

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION**

APPEAL NO 94 OF 2008

IN THE MATTER OF:

Appeal against the order dated 24.11.2007 passed by the Kerala Electricity Regulatory Commission in Petitions No. 20 of 2006 and 22 of 2006

AND

IN THE MATTER OF:

Kerala State Electricity Board
Vydyuthi Bhavanam, Thiruvananthapuram-695004
Rep.by its Secretary.

.....Appellant

VERSUS

Kerala State Electricity Regulatory Commission
KPFC Bhavanam, CV Raman Pillai Road,
Vellayambalam, Thiruvananthapuram - 695010

.....Respondent

APPEAL UNDER SECTION 111(1) OF THE ELECTRICITY ACT, 2003

MOST RESPECTFULLY SHOWETH:

1. DETAILS OF APPEAL

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against impugned order dated 24.11.2007 passed by the Kerala State Electricity Regulatory Commission (hereinafter referred to as "**State Commission**").

2. The impugned order was communicated to the appellant on 03.12.2007.

3. THE ADDRESS OF THE APPELLANT FOR SERVICE IS SET OUT HEREUNDER:

- i) Kerala State Electricity Board
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram-695004
Phone: 0471- 2514317, 2514650
Fax: 0471-2514405
Email: trac@ksebnet.com
- i) Name and Address of the Counsel
M.T.George,
435-New Lawyers Chambers,Supreme Court, New Delhi
Phone: 23070435
Fax :011-23070435
Email: mtgeorgeadvocate@rediffmail.com.

4. THE ADDRESS OF THE RESPONDENTS FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:

- (i) Kerala State Electricity Regulatory Commission
KPFC Bhavanam, CV Raman Pillai Road,
Vellayambalam
Thiruvananthapuram - 695010

5. JURISDICTION OF THE APPELLATE TRIBUNAL

The appellant declares that the subject matter of the appeal is within the jurisdiction of this Tribunal.

6. LIMITATION.

The impugned order dated 24.11.2007 passed in the matter of truing up of Annual Revenues against the tariff allowed for the years 2003-04 and 2004-05 was communicated to the appellant on 10.12.2007. The appellant filed a review petition for the review of order dated 24.11.2007 on 3.1.2008 on the bonafide basis that there were errors apparent on the face of record which would be corrected in review. However, the State Commission has rejected the review petition of the appellant on the ground that there is no error apparent on the face of record and therefore its order cannot be reviewed under Order 47 Rule 1 of the Code of Civil Procedure, 1908. The Review Order dated 11.3.2008 was communicated to the appellant on 14.3.2008. The present appeal is being filed within 45 days from the date the Review Order was communicated. However, there is a delay of days in the filing of this appeal from the communication of the Order dated 24.11.2007 i.e. from 10.12.2007. The appellant was bonafide seeking the relief by way of a review and thus bonafide presenting other remedies provided in the Electricity Act, 2003. The appellant is filing an application for Condonation of Delay in filing the appeal.

7. FACTS OF THE CASE

- A. The appellant, Kerala State Electricity Board (hereinafter referred to as “KSEB”) is a Board constituted under Section 5 of the Electricity (Supply) Act, 1948 as was in existence prior to the enactment of the Electricity Act, 2003.

- B. KSEB is a deemed licensee for the electricity transmission, distribution and trading in the State of Kerala in terms of the first proviso to Section 14 of the Electricity Act, 2003. KSEB also undertakes generation of electricity besides the above licensed activities.
- C. The Kerala State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) was constituted as the Regulatory Commission for Electricity in the State of Kerala initially under the provisions of the Electricity Regulatory Commissions Act, 1998.
- D. Subsequently, the Parliament enacted the Electricity Act, 2003 which came into force on 10.6.2003. After the coming into force of the Electricity Act, 2003, the State Commission discharges the functions as per the provisions of the Electricity Act, 2003.
- E. On 22.6.2006, KSEB filed a petition for truing up of the financials of KSEB’s operations for the FY 2003-04 being TP 20 of 2006 and sought adjustment for the revenue gap of Rs.1007.44 crores as more fully set out in the said petition. A copy of the said petition is attached hereto and marked as **Annexure A**. The State commission admitted the petition on 12.7.2006 and directed KSEB to publish the same.
- F. On 2.11.2006, KSEB filed a petition or truing up of the financials of FY 2004-05 being TP 22 of 2006 and sought adjustments for the revenue gap of Rs. 342.77 crores as more fully set out in the said petition. A copy of the said petition is attached hereto and marked as **Annexure B**.
- G. The State Commission sought clarifications from the KSEB on various issues raised in the said two petitions which KSEB duly provided on 10.8.2006, 6.11.2006, 12.6.2007 and 20.7.2007.
- H. KSEB published notice of the said truing up petitions inviting public participation as under-

1. Mangalam Daily - 5.7.2007

2. Madhyamam Daily- 6.7.2007

3. The Hindu - 6.7.2007

- I. The HT and EHT consumers association and M/s Binani Zinc filed their objections to the truing up petitions of KSEB. On 23.10.2007, the State Commission held public hearing on the petition filed by KSEB.
- J. By impugned order dated 24.11.2007, the State Commission passed Orders on the above truing up petitions filed by KSEB for the FYs 2003-04 and 2004-05. A copy of the order dated 24.11.2007 is attached hereto and marked as **Annexure C**. This Order was communicated to the KSEB on 10.11.2008.
- K. On 3.1.2008, KSEB filed a petition for review of order dated 24.11.2007 before the State Commission on the bona fide belief that these will be corrected by the State Commission. A copy of the review petition filed by KSEB is attached hereto and marked and **Annexure D**.
- L. By order dated 11.3.2008, communicated to KSEB on 14.3.2008, the State Commission has rejected the review petition of the appellant on the ground that the review is not maintainable under Section 94(1)(f) of the Electricity Act, 2003. A copy of the Order dated 11.3.2008 passed by the State Commission is attached hereto and marked as **Annexure E**.
- M. Aggrieved by the Order dated 24.11.2007, KSEB is filing the present appeal.

8. (i) FACTS IN ISSUE

General-

- 1. Can the State Commission refuse to accept the actual audited expenses certified by the Comptroller and Auditor General of India when such expenses have been actually incurred by KSEB under the following heads during the financial years 2003-04 and 2004-05:

- (a) Repair and Maintenance expenses
- (b) Interest and finance charges
- (c) Administrative and General expenses
- (d) Employees cost
- (e) Other Miscellaneous expenses

A summary of the truing up carried out by the State Commission is as under-

Particulars	2003-04			2004-05		
	ARR Order dated...	Actual claimed as per audited accounts	True-up Order dated 24.11.07	ARR Order dated...	Actual claimed as per audited accounts	True-up Order dated 24.11.07
Purchase of Power	1775.13	1887.11	1887.11	1605.53	1463.03	1463.03
Generation	153.32	143.70	143.70	100.53	81.13	81.13
R&M Expenses	66.70	63.79	66.70	66.70	74.49	66.70
Employee cost	693.64	788.31	788.31	718.47	789.64	753.47
A&G Expenses	55.88	84.74	34.01	68.68	95.01	34.30
Depreciation	334.52	326.19	326.19	382.27	374.77	374.77
Interest & Financing charges	679.26	726.32	725.60	618.30	605.59	618.30
Other expenses	76.28	143.35	138.04	50.00	117.54	104.74
Total	3834.73	4163.51	4109.66	3609.95	3601.20	3496.44
Less expenses capitalized	119.80	109.05	109.05	123.53	42.88	42.88
Less interest capitalized	108.93	78.11	78.11	98.96	62.04	62.04
Sub total	228.73	187.16	187.16	222.49	104.92	104.92
Total expenses	3606.00	3976.35	3922.50	3387.46	3496.28	3391.52
Surplus	91.83	91.83	91.83	105.00	103.49	103.49
Total revenue requirements	3697.83	4068.18	4014.33	3492.46	3599.77	3495.01
Non tariff income	240.37	304.66	304.66	231.00	339.63	339.63
Revenue from tariff	2901.00	2756.09	2789.57	2965.00	2917.37	2936.90
Total revenue requirements	3141.37	3060.75	3094.23	3196.00	3257.00	3276.53
Revenue gap	-556.46	-1007.43	-920.10	-296.46	-342.77	-218.48
Subsidy received/Ordered	556.46	556.46	556.46	200.00	0.00	222.06
Balance revenue gap/Surplus	0.00	-450.97	-363.64	-96.46	-342.77	3.58

