

Rajasthan Electricity Regulatory Commission

**Petition No. RERC-1735, 1754, 1755, 1758, 1759,
1769, 1782, 1791, 1794, 1795, 1797 & 1798/20**

Petitions under Section 86 (1)(f) for adjudication of dispute with Discoms and u/s 142 and 146 of the Electricity Act, 2003 for non compliance of the provisions of the tariff order and general condition of supply issued by Discoms for waiver of fixed charges.

Coram :
Shri Shreemat Pandey, Chairman
Shri S.C. Dinkar, Member
Shri Prithvi Raj, Member

Petitioners :

1. M/s Rajasthan Steel Chambers (1735/20)
2. Rajasthan Textile Mills Association & Ors. (1754/20)
3. The Employers Association of Rajasthan (1755/20)
4. M/s Mangalam Cement Ltd. (1758/20)
5. M/s BLS Ecotech Ltd. (1759/20)
6. Mewar Chamber of Commerce and Industry (1769/20)
7. M/s Jindal Saw Ltd. (1782/20)
8. M/s Ultratech Cement Ltd. (Unit: Birla White) (1791/20)
9. M/s Ultratech Nathdwara Cement Ltd. (Unit: Nathdwara Cement Works) (1794/20)
10. M/s Ultratech Nathdwara Cement Ltd. (Unit: Neem Ka Thana Cement Works) (1795/20)
11. M/s Ultratech Cement Ltd. (Unit: Aditya Cement Works) (1797/20)
12. M/s Ultratech Cement Ltd. (Unit: Kotputli Cement Works) (1798/20)

Respondent:

1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd.

Date of hearing : 22.07.2020, 04.08.2020, 11.08.2020, 25.08.2020, 08.09.2020,
and 16.09.2020

Present :

Sh. Anupam Bhargava, Advocate for Petitioner (1735/20)
Sh. R.G. Gupta, Authorised rep. of Petitioner (1769/20)
Sh. V.K. Gupta, Authorised rep. for Petitioner (1782/20)
Sh. P.N. Bhandari, Advocate for Petitioners (1754-1755/20,
1758-1759/20, 1791/20, 1794-1795/20 and 1797-1798/20)
Sh. Sandeep Pathak, Advocate for Respondents(1735/20,
1754-1755/20, 1758-1759/20, 1769/20, 1782/20, 1791/20,
1794-1795/20 and 1797-1798/20)
Sh. Bipin Gupta, Advocate for JdVVNL (1791/20 and
1794/20)

Order Date:

28.10.2020

ORDER

1. The Petitioners referred to in the cause title have filed the petitions under Section 86 (1)(f) for adjudication of dispute with Discoms and u/s142 and 146 of the Electricity Act, 2003 for non compliance of the provisions of the tariff order and general condition of supply issued by Discoms for waiver of fixed charges.
2. The Petitioners have also filed stay applications seeking directions to issue stay orders not to recover fixed charges for the period of lockdown and for not taking any coercive action against the Petitioners till the matter of recovery of fixed charges is finally decided.

3. Notices were issued to Respondent Discoms for filing the reply. Accordingly Discoms filed their reply in respective petitions. Some of the Petitioners also filed the rejoinder and written submissions.
4. As the issue that arises in all the petitions for consideration and decision of the Commission is similar, all the petitions referred to in cause title are clubbed together and are being disposed of by this common order.
5. The matter was finally heard on 16.09.2020. Sh. Anupam Bhargava, Advocate, Sh. R.G. Gupta, Authorised rep., Sh. V.K. Gupta, Authorised rep. and Sh. P.N. Bhandari, Advocate appeared on behalf of respective Petitioners, Sh. Sandeep Phatak, Advocate appeared on behalf of Discoms in respective petitions and Sh. Bipin Gupta, Advocate for JdVVNL.
6. Petitioners in their petitions, rejoinder and during hearing have mainly submitted that:
 - 6.1 The Petitioners are consumers of the three Discoms of Rajasthan. They have entered into contracts with the respective Discoms from time to time for procurement of electricity.
 - 6.2 The present dispute is arising out of the extraordinary circumstances and a major policy decision is involved in this matter, which can be taken only at the level of the Commission. The Redressal Committees are not empowered to take major policy decisions regarding Terms and Conditions of supply (TCOS), 2004 approved by the Commission. Many of the situations arising out of the Nationwide Lockdown were not even anticipated by the Commission or anyone else. How to deal with such situations can be decided by the Commission alone.

- 6.3 The Hon'ble APTEL has also held in a number of cases that where policy decisions are involved, such issues could be directly raised before the Regulatory Commissions. Reference has been made to the judgement dated 7/2/2017, in Appeal No 264/16 of the Hon'ble APTEL.
- 6.4 The Lockdown due to COVID 19 was imposed by the Government of India under the Disaster Management Act, 2005 by its order dated 24.03.2020 directing all Commercial and Industrial Establishments to remain closed for a period of 21 days (which was extended subsequently from time to time). Prior to this, the Government of Rajasthan had also issued similar lockdown directions on 22.03.2020 vide order No. F.33(2)Home/Gr.9/2019.
- 6.5 Consequent to the restrictions imposed by the Central/State Government the Petitioners had no option but to totally shut down their plants, causing heavy losses to the Petitioners, dislocation of entire industrial activity apart from the extreme hardship to the workers. The events were well beyond the control of the Petitioners and have led to the impossibility of the contracts, temporarily during the Lockdown period. The Petitioners had also made representation to the Principal Secretary, Energy GOR, Chairman Discoms and Managing Directors of respective Discoms.
- 6.6 It is clear that the force majeure conditions are attracted in such situations and even the Government of India has recognized this irrefutable legal position. Reference has been made to some of the recent orders of the Government of India which clearly lay down that in all such contracts, force majeure clauses would be attracted.
- I. The Govt. of India vide its Memo No. F. 18/4/2020 PPD dated 19-02-2020 issued by the Deputy Secretary of Govt. of India, Ministry of Finance.

- II. The Ministry of New & Renewable Energy vide Office Memorandum bearing no. 283/18/2020-GRID SOLAR dated March 20, 2020 has termed the occurrence of Covid-19 as a Force Majeure Event.
- III. The Ministry of New & Renewable Energy vide Office Memorandum bearing no. F. No. 283/18/2020-GRID SOLAR dated April 17, 2020 has reiterated the occurrence of Covid-19 as a Force Majeure Event.
- IV. Order dated 8.6.2020 issued by the Finance Department Government of Rajasthan which also recognizes the extraordinary situation arising out of Corona pandemic.

6.7 In this respect, Section 56 of the Indian Contract Act, 1872 also supports the above contention. It reads thus:-

"Agreement to do impossible act. Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non performance of the promise".

6.8 The tariff determined by the Commission has two parts - Fixed Charges and Variable Charges. The concept of Fixed Charges is that the Discoms make substantial investment on the infrastructure for supplying power to the consumers. Consequently, the Discoms are entitled to Fixed Charges even if the industrial consumer voluntarily chooses not to draw the minimum electricity as per the contract demand. Hence if any industrial consumer chooses not to draw any electricity or draws less than the contract demand, it will still have to pay the full Fixed Charges

to the Discom. But it is obvious that the present situation is totally different. The Petitioners were fully in a position to draw the electricity as per the sanctioned contract demand with the Discoms but were prevented to operate their industrial units because of the Lockdown.

6.9 Discoms have published the 'tariff for supply of power' dt. 17.02.2020 in pursuance to Commission's order dated 06.02.2020. Clause 23 of the tariff for supply of Electricity 2020 also states that during the restrictions of use of electricity in respect of HT supply consumers the pro rata reduction in fixed charges shall be allowed on the basis of average power cuts and restrictions during the month.

6.10 The clause 23 (ii) of "Tariff for Supply of Power 2020" reads thus-

"During the period of Power Cuts/Restrictions in use of electricity in respect of HT Supply consumers, irrespective of category of consumer, the pro-rata reduction in Fixed Charges shall be allowed on the basis of average power cuts & restrictions during the month".

