

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL No. 362 OF 2017

Dated: 28.05.2025

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member**

IN THE MATTER OF:

**Federation of Karnataka Chambers of
Commerce and Industry (FKCCI),
Federation House, K.G. Road,
Bangaluru – 560 009**

... Appellant

VERSUS

- 1. Karnataka Electricity Regulatory Commission**
6th & 7th Floor, Mahalakshmi Chambers,
9/2, MG Road,
Bangaluru – 560 001.
(Represented by the Secretary)
- 2. Bangalore Electricity Supply Company**
S7 Sub Division, Old Airport Road,
Bengaluru, Karnataka -560017.
(Represented by the Managing Director)

...Respondents

Counsel for the Appellant(s) : Mr. Ananga Bhattacharyaa
Mr. Mukund P. Unny
Ms. Devahuti Tamuli
Mr. Rohit Rao. N

Counsel for the Respondent(s) : Mr. Anand K Ganesan
Ms. Ritu Apurva for R-1

Mr. Shahbaaz Husain
Mr. Fahad Khan
Mr. V. M. Kannan for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The instant Appeal has been filed by the Appellant i.e., Federation of Karnataka Chambers of Commerce and Industry (in short "Appellant" or "FKCCI") against the order dated 11.04.2017 (in short "Impugned Order") passed by the Karnataka Electricity Regulatory Commission (in short "Respondent No. 1" or "KERC" or "Commission") disposing of the Application of Bangalore Electricity Supply Company Limited (in short "BESCOM") in respect of the Annual Performance Review for Financial Year 2016, Revision of Annual Revenue Requirement for Financial Year 2018 and Revision of Retail Supply Tariff for Financial Year 2018, under Multi Year Tariff Framework.

Description of parties

2. The Appellant, Federation of Karnataka Chambers of Commerce and Industry, is a not-for-profit Company at present, under the provisions of the Companies Act, 2013. The Appellant is an apex organization established to give

a common voice to the interests and concerns of the Industry, Trade & Service sectors in Karnataka.

3. The Respondent No.1 is the Karnataka Electricity Regulatory Commission, having issued the impugned order.

4. The Respondent No. 2, the Bangalore Electricity Supply Company (BESCOM), is a distribution licensee for 8 districts in the State of Karnataka under the provisions of the Electricity Act, 2003.

Factual Matrix of the Case

5. The Bangalore Electricity Supply Company Ltd. (BESCOM) and Mangalore Electricity Supply Company (MESCOM), both distribution licensees under the Electricity Act, 2003, submitted applications for the review of annual performance for FY 2015-16, approval of the revised ARR for FY 2017-18, and approval for the retail supply tariff for FY 2017-18.

6. On 18.02.2017, objections were filed by the Appellant against these petitions, highlighting several issues. The Government of Karnataka, through G.O. No EN 131 PST 2003 dated 10.05.2005, transferred the power trading rights from Karnataka Power Transmission Corporation Limited (KPTCL) to five distribution licensees, including BESCOM and MESCOM. Existing power purchase agreements (PPAs) were reassigned accordingly.

7. The Appellant argued that the subsequent state notifications on power allocation violated Section 131 of the Electricity Act, 2003. The Appellant contended that assigning high-cost energy PPAs disproportionately to BESCOM and MESCOM led to higher procurement costs and consumer prejudice.

8. The State Commission, under Section 86(1)(b) of the Electricity Act, 2003, is the appropriate authority for such allocations. Despite BESCOM and MESCOM having the lowest cost of supply, their tariffs were among the highest, violating Sections 61(e) and 61(g) of the Electricity Act, 2003. The commission allegedly failed to adopt a rational tariff determination method.

9. The increase in fixed charges for various consumer categories, without prior proposals or consumer input, was highlighted as a violation of natural justice and Section 64 of the Electricity Act, 2003.