Revenue Gap-

2. In the process of truing up, is the State Commission justified in admitting only a revenue gap of Rs. 920.07 crores as against the actual revenue gap of Rs.1007.43 crores reflected in the audited accounts of KSEB for FY 2003-04 ?
3. In the process of truing up, is the State Commission justified in admitting a revenue gap of Rs. 218.48 crores as against the actual revenue gap of Rs.342.77 crores reflected in the audited accounts of KSEB for FY 2004-05 ?
4. Is the State Commission justified in further adjusting the admitted revenue gap against the payment of duty under the Kerala Electricity Duty Act, 1963 - Section 3(1) i.e. Rs.54.98 crores and under Section 4 i.e. Rs.167.08 crores aggregating to Rs.222.06 crores is payable by KSEB to the State Government without any permission or decision from the State Government empowering such adjustments ?

Repair and Maintenance (R & M) expenses -

5. In the process of truing up, should the R & M expenditure in the year 2004-05 be limited only to the extent of the R & M expenditure in the year 2003-04, though KSEB has actually incurred higher R & M on account of addition of new assets by creation of new generating capacity, new sub-stations, lines etc?

Administrative and General (A & G) expenses-

6. In the process of truing up of A & G expenses, is the State Commission justified in not allowing the Electricity Duty paid by KSEB, which is a necessary outflow? The State Commission has not allowed an amount of Rs. 51.53 crores in 2003-04 and Rs.54.98 crores in 2004-05 of the electricity duty paid by KSEB as part of it's A & G expenses.
7. In truing up, can the A & G expenses for the year 2004-05 be directed to be limited to the extent of A & G expenses incurred in the year 2003-04 and thus an amount of Rs.5.73

crores not be admitted even though additional works have been incurred by KSEB in generation, transmission and distribution?

Employees' expenses-

8. Whether the State Commission was justified in not allowing the employees cost incurred by the KSEB during the year 2004-05 of Rs 789.64 crores fully and restricting such employees costs to Rs 753.47 crores ?

Other expenses-

9. Whether under the heard 'other expenses', the actuals as per the audited accounts of KSEB ought to be allowed or the amounts as originally approved by the State Commission for the years 2003-04 and 2004-05 should be maintained ?

Transmission and Distribution (T & D) loss-

10. In the process of truing up, can the State Commission disallow the actual T & D loss of KSEB and treat the difference between what was allowed and what has been achieved by KSEB as an under achievement and further accounting the difference between the two and treat the same as an actual sale of KSEB. The following table illustrates the fact in issue-

Particulars	2003-04			2004-05		
	ARR order	Actual	True-up	ARR Order	Actual	True-up
Total energy input (MU)	12120	12281	12281	12310	12505	12505
Energy sales (MU)	8900	8910	8910	9300	9384	9384
Excess sale admitted by factoring the difference in T&D loss fixed by the KSERC			108			63
Addl revenue on account of excess sale factored by KSERC @ average realization (Rs. Crore)			33.48			19.53

(ii) QUESTIONS OF LAW

The following questions of law arise in the present appeal:

- A. Can the State Commission ignore the audited accounts of the KSEB placed before it duly certified by the Comptroller and Auditor General of India and not allow the actual expenses of KSEB as per audited accounts without any disallowance on account of unprudence on the part of KSEB being there ?
- B. Can the State Commission adjust the electricity duty payable by KSEB to the Government against the revenue gap of KSEB when such electricity duty is not part of the revenues of KSEB ?
- C. During the course of truing up, can the State Commission refuse to allow to KSEB expenses that KSEB has necessarily incurred without there being any imprudence or mismanagement on the part of KSEB?

