

Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2149/2023

In the matter of

Petition under Section 86(1)(e) read with Sec.142 of the Electricity Act for adjudication of dispute.

Coram:

Dr. B.N. Sharma, Chairman

Shri Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

M/s Bosch Limited

Petitioner

Jaipur Vidyut Vitran Nigam Ltd.

Respondent

Date(s) of hearing:

20.07.2023, 25.07.2023 and 10.08.2023

Present : Sh. P. N. Bhandari, Advocate for Petitioner.

Sh. Bipin Gupta, Advocate for Respondent.

Date of order

30.10.2023

Order

1. The present Petition has been filed by M/s Bosch Limited (hereinafter referred as the 'Petitioner') located in Sitapura RIICO Industrial Area Jaipur, an industrial consumer of Jaipur Vidyut Vitran Nigam Ltd(hereinafter referred as the 'Respondent') under Section 86(1)(e) read with Sec.142 of the Electricity Act, 2003 for adjudication of dispute.

2. The matter was heard on 20.07.2023, 25.07.2023 and finally heard on 10.08.2023. Sh. P. N. Bhandari, Advocate appeared on behalf of Petitioner. Sh. Bipin Gupta, Advocate appeared on behalf of Respondent.

3. Petitioner in its petition, rejoinder and during the hearings mainly submitted as under:

3.1. The petitioner had set up a captive solar plant of 500 kW in March 2017 for which permission of the Electrical Inspector was duly taken on 27.03.2017 with the endorsement to the Executive Engineer, Sanganer Jaipur.

3.2. In February 2019, another captive solar plant of the Petitioner was set up with a capacity of 900 kW for which also the permission of the Electricity Inspector taken on 14.02.2019. Third captive solar plant with a capacity of 1200 kW is also ready, but its commissioning is getting unduly delayed, due to a circular of the Energy Department dated 15.06.2022 stating that Electrical Inspector would give clearance only after the project is cleared by SLSC and thus, permission of the Electrical Inspector is also awaited. The Commission is mandated to promote Renewable Energy under Section 86(1)(e) of the Electricity Act, 2003. Thus, the appropriate directions are desirable so that Govt. could clarify that this circular will not be applicable for captive power plants.

3.3. As per Section 7 of the Electricity Act,2003 for captive generation no licence is required. Further, Section 9 of the Electricity Act,2003 gives full freedom to the captive generators to construct, maintain and operate a captive generation power plant. To further encourage the setting up of captive plants, the right to open access has also been given. Regulations have neither been notified nor can be notified in violation of the Electricity Act, 2003. Further, Reg 3.4 of the RERC (Grid Interactive Distributed

Renewable Energy Systems) Regulations, 2021 (hereinafter DREGS Regulations, 2021) reads thus:

"3.4 These Regulations shall be applicable to all Grid interactive Distributed Renewable Energy generating systems that are commissioned on or after 1st July 2021."

3.4. Since the captive plant of the petitioner was commissioned in 2017, i.e., even before the notification of DREGS Regulations 2021, hence, these Regulations are not applicable to Petitioner's captive solar plant.

3.5. The Respondent vide its letter dated 26.6.2023 has raised the huge demand towards Fixed charges amounting to Rs. 77,48,100/- without giving any opportunity of hearing to the Petitioner and this demand followed by the Electricity bill dated 11.7.2023. However, no rule or regulation has been mentioned under which the claim of fixed charges of Rs 7748100/- has been made. Further, the Respondent has claimed the Electricity Duty of Rs. 5196912/- for the last six years from 27.3.2017, in gross violative of Section 56 (2) of the Electricity Act,2003. Any such alleged claims could be raised only for the last two years, starting from the bill dated 11.7.2023 when this claim has been billed for the first time.

3.6. The statement enclosed with the letter dated 26.6.2023 shows that it is totally concocted without any scientific approach or logical basis. As per Para 4 of the Statement enclosed with letter dated 26.6.2023 reads "Maximum gen. per day per kW" where maximum generation of 4.8 per kW per day, is claimed, and from June 2021 onwards, the figure has been revised to 6 per kW per day. Solar/ wind power is infirm & consequently, the generation varies from time to time, season to season. The statement is, thus, highly inflated and fictitious.

3.7. The Petitioner has kept monthly record of generation and ED is payable as per this data and the Petitioner undertakes to deposit this amount within two weeks. For future the Discom should be directed to

install a separate meter for the Petitioners solar plants. Alternatively, the Petitioner is willing to install its own meter which may be sealed by Discom, to avoid any dispute.

