

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : **Shri. R. Preman Dinaraj**
Chairman

OP.No.13/2020

In the matter of :Waiver of interest for delayed payment as per Schedule -1 of Miscellaneous charges of Kerala State Electricity Supply Code – 2014

Petitioner : M/s Bharat Sanchar Nigam Limited (BSNL), Doorsanchar Bhavan, Thiruvanthapuram represented by Shri. R.Satheesh, Chief Engineer (E)

Respondents : 1. M/s. Kerala State Electricity Board Ltd. (KSEBL) Vydhyuthi Bhavan, Pattom, Thiruvananthapuram represented by Shri. K.G.P. Namboothiri, Exe. Engineer
2. M/s. Thrissur Corporation Electricity Department, Thrissur, represented by Shri. Jose, Electrical Engineer

ORDER DATED 03/07/2020

1. The Chief Engineer (Electrical), BSNL, Doorsanchar Bhavan, Thiruvanthapuram has filed a petition before the Commission vide letter dated 8-5-2020 for reduction/waiving of the interest on delayed payments as per the Schedule -1 of the Model schedule of Miscellaneous charges under Kerala Electricity Supply Code 2014 (*hereinafter referred to as Supply Code 2014*). The Commission admitted the petition and issued notices to the respondent KSEB Ltd and TCED.
2. In the petition, M/s BSNL stated that it is a Government of India undertaking providing various vital telecommunication services such as Landline telephone, mobile communications, leased data circuits, fiber to home, broadband data connection etc., in India. BSNL Kerala is providing telecommunication services all over Kerala and Lakshadweep. The petitioner has both HT and LT connections numbering 152 and 5175 respectively in the State from two electricity distribution licensees in the

State viz., Kerala State Electricity Board Limited and Thrissur Corporation Electricity Department.

3. According to the petitioner, BSNL is temporarily having a revenue /cashflow shortage and is unable to pay its electricity charges in time. Though the petitioner has approached the respondents for waiving the interest charges for belated payments by considering BSNL as a Government of India Enterprise of national importance and as incipient sick PSU, the respondents denied the request and are going ahead with their demands. The respondents are resorting to imposition of penalty and interest for delayed payments of energy charges, without any consideration that the petitioner is a Government of India Undertaking and the steps taken by Government of India to revive BSNL to continue its services. Though there is extreme financial crisis, the dues will be cleared shortly. The petitioner stated that disconnection of the electricity services will seriously affect the communication services and essential security requirements provided by the petitioner to the national network.
4. In these circumstances, the petitioner approached the Commission with the present petition with following prayers:
 - a. Petitioner may be treated as an incipient sick PSU of national importance until its revival.
 - b. Interest on delayed payments may be waived considering the gravity of services of BSNL to the nation as an incipient sick PSU.
 - c. The disconnection of power supply to BSNL installations may be dispensed with, considering services and security reasons.
 - d. The date of payment of energy bill may be extended to 60 days from the due date in addition to periods allowed for natural calamities.

Hearing on the Petition

5. The petition was heard through video conferencing on 15-6-2020. Respondents KSEB Ltd and TCED had furnished their oral and written comments. The Respondent KSEBL represented by Shri. K.G.P. Namboothiri,

Executive Engineer submitted that, the petitioner was allowed all the relaxations issued by the Government of Kerala in view of the Covid-19 pandemic. No disconnections were effected on account of delayed payment and enlargement of time is allowed on a monthly basis for payment of dues. At present, the interest for delayed payment was charged as per the provisions of the Supply Code-2014 and the distribution licensee is not empowered to relax any of these provisions. KSEB Ltd also submitted that, waiver of interest will affect the interest of other consumers due to passing of this component in the tariff.

6. In their comments, KSEB Ltd prima facie stated that the petition is not maintainable as the provisions of the existing law and the Commission lacks jurisdiction to entertain the individual grievance of consumers considering the provision under Section 42(5) of the Electricity Act 2003. In order to support the argument, KSEB Ltd cited the Supreme Court Judgment in Maharashtra State Electricity Distribution Co Ltd Vs Lloyd's Steel Industries Limited (Civil Appeal No. 3552 of 2006) and APTEL order in DHBVNL and Others Vs DLF Services Limited (Appeal No. 104 of 2005) and stated that State Commission has no jurisdiction to entertain a petition filed by an individual consumer and this petition is to be dismissed in the admission stage itself.
7. KSEB Ltd further pointed out that as per the provisions of the Regulation 180 of the Supply Code, 2014 also the petitioner is not entitled to approach the Commission to waive the interest applicable to them by considering them as a sick PSU. The request of the petitioner BSNL to extend the due date and avoid disconnection requires amendment of Regulation 122(10) and Regulation 136(4) of the Supply Code 2014. Such amendments can only be done through Code Review Panel. KSEB Ltd further stated that relaxations have already been granted to BSNL upon their request from February 2018. In February 2018 and October 2018, disconnection was not effected for non-payment of electricity charges. As per the request of the petitioner, time extensions were allowed for remitting their regular electricity bills for short periods from March 2019 to April 2020. Due to the Covid-19 pandemic, instructions were issued to the effect that disconnections shall not be

effected without the consent of Directors except for the safety related issues. KSEB Ltd also informed that HT-EHT consumers were allowed time till up to 16-05-2020 to remit the electricity bills for the month of March and April 2020 without interest and the LT consumers were allowed to remit their bills up to 16-05-2020 without surcharge for the bills issued from the commencement of lockdown to 05-05-2020 or it became due from the date of commencement of lockdown to 15-05-2020. These relaxations are applicable to the petitioner also. KSEB Ltd reported that the total arrears from M/s BSNL as on 31-05-2020 is Rs. 17.28 crore. Waiver of interest would lead to considerable loss to the respondent.

8. KSEB Ltd further contented that if any exemption /relief is granted to certain consumer category it will be a burden to the rest of the consumers. The common consumers will have to bear the burden faced by KSEB Ltd in future and may seriously hamper KSEB Ltd's ability to serve the consumers. The Commission had fixed the collection efficiency target as 98% and 99% respectively for 2019-20 and 2020-21. Hence, accumulation of arrears would adversely affect the collection efficiency and the AT&C loss target. In view of the acute financial difficulties faced by KSEB Ltd, mounting of arrears may not be allowed at this juncture. KSEB Ltd further submitted that since the revenue from sale of power is the only receipts to KSEB Ltd any relief/concessions/deferment of receipts is against the provisions of Electricity Act and Supply Code 2014. Based on the above grounds, KSEB Ltd requested to reject the petition.
9. Shri. Jose, Electrical Engineer, M/s TCED submitted that the petitioner was given sufficient time to settle the bills and disconnections are not effected till date. The relaxations announced by the Government of Kerala in view of the Covid-19 pandemic are also allowed. TCED also stated that the arrear of the petitioner up to June 2020 is about Rs.66 lakh. TCED is facing considerable cash deficit and requested for directions for immediate payment of bills.
10. TCED submitted that the bills for the bulk supply of power of TCED have to be remitted within the due date and if not paid interest for belated payment is applicable. The consumers of TCED also have to pay their bills as per the

provisions of Regulation 122 and have to remit interest for belated payments under Regulation 131 of the Kerala Electricity Supply Code, 2014. If the bills are not paid, electricity supply is to be disconnected as per Regulation 138 of the Supply code 2014. The main income source of TCED is its revenue from sale of power along with interest on belated payments.

11. As per the direction of the Government, TCED has extended the due date of the bills for March and April to 16-05-2020 and 01-06-2020 respectively. The total interest loss to TCED due to extension of payment date itself is to the tune of Rs.21,114/-. TCED further submitted that though TCED had suffered interest loss, KSEB Ltd is unwilling to forgo any such loss and TCED has to pay the bulk supply bills on time. TCED further stated that though M/s BSNL sought to waive the interest charges stating that it is an incipient sick PSU, no orders have been presented to support the claim. Since no concession is allowed to TCED, the entire burden of interest waiver has to be faced by TCED itself, which will lead to bankruptcy of TCED. The concessions if any extended, would lead to reduction in revenue and will affect other consumers of TCED. Accordingly, TCED sought to reject the reliefs sought for by M/s BSNL, considering the above situation.

Analysis and Decision of the Commission

12. The Commission has examined the contentions in the petition and the objections of the Respondent KSEB Ltd and TCED. The instant petition is for treating M/s BSNL as incipient sick PSU and for allowing relief in terms of extension of time up to 60 days for payment of bills and reduction/waiver of interest on belated payments under Schedule 1 of the Miscellaneous Charges as per Supply Code 2014. After considering the contentions of the parties and the written submissions, following issues are framed for examination:
 - a. Whether the petitioner has *locus standi* in filing the instant petition.
 - b. Whether the Petitioner is to be treated as an incipient sick PSU of national importance until its revival.
 - c. Whether the request that Interest on delayed payments as per the Schedule 1 of Supply Code 2014 can be waived considering BSNL as an

incipient sick PSU and the date of payment of bill can be extended up to 60 days from the due date by relaxing the provisions of the Supply Code 2014.

d. The disconnection of power supply to BSNL installations may be dispensed with, considering services and security reasons.

13. The each of the issues are taken up as shown below:

a. Whether the petitioner has *locus standi* in filing the instant petition

14. The first respondent KSEB Ltd in their written comments on the petition has argued that there is no *locus standi* in admitting the present petition as the Commission is not empowered to entertain complaints of the individual consumers. KSEB Ltd cited the judgment of Hon. Supreme Court in Maharashtra State Electricity Distribution Co. Ltd Vs. Lloyds Steel Industries Ltd [2007] and Order of the APTEL in Appeal No.104 of 2005 (DHBVNL and ors Vs. DLF services Ltd and Ors) in support of the claim. In the said judgment Hon. Supreme Court has ruled that in the event of establishment of CGRF and Ombudsman under Section 42(5) of the Act, the Commission is not empowered to entertain the complaints of individual consumers. In the case of grievances of the consumers, the appropriate forum is CGRF and Ombudsman.

15. The Commission has examined the above contentions of the KSEB Ltd. At the outset, the Commission is not inclined to subscribe to the contentions of the KSEB Ltd in this regard. The general powers of the Commission regarding consumer complaints and protection of consumer interest is mentioned in Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd and Ors. (MANU/SC/7800/2007). However, it is pertinent to note in the present case that, the petitioner has not raised any dispute or complaint against the actions of the respondent distribution licensees. In the prayers also, the petitioner has sought reliefs considering the financial difficulties faced by them. The petitioner on the other hand, has requested for relaxing the provision of Schedule 1 of the Miscellaneous charges under Supply Code

2014 on interest on belated payment. The power to relax the provisions of the Regulations is vested only with the Commission and the petition invoking the such power is not maintainable before any complaint redressal mechanisms like CGRF or Ombudsman under Section 42(5) of the Electricity Act. **Since the present petition is not in the nature of a dispute or a complaint as contented by KSEB Ltd, the argument of the KSEB Ltd that petition is not maintainable and the petitioner has no *locus standi* is to be rejected.**

b. Whether the Petitioner is to be treated as an incipient sick PSU of national importance until its revival

16. The petitioner has stated in the petition that the petitioner is to be treated as incipient sick PSU of national importance until its revival. In this regard, the Commission is of the view that, as per the provisions of the Electricity Act or the Regulations made thereunder, the Commission has no such jurisdiction and the Commission is not the appropriate forum for raising such prayers. The petitioner as a Central Government owned enterprise, may have to approach Central Government for such declaration. **Hence, the prayer of the Petitioner to treat the petitioner as an incipient sick PSU of national importance is to be rejected.**

c. Whether the request that Interest on delayed payments as per the Schedule 1 of Supply Code 2014 can be waived considering BSNL as an incipient sick PSU and date of payment of bill can be extended to 60 days from the due date relaxing the provisions of the Supply Code 2014.

and

d. The disconnection of power supply to BSNL installations may be dispensed with, considering services and security reasons.

17. Since the last two issues are interconnected as it requires relaxation of the provisions of Supply Code, 2014, they are taken up together.

18. The petitioner has requested for reduction of the interest on belated payment by relaxing the provisions of Schedule 1 of the Supply Code 2014 and also requested for extension of the due date for payment to 60 days. The respondents KSEB Ltd and TCED had strongly objected to the above relaxations sought by the petitioner stating that the same would result in increase of tariff for other consumers. KSEB Ltd has mentioned that already the concession as per the direction of the Government on account of Covid 19 pandemic have been extended to the petitioner. The due date for payment has been extended and disconnections are not effected due to non-payment by issuing appropriate orders. TCED has also stated that disconnections were not effected till now for non-payment and considerable arrears are due from the petitioner.
19. The Commission notes that the request of the petitioner BSNL to extend the due date and avoid disconnection requires relaxation of Regulation 122(10) and Regulation 136(4) of the Supply Code 2014. The Commission also notes that the petitioner has not furnished any supporting details other than the list of connections with the respondents. No supporting information were furnished for explaining the financial difficulties. The petitioner has also not stated how long such relief is to be continued. In its absence, any appreciation of the contentions of the petitioner is not possible. The petitioner has sought relaxation of the provisions of Schedule 1 of the Supply Code 2014, however, failed to show any of the provisions of the Electricity Act 2003 or any Regulations under it for invoking such power by the Commission.
20. Regulation 179 of the Supply Code 2014, empowers the Commission to relax the provisions of the Supply Code, which is quoted below:

179. Power of relaxation and power to remove difficulties. - (1) The Commission may in public interest and for reasons to be recorded in writing, relax any of the provisions of the Code.
21. As shown above, as per the provisions of the Supply Code 2014, the Commission has the power to relax the provisions of the Code in public interest. However, the petitioner has not convincingly established that there is public interest involved in the matter to invoke the power of the

Commission for such relaxations. The Respondents mentioned that extending such concessions to the petitioner would lead to financial loss. Thus, as pointed out by the respondents, any relaxation extended to the petitioner as a consumer, would in turn affect other consumers since the burden of the financial loss on the licensees would have to be shared by other consumers. This is not in public interest. Further, the Commission also has to ensure level playing field, since such concessions will have to be extended to other similarly placed consumers, in case they seek such concessions. It is also pertinent to state that the financial difficulties of the petitioner alone cannot be a factor for invoking the provision of Regulation 179 of the Supply Code 2014. Hence, the Commission is of the considered view that it is not a fit case for invoking the power under Regulation 179 of the Supply Code 2014.

22. Considering the above, the Commission **is not in a position to allow the requests of the licensee for waiver of the interest on delayed payments as per Schedule -1 of the Supply Code 2014 and the extension of the due date for payment of electricity bills, by relaxing the provisions of the Supply Code-2014, under Regulation 179.**

Orders of the Commission

23. After considering the contentions of the petitioner, the respondents and the provisions of the Supply Code 2014, the Commission is of the view that the waiver of interest charges and extension of due date as sought by the petitioner cannot be allowed.
24. With this, petition is disposed of. Ordered accordingly.

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Secretary