

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)

OP No 37/2021

In the matter of : Petition seeking approval for modification of the Order No. OP 07/2020 dated 13-03-2020 approving continuation of the Generic Tariff determined by the Commission in respect of the Power Purchase/ Sale Agreement between Ayyappa Hydro Power Ltd and KSEB Ltd in respect of Karikkayam 15 MW SHP.

Petitioner : M/s Ayyappa Hydro Power Ltd
AHPL represented by : Sri. Radhakrishna Kumar, Consultant
Sri. Nitin Dutt Sharma, Manager Technical
Sri. Ivan Baby, Assistant Manager, Project

Respondent : Kerala State Electricity Board Ltd.
KSEB Ltd represented by : Dr. G Sreenivasan, Deputy Chief Engineer
Smt. Latha S.V, Asst. Executive Engineer

Date of the hearing : 08.09.2021

Order dated 20.10.2021

1. M/s Ayyappa Hydro Power Ltd (hereinafter referred to as M/s Ayyappa or the petitioner), on 02.08.2021, filed a petition before the Commission with the following prayers:
 - (1) *The Tariff determined by Hon Commission by the Order dated 23-05 2017 for the Karikkayam power plant owned by the petitioner at the Generic Tariff of Rs. 4.16 per unit is allowed to be realised for entire BOOT period of 30 years from the date of final commercial operation of the project that is 23rd May 2017.*
 - (2) *the power purchase agreement entered into between the Petitioner and the respondent utility be amended and extended for the complete period of supply of thirty years from the date of final COD of 23rd May 2017 as mandated in the implementation agreement.*
2. Summary of the petition filed by M/s Ayyappa Hydro Power Ltd is given below

- (1) The petitioner owns and operates "Karikkayam 3 x 5 MW Small Hydroelectric Power Generating Station". The project was allotted to the petitioner by the State Government and an Implementation Agreement (IA) was also signed by the petitioner with the State Government on 15.06.2009. Among other things, the Implementation Agreement also specifies the BOOT period, CoD etc.
- (2) Though the Techno-Economic Feasibility Report (TEFR) envisaged the project to operate at the Reservoir level of 49M, due to issues related to forest clearance, initially the weir height was restricted to the reservoir level of 42.5m. The reduction in head resulted in reduction in the power output of each of the 3 units of 5 MW machines at 3.5MW each only.

Therefore, the petitioner proposed to commission the project in two stages, Stage-1 with the reduced capacity of 3 x 3.5 MW = 10.5 MW, though the installed capacity was 15 MW. The petitioner also decided to commission the machines to their full capacity once they are able to raise the height of the weir to 49m from 42.5 m, once the forest clearance is obtained from the authorities.

- (3) Accordingly, the petitioner achieved CoD for the Phase-I project (3x 3.5 = 10.5 MW) on 14.07.2014. Subsequently the Commission vide Order dated 01.11.2014 in OP No. 27/2013 and OP No. 24/2012, approved the tariff of the project as extracted below:
 - (i) *KSEB Ltd shall enter into PPA for a period of four years with M/s. Ayyappa Hydro Power Ltd for purchase of power at the provisional rate of Rs 4.16/unit.*
 - (ii) *If after completion of four years, KSEB Ltd or M/s. Ayyappa Hydro Power Ltd applies for a project specific tariff to be determined, such tariff shall be determined by the Commission based on the average CUF for the period of four years of actual operation of the project and the actual project cost as approved by the Commission.*
 - (iii) *If project specific tariff is determined after a period of four years from the date of CoD on petition from KSEB Ltd or M/s. Ayyappa Hydro Power Ltd, the same shall be made applicable with retrospective effect from the date of CoD and adjustment of any excess / deficit payments shall be allowed in the subsequent bills of M/s. Ayyappa Hydro Power Ltd.*
 - (iv) *For the remaining nine years, the tariff applicable shall be the generic tariff of Rs.4.16/unit or the project specific tariff as decided by the commission and PPA shall be executed accordingly.*
- (4) The Commission has allowed the generic tariff of Rs 4.16 per unit, the generic tariff applicable for the SHPs commissioned in the FY 2014-15 on the basis of achieving the CoD on 14.07.2014. The petitioner has been supplying electricity to the Respondent since then at this rate.

- (5) Subsequently, the petitioner obtained forest clearance and raised the weir height to reach the reservoir level up to 49.5m in the year 2017. The petitioner declared CoD of the full capacity of $3 \times 5 = 15$ MW on 23.05.2017.
- (6) The petitioner filed a petition before the Commission on 18.12.2019 with the following prayer.

*“(1) The Tariff determined by Hon Commission by the order dated 01.11.2014 for the Karikkayam power plant owned by the petitioner at the Generic Tariff of Rs. 4.16 per unit be allowed to be realized for entire period of 30 years from the date of commercial operation of the project (May 2017).
(2) The power purchase agreement entered into between the Petitioner and the respondent utility be amended and extended for the complete period of supply of thirty years from the date of COD (May 2017) as mandated in the implementation agreement.”*

On this petition, the Commission vide Order dated 13.03.2020 ordered as follows.

*“(1) The levelized tariff for the electricity generated from the Karikkayam Small Hydro Project of the petitioner M/s Ayyappa Hydro Power Ltd shall be at Rs 4.16/unit, the levelized generic tariff as per the KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013.
(2) In partial modification to the Commission’s order dated 01.11.2014 in OP No. 27/2013 and OP No. 24/2012 and the PPA executed between the petitioner and KSEB Ltd, the validity of the PPA is extended for the complete period of supply of supply of 30 years w.e.f 14.07.2014.
(3) The petitioner M/s Ayyappa Hydro Power Ltd and the respondent KSEB Ltd shall modify the existing Power Purchase Agreement as above and the petitioner shall submit a copy of the modified PPA to the Commission for information and record.”*

- (7) As above, the Commission vide Order dated 13.03.2020 ordered that the tariff for the project is the generic tariff applicable for the year 2014-15, which is Rs 4.16/unit. This tariff is applicable from the CoD of the first phase, instead of the second phase as prayed by the petitioner.
 - (8) In the instant petition, the petitioner again requested to approve the generic tariff of Rs 4.16/unit from the BOOT period of 30 years from the CoD of Phase-II, i.e, on 23.05.2017, and also requested to amend the PPA accordingly.
3. The Commission admitted the petition as OP 37/2021. The hearing of the petition was held on 08.09.2021 through video conference. Sri. Radhakrishna Kumar, Consultant, M/s Ayyappa Hydro Power Ltd presented the petition on

behalf of the petitioner M/s Ayyappa Hydro Power Ltd. Smt. Latha S.V, Asst. Executive Engineer presented the comments of KSEB Ltd. The summary of the deliberations during the hearing is given below:

- (1) The petitioner submitted that they had earlier filed a petition before the Commission on 18.12.2019 to continue the generic tariff provisionally approved by the Commission vide Order dated 01.11.2014 for the entire period of 30 years from the date of commercial operation of the project in May 2017. However, the Commission vide Order dated 13.03.2020 extended the tariff for a period of 30 years w.e.f 14.07.2014.
- (2) The petitioner further submitted that the Karikkayam Small Hydro Project was implemented in two phases due to the issues on raising the weir height upto the level of 49.00m as per the TEFRR. Under Phase-1, the petitioner raised the weir height upto 42.50m, and though the installed capacity of the project was 3 x 5= 15 MW, they could achieve a maximum capacity of 3 x 3.5= 10.5 MW only in Phase- I which was commissioned on 14.07.2014. Subsequently, the petitioner could raise the reservoir height from 42.5m to 49m in the year 2017 and thereby they could achieve the full capacity of 15 MW w.e.f 23.05.2017. KSEB Ltd officials also witnessed and certified the achievement of the full capacity of 3x 5 MW=15MW.
- (3) The petitioner further submitted that, as per the Implementation Agreement signed with State Government dated 15.06.2009 and Power Purchase Agreement signed with KSEB Ltd dated 14.07.2014, CoD of the project can be considered only from 23.05.2017, i.e., from the date of declaration of CoD of the Phase II of the project.
- (4) KSEB Ltd submitted that the Commission vide Order dated 13.03.2020 has approved the tariff for electricity generated from Karikkayam 15 MW Small Hydro Project @ ₹ 4.16/unit as per the KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013. The Commission also ordered that the PPA executed between KSEB Ltd and M/s Ayyappa Hydro Power Ltd dated 14.07.2014 is extended for the complete period of the supply of power of 30 years w.e.f 14.07.2014.
- (5) KSEB Ltd further submitted that in the present petition, the petitioner has requested to allow the generic tariff of ₹ 4.16/unit be allowed to be realised for 30 years from the date of final commercial operation of the project on 23rd May 2017. KSEB Ltd further submitted that this prayer of the petitioner can be considered only as a review petition against the original Order dated 13.03.2020. However, there is inordinate delay in filing the instant petition and hence it is liable to be rejected as per the provisions of KSERC (Conduct of Business) Regulations, 2003.
- (6) KSEB Ltd also submitted that the project was commissioned and entered into commercial operation from 14.07.2014 onwards. The petitioner has installed the machines of total 15 MW capacity in phase I

during 2014 itself. The petitioner could achieve the capacity of 10.5 MW only due to their inability to construct the weir at 49 m height as envisaged in the DPR. The request of the petitioner to change the CoD of the project on 23.05.2017 instead of 14.07.2014 cannot be considered, since the project started commercial operation on 14.07.2014 and KSEB Ltd has paying tariff to the petitioner at ₹ 4.16/unit from 14.07.2014 onwards. Considering these reasons, the present petition filed by M/s Ayyappa Hydro Power Ltd may be rejected.

Analysis and Decision of the Commission

4. The Commission examined the petition filed by M/s Ayyappa Hydro Power Ltd as per the provisions of Electricity Act 2003, KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013, Implementation Agreement dated 15.06.2009 signed by the petitioner with State Government, Power Purchase Agreement dated 14.07.2014 and other materials and facts and here by decided as follows.
5. The only issue raised by the petitioner M/s Ayyappa Hydro Power Ltd, is to extend the applicability of the approved tariff at ₹ 4.16/unit for the entire BOOT period of 30 years from CoD of phase II on 23.05.2017, instead of CoD of Phase - I on 14.07.2014 as per the Order of the Commission dated 13.03.2020 in OP No. 07/2020. The Commission examined the argument of the petitioner in detail and noted the following.
 - (1) There is no dispute between the parties that, the Phase-I of the project had achieved CoD on 14.07.2014. KSEB Ltd and the petitioner also entered into a Power Purchase Agreement on the same CoD of Phase-I. i.e, on 14.07.2014. The Commission, as per the provisions of KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013, has approved the generic tariff of ₹ 4.16 per unit applicable for the SHPs which achieved CoD in the financial year 2014-15 (14.07.2014). The project entered into commercial service and started commercial production of electricity from 14.07.2014 onwards. KSEB Ltd also has been making payments to the petitioner at ₹ 4.16 per unit for the entire electricity generated and supplied to KSEB Ltd from 14.07.2014.
 - (2) It is also a fact that, the generic tariff approved by the Commission for SHP's are applicable for SHP having capacity installed between 5 MW and 25 MW. Hence, irrespective of whether the capacity of the project is 10.5 MW or 15 MW, as per KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013 the generic tariff applicable is ₹ 4.16 per unit.
 - (3) As above, the Commission has allowed the generic tariff @ Rs 4.16 per unit, the generic tariff applicable for the SHPs commissioned in the FY 2014-15 on the basis of achieving the CoD on 14.07.2014.

- (4) The Commission vide Common Order dated 01.11.2014 in Petition OP No. 24/2012 and OP No. 27/2013, has ordered as follows.
- (i) *KSEB Ltd shall enter into PPA for a period of four years with M/s Ayyappa Hydro Power Ltd for purchase of power at the provisional rate of Rs 4.16/Unit.*
 - (ii) *If after completion of four years, if KSEB Ltd or M/s Ayyappa Hydro Power Ltd applies for a project specific tariff to be determined, such tariff shall be determined by the Commission based on the average CUF for the period of four years of actual operation of the project and the actual project cost as approved by the Commission.*
 - (iii) *If project specific tariff is determined after a period of four years from the date of CoD on petition from KSEB Ltd or M/s Ayyappa Hydro Power Ltd, the same shall be made applicable with retrospective effect from the date of CoD and adjustment of any excess/deficit payments shall be allowed in the subsequent bills of M/s Ayyappa Hydro Power Ltd.*
 - (iv) *For the remaining nine years, the tariff applicable shall be the generic tariff of Rs 4.16/Unit or the project specific tariff as decided by the commission and PPA shall be executed accordingly*
- (5) Subsequently, duly considering the issues raised in the petition dated OP No 07/2020 and the views of KSEB Ltd, the Commission issued the following orders to extend the generic tariff earlier approved provisionally for four years to the entire BOOT period of 30 years from the CoD of Phase-1.
- “(1) The levelized tariff for the electricity generated from the Karikkayam Small Hydro Project of the petitioner M/s Ayyappa Hydro Power Ltd shall be at Rs 4.16/unit, the levelized generic tariff as per the KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013.*
 - (2) In partial modification to the Commission’s order dated 01.11.2014 in OP No. 27/2013 and OP No. 24/2012 and the PPA executed into between the petitioner and KSEB Ltd, the validity of the PPA is extended for the complete period of supply of supply of 30 years w.e.f 14.07.2014.*
 - (3) The petitioner M/s Ayyappa Hydro Power Ltd and the respondent KSEB Ltd shall modify the existing Power Purchase Agreement as above and the petitioner shall submit a copy of the modified PPA to the Commission for information and record”.*
- (6) As above, the Commission vide Order dated 13.03.2020 ordered that the Levelized tariff for the electricity generated from the Karikkayam 15 MW Small Hydro Project of Ayyappa Hydro Power Ltd shall be ₹ 4.16 per unit, the Levelized tariff as per the KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013. The

Commission has approved the generic tariff @Rs 4.16/unit, on the basis of achieving the CoD of the project on 14.07.2014. The petitioner started commercial production w.e.f 14.07.2014 and supplying electricity to KSEB Ltd since then. KSEB Ltd also making payments to the electricity generated and supplied @Rs 4.16/unit.

6. As per the records, the PPA between the petitioner and KSEB Ltd was signed on 14.07.2014. As per the Order of the Commission dated 01.11.2014, the PPA was valid for a period of four years from the date of CoD of Phase- I on 14.07.2014. However, as requested by the petitioner and as consented by Respondent KSEB Ltd, the Commission vide Order dated 13.03.2020 had extended the validity of the PPA for the complete period of 30 years w.e.f 14.07.2014. Hence, there is no ambiguity in the original Order of the Commission dated 01.11.2014, and in the subsequent Order of Commission dated 13.03.2020 in OP No.07/2020. However, in the present petition, the petitioner has requested to extend the applicability of generic tariff at ₹ 4.16 per unit for the entire BOOT period of 30 years from the date of final commercial operation, i.e., from 23.05.2017, i.e, CoD of Phase-II. The petitioner also requested to amend and extend the PPA dated 14.07.2014 entered into between petitioner and Respondent utility from the date of final CoD of 23rd May 2017.
7. As discussed above, the present petition dated 02.08.2021 filed by the petitioner M/s Ayyappa Hydro Power Limited, is for reviewing and modifying the Order of the Commission dated 13.03.2020 in Petition No. 07/2020. However, as per Regulation 67 of the KSEB (Conduct of Business) Regulations, 2003, and its amendments, the Review Petition against the Order/direction of the Commission has to be filed within 45 days from the date of the Order. The relevant Regulations is extracted below.

*“67. Powers of review, - (1) Any person or party affected by a decision, direction or order of the Commission may, **within forty five days from the date of making such decision, direction or order apply for the review of the same.** (2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations. (3)The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application: Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing: Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”.*

8. Further, as per the Section 94 of the EA-2003, review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Sections is extracted below:

“(i) Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) discovery and production of any document or other material object producible as evidence;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning of any public record;*
- (e) issuing commission for the examination of witnesses;*
- (f) reviewing its decisions, directions and orders;*
- (g) any other matter which may be prescribed.*

(ii) Order 47 Rule 1 of the Code of Civil Procedure dealing with review of the orders and decisions of a Civil court is quoted below:

“

Application for review of judgment.- (1) *Any person considering himself aggrieved,—*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

9. As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, the review jurisdiction of the Commission is very limited. For reviewing its decisions, discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason.
10. The petitioner has not submitted any new facts in this review petition before the Commission. They have also not pointed out any apparent mistake or error on the face of records. Hence, neither the provisions of the EA- 2003 nor the review jurisdiction of the Commission under Order 47, Rule 1 of the Code of

Civil Procedure is violated while passing the original Order dated 13.03.2020 in OP No. 07/2020.

Orders of the Commission

11. The Commission, after examining the petition filed by M/s Ayyappa Hydro Power Ltd as per the provisions of the Electricity Act, 2003, KSERC (Conduct of Business) Regulations, 2003 and other materials and documents placed before it, here by orders that,
- (1) The petition filed by M/s Ayyappa Hydropower Ltd dated 28.07.2021 is not maintainable as per the provisions of the Electricity Act, 2003 and KSERC (Conduct of Business) Regulations, 2003, and hence rejected.
 - (2) The petitioner M/s Ayyappa Hydro Power and the Respondent KSEB Ltd shall comply with the Order of the Commission dated 13.03.2020 in OP No 07/2020.

The petition disposed off. Ordered accordingly.

Sd/-
Adv A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)