

Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2052/2022

Petition filed under section 86(1)(A), Section 62(6), Section 142 and Section 146 of the Electricity Act, 2003 read with various tariff orders passed by the Commission from time to time, to declare that the Respondent Discom is in contravention of the tariff orders/Electricity Act, 2003 has charged amount under the head of Transformation Charges which is unregulated, illegal, arbitrary, without any legal basis and thus null and void AB initio.

Coram:

Dr. B.N. Sharma, Chairman

Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Petitioner : M/s Ramayana Ispat Private Limited

Respondent : Jaipur Vidyut Vitran Nigam Limited

Date of hearing : 10.11.2022, 08.12.2022, 24.01.2023, 04.04.2023, 05.05.2023
& 15.05.2023

Present : 1. Sh. Tushar Jain, Advocate for petitioner
2. Sh. Sandeep Pathak, Advocate for Respondent

Order Date : 16.06.2023

Order

1. M/s Ramayana Ispat Private Limited (hereinafter also referred to as "Petitioner") has filed a petition No. 2052/2022 on dated 06.10.2022 under section 86(1)(A), Section 62(6), Section 142 and Section 146 of the Electricity Act, 2003 read with various tariff orders passed by the Commission from time to time, to declare that the Respondent Discom is in contravention of the tariff orders/Electricity Act, 2003 has charged amount under the head of Transformation Charges which is unregulated, illegal, arbitrary, without any legal basis and thus null and void AB initio.
2. The matter was initially listed on 10.11.2022. On the requests from the parties the matter was heard through video conferencing. The Commission directed Respondent to file their reply. Accordingly, Respondent filed their submissions on dated 06.12.2022. After hearing on 08.12.2022 petitioner filed their rejoinder on 30.01.2023.

3. The matter was finally heard on 15.05.2023 through video conferencing. The Commission granted liberty to both the Petitioner & Respondent to file the gist of their arguments made during the hearing, if they wish to do so. However, both the Petitioner & Respondent did not file the same.

Petitioner's Submission:

The Petitioner in its petition, written submissions and during the course of hearing(s) submitted as under:

4. The Petitioner is an industrial consumer of Rajasthan in the distribution area of the Respondent connected at 33 KV and currently having contract demand of 6000 KVA. The Petitioner is maintaining the said connection at 33 KV since inception; however, earlier petitioner was maintaining a contract demand of 5000 KVA at the same 33 KV.
5. Vide the present petition, the Petitioner is invoking the regulatory powers vested with the Commission by virtue of Electricity Act, 2003 under Section 62(6) read with Section 86(1)(a) and Section 146.
6. On dated 07.10.2013, the Petitioner applied for increase in the contract demand from 5000 KVA to 5690 KVA with the Respondent on the already existing 33 KV connection.
7. In lieu of increase in said contract demand, the Respondent commenced to impose transformation charges at the rate of 3% on the units consumed by the Petitioner on contract demand over and above 5000 KVA.
8. The Petitioner is aggrieved by illegal imposition/charging of transformation charges by the Respondent for the period from 07.10.2013 till 09.10.2017, since with effect from 10.10.2017, the 11th Amendment of RERC (Electricity Supply Code & Connected Matters) Regulations, 2004 were in force, which dealt with the transformation charges differently, and the issue pertaining to charging of transformation charges since 10.10.2017 by the Respondent from the Petitioner is currently pending adjudication before the Hon'ble APTEL in appeal no. 256 of 2022.
9. For the period from 07.10.2013 till 09.10.2017 ("*impugned period*") the Respondent levied transformation charges of 3% on the bills raised on the Petitioner for the consumption over and above 5000 KVA of the contract demand wherein 3% transformation charges were calculated to give effect to the increase in consumption units of the petitioner of a particular month.

10. The Commission while invoking its regulatory powers as provided under Section 62 of the Electricity Act, 2003 determines the tariff of the distribution companies, transmission companies and generating companies in the State of Rajasthan.
11. The Respondent being a distribution licensee under the Electricity Act, 2003 is a regulated entity under the Electricity Act, 2003 falls within the ambit of Commission and accordingly the tariff of the Respondent is also determined by the Commission under section 62 of the Electricity Act, 2003 for which tariff orders were issued from time to time by the Commission which are legally binding on the Respondent.
12. In terms of powers vested under Section 62, the Commission has issued various tariff orders from time to time for the Respondent. Those components under the said determined tariff orders by the Commission are the only charges which are ought to be charged by the Respondents from its consumers including the petitioner. Respondent has no power to charge any other component except as determined by the Commission in its respective tariff order(s).
13. Transformation charges of 3% were not provided in any of the applicable tariff order(s) for the impugned period. Further such charges of transformation were not provided to be levied on the consumers in any of the rules/regulations framed by the Commission for the impugned period or under any other document having force of law.
14. On making queries vide RTI for the document providing legal basis to levy transformation charges before the coming into force 11th Amendment of RERC(Electricity Supply Code & Connected Matters)Regulations, 2004, the Respondent vide reply dated 20.07.2021 along with other documents have cited an internal document with no. JPD/Dy.CE(C&P)/ XEN/CI/F.4(210)/Pt.VI/D.745 dated 14.07.2004 based on which transformation charges were levied by the Respondent on the bills of the Petitioner.

Under para 3 of the said internal order dated 14.07.2004 of the Respondent, the following is provided:-

(3) The consumer shall also be required to bear the transformation losses @ 3% of the recorded consumption for the ratio of the consumption corresponding to MVA above 5MVA. For example, if KWH consumption in a month for a consumer is 24 lacs units and the contract demand of the consumer is 6 MVA, the KWH consumption to 1 MVA (Above 5 MVA) would be i.e. $24 \times 1 / 6 = 4$ lacs units and to this consumption 3% transformation losses (12000) units shall be added to arrive at the chargeable units from the consumer. Balance

consumption i.e. 20 lacs will not be increased to cover the transformation losses @ 3% in this case. Total recoverable units would be $4.12+20 = 24.12$ lacs.

15. The aforesaid illustration and formula as provided in above mentioned letter dated 14.07.2004 was applied to levy the 3% transformation charges on the Petitioner for the impugned period.
16. The above para 3 of the said internal order is assumed by the Respondent to be the document having the authority to levy the contested transformation charges for the period from the year 2004 to 2017 which also subsume the impugned period.
17. The charges in the form of transformation losses/charges levied by the Respondent on the Petitioner for the impugned period in the bills raised by it completely illegal and falls outside the domain of the Respondent and the Respondent on its own stepped into the shoes of the Commission to levy the said charges on the Petitioner without having any legal/regulatory backing to levy the same.
18. The Respondent cannot assume to have the powers of this Commission to levy the transformation charges on the consumers at its own whims and fancies while flouting the tariff orders, rules and regulations of the Commission for a long period of approximately 15-16 years. The said action by the Respondent amounts to jurisdictional breach of the power of the Commission.
19. The Respondent from the year 2004 till 2017 continued to deliberately escape the regulatory/legal regime, thereby continued to remain unregulated both under the Electricity Act, 2003 and under this Commission which is blatant act on the part of Respondent and same cannot be permitted.
20. In addition to the tariff orders passed, the Respondent may have the right to levy a particular charge in the event the said charge is provided under the rules/regulations or any other order issued by the Commission.
However, such transformation charges of 3% do not find mention in any rules/regulations or in any order issued by this Commission. Accordingly, by illegally levying of the said transformation charges, the Respondent deliberately contravened the tariff orders passed by the Commission.
21. The said charges as applied by the Respondent are illegal as the same are beyond the charges as fixed by the Commission in the tariff order(s) issued for the Respondent and the said charges does not have any legal backing in any form under the rules, regulations or the Electricity Act, 2003. Further the internal order dated 14.07.2004 was pursuant to the coming into force of the Electricity Act, 2003 and the Respondent at the

time of issuance of this order was already under the Regulatory framework of the Commission. Accordingly, the act of issuing such order and making the applicability of the same on the consumers was void ab initio.

22. Since the Respondent is a regulated entity under the Electricity Act, 2003 and accordingly falls in the regulated framework of the Commission and any action of the Respondent cannot be ultra vires to the orders issued by this Commission.
23. The internal order dated 14.07.2004 issued by the Respondent and making it applicable on the consumers of its licensed area is bad, illegal and had no force of law being void ab initio and accordingly transformation charges levied by the Respondent on the petitioner and other consumers were also illegal.
24. The issue concerning the present petition is a regulatory issue concerning the violation of tariff order(s) under Section 62 read with Section 86(1)(a) and Section 146 of the Electricity Act, 2003 and the petition is not barred by the limitation. The said view is clear in Hon'ble Supreme Court judgement in Civil Appeal no. 6036 of 2012 decided on 16.10.2015 in the matter of:
 - (i) ***A.P. Power Coordination Committee & Ors. Vs. M/s Lanco Kondapalli Power Ltd. & Ors.,***
 - (ii) ***State of Gujrat & ors. Vs Utility Users Welfare Association & Ors. In CA no. 14697 decided on 12.04.2018 and***
 - (iii) ***Civil appeal no. 4569 of 2003 decided on 29.11.2019 in the case of Transmission Corporation of Andhra Pradesh Limited vs M/s Rain Calcining Limited & Ors.***
25. In view of above judgements, Sections pertaining to determination of tariff and associated functions falls within the category of regulatory functions for which this Commission has extensive powers to meet the objectives of the Act. Further as per settled law, the law of limitation does not apply to the transaction based on the documents which are invalid or void AB initio.
26. With the above submissions, The Petitioner in its petition no. 2052/2022 mainly prayed that :
 - (i) Admit the present petition.

- (ii) Declare that the internal order dated 14.07.2004 along with its applicability on the petitioner, issued by the Respondent is bad, illegal and have no force of law being void ab initio.
- (iii) Declare that Respondent does not have any legal power/authority under the Electricity Act, 2003 to issue internal order dated 14.07.2004 which may have any direct or indirect effect of tariff of the Petitioner or the consumers.
- (iv) Declare that the Respondent has illegally levied transformation charges of 3% in the electricity bills raised on the petitioner for the period from 17.10.2013 till 09.10.2017.
- (v) Pass appropriate orders/directions against the Respondent in terms of Section 142 and /or Section 146 for the contravention of Tariff order(s) and the Electricity Act, 2003 and/or rules/regulations framed thereunder.
- (vi) To pass any other or further orders required in the matter of justice, equity and fairness.

Respondent's submission:

Respondent Discom in their reply submitted as under:

- 27. The petition is not maintainable as prayers are beyond period of limitation. Transformation charges @ 3% have been challenged for the period Oct. 2013 to Oct. 2017. The petitioner seeks refund of these charges by way of this petition. General Law of limitation prescribes period of 3 years while this petition is filed beyond period of 3 years.
- 28. The petitioner has challenged the order dated 14.07.2004 and its applicability in the year 2022 in respect of grievance related to imposition of transformation charges levied in Oct. 2013. Thus present petition is highly delayed, beyond limitation and is liable to be dismissed.
- 29. The petition filed u/s 86(1) (a) read with Section 62 (6), Section 142 & Section 146 of the Electricity Act, 2003. The present petition is not maintainable under these provisions because there is no dispute under Section 86 (1) (a) which requires adjudication. In fact, the said provision provides for functions of the Commission to determine the tariff and other charges which are to be discharged as per procedure prescribed under the provisions of the Electricity Act, 2003. Further Section 142 & 146 deals with punishment for non-compliance of directions issued by the Commission. There is no violation of any direction of the Commission and thus section 142 & 146 of Electricity Act are not attracted.

30. The petition cannot be made a tool to seek amendment in the existing applicable regulations.
31. The petition is also liable to be dismissed for breach of waiver by petitioner itself. Approval of load extension granted on 19.12.2013 was based on condition that transformation charges would be paid. For this purpose an undertaking on Stamp paper was also submitted by the petitioner. Despite submission of said undertaking and thereafter, paying the requisite charges till 2017, petitioner has no right to challenge imposition of transformation charges after 9 years and challenging order dated 14.07.2004 after 18 years.
32. The petitioner has already tried to challenge the 11th amendment of RERC (Electricity Supply Code and Connected Matters) Regulations, 2004 vide petition No. 1371/2018 which was dismissed vide Commission's order dated 08.02.2019. The appeal no. 256/2022 against the said order has also been decided by the Hon'ble APTEL and the matter has been remanded back to the Commission. Therefore the present petition is not maintainable.
33. The issue regarding imposition of 3% transformation losses upon the consumer when the consumer is fed at one stage lower voltage while being entitled for higher voltage is pending before Hon'ble High Court in various petitions being CW petition No. 8753/2013, 7796/2014, 7797/2014. In all these cases the decision of Ombudsman has been stayed by the Hon'ble High Court. Since the basic issue for consideration is already sub-judice and pending before the Hon'ble High Court, the present petition is not maintainable. In fact, if petitioner has any grievance, then it should approach appropriate forum i.e. Ombudsman. Without approaching the appropriate forum, the present petition has been filed which is misconceived and liable to be dismissed.

Petitioner's rejoinder:

The Petitioner in its rejoinder, submitted as under:

34. Averments made in reply filed by the Respondent are denied in toto. The petitioner reiterates and submits that the levy of transformation charges of 3% on the petitioner for the period from 07.10.2013 to 09.10.2017 is illegal, invalid and beyond the authority as provided under the law.
35. The Respondent while flouting the complete regulatory regime as vested by virtue of Electricity Act, 2003 and orders/rules/regulations issued by this Commission, has levied transformation charges of 3% as per its own whim and fancies.

36. Issue of limitation as raised in the present petition is not sustainable and cited the case of Hon'ble Supreme Court in the matter of **A.P.Power coordination Committee & Ors. vs. M/s Lanco Kondapalli Power Ltd. & Ors.** it was held that law of limitation applies only to adjudication of disputes falling under section 86(1)(f) of the Electricity Act, 2003. However, such limitation does not apply to the issues wherein the Commission exercises its other powers being regulatory or administrative in nature as provided under the Electricity Act, 2003. Further, in the case of Hon'ble Supreme Court in the matter of **Prem singh vs. Birbal** decided on 02.05.2006 in civil appeal No. 2412 of 2006, it was held that limitation provisions would not be attracted to an instrument which is presumptively invalid. Since the issuance of order dated 14.07.2004 by the Respondent is in complete disregard of law and tantamount to judicial overreach and judicial impropriety and void *ab initio* since the Respondent has no authority under law to issue the internal order dated 14.07.2004 and is presumptively invalid.
37. Levy of transformation charges on the petitioner for the period 07.10.2013 till 09.10.2017 are completely perverse and without authority of law and does not have any legal backing either under any law and /or under the tariff orders passed by this Commission.
38. Such an act of Respondent tantamount to circumventing the tariff orders issued by this Commission from time to time, the Respondent cannot be allowed to go scott free and the present petition is maintainable both under law and equity.
39. The contention of the Respondent that petitioner itself has admitted about the levy of transformation charges @ 3% under the tariff order from time to time is completely wrong, since the Respondent has violated the law while levying of a charge not provided under any law on the time being in force, the Respondent in gross violation is liable under Section 142 and 146 of the EA, 2003.
40. Submission in the present petition relates to illegal levy of transformation charges for the period from 07.10.2013 to 09.10.2017, during which no regulation/rules/order or any other law time being in force provide any authority to the Respondent to levy any such charges in the form of transformation charges on the petitioner. Hence the question of amendment of any existing regulation does not arise.
41. Load extension request by the Petitioner does not provide any authority to the Respondent to flout the law for charging transformation charges on the Petitioner.

42. The case no. 1371/2018 for which the Hon'ble APTEL has remanded the matter back to this Commission is dealt separately and has no relevance to the present petition.
43. In rejoinder, Petitioner submitted that the Respondent is trying to mislead this Commission by raising the issue of stay order in S.B. Civil writ Petition No. 8753/2013, the present issue is a regulatory issue wherein the actions of the Respondent tantamount to violation of Section 142 and 146 of the Electricity Act, 2003. However, since the Respondent is admitting to the fact that the same issue is pending before the Hon'ble High Court of Rajasthan and seeking dismissal of the present petition on the basis of the same relief provided in the said petition shall be extended by the Respondent to the Petitioner as well.
44. Petitioner further submitted that coerced undertaking obtained from the Petitioner cannot make transaction valid in the eye of law since the internal order dated 14.07.2004 on the basis of which charges are levied is void *ab- initio*.
45. The Petitioner also submitted that Respondent has merely denied the averments stated in the petition with no pleadings in support of such denial, mere denial of pleadings does not contemplate any meaning unless the same is backed by some founded reasoning.

Commission view:

46. The Commission has considered the submissions, replies and oral arguments on behalf of the Petitioner and Respondent.
47. The Petitioner in its petition has mainly prayed for:
 - (i) Admit the present petition.
 - (ii) Declare that the internal order dated 14.07.2004 along with its applicability on the petitioner, issued by the Respondent is bad, illegal and have no force of law being void *ab initio*.
 - (iii) Declare that Respondent does not have any legal power/authority under the Electricity Act, 2003 to issue internal order dated 14.07.2004 which may have any direct or indirect effect of tariff of the Petitioner or the consumers.
 - (iv) Declare that the Respondent has illegally levied transformation charges of 3% in the electricity bills raised on the petitioner for the period from 17.10.2013 till 09.10.2017.
 - (v) Pass appropriate orders/directions against the Respondent in terms of Section 142 and /or Section 146 for the contravention of

Tariff order(s) and the Electricity Act, 2003 and/or rules/regulations framed thereunder.

- (vi) To pass any other or further orders required in the matter of justice, equity and fairness.
48. The Commission observes that Respondent JVVNL had imposed/charged transformation charges for the period from 07.10.2013 till 09.10.2017 on the petitioner. As per the petitioner's submission, the said charges as applied by the Respondent are illegal as the same are beyond the charges as fixed by the Commission in the tariff order(s) issued for the Respondent and the said charges does not have any legal backing in any form under the rules, regulations or the Electricity Act, 2003. Further the internal order dated 14.07.2004 was pursuant to the coming into force of the Electricity Act, 2003 and the Respondent at the time of issuance of this order was already under the Regulatory framework of the Commission. Accordingly, the act of issuing such order and making the applicability of the same on the consumers was void ab-initio.
49. Further, Respondent Discom submitted that the petitioner has challenged the order dated 14.07.2004 and its applicability in the year 2022 in respect of grievance related to imposition of transformation charges levied in Oct. 2013 to Oct. 2017. Thus present petition is highly delayed, beyond limitation and is liable to be dismissed. The petitioner also attempted to challenge the 11th amendment to the Regulation, 2004, where it failed to bring out this issue.
50. Respondent Discom also submitted that the petition is also liable to be dismissed for breach of waiver by petitioner itself. Approval of load extension granted on 19.12.2013 was based on condition that transformation charges would be paid. For this purpose an undertaking on Stamp paper was also submitted by the petitioner. Despite submission of said undertaking and thereafter, paying the requisite charges till 2017, petitioner has no right to challenge imposition of transformation charges after 9 years and challenging order dated 14.07.2004 after 18 years.
51. Further, the respondent submitted that the issue regarding imposition of transformation losses upon the consumer when the consumer is fed at one stage lower voltage while being entitled for higher voltage, is pending before Hon'ble Rajasthan High Court in various petitions being CW petition no. 8753/2013, 7796/2014, 7797/2014. In all these cases, the decision of Ombudsman has been stayed by the Hon'ble High Court. In all these cases, the aggrieved consumers, for the same issue,

approached the Ombudsman for efficacious remedy provided under RERC(Consumer Grievance Redressed Forum, Electricity Ombudsman and Consumer Advocacy) Regulations, 2021. The petitioner instead of seeking efficacious remedy in the matter before CGRF or Ombudsman as per Regulation, 2021, has filed this petition before the Commission. The petitioner has not availed the remedies available to him as provided under statutory provisions of the Commission. It is an established practice in legal field that any petitioner must exhaust the remedies available to him before approaching any court. The Commission is of the considered view that the petitioner should have first availed the remedies available under RERC(Consumer Grievance Redressed Forum, Electricity Ombudsman and Consumer Advocacy) Regulations, 2021. However instead of raising his grievance the petitioner has filed this petition u/s 8(1)(a), 62(6), 142 and 146 of the Electricity Act, 2003 assailing the validity of internal order dated 14.07.2004 of JVVNL.

52. The Commission observes that every year the Commission get the notice u/s 64(2) published in newspapers for inviting comments on the ARR and tariff petitions by the Discom but the petitioner herein has not raised this issue during these proceedings and continued to pay transformation charges as per agreement entered with the respondent Discom. It is only after the issue of new Supply Code Regulation in 2021 wherein the load limit at 33 kV was increased thereby getting him out of ambit of transformation charges, the petitioner challenged the internal order of the Discoms dated 14.07.2004.

53. The Commission has considered the rival submissions and observes that 'RERC (Electricity Supply Code and Connected Matters) Regulations, 2004' was notified on 09.06.2004. In the regulation, category of consumers and character of service had been specified in the table given at para 4 reproduced hereunder:

"4. Category of consumers and character of service

.....

<u>Category of Consumer</u>	<u>Character of Service</u>	
.....
(g) Large Industrial (except Railway Traction)	(ii) Contract/actual demand is above 1500 KVA but upto 5000 KVA	(ii) HT 33 KV
	(iii) Contract/actual demand above 5000 KVA	EHT 132 KV or 220 KV

.....

Note :

(iv) The licensee may allow supply to a consumer at a voltage level one stage higher or lower in exceptional circumstances."

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A bare reading of note (iv) makes it clear that It is the discretion of licensee to supply one voltage level higher or lower in case of exceptional circumstances. In the present case also the licensee, as per discretion available, granted supply one voltage lower to the petitioner due to technical constraints for which petitioner, with open eyes, entered into an agreement with the licensee.

54. The Commission also observes that it is a fact that the above voltage wise load limits have been specified keeping in view the fact that having higher load at a low voltage not only causes higher losses and also cause other technical issues. If the Contract/Actual Demand is increased keeping the voltage level constant then the current in ampere and in turn the line losses will also increase in proportion to square of the current (I^2R). There have always been provisions for recovery of such increased losses in some form or others. For example the "Tariff for supply of electricity" as annexed at annexure-2 (colly) to the petition (tariff structure , part – II, HT tariff) provides that the Discom may at its discretion provide metering equipment on low voltage side of consumer's transformer and in such a case 3% transformer losses shall be applied to the consumer. This shows the intention of recovery of transformation losses on account of metering being on lower voltage side of the transformer instead of being at higher voltage side.
55. In the present case, the licensee allowed supply to the petitioner at a voltage level one stage lower i.e. at 33 kV instead of 132 kV to which he was entitled. There is no doubt that the licensee had to incur the increased losses on account of the reason which is attributable to the petitioner.
56. The consumer also had an option to wait for the connection to be released at high voltage to which he is entitled to but he entered into an agreement with the licensee showing his readiness to pay transformation charges for compensating these increased line losses. At the same time the petitioner saved crores of rupees which he otherwise would have to incur on change of transformer, construction of 132 kV lines and bay etc.

57. In view of the position of the regulations regarding discretion of Discoms to release connection at one voltage lower and intention of the provisions of tariff, it emerges that Discom was rightful to refuse the connection or recover the likely losses on account of this for which the consumer looking to his needs furnished an undertaking for payment of transformation losses.
58. Accordingly, the Commission is of the view that as per provision of note (iv) of Regulation 4 it was the discretion of the Discom to release the connection at one stage lower i.e. at 33 KV and the Discom was entitled to refuse the load extension or recover the likely losses. Considering all above the Commission holds that the internal order dated 14.07.2004 is in consonance with the provisions of Regulations read with provisions of tariff and standard industry practice. Hence the prayer of Petitioner to declare the impugned internal order dated 14.07.2004 of Discom as bad in law, illegal and void ab-initio, cannot be accepted. In light of this, other related prayers of the petitioner are also rejected.
59. Accordingly, the petition is disposed of in above terms with no orders as to cost.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman