

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**
Adv. A.J. Wilson, Member (Law)

OP No. 42/2020

In the matter of : Petition seeking Review of Order dated 04-09-2020 in the matter of Capital Investment Plan for 2012-13 to 2016-17 of Distribution Licensee M/s.Technopark.

Petitioner : Electronics Technology Parks –Kerala (Technopark)
Park Centre, Technopark Campus,
Thiruvananthapuram –695581

Petitioner represented by : Shri. Sasi Pilacheri Meethal, CEO
Smt. Jayanthi. L., Chief Finance Officer,
Shri. Madhavan Praveen, DGM(Projects)
Shri.Viswanathan.N., Asst.Manager(Finance)
Shri. Anfal A., Dy. Manager (Electrical)

Hearing No and Date : 1st hearing held on 13-01-2021 at Technopark

Order dated 03..03..2021

Background

1. M/s Electronics Technology Parks –Kerala (hereinafter referred to as M/s Technopark or the petitioner) filed a Review petition before the Commission on 05.11.2020, with the following prayers:

- *Review of the Order dated 04-09-2020 in OA 16/2020 in the matter of Capital investment plan approval of the licensee for the Financial Years from 2012-13 to 2016-17*
- *Allow the capital investment amounting to Rs.7,63,03,692/-incurred by the petitioner during Financial Years from 2012-13 to 2016-17 in creating business infrastructure within licensed area by considering business objectives and environment of the petitioner to prevent business drifting to future loss.*

The summary of the review petition filed by M/s Technopark is as given below,

2. The petitioner had earlier filed petition No. OP-16 / 2020 seeking approval of Capital Investment Plan for Financial Years from 2012-13 to 2016-17. The matter was heard and the Commission had issued Order dated 04-09-2020 wherein certain investments made by the petitioner during the period was disallowed based on specific reasons as mentioned in the Order. The present petition is filed by the petitioner seeking review of the Order dated 04-09-2020 citing the reason that the petitioner would be unable to recover the depreciation expenses and the permissible Return on Net Fixed Assets of the disallowed portion.
3. A summary of the capital investments claimed phase wise and approved in the Order is reproduced by the licensee in the petition as under. The phase/campus wise disallowances are discussed in subsequent paras.

TABLE-1

The total Capital Investments claimed and amount Approved Year wise

Rs. in Crores

Year	Phase 1 Campus		Phase 3 campus		Phase 5 Kollam		Total	
	Claimed	Approved	Claimed	Approved	Claimed	Approved	Claimed	Approved
2012-13	0.09	0.00	0.08	0.08			0.17	0.08
2013-14	0.00	0.00	0.45	0.45			0.45	0.45
2014-15	2.29	1.88	6.22	0.22	26.94	0.00	35.45	2.10
2015-16	0.06	0.06					0.06	0.06
2016-17	0.39	0.00	0.48	0.22	0.05	0.00	0.92	0.22
Total	2.84	1.95	7.22	0.96	27.00	0.00	37.05	2.91

4. **Phase -1 Campus Capital Investments (Rs.2.84 Cr):** The licensee submitted that the Commission had deferred approval and disallowed an amount of Rs.88.96 Lakhs in respect of the investment done in Phase-1 Campus. The details of disallowances are given in the table below.

TABLE -2
Amounts Disallowed in Phase-1

No	FY	Capital Item	Value (Rs)	Remarks
1	2012-13	Service tax	2,30,025	Deferred
2	---do---	Consultation Charges	7,505	Deferred
3	---do---	High Mast System	6,84,427	Disallowed
4	2014-15	NEW 11 kV Substation	16,89,471	(1.92 Cr-1.74 Cr) Disallowed
5	---do---	High Mast System	23,49,391	Disallowed
6	2016-17	Street light system	39,35,102	Disallowed
		TOTAL	88,95,921	

5. The licensee further submitted that the Commission had vide Order dated 04-09-2020 deferred Item 1 and 2 being Service tax amounting to Rs.2,30,025 /- and consultation charge Rs.7,505 /- and directed to produce the supporting documentary evidence within three months. The licensee has submitted copies of invoices of Service tax along with this petition.
6. In respect of the Item 4, New 11 kV substation, the licensee submits that the Commission has limited the expenses to the Value of Work order issued to the Contractor M/s. Fathima Engineering Co of Rs 1.74 Cr whereas the actual payment was Rs.1.92 Cr. Licensee claims that the difference (9.7%) is the statutory taxes paid in respect of the work order. Licensee submitted that the tax amount of Rs.16,89,471/- may be allowed.
7. **Phase - 3 Campus Capital Investments (Rs 7.22 Cr) :** The licensee submits that the Commission has disallowed an amount of Rs 6.25 Cr out of the Rs.7.22 Cr investment done in phase-3 Campus. The details of disallowances listed out by the licensee is as given in the table below.

TABLE -3
Amounts Disallowed in Phase-3

No	FY	ITEM	VALUE (Rs)	REMARKS
1	2014-15	Electrification of IT Building	5,23,19,865	Disallowed
2	2014-15	Consultancy fee	8,24,721	Allowed in
3	2014-15	Consultancy fee	26,110	Truing Up Fy 2016-17
4	2014-15	Other Items (Street Lights)	7,20,058	Disallowed
5	2014-15	Street Lighting System Phase -III	61,44,378	Disallowed
6	2016-17	Street light System Phase - III	25,53,541	Disallowed
		Total	6,25,88,673	

8. The licensee submits that the Commission had disallowed the capital cost of the distribution network (Rs 5.23 Cr) in the IT building by pointing out the Regulation 49 (1) and (5) of the Supply Code. The licensee contends that
9. the distribution network within the building comprises of substation infrastructure for stepping down the 11 kV to low tension voltage, LT network for distributing the power to each floor of the multi-storey building and till the metering point to individual consumers. Licensee submits that these expenses may be allowed.
10. The licensee further submits that the sub-regulation (5) of the Regulation 49 of the Supply Code 2014, is a special clause intended to remove burden of installing and maintaining Low Tension network facility in privately-owned high-rise buildings, from large utilities like KSEBL. According to the licensee the business objective of Technopark is different and that the high rise buildings within the park, may not be treated equal to private high rise buildings. The difficulties encountered by Large utilities are absent in the case of Technopark and therefore the above special clause in the supply code may not be applied in the case of Technopark without considering the business environment and business objective of Technopark. The licensee further states that disallowance of capital cost of all 11 kV substations and downstream low-tension network would disproportionately reduce the fixed asset value and the depreciation and return on net fixed assets and eventually will lead to a situation where the business would plunge into perpetual loss.

11. **Kollam Campus (Phase - V) Capital Investments (Rs 27 Cr)** :The licensee submits that out of the total investment Rs. 27 Crores, the Commission has not approved any of the Capital Expenses during the period stating that assets have not been put to use. The licensee submitted that the total investment in Kollam campus during 2014-15 was Rs.82.75 Crore. Out of which Rs.27 Crores pertains to power distribution system. The Loan Taken from NABARD was Rs.65.77 Cr which was converted to grant by the State Government. Thus, only 79.48 % of the Capital Investment was met from Government grants (ie:65.77/82.75=79.48%) and the balance was met from own resources of Technopark.
12. The licensee submits that at the Kollam Campus, the distribution assets commissioned during the subject period is given below, which is 58.47 % of the total electrical assets that are attributable to the distribution business. The licensee claims that the above percentage is arrived by segregating the electrical assets attributable to the distribution business and others from the work order given to the contractors. Licensee requests that considering the above facts, Commission may kindly allow this amount of capital Investment.

TABLE -4
Amounts claimed for Kollam Phase

No	FY	Capital Item	Value (Rs)	Remarks
1	2014-15	Distribution Network	2,18,88,171	Inside IT Building
2	2016-17	Electrical Sub Panels	1,68,655	Consultancy Charges
		Total	2,20,56,826	

13. The petitioner's prayer to the Commission is to review the Order dated 04-09-2020 in Petition No. OA 16/2020 and allow capital investment amounting to **Rs 7,63,03,692/-** genuinely incurred by the petitioner during the period from FY 2012-13 to FY 2016-17 in creating distribution infrastructure within the licensed area by considering the business objectives and environment of the petitioner, preventing the distribution business drifting to future loss.
14. The petitioner vide letter dated 01-12-2020 had furnished the petition for condonation of delay and additional submissions. In the said additional submissions, the petitioner stated that the major disallowances made in the petition was related to the cost of LT distribution network within the buildings constructed within the license area for the purpose of providing industrial infrastructure to attract investors in electronics and information technology

industry to generate employment. The petitioner further stated that for segregating the cost of LT network related to the distribution business, the petitioner had relied on the provisions of the section 2(19) Electricity Act 2003 (definition of distribution system) and the definition contained in the Act as well as Supply Code.

15. Based on the said definition, the petitioner sought approval of distribution system network within the building which includes stepdown transformers for bringing the high voltage (11kV) to low voltage and related protection, control and measuring instruments both in high voltage side and low voltage sides, respective bus ducts, and cables for bringing power to respective floors at their metering points. The said investments were disallowed based on the Regulation 49 of Supply Code 2014 may be reviewed considering the fact that the said provision is a special regulation that can be applicable to large utilities like KSEB Ltd. According to the petitioner, it is not prudent to apply the same ratio of this regulation to be applied in licensees like that of the petitioner. The definition given in the Act is to be applied to preserve the genuine rights of the petitioner. The petitioner further stated that the project to build high rise building and its electrical distribution system was finalized before the notification of the Supply Code 2014. The relevant dates are given below:

Item	Phase III project	Phase V Kollam
Executive council decision (Project implementation Board)	01/04/2009	18/09/2009
Award of Electrical works	09/06/2010	19/03/2010
Completion of the Project	07/05/2014	23/07/2013

The petitioner stated that the notification prevailing before 1st April, 2014 was the Supply Code notified in 2005 and corresponding clause to Regulation 49 was not available in Supply Code 2005. Hence, the provision in Supply Code 2014 cannot be applied retrospectively in the case of the petitioner.

16. The petitioner further pointed out that in para 32 of the impugned Order, the Commission has taken a view that the loan taken by the Technopark as the Developer is about 61.08% of the total investments made so far and same percentage of loan is to be considered for claiming interest on loan for the capital investment approved for electricity distribution business. According to the petitioner, the 110kV substation and overhead lines at Phase III was crated by availing loan from South Indian Bank, which was later transferred

to consortium loan in 2011 for Phase III infrastructure creation. Hence the petitioner requested to review the decision of the Commission that only the interest for 61.08% of the amount is to be allowed. The petitioner requested that since the interest on loan is purely for distribution business and hence the actual interest is to be allowed.

Hearing on the petition

17. The public hearing on the petition was held on 13-01-2021 at 11.00 AM at Malabar Hall Technopark . The applicant M/s Technopark was represented by Shri. Sasi Pilacheri Meethal, CEO infopark, Smt. Jayanthi. L, Chief Finance Officer, Sri. Madhavan Praveen, Dy. General Manager, Sri. Anfal. Dy Manager, Sri. Viswanathan, Finance Officer of the licensee and Shri. Bipin Consultant. Sri. Anfal, presented the details of the petition on the truing up of accounts for the year 2018-19 and gave clarifications on the queries of the Commission. The main points made by Technopark are:-
18. The licensee submitted that for Kollam Campus (Phase - V) Capital Investments amounting to Rs 27 Crore was made. Out of the total Rs. 27 Crore, the Commission had not approved any of the Capital Expenses during the period stating that assets have not been put to use.
19. Regarding the Phase I Campus Capital Investments of Rs 2.84 Crore, the licensee submitted that out of their claim, Commission has deferred approval or disallowed an amount of Rs 88.96 Lakhs in respect of the investment done.
20. The licensee submitted that out of their claim towards Phase - 3 Campus Capital Investments Rs 7.22 Crore, Hon Commission has disallowed an amount of Rs 6.25 Crore out of the Rs 7.22 Crore investment done in phase-3 Campus. The amount incurred for electrification of IT building Rs.523.19 lakhs was disallowed and so was all amounts incurred towards streetlight systems. The amounts incurred towards consultancy fee was also disallowed.

Analysis and decision of the Commission

21. The Commission clarified the points raised by the licensee. It was a pre-condition that for all investments above Rs.5 lakhs, prior approval of the Commission has to be taken by submitting proper DPRs and also for

qualifying for benefits such as depreciation, RoNFA etc. the Assets should be put to use.

22. As per the Section 42 of the Electricity Act, 2003, M/s Technopark as a distribution licensee for supplying electricity within their campuses, is required to develop and maintain an efficient, coordinated and economical distribution system in their area. Further as per the Section 43 of the Electricity Act, 2003, M/s Technopark has to provide electricity supply on request by the consumers within their area of supply. Further, as per the Section 46 of the Electricity Act, 2003, the State Commissions may permit the distribution licensees to charge from a person requiring electricity supply under Section 43 of the EA-2003, the reasonable expenses incurred in providing any electrical line or electrical plant used for the purposes of giving supply to that particular consumer.
23. Also, as per the provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014, and KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018, depreciation, return on equity and interest charges shall not be allowed on the assets created out of Government grant/Consumer contribution.
24. The requests made by the licensee are examined phase wise as under;

(i) Phase -1 Campus Capital Investments (Rs 2.84 Cr):

The licensee had requested for approval of the disallowed amount of Rs.88.95 lakhs as per Order dated 04-09-2020 details of which are as under.

TABLE - 5

Disallowed Expenditures in phase 1

No	FY	Capital Item	Value (Rs)	Remarks
1	2012-13	Service tax	2,30,025	Deferred
2	---do---	Consultation Charges	7,505	Deferred
3	---do---	High Mast System	6,84,427	Disallowed
4	2014-15	NEW 11 kV Substation	16,89,471	(1.92 Cr-1.74 Cr) Disallowed
5	---do---	High Mast System	23,49,391	Disallowed
6	2016-17	Street light system	39,35,102	Disallowed
		TOTAL	88,95,921	

The licensee's claim of Service tax amounting to Rs 2,30,025 /- and consultation charge Rs 7,505 /- **was examined by the Commission. The licensee was directed to produce the supporting documentary evidence of the above expenses within three months. *The licensee has submitted copies of invoices of Service tax along with this petition. This amount of Rs 2,30,025 /- is allowed but in respect of consultation charges claimed amounting to Rs 7,505 /- no additional details have been submitted and also being an expense of a revenue nature, this can be claimed as a part of truing up of the concerned year.***

In respect of the Item 4, New 11 kV substation, the licensee submits that the Commission has limited the expenses to the Value of Work Order of Rs.1.74 crore issued to the Contractor, M/s. Fathima Engineering Co, whereas the actual payment was Rs 1.92 Cr. Licensee claims that the difference (9.7%) is the statutory taxes paid in respect of the work order. Licensee submitted that the tax amount of Rs.16,89,471/- may be allowed. The licensee agreed to furnish proof of payment of tax by the recipient to the Commission in order to allow the claim. However, so far no additional document has been submitted to prove this claim. **Hence the Commission is not in a position to deviate from the originally approved amount of Rs 1.74 crores. As and when the proof of payment is made, this amount shall be allowed.**

As explained in the Order dated 04-09-2020, M/s Technopark is the developer and infrastructure provider in the Phase-1 campus. This infrastructural works includes building of necessary roads, street lights, water supply, buildings and other infrastructure within the Phase-1 campus. Public lighting and street light installation are part of the main park development activities and hence such assets have to be treated as the capital asset of the park developer M/s Technopark, and it cannot be treated as part of its electricity distribution business. The remaining expenses in Table-4 above other than item 1,2&4 are in the nature of expenses incurred towards park business and ***hence the Commission stands by the original decision to reject the amount of Rs 69.69 lakh claimed for installation of High Mast System and Street light system as part of the electricity distribution business of Technopark.***

(ii) Phase - 3 Campus Capital Investments (Rs 7.22 Cr) :

The licensee had requested for approval of the disallowed amount of Rs.625.88 lakhs as per Order dated 04-09-2020 details of which are as under.

The consultancy fee of Rs.824721/-and Rs.26110/- had already been approved in the truing up Order dated 27-04-2020. The remaining items in the table are disallowed being for electrification of high rise building and for street lights.

TABLE- 6
Amounts Disallowed in Phase-3

No	FY	ITEM	VALUE (Rs)	REMARKS
1	2014-15	Electrification of IT Building	5,23,19,865	Disallowed
2	2014-15	Consultancy fee	8,24,721	Allowed in
3	2014-15	Consultancy fee	26,110	Truing Up Fy 2016-17
4	2014-15	Other Items (Street Lights)	7,20,058	Disallowed
5	2014-15	Street Lighting System Phase -III	61,44,378	Disallowed
6	2016-17	Street light System Phase - III	25,53,541	Disallowed
		Total	6,25,88,673	

The Commission explained that the amount incurred for electrification of IT building was disallowed since any work inside the IT building is against the provisions of Regulation 49(1) of the Kerala Electricity Supply Code 2014 and hence disallowed.

Regulation 49(1) of the Kerala Electricity Supply Code 2014 reads as under;

“Electricity connection to high rise building, colony and to residential, commercial or industrial complex.- (1) The expenditure for modification, upgradation and uprating of the distribution system of the licensee executed, if any, exclusively for giving connection shall be realised from the applicants in the following cases:-

- (a) colony developed by development authority or private builder or promoter or developer with a total load demand more than one megawatt (MW);*
- (b) domestic or commercial or industrial complex with multiple consumers with a total load demand more than one megawatt (MW);*
- (c) high rise buildings, irrespective of the load demand;*
- (d) a single consumer with a load demand above one MW.”*

Thus, the expenses of Rs.5,23,19,865/- claimed by the licensee for electrification of IT building is disallowed.

The street lighting expenses also was disallowed since these expenses are part of the main park business and cannot be considered to be part of the infrastructural development activity of the electricity distribution business. Hence the dis-allowance. ***The consultancy charges of Rs.8.51 lakhs was disallowed since the same was preferred earlier by the licensee during truing up of accounts of the financial year 2016-17 and hence cannot be claimed again.***

Hence the Commission stands by the original decision and the additional claim made is disallowed.

(iii) Kollam Campus (Phase - V) Capital Investments (Rs 27 Crore)

The licensee has submitted that the Commission had not approved any of the capital expenses incurred at Kollam campus during the period since these assets have not been put to use. The licensee submitted that at the Kollam Campus, the distribution assets commissioned during the subject period as given below, is 58.47 % of the total electrical assets that are attributable to the business of distribution. Hence the licensee requested that considering the above facts, Commission may kindly allow this amount of capital Investment.

TABLE -7

Amounts claimed for Kollam Phase

No	FY	Capital Item	Value (Rs)	Remarks
1	2014-15	Distribution Network	2,18,88,171	Inside IT Building
2	2016-17	Electrical Sub Panels	1,68,655	Consultancy Charges
		Total	2,20,56,826	

The Commission has carefully examined the petitioner's submission. As per the petition and additional clarification submitted, the 110 kV substation constructed at Technopark, Kollam is yet to be commissioned and put into use. As per the provisions of the Tariff Regulations, 2014 and Tariff Regulations, 2018, capitalisation of any assets is permitted only after declaration of commercial operation date and after it is put into use. However, the 110 kV substation and associated assets at Kollam campus is yet to be commissioned and put into use.

Hence the Commission cannot approve the GFA addition of Technopark Kollam, till the COD of the assets is declared and the assets put to use. In addition, since the entire 110 kV substation and associated assets at Technopark, Kollam is created using Government grants, the Commission as per Regulation 26(2) of the 2014 Regulations, cannot allow Return on Equity

(RoE), depreciation and interest on loan etc on these assets.

As to the submission on the contention that the total funding is not by Government and that a part of it is out of its own funds, the Commission called for producing the approval/sanction obtained for the project concerned from the Executive Committee of Technopark so as to establish the contention. The licensee agreed to submit these documents. However, no documents have been submitted till now.

Summary

The licensee in their review petition sought for review of the Order dated 04-09-2020 for allowing the following expenses disallowed in the said Order.

TABLE- 8
Total expenses claimed for approval

No	Fin Year	Campus	Capital Item	Value (Rs)	Remarks
1	2014-15	Kollam	Distribution Network	2,18,88,171	Inside IT building
2	2016-17	Kollam	Electrical Sub Panels	1,68,655	Consultancy Charges
3	2012-13	Phase -1	Service tax	2,30,025	Document produced
4	2012-13	Phase -1	Consultation Charges	7,505	
5	2014-15	Phase -1	New 11 kV Substation	16,89,471	Tax component
6	2014-15	Phase -3	Distribution network	5,23,19,865	Inside IT building
			Total	7,63,03,692	

Out of the above claim, Rs 2,30,025/- incurred towards service tax is allowed by the Commission. Regarding payment of Rs.16,89,471/-towards statutory taxes, the Commission can consider the same as and when the relevant payment documents are submitted to the Commission. The remaining items amounting to Rs.7,43,84,196 /- cannot be considered at present for reasons stated in the preceding paras.

25. The petitioner in the additional submissions also requested for review of the para 32 of the impugned Order of the Commission. In the said para the Commission has allowed only 61.8% of the approved capital cost for allowing interest on loan, considering the fact that the total loan taken for the project consists of only

61.08% of the value of assets. The Commission has examined the request of the petitioner and noted that the licensee is eligible for recovery of the cost of the capital assets approved by the Commission. It is true that the total value of loans for the project is only 61.08% of the amount allowed. The balance portion might have been funded out of internal accruals, since the grant portion of the approved assets have already been removed. Since the licensee is not having any equity component in their books of account, the entire value can be treated as funded out of loan and accordingly the interest charges being allowed for the entire approved portion of the value of Asset addition. Accordingly, the Commission modifies the impugned order to the extent that the reference to 61.08% is omitted and the entire value of approved asset addition of Rs.2.91 crore shall be considered for depreciation, RoNFA and interest on loan. The impugned order is modified to that extent.

Orders of the Commission

26. The Commission after considering the review petition filed by M/s. Technopark for **review of capital expenditure approval from 2012-13 to 2016-17 Orders as under;**
- a) The Assets created at Kollam campus costing Rs.27 Crores is yet to be Commissioned and put to use and therefore there is no eligibility for approval until and unless the Assets are put to use. Hence the Order dated 04-09-2020 prevails in this matter.
 - b) The Assets of Phase 1 campus out of which Rs,88,95,921/- was disallowed vide Order dated 04-09-2020 is modified to the limited extent by allowing the Service Tax amount of Rs.2,30,025/-. Further Rs.16,89,471/- can be considered for approval on production of relevant documents by the licensee. For the rest of the expenses, the Commission Order dated 04-09-2020 prevails and this Order is modified to the above extent.
 - c) Assets of Rs.625.89 lakhs of Phase 3 campus disallowed vide Order dated 04-09-2020 stands and there is no change in the stand taken by the Commission with respect to electrification of High-rise buildings and street lighting systems. The Commission can allow expenses which form part of the distribution system only to the point of connection as per Sub regulation (5) of Regulation 49 of the Supply Code, 2014.
 - d) The licensee is eligible for the entire value of approved capital assets additions (Rs.2.91 crore) as per impugned order for RoNFA, interest

charges and depreciation. The reference of 61.08% in the impugned order is deleted to the said extent.

- e) The documents agreed to be submitted by the licensee at the hearing mentioned in para 24 above has not so far been received. Hence the contentious issues could not be reassessed.

27. The petition is disposed of. Ordered accordingly.

Sd/-

Adv.A.J.Wilson
Member (Law)

Sd/-

Preman Dinaraj
Chairman

Approved for issue

Sd/-
Secretary