

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO.238 OF 2022

Dated: 15.11.2022

Present: Hon’ble Mr. Justice R.K. Gauba, Officiating Chairperson
 Hon’ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

L&T METRO RAIL (HYDERABAD) LIMITED

Through Mr. Chandrachud D Paliwal
Head, Legal and Company Secretary,
Hyderabad Metro Rail Administrative Building
Uppal Main Road,
Nagole, Hyderabad,
Telangana – 500068

... Appellant(s)

VERSUS

**1. SOUTHERN POWER DISTRIBUTION COMPANY
OF TELANGANA LIMITED**

Through its Chairman and Managing Director,
Corporate Office, #6-I-50,
Mint Compound,
Hyderabad – 500063.

**2. TELANGANA STATE ELECTRICITY
REGULATORY COMMISSION**

Through its Secretary,
5th Floor, Singareni Bhavan, Red Hills
Hyderabad – 500004

... Respondent(s)

Counsel for the Appellant (s) : Mr. Buddy Ranganadhan
Mr. Utkarsh Sharma

Counsel for the Respondent (s) : Mr. D. Abhinav Rao
Mr. Rijuk Sarkarfor R-1

Ms. Somnadri Goud Katam
Mr. Rushpa Khan for R-2

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a special purpose vehicle incorporated under the provisions of Companies Act, 1956, having been awarded and implemented the *Hyderabad Metro Rail Project*, being responsible for its day-to-day operations requiring continuous supply of electricity for running of the metro trains and activities essential for its functioning. It has a contractual arrangement for procurement of supply of electricity with the first respondent (“distribution licensee”), the *Contracted Maximum Demand* (“CMD”) having been specified therein. It is aggrieved by order dated 19.10.2020 of the second respondent (“the State Commission”) passed in Original Petition no.27/2020 and Order dated 23.08.2021 in Review Petition no.1/2021, as a result of which its request for derating of the CMD of its electrical supply for the period from 22.03.2020 to 07.09.2020 has been declined.

2. The *General Terms and Conditions of Supply* (“GTCS”) applicable to the case of the appellant deal with the subject of reduction in load, the clause 5.9.4.2. stipulating as under:

“Deration of CMD or Termination of Agreement in respect of HT Supply:

The consumer may seek reduction of contracted maximum demand or termination of the HT Agreement after the expiry of the minimum period of the Agreement by giving not less than one month notice in writing expressing his intention to do so. However, if for any reason

the consumer chooses to derate the CMD or terminate the Agreement, before the expiry of the minimum one year period of the Agreement, the CMD will be derated or the Agreement will be terminated with effect from the date of expiry of the initial one year period of the Agreement or after expiry of one month notice period whichever is later. The Company can also terminate the HT Agreement, at any time giving one month notice if the consumer violates the terms of the HT Agreement, or the GTCS or the provision of any law touching the Agreement including the Act and rules made thereunder, and AP Electricity Reforms Act, 1998. On termination of the HT Agreement the consumer shall pay all sums due under the Agreement as on the date of its termination.”

3. Also relevant for present purposes is clause 7.3 of Schedule I of Regulation no.5 of Standard of Performance Regulations (“SOP Regulations”) which reads as under:

“Reduction in Load

Upon receipt of a request by a consumer for reduction of contract demand / contract load of such consumer after expiry of minimum period of Agreement entered by the consumer with the Licensee (indicated in GTCS), the Distribution Licensee shall reduce the contract demand/contract load of such consumer before the expiry of the second billing cycle after the receipt of such request;

Provided that consumer executes fresh agreement for such revised load before the second billing cycle.”

4. In the wake of imposition of lock down on account of COVID-19 pandemic, under directions of the governmental authorities from 25.03.2020 onwards, representations having been made, the State Commission, by its *suo motu* order, on Mitigation of Impact of COVID-19 – Relaxation of Clause 5.9.4.2 of GTCS and Clause 7.3 of Schedule I of Regulation No.5 of 2016 – registered as Original Petition no.17/2020,

passed on 29.04.2020, referring to clause 5.9.4.2 of GTCS and clause 7.3 of SOP Regulations, had directed as under:

“8. The Commission is of the view that due to lockdown these conditions do have onerous impact on the electricity consumers. Since the HT consumers may not be availing the entire load contracted for during the lockdown and at present this situation having started on 22.03.2020 and now stands extended upto 07.05.2020, it may be appropriate to allow reduction of the load temporarily. However, it has to be stated that while allowing the deration of the load, it is not worth to insist on compliance of the GTCS conditions or clauses in SOP regulation. Therefore, the Commission considers it appropriate to relax the same for the lockdown period upto 07.05.2020 or such further extended period. The provisions of GTCS and SOP Regulations are relaxed to the following effects:

- i) A consumer, if it so desires to avail deration of the contracted load may apply to the licensee and is permitted to exercise clause 5.9.4.2 of GTCS irrespective of the criteria of completion of minimum period of the agreement as stipulated in GTCS.
- ii) The distribution licensee shall upon such request by the consumers, give effect to the request of the consumer, who has exercised clause 5.9.4.2 of GTCS, within five (5) days on receipt of the application from such consumer.
- iii) The above relaxations shall be applicable only during the lockdown period.
- iv) The above relaxations shall not be applicable for the period after lifting the lockdown and the conditions in the GTCS and SOP would continue to be applicable normally as before.
- v) The consumers are at liberty to seek restoration of the load post lifting of the lockdown.
- vi) In case the deration of the load happens in between the billing cycle in terms of the request of the consumer as per the relaxation given above, the distribution licensee shall endeavour to bill the consumer duly giving effect to the deration, that is billing as per the tariff order upto the date of deration and post deration of the load on the basis of the derated load only. The demand charges shall be levied accordingly on proportionate basis.”

5. Indisputably, the appellant herein had made a request vide its letter dated 01.05.2020 submitted to the distribution licensee for CMD to be

derated for certain connections. The respondent licensee did not accede to the said request and issued electricity bills on the basis of CMD, declining to issue revised electricity bills.

6. The dispute was taken by the appellant to the State Commission by Original Petition registered as 27/2020. The Commission having rejected the case of the appellant, a review petition was filed which was also declined by order dated 23.08.2021, both, the original order and the review order now being under challenge by the appeal at hand.

7. The reason why distribution licensee did not accede to the request of the appellant was that it had not come forward to execute a fresh agreement pursuant to the requirement of proviso appended to clause 7.3 of SOP Regulations quoted earlier.

8. The view taken by the State Commission in rejecting the case of the appellant is summarized in the impugned order as under:

“15. in the present case, the petitioner sought deration of the load after passing of the Suo motu order. It is also noticed from the record as well as on the claim of the petitioner that the licensee did not effect the deration within the time stipulated by the Commission in the Suo motu order alleging that the petitioner did not enter into an agreement as required in the order passed by the Commission. It is clear that the Suo motu order did not rescind the requirement of entering into an agreement on deration of the load. On this aspect the petitioner contended that the DISCOM still insisted on entering into a fresh agreement for effecting duration of the load. The Suo motu order was intended to give quick relief to the HT consumers’ vis-à-vis the notice period and time line for deration under GTCS and

SOP regulation, immediately within five days of such application. The requirement of entering into an agreement is a sine-qua-non for granting deration. In the present case, there is no such compliance as seen from the record.”

9. Having heard the learned counsel for both parties we find the Commission to be in error. By the *suo motu* order dated 29.04.2020 the rigor and requirements both of GTCS and SOP Regulations had been relaxed. The distribution licensee is obliged under the relaxed norms to grant the request for reduction of the CMD “*on receipt of the application*” from the consumer within five days of its submission, there being no requirement added for any fresh agreement to be executed. In the circumstances for dealing with which the norms were relaxed as above, the formal execution of the agreement could not even otherwise have been a requirement added. The period for which such situation were to prevail was uncertain. The order relaxing the norms was thus virtually open ended, though formally amended from time to time. Since the social and economic activity was adversely affected, this necessarily having impacted the use of the Metro Rail services, the appellant could not have specified the period for which such relaxation would be necessary to save unnecessary expenditure.

10. For above reasons, we find the view taken by the State Commission in the impugned order dated 19.10.2020 incorrect, not in *sync* with the

letter and spirit of the *suo motu* order dated 29.04.2020, the requirement of execution of fresh agreement in terms of clause 7.3 of SOP Regulations also being part of the norms which had been thereby relaxed.

11. In above view, the impugned order is set aside. The State Commission is directed to consider the prayers presented by the appellant in its petition, on which the impugned order was passed, afresh bearing in mind the above conclusions and issue consequential directions thereupon.

12. The appeal is disposed of in above terms.

Pronounced in open court on this 15th Day of November, 2022.

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson