



TAMIL NADU ELECTRICITY OMBUDSMAN

19- A, Rukmini Lakshmiipathy Salai, (Marshal Road),
Egmore, Chennai – 600 008.

Phone : ++91-044-2841 1376 / 2841 1378/ 2841 1379 Fax : ++91-044-2841 1377
Email : tnerc@nic.in Web site : www.tneo.gov.in

BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. S. Devarajan, Electricity Ombudsman

Appeal Petition No.24 of 2017

M/s WIPRO Limited,
Rep by its General Manager,
Survey No.602/3, Medavakkam Road,
Sholinganallur Village,
Chennai – 600 119.

. Appellant
(Thiru. Subhang P. Nair &
K.M.D. Muhilan, Advocates)

Vs

The Superintending Engineer,
Chennai Electricity Distribution Circle/South-II,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 600 078.

. Respondent
(Thiru. R. Someswaran, AEE/General
SE/CEDC/S-II)

Date of hearing : 5-9-2017

Date of order : 06-10-2017

The petition dated 27.3.2017 filed by M/s WIPRO Ltd., Sholinganallur Village, Chennai was registered as Appeal Petition No. 24 of 2017. The above appeal petition came up before the Electricity Ombudsman for hearing on 5.9.2017. Upon perusing the appeal petition, counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant:

M/s. WIPRO Limited (the Appellant) have prayed to set aside the order dated 24.02.2017 passed by the CGRF of CEDC/South-II and the demand of Rs.2,31,00,000/- levied by the TANGEDCO towards monthly minimum charges for the 1st and 2nd 90 days period in advance for its alleged failure to avail supply within the stipulated date.

2. Brief History of the case:

The Complaint was filed against the direction of the Superintending Engineer/Chennai EDC/South, vide letter dated 28.5.2016, wherein the Appellant was directed to pay an amount of Rs.2,31,00,000/- towards monthly minimum charges for the 1st and 2nd 90 days period in advance for its alleged failure to avail supply within the stipulated date as per the HT Agreement.

2.2 The Appellant filed a petition dated 09.01.2017 before the CGRF of Chennai Electricity Distribution Circle/South-II to redress the above grievance.

2.3 The CGRF of Chennai Electricity Distribution Circle/South-II issued its order on 24.02.2017 rejecting the petitioners request of withdrawal of the monthly minimum charges levied by the SE/CEDC/South-II.

2.4 Aggrieved over the order of the CGRF, the Appellant filed this appeal petition before the Electricity Ombudsman.

3. Order of the Forum :

The CGRF of Chennai Electricity Distribution Circle/South-II issued its order on 24.2.2017, the relevant portion of the order is extracted below:-

“The forum is of the opinion that TANGEDCO could have informed that the petitioner well in advance about the non availability of the EHT cable. However, even after having known it and undertaken to do it on its own, the

petitioner was not able to complete the cable laying works, when TANGEDCO was ready to extent supply to them. Though the petitioner claims that they could have obtained the safety much earlier it is obvious that the safety could be obtained only on completion of all the installation works. Hence, the delay in cable laying work was the reason for delayed safety certificate and TANGEDCO's supply availability notice seems to be in order. Hence, the petitioner request of withdrawal of the monthly minimum levied is not considered, by the forum. ”

4. Contentions of the Appellant :

4.1 The said Order was passed upholding the direction of the Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Limited, CEDC/South, vide letter dated 28.05.2016 wherein Wipro was directed to pay an amount of Rs.2,31,00,000/- (Rupees Two Crore Thirty One Lakhs Only) towards Monthly Minimum Charges for 1st and 2nd 90 days period in advance for its alleged failure to avail supply within the stipulated date.

4.2 The Appellant applied for sanction of an additional 11 MVA power over and above the existing 4MVA load to its facility at Survey No. 602/3, Elcot SEZ, Medavakkam Road, Sholinganallur. The Appellant completed all its portion of the work and paid the earnest money deposit on 05.03.2014. Wipro was called upon to pay Rs. 6,42,52,530/- for arranging to effect the additional demand of 11 MVA, pursuant to which TANGEDCO was to complete its extension works and issue the supply availability notice. As per the aforesaid letter, the probable date of effecting supply was 165 days from the date of payment of all charges and execution of the agreement. The Appellant duly paid the demand amount, and the HT Agreement was executed and submitted to TANGEDCO on 20.08.2014. Pursuant to this, the Appellant issued multiple letters dated 29.10.2014, 07.11.2014, 12.11.2014, and 22.12.2014 to TANGEDCO following up on the status of the work and the

connection. However, TANGEDCO could not provide any firm dates for providing the supply as there were delays in procuring the cables required.

4.3 Pursuant to discussions with the officials of TANGEDCO, it was suggested by the officials that the Appellant should take up the cable laying activity (which was TANGEDCO's responsibility) as this will help in expediting the supply. Pursuant to this, the Appellant had, vide letter dated 24.12.2014 and 22.01.2015, proposed to supply and lay the HT cables with accessories as per TANGEDCO Standards. Also, the civil and ancillary works required as part of cable laying and termination were also proposed to be undertaken by the Appellant under the supervision of TNEB officials; and the costs incurred for the above works were proposed to be adjusted against future consumption charges as appropriate. TANGEDCO, vide its letter dated 11.06.2015, had accepted and approved the Appellant's proposal to supply and lay 4.635 kms of 110KV UG cable for extension of EHT supply for the additional demand to the Appellant.

4.4 The Appellant has submitted the Cable Route Drawing for the approval of TANGEDCO on 19.06.2015. TANGEDCO accorded approval for the route drawing on 26.08.2015. Post which, Appellant gave clearance for production of cable to the Cable manufacturer as per the lengths approved by TANGEDCO in cable route drawing. Once the cable production was completed, the Appellant gave a request letter to TANGEDCO for inspection or inspection waiver on 30.11.2015. In response, TANGEDCO provided inspection waiver and advised the Appellant to produce the Routine test reports vide their letter dated 19.12.2015. The Appellant submitted the routine test report on 22.12.2015 and requested for despatch clearance. Post which, TANGEDCO gave dispatch clearance on 05.01.2016 and the cables were received at site on 11.01.2016.

4.5 The unprecedented rain in November- December, 2015 had severely affected/inundated the campus of Appellant including the Sub Station and Transformer yard which was completed earlier in October, 2014 in all respects. The Appellant was forced to rectify all the defects happened due to flooding by replacing/servicing most of the components. The appellant commenced the cable laying, completed the same on 10.03.2016, and offered for cable testing to TNEB. During inspection, TNEB requested for submitting the Third Party Test Report also for cable from Central Power Research Institute (CPRI). CPRI had conducted the test on 01.04.2016 and submitted their report on 05.04.2016.

4.6 To the Appellant's surprise, TANGEDCO, vide its letter dated 03.02.2016, claimed that it is ready to extend the HT supply for an additional demand of 11MVA over and above the then existing demand of 4MVA by converting supply voltage from 11KV to 110KV. It further claimed that the supply however could not be extended, as the 110KV cable laying works have not yet been completed by the Appellant. Thereafter, TANGEDCO issued the first three months availability notice from 27.01.2016 and directed that the Monthly Minimum Charges at the rate of Rs. 350/KVA/Month for the 1st and 2nd 90 days period is to be paid in advance in order to prevent termination of the agreement and to keep the HT application alive.

4.7 The Appellant responded, vide letter dated 02.03.2016, requesting for additional time till May 2016 to complete the cable laying activity, and also protesting the levy of Monthly Minimum Charges, pointing out that the delay was due to the TANGEDCO's failure to perform its obligations, and also due to the natural calamity which followed the heavy rain and floods in Chennai in November-December 2015.

4.8 TANGEDCO, however, vide its letter dated 18.03.2016, rejected the Appellant's objections to the Monthly Minimum Charges and its request extension of time for completion of the cable-laying work. The Appellant persisted with its follow-up, vide letters dated 30.03.2016 and 15.04.2016, clarifying that it was the failure on the part of TANGEDCO to carry on the cable laying works on account of non-availability of required cables in TANGEDCO stock which compelled Wipro to take up the activity, in spite of it having paid an amount of Rs. 6,42,52,530/- (Rupees Six Crores Forty Two Lakhs Fifty Two Thousand Five Hundred and Thirty Only) towards charges for arranging to effect the additional demand of 11 MVA over the existing 4MVA on 20.08.2014.

4.9 TANGEDCO responded to this vide letter dated 02.05.2016, reiterating that the waiver of Monthly Minimum charges is not feasible and that the Availability Notice period continues to apply, without providing any explanation for rejection of the representations made by the Appellant.

4.10 Pursuant to the above, TANGEDCO issued its Letter Ref: Lr. No. SE/CEDC/S-II/AEE/GI/AE/GI/F.M/s.Wipro-742/D.No.1849/16 and dated 28.05.2016, calling upon the Appellant to pay Rs.2,31,00,000/- (Rupees Two Crore Thirty One Lakhs Only) towards Monthly Minimum Charges immediately, failing which the application will be cancelled without further notice and the HT Agreement terminated, forfeiting all the amounts paid by WIPRO.

4.11 On receipt of the said order, despite having justifiable grounds for waiver of Monthly Minimum Charges, the Appellant herein was constrained to make the payment of Rs.2,31,00,000/- under protest vide its letter dated 24.06.2016 which was enclosed with a Demand Draft, while clearly reserving its rights to appeal against the said order.

4.12 Though the Appellant had completed its works and reported to TANGEDCO vide letters dated 29.10.2014, 12.11.2014 and 22.12.2014 as mentioned above, it was not in a position to proceed with Central Electricity Authority ("CEA") inspection to obtain 'Safety Certificate', since the Metering side works including incoming cable laying works were not completed by TANGEDCO.

4.13 The Appellant submitted the application to CEA to obtain safety certificate. The CEA official inspected the entire system installed on 27.05.2016. The safety certificate was obtained and submitted to TANGEDCO on 06.06.2016 and the Appellant requested TANGEDCO to energise the Substation and also sought waiver of minimum monthly charges. However, TANGEDCO vide letter dated 09.06.2016 insisted the Appellant to pay the minimum monthly charges to avoid cancellation of the application.

4.14 The Appellant promptly undertook the cable laying activity after having received the approval from TANGEDCO on 11.06.2015 and there has been no intentional delay on the part of Wipro in completing the cable laying works and to commission the 110 KV substation. It is therefore evident that the Appellant has not been at fault and it is the delay on the part of TANGEDCO to initiate the cable laying activities, the delay in providing requisite approval to Wipro for cable laying and the delay attributable to the natural calamity pursuant to the floods in Chennai which contributed to the delay in completing the required activities.

Grounds:

a) The impugned order is liable to be set aside as it has erred in appreciating the true scope and extent of the terms agreed to by the parties herein, for drawal of power under the H.T. Agreement (Additional) dated 20.08.2014 ('HT Agreement'). This is plainly evident on the face of the impugned order,

wherein the Forum has failed to consider the effect of the Respondent/TANGEDCO's failure to perform the cable laying works upon subsequent obligations under the HT Agreement.

- b) It is plainly evident that the order of performance under the said HT Agreement stipulated TANGEDCO becoming able to announce readiness and consequently levy Monthly Minimum Charges only after duly completing the entirety of the cable laying work. In fact, the HT Agreement itself comes into force only upon the TANGEDCO completing such cable laying work and announcing readiness, under Clause 2 of the HT Agreement.
- c) The reasoning contained in the Impugned Order that TANGEDCO could have completed the cable laying work within time, if the Appellant herein had not sought to do the same itself, is wholly flawed and lacking in any basis. It is submitted that there is not even an averment, let alone documentary evidence proving, that TANGEDCO had indicated such readiness to complete the cable-laying work itself.
- d) The Impugned Order is vitiated in so far as it is struck by the well-established proposition of law that no court or authority shall permit a party to take advantage of its own wrong. In the instant case, TANGEDCO has sought to achieve exactly this in so far as it has proceeded to announce its readiness to supply power despite the Appellant herein having been rendered unable to utilize the same due to pending cable laying work, which had to be performed by the Appellant due to TANGEDCO's own failure.
- e) It is submitted that TANGEDCO's failure to perform cable-laying work was the sole factor that constrained the Appellant herein to undertake the same.

This, in fact, has been taken note of by the Forum in the Impugned Order.

- f) It is submitted that the Impugned Order, in any event, is erroneous in so far as it fails to determine the effect of the force majeure circumstances despite a finding affirming the existence of the same.

- g) It is submitted, in any event, that the Respondent is not entitled to press the Agreement into force and claim Monthly Minimum Charges in so far as the Respondent TANGEDCO itself did not complete other works until January 2016. In these circumstances, if TANGEDCO was also to perform the cable-laying work under the HT Agreement, the completion of performance would have undoubtedly been further delayed. In these circumstances, it is submitted that the notice of readiness issued on 03.02.2016 is liable to be construed as invalid and the said date cannot be considered as the date of coming into force of the HT Agreement.

5. Contentions of the Respondent :

5.1 M/s. WIPRO Limited, had applied for an additional demand of 11 MVA at 110 KV over and above the existing demand of 4 MVA at 11 KV. While submitting HT application, they had agreed to furnish CEA Safety certificate along with an undertaking for payment of monthly minimum charges in case of delay in submission of CEA Safety certificate after completion of TANGEDCO Side works.

5.2 The HT application was registered under As No.481 13-14 dt: 05.03.2014. The proposal was administratively approved on 30.07.2014 and technically sanctioned on 01.08.2014 by the competent authorities of TANGEDCO. Necessary 15 days notice was issued on 05.08.2014 duly intimating that the probable date of supply is 165 days as per TNERC norms. In the 15days notice issued, it has been clearly insisted to produce CEA safety certificate at the time of

completion of Board side works, also with the intimation that the monthly minimum charges will be levied from the date of issue of Supply availability notice.

5.3 Based on the notice M/s. Wipro Ltd., had paid the development and other charges on 20.08.2014, by agreeing all the terms and conditions stipulated in 15days notice issued and executed HT agreement. The Superintending Engineer/CDC/ TANTRANSCO and GCC were requested to take up the 110 KV cable laying works and 110 KV bay extension works as per administrative approval and technical sanction on 21.08.2014 itself, since the committed date fell on 31.01.2015.

5.4 Before the committed date i.e 31.01.15, M/s. Wipro Ltd had represented vide their letter dated: 24.12.2014 that they have decided to supply the HT cable with accessories and had requested to adjust the cost in the nearest CC charges.

5.5 Approval was accorded Vide (per) CH TANTRANSCO proceedings NO.84 dated: 03.06.2015 to accept the request of M/s. Wipro Ltd to supply and to erect the 4.635 Kms of 110 KV UG cable by themselves for extension EHT supply for an additional demand of 11 MVA over and above the existing demand of 4 MVA at their own cost.

5.6 TANTRANSCO furnished work completion report on 27.01.2016 and supply availability notice issued and monthly minimum charges levied from thereon as per the prior under taking received, demand notice issued and the HT agreement executed. The applicant had completed their works by 12.04.16 and produced CEA safety certificate on 06.06.2016 for 110 KV equipments and connected load only on 23.06.16 and necessary clearance issued subsequently on 30.06.16. After completion of all the commissioning test, the additional demand of 11 MVA at 110KV was effected on 08.07.16.

5.7 As per the clause 30(9) of TNEDC, all high tension installation and the associated medium voltage and low voltage installation will have to comply with the applicable safety and security rules prescribed by authority/Government/Commission. For effecting HT demand, producing of Safety certificate by intending consumer from CEA is mandatory one.

5.8 In this case, after completion of Board's works, the supply availability notice issued on 27.01.16 and as per clause 31(2) of TNEDC, the HT consumer shall avail within 3 months from the date of supply availability notice. As per the clause 31(3), since the consumer failed to avail the supply within the above period, a further 3 months notice for availing HT supply was given to the consumer and within that period, they had availed supply. For that period only, as per clause 31(5) of TNEDC, they have paid monthly minimum Charges.

5.9 Further, they have stated that due to non availability of materials with Board only, they have come forward to supply and erect under their scope. In this connection the TANTRANSCO has completed their part on the following works on 27.01.16 beyond the committed date of 31.01.15.

- i. Introduction of 110KV Bay at 230/110KV Kits Park SS.
- ii. Erection of 110KV SF6 Breaker.
- iii. Erection of 110KV Isolator without earth blade
- iv. Erection of 110KV Isolator with earth blade.
- v. Erection of 110KV CT of 600-300/1Amps and with accessories.
- vi. Erection of 110KV metering point at M/s. Wipro Ltd., end.
- vii. Erection of 110KV SF6 Breaker.
- viii. Erection of 110KV Isolator without earth blade
- ix. Erection of 110KV Isolator with earth blade.

x. Erection of 110KV CT and PT.

5.10 The TANTRANSCO took almost one year for the above EHT works. If the applicant had not committed to take up the 110KV cable laying, the TANTRANSCO could have completed the laying of EHT cable as well parallelly with the other works duly arranging all materials. It is further stated here, that the Supply Availability notice was issued after one year beyond the committed date. Hence, the December 2015 flood and other routine reasons said by the applicant for delay in completion of works under their scope could not be accepted. If the works were promptly scheduled, they could have completed their works well before the completion of TANTRANSCO works.

5.11 In this case, it is stated that the prime reason mentioned in order for having levied the monthly minimum charges is non submission of safety certificate from CEA in time as per the prior undertakings received, demand notice issued and HT agreement executed. The testing of above mentioned board side equipments including the 110KV cable laid by the consumer are under the scope of TANTRANSCO/TANGEDCO.

5.12 It is further stated that, the TANGEDCO reserved 11 MW of additional demand at 110KV voltage level by establishing various infrastructure from generation to transmission side for supplying to consumer end. For that, the TANGEDCO / TANTRANSCO have incurred heavy investment. The supply availability notice was issued as per the clauses 31(3) of TNEDC.

5.13 If the representation of M/s. WIPRO Ltd., is considered, it would be a precedent for many other consumers who will be waiting for HT service connection without producing the safety certificate and completion certificate form competent

authorities due to non compliance of various obligations/norms and incur huge financial loss to the TANGEDCO.

6. Rejoinder filed on behalf of the Appellant :

6.1 The Appellant had furnished an undertaking to submit the CEA Safety Certificate on the understanding that all the TANGEDCO side works, referred to by the Respondent itself, would be completed by TANGEDCO. The Appellant, in fact, had completed its works and reported to TANGEDCO vide letters dated 29.10.2014, 12.11.2014 and 22.12.2014 that it was not in a position to proceed with Central Electricity Authority ("CEA") inspection to obtain 'Safety Certificate', only because the Metering side works including incoming cable laying works were not completed by TANGEDCO. As impliedly admitted by the Respondent itself, the completion of such works was a condition precedent to be satisfied before the TANGEDCO could levy monthly minimum charges. In so far as the same was not done by TANGEDCO, and had to be carried out by the Appellant itself, the conditions for levy of monthly minimum charges have not been satisfied in the instant case.

6.2 It is stated that TANGEDCO could not provide any firm dates for providing the supply as there were delays in procuring the cables required. It was the failure on the part of TANGEDCO to carry on the cable laying works on account of non-availability of required cables in TANGEDCO stock that compelled the Appellant to take up the activity. The Appellant promptly undertook the cable laying activity after having received the approval from TANGEDCO on 11.06.2015 and there has been no intentional delay on the part of Wipro in completing the cable laying works and to commission the 110 KV substation.

6.3 The levy of monthly minimum charges was not warranted in the present case as the lack of readiness was only on account of the fact that the pre-requisite works

were not completed by TANGEDCO. In these circumstances, it is submitted that the said levy is liable to be set aside.

6.4 The completion of the TANGEDCO side works are a pre-requisite to obtaining a safety certificate as well as readiness for availing supply. In the instant case, TANGEDCO could not complete such works and, as such, is not entitled to claim monthly minimum charges.

6.5 It is stated that the Appellant herein has carried on the works using all best efforts as delay in completing the works has caused the Appellant also significant financial loss in so far as the entire 72 acre facility of the Appellant was being run with the power generated using 11 KV HT DG sets. As such, the allegations that there was undue delay on the part of the Appellant is wholly baseless and not backed by any reasoning whatsoever. It is submitted that the Respondent itself has admitted that levy of monthly minimum charges are only after the completion of all side works.

6.6 The Appellant submitted request letters dated 24.12.2014 & 22.01.2015 to the Respondent for approval to lay the cable after entering into the agreement on 20.08.2014. As per the agreement, the Respondent was to complete all the works and provide power supply on or before 31.01.2015. However, requisite approval was given by the Respondent only on 11.06.2015. It is evident that the said delay was occasioned because, until this time, the Respondent do not have any visibility on availability of cables in their stock and were unable to procure cables from any other source/suppliers within any specified duration.

6.7 It is submitted that the Respondent has wholly failed to appreciate that the completion of the said works was a pre-requisite to the levy of monthly minimum charges. Moreover, the Respondent itself failed to complete the works and delegated its responsibility to the Appellant instead, thus constraining it to perform the works.

6.8 Even assuming without admitting the additional investments or losses were suffered by the Respondent, the same cannot be considered in the present case. In any event, it is submitted that the Respondent has failed to adduce any evidence whatsoever to prove such investments and, in the absence of any supporting documents, an adverse inference is liable to be drawn in law regarding the same. In essence, the Respondent cannot be considered to have suffered any losses, and in such circumstances, the monthly minimum charges cannot be levied in so far as the same would amount to unjust enrichment on the part of the Respondent.

6.9 The Power supply would be effected only after intimation was received from the Consumer about their readiness to avail supply, including safety certificate. The Respondent is well aware that the Appellant is not ready to receive power. Hence, the claim of Respondent that they have reserved 11 MVA Power and incurred cost towards generation/transmission is untenable and also vitiated as mere, unjustified allegations.

6.10 It is submitted that, where the Appellant is entitled to a refund of the monthly minimum charges based on well-settled legal principles and also on grounds of equity, the same cannot be denied merely because the Respondent speculates that other consumers may use the same as precedent.

7. Reply to the Rejoinder by the Respondent :

7.1 I respectfully submit that the committed date of effecting of additional demand of 11MVA over and above the existing demand of 4MVA to M/s. Wipro Ltd., is 31.01.2015 (165days as per TNERC Code) whereas the TANTRASCO

completed their works only on 27.01.2016 ie after a lapse of one year period. The supply availability notice issued on 03.02.16 with effect from 27.01.2016 and monthly minimum charges was levied only from 27.01.2016 and not from the committed date due to non submission of CEA safety certificate.

7.2 In this case, the consumer had undertaken the scope of cable laying works (supply and erection). The CEA will inspect only the consumer's equipments, installation and loads. The EHT cable shall be tested and commissioned by TANTRASCO. There is no considerable reasons for waiting to get CEA safety certificate until completion of cable laying. Both the cable laying and CEA safety can be completed in parallel. Only on producing of CEA safety it will be construed that they have completed their installations.