6.11 As per Terms and Conditions of Supply of Power – Specific Clause related to "Restriction on use of Supply" is as under:
Clause 45 (4) : Restriction on use of Supply :

"the large industrial consumer at any time, is prevented from receiving or using the electrical energy to be supplied under this agreement in whole, owing to any strike, lawful lockouts, riots, insurrections, command of a civil or military authority, fire, explosions or Act of God, then the consumer shall not be liable to pay minimum billing amount for the period of the event(s) mentioned above, provided the consumer notifies the Asstt. Engineer concerned and billing authority within three days in writing of the occurrence of any event as noted above with necessary details to prove that the occurrence is preventing/has prevented the consumer from receiving or using the amount of power for industrial purpose....."

- 6.12 Under the current Lockdown conditions all Industrial Consumers have been restricted use of electricity Supply due to Lockdown Orders of Central Government/State Government and/or District Magistrates. Therefore it has become impossible for the industrial consumers to draw any electricity from the Discoms. Hence Fixed Charges for the relevant period are not leviable under the above provisions and the Commission may kindly declare accordingly.
- 6.13 The tariffs are subjected to the provisions of Terms and Conditions of supply (TCOS), 2004 or any modifications thereof as are enforced from time to time. In view of aforesaid categorical provisions of the Act and the tariff order issued in pursuance of the provisions of the Act, the provisions of TCOS are integral part of the tariff order.
- 6.14 As per Clause 48(4) of the general conditions of supply issued by the Respondents, consumer shall not be liable to pay the fixed charges for the period of lawful lockdown. In view of above, Petitioners therefore are not liable to pay fixed charges during the lockdown period.
- 6.15 Since the present lockdown was permitted by the State Government it is a lawful lockdown which is different from strike/lockout in an individual isolated industry. Hence the provisions of clause 78(4) of TCOS regarding intimation to the concern Assistant Engineer within 24 hours have no relevance in the statewide lockdown.
- 6.16 Many of the State Governments have taken a very sympathetic view on this issue. The Government of Gujarat's order dt. 30.03.2020 has unambiguously laid down that only consumption charges would be levied and not the demand charges or fixed charges.
- 6.17 Unfortunately the Discoms have been raising the bills with full Fixed Charges for the month of March and April, 2020 and so on. However

Fixed Charges for the effected period, i.e., 10 days of March (from 22.03.2020 to 31.03.2020) and full month of April and May, 2020 (or as per lockdown restrictions from time to time) should be declared to be not leviable and consequently should be completely waived in view of the Terms and Conditions of Supply of Power and Tariff of Supply of Electricity, 2020 and also due to force majeure conditions.

- 6.18 Even after the partial lifting of the lockdown, the State and Central Governments have put many mandatory restrictions. such as (a) allowing only one third of labour (b) working in shifts (c) restrictions of movement of labour between 7pm to 7am, resulting in suspension of the night shift (d) social distancing in the plant compels the management to reduce labour in every shift (e) gap of at least one hour between shifts leading to reduced production.
- 6.19 This is forcing the industrial consumers to stop/restrict their production and consequential electricity consumption. This situation may continue for another 6 months or even more. Therefore coming 6 months or such extended period of partial Lockdown should be considered as effected period and proportionate Fixed Charges should be levied on the basis of actual maximum demand recorded rather than levying minimum Fixed Charges on 75% of Contract Demand till the Lockdown is totally lifted.
- 6.20 As approved by RERC vide order dated 06.02.2020, Fixed Charges of Rs. 270/- per KVA of Billing Demand per month is payable by Large Industrial Service. Lower tariff is available only in case of Billing Demand is more than 1 MVA and having Load Factor 50% or more.

Where Billing Demand has been defined as –

“Maximum Demand recorded in the month or 75% of Contract Demand whichever is higher.

Where Load Factor is the ratio of the average load over a period to the contract demand during the period.

$$L.F.= \text{Total Consumption (Discom) in a month} / \text{Contract Demand} \times 24 \times 30 \text{ days}$$

6.21 It needs to be highlighted that lower tariff linked with higher Load Factor was approved by the Commission vide order dated 06.02.2020 for the mutual benefit of the Discoms and the industrial consumers so that the high tariff paying consumers can take the benefit of lower tariff by drawing maximum power from the Discoms rather than from open access etc. But the Petitioners are facing an unprecedented situation which was never anticipated by anyone including the Commission.

