

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.Prabhakara Rao **Member**
and
Thiru.K.Venkatasamy **Member (Legal)**

D.R.P. No.9 of 2015

M/s. A.R.S. Metals (P) Ltd.
(Presently known as M/s A.R.S. Energy Pvt. Ltd.)
No. D-109, 2nd Floor,
LBR Complex,
Anna Nagar East, Chennai – 600 102

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

Vs.

1. The Director / Operation
TANTRANSKO
144, Anna Salai,
Chennai - 2
2. The Superintending Engineer,
Chennai Electricity Distribution Circle / North,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai – 2

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

Dates of hearing : **17-09-2019; 15-10-2019; 12-11-2019;**
28-01-2020; and 27-10-2020

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

The D.R.P.No.9 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 and all other connected records and after hearing both the parties passes the following:-

ORDER

1. Prayer of the Petitioner in DRP No.9 of 2015:-

The prayer of the petitioner is to fix the supervision charges payable by the petitioner in the erection of 230 KV temporary connectivity line from the plant to Gummidipoondi 230 KVSS. and consequently direct the Respondents to refund the excess amounts collected with interest as contemplated under Section 62(6) of the Electricity Act 2003 and costs of this petition.

2. Facts of the case:-

The present petition has been filed to seek fixation of Supervision charges for erection of 230 KV temporary connectivity line from the plant to Gummidipoondi 230 KVSS.

3. Contentions of the Petitioner:-

3.1. The petitioner submits that it has established 1 x 60 M.W. Coal based captive generating plants at No.207, Sithurnatham, Sirupulalpet and Eguvarpalayam Village, Gummidipoondi Taluk, Thiruvallur District. The petitioner has also obtained grid connectivity from the respondents and achieved commercial operation on and from 25.06.2013.

3.2. The 1st Respondent raised a demand for the payment of Rs.106.07 lakhs in Cr.No.Dir/0/SE/LD&GO/EE/OA/AEE2/F.ARS Metals/D857/13 dated 18.05.2013 towards supervision charges in the erection of a 230 KV S/C. Line from the plant of the petitioner at Gummidipoondi to Gummidipoondi S.S. for

temporary connectivity.

3.3. The respondents ought to have approached this Commission for fixation of the Supervision charges before collecting such huge amounts from the petitioner. The following requires consideration of the Commission:-

- i) The 1st Respondent has demanded and collected the said Supervision charges without the authority of law nor obtained approval from this Commission;
- ii) The Respondents have not followed any specific regulation or order to demand and collect the supervision charges from the petitioner;
- iii) In fact the temporary transmission lines are erected by the petitioner and the lines are not supervised by any officer of the respondents till it is commissioned. Therefore claiming such huge amount is illegal arbitrary and untenable under law.

3.4. The petitioner is hence constrained to file this petition before this Hon'ble Commission for redressal of its grievances to fix the appropriate charges/tariff payable by the petitioner towards supervision charges for the erection of 230 K.V. temporary connectivity line from the plant to Gummidipoondi 230 K.V.S.S. for direction to refund the excess amounts collected unauthorisedly from the petitioner.

4. Contentions of the Respondents:-

4.1. The petitioner requested grid connectivity approval for its 2 x 60 MW coal

based power plant at Eguarpalayam, Gummidipoondi for connecting at 230KV voltage level vide letter dt.5.4.2010. As per the load flow study conducted, it was proposed 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.A.R.S Metals Pvt. Ltd to M/s A.R.S Energy Private Ltd and the name transfer approval was 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 vide their letter dt.11.07.2011 for the Temporary Grid connectivity of their 1 x 60 MW Generator to Gummidipoondi 230 KV SS at 230 KV level since their commissioning schedule of their first Unit will not match with the commissioning schedule of the proposed Thervoikandigai SS and the petitioner have given undertaking to bear the cost for both temporary and permanent connectivity schemes vide their letter dt.6.1.2012.

4.4. The approval was accorded vide B.P. (Per) CH TANTRANSCO Proceedings No.23, dt.29.3.2012 for the erection of temporary connectivity scheme by the petitioner for connecting their 1x60 MW Generator to Gummidipoondi 230 KV SS on payment of necessary establishment and supervision charges.

4.5. As requested by the petitioner it was permitted to take up the erection of temporary

connectivity 230KV line from their 1x60 MW plant to Gummidipoondi 230 KV SS of 7 KM distance on payment of necessary establishment and supervision charges to TANTRANSCO.

4.6.It was agreed by the petitioner vide its letter dt.25.3.2013 and dt.18.5.2013 to bear the cost towards erection of above 230KV temporary connectivity line.

4.7. The petitioner was requested vide letter dt.18.5.2013 to remit an amount of Rs.106.07 Lakhs towards establishment and supervision charges @ 22% for the erection of 230KV line and testing and commissioning charges @ 10% and the petitioner remitted the above amount in the Office of Superintending Engineer/Chennai Electricity Distribution Circle/ North vide PR No.404Q055181, dt.20.5.2013.

4.8. At therequest of the petitioner approval was accorded for temporary connectivity of their first unit of 60 MW with Gummidipoondi 230KV SS on 15.03.2013. The first unit of 60 MW was synchronised on 30.07.2013 at 13.25 Hrs and COD was declared on 10.08.2013.

4.9. The petitioner is now wheeling 52.964 MW of power to their captive users from their 1 x 60 MW power plant.

4.10. 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, dt.10.04.1992.

4.11. The rate of supervision charge @ 22% of estimated cost is being also adopted by other Government departments.

4.12. 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 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 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.

4.13. TANTRANSCO has also carried out backing down of its own generation at North Chennai Thermal Power Station (NCTPS) for above temporary connectivity line erection works.

4.14 The supervision by the officials of TANTRANSCO is essential, since

temporary connectivity line works has been made on the existing TANTRANSCO's Gummidipoondi 230KV 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.

4.15. Any mishap during synchronization of any generator with the grid could be avoided only if there is supervision by TANTRANSCO.

5 Findings of the Commission:

5.1 This petition has been filed to fix the supervision charges payable by the Petitioner in the erection of 230 KV temporary connectivity line from the plant to Gummidipoondi 230 KV Sub-station and consequently direct the respondents to refund the excess amounts collected with interest as contemplated under section 62(6) of the Electricity Act, 2003. In this case, the establishment and supervision charges had been collected only towards the supervision of the erection of 230 KV line for interfacing the Petitioner's 60MW generator with the grid and not for the maintenance of the same.

5.2 The respondent has drawn the attention of the Commission to the provisions of section 46 of the Electricity Act, 2003, which provides as follows:

"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 electric plant used for the purpose of giving that supply".

5.3 From the above, it is clear that respondent is entitled to collect a reasonable fees for the expenses incurred for providing any electric line. Further, the following

works have been executed by the respondent in connection with the evacuation of the electricity from the Petitioner's power plant:-

- (i) Estimation of 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 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.
- (iv) 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.

5.4 The orders of Hon'ble APTEL dated 24-05-2011 in Appeal No.166 of 2010 relied upon by the Petitioner to advance their claim for refund of amount collected from them and for fixation of charges / Tariff payable by the Petitioner for their power plant connected at Gummidipoondi 230 KV S.S has no bearing to the facts of this case for the reason that the asset i.e. the line was created by the RR Energy Ltd., and they intended to maintain the line by themselves in accordance with the provisions of section 10(1) of the Electricity Act, 2003. To this extent for creation of the line RR Energy Ltd., obtained prior approval of the State Government under Section 68 of the Act was obtained.

5.5 It is seen that the charges were paid without any basis of protest for interfacing the Company's 60MW generator with the grid and further the respondent is maintaining the asset as and when requested by the Petitioner and in such cases the responsibility of operation and maintenance of the line would be

that of the respondent. To this extent, the levy of charges is justified and valid in law. Hence the Petitioner is not entitled to refund of charges.

5.6 Further, TANTRANSCO has also carried out backing down of its own generation at North Chennai Thermal Power Station (NCTPS) for above temporary connectivity works and 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 have been paid by the Petitioner. Mishaps during synchronization of any generators with the grid could be avoided only under the supervision of TANTRANSCO.

5.7 The Commission has already issued orders in DRP No.3 of 2014 dated 28-01-2020 filed by M/s.Suryadev Alloys and Power Pvt.Ltd., It has been held by the Commission in that case as follows:

"5.6 From the records submitted by the respondents it is seen that the Petitioner has accepted to pay the necessary Establishment and Supervision Charges as per the guidelines without any protestafter agreeing upon to pay the charges at the rate under the established proceedings as per BP(FB) No.84, dated 10-04-1992 and after having availed the services of the respondent, denial of such charges now is only an afterthought".

5.8 The above said order will squarely apply to this case also. The respondent has claimed the supervision charges based on the BP(FB) No.84, dated 10-04-1992 which was not objected to by the Petitioner at the time of submitting application for temporary grid connection. Further, the Petitioner has never

challenged the said BP. The collection of such charges is not inconsistent with any of the provisions of the Electricity Act, 2003 and hence the orders issued in the said BP before coming into force of the Electricity Act, 2003 is saved by the provisions contained in 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 other persons who have already remitted such fees and this exercise would cause huge financial crisis to the public exchequer which ultimately affect the consumers to whom such charges are passed through tariff revision. 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 for such levy of fees following usual procedures within a period of 30 days from the date of this order. In view of the above, we hold that the petitioner is liable to pay the supervision charges

In the result, the petition is dismissed.

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

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

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

//True Copy//

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