Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 160 of 2009 and Appeal No193 of 2009 and IA No. 339 of 2009

Dated : May 18 , 2010

Present: Hon'ble Mr. H.L. Bajaj, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member

Appeal No. 160 of 2009

Kanan Devan Hills Plantations Company Pvt. Ltd.
KDHP House
Munnar-685612
Represented by its Executive Director
Mr. P.M. Srikrishnan ….Appellant(s)

V/s.

1. Kerala Electricity Regulatory Commission
   C.V. Raman Pillai Road
   Vellayambalam
   Thiruvananthapuram-695010
   Kerala

2. Kerala State Electricity Board
   Vydhyuthi Bhavan, Pattom
   Thiruvananthapuram-695004
   Kerala
   Represented by the Special Officer
   (Revenue) ….Respondents

Appeal No. 193 of 2009 and I.A. No. 339 of 2009

Kanan Devan Hills Pantations Company Pvt. Ltd.
KDHP House
Mannar-685612
Represented by its Executive Director,
Mr. P.M. Srikrishnan ...Appellant (s)

Vs.

1. Kerala State Electricity Board
   C.V. Raman Pillai Road
   Vellayambalam
   Thiruvananthapuram -695 010

2. The Kerala State Electricity Board
   Vydhyathi Bhavan Pattom
   Thiruvananthapuram-695 004 .....Respondent(s)

Counsel for Appellant : Mr. Joseph Kodinthara,Sr.Adv.
Mr. M.P. Vinod
Ms Usha Nandini
Mr. Biju P. Raman

Counsel for Respondent : Mr. M.T. George
Ms Smitharanir for Resp. No.2
Mr. Ramesh Babu
Ms Bina Madhavan
Mr. Tarun Satija
Ms Ananya Kar

Judgment

Per Hon'ble Shri H.L. Bajaj, Technical Member.

The Appellant Kannan Devan Hills Plantations Company Pvt. Ltd. has filed these two Appeals against orders of the Kerala State Electricity Regulatory Commission (KSERC or the Commission in short) dated August 11, 2009 and January 21, 2009 by which approval was granted to the Aggregate Revenue Requirement and Expected Revenue Charges (ARR-ERC) for the years 2008-09, 2009-2010 and 2010-2011. As the issues involved in these two Appeals by the Appellant against the orders of the Commission are similar these Appeals have been taken together in this judgment.

2. The brief facts are given hereunder:

3. The appellant is the sole distribution licensee under Section 14 of The Electricity Act, 2003 for distributing electricity in Munnar and its neighboring areas covering an area of about 240 sq. KMts. Being a distribution licensee, the Appellant has to get the ARR-ERC approved on yearly basis from the Kerala State Electricity Regulatory Commission. The Appellant became the distribution

licensee in the year 2007 by transfer of license from Tata Tea Limited, the erstwhile licensee. As such, according to the Appellant the year 2007-08 is the first year of operation.

4. The Appellant filed a combined application for approval of ARR and ERC for three consecutive years of 2008-09, 2009-10 and 2010-11. Since the High Court vide order dated March 12, 2008 had quashed the notification fixing Bulk Tariff in respect of the Appellant, the application was filed by the Appellant on the basis of pre revised tariff. In view of this, and because of the fact that the Commission has taken fresh steps to fix Bulk Tariff, the Commission decided to consider the ARR and ERC petition for the current year 2008-09 separately (Appeal No. 160 of 2009) and for the year 2009-10 respectively (Appeal No. 193 of 2009).

5. While approving the ARR & ERC for the years 2008-09, 2009-10 and 2010-11, the Commission has accepted all the projections submitted by the appellant except the projections on cost of

purchase of Power, Interest and Finance Charges, Employee cost and repair and maintenance cost.

Appeal No. 160 of 2009

6. The Appellant has raised the following issues in this Appeal:

(i) Finality of pre-revised rates.

(ii) Computation of total line losses excluding feed back energy

(iii) Interest on finance charges

(iv) Employees Costs, Administration and General Expenses and Repair and Maintenance Expenses.

Finality of Pre-revised dates.

7. In this regard the Commission has decided as under in para 2 of the Impugned Order.

> *" Also Licensee has got quashed, the tariff order of the Commission effective from December 01, 2007 on the rates for Bulk Supply by Hon High Court. But the pre-revision rates cannot be considered as final in the case of this licensee. Hence Commission does not consider it necessary to analyse the ARR&ERC for a three year period now. The analysis will be restricted to only one year viz. 2008-09"*

8. Kerala High Court in its order dated July 09, 2008 has ordered that the Appellant should be billed at the pre-revised Bulk

Supply Rates for the licensee subject to the result of the W.P. No. WP(C) No. 17365 of 2008.

9. As the order of the Kerala High Court is subject to its final decision, we agree with the approach of the State Commission to consider ARR-ERC on annual basis and not decide on the Multi Year Tariff for 2008-09, 2009-10 and 2010-11. We approve of the approach adopted by the State Commission in this regard.

Computation of total line losses excluding feed back energy.