10. The Appellant pointed out discrepancies in the review, particularly concerning the cross-subsidization of unmetered IP set consumption. The non-deduction of such consumption from BESCOM's accounts burdened regular consumers, contravening Section 61(g) of the Electricity Act, 2003, which mandates reducing cross-subsidies.

11. Errors in final calculations were noted, including the wrongful inclusion of exempt income tax liabilities and incorrect computation of return on equity,

contrary to the KERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulations, 2006. These issues were argued as significant errors by the State Commission, adversely affecting consumers and contravening statutory provisions.

12. The Respondent No.1 passed the tariff order for the FY 2018 without considering various aspects material for the just and fair calculation of the tariff. Aggrieved by certain portions of the order dated 11.04.2017 of the State Commission, the Appellant has preferred the present Appeal.

Submissions of the Appellant

13. The Appellant submitted that Karnataka Electricity Regulatory Commission (KERC), Respondent No. 1, issued the Tariff Order for FY 2017-18 pursuant to Section 62 of the Electricity Act, 2003, and in accordance with the KERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulations, 2006, and KERC Tariff Regulations, 2000.

14. In accordance with Sections 39 and 131 of the Electricity Act, 2003, the Karnataka State Government, through G.O. No. EN 131 PSR 2003 dated 10.05.2005, transferred electricity trading rights from Karnataka Power Transmission Corporation Ltd. (KPTCL) to five electricity supply companies (BESCOM, HESCOM, MESCOM, GESCOM, and CESC Mysore). Subsequently, by notification No. EN 131 PSR 2003 dated 28.12.2005, the State Government

reallocated high-cost power from BESCO and MESCOM to other ESCOMs, effective November 2005. Section 39 of the Act is as follows:

“39. State Transmission Utility and functions.—

(1) The State Government may notify the Board or a Government company as the State Transmission Utility: Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 (1 of 1956) to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2)”

Section 131 of the Act states:

“131. Vesting of property of Board in State Government.—(1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the

State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereinafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be: Provided that the transfer value of any assets transferred hereunder shall be determined as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution license, as the case may be.

(3).....

(4).....

(5) A transfer scheme under this section may —

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;

(b) define the property, interest in property, rights and liabilities to be allocated— (i) by specifying or describing the property, rights and liabilities in question; or

(ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or

(iii) partly in one way and partly in the other;

(c) provide that any rights or liabilities or stipulated described in the scheme shall be enforceable by or against the transferor or the transferee;

(d) impose on the transferor an obligation to enter into such written agreements with or execute such other instruments in favour of any other subsequent transferee as may be stipulated in the scheme.

(e) mention the functions and duties of the transferee;

(f) make such supplemental, incidental and consequential provisions as the transferor appropriate including provision stipulating the order as taking effect; and

(g) *provide that the transfer shall be provisional for a stipulated period.*

(6).....

(7).....”

15. The Appellant further submitted that the State Government's authority to transfer and allocate power purchase agreements under the Electricity Act, 2003, was intended as a one-time action during the establishment of new distribution licensees. Beyond this, the State Government lacks the legal authority to allocate power among the ESCOMs.

16. Under Section 86(1)(f) of the Electricity Act, 2003, it is the responsibility of the Karnataka Electricity Regulatory Commission (KERC), Respondent No. 1, to regulate the electricity procurement process for distribution licensees. However, KERC has failed to exercise this regulatory function, instead continuing with the power allocation initially set by the State Government, which contradicts the objectives of the 2003 Act.

17. Clause 5.3.4 of the National Electricity Policy dated 12.02.2005 states:

“The Act prohibits the State transmission utilities/transmission licensees from engaging in trading in electricity. Power purchase agreements (PPAs) with the generating companies would need to be suitably assigned to the Distribution Companies, subject to mutual

agreement. To the extent necessary, such assignments can be done in a manner to take care of different load profiles of the Distribution Companies. Non-discriminatory open access shall be provided to competing generators supplying power to licensees upon payment of transmission charge to be determined by the appropriate Commission. The appropriate Commissions shall establish such transmission charges no later than June 2005.”

18. The Hon’ble Supreme Court in the matter of **Kedar Nath Yadav v. State of West Bengal reported in (2017) 11 SCC 601** held that:

“88. It is also a well-settled principle of law that if the manner of doing a particular act is prescribed under any statute the act must be done in that manner or not at all. In Babu Verghese v. Bar Council of Kerala [Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422] , this Court has held as under: (SCC pp. 432- 33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372] who stated as under: (SCC OnLine PC)

„... where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 : 1954 Cri LJ 910] and again in Deep Chand v. State of Rajasthan [Deep Chand v. State of Rajasthan, AIR 1961 SC 1527 : (1961) 2 Cri LJ 705] . These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [State of U.P. v. Singhara Singh, AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] and the rule laid down in Nazir Ahmad case [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

19. The determination of tariffs must be conducted by Respondent No. 1 (KERC) in strict compliance with the Electricity Act, 2003, and its associated regulations. Any interference by the State Government or failure by KERC to adhere to the Act constitutes a violation of its provisions. The allocation of power purchase agreements directly influences the cost of supply and, consequently, the tariff. Therefore, KERC should have independently assessed the power allocation among ESCOMs as mandated by the Electricity Act, 2003.

20. Section 61 of the Electricity Act, 2003 empowers the State Commission to make tariff regulations. Section 61 (g) is as follows:

“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

xxxxxxx

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission.”

21. According to the Tariff Order, the average power purchase cost for FY 2018 is Rs. 4.41 per unit, while the average cost of supply is Rs. 6.48 per unit. Despite having the lowest cost of supply among ESCOMs, consumers face the highest tariffs. Notably, the approved tariff for the HT-2(b) consumer category ranges from Rs. 8.25 to Rs. 8.55 per unit, exceeding the average cost of supply by over 20%.

22. This Tribunal, in its order passed in the matter of Siel Ltd. v. PSERC reported in 2007 ELR (APTEL) 931, has held:

“Keeping in view the provisions of Section 61(g), which requires Tariff to ultimately reflect the cost of supply of electricity and the National Tariff Policy, which requires Tariff to be within + 20 per cent of the average cost of supply, it seems to us that the Commission must determine the cost of supply, as that is the goal set by the Act. It should also determine the average cost of supply. Once the figures

are known, they must be juxtaposed, with the actual Tariff fixed by the commission. This will transparently show the extent of cross subsidy added to the Tariff, which will be the difference between the Tariff per unit and the actual cost of supply.”

23. The decision of the Tribunal has been reiterated in the decisions of M/s. Tata Steel Limited Vs Orissa Electricity Regulatory Commission & Ors. [Appeal Nos. 102, 103 & 112 of 2010] and M/s. Ferro Alloys Corporation vs. Odisha Electricity Regulatory Commission [Appeal No. 52 of 2012]. This Tribunal has given such direction to Respondent No.1, Commission in the matter of Federation of Karnataka Chambers of Commerce and Industry (FKCCI) v. BESCOM and Anr. [Appeal No.42 of 2014]. The Tribunal directed:

“The State Commission has not determined variation of category wise revenue realisation per unit with respect to overall average cost of supply to indicate that the tariffs are within $\pm 20\%$ of the average cost of supply as per the Tariff Policy. The State Commission has also not determined voltage wise cost of supply and category wise subsidy with reference to actual cost of supply as mandated by this Tribunal in the various judgments. As the FY 2013-14 is already over and the Respondent have given data to indicate that the cross subsidy in various categories have been reduced, we are not interfering with the Impugned Order. However, we give directions to the State Commission to clearly indicate the variation of anticipated category

wise average revenue realisation with respect to over all average cost of supply to establish that the stipulation of the Tariff Policy that tariffs are within $\pm 20\%$ of the average cost of supply is met, in the future tariff orders. The State Commission shall also indicate category wise cross subsidy with reference to voltage wise cost of supply as mandated in the various judgments of this Tribunal and comprehensively dealt with in the judgment dated 31.5.2013 in Appeal No.179 of 2012.”

