

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

Petition: OP No. 21/ 2021

- Present** : Shri. Preman Dinaraj, Chairman;
: Adv. A. J. Wilson, Member (Law)
- In the matter of** : Petition filed by M/s Bennet, Coleman & Co. Ltd.,
Kochi seeking; Tariff applicability for Media
Services (Pre-Press activities) Industrial Tariff and
Waiver of Demand charges on difference in tariff
charged retrospectively from 2014 till 2020.
- Petitioner** : Shri. Kamal Krishnan.P.S, Assistant Vice President,
M/s Bennett, Coleman & Co. Ltd.,
Imperial Trade Centre, M.G.Road, Kochi -682 035
- Petitioner represented by** : Shri. Shailen Chawla
: Shri. Aarjay Prakasan, Chief Manager (Legal);
: Shri. Sanjeev, Deputy General Manager (Fin);
: Shri. Shibu, Manager, Kochi.
- Respondent** : Kerala State Electricity Board Ltd. (KSEB Ltd.),
Thiruvananthapuram.
- Respondent represented by:** Shri. Prem Kumar P.K, Deputy CE, KSEB Ltd
: Shri. K. G. P. Nampoothiri, EE, TRAC;
: Shri. Edward, AEE, TRAC.
- Date of E- Hearing** : 04.05.2021, 11.00 AM.
26.05.2021, 11.00 AM

Order dated 08.07.2021 in OP No. 21/ 2021

1. M/s Bennett Coleman & Co Ltd, Times of India Group (hereinafter referred to as the petitioner or BCCL), is one of the largest media services conglomerates in India having a heritage of over 182 years of publishing and printing the world's largest read English Daily—The Times of India and The Economic Times. M/s BCCL is operating its Branch Office at the Imperial Trade Centre, M.G. Road, Kochi for the purposes of publishing newspapers. M/s Bennett Coleman & Co Ltd on 16-03-2021 has submitted this petition, seeking applicability of Industrial tariff for Media Services (Pre-press activities) and to waive the retrospective demand charges from 2014 to 2020.

2. The prayers of the petitioner before the Commission are as follows:
- (i) To review the issue in its entirety and exempt BCCL from being considered as a Consumer under the Commercial category, and instead extend the benefits of the revised tariff under Industrial, which has otherwise already been effectuated w.e.f 16.08.2014, and categorize as such (HT/LT Industrial).
 - (ii) To waive off the Demand Charges of Rs. 32, 40,602/- raised by KSEB Ltd. vide their Demand Notice No. SOR/ HTB 24/ 5919/ 2020-21 dated 29.04.2020 for the period from August 2014 to February 2020.
3. M/s BCCL in the petition has submitted as follows:
- (i) On the request of M/s BCCL in 2011, KSEB Ltd. sanctioned an electric connection for a load of 163 kVA. The HT connection was availed by BCCL, under the HT Commercial tariff category after executing the HT Consumer Agreement No. ECE/HT-41/11-12 dated 12-12-2011 with KSEB Ltd.
 - (ii) Later M/s BCCL has executed the existing agreement with M/s KSEB Ltd. vide Agreement No.: ECE/HT-62/2019-20 dated 06-02-2020 for reducing the Contract Demand from 163 KVA to 90 kVA at HT IV Commercial Tariff.
 - (iii) The following are the activities carried out at the Office of M/s BCCL:-
 - a) Gathering of news
 - b) Editing of the news using printing software
 - c) Page Setting using printing software
 - d) Advertisement Booking
 - e) Dummy Printing of Pages (Editorial and Advertisements)
 - f) All pre-press activities

The printing of the newspaper is being carried out at a place different and separate from the said premises. The printing of the newspaper is done at the Outsourced Printing Press located at the Mathrubhumi Printing & Publishing Co Ltd., X11/13F, Manjummal, Eloor, Udyogamandal P O, Ernakulum — 683501.
 - (iv) KSEB Ltd issued the Tariff revision Circular No. KSEBL / TRAC / Tariff Revision /2014-15 /LT dated 09th August 2014. Based on this Circular, KSEB Ltd. vide Demand Notice No. SOR/HTB 24/5919/2020-2021

dated 29.04.2020, intimated that when the new tariff, effective from 16.08.2014 came into existence, the bills were issued wrongly to the petitioner under HT I (A) Industrial instead of the actual tariff of HT IV (A) Commercial. Accordingly, as part of rectifying the mistake, the bills issued in the wrong tariff are revised and an amount of Rs. 32, 40,602/- was arrived at as the difference in tariff. Since in the original Demand Notice, BCCL was billed under Industrial Tariff with effect from 16th Aug 2014 and to rectify this mistake, BCCL is required to pay the differential amount of Rs. 32, 40,602/- on or before 29.05.2020.

- (v) The petitioner submitted that the 2014 Tariff Circular categorizes Printing Press including presses engaged in printing dailies as LT IV (A) Industrial and does not categorize them under HT Commercial or HT Industrial.
- (vi) Even though M/s BCCL approached the SOR about the change in Tariff Category, they were informed that it is as per the latest revision in the Tariff Order and KSEB Ltd has automatically revised the tariff.
- (vii) BCCL is of the opinion that they are not responsible for the wrong invoices issued by KSEB Ltd. under Industrial tariff from August 2014.

Hearing of the Petition and the arguments/ documents presented:

4. The Commission admitted the petition as OP No. 21/ 2021 and Form 3 (A) notice was issued to the respondent KSEB Ltd. The hearings on the petition were conducted on 29.04.2021 and 26.05.2021 through video conferencing. The representatives of the applicant and the respondent attended the hearings and answered the queries raised during the hearings. Shri. Aarjay Prakasan, Chief Manager (Legal) along with other officers of BCCL presented the petition before the Commission. Shri. Edward, AEE, TRAC and other officers of KSEB Ltd submitted their responses/ comments to the petition.
5. In the first hearing held on 29.04.2021, M/s KSEB Ltd submitted that media offices in which 'no printing activity' has been carried out in the same premise, is not eligible for industrial tariff. On the other hand they are assigned under the commercial tariff. KSEB Ltd further submitted that the tariff category applicable to the consumer is HT IV-Commercial, since no printing/ press activity is carried out in their premises. They also stated that the tariff charged on the consumer from 2014 was incorrect and this mistake on its detection was corrected in 2020 and the arrear bill for the period of wrong classification was issued. As per

Regulations 134 & 152 of the 'Supply Code, 2014', the licensee is permitted to raise such arrear bills. Further, the bill does not have any interest for the past period. Therefore the petition filed is for seeking unlawful benefits.

6. The Commission highlighted the provisions under Section 56(2) of the Electricity Act, 2003 and the limitation of two years for collecting arrears for the past period. It was further informed that, Regulation 136(3) of the Supply Code, 2014 also stipulate the same. In reply, KSEB Ltd. pointed out that certain judgments of the Hon' Supreme Court permitted the Licensee to collect arrears due for the period in excess of two years and they agreed to submit the related documents. The petitioner also requested for more time to produce the documents substantiating their claims. Considering the above deliberations, the Commission vide Daily Order dated 05.05.2021, decided to finalize the petition after due scrutiny of the documents and after deliberations in another hearing. The Commission also ordered that both the parties provide their additional submissions and supporting documents to the Commission with copy to the other party within two weeks.
7. M/s KSEB Ltd vide letter dated 24.05.2021 furnished their additional submission. In the submission, KSEB Ltd countered the statement of BCCL regarding the non-receipt of Demand Notice and furnished a copy of the Judgement of the Supreme Court of India in Civil Appeal No. 1672 of 2020 dated 18.02.2020 - Assistant Engineer (D1), Ajmer Vidyut, Vitran Nigam Limited & Anr. Versus Rahamatullah Khan alias Rahamjulla which discussed the following matters;
 - 1) What is the meaning to be ascribed to the term "first due" in Section 56(2) of the Electricity Act, 2003?
 - 2) In case a wrong tariff has been applied on account of a mistake, when would the amount become "first due"?
 - 3) Whether recourse to disconnection of electricity supply may be taken by the licensee company after the lapse of two years in case of a mistake?
8. KSEB Ltd submitted that in the petition filed by BCCL, the additional demand raised on 29.04.2020 was for the period from 08/2014 to 02/2020. The mistake of billing under wrong tariff was discovered, when the consumer approached KSEB Ltd. for a reduction in their contract demand during 02/2020. Though, the limitation period of two years under section 56(2) had by then already expired, Section 56(2) did not preclude the respondent KSEB Ltd. to raise the additional demand based on the actual consumption

and appropriate tariff. Even after the expiry of the limitation period under Section 56(2) KSEB Ltd can realise the short fall in electricity charge from the petitioner consumer, as per the judgement of the Supreme Court in the aforesaid Civil Appeal. Hence, the claim of the petitioner to waive the retrospective demand charge may not be considered and KSEB Ltd may be allowed to realise the demand for the entire period as per Demand Notice 29.04.2020. KSEB Ltd also requested the Commission to reject the claim of the petitioner for Industrial Tariff for pre-printing activities.

9. M/s BCCL submitted their rejoinder vide letter dated 25.05.2021 countering the arguments of KSEB Ltd. They submitted that the Supreme Court in the facts and circumstances of the said case has interpreted and ruled that Section 56(2) does not permit the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. Instead, it has only restricted the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired.
10. The Second hearing on the petition was conducted on 26.05.2021. The petitioner requested the Commission to retain them under the Industrial Tariff which is applicable to Printing presses. The petitioner also mentioned that the judgement referred to by KSEB Ltd is not applicable to them and they were not at fault when the category change was done by KSEB Ltd themselves in 2014. They further pointed out that it was the duty of the licensee as per the Tariff Order issued by the Commission, to ascertain the consumer's details before assigning the applicable tariff.
11. The Commission highlighted the petitioner's own statement regarding the outsourcing of printing processes and the fact that only back-office works are carried out in the consumer premises. The Commission also indicated that normally, the change in categorization of consumers, if required and justified, is done during the tariff determination process. The petitioner and similar industries/ consumers can raise their demand, if considered necessary, for back office process to be categorised as equivalent to that of newspaper industry, in the public hearings to be conducted shortly for finalizing the Multi Year Tariff for the next control period (2022-2027).
12. KSEB Ltd vehemently argued for their right to raise the arrear bill pertaining to periods more than two years in view of the order of the Hon' Supreme Court. To this argument, the Commission raised the questions of the understanding of the term 'first due' and the meaning of 'supplementary bill'.

The Commission also pointed out that Section 56 of the Act dealt with '*Disconnection of supply in default of payment*'. M/s BCCL has not made any default in the payment to the bills raised by KSEB Ltd. The Commission also highlighted various provisions in the Kerala Electricity Supply Code, 2014 and directed both the parties to provide their additional submissions and supporting documents, if any, to the Commission with copy to the other party on or before 15.06.2021.

13. M/s BCCL vide letter dated 07.06.2021 submitted additional points to establish and validate their prayers. They stressed that, KSEB Ltd has been lackadaisical towards their own responsibility of assigning the correct tariff despite the revised order issued by the Commission and sat on their mistake for almost six years before noticing that a wrong category stands assigned to M/s BCCL. This too had happened only when M/s BCCL had approached KSEB Ltd during February 2020, for reduction in the contract demand from 163 kVA to 90 kVA. They further submitted that the respondent, M/s KSEB Ltd is to be held responsible for its lapses and short comings for having assigned an incorrect classification and the consumer cannot be held responsible for such lapses.
14. With regard to the applicability of Section 56 of the Electricity Act 2003, M/s BCCL submitted that the heading of Section 56 itself states '*Disconnection of Supply in case of default in payment*'. They have been paying the electricity charges promptly as and when bills were raised by KSEB Ltd and had never defaulted on it. They did not have any arrears and stressed that Section 56 of the Electricity Act, 2003 is not applicable in the present case as held by the Hon'ble APTEL in Ajmer Vidyut Nigam Limited Vs Rajasthan Electricity Regulatory Commission and Ors (Appeal No. 74/2007), that bill for dues would "*be subject to the general law of Limitation and anything falling due prior to three years from the date on which the claim is made would be barred by limitation as prescribed by the Limitation Act, 1963.*"
15. It is further stated that the Hon'ble Supreme Court, in the case of AP Power Co-ordination Committee Vs Lanco Kondapalli Ltd (2016) 3SCC 468 (Para 31) had held that "*a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court*". In fact the provisions of Limitation Act was made applicable to Electricity Act, 2003 vide the said judgement dated 16.10.2015. Relying on the above aspects, the Jharkhand State Electricity Regulatory Commission in

Case No. 25 of 2014 titled M/s Usha Martin Ltd Vs Jharkhand Urja Vikash Nigam Ltd (JUVNL) & Ors vide its Order dated 21 February 2019, a copy of which was submitted, has in their findings held that:

"Relying on the above judgement of the Hon'ble Supreme Court which is of 2016, we feel that such an interpretation with an open ended power to the distribution licensee, to raise bills and claims, after keeping the matter pending for more than a decade would be arbitrary and violative of law of limitation and natural justice. A business entity producing goods and services, factors in the cost of electricity before it sells its products in the market. If the distribution licensee is allowed to go back to indefinite period to raise its claims, the business entity would be in a disastrous situation as it cannot claim the higher cost of production for products sold long before. The law of limitation is the legal provision of the rules of prudence requiring any party to be vigilant to protect its rights. The whole purpose of law of limitation is to disentitle a party to recover its claim if it has been sleeping over its right indefinitely".

16. M/s BCCL has further stated that the demand is raised by the KSEB Ltd without any notice or opportunity of being heard and is thus in violation of the principles of natural justice and therefore null and void. Hence they prayed that they should not in any way be held at fault or responsible for the wrong invoices raised and issued by the Respondent under Industrial Tariff due to their own lapses and short comings, retrospectively from August 2014.
17. They further submitted that if the Commission still comes to the conclusion of maintainability of the claims of the KSEB Ltd, *"the realisation shall have to be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted, is found to be more than twenty four months"* based on the third proviso to Regulation 152 (3) of the Kerala Electricity Supply Code, 2014 and requested for a favourable consideration due to the present conditions and business constraints, and thus render justice in the interest of equity and fair play.
18. M/s KSEB Ltd submitted their additional submission vide letter dated 17.06.2021 and countered all the arguments of the petitioner. KSEB Ltd has submitted that they have the right to raise the arrear bill pertaining to periods more than two years and has prayed before the Commission that the claim of the petitioner to waive the retrospective electricity charges raised at the applicable tariff may not be considered. Also, KSEB Ltd may be allowed to realise the arrears as per the demand notice issued. KSEB Ltd further

requested the Commission to reject the claim of the petitioner for Industrial Tariff for pre-printing activities.

Analysis and Findings of the Commission

19. The Commission has examined the petition filed by M/s Bennett Coleman & Co Ltd as per the provisions of the Electricity Act, 2003, Kerala Electricity Supply Code 2014, the relevant Tariff Orders issued by the Commission and observe as follows: -
20. The petitioner consumer was provided power supply by KSEB Ltd. in 12/2011 at HT (11 kV) with a contract demand of 163 kVA. As per the details provided at that time, the pre-printing activities are done at the subject premises and the actual printing of the newspaper is carried out at a different place (Mathrubhumi printing press). Hence at the time of the execution of the Agreement (dated 12.12.2011) they were categorized under HT IV Commercial category.
21. Thereafter, based on the Tariff Order issued in 08/2014, KSEB Ltd. suo-motu categorised the petitioner under the Industrial tariff and assigned HT I (A) tariff. KSEB Ltd issued the monthly bills regularly from August 2014 to February 2020 under HT I (A) tariff and the petitioner consumer paid the bills promptly.
22. During 2020, M/s BCCL submitted an application to reduce the contract demand to 90 kVA from the existing 163 kVA. After due process, KSEB Ltd reduced the Contract Demand of the consumer from 163 KVA to 90 kVA at 11 kV and executed the revised Agreement No. ECE/HT-62/2019-20 dated 06.02.2020 under HT IV Commercial Tariff. Based on the New Agreement, KSEB Ltd. has been issuing the monthly bills to the consumer from 03/2021 under HT IV Commercial Tariff and the consumer is remitting the same.
23. Consequent to the execution of the above New Agreement, KSEB Ltd. vide the Demand Notice No. SOR/HTB 24/5919/2020-2021 dated 29.04.2020, intimated the petitioner that effective from 16.08.2014, bills were issued wrongly under HT I(A)- Industrial tariff, instead of the actual tariff of HT IV (A) - Commercial and as part of rectifying the anomaly, the bills issued under wrong tariff are revised. An amount of Rs. 32, 40,602/- was arrived at as difference in tariff for the period from 08/2014 to 02/2020 and the amount is to be remitted before 29.05.2020 to avoid disconnection.

24. Aggrieved by the change in the tariff category and issuance of the demand notice for arrear for the last 6 years, the consumer filed this petition praying;
- (i) To review the issue in its entirety and exempt BCCL from being considered as a Consumer under the Commercial category,
- (ii) To waive off the Demand Charges of Rs. 32, 40,602/- raised by KSEB Ltd. vide their Demand Notice No. SOR/HTB 24/5919/2020-21 dated 29.04.2020 for the period from August 2014 to February 2020.
25. The details/ findings of the **prayer (i)** issue – **‘To review the issue in its entirety and exempt BCCL from being considered as a Consumer under the Commercial category’**- are as follows :-

As per the Tariff Order effective from 1.1.2010, which prevailed at the time of energization of the power connection to the appellant consumer:-

HIGH TENSION (HT – IV) COMMERCIAL

Tariff applicable to airports, hotels/ restaurants, lodges, hostels, guest/rest houses, travelers bungalows, commercial cold storage, freezing units, commercial establishments, business houses, film studios, cinema theatres, self-financing educational institutions, hospitals other than government owned, private nursing homes, Seafood Processing Units, milk chilling plants, private scanning units, private X-ray units, private clinical laboratories, offices/ telephone exchanges of telecom companies, radio stations, television broadcasting companies, television channels, construction works.

<i>Normal Rates</i>	
<i>Demand Charges (Rs./ kVA of Billing Demand/Month)</i>	350
<i>Energy Charge (Paise/kWh)</i>	370

‘Printing presses’ has been categorized under LT- IV (A) – Industry.

On reviewing the above Tariff Order of 2010, it is noticed that the printing presses availing power at low voltage were categorised under the Industrial Tariff (LT IV) at that time and no specific categorisation was given for the printing presses availing supply at HT. However, since no printing activity is done in the consumer’s premises and only the pre-press/ back office activities are carried out in the premises, the tariff assigned to the petitioner at the time of energization under (HT IV) Commercial in 2011 was correct.

26. The relevant portion of the Tariff Orders issued in 2014, 2017 & 2019 are quoted below:

1) Tariff Order dated 14-08-2014;

LOW TENSION IV - INDUSTRY (LT- IV)

*(a) **LT- IV (A) – INDUSTRY Tariff** applicable for general purpose industrial loads (single or three phase) which include manufacturing units, grinding mills, flour mills, oil mills, rice mills, saw mills, ice factories, rubber smoke houses, prawn peeling units, tyre vulcanizing/retreading units, workshops using power mainly for production and/or repair, pumping water for non- agricultural purpose, public waterworks, sewage pumping, power laundries, screen printing of glass ware or ceramic, **printing presses including presses engaged in printing dailies**, bakeries (where manufacturing process and sales are carried out in the same premises) diamond- cutting units, stone crushing units, book binding units with allied activities, garment making units, SSI units engaged in computerized colour photo printing, audio/video cassette/CD manufacturing units, seafood processing units, granite cutting units (where boulders are cut into sheets in the same premises), cardamom drying and curing units, and units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex, telemetry stations of KWA, dairy, processing of milk by pasteurization and its storage and packing, soda manufacturing units, plantations of cash crops, all non-agricultural pumping, drinking water pumping for public by Kerala Water Authority, corporations, municipalities and Panchayats, electric crematoria, pyrolators installed by local bodies.*

HT tariff under Industrial tariff is assigned to similar industries availing supply at HT levels also.

2) Tariff Order dated 17.04.2017

LT-IV (A) -Industry

LT-IV (A) Industrial tariff is applicable for the general purpose industrial loads (single or three phase) which include

- (i) manufacturing units,*
- (ii) grinding mills, flour mills, oil mills, rice mills,*
- (iii) saw mills, units using electric hydraulic axe machine to break down logs into small pieces.*
- (iv) ice factories,*
- (v) rubber smoke houses, tyre vulcanizing/re-treading units, manufacturing rubber sheets from latex,*

- (vi) workshops using power mainly for production and/or repair,
- (vii) public waterworks, drinking water pumping for public by Kerala Water Authority, corporations, municipalities and panchayats, telemetry stations of KWA, pumping water for non- agricultural purposes, sewage pumping units,
- (viii) power laundries,
- (ix) screen printing of glass ware or ceramic, SSI units engaged in computerized colour photo printing,
- (x) audio/video cassette/CD manufacturing units,
- (xi) printing presses including presses engaged in printing dailies,**
- (xii) bakeries (where manufacturing process and sales are carried out in the same premises)
- (xiii) diamond- cutting units, stone crushing units,
- (xiv) book binding units with allied activities,
- (xv) garment making units,
- (xvi) seafood processing units, prawn peeling and processing units, granite cutting units (where large granite blocks are cut into sheets in the same premises),
- (xvii) plantations of cash crops, tea factories, cardamom drying and curing units, 208
- (xviii) units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection,
- (xix) dairy, processing of milk by pasteurization and its storage and packing,
- (xx) soda and drinking water manufacturing units,
- (xxi) electric crematoria.

HT tariff under Industrial tariff is assigned to similar industries availing supply at HT levels also.

3) Tariff Order dated 08.07.2019

LOW TENSION IV - INDUSTRY (LT- IV)

(a) LT- IV (A) – INDUSTRY

LT-IV (A) Industrial tariff is applicable for the general-purpose industrial loads (single or three phase) which include, -

- (i) manufacturing units,
- (ii) grinding mills, flour mills, oil mills, rice mills,
- (iii) saw mills, units using electric hydraulic axe machine to break down logs into small pieces.
- (iv) ice factories,
- (v) rubber smoke houses, tyre vulcanizing/re-treading units, units manufacturing rubber sheets from latex, coconut drying units,
- (vi) workshops using power, mainly for production and/or repair,
- (vii) public waterworks, drinking water pumping for public by Kerala Water

Authority, Corporations, Municipalities and Panchayats, telemetry stations of KWA, pumping water for non- agricultural purposes, sewage pumping units, (viii) power laundries,

(ix) screen printing of glass ware or ceramic, SSI units engaged in computerized colour printing excluding photo studios/ colour labs.

(x) audio/video cassette/CD manufacturing units,

(xi) printing presses including presses engaged in printing dailies,

(xii) bakeries (where manufacturing process and sales are carried out in the same premises)

(xiii) diamond- cutting units, stone crushing units, granite cutting units (where boulders are cut into sheets in the same premises)

(xiv) book binding units with allied activities,

(xv) garment making units,

(xvi) Seafood processing units, prawn peeling and processing units, ,

(xvii) plantations of cash crops, tea factories, cardamom drying and curing units,

(xviii) units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise and under the same service connection,

(xix) dairy, processing of milk by pasteurization and its storage and packing,

(xx) soda manufacturing units, bottling plants/ packaging drinking water.

(xxi) electric crematoria.

HT tariff under Industrial tariff is assigned to similar industries availing supply at HT levels also.

27. It is seen that in all the above three Tariff Orders; ***printing presses including presses engaged in printing dailies*** only are classified under the Industrial Tariff Category. The petitioner themselves have submitted that no printing activity is carried out in the consumer's premise and only pre-printing/ back office activities are done in the premises. Accordingly the petitioner is not eligible for the Industrial Tariff effective from 08/2014 onwards and the classification done by the licensee in 08/2014 was wrong. Hence re-categorization done by KSEB Ltd. from 08/ 2014 is in order.
28. Vide the New Agreement dated 06.02.2020, HT IV – Commercial Tariff was assigned to the petitioner. As indicated in the Para above, this categorization conforms to the categorization under the Tariff Order issued in 07/2019 and is in order.
29. Regarding the request of the petitioner to consider the pre- press/ back office activities under the tariff for printing dailies, i.e. Industrial Tariff (HT-1A) the Commission cannot do any tariff categorisation or re-categorization

during the effective period of any Tariff Order. Instead, reclassification if required and justified can only be done along with the tariff revision process, after conducting public hearing/ stakeholders' consultation and following other due statutory procedures. It is upto the petitioner and similar category consumers, if they so desire, to raise their concern on tariff categorization, during the public hearing to be held during the consultation process for finalization of the Multiyear Tariff for the next five year Control Period (2022-2027). Commission may review the issue at that time based on the demands, justification and responses of the stakeholders.

30. With regard to the **prayer (ii)** issue; ***'To waive the Demand Charges of Rs. 32, 40,602/- raised by KSEB Ltd vide their Demand Notice No. SOR/HTB 24/5919/2020-21 dated 29.04.2020, for the period from August 2014 to February 2020'***; the Commission has examined whether the arrear bill issued to the petitioner for a prior period of 6 years is in order or not. In this regard the Commission has gone through the provisions of: the Electricity Act, 2003, the Kerala Electricity Supply Code, 2014, the judgments of the Hon' Supreme Court of India and the APTEL etc. and observe as follows: -
31. Section 56 of the Electricity Act, 2003 deals with the 'Disconnection of supply in default of payment' and Regulation 136 of the 'Kerala Electricity Supply Code, 2014' deals with Recovery of arrears and its limitation period, which are quoted below:

Section 56 of the Electricity Act, 2003

"56. Disconnection of supply in default of payment: -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

- (a) an amount equal to the sum claimed from him, or*
 - (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*
- (2) Notwithstanding anything contained in any other law for the time being in force, **no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.***

Regulation 136 of the Kerala Electricity Supply Code, 2014:

“136. Recovery of arrears and its limitation. - (1) The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due.

(2) The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice.

(3) No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.

(4) If the consumer fails to remit the amount of arrears with interest on or before the due date indicated in the bill or in the demand notice, the licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions.

(5) The licensee may formulate a scheme for one-time settlement of long pending arrears and implement the scheme with prior approval of the Commission:

Provided that such one-time settlement schemes shall be open only for short duration.”

32. The Commission notes that the above provisions in the Act/ Regulations, do not allow the licensee to collect an arrear pertaining to a period prior to two years from the date when such sum became first due, unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied. In this case, the monthly bills/ invoices of the consumer were issued by KSEB Ltd. from 08/ 2014 promptly and and the consumer had remitted the bill amount before the due date, as stipulated in the Supply Code. Hence, it is clear that the bills were issued by the licensee when it become due and the petitioner had promptly paid it. It was only during 2020 that the licensee detected that the Tariff Category assigned to the consumer was wrong from 08/2014 onwards and that too, only when the consumer approached the licensee to get the contract demand reduced, after a period of 6 years. Hence this arrear bill for 6 years for collecting the difference in the amount between the two tariffs was issued for a period in excess of 2 years.
33. In this regard the following facts shall also need to be considered: -
- (i) The Electricity Act, 2003 is a consumer-friendly statute, framed as a self contained comprehensive legislation.
 - (ii) Here the arrear bill was issued consequent to the detection of application of wrong tariff after a lapse of 6 years. This arrear bill cannot be considered as a bill of 'first due', since the bill for these months were issued by the licensee in time and the consumer remitted the same then itself. Treating the words 'first due' to mean the date of detection of mistake would be grossly incorrect and contrary to the mandate of the two year limitation period provided by Section 56(2) of the Electricity Act, 2003. Furthermore, the words 'recoverable as arrears of charges' would be rendered completely otiose and nugatory. Hence the Commission is of the view that the bill raised in 2020 is a 'Supplementary bill'.
 - (iii) It is clear that the period of limitation under Section 56(2) cannot be extended by raising a supplementary bill and that too for no fault of the consumer. Further, any 'sum due' raised in the original bill, and not paid by the consumer, must be continuously shown as arrears of charges in subsequent bills, for it to become recoverable by taking recourse to the coercive mode of disconnection of electricity supply.

- (iv) The wrong tariff was assigned to the consumer in 2014, suo-motu by the Licensee, consequent to a revision of Tariff Order issued by the Commission.
- (v) It is the statutory duty of the licensee to assign the correct tariff to the consumer. It is to be noted that the consumer was assigned the correct tariff from the date of energization in 2011, which for reasons unknown was changed by the licensee themselves. The Act and the Code provides 24 months period to the licensee, to correct the mistake, if any, in the tariff assigned and the arrears can be collected only for such period.
- (vi) This petitioner is an HT consumer and the number of HT consumers is less than 0.1% of the total number of consumers of the licensee. The monthly billing of the consumer is done centrally by the o/o the SOR under a Senior Accounts Officer. This office has an exclusive Internal Audit wing to concurrently audit the bills raised. The Agreement Authority of the HT consumer is the Area Distribution Deputy Chief Engineer and the details of the consumption and performance of each HT consumer is regularly monitored in this Circle Office. The energy meter reading of the HT consumer is taken on 1st of every month by the Assistant Engineer of the local Electrical Section. Moreover, the HT metering system in the premises of the consumer is inspected and calibrated annually by the HT meter testing unit of the licensee. This indicates that multiple check provisions exist in the system to detect any inadvertent mistakes occurring, without delay. But, in this case it was failed miserably.
- (vii) None of the above agencies identified the mistake for more than 6 years and it was detected only when the consumer approached the licensee for reduction of their contract demand. This clearly indicates the dereliction of duty among the licensee's officials and the consumer cannot be penalized for the lapse on the part of the licensee.
- (viii) A business entity producing goods and services, factors in the cost of electricity before it sells its products in the market. To enable this, *Section 61 of the Act – Tariff Regulations stipulate that tariff determination process shall be guided by:*
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- (d) safe guarding of consumers' interests and at the same time, recovery of the cost of electricity in a reasonable manner;*

- (e) *the principles rewarding efficiency in performance;*
- (f) *multiyear tariff principles; etc.*

- (ix) Considering these and to have stability in the tariff, the Commission is following the multiyear tariff regulations to determine the tariff from 2014. This will help the consumers to reasonably know the electricity tariff/ expenses for their products/ services. Revision of the electricity charges from a prior period will definitely negate the consumer interests and the above principles of tariff determination.
- (x) Section 50 of the Act – enables *the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non payment thereof, etc.* Accordingly the Commission has specified 'the Kerala Electricity Supply Code, 2014' after following the due statutory process for framing a subordinate legislation. Regulations of this Code specify a limitation period of two years from the date when such sum became first due.
- (xi) The Standing Committee of Energy in its Report dated 19.12.2002 on the 'draft Electricity Act' submitted to the 13th Lok Sabha, opined that a restriction has been placed on the recovery of arrears pertaining to the period prior to two years from consumers, unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that: *"It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings"*.
- (xii) Hon'ble Supreme Court, in the case of AP Power Co-ordination Committee Vs Lanco Kondapalli Ltd (2016) 3SCC 468 (Para 31) had held that *"a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court"*. The law of limitation is the legal provision of the rules of prudence requiring any party to be vigilant to protect its rights. The whole purpose of law of limitation is to disentitle a party to recover its claim if it has been sleeping over its right indefinitely. The Limitation Act, 1963 prescribes that; *anything falling due prior to three years from the date on which the claim is made would be barred by limitation.*

(xiii) The Commission also examined Section 56(2) of the Electricity Act, 2003 which is reproduced below:

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

(xiv) From this section of the Electricity Act, it is clear that Section 56(2) is the applicable provision and Electricity Act, 2003 is the governing law in this case. Hence, it follows that since the provisions of the Electricity Act, 2003 and the Kerala Electricity Supply Code, 2014 framed based on it, have limited this period to two years, any bill issued to a consumer pertaining to a period prior to two years is against the provisions under the Electricity Act, 2003.

(xv) In view of the above statutory/ regulatory provisions and the Court judgements, the arrear bill issued to the consumer is not in order and shall be revised; limiting the period to 2 years immediately prior to 02/2020 when the error was detected. The petitioner is directed to remit the revised bill amount within 30 days of the issue of the revised bill.

Decision and Orders of the Commission

34. After due consideration of the petition, the submissions & documents provided by the petitioner and the respondent licensee, the views expressed during the hearing and the findings detailed above, the Commission hereby orders as follows:-

- 1) The tariff applicable to the petitioner consumer from the date of connection (12/2011) is HT IV – Commercial and the tariff fixed by KSEB Ltd. in the Agreement dated 12.12.2011 is correct and in order.
- 2) The petitioner and similar industries can raise their concern regarding the tariff categorization, if any, during the tariff determination process for finalizing the tariff for the next 5 year control period (2022-2027).
- 3) The Arrear bill issued to the consumer for Rs. 32, 40,602/- vide demand notice dated 29.04.2020 is not in order and is quashed.

- 4) KSEB Ltd shall issue a new demand notice/ supplementary bill to the petitioner for collecting the arrear for the revision of tariff, limiting the prior period to two (2) years from 02/2020, without any penal charges. The consumer should remit the revised amount within the next 30 days of issue of the demand without fail.

The Petition is disposed off as ordered above.

Sd/-
Adv. A. J. Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for Issue

Sd/-
Secretary