

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

RP No.4/2019

Present : Shri. Preman Dinaraj, Chairman
Shri. K.Vikraman Nair, Member
Shri. S. Venugopal, Member

In the matter of : Review Petition against order dated 15-7-2019
in OA 14/2018 on Truing Up of the Accounts of
M/s Rubber Park India (P) Limited for the year
2016-17

Petitioner : M/s. Rubber Park India Private Limited
Valayanchirangara, Ernakulam

Respondent : M/s KSEB Ltd, Thiruvananthapuram

Order dated 03/12/2019

1. M/s Rubber Park India (P) Ltd (*hereinafter referred to as M/s RPL or the licensee*) filed a petition dated 29-08-2019 for the Review of the Order of the Commission in OA No. 14/2018 dated 15-07-2019 on the Truing up of Accounts of M/s RPL for the year 2016-17 as per Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003. The petition was admitted as RP No.4/2019. After admitting the petition, the Commission issued notices to the parties for the public hearing and the hearing was conducted at the Office of the Commission on 27-11-2019.
2. In the petition, the licensee has claimed that the Commission had, in the order dated 15-7-2019 in OA 14/2018 on Truing Up of accounts of the licensee for the year 2016-17, approved a revenue deficit of Rs 13.48 lakh only as against revenue deficit of Rs 144.76 lakh claimed by the licensee as per the provisions of KSERC (Terms and conditions for determination of Tariff) Regulations 2014 (*herein after referred to as the Regulations*). According to the licensee, though the Commission has approved most of the claims it had not considered the actual expenses incurred by the licensee in certain instances and there are some errors in the assessment while approving the claims. The errors are in the nature of

errors apparent on the face of record and therefore within the jurisdiction of the Hon. Commission under Section 94 of the Electricity Act 2003 and Order 47, Rule 1 of the CPC. The licensee filed this review petition seeking review on the decision of the Commission on the approval of interest on normative loan and approval of non-tariff income considering the matters as detailed in the review petition. Claims of the licensee are given below:

a. Interest on Normative loan

The licensee had sought interest on normative loan in the ARR & ERC application for the first control period (2015-16 to 2017-18) and the Commission had approved Rs. 35.57 lakh as interest on normative loan for the year 2016-17 in the Order on ARR&ERC for the control period 2015-16 to 2017-18 dated 3-9-2015. However, the Commission in the order on the truing up of accounts for the year 2016-17 did not allow any interest on normative loan stating that there is no normative loan approved for the period ending 31-03-2015 as per the provisions of the Regulations. The licensee claims that the conclusion of the Commission that the Rubber Park is established with the grants from Government for research activities relating to rubber and rubber industries and there is no profit motive behind the establishment of the Company as evidenced by the fact that there are no dividends declared to its promoters so far, is not correct. According to the licensee, the Company had declared dividends for the promoters in April 2019 for the year 2018-19. The assumption of the Commission that the licence was granted for providing reliable power to the rubber based industries in the park at lower cost is also not correct. According to the licensee, the truing up order for the year 2016-17 dated 15-7-2019 was only for truing up of the financials and not to relook on the very principles of tariff determination. Further, the licensee argued that the reliance of the Commission on Regulation 27(4) to disallow the entire interest on loan to the Company is not correct and the amount not claimed earlier is not a reason for denying in future also.

b. Non-Tariff Income:

Regarding non-tariff income, the licensee claimed that the decision of the Commission that the interest accrued on security deposit paid to KSEB Ltd for purchase of power shall be accounted as part of distribution business is not correct and approval of interest on accumulated surplus is contrary to the MYT Regulations. According to the Licensee, till 2015-16, the Company has erroneously booked the interest on security deposit received from KSEB Ltd

as part of income of power distribution business. Merely because of the erroneous booking of income in the past would not mean that error to be followed in future also. Further, approving interest on accumulated surplus is contrary to the MYT Regulations. The provisional accumulated surplus will become deficit when the actual RoE is considered, instead of provisional RoE approved in the truing up orders. Further, even for argument sake it is accepted that there is an accumulated surplus, the interest that can be charged only at the actual rate of interest of 7.25% instead of notional base rate of 9.3%.

3. The licensee has prayed to review the order on the truing up of accounts for the year 2016-17 considering the above matters as detailed in the review petition.

Hearing on the Matter

4. The matter was heard on 27-11-2019 at the office of the Commission. The licensee was represented by Shri. J.Krishnakumar, MD and Shri. Anees T.M Resident Engineer. They have explained the grounds on the review petition as mentioned in the petition.
5. KSEB Ltd was represented by Shri.Manoj, Executive Engineer, TRAC. While commenting on the petition, M/s KSEB Ltd stated that the review is warranted only if there is apparent error on the face of record and the petitioner could not point out any apparent error in the impugned order. The contents in the petition is akin to an appeal petition which cannot be entertained as part of a review process envisaged under the Electricity Act 2003.Regarding interest on normative loan, M/s KSEB Ltd contented that in the case of assets created prior to 01-04-2015, the debt equity ratio approved by the Commission is applicable and in the instant case, the Commission had not allowed any Debt Equity Ratio and also no claim of interest charges till 2014-15. Equity infusion during 1998 to 2003 during the start of the Company does not qualify for interest charges after a long period of about 20 years. In the impugned order, the Commission has rightly not allowed interest charges as there is no cash outflow.
6. Regarding Non-tariff income, KSEB Ltd stated that the argument of the petitioner is not correct since there is a regulatory surplus which in any case would attract interest income. Regarding RoE, KSEB Ltd stated that total funding is Rs.966 lakh as per the details furnished to the Commission and RoE was allowed for 30% of the funding at a rate of 14%. The claim of the licensee

for balance RoE is also not sustainable since the provisional RoE of Rs.10 lakh was allowed after taking a lenient view by the Commission. Since the matter has become final there is no scope for review on the matter. Hence KSEB Ltd requested to reject the review petition of the petitioner.

Analysis and decision of the Commission

7. The Commission has considered the review petition filed by the licensee, comments of KSEB Ltd and the reply of the licensee thereof. As per the provisions of Section 94(1) (f) of the Electricity Act, 2003 and Regulation 67 of the KSERC (Conduct of Business) Regulations, 2003, the Commission has been vested with the powers for reviewing its decisions, directions and orders, as per provisions of the Code of Civil Procedure 1908. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure, 1908. The review power, under the aforesaid provision is reproduced below: -

“Application for review of judgment – (1) Any person considering himself aggrieved–

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed; or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order”.

8. Thus, as per the provisions of the Code of Civil Procedure 1908, review is justified on discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the parties at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons. The petitioner has to provide such evidences for a successful review.

9. Similarly, the provisions of the KSERC (Conduct of Business) (Amendment) Regulations 2014 provides that:

“67. Powers of review, -

(1) Any person or party affected by a decision, direction or order of the Commission may, within forty five days from the date of making such decision, direction or order apply for the review of the same.

(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.

(3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application:

Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing:

Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”

10. As per Regulation 67 of the KSERC (Conduct of Business) (Amendment) Regulations 2014, any person or party affected by the decision, direction or order of the Commission may, within forty five days of making such decision, direction or order, apply for a review. In case, an opportunity of being heard is given to the party, the appropriate orders have to be passed within 30 days of the date of final hearing.
11. During the hearing the petitioner has raised the arguments for review of the impugned order on three counts viz., review of the decision on the interest on normative loan, the interest on accumulated surplus and the interest on security deposit provided to KSEB Ltd charged as part of non-tariff income. It can be seen that the petitioner could not place on record any material supporting the grounds for review as mentioned above. The grounds raised in the petition and the arguments made are not new and hence not sufficient for warranting a review of the impugned order. The first argument that the petitioner is entitled for interest on normative loan was agitated in the original proceedings and also at the time of truing up of accounts for 2015-16. Further, the licensee has escalated the matter before the Hon. APTEL by preferring an appeal (Appeal No.114/2018) under Section 121 of the Electricity Act 2003 against the order of the Commission

dated 26-7-2017 on the truing up of accounts for 2015-16. The decision on the matter is awaited from APTEL. Though the matter stands as mentioned above, the Commission has examined the matter in detail for a fair treatment of the arguments made by the petitioner.

12. The first issue raised by the Petitioner is on the interest on normative loan, which has been agitated in the original proceedings also. According to the petitioner licensee, they are eligible for interest for normative loan for 70% of the cost of assets which was fully funded through equity. However the license is claiming interest on normative loan from 2015-16 onwards only. It is pertinent to point out that the licensee has not claimed any interest charges either on normative basis or otherwise since its inception, though the provision for normative loan was available even in the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations 2006.
13. The provisions of Tariff Regulations, 2014 is unambiguously clear on the interest on normative loan. Regulation 27 deals with debt-equity ratio. Regulation 27(1) to 27(3) deals with treatment of Debt: Equity ratio. Regulation 27(4) provides for Debt-Equity ratio for assts capitalized before 1-4-2015. As per the said provision, for determination of tariff the Debt : Equity ratio allowed by the Commission for the period ending 31-3-2015 is to be considered. As per Regulation 30(2) gross normative loan is to be arrived at as per Regulation 27. Till 31-3-2015, the licensee has neither claimed any interest charges nor the Commission allowed interest charges considering any normative loan. All these issues were examined in **great** detail as mentioned in para 20 to 22 of the Order dated 26-7-2017 for truing up of Accounts for the year 2015-16 and in para 65 to 67 of the impugned order dated 15-7-2019. There was no case or claim of interest charges from its inception from 2004-05 to 2014-15. Considering this, the *Regulations* provides that for the control period 2015-16 to 2017-18, if the normative loan is to be considered, the same is to be approved as outstanding as on 31-3-2015. Since there is no normative loan approved as outstanding as on 31-3-2015, the Commission as per the provisions of the Regulations did not allow interest charges. Now the licensee has claimed interest charges for the said period. Thus the Commission has taken a considered decision regarding interest on normative loan in the case of M/s RPL for the impugned period.
14. Further, the licensee argued that the conclusion of the Commission that the RPL is established with the grants of Government of India is not correct and it had not received any grant from neither Government of India nor Government of Kerala so far. The licensee also claims that dividends were given to the shareholders and it

is not a non-profit oriented concern. However, such arguments are not relevant in the present case and also the Commission notes that from audited statements of RPL that the licensee had received grants from ASIDE, though for establishing similar parks at Pathanapuram. The claim of first ever declaration and payment of dividend also pertains to the period 2018-19, which is a subsequent event. The licensee during the hearing has claimed that no money has been received from the consumers for providing electricity connection and the entire electricity distribution assets are funded out of equity alone. ***In such situation the examination of the accounts of the licensee in line with provisions of Kerala Electricity Supply Code and examination of the funding of distribution assets would become necessary. The Commission may venture for the same appropriately after giving due notice to the licensee.***

15. The licensee had pointed out that it is the right of the licensee to decide when to claim the interest on normative loan and non-claiming of the same cannot be a ground for denying the interest in future. However, the argument of the licensee is not acceptable in this regard. As per the regulatory principles, approved expenses are passed on to the consumers through recovery from tariff. If the licensee decide to claim expenses without following the principles of consistency, the same would result in fluctuation in the consumer tariff, derailing the principles of certainty and predictability of the retail tariff, which is not advisable. Hence such arguments cannot be accepted in a regulatory regime.
16. The licensee has also highlighted the point that in the ARR&ERC order for the MYT period 2015-16 to 2017-18, the Commission has allowed normative loan and hence the same is to be approved during the truing up also. In this context, it is to be reiterated that the licensee has filed petitions for revision of the ARR&ERC for 2016-17 and 2017-18 for several items and the Commission had not allowed the additional interest charges and also held that the interest charges claimed by the licensee will be considered subject to prudence check while finalizing the truing up process for the year 2016-17. Thus, the licensee cannot claim as a matter of right what is allowed in the ARR&ERC order especially in a situation when as per the provisions of the Regulations are on the contrary.
17. Another issue pointed out by the petitioner is regarding non-tariff income. According to the petitioner, the Commission has booked interest amount of Rs.10.40 lakh on security deposit given to KSEB Ltd for power purchase and interest on accumulated surplus to the tune of Rs.3.75 lakh was included as non-tariff income which is contrary to the MYT regulations. The licensee claims that the till 2015-16, the Company had erroneously booked the interest received from

KSEB Ltd as part of the income of power distribution business which was corrected from 2016-17.

18. According to the licensee, the fund for providing security deposit is provided by the RPL's main business and hence, the interest is accounted in RPL accounts as against the accounts of the licensed business. According to the licensee, merely because an amount was erroneously booked as income in the past would not mean that error to be followed in future as well. The Commission has examined the submission of the licensee in this matter. The issue was dealt with in para 24 and 25 of the impugned order. It is to be noted that a legal fiction is created in the accounting of the 'licensed business' ie., electricity distribution of RPL. The 'licensed business' of M/s Rubber Park India Limited is segregated from RPL's other business. The 'licensee business' is required to provide security deposit for the purchase of power from KSEB Ltd and rightly so the same was accounted part of the so called segregated accounts of 'licensed business' till 2015-16. The business other than the 'licensee business' of RPL (ie., main business of RPL) is not obliged to provide security for power purchase. It is a fact that the licensee has accounted the security deposit with KSEB Ltd as part of 'loans and advances' which is shown as part of the balance sheet of the 'licensed business' continuously and interest thereon received is booked under non-tariff income. Hence, the Commission is not in a position to accept the arguments of the licensee that the item was booked erroneously. The truing up petitions were filed as per the provisions of the Regulations, with supporting affidavit and certified by qualified chartered accountants. These documents in the form of petition is placed before the public scrutiny. If the contentions of the licensee are to be true, then the Commission is duty bound to initiate action for furnishing false affidavit and misleading the stakeholders.
19. Regarding interest charges for regulatory surplus, the licensee stated that in the Regulations list of items, the non-tariff income does not contain income from interest charges as an item. According to the licensee, charging interest based on SBI Base rate for the regulatory surplus is against the Regulations. The Commission examined the contentions of the licensee. In this context, it is to be mentioned that, if there is any revenue deficit after truing up process, the carrying cost is to be allowed as per the Orders of Hon. APTEL. Generally carrying cost is allowed at SBI Base rate, which is also the rate allowed for borrowing, if the licensee does not have any actual borrowing. In the same manner, if there is a surplus which is held by the licensee after truing up, the interest on the same is to be allowed at SBI Base rate. Hence the contention of the petitioner that even if

interest charges is to be realized the same is to be at the rate of interest charges on fixed deposit cannot be accepted.

20. Thus, as shown above, the Commission is of the considered view that the contentions in the petitioner are not within the ambit of a review petition and hence cannot be considered. The arguments made are already considered and hence neither no new facts are brought nor any apparent error is pointed out. Hence the petition is deserved to be rejected.

Orders of the Commission

21. In the light of the above analysis of all the points raised by the licensee as well as the objectors, the Commission is of the view that there are no sufficient grounds placed by the petitioner for a review of the Order dated 15-7-2019 on the truing up of accounts of M/s RPL for the year 2016-17 as per the provisions of the Electricity Act and Regulations thereof.

22. With the above, the petition disposed of. Ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
G.Jyothichudan
Secretary