

No. N/105/2019

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated:19.06.2020

Present:

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

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BETWEEN:

The Managing Director
Bangalore Electricity Supply Company Limited,
K. R. Circle,
Bengaluru-560 001.

.. PETITIONER

[Petitioner Represented by
Sri Shabazz Husain, Advocate]

AND:

NIL

.. RESPONDENT

ORDERS

1. BESCO has filed this Petition under Clause 46 of the Conditions of Supply of Electricity of the Distribution Licensees in the State of

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Karnataka, read with Clause 11 of the KERC (General and Conduct of Proceedings) Regulations, 2000 for the following reliefs:

- I. Amend the Clauses 4.04 (iv), 8.09 and 9.07 (3) (f) [BESCOM has incorrectly indicated the clause No as 9.07 (f) in the Petition] of the Conditions of the Supply of Electricity of the Distribution Licensees in the State of Karnataka, 2006 (CoS) and clauses 3.2.1 (iv) [BESCOM has incorrectly indicated the clause No as 3.2(f)(iii) in the Petition] and 3.6.5 of K.E.R.C. (Recovery of Expenditure for Supply of Electricity) Regulations 2004 (RoE) by substituting the existing requirement of one year guarantee with the proposed requirement of five years guarantee; and
 - II. Such other Order as this Hon'ble Commission may deem fit in the common public interest.
2. Brief Facts of the Case are as follows:
- i. The Government of India (hereinafter referred to as 'GOI'), while adopting the policy of 'POWER FOR ALL' has laid down certain guidelines and directives to be followed to ensure safe, quality and uninterrupted power supply at affordable cost to domestic and industrial establishments. In this backdrop, the GOI addressed a letter on 27.02.2018 (Annexure A) to the Government of Karnataka (hereinafter referred to as 'GOK') to ensure the

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observance and compliance of the prescribed quality standards in laying electrical lines.

- ii. The GOI, informed that the manufacturers produce their best product as the sample for type testing in order to get their products passed in the test. The GOI further informed that there is every possibility of sub-standard quality of certain products being supplied for use at the site. In this regard, the GOI desired the Power Utilities to institutionalize a procedure for post supply checks after drawing random samples for testing.
- iii. In the above background, the GOI instructed the GoK to direct all the DISCOM / TRANSCOS / GENCOS Utilities in the State to adopt a policy in their procurement guidelines, mandating to test at Third Party Laboratory of the samples drawn from the supplied lots to further ensure quality of the equipment installed in the power system network.
- iv. Subsequently, the GoK has addressed a letter to all the Distribution Licensees including the Petitioner on 12.03.2018 (Annexure B) and directed to implement the procedure prescribed in the GoI to ensure better quality of the equipment in general. Since the implementation requires change in the prevailing Conditions of the Supply of Electricity of the Distribution

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Licensees in the State of Karnataka, BESCO has filed this Petition requesting for amendments to the Conditions of Supply.

- v. The Petitioner (BESCO), on the basis of directives from the GOI and the practical feasibility of their implementation, passed an Official Memorandum (hereinafter referred to as 'OM') on 29.04.2019 (Annexure C) adopting the procedure of subjecting a random sample from the supplied lot to type testing, as required by the GOI. Along with the implementation of the directive, the Petitioner, in its efforts to secure quality and standard materials / equipment, also prescribed in the tender process, a guarantee period of 5 years, and in addition to the type-testing so as to ensure the quality thereof. The Petitioner further obligated the consumers under the self-execution work to purchase the equipment from the Petitioner's approved vendors only by directing to furnish 5-year guarantee on all the products. A sample of OM dated 29.04.2019 for Vendor Approval is produced as Annexure D.
- vi. It is submitted that the existing clauses 4.04(iv), 8.09 and 9.07 (3) (f) [BESCO has incorrectly indicated the clause No as 9.07 (f) in the Petition] of the Conditions of the Supply of Electricity (CoS) of the Distribution Licensees in the State of Karnataka, 2006 and clauses 3.2.1 (iv) [BESCO has incorrectly indicated the clause

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No. as 3.2(f)(iii) in the Petition] and 3.6.5 of K.E.R.C. (Recovery of Expenditure for Supply of Electricity) Regulations 2004 (RoE) mandate the consumers and developers to provide one-year guarantee. The said relevant clause of the Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka, 2006 are extracted below:

Clause 4.04 (iv):

“The Applicant shall stand guarantee for a period of one year from the date of service for the service main work carried out through the contractor. Any defects arising during this period due to bad workmanship or usage of sub-standard materials shall be got rectified by the Consumer at his cost.

If the service main is to be replaced consequent to additional load requirements, the same shall be got done by the Consumer at his cost through the Contractor.”

Clause 8.09:

“After servicing of the installation, the entire service line along with other accessories shall be taken over by the Licensee and the ownership would thereafter vest with Licensee for the purpose of maintenance. Guarantee shall be obtained by the Licensee from the Applicant for a period of 12 months from the date of servicing the installation for the materials used in the work as well as the quality of work executed.”

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Clause 9.07 (3) (f)]:

“Guarantee shall be obtained from the consumer for a period of one year for the materials used in the works as well as for the quality of the work carried out, from the date of taking over of the lines and equipment by the Licensee.”

K.E.R.C (Recovery of Expenditure for Supply of Electricity) Regulations 2004:Clause 3.2.1 (iv):

“Guarantee shall be given by the developer for a period of one year for the materials used in the works as well as for the quality of work carried out, from the date of taking over of the Distribution System and transformer(s) by the Distribution Licensee.”

Clause 3.6.5:

“The Applicant shall stand guarantee for the electric line / plant and works carried out under self-execution for a period of one year for the satisfactory performance from the date of handing over to the Licensee. The Applicant shall hand over to the Distribution Licensee electric line / plant, free of cost for the purpose of maintenance.”

- vii. The requirement of 5 years guarantee assumes high significance in the case of self-execution works as materials procured under such works are not subjected to type-testing on practical grounds. The Petitioner has expressed difficulty in subjecting the materials used under self-execution works.
- viii. Through a Memo dated 25.02.2020, the Petitioner further submits that, the major materials used in self-execution work, for which 5

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years guarantee period is insisted are, HT & LT cable, Transformers, RMUs, Conductors, Insulators, GOS and other current carrying materials which are to be purchased from only Petitioners' approved vendors and these vendors have undertaken to provide Five years guarantee period at the cost of the Common Schedule of Rates of all ESCOMs of Karnataka.

- ix. While preparing a Common Schedule of Rates of the year 2018-19 the design and specification of all the items are reviewed to obtain a maximum life period of 30 years and accordingly the rates were fixed.
- x. The Utilities in Gujarat, Maharashtra and Uttar Pradesh have already started insisting on Five years guarantee period for the procurement of materials and these States do not have self-execution scheme; all the works are carried out by the Licensee by collecting the cost of the estimate maintaining the guarantee period uniformly. Hence, insisting the same system is an alternate option.
- xi. If the proposed amendments are approved, it will reduce the outages of electricity due to failure of equipment and cost of replacement of faulty materials.

In view of the above difficulties faced by Petitioner, the Petitioner has filed this petition with the prayers noted above.

- xii. BESCO has made the following grounds in support of the amendments to the relevant clauses of the Conditions of Supply:
 - a. A perusal of the above clauses reveals that consumers and developers are required to provide guarantee of only one year on the equipment used in laying of electrical line.

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Therefore, the consumers and developers have been using the said clauses of Conditions of Supply to secure only one year of guarantee with the approved vendors as opposed to the 5-year guarantee clause mandated in OM approving the sanction of power.

- b. To bring conformity with the said clauses and the Petitioner's OM passed subsequent to GOI direction, the Petitioner has filed this petition praying for amending clauses 4.04(iv), 8.09 and 9.07(f) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, 2006 and clauses 3.2(f) (iii) and 3.6.5 of K.E.R.C. (Recovery of Expenditure for Supply of Electricity) Regulations 2004 and also the Vendor Approval OM by enhancing the period of guarantee to 5 years on the following grounds;
- c. One of the objectives of the Electricity Act, 2003 is to ensure safe and uninterrupted power supply in India.
- d. The Mandatory guarantee period of 5 years will result in safe and uninterrupted power supply to such installation under the self-execution work. The customer, vendors or the Petitioner will not be burdened with maintenance of the equipment for 5 years and the manufacturers will be tasked with the responsibility of maintaining the quality of equipment and maintain the same for a period of 5 years.
- e. The quality of the electrical infrastructure throughout the area falling under the Petitioner shall be uniform and consistent with the relevant quality standards.
- f. As explained supra, the equipment under the self-execution works cannot be subjected to type testing. This being the

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case, it becomes absolutely necessary to ensure 5-year guarantee of the equipment used in the self-execution works.

- g. The above amendment will not in any manner alter the structure or defeat the objectives of the said Regulations. The only outcome of this amendment will be installation of quality electrical equipment under the self-execution scheme.
- h. This petition has been filed in the common interest of public and the petitioner and no entity will be put to hardship if this petition is allowed in toto, whereas if this Petition stands rejected, the safety of the electrical infrastructure in the State of Karnataka will be greatly prejudiced.

3. We have heard the Counsel for the Petitioner and after considering the written submissions, the Commission has framed the following issues to take a view in the matter:

Issue No.1: Whether the prayer for amendments to clauses 4.04 (iv), 8.09 and 9.07 (f) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, 2006 for increasing one year guarantee period to five years guarantee on the basis of the letter No 3/8/2017-T&R dated 27.02.2018 (Annexure A) is Justifiable?

Issue No.2: Whether amendment to clauses 3.2 (f) (iii) & 3.6.5 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004 to increase guarantee period from one year to five years is Justifiable?

Issue No 3: If Issue No 1&2 are affirmative or negative, then what order?

The Commission has examined each of the issues and Commission's findings thereon are discussed below:

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Issue No.1: Whether the prayer for amendments to clauses 4.04 (iv), 8.09 and 9.07 (f) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, 2006 for increasing one year guarantee period to five years guarantee on the basis of the letter No 3/8/2017-T&R dated 27.02.2018 (Annexure A) is Justifiable?

- a. The Petitioner is seeking amendment to the Regulations on the basis of the directions issued by the GOI and the GOK in their letters dated 27.02.2018 and 12.03.2018 respectively. The directions issued in these letters, the CoS and RoE are applicable to all the Distribution Licensees in the State of Karnataka. However, none of the other Distribution Licensees have filed petition before the Commission, seeking such amendments except BESCO.
- b. To have a continuous check in the process of improving the quality of the equipment used / installed in the power system network, the GOI and GOK, vide the letters dated 27.02.2018 and 12.03.2018 respectively, have issued directions to the ESCOMs to adopt a policy in their procurement guidelines, to get the samples of the equipment tested at a Third Party laboratory and that the drawal of samples from the supplied lots shall have to be made mandatory. If the samples fail during this test, the entire lot of supply shall have to be rejected. However, the GOI letter dated 27.02.2018 doesn't indicate / specify anything about the guarantee period of electrical equipment / products to be procured by the State Transmission and Distribution Utilities. It only emphasises the need to checking of samples of various electrical equipment/ products, post supply, by the vendors and such sample being selected randomly from the supplied lots and sent to an

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Accredited Laboratory for quality check as per specifications mentioned during the Tender documents. If such sample selected for quality test fails the quality test, then the entire supplied lot has to be rejected. The basic intent of this letter is to ensure quality of the equipment installed in the power system network. Therefore, the State / UTs have been advised to incorporate a provision in their procurement guidelines / policy, to get the quality of equipment / materials / products tested in an Accredited Laboratory.

It could be observed that the Petitioner has not understood the intent of the letter dated 27.02.2018 by the Ministry of Power, GOI, in proper perspective. Moreover, there is no relevance of said letter to the present proposal of Petitioner seeking amendments to Clauses 4.04(iv), 8.09 and 9.07(f) [9.07 (3) (f)] of the Conditions of Supply of Electricity of the Distribution Licensee in the state of Karnataka, 2006 and clauses 3.2(f)(iii) [3.2.1 (iv)] and 3.6.5 of K.E.R.C. (Recovery of Expenditure for Supply of Electricity) Regulations 2004 as prayed in the Petition.

