

THE JHARKHAND STATE ELECTRICITY REGULATORY
COMMISSION, RANCHI.

Case No. 01 of 2015.

M/S. Kohinoor Power Private Limited... .. Petitioner

Versus

1. Jharkhand Urja Sancharan Nigam Limited having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman.
2. The Chief Engineer, Jharkhand Urja Sancharan Nigam Limited having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi.
3. Electrical Superintending Engineer, Transmission Circle (Grid Operation), Chandil Division, Jamshedpur ... Respondents.

P R E S E N T

Hon'ble Mr. Justice N.N. Tiwari, Chairperson
Hon'ble Mr. Sunil Verma, Member (Finance)

Dated: 26th May, 2015.

For the Petitioner : Mr. NK. Pasari and Ms. Ranjana Mukherjee,
Advocate.

For the Respondents: Mr. Navin Kumar, Advocate.

O R D E R

1. The petitioner has challenged the respondents' claim of supervision charges @21.5% on the entire estimate for construction of 132 KV Mini Switch Yard (Grid Sub-Station) connected through LILO (Loop In – Loop Out) of 132 KV Hatia-Chandil Transmission Line to the petitioner's proposed (Group Captive Power Plant).
2. The petitioner claims to be a sister concern of M/s Kohinoor Steel Private Limited.

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3. For the installation of a Group Captive Power Plant, and for that purpose, in order to get permission for synchronization of its power plant, the petitioner entered into an agreement with the then Jharkhand State Electricity Board (for short “the JSEB”) on 14.07.2012.

4. For that purpose, the petitioner required to create/establish one mini grid sub-station of 132/33 KV, as directed by the transmission licensee.

5. Estimates for the same were to be prepared by the transmission licensee for which the licensee is entitled to claim supervision charges.

6. The petitioner, after entering into an agreement, has undertaken construction/erection work of the power plant with the capacity of 1 x 66 MW.

7. The petitioner made an application before the respondents for grant of permission for approval of LILO (Loop In – Loop Out) connectivity with the transmission licensee. A feasibility report was prepared at the instance of the Chief Engineer (Transmission) and terms and conditions were put forth.

8. The respondents, in the meanwhile, served Letter No. 28/Chandil dated 13.02.2014 showing an estimation of Rs. 10,17,07,514/- towards synchronization.

9. In the said estimation, supervision charges were calculated @21.5% of the entire estimated cost.

10. The petitioner, on receipt of the letter, replied stating that the supervision charges—amongst other shall be deposited in terms of the

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prescribed norms of the Jharkhand State Electricity Regulatory Commission (for short "JSERC"). The petitioner again requested for granting approval for LILO.

11. The petitioner, thereafter, was directed to execute an agreement and to deposit the supervision charges calculated @21.5% on the entire estimated cost.

12. The grievance of the petitioner is that there is no justification for claiming supervision charges calculated @ 21.5% contrary to the provisions of Clause 3.2.3 of Chapter 3 of the Electricity Supply Code Regulation, 2005 (for short "Regulation, 2005"), which provides that a licensee can recover supervision charges not exceeding 15% of the labour cost, and that too, when the licensee carries out the work. In the instant case, the petitioner has to carry out the entire work in terms of the technical report of the licensee as also the sanctioned estimate prepared by the Electricity Board. The materials also have to be supplied by the petitioner/consumer.

13. On the above premises, it has been submitted that the respondents' claim of supervision charges @ 21.5% of the entire cost including the cost of material is wholly arbitrary and illegal and is violative of the said provision of Regulation 2005.

14. It has been further submitted that the same issue arose in Case No. 01 of 2011 (M/s Kohinoor Steel Private Limited vs. Jharkhand State Electricity Board and others) was decided and set at rest by order dated 25th March, 2011 passed by this Commission. After thorough consideration of the relevant provisions of law and the Regulations, it was held that the claim of

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JSEB of the supervision charges @ 21.5% on the entire estimated cost is not legal and permissible. The Commission allowed the supervision charges to the extent of 15% of the labour cost as prescribed by JSERC under Regulation 2005. The petitioner submitted that this case is squarely covered by the said order of the Commission passed in M/s Kohinoor Steel (Supra).

15. The respondents have supported the claim of supervision charges @21.5% on the entire estimate for construction of 132 KV Mini Switch Yard (Grid Sub-Station) connected through LILO (Loop In – Loop Out) of 132 KV Hatia-Chandil Transmission Line on the ground that the petitioner had acceded to the said rate of supervision charges by their letter dated 2.5.2014 and the Board of Directors, Jharkhand Urja Sancharan Nigam Limited (for short “JUSNL”) and the Chief Engineer (Transmission) has sent letter on that basis vide Memo No. 278 dated 9.7.2014.

16. The respondents submitted that the scope of work, duties, liabilities and responsibilities of a distribution licensee vis-à-vis a transmission licensee is entirely different and the transmission licensee has to discharge greater responsibility than the distribution licensee. The transmission licensee works on the power transmission line of 132 KV and above, whereas the job performed by the transmission licensee involves greater responsibility, management and risk factor than that of distribution licensee.

17. The respondents on the above plea tried to justify the claim of supervision charges @ 21.5% from the petitioner.

18 The respondents also tried to distinguish the decision of this Commission in the case of M/s Kohinoor Steel (Supra) against the JSEB

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taking plea that in that case, the supervision charges @ 15% was made applicable to the distribution licensee in their respective licensed area under the provision of Clause 3.2.3 of JSERC Regulation, 2005 which is applicable only in case of distribution licensee. The JSEB now no longer exists. After unbundling of the JSEB, four separate Companies came into existence, i.e.: (i) Jharkhand Urja Vikas Nigam Limited; (ii) Jharkhand Bijli Vitran Nigam Limited; (iii) Jharkhand Urja Sancharan Nigam Limited; and (iv) Jharkhand Urja Utpadan Nigam Limited.

19. Since the decision was with respect to JSEB, the same has no application in the case of the respondent--Jharkhand Urja Sancharan Nigam Limited.

20. We have heard learned counsel for the parties and considered the facts and materials on record.

ISSUE

21. The only issue arose for consideration and decision in this case is as to whether the respondents' claim of supervision charges @ 21.5% is justified?

Finding

22. From the statements made in the counter affidavit as also the communication made with the petitioner regarding claim of supervision charges @21.5%, the Commission does not find the same supported by any provision of law or regulation framed by this Commission. The respondents have taken plea that the claim of supervision charges @21.5% is validly

based on the provision of the Bihar State Electricity Board Financial and Account Code (for short “BSEB Code”).

23. The petitioner controverted the said claim and submitted that the BSEB Financial and Account Code, which was deemed regulation under Section 79 (1) of the Electricity (Supply) Act, 1948, stood repealed by the new enactment i.e. the Electricity Act, 2003. The respondents had earlier taken the same plea in M/s Kohinoor Steel (Supra) which was rejected by the Commission after thorough consideration, and recording detailed reasons in paragraphs 22 and 23 of the said order, which are reproduced hereinafter:-

“22. Section 185 of the Electricity Act, 2003 which has been reproduced hereinabove, does not speak about the saving of regulations framed under section 79 (1) of the Electricity (Supply) Act, 1948. From this, we come to the conclusion that the said Code, under which the respondent-licensee-JSEB is claiming supervision charges, is not saved by the Electricity Act, 2003 and, as such, the respondent-licensee-JSEB is devoid of any authority to include in the estimate the supervision charges under “the Code”. True the respondent-licensee-JSEB has charged supervision charges @21.5% on the entire estimated cost from two other entities viz. M/s Usha Martin Limited and Road Construction Department of Government of Jharkhand. But “the Code” under which the respondent-licensee-JSEB have charged the supervision charges itself has not survived after the Electricity Act, 2003 has come into force and as such, the respondent-licensee-JSEB’s action in the case of these two entities would not validate their action in this behalf. Therefore, this plea is not tenable.

23. It will be relevant here to refer to Sections 45, 46 and 47 of the Electricity Act, 2003 which provides for power to recover charges, power to recover expenditure and power to require security respectively. Under Section 45 of the Act, which provides for how to recover charges, section 62 is also mentioned which speaks about determination of tariff. Broadly, these are the legal provisions under which a licensee can levy various charges and recover the same. Sub-Section 45 (5) of the Act says that the charges fixed by the distribution licensee shall be in accordance with the provisions of the

Electricity Act, 2003 and the Regulations made thereunder. Obviously, “the Code” is not a Regulation made under the Electricity Act, 2003 and to us, after coming into force the Electricity Act, 2003, that Code does not have legal sanctity.”

24. In view of the above, the ground on which the petitioner has based its claim became nonest.

25. The Electricity Act, 2003 provides elaborate provision of recovery of charges such as expenditure, security deposit etc. No provision of Electricity Act has been referred to by the respondents in support of their claim. Any provision of the Regulation framed by this Commission has also not been shown, giving such authority to the respondents to claim supervision charges @ 21.5%.

26. The Commission had taken note of those legal provisions while passing order in Case No. 1 of 2011 (Supra). It was also noticed that the Commission has framed regulations for levying of various charges including the cost of service connection/extension/up-gradation, charges of electricity supplied, security deposit and the schedule of charges. The JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010 provides for the Grid interconnection/parallel operation. The Commission had considered the relevant clauses of the said Regulations. In view of the provisions of JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010 and JSERC Electricity Supply Code Regulation, 2005, the Commission had come to the conclusion that the supervision charges cannot exceed 15% of the labour cost.

Conclusion:

27. In view of the above discussion and in our considered opinion, the petitioner's claim of supervision charges @ 21.5% has not been supported by any provision of law or any provision of the Regulations framed by this Commission and, as such, is not legally justified.

28. In course of hearing, it was contended on behalf of the respondents that the petitioner in their communication had agreed to pay the supervision charges @ 21.5% and as such, the petitioner is estopped from denying the same.

29. No document in the form of any agreement signed by the parties has been produced before us. Moreover the claim being contrary to the statutory provision, does not attract the principle of **bar of estoppels**.

30. It is, therefore, held that the respondents have no authority to claim supervision charges @ 21.5% from the petitioner on the entire estimate for construction of 132 KV Mini Switch Yard (Grid Sub-Station) connected through LILO (Loop In – Loop Out) of 132 KV Hatia Chandil Transmission Line to the petitioner's proposed Group Captive Power Plant.

31. However, the respondents are at liberty to re-calculate the supervision charges not exceeding 15% of the labour cost from the petitioner in terms of Clause 3.2.3 of Regulations 2005.

32. This petition is, accordingly, allowed and disposed of in the above terms.

Sd/-
(Sunil Verma)
Member (F)

Sd/-
(N.N.Tiwari, J.)
Chairperson