



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: Smt. UDAYA GOURI

Tuesday the Twenty Sixth Day of November 2019

Appeal No. 20 of 2019-20

Preferred against Order dt:31.07.2019 of CGRF in
CG No.333/2019-20 of Rajendra Nagar Circle

Between

M/s. Salasar Iron Steel Pvt.Ltd., represented by its Director Sri. Vinod Kumar
Agarwal, Flat No. 101, 1st Floor, Satya Sarovar Complex, High Court Road,
Hyderabad - 500 002. Cell: 9393312319, 7036205211.

... Appellant

AND

1. The ADE/OP/Shadnagar/TSSPDCL/RR Dist.
2. The DE/OP/Shadnagar/TSSPDCL/RR Dist.
3. The SAO/OP/Rajendra Nagar Circle/TSSPDCL/RR Dist.
4. The SE/OP/Rajendra Nagar Circle/TSSPDCL/RR Dist.

... Respondents

The above appeal filed on 13.08.2019, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 30.10.2019 at Hyderabad in the presence of Kum. Nishitha - On behalf of the Appellant Company and Sri. P. Raja Ram Reddy - DE/OP/Shadnagar for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

AWARD

This is an Appeal filed against the orders of the CGRF/Rajendranagar Circle in CG No. 333/2019-20 dt.31.07.2019.

2. The contention of the Appellant is that it has filed a complaint before the CGRF, Rajendra Nagar Circle vide CG No.333/2019-20 seeking for refund of

Rs 30,00,000/- which was paid by the Appellant towards the DC Charges for 2500 KVA on its service connection No. HT SC No. RJN 1597 along with interest @ 24% P.A. from the date of payment till the date of refund of the amount, but the learned CGRF failed to appreciate their grievance and rejected the complaint. As such aggrieved by the same the present Appeal is filed.

3. The Appellant contended that it is a company registered under the Companies Act under the name and style of Salasar Iron and Steel Private Limited and having a HT Consumer bearing No. H.T No. RJN 1957 with Contracted Maximum Demand (CMD) of 9990 KVA for supply of energy and demand from the respondents.

That the appellant filed the C.G. No. 333/2019-20/Rajendra Nagar Circle with prayer to refund Rs. 30,00,000/- (Thirty lakhs only) collected towards Development Charges @ Rs. 1,200/- per KVA for 2500 KVA.

That the respondent Nos. 2 and 3 appeared before Hon'ble CGRF II at the time of hearing. During the hearing the Respondent No. 2 and 3 filed the letter no. SE/OP/RJNR/SAO/HT/D. No. 108/2019 dated 12.7.2019.

That the CGRF has passed the award dated 31.7.2019 of C.G. No. 333/2019-20/Rajendra Nagar Circle and rejected the complaint.

That the CGRF has not considered the following facts raised by the Appellant more specifically pertaining to the provisions of Regulation 4 of 2013 dated 29.7.2013 before passing the award.

The very first heading of the regulation LICENSEE'S DUTY FOR SUPPLY OF ELECTRICITY ON REQUEST AND RECOVERY OF EXPENSES FOR PROVIDING ELECTRIC LINE OR ELECTRICAL PLANT.

4. The Appellant contended that under Section 46 of Electricity Act'2003 the State Commission has authorised the Distribution Licensee to recover the expenses reasonably incurred in providing any electrical line or electrical plant used for the purpose of giving supply to a person pursuant to section 43 and that the Distribution Licensee shall be responsible to collect all service line charges and Development charges pertaining to EHT services and remit the same to the respective transmission

Licensee. The Transmission Licensee shall also take up the work after receipt of the service line charges and Development charges as mentioned in Clause 6 to 8.

5. The Appellant stated that **Clause 6 mentions “Right of the Distribution Licensee / Transmission Licensee to recover expenditure:** (2) Subject to the provisions of the Act and this Regulation and subject to such directions, orders or guidelines the Commission may issue from time to time, every Distribution / Transmission Licensee is authorized to recover from an applicant, requiring supply of electricity, any expenses that the Distribution / Transmission Licensee shall be required to reasonable incurred to provide any electric line specifically for the purpose of giving such supply to the applicant.”

(3) Before taking up the erection of electric line required for extending supply to the applicant, the Distribution / Transmission Licensee shall estimate the Service Line Charges for erecting such electric line as per the cost data and present the same to the applicant for making payment to the Distribution Licensee.

Clause 7 mentions Specific provision for Service Line Charges.

“(1) In case of applications for new connections, where such supply requires extension of line from the existing distributing main to the consumer’s premises, the Distribution / Transmission Licensee shall estimate the cost of Service Line, excluding the cost of terminal and metering arrangements at the premises of the consumer. The Distribution / Transmission Licensee shall estimate the cost of Service Line as per the latest cost data based on actual survey and line length. The Distribution / Transmission Licensee shall commence the work after receipt of estimated charges from the application.”

While Clause 8 mentions Specific provision for Development charges

“(1) The Distribution Licensee shall collect development charges subject to the provision of Act and this Regulation and subject to such directions, orders or guidelines, the commission may issue from time to time. The Distribution Licensee is authorized to recover from an applicant requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurred in extending power supply to the applicant.”

8. Annexure I Schedule of Development Charges. The heading of the table is Proposed Development Charges.

It is pertinent to note at this juncture once again that the Section 46 of Electricity Act, 2003 is not conferred with the powers to collect development charges. Further, please note that the Regulation 4 of 2013 dated 29.7.2013 is pertaining to supply to EHT service only subject to provision of Electricity Act, 2003 but not pertaining to supply to HT service.

In view of the above said facts, the appellant pray to this Hon'ble Vidyut Ombudsman for the State of Telangana may be pleased to allow the present appeal directing the Respondents:-

UNDER SUB CLAUSE 3.35 OF REGULATION 3 OF 2015:

1. To set aside the Respondent No. 1 order dated 31.7.2019 passed in C.G. No. 333/2019-20/Rajendra Nagar Circle;
2. To refund Rs. 30,00,000/- (Rupees Thirty lakhs only) with interest @ 24% per annum as prescribed in Clause 4.7.3 of Regulation 5 of 2004 dated 17.3.2004 with effect from the date of payment to date of refund; and
3. Any other order or orders as may deem fit and proper by the Hon'ble Vidyut Ombudsman for the State of Telangana under the circumstances of the case and in the interest of justice and fair play.

6. Reply by DEE/OP/TSSPDCL/SHADNAGAR:-

That the complainant is the HT consumer of M/s. Salasar Iron and Steels Pvt. Ltd, bearing SC No. RJN1957 released on 12.12.2013 under Cat-I(A) with CMD of 3567 KVA. The consumer paid the development charges for releasing of additional load of 1500 KVA and 1000 KVA on 22.04.2016 for Rs 18,00,000/- and 27.12.2018 for Rs 12,00,000/- respectively.

That in Regulation 4 of 2013 of APERC there is specific provision for collection of Development charges under Clause 8, the procedure for collection of Development charges is also laid down under Clause 8 and the same is as follows:-

“Clause 8: Specific provision for development charges:-

The Distribution Licensee shall collect development charges subject to the provisions of the Act and this regulation and subject to such directions, orders or guidelines, the Commission may issue from time to time. The Distribution Licensee is authorised to recover from an applicant, requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurrent in extending power supply to the applicant.

The development charges on normative basis are arrived using shallow approach limiting the network cost to the next immediate higher voltage level. The Distribution Licensee shall levy development charges on per kVA/kW basis as per the schedule (Annexure-I) enclosed.

The Distribution Licensee shall recover full cost of transformer in case of commercial complexes, apartments and multi storied buildings where a dedicated transformer is provided while extending new LT service connections. In such cases, the Distribution Licensee is not entitled to collect development charges and shall own the transformer and maintain it. The Distribution Licensee shall not extend power supply to any other consumer from the dedicated transformer other than the consumer who has borne the foil cost of Transformer.

In case of LT supply, the responsibility of erection of distribution transformer lies with the Distribution Licensee and shall not charge cost of transformer to any consumer except those consumers mentioned in para 3 above and levy only development charges.

The Distribution Licensee shall not charge development charges to a consumer who seek temporary supply.

The Distribution Licensee is entitled to collect difference cost of development charges, in case of change of category from lower development charges category to higher development charges category.

The Distribution Licensee is not entitled to collect development charges for restoring the de-rated capacity to the original level.

If any existing consumer requests for splitting of service into two different categories, the Distribution Licensee is not entitled to collect full development charges. The DISCOM is entitled to collect shortfall amount if any resulting out of splitting. For example, a 50 kW commercial service may require splitting of his service into two categories, viz., 20 kW commercial category and 30 kW industrial category.

Subject to the provisions of Act and this Regulation and subject to such directions, orders or guidelines issued by the Commission, the Distribution Licensees shall file revised development charges, if required, for approval, once in five years along with MYT proposals.”

Further submitted that schedule of development charges were mentioned in Annexure-1 of Regulation 4 of 2013 of APERC wherein it was clearly mentioned about the collection of development charges for HT services of 11 KV and 33 KV and the same is being printed in Tariff Order from time to time.

In this connection it is not out of place to submit that extension of supply under EHT comes under the purview of TSTRANSCO. For extension of supply under EHT within the stipulated time by TSTRANSCO, the required charges i.e. service line charges and Development charges are to be collected by DISCOM and remitted the same to TRANSCO. Further activity of collection of Development charges pertains to EHT and remitting the same to TSTRANSCO, does not mean that not to collect development charges from HT consumers.

Further it is once again reiterate that Clause 8(1) and (2) of Regulation 4 of 2013 of APERC authorise the DISCOM to collect development charges as per schedule of Development charges.

In view of the above submission it is requested to arrange to dismiss the grievance of the consumer or pass such other suitable orders in the matter.

7. REJOINDER FILED BY APPELLANT.

In reply to para No 2:

The clause No. 8 of regulation no 4 of 2013 dated 29.7.2013 will be applicable after applicability of clause 1 to 7 of said regulation. The relevant portion of provisions of clause 1 to 7 which are relevant in the present appeal duly highlighted and underlined are furnished as follows:

Clause 2 (K):

“Electrical plant means any plant, equipment, apparatus or appliance or any part therefore used for or connected with, the generation, transmission, distribution or supply of electricity but does not include”.

(i) And electrical line:

(ii) A meter used for ascertaining the quality of electricity supply to any premises;
or.

(iii) An electrical equipment, apparatus or appliance under the control of the consumer.

(m) “Extra High Tension (EHT) supply means supply voltage above 33000 volts”.

Clause 4 (3):

The Distribution License shall be responsible to collect all service line charges and development charges pertaining to EHT services and remit the same to the respective transmission license. The transmission licensee shall take up the work after receipt of service line charges and development as mentioned in clause 6, clause 7 and clause 8. The Distribution Licensee shall work in coordination with Transmission Licensee in respect of releasing the service within stipulated time permitted by the commission.

In view of the above, clause 6, 7, and 8 of regulation 4 of 2013 are applicable only to the EHT service as specified in clause 4 (3) of said regulation. As this applicant is a HT consumer the same is not applicable to the Appellant.

Further, please note that as per clause 8(1) of regulation 4 of 2013 “The Distribution Licensee shall collect development charges subject to the provision of Act”. In the provision of electricity Act, 2003 there is no provision for collection of development charges. However, as per section 46 of Electricity Act, 2003 “Any expenses reasonably incurred in providing any electric line or electrical plant used for

the purpose of giving that supply.” The definition of Electrical plant as per clause 2 (k) of regulation 4 of 2013 is as follows.

“Electrical plant means any plant, equipment ,apparatus or appliance or any part therefore used for or connected with the generation, transmission, distribution or supply of electricity but does not include.

As per annexure 1 of regulation 4 of 2013 the proposed development charges for HT consumer is 33KV Rs 1,200/- per KVA or part thereof, of the contracted demand please note that this Rs 1,200 per KVA include the expenditure of electric line and electrical plant.

In the present case the appellant has incurred total service line charges duly paying 10% supervision charges to the respondents. Also paid Rs 30,00,000/- i.e Rs 1,200/- per KVA X 2500 KVA to the respondents towards development charges for providing additional load of 2500 by using existing distribution system. In other words no fresh amount is incurred on the distribution system for providing additional load of 2500 KVA.

Hence the Respondents should furnish the details of expenditure incurred by them on any plant, equipment, apparatus or appliance or any part thereof used for or connected with the generation, transmission, distribution or supply of electricity for providing additional load of 2500 KVA to the Appellant along with evidence. Also please furnish the details of any amount paid to the Transmission Licensee out of Rs 30 lakhs as mentioned Clause 4(3) of Regulation 4 of 2013.

It is pertaining to note at this junction that as per annexure 1 of regulation 4 of 2013 Rs 1,200/- per KVA or part thereof is mentioned.

It is not out of place to reiterate that as per section 46 of Electricity Act 2003 “any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

It is pertinent to note at this the Hon'ble High Court of Andhra Pradesh in its common order dt. 05.10.2010 in WP No. 4010, 4013, 4328, 24082 and 25597 of 2005 decided that “ making demands for payment of notional development charges for new connections and for additional loads is arbitrary and illegal (page No. 65 of main

appeal).” Further vide order dt.08.04.2015 in WP No. 9828 of 2015 allowed the Appeal “in terms of ratio laid down by the learned single judge of this Court in the said common order dt.05.10.2010 WP No. 4010 of 2005 and batch.

In reply to Para No.3

The Hon’ble TSERC in the Tariff Order of FY 2016-17 at Page No.236-237 discussed development charges for the category of HTI(A) - Seasonal Industries only in clause 9.128 (page No.237). But not discuss for HT 1(A) General. Hence the statement is liable to be set aside.

In reply to Para No.4

The statement of Respondent No.5 stating that “collection of development charges pertaining to EHT and remitting the same to Transco does not means that not to collect development charges from HT consumer.”

The admission of the Respondent no. 4 is very clear that the development charges mentioned in Regulation 4 of 2013 is applicable to EHT supply only and to be remitted to the Transco. Further, he assumed on its own that he can collect the same for the Ht supply also. Hence, the further assumption of the Respondent No.4 is not correct, illegal and liable to be set aside.

In reply to para No.5

The clause No. 8(1) and (2) of Regulation 4 of 2013 is applicable for EHT supply only as prescribed in Clause 4(3) of said regulation. Hence, the same is not applicable to the HT supply of the Appellant.

In reply to Reply No.6

In view of the above stated facts, the Appellant pray to this Hon’ble Authority to allow the Appeal as prayed for.

8. 2nd Rejoinder filed on behalf of the Appellant.

The present appeal is filed in respect of refund of development charges. In this regard the following relevant provision of the GTCS of Development charges is to be noted:-

5.3.3. Development Charges

5.3.3.1 The amount payable by the consumer towards development charges of new connection additional load under LT and HT categories shall be at the rates notified by the company with the approval of the commission from time to time. The consumer shall pay these charges in advance, failing which the works for extension of supply shall not be taken up. These charges are non refundable.

The Respondent No. 4 categorically admitted that they have collected the Development charge as prescribed in Clause 8 of Regulation 4 of 2013.

In this regard the following clause of Regulation 4 of 2013 are to be considered:-

1. Section 46 of Electricity Act, 2013 prescribed power to recover expenditure- The State Commission may by regulation, authorise a Distribution Licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any **Electric Line or Electric Plant** used for the purpose of giving that supply.
2. The heading of regulation 4 of 2013 is “LICENSEE DUTY FOR SUPPLY OF ELECTRICITY ON REQUEST AND RECOVERY OF EXPENSES FOR PROVIDING ELECTRIC LINE AND ELECTRICAL PANT “
3. Clause 2 (j) defined “ Electric Line” means any line which is used for carrying electricity for any purpose and includes : (1) any support for any such line, i.e to say any structure .tower,pole or other things in .on.by or from which such line is, or may be, supported , carried . or suspended (1) Any apparatus connected to any such line for the purpose of carrying electricity (please refer at page No.,84 of main appeal):
4. Clause 2 (k) defined **Electric plant**” means any plant equipment, or appliances or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include (1) and electric line or (1) a meter used for ascertaining the quantity of electricity supplied to any premises or (11) and electrical equipment the quantity of electricity under the control of the consumer (please refer at page No.84 of main appeal);
5. Clause 2 (m) defined as Extra High Tension (EHT) supply means supply voltage **above 33000 Volts.**

6. Clause 2 (n) defined as “High Tension (HT) supply” means supply voltage more than 440 Volts and up to and inclusive of 33000.
7. Clause 4 (3) The Distribution Licensee shall be responsible to collect all service line charges and development charges pertaining to EHT services and remit the same to respective Transmission Licensee. **The Transmission Licensee shall take up the work after receipt of service line charges and development as mentioned in clause 6, clause 7 and clause 8.**
8. Clause 7 Specific provision for service line charges. In case of application for new connections, where such supply requires extension of service line the licensee shall estimate the cost of service line.
9. Clause 8 Specific Provision for development charges. The Licensee is authorised to recover from and applicant requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurred in extending power supply to the applicant.
10. Annexure I Schedule of development charges. Proposed Development Charges for HT consumers of 33 KV Rs. 1,200/- per KVA or part thereof of the contracted Demand.

In view of the above stated facts the following points are to be considered:-

- a) The appellant is not a EHT consumer;
- b) As prescribed in Clause 4 (3) the clause 6, clause 7 and clause 8 are applicable only to the EHT service only;
- c) The proposed rate of Rs. 1,200/- per KVA or part thereof is pertaining to **Service Line Charges and Development Charges;**
- d) As the applicant is HT consumer the Development Charges will not apply ;
- e) The appellant has incurred the total cost of electric Line hence, if at all any charges are to be paid towards development charges shall be restricted to the extent of electric plant only as prescribed in section 46 of electricity act 2003.

9. The Appellant filed a Memo dt.30.09.2019 stating as follows:-

The Appellant pray to this Hon’ble Authority to reopen the Appeal in the interest of justice and fair play on the following grounds:-

- a. This Appellant wish to explain one example of sanction of Additional load of 1000 KVA in which the Electric Line expenses are involved as per estimate sanctioned by the SE/Rajendra Nagar: versus
- b. Development charges of Rs 12,00,000/- has been collected for Additional load of 1000 KVA.

Page No.29:

That the SE/Rajendranagar vide its Memo No.SE/OP/RJNR/COML/DR No.119/18-19/D.No.1243/18 dt.28.09.2018 accorded the sanction of Additional load of 1000 KVA on the payment of the following charges:-

- | | | |
|----|--------------------------------|----------------|
| a. | Estimated service line charges | Rs 11,800/- |
| b. | Development charges | Rs 12,00,000/- |
| c. | Initial Consumption Deposit | Rs 15,00,000/- |
| d. | Total | Rs 27,11,800/- |

Please note that the estimation of service line charges of Rs 11,800/- includes Rs 10,000/- towards estimation of cost of material to enhance the service line capacity which is to be incurred by the Appellant, Rs 1000/- is 10% supervision charges, Rs 90/- is CGST @ 9% on 10% supervision charges and Rs 90/- is SGST @ 9% on 10% supervision charges. Accordingly Rs 10,000/- incurred by the Appellant.

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In view of the above sanction the SE/Rajendranagar vide Lr.No.SE/OP/RJNR/COML/DR No.119/18-19/D.No.1244/18 dt.28.09.2018 informed the Appellant to make the payment of Rs 27,01,180/- which includes Rs 1000/- towards 10% supervision charges, Rs 90 is CGST @ 9% on 10% supervision charges and Rs 90/- is SGST @9% on 10% supervision charges. Rs 12,00,000/- Development charges and Rs 15,00,000/- initial security deposit.. Accordingly the Appellant made the payment.