7.3 Hence the stand on levying of monthly minimum charges after completion of ; TANTRANSOCO side works is in order.

8. Hearing held by the Electricity Ombudsman:

8.1 To enable the Appellant and the Respondents to put forth their arguments in person, a hearing was proposed on 25.5.2017. The Counsel for the petitioner requested time extension to file rejoinder to the counter and the same has been received at this office on 7.7.2017. The hearing was conducted on 5.9.2017.

8.2 Thiru. Subhang P. Nair & K.M.D. Muhilan advocate have attended the hearing on behalf of the Appellant and putforth their arguments.

8.3 Thiru R. Someswaran, Assistant Executive Engineer/General, Chennai EDC/South-II has attended the hearing on behalf of the Respondent and putforth his arguments.

9. Arguments putforth by the Appellant's Representative on the hearing date:

- 9.1 The Appellant's representative advocate reiterated the contents of the Appeal Petition. The probable date of effecting supply was 165 days from the date of payment of all charges and execution of the agreement. Wipro paid the amount HT agreement executed on 20.08.2014. M/s.Wipro has written multiple letters to TANGEDCO to expedite the infrastructure so that their substation can be charged and Wipro can avail of the sanctioned power. But there was no advancement of any work till mid of December'2014.
- 9.2 Since M/s.Wipro were incurring huge monthly expenses on running the premises with 11KV HT DG sets to meet the power requirement in addition to the existing 11KV/4 MVA load, they have submitted a proposal to accord approval to supply and erection of HT cable with accessories as per TANGEDCO standards including any Civil and ancillary works required as part of cable laying.
- 9.3 Further they argued that eventhough they submitted their proposal vide letter dated 22.01.2015, it took TANGEDCO to accord approval only on 11.06.2015.
- 9.4 TANGEDCO issued the first three months availability notice from 27.01.2016 and directed that the monthly minimum charges for the 1st and 2nd 90 days period is to be paid in advance in order to prevent termination of the agreement and to keep the HT application alive. In response to the letter they have requested additional time to complete the cable laying activity till May 2016 and to waive the monthly minimum charges imposed citing delay was due to the delay at TANGEDCO's end and also due to natural calamity.

10. Arguments furnished by the Respondent on the hearing date:

- 10.1 Thiru R. Someswaran, Assistant Executive Engineer/General, Chennai EDC/South-II has reiterated the contents of the Counter.
- 10.2 He argued that had the applicant not committed to take up the 110 KV cable laying, the TANTRANSCO could have completed the laying of EHT cable as well parallelly with other works duly arranging all materials.
- 10.3 The reason mentioned in the order for having levied the monthly minimum charges is non submission of safety certificate from CEA in time. The testing of board side equipments including the 110 KV cable laid by the consumer are under the scope of TANTRANSCO/TANGEDCO.
- 10.4 Further he argued that the committed date of effecting of additional demand over and above the existing demand to M/s.Wipro Ltd is 31.01.2015 whereas the TANTRANSCO completed their works only on 27.01.2016 i.e. after a lapse of one year period. The monthly minimum charges was levied only from 27.01.2016 and not from the committed date due to non submission of CEA safety certificate.
- 10.5 The CEA will inspect only the consumer's equipments, installation and loads. The EHT cable shall be tested and commissioned by TANTRANSCO. There is no valid reasons for waiting to get CEA safety certificate until completion of cable laying.

11. Findings of the Electricity Ombudsman:

11.1 On a careful consideration of the arguments put forth by the Appellant and the Respondent, the following are the issues to be decided;

- i) whether the contentions of the respondent to levy monthly minimum charges is correct?
- ii) whether any relief can be given to the appellant?

12. Findings on the first issue:

12.1 The appellant claimed that the impugned order is liable to be set aside as it has erred in appreciating the true scope and extent of the terms agreed to by the parties for drawal of power under the H.T. Agreement (Additional) dated 20.08.2014. They further claimed that TANGEDCO could levy Monthly Minimum Charges only after duly completing the entirety of the cable laying work. In fact, the HT Agreement itself comes into force only upon the TANGEDCO completing such cable laying work and announcing readiness, under Clause 2 of the HT Agreement.

12.2 Respondent argued that M/s.Wipro's HT application was administratively approved on 30.07.2014 and technically sanctioned on 01.08.2014. Necessary 15 days notice was issued on 05.08.2014 duly intimating that the probable date of supply is 165 days as per TNERC norms. In the 15 days notice issued, it has been clearly insisted to produce CEA safety certificate at the time of completion of Board side works, also with the intimation that the monthly minimum charges will be levied from the date of issue of Supply availability notice.

12.3 Based on the notice M/s. Wipro Ltd., had paid the development and other charges on 20.08.2014, by agreeing all the terms and conditions stipulated in 15days notice issued and executed HT agreement. The Superintending Engineer/CDC/

TANTRANSCO and GCC were requested to take up the 110 KV cable laying works and 110 KV bay extension works as per administrative approval and technical sanction on 21.08.2014 itself, since the committed date fell on 31.01.2015. Before the committed date i.e 31.01.15, M/s. Wipro Ltd had represented vide their letter dated: 24.12.2014 that they have decided to supply the HT cable with accessories and had requested to adjust the cost in the nearest CC charges.

12.4 The appellant contented that they had furnished an undertaking to submit the CEA Safety Certificate on the understanding that all the TANGEDCO side works, referred to by the Respondent itself, would be completed by TANGEDCO. The Appellant, in fact, had completed its works and reported to TANGEDCO vide letters dated 29.10.2014, 12.11.2014 and 22.12.2014 that it was not in a position to proceed with Central Electricity Authority ("CEA") inspection to obtain 'Safety Certificate', only because the Metering side works including incoming cable laying works were not completed by TANGEDCO.

12.5 They further stated that TANGEDCO could not provide any firm dates for providing the supply as there were delays in procuring the cables required. It was the failure on the part of TANGEDCO to carry on the cable laying works on account of non-availability of required cables in TANGEDCO stock that compelled the Appellant to take up the activity. The Appellant promptly undertook the cable laying activity after having received the approval from TANGEDCO on 11.06.2015 and there has been no intentional delay on the part of Wipro in completing the cable laying works and to commission the 110 KV substation. Therefore the levy of monthly minimum charges was not warranted in the present case as the lack of readiness was only on account of the fact that the pre-requisite works were not completed by TANGEDCO.

12.6 The cable laying works were completed including testing on 05.04.2016. In the meantime, the unprecedented rain in December'2015 had affected/inundated the campus of Appellant including the Sub-station and Transformer yard which was completed earlier in October'2014 in all respects. The appellant was forced to rectify all the defects happened due to flooding by replacing/servicing most of the components. This activity warranted due to Force Majeure was completed by the Appellant on 20.05.2016.

12.7 As impliedly admitted by the Respondent itself, the completion of such works as a condition precedent to be satisfied before the TANGEDCO could levy monthly minimum charges. In so far as the same was not done by TANGEDCO, and had to be carried out by the Appellant itself, the conditions for levy of monthly minimum charges have not been satisfied in the instant case.

12.8 The respondent stated the TANTRANSCO has completed their part on the following works on 27.01.16 i.e. beyond the committed date of 31.01.15.

- i. Introduction of 110KV Bay at 230/110KV Kits Park SS.
- ii. Erection of 110KV SF6 Breaker.
- iii. Erection of 110KV Isolator without earth blade
- iv. Erection of 110KV Isolator with earth blade.
- v. Erection of 110KV CT of 600-300/1Amps and with accessories.
- vi. Erection of 110KV metering point at M/s. Wipro Ltd., end.
- vii. Erection of 110KV SF6 Breaker.
- viii. Erection of 110KV Isolator without earth blade
- ix. Erection of 110KV Isolator with earth blade.
- x. Erection of 110KV CT and PT.

12.9 The TANTRANSCO took almost one year for the above EHT works. The TANTRANSCO could have completed the laying of EHT cable as well parallelly with the other works duly arranging all materials had the applicant had not committed to take up the 110KV cable laying. It is further stated here, that the Supply Availability notice was issued after one year beyond the committed date. If the works were promptly scheduled, they could have completed their works well before the completion of TANTRANSCO works.

12.10 Further they stated that the prime reason mentioned in the Order for having levied the monthly minimum charges is non submission of safety certificate from CEA in time as per the prior undertakings received, demand notice issued and HT agreement executed. The testing of above mentioned board side equipments including the 110KV cable laid by the consumer are under the scope of TANTRANSCO/TANGEDCO.

12.11 Further only after completion of Board's works, the supply availability notice issued on 27.01.16 and as per clause 31(2) of TNEDC, the HT consumer shall avail within 3 months from the date of supply availability notice. As per the clause 31(3), since the consumer failed to avail the supply within the above period, a further 3 months notice for availing HT supply was given to the consumer and within that period, they had availed supply. For the supply availability notice period, they have paid monthly minimum Charges as per clause 31(5) of TNEDC.

12.12 Since the Respondent quoted Regulation 31(2), (3) & (5) of TNEDC for levying monthly minimum charges, I would like to refer Regulation 31 of Tamilnadu Electricity Distribution Code which is given below:

“31 INSPECTIONS, TESTING AND EFFECTING SUPPLY:

(2) The intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

(3) If the intending consumer fails to avail the supply within the above period, a further three months notice in case of HT and one-month notice in case of LT will be sent to the intending consumer to avail the supply. If he does not avail himself the supply during this notice period, the application will be treated as lapsed and cancelled in the case of Low Tension supply and the application shall be treated as cancelled, terminating the agreement, in the case of High Tension supply. The service connection charges and the Security Deposit / development charges, etc. except Meter Caution Deposit will be forfeited. In case the intending consumer could not avail the supply under force majeure conditions, the Security Deposit and meter caution deposit shall be refunded to the intending consumer.

(4) However, Licensees of the Distribution are delegated with powers to condone the delay on specific request from them if received before expiry of second notice period and to accord approval to effect supply any day after the date of expiry of second notice of availability of supply without forfeiture of development and other charges and cancellation of application subject to his/her consent to pay monthly minimum charges up to the date of availing supply.

(5) If the intending consumer avails supply during the notice period of availability of supply he shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.”

12.13 On a careful reading Regulation 31(2) specifies that the intending consumer shall have to avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

12.14 Regulation 31 (3) specifies that, if the intending consumer fails to avail the supply within period mentioned in Regulation 31 (2), a further three months notice in case of HT and one-month notice in case of LT will be sent to the intending consumer to avail the supply. If he does not avail himself the supply during this notice period also, the application will be treated as lapsed and cancelled in the case of Low Tension supply and the application shall be treated as cancelled, terminating the agreement, in the case of High Tension supply. The service connection charges and the Security Deposit / development charges, etc. except Meter Caution Deposit will be forfeited. In case the intending consumer could not avail the supply under force majeure conditions, the Security Deposit and meter caution deposit shall be refunded to the intending consumer.

12.15 Regulation 31(4) states that the Licensees of the Distribution are delegated with powers to condone the delay on specific request from the intending consumer, if received before expiry of second notice period and to accord approval to effect supply any day after the date of expiry of second notice of availability of supply without forfeiture of development and other charges and cancellation of application subject to his/her consent to pay monthly minimum charges up to the date of availing supply.

12.16 Regulation 31 (5) states that, if the intending consumer avails supply during the notice period of availability of supply, the intending consumer shall pay the

monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.”

12.17 In the case on hand, the Respondent has given supply availability notice with effect from 27.01.2016. Since the Appellant was not in a position to avail supply, a further 3 months notice has been issued by the Respondent and directed that the monthly minimum charges at the rate of Rs.350/KVA/Month for the 1st and 2nd 90 days period is to be paid in advance in order to prevent termination of the agreement and to keep the HT application alive.

12.18 The Appellant contended that the completion of TANGEDCO side works is a pre-requisite to obtaining a safety certificate as well as readiness for availing supply. In the instant case, TANGEDCO could not complete such works and, as such, is not entitled to claim monthly minimum charges.

12.19 The Respondent stated that the CEA will inspect only the consumer's equipments, installation and loads. The EHT cable shall be tested and commissioned by TANTRANSCO.

12.20 There is no bar to obtain safety certificate even before the completion of cable laying work as the safety certificate is required for the Appellant's electrical installations only. Process of obtaining safety certificate from CEA could have been initiated parallelly along with cable laying work.

12.21 On a careful consideration of the foregoing paras, I would like to state that the contention of the Respondent that the CEA will inspect only the consumer's equipments, installation and loads and there is no valid reason for waiting to get CEA safety certificate until completion of cable laying is acceptable to me.

12.22 Further having accepted EHT cable laying work, it is the responsibility of the Appellant to complete the work in time. The consequential delay cannot be passed on the respondent.

12.23 Hence I am of considered opinion that the Respondent's stand on levying of monthly minimum charges as per Regulation 31(5) Tamilnadu Electricity Distribution Code after completion of TANTRANSCO side works is in order.

13. Findings on the Second issue:

As per my findings in para 12, I am unable to give any relief to the Appellant.

14. Observation:

14.1 The additional demand of the Appellant was actually effected by the Respondent only on 08.07.2016 i.e. after about 2¼ years from the date of filing the application which is abnormal.

14.2 Further the respondent took almost 5 months for issuing approval to the appellant for taking up the supply and laying of EHT Cable.

15. Conclusion :

15.1 In view of my findings in para 12 above, I am unable to interfere with the orders of the CGRF of Chennai Electricity Distribution Circle/South -II.

15.2 With the above findings the AP. No 24 of 2017 is finally disposed of by the Electricity Ombudsman. No Costs.

(S. Devarajan)
Electricity Ombudsman

To

1) M/s WIPRO Limited,
Rep by its General Manager,
Survey No.602/3, Medavakkam Road,
Sholinganallur Village,
Chennai – 600 119.

2) The Superintending Engineer,
Chennai Electricity Distribution Circle/South-II,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 600 078.

3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/South-II,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 600 078.

4) The Chairman & Managing Director,
TANGEDCO,
NPKRR Maaligai,
144, Anna Salai,
Chennai -600 002.

5) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.

6) The Assistant Director (Computer) – **For Hosting in the TNEO Website please**
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.