24. The Electricity Act, 2003 mandates tariff determination based on the actual cost of supply, not the average cost. Respondent No. 1 (KERC) has failed to comply with this mandate, as well as the National Tariff Policy and the directives of this Tribunal, in determining tariffs for HT category consumers.

Submissions of the Respondent No.2, Bangalore Electricity Supply Company

25. Respondent No. 2 submitted that the Appellant contended that the State Government improperly allocated high-cost power to BESCOM, affecting consumer tariffs. They argued that the Electricity Act, 2003 vests the authority for power allocation with the State Commission, and that the Government's powers ceased with the introduction of the transfer scheme, unbundling the ESCOMs.

26. Respondent asserted that neither the Electricity Act, 2003, nor the transfer scheme prohibits the State Government from allocating power among ESCOMs.

27. Section 131 of the Electricity Act, 2003, allows the State Government, in consultation with relevant entities, to determine the terms of the transfer. Section 131(3)(b) specifies that transactions under the transfer scheme are binding on all parties, regardless of their consent. Thus, the State Government retains the authority to allocate power among ESCOMs, and the Appellant cannot challenge this allocation.

28. The Appellant has argued that the power purchase agreement ratios set in the transfer scheme should remain unchanged, yet simultaneously claims the State Government lacks authority to allocate power among ESCOMs, creating a contradictory stance. Without challenging the State Government's allocation directly, the Appellant cannot assert the Government's lack of jurisdiction.

29. The State Government, as the owner of generating and distribution companies, has the authority under Section 131 to allocate power based on each licensee's demand forecasts.

30. Section 86 of the Electricity Act defines the State Commission's functions, including regulating electricity purchase and procurement processes. However, it does not mandate the Commission to allocate power among ESCOMs. The Commission approves the Government's power allocation and procurement

prices, where the Commission adhered to the Government's allocation decisions. Therefore, Section 86 has been properly complied with.

31. BESCOM, serving Bangalore, handles high demand due to its many HT consumers, unlike other ESCOMs. Under the GOK's policy, farmers receive free or subsidized power, and HT consumers pay a cross-subsidy surcharge to support this.

32. The GOK ensures lower power purchase costs for ESCOMs with many farmer customers. The power allocation by GOK is a policy decision made in the public interest, which is subject to limited judicial review. Importantly, the Appellant has not challenged the GOK's power allocation in this Appeal.

33. Further, submitted that the Appellant claims that BESCOM's power purchase and supply costs are the lowest among ESCOMs, suggesting this should reflect in its tariff.

34. However, the Respondent refuted this by citing that BESCOM's costs are not the lowest. The cost of supply for each ESCOM is detailed in the Tariff Orders. Thus, the claim that BESCOM has the lowest cost of supply compared to other ESCOMs is incorrect.

35. The Appellant's claim that KERC increased fixed charges without a proposal from BESCOM is incorrect. BESCOM filed a Petition (OP 87/2016) requesting an

increase in fixed charges and a corresponding decrease in energy charges. This was due to BESCOM paying 33% of power purchase costs as fixed costs but recovering only 11% of revenue through fixed charges.

36. The fixed costs were embedded in both energy and fixed charges, leading to a revenue shortfall during periods of low consumer demand. Consequently, BESCOM's petition was admitted by the Commission, which, after stakeholder feedback, decided to increase the fixed charges.

37. The Appellant's claim that unmetered IP set consumption included in the APR of FY 2016 increases the burden on consumers paying CSS is incorrect. The assertion is based on defunct wells from a GPS survey.

38. However, unmetered IP sets are distinct from those linked to defunct wells. The NJY Agri Feeders measure agricultural consumption, and the Commission clarified in the Tariff Order that unmetered IP sets are assessed via readings from agricultural feeders under the NJY scheme, with sales included in the tariff.

39. This Tribunal, on 25.07.2024, ruled that the sole legal issue remaining is whether the tariff set for KPTCL can be applied to BESCOM without independently determining BESCOM's tariff.

40. Separate tariff orders for BESCOM and KPTCL were issued on 11.04.2017, following the procedures under Sections 61 and 62 of the Electricity Act, 2003.

The Appellant's claim that KPTCL's tariff was imposed on BESCOM without independent determination is baseless.

41. The Appellant previously raised the issue of power allocation by the Government of Karnataka in Appeal No. 42 of 2014. This Tribunal dismissed the Appeal, finding no merit in the Appellant's claim that the Government lacked authority to allocate electricity.

42. The Appellant, in its written submissions dated 22.04.2024, introduced a new ground not mentioned in the original Appeal. It is argued that this new claim should not be permitted. Without conceding, the Appellant's allegation that KERC failed to follow the Electricity Act, 2003, National Tariff Policy, 2016, and Tribunal orders by determining tariff based on average cost rather than actual cost is denied. Accepting the Appellant's request to revise tariffs and reduce the Cross Subsidy Surcharge for HT consumers would increase tariffs for subsidized sections, burdening marginalized communities, contrary to the Act and National Tariff Policy.

Analysis and Conclusion

43. Having heard all parties in detail, the core question for determination in this Appeal is as follows:

Whether the State Government has the authority to allocate power to ESCOMs after the implementation of the transfer scheme, and whether the Commission has failed in its duty by allowing such allocation, contrary to the functions outlined under Section 86(1) (b) of the Electricity Act?

44. The Appellant herein has prayed for the following:

“a) Allow the instant appeal setting aside the impugned tariff order dated 11.04.2017 passed by the Hon’ble Commission to extent mentioned in the appeal;

b) Grant cost of this appeal; and

c) To grant such other and further reliefs as this Hon’ble Tribunal deems fit to pass under the facts and circumstances of the case, in the interest of justice.”

45. The Appellant has challenged the power allocation by the State Government to electricity supply companies (ESCOMs) post the implementation of the transfer scheme, alleging it violates provisions of the Electricity Act, 2003.

46. It is also contended that KERC failed in its duty by allowing such allocation, contrary to Section 86(1)(b) of the Electricity Act, 2003.

47. The Appellant argues that the State Government's authority to allocate power ceased after the transfer scheme was implemented. As per Sections 39 and 131 of the Electricity Act 2003, the role of trading in electricity was transferred from the Karnataka Power Transmission Corporation Ltd. (KPTCL) to the ESCOMs, and any further allocation is the prerogative of the State Commission under Section 86.

48. The Respondent counters that Section 131(3)(b) allows the State Government to make binding decisions under the transfer scheme, including the allocation of power, in consultation with the relevant stakeholders.

49. It further asserts that no statutory provision explicitly restricts the State Government from allocating power after the transfer scheme's implementation.

50. Section 131 provides the State Government with powers concerning transfer schemes, including binding allocations. Furthermore, there is no explicit prohibition against post-transfer allocations by the State Government. The Appellant's reliance on Sections 39 and 86 does not override the provisions of Section 131(3)(b).

51. Therefore, the State Government retains the authority to allocate power amongst ESCOMs, provided it is consistent with the principles and objectives of the Electricity Act, 2003.

52. It is, therefore, important to take note of the Government notifications issued with reference to power allocation amongst the ESCOMs.

GOVERNMENT OF KARNATAKA
ಕರ್ನಾಟಕ ಸರ್ಕಾರ - 2006

No : EN 131 PSR 2003

Karnataka Government Secretariat,
 M.S. Building,
 Bangalore, Date: 6.7.2005.

NOTIFICATION

In exercise of powers conferred under section 131 of the Electricity Act 2003 and to implement provisions of sections 31(2) and 39(1) of the Electricity Act, 2003, which prohibit the State Transmission Utility and the State Load Despatch Centre from engaging in the business of trading, the Government of Karnataka hereby transfers the right relating to procurement and bulk supply of electricity or Trading of electricity from Karnataka Power Transmission Corporation Limited ("KPTCL") to the Five Distribution Companies, viz, (1) Bangalore Electricity Supply Company Ltd., (2) Mangalore Electricity Supply Company Ltd., (3) Hubli Electricity Supply Company Ltd, (4) Gulbarga Electricity Supply Company Ltd, (5) Chamudeswary Electricity Supply Corporation with effect from 10 June 2005.

The rights and obligations under agreement and contracts, relating to procurement of power from Conventional Energy source projects including projects of Karnataka Power Corporation Ltd, Vishweshwaraiah Viduth Nigam Niyamit Ltd., and Independent Power Producers, Central Generating Stations to which KPTCL was originally a party shall stand transferred and vested in (1) Bangalore Electricity Supply Company Ltd., (2) Mangalore Electricity Supply Company Ltd., (3) Hubli Electricity Supply Company Ltd, (4) Gulbarga Electricity Supply Company Ltd, (5) Chamudeswary Electricity Supply Corporation; in the specified ratios worked out as per the GO No. EN 131 PSR 2003 BANGALORE Dated 10th May 2005, with effect from 10 June 2005.

In Case of Non-Conventional Energy Sources projects, the same has already been assigned in favour of supra said Distribution Companies based on geographical location of the project as per the GO referred above.

Firm allocations in each of the Central Sector Generating Stations along with any allocations from the unallocated quota, as determined by Government of India for Karnataka will stand completely reallocated to the Distribution Companies in inter se ratio of reallocation, which can be modified by the State Government from time to time by advance intimation to the parties concerned. The specified ratios shall be as follows-

53. It can be seen that the State Government, in exercise of powers conferred upon it under section 131 of the Electricity Act, 2003, and to implement the provisions of sections 31(2) and 39(1) of the Act, transferred the rights relating to procurement and bulk supply of electricity or trading of electricity from KPTCL to the five distribution licensees of the State, as the transmission licensee is prohibited from trading or sale of power under the Electricity Act, 2003.

54. The State Government, further, allocated the existing PPAs as signed by the KPTCL under the erstwhile provisions to the distribution licensees in proportion to the specified ratios as notified by GO No. EN 131 PSR 2003 BANGALORE dated 10.05. 2005.

55. We find the allegations made by the Appellant as totally unwarranted and baseless. On being asked, the Appellant failed to provide any documentary evidence in their support.

56. The Appellant alleges that the KERC failed to regulate the power procurement and allocation process, which falls within its statutory mandate under Section 86(1)(b).

57. The Appellant highlights that the allocation impacts tariff calculations, which the Commission must oversee independently.

58. Per Contra, the Respondent maintains that the KERC approved the allocations made by the State Government after due consideration and in compliance with its regulatory duties. Section 86 does not expressly require the KERC to initiate the allocation process but only to regulate and approve it.

59. Under Section 86(1)(b), the KERC is tasked with regulating the electricity purchase and procurement process. The Commission's role is not to independently allocate power but to approve such allocations in line with the statutory framework and public interest. KERC duly reviewed and approved the State Government's allocation decisions in its tariff orders. Thus, no failure in its duty is established.

60. The Appeal lacks merit, the State Government's authority to allocate power amongst ESCOMs under Section 131 of the Electricity Act, 2003, remains valid, and the KERC has fulfilled its regulatory obligations under Section 86(1) (b).

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No.362 of 2017 does not have any merit and is dismissed. The allocation of power amongst ESCOMs by the State Government is upheld as lawful and consistent with the Electricity Act, 2003.

The Captioned Appeals and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 28th DAY OF MAY, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks