

Record of proceedings dated 25.01.2024

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 17 of 2023	Garrison Engineer (I) R&D RCI	TSTRANSCO & TSSPDCL

Petition filed seeking orders for handing over of connected assets to MES created from defence funds at RCI, Hyderabad to establish direct grid connectivity being deemed licensee to enable MES to operate as deemed distribution licensee in Telangana State.

Sri. M. A. Dubey, Director E/M for the petitioner and Sri Mohammad Bande Ali, Law Attaché for respondents are present. The representative of the petitioner stated that the petitioner has applied for not only transfer of assets but the status of deemed licensee. The submissions have been made in writing with regard to transfer of assets and would like to reiterate the submissions made earlier in the matter. The Commission may consider according the prayer sought for in the petition.

The representative of the respondents stated that there is no application for grant of deemed licensee status. Unless the Commission declares the petitioner to be a deemed licensee, there is no case for transfer of assets as sought by the petitioner. The petition has not filed any application with regard to deemed licensee status. In terms of GTCS the line once established becomes part of the property of the licensee and cannot be claimed by anybody. Such lines and equipment though paid for by the petitioner as consumer cannot be handed over to the consumer itself unless the status has changed. Even in those circumstances also, the lines will not be handed over to another licensee and the other licensee has to lay its own lines.

The representative of the respondents further stated that the maintenance of lines in favour of another licensee also would not arise even if the amount is paid. For transmitting power, the petitioner has to avail open access both for transmission and distribution networks and pay the necessary tariff as determined by the Commission. Thus, the petitioner is not entitled to any relief including the purported request for deemed licensee status. Having heard the parties to the petition, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 20 of 2023	M/s. Sarda Metals & Alloys Ltd.	TSDISCOMs

Petition filed seeking directions to the respondents to pay the surcharge on delayed payments of regular power supply bills and back down compensation amount along with interest.

Sri. Challa Gunaranjan, Counsel for petitioner along with Sri. Deepak Chowdary, Advocate and Sri. Mohammad Bande Ali, Law Attaché for respondents are present. The counsel for petitioner stated that the petitioner was awarded with supply of power on short term basis in the year 2019. For that purpose, the DISCOMs have issued a purchase order. The conditions imposed in the purchase order include the liability of the DISCOMs to pay compensation towards backing down of more than 30% of the quantum of power contracted and any dispute arising out of the purchase order is subject to jurisdiction of the Commission.

The counsel for petitioner stated that now a counter affidavit is filed stating that the petition is not maintainable before this Commission, which is contrary to the understanding between the parties. A reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of M/s. Energy Watchdog decided in the year 2017 but the said judgment is inapplicable in this case. It is stated that the Hon'ble High Court of Andhra Pradesh as then was, had in the matter of M/s. A. P. Gas Power Corporation Limited vs. APERC held that the Commission is required to decide all the issues including the preliminary objections at one stretch and not in a piece meal, hence the Commission may decide the matter on merits.

The representative of the respondents stated that the petitioner is a generating company in the state of Andhra Pradesh and is supplying power to DISCOMs in Telangana and as such, it becomes an interstate project, which constitutes a composite generation. In terms of section 79 of the Electricity Act, 2003, the petitioner has to approach the Central Commission to settle the issue as it involves a composite generation and supply. He emphatically relied on sec 79 of the Act, 2003 to demonstrate that it is a composite scheme and a decision of the Hon'ble High Court for the States of Andhra Pradesh and Telangana in the matter of

jurisdiction of the Commission. The said judgment relating to M/s. GVK Industries and others had opined that where the generation is taking place in one state and supply is undertaken in another state, it would amount to a composite scheme and thereby the jurisdiction of the Central Commission is attracted. As such, this petition is liable to be agitated before the Central Commission only. The petitioner ought to have filed this petition before the CERC in view of the decisions of the Hon'ble High Court and Hon'ble Supreme Court.

The representative of the respondents stated that DISCOMs are relying on the decision rendered in M/s. Energy Watchdog by the Hon'ble Supreme Court, wherein the interpretation has been made to sec 79 of the Act, 2003, specifically with relation to the composite scheme wherein the petition also fits into the case. Therefore, the Commission may refuse to entertain the petition filed by the petitioner. Also, it is stated that issue of deciding on merits would arise only if the petitioner succeeds in the preliminary issue. There are good number cases rendered by the Hon'ble Supreme Court and the Hon'ble High Court wherein it had been pointed out the preliminary issue has to be taken at first instance. Thus, the petition may be rejected as not maintainable.

The counsel for petitioner stated that the respondents could not have taken the preliminary objection in the teeth of the fact that section 79 of the Act, 2003 is not attracted. There is subtle distinction between section 86 (1) (f) with section 79 of the Act, 2003. Sec 86 (1) (f) is widely encompassed with the words licensees and generators and does not rely on other functions of the Commission for adjudication, whereas sec 79 is self-restrained with a limitation to look into only the issues arising out of clauses (a), (b), (c) and (d) only of that particular sec for adjudication. Thus, the present petition is maintainable before the Commission.

The counsel for petitioner stated that definition provided in the Act, 2003 at sections 2 (38), 2 (39) read with section 14 would make it clear that it is the licensees only in whose cases the state Commission is empowered to adjudicate. The licensees relating to distribution are not amenable to the Central Commission jurisdiction directly. Moreover, the clauses in the purchase order are specific and clear and as such, jurisdiction of the Commission is not ousted. Therefore, the

Commission may consider deciding the matter on merits. Having heard the parties to the petition, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 29 of 2023	M/s. Zuari Cement Limited	TSTRANSCO & TSSPDCL along with its officer

Petition filed questioning the levy of penalty towards reverse power relay mechanism and surcharge thereof for the period from 11.09.2007 to 18.10.2023 and other consequential reliefs.

Sri. Challa Gunaranjan, Counsel for petitioner along with Sri. Deepak Chowdary, Advocate and Sri Mohammad Bande Ali, Law Attaché for respondents are present. The counsel for petitioner stated that the issue relates to the year 2007 wherein the licensee has raised demand towards penalty for exceeding the contracted demand. The petitioner had established a CPP and had availed a demand of 3125 KVA for its plant where the captive power plant (CPP) is co-located. The CPP was under trial run after synchronization with the grid at the relevant time. The petitioner has a sister unit at Yerraguntla.

The counsel for petitioner stated that during the course of trial run as the CPP was being tested for the capacity, it had opened the breakers and allowed power supply to be made available to its sister unit for the month of August, 2007. Resultantly, the RMD recorded by the petitioner at the location where the power supply is availed, has exceeded the contracted demand and the total RMD recorded was 21287.5 KVA against the CMD 3125 KVA. Thereby, it exceeded the demand by 18,152.5 KVA. Consequent liability is Rs. 1,18,26, 046/-.

The counsel for petitioner stated that aggrieved by the demand, the petitioner had approached the Hon'ble High Court by filing a writ petition questioning the levy of amount as penalty for exceeding the CMD. There was a threat of disconnection and as such had obtained stay of the demand made by the DISCOM.

The counsel for petitioner stated that the writ petition had been disposed of by order dated 21.06.2023 with a direction that the licensee shall give an opportunity of being heard and thereafter, decide the matter on merits. The opportunity was given

on 06.09.2023, an order was passed subsequently determining the penalty as well as interest thereon at Rs. 68,35,336/- being the balance amount and Rs. 2,08,71,014/- towards surcharge, respectively. It is stated that an issue relating to reverse power relay is also clubbed to this aspect. The petitioner has complied with the technical requirements to the satisfaction of the officers of the licensee as well as TSTRANSCO.

The counsel for petitioner stated that pursuant to the said order, the petitioner has been threatened with disconnection of its power supply. Therefore, the petitioner had approached the Commission with this petition. However, in view of the threat of disconnection, the petitioner had also approached the Hon'ble High Court and obtained interim protection by filing writ petition in W. P. No. 31189 of 2023 on 09.11.2023. Subsequently, the Commission has taken up the matter and passed interim order dated 16.12.2023.

The counsel for petitioner stated and relied on the judgment of the Hon'ble Supreme Court reported in 2005 (7) SCC 615 with regard to levy of penalty and in the other case reported in 1962 (2) SCC 627 with regard to imposition of penalty. It is stated that penalty will not attract further penalty or surcharge thereon. The CPP unit was under trial run and all the parameters were required to be tested. Therefore, an attempt was made to generate and supply to the sister unit. In that process, there occurred exceeding of demand contracted. Moreover, during the trial run no penalty can be imposed.

Thus, the counsel for petitioner sought interference by the Commission towards levy of penalty and further surcharge on such penalty.

The representative of the respondents stated that the petitioner has not made out a case for interference in the matter. The claim is with regard to penalty imposed towards exceeding the contracted demand in terms of the tariff order passed by the Commission. As the petitioner had exceeded the contracted demand, it attracted penalty. The penalty so levied got stayed by the Hon'ble High Court and is now sought to be realised, hence surcharge is imposed.

The representative of the respondents stated that penalty is not surcharge and surcharge is not penalty. The petitioner had withheld the amount due to the licensee and thus, incurred the levy of surcharge. The Hon'ble High Court, while disposing of the writ petition in the earlier round, had fairly required licensee to give an opportunity and decide the matter, which has been complied with. Under the conditions of supply, the petitioner is estopped from undertaking sale or supply to another consumer and such action also invites penalty. Further, the petitioner ought to have obtained proper permission before undertaking testing of the CPP including but not limited to LTOA. The petitioner is liable to pay the penalty as it had exceeded the contracted demand, which is not denied by the petitioner. Also, the petitioner could not have interfered with the equipment of the licensee in the process of testing of its CPP.

Thus, the representative of the respondents endeavoured to submit that the petitioner is not entitled to any relief as submitted earlier. Therefore, the petition is liable to be dismissed.

The counsel for petitioner stated that the claims made by the licensee are contrary to the principle of non-levying surcharge on penalty. The exceeding of RMD on the supply extended to the other unit is not at all concerned with the demand availed from the licensee. The petitioner was seeking to extend supply from its CPP. Further, while deciding the applicable penalty, the respondents resorted to taking the applicable rates as of present day and not the rates applicable in the year 2007. Thus, the claims made are liable for dispute.

The counsel for petitioner stated that the claims made towards penalty and consequential surcharge cannot be said to be in accordance with applicable tariff and regulations. Inasmuch as levying penalty itself is erroneous and further levy of surcharge is contrary to law. Therefore, the Commission may consider setting aside the demand raised by the respondents. Having heard the parties to the petitioner, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman