

**BEFORE THE
TRIPURA ELECTRICITY REGULATORY COMMISSION
Bidyut Bhavan ,Bhutoria , Banamalipur , Agartala ,Tripura-799001
Phone : 0381-2300137 , 0381-2326372 , Website : <https://terc.tripura.gov.in>**

Petition No. : 06 of 2023

FINAL ORDER NO. : 32 of 2023

Present

1. Hon'ble Sri D. Radhakrishna, Chairman, TERC
2. Hon'ble Sri Jiban Krishna Sen, Member, TERC

Between

Internal Financial Advisor, BSNL, Tripura..... Petitioner

And

**Tripura State Electricity Corporation Ltd.,
Bidyut Bhavan Complex, Banamalipur , Agartala ,
Tripura , Respondent**

Represented by:

1. Mr. Debashis Bhowmik ,..... For the petitioner
&
2. Ms. Sujata Sarkar , DGM(C&T) , TSECL & Mr. Amardip Debbarma, Manager
(C&T) TSECL,
..... For the Respondent

Date of filing Petition : 7th March, 2023

Date of Final Order : 29th September, 2023

ORDER

1. Shri Debashis Bhowmik , the Internal Financial Advisor BSNL Tripura , here in called the petitioner, in his petition dated 07/03/2023 filed before the forum , on 09/03/2023 seeking clarification on “*Surcharge on delayed payment*” of the electricity bills stating inter –alia that:-
 - (1) The petitioner is representing the Bharat Sanchar Nigam Limited in the capacity of Internal Financial Advisor.
 - (2) On scrutiny of the electricity bills issued by Tripura State Electricity Corporation Ltd.(TSECL), it is observed that in some of the bills, the delayed

payment.

- (3) Surcharge levied by Tripura State Electricity Corporation Ltd.(TSECL) was more than 2% of the principal outstanding.
 - (4) That the matter was taken up with Tripura State Electricity Corporation Ltd.(TSECL), the respondent of the case for clarification. The Tripura State Electricity Corporation Ltd., technical team has explained that as per tariff regulation, if the payment is not made for full due amount within the due date, Delayed Payment Charges are to be charged on the total bill amount (not on the balance part amount of the month due for payment). For example, if the bill amount is Rs .100for a certain month and consumer has paid Rs.90 within the due date, then the Delayed Payment Charges will be charged @2% on Rs.100, i.e. Rs.2/- for payment beyond the date.
 - (5) That, as per tariff schedule provided by Tripura State Electricity Corporation Ltd.(TSECL) – “Surcharge is applicable for all category @ 2% on total bill interest on delay payment”. As per TERC tariff order 2020-21 dated 01/09/2020 and tariff order 2014-215 dated 22/11/2014 “Surcharge for delayed payment : Surcharge @2% per month or part thereof at simple interest shall be levied, if payment is made after the due date”.
 - (6) That in view of “Surcharge for delay payment” provided in the tariff order and the delay payment surcharge levied by Tripura State Electricity Corporation Ltd., it is found to be contradictory to each other.
 - (7) According to technical team, Tripura State Electricity Corporation Ltd.(TSECL) Delayed Payment Surcharge is calculated on the total bill amount if the payment is not made for full due amount within the due date and not on the balance part amount of demand due for payment which according to petitioner is unreasonable and not at par tariff order of the TERC.
 - (8) Considering the claim of the Tripura State Electricity Corporation Ltd.(TSECL) and the Tripura Electricity Regulatory Commission(TERC) tariff order, it will be a great relief for the petitioner, if the commission clarifies elaborately the definition and process of “delay payment charges” of the electricity bills provided in the regulation of the commission.
2. Notice was served upon the Respondent duly enclosing the copy of the petition of the petitioner and asking to submit its reply against the petition. The respondent i.e. Tripura State Electricity Corporation Ltd. Bidyut Bhavan , North Bananalipur , Agartala 799001 Tripura in its written submission dated 20/04/2023 received by the commission on the same date stated as follows:-

- (1) The Tripura State Electricity Corporation Ltd.(TSECL) is paying surcharge on full bill amount after paying part of that bill amount in respect of purchase of power from all Generating Company and Transmission Company instead of surcharge on balance amount.
 - (2) As per tariff order dated 22nd November 2014 as the Hon'ble Commission it was stated that the "Surcharge is applicable for all category @ 2% on total bill in case of delayed payment". Again in tariff order dated 2nd September 2022 it was stated that "Surcharge @ 2% per month or part thereof at simple interest shall be levied , if payment is made after the due date. According to that order the billing logic set in RMS system , if a consumer pay part of the bill amount, surcharge shall be levied on total bill amount not to the balance amount. According to that " Surcharge @ 2% per month or part thereof " stands for duration of delayed period not for partial payment . For example, if the bill amount is Rs.100 for certain month and consumer has paid Rs. 90 within the due date, then the Delayed Payment Charges will be charged @ 2% on Rs.100 i.e. Rs. 2 for payment beyond the due date.
 - (3) Distribution Company (DISCOM) has to pay to Generation Company (GENCO)/Transmission Company(TRANSCO) in due time as per Late Payment Surcharge Rule 2022 of Govt. of India to avoid Late Payment Surcharge as well as power Regulation. Surcharge can be avoided when DISCOM will pay full invoice amount instead of partial payment.
 - (4) That as Tripura State Electricity Corporation Ltd.(TSECL) paying surcharge on full bill amount for delayed payment to GENCOs/ TRANSCO for procurement of power, the same rules may be followed for TSECL to its esteem consumers.
 - (5) The Surcharge for delayed payment levied by Tripura State Electricity Corporation Ltd.(TSECL) is as per the tariff order of the commission on total bill amount not to the balance amount. If the Surcharge is applicable on balance amount in case of part payment the same will encourage consumers not to pay regular bill.
 - (6) So, the Hon'ble Commission is requested to introduce the Surcharge as applicable for all category @ 2% on total bill in case of delayed payment in line with the Hon'ble Commission's order dated 22nd November 2014 and to omit the word " part thereof " and thereby to make clear the ambiguity of the petitioner.
3. The copy of the written statement was supplied to the Petitioner ,then the petitioner on 3rd May 2023, again filed a rejoinder against the reply / written statement made by the respondent and stated:-

- (1) That in respect of submission made in para 1 to 3 of the reply made by the respondent, the Petitioner reproduce the relevant rules of the Electricity (Late Payment surcharge and related matter) Rules 2023----

Rule 2(1)(g) defines the “Late payment surcharge” as means the charges payable by a distribution licensee to a generating company or electricity trading licensee on account of delay in payment of monthly charge beyond the due date.

Rule 2(1)(h) defines the “outstanding dues” as means which remains unpaid by the beneficiary beyond the due date.

Rule 3(1) of the Rules provides specifying that “late payment surcharge” shall be payable on the payment outstanding after the due date.

Thus, the conjoint reading of the above rules 2(1)(g),2(1)(h)and 3(1) of the Electricity (Late payment surcharge and related matters) Rules 2022 clearly establish that Delayed Payment Charges is applicable only on the outstanding dues but not on the full bill amount .Therefore, the reply of the respondent that TSECL is paying surcharge on full bill amount is factually incorrect and contradictory to the rules.

- (2) That in respect of reply made by the respondent at Para 2 that as per Tripura Electricity Regulatory Commission (TERC) tariff order dated 22nd November, 2014 that surcharge is payable for all category @ 2% on total bill in case of delayed payment is totally incorrect. Rather, TERC tariff order 2014 defines “Surcharge for delayed payment: as surcharge @ 2% per month or part thereof at simple interest shall be levied if payment is made after the due date.”
- (3) It is stated that the plea of the respondent that it will encourage the consumers if surcharge is payable on balance amount in case on part payment, not to pay regular bills is based on imagination;
- (4) The Petitioner claims that in case of non- payment of electricity bill by the consumer, the Delayed Payment Charges shall charged for the delay beyond the due date. Meaning there by , the Delayed Payment Charges shall be applicable only on unpaid amount and the supplier Tripura State Electricity Corporation Ltd.(TSECL) will be compensated for the deprived of the balance outstanding amount, if any ,in other way if the bill is not paid in full amount within due date;
- (5) The Petitioner has furnished various State regulators, i.e., the States of Maharashtra, Punjab, Orissa, Uttar Pradesh ,Haryana, Gujarat etc. regarding definition of Delayed Payment Charges wherein all such states charges

Delayed Payment Charges on unpaid amount of the electricity bill if payment is made delayed beyond the due date.

- (6) So, it is therefore, requested to the Honorable Commission to consider all state regulators and tariff order of the Commission and clarify elaborately regarding the factors determining the charging of DPC (delay payment surcharge) by calculating the same on unpaid balance amount of the bill and for delay beyond the due date.

POINT FOR DETERMINATION

4. The issue which has arisen for consideration and determination in the present Petition are:
 - (1) To clarify the definition of “delay payment surcharges” or DPS on electricity bill contained in TERC tariff order ; and
 - (2) How the DPS is calculated as per tariff regulation if the payment of bill is not made for full due amount within the due date. Whether DPS are to be calculated and be charged on the total bill amount or on the balance or part amount of the month due for payment?
5. We have heard Mr. Debashis Bhowmik , the Internal Financial Advisor, BSNL who is representing the Petitioner and Ms. Sujata Sarkar, DGM (C&T) Tripura State Electricity Corporation Ltd.(TSECL) who is representing the respondent.
6. Mr. Debashis Bhowmik represented the Petitioner company, and submitted that as per tariff order issued by TERC , the Tripura State Electricity Corporation Ltd.(TSECL) shall entitle to levy surcharge for delay payment of the bill on the balance part amount of the month if it is not made full due amount within the due date. But, the respondent Tripura State Electricity Corporation Ltd.(TSECL) is calculating the surcharge for delayed payment of the bill on the total bill amount not on the balance part amount of the month due for payment which his clearly contradictory to the tariff order and electricity rules.
7. Mr. Bhowmik also argued that question of definition and process of calculating the LPS in the context of tariff order of the State by the Commission needs to be clarified and determined as the same question go to the root of the dispute between the petitioner and the Tripura State Electricity Corporation Ltd.(TSECL), i.e., the distribution company. If this question is decided either way, the same shall be determinative of inter se rights between the parties and also will have wide impact across the entire electricity sectors.
8. Mr. Bhowmik finally submitted that the DPS must be calculated as per tariff order

calculating only for outstanding balance payment not on the full bill amount if not paid within due date. Mr. Bhowmik also referred Section 4 of the Electricity (Late Payment Surcharge) Rules 2021 and submits that Section 4 (1) – Late payment surcharge says that late payment surcharge shall be payable on the payment outstanding after the due date at the base rate of late payment surcharge applicable for the period for the first month of default.

9. Mr. Bhowmik has further referred the judgment passed by the Honorable Supreme court in Civil Appeal No.1843 of 2021, Maharashtra Electricity Distribution Company Limited vrs. Maharashtra Electricity Regulatory Commission & others – where it was held that “the late payment surcharge which has been saddled upon the applicants is at the rate of 2% in excess of applicable SBAR per annum on the amount of outstanding payment concluded on a day to day basis (and compounded with monthly rest) for each day of the delay . Therefore, there shall be huge liability of payment of late payment surcharge upon the appellants Rajasthan DISCOMS.”
10. On the other hand, Ms. Sujata Sarkar, the DGM, Tripura State Electricity Corporation Ltd.(TSECL) represented the respondent, and submitted that as per tariff regulation, if payment is not made for full due amount within the due date, Delayed Payment Charges are to be charged on the total bill amount and not on the balance part amount of the month due for payment as claimed by the Petitioner.
11. Ms. Sarkar has also quoted tariff order dated 22nd November, 2014 and tariff dated 2nd September, 2022 issued by the Commission which are as follows:;

“Surcharge is applicable for all category @ 2% on total bill in case of delayed payment.” And

“Surcharge @ 2% per month or part thereof at simple interest shall be levied, if payment is made after the due date.”

Taking the above tariff orders, Ms. Sarkar submits that as per tariff orders surcharge shall be charged and levied on total amount but not the balance amount, for example, if the bill amount is Rs. 100 for a certain month and consumer has paid Rs. 90 within the due date, then, the Delayed Payment Charges will be charged @ 2% on Rs. 100 for payment beyond due date.

12. It was further submitted and argued by Ms. Sarkar that at present , the respondent company is paying surcharge on full bill amount for delayed payment to GENCOs/ TRANCOs for procurement of power, therefore , the same rules may be adopted for respondent’s esteemed customers also.