It is pertinent to note hat for enhancement of CMD of 1000 KVA i.e. from CMD of 8990 KVA to CMD of 9990 KVA the total service line charges or electric line charges for enhancement of line capacity the Appellant incurred an amount of Rs 11,180/- only i.e. Rs 10,000/- material cost, Rs 1000/- supervision charges of 10% of material cost estimation and Rs 180/- GST.

Accordingly, in respect of electric plant, the Appellant is liable to pay, if payable proportionate expenses towards Electric plant expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurred in extending power supply to the applicant i.e. of 1000 KVA additional load instead of that the Respondent collected Rs 12,00,000/- as notional Development Charges for which the Hon'ble High Court decided as illegal arbitrary for new connection and additional loads vide its order dt.05.10.2010 and 08.04.2015 respectively. Also the then Hon'ble APERC in its Annexure I mentioned as Rs 1200/- per KVA or part thereof the Contracted Demand.

In view of the above, if the Appellant is not given an opportunity, the Appellant will be put into huge irreparable loss.

10. The Appellant filed his written arguments dt.22.10.2019 stating as follows:-

As on 28.09.2018, the Respondent No.4 informed the Appellant to enhance the capacity of Electric Line to the extent of 1000 KVA additional load. Accordingly the Appellant incurred Rs 10,000/- on Electric Line.

In respect of Electric Plant the Clause 10 of Regulation 4 of 2013 is to be noted as follows:-

“The Distribution Licensee shall account, under appropriate account heads, all charges recovered by him for erection of electric line/plant for extending supply to the applicant seeking new connection/enhancement of existing load. The amount so recovered shall be deducted from the Gross Fixed Assets to arrive at the value of Net Fixed Assets.”

As per Clause 8(1) of Regulation 4 of 2013 “ The Distribution Licensee is authorised to recover from an Appellant, requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurred in extending power supply to the Applicant.”

As per Clause 10 of Regulation 4 of 2013, it is the prima facie duty of the Respondent No.4 to arrive at the value of Net Fixed Asset i.e.e Electric Plant as on

28.09.2018 through which the additional load of 1000 KVA is extended to the Appellant.

In view of Clause 8(1) read with 10 of Regulation 4 of 2013, the Respondent No. 4 is entitled to recover Development charges towards part of upstream network cost to the extent of 1000 KVA i.e. part of Rs 1200/- per KVA.

However, it is to be noted that the said recovery of Development charges is subject to applicability of Regulation 4 of 2013 to HT consumers.

11. SE/OP/Rajendra nagar circle/TSSPDCL filed his reply vide letter No.218/2019 dt.23.10.2019 as follows:-

With reference to letter under 2nd cited, it is respectfully submitted that the complaint is the HT consumer of M/s salasar iron and steels pvt LTd, bearing SC.No RJN1957 released on 12.12.2013 under Cat-I(A).

Further it is sub limit clause 10 of regulation 4 of 2013 deals with the manner of accounting of adjustment in the books of TSSPDCL internally. Hence the clause is no way related to the consumer.

Further it is once again reiterate that clause 8(1) and 2 of regulation 4 of 2013 of APERC authorize the discom to collect development charges as per schedule of development charges mentioned in annexure-I.

In view of the above submission it is requested to arrange to dismiss the grievence of the consmuer or pass such other suitable orders in matter.

Heard both sides

Issues

12. In the face of the said contentions by both sides, the following issues are framed:-

1. Whether the Appellants are entitled for refund of Rs 18,00,000/- and Rs 12,00,000/- paid respectively towards Development charges for the additional loads of CMD of 1500 KVA as per Clause 4.7.3 of Regulation 5 of 2004?

2. Whether they are entitled for interest @ 24% P.A. on the said amount paid from the date of its payment?And
3. To what relief?

Issues 1 to 2

13. A perusal of the evidence on record shows that the Appellant i.e. M/s. Salasar Iron and Steel Pvt. Ltd. has a service connection bearing HT SC No. RJN 1957 and the same was released initially with a CMD of 3567 KVA under Category IA on 12.12.2013 and subsequently additional CMD was released for 1500 KVA on 22.04.2016 and again 1000 KVA was released on 27.12.2018 and as such they have paid Development Charges for the above additional CMDs released for the additional loads amounting to Rs 18,00,000/- and Rs 12,00,000/- respectively @ 1200/- per KVA. The Appellant replying on Clause 4.7.3 of Regulation 5 of 2004 held that they are not liable to pay such an amount towards Development Charges, as such they have requested the Respondents for the refund of the said amount with an interest @ 24% P.A. w.e.f the date of payment of the said amount till the refund of the same