6.22 The formula to be used by the Discoms for calculating Load Factor on Contract Demand, was formulated by Commission for normal times, is not workable presently. During this extraordinary period, it should be based on Maximum Demand Recorded rather than Contract Demand. In the present working scenario where actual Maximum Demand recorded is bound to be less than 50% of the Contract Demand, the legitimate incentive of lower tariff as above will be totally ruled out for no fault of the Petitioners even if they source full power from Discoms. Therefore for the effected period starting from 22.03.2020 the following formula may kindly be considered for calculating Load Factor in place of the existing Formula:

$$L.F.= \text{Total Consumption (Discom) in a month} / \text{Maximum Demand Recorded} \times 24 \times 30 \text{ days}$$

6.23 Load Factor for the month of March, 2020 should be calculated considering working of 21 days instead of 30 days as follows:-

$$L.F.= \text{Total Consumption (Discom) in a month} / \text{Maximum Demand Recorded} \times 24 \text{ hours} \times 21 \text{ days i.e. number of days actual worked}$$

- 6.24 Hence for this period while the lockdown orders are in operation, a separate formulation needs to be devised, although even after lifting of the Lockdown, due to disruption of labour, operations may not normalise for quite some time. The Petitioners are keen to draw maximum power but it is impossible under Lockdown conditions issued from time to time.
- 6.25 Presently banked units of Captive Renewable Energy Plants are available for being utilised only within the same month as per RERC (Terms and Conditions for Determination of Tariff Regulations, 2014). In the current scenario Industrial Plants had to be completely shut down since 22.3.2020 and therefore it was impossible to consume this quantum of renewable energy in the same month. The same extraordinary situation due to lockdown conditions requires similar relaxation in banking till the Lockdown is completely lifted. It is therefore requested that banking of unutilized renewable energy should be extended till the complete lifting of the lockdown.
- 6.26 The Discoms may kindly be directed to defer the recovery of Special Fuel Surcharge till the Lockdown is completely lifted i.e. to extend the recovery period. It will help the Industry for the time being, when all Industries are struggling with acute cash flow problems.
- 6.27 The issue is already pending before the Commission for revision of the order for recovery of Special Fuel Surcharge. It is therefore submitted that for easing the cash flow situation of the Industries in the current adverse situation when the Industries are not having sufficient funds to meet even their other committed obligations, this deferment will be a great help to the Petitioners.

- 6.28 In the current scenario Industrial Plants had to be completely shut down since 22.3.2020 and therefore it was impossible to maintain desired Power Factor for the period for which plants were not working during the lock down period. The same extraordinary situation due to lockdown conditions requires similar relaxation in maintaining power factor during the period when plant operations were closed.
- 6.29 If there is a wholesale change in the scenario, then the applicable conditions also need a re-look by the Commission. There are virtually no provisions for dealing with many such conditions. Therefore the Petitioners have every right to highlight the problems and suggest just and equitable measures to deal with the extraordinary conditions.
- 6.30 All laws are enacted on the basis of the then prevailing situation. There is nothing perpetual about laws. When fresh situations arise due to any unanticipated situation, laws are often amended. Even the Constitution of India has been amended 126 times and many more amendments are in the offing. Therefore if the existing Regulations/orders are silent or ambiguous about certain new and unanticipated developments arising out of Corona lockdown, then the Commission can certainly think of introducing some of the suggestions to deal with the extraordinary situation.
- 6.31 If the existing Regulations could not anticipate certain situations and are silent on certain issues, then it is the Petitioner's right and duty to suggest measures to deal with the extraordinary situation in a just and equitable manner.
- 6.32 If the Regulations/ orders issued by the Commission apply to all stakeholders and if the Respondents are refusing to comply with them,

the individual facts of each factory are irrelevant. For implementation of Regulations / orders, individual facts are not relevant.

- 6.33 The latest order of the Commission dated 15.04.2020 has recognized the “unforeseen and unprecedented” conditions, Commission’s intention to mitigate the hardship to the consumers”, to “protect the interest of the consumers”, the directions are basically meant for the licensees and the relaxations which they are supposed to provide but no where the tariff order of 2020 has been withdrawn or suspended. This is more of ex-gratia relief by the Commission to the consumers without affecting their existing rights. There is no question of challenging administrative orders of the Commission. The orders do not reduce or withdrew the rights of the consumers given by the Commission through its earlier Tariff orders passed after public hearing. Deferment is no substitute for waiver. Right of waiver cannot be diluted or defeated by deferment.
- 6.34 It is true that the Discoms did not prevent the consumers from receiving the electricity. But it is equally true that the Petitioner was ready to receive electricity but the orders of the government prevented them to continue the operations.
- 6.35 The Maharashtra order is based on different facts. The Petitioner had sought relaxation of Regulations in the Maharashtra petition but the Petitioner is not seeking any relaxation in fixed charges. Its prayer is for direction to the Discoms to comply with the Commission’s Tariff orders in the past as reflected in TCOS issued by the Discoms themselves. The Petitioner’s complaint is limited to non-compliance of Commission’s tariff orders relating to fixed charges as reflected in TCOS.
- 6.36 In view of above Petitioners in their respective petitions have mainly prayed as under:

- (i) The Fixed Charges of the Petitioners for the Lockdown period may kindly be declared to be non leviable and consequently waived. Bills raised to the contrary should be quashed so far as fixed charges are concerned. For the partial Lockdown period also, proportionate relief should be allowed in Fixed Charges.
 - (ii) The Load Factor formula should be based on Maximum Demand Recorded rather than on Contract Demand and should be calculated during the Lockdown period, with actual number of days worked in the particular months of lock down period rather than multiplying the same with 30 days.
 - (iii) The banking of renewable energy may kindly be continued till the total lifting of the Lockdown period.
 - (iv) The recovery of special fuel surcharge may kindly be deferred without interest for six months or till the total lifting of Lockdown, whichever is later.
 - (v) The condition related to maintaining Power Factor during the lockdown period (when the Industrial unit was totally shutdown) may kindly be suspended and no surcharge should be levied.
 - (vi) The yard stick of 6% should be applied not for the entire month but for only lockdown period of the particular month.
 - (vii) Industrial units who have resumed partial operations following the easing out of lockdown, the exemption of the fixed charge should be continued to be given so long as the consumption is below the 6% yard stick.
 - (viii) Definition of load factor in Tariff for Supply of Electricity, 2020 may be set aside and restored by the definition in Tariff for Supply of Electricity, 2018.
7. Respondent Discoms in their common reply, additional submissions and during hearing have submitted as under:

- 7.1 The basis of filing the present petition is that due to the lockdown various industries have not carried out their operations and therefore, fixed charges of electricity are required to be waived. Each industry or factory is governed by its peculiar circumstances, namely; the nature of products, which are being manufactured, type of industry etc. Therefore, Petitioners cannot be allowed to pursue common cause of action against the answering Respondents by way of the present petition.
- 7.2 The State Government considering the impact of Covid-19 outbreak on the Industries and all the consumers in general issued certain guidelines to mitigate its impact on consumers. Accordingly, the answering Respondents have also issued an order dated 01.06.2020 wherein the relaxations granted by the State Government have been implemented by the answering Respondents and the fixed charges have been deferred upto 30.06.2020, so that the industrial consumers are not burdened with the liability to pay the fixed charges immediately.
- 7.3 The order dated 01.06.2020 and dated 16.04.2020 passed by the answering Respondents and orders passed by the State Government and the Commission dated 02.04.2020 and dated 15.04.2020 have not been challenged by the Petitioner.
- 7.4 The Commission was also considerate about the impact of outbreak of Covid-19 on different category of consumers. Commission vide order dated 15.04.2020 and 03.06.2020 has passed directions in Suo-Moto Petition titled "Mitigation of Impact of Covid-19 on Electricity Distribution Licensees and Consumers of Rajasthan". The above orders clearly provide that the Commission has considered the impact of Covid-19 and has passed orders with regard to the fixed charges of electricity and other aspects being applicable on different categories of

consumers. The direction for deferment of fixed charges has been taken note of by the Commission. The Commission has not directed for the waiver of the fixed charges of electricity for the lockdown period.

- 7.5 By way of this petition, Petitioners are trying to overreach the directions issued by the State Government as also by the Commission. It is a settled preposition of law that whatever cannot be done directly can also not be done indirectly.
- 7.6 The fixed charges and other payable charges and mechanisms applicable upon all the consumers regarding their financial liabilities are in accordance with the tariff orders and all other applicable Rules, Regulations and Guidelines. The calculation of fixed charges has been done in accordance the Commission's tariff order dated 06.02.2020 in petition no. 1541/19,1542/19 and 1543/19. No consumer has the right to seek waiver of the fixed charges, which are otherwise payable as per the provisions of Electricity Act, 2003, tariff order dated 06.02.2020 and Terms and Conditions for Supply of Electricity.
- 7.7 The petition is also liable to be dismissed on the ground that the interpretation of clause 48(4) of TCOS is misconceived. Firstly, the said provision is applicable only if the answering Respondents or the Nigam is of the opinion that the fixed charges are to be waived then such an order can be passed. In the present case, the availability of electricity was in existence with all the Industrial Consumers and due to impact of Covid-19, the State Government as well as the answering Respondents have deferred the payment of fixed charges to a later date. Therefore, Petitioners cannot invoke clause 48(4) of Conditions of 2004 and seek complete waiver of fixed charges.

- 7.8 The Petitioners are blowing hot and cold at the same time. At one hand clause 48(4) is being invoked and on the other hand, the redressal procedure provided under clause 49, i.e. by approaching 'Grievance Redressal-cum-Settlement Forum' has not been adopted. Petitioners are trying to seek advantage of one clause of particular conditions/Regulations, whereas another clause is not being complied with intentionally. Hence, Petitioner cannot be allowed to file a petition by selectively choosing the clauses of a particular Regulation /conditions.
- 7.9 The answering Respondents are not liable for granting complete waiver of the fixed charges during the lockdown period. During the lockdown period the answering Respondents did not prevent the industrial consumers from receiving the electricity and infact the cost incurred upon the answering Respondent continued during the said period. The procedure prescribed under clause 48(4) has also not been complied with by the industrial consumers and no averment in this regard has been mentioned in the petition.
- 7.10 Maharashtra Electricity Regulatory Commission in Case No. 93/2020 titled "Ghatge Patil Industries Ltd. V/s Maharashtra Electricity Distribution Company Ltd." dated 08.07.2020 has held that the waiver of fixed charges on account of lockdown due to Covid-19 is not permissible and the said prayer has been specifically rejected.
- 7.11 The petition with respect to other aspects namely; modification in the formula of load factor, banking of renewal energy, special fuel surcharge and power factor rebate/surcharge is not maintainable. All these aspects have been considered by the Commission at different times under different proceedings or are otherwise covered under

applicable Regulations. Hence, the claims made in this regard are baseless.

- 7.12 The Petitioners by way of the present petition are virtually seeking amendment and modification in the existing Regulations, which is not permitted by way of petition under Section 86(1)(f) of Electricity Act, 2003. Without challenging the existing Regulations and the orders passed by the Commission, State Government or the Respondents, the present petition is highly misconceived. It is a settled position of law that whatever cannot be done directly can also not be done indirectly. Petitioners are trying to seek the reliefs by indirectly challenging the Regulations, which is not permissible under the provision of Section 86(1)(f) of Electricity Act, 2003.
- 7.13 That the Petitioners have filed this petition without any cause of action as none of the actions of the answering Respondent have caused any prejudiced to the Petitioners.
- 7.14 The claim of the Petitioners in the present petition by contending that force majeure conditions have triggered in the present facts is improper. Mere outbreak of Pandemic or National Lockdown would not entitle the Petitioners for seeking relief contrary to and beyond the applicable Regulations existing as on date.
- 7.15 The context of applicability of force majeure condition is to be seen as per the said orders of GOR and GOI. The Petitioners who are claiming to be industrial consumers cannot take advantage of these orders to avoid their obligation to make payments of electricity charges, since force majeure condition is said to be applicable with respect to supply changes.

- 7.16 The Regulations cannot be rendered ineffective or non-applicable due to the lockdown imposed during the outbreak of Covid-19.
- 7.17 The Petitioners have referred to the order passed by Govt. of Gujarat. It cannot be basis for claiming relief in other states like Rajasthan. In fact, the State Govt. has issued order dated 02.04.2020 pursuant to which the answering Respondent have issued orders dated 16.04.2020 & 01.06.2020. The Commission has also passed order dated 15.04.2020 considering the overall circumstances. These orders are applicable in the State of Rajasthan.
- 7.18 The obligations of the Petitioners arise out of the applicable guidelines and Regulations, which cannot be overlooked on the basis of any representation. On the contrary, if Petitioners had any grievance then appropriate grievance redressal mechanism ought to have invoked.
- 7.19 If any grievance for the lockdown period is to be raised then the same should be agitated by concerned industrial consumer. Entire procedure for grievance redressal has to be strictly followed. Without submitting specific details of particular industrial consumers, the benefit of waiver of fixed charges cannot be claimed by the Petitioners by filing this petition in a superficial manner.
- 7.20 The 'billing demand' has been duly defined apart from the load factor. A specific formula for calculating load factor has been provided under Tariff for Supply of Electricity 2020 issued by Respondents, which is based on the contract demand during the period. Load Factor, by definition, corresponds to the electricity units consumed divided by the maximum possible consumption as per contract demand. The Petitioner seeks to change the said formula by using a non-existing term 'Maximum

Demand Recorded'. Such prayer is beyond the scope of adjudication under Section 86 (1) (f) of EA 2003.

- 7.21 It is submitted that as per RERC (Terms and Conditions for Determination of Tariff) Regulations 2014 clearly provide for the adjustment of energy produced by Captive Renewable Energy Plants within the same month. The Regulations are in existence and as per Clause 39 (3) of RERC (Terms & Conditions for determination of tariff for renewable energy source –wind & solar energy (Second Amendment) Regulations, 2019 the intention of the framers of Regulations is amply clear. Petitioners cannot be allowed to seek any prayer beyond and contrary to the existing Regulations.
- 7.22 Admittedly, Regulation mentioned above has not been challenged by the Petitioners till date or even by this present petition. The prayers made are therefore not maintainable. It is settled preposition of law that courts cannot rewrite the statute or legislate. The prayer made by the Petitioners clearly fall within the scope of rewriting of the Regulations which cannot be done under Section 86 (1) (f) of EA 2003.
- 7.23 The Special Fuel Surcharge has been levied by the Discoms under the compliance of order dated 13.06.2019 passed by the Commission. In the petition said order has not been challenged by the Petitioners and thus, the petition is not maintainable.
- 7.24 Regarding special fuel surcharge it is submitted that the Petitioners have not challenged the relevant provisions of the Tariff Regulations and as such is estopped from challenging the action undertaken by the answering Respondents in pursuance to such Regulations.
- 7.25 According to section 45 of the Electricity Act, 2003, the distribution licensee is empowered to recover charges for the electricity supplied

by it and such charges shall be fixed in accordance with the methods and the principles as may be specified by the concerned Regulatory Commissions. Regulation 88 of the Tariff Regulation permits the licensee to determine and recover fuel surcharge in accordance with the specified formula. The APTEL has in a plethora of decisions has upheld the recovery of fuel/power purchase cost adjustment by means of a formula prescribed by the State Commission.

7.26 The Petitioners is indirectly trying to challenge the RERC (Terms & Conditions for Determination of Tariff) Regulations 2019 under the Provisions of Section 86 (1) (f) of the Electricity Act, 2003.

7.27 As per Power Factor Clause, Consumer shall maintain an Average Power factor. Accordingly surcharge and incentive shall be applicable. Consumers have to maintain the power factor as per the Tariff for supply of Electricity 2020 order issued by the Commission on 06.02.2020.

7.28 The said order has not been challenged by the Petitioners and therefore, the same cannot be modified on hypothetical arguments raised by the Petitioners. This prayer is not acceptable.

7.29 It is, therefore, prayed that the petition filed by the Petitioners may be dismissed with exemplary cost.

Commission's view

8. Commission has carefully considered the submissions made by Petitioners and the Respondents.

9. Petitioners have mainly prayed that

- (i) The Fixed Charges of the Petitioners for the Lockdown period may be declared to be non leviable and consequently waived. Bills raised to the contrary should be quashed so far as fixed charges are

concerned. For the partial Lockdown period also, proportionate relief should be allowed in Fixed Charges.

