolio, the interest is to be allowed at the base rate of SBI. The ruling base rate is 9.7%. Thus the allowable interest is estimated as shown below:

Table.16

Approved interest on normative loan for the control period

|  | 2015-16 | 2016-17 | 2017-18 |
|--|---------|---------|---------|
| Opening level of NFA (Rs.lakhs)        | 573.90  | 523.85  | 473.80  |
| 70% of the Net Fixed Assets (Rs.Lakhs) | 401.73  | 366.70  | 331.66  |



|                               |       |       |       |
|-------------------------------|-------|-------|-------|
| Base Rate (%)                 | 9.70% | 9.70% | 9.70% |
| Normative interest (Rs.lakhs) | 38.97 | 35.57 | 32.17 |

*As shown above, the normative interest charges allowable for the control period is Rs 38.97 lakhs for 2015-16, Rs.35.57 lakhs for 2016-17 and Rs.32.17 lakhs for 2017-18.”*

7. The appellant filed an application for truing-up of accounts for 2015-16 which came up before the State Commission, being OA No. 11/2017, it being decided by Order dated 26.07.2017. The claim for interest on normative loan, however, was disallowed by the said order, the Application (RP 9/2017) for review having also been declined by order dated 13.12.2017, the reasons having been summarized in the said review order as under:

*“13. As per sub-regulation (4) of Regulation 27 of the Tariff Regulations, 2014, the debt-equity ratio allowed by the Commission for determination of tariff for the period ending 31.03.2015 shall be considered. Therefore, the debt-equity ratio or the loan portfolio approved by the Commission in the truing up of accounts for the year 2014-15 shall be used for allowing normative loan if any. It is evident that as per orders of the Commission on truing up of accounts of the licensee for the year 2014-15, the Commission has not approved any interest cost as there was no normative loan as per the regulatory accounts. The licensee has also not raised any dispute on the order of truing up of accounts for the year 2014-15 as there was no normative loan for claiming interest thereon. As per the audited accounts for the year 2015-16, there were no long-term borrowings or short-term borrowings under the head “Non-current liabilities”/“Current Liabilities”. Therefore, it is crystal clear that there was no loan portfolio as on 1-4-2015 and therefore, the licensee is not eligible to claim interest on normative loan for the year 2015-16.”*

8. The appellant is aggrieved by the above decision of the State Commission primarily arguing that omission on its part to claim the benefit

of interest on normative loan in the previous year(s) ought not be the reason for it being denied such benefit as would otherwise be available upon 2014 Regulations being read alongside 2006 Regulations. It is, however, the submission of the respondent State Electricity Board that the appellant had not claimed any amount under the head "*interest and finance charges*" in the truing-up petition for 2014-15, no loan having been availed by the appellant, and consequently the same was not approved for the relevant year.

9. The appellant also raises the issue vis-a-vis the application of Regulation no. 29 of 2014 Tariff Regulations on the subject of "*return on investment*", the clause reading thus:

*"29. Return on investment..-- (1) Return on equity shall be computed in rupee terms, on the paid up equity capital determined in accordance with the regulation 27 and shall be allowed at the rate of fourteen percent for generating business/companies, transmission business/licensee, distribution business/licensee and state load despatch centre;*

*Provided that, return on equity for generating business/company, transmission business/licensee, distribution business/licensee and state load despatch centre, shall be allowed on the amount of equity capital approved by the Commission for the assets put to use at the commencement of the financial year and on fifty percent of equity capital portion of the approved capital cost for the investment put to use during the financial year.*

*Provided further that at the time of truing up for the generating business/company, transmission business/licensee, distribution business/licensee and state load despatch centre, return on equity shall be allowed on pro-rata basis, taking into consideration the*

*documentary evidence provided for the assets put to use during the financial year.*

*(2) If the equity invested in the regulated business of the generating business/company or transmission business/licensee or distribution business/licensee or state load despatch centre is not clearly identifiable, return at the rate of three percent shall be allowed on the net fixed assets at the beginning of the financial year for such regulated business:*

*Provided that net fixed assets shall be exclusive of the assets created out of consumer contribution, deposit works, capital subsidy or grants. “*

10. The focus of the argument of the appellant is on the second proviso to clause (1) of Regulation no. 29 quoted above, it being its case that it had demonstrated with relevant data and information regarding certain assets having been put to use during FY 2015-16, the contesting respondent contending otherwise.

11. At the hearing, a suggestion came up to the effect that the matter may require revisit by the State Commission in as much as the full import and effect of the 2014 Regulations, as read conjointly with 2006 Regulations does not seem to have been comprehensively examined by it (KSERC) and further because (on the second issue) there is *prima-facie* material available on record which does not find reflected in the impugned decision. On request of the counsel for the respondents, the matter was adjourned so that they could seek appropriate instructions in this regard.

12. It has been submitted before us today that the respondents are agreeable for remit in light of the above noted contentions of the appellant. Thus, with the consent of all sides, we dispose of the appeal by directing remit of the above-mentioned two issues to the State Commission for reconsideration and fresh adjudication after hearing all sides in accordance with law. Needless to add that the consent given for remit, or the direction for remit by us, will not be construed as concession given by the parties or expression of opinion rendered by us.

13. The parties are directed to appear before the State Commission on 13.07.2020 for further proceedings.

14. The instant appeals, and pending application, if any, are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING**  
**ON THIS 18<sup>th</sup> DAY OF JUNE, 2020.**

**(Justice R.K. Gauba)**  
Judicial Member

**(Ravindra Kumar Verma)**  
Technical Member

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