3.8. Hence, the letter dated 26.6.2023 of the Discom is frivolous and void ab initio. It deserves to be quashed. Rules & Regulations have been flagrantly violated by the Respondent Discom while raising the latest bill, hence the Section 142 of the Electricity Act, 2003 is attracted.

Prayer:

3.9. It is prayed that:

(a) In view of the above submission, the letter dated 26.06.2023 deserves to be quashed.

(b) Similarly the latest bill, excluding the current charges should be quashed.

(c) Any other relief which the Hon'ble Commission deems fit and proper in the interest of justice and fairness.

4. Petitioner also filed Stay Application (IA No. 01/2023) and submitted as under:

4.1. Petitioner has on this date filed a Petition which raises serious grounds and is likely to be allowed by the Hon'ble Commission. The Petitioner thus has a strong prima facie case in its favour. The averments made in the Petition may kindly be treated as part of this Stay Application.

4.2. A huge bill of nearly Rs 1.31 Crores has been raised by Jaipur Discom under DREGS Regulations, 2021, while the Petitioner has a solar captive plant, not connected with the Grid. Hence, those Regulations are not applicable to the Petitioner's captive plant.

4.3. Even otherwise, under Section 7 of the Electricity Act, generating plants have been totally Delicensed. Similarly, under Section 9 of the Act, Captive generating plants have been liberated from licensing etc. Therefore, on the face of it, the claim is frivolous & unsustainable in law.

4.4. The petitioner shall suffer an irreparable loss in case an appropriate interim order as prayed for in this application is not granted in its favour during the pendency of the Petition.

4.5. The balance of convenience also lies entirely in favor of the petitioner.

4.6. The Petitioner undertakes to deposit the current dues, within the prescribed time.

(a) It is, therefore, prayed that this application may kindly be listed at the earliest, as the Petitioner's electric connection is likely to be disconnected, if an interim order is not passed restraining the Respondent Discom from taking any coercive action against the Petitioner, during the pendency of this Petition.

(b) This application may kindly be allowed, and by an appropriate interim order or direction pending final disposal of the petition, the arrear amount claimed by the respondent vide the latest bill dated 11.07.2023 may kindly be stayed.

(c) The Petitioner undertakes to deposit the current dues before the due date.

(d) Any other appropriate interim order or direction which may be considered just and proper in the facts and circumstances of the case may kindly also be issued in favor of the Petitioner.

5. Respondent in its reply and during hearing mainly submitted as under:

5.1. The present petition has been filed praying therein to set aside the demand letter dated 26.06.2023 and to quash the bill excluding the current charges. Both the prayers are on behalf of a consumer against whom the demand has been raised. The said dispute is not between the generator or the licensee and therefore, the petitioner has not quoted Section 86(1)(f) of the Electricity Act, 2003. For a consumer dispute alternative mechanism has been provided under the statute, i.e., Section 42(5) and 42(6) of the Electricity Act, 2003. Therefore, the present petition is not maintainable and deserves to be rejected.

5.2. Section 56(2) of the Act will not come to rescue the petitioner as for the first time on site verification, it transpired that petitioner was running a solar plant and was not paying any electricity duty. Thus, since electricity duty is not the tariff rather it is the duty which is levied by the State Government and therefore, Section 56(2) will come to rescue the petitioner.

5.3. In absence of any information as per the Regulations, the commissioning cannot be deemed prior to 2021 and even otherwise also the Respondent have not claimed any charges prior to coming into force of the Regulations.

5.4. As regards their submission that they have not been given opportunity of hearing, the Petitioner was issued letter dated 26.06.2023 giving 15 clear days and thus, proper opportunity has been given to them and there is no gross violation of any principles of the natural justice.

5.5. There is no impediment to maintain or operate captive generating plant but as per provisions the generator has to comply with the

Regulations issued from time to time. As per Section 9 of the Electricity Act, the petitioner has to comply with the Regulations.

5.6. Petitioner without informing the respondent has started utilizing the power from its solar generation. Further, after coming into force of DREGS Regulations, 2021 also did not inform as required under the Regulations. This resulted in the loss of the Electricity Duty to the State Government. Since the petitioner never communicated about its operation of solar power plant to the Respondent and even after coming into force of DREGS Regulations, 2021. Therefore, considering the violation of DREGS Regulations, 2021, the demand for electricity duty has been raised from the date of April 2020 when the ED was made applicable and similarly, the fixed charges have been levied from the 15.6.2021 when the DREGS Regulations, 2021 had come into force. The said fixed charges have been levied as per provisions of the DREGS Regulations, 2021 from the date, The Regulations have come into force and not prior to that. Therefore, on the basis of the said regulations, the charges have been correctly levied against the petitioner.

5.7. As regards the request of the Petitioner regarding Notification of Energy Department dated 15.06.2022, the same is not the part of the Petitioner's prayer.

5.8. Petitioner failed to communicate the Discom about its plant and to adhere to the DREGS Regulations, 2021, the Respondent had no option except to take the generation based on the capacity of the plant and therefore, there is no illegality in raising the demand.

5.9. The Petitioner's averment that the Discom may come out with actual figures is misconceived in absence of any information to the Respondent required under the DREGS Regulations, 2021.

5.10. In view of the above, the Respondent has not violated any Rules or Regulations as argued by the Petitioner and therefore, Section 142 is not applicable, and the petition deserves to be rejected.

6. Subsequently, Petitioner filed its rejoinder wherein it is submitted as under:

6.1. There is gross misreading of the legal provisions by the Respondent. Provisions of Section 45(5) are not meant for such disputes as they are meant for routine billing disputes. Hon'ble APTEL has time and again laid down that particularly where the Electricity Act or the Regulations are to be interpreted, the Redressal Forum cannot deal with such matters. The Consumer can directly approach the Commission, involving such grievances. The Regulations have been notified by the Hon'ble Commission and hence, their interpretation can be done only by the Hon'ble Commission and not any subordinate authority.

6.2. Respondent has failed to appreciate the elementary issue that Section 7 & 9 of the Electricity Act have totally delicensed generators and captive generators. They can establish, operate and maintain, without obtaining any licence. It would be strange to argue that captive plants have been delicensed but they still have to obtain permission from certain authorities.

6.3. A licensee can be penalized for any violation but a non licensee cannot be penalized in the same way. Hence, no rule or regulations can impose any restrictions upon the operation of captive power plants. If they are wheeling the generated power through the grid or have arrangements for net-metering, then they will have to follow the directions of the Discoms.

6.4. DREGS Regulations 2021 are applicable for plants commissioned after 1st July 2021, yet Discom is arbitrarily invoking the above Regulations. Petitioner's plant was commissioned as back as in 2017.

6.5. The Respondent argued that the petitioner has not informed about the setting up of the captive plant, however, they have not cited any provision which requires such information to be given to the Respondent Discom. Delicensing of the generating plants and captive plants was one of the major reforms of the Electricity Act, 2003. They all have been removed under Sec 7 & 9 of the Act & CPPs have been totally liberated from all Authorities. Hence, Licensing cannot be introduced in the name of permissions & approvals.

6.6. No such Permissions can be imposed in violation of Section 7 & 9 of the Act. If inadvertently any such condition is laid down in any Regulation, it will have to be ignored, being violative of the Act.

6.7. Permission has been taken from the Electrical Inspector. In fact, the petitioner believes that the Discom was very much aware about the setting up of this captive plant because the permission letter dated 27.3.2017 of the Electrical Inspector has been endorsed to the Executive Engineer, of the Respondent.

6.8. There is no violation of the DREGS Regulations, 2021 by the petitioner, when in fact that Regulation is not even applicable to the petitioner. When the Regulation itself is not applicable and when the respondent Discom is unable to point out any logic for imposing penalty etc. under this Regulation, levy of any penalty is legally unsustainable.

6.9. It has specifically stated that no rule or regulation has been quoted to justify the levy of the fixed charges. The Respondent has miserably failed to quote any rule or regulation under which fixed charges can be levied.

6.10. About Electricity Duty, there is no provision in the quoted Regulation and therefore, that Regulation cannot be invoked for enforcement of ED provisions. Violation, if any, cannot be of this Regulation.

6.11. Further, attention is drawn of the Energy Department to review its circular of 15.06.2022 as it violates Section 7 and 9 of the Electricity Act and clarify that the approval of SLSC etc. is not required from SLSC etc., for captive power plants. The above direction is necessary as it is preventing the setting up of additional solar plants, which is not in the national interest. The Govt is deprived of the revenue from the Electricity Duty.

6.12. It is incorrect to state that Section 56 deals only with tariff recovery. The Section 56 reads thus:

*"56 (1) Where any person neglects to pay any charge for electricity **or any sum other than a charge for electricity due from him to a licensee** or*

*(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section **shall be recoverable after the period of two years** from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*

6.13. Above clearly mentions "any charge for electricity or any sum other than a charge for electricity due from him". Therefore, Electricity Duty also comes under this provision. The fundamental principle of the Electricity Act is that the burden of dues should not hang indefinitely. The analogy is the Limitation Act. However, legitimate and justified the dues may be, they would all become time barred after a lapse of three years.

