

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Shri. C. Balakrishnan Chairman.
Shri. C.Abdulla, Member
Shri. M.P.Aiyappan, Member

July 23, 2008

Petition DP No. 38	Dy.No. 01660 dated 23-02-08	M/s.Cochin Special Economic Zone, Kakkanad, Kochi	Petitioner
		Kerala State Electricity Board, Vaidyuthi Bhavanam, Thiruvananthapuram	Respondent

ORDER

1. Background

Cochin Special Economic Zone (hereinafter called CSEZ) is a Licensee distributing power to the consumers within CSEZ in Kakkanad, Kochi with effect from 1.5.2005. As per the existing power purchase agreement executed by CSEZ with Kerala State Electricity Board (herein after called KSEB), KSEB has agreed for a contract demand of 7961 KVA to CSEZ. CSEZ has deposited an amount of Rs.1.20 crore in cash and Bank guarantee for equivalent amount with KSEB as security deposit. The number of working units in the zone has increased from 73 in 2005 to 93 in 2007. Some of the major consumers like M/s. Muthoot Hotels and Tourism Ventures (Pvt) limited and M/s. WFB Baird Mcnutt India (Pvt) Limited commenced operations during this period. In addition to this, 12 more units are under various stages of implementation. The demand from the existing units has also increased. As per the existing consumption pattern of the consumers in CSEZ, the requirement of maximum demand has gone up to 10,000 KVA. This is the first application from CSEZ for enhancement in the Contract Demand, after acquisition of licensee status.

As per Clause 15a of the Power Purchase Agreement, enhancement of Contract Demand can be done on mutual consent. To meet the present requirement of CSEZ consumers, CSEZ has applied to KSEB on 9.4.2007 with the requisite fee of Rs. 20,000.00 to enhance the Contract Demand from 7961 KVA to 10,000KVA.

In response to CSEZ's request for additional allocation of power, the Deputy Chief Engineer, KSEB, Kalamassery vide letter No.TCK/109/DBI/CSEZ/07-08/ dated 08.2007 issued a notice stating that the pathway constructed for vehicular movement attached with the building of M/s. Muthoot Hotels & Tourism Ventures (Pvt.) limited, under the KLBR No. I & II, 110 KV feeders, does not maintain the minimum statutory vertical clearance from the bottom of the conductor as required under relevant provisions of the Indian Electricity Rules, 1956. According to KSEB, the minimum statutory vertical clearance from the bottom of the conductor to the pathway shall not be less than 6.4m whereas the present clearance is only 5.1.m. KSEB had also informed CSEZ that if no

action is taken within 30 days of receipt of the notice to ensure the minimum clearance to the pathway constructed under the 110 KV feeders, supply to the building will be switched off without any further notice. The directions of the KSEB was communicated to M/s. Muthoot Hotels & Tourism Ventures (Pvt) Limited, by CSEZ for taking necessary action.

M/s. Muthoot Hotels & Tourism Ventures (Pvt) Limited vide their letter dated 12.09.2007 informed CSEZ that they have complied with the maintenance of vertical clearance of 4.6 mtrs as required by the Chief Electrical Inspector, Thiruvananthapuram in its order No. B3-11030/2006/CEI dated 22.07.2006. They further clarified that the said pathway i.e. the ramp is not a road as it forms part of the building itself. Since the ramp is not a road the requirement of maintaining vertical clearance of 6.4 mtrs is not applicable in their case. A copy of the reply was also endorsed to Deputy Chief Engineer, KSEB, Kalamassery by CSEZ.

However, the Chief Engineer (Distribution Central) , KSEB, Vyttila Ernakulam vide letter No.CE(DC)/1/PA-pbvr/07-08/3146 dated 30.11.2007 reiterated the need for maintaining the statutory vertical clearance for the M/s. Muthoot Technopolis building. CSEZ issued a notice dated 10.12.2007 to M/s. Muthoot Hotels and Tourism Ventures Pvt.Ltd. directing them to comply with minimum statutory clearance requirement as laid down by KSEB within 7 days, failing which power supply to the building would be disconnected. CSEZ, the licensee, was constrained to serve this notice as licensee is dependent on KSEB for supply of power to the zone. On receipt of notice from CSEZ, M/s. Muthoot Hotels and Tourism Ventures Pvt.Ltd approached the Hon'ble High Court vide WP (C) No. 37580/2007 and the Hon'ble High Court stayed all the proceedings against the unit pending disposal of the above writ petition.

Petitioner has further stated as follows.

Plot No.1 having an area of 8693.00 Sq.mtrs was allotted to M/s. Muthoot Hotels & Tourism Ventures (Pvt) Limited for development of a Software Complex having an area of 3.50 lakh Sq.ft in Cochin SEZ under SEZ developer scheme. The Chief Electrical Inspector, Thiruvananthapuram(hereinafter called CEI) conducted the inspection of the installations on 15.06.2006 and 16.6.2006 and thereafter sanction was accorded vide order No.B-3-11030/2006/CEI dated 22.07.2006 under Rule 63,50A & 47A of the Indian Electricity Rules, 1956 for energizing two numbers of 1500 KVA transformers, 1 No. 1250 KVA DG set installed at premises of M/s. Muthoot Hotels & Tourism Ventures (Pvt) Limited subject to the following conditions:

1. Statutory vertical clearance of 4.6 m shall be maintained from the 110 KV transmission line and parapet of the access ramp of the building. Necessary follow up action shall be taken with KSEB authorities.
2. Winding temperature trip shall be incorporated to the HT breaker.
3. The 51 relay provided in PCC for the DG set shall be replaced with 51 V as per approval within three months.
4. All the pre commissioning test results shall be recorded for ready reference.
5. A register shall be maintained to record the maintenance carried out as prescribed by the manufacturer and as specified in the relevant I.S.

Pursuant to M/s. Muthoot Hotels & Tourism Ventures (Pvt) Limited having complied with all the requirements as required by CEI, Thiruvananthapuram, they were allowed to draw power with effect from August, 2006.

Petitioner has stated that KSEB is linking the licensee's request for additional power allocation with the issue of maintaining statutory vertical clearance by M/s. Muthoot Hotels and Tourism Ventres Pvt.Ltd. If additional power is not allocated to the licensee immediately, the licensee will be unable to give power connection to the newly approved units and also to consider the application for additional allocation of power to the existing units. The consumption has already exceeded the permitted load of 7961 KVA. KSEB has stated penalizing the licensee for excess drawl of power for the period August 2007 to November 2007.

The application dated 9.4.2007 of CSEZ for enhanced power allocation is pending with the KSEB. This is affecting the credibility of the licensee with regard to the commitments to the consumers within the CSEZ and also affecting the export production and thereby loosing foreign exchange earnings to the country.

CSEZ has sought the intervention of the KSERC in the matter for issue of necessary directions to KSEB to consider their application for the enhancement of contract demand from 7961 KVA to 10,000 KVA on a priority basis without linking the request to the issue of maintenance of statutory vertical clearance by M/s. Muthoot Hotels and Tourism Ventures Pvt. Ltd., considering that the ramp in Technopolis is a part of the building and statutory vertical clearance as Technopolis is a part of the building and statutory vertical clearance as ordered by Chief Electrical Inspector , Thiruvananthapuram has already been maintained by M/s. Muthoot Hotels and Tourism Ventures Pvt. Ltd.

In response to the petition filed by M/s. Cochin Special Economic Zone (CSEZ), KSEB, the respondent has stated as follows.

CSEZ is a licensee distributing power to the consumers within CSEZ Kakkannad under Grid tariff II sanctioned vide KSEB Order No. (FM) 637(A)/2005 Plg.Com. 4324/01 dated 28.02.05. The EHT connection to the licensee was energized on 04.05.2005 as a double circuit tap line from Kalamassery – Brahmapuram feeders. EHT Licensee Agreement was executed vide Agreement No. 10/2005-06/dated 23.04.2005 and Contract Demand of the licensee was 7961 kVA.

Later vide B.O. (FM) No. 786/07/TRAC/SERC/823/05/R1 dated 02.04.2007, KSEB accorded sanction for executing Power Purchase Agreement between KSEB and CSEZ and authorized the Chief Engineer – Distribution (Central), to sign the PPA on behalf of KSEB with CSEZ.. A PPA was executed by Chief Engineer- Distribution (Central) & CSEZ vide Agreement No. 26/07-08 dated 18.06.2007.

During April 2007, M/s. CSEZ requested for additional power enhancing the total form existing 7961 to 10,000 kVA, for giving connection to new industries and for the expansion of existing Industries. The essential preconditions to be accomplished for getting additional power allocation were:

1. Entry of KSEB staff was restricted by the licensee many times causing difficulty for taking meter reading, serving invoice, conducting inspection etc. This is violation of clause 2 (b) & 6(b) of Power Purchase Agreement. So free entry of KSEB staff to perform their duties is to be ensured by the licensee.
2. The licensee energized the building of M/s. Muthoot Technopolis against the notice issued by Assistant Executive Engineer, Transmission Sub-Division, Kalamassery and also from Electrical Inspectorate for maintaining Statutory clearance from EHT line as per Indian Electricity Rule 1956. The licensee has to ensure the statutory minimum clearances.

Due to not maintaining statutory clearance from the EHT line of KSEB, when any electrical accident or mishap occur, KSEB will be put liable for the same and consequent damages for no fault of KSEB. So notice was issued to the Development Commissioner, CSEZ, Kakkanad stating that the pathway constructed for vehicular movement attached with the building of M/s. Muthoot Technopolis under KLBR I & II feeders does not maintain minimum statutory vertical clearance from the bottom conductor as per relevant provision of Indian Electricity Rule 1956. Notice also directed M/s. CSEZ to ensure minimum clearance to pathway within 80 days, failing which, supply to the building will be switched off without further notice.

In December 2007 M/s. Muthoot Hotels and Tourism Ventures Private Limited approached the Hon.High Court vide WP (c) No. 3780/580/07 and the High Court stayed further action against the unit pending disposal of the writ petition and also directed the CEI to furnish report.

Muthoot Technopolis building in CSEZ, Kakkanad is having a parking area in first floor of the building and a ramp was constructed for access to parking area. The 110 kV Kalamassery-Brahmapuram I & II feeders passes above this access ramp and this ramp does not maintain statutory vertical clearance of 6.1 m from the bottom conductor as per IE Rule 77(1). The contention of M/s. Muthoot Hotel in the above WP was as follows:

- i) The access ramp is not a road, as it forms part of the building itself and directions to maintain clearance of 6.4 m is arbitrary and illegal.
- ii) CEI has accorded sanction for energisation of their installation on 22.07.2006 with a condition to provide statutory vertical clearance of 4.6 m between Transmission line and parapet of access ramp of the building.

KSEB submitted statement of facts in the above case in which the following arguments were furnished in defence.

1. The ramp is constructed for access to the parking area in first floor and there is no other access to this area except staircase. Therefore, vehicle movement to the parking space in the first floor can only be through the said ramp as is done now and is likely to continue in future, since there is no other alternate access as of now.

2. Any place where there is vehicle movement need to be considered as a road and not as roof or part of the building with regard to statutory clearance from EHT line. Hence minimum vertical clearance of 6.4m (110KV line crossing the street) is applicable in this case.

The statement filed by the CEI before Hon High Court in the above case on 02.01.2008 is as follows.

“ During inspection it has come to the notice of the inspecting officers that 110 kV Kalamassery-Brahmapuram No. I & II feeder is passing above a ramp constructed to the 1st floor of this multistoried building. The construction of a building in the vicinity of the power line required prior approval from this Department as stipulated under Rule 82 of the Indian Electricity 1956. Hence it is pointed out in the defect report served to party to maintain statutory vertical clearance of 4.6 meters between line and parapet of access ramp of the building. In the rectification report party has furnished a reply to the effect that the matter of the line removal is taken up with KSEB for necessary action. Based on the above under taking sanction for energisation was issued vide the order No. B3-11030/2006/CEI dated 22.07.2006 of with a condition that statutory clearance of 4.6 metres shall be maintained from 110kV line and parapet, with necessary follow up with KSEB.”

In this respect the following paragraph from the statement of facts of the CEI filed before the Hon.High Court of Kerala may be looked into:

"Now it is noticed that the ramp that has been constructed from the building is used for regular vehicle traffic for parking in the 1st floor of the building. Hence this ramp cannot be treated as a part of the building but it is considered as a regular pathway from the point of view of safety. In these circumstances Rule 77(1) of the Indian Electricity Rules 1956 is applicable and as per this rule a vertical clearance of 6.1 meters is to be maintained from the ramp to the lowest 110kV conductors".

From the above it is seen that the argument of the KSEB and statement filed by Chief Electrical Inspectorate it is evident that the ramp should have minimum vertical clearance of 6.1 m.

Based on the request from Development Commissioner, CSEZ, KSEB had taken up action towards raising 110kV line to maintain statutory clearance from the access ramp. The works associated with the raising of the line was estimated to Rs. 14.5 lakhs in 2006 and the Development Commissioner, CSEZ was requested to remit the amount to KSEB. But the amount was not remitted till date. But the costs of materials including steel, towers etc. have shot up many folds from 2006 levels. So fresh estimation is needed to fix up the cost of the deposit work.

The request of CSEZ for additional power allocation and the issue of maintaining statutory clearance by Muthoot are linked because CSEZ is the licensee distributing power to consumers within their area of supply and the Licensee is legally bound to ensure satisfactory completion of all statutory formalities before energizing the consumer's installation. In the case of Muthoot this was not adhered to. Under similar circumstances, if the above consumer was outside CSEZ's compound, KSEB would not have energised the installation without maintaining statutory clearance from the EHT line.

In view of the above, KSEB's stand in delaying allocation of additional power to CSEZ Kakkanad is justified as CSEZ failed to comply the statutory obligations as distribution licensee and KSEB's stand in Muthoot's case was upheld by the Chief Electrical Inspector to the Government of Kerala.

KSEB has requested the Commission to dispose of the petition filed by M/s. CSEZ directing them to provisionally remit Rs. 14.5 lakhs as per previous estimate and to remit the balance as per revised cost before drawing the additional power, for raising the two feeders as a condition to issue power allocation.

2. Hearing on the Matter

The petition was heard on 14th May 2008 at the Commission's office. During the proceedings, petitioner's counsel stated that for no fault of CSEZ, KSEB is penalizing them by denying additional power allocation and thereby imposing excess demand charges from Aug 2007.

Respondent reiterated that M/s Muthoot Technopolis are not maintaining the statutory clearance of 6.1 m . KSEB is ready to take up the raising the towers if the cost of the work is remitted by CSEZ. CSEZ has not done the same so far.

Petitioner reiterated that the ramp under question is part of the building and not a public road and hence does not violate rule 86 of IE Rules. Entry to this ramp is restricted.

Respondent further stated that CEI has confirmed that the clearance required is 6.1 m.

As CEI has issued clearance at the time of construction of the building, Commission enquired with the representative of CEI why there is a change of stand taken by CEI. Representative of CEI wanted to have a fresh look in to this. Commission directed CEI to submit a report on this within 15 days and the representative agreed for the same.

3. Commission's Findings

CEI has issued clearance at the time of construction of the building. But in the Hon High Court, CEI has taken a new stand and has stated that the required clearance is not available. In the affidavit submitted by CEI vide letter dated 27th May 2008, it is stated in para three that M/s Muthoot Technopolis was asked to maintain a vertical clearance of 4.6 m. In the next para it is stated that as the ramp is used for regular vehicular traffic, the clearance required is 6.1 m. As an alternate suggestion, CEI has pointed out that there is another ramp to the parking area which is not below the EHT line of KSEB and hence if this ramp is used for vehicle movement, and by blocking the ramp beneath the EHT line of KSEB, the issue can be solved. This affidavit was forwarded to petitioner and respondent. Petitioner in the additional affidavit submitted vide letter dated 1st July 2008, stated that, M/s Muthoot Technopolis have accepted the suggestion of CEI. A copy of letter dated 19th June 2008 from Ms. Muthoot Technopolis is enclosed. In this letter, it is stated that the ramp on the southern side will be used only for pedestrian movement and the ramp on the northern side will be used for regular traffic. CSEZ have requested for release of additional contract demand and for refund of penalty collected with interest.

The stand taken by CEI has created confusion. KSEB has in the statement submitted to Commission taken a stand that there is no other alternate access as of now. This is also wrong. CEI has taken a change of stand. The alternate remedy suggested now by CEI could have been put forward at the first instance itself either by KSEB or CEI and the issue solved. CSEZ is not responsible for maintenance of clearance by M/s Muthoot Technopolis. CSEZ was prevented from taking any action by the order from Court and are not responsible for the delay in settlement of the issue. Denying the allocation of power requested has caused excess drawl. KSEB could have taken up the issue with the Commission instead of denying power allocation.

4. Commission's Order

As the issue of maintaining vertical clearance below the 110 kV line of KSEB has been solved by mutual agreement, respondent(KSEB)shall give additional power allocation requested by CSEZ with immediate effect.

Sd/-
M.P.AIYAPPAN
Member(F)

Sd/-
C.ABDULLA
Member (E)

Sd/-
C.BALAKRISHNAN
Chairman

Authenticated Copy for issue

Secretary (in charge)