9. GROUNDS RAISED WITH LEGAL PROVISIONS

- B. The State Commission erred in not fully allowing to KSEB, during the process of truing up the actual expenditure incurred by KSEB as per its audited accounts duly certified by the Comptroller and Auditor General of India.
- C. The State Commission erred in following an inconsistent approach in the process of truing up in as much as it allowed the actual expenses under certain heads for the year 2003-04 while not allowing the same for the year 2004-05.
- D. The State Commission erred in disallowing the valid and actual expenses of KSEB when it has not shown any act of imprudence or mismanagement on the part of KSEB.
- E. The State Commission erred in not revising and truing up the expenses under various heads on the ground that it had initially approved some figure under the same head and therefore, KSEB

could not incur any more expenditure than what was initially approved.

- F. The State Commission failed to appreciate the philosophy behind the process of truing up. The State Commission erred in disallowing to KSEB expenditure that KSEB has necessarily incurred as shown in its audited balance sheets.
- G. The State Commission erred in admitting only Rs.920.07 crores as against the actual revenue gap of Rs.1007.43 crores for the year 2003-04. Similarly, the State Commission erred in admitting only Rs.363.64 crores as against the actual revenue gap of Rs.556.46 crores for the year 2004-05.
- H. The State Commission has overlooked the fact that the revenue gap of KSEB is strictly as per the audited balance sheet of KSEB as certified by the Comptroller and Auditor General of India.
- I. The State Commission erred in adjusting the admitted revenue gap of KSEB against the payment of electricity duty under the Electricity Duty Act - Section 3(1) i.e. Rs.54.98 crores and under Section 4 i.e. Rs.167.08 crores which is a total duty of Rs.222.06 crores.
- J. The State Commission had no authority in adjusting on its own the amount of such electricity duties payable by KSEB to the Government of Kerala when at the time of truing up, there was no permission or decision by the Government of Kerala.
- K. The State Commission has failed to appreciate that it does not have the jurisdiction to issue such a direction to the Government of Kerala and such an adjustment cannot be carried out without the permission or approval of the Government of Kerala.
- L. The State Commission erred in restricting the amount to be allowed under the head of R & M expenses for the year 2004-05 to the extent allowed to KSEB under the same head for the year 2003-04. The State Commission failed to appreciate that KSEB is having to incur substantial expenditure in maintaining and

monitoring the old assets and further adding new generating capacity, sub-stations lines etc and all these factors lead to a rise of R & M expenses year after year.

- M. The State Commission erred in disallowing Rs.0.72 crores under the head interest and finance charges for the year 2003-04 without appreciating that KSEB is taking every possible effort to reduce the interest burden.
- N. The State Commission erred in disallowing the actual A & G expenditure of KSEB for both the years. The State Commission has without any basis whatsoever, refused to allow the electricity duty paid by KSEB under Section 3 (1) of the Kerala Electricity Duty Act, 1963 as a pass through in the A & G expenses and has wrongly relied on Section 3 (3) of the Kerala Electricity Duty Act to justify its decision.
- O. The State Commission has failed to appreciate that the electricity duty paid by KSEB is a necessary outflow and in a cost plus based tariff, all the actual expenditure incurred by a utility becomes a pass through in its tariff.
- P. The State Commission has failed to appreciate that KSEB has always been including the electricity duty paid under the head of A & G expenses and for the past many years even the State Commission has not changed the said position.
- Q. The State Commission erred in limiting the A & G expenses in the year 2004-05 to the same extent as in the year 2003-04 and disallowing Rs.5.73 crores to KSEB. The State Commission failed to appreciate that with the increase in energy demand and the addition of 5 lakh new consumers in 20054-05. A & G expenses have risen and these ought to be allowed to KSEB.
- R. The State Commission erred in following an inconsistent approach with respect to the employees' expenses in as much as it has allowed the actual employees' expenses for the year 2003-04 but has maintained the amount allowed in the ARR and ERC for 2004-

05 and disallowed the actual employees' expenditure for the 2004-05.

- S. The State Commission erred in reducing the salary and DA component in 2004-05 as compared to the amount allowed in 2003-04. This is patently incorrect as the actual increase in salary and DA in 2004-05 is 3.7% over the amount of 2003-04.
- T. The State Commission erred in disallowing the legitimate employees' expenditure incurred by KSEB without appreciating that with the growth in load and the need to attend to consumer needs and implement standards of performance introduced by the State Commission, KSEB is incurring expenditure on its employees.
- U. The State Commission erred in not revising the expenditure under the head 'other expenses'. The State Commission has disallowed the extra expenditure only on the ground that this is in excess of what it had earlier approved under this head.
- V. The State Commission has failed to appreciate that the actual expenditure under the head 'other expenses' is more as KSEB is following prudent accounting practices like creation of provision for bad and doubtful debts as per the observations of C & AG and writing off of other miscellaneous losses.
- W. The State Commission erred in disallowing the actual T & D loss achieved by KSEB on the ground that this is an under-achievement on part of KSEB and hence will not be allowed.
- X. The State Commission erred in treating the difference between what was allowed arbitrarily by factoring in the difference between the two and treat the same as an additional sale over the actual sale of KSEB. This is a mere fictitious computation as even if the T & D loss was reduced by KSEB to the extent fixed by the State Commission, the sales would remain the same.
- Y. The State Commission erred in fictitiously assuming additional sales and the revenue from the said sale and penalized KSEB to

the extent of Rs.33.48 crores in 2003-04 and Rs.19.53 crores in 2004-05.

- Z. KSEB craves leave to add to the above mentioned grounds and states that the above are in the alternative and have been preferred without prejudice to one another.

10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

KSEB had filed a petition for review of order dated 24.11.2007 on 3.1.2008 on the bonafide belief that there were errors apparent on the face of record which would be corrected in review. By order dated 11.3.2008, the State Commission has rejected the review petition of KSEB. KSEB has not filed any other suit, appeal or has initiated any other legal proceeding against the impugned order dated 24.11.2007 passed by the State Commission.

11. GROUNDS FOR SUCH RELIEF (S) AND THE LEGAL PROVISIONS, IF ANY, RELIED UPON

N.A.

12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.

N.A.

13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIUBNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL.

N.A.

14. DETAILS OF INDEX

An index containing the details of the documents to be relied upon is enclosed.

15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF POWER, NEW DELHI.

In respect of the fee of appeal.

- (1) Name of the Bank. SBT Branch New Delhi Service branch payable at Delhi .DD No.033238 Date 15.04.2008. for Rs.1,00,000/-.
- (2) In respect of Interlocutory Application (Delay Condonation application) DD.No.250177 dated 22/04/2008 for Rs.1,000/-.
- (3) In respect of Process fee DD.No.250178 dt.22.04.2008 for Rs.2,000/-

16. LIST OF ENCLOSURES.

- Annexure A: A Copy of the petition for truing up for the FY 2003 -04 being TP 20 of 2006 filed by KSEB.
- Annexure B : A copy of the petition for truing up for the FY 2004-05 being TP 22 of 2006 filed by KSEB.
- Annexure C: A copy of the impugned order dated 24.11.2007 passed by the State Commission.
- Annexure D: A copy of the review petition filed by KSEB for review of the Order dated 24.11.2007 before the State Commission.
- Annexure E: A copy of the order dated 11.3.2008 passed by the State Commission.

17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED.

Yes

18. WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS

Yes

19. WHETHER THE COPY OR MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.

No.

