



Chhattisgarh State Electricity Regulatory Commission

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**In the matter of refund of 15% supervision charges
levied by the respondent on estimated cost of dedicated 132KV
line from Raigarh EHV sub-station of CSPTCL**

Petition No.46 of 2009 (M)

M/s R.R. Energy Ltd.
Raigarh

.... Petitioner

V/s

Chhattisgarh State Power Transmission Company Ltd.
Raipur

.... Respondent

Present: Manoj Dey, Chairman
B.K. Sharma, Member

ORDER
(Passed on 29.10.09)

M/s R.R. Energy Ltd., a 14 MW power generating plant situated at village Garhumaria, district Raigarh filed a petition under section 86 (1)(f) of the Electricity Act, 2003 (the Act, for short) for refund of 15% supervision charges levied by Chhattisgarh Power Transmission Company Ltd. (CSPTCL, for short) a successor company of CSEB on estimated cost of dedicated 132 KV line from Raigarh EHV sub-station of CSPTCL to their power plant laid under approval of State Government, Chhattisgarh under section 68 read with section 10 of the Act. The brief history of the case is that on the request of the petitioner the CSEB sanctioned an estimate for laying of 11 KM of 132 KV line from petitioner's power plant to 132 KV sub-station, Raigarh based on payment of 15% supervision charges by the petitioner on the cost of estimate. Since the said line was intended to be constructed by the petitioner they obtained approval from the State Government for laying of this dedicated 132 KV line under section 68 of the Act and communicated the approval to the CSEB on dated 10.10.07 intimating that the work of 132 KV line shall be executed by the petitioner as per approval accorded by the State Government. Subsequently, after completion of the construction work of 132KV line they obtained the approval from the Chief Electrical Inspectorate to charge the line and communicated to the CSEB, but the CSEB did not allow connectivity of 132KV line with its 132 KV sub-station Raigarh on the plea that 15% supervision charges which was due for payment is not paid by the

petitioner. On insistence for the payment of 15% supervision charges by CSEB and to avoid delay in commissioning of the line, the petitioner had to deposit Rs.71,16,184/- under protest on dated 16.10.08 towards 15% supervision charges alongwith necessary service tax. This has resulted this petition.

2. The petitioner in its petition has submitted that the section 68 of the Act under which the State Government has been delegated authority to grant approval for laying over-head line does not provide any charge to be levied as supervision charge payable either to the State Government or the Electricity Board or its successor company. It is further stated in the petition that the entire work of laying of the dedicated line as per the State Government approval was carried out by the petitioner company and the CSEB or its successor company did not play any role on its construction. The respondent even did not supervise the work of laying of line during construction work. As per the practice 15% supervision charges of the work is applicable only when the line is either constructed by CSPTCL (erstwhile CSEB) on contributory deposit basis, or when the line is constructed by consumer through contractor under supervision of the Board's officer and the line so constructed becomes the property of CSPTCL/erstwhile Board and the Board is liable to carry out O&M of the line. It is further stated that the petitioner's intention for laying 132KV line in accordance with the approval of the State Government was again intimated to CSEB vide their letter No. 120 dated 31.10.07. Therefore, it is not fair and legally tenable to levy 15% supervision charges of the estimated cost for a dedicated line by CSEB or its successor company which has been constructed by the petitioner under section 10 of the Act and thus the petitioner has prayed to instruct CE (Transmission), CSPTCL to refund the amount of 15% supervision charges (alongwith service tax) already deposited under protest by the petitioner.

3. The respondent CSPTCL in its submission stated that CE (Commercial) of CSEB while communicating the approval for connectivity of the line vide letter dated 24.09.07 has clearly intimated that approval has been accorded for construction of 132 KV independent line from the project site of M/s R.R. Energy Ltd. to 132 KV sub-station, Raigarh on payment of supervision charges @ 15%, and line completed shall be handed over to the CSEB on commissioning for further necessary action regarding maintenance etc. M/s R.R. Energy Ltd. (the petitioner) vide their letter dated 26.09.07 intimated that they are ready to pay the supervision charges @ 15%. On the contention of the petitioner that the State Government approval does not provide any charge to be levied as supervision charges payable, the respondent has stated that the State Government approval is for authorizing the petitioner to lay the line under section 68 of the Act and does not specify any charges payable by the petitioner in this respect. The petitioner has paid the inspection fee to the Electrical Inspectorate for obtaining the approval for energizing the line

though no such mention was there in the government approval conveyed to the petitioner for laying of this line. Likewise, the CSPTCL (STU) are entitled to receive the supervision charges for the line which is to be connected to their grid towards supervision and assurance of standard and quality in construction of the line. Since the petitioner did not deposit the supervision charges the supervision work by CSPTCL could not be carried out. The petitioner also did not communicate the respondent about taking up of the construction of the line work till the construction of line work was over. After payment of supervision charges under protest by the petitioner, the line was physically checked by the respondent and then energized.

4. The petitioner in its rejoinder has submitted that on submission of petitioner's letter dated 31.10.07 to the respondent indicating that the work is to be carried out by the petitioner in accordance with the State Government approval, the respondent in its letter dated 06.11.07 neither denied petitioner's request for execution of the work by them nor again asked the petitioner to deposit 15% supervision charges therefore, the previous letter of the CE (Commercial), CSEB dated 24.09.07 automatically stands superseded and under such condition question of payment of supervision charges does not arrive. It is further stated that the payment of 15% supervision charges as agreed by the petitioner vide their letter dated 26.09.07 also gets superseded subsequently in view of the State Government approval dated 09.10.07. Thus the petitioner is of the opinion that the 15% supervision charges claimed by the respondent are arbitrary and have no competent approval as such there is no any provision by CSERC for levy of supervision charges of 15% in case of lines laid by the generating company.

5. We have gone through the contents of petition submitted by the petitioner and rejoinder thereof alongwith pleadings of both the parties in length and have observed that the contention of the petitioner that there is no competent approval and provision of levy of 15% supervision charge by the CSERC on the cost of the line laid by the generating company is not correct. In our order passed on dated 10.08.07 in petition No.40 of 2006(M) in the matter of approval of miscellaneous and general charges under sections 43, 45 and 46 of the Electricity Act, 2003 and clause 4 and other relevant clauses of Chhattisgarh State Electricity Supply Code, 2005, we have given decision of payment of 15% supervision charges in para 6.9 shown as follows:

"The Commission's views in respect of levy of 15% supervision charges have been dealt with para 6.7. Here the asset is created by the consumer and handed over to the Board. The consumer incurs the cost of material and labour. Thus, there appears justification in charging of supervision charge of 15% on cost of material and labour. This practice is also being followed for many years in the Board. The Commission

approves supervision charges at 15% on the cost of estimate of work approved by the Board including cost of material, labour etc.

We do not agree with the contention of the petitioner that on not specifically re-demanding 15% supervision charges by CSEB in their letter dated 06.11.07, the letter of CE (Commercial), CSEB dated 24.09.07 where the approval of the CSEB for laying of the line along with the condition of payment of 15% supervision charges was conveyed get automatically stands superseded. We also do not agree with contention of petitioner that consent letter dated 26.09.07 of petitioner also gets superseded on conveying State Government approval for laying of 11 KM 132 KV line from the generating plant of the petitioner to the grid of CSEB. While going through the various correspondences made by the petitioner with the respondent company copy of which submitted with petition, the petition and rejoinder filed to this Commission we have observed that nowhere the petitioner has specifically mentioned that the operation and maintenance work of the said 132KV line will be carried out by them and this has resulted mis-understanding between the petitioner and respondent. Had this would been made clear by the petitioner to the respondent the dispute and this petition would not have raised. During the course of arguments the petitioner informed its intention to own and carry out the maintenance of this 132 KV line and accordingly the petitioner was directed to submit his clear confirmation in writing to own and carry out the maintenance of the line. Accordingly the petitioner submitted a separate application on dated 15.10.09 stating that they own the responsibility to maintain this line in future also. We agree that the contention of the petitioner stated in para 12 of its petition that 15% supervision charges on the estimate is applicable only when the line is either constructed by erstwhile CSEB on deposit basis or when the line is get constructed by consumer/beneficiary through contractor under supervision of the Board's officer and the line so constructed becomes the property of CSPTCL/erstwhile Board and the Board is liable for O&M of the line. This provision is applicable not only for service connection but for other extensions also for which work is carried out by Distribution/Transmission Company. Further, as per section 10 of the Act, the duties of the generating companies shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith. Thus a generating company is authorized to construct own and maintain the dedicated transmission line. Since here in this case the petitioner has confirmed that they will own and maintain the said 132KV line hence as per provision 6.9 of our order passed on 10.08.07 related to the miscellaneous and general charges the petitioner company is not liable to pay the 15% supervision charges on the cost of the line. We, therefore, direct the respondent to refund back the amount collected towards 15% supervision charges and service tax thereon to the petitioner within a period of one month.

7. Since there is no precedence here that any generating company or consumer carrying out the maintenance of the transmission line and this is the first case of its kind where the dedicated line connected to the State transmission system is to be maintained by the generating company, the possibility of handing over of the line including its O&M in future may be possible. On questioning the petitioner on such possibility in future it was stated by the petitioner that in such case they will pay necessary charges to the CSPTCL as decided by the Commission. We, therefore, decided to cover this aspect also in our order. On our query it was informed by the respondent that in case of the line extension work get carried out on turn key basis under their supervision provision of two years performance guarantee is made to cover the risk factor related to the quality of the construction work. Considering this we are of the view that in case of the work which has not been supervised by the CSPTCL, five years performance guarantee will be reasonable and hence, in this case if the petitioner comes out with the proposal to hand over the line including the O&M work to the respondent within a period of five years from the date of charging of the line, the petitioner shall pay the charges equivalent to 15% supervision charges on the cost of the line as per current i.e. present schedule of the rate and actual cost of modification of the line as per standard, if so required. In case the proposal to hand over the line and the O&M comes out after a period of five years of the charging of the line, the petitioner shall pay the actual cost of modification of the line as per standard, if so required. We order accordingly.

**Sd/-
Member**

**Sd/-
Chairman**

True Copy

**(N.K. Rupwani)
Secretary**