

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, Times of India
: Shri. Aarjay Prakasan, Chief Manager (Legal);
: Shri. Sanjeev, Deputy General Manager (Fin);
: Shri. Shibu, Manager, Kochi.
- Respondent** : Kerala State Electricity Board Ltd., Thiruvananthapuram.
- Respondent represented by:** Shri. Prem Kumar P.K , Deputy CE, KSEB Ltd
: Shri. Edward, AEE, TRAC.
- Date of Second E- Hearing** : 26.05.2021, 11.00 AM.

Daily Order dated 28.05.2021 in OP No: 21/ 2021

1. M/s Bennett Coleman & Co Ltd, Kochi filed a petition dated 15.03.2021, seeking the Industrial tariff for Media Services (Pre-press activities) and to waive the Demand Charges from the year 2014 to 2020. Following are the prayers of the petitioner:
 - (i) To exempt BCCL being considered as a Consumer under the Commercial category and instead extend the benefits of the revised tariff under Industrial, category which has otherwise already been effected 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 vide their Demand Notice No. SOR/HTB 24/5919/2020-21 dated 29.04.2020 for the period from August 2014 to February 2020.
2. The petition was admitted as OP No: 21/ 2021 and Form 3 (A) Notice was issued. Due to the Covid 19, the Commission conducted the first hearing through Video Conference Mode on 04.05.2021. On behalf of the petitioner Sri. R.J. Prakasan, Chief Manager (Legal) presented the case, and requested the Commission to allow both the prayers in the petition. KSEB Ltd in their submission informed 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 Consumer's Agreement for power supply with KSEB Ltd mentioned that Commercial tariff was applicable and tariff collected from the consumer from 2014 was incorrect. This mistake on detection in 2020 was corrected 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. It was also submitted that the bill do not contain any interest element for the past period.
 3. Considering the request of the petitioner for providing more time to produce documents substantiating their claims, the Commission vide Daily Order dated 05.05.2021 decided to finalize the petition after submission of documents and after deliberations in another hearing scheduled to be held on 26.05.2021. The Commission also ordered both the parties to provide their additional submissions and supporting documents to the Commission with copy to the other party
 4. M/s KSEB Ltd vide letter dated 24.05.2021 furnished their additional submission. In the submission, KSEB Ltd has 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 the case of a wrong tariff billing having 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?

5. 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 by KSEB Ltd, 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.
6. M/s BCCL submitted their rejoinder 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. Further, the Hon'ble Supreme Court has not restricted other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.
7. The Second E-Hearing was conducted on 26.05.2021. The hearing was attended by the representatives of the petitioner and the respondent. On behalf of the petitioner Shri. Aarjay Prakasan, Chief Manager (Legal) presented the rejoinder before the Commission and Shri. Edward, AEE, TRAC submitted their comments.
8. 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 consumers details before assigning a tariff category.

9. The Commission highlighted their 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 is done during the tariff determination process. The petitioner and similar industries/consumers can raise their demand if considered necessary for back offices process to be categorised as equivalent to that of newspaper industry in the public hearings to be conducted during process of the fixing the Multi Year Tariff.
10. 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 Supreme Court. To this argument, the Commission raised the questions of the understanding of the term 'first due' and 'supplementary/original bill'. The Commission also pointed out the Section 56 dealt with '*Disconnection of supply in default of payment*' and it seen that 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 Kerala Electricity Supply Code, 2014. However, KSEB Ltd were unable to convincingly present the reply to the above queries.
11. Hence KSEB Ltd requested the Commission for additional time for submitting their detailed comments on the rejoinder of the petitioner. The Commission considered the request of KSEB Ltd and directed both the parties to provide their additional submissions if any and supporting documents to the Commission with copy to the other party on or before 15.06.2021.
12. The Commission shall finalize the petition after due scrutiny of the documents and other submissions, if any before the Commission.

Sd/-
Adv. A.J.Wilson
Member

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
Secretary