TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O.P.(SR) No.108 of 2022

Dated 02.03.2023

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s Sheetal Shipping & Mental Processor Limited,
5-5-103 to 1056, Meher Complex, 1st Floor,
Ranigunj, Secunderabad 500 003. ... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
   Corporate Office, H.No.6-1-50, Mint Compound,
   Hyderabad 500 063.
2. Chief General Manager (Commercial),
   TSSPDCL, Corporate Office, H.No.6-1-50,
   Mint Compound, Hyderabad 500 063.
3. Superintending Engineer, Operation Circle,
   Yadadri, TSSPDCL, Near 33/11 Bhongir Town Substation
   Kisan Nagar, Bhongir District 508 116.

... Respondents

The petition, at SR stage for maintainability, came up for hearing on 09.01.2023. Ms. Nishtha, Advocate for petitioner appeared on 09.01.2023 and matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Sheetal Shipping & Metal Processor Limited (petitioner) has filed a petition under Section 142 of the Electricity Act, 2003 (Act, 2003) read with clause 26(1) of Regulation No.2 of 2015, seeking declaration of the claim of development charges

along with interest on restoration of CMD and consequential relief including punishing the respondents. The pleadings of the petition are extracted below:

a. It is stated that the petitioner is a HT consumer as defined in Section 2(15) of the Act, 2003 vide service connection bearing No.YDD 557 for supply of power of contracted maximum demand (CMD) of 750 kVA under high tension category situated at operation circle, Yadadri, Bhongir District.

b. It is stated that the Act, 2003 is enacted and conferred with the power to the Commission to discharge function as prescribed under Section 86 of the Act, 2003.

c. It is stated that the petitioner original CMD was 750 kVA.

d. It is stated that the petitioner was not able to make the payment of C.C. charges due to bad market condition the respondents disconnected power supply to its HT No.YDD 557.

e. It is stated that the petitioner requested the respondents to restore power supply by extending the scheme of sick unit revival. Accordingly, the respondents are pleased to sanction the said scheme vide memo No.CGM(Comml)/SE(C)/ DE(C)/ADE-III/F.Sick Unit/D.No.366/15 dated 13.05.2015 and restored the power with the original CMD of 750 kVA.

f. It is stated that the respondents while extending the sick unit revival scheme claimed an amount of Rs.9,00,000/- towards development charges that is 750 kVA x 1200/- per kVA.

g. It is stated that in view of the above discrepancy the petitioner vide its letter No.SSMPL/F.SE YDD/D.No./2021 dated 13.08.2021 made a representation before respondent No.3 with a request to withdraw the claim of development charges of Rs.9,00,000/-.

h. It is stated that the as prescribed in clause 8(6) of Regulation 4 of 2013 dated 29.07.2013 the respondents are not entitled to collect development charges for restoring the capacity to the original level.

i. It is stated that the then APTRANSCO vide letter No.CE(Comml)/AE/TCS/411/ 2001 dated 29.05.2001 filed a proposal before the then APERC for approval of scheme under sick unit revival scheme for HT consumer who are under

disconnection more than four months. The then APERC in response to the said proposal issued letter No.APERC/Secy./Dir(Tariff)/F./D.No.4966/2001 dated 05.11.2001 to the then APTRANSCO and four DISCOMs along with terms and condition applicable for sick unit revival scheme.

j. It is stated that the APERC vide its letter No.E-273/JD(Engg.)/2018 dated 29.11.2018 issued to their DISCOMs sick unit revival scheme is sanctioned. As per clause 2(iii) directed "*The DISCOMs shall not collect development charges for the load/demand already sanctioned. However, development charges can be collected for additional load, if any*."

k. It is stated that as prescribed in clause 5.3.3.1 of GTCS the development charges payable only when new connection or additional load is provided. The clause 5.3.3.1 is extracted hereunder.

"5.3.3 Development Charges

5.3.3.1 The amounts payable by the consumer towards development charges of new connection/additional load under LT and HT categories shall be at the rates notified by the Company with the approval of the Commission from time to time. The consumer shall pay these charges in advance, failing which the works for extension of supply shall not be taken up. These charges are non-refundable."

l. It is stated that as prescribed in clause 5.3.2.1 the development charges as prescribed in Clause 5.3.3.1 are to be collected for providing service line charges for release of new connection or additional load.

m. It is stated that the then APERC issued Regulation No.4 of 2013 on 29.07.2013. As prescribed in clause 8(1) the licensee is authorised to recover from an applicant, requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the distribution licensee has already incurred or to be incurred in extending power supply to the applicant. The clause 8(1) of Regulation No.4 of 2013 is extracted hereunder.

"8. Specific provision for Development charges

(1) The Distribution Licensee shall collect development charges subject to the provision of Act and this Regulation and subject to such directions, orders or guidelines, the Commission may issue from time to time. The

Distribution Licensee is authorised to recover from an applicant, requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurred in extending power supply to the applicant."

n. It is stated that the development charges claimed on 750 kVA under sick revival scheme is in violation of terms approved by the then APERC vide letter No.APERC/Secy./Dir (Tariff)/D.No.4966/2001 dated 05.11.2001. It is pertinent to note that inspite of the development charges for CMD of 750 kVA is already paid the development charges claimed once again.

o. It is stated that the respondent while extending sick unit revival scheme not incurred any expenses for upstream the network as the existing network was already developed after collecting development charges from the petitioner.

p. It is stated that in the present case no service line is provided as the line was existing. No additional load is provided as the existing CMD is 750 kVA on the same once again development charges claimed without providing any service line or without up streaming network is in violation of provisions of law and in violation of natural justice.

2. The petitioner has sought the following prayer in the petition for consideration.

"(i) To declare the claim of development charges of Rs.9,00,000/- pertaining to restoration of CMD of 750 kVA claimed by respondent No.2 vide Memo No.No.CGM(Comml)/SE(C)/DE(C)/ADE-III/F.SickUnit/D.No.366 /15 dated 13.05.2015 as illegal consequently set aside the said claim.

(ii) To refund Rs.9,00,000/- of development charges along with applicable rate of interest from the date of payment to date of refund.

(iii) To pass appropriate orders as prescribed under Section 142 of Electricity Act, 2003."

3. The Commission has heard the counsel for petitioner with regard to the maintainability of the petition and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 09.01.2023:

"… … The advocate representing the counsel for petitioner stated that the issue arises in respect of wrong application of the provisions of the Electricity Act, 2003 and the regulations including guidelines issued by the Commission. No doubt collection of development charges is an issue seized up by the Hon'ble High Court, but it pertains to levy of the same for the first time and this case does not involve such situation. Though, the petitioner is a subsisting consumer, because of initiating revival proceedings, the unit is getting revived and therefore, sought restoration of power supply to which request, the respondents are demand payment of development charges again by treating it as a fresh connection.

The advocate representing the counsel for petitioner stated that Sections 43, 45 and 86(1)(a) of the Act, 2003 emphasize that the licensee has to collect only such charges as have been determined by the Commission and no others. Also, there is no provision in the above stated sections or in the regulations notified by the Commission that the units being revived under the sick industry policy are to be treated as fresh service connection and mulcted with development charges again. Further, the Commission itself in its communication (issued by the then APERC) did specifically required certain things to be followed in case of sick industries, however, did not mention the aspect of development charges.

Thus, the petitioner is entitled to the relief of exemption from payment of development charges. This Commission being the authority to determine the tariff and other charges is required to entertain this petition and decide the same on merits. The Commission may consider admitting the matter and issuing notice to the respondents in respect of the specific issue of levy of development charges for the second time, which is contrary to the provisions of the Act, 2003 and regulations thereof. Having heard the submissions of the advocate representing the counsel for petitioner, the matter is reserved for orders on maintainability."

4. The Commission has heard the arguments of the counsel for petitioner on maintainability of the petition filed before the Commission on the questions raised therein. The petition has been filed under Section 142 of the Electricity Act, 2003 r/w

Clause 26(1) of Regulation 2 of 2015 for the reliefs mentioned hereunder:

a) To declare the claim of development charges as illegal and for setting aside that claim;

b) to refund development charges paid by the petitioner along with the applicable rate of interest from the date of payment to the date of refund;

c) To pass appropriate orders as prescribed under Section 142 of the Electricity Act, 2003;

5. The Section 142 of the Electricity Act, 2003 empowers the Commission to impose a penalty on any person who has contravened any of the Provisions of the Act or rules or regulations made thereunder, or any direction issued by the Commission. The Clause 26(1) of Regulation No.2 of 2015 is akin to Section 142 of the Act.

6. The grievance of the petitioner is that the collection of development charges by the respondents for restoring the capacity to the original level of a sick industry like petitioner is contrary to the Clause 8(6) of Regulation No.4 of 2013 and in violation of terms applicable to sick unit revival scheme as mentioned in letter No.APERC/Secy /Dir(Tariff)/F./D.No.4966/2011 dated 05.11.2001 and which letter was addressed to then Chairman & Managing Director of APTransco and others.

7. It is a fact that several consumers, upon whom the TSDiscoms have levied development charges, by challenging the clause relating to the levy of development charges as mentioned in the Regulation No.4 of 2013, have filed W.P.No.23103 of 2020 before Hon'ble High Court and as the petition is still sub judice before the Hon'ble High Court, this Commission can't take up the individual case of petitioner on the premise the case of the petitioner is relating to revival of sick unit and not a fresh one.

8. The main prayer of the petitioner is for giving directions to the respondents for the refund of amount paid towards development charges along with GST and with applicable rate of interest and the prayer to pass any appropriate order under Section 142 of the Act is only ancillary prayer to main prayer and Section 142 of the Act is nothing to do with the main prayer. The alleged grievance of the petitioner is appearing as a consumer dispute and it is not attracting any of functions of Commission as enumerated under Section 86 of the Electricity Act, 2003.

9. Reference has been made to the proceedings issued by the present APERC dated 29.11.2018 with regard to collection of development charges. The Commission is of the view that the said proceedings is neither relevant to the case nor the same is binding on this Commission. Therefore, the said proceedings cannot be considered in this case for rendering any finding in this case.

10. For the above said reasons the petition is not maintainable and accordingly the same is rejected. There shall be no order as to costs. However, petitioner has liberty to approach the Commission if levy of development charges is upheld by the Hon'ble High Court.

This order is corrected and signed on this the 2nd day of March, 2023.

Sd/-	**Sd/-**	**Sd/-**
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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