

CENTRAL ELECTRICITY REGULATORY COMMISSION

RECORD OF PROCEEDINGS

Petition No. 163/2008

Accumulation of dues-Seeking Commission's intervention and direction for TNEB to clear the income tax dues and excess rebate availed.

Date of hearing: **9.7.2009**

Coram: Dr.Pramod Deo, Chairperson
Shri R.Krishnamoorthy, Member
Shri V.S.Verma, Member

Petitioner: NLC

Respondent: TNEB

Parties present: (1) Shri. N.A.K.Sarma, Advocate, NLC
(2) Shri. R.Suresh, NLC
(3) Shri P.H.Parekh, Sr. Advocate, TNEB
(4) Shri E.R.Kumar, Advocate, TNEB
(5) Shri Ashish Vaid, Advocate, TNEB
(6) Shri Shubranshu Padhi, Advocate, TNEB
(7) Shri S.Soumyanarayanan, TNEB
(8) Ms. V.Savitha, TNEB

This petition has been made seeking directions to the respondent, Tamil Nadu Electricity Board, (TNEB), for refund of the excess rebate amounting to Rs 79.52 crore and also for reimbursement of the income-tax dues amounting to Rs 481.46 crore already deposited by NLC with the income-tax authorities, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, (the 2004 regulations).

2. The learned counsel for the petitioner submitted that the matter had been remanded to the Commission in terms of the directions contained in the order of the Appellate Tribunal for Electricity (Appellate Tribunal) dated 20.5.2009 and no ground existed now for the respondent to argue on the point of bias. The learned counsel also submitted that the decision on the issue of refund of excess rebate raised in the petition would depend upon the decision taken by the Commission in the Review Petition Nos 98/2009 & 99/2009 filed by the respondent and hence, it had no objection to de-link the issue of refund of income-tax in the petition and be considered in a separate petition. The learned counsel for the petitioner further submitted that the respondent could not withhold the reimbursement of income-tax dues, in the name of reconciliation which would tantamount of violation of the 2004 regulations and the orders of the Commission.

3. In response, the learned counsel for the respondent submitted that it had filed detailed reply to the rejoinder of the petitioner. The learned counsel pointed out that the income-tax assessed by for the period 2001-02 to 2005-06 was Rs 435.16 crore and the petitioner had adjusted a credit of Rs 4.43 crore against the dues of income-tax. The learned counsel further submitted that though the petitioner had claimed an outstanding amount of Rs 277.51 crore instead of Rs 168.79 crore for the period 2001-02 to 2005-06 and it had not been able to explain as to how it had arrived at the said amount. The learned counsel for the respondent submitted that the income-tax claim for the period 2006-07 up to the 3rd quarter of 2008-09 as per the auditor certificate was Rs 317.51 crore against which the respondent had released three installments totalling Rs 76.17

crore and hence the total outstanding liability upto the 3rd quarter of 2008-09 should be Rs 410.13 crore. The learned counsel pointed out that as the petitioner had claimed grossed up tax on the beneficiaries, it could be presumed that the claim of Rs 317.51 crore for the period from 2006-07 to the 3rd quarter of 2008-09 was also arrived at by the petitioner after grossing up. The learned counsel further submitted that the petitioner needed to clarify the above and the amount for Rs 317.51 crore should be revised without grossing up the amount of income-tax.

4. On a query as to whether the payment of the entire amount of income-tax was disputed, the learned counsel for the respondent pointed to the tabulation statement at para 14 page 8 of its reply and submitted that as against the claim of Rs 518.85 crore by the petitioner till the 3rd quarter of 2008-09, an amount of Rs. 410.11 crore had been arrived at after adjustment of the amounts already paid and was subject to the confirmation that no grossing up of tax has been made in any of the years by the petitioner.

5. On a further query as to how the respondent had paid income-tax based on calculations made by other generating companies like NTPC, the learned counsel for the respondent prayed for a short time to submit the information. The learned counsel for the petitioner submitted that NTPC undertook core and non-core business and the claims of NTPC were based on grossed up income-tax on the net income attributable to the core business.

6. The Commission directed the respondent to submit relevant documents relating to calculation of income-tax along with the payments made to the petitioner, in addition to the information at para 5 above, within one week.

7. Subject to the above, order in the petition was reserved.

Sd/-
(K.S.Dhingra)
Chief (Legal)