

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No.10 of 2013 &
I.A. Nos. 29 & 30 of 2013

Dated: 25th October, 2013

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

**Association of Approved and
Classified Hotels of Kerala,**

14/1350, Sea Gull Road, Willington Island,
Cochin-682 003,
Kerala State

... **Appellant**

Versus

1. **Kerala State Electricity Regulatory Commission,**

Represented by its Secretary,
KPFC Bhavanam,
C.V. Raman Pillai Road Vellayambalam
Thiruvananthapuram-695 010,
Kerala State

2. **Kerala State Electricity Board,**

Represented by its Secretary,
Vydhuthi Bhavan, Pattom Post,
Thiruvananthapuram-695 004,
Kerala State

...**Respondent(s)**

Counsel for the Appellant(s) : Mr. S. Ramesh Babu, Sr. Adv.
Mr. James P. Thomas,
Mr. Biji Mathew

Counsel for the Respondent(s) : Mr. Ramesh Babu M.R.
Mr. Ramesh Balan for R-1
Mr. M.T. George
Ms. Kavitha K.T.,
Mr. G. Sreevivasan (Rep.) for R-2

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Association of Classified and Approved Hotels of Kerala against the order dated 25.7.2012 passed by Kerala State Electricity Regulatory Commission regarding the retail supply tariff for Kerala State Electricity Board.

2. The brief facts of the case are as under:

a) The Appellant is an association of classified Hotels and Restaurants within the State of Kerala. The State Commission is the first Respondent. The second Respondent is Kerala State Electricity Board, a vertically integrated utility engaged in the business of generation, transmission and distribution of electricity.

b) The Electricity Board (R-2) filed a petition for determination of its ARR and ERC for the FY 2012-13 on 31.12.2011. The State Commission approved the ARR and ERC of the Electricity Board for the FY 2012-13 by its order dated 28.4.2012 after the public hearing. In this order, the State Commission approved the ARR and ERC for FY 2012-13 and indicated a revenue gap of Rs. 1889.15 crores.

c) Subsequently, the Electricity Board (Respondent no.2) filed a petition on 29.3.2012 before the State Commission for determination of tariff with its proposal for increase in tariff for the various categories. On 25.7.2012, the State Commission passed the impugned order deciding the tariff rates applicable to different categories of consumers. In the impugned tariff order the tariff for the members of Appellant's Association has been increased.

- d) Aggrieved over the impugned order dated 25.7.2012, the Appellant has filed this Appeal.
3. The submissions made by the Appellant are as under:
- a) The tariff increase in Appellant's category (HT-IV Commercial) is 59% with recovery rate of 169%, resulting in a tariff shock which is against the norms set out by the State Commission in its Tariff Regulations, National Tariff Policy, National Electricity Policy, the 2003 Act and the various judgments of the Tribunal.
- b) The State Commission has not only hiked the rate of tariff of HT-IV Category but also sub-classified the category in accordance with the consumption of power which was not proposed by the Electricity Board.

- c) The tariff rate proposed by the Electricity Board of 43% increase was quite reasonable, which was in line with ARR & ERC that was approved by the State Commission. However, the State Commission has decided 59% increase in the tariff with recovery rate of 169%. The State Commission has also deviated from the cost of supply of power per unit and the order of the State Commission is inconsistent with Section 61 (g) of the Electricity Act, 2003 requiring the tariff to be progressively reflecting the cost of supply.
4. The Electricity Board (Respondent no.2) in its reply has made the following submissions:
- a) Before the present tariff revision, the tariff applicable to the Appellant was last revised during the year 2007-08. Since then, the expenses of all tariff components have increased considerably. The

percentage increase in average cost of supply in FY 2012-13 since 2007-08 has been 53.9%. The revenue gap approved by the State Commission has also been increasing since FY 2007-08, though no tariff revision was effected. The cumulative un-recovered revenue gap as approved by the State Commission from 2008-09 to 2011-12 was Rs. 1725.32 crores.

b) The State Commission has approved the revenue gap of Rs. 1889.15 crores for the FY 2012-13. Since the tariff has been revised w.e.f. 1.7.2012 the revised tariff will be applicable for 9 months from July 2012 to March 2013 during the year 2012-13. Therefore, only 1257.63 crores of revenue gap will be recovered by the Electricity Board during 2012-13 as against the approved revenue gap of 1889.15 crores leaving an un-bridged revenue gap of Rs. 631.52 crores.

c) The State Commission has increased the tariff for domestic categories by 40.70% and LT agriculture category by 91.9% and the HT-IV Commercial category by 58.80%.

d) The cross subsidy provided by HT-IV commercial consumers during the last tariff revision in the FY 2007-08 was 64.12%. The cost of power purchase has been consistently increasing since the FY 2007-08 mainly due to purchase of power from costly liquid fuel which in turn is the result of the excessive increase in consumption by the HT-IV commercial consumers. The Board had proposed to enforce power cuts to reduce purchase of power from the liquid fuel based stations but the State Commission declined the proposal for power cuts. Considering the excessive increase in energy usage by the commercial consumers and as a disincentive for excessive usage, the State Commission

has approved a higher tariff for commercial consumers with monthly consumption of above 30,000 units. The increase in tariff will help in curbing wasteful use of electricity.

e) Section 62(3) of the Electricity Act, 2003 permits the State Commission to determine the tariff applicable to the consumers based on the purpose for which supply is required.

5. The State Commission also filed written submissions in support of its findings in the impugned order.
6. On the above issues, we have heard the learned Counsel for the Appellant, the State Commission and the Electricity Board. In view of the rival contentions of the parties, the following questions would arise for our consideration:

- i) Whether the determination of tariff in respect of the Appellant's category is inconsistent with the provisions of the 2003 Act and Tariff Policy?
 - ii) Whether the tariff of Appellant's category has been fixed at an unreasonable level in violation of the principles laid down by this Tribunal in various judgments?
7. Since both the issues are inter-related, we shall be dealing with them together.
8. Let us first examine the findings of the State Commission in the impugned order relating to the consumer category of the Appellant viz; HT-IV Commercial Category as under:

"95. Existing cost recovery from this category is 106%. In LT Commercial the cost recovery post revision will be around 171%. Hence it would be fair to increase the cost recovery of HT Commercial also to nearby levels. There are around 1900 commercial consumers in this group and their monthly consumption is around 75 MU, that is average consumption is around 40,000 units. Out of above, around 500 consumers consume more

than 40,000 units per month. Star rated hotels, large jewelleryes, large Textile shops, large private hospitals etc., come under this group. These consumers use electricity largely for air conditioning, display lighting etc., for commercial purposes. These high – end business consumer groups should provide more cross subsidy for other weaker sections of consumers. They should also be prompted to seek alternate captive sources through price signals. With these objectives, the Commission decided to modify the rates proposed by the KSEB. The increase has been from 43% to 59% with a recovery rate of 169%. The approved tariff for the category is as shown below:

Approved Tariff for HT IV Commercial

<i>Particulars</i>	<i>Proposed Tariff</i>	<i>Approved Tariff</i>
<i>Demand charge (Rs/kVA per month)</i>	<i>400.00</i>	<i>400.00</i>
<i>Energy charge (paise per unit)</i>		
<i>Upto 30,000 units (all units)</i>		<i>550</i>
<i>above 30,000 units (all units)</i>	<i>550</i>	<i>650</i>
<i>Revenue (Rs. crore)</i>	<i>641.17</i>	<i>711.43</i>
<i>Average Tariff (paise per unit)</i>	<i>707</i>	<i>785</i>
<i>Tariff increase</i>	<i>43%</i>	<i>59%</i>

9. Thus, the State Commission has stated that consumers in HT IV Commercial are star rated Hotels, large jewelleryes, large Textile shops, large private hospitals in which the electricity is used mainly for air conditioning, display lighting, etc; and these high end consumers should provide more cross subsidy. They should also be prompted to seek alternate captive sources of supply. The Board had proposed energy charges of Rs. 5.50 per unit but the State Commission decided energy rate of Rs. 5.50 per unit for consumers in this category with monthly consumption upto 30,000 units and Rs. 6.50 per unit for consumers with monthly consumption of above 30,000 units. Thus, the State Commission effected a tariff increase of about 59% for this category as against 43% increase proposed by the Electricity Board.

10. According to the Appellant, the tariff increase as suggested by the Electricity Board was acceptable to them but the State Commission has hiked the tariff abnormally giving them a tariff shock.

11. We find that the overall average cost of supply for the Electricity Board for the FY 2012-13 is Rs.4.64 per kWh against which the average tariff for the Appellant's category is Rs. 7.85 per kWh. Thus, the average tariff for the Appellants is 69% above the average cost of supply. This is contrary to the provision of the Tariff Policy which envisages that the tariff should progressively reflect the efficient and prudent cost of supply of electricity and latest by 2010-11, the tariff for all categories of consumers except the consumers below poverty line should be within $\pm 20\%$ of the average cost of supply. The State Commission has also violated the dictum laid down by this Tribunal in the

various judgments that the commercial consumers could not be subjected to exorbitant increase in tariff and tariff shock just because they consume electricity in air conditioning and lighting for commercial purpose.

12. It would be pertinent to refer to the findings of the Tribunal in its judgment dated 31.5.2013 in Appeal no. 179 of 2012 in the matter of Kerala High Tension and Extra High Tension Industrial Electricity Consumer's Association Vs. The Kerala State Electricity Regulatory Commission & Others. In this Appeal the HT and EHT Industrial Consumers had challenged the same tariff order dated 25.7.2012 which has been impugned in the present Appeal on the ground of exorbitant increase in tariff and non-determination of tariff on the basis of voltage-wise cost of supply. This Tribunal refused to intervene with the impugned order regarding tariff for HT Industrial Consumers but gave some directions to

the State Commission for determination of voltage-wise cost of supply in future.

13. The relevant portion of the findings of the Tribunal in judgment dated 31.5.2013 in appeal no. 179 of 2012 are reproduced below:

“i) We find that in the present case, the State Commission has determined the tariff of the Appellant’s category of HT and EHT Industrial consumers within \pm 20% of the average cost of supply as per the Tariff Policy, the dictum laid down by this Tribunal and as sought by the Appellant in their objections filed before the State Commission. However, we give directions to the State Commission to determine the voltage-wise cost of supply for the various categories of consumers within six months of passing of this order and take that into account in determining the cross subsidy and tariffs in future as per the dictum laid down by this Tribunal.

ii) We do not find that the Appellant’s categories have been subjected to disproportionate increase in tariff and they have not been subjected to tariff shock.

iii) We also do not find that the State Commission has violated its Tariff Regulations in determining the tariff of the Appellant’s category.”

14. The findings of the Tribunal in Appeal no. 179 of 2012 regarding voltage-wise cost of supply for the various categories of consumers will also apply to this case. However, unlike the HT and EHT Industrial Consumers, the tariff of the HT Commercial consumers has been increase exorbitantly and fixed well above +20% of average cost of supply in the present case and needs to be interfered with.

15. We find that the tariff for HT IV commercial consumers category has been fixed 69% above the overall average cost of supply against the provision of tariff policy. The increase in tariff of 59% has also been much more then the increase in average cost of supply. Thus, the Appellants have been subjected to disproportionate and exorbitant increase in tariff and tariff shock against the dictum laid down by this Tribunal in a number of judgments.

16. We are conscious of the fact that the financial year 2012-13 is already over and any relief given to the Appellants in tariff with cause immediate burden on the distribution licensee which is already struggling with uncovered revenue gap as the retail supply tariff was revised after a long time of 10 years in FY 2012-13 and the revenue gap for FY 2012-13 was not covered up fully in the tariff order. However, the Appellants had filed the Appeal during the FY 2012-13 itself and, therefore, they deserve some relief by this order.

17. The Appellant in its submissions in this Appeal has stated as under:

“The tariff rate proposed by the KSEB, of 43% increase is quite reasonable and which is in tune with the AAR & CER and the Guidelines, which was approved by the Sate Commission. By virtue of the impugned order the increase has been from 43% to 59% with recovery rate

of 169% and consequent issuance of tariff rate to the tune of 550 paise per unit per month for consumption of energy unit upto 30,000 and above 30000 will be charged at 650 paise per unit is perse illegal and the reasoning that

“Existing cost recovery from this category is 106%. In LT Commercial the cost recovery post revision will be around 171%. Hence it would be fair to increase the cost recovery of HT Commercial also to nearby levels. There are around 1900 commercial consumers in this group and their monthly consumption is around 75 MU, that is average consumption is around 40,000 units. Out of the above, around 500 consumers consume more than 40,000 units per month. Star rated hotels, large Jewelries, large Textile shops, large private hospitals etc, come under this group. These consumers use electricity largely for air conditioning, display lighting etc., for commercial purposes. These high-end business consumer groups should provide more cross subsidy for other weaker sections of consumers. They should also be prompted to seek alternate captive sources through price signals. With these objectives, the Commission decided to modify the rates proposed by the KSEB. The increase has been from 43% to 59% is perverse, even if, the best interest can be attributed to the State Commission for the need to fill up the revenue gap.”

18. We feel that ends of justice would be met if the tariff for HT IV commercial category is re-fixed as per the

proposal submitted by the Electricity Board in its petition before the State Commission.

19. In view of above, we set aside the tariff determined by the State Commission for HT IV Commercial category and decide that they should be charged at the tariff as proposed by the Electricity Board in their proposal i.e. demand charges of Rs. 400 per kVa per month and energy charge of 550 paise per kWh for all units consumed. The Electricity Board will refund the excess amount charged from all the consumers of HT IV Commercial Category in their bills from the month of November, 2013 to April, 2014 in equal instalments. In case of delay in reimbursement of excess amount by the Respondent no.2 to the consumers of HT IV Category, the consumers will be entitled to interest @ 1% per month for the unpaid amount. The total amount refunded by the Electricity Board to HT IV Commercial

Consumers will be allowed as expenses with carrying cost in the ARR of the Electricity Board for FY 2014-15 to be recovered in the retail supply tariff during the FY 2014-15.

20. This order will apply to all the consumers of HT IV Commercial Category.

21. **Summary of our findings:**

The tariff determined by the State Commission for HT IV Commercial Category is inconsistent with the provisions of Act and Tariff Policy and the dictum held by this Tribunal in various judgments. The tariff of consumers of this category has been increased exorbitantly giving them tariff shock. Accordingly, the tariff fixed by the State Commission for HT IV Commercial Category is set

aside and they will be charged at the tariff as proposed by the Electricity Board in their petition to the State Commission i.e. fixed charges of Rs. 400 per kVA per month and energy charges of Rs. 5.50 per kWh. The excess amount charged by the Electricity Board from the consumers of HT IV Commercial Category will be refunded in their bills from November 2013 to April 2014 in equal instalments. For any delay in reimbursement of the amount as indicated above the consumers will be entitled to interest of 1% per month on the unpaid amount. As regards determination of voltage-wise cost of supply, the directions as given in this Tribunal's judgment in Appeal no. 179 of 2012 will apply.

20. The Appeal is allowed as indicated above. However, there is no order as to costs.

**21. Pronounced in the open court on this 25th day of
October, 2013.**

**(Rakesh Nath)
Technical Member**

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**(Justice M. Karpaga Vinayagam)
Chairperson**

REPORTABLE/NON-REPORTABLE

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