IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 26226 of 2009 (W)

PETITIONER(S):

M/S.KITEX GROUP OF CAMPANIES, P.B.NO.5,
KIZHAKKAMBALAM-683 562, REPRESENTED BY ITS MANAGER
(ADMINISTRATION) SRI.SAJEEV KOSHY.

BY ADVS.SRI.MILLU DANDAPANI
SRI.FIROZ K.ROBIN

RESPONDENT(S):

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1. KERALA STATE ELECTRICITY BOARD,
   REPRESENTED BY ITS SECRETARY,
   VYDYUTHI BHAVAN, PATTOM,
   THIRUVANANTHAPURAM.

2. CHIEF ENGINEER (DISTRIBUTION CENTRAL),
   ERNAKULAM.

3. DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE,
   PERUMBAVOOR.

4. ASSISTANT ENGINEER, ELECTRICAL SECTION,
   KSEB, KIZHAKKAMBALAM.

BY ADV. SRI.S.RAMESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 26226 of 2009 (W)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE LETTER DTD.6.1.2006.

EXT.P2: TRUE COPY OF THE LETTER DTD.11.1.2006 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P3: TRUE COPY OF THE ESTIMATE REPORT PREPARED BY THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF THE LETTER DTD.3.1.2008 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE ORDER DTD.29.3.2008 ISSUED BY THE 1ST RESPONDENT.

EXT.P6: TRUE COPY OF THE POWER ALLOCATION DTD. 26.8.2008.

EXT.P7: TRUE COPY OF THE POWER ALLOCATION DTD.3.12.2008 ISSUED BY THE 2ND RESPONDENT.

EXT.P8: TRUE COPY OF THE LETTER DTD.2012.2008 ISSUED BY THE 3RD RESPONDENT.

EXT.P9: TRUE COPY OF THE COVERING LETTER DTD.26.12.2008.

EXT.P9(a): TRUE COPY OF THE CHEQUE DTD.25.2.2009 DRAWN IN FAVOUR OF THE 4TH RESPONDENT.

EXT.P10: TRUE COPY OF THE EMERGISATION ORDER ISSUED BY THE CHIEF ELECTRICAL INSPECTOR, THIRUVANANTHAPURAM.

EXT.P11: TRUE COPY OF THE AGREEMENT SIGNED BY THE PETITIONER WHICH IS SUBMITTED BEFORE THE 4TH RESPONDENT.

EXT.P12: TRUE COPY OF THE LETTER DTD.31.8.2009 ISSUED BY THE 3RD RESPONDENT.

EXT.P13: TRUE COPY OF THE BOARD ORDER DTD.27.8.2009.

EXT.P14: TRUE COPY OF THE LATEST NEWS ITEM THAT HAS APPEARED IN MALAYALA MANORAM DAILY DTD.7.10.2009.

IA.NO.11181/2014 IN WP(C) 26226/2009

EXT.P14: A TRUE COPY OF THE APPLICATION DTD.4TH AUGUST, 2014 SUBMITTED BEFORE THE RESPONDENTS UNDER RIGHT TO INFORMATION ACT.

Msv/

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EXT.P15: TRUE COPY OF THE LETTER NO.BB/KBLM/RTI ACT/14-15/76, RECEIVED UNDER RIGHT TO INFORMATION ACT DTD.29.8.2014.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): PHOTOCOPY OF THE ORDER NO.CE(DC)/1PA/PBVR/2008-09/3544 DTD.3.12.2008 OF THE 2ND RESPONDENT.

EXT.R2(b): PHOTOCOPY OF THE ORDER NO.PAWW/08-09/4988 DTD.18.12.2008 OF THE 3RD RESPONDENT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K. ABDUL REHIM, J.

W.P.(C)No.26226 of 2009

Dated this the 6th day of February, 2015

JUDGMENT

The petitioner is a public limited company. They applied for power allocation with respect to their two new units and also for enhancement of power capacity by way of additional load in an existing unit. The total extent of power allocation sought for with respect to the three units was 4560 KVA. In Ext.P1 letter the 1st respondent had intimated that the request for a dedicated feeder at the cost of KSEB cannot be allowed, but the work can be taken up on 'work deposit basis'. On the basis of Ext.P1 the petitioner submitted separate power allocation application. Ext.P2 is the application with respect to one of the units seeking power allocation to the tune of 2000 KVA with a connected load of 2106 KW. Based on Ext.P2 application the 3rd respondent had prepared Ext.P3 estimate, in which it is observed that the existing capacity of the Sub Station concerned is 6.3 MVA and in order to cater the need of the petitioner the capacity of the Transformer has to be enhanced to 10 MVA. The estimate value of the 'deposit work' was intimated as Rs.1,57,60,000/-. On receipt of Ext.P3 the petitioner had approached the 2nd respondent stating that, for catering the need put forth by the petitioner, installation of a 4 MVA Transformer would be sufficient and the total cost of it will not exceed Rs.60,00,000/-. Therefore a reconsideration of Ext.P3 was requested. Thereafter the 1st respondent Board considered the matter. It was opined that power allocation will be feasible only by enhancing capacity of the existing Transformer to 10 MVA and by providing two 11 KV outlets at the existing Sub Station. Therefore sanction was accorded for an estimate amounting to Rs.1,67,88,000/- for enhancement of the capacity of the Transformer to 10 MVA and for providing two number of 11 KV out going feeders for supply to the petitioner on 'deposit work basis', subject to realisation of the pending arrears from the the petitioner to the tune of Rs.2,43,364/-. In Ext.P5 order issued by the 1st respondent it was mentioned that, the power allocation will be made on 'deposit work basis' subject to realisation of 'pro-rata expenses' (i.e: connected load/Total Capacity). Based on Ext.P5 the 1st respondent Board had accorded sanction to the 2nd respondent for issuing power allocation for all the three units subject to settlement of arrears and on payment of the estimated amount. Based on Exts.P5 and P6 the 2nd respondent had granted power allocation to one of the units to the extent of 2000 KVA, as per Ext.P7. The 3rd respondent vide Ext.P8 letter directed the petitioner to make deposit of a sum of Rs.33,57,600/- towards 'deposit work amount' of the said unit on a provisional basis, subject to condition that actual quantities of the work will be arrived and additional amount if any required will have to be remitted by the industry. The amount demanded under Ext.P8 was paid by the petitioner as evidenced from Ext.P9. It is stated that, apart from the said amount a sum of Rs.34,86,199/- was also deposited as evidenced from Ext.P9(a) towards supervisory charges under the 'OYEC scheme' with respect to the works directly undertaken by the petitioner for distribution of power from the Sub Station to the units. Thereafter the petitioner obtained permission from the Electrical Inspectorate with respect to energisation of the unit in question and an agreement to be executed with the Board was prepared as evidenced from Ext.P11. But, despite compliance of all such formalities and despite the petitioner expending huge amount on purchase of machineries etc. power supply was not provided to the unit. On the other hand, the 3rd respondent intimated the petitioner through Ext.P12 that there occurred some error in the calculation of pro-rata expenses to be paid by the unit in question and demanded payment of further amount of Rs.57,16,995/- , allegedly based on Ext.P13 order issued by the 1st respondent Board. In Ext.P13 it is mentioned that Ext.P5 order issued by the Board is corrected to the extent making it clear that power allocation will be granted to the petitioner subject to realisation of 'pro-rata expenses' (i.e. connected load/total capacity addition). The petitioner is challenging

Exts.P12 and P13 contending that the demand raised based on the erratum order of the 1st respondent is not legally sustainable**.**

2. Contention of the petitioner is that liability for payment of the entire estimated cost of 1,67,88,000/- cannot be fetched exclusively on the petitioner. It is pointed out that the petitioner will be liable only for payment of the pro-rata amount with respect to each of the units, worked out in proportion to the additional load demanded. In otherwords, contention is that the petitioner can be held liable only for payment of the proportionate amount out of the total amount of the 1,67,88,000/-, depending on the need for additional power with respect to each unit. The contention is that, the petitioner can be held liable only for the proportionate payment out of the total amount, based on the total additional load of around 4MVA demanded and such proportion has to be worked out treating the total capacity of enhancement as 10 MVA. But in the erratum order the 1st respondent had deviated from its original

stand that the 'pro-rata' expenses has to be calculated on the basis of connected load divided by total capacity and insisted that the pro-rata expenses has to be met by the petitioner based on the connected load divided by the additional capacity demanded.

3. While evaluating the contention it is beneficial to have a scanning of the relevant provisions of law. Section 46 of the Electricity Act 2003 confers power on the State Commission to authorise any distribution licensee to charge from a person requiring supply of electricity, any expenses reasonably incurred in providing the electric line or electrical plant used for the purpose of giving that supply. Regulations framed by the Commission in exercise of Section 46 of the Act is contained in Regulation 7 of the Kerala Electricity Supply Code 2005. It also empowers the licensee to recover from the owner or occupier of any premises requiring supply of electricity, the expenses reasonably incurred by the licensee for providing any electrical plant required specifically for the purpose of giving such supply. In Regulation 8(1)(d) it is

provided that in the case of HT consumers the licensee can realise the cost of service line, terminal arrangements and Transformers specifically required for the applicant, but shall not include the cost of the Meter. Identical Regulations are contained in Regulations 4 and 5 of the 'KSEB terms and conditions of supply 2005'.

4. Question mooted for consideration is as to whether the Board can make a demand for the entire expenses incurred with respect to enhancement of capacity of the Transformer and the new feeders, when by virtue of such an enhancement the capacity has been increased more than what was required by the applicant. Sum and substance of the contention raised by the petitioner is that the applicant in such case will be liable only to pay the proportionate cost in accordance with the power requirement/additional power requirement, based on the total capacity to which the sub-station and the distribution system is enhanced. It is evident that in Ext.P5 order the Board had mentioned that the pro-rata expenses has to be calculated based on

connected load/total capacity. But in Ext.P13 it was corrected to the extent that the pro-rata expenses has to be calculated based on connected load /total capacity addition. This court is of the considered opinion that the 'total capacity addition' effected is only for the purpose of providing power allocation demanded by the petitioner. It is true that the petitioner will be granted with power only with respect to a portion of the total capacity enhanced. But when the enhancement is made based on an application of the petitioner, the total expenditure incurred for the capacity enhancement is the reasonable expenditure which had been incurred by the Board for providing electric supply to the applicant. Therefore, going by legal provisions enabling realisation of such expenditure, it cannot be held that the revised demand made by the 1st respondent Board is in any manner illegal or unsustainable.

5. It is noticed that a Division Bench of this court in **Kerala State Electricity Board & Ors. v. Hamsaveni Carbides & Anr. [2014 (1) KLJ 657]** held that, from

the statutory provisions it is clear that the Board is entitled to recover in advance from the consumer requiring supply, the expenses reasonably incurred by it for providing electric line or electrical plant required for the purpose of giving such supply. Once the statutory provision enable the Board to recover such expenses, no principles of promissory estoppel can in any manner come in the way of the Board recovering such dues. On the facts of the said case there was a decision taken earlier by the Government to the effect that power allocation can be granted based on deposit of certain specific amounts. But the Board worked out the estimate and demanded payment of the entire expenditure to be incurred. The action of the Board in this regard was challenged contending the principles of estoppel. But this court found that in order to establish a claim of a promissory estoppel it should be illustrated that there was a clear and unequivocal promise made from the side of the Government and the promissee should have acted based on such promise to his detriment. In the case at hand, merely because the Board had issued an earlier order demanding a lesser amount, it cannot be said that they were estopped from rectifying the mistake in the computation and in demanding any higher amount. Hence this court is of the opinion that challenges raised against the impugned demand based on contentions as mentioned above cannot succeed.

6. However, learned counsel for the petitioner contended that, based on Ext.P5 order of the Board and based on Exts. P6 and P7 power allocations the petitioner had undertaken the work of establishing distribution system from the sub-station upto the unit by expending huge amount to the tune of about Rs.4.5 crores. It is stated that petitioner had paid 10% supervision charges in this regard amounting to Rs.34,86,199/- as evidenced from Ext.P9(a). It is argued that all such expenses were incurred based on the confirmed offer made by the 1st respondent to provide electric connection on the basis of payment of the amount demanded under Ext.P5 and on the basis of Exts.P6 and P7. It is pointed out that during

pendency of the writ petition the petitioner had deposited the entire amount demanded in the impugned proceedings, without prejudice to their contentions, because they were urgently in need of power connection. Learned counsel for the petitioner seeks indulgence of this court to interfere in the computation and demand made based on adaptation of the pro-rata expenses, contending that utilising the enhanced capacity the licensee had provided so many other industrial connections, for which various amounts were collected on 'work deposit basis'. This court is of the opinion that this is a matter which need to be looked into by the 1st respondent Board for taking an appropriate decision, as to whether any reduction can be granted to the petitioner in the matter of the pro-rata expenses for which they can be held liable.

Under the above mentioned circumstances the writ petition is disposed of by directing the 1st respondent Board to consider the issue and to take an appropriate decision on the request for granting reduction in the demands made under Exts.P12 and P13. A decision in this regard shall be taken after affording an opportunity of personal hearing to the petitioner, at the earliest possible, at any rate, within a period of three months from the date of receipt of copy of this judgment.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL