

**THE KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

Petition No. : RP No.9/2013

In the matter of : Review on the Order dated 1-7-2013 on Truing up of  
Accounts of M/s Cochin Special Economic Zone Authority  
for 2010-11 and 2011-12

Petitioner : M/s. Cochin Special Economic Zone Authority, Kochi

PRESENT : Shri P Parameswaran, Member  
Shri. Mathew George, Member

Dated : 01-04-2014

## **ORDER**

### **Background**

1. M/s. Cochin Special Economic Zone Authority (herein after referred to as CSEZA or Authority) has filed a petition for review of the orders dated 1-7-2013 on truing up of accounts for the year 2010-11 and 2011-12 on 31-12-2013. They had earlier vide letter dated 10-10-2013 sought review of the said truing up order and the Commission in its letter dated 1-11-2013 had directed that *“In order to consider these issues, if you desire so, you may file a review petition as per clause 67 of KSERC (Conduct of Business) Regulations, 2003, with petition for condonation of delay if any required.”* The petitioner filed the petition accordingly and also sought to condone the delay on filing the petition. The Commission admitted the petition on 20-1-2014, condoning the delay and issued notice to petitioner and Kerala State Electricity Board Limited for a hearing on the petition scheduled to be held on 25-2-2014. The petitioner sought review on following grounds:

- a. In para 3(e) of the impugned order, it is mentioned that entire funds for developing distribution is done by Government of India and there is no equity. However, according to the petitioner, Cochin Special Economic Zone Authority (CSEZA) was created by taking over of the assets of Cochin Special Economic Zone (CSEZ), any grants received subsequent to the formation of CSEZA can be treated as grants.
- b. Prior to the formation of CSEZA, all accounts relating to power distribution was handled by M/s KITCO limited, the operation and maintenance agency appointed for power distribution. Through better financial management they have generated Rs.196.57 lakhs and 3% portfolio management charges amounting to Rs.5.90 lakhs were given by the CSEZ to M/s. KITCO, the same was not allowed. Further an amount of Rs.3.03 lakhs shown as other expenses comprising of fees paid to KSERC and Electrical Inspectorate is also to be allowed.
- c. Depreciation on the assets created from the amount invested by Government of India is to be allowed as expense and should form part of tariff calculations, as replacement of assets in future is necessary. Accordingly, the mention that total investment made in the distribution are part of grant received from Government of India is incorrect.
- d. The land rent and management fees claimed are attributed to the distribution function and the same has to be allowed.
- e. The return on equity as per the regulations of the Commission needs to be allowed to the authority. The interest on the deposit held with KSEB is accounted on receipt basis as no details are available from KSEB on a yearly basis on the amount of interest paid.

### **Hearing on the Petition**

2. The petition was heard on 25-2-2014 at the Office of the Commission. Shri.Sitaraman representing the Authority presented the petition and stressed only four issues such as disallowance of portfolio management fees paid to M/s KITCO, other expenses amounting to Rs.3.03 lakhs, net prior expenses booked to the tune of Rs.28.28 lakhs towards lease rent and Rs.35 lakhs towards management fees and return on equity. Regarding the portfolio management fees paid to M/s. KITCO,

the petitioner stated that the amount of Rs.5.90 lakhs was paid to M/s KITCO and is an incurred expenses. According to the petitioner, due to the better financial management of M/s KITCO, they have earned Rs.197.57 lakhs as interest income which was booked on receipt basis as other income in 2010-11 and 2011-12. For this an amount of Rs.5.90 lakhs was given which is justifiable and is to be approved. Regarding other expenses of Rs.3.03 lakhs, which comprises of fees paid to KSERC and electrical inspectorate, represented as technical fees in the impugned order.

3. Regarding prior period expenses of Rs.28.28 lakhs and Rs.35 lakhs towards lease rent and management fees was approved in the Truing up order for 2008-09 in May 2011, which was claimed and accounted in the books of accounts in March 2011. Accordingly, the same has to be allowed as prior period expenses in the accounts. In the case of return on equity, the petitioner stated that the provision for return on equity was made as per the regulation of the Commission on 30% of the investment at 14% and balance 70% shall be as loan at SBI PLR of 8%. Hence the same has to be allowed.
4. Kerala State Electricity Board Limited represented by Shri. B. Pradeep objected to the review petition. Shri Pradeep stated that the petition is not maintainable as is barred by limitation as per clause 67 of the KSERC (Conduct of Business) Regulations, 2003. The petitioner neither pointed out any apparent error nor has submitted any new facts which warrants review of the impugned order. The petitioner has not given any proof in substantiating the claim for granting return on equity. The Consultants appointed for study on the issue has also suggested to treat the funds from Central Government as grants.
5. The amount of Rs.5.90 lakhs claimed for portfolio management charges, is also not sustainable as the O&M Agency M/s KITCO has been paid Rs.99.98 lakhs and Rs.107.63 lakhs in 2010-11 and 2011-12. The amount now claimed is in addition to this and the surplus generated is not due to any operational efficiency, but through the difference retail supply tariff and bulk supply tariff prevailed during that period. Since the expenses claimed is not prudent and hence not admissible. Regarding the claim of depreciation, the Commission has allowed the claim and directed to create a separate fund for keeping the depreciation. Hence there is no injury to the petitioner and hence the plea is to be rejected. The land rent claimed on the assets created out of government funds is not reasonable and cannot be charged on to the consumers, which will result in undue enrichment of the petitioner. The claim of

management fee is also over and above the allowed expenses and hence claim is to be rejected. In the impugned order, the Commission has taken the actual interest income under non-tariff income, and hence the claim of the petitioner will not alter the ERC of the petitioner.

6. After hearing the parties, the Commission has allowed one week time for the petitioner to submit the reply on the comments of KSEBL and also clarification on the yearwise details of surplus income and the interest income generated. It was also directed to report whether the lease rent and management fee amounting to Rs.28.28 lakhs and Rs.35 lakhs have already been claimed in the years from 2006-07 to 2008-09.
7. The licensee in its letter dated 10-3-2014 had given the clarifications sought for by the Commission. The licensee has mentioned that inadvertent error was made in stating the interest on fixed deposits as Rs.197.57 lakhs instead of Rs.170.96 lakhs. The total interest received in 2009-10 was Rs. 91.03 lakhs and Rs.79.93 lakhs in 2011-12. The same was included in the truing up of accounts of respective years. The management fee was of Rs.5.90 lakhs was claimed for the total interest earned Rs.170.96 lakhs. The lease rent (Rs.28.28 lakhs) and management fee (Rs.35.00lakhs) were already claimed in the truing up petitions in 2009-10 and 2010-11. Hence the same was included as prior period expenses.
8. In reply to the views expressed by the M/s KSEB Limited, the licensee has stated that condonation of delay was already granted by the Commission. The CSEZ has already forwarded its views on the Consultants report on assets and the same is to be considered while finalizing the recommendations. The statement of KSEB hat the surplus is generated out of difference in BST is acceptable as the other income is by way of interest earned. Regarding, depreciation, the funds invested by the Government of India is to be considered as equity to create infrastructure facilities and depreciation is to be allowed as has been done by the Commission.

### **Analysis and decision of the Commission**

9. The Commission has considered the arguments of the petitioner and the reply of the Board. *Prima facie*, as per the provisions of Section 94(1)(f) of the Electricity Act 2003, the Commission has been vested with the powers for reviewing its decisions, directions and orders as in the Code of Civil Procedure 1908. Accordingly, clause 67(1) of KSERC (Conduct of Business) Regulations, 2003 provides that:

*Powers of Review, Revision etc.,-(1) The Commission may either on its own motion or on an application made by any interested or affected party, within 90 days of the making or issuing of any decision , direction, order, notice, or other document or the taking of any action in pursuance of these regulations, review revoke, revise, modify, amend, alter, or otherwise change such decision, direction, order, notice, or other document issued or action taken by the Commission or any of its officers.*

10. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure. Hence, as has been held previously in many occasions, deliberation on the merits of the issues discussed in the original order is not contemplated in the review proceedings. Deliberating the issues which are originally taken up in the original proceedings is also not contemplated. The review jurisdiction is a limited power to be exercised when new facts which could not be produced at the time of the order are presented or for considering any apparent error on the face of the record. In the petition, the petitioner has failed to provide any materials to substantiate grounds for a review and accordingly, the petition is liable to be dismissed. However, it is pertinent to discuss the issues raised in the petition for the sake of clarity and transparency.
11. The licensee has requested to allow the portfolio management charges given to the O&M agency M/s KITCO for management of surplus funds. According to the licensee, Rs.5.90 lakhs were paid to KITCO as they have earned Rs.197.57 lakhs (later corrected as Rs.170.96 lakhs) additionally through the better financial management. In the petition for truing up of accounts for 2010-11 the licensee has accounted Rs.73.61 lakhs as interest on fixed deposits. The relevant portion of the impugned order is as follows:

*“In 2010-11, the non-tariff income consists only collection charges. In 2011-12, interest on fixed deposits and income from other investments have been included apart from collection charges. The licensee has clarified that the M/s KITCO has been entrusted with the task of accounting and management of funds received from power distribution. The agency has invested the liquid funds into fixed deposits. Subsequent to the settlement and transfer of funds to CSEZA, the interest earned by*

*them in the previous years were also transferred and accounted. The amount of interest (Rs.73.61 lakh) includes the accrued interest on the fixed deposits made by the CSEZA.”*

12. Hence, the licensee has shown only Rs.73.61 lakhs in the accounts in 2010-11 and the balance in 2009-10. The better financial management reported by cannot be treated as exceptional as it is expected that the licensee has to deploy the funds in most prudent manner. As per the submissions of the licensee, it can be observed that before the constitution of CSEZA, the entire management including financial matters had been entrusted with M/s KITCO and accordingly, prudent financial management is expected from them. Hence, the Commission is of the view that there is no reasonableness in the claim for additional portfolio management charges to be part of regulatory accounts. The licensee may in its wisdom free to advance funds from its account, which cannot be part of the regulatory accounts.
13. Another issue is on the technical fees, the same was allowed in the truing up order, and the contention of the petitioner is that the same has been accounted as technical fee. However, petitioner has no grievance in this regard. As per the records, the petitioner himself accounted the same as technical fees and accordingly there is no error apparent in reflecting the same as technical fees in the impugned order.
14. Regarding depreciation, the Commission as a policy is not allowing depreciation on assets created out of contribution and grants. However the licensee is allowed depreciation and the same is directed to keep it in the separate funds so as to use the same for meeting the future capital expenditure as approved by the Commission.
15. Regarding prior period expenses, the licensee has already claimed land rent in the accounts from 2006-07, the same has been confirmed by the licensee in its letter dated 10-3-2014. The item once claimed in the accounts, cannot be allowed again as part of prior period charges. In the case of return on equity, the licensee has failed to provide material evidence to show that the investment in the electricity assets by Government of India is in the form of equity. Accordingly, the claim of return on equity cannot be admitted at this stage.

## **Orders of the Commission**

16. After considering the petition and the averments of the petitioner and respondent thereon, the Commission has decided that the review petition is not maintainable and hence rejected. The request of the licensee to allow the portfolio management charges paid to M/s KITCO in the truing up of accounts of the licensee, cannot be considered as reasonable and hence rejected. All other issues raised in the petition have also been considered in detail and rejected.

17. The review petition disposed of.

**Sd/-**

**P.Parameswaran  
Member**

**Sd/-**

**Mathew George  
Member**

Approved for issue

Secretary