FINDINGS AND ANALYSIS

13. It is to be noted that electricity has been held to be “goods” by a Constitution Bench in State of Andhra Pradesh v. National Thermal Power Corporation Ltd. (2002)5 SCC203. Under the Sale of Goods Act, 1930 a purchaser of good is liable to pay for it at the time of purchase or consumption. The quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute. In the case of electricity, the charges are ascertained and recovered as per the tariff notified by the State Electricity Board, or under an electricity supply agreement between the parties read with tariff section 62(1) (d) and electricity supply Code framed under section 50.
14. It is acknowledged that the Commission determined the tariff of the state as per Section 86(1) (a) and (b) and in accordance with the tariff Regulation framed under section 61 read with section 181 of the Electricity Act, 2003.
15. The obligation of a consumer to pay electricity charges arises after the bill is issued by the license company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried forward to the next bill as arrears along with interest if any on the same.
16. The present Petition pertains only to the interpretation on Delayed Payment Charges, i.e., delay payment surcharge of electricity bill levied by Tripura State Electricity Corporation Limited as per Tariff Regulations.
17. The grievance of the petitioner is that the respondent company, i.e., TSECL is charging Delayed Payment Charges on the total bill amount if the payment is not made for full due amount within the due date instead to charge on the balance part amount of the month due payment.
18. The argument of the Petitioner is that Delayed Payment Charges are to be calculated and collected for delayed payment on the balance part amount of the month due for payment but not on the full bill amount.
19. The Respondent replied that the calculation and collection of Delayed Payment Charges for belated payment of electricity bill is in accordance with tariff order dated 22nd November, 2014 and latest tariff order dated 2nd September, 2022 issued and approved by the Commission.
20. The tariff order dated 2nd September, 2022 for FY 2022-23 in the matter of levying delayed payment surcharge for belated payment says that the licensee shall charge surcharge @ 2% per month or part thereof at simple interest, if payment is made

after the due date.

21. The ordinary meaning of “late payment surcharge” means the charges payable by a distribution licensee to a generating company or electricity trading licensee power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date.
22. As per Electricity (Late payment surcharge and related matter) Rules 2022 notified by the Central Government , Late payment surcharge shall be payable on the payment outstanding after the due date at the base rate of late payment surcharge applicable for the period for the first month of default . According to the rules, late payment surcharge is interest payable on the amount outstanding after the due date and the same will be payable by power distribution companies (DISCOM) and Power transmission licensee.
23. The bare reading of tariff order 2022-23 of the State Commission indicates that the late payment surcharge shall be calculated @ 2% per month or part thereof at simple interest if payment is made after due date, meaning thereby late payment surcharge shall be calculated and levied on the unpaid amount of the bill which the payment is delayed beyond the due date specified in the bill.
24. Thus, the conjoint reading of tariff order 2022-23, the Electricity (Late payment surcharge and related matters) Rules 2022, the ordinary meaning of late payment surcharge, the object of enactment of the Electricity Act, 2003 and the interpretation of late payment surcharge in Civil appeal 1843 of 2021 in Maharashtra Electricity Distribution company Ltd. V. Maharashtra Electricity Regulatory Commission & Ors., clearly establish that the “late payment surcharge’ shall only be levied on the balance part amount of the bill of the month due for payment , which means on the unpaid amount of the bill only. The respondent Company cannot levy the late payment surcharge calculating on total bill amount.
25. As such , the request of the Petitioner for considering the levy of late payment surcharge shall only be on the unpaid amount of the bill excluding delayed payment surcharge in case the payment is delayed beyond the due date, is reasonable and as per tariff order in force and the same is allowed.

ORDER

26. As per the tariff policy in vogue, there is absolutely no provision for making payments in installments, and payments need to be made within the due date for continuing the power supplies. There cannot be any lacklustre approach, as DISCOM needs to be paid the whole amount for the powers consumed. Any

concession or relaxation cannot be taken as a rule. For some reasons, if the consumer is unable to make payments occasionally for reasons beyond its control, then the consumer should approach for relief, which is a prerogative of a DISCOM to grant or not. Any payment left over from the payable bill can be levied Late Payment Surcharge on the balance payment only, which is logically correct as well.

27. Thus, the petition is disposed off with an instruction to the DISCOM to focus on payment collection within the due date.
28. The Secretary, TERC is directed to inform to all concerned.

This order is corrected and signed on 29th September 2023

Sd/
29.09.2023
(Jiban Krishna Sen)
Member
TERC ,Agartala

Sd/
29.09.2023
(D. Radhakrishna)
Chairman
TERC , Agartala

Certified True Copy



(Ms Sujata Das Chakrabarti)
Secretary
TERC , Agartala