ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

Vidyut Niyantrana Bhavan, Adjacent to 220/132/33/11 KV AP Carbides SS,
Dinnedevarapadu Road, Kurnool - 518 002, Andhra Pradesh.
Phones: 08518 - 294823,24,25,26

MONDAY, THE FOURTEENTH DAY OF
TWO THOUSAND AND TWENTY-FOUR

***

:Present:

Justice C.V. Nagarjuna Reddy, Chairman

Sri Thakur Rama Singh, Member

Sri P.V.R.Reddy, Member

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In the matter of a dispute about the claim of line and bay maintenance charges imposed on the HT SC No. SKL-139 & Unit HT Sc No. SKL-423 by APTRANSCO

in

O.P No. 28 of 2024

BETWEEN:

Aurobindo Pharma Ltd (APL),
Unit XI. HT SC No. SKL-139, Aurobindo Pharma Ltd (APL),
Pydibhimavaram, Ranasthalam. Srikakulam - 532409
Solar Power Plant (SPP). HT SC No. SKL-423,
Pydibhimavaram, Ranasthalam, Srikakulam - 532409
Rep. by Aurobindo Pharma Ltd. ...Petitioner

And

1. Transmission Corporation of Andhra Pradesh Limited,
2. The Chief Engineer,
   Vizag Zone, AP Transco,
3. The Superintending Engineer
   OMC Circle, APTRANSCO
   Vizianagaram. Andhra Pradesh

.....Respondents

This Original Petition has come up for hearing before us on 28.08.2024 in the presence of Sri. Deepak Chowdary, Counsel representing Sri Challa Gunaranjan, learned counsel for the Petitioner; and Sri P. Shiva Rao, learned Standing Counsel for the respondents; that after hearing the learned counsel for both parties and after carefully considering the material available on record, the Commission passes the following:

ORDER

The petition mainly pertains to the alleged arbitrary levy and collection of Operation and maintenance (O&M) charges by the Respondents for maintaining lines and substation bays in two cases. One concerns an EHT consumer SKL-139 receiving supply from 132/33 kV Pydibheemaram Substation in Srikakulam District, and the other concerns a Solar Captive Generating plant (1X30 MW) connected to 132/33 kV Pydibheemavaram EHT Substation. Both these units belong to the petitioner.

The main averments of the petitioner, each unit-wise, are as follows.

Case I : EHT Consumer -HT SC No. SKL-139.

This unit manufactures pharmaceutical products and is located in Ranasthalam in Srikakulam District. The Petitioner, as a Consumer, entered

into an HT Agreement dated 21.11.2011 with APEPDCL for the supply of electricity vide HT S.C. No. SKL 139 for the Contracted Maximum Demand ("CMD") of 12000 kVA.

The Petitioner constructed the 132 kV supply line connecting the Pydibheemavaram Substation with his unit and bay at the substation as per the approval of the 1st Respondent vide letter dated 05.02.2011. The Petitioner took up the Transmission Line and Metering Yard works to connect the unit with 132/33kV Pydibheemavaram SS on a turnkey basis after the due payment of all relevant charges. The petitioner paid the Supervision Charges of Rs. 54.89 lakhs to the Respondent. The petitioner incurred Rs. 5.482 Crores for establishing the transmission line and metering yard, completed and commissioned the same on 21.11.2011. The Physical possession of the asset was handed over to the 1st Respondent.

By letter Lr No. CE/VSPZone/O&M/AEE.l/F. /D.No.5269/2021, dated 22.11.2021, 3rd Respondent, for the first time, demanded payment of annual maintenance expenses of Rs.46,05,164/- for the interconnection facilities from 21.11.2011 to 31.03.2022 in respect of HT S.C. No. SKL 139.

The asset was delivered by a gift deed dated 12.05.2023, handed over vide a Letter dated 15.05.2023 to the 1st Respondent.

The Petitioner stated that the demand notice issued by the Respondents is illegal, without jurisdiction, and the same is not backed by any statute or contractual arrangement.

Case II: Solar Generating Plant

The Petitioner has set up a Solar Captive Generating plant (1X30 MW) at Varisam, Srikakulam Dist, and it has an HTSC no SKL 423 with APEPDCL.

The interconnection of the solar generating plant was undertaken on a turnkey basis under the supervision of AP Transco after the due payment of relevant charges. The line & bays were commissioned on 20.05.2017. The

delivery of the asset is done by gift deed dated 12.05.2023, and the said gift deed was handed over vide Letter dated 15.05.2023 to the 1st Respondent.

The Power from the Solar Power Plant is being injected into the Grid substation at 132/33 kV Pydibheemavaram. The Petitioner has been maintaining the 132 kV line and SS equipment since the Commercial Operation Date (CoD) and has been paying for the expenses incurred.

By Lr.No. SE/OMC/SKLM/F. Maintenance Expenses/ D. No. 1098/2018 dated 06.08.2018, the Respondent demanded payment of annual maintenance expenses of Rs.2.36,959 for the interconnection facilities from 20.05.2017 to 31.03.2018.

The Petitioner stated that APTRANSCO, on the one hand, was insisting on the petitioner to maintain the 132 kV system and, on the other hand, has been raising the bills towards O&M charges without maintaining the 132 kV system. As the Petitioner maintained the 132 kV system, APTRANSCO's levy of Operation and Maintenance (O&M) charges on the Petitioner without maintaining the 132 kV system is illegal and not justifiable.

Submissions of the Petitioner regarding the above two cases:

When the Long-Term Open Access agreement of APL Solar Power Plant was due for renewal by 01.06.2022, and the same was communicated by CGM/Commercial/APTRANSCO vide letter dated 25.05.2022. APTRANSCO refused to renew the Long-Term Open Access (LTOA) agreement unless the O&M charges were paid according to the impugned demand notices. Under this forced condition, Aurobindo Pharma Ltd had to pay the O&M charges in the above two cases to seal the LTOA agreement's renewal under protest.

The Respondents are responsible for O&M, and there is no statutory or contractual obligation for the petitioner to bear or reimburse the maintenance charges. Therefore, the Respondents were requested to refund the amounts already paid under oral protest and not to demand the said

charges in the future. Several representations made to the Respondents to drop the demands were not responded to.

The impugned notices seek to derive authority to levy operation and maintenance charges from the TOO(CE-Construction-2) MS. No.20 dated 23.04.2012. The TOOs issued by the 1st Respondent do not have any statutory force. They are not traceable to any specific provisions of the Electricity Act, 2003 and, therefore, not binding on the petitioner herein unless there is an agreement or contract. The 1st Respondent issued the TOO to stipulate the detailed procedure for approving transmission works relating to the extension of EHT supply to Bulk Load Consumers for providing transmission connectivity for evacuation of power from power plants of Power Developers such as IPPs/CPPs and to Open Access consumers and for Deposit Contribution Works such as shifting of EHT lines etc., by Consumers/Power Developers or third parties by paying necessary supervision charges to Respondent. The TOO also stipulates the procedure for handing over the asset created by third parties to the 1st Respondent and for capitalisation of such assets. As per the TOO, the assets created by third parties are deemed to be vested with the Respondent, who is responsible for the operation and maintenance of the asset. The notices are contrary to Clauses 15 & 17 of the terms & conditions of the said TOO. The signing of a gift deed in favour of the Ist Respondent is only a ministerial act, and the Respondents should bear the 0 & M Charges as those charges are included in the Tariff paid for the SKL-139 unit; that the only contractual arrangement between the Petitioner and the 1st Respondent are the turnkey works approval letters, i.e. Lr. No, CPT-230/SE/PM-lI/Aurobindo/D.No.177/2011 dated 05.02.2011 and Lr.No.ED/HRD&Plg/DE-REE/ADE-C/AE-C/F-Aurobindo/D.No.72/17, dt 17.02.2017, for HT S.C. No. SKL 139 (CMD 23 MVA) and HT S.C. No. SKL 423 (30 MW Capacity) respectively which do not stipulate the payment of O & M charges and they clearly state that the asset shall be deemed the property of the 1st Respondent.

The petitioner further stressed that his HT S.C. No. SKL 139 (CMD 23 MVA) and HT S.C. No. SKL 423 (30 MW Capacity) are Industrial Category service connections. Since the lines are vested with Respondents, the cost of maintenance charges for usage are included in the tariff, and the petitioner has been paying the power bills according to the tariff determined by APERC, and hence separate maintenance charges cannot be levied. That as per Clause 5.3.2.2 of GTCS, the service line shall be the property of the 1st Respondent, which shall maintain the same at its own cost, notwithstanding the fact that the consumer has paid for a portion or the total cost of the service line. Thus, the impugned levy of Annual Maintenance Charges on the petitioner on the premise that the captioned assets are required to be maintained by Respondent at the cost and expenses of the petitioner is without jurisdiction and lacks authorisation of the Commission to collect such charges either from the Retail Tariff Order or Transmission Tariff Order, besides not deriving right from the contract.

That under Clause 3 of Works of Licensee Rules issued vide G.O. Ms. No. 24 dated 27/02/2007 by GoAP, the Respondent, being the transmission licensee, is the only authorised person/company to execute/ undertake any transmission work. The GoAP has consented under Section 68 of the Electricity Act, 2003, to the Respondent to construct any line or plant in Andhra Pradesh. As per the Works of Licensee Rules, to acquire the Right of Way to lay a transmission line lies with the Respondent. To avoid delay, the petitioner herein has taken up the construction of a 132 kV line on behalf of the Respondents, as per the specifications mentioned in the approval of the Respondent, by paying 10% Supervision Charges on the estimated cost of the work. Therefore, as per the TOO, the assets created by third parties are deemed to be vested with the 1st Respondent, and they are responsible for the operation and maintenance of the asset.

The Petitioner also relies on the APERC Order in a similar case in O.P. No. 11 of 2016, which held that recovery of line and bay maintenance charges is illegal and without statutory or contractual authority.

That the Respondents' contention that unless the Transmission asset is transferred to them in the manner as demanded in various addressed letters, the petitioner is obligated to incur maintenance charges is wholly erroneous. Both have no nexus in as much as the imposition of any charge, which either should emanate from statutory provision folioed by appropriate authorisation to collect or the same should arise out of a contractual arrangement, both of which do not exist in the present case.

With the above averments, **the petitioner prayed the Commission** to declare the levy of Operation & Maintenance Charges by Respondents on the lines and bays in the above two cases as illegal and to direct the Respondents to refund a sum of Rs. Rs. 48,42,123/- (Rs. 46,05.164 (HT S.C. No. SKL 139) + Rs. 2.36,959 (HT S.C. No. SKL 423) paid by the petitioner under protest with interest @12% per annum and not to raise such demands in future.

Counter averments of the Respondents:

The Respondents stated that the line and bays of HTSC No.SKL 139 were completed and commissioned on 21.11.2011. The asset was handed over to APTRANSCO vide a Gift Deed dated 12.05.2023 by the Petitioner's letter dated 15.05.2023. These assets- 1 No. 132 KV line and 2 Nos Bays were in the petitioner's name from 21.11.2011 to 12.05.2023. The Respondents maintained the line and two bays during the said period; hence, charges were levied only for that period. The list of O&M activities done by the Respondent was furnished.

Regarding HTSC NO.SKL423 (Solar plant of the Petitioner), the Respondents stated that the petitioner is misleading the Commission. As per clause 16 of the Turnkey approval letter issued to the Petitioner, the lines and bays become the property of the Respondent only after the successful takeover of the assets. The Respondents can utilise the above works in any manner as required from time to time. The Petitioner handed over the lines and bays by gift deed on 12.05.23, so they levied the O&M charges from 20.5.2017 (date of COD) to 12.5.2023. The Respondents stated that they

maintained the line and bays during the period for which O&M charges were levied and furnished the list of the O&M activities carried out by them. That the bulk load consumer and generators have to hand over the assets immediately/ after commissioning as per TOO No.20 dated 23.04.2012. Since handing over has not been done, the O&M services for the above assets have been treated as third-party O&M services and O&M charges levied since no third-party services rendered are supposed to be free of cost, and the charges are not supposed to be socialised because ordinary consumers will be burdened.

The Respondent further stated that as per clause 14 of Regulation 2 of 2017 of APERC, after completion of the execution of evacuation works, the ownership of 11 kV or 33 kV or EHT Line from common metering point of Pooling SS/Pooling bus to APTRANSCO/DISCOM grid shall be transferred to APTRANSCO/DISCOM and APTRANSCO/DISCOM shall carry out O&M of EHT/33 kV line as the case may be; that as per Clause 5.3.2.2 of GTCS, although the consumer has paid for a portion or full cost of the service line, the service line shall be the property of the licensee, which shall maintain it at its own cost. The licensee shall also have the right to use the service line to supply energy to any other person(s). Hence, as per the above clauses, the assets created by Generators/Developers/Bulk Load consumers on a turnkey basis are to be handed over to the Respondent immediately after commissioning

The Respondent also stated that if it had taken the Asset into their Accounts from the date of Commissioning as per prevailing Regulations, the Asset would have been duplicated, which is against the Accounting rules. The Respondent has evaluated a procedure for handing over assets to avoid this duplication vide TOO No.20 dt.23.04.2012.

Points for determination

In light of the respective pleadings of the parties as above, the points for consideration are

1. whether the respondents are entitled to levy and collect the maintenance charges in question? and
2. If not what relief the petitioner is entitled to?

Commission's decision:

Re-Point 1

The Commission carefully considered respective pleadings with reference to the records. The Petitioner has two EHT service connections, basically HTSC No.SKL 139 is for consumption from the Grid, and the Other is for injecting energy into the Grid by solar plants for captive use. After obtaining approval from the Respondents, the Petitioner executed captioned EHT lines and Bays at the APTRANSCO substation and its locations using a Turnkey method with his investments, in the first case in 2011 and in the second case in May 2017. The Petitioner handed over the captioned lines and bays in 2023 to the Respondents. The Respondents have levied the O&M charges from the COD date of captioned lines and bay till the date of handover. The charges were levied after a gap of about ten years concerning HTSC No.SKL 139 and after one year concerning the HTSC no 423. The Petitioner's plea is that the turnkey approvals do not stipulate O&M charges; that the industrial consumer's service lines and bays are deemed to be vested with the Respondents once the lines and bays are commissioned as per clause 5.3.2.2 of GTCS despite his investment. It is the Petitioner's further case that the Respondents are responsible for O&M, and there is no statutory or contractual obligation for the Petitioner to bear or reimburse the maintenance charges. The Petitioner further stated that handing over the lines is only a ministerial act which is now completed and that the O&M costs incurred by the Respondents are already factored into the Retail Supply Tariff paid by it. The Petitioner also relies on the APERC Order in O.P. No. 11 of 2016 to declare the impugned demands issued by the Respondents as illegal. The Respondents, without answering the various grounds raised by the Petitioner, rely on terms and conditions mentioned in

the Turnkey approvals granted by them, clause 5.3.2.2 of GTCS and clause 14 of APERC Regulation 3 of 2017.

Further, both parties claim that the captioned lines and the bay are maintained for service HTSC no 423 from the COD to the date of handing over. The Respondent also states that deemed vesting of the assets into their accounts would lead to duplication in accounts, and hence, the procedure was evolved to hand over the assets executed by the third parties to the Respondents.

Since both parties are placing reliance on clause 5.3.2.2 of GTCS, the same is extracted below.

"5.3.2 Service Line Charges

5.3.2.1 The Service line charges payable by the consumers for release of new connection/ additional load under both LT and HT categories shall be levied at the rates notified by the company in accordance with regulations /orders issued by the Commission from time to time. These charges shall be paid by the consumer in advance failing which the work for extension or supply shall not be taken up. These charges are not refundable. Provided that where any applicant withdraws his requisition before the Company takes up the work for the erection of the service line, the Company may refund the amount paid by the consumer after deducting 10% of the cost of the sanctioned scheme towards establishment and general charges. No interest shall be payable on the amount so refunded.

5.3.2.2 Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s). "

As seen from the above, the service line shall be the licensee's property, and it shall maintain the same at its own cost. Further, the above clause

provides an absolute authority to the Respondents to use the captioned service line to supply energy to other persons. Therefore, concerning HTSC No.SKL 139, the above clause squarely applies, notwithstanding anything contained in the terms and conditions prepared by the Respondent for turnkey approvals regarding the handing over of the assets. It is pertinent to refer to a similar case in OP No 61 of 2023, Sarda Metals Vs APTRANSCO; in which this Commission observed as under.

"While the factum of handing over of the works is the bone of contention between the parties, the fact, however, remains that, though the works were constructed at the cost of the petitioner, they are treated as the property of respondents. Irrespective of whether handing over of the works as per the rituals or formalities has not taken place or not, undisputedly the same works are being utilised by the respondents for transmitting power to other consumers also. In this situation and in the absence of any provision which specifically envisages recovery of maintenance charges from the petitioner it would be highly unconscionable for the respondents to collect any charges from the petitioners in the name of maintenance. This action, in the Commission's opinion is not sanctioned by Law and wholly unauthorised."

The above observations hold good in this case also. The Petitioner contends that it has no statutory or contractual obligation to bear or reimburse the maintenance charges. The Respondents have not filed any statutory document to show how the Petitioner is obligated to pay the O&M charges. There is no merit in the argument of the Respondents that if it had taken the Asset into their Accounts from the date of Commissioning, the Asset would have been duplicated since merely taking the assets into books of accounts, the Respondents would not be entitled to any depreciation and RoCE except O&M as the consumer contributions would be deducted while computing depreciation and RoCE in the Tariff Computations. Thus, showing the depreciation and ROCE in Petitioner's account for its investment in the service line would not amount to duplicating the asset.

For the service line commissioned in 2011, the Respondents issued the demands for O&M charges in 2021. It is pertinent to refer to the Hon'ble APTEL's observations in its judgement 29.10.2015 in Appeal Nos. 285 of 2014, 286 of 2014 and 287 of 2014 (EID Parry (India) Ltd & Others Vs APERC & Others) while dealing with such matters. The Hon'ble APTEL's observations are extracted below.

31. The learned State Commission in the Impugned Order had rightly held that the claims of the maintenance charges made by the respondents (distribution/transmission licensee) were not barred by law of limitation and we agree to the extent only that the Limitation Act 1963 is not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission. After going through the legal authorities mentioned above in this judgement, we find that the said maintenance charges/expenses claimed by the respondents (distribution/transmission licensee) are absolutely barred by the principle of delay and laches and the said principle is clearly applicable to the facts of the matters before us. Every Court or Tribunal is required, while considering the limitation, to also consider the effect of principle of delay and laches in the facts and circumstances of a particular case. Thus the demands or claims of the said maintenance charges towards the maintenance of the dedicated transmission lines of the appellants are clearly and completely barred by the Doctrine of delay and laches and every finding or reasoning recorded by the State Commission in the respective Impugned Order to the contrary is required to be quashed or set aside as the State Commission's findings are based on total incorrect and illegal approach which is not warranted in law.

Hence, even without going into the merits, assuming the Respondents are right in imposing demands on the Petitioner, as per the above observations, the demands are barred by the doctrine of delay and laches.

Given the foregoing and in line with the Commission's order in OP NO 61 of 2023, the Commission is inclined to accept the Petitioner's plea.

Accordingly, it is held that the demand issued to this service is without the authority of law.

Coming to HTSC no 423, it is to be noted that the line is meant for evacuating the power by the Petitioner's solar power plant for captive use. The Petitioner uses DISCOM's power only for start-up operations. Such services can not be treated as consumer service as per the Hon'ble APTEL's judgement dated 24.05.2011 in Appeal Number 166 of 2010. In the said judgement, Hon'ble APTEL held that a generator requiring 'startup up power' from the grid occasionally cannot be termed as a consumer. Accordingly, GTCS, which are applicable for a consumer, have no application to the Petitioner. Hence, this case shall be dealt with separately.

The Respondent relies on terms and conditions [TOO (CE-Construction-2) Ms No. 20] of the Turnkey approval letter issued to the Petitioner and the APERC Regulation 3 of 2017 to justify the imposition of the O&M charges on the Petitioner. We have carefully gone through the TOO MS No 20 as well as Regulation 3 of 2017. No doubt both of them stipulate the transfer of line. However, neither of them provides for consequences of non-transfer; much less levy of charges under any head, including towards O&M. It is legally well settled that no fiscal liability could be fastened either by the State or any Private person for that matter, on any other person without the authority of law. In the absence of any provision authorising the Respondent to levy O&M charges, it can't arrogate to itself the power to levy the charges. Therefore, the impugned levy being without the authority of law cannot be sustained, and the same is, accordingly, set aside.

Re-Point 2

In the light of the findings on point 1, the Respondent is liable to refund the impugned charges. Respondent 1 is also directed to refund the amounts collected in the second case. In both cases, the Respondents are directed to refund within one month from the date of this Order. As regards the interest claimed by the Petitioner, it needs to be kept in mind that the respondent is

a public utility service serving the interests of the consumers without a profit motto. Any charges collected from it towards interests have to be necessarily collected from the consumers at large. In the facts and circumstances of the case, we are not inclined to award interest.

In terms of the above directions, the petition is disposed of.

Sd/-	**Sd/-**	**Sd/-**
P.V.R. Reddy	**Justice C.V. Nagarjuna Reddy,**	**Thakur Rama Singh**
Member	**Chairman**	**Member**