20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT DEEMS NECESSARY TO SET OUT:

N.A:

21. RELIEFS SOUGHT.

In view of the facts mentioned in para 7 above , points in dispute and questions of law set out in para 8 and the grounds of appeal stated in para9, the appellant prays for the following reliefs:

- (a) Allow the appeal and set aside the order dated 24.11.2007 passed by the State Commission to the extent challenged in the present appeal.
- (b) Pass such other order(s) and this Hon'ble Tribunal may deem just and proper.

Dated at New Delhi this the 24th day of April, 2008.

M.T.George

Counsel for Appellant

Appellant
Kerala State Electricity Board

DECLARATION BY APPELLANT

The appellant above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original.

Verified at New Delhi on this the 24th day of April, 2008

Appellant
Kerala State Electricity Board

VERIFICATION

I, Sathyanathan, S/o.C.H.Kunhappa, aged about 51 years, working as Resident Engineer, in the Office of gthe Kerala State Electricity Board, Travancore House, Kasturba Gandhi Marg, New Delhi do hereby verify that the contents of paras 1 to 7 and 10 to 20 are based on the records of the appellant maintained in the ordinary course of business and believed by me to be true and paras 8, 9 and 21 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 24/4/2008
Place : New Delhi.

Appellant/Authorised Officer
Kerala State Electricity Board.

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION

APPEAL NO. OF 2008

IN THE MATTER OF:

Kerala State Electricity Board.Appellant

Versus

Kerala State Electricity Regulatory CommissionRespondents.

AFFIDAVIT

I, Sathyanathan, aged about 51 years, S/o. C.H.Kunhappa, Resident Engineer, Kerala State Electricity Board, Travancore House, Kasturba Gandhi Marg, New Delhi hereby solemnly affirm and state as under:

1. That I am the Officer on Special Duty, Kerala State Electricity Board. I know the facts of the case and I am authorized to file this affidavit.

2. I say that I have read the contents of the above appeal filed by the appellant against the order dated 24.11.2007 passed by the state Commission and I have understood the contents of the same.

3. I say that the contents of the above appeal filed by the appellant are based on information available with the appellant in the normal course of business and believes by be to e true.

4. I say that the annexures to the Memorandum of appeal are the true and correct copies of their original.

Deponent

VERIFICATION:

I, the deponent above named, do hereby the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 23rd day of April, 2008.

Deponent

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

APPELLATE JURISDICTION

I.A.No. of 2008

IN
APPEAL NO. OF 2008

IN THE MATTER OF:

Kerala State Electricity Board.Appellant

Versus

Kerala State Electricity Regulatory CommissionRespondents.

AFFIDAVIT

I, Sathyanathan, aged about 51 years, S/o. C.H.Kunhappa, Resident Engineer, Kerala State Electricity Board, Travancore House, Kasturba Gandhi Marg, New Delhi hereby solemnly affirm and state as under:

1. That I am the Officer on Special Duty, Kerala State Electricity Board. I know the facts of the case and I am authorized to file this affidavit.
2. I have read the accompanying Application for Condonation of delay and I say that its contents are true to my knowledge.

Deponent

VERIFICATION.

I, the deponent above named do hereby verify that the contents of my above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.
Verified at New Delhi on 23/4/2008.

Deponent

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION

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Appeal against the order dated 24.11.2007 passed by the Kerala Electricity Regulatory Commission in Petitions No. 20 of 2006 and 22 of 2006

AND

IN THE MATTER OF:

Kerala State Electricity Board

Appellant

VERSUS

Kerala State Electricity Regulatory Commission

Respondent

I N D E X

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ELECTRICITY ACT**

FILED BY:

New Delhi
Dated :24/04/2008

(M.T.George)
Advocate for the Appellant
435-New Lawyers Chambers
Supreme Court, New Delhi - 110001
Tel: 23070435 (Mob) 9868125065

LIST OF DATES

31-12-2003	KSERC order on ARR & ERC of KSEB for the year 2003-04
16-04-2004	KSERC order on ARR & ERC of KSEB for the year 2004-05
22.6.2006	The Appellant, Kerala State Electricity Board (KSEB) filed an application before the State Commission for truing up of the financials pertaining to the year 2003-04, being TP 20 of 2006.
19-10-2006	KSEB filed an application before the State Commission for truing up of the financials pertaining to the year 2004-05, being TP 22 of 2006.
5.7.2007 & 6.7.2007	KSEB duly published the notice of the truing up petition in the 'Mangalam Daily', 'Madhyanam Daily' and 'The Hindu'.
23.10.2007	After receipt of objections from various stakeholders, the State Commission conducted public hearing on the petition of KSEB.
24.11.2007	Order passed by the State Commission on the truing up petitions filed by KSEB.
3.1.2008	KSEB filed Review Petition for review of order dated 24.11.2007 before the State Commission raising several detailed issues.
11.3.2008	The State Commission dismissed the Review Petition filed by the KSEB on the ground that there is no error apparent in their order to be corrected in review.
14.3.2008	Order dated 11.3.2008 was communicated to KSEB.
24.4.2008	Date of present appeal under Section 111(1) of the Electricity Act before this Hon'ble Tribunal.

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IN THE MATTER OF:

Appeal against the order dated 24.11.2007 passed by the Kerala Electricity Regulatory Commission in Petitions No. 20 of 2006 and 22 of 2006

AND

IN THE MATTER OF:

Kerala State Electricity Board
Vydyuthi Bhawanam
Thiruvananthapuram

.....Appellant

VERSUS

Kerala State Electricity Regulatory Commission
KPFC Bhavanam, CV Raman Pillai Road,
Vellayambalam
Thiruvananthapuram - 695010

.....Respondent

APPLICATION FOR CONDONATION OF DELAY

MOST RESPECTFULLY SHOWETH:

1. The present Appeal has been filed by Kerala State Electricity Board (hereinafter referred to as "KSEB") under Section 111 of the Electricity Act, 2003 against impugned order dated 24.11.2007 passed by the Kerala State Electricity Regulatory Commission (hereinafter referred to as the "State Commission").
2. The impugned Order dated 24.11.2007 was communicated to KSEB on 03.12.2007. KSEB immediately filed a Petition being Review before the State Commission for review of its Order dated 24.11.2007.
3. The Review Petition was decided by the State Commission by Order dated 11.3.2008 and the same was communicated to KSEB on 14.3.2008.
4. KSEB had filed the Review Petition before the State Commission on the bona fide belief of KSEB that there were sufficient causes for rectifying/modifying the impugned order on some aspects and that the State Commission would have corrected the same in review.
5. However, the Review Order dated 11.3.2008 has rejected the Review Petition of KSEB on the ground that there is no error apparent on the face of record and therefore there is no case made out under Order 47 Rule 1 of the Code of Civil Procedure, 1908.

6. As KSEB was bona fide pursuing the remedy of review before the State Commission, the present appeal filed by KSEB is delayed by days. The Review Petition had been filed within time. The Review Petition was decided by the State Commission on 11.3.2008 and communicated to HPSEB on 14.3.2008.
7. In the circumstances, the delay in filing the appeal is not deliberate but for sufficient cause.
8. It is therefore respectfully prayed that this Hon'ble Tribunal may be pleased to condone the delay in filing the appeal and pass such further order or orders as may be considered appropriate in the circumstances of the case.

M.T.George
Counsel for Appellant

Appellant
Kerala State Electricity Board

Place: New Delhi
Date : 24/4/2008

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
APPELLATE JURISDICTION

APPEAL NO. 94 AND 95 OF 2008

BETWEEN:

Kerala State Electricity Board.Appellant

Versus

Kerala State Electricity Regulatory
Commission & Others.Respondents

I N D E X

Sl.No. Particulars Page.Nos.

1. Amended cause title in the above matter.

New Delhi
Date:6/1/2009

Filed by:

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