6.14. The Respondent has failed to refute the claim of the Petitioner that statement of solar generation enclosed with the letter of Discom is

concocted. It has failed to prove that the data is real and not imaginary and also the source of information for preparing this statement.

6.15. Notification dated 15.12.2016 and Notification dated 10.07.2019 escaped the attention of petitioner. Now that the petitioner has learnt about it, it will pay the ED for the last 2 years, soon after the disposal of the present petition.

6.16. Respondent Discom is not positively reacting to a suggestion of installation of meters to avoid all future controversies. Hon'ble Commission can finally decide about this but at least the Discom should have indicated its reaction whether it is doable and practical.

6.17. Section 142 of the Electricity Act,2003 is all pervasive provision. It covers all categories of matters. The respondent is disregarding the Section 7 & 9 of the Electricity Act. The Respondent is invoking the DREGS Regulations,2021 which are not applicable for plants which have been commissioned before 1st July 2021, while the petitioner's plant was commissioned in 2017. Therefore, Section 142 of the Act is very much attracted.

Commission's view:

7. We have considered the submissions, replies, rejoinder and oral arguments made on behalf of Petitioner and Respondent in the petition and IA.

8. It is the submission of the Petitioner that a huge bill of nearly Rs 1.31 Crores has been raised by Jaipur Discom under the DREGS Regulations, 2021, while the Petitioner has a solar captive plant, not connected with the Grid. Hence those Regulations are not applicable to the Petitioner's captive plant.

9. The petitioner further submitted that even otherwise, under Section 7 of the Electricity Act, generating plants have been totally Delicensed.

Similarly, under Section 9 of the Act, Captive generating plants have been liberated from licensing etc. Therefore, on the face of it, the claim of the Respondent is frivolous & unsustainable in law.

10. The petitioner also submitted that Section 142 of the Electricity Act, 2003 covers all categories of matters more so when the respondent is disregarding even Section 7 & 9 of the Electricity Act, 2003 and invoking the Grid Interactive Regulations plants which are not applicable for plants commissioned before 1st July 2021. The petitioner's plant was commissioned in 2017 and therefore, Section 142 of the Act is very much attracted.

11. According to the Petitioner permission has been taken from the Electrical Inspector and the Discom was very much aware about the setting up of their captive plant as the permission letter dated 27.3.2017 of the Electricity Inspector has also been endorsed to the Executive Engineer of the Respondent.

12. Per contra it is the submission of the Respondent the Commission has framed the Regulations 2021 providing that a renewable generator must comply with the regulation of 2021 However, Petitioner without informing the respondent has started utilizing the power from its BTM solar generation. Further, even after coming into force of RERC (Grid Interactive Distributed Renewable Energy Generating System Regulation 2021) the petitioner did not inform them, as required under the Regulations. This resulted in the loss of the electricity duty to the State Government.

13. It is the submission of the Respondents that since the petitioner never communicated about its operation of solar power plant to the respondent and even after coming into force of Regulations of 2021, therefore, considering this as the violation of Regulations of 2021, the demand for electricity duty has been raised from the date of April 2020

when the ED was made applicable and similarly the fixed charges have been levied from the 15.6.21 when the DREGS Regulations, 2021 had come into force. Further, the said fixed charges have been levied as per provisions of the DREGS Regulations, 2021 from the date, having come into force and not prior to that.

14. As regard the issue of limitation period raised by the Petitioner, as per the submission of the Respondent they raised the demand once they came to know about the Petitioner's Plant and raised the demand accordingly for non-compliance of the Regulations by the Petitioner. In our view, in the given circumstances the limitation period would begin from the date when first bill was raised by the Respondent and not prior to that. We decide accordingly.

15. The Commission further observes that the petitioner is aggrieved by the following action of respondent:

- (i) Levy of Electricity Duty, and
- (ii) Levy of fixed charges.

16. As regards the issue of levy of the Electricity Duty, we note that the petitioner has agreed to pay the same in its submissions. Otherwise also the issue of Electricity Duty falls outside the purview of the Commission as ED is levied by the Finance Department, GoR under power conferred to them under Rajasthan Electricity (Duty) Act, 1962 as amended from time to time. Further, we are also not inclined to accept the request of the Petitioner for issuing any clarification or direction regarding the circular issued by Energy Department on 15.06.2022 regarding obtaining of SLSC approval as we note that the same has been issued with reference to the Solar Energy Policy, 2019 and Wind and Hybrid Energy Policy, 2019, which falls under the exclusive domain of the State Govt. If need be the Petitioner may approach the appropriate forum in respect of the above

in accordance with Law. As such the only issue left to be adjudicated by the Commission is that whether the levy of fixed charges is valid or not.

17. As regards the levy of fixed charges on account of non intimation to the Distribution Licensee, the relevant provisions of the RERC DREGS Regulations, 2021 read as under:

10.14 Renewable Energy generating system connected behind the Consumer's Meter.

10.14.1 Renewable Energy generating system connected behind the Consumer's meter, operating in parallel with the Distribution Licensee's Grid, and not opting either for Net Billing arrangement or Net Metering arrangement, shall be allowed only after prior intimation to the respective Distribution Licensee:

Provided that, the Consumer shall be responsible for ensuring that all necessary safeguarding measures as specified by CEA are taken:

Provided further that, in case the Consumer installs Renewable Energy generating system behind the Consumer's meter without prior intimation to the respective Distribution Licensee, then the additional liabilities shall be levied at the rate of fixed charges for the period of installation of such system till it comes to notice of Distribution Licensee that such system is installed by the Consumer applicable as per the Tariff Order of Distribution Licensees for the relevant consumer category.

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10.14.6 The Consumers, who have connected Solar Rooftop PV systems behind the Consumer's meter and not opted for Net Metering arrangement under RERC (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems) Regulations, 2015 and subsequent amendments thereof, shall intimate the Distribution Licensee such details in Model Form within three (3) months from the notification of these Regulations:

Provided that, if consumer fails to intimate the details of Solar Rooftop PV system behind the Consumer's meter to the Distribution Licensee within the specified time, the additional liabilities may be levied at the rate of fixed charges, applicable as per the tariff order of Distribution Licensees for the relevant consumer category for such period of delay:

Provided further that, the additional liabilities shall be levied after three (3) months from the notification of these Regulations on monthly basis, as per the tariff order of Distribution Licensees for the relevant consumer category.

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10.14.8 The Model Form, for intimating installation of Renewable Energy generating system behind the meter by the Eligible Consumer to the concerned Licensee, is set out at Annexure-V of these Regulations.

18. It is observed from the submission of the petitioner that they have installed two plants behind the meter prior to the notification of the DREGS Regulations, 2021. It is the argument of the petitioner that in view of Section 7 there is no requirement of licence for generating station. Otherwise also the permission letter of Electrical Inspector has been endorsed to the Executive Engineer of Respondent as such there is no occasion of levying any fixed charges by it.

19. As far as the argument of the petitioner that there is no requirement of licence for generation as per Section 7 of the Electricity Act, 2003 is concerned, Commission observes that as per the Regulations there is no requirement of obtaining a License and the Regulations simply provide for intimation of setting up a behind the meter plant in accordance with the provisions of the Regulations to the Distribution Licensee.

20. It is further observed that the Regulation 10.14.6 as reproduced above provides that the Consumers, who have connected their Solar Rooftop PV systems behind the Consumer's meter and not opted for Net Metering arrangement under RERC (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems) Regulations, 2015 and subsequent amendments thereof, shall intimate the Distribution Licensee such details in Model Form within three (3) months from the notification of Regulations and the regulation further provides for consequence of non-intimation of such details to the Distribution Licensee.

21. In view of the position of the Regulations, We do not find force in the argument of the petitioner that the Discom was very much aware about the setting up of their captive plant as the permission letter dated 27.3.2017 of the Electrical Inspector has been endorsed to the Executive

Engineer, of the Respondent. In our considered view, being the consumer, it was the duty of the Petitioner to intimate the Distribution Licensee the various particulars in the model form annexed with the Regulations and there can be no other way of intimating to the Distribution Licensee when the same is specifically provided in the Regulations.

22. Further, the Regulations were notified in the official Gazette on 15.06.2021 and the intimation in respect of existing behind the meter plants was to be given in the specified format by the consumers within three months from the above date accordingly and additional liabilities shall be levied for the period of delay after three months from the notification of the Rules in accordance with Regulations 10.14.6.

23. Accordingly, it is held that the Regulations cast a mandatory obligation on part of the consumer to intimate the Distribution Licensee and also provide the consequence of non-intimation with specified time. In our view the petitioner has failed to fulfill the said obligation of this case, thus, the Distribution licensee has rightly levied the fixed charges.

24. The Petition and pending I.A. are disposed of in terms of the above with no order as to costs.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B.N. Sharma)
Chairman