

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru.M.Chandrasekar **Chairman**
Dr.T.PrabhakaraRao **Member**
and
Thiru.K.Venkatasamy **Member (Legal)**

D.R.P. No.8 of 2015

Ms. A.R.S. Metals (P) Ltd.
D-109, LBR Complex,
2nd Floor, Anna Nagar East,
Chennai – 600 102.

... Petitioner
(Thiru. K.Seshadri
Advocate for the Petitioner)

Vs.

1. The Chief Engineer /Transmission
6th Floor, NPKRR Maaligai
800, Anna Salai
Chennai – 600 002.
2. The Superintending Engineer,
General Construction Circle – I
TANTRANSCO
Chennai - 600 032.

... Respondents
(Thiru.V.Anil Kumar,
Standing Counsel for Respondents)

Dates of hearing : **24-09-2019; 22-10-2019; 19-11-2019;**
28-01-2020; and 27-10-2020

Date of Order : **08-12-2020**

The D.R.P.No.8 of 2015 came up for final hearing on 27-10-2020. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent, written submission filed by the respondent and all other connected records and after hearing both the parties passes the following:-

ORDER

1. Prayer of the Petitioner in DRP No.8 of 2015:-

The prayer of the Petitioner in the above DRP No. 8 of 2015 is to fix the charges /tariff payable by the Petitioner towards Establishment and Supervision charges for the temporary transmission lines erected by the petitioner from their power plant to Gummidipoondi 230 KVSS. and testing and commissioning charges payable by the petitioner and consequently direct the respondents to refund the excess amounts collected from the petitioner with interest as contemplated under Section 62(6) of the Electricity Act, 2003 and the costs of this proceedings.

2. Facts of the Case:

The petition has been filed to seek fixation of rates/tariff payable by the petitioner towards the charges for establishment and supervision testing and commissioning of line work for temporary connectivity of petitioner power plant (1 x 60 M.W.) the 230 K.V. bay extension work at existing Gummidipoondi 230 KVSS.

3. Contentions of the Petitioner:

3.1. The Petitioner has established 1 x 60 M.W. coal based power plant at No.207, Sithurnatham, Sirupulalpettai and Village, Eguvarpalayam, Gummidipoondi Taluk, Thiruvallur District. The Petitioner has also obtained grid connectivity and achieved Commercial operation on and from 25-6-2013.

3.2. The first respondent in his letter No.CE/TR/SE/TR1/EW/A4/F.ARS Metals/D28/12 dated 30-3-2012 has informed that the petitioner has been permitted temporary connectivity of its power plant to the existing Gummidipoondi 230 KVSS

to evacuate power generated by the petitioner power plant with associated works sanctioned vide (per) CMD TANGEDCO Proceeding No.23 dated 29-3-2012 and instructed to take up line work from the Power Plant to Gummidipoondi 230 KVSS as per Section 10(1) of Electricity Act 2003.

3.3. The 1st Respondent in the said letter dated 30-3-2012 also directed the petitioner to remit Rs.1,38,79,700/- towards the cost of materials together with the charges for establishment and supervision, testing and commissioning of the work entrusted to the petitioner. The said letter reveals that the Supervision and establishment charges at the rate 22% on the cost of materials and testing and commissioning charges at 10% of the cost of equipment will be debited/collected from the Petitioner.

3.4. The petitioner paid the amount on 3-4-2012 to the General construction circle, TANTRANSCO Chennai-32. The Respondents have collected establishment and supervision charges for the erection of line works at the rate of 22% on the cost of materials and 10% of the cost of equipment for testing and commissioning charges, without any basis or approval from the Commission.

3.5. Though the petitioner has undertaken to erect all the said transmission lines as specified by the 1st Respondent, the petitioner was advised to pay the above huge amount without indicting any Rule or Regulation of the Commission. The payment received by the Respondents are also not covered under any tariff order of the Commission.

3.6. The charging of 22% on the cost of materials and 10% for testing and commissioning charges for the temporary transmission lines are arbitrary illegal and without authority of Law.

3.7. The respondents ought to have approached the Commission for fixation of the appropriate tariff/charges to be collected from the petitioner generator before demanding and collecting such huge amount from them.

3.8. The following requires the consideration of the Commission:-

- i) The Respondents have collected 22% on the cost of materials as establishment and supervision charges and 10% for testing and commissioning charges without any approved regulations or orders of the Commission.
- ii) The Respondents have not followed the procedure as contemplated under Non-Tariff Related Miscellaneous charges issued by the Commission.
- iii) The Respondents are not collecting the said establishment and supervision charges, testing and commissioning charges uniformly from the generators. The Respondents are collecting the said charges at their will arbitrarily.
- iv) The Respondents are not entitled to collect the said huge charges without attending to any supervision or establishment work in the laying of transmission lines referred to above.
- v) The Respondents commit gross discrimination in collecting the said charges.

3.9. The Petitioner is constrained to file this petition for redressal of its grievances to fix the appropriate charges / tariff payable by the petitioner who erect the entire transmission lines from its power plant to the TANGEDCO's grid at 230 K.V.S.S. Gummidipoondi, towards establishment and supervision charges, testing and commissioning charges and for direction to refund the amounts collected unauthorized from the petitioner.

4. Contentions of the Respondent:

4.1. The Petitioner requested grid connectivity approval for their 2 x 60 MW coal based power plant at Eguarpalayam, Gummidipoondi for connecting at 230 KV voltage level vide their letter dated 5.4.2010. As per the load flow study conducted, it was proposed to connect the power plant with the proposed 400 KV Thervoikandiagai SS by erecting 230 KV SC line on DC towers from their power plant at Eguarpalayam, Gummidipoondi to the proposed Thervoikandigai 400/230-110 KV SS and erection of one No.230 KV bay at Thervoikandigai SS.

4.2. The Petitioner has requested the name change from M/s.ARS Metals Pvt.Ltd., to M/s.A.R.S.Energy Pvt.Ltd., and the name transfer approval has been accorded to the petitioner by the O/o Superintending Engineer/EDC/Chennai North vide letter dated 26-3-2015.

4.3. In the meanwhile the petitioner requested approval for the Temporary Grid connectivity of its 1 x 60 MW Generator to Gummidipoondi 230 KV SS at 230 KV level vide its letter dated 11-7-2011 since commissioning schedule of their first Unit

will not match with the commissioning schedule of the proposed Thervoikandigai SS and the Petitioner has given undertaking to bear the cost for both temporary and permanent connectivity schemes vide their letter dated 6-1-2012.

4.4. The establishment and supervision charges of Rs.1,38,79,700/- towards 230 KV bay extension work, testing and commissioning charges and PLCC equipment charges was collected from the petitioner for the temporary connectivity scheme vide B.P.(Per) CH TANTRANSCO proceedings No.23, dt.29-3-2012.

4.5. The approval was accorded for temporary connectivity of the petitioner's first unit of 60 MW with Gummidipoondi 230 KV SS on 15-3-2013. The first unit of 60 MW was synchronized on 30-7-2013 at 13.25 hrs and COD was declared on 10-8-2013. The petitioner is now wheeling 52.964 MW of power to their captive users from their 1 x 60 MW power plant. The establishment and supervision charges are being collected uniformly from all the generators at the rate of 22% of the estimate cost as per B.P.(FB) No.84, dated 10-4-1992. The rate of supervision charge @ 22% of estimated cost is being also adopted by other Government departments.

4.6. The petitioner agreed to pay the establishment and supervision charges for the above works vide their letter dated 6.1.2012. The following works are being carried out by the licensee even though the Generator executes the evacuation scheme works by themselves under 10(1) of the Electricity Act 2003.

- a. Estimation of the evacuation scheme
- b. Issuing standard specifications of Transmission scheme as per TANTRANSCO norms

- c. Issuing LIC (line clear) for erection of line and bay by the generator. In this particular case, TANTRANSCO coordinated with other private generators in that area for backing down their generation to carry out temporary connectivity erection works of their generator as the erection of transmission system by the petitioner was having significant impact in maintaining the grid.
- d. Supervision of the line and bay works is carried out while execution to ensure their standards to avoid mishaps during synchronization of their generator with the grid.

4.7. TANTRANSCO has also carried out backing down of its own generation at North Chennai Thermal Power Station (NCTPS) for above temporary connectivity works. The supervision by the officials of TANTRANSCO is essential, since temporary connectivity line works has been made on the existing TANTRANSCO's Gummidipoondi 230 KV SS and required modification works has also been carried out in the existing transmission lines of TANTRANSCO for which the establishment and supervision charges has been paid by the petitioner. Any mishap during synchronization of any generator with the grid could be avoided only when there is supervision of TANTRANSCO.

5. Written submissions filed by the Petitioner:

5.1. The demand of supervision charges and Commissioning charges at 22% and 10% respectively is without any authority of law nor any regulation or order passed by this Commission. After coming into force of the Electricity Act, 2003, any charges that may be levied, demanded and

collected from the Generating Company or the Consumer, has to be approved by or be pursuant to orders passed by the Commission. There is neither any order passed by this Commission nor any rule, regulations or statutory provisions which permit the Respondent to levy supervision charges or testing and commissioning charges that too at an exorbitant percentage of 22% and 10% respectively.

5.2. The entire Transmission line has been laid by the petitioner under section 10 (1) of the Electricity Act 2003 and is being operated and maintained by the petitioner. No services have been rendered by the Respondent for the said purpose. There has been no inspection, supervision or any assistance rendered by the Respondents in the course of erection and commissioning of the said Transmission Line.

5.3. The Respondent is not entitled to levy, demand or collect supervision charges under the provision and the statute or rules framed by the Government or any regulations passed by this Commission which empowers the Respondents to demand and collect the said amount. The Petitioner has laid the said line at its own cost under section 10 (1) of the Electricity Act, 2003.

5.4. There is no supervision or any service rendered by the Respondents. No manpower was employed by the Respondents for the work of the petitioner. Petitioner itself has employed experienced engineers for supervision and maintenance of the Transmission lines. Transmission lines have not been handed over to the Respondents till date. -

5.5. The Respondents seek to contend that petitioner has accepted to pay the amount and has paid the amount and further seek to place reliance on the Board Proceedings in BP (FB) No.84 dated 10.04.1992 by which 22% of the estimate is authorized to be collected as establishment and general charges for all deposit works being executed by the Board. Reference is also sought to be placed on subsequent Board Proceedings of the year 2012.

5.6. In this connection, the demand is unauthorized and illegal since it is not traceable to any authority under any provisions of the statute rules, regulations or orders passed by the Legislature, Government Order or this Commission.

5.7. There is no estoppel against the statute. The payment was made by the petitioner only out of compulsion as otherwise the work could not be allowed to be carried out by the petitioner. The Respondents being Statutory Authorities functioning under the provisions of the Electricity Act 2003 cannot collect money under any Head unless it is authorized by any valid statutory provisions, rule or regulation.

5.8. The Board Proceedings which are referred to, are misconceived and untenable since 1992 proceedings is under the Old Act and is not saved as per the proceedings of the new Act. The Board Proceedings of the year 2012 does not have any leg to stand since the Board does not have any authority to take a policy decision on its own for levying charges and collecting the same without filing a petition before the Commission and getting orders of the Commission after hearing all the stakeholders. No charges can be levied after coming into force of the Electricity Act, 2003 only if it is

permitted by the Regulations framed by the Commission after following the relevant provision under the Electricity Act. The Respondents in its counter as well as in the argument has not in a position to point out towards any statutory provisions rule or regulations which authorized them to collect the said amount.

5.9. The issue as to whether the licensee is entitled to collect supervision and maintenance charges is covered by the judgment of the Hon'ble Appellate Tribunal for Electricity in AP No.166 of 2010 dated 24-5-2011 wherein the Hon'ble Appellate Tribunal has held as follows:

“The line in dispute is a dedicated transmission line in terms of section 10 of the Electricity Act 2003. Accordingly the line has to be operated and maintained by the Respondent-1 (RR Energy)

The levy of 15% supervision charges are justified in cases where an asset is established by consumer and is handed over to licensee for operation and maintenance. In such cases the asset is to be maintained by licensee for whole of its life including replacement any defective part of the asset during life time at his costs. In the present case line is to be operated and maintained by the Respondent-1. There is no justification for supervision charges.”

5.10. The amount of Rs.1,38,79,700/- and Rs.106.07 Lakhs collected by the Respondents is unauthorized and illegal and should be ordered to be refunded to the petitioner with interest till date of full payment.

6. Findings of the Commission:-

6.1. The prayer of the petitioner is to fix the charges /tariff payable by the Petitioner towards Establishment and Supervision charges for the temporary

transmission lines erected by the petitioner from their own plant to Gummidipoondi 230 K.V.S.S. and testing and commissioning charges payable by the petitioner and consequently direct the respondents to refund the excess amounts collected from the petitioner with interest as contemplated under Section 62(6) of the Electricity Act 2003 and the costs of this proceedings.

6.2. We have anxiously considered the submissions made on behalf of both parties. The main contention of the petitioner is that the demand of supervision charges and commissioning charges at 22% and 10% respectively is without any authority of law nor any regulation or order passed by the Commission.

6.3. The petitioner has further contended that after coming into force of Electricity Act, 2003 any charges that may be levied, demanded and collected from the generating company or the consumer has to be approved by or re-pursuant to the orders passed by the Commission. It is also stated by the petitioner that the entire transmission line has been laid by the petitioner under section 10 (1) of the Electricity Act, 2003 and is being operated and maintained by the petitioner. No services have been rendered by the respondent entitling the respondent for the levy of the above said charges.

6.4. Further, there is no supervision or any services rendered by the respondent, no manpower was employed by the respondent for the work of the petitioner. In order to substantiate the claim, the petitioner has relied upon the judgment of the APTEL in Appeal No.166 of 2010 dated 24-05-2011 wherein the Hon'ble APTEL has held that levy of supervision charges are justified wherein the service line is

established by the consumer and handed over to the Distribution Licensee for operation and maintenance.

6.5. In this connection, the question arises for consideration is whether the respondent is entitled to levy supervision charges and commissioning charges without any authority or provision in the Commission's regulations and whether any services have been actually rendered by the respondent in maintaining the service line in question and also whether the judgments of the Hon'ble APTEL cited above by the petitioner is applicable to this case. In this connection, the provisions of section 46 of the Electricity Act, 2003 would be relevant to quote:-

“The State Commission, may, by regulations, authorize a distribution licensee to charge from a person requiring supply of electricity in pursuance of section 73, any expenses reasonably incurred in providing in any electric line or electrical plant used for the purpose of giving that supply.”

6.6. From the above provision, it is clear that the Distribution Licensee can recover any charge reasonably incurred in providing the electric line or electric plant used for the purpose of giving supply. Further, the respondent has claimed 22% supervision charges and 10% for testing and commissioning charges based on B. P. (Per) Ch No.23 TANTRANSCO Proceedings No. 23 dated 29-03-2012 which has not been objected at the time of submitting the application for Bay extension work, testing and commissioning work and PLCC equipment.

6.7. Further the petitioner has never challenged the said B.P. of the respondent and filed the petition after 2 years from the date of work. The charges levied by the respondent is based on the B.P. Although the approval of the Commission has not

been obtained for the levy of the charges in this case levy of such charges based on the BP reasonably incurred by the Licensee for erection of electric lines cannot be said to be illegal since the Electricity Act, 2003 itself enables the Distribution Licensee to recover the charges reasonably incurred for maintaining any electric lines and the levy of such fees based on the said BP has been in vogue for decades.

6.8. Further, the respondent has submitted that the following services have been rendered by them in this case namely:-

- (i) Estimation of the evacuation scheme.
- (ii) Issuing standard specifications of transmission scheme as per TANTRANSCO norms.
- (iii) Issuing LC (line clear) for erection of line and bay by the generator. In this particular case, TANTRANSCO coordinated with other private generators in that area for backing down their generation to carry out temporary connectivity erection works of the generator as the erection of transmission system by the petitioner was having significant impact in maintaining the grid.
- (iv) Supervision of the line and bay works is carried out by the respondent while execution to ensure their standards to avoid any mishaps during synchronization of the petitioner's power generating plant with the grid.

6.9. Without availing the above services of the respondent, the power generated by the petitioner's plant could not have been evacuated smoothly. Therefore, there is a clear proof that the respondent has rendered necessary services in the

evacuation of power generated by the person. The only question left to be decided now is whether the judgment dated 24-05-2011 in Appeal No. 166 of 2010 applicable to this case. In this connection, the following observation of the Hon'ble APTEL would be relevant:-

“The levy of 15% supervision charges are justified in cases where an asset is established by consumer and is handed over to licensee for operation and maintenance. In such cases the asset is to be maintained by licensee for whole of its life including replacement any defective part of the asset during life time at his costs.”

6.10. In the instant case, the respondents have stated that the supervision charges and testing and commissioning charges were collected only towards the erection of 230 KV line for connecting the petitioner's 60 MW power plant with the grid and not for the maintenance of the aforesaid line.

6.11. In the order of the Hon'ble APTEL, it is stated that the supervision charges is for the entire life of the plant including any replacement of defective part of the asset during its life time and in the instant case the supervision charges and testing and commissioning charges were levied only for the interfacing work of the petitioner's 60 MW power plant with the grid as stated in para 6.8. and not for the maintenance of the aforesaid transmission line. Therefore, the Hon'ble APTEL's order is not squarely applicable and the collection of supervision charges and testing and commissioning charges are justifiable.

6.12. Further, it is noticed that the supervision of line and bay works are carried out by the respondent while execution to ensure that standards to avoid any mishap during synchronization of the petitioner's plant with the grid. Without the respondent's service, the power generated by the petitioner's plant cannot be evacuated.

6.13. Therefore, the Commission is of the view that the respondent has rendered the services and accordingly the collection of 22% supervision charges and 10% of testing and maintaining charges are justified.

6.14. The respondent has collected supervision charges, testing and commissioning charges etc. from the petitioner under their BP (FO) No. 84 dated 10-04-1992 and B.P. (Per) Ch No.23 TANTRANSCO Proceedings No. 23 dated 29-03-2012. From the records submitted by the respondent, it is observed by the Commission that before the synchronization, both the petitioner and the respondent have exchanged series of correspondences on the aforesaid matter and the petitioner has agreed and paid the aforesaid charges by virtue of an agreement entered between them.

6.15. The collection of such charges is not inconsistent with any of the provisions of the Electricity Act, 2003 and hence the order issued in the said B.P. before coming into force of the Electricity Act, 2003 is saved by the section 185 of the said Act. In case the fees already collected from the generator is ordered to be refunded, then the Commission would be flooded with similar claims from the other persons, who have already remitted such fees and this exercise would cause huge

financial crisis to the public exchequer which ultimate affect the consumers to whom such charges are passed through tariff. However, since the levy of such fees has not been approved by the Commission, the respondent is directed to send a separate proposal to the Commission for regulatory approval following the usual procedures within a period of 30 days from the date of this order.

In the result, the petition is dismissed.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

//True Copy//

(Sd.....)
Secretary
Tamil Nadu Electricity
Regulatory Commission