

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.323 of 2017

Dated: 24.06.2025

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

In the matter of:

The Kerala High Tension and Extra High Tension

Industrial Electricity Consumers' Association,
Productivity House, Jawaharlal Nehru Road,
Kalamassery – 683 104, Kerala,

Represented by its Secretary – Mr. K. Suresh

... Appellant

Versus

1. Kerala State Electricity Regulatory Commission

C.V. Raman Pillai Road, Vellayambalam,
Thiruvananthapuram – 695 010, Kerala
Represented by its Secretary

2. The Kerala State Electricity Board Ltd.,

Vydhuthi Bhavanam, Pattom,
Thiruvananthapuram – 695 004, Kerala,
Represented by its Secretary.

Counsel for the Appellant(s) : George Poonthottam, Sr. Adv
M.P. Vinod
Atul Shankar Vinod

Counsel for the Respondent(s) : M.T. George for Res. 1
Subhash Chandran K.R
Krishna L.R for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant, an association of High Tension and Extra High Tension Industrial Electricity Consumers in the State of Kerala, has filed this appeal against the order dated 26.07.2017 passed by the 1st respondent Kerala State Electricity Regulatory Commission (hereinafter referred to as "the Commission") in the review petition filed by appellant bearing R.P. No.1/2017 against the *suo moto* tariff order dated 17.04.2017 issued by the Commission.

2. A preliminary objection has been raised by the 2nd respondent Kerala State Electricity Board (in short "KSEB") regarding maintainability of the appeal as having been filed against the review order and not against the original order.

3. Accordingly, we have heard the learned counsel for the parties on the aspect of maintainability of appeal and have perused the impugned order as well as the memorandum of appeal.

4. The Commission had passed a *Suo moto* order of tariff revision for the financial year 2017-18 on 17.04.2017. Feeling dissatisfied by the said order on some aspects, the appellant sought its review by way of review petition bearing

RP No.1 of 2017. Following main issues were raised by the appellant in the review petition: -

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- i) *The cost of own generation may be excluded while computing 'C' in the surcharge formula.*
- ii) *Reduce the demand charge component from Cross Subsidy Surcharge for Embedded open access consumers.*
- iii) *Allow power factor incentive to the power sources through open access route and allow power factor incentive on cross subsidy surcharge collected from open access consumers.*
- iv) *Implement the new open access charges from 20.04.2017 only.”*

5. The review petition has been disposed off by the Commission vide impugned order dated 26.07.2017 thereby disagreeing with the appellant on all the four issues. Thus, in effect, the review petition has been dismissed by the Commission.

6. It is a settled principle of law that where the review petition is dismissed, there is no question of merger and anyone aggrieved shall have to assail the

original order and not the order dismissing the review petition. The law on this aspect is found in the judgment of the Hon'ble Supreme Court in Rahimal Bathu Vs. Ashiyal Beevi, 2023 SCC Online SC 1226, the relevant portion of which is extracted hereinbelow: -

“What is clear from the above observation is, that where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be

excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.”

7. In view of the law laid down by the Supreme Court in the above referred judgment, the instant appeal having been filed against the order dated 26.07.2017 dismissing review petition and not against the order dated 17.04.2017 is clearly not maintainable.

8. Hence, the appeal is hereby dismissed as not maintainable.

Pronounced in the open court on this the 24th day of June, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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~~REPORTABLE / NON-REPORTABLE~~

tp/nr