

**Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 223 of 2013**

**Dated: 9th July, 2014**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**In the matter of:**

**Chhattisgarh State Power Distribution Co. Ltd.,**

4<sup>th</sup> Floor, Vidyut Sewa Bhawan, Danganiya,

Raipur-492 013.

Represented by its Additional Chief Engineer (RAC). **... Appellant (s)**

Versus

**1. Chhattisgarh State Electricity Regulatory Commission,**

Irrigation Colony, New Shanti Nagar,

Raipur-492 001,

Chhattisgarh.

**2. Confederation of Real Estate Developers Association of  
India (CREDIA),**

Avinash House,

Maruti Business Park, G. E. Road,

Raipur-492 001

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary  
Mr. Bhatnagar (Rep.)

Counsel for the Respondent(s) : Mr. C.K. Rai,  
Mr. Mahipal for R-1  
Mr. Abhinav Kardekar for R-2

**JUDGMENT**

**RAKESH NATH, TECHNICAL MEMBER**

The present Appeal has been filed by  
Chhattisgarh State Power Distribution Co. Ltd. against

the order dated 10.7.2013 passed by Chhattisgarh State Electricity Regulatory Commission (“State Commission”) raising the question of law relating to interpretation of the Supply Code Regulations, 2011 regarding bearing of cost of construction of the 33/11 kV sub-station for extending power supply to housing colonies/multi consumer complex.

2. The Appellant is a distribution licensee. The State Commission is the Respondent no. 1. Confederation of Real Estate Developers Association of India (CREDAI) is the Respondent no. 2.

3. The brief facts of the case are as under:

(i) The State Commission issued the Supply Code 2005 by notification dated 14.9.2005. Chapter 4 of the Supply Code has provision for new power supply. Amendments were issued to the Supply Code

on 16.4.2007 by which some provisions of Chapter 4 were amended. The second amendment was issued on 1.10.2007 whereby, *inter alia*, the Chapter 4 was substituted.

(ii) The State Commission on 28.11.2011 notified the Supply Code of 2011. The Chapter 4 of the said notification gives provisions for the procedure for release of new connection and change in existing connection.

(iii) One Om Construction sent a letter dated 6.6.2012 to the State Commission seeking clarification with respect to clause 4.1 of the Supply Code, 2011. Two others also sent similar letters to the State Commission on the same date.

(iv) By letter dated 6.8.2012 to the Appellant, the Secretary of the State Commission clarified that a colonizer is obliged to provide land only and the

licensee has to bear the cost of 33/11 kV sub-station and line.

(v) The Board of Directors of the Appellant in its meeting on 30.11.2012 decided that the expenditure for construction of 33 kV line and 33/11 kV sub-stations for electrification of colonies should be borne by the colonizer and not the Appellant. Consequently, it was resolved that sanctioning works for construction of 33 kV line and 33/11 kV sub-stations for electrification of colonies be discontinued forthwith and such work may be taken up in future provided the cost is borne by the colonizer or is reimbursable under any Government sponsored scheme.

(vi) Thereafter, the Appellant addressed a letter dated 4.1.2013 to the State Commission that the clarification given in letter dated 6.8.2012 that the distribution licensee has to bear the cost of 33 kV line

and 33/11 kV sub-station is contrary to the Supply Code Regulations and also requested the State Commission to relax the requirement till the financial condition of the Appellant is improved.

(vii) Thereafter, the Appellant was granting approval for external electrification of residential colony with the condition that the work of erection of 33 kV line, 33/11 kV sub-station, 11 kV distribution line and transformer will be carried out by the colonizer under the supervision of the Appellant.

(viii) On 20.2.2013 the Respondent no. 2 filed a Petition before the State Commission under Section 142 read with Section 149 of the Electricity Act, 2003 seeking direction to the Appellant to follow clause 4.52 (vi) of the Supply Code and construct sub-stations at Appellant's cost after land being made available and take suitable action against the Appellant's officers

who passed the resolution dated 1.12.2012 and impose costs for non-compliance with the directions and Regulations of the State Commission.

(ix) The State Commission passed the impugned order dated 10.7.2013 reiterating its earlier interpretation of Regulation communicated by letter dated 6.8.2012 and directing the Appellant to comply with the existing provisions of the Supply Code.

(x) Aggrieved by the impugned order dated 10.7.2013, the Appellant has filed this Appeal.

4. The Appellant has submitted as under:

i) The letter dated 6.8.2012 issued by the Secretary of the State Commission on a letter sent by some colonizers was a mere communication and is not having the force of law and unenforceable as such.

ii) The State Commission merely relied upon the clarification issued in the letter dated 6.8.2012 without any adjudication process according to law in the impugned proceedings.

iii) The interpretation of the Supply Code was specifically put to issue in the impugned proceedings by the Appellant but the State Commission failed to consider and deal with these submissions.

iv) The State Commission failed to consider that the Supply Code 2011 was materially different from the Supply Code 2005 as amended in 2007. The State Commission should have considered the obligations and rights of the Appellant under the Supply Code 2011 without reference to the repealed Supply Code 2007. As per Supply Code 2011, the entire cost of 33/11 kV sub-station which is part and parcel of the extension of the system required upto the point of

supply for meeting the demand of new consumers and/or load enhancement of the existing consumers has to be borne by the applicant colonizer in the case of housing colonies. There is nothing in the code or in the Miscellaneous and General charges which provides that the multi-consumer complexes/housing colonies are not required to pay such cost. The licensee is accordingly required to give supply under clause 4.1 only if the colonizer of housing colonies agrees to bear such cost of extension of supply including the cost of 33/11 kV sub-station required to be set up to extend the supply.

v) The State Commission has wrongly interpreted that code to decide that clause 4.52 (vi) alone as being applicable in case of multi consumer complexes/housing colonies to the exclusion of

provision of Chapter 4 including clauses 4.1 and 4.3 in particular.

vi) Clause 4.52 provides for special conditions for supply to multi consumer complexes and housing colonies. These special conditions are applicable in addition to all such conditions as are specified, particularly clause 4.52(vi) which requires the colonizer to provide the required land at a nominal cost for construction of 33/11 kV sub-station where total load exceeds 1500 KW. This is in addition to the cost to be borne by the colonizer under clause 4.3 read with clause 4.1 for extension of supply by the Appellant.

vii) Assuming, without admitting that the Appellant was obliged to construct 33/11 kV sub-station for housing colonies at its own cost in terms of the Supply Code 2011, the State Commission

ought to have considered the acute financial constraints and financial disability of the Appellant arising out of the huge deficit of revenue allowed under the Tariff Order dated 28.4.2012 and exercised its power to relax the provisions of the Code.

5. The State Commission and the Respondent no. 2 in their submissions have made submissions supporting the findings of the State Commission in the impugned order.

6. We have heard the learned counsel for the Appellant, learned counsel for the State Commission and learned counsel for Respondent no. 2.

**7. The only question that arises for our consideration is whether in case of supply to multi-consumer complex and housing colonies where the total load exceeds 1500 KW, the cost of**

**construction of 33/11 kV sub-station and 33 kV line is to be borne by the licensee or the colonizer?**

8. Let us examine the findings of the State Commission. These findings are summarized as under:

a) Clause 4.52(vi) of the Supply Code, 2011 is clear and there is no ambiguity.

b) The State Commission had interpreted and clarified the meaning of the above clause vide its letter dated 6.8.2012.

c) The distribution licensee had been constructing such sub-stations as per the same provisions in the then prevailing Supply Code, namely Supply Code of 2005 as amended in the year 2007 without any ambiguity.

d) The Resolution dated 1.12.2012 passed by the Board of Directors of the distribution licensee is in

violation of the notified Supply Code. Only, thereafter the distribution licensee has made a request vide letter dated 4.1.2013 for grant of relaxation in respect of the Supply Code citing the reasons of poor financial position of the licensee.

e) The distribution licensee is directed to comply with the existing provisions of the Supply Code.

f) The amount collected, if any, by the distribution licensee towards construction of 33/11 kV sub-station from the Respondent, M/s. CREDAI, a colonizer Association may be refunded within one month from the date of issue of the order.

9. Let us examine Supply Code, 2011 relating to supply to Multi-Consumer Complex and Housing colonies. The relevant Regulation is 4.52 which is reproduced below:

**“4.52 Supply to Multi-Consumer Complex and Housing colonies-Special conditions:**

*(i) A building or a group of buildings which normally require(s) one or more than one LT connection and for a total load of 50 KW or above, assessed as per clause 4.51 of this Code, shall be treated as multi consumer complex for the purpose of electric supply. A multi-consumer complex shall include residential, non-residential and commercial complexes, housing colony, office complexes, educational and training institutions etc.*

*(ii) Supply to a multi-consumer complex shall be arranged through a separate distribution transformer of adequate capacity but not less than capacity of 100 KVA. The cost of extension including 11 KV line, distribution transformer and L.T. lines/ cables shall be borne by the developer/ builder/ housing society/ group of consumers/ consumer, who applies for the connection. The applicant shall have to provide suitable space required for the construction of the distribution transformer substation free of charge.*

*(iii) In case no outdoor space can be provided by the applicant for installation of distribution transformer / sub-station or if the applicant wants to install the transformer sub-station indoor, the required space for housing the transformer substation and meters shall be provided by him free of cost for which rent or premium shall not be payable by the licensee. In such case transformer shall be of dry type apart from being energy efficient and all safety measures as per prevailing rules and regulations should be taken up and followed.*

*(iv) If such an applicant wants to lay 11 KV and/or LT line through underground cable, he shall be allowed to do so subject to the condition that the relevant Indian Standards are followed.*

*(v) If such applicant wishes to provide transformer of rating more than 315 KVA, 11/0.4 KV with special type of protection equipment (with ISI mark), such consumer shall have to install one*

*extra transformer unit of same capacity. The applicant shall bear the cost of extension of 11KV line, sub-station bay, if any, distribution transformer and LT lines / LT cables.*

*(vi) In case the total load of the multi-consumer complex/housing colonies including all phases exceeds 1500 KW, assessed as per clause 4.51, the applicant shall provide necessary land measuring not less than 40 x 30 meters at a token premium of Re.1, for construction of 33/ 11 KV sub-station by the licensee. The location of the same shall be selected by the Engineer in-charge of the area in consultation with the applicant.*

*(vii) If a building/ group of buildings come(s) under the category of multi consumer complex or housing colony due to additional construction or additional requirement of load, and if a separate distribution transformer of sufficient capacity for giving supply to such building(s) was not provided earlier then, it will be provided at the cost of the applicant. In case, for such purpose, capacity of the existing*

*distribution transformer substation is required to be augmented, the same may be done by the licensee at the cost of the applicant. Further, in case the total load of multi consumer complex/housing colonies including all phases (existing and adjacent proposed) exceeds 1500 KW, applicant has to provide land measuring not less than 40x30 meters for construction of 33/11 KV sub-station at a token premium of Re. 1-.*

10. The above Regulation is quite clear. The Applicant has to only provide necessary land for construction of 33/11 kV sub-station by the distribution licensee at a token premium of Re. 1/-. The Applicant is not required to bear the cost of 33/11 kV sub-station and 33 kV line. The Regulation only provides for bearing of the cost of 11 kV line and 11/0.4 kV distribution transformer by the developers/builders/housing society/consumers.

11. As pointed out by the learned counsel for the State Commission, all along the distribution licensee in the proceedings before the State Commission had taken the plea of financial constraints in undertaking the cost of construction of 33/11 kV sub-stations for fulfilling its supply obligations imposed by the Supply Code to the group housing colonies. The relevant paragraphs of the reply are reproduced below:

*“5. That owing to its severe financial constraints as reflected from the large deficit shown in the above Tariff Order, the Respondent has been seriously handicapped in discharging its various obligations towards different entities to elucidate:-*

- (i) Payment towards power purchase for meeting the supply requirement in the State from various sources is being delayed.*
- (ii) Payment of transmission charges to the Transmission Company is over due for more than 10-12months; and*

*(iii) Payments to contractors/suppliers are also delayed abnormally.*

*Sufficient to say, it is an uphill task for the Respondent Company to meet its financial commitments to various entities. The situation is that owing to the large deficit, obtaining of credit/loan facilities from the banks for running the operation of the Company has become a near impossibility. It is in this context of the financial hardships being faced by the Respondent Company that the compliance of obligations imposed under clause 4.52 (vi) of the Supply Code are to be viewed by this Hon'ble Commission.*

*6. That in the above circumstances, when the issue or provision required for electrification of colonies has been considered by the competent authority of the Respondent Company, it has been realized that such electrification under the existing scenario can take place only if the expenditure for the same is borne by the colonizers or funded by the Government under any sponsored scheme,*

*more so when at present such expenditure if incurred by the Respondent is not reimbursable under any government scheme and the same is to get loaded in the tariff to be recovered in future from the existing consumers. Since the Respondent has not been having funds available with it to undertake such capital investment on its own and there is also no State or Central Government scheme from where such expenditure can be met, the competent authority has advised the Respondent to discontinue the expenditure on electrification of colonies and take up the matter with the Hon'ble Commission.....”.*

12. Thus, the plea of the Appellant before the State Commission was that it was not able to construct the 33/11 kV sub-station due to financial constraints and no funds being available from the Government under any sponsored scheme and therefore, they wanted the cost to be borne by the colonizers.

13. Further, we also find that vide letter dated 4.1.2013, the distribution licensee had stated that they were not able to construct 33 kV line and 33/11 kV sub-station for housing colonies at their own cost according to the existing provisions of the Supply Code and therefore, they sought relaxation from the State Commission from compliance of the provision under Section 4.52 (vi) and (vii) of the Supply Code till their financial condition improved. The relevant portion of the letter dated 4.1.2013 is as under:

*“Under such stringent financial situation the CSPDCL does not have enough money to spent on construction of 33 kV lines and 33/11 kV sub-station for Housing Colonies at Company’s Cost according to existing provision under Section 4.52 (vi) and (vii) of Chhattisgarh State Electricity Supply Code – 2011 as clarified by the Hon’ble Commission vide letters at reference no. (3) above.*

*Therefore, the compliance of above provisions of Supply Code is practically not possible for CSPDCL.*

*In the light of above difficult financial situation of the CSPDCL, the Hon'ble Commission is requested to invoke the provision under Section 13.28 of the Chhattisgarh State Electricity Supply Code – 2011 and relax the CSPDCL from compliance of the provision under Section 4.42 (vi) and (vii) of same Supply Code till the difficult financial position of the CSPDCL is improved and normalized.....”.*

14. Before sending the above letter dated 4.1.2013 to the State Commission, the Board of the distribution licensee also passed a Resolution dated 30.11.2012 as under:

*“..... The Board was further informed that the above Capital investment Plan includes an amount of Rs. 200 crores provided for Normal Development (ND) Scheme. Further the above provision for ND includes provides for construction of 33 kV line &*

*33/11 kV sub-station required for electrification of colonies.*

*Regarding provision required for electrification of colonies, the Board was of the view that such expenditure to be borne by the colonizer and under no circumstances, such expenditure to be borne by the Company keeping in view, inter alia the fact that at present, such expenditure is not reimbursable under any govt. scheme and the same gets loaded in the tariff to be recovered from the existing consumers. Thus, such stipulation is prima-facie not in line with the principle that expenditure on services should be borne by the consumer to whom the service is rendered. Further, in any case, as of now, the Company has no money available with it to undertake such capital investments on its own, nor is there any state or central government scheme from where such expenditure would be met. The Board was therefore, of the view that expenditure on electrification of colonies being incurred by the*

*Company be discontinued forthwith and the matter may be appropriately taken up with the CSERC.*

*The following resolution was passed in this regard:-*

**“RESOLVED THAT** *the provision made in the Capital Investment Plan for construction of 33 kV line & 33/11 kV sub-station for electrification of colonies be deleted from ND works. The matter may be taken up with CSERC/appropriate forum. Accordingly, the provision made for ND Scheme in the Plan be reduced from Rs. 200 Cr. to Rs. 150 Cr. for the financial year 2013-14.....*

**RESOLVED FURTHER THAT** *sanctioning works for construction of 33 kV line & 33/11 kV sub-station for electrification of colonies be discontinued forthwith and such works may be taken up in future provided the cost is borne by the colonizer or is reimbursable under any govt. sponsored scheme”.*

15. It is clear from the above Resolution that the Board of the Appellant took the decision not to carry on the construction of 33 kV line and 33/11 kV sub-station at their cost due to financial constraints and not due to the reason that the Supply Code Regulation of 2011 provided for bearing of cost of construction of 33 kV line and 33/11 kV sub-station by the colonizer. If the understanding of the Board was that the colonizers had to bear the cost construction of 33 kV line and 33/11 kV sub-station as per the Regulations, then there was no need for passing such Resolution by the Board. We feel that the Board passed the above Resolution fully conscious of its obligation to construct the 33/11 kV sub-station at their own cost. It is for this reason the Board resolved to take up the matter with the State Commission. Accordingly, matter was taken up by the distribution

licensee vide letter dated 4.1.2013 for relaxation from compliance of the Regulation 4.52 (vi) & (vii) of the Supply Code 2011.

16. Thus, it is very clear from the above, that all along the distribution licensee had the understanding about their obligation to construct 33 kV line and 33/11 kV sub-station for housing colonies at its own cost as per the Regulation and they only wanted relaxation from the State Commission for not being able to fulfill the conditions laid down in the Supply Code due to financial constraints.

17. The learned counsel for the Appellant has now argued that the clarification dated 6.8.2011 is not in order of the State Commission but only a letter communicated by the Registrar of the State Commission. We do not find any force in this argument. The clarificatory letter from the State

Commission was never challenged by the Appellant. In fact the clarification was accepted and accordingly the distribution licensee sought exemption from the State Commission on account of the financial difficulties.

18. The learned counsel for the Appellant has also referred to clauses 4.1, 4.2 and 4.3 of the Supply Code, 2011. We find that these are general clauses giving the obligations of the licensee and sharing of cost by the consumers. Supply Code Regulation 4.52 is the regulation which gives in detail the cost to be borne by the distribution licensee and the consumers for extension of supply to Multi-consumer Complex and Housing Colonies. Regulation 4.1, 4.2 and 4.3 do not in any way will be of any help to the Appellant's case as they do not indicate that the cost of 33 kV line and 33/11 kV sub-station is to be borne by the colonizers.

18. In view of above, we do not find any merit in the contentions of the Appellant.

19. **Summary of our findings:**

**i) The Supply Code Regulation 4.52 relating to supply to Multi-Consumer Complex and Housing colonies provides that the land for construction of 33/11 kV sub-station has to be provided by the Respondent No. 2 Developer Association to the distribution licensee at a premium of Re. 1/-. The 33/11 kV sub-station and 33 kV line have to be constructed by the distribution licensee at its own cost.**

**ii) In view of above, there is no infirmity in the order of the State Commission and the same is upheld.**

**iii) The Resolution passed by the Board of the Appellant is in contravention to the Supply Code Regulations.**

**iv) The State Commission has correctly directed the Appellant to refund the amount collected from the Respondent no. 2.**

20. In view of above, the Appeal is dismissed as devoid of any merit and the impugned order of the State Commission is upheld. There is no order as to costs.

21. Pronounced in the open court on this **9<sup>th</sup> day of July, 2014.**

**(Justice Surendra Kumar)  
Judicial Member**

**( Rakesh Nath)  
Technical Member**

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**REPORTABLE/NON-REPORTABLE**  
Vs