

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Sri. K.J.Mathew, Chairman

Sri.M.P.Aiyappan, Member

January 29, 2010

In the matter of distribution of electricity in Pallipuram and nearby villages by Technopark .

Petition No.RP-7 of 2009	Kerala State Electricity Board Vs Technopark	Petitioner Respondent
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Representative of petitioner: Sri. Ramesh Babu, Dy Chief Engineer

Representative of respondent: Sri. K.V.Rajendran,GM.

ORDER

Vide order dated 2nd July 2009, Commission had issued approval for inclusion of the area in Pallipuram and nearby villages acquired by Technopark, in their licence for distribution of electricity . Kerala State Electricity Board (herein after called KSEB) has sought for review of this order pointing out to 6th proviso of Section 14 of Act 2003 with a prayer for withdrawl of the order dated 2nd July 2009.

Background

Licence for distribution of electricity in the IT Park at Kazhakuttom was granted to Technopark (the promoter of the IT Park) by Government of Kerala in the year 1999.

Approval for inclusion of Phase II and Phase III expansion at Kazhakuttom was accorded by the Commission vide order No.KSERC/II/LP-3/2007 dated 22nd May 2008. At that time KSEB did not arise objection with a reference to any provision of Electricity Act 2003.

Technopark applied for sanction to include the new area acquired by them at Pallipuram and nearby villages in Phase IV expansion in the Licence for distribution of electricity vide application dated 5th July 2008. A gist of the application was published in English and Malayalam dailies dated 22nd October 2008.

Public hearing on the petition was conducted at Kaniyapuram Panchayat Mini Hall on 15th January 2009 after publicity through dailies and visual media. During the proceedings of the hearing, KSEB has raised a point with a reference to 7th proviso of Section 14 of the Act 2003. As the Commission has nothing to do with the application of 7th proviso which relates to franchisee arrangement, sanction for inclusion of the new area as requested in the application was issued vide order dated 2nd July 2009 after observing all the statutory formalities. Now KSEB has sought for review of the above order dated 2nd July 2009.

Hearing

The petition was initially posted for hearing on 6th November 2009. Respondent requested for postponement of hearing to another date. The petition was finally heard on 24th November 2009.

Petitioner stated that the licence for distribution of electricity was granted by Govt of Kerala in the year 1999 and this was before the enactment of the new Act. The expansion of Technopark to Technocity is an area where KSEB is the deemed distribution Licensee. Thus Technopark will be the second Licensee in Technocity.

Petitioner argued that KSEB is not against the development of IT sector. Allowing Technopark to distribute electricity in KSEB's licence area will have adverse impact on the ordinary consumers of KSEB. This is only a beginning. If this is continued, many other persons may come forward with application for grant of Licence. Further Technopark is not investing in Generation and Transmission. The entire burden of subsidy is put on the shoulders of KSEB alone. Petitioner stated that KSEB has proposed franchisee type of arrangement. In the States of Andhra, Tamil Nadu or Karnataka, IT Parks are not given licence to distribute electricity. Petitioner further pointed out that though KSERC has stopped the rebate allowed to Technopark, the arrears have not yet been cleared by Technopark. Petitioner made a reference to notification of Ministry of Power of Govt of India which stipulates that in the case of second licence, the minimum area should be a Village, a Corporation or a District.

Respondent stated that Licence for distribution of electricity was given to Technopark by Govt of Kerala at the first instance in the year 1999. The area of licence was extended to Phase II and Phase III expansion by the Commission. Phase IV expansion at Pallipuram and nearby villages will have SEZ status. Respondent further stated that adequate publicity of the gist of the application and also of the public hearing was published in dailies and a period of 30 days was given for filing objections. No objection was filed by KSEB during this period. During the public hearing at Kaniyapuram on 15th January 2009, the Commission enquired with KSEB whether they are against grant of Licence for distribution to Technopark. KSEB had not raised any objection. Respondent pointed out that tariff is approved by the Commission and hence the argument of KSEB is not correct. Respondent stated that the argument of petitioner that the main business of Technopark is not distribution of electricity is not correct because Technopark has to provide all infrastructure facilities which includes electricity also. Further the facility should be of world class. The situation in other States is different because the Electricity Boards have been unbundled in those States. Also Electricity Act 2003 allows carrying out distribution activity along with any other business. The only requirement is that the accounts should be maintained separately. Respondent stated that in Kerala IT industry is the largest provider of employment. Such Parks will not attract customers unless reliable electricity is not made available. Respondent pointed out to Section 51 of Act 2003 also. Respondent stated that notification of Ministry of Power is on capital adequacy. The same is not applicable in the present instance because Technopark is the first Licensee in the area. Coming to rebate, respondent argued that the matter was referred to Govt. of Kerala and a direction has been obtained on the matter. Replying to a query from Chairman of the Commission, respondent replied that there is no proposal for generation of power.

Analysis

The stand taken by the petitioner that the main activity of Technopark is not distribution of electricity is not relevant because licence at the first instance was given in 1999. Also extensions of area have already been given. These extensions has made the distribution activity of Technopark a major activity. As pointed out by the respondent, electricity is an important infrastructure facility. Also Act 2003 does not prohibit, any licensee from carrying out any other business.

KSEB's burden of subsidy cannot be transferred to anybody else. This has to be reimbursed by State Govt.

Notification dated 23rd March 2005 of Ministry of Power refers to minimum area requirement in the case of second licence. In the case of Technopark the applicable regulation is clause 3.2(a) of Chapter II of the Licensing Regulations 2006. The extension of area is also on the basis of this clause. In the area acquired by Technopark, only one licensee is authorized and that is Technopark. Notification of Ministry of Power is applicable only when the licence is issued as a second licence.

Order

There is no merit in the review petition and the same is rejected.

Sd/-
M.P.Aiyappan
Member

Sd/-
K.J.Mathew
Chairman

Approved for issue

Secretary