- c. The GOK vide letter No.EN 14 VSC 2018 dated 12.03.2018 submitted as Annexure-B by the Petitioner, also issued the similar guidelines as issued by the GOI in its letter dated 27.02.2018.
- d. The Petitioner has not produced any relevant documents towards its claims that the States viz., Gujarat, Maharashtra and Uttar Pradesh are insisting on Five year's warranty period for the materials being procured by them. The Petitioner also has not submitted any documents in evidence of incorporation of such a longer guarantee period by any other

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Central or State Government Utilities / Agencies involved with procurement of materials.

- e. If this Petition is allowed by increasing the guarantee period to Five years, it will have an impact on the pricing of the equipment resulting in increase in the price for the same equipment, with the addition of guarantee premium. This will have impact on the total cost of the works and result in unnecessary burden on the consumers.
- f. The Petitioner, in its petition, has stated that the approved vendors have already undertaken to provide Five years guarantee period for the materials used under self-execution works at the Common Schedule of Rates of all ESCOMs of Karnataka.
- g. The Commission, during the process of hearing has gone through the General Specifications for Electrical Works, published by the Government of India, Central Public Works Department, Part-I Interval 2013, published under the Authority of Director General, CPWD, New Delhi wherein, the stipulated guarantee period for equipment / materials is twelve (12) months / one (1) year.
- h. During the arguments, the Petitioner has submitted a document, Annexure-A to the Memo, giving the list of materials, applicable Indian Standard (IS) specifications indicating the life of the materials etc., On a perusal of this document, specifying IS specifications (Code) and Life of the materials specified by the firms, the Petitioner in the foot note has informed that in any IS standard no guarantee period is mentioned and that the stipulated tests are to be made as per the mutual agreement between the Supplier

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(Manufacturer) and Consumer. Hence, it is up to the Petitioner to procure the IS Standard equipment / Materials / products / items as per procurement policy of the BESCO. However, while inviting Tenders of Electrical equipment / Materials / products / items BESCO can include a Tender Condition for a minimum guarantee period for specific material / equipment as per its requirement.

Moreover, Clauses 4.04(iv), 8.09 and 9.07(f) [9.07 (3) (f)] of the Conditions of Supply of Electricity of the Distribution Licensee in the state of Karnataka, 2006 and clauses 3.2(f)(iii) [3.2.1 (iv)] and 3.6.5 of K.E.R.C. (Recovery of Expenditure for Supply of Electricity) Regulations 2004 specify a minimum period of guarantee i.e., ONE year. There is no restriction on Distribution Licensee to increase this guarantee period as per its requirement of electrical equipment / material and Techno-economic feasibility of its works / projects. In view of the above, the grounds made out for amending the specific Clauses of CoS are not tenable and liable to be rejected. Accordingly, we hold Issue No.1 in negative.

Issue No 2: Whether the prayer for amendment to clauses 3.2 (f) (iii) & 3.6.5 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004 to increase guarantee period from one year to five years is Justifiable?

The provisions in the Recovery of Expenditure Regulations are supplemental to the Conditions of Supply to enable the Licensees to recover the expenditure incurred in providing the electricity to the consumers. In most of the self-executed works, the consumers himself will procure the materials /

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equipment from the market. As submitted by the Petitioner, the consumers have to purchase the materials from the approved vendors. The approved vendors have already agreed to provide a guarantee period of five years. In such a situation, BESCO may also specify the quality of materials / equipment so as to ensure quality and duration of such materials / equipment. In line with the decision not to amend the Conditions of Supply in Issue No.1 as discussed above, we are of the considered opinion that there is no need to amend the KERC (Recovery of Expenditure) Regulations 2004. Accordingly, we hold Issue No.2 in negative.

Issue No.3: If Issue No.1 &2 are affirmative or negative, then what order?

In view of the decisions in respect of Issue No.1 & 2 being negative, we pass the following:

ORDER

The Petitioner is not entitled for any relief. Accordingly, the Petition is hereby dismissed.

sd/-

(SHAMBHU DAYAL MEENA)
CHAIRMAN

sd/-

(H.M. MANJUNATHA)
MEMBER

sd/-

(M.D. RAVI)
MEMBER