

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2012

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

**Date of Hearing: 17.04.2012
Date of Order: 02.01.2013**

In the matter of

Petition under Section 79 (1) (b), (c) and (f) under the Electricity Act, 2003 and seeking payment of Rs. 2,89,41,174/- as pending trading margin dues payable to PTC India Ltd., under power Sale Agreement dated 19.6.2009 executed between Haryana Power Purchase Centre, on behalf of Uttar Haryana Bijli Vltan Nigam Limited and Dakshin Haryana Bijli Vltan Nigam Ltd. along with Interest @ of 1.25% per month from date of payment.

And in the matter of

PTC India Ltd, New Delhi

Vs

Petitioner

1. Haryana Power Purchase Centre (HPPC)
2. Jammu & Kashmir State Power Development Department

Respondents

Present:

1. Shri Atul Nanada, Sr. Advocate, PTC
2. Shri Ravi Prakash, Advocate, PTC
3. Shri Varun Pathak, Advocate, PTC
4. Shri Aditya Dewan, Advocatae PTC

ORDER

The petition has been filed by PTC India Ltd, Category I inter-State trading licensee, for adjudication of dispute arising out of the alleged non-payment by Haryana Power Purchase Centre of trading margin dues amounting to ₹2,89,41,174/- accumulated till the date of filing of the petition for electricity



purchased on behalf of Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Ltd.. The reliefs claimed by the petitioner are as under:

- A. *To direct the Respondent to pay Rs. 2,89,41,174/- towards the trading margin dues of the Petitioner accumulated till date in accordance with Clause 2.2.2 of Schedule B of the PSA along with an interest of 1.25% per month from the date of payment.*
- B. *Direct HPCC to honour its obligations and make all payments of trading margin payable to PTC in accordance with PSA.*
- C. *Award pendent lite interest at 18% p.a.*
- D. *Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."*

2. The facts of the case are that the petitioner entered into a Power Purchase Agreement dated 13.10.2008 (PPA) for purchase of 225 MW of power from Jammu & Kashmir State Power Development Corporation (JKSPDC) generated at Baglihar Hydro-electric Project for a period of 12 years in the months of November, December, January and February every year for further sale outside the State of Jammu and Kashmir. Out of 225 MW of power purchased, the petitioner executed Power Supply Agreement dated 10.6.2009 (PSA) for supply of 50 MW of power also for a period of 12 years, with the first respondent who executed PSA on behalf of Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Ltd. Clause 2.2 of Schedule B of PSA provides as under:

"2.2 PTC's Trading Margin

2.2. 1 PTC Trading margin shall be the capped trading margin as notified by CERC for contracts of such nature and duration from time to time (Trading Margin').

2.2.2 In case there is no cap on the trading margin by CERC, then PTC's Trading Margin shall be three percent (3%) of Tariff Rate fRs. 3.65 per kWh) as given at Section 2.1 of the Schedule B."

3. The Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 apply to short-term buy and short-term sale contracts for inter-State trading in electricity undertaken by a licensee. The short-term buy and short-term sale contract has been defined as a contract whose duration is less than one year. Thus PPA and PSA, whose duration is 12 years, are long-term contracts and are not governed by the ceilings of trading margins fixed under the Trading Margin Regulations. Accordingly, under PSA the petitioner is entitled to claim trading margin at the rate of 3% of tariff rate of ₹3.65/kWh. The petitioner in its communications dated 9.4.2010 is said to have informed HPCC that as per clause 2.2 of Schedule B of PSA, the trading margin worked out to 11 paisa/kWh but it had reduced the trading margin to 9 paisa /kWh. Thus, the petitioner claims to have agreed to charge trading margin of 9 paisa/kWh. The petitioner has alleged that HPCC paid trading margin of 4 paisa/kWh for the power supplied. The petitioner is said to have made efforts with HPCC for resolving the matter and for this purpose claims to have sent a number of communications to the concerned authorities. But the dispute remains unresolved as the authorities concerned have not responded to the communications sent. Hence, the petitioner has filed the present petition.

4. We heard the learned counsel for the petitioner on maintainability of the petition. We have also perused the judgments/orders filed/relied upon by learned counsel.

5. Learned counsel for the petitioner submitted that the petition was filed under clauses (b) and (c) read with clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (hereinafter "the Act"). According to learned counsel, the PPA



between the petitioner and the second respondent, JKSPDC, a generating company, contemplated further sale of power outside the State of Jammu and Kashmir and accordingly, adjudication of the dispute on account of non-payment of dues by the first respondent was within the jurisdiction of this Commission. Learned counsel argued that purchase of power from the second respondent for further sale outside the State involved inter-State transmission of electricity and for this reason also, the dispute was within the purview of this Commission. In support of the contentions urged, learned counsel has relied upon the following judgments/orders:

- (a) Tata Power Company Ltd Vs Reliance Energy Ltd (2009) 16 SCC 659 (Para 111),
- (b) K Ramanathan Vs State of Tamil Nadu (1985) 2 SCC 116 (Paras 18 and 19),
- (c) PTC India Ltd Vs CERC and Others (2010) 4 SCC 603 (Para 17),
- (d) Appellate Tribunal Judgment dated 4.11.2011 in Appeal No 15/2011 and 52/2011 Lanco Power Ltd Vs HERC and others (Paras 21 and 61),
- (e) Appellate Tribunal Judgment dated 23.2.2011 in Appeal No 200 of 2009 Pune Power Development Pvt Ltd Vs KERC and others (Para 22),
- (f) CERC order dated 22.1.2008 in Petition No 107 of 2007 