10. The Appellant is being supplied electricity by the Respondent Kerala State Electricity Board at one end. Of this, electricity meant for the Respondent also flows through the system of the Appellant and 5.33 MU is fed back to the Board. For computation of the line losses the Commission has excluded 5.33 MU from the base figure which is not correct. In its written submission the Commission itself has accepted this. As the denominator will change, the Commission will therefore recompute the percentage figures. We order accordingly.

Interest on Finance Charges.

11. The main grievance of the Appellant is that after takeover of the electricity distribution business by the Appellant from its predecessor Tata Tea Ltd. in July, 2007 it has fully restructured and stabilized the operations and has adopted several changes in the accounting as well as operational methods. The earlier licensee was treating this business of distribution of electricity as an integral part of the main tea business and therefore never strictly followed a method of expense appropriation for the distribution of electricity business. It is the plea of the Appellant that it has funded the acquisition of electricity business out of the loan availed and the interest on fund so utilized has also to be claimed by the Appellant. The Commission, by adopting the previous years figures with respect to Employees Cost, Administration & General Expenses, Repair and Maintenance expenses and Interest Charges has not taken note of the fact that pursuant to the takeover of the distribution business by the Appellant, unlike its predecessor, the distribution business of electricity as a licensee under Section 14 of

the Act was segregated as a separate business division and accordingly all costs attributable to this separate business division were claimed as expenses on actual basis in its Petition before the Commission.

12. In view of the fact that on change of hands from Tata Tea to the current Appellant, structural changes and accounting methodology have been changed, the Commission needs to reconsider actual expenses incurred on Employees Cost, Administration and General Expenses, Repair and Maintenance and Interest Charges. We therefore, direct the Commission to reconsider this issue and revise the ARR-ECR, if found necessary.

Rate of power applicable for self consumption by Appellant.

13. Main contention of the Appellant is that the Appellant in its capacity as a licnesee is eligible to consume power for his own use within the limits at the price it has purchased the power. This issue is contested by the Commission in view of the Section 62(3) of the Act which reads as under:

Section 62(3): *The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate accounting to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."*

14. We agree with the contention of the Commission that the Act does not permit any discrimination in the Tariff for the same category of consumers. The licensee as a distribution licensee has to treat all the consumers of electricity equally adopting the same principle. By his own admission, the Appellant claims that they have restructured their business and separated the electricity distribution business. Therefore, in this view of the matter we are not inclined to interfere with the orders of the State Commission.

Appeal No. 193 of 2009.

15. In this Appeal the Appellant has raised the following issues:

1. Rate of power for own consumption.
2. Maximum Demand for own consumption
3. Disallowance for claim for penal charges
4. Rejection of electricity duty charges.

Rate of Power for own consumption.

16. This issue has been decided in Appeal No. 160 of 2009 above. Our decision applies fully in this Appeal also.

Maximum Demand for own consumption.

17. Appellant has contended that the Commission has erred in fixing its Maximum Demand (MD) for own consumption on the basis of the meter readings at the various consumption points ignoring the actual figures available based on overall MD less MD of other consumers of the Appellant as a distribution licensee. Fixation on the basis of meter reading of the Appellant at the various consumption points could never give a realistic or true figure and therefore, the Impugned Order to the extent which ignores the actual figure is erroneous. The learned counsel for the Appellant contended that while no costs relating to consumption by the Appellant would be passed on to other consumers, at the same time its own consumption cannot be assigned a value based on hypothetical situation considering that the Appellant is a retail consumer like any other consumer and ignoring the fact that the Appellant in its capacity as a licensee is eligible to consume power

for its own use within a limit at the price at which it purchases power. He contended that the Appellant consumption was always within the permissible limits of up to 50% of its total purchase. Moreover, during peak hours when the power available to the Appellant falls short of the actual load required, the Appellant is reducing its own load by running in-house generator at its factories which is very expensive and additional cost is borne by the Appellant. In view of this the Appellant has been computing MD of own consumption as the total MD billed on the Appellant by Kerala State Electricity Board less the MD billed by the Appellant to its consumers.

18. Per contra, it is the contention of the Commission that the stand taken by the Appellant that as their own consumption is less than 50% of its total purchase it should give them an exemption from the provisions of the Electricity Act, 2003. Using costlier power through own generator and imposing cost on the other consumers when cheaper power is available is no way of reducing the MD. Therefore, stand taken by assessing the MD of own consumption

by hypothetical principle in stead of on the basis of metered values is a clear violation of the Electricity Act, 2003.

19. Having heard the counsel for the parties and considering the submissions made by them, we feel that no different treatment can be given for consumers at large: whether Appellant itself is the consumer notwithstanding. The Act does not permit such differential treatment. The ground realities in the case in hand are that MD meters are not installed at the premises of all consumers of the Appellant. This is a clear violation of the Section 55 of the Act. The Commission is not powerless to enforce installation of MD meters. In this view of the matter we direct that the Appellant ensures installation of MD meters within six months of the date of this order.