- (ii) The Load Factor formula should be based on Maximum Demand Recorded rather than on Contract Demand and should be calculated during the Lockdown period, with actual number of days worked in the particular months of lock down period rather than multiplying the same with 30 days.
 - (iii) The banking of renewable energy may kindly be continued till the total lifting of the Lockdown period.
 - (iv) The recovery of special fuel surcharge may kindly be deferred without interest for six months or till the total lifting of Lockdown, whichever is later.
 - (v) The condition related to maintaining Power Factor during the lockdown period (when the Industrial unit was totally shutdown) may kindly be suspended and no surcharge should be levied.
 - (vi) The yard stick of 6% should be applied not for the entire month but for only lockdown period of the particular month.
 - (vii) Industrial units who have resumed partial operations following the easing out of lockdown, the exemption of the fixed charge should be continued to be given so long as the consumption is below the 6% yard stick.
 - (viii) Definition of load factor in Tariff for Supply of Electricity, 2020 may be set aside and restored by the definition in Tariff for Supply of Electricity, 2018.
10. Petitioners have submitted that the present dispute has arisen out of the extraordinary circumstances due to Lockdown imposed by the Government of India and GOR due to COVID 19 pandemic. A major policy decision is involved in this matter, which can be taken only at the

level of the Commission. Therefore instead of approaching the Redressal Committees, they have come before the Commission

11. Petitioners have submitted that the force majeure conditions have arisen even the Government of India in its various orders has recognised this legal position.
12. Petitioners further submitted that as per TCOS the fixed charges cannot be levied, if the industrial units are forced to shut down, due to lockdown. The Petitioners' complaint is limited to non compliance of Commission's Tariff order relating to fixed charges as reflected in the TCOS.
13. Per contra Respondent Discoms have submitted that if any grievance for the lockdown period is to be raised then the same should be agitated by concerned industrial consumer. Entire procedure for grievance redressal has to be strictly followed.
14. Respondent Discoms also submitted the State Government and the Commission considering the impact of Covid-19 outbreak on the Industries and all the consumers in general has issued certain guidelines to mitigate its impact on consumers. Accordingly, the Respondents have also issued an order dated 01.06.2020 wherein the relaxations granted by the State Government have been implemented by the answering Respondents and the fixed charges have been deferred upto 30.06.2020, so that the industrial consumers are not burdened with the liability to pay the fixed charges immediately. The Commission has not directed for the waiver of the fixed charges of electricity for the lockdown period.
15. Respondents submitted that the Petitioners by way of the present petitions are seeking amendment and modification in the existing

Regulations, which is not permitted by way of a petition under Section 86(1)(f) of Electricity Act, 2003. The present petitions, therefore, should be dismissed.

16. Commission observes that Petitioners are seeking waiver of Fixed Charges in terms of TCOS since the industrial units were forced to shut down due to Covid 19. For other relief such as modification in Load Factor formula, continuation of banking of renewable energy till the total lifting of the Lockdown period, deferment of recovery of special fuel surcharge and suspension of condition of maintaining Power Factor during the lockdown period, they are seeking amendment/relaxation in the relevant Regulations.
17. The circumstances due to COVID-19 were unforeseen and unprecedented, which required the Commission to act for balancing the interest of consumers and utilities. Each constituent of the Power Sector has been affected by the Lock-down. The Commission therefore took the measures to mitigate hardships to the consumers and the utilities in public interest. The prime function of the Commission is to protect the interest of the consumer and at the same time ensuring recovery of cost by utilities.
18. The Commission therefore vide its orders dated 15.04.2020 and 03.06.2020 issued certain directions to the Discoms to mitigate hardships to the consumers. The Government of Rajasthan has also announced various measures which inter-alia includes deferment of the fixed Charges for industrial and non domestic consumers. In view of above, it is clear that the GOR and the Commission have provided the necessary reliefs to mitigate hardships to the consumers on account of COVID 19. The Commission is not inclined to review its decision at this stage.

19. As regards non compliance of the provisions of TCOS, Commission directs that provisions of TCOS should be strictly followed by the Discoms. If any particular consumer has specific grievance regarding non compliance of TCOS then appropriate grievance redressal mechanism should be invoked by him and the procedure for grievance redressal should be followed. The Discoms should ensure strict compliance of Regulations/ TCOS at sub division level.
20. The Petitions along with other connected applications are disposed of with no order as to cost.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman