

BEFORE THE MEGHALAYA STATE ELECTRICITY REGULATORY
COMMISSION, SHILLONG

MSERC Case No. 5 of 2020.

Byrnihat Industries Association,
13th Miles, Tamulikuchi, Byrnihat,
RiBhoi District, Nongpoh,
Meghalaya-

... ..**Petitioner.**

-Versus –

Meghalaya Power Distribution Corporation Ltd.
Integrated Office Complex
Lumjingshai, Short Round Road,
Shillong-793001

... ..**Respondent.**

Coram:

P.W.Ingty, IAS (Retd.) Chairman, MSERC

Roland Keishing, District & Sessions Judge
(Retd), Member, MSERC

Counsel for the Petitioner : Kaustav Paul, Sr.Advocate &
Counsel for the Respondent : MI Nongpiur & E Marwein, Advocate.
Date of hearing : 20/07/2020,18/08/2020 & 24/08/2020.
Date of Order : 31/08/2020.

ORDER

Dated 31st August, 2020.

This is to dispose of a Petition filed by Byrnihat Industries Association, (BIA) represented by Shri Rahul Bajaj (hereinafter referred to as the Petitioner) against the Meghalaya State Power Distribution Corporation Ltd. Shillong (hereinafter referred to as the

Respondent and or MePDCL in short) under Regulation 106 and 108 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tarrif) Regulations, 2014, read with Regulation 12.7 and Regulation 12.9 of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018 for mitigating the effects of pandemic caused by Novel Covid19, corona virus on the members of the Petitioner Association.

2. The case in brief is that, the Petitioners' Association is an industrial consumer, represent EHT Industrial, HT Industrial and Ferro Alloy situated within Brynihat. The members of the Association have shut down operations of their respective factories/manufacturing units/commercial establishments in compliance with the nation-wide lockdown imposed by the Central Government due to Novel Covid19 virus pandemic.

3. Thus, the Petitioner pray to waive demand/fixed charges applicable on EHT Industry/HT Industrial/Ferro category of consumers pursuant to Tariff Orders dated 31/03/2018 and 25/03/2020, order dated 10/09/2018 and the Supply Code for the entire period of lockdown imposed by the Central Government and the State Government; direct the Respondent to bill demand charges on the members of the Petitioner only on the basis of their actual pro-rata consumption of electricity; extend the date of payment of electricity bill as specified under Chapter 8 of the MSERC Supply Code, which have been raised during the period of lockdown imposed by the Central Government and State Government, and payable by the members of the Petitioner, to one month after lifting of the lockdown; waive any late payment surcharge livable on the members of the Petitioner under Chapter 8 of the MSERC Supply Code and Tariff Orders dated 31/03/2018 and 25/03/2020, order dated 10/09/2018 for payment of electricity bills till after the lockdown is lifted and to pass any order(s) and or direction(s) which the Commission may deem fit and proper in the facts and circumstances of the case.

4. Whereas, the Respondent, through its Superintending Engineer (RA) MePDCL filed Affidavit-in-opposition denying all the averments of the petition from para no. 22 till the end by asserting inter alia that while the Respondent has taken note of the grievance of the Petitioner, the fact remains that the Respondent has not been exempted from making payment to the Power Generation and

Transmission Companies during this period of pandemic and therefore it cannot extend the same benefit to its consumers.

The Respondent then narrated the losses incurred in the last five years which is now compounded by the pandemic as normal billing and collection operation of the Discom has reduced by 70% comparing to the previous month prior to the lockdown.

5. Thus, the Respondent submits that waiving fixed charges in the present circumstances will compromise the functioning of the utility and to recover the approved ARR for FY 2020-21 will cause additional burden on the other categories of consumers whose income have also been seriously affected by the lockdown, besides waiver, if allowed may set precedence for commercial (LT, HT & ILT) consumers to claim waiver of fixed charges.

Accordingly, the Respondent suggests that the Petitioner may approach the State Government to subsidize their fixed charges payable during the lockdown period so as to ensure that the consumers and the Discom are not burdened.

The Respondent also aver that, late payment surcharge, has been kept in abeyance during the period of lockdown.

Furthermore, the Respondent also pointed out that the instruction from the Ministry of Power contained in the letter dated 15th May, 2020 along with the corrigendum dated 16th May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of Ministry for Power for the Lockdown period on account of Covid19 pandemic is under process.

Hence, the Respondent prays to reject the Petition for waiver of fixed charges; direct the Petitioner to immediately make payment of their dues without any further delay and to pass such order(s) as deem fit.

6. Parties along with their Ld. Counsel were heard at length and perused all the materials on record. The undisputed facts are as follows;

About 100 years after the outbreak of 1918 Influenza (Flu) pandemic which is also known as Spanish flu, caused by an H1N1 virus with genes of avian origin, the world is now witnessing the Covid19 pandemic.

Thus, the Government of India on 24/03/2020 announced nationwide lockdown as preventive measure to contain against the spread of Covid19 pandemic in India thereby restricting movement of the entire 1.3 billion population of India w.e.f. 25/03/2020.

The unlock 1.0 phase starts from 1st June, 2020 till 30/06/2020, however closure of commercial/Industrial and other establishment continued except pharmacies, hospitals, banks and other essentials services. As such lockdown of commercial industrial continued till 30/06/2020 as per the Central Government directives.

During the lock down period, the Respondent's normal billing and collection of revenue was adversely affected.

Likewise, the Petitioner's economic activities were shut down and were also adversely affected.

The Respondent in his written reply at para no.10.1 duly acknowledged the grievances of the consumers and particularly the Petitioner. Besides, the Respondent have nothing to say against the averments made at para no. 1 to 21 of the petition.

7. With the above undisputed facts and circumstances, turning to the action taken by various State Discoms/Regulators, it may be noted that, Haryana ERC had directed for commercial and industrial consumers for waiver of fixed/demand charges having load of $>_{20}$ kw/kVA for the month of March and April 2020 subject to the ceiling of INR 10,000 per month and monthly consumption is 50% or less than his/her average consumption in the month of Jan and Feb., 2020.

In Gujarat for commercial and industrial consumers, it has a direction for no recovery of Demand/Fixed charges for the month of April 2020. LT industries are exempted from levying fixed charge demand charge on their April electricity bills. For HT consumers there will be no fixed charge whose power consumption during the lockdown is less than 50% of the average consumption of the previous 3 months.

In the case of Punjab, the PSERC issued notice for FC exemption for medium supply, Large Supply Industrial consumers for the next two months w.e.f 23/03/2020 and energy charges may be fixed to commensurate with FC reduction.

State of Kerala for LT, HT & EHT allow a rebate of 25% on FC applicable to Industrial/Commercial consumers for the month of March, April and May and differ the balance of 75% of the said months up to 15/06/2020 without levying interest during the deferred period.

In the State of UP, Commercial and Industrial consumers billing for the month of April shall be done on actual consumption and not on the basis of average consumption in the last 3 months.

Whereas, some of the States such as Madhya Pradesh, Himachal Pradesh, Telagana and other deferred payment of FC of LT Non-Domestic, LT Industry and HT Industry consumers.

And in some States moratorium for FC payment for next 3 billing cycles are made thereby deferring the period of recovery and some other States are yet to take a call.

8. Under the above facts and circumstances, it is very clear that all States are providing some relief to the Industrial/Commercial consumers considering the Covid19 pandemic which is unprecedented and an exceptional circumstance,

However, quantum, method and period differs from State to State in providing relief to the said Commercial and Industrial consumers.

Hence, in our considerate view, we agreed that, it would be prudent to provide some relief to the consumers of Industrial/Commercial establishment of our State.

9. However, we find that there is no straight jacket formula that can be adopted in providing relief and at the same time equity demands that the Utility should not be placed under undue inconveniences while providing relief to the Petitioners such as complete waiver of demand charge during the period of nationwide Lockdown.

Hence, the quest is to find workable formula that is based on equity, Rules and Regulations even if it amount to some stretching.

10. The Petitioner quoted Regulations 8.1 (13) of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018, which provides as follows;

“When supply to a consumer is commenced in the middle of a month or date of revision of Tariff and meter reading does not happen at the same time, the Demand Charges, Minimum charges and/or any other similar fixed charges shall be levied on pro-rata basis for the number of days for which supply is given. The units to be charged under various blocks or slabs shall also be accordingly prorated. For the purpose of this sub-clause, the month shall be computed as 30 days”

The basic principle of the above provision is that, Demand charge/fixed charge shall be levied on pro-rata basis for the number of days the supply is made. It is also clear that the Units to be charged under various blocks or slabs shall also be accordingly prorated, meaning thereby the consumer shall pay what is consumed.

11. Whereas, the Respondent objected the plea of the Petitioner for application of the provision of the Electricity Supply Code and submitted their own proposal for application to the members of the Petitioner, which is as follows;

4. Assessment of Billing Demand:

4.1 Assessment of billing demand for EHT/HT Supply-

4.1.1 Contract demand shall not be less than 80% of the connected load subject to the minimum of 50 KW or 56 KVA

4.1.2 Billing demand in a month shall be the highest of any of the following, subject to a minimum of 56 KVA

1. The maximum demand established during the month, or
- 2 80% of the highest demand established during the preceding 11 months, or
3. 75% of the contract demand.

Thus, the Respondent worked out the relief on Fixed Charge that may be provided to the consumers who are members of the Petitioner are as follows;

(a) Month of April 2020	-	71.20%
(b) Month of May 2020	-	25.90%
(c) Month of June 2020	-	16.37%

12. We have heard and considered the Parties along with their respective Ld. Counsel submission in regard to their respective relief proposal.

(a) The proposed formula of the Petitioner is not something new but based under the Regulations 8.1 (13) of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018.

Whereas, the proposal of the Respondent appears to be based on Tariff Booklet of the Respondent, which is not part of the Electricity Supply Code 2018 and may not capture the recorded reading as it appears that the MRI block of 15 minutes was taken as the basis.

(b) The proposal of the Petitioner is based on 100% demand charges calculated at pro-rata of the actual consumption of Electricity to be levied on different units on their actual consumption.

whereas, the proposal of the Respondent is based on flat 71.20%, 25.90% and 16.37% for the lockdown period of April, May and June 2020 respectively.

However, the detail data for arriving at 71.20%, 25.90% and 16.37% for the month of April, May and June 2020 respectively is never placed on record for consideration, besides fluctuation of the percentage of the three months is never explained, whereas in those three months total lockdown was imposed on the commercial and industrial establishment.

At this stage, we also take the liberty to state that the Respondent in the course of hearing frankly admits that their proposal may not be accurate but at the same time objected the

formula proposed by the Petitioner, nevertheless the Respondent also failed to explain or place any iota of materials on record in support of their objection.

13. Situated thus, in our considerate view, under the extraordinary circumstances caused by the Covid19 pandemic, and by invoking the provision of Regulation 106 and 108 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tarrif) Regulations, 2014, read with Regulation 12.7 and Regulation 12.9 of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018, application of pro-rata on actual consumption as provided in Regulations 8.1 (13) of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018 as per the Tariff orders would meet the end of justice and is accordingly applied for the lockdown period.

14. The next crucial point for determination is the period of lockdown/restrictions which affected the Petitioner.

As per the guideline and instruction of the MHA and NDMA under the unlock 2.0 w.e.f 01-07-2020 till 31-07-2020 lockdown measures were only imposed in containment Zones. In all other areas, most activities were permitted. However, State Governments were allowed to put suitable restrictions on all activities, but State borders are to remain open.

Unlock 3.0 w.e.f. 01-08-2020 to 31/08/2020 all inter State and intra State travel and transportation is permitted. However State of Maharashtra and Tamil Nadu imposed lockdown for the whole month, while West Bengal imposed lockdown twice a week.

However, in our State, the Deputy Commissioner Ri Bhoi District, in exercise of 144 CrPC read together with Regulation 3 of the Meghalaya Epidemic Disease, Covid19 Regulation 2020 and Guidelines No.5(1) of Order Dated 1st May 2020, of Government of India in the Ministry of Home Affairs vide Order dated 29-06-2020 bearing No.DCRB(CN)/COVID-19/1/2020/363/RB/103/2020/200 issued prohibitory order U/S 144 CrPC and specifically enforce lockdown in the area of Byrnihat area, Khanapara area, Jorabat-Baridua area, Ampatama, Umshru Sukhoinljira, Lewmawroh, Bakhlapara, Hawla, Jimbrigaon, Lyngkhung, Patgaon, Umsen, Jyrmang,

Bernongsai Nongkhlaw, Bernongsai Nongspung, Umsaliang, Gunapati, Mairapur, Nongkyllang, Rani Jirang, Umshalani, Ranibari, Balakhawa, New Balakhawa, Bilpara, Halher, Akhoinijira, Garobhanga and Ulubari w.e.f 6:00 AM of 30th June, 2020(Tuesday) to 6:00 AM of 13th July, 2020.

Again the Deputy Commissioner Ri Bhoi District passed an Order Dated 12th July, 2020 bearing No. No.DCRB(CN)/COVID-19/1/2020/Pt.1/5 thereby extending the period of lockdown w.e.f 6:00 AM of 13th July, 2020(Monday) to 6:00 AM of 20th July, 2020.

15. The Petitioner through its General Manager vide Letter dated 02/06/2020 No. RB/DCIC/COVID-19/900/2020/183 sought permission to bring in manpower from outside the State.

However, the Deputy Commissioner Ri Bhoi District, vide Letter dated 24-/07-/2020 bearing No.DDMA/RB/103/2020/200 addressed to the RNB Carbide and Ferro Alloys (P) Ltd., informed that the request for permission is being kept in abeyance for the time being due to the rising cases of Covid19 in the State.

The Government of Meghalaya, Political Department issued an Order Dated 15th July, 2020 bearing No. POL.,75/2020/Pt1/56 which read as follows:

“It is hereby notified that all the currently operational entry points of the State located at Byrnihat, Ratacherra, Bajengdoba, Tikkrikilla, Mirjumla and Hallidayganj shall remain closed from midnight of 23rd July, 2020 to midnight of 31st July, 2020. Only movements related to emergency, medical & essential services, goods and inter State transit vehicles will be allowed during this period. All persons who intend to visit/return to Meghalaya during this period are requested to reschedule their travel plan.”
Sd/-

Chief Secretary
Government of Meghalaya

16. Thus, practically the whole month of July, 2020 was under lockdown in the general area of Ri Bhoi District as well as in the State of Meghalaya as aforementioned. Besides, the topography is as such the NH 40, which is one

of the entry point from Guwahati to Meghalaya, runs through Ri Bhoi District, wherein the members of the Petitioner's Industries situate.

Therefore, it is clear that the State Government continue to lockdown by imposing restriction in the inter-State movement and thereby functioning of the commercial/industrial activities were affected continuously till midnight of 31st July, 2020 except for essential services as per the document referred above.

Under the above facts and circumstances, and without going into the issue of the Central Government having overriding effect in exercise of the provision of National Disaster Management Act 2005 and the State Government having provision under "The Epidemic Diseases Act, 1897" to make regulations for preventing and curtailing outbreak or spread of diseases, the fact remains that the State is under lockdown and restriction was imposed on inter-state movements but with some exception as stated above.

Thus, the plea and the grievances put forwarded by the Petitioner is justified in view of the aforementioned documents.

Therefore, in all fairness, the relief may be granted to the Petitioner from the month of April till 31st July, 2020.

Accordingly, we herein ordered as follows;

For the month of April, May,
June and July 2020, Pro rata Rate
of Demand Charges per KVAH
of Unit consumed during the month = Rate of full Demand
per KVA as applicable
tariff order x Contracted
load in KVA
Contracted load in KVA
X 24 (hrs) x 30 (days)

- (ii) No delay payment shall be levied to the members of the Petitioner for payment of energy bill from the month of March up to August 2020 which was also agreed upon by the Respondent during the hearing held on 20th July 2020, for which the Respondent has also not charged as per the bill enclosed.

- (iii) Most of the members of the BIA have made some bill payment under protest. Therefore, the balance payment for energy bill for the month of March to August 2020 shall be cleared on or before 31-10-2020. However, the Respondent, in view of the application of pro-rata demand charges the same shall be calculated for the month of April, May, June and July 2020.
- (iv) Accordingly, in view of the demand charge calculated on pro-rata basis for the month of April, May, June and July 2020, given in this order, their monthly bill shall be revised by the Respondent on or before 30/09/2020.

14. This order has been passed in view of the lockdown caused by the Covid19 pandemic and the measures taken by the Central and State Government and also in compliance of the Letter dated 28-03-2020 Ministry of Power and also taking into consideration of the letter dated 15th May, 2020 along with the corrigendum dated 16th May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of Ministry for Power for the Lockdown period on account of Covid19 pandemic.

However, before we part the case, it is made clear that this order shall not set as precedent in any other circumstances.

The case is accordingly disposed off with the above directions.

Roland Keishing

P.W.Ingty