

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri U. N. Behera, Chairperson
Shri S. K. Parhi, Member**

Case No. 88/2017

| | | |
|---------------------|-------|------------|
| M/s Rail Vikas Ltd. | | Petitioner |
| Vrs. | | |
| OPTCL | | Respondent |

In the matter of: **An application under Section 142 of the Electricity Act, 2003 for violation of CEA (Measures relating to safety and electric supply) 2010 made under Section 177 of the Electricity Act, 2003.**

For Petitioner: Shri Ashok Mishra, Advocate on behalf of M/s. Rail Vikas Nigam Limited.

For Respondent: Shri L. N. Mohapatra, Advocate, Shri P. K. Mohanty, Sr. Advocate.

ORDER

Date of hearing: 30.07.2019

Date of order: 25.09.2019

The petitioner M/s. Rail Vikash Nigam Limited (M/s. RVNL) has filed this petition against OPTCL on the estimate raised for relocation/shifting/diversion of 9 nos. of transmission lines of 220 KV and 132 KV voltage level for the construction of proposed Angul-Sukinda new Railway B.G.line.

2. The petitioner M/s. RVNL submitted that execution of Railway Projects involves re-location/shifting of barriers on their way which includes transmission and distribution lines as well as underground cables. M/s. RVNL entrusted the work of re-location of its proposed Angul-Sukinda Railway B.G line to Odisha Power Transmission Company Limited (OPTCL) which owns those lines. Accordingly, OPTCL submitted 9 nos. of estimates on 10.04.2015 amounting to Rs.27,54,55,364/- for the aforesaid work, which is exclusive of ROW compensation charges, but includes the departmental charges /supervision charges @ 22%. Further, these estimates include the loss of revenue to GRIDCO & OPTCL due to shut down of CKT-1, CKT-2 of the transmission lines for two days from 0700 hours to 1800 hours. Thereafter, OPTCL submitted a revised estimate amounting to Rs.28,43,55,364/-, including the charges towards the ROW compensation and asked RVNL to deposit the entire amount for effecting immediate execution of work.

3. The petitioner submitted that imposition of departmental charges @ 22% on the total cost of the projects by OPTCL as well as claiming the amount towards loss of revenue due to shut down is not in consonance with law and the policy adopted by the electricity company constituted and functioning under Electricity Act, 2003 and the Rules framed there under. He further submitted that OPTCL does not have a single transmission line but they have network of transmission lines interconnected with each other. Interruption in any single line of the network shall be catered by other available lines. Hence, there should not be any loss of revenue to OPTCL. Further no electricity authority of other States impose such charges in the estimate for modification work. Therefore, the petitioner requested OPTCL for reconsideration of their estimate, but OPTCL authorities without examining the matter asked the petitioner to deposit the entire estimated amount including the charges for revenue loss for effecting execution of the work.
4. The petitioner submitted that since the dispute on estimate arose between the parties, the matter was brought to the notice of the State Govt. In this connection, a meeting was convened on 08.03.2016 under the chairmanship of the Chief Secretary on several other issues including the above. It was decided in the said meeting that OPTCL will start execution of work on receipt 50% of the estimated amount from RVNL and the actual loss of revenue due to transmission line shut down will be calculated at a later date taking the metered data in to consideration. The petitioner, thereafter deposited an amount of Rs.22,96,57,154/- on 27.07.2016 under protest for enhanced departmental charges @22% on the total estimated cost and loss of revenue as a cost component on account of shut down of transmission lines.
5. The petitioner submitted that on conjoint reading of Clause (b) &(c) of Sub-Rule 5 of Rule 82 of Indian Electricity Rules,1956, conclusion can be drawn that the supervision charges can be imposed to the extent of 15% of the wages of labour employed in affecting the alteration. He further submitted that CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 was framed by the Central Electricity Authority in exercising the power conferred under Section 177 of the Electricity Act, 2003, wherein Clause 4 of Regulation 63 stipulates that the Electrical Inspector shall inspect the cost of alteration of overhead line and the supervision charges to the extent of 15% of the wages of the labour employed in affecting such alteration, shall be charged. He also submitted that on mutual discussion between the Chief Secretary of the Government of West Bengal and M/s. RVNL, it was decided that supervision charges shall be claimed

to the extent of 15% of the labour component. Similarly, in a similar dispute, Jharkhand State Electricity Regulatory Commission on consideration of the relevant provisions of the Electricity Act, 2003 have arrived at a conclusion that supervision charges can only be imposed to the extent of 15% of the labour cost.

6. The petitioner further submitted that this Commission in its review order dated 26.04.2011 passed in Case Nos. 63/2006 and 03/2007 has clearly determined supervision charges @6% when the lines are constructed by the user itself and departmental charges @16% when the lines are constructed by OPTCL on request of the user. The present respondent had made an appeal before the Hon'ble APTEL in Appeal No. 30/2012 and the Hon'ble APTEL in their judgment dated 14.12.2012 upheld the Commission's order and did not alter the departmental charges and supervision charges held by this Commission. Thus according to the said order of the Commission and judgment of the Hon'ble APTEL, the law is well settled. Hence, in the present case, the claim of OPTCL regarding departmental charges @ 22% on the total estimated cost is arbitrary and illegal in the eyes of law in view of the provisions of the Act, Rules and orders noted above. Hence, it is well under the jurisdiction of this Commission to adjudge the present case. Further, a conjoint reading of Section 67 (4) with Section 177 and Section 142 of the Electricity Act, 2003 give ample jurisdiction to this Commission to adjudicate the matter. Therefore, the petitioner has filed the present case before this Commission.
7. In view of the above, the petitioner has prayed the Commission to direct the Respondent-OPTCL to calculate the departmental charges @ upto 16% of the labour component employed for relocation of the transmission lines and the loss of revenue as per the actual instead of 7% to 46% claimed in the present case.
8. The Respondent-OPTCL has submitted that the petitioner had proposed diversion of nine different transmission lines to undertake traction work in Angul- Sukinda Broad Gauge Railway route. OPTCL after survey of the locations and after solving the RoW issues had made the estimates for each of the above nine locations covering cost of materials, labour charges and departmental charges etc. amounting to Rs.27,54,55,364/- for the aforesaid work, which excludes of RoW compensation charges, but includes the departmental charges/supervision charges @ 22% and revenue loss of OPTCL due to shut down of CKT-1 &CKT-2 for two days from 0700 hours to 1800 hours. However, a revised estimate has been furnished to the petitioner incorporating the amounts towards tentative ROW compensation.

9. Regarding calculation of revenue loss, the BoD of OPTCL in their 73rd meeting held on 23.09.2015 have concurred the generic formula for calculation of loss of revenue. Accordingly, the loss of revenue is to be computed on the basis of actual meter reading and the formula to be adopted for such calculation have been intimated to the petitioner. The OPTCL has further submitted that the transmission system in all cases may not have the flow of energy from one line to another due to system constraints. When the entire line is put to shut down for its relocation, the loss of flow of power is bound to take place and in such events it is justified for the respondent to claim the actual loss from the petitioner. The issue was discussed in the meeting held under the Chairmanship of Chief Secretary, Govt. of Odisha on 08.03.2016, wherein it was decided that loss claimed in the estimate is tentative and M/s. RVNL has to deposit 50% of such component for execution of work and after completion of work, actual loss based on meter data will be computed by OPTCL. Accordingly, the petitioner has deposited the 50% of claim of including such loss under protest pending final calculation. OPTCL has submitted that in a similar manner the Railway Department is claiming a 'blocked charge' when the work of transmission line is undertaken across and over its railway traction and even for crossing of equipments like transformers etc. by road carrier under the traction line.
10. Regarding the issue of departmental charges @22%, the respondent has submitted that this practice is followed all through in every such estimate made for public works and this proposition has been recognised by this Commission in Para-50 of the order dated 26.04.2011 passed in Case Nos. 63/2006 and 03/2007. The Commission had also noted 23% to 27% departmental charges levied in the estimate of CPWD works depending upon the nature of work and estimated cost of work. OPTCL submitted that the petitioner had raised objection on the levy of 22% departmental charges referring the findings at Para-52 of the Commission's order dated 26.04.2011. OPTCL stated that the said findings of the Commission about 6% and 16% supervision charges as reflected in Para-52 of the said order was passed on the review petition of OPTCL before this Commission in Case No. 63/2006 which was the contentious issue before the Hon'ble APTEL in the appeal filed by OPTCL in Appeal No.30/2012. The challenges to that observations of the Commission relating to above rates of supervision charges has finally been resolved by the Hon'ble APTEL in Para-23 & 24 of their judgment dated 14.12.2012. It was held by the Hon'ble APTEL that the Commission did not have power to give ruling on the issue of supervision charges in its review order as it was not

an issue before the Commission in the original case and the said issue had not been raised by the appellant in the review petition. OPTCL has stated that in the above premises the observation of the Commission in its order dated 26.04.2011 cannot be held to have become a final verdict to be applied in the case of the petitioner for taking its advantage. OPTCL has submitted that besides blockade charges M/s. RVNL also charges various other charges which together comes to about 40% of the estimated cost. In the above scenario the levy of 22% departmental charges is much less and cannot be assailed. Further, OPTCL is charging departmental charges for executing the works themselves involving series of activities as distinguished from supervision charges for meagre supervision of the work undertaken by other agencies. Therefore, in pursuance to the order dt.22.07.2006 in Case No. 36 of 2005, review order dt.26.04.2011 in Case No. 63 of 2006 of OERC and judgment dt.14.12.2012 passed by Hon'ble APTEL in Appeal No. 30 of 2012, OPTCL had issued a circular on 30.03.2013 as regards to collection of supervision charges. As per the said circular *"In case of the EHT consumer wants for execution of the work by OPTCL, departmental charge of 22% will continue to be claimed and for State Govt. Agencies, departmental charge of 10% will be claimed"*.

11. OPTCL has submitted that the above issue had also been discussed in the meeting held under the Chairmanship of Chief Secretary, Govt. of Odisha on 08.03.2016. It was placed therein that in case the Railways execute the works themselves then only 6% supervision charges will be claimed. OPTCL stated that the petitioner-M/s. RVNL cannot be treated differently as the departmental charges @ 22% are being claimed by OPTCL from NHAI, NTPC, MCL, East Coast Railways, etc. OPTCL further submitted that the petitioner has referred Clause 82 of IE Rules, 1956 at Sub-rule 5 in Clause-C and Rule 63 of CEA (Measures Relating to Safety and Electricity Supply) Regulations, 2010 framed under Section 177 of the Electricity Act, 2003 for justifying supervision charges to the extent of 15% of the wages of labour employed in effecting the alternation of transmission line. But Section 177 of the Electricity Act, 2003 empowers CEA to frame Regulations with regard to provisions in Sections 34, 53, 55, 70, 73 & 74 of the Electricity Act, 2003. But the CEA Regulations, 2010 having been framed under Section 177 of the Electricity Act, 2003, provisions of IE Rules 1956 do not apply in view of Section 185 (2) (c) of the Electricity Act, 2003. CEA Regulations, 2010 do not empower/authorise CEA to prescribe the rate of supervision charges to be levied on wage component and charges incurred in complying with the provisions of Section 67

of the Electricity Act, 2003. The provision in Section 67 does not authorise CEA to frame such Regulations and in fact the Central Government has already framed and enforced the Works of Licensees, Rules, 2006 under Section 67 (2) of the Electricity Act, 2003. Hence, the provisions of IE Rules 1956 has no force to be relied upon by the petitioner. Further, the provisions in the Regulation 63 of CEA Regulations, 2010 cannot be applicable in the present case and relied upon by the petitioner to its advantage. The Petitioner was very much aware that he would be liable to pay 6% only towards supervision charge if he executed the work himself. Yet he did not opt for the same. The M/s. RVNL having opted to get the work done through the respondent OPTCL, is not entitled to raise objection against the departmental charges of 22%.

12. OPTCL submitted that due to the aforesaid facts the petitioner in the present case is not entitled to invoke the jurisdiction of the Commission under Sub-clause 4 read with Sub-clause 3 of Section 67 of the Electricity Act, 2003 for its purpose. Further, the respondent OPTCL has neither violated nor contravened any of the provisions of the Electricity Act, 2003 or Rules and Regulations made there under or any direction issued by the Commission. Hence the respondent is not liable to be prosecuted under Section 142 of the Electricity Act, 2003 and therefore, the present petition is liable to be rejected.
13. Heard the parties. Their written notes of submission are taken into records. Regarding rate of supervision charges and departmental charges for works related to OPTCL, we had given a finding in Case No. 63/2006 & 03/2007 dated 26.04.2011. That was a review order arising out of Case No. 36/2005 of the Commission. In that review order in Para-52, the Commission had distinguished the supervision charges from departmental charges and held as under:-

“We, therefore, hold that – (1) when the EHT lines/system is constructed by the User itself under the supervision of OPTCL, then 6% supervision charge of the total capital cost shall be payable to OPTCL. The testing fee of the Electrical Inspector shall be borne by the User. The word User here includes both EHT consumer as well as Generator/CGPs seeking connectivity with OPTCL.

(2) when the dedicated lines/system is constructed by OPTCL as per the request of User, 16% departmental charge which also includes testing fee of the Electrical Inspector shall be made applicable. The total estimated cost including 16% departmental charge need to be approved by the Commission. The above charges shall be made applicable in respect of the work for which agreement is to be signed on or after the date of this order and past cases shall not be reopened.”

That the review order was challenged by OPTCL before the Hon’ble APTEL in appeal No. 30/2012 and Hon’ble APTEL held that since the matter of supervision charges with

respect to works taken up by OPTCL on behalf of consumer was not an issue before the Commission in Case No. 35/2005 which was sought to be reviewed, the Commission did not have powers to give ruling on this issue. We will abide by that order of the Hon'ble APTEL.

14. Now, the matter has been raised before us by the petitioner. The observation of the Commission in Para-50 of Case No. 63/2006 & 03/2007 is relevant here and extracted below:-

Further, in case of Engineering Department of State Govt. supervision charges in the shape of pro-rata charges are being inbuilt into the estimate by the Engineering departments in the State Govt. under Orissa PWD Code ranging from 16% to 17% as per the table of breakup given below:-

Table-2 Pro-rata Charges

| Items | Plan | Maintenance (Non Plan) | Deposits |
|--|--------------|-------------------------------|-----------------|
| <i>Establishment Charge (Salaries)</i> | <i>10.5%</i> | <i>10.5%</i> | <i>10.5%</i> |
| <i>Audit & Accountants Estt.</i> | | | |
| <i>Tools & Plant</i> | <i>4.5%</i> | <i>8.5%</i> | <i>4.5%</i> |
| <i>Pensionary Charges</i> | <i>1%</i> | <i>1%</i> | <i>1%</i> |
| Total | 16% | 20% | 17% |

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The Commission further held at Para-52 as follows:-

“We, therefore, hold that – (2) when the dedicated lines/system is constructed by OPTCL as per the request of User, 16% departmental charge which also includes testing fee of the Electrical Inspector shall be made applicable. The total estimated cost including 16% departmental charge need to be approved by the Commission. The above charges shall be made applicable in respect of the work for which agreement is to be signed on or after the date of this order and past cases shall not be reopened.”

15. In the meeting held on 08.03.2016 under the Chairmanship of Chief Secretary at Para-5 of minutes, the submission of OPTCL that they levy 22% supervision charges to all other departments of State Government and NHAI has been merely recorded. Reason of fixing such level of charges has been given by OPTCL neither before us nor in the meeting held under the Chairmanship of Chief Secretary. No decision on this matter has been taken in that meeting either. Therefore, in view of our earlier observation, we find that 16% departmental charges to be levied in this case is justified.
16. We cannot accept the pleading of the petitioner that there is no revenue loss to the Respondent-OPTCL. We accept the submission of OPTCL that the loads catered by one line may not have alternative source of injection. If at all it has alternative source the alternative line may get over loaded, therefore load is to be curtailed. It leads to revenue

loss of OPTCL. OPTCL load is estimated in advance and accordingly its revenue is fixed. Therefore, loss of load should be suitably compensated on meter reading basis. As per OPTCL this relocation work shall take two days from 0700 hours to 1800 hours for two circuits. OPTCL should ensure that the work is completed within the stipulated time. It should not at any cost go beyond that. If, the relocation work over-shoots the limit then the petitioner is not liable for payment of compensation during that period due to revenue loss.

17. OPTCL is directed to revise the estimate of the work as per our above observations within a month from issue of this order.
18. With the above observations the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson