

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Record of Proceedings

I.A.23/2009 in Petition No.66/2005

Subject: Determination of generation and inter-State transmission tariff for Damodar Valley Corporation in terms of the judgment dated 23.11.2007 of the Appellate Tribunal for Electricity in Appeal No. 273/2006.

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

Date of Hearing: 7.7.2009

Applicants in I.A: Bhaskar Shrachi Alloys Ltd, Maithon Alloys Ltd, Anjaney Fero Alloys Ltd, Shyam Ferro Alloys Ltd and Surya Alloys Industries Ltd

Respondents: DVC, State of West Bengal, State of Jharkhand, WBSEDCL, JSEB and Ministry of Power, Govt. of India.

Parties present: Shri C.S.Vaidyanathan, Sr. Advocate, BSAL
Shri Shyamal Sarkar, Advocate, BSAL
Shri Gautam Shroff, Advocate, BSAL
Shri M.G.Ramachandran, Advocate, DVC
Shri D.K.Aich, DVC
Shri R.Goswami, DVC

This interlocutory application has been filed by Bhaskar Shrachi Alloys Ltd, Maithon Alloys Ltd, Anjaney Fero Alloys Ltd, Shyam Ferro Alloys Ltd and Surya Alloys Industries Ltd (hereinafter referred to as "the applicants") to restrain the petitioner, Damodar Valley Corporation (DVC) from increasing its tariff or from disconnecting the electric connection to the factories of the applicants in violation of the Commission's

order dated 21.6.2005 till tariff for the petitioner is determined by the Commission. The applicants have also prayed for an ad-interim order in terms of the above.

2. Learned Counsel for the applicants submitted that the petitioner during the pendency of its application for determination of tariff and without seeking leave of the Commission increased its tariff from April 2008 to September 2008 by 31 paise/kWh and from October 2008 to March 2009 by 55 paise/kWh by increasing the fuel surcharge. The learned counsel pointed out that in terms of the order of the Commission dated 21.6.2005, DVC could only charge the tariff applicable as on 31.3.2004 as the Commission had not determined the tariff of the petitioner pursuant to the hearing on 16.6.2009. The learned counsel also submitted that the fuel surcharge was part of the generation tariff, and the Commission's order dated 3.10.2006 determining the tariff of DVC provided for fuel surcharge for the period till 31.3.2009 which was final and binding upon the petitioner as it had not challenged the same before the Appellate Tribunal. The learned counsel further prayed that DVC be restrained from disconnecting the electric connection to the factories of the applicants in terms of the notice, till the final disposal of the tariff petition by the Commission.

3. In response, the learned counsel for DVC submitted that it had only made adjustment of fuel surcharge and had not increased the tariff as alleged by the applicants. The learned counsel also pointed out that in terms of clause (4) of section 62 of the Electricity Act, 2003, it could make fuel surcharge adjustments and submitted that the interlocutory application should not be considered by the Commission. The learned counsel also submitted that in the appeal filed by some of the applicants challenging the

judgment of the Appellate Tribunal for Electricity (referred to as “the Appellate Tribunal”) dated 23.11.2007, the Hon’ble Supreme Court had refused to stay the operation of the said order. The learned counsel further submitted that in a similar matter wherein the Jharkhand State Electricity Regulatory Commission (JSERC) rejected the increase in the fuel surcharge by its order dated 27.4.2009, the Appellate Tribunal by its order dated 28.5.2009 while reserving its judgment had allowed the interim stay of the order made by JSERC. The learned counsel further submitted that the applicants having not succeeded in other forums had approached the Commission only to delay the determination of tariff of the petitioner.

4. Learned counsel for the applicants objected to the submissions of DVC and contended that the issues involved in the proceedings before the Hon’ble Supreme Court and the JSERC were different and could not be relied upon by DVC in the present proceedings.

5. On a query as to whether the formula for fuel surcharge approved by the Commission was being adopted, the learned counsel for DVC submitted that the fuel surcharge formula was applied from the year 2000 with certain adjustments from time to time. The learned counsel also submitted that the said fuel surcharge formula was applicable as on 31.3.2004 and was not different from the formula approved by the Commission in its order dated 3.10.2006.

6. On a further query as to whether payments were made by the applicants to DVC based on fuel surcharge adjustments made earlier, the learned counsel for the applicants submitted that no payments were made to DVC towards fuel surcharge

adjustments, pursuant to the order of the Commission dated 3.10.2006. However, the learned counsel for DVC refuted the said contention and submitted that the applicants had made payments to DVC for the period up to October 2008 and notices for disconnection had been issued subsequent to default in payments by the applicants. The learned counsel for DVC further added that it had documentary evidence in support of its submissions and was willing to place it on record. The learned counsel for the applicants reiterated that no payments on account of fuel surcharge were made by it after the Commission's order dated 3.10.2006 and prayed that the notice of disconnection be stayed by the Commission.

7. The learned counsel for DVC submitted that the matter pertaining to disconnection of electricity was subject to the jurisdiction of the State Commission and the Central Commission should not take cognizance of the same. The learned counsel for applicants objected to the above and submitted that the matter pertaining to fuel surcharge adjustments was within the purview of the Central Commission.

8. The Commission directed the applicants to file affidavit enclosing documents, in support of its contentions at para 6 above, within three days, with copy to DVC, who may file its response, in next two days.

9. Subject to the above, order in the application was reserved.

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