20. In the absence of MD meters, actual Maximum Demand of the Appellant cannot be determined and only an approximation can be made. Considering that the Appellant does substitute the KSEB supply by running its own captive diesel generators at its own cost

during peak hours it would be only fair and equitable to use the approximate method used by the Appellant to determine the Maximum Demand for the time being. We, therefore, are inclined to agree with the methodology of the Appellant only as an interim measure and as an exceptional case. We again direct the Appellant to ensure installation of meters within six months.

Disallowance of claim for Penal Charges.

21. The Appellant has projected a cost of power purchase including 6.10 lakhs as Penal Charges for excess demand on the assumption that there will be an excess demand. It is the contention of the Commission that there is no base for this assumption specially when the Appellant itself is using its own generators for meeting the excess demand. Learned counsel for the Commission fairly stated that the excess demand charges, if any, could be based on actual charges rather than estimated values. The Commission has given the following comparison which shows that the actual demand has neither been equal to the estimated demand or the approved demand.

Sl.No.	Estimated Demand In Rs. Lakhs	Approved Demand In Rs. Lakhs	Actual Demand In Rs. Lakhs
2007-08	259.18	212.199	175
2008-09	232.51	214.2	229.38

22. The Commission has also contended that in case there is an increased demand, the Appellant can execute a PPA for the increased demand instead of paying the penal charges due to excess demand.

23. We are inclined to agree with the contention of the Commission and, therefore, do not wish to interfere with the decision of the Commission in this view of the matter. The Appellant should enter into a PPA so that penal excess demand charges need not be borne by the consumers.

Reduction of Electricity Charges.

24. The issue of electricity duty paid by the Appellant under the Kerala Electricity Duty Act, 1963 has been decided by this Tribunal in our judgment in Appeal No. 94 of 2008 reproduced below.

Administrative and General Expenses:

27) *The appellant contends that the Commission erred in limiting the A&G expenses for 2004-05 to the same extent as in 2003-04 and thereby disallowing Rs.5.73 Crores to the appellant. It can be stated at the outset that the Commission's decision to limit the A&G expenses to the same level as 2003-04 was not challenged. Therefore, in the present appeal against the truing up order the appellant can only raise some objections to the truing up exercise. Two major components of A&G expenses are to be examined in this appeal. The first component is the electricity duty payable by the appellant and the second is the expenses other than electricity duty which is Rs.34.01 Crores. There were two kinds of electricity duty payable under the Kerala Electricity Duty Act 1963 (KED Act for short). Section 3 of that Act requires the licensee to pay the electricity duty calculated at 6 paisa per unit of energy sold at a price more than 12 paisa per unit. Section 4 of the Act levies electricity duty on the consumer which is distinct from duty payable by the licensee under section 3. Section 3 has a proviso to the following effect:*

> "*the duty under this section on sales of energy should be borne by the licensee and shall not be passed on to the consumers.*"

28) *The Commission has expressed helplessness to help the appellant in view of this categorical direction in the Act. The duty payable under section 3(i) was Rs.54.98 Crores and the duty payable under section 4 was Rs.167.08 Crores. The Commission recommended to the Government for adjustment of duty for 2004-05. However, to the extent of the duty payable under section 3, the burden had to be born by the appellant and Rs.167.08 Crores only which had been collected by the appellant from the consumers could be retained by way of adjustment against subsidy payable. A letter*

from the Government of Kerala to the Commission about waiving of electricity duty has been placed on the record. This letter dated 05.11.05 deals only with the duty leviable under section 4 of the KED Act. The letter in effect says that it is necessary for the Government to actually release the subsidy from the expenditure head of account and then show the revenue received from the electricity duty and that this kind off setting will be done by Accountant General. The letter neither demands the electricity duty payable under section 3 of the KED Act nor exempts the appellant from paying such duty. The Commission can make no concession in respect of duty payable under section 3 which is imposed statutorily on the appellant. Nor can the Commission allow the duty payable as pass through in tariff. In this regard we are constrained to agree with the view of the Commission.

25. In view of the above we are inclined to agree with the contention of the Commission that the Electricity Duty paid by the Appellant under KED Act, 1963 cannot be passed on to consumers.

26. In conclusion we decide as under:

(i) The Commission is directed to recompute the percentage line loss after including the feed back power in the denominator.

(ii) The Commission is directed to reconsider the expenses incurred on Employees, Administration & General Expenses, Repair & Maintenance Charges and Interest Charges taking into account the restructuring and the

new accounting methodology adopted by the Appellant and revise the ARR-ERC, if necessary.

27. Appeal No. 193 of 2009 is allowed only to the extent that Maximum Demand as calculated by the Appellant is permitted only as an interim measure and as an exceptional case. Appellant is directed to install MD meters at all its consumer premises within six months of the date of this judgment.

28. Appellant is also directed to enter into Power Purchase Agreement with the Respondent KSEB within six months.

29. Appeals and IA stand disposed of. No costs.

(P.S. Datta)
Judicial Member

(H.L. Bajaj)
Technical Member

REPORTABLE/NON-REPORTABLE