

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**

Petition No. 27/2004

In the matter of

Application for arbitration of disputes in regard to non-payment of the amounts due to the petitioner for supply of energy in the Eastern Region for the month of October, 1998.

And in the matter of

National Thermal Power Corporation Limited, New Delhi... **Petitioner**

Vs

1. Bihar State Electricity Board, Patna
 2. West Bengal State Electricity Board, Kolkata
 3. Grid Corporation of Orissa Limited, Bhubaneswar
 4. Jharkhand State Electricity Board, Ranchi
 5. Damodar Valley Corporation, Kolkata
 6. Government of Sikkim, Gangtok
 7. Eastern Regional Electricity Board, Kolkata
- Respondents**

The following were present:

1. Shri M.G. Ramachandran, Advocate, NTPC
2. Shri V.B.K. Jain, NTPC
3. Shri I.J. Kapoor, NTPC
4. Shri T.R. Sohal, NTPC
5. Shri Balaji Dubey, Dy. Mgr Law, NTPC
6. Shri N. Ahmad, NTPC
7. Shri R.N. Sen, NTPC
8. Shri S.D. Jha, NTPC
9. Shri S.K. Samvi, NTPC
10. Shri K.V. Balakrishnan, NTPC
11. Shri R. Singhal, NTPC
12. Shri Guryog Singh, NTPC
13. Shri Robin Mazumdar, NTPC
14. Shri R Chhabra, NTPC
15. Shri N.P. Sharar, NTPC

16. Shri Satya Prakash, NTPC
17. Shri G.K. Dua, NTPC
18. Shri S. Chattopadhyay, DVC
19. Shri S. Dutta Chowdhary, DVC

ORDER
(DATE OF HEARING: 3.8.2004)

The application is made under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 for arbitration of dispute in regard to non-payment of the dues of the petitioner for supply of energy in the Eastern Region during October, 1998. The law authorises the Commission to adjudicate upon disputes involving generating company or transmission licensee in regard to matters specified in clauses (a) to (d) of sub-section (1) of Section 79 and to refer any dispute for arbitration. By virtue of these powers, we proceed to adjudicate upon the dispute raised in the present application.

2. The dispute primarily relates to recovery of fixed charges by the petitioner on account of regulation of power supply to West Bengal State Electricity Board (WBSEB) and Damodar Valley Corporation (DVC) during October, 1998. From the facts placed on record by the petitioner, it is noted that respondent No.1, Bihar State Electricity Board (BSEB) had disputed an amount of Rs.40.91 crore against the bill raised by the petitioner for the month of October, 1998 for the fixed charges. BSEB in its reply filed before the Commission has denied its liability to pay the fixed charges claimed by the petitioner on the ground that as a result of regulation of power supply by the petitioner to WBSEB and DVC, the cost per unit of the energy generated at the petitioner's generating stations in the Eastern Region had increased exorbitantly, for no fault on the part of BSEB. Therefore, an

amount of Rs.40.91 crore remains unpaid for which the bills were raised. The reply to the petition has also been filed by WBSEB, who has stated that during the period of regulation, fixed charges for petitioner's generating stations were not payable by it since the energy was not drawn.

3. We heard Shri M.G. Ramachandran, Advocate for the petitioner. The representatives of DVC though present, made no submissions on the issue raised. None was present on behalf of the other respondents. Shri Ramachandran argued that the petitioner, NTPC was entitled to fixed charges in accordance with the notification issued by Ministry of Power and sought a direction to the respondents for payment of these charges.

4. We have considered the material available on record. On perusal of the views of the parties, the following alternative views have emerged:

- (a) The entire amount of fixed charges payable by WBSEB and DVC but for regulation of power supply to them should be borne by the petitioner, NTPC since electricity falling to the shares of WBSEB and DVC was not generated.
- (b) These fixed charges be borne by WBSEB and DVC in proportion of their share/allocated capacity as regulation of power supply to them was on account of their default in making payment of the petitioner's dues.

(c) These fixed charges be borne by the constituents of Eastern Region, other than WBSEB and DVC, in proportion of supply of power to them during the period of regulation, in accordance with the Ministry of Power notifications read with Power Purchase Agreements signed by the parties.

5. For proper adjudication, specific view of the parties on the above issues are necessary. The petitioner and the respondents may file their written submissions on the above three alternatives latest by 10.9.2004. The petition be listed for further directions on 23.9.2004. In the absence of any of the parties on the date fixed, the Commission may proceed ex parte.

**Sd/-
(BHANU BHUSHAN)
MEMBER**

**Sd/-
(K.N. SINHA)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRMAN**

New Delhi, dated 10th August, 2004