14. The Appellant stated that the then Hon'ble APERC passed a Regulation No. 3 of 2004 dt.05.03.2004 and as per Clause 7 of the said Regulation in case of High Tension supply where extension of load is required to provide supply, the Respondents are entitled to estimate the cost of the service line on the basis of "Per Kilometer" on the latest cost data as published by the Distribution Licensee. In view of the said Regulation the DISCOM filed revision petitions No.1 of 2004, 2 of 2004 and 3 of 2004 before the Hon'ble APERC for deletion of Clause 5 to 11 of Regulation No. 3 of 2004 and the Hon'ble APERC allowed the said revision petitions and deleted clause 5 to 11 of Regulation 3 of 2004 from the date of Regulation. Aggrieved by the said orders of the APERC some of the stakeholders approached the Hon'ble High Court at Hyderabad vide WP Nos. 4010, 4013, 4328, 24082 and 25597 of 2005 seeking to set aside the above orders of APERC and for restoration of Clause 5 to 11 of Regulation 3 of 2004 and the Hon'ble High Court allowed the said Writ Petitions and set aside the orders of APERC thus restoring Clause 5 to 11 of Regulation No. 3 of 2004. The Appellant further stated that some more stakeholders have filed writ petitions seeking for the same relief and the earlier orders in the writ petitions were reiterated and as such contended that as per Clause 7 (a) of Regulation 3 of 2004 where extension is

required on its service connection with High Tension supply from the Licensee the consumers are entitled to pay only estimated cost of service line on “per kilometer” basis on the basis of the latest cost data published by the Distribution Licensee. They contended that in this case however at the time of enhancing the load of the service connection of the Appellant, the Licensee collected DC charges and SD which is not liable to be collected by the Licensee/Respondents against Clause 7(a) of Regulation 3 of 2004. Hence they are contending that they are entitled for refund of the amount paid by them i.e. Rs 30,00,000/- towards Development charges etc. along with interest @ 24% P.A. from the date of payment till the date of refund.

15. The Appellants in furtherance of their contentions stated that The CGRF-II disposed the above appeal with the following directions:-

“Hence when the DISCOM has collected the DC charges and SD amount for release of 2500 KVA on the service connection of the consumer company as provided under Clause 8 of Regulation No. 4 of 2013. Hence the Forum unable to agree with the contention of the consumer company they are entitled for refund of Rs 30,00,000/- along with interest @ 24% per annum from the date of payment to till the date of refund of amount. Therefore the point is answered accordingly in favour of the Licensee and against the consumer company.

In the result the grievance complaint filed by the consumer company dt.27.06.2019 for refund of Rs 30,00,000/- towards Development Charges along with interest @ 24% is hereby rejected.”

In the appeal, the Appellant relied on the Clause 4.7.3 of Regulation 5 of 2004 upon their claim towards refund of paid development charges which is reproduced here under:-

“On examination of the complaint, if the Licensee finds the bill to be erroneous, a revised bill shall be given to the consumer indicating a revised due date payment, which should not be fixed not earlier than seven days from the date of delivery of the revised bill to the consumer. If the consumer has paid any excess amount, it shall be refunded by way of adjustment in the subsequent bills. The Licensee shall pay to the consumer interest charges at 24% per annum on the excess amount outstanding on account of such wrong billing.”

A plain reading of the above said clause goes to show that when a bill i.e. current consumption bill, if claimed to be erroneous by the consumer, the Licensee on examination, finds the bill as erroneous, have to give revised bills with revised due date. The present subject is in regard to payment of Development Charges on account of additional load and not on the erroneous CC bills, thereby there is no relevance of above said clause to the subject as claimed by the Appellant.

16. Whereas Respondents no 4, SE/OP/Rajendranagar, vide his return submission dt. 18.8.2019, relied on clause 8 of regulation 4 of 2013 and also referred the Annexure-I of the regulation 4 of 2013, wherein schedule of development charges based on the category of the service is mentioned along with proposed development charges which is reproduced here under:-

July 29, 2013] ANDHRA PRADESH GAZETTE EXTRAORDINARY 7		
Annexure-I Schedule of Development Charges		
Tariff/Category	Category of Service	Proposed Development Charges
HT	HT Services	11 kV - Rs.1,200/- per kVA or part thereof, of the Contracted Demand 33 kV - Rs.1,200/- per kVA or part thereof, of the Contracted Demand Above 33 kV - Rs 1,000/- per kVA or part thereof, of the Contracted Demand
LT-I	Domestic Services	
	i) Upto 500 watts Contracted load	Rs.600/-
	ii) 501 watts to 1000 watts	Rs.1,200/- per Service
	iii) Above 1000 watts	Rs.1,200/- + Rs.1,200/- per kW or part thereof of Contracted Load
LT-II	Non-Domestic/Commercial Services	
	i) Upto 250 watts Contracted Load	Rs.300/-
	ii) 251 watts to 500 watts	Rs.600/-
	iii) 500 to 1000 watts	Rs.1,200/-
	iv) Above 1000 watts	Rs.1,200/- + Rs.1,200/- per kW or part thereof of Contracted Load
	All other LT categories	Rs.1,200/- per kW or part thereof of Contracted Load

(BY ORDER OF THE COMMISSION)

Hyderabad,
19-07-2013.

M.D.MANO HAR RAJU,
Commission Secretary.

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The Appellant placed his counter on the above, stating that the Clause 8 of Regulation 4 of 2013, will be applicable after applicability of Clause 1 to 7 and also relied on the **Clause 4(3)**:

“The Distribution License shall be responsible to collect all service line charges and development charges pertaining to EHT services and remit the same to the respective transmission license. The transmission licensee shall take up the work after receipt of service line charges and development as mentioned in clause 6, clause 7 and clause 8. The Distribution Licensee shall work in coordination with Transmission Licensee in respect of releasing the service within stipulated time permitted by the commission.”

That the Clause 6,7 & 8 of Regulation 4 of 2013 are applicable only to the EHT services as specified in Clause 4(3) of said Regulation. The Appellant held that they are a HT consumer, thereby not being EHT consumer, Regulation 4 of 2013 is not applicable to them.

That as per Clause 8(1) of Regulation 1 of 2013, **“the Distribution Licensee shall collect Development charges subject to the provisions of Act”**. It was held that there are no provisions in the Electricity Act 2003 for collection of Development charges. The Section 46 of Electricity Act 2003 mandates **“any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”** And also relied on the heading of Regulation 4 of 2013 **“LICENSEE DUTY FOR SUPPLY OF ELECTRICITY ON REQUEST AND RECOVERY OF EXPENSES FOR PROVIDING ELECTRIC LINE AND ELECTRIC PLANT”**. The definitions of Electric Line and Electric Plant are reproduced here under

Clause 2 (j) defined **“ Electric Line”** means any line which is used for carrying electricity for any purpose and includes : (1)any support for any such line, i.e to say any structure .tower,pole or other things in on.by or from which such line is, or may be, supported , carried . or suspended (1) Any apparatus connected to any such line for the purpose of carrying electricity

Clause 2 (k) defined **“Electric plant”** means any plant equipment, or appliances or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include (1) and electric line or (1) a

meter used for ascertaining the quantity of electricity supplied to any premises or (11) and electrical equipment the quantity of electricity under the control of the consumer.

The Appellant further claimed that as per Annexure 1 of Regulation 4 of 2013, the proposed Development charges for HT consumer under 33 KV level is Rs 1200/- per KVA or part thereof, of the contracted demand. It was claimed that this Rs 1200- per KVA includes the expenditure of electric line and electric plant. That the additional load of 2500 KVA was provided by using existing distribution system and no fresh amount is incurred on existing distribution system for providing additional load of 2500 KVA.

It was held that the Hon'ble High Court of Andhra Pradesh in its common order dt. 05.10.2010 in WP No. 4010, 4013, 4328, 24082 and 25597 of 2005 decided that “ making demands for payment of notional development charges for new connections and for additional loads is arbitrary and illegal.” Further vide order dt.08.04.2015 in WP No. 9828 of 2015 allowed the Appeal “in terms of ratio laid down by the learned single judge of this Court in the said common order dt.05.10.2010 WP No. 4010 of 2005 and batch.

In view of the rival contentions of both Appellant and the Respondents the Regulation No.4 of 2013 is reproduced hereunder for perusal. The Hon’ble Commission in the introduction of Regulation 4 of 2013 (issued repealing the APERC Regulation No. 3 of 2004) has given the following preface:-

“Section 46 of the said Act has vested the State Commission with the power to authorise the Distribution Licensee to recover the expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving supply to a person pursuant to Section 43.

In this regard, the Commission notified Regulation No. 3 of 2004. However by a common order dt.24.08.2005, in R.P Nos. 1 to 4 of 2005 filed by the Distribution Licensees, the Commission deleted clauses 5 to 11 of the said Regulation No. 3of 2004 permanently w.e.f. The date of the said Regulation came into force. The Hon’ble High Court passed its order in WP Nos. 4010, 4013, 4328, 24082 and 25597 of

2005 on 05.10.2010, declared that the said order is non-est in the eye of law and directed the Commission to make a fresh regulation under Section 46 of the Act.”

The Hon’ble Commission issued the Regulation 4 of 2013 repealing the APERC Regulation No. 3 of 2004 and after judgements given by the Hon’ble High Court of Andhra Pradesh by common order as stated above. The said Regulation 4 of 2013 has given the clear mandate over the provisions of Development charges in the Clause 8 which is reproduced here under:-

“Clause 8: Specific provision for development charges:-

1. *The Distribution Licensee shall collect development charges subject to the provisions of the Act and this regulation and subject to such directions, orders or guidelines, the Commission may issue from time to time. The Distribution Licensee is authorised to recover from an applicant, requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurrent in extending power supply to the applicant.*
2. *The development charges on normative basis are arrived using shallow approach limiting the network cost to the next immediate higher voltage level. The Distribution Licensee shall levy development charges on per kVA/kW basis as per the schedule (Annexure-I) enclosed.*
3. *The Distribution Licensee shall recover full cost of transformer in case of commercial complexes, apartments and multi storied buildings where a dedicated transformer is provided while extending new LT service connections. In such cases, the Distribution Licensee is not entitled to collect development charges and shall own the transformer and maintain it. The Distribution Licensee shall not extend power supply to any other consumer from the dedicated transformer other than the consumer who has borne the foil cost of Transformer.*
4. *In case of LT supply, the responsibility of erection of distribution transformer lies with the Distribution Licensee and shall not charge cost of*

transformer to any consumer except those consumers mentioned in para 3 above and levy only development charges.

5. *The Distribution Licensee shall not charge development charges to a consumer who seek temporary supply.*

6. *The Distribution Licensee is entitled to collect difference cost of development charges, in case of change of category from lower development charges category to higher development charges category. The Distribution Licensee is not entitled to collect development charges for restoring the de-rated capacity to the original level.*

7. *If any existing consumer requests for splitting of service into two different categories, the Distribution Licensee is not entitled to collect full development charges. The DISCOM is entitled to collect shortfall amount if any resulting out of splitting. For example, a 50 kW commercial service may require splitting of his service into two categories, viz., 20 kW commercial category and 30 kW industrial category.*

8. *Subject to the provisions of the Act and this Regulation and subject to such directions, orders or guidelines issued by the Commission, the Distribution Licensees shall file revised development charges, if required, for approval, once in five years along with MYT proposals.”*

A perusal of the above goes to show that there is a clear mandate as per Annexure - I of Regulation 4 of 2013 and Clause 8(1) and 8(2) to collect the Development Charges for new services and additional loads under different category of services for HT services and LT services. The Appellants claim that only EHT services shall be charged Development charges and HT services shall not be charged relying on Clause 4(3) does not holds good. The said clause 4(3) specifies directions to the DISCOM over payment of Development charges pertaining to EHT services which falls under the jurisdiction of transmission licensee. There is no specification that only EHT services shall be charged development charges, the Appellant has wrongly interpreted the Clause 4(3). The plea of the Appellant that, in case of an extension in the distribution system only then the Development charges are liable to be paid, is not tenable, when the clause 8(1) of Regulation 4

of 2013, clearly mandates the Distribution Licensee to recover development charges from the applicants requiring supply of electricity towards part of upstream network cost, that the distribution licensee has **already incurred** or to **be incurrent** in extending power supply to the Appellant.

While the present Appeal was reserved for orders, the Appellant requested to reopen the file in the interest of justice and fairplay based on the following grounds:-

That SE/Rajendranagar vide its Memo No.SE/OP/RJNR/COML/DR No.119/18-19/D.No.1243/18 dt.28.09.2018 accorded the sanction of Additional load of 1000 KVA on the payment of the following charges:-

a. Estimated serviceline charges	Rs 11,800/-
b. Development charges	Rs 12,00,000/-
c. Initial Consumption Deposit	Rs 15,00,000/-
d. Total	Rs 27,11,800/-

That the estimation of service line charges of Rs 11,800/- includes Rs 10,000/- towards estimation of cost of material to enhance the service line capacity which is to be incurred by the Appellant, Rs 1000/- is 10% supervision charges, Rs 90/- is CGST @ 9% on 10% supervision charges and Rs 90/- is SGST @ 9% on 10% supervision charges. Accordingly Rs 10,000/- incurred by the Appellant.

The contention of the Appellant is that out of Rs11,800/-, Rs 10,000/- is towards the cost of material required for extension of additional load of 1000 KVA, thereby there is no further requirement of network cost for extending such load and hence there is no requirement for payment of Development charges of Rs 12,00,000/-. The cost of the material required for extension of additional load is not correlated to the development charges. The material required for extension of supply either to the new service or additional load depends upon the existing network and differ from service to service. The development charges are on normative basis arrived using shallow approach limiting the network cost to the next immediate higher voltage level. The development charges tariff is based on per KVA/KW only.

Hence, there is no substance in the argument of the Appellant over non payment/refund of development charges.

In view of the discussion supra, the stand taken by the Appellant over refund of Development charges relying on the Clause 4.7.3 of Regulation 5 of 2004 has no relevance to the present case, since the said Regulation was repealed by the Hon'ble Commission and fresh Regulation 4 of 2013 "LICENSEE DUTY FOR SUPPLY OF ELECTRICITY ON REQUEST AND RECOVERY OF EXPENSES FOR PROVIDING ELECTRIC LINE AND ELECTRIC PLANT" was issued. The argument placed by the Appellant against the Regulation 4 of 2013 does not holds good, when there is a clear mandate given for the payment of Development charges in Annexure-1 and Clause 8(1) and 8(2). Hence the request of the Appellant for the refund of the payment of Rs 30,00,000/- towards the release of additional load of 2500 KVA is not tenable. Hence decides these issues against the Appellant.

Issue No.3

17. In the result the Appeal is dismissed.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 26th day of November, 2019.

Sd/-

Vidyut Ombudsman

1. M/s. Salasar Iron Steel Pvt.Ltd., represented by its Director,
Sri. Vinod Kumar Agarwal, Flat No. 101, 1st Floor, Satya Sarovar Complex, High Court Road, Hyderabad - 500 002. Cell: 9393312319, 7036205211
2. The ADE/OP/Shadnagar/TSSPDCL/RR Dist.
3. The DE/OP/Shadnagar/TSSPDCL/RR Dist.
4. The SAO/OP/Rajendra Nagar Circle/TSSPDCL/RR Dist.
5. The SE/OP/Rajendra Nagar Circle/TSSPDCL/RR Dist.

Copy to :

6. The Chairperson, CGRF-GHA, TSSPDCL, GTS Colony, Vengal Rao Nagar, Hyderabad.
7. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul, Hyd.