

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. PremanDinaraj, Chairman
Adv. A. J. Wilson, Member

OP No 38/2020

Hearing date: 30.11.2020

In the matter of : Petition on prior intimation regarding the matter of KSEBL taking the role of Special Purpose Vehicle for the execution of NILAAVU Scheme – a project of Government of Kerala to replace all conventional street lights with energy efficient LED lights with longer life expectancy for illuminating all roads and sub-roads of Grama Panchayats, Municipalities and Corporations across Kerala in a phased manner and seeking concurrence of Hon'ble Commission under Section 51 of Electricity Act 2003.

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by : Sri. Suresh. A., Executive Engineer

Order dated 03.12.2020

1. KSEB Ltd, on 24.11.2020 filed a prior intimation petition regarding KSEBL taking up the role of Special Purpose Vehicle for the execution of NILAAVU Scheme – a project of Government of Kerala to replace all conventional street lights with energy efficient LED lights with longer life expectancy for illuminating all roads and sub-roads of Grama Panchayats, Municipalities and Corporations across Kerala in a phased manner and seeking concurrence of the Commission under Section 51 of Electricity Act 2003, with following prayers.

“KSEBL humbly prays before this Hon'ble Commission to consider the matter of prior intimation on KSEBL taking the role of SPV for the execution of NILAAVU Scheme included under Chief Minister's 12 point priority projects of Government of Kerala, targeting replacement of all conventional street lights with energy efficient LED lights with longer life expectancy for illuminating all roads and sub-roads of Grama Panchayats , Municipalities and Corporations across Kerala in a phased manner and accord

concurrence for regulating the same in accordance with Regulation 83 of KSERC Terms and Conditions for Determination of Tariff Regulations, 2018”.

2. The summary of the petition filed by KSEB Ltd is given below.

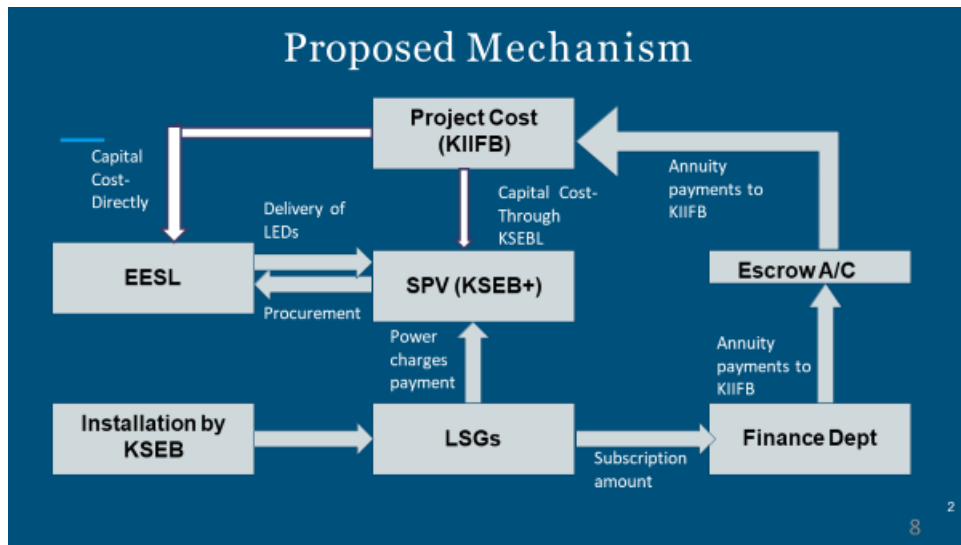
- (i) Government of Kerala has decided to implement NILAAVU – a scheme for replacing conventional street lights with new LED Street Lights along the roads and byroads in Grama Panchayat, Municipalities and Corporations across Kerala as part of Street Light National Program (SLNP), an initiative of Government of India. Energy Efficiency Services Limited (EESL), a Public Energy Services Company under the administration of Ministry of Power, Government of India (GoI) is the implementing agency for SLNP. In Kerala, the project is included in the Chief Minister’s 12-point priority projects of Government of Kerala.
- (ii) A total of 10.5 Lakh Street lights are needed to be replaced under the scheme and the approximate cost of the project would be Rs. 285 Cr. The project will ensure energy conservation, saving electricity & maintenance charges of Local Self Government Institutions (LSGIs), environment protection by reducing CO₂ emission and mercury ingress and can be considered as a green project benefitting the entire ecosystem.
- (iii) The savings in electricity & maintenance charges directly benefits the LSGIs undertaking the project. Low failure rate of LED lamps will reduce the downtime. Well illuminated streets round the year will benefit the public road users and law enforcing agencies.
- (iv) Government of Kerala vide Order dated 10.08.2020 has selected KSEB Limited as the nodal agency of the project.
- (v) A high level meeting attended by Additional Chief Secretary-Finance, CEO-KIIFB, Secretary-Power, Principal Secretary-LSGD, Secretary-Chief Minister’s Program Co-ordinating Cell, Chairman & Managing Director-KSEBL, Director (Planning & Safety)-KSEBL and Director (D&IT)-KSEBL, decide as follows.
 - 10.50 lakh street lights are required if the proposal is to be implemented across Kerala and the approximate cost of the project would be Rs. 285 Cr.
 - The first phase is for installation of 2 lakh street lights and period of implementation is 3 months from January, 2021 and 2nd phase is for installation of remaining 8.50 lakh street lights in another 3 months period from February 2021.
 - Kerala Infrastructure Investment Fund Board (KIIFB) shall fund the project with 80% as advance and balance 20% over the warranty period of 7 years, at nominal interest rate of 5% per annum.

- The procurement and supply of LED street lights for the project will be made by EESL through KSEBL, which is the SPV.
 - The payment to EESL will be made by KIIFB either directly or through KSEBL, as decided by the Government.
 - Annuity payment to KIIFB will be made by Finance Department through an Escrow account of SPV by deducting proportionate amount from the plan fund of each LSGI.
 - Additional Chief Secretary, Finance and CEO, KIIFB has agreed that KSEBL shall be insulated from any liability on account of financial transaction among Government of Kerala, EESL and KIIFB.
- (vi) The role of KSEBL is as given below.
- Lead SPV for coordinating with KIIFB, EESL and LSGD.
 - Procurement of LED Street Lights from EESL which include placing purchase Order, receipt, acceptance, storage, transportation, distribution, initial installation and supply to LSGDs for replacement of faulty LED Street lights during the warranty period of 7 years.
 - Initial installation of LED Street Lights (including dismantling of existing street lights) shall be carried out by KSEBL as per the requirement of LSGIs after execution of quadripartite agreement among KIIFB, KSEBL, EESL and LSGD.
 - If LSGIs decide to entrust the maintenance to KSEBL, KSEBL shall replace the street lights, supplied under this scheme which became non-functional, on intimation by the LSGIs, subject to payment of upfront AMC in each financial year during the warranty period.
 - DPR Preparation and presentation to KIIFB.
- (vii) The cost for initial installation and replacement of faulty LED street lights including storage and transportation is estimated to be **Rs 500 per street light and will be reimbursed to KSEB Ltd by EESL.**
- (viii) KSEBL submitted that, it has no financial liability on account of being the lead SPV of this project. There are no other risk factors involved for KSEBL in this project since the financial transaction on account of implementation of this project does not reflect in the accounts of KSEBL. KSEB Ltd further submitted in their petition that Additional Chief Secretary (Finance) and CEO, KIIFB has agreed that KSEB Ltd shall be insulated from any liability on account of financial transaction among Govt . of Kerala, EESL and KIIFB. Further KSEBL is receiving an amount of Rs 500 per street light as the cost for initial installation and replacement of faulty LED street lights during the warranty period.
- (ix) There is no financial expenditure involved in this project from the part of KSEBL as the cost of procurement and supply of LED street lights by EESL is being funded by KIIFB. However, KSEBL is receiving an income in the form of installation and maintenance charges on account of this.

This can be treated as Income from other business of Distribution Licensees as per Section 51 of Electricity Act, 2003. **The assets and resources of KSEB Ltd put to use for implementing the project include man power, storage and transportation facilities etc.**

- (x) Section 51 of the Electricity Act, 2003 is extracted below:
- Other businesses of distribution licensees: A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets*
- Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling*
- Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business.*
- Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.*

3. The Commission admitted the petition as OP No. 38/2020 and conducted hearing on 30.11.2020. Sri. Suresh A, Executive Engineer presented the petition on behalf of KSEB Ltd. The summary of the deliberations during the hearing is given below.
- (i) KSEB Ltd filed the petition for the intimation on KSEB Ltd, taking the role of lead SPV for the execution of NILAVU scheme, – A project of Govt. of Kerala to replace all conventional street lights with energy efficient LED lights, in a phased manner and seeking concurrence of the Commission under Section 51 of Electricity Act 2003 and Regulation 8 of KSERC (Licensing Regulations), 2006.
- (ii) NILAVU scheme is one of the project included in the Chief Minister's 12-point priority projects of GoK, aims to replace all the conventional street lights in LSGDs across Kerala as part of Street Light National Programme (SLNP), an initiative of Government of India. Energy Efficiency Services Limited (EESL), a Public Energy Services Company under the administration of Ministry of Power, Government of India (GoI) is the implementing agency.
- (iii) The proposed mechanism and the role of each entity in implementing the NILAVU scheme is given in the schematic diagram given below.



- (iv) Role of KSEB Ltd in implementing the NILAVU scheme is given below.
- Lead SPV for coordinating with KIIFB, EESL and LSGD.
 - Procurement of LED Street Lights from EESL which include placing purchase Order, receipt, acceptance, storage, transportation, distribution, initial installation and intimation to LSGDs for replacement of faulty LED Street lights during the warranty period of 7 years.
 - Initial installation of LED Street Lights (including dismantling of existing street lights) shall be carried out by KSEBL as per the requirement of LSGs after execution of quadripartite agreement among KIIFB, KSEBL, EESL and LSGD.
 - The cost for initial installation and replacement of faulty LED street lights including storage and transportation is estimated to be Rs 500 per street light and will be paid to KSEB Ltd.
 - Procurement and supply of LEDs including fixtures, clamps etc.
 - Ensure the warranty of 7 years for the LED Street Lights supplied under the project from the date of acceptance of supply
 - Arrange delivery of the LED Street lights to Sub Regional Store of KSEBL.
 - Arrange 5% additional luminaries and recoup the same regularly, as part of the warranty obligation.
 - The cost for initial installation and replacement of faulty LED street lights including storage and transportation is estimated to be Rs 500 per street light and will be paid to KSEB Ltd.
 - There is no financial expenditure involved in this project from the part of KSEBL as NILAAVU is funded by KIIFB, but KSEBL is receiving an income in the form of installation and maintenance charges under the project.

- This can be treated as Income from other business of Distribution Licensees as per Section 51 of Electricity Act,2003. The assets and resources of KSEB Ltd put to use for implementing the project include man power, storage and transportation facilities etc.
- KSEBL has submitted the current petition as per Section 51 of Electricity Act,2003 for prior intimation on the matter of KSEBL taking the role as SPV for execution of NILAAVU Scheme.

KSEBL prays before the Commission to consider the matter of prior intimation on KSEBL taking the role of lead SPV for the execution of NILAAVU Scheme and accord concurrence for regulating the same in accordance with Regulation 83 of KSERC Terms and Conditions for Determination of Tariff Regulations,2018.

4. The Secretary to Government, Power Department, Government of Kerala, vide the letter dated 27.11.2020 informed the Commission the following.

(1) Government of Kerala has decided to implement NILAVU- a scheme for replacing conventional street lights with new LED Street lights along the roads and byroads across Kerala as part of Street Light National Programme (SNLP), an initiative of Government of India.

(2) The proposed mechanism of implementation of the project includes the following.

(i) 10 lakh street lights are required if the proposal is to be implemented across Kerala and the approximate cost of the project would be Rs 285.00 crore.

(ii) The first phase is for installation of 2 lakh street lights and period of implementation is 3 months from January 2021, and the 2nd phase is for installing the remaining 8 lakh street lights in another 3 months period from February 2021.

(iii) KIIFB to fund the project with 80% as advance and balance 20% over the warranty period of 7 years, at nominal interest rate of 5% per annum.

(iv) The procurement and supply of LED street lights for the project will be made by EESL and supplied to KSEB Ltd being the SPV of the program.

(v) The payment to EESL will be made by KIIFB either directly or through KSEBL, as decided by the Government.

(vi) Annuity payment to KIIFB will be made by Finance Department through an Escrow account to SPV by deducting proportionate amounts from the plan fund of each LSG

(3) The role of KSEB Ltd was suggested as:

- (i) Lead SPV
- (ii) Procurement of LED Street Lights from EESL which include placing purchase order, receipt, acceptance, payment, storage, distribution, installation and replacement of faulty LED street lights during the warranty period of 7 years.
- (iii) DPR preparation and presentation to KIIFB.

As the KSEB Ltd is involved in the project as SPV, Secretary to Government, Power Department requested to take appropriate action urgently.

Analysis and Decision of the Commission

5. The Commission examined in detail the petition filed by KSEB Ltd for prior intimation regarding KSEB Ltd taking the role of lead Special Purpose Vehicle for the execution of NILAVU scheme, as mentioned in the foregoing paras as per the provisions of the Electricity Act, 2003 and KSEERC (Conditions of License for Existing Distribution Licensees Regulations), 2006.
6. NILAVU scheme's objective is to replace about 10.5 lakh the conventional street lights with new LED Street Lights in Local Self Governments (LSGDs) including Grama panchayat, Municipalities and Corporations across the State of Kerala in two phases. This scheme is implemented as part of the Street Light National Programme, an initiative of the Government of India.
7. The Commission has also examined the Government Order dated 10.08.2020, and the summary of the decisions in the said order is given below.
 - (i) State Government has decided to include the NILAVU scheme in the Chief Minister's 12 point priority projects of Government of Kerala.
 - (ii) KSEB Ltd is selected as the nodal agency for implementing the NILAVU scheme. KSEB Ltd is authorized to sign MOU with Local Self Government Department for implementation of the NILAVU scheme. Energy Efficiency Services Limited (EESL), an agency under the control of the Central Government is selected as the Project Management Consultant by KSEB Ltd for the implementation of the project. EESL shall purchase and supply LED to KSEB Ltd as per the requirement of LSGs.
 - (iii) Technical specifications of the LEDs to be procured by EESL shall be decided by KSEB Ltd. LED shall have a warranty of seven years. During the warranty period, KSEB Ltd shall make arrangements for replacing the faulty/ unfunctional LEDs under the scheme free of cost.
 - (iv) LEGs, can enter into MOU with KSEB Ltd for AMC @Rs 34.46 per LED per annum. If the LEGs do not desire to have AMC with KSEB Ltd, such institution may make separate arrangements for AMC on their own.

- (v) On behalf of KSEB Ltd, the Project Management Consultant shall undertake the tendering process for procurement of LEDs. KSEB Ltd shall be responsible for the storage, distribution and installation of the LEDs.
 - (vi) During the warranty period, KSEB Ltd shall replace the LEDs if required. If the LSGs enters AMC locally with other agencies, then such agencies shall be responsible for replacing the LEDs.
 - (vii) Savings in electricity consumption due to the installation of LEDs shall be assessed by KSEB Ltd and it shall be passed on to the LSGs periodically.
 - (viii) KSEB Ltd shall ensure the quality of the LEDs installed under the scheme. KSEB Ltd shall also do the maintenance of the LEDs if the LSGs entrusts the AMC with KSEB Ltd.
 - (ix) Director (Panchayat) and Director (Urban Affairs) are entrusted with overall supervision of the implementation of the NILAVU scheme. The details regarding the requirements of LED by each LSGs shall be compiled and informed to KSEB Ltd. Further, it shall be ensured that, the fund required for the smooth implementation of the scheme is deposited with KSEB Ltd in advance.
 - (x) Further, for the overall coordination and smooth implementation of the scheme, a nodal officer shall be appointed jointly by KSEB Ltd and Local Self Government Department.
 - (xi) Government has constituted a monitoring committee with the following members for ensuring the timely implementation of the scheme.
 - i. Principal Secretary, Local Self Government Department.
 - ii. Secretary, Power Department.
 - iii. Chairman, KSEB Ltd
 - iv. Nodal officer, KSEB Ltd
 - v. Director (Panchayat)
 - vi. Director (Urban Affairs)
 - (xi) LSGs are allowed to find the source of funds for the NILAVU scheme from the plan fund allocated to LSGDs or from the grant from Central Government or from CSR fund.
8. KSEB Ltd in its petition dated 24.11.2020 submitted that, KIIFB shall fund the project with 80% in advance and balance 20% over the warranty period of 7 years, at normal interest rate of 5%. It is also informed by KSEB Ltd that, payment to EESL will be made by KIIFB either directly or through KSEB Ltd, as decided by the Government. Annuity payment to KIIFB will be made by Finance Department through an Escrow account to SPV by deducting proportionate amounts from the plan fund of each LSG. Hence, KSEB Ltd submitted that, there is no financial commitment on the part of KSEB Ltd on account of the implementation of the project.

Secretary to the Government, Power Department, Government of Kerala also informed that the funding of the project is same as that submitted by KSEB Ltd. ***However, formal order of the Government / decision of the KIIFB regarding the funding of the project is yet to be placed before the information of the Commission.***

9. KSEB Ltd in its petition has submitted that, the cost of initial installation and replacement of faulty street lights including storage and transportation is estimated at Rs 500 per street light and will be reimbursed to KSEB Ltd by EESL. However, the Government Order dated 10.08.2020 is silent on the cost of installation and replacement of faulty street light by KSEB Ltd and who shall reimburse the cost to KSEB Ltd.

KSEB Ltd further submitted that, its man power, storage and transportation facilities are proposed to be utilized for procurement of LED from EESL, storage, distribution, installation of the LEDs. And, also for the replacement of faulty LED street lights during the warranty period. However, KSEB Ltd has not submitted details of the extent of utilization of its resources such as manpower, storage and transportation facilities in the project and its cost to be recovered from the LSGIs, before the Commission.

KSEB Ltd in the petition has submitted that, though it has no financial commitment in the NILAVU project, KSEB Ltd will be receiving an income in the form of installation and maintenance charges @Rs 500 per street light. KSEB Ltd further submitted that, this income can be treated as income from other business of Distribution Licensees as per Section 51 of the Electricity Act, 2003.

10. Commission noted that, the present petition was filed before the Commission to consider the matter of prior intimation on KSEB Ltd taking the role of SPV for the execution of NILAAU scheme. The Commission examined the petition by KSEB Ltd with the provisions of the Electricity Act, 2003 and KSERC (Conditions of License for Existing Distribution Licensees) Regulations, 2006. The relevant sections of the Electricity Act, 2003 and Regulations, dealing with other business of distribution licensees are extracted below for ready reference.

- (1) Section 51 of the Electricity Act, 2003.

Section 51 of the Electricity Act, 2003 deals with Other business of the distribution licensees, which is extracted below.

“51. Other businesses of distribution licensees:- A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling :

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution

business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business:

Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.”

As extracted above, Section 51 of the EA-2003 permits the distribution licensees to engage in other business for the optimum utilization of its assets, subject to the following conditions.

- (1) Proportion of the revenue derived from such other business shall be utilized for reducing its charges for wheeling;
 - (2) Distribution licensee shall maintain separate accounts for other business.
 - (3) Distribution licensee neither subsidizes such other business nor encumber its distribution assets to support such other business.
- (2) Consistent with the Section 51 of the Electricity Act, 2003, the Regulation 6 of the KSERC (Conditions of License for Existing Distribution Licensees) Regulations, 2006, permits the distribution licensees to engage in other activities with prior intimation to the Commission, only so long as such activity is likely to result in optimum utilization of the assets, and subject to the conditions specified therein. The relevant Regulations is extracted below for ready reference.

“6.Other Activities of the Licensee. - (1) The Licensee with prior intimation to the Commission may engage in any other business, only so long as such activity is likely to result in the optimum utilization of the assets and infrastructure comprising the distribution system and subject to the following conditions:

(a) provided the distribution business and the conduct thereof by the Licensee is not prejudiced and / or adversely affected in any manner;

(b) provided that a proportion of the revenues derived from such business shall, as may be specified by the Commission, be utilized for reducing the wheeling charges of the Licensee;

(c) provided further that the Licensee shall maintain separate accounts for each such business to ensure that distribution business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

(d) the Licensee shall always comply with such guidelines that the Commission may specify in this regard.”

11. As extracted above, as per the Section 51 of the Electricity Act, 2003 and Regulation 6 of the KSERC (Conditions of License for Existing Distribution Licensees) Regulations, 2006, KSEB Ltd can take the role of lead Special Purpose Vehicle for carrying out the assigned roles and responsibilities as per

the G.O dated 10.08.2020 for the implementation of the NILAAU scheme, subject to the conditions as detailed below;

- (1) KSEB Ltd shall take the role of lead SPV for implementation of NILAAVU scheme strictly as per the Section 51 of the Electricity Act, 2003 and Regulation 6 of the KSERC (Conditions of License for Existing Distribution Licensees), 2006.
- (2) KSEB Ltd shall maintain a separate account for the NILAAVU scheme, and account all the direct and indirect costs associated with the implementation of the project, i.e. the costs involved in utilizing its assets such as manpower, storage and transportation facilities.
- (3) The Commission shall regulate the income from other business, strictly as per the Regulations 83 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018 and its amendments from time to time.

Orders of the Commission

12. The Commission, after examining in detail the petition filed by KSEB Ltd for prior intimation regarding the matter of KSEBL taking the role of Special Purpose Vehicle for the execution of NILAVU scheme, as per the provisions of the Electricity Act, 2003 and KSERC (Licensing Regulations), 2006, hereby orders the following.

- (1) The Commission hereby takes on record KSEB Ltd's intimation regarding its role of Special Purpose Vehicle for carrying out the role and responsibilities as per the G.O dated 10.08.2020 for the implementation of the NILAAU scheme, targeting replacement of all conventional street lights with energy efficient LED lights with longer life expectancy for illuminating all roads and sub-roads of Grama Panchayats, Municipalities and Corporations across Kerala in a phased manner, subject to the conditions as detailed below;
 - (i) KSEB Ltd shall take the role of lead SPV for implementation of NILAAVU strictly as per the Section 51 of the Electricity Act, 2003 and Regulation 6 of the KSERC (Conditions of License for Existing Distribution Licensees), 2006.
 - (ii) KSEB Ltd shall maintain a separate account for the NILAAVU scheme, and account all the direct and indirect costs associated with the implementation of the NILAAVU scheme by utilizing its assets such as manpower, storage and transportation facilities.
 - (iii) The Commission shall regulate the income received by KSEB Ltd by taking the role of SPV in NILAAVU scheme, strictly as per the Regulations 83 of the KSERC (Terms and Conditions for

Determination of Tariff) Regulations, 2018 and its amendments from time to time.

- (iv) KSEB Ltd shall, within 3 months from the date of issue of this Order,
- a. submit documents from Finance Department and KIIFB as mentioned in para 2 (ix) of this order.
 - b. Government Order and decision of KIIFB regarding funding of the project
- (2) KSEB Ltd shall, in the petition for Truing Up of accounts of the relevant years concerned, submit all the details including the direct and indirect costs, and also the revenue earned by utilizing its manpower, storage and transportation facility as per the Government Order dated 10.08.2020 for taking the role of SPV for the implementation of NILAAVU scheme

The petition is disposed of.

Sd/-
Adv. A.J. Wilson
Member

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C.R Satheeshchandran
Secretary(i/c)