

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No.157 of 2011**

**IN**

**IA NO.245 OF 2011**

Dated: 11<sup>th</sup> April, 2012

Present: **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,**  
**Hon'ble Mr.Rakesh Nath, Technical Member**

**In the Matter of:**

**Cochin Port Trust,  
Willingdon Island  
Cochin, Kerala-682 009**

**.....Appellant (s)**

**Versus**

- 1. Kerala State Electricity Board  
Vidyuthi Bhavanam  
Pattom  
Thiruvanthapuram  
Kerala-695 004**
  
- 2. Kerala State Electricity Regulatory Commission  
K.P.F.C Bhavanam  
C.V. Raman Pillai Road  
Vellayambalam  
Thiruvanthapuram  
Kerala-695001**

**.....Respondents**

**Counsel for the Appellant(s):**Mr.A K Jayshankaran Nambiar,Sr Adv  
**Ms. Akriti Gandotra**  
**Mr. P C Abraham**

**Counsel for the Respondent(s):**Mr. M.T George for KSEB  
**Ms. Kavitha K.T for KSEB**  
**Mr. G Sreenivasa for KSEB**  
**Mr. Ramesh Babu for R-2**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. The only question which has been raised in the present Appeal is this "Whether Kerala State Commission is right in holding that Cochin Port Trust, the Appellant is liable to pay their share of cost of construction of Kataribagh sub station to the Kerala State Electricity Board ?"
2. Cochin Port Trust is the Appellant herein.
3. On the Petition filed by the Kerala State Electricity Board (R1) before the State Commission (R2) claiming that the Appellant is liable to pay their share of cost of construction of Kataribagh sub station namely Rs.201.5 lakhs to the Electricity Board, the State Commission held that the Appellant is liable to pay the said Rs.201.5 lakhs being the share of cost of construction, but directed the Cochin Port Trust to pay only Rs.80.26 lakhs since the balance amount of Rs.121.24 lakhs had already been paid by the Appellant to the Electricity Board towards the cost of laying UG cables

and the same shall be adjusted from the total liability. Aggrieved over this Order the Appellant which claims that it is not liable to pay any amount towards the share of construction, has filed this Appeal. The short facts are as under:

- (a) The Appellant is a deemed distribution licensee Under Section 14 of the Electricity Act, 2003 to distribute the power on Willington Island area of Kerala State.
- (b) The Electricity Board (R-1) is engaged in generation, transmission, distribution and sale of electricity in terms of the Electricity Act, 2003.
- (c) The Appellant has been procuring bulk power from the Respondent No.1 for meeting the requirement in its licensed area and drawing power at 11KV. During the year 1988 to 1993, the Appellant enhanced its contract demand from 3.5 MVA to 6.5 MVA.
- (d) The Appellant requested the Electricity Board for enhancement of the contract demand from 6.5 MVA to 13 MVA in the year 1993. During the same period, Cochin Naval Base, another licensee also demanded additional 2 MVA power

allocation. As per the Electricity Rules, 1956 prevalent at that time, supply at 11 KV could be made to loads upto 3 MVA. The Electricity Board undertook the construction of 110 KV sub station at Kataribagh sub station on the understanding among the Electricity Board, Cochin Port Trust and Naval base that the total cost of the Kataribagh sub station would be shared amongst these three utilities on their respective additional requirement.

- (e) Accordingly, the Electricity Board completed the construction of 110 KV Kataribagh sub Station in the year 1997. The load of the Appellant was immediately shifted to Kataribagh sub station to ensure better quality of service but it continued to get supply at 11 KV from Kataribagh sub station.
- (f) In September, 2008, the Electricity Board (R1) intimated the Appellant various conditions for extending supply at 110 KV. One of the conditions was that the Appellant had to remit Rs.26,32,500 towards service connection charges. Though the Appellant claimed that they were not liable to pay service connection charges, they were constrained to pay the same under protest. On

17.11.2008, Power Purchase Agreement was entered between the Appellant and the Respondent No.1. On 26.11.2008, the Appellant started drawing power at 110 KV with contract demand of 6.5 MVA.

- (g) Thereupon, the Appellant questioning the levy of service connection charges filed a Petition before the State Commission against the said collection.
- (h) The State Commission in its order dated 15.7.2009 held that the collection of service connection charges by the Electricity Board from Cochin Port Trust, was not valid in law and so, it directed the Electricity Board to refund the amount to Cochin Port Trust, the Appellant.
- (i) As against this order, the Electricity Board filed an Appeal before this Tribunal in Appeal No.152 of 2010. This Tribunal, after hearing the parties, by the judgment dated 13.7.2010 upheld the impugned order of the State Commission holding that the Electricity Board is not entitled to realize the service connection charges from the Cochin Port Trust. However, the Tribunal, as requested by the Electricity Board, gave a liberty to the Electricity Board to approach the State

Commission regarding the claim for sharing the cost of Kataribagh sub Station from Cochin Port Trust.

- (j) Accordingly, the Electricity Board filed a Petition before the State Commission claiming for the payment of sharing in the cost of construction of 110 KV Kataribagh sub Station of Rs.201.5 lakhs from the Appellant.
  - (k) The State Commission, after hearing the parties, accepted the contention of the Electricity Board that the Appellant was liable to pay the cost of construction towards its share of Rs.201.5 lakhs and held in the impugned order dated 3.8.2011 that since the Appellant has already paid Rs.121.24 lakhs towards the cost of laying underground cables, the same shall be adjusted from total liability and therefore, the Appellant is liable to pay the balance amount of Rs.80.26 lakhs to the Electricity Board and accordingly directed.
4. Aggrieved over this, the Appellant, Cochin Port Trust has filed this Appeal.
  5. The case of the Appellant is this : “The State Commission erred in allowing the claim of the Electricity Board holding

that the Appellant is liable to share the cost of construction in Kataribagh sub station amounting to Rs.201.5 lakhs in spite of the fact that the Electricity Board failed to establish statutorily or on contractual basis such a claim and therefore, the impugned order has to be set aside.”

6. On the other hand, the Learned Counsel appearing for the Electricity Board in justification of the impugned order dated 3.8.2011 submitted as follows:

“The Appellant from 5.3.1993 onwards never disputed the fact that they had agreed to the share cost of construction of sub station at Kataribagh. As a matter of fact, in the meeting held on 5.3.1993, in the Chamber of the then Minister of Electricity it was decided that the cost of construction at Kataribagh sub station will be shared by Electricity Board, Cochin Port Trust and Navy in proportion to their additional requirements. Apart from that, the Appellant admitted the liability to pay his share of cost of construction through the letters dated 27.3.1996, 17.12.2003 and on 14.11.2008 the Appellant gave an undertaking to the Electricity Board that the 1/3<sup>rd</sup> share of the Kataribagh sub station namely Rs.201.5 lakhs claimed by the Electricity Board would be paid in case the State Commission finds that the said amount is payable by

the Appellant to the Board. The State Commission in the impugned order decided that the Appellant is liable to share the cost of construction as claimed by the Electricity Board and despite its undertaking the Appellant in violation of the said undertaking has chosen to file this Appeal which is devoid of merits”.

7. In the light of the above rival contentions as mentioned earlier, the following question would arise for consideration:

“Whether the State Commission has erred in holding that whether the Appellant is liable to pay share of cost of construction of the Kataribagh sub-station?”.

8. On this question, the Learned Counsel for both the parties have made their elaborate arguments.
9. The issue that was considered by the State Commission in the impugned order is with regard to the liability of the Appellant to share the construction cost of the 110 KV sub station at Kataribagh. The State Commission after hearing the parties found that the Appellant is liable to pay their share of cost of construction of Kataribagh sub station but directed the Appellant to pay only amount of Rs.80.26 lakhs to the Electricity Board after making adjustment of Rs.121.24 lakhs which was already paid by the Appellant on 7.1.1992 itself towards cost of laying



underground cable.

10. It is not disputed that the Appellant from 1981 onwards was seeking allocation of additional load and had proposed installation of a 66 KV Sub Station in Willington Island. The Appellant who was a deemed distribution licensee was pressurising the Electricity Board for allocation of supply of additional power for development of infrastructure.
  
11. With regard to the said issue, several meetings were held between the parties. One of the meetings was held in the presence of the Minister of Electricity on 5.3.1993. In the said meeting, it was agreed by the parties that the load of the Appellant would be shifted to Kataribagh sub station when it is commissioned. This would necessitate additional transformer being set-up in Kataribagh as load will exceed 20 MVA. So in that meeting it was agreed by all the parties that the cost of such work will be shared by Navy, Cochin Port Trust (the Appellant) and State Electricity Board (R-1) in proportion to their additional requirements. Thereafter, the Chief Engineer, Transmission, Kerala State Electricity Board through his letter dated 27.12.1993 informed the Appellant that the estimated cost for establishing Kataribagh sub Station was Rs.620 lakhs. In the very same letter the share of the Appellant as per the approved cost sharing was

indicated as 32.5% of total expected expenditure which came to Rs.201.5 lakhs. The Appellant was also requested to remit Rs.201.5 lakhs towards its share of the cost of construction.

12. Thereafter, the Appellant through its Chairman while seeking some clarification from the Electricity Board, agreed to share the cost but demanded that already paid amount of Rs.121.24 lakhs has to be adjusted from the share due from the Appellant. Thereafter, Kataribagh sub station was commissioned on 11.11.1997.
13. On 3.11.2003, in a meeting held with the Electricity Board, the Appellant requested that their present requirement is 6.5 MVA which they propose to convert to 110 KV. It was agreed that remittance of the share of Wellington Island Sub-station will be settled before energisation of sub station.
14. On 17.12.2003, the Appellant through its Deputy Chief Engineer wrote a letter to the Electricity Board promising that 1/3<sup>rd</sup> cost of sub station (Rs.201.5 lakhs) shall be remitted at the time of energizing the 110 KV supply to the Appellant as agreed in the meeting held on 3.11.2003 which is available on record.
15. Then, the Electricity Board demanded various amounts like security deposits, service connection charges

and 1/3<sup>rd</sup> cost of the construction. Though the Appellant remitted the security deposit and paid the service connection charges under protest, the Appellant had given undertaking on 14.11.2008 that the Appellant would pay to the Electricity Board, the 1/3<sup>rd</sup> share of the cost of construction of Kataribagh sub station claimed by the Electricity Board after the State Commission finds that the said amount is payable to the Electricity Board.

16. On the basis of these materials, the Electricity Board approached the State Commission claiming the share of cost of construction in the light of the liberty given by this Tribunal in the other Appeal filed by the Board with reference to collection of service connection charges.
17. The State Commission after hearing the parties, passed the impugned order dated 3.8.2011 holding that the Appellant is liable to pay its share of cost of construction of Kataribagh sub station to the Electricity Board and however held that the Appellant had already paid Rs.121.24 lakhs on 7.1.1992 towards the cost of laying underground cables and the said amount will be adjusted against the liability and the balance amount of Rs.80.26 lakhs shall be paid by the Appellant.
18. It is brought to our notice that Navy, one of the three beneficiaries of the sub station had already paid their share

much earlier by complying with the mutual decision taken on 5.3.1993.

19. As indicated above, the records and other letters would reveal that both in the meeting held in the presence of the Minister and through the correspondence, the Appellant had agreed to give its share of cost of construction and on that basis, the construction was completed by the Electricity Board by incurring the expenditure. From 5.3.1993 onwards, the Appellant has agreed to share the cost of the construction of Kataribagh sub station through its letters.
20. As a matter of fact, as indicated above, the Appellant on 14.11.2008 has given an undertaking to pay 1/3<sup>rd</sup> of share of cost of construction of Kataribagh sub station to the Electricity Board, if the State Commission finds that this amount is payable to the Electricity Board. However, the Appellant had not approached the State Commission seeking for the finding on that. Now, the Electricity Board was constrained to approach the State Commission which ultimately held that the Appellant is liable to pay the share of the cost of construction of the Kataribagh sub station as claimed by it. Despite this finding, this Appeal has been filed.
21. The main ground urged by the Learned Counsel for the Appellant that when the State Commission found that the

Judgment in Appeal No. 157 of 2011 Board had already relieved the Appellant from making any payment towards the proportionate cost of the construction of Kataribagh sub station, the Station Commission was wrong in holding that the Appellant was liable to pay to the Electricity Board the difference between Rs.201.5 lakhs and Rs.121.24 lakhs already paid by it and this finding is illegal when the State Commission itself has held in the impugned order that there was no liability for the Appellant to pay the principal amount itself. He has also cited the judgment of Hon'ble Supreme Court in (1993) 4 SCC 181 Deokabai Vs Uttam.

22. This contention is wrong. The perusal of the impugned order as a whole, passed by the State Commission would show that the Appellant had agreed to pay share of the cost of construction in the various meetings held and the Appellant gave an undertaking to the Electricity Board that if State Commission held that the Appellant is liable to pay its share of cost of construction, it would certainly pay the same. Accordingly, the State Commission went into the question about liability and held in favour of the Electricity Board by taking into consideration of all the relevant documents as a whole. However, the State Commission fairly held that out of the total amount of liability of Rs.201.5 lakhs, Rs.121.24 lakhs had already been paid by the Appellant on 7.1.1992 itself towards the cost of laying underground

Cables to the Board and the same shall be adjusted and the balance amount alone shall be paid to the Board.

**23. So, our conclusion is that the State Commission is right in holding that the Appellant is liable to pay the share of the cost of construction to the Electricity Board and its consequent direction.**

24. In view of the above conclusion, we find no merits in the Appeal and the same is dismissed.

25. However, there is no order as to costs.

*(Rakesh Nath)*  
**Technical Member**

*(Justice M. Karpaga Vinayagam)*  
**Chairperson**

Dated: 11<sup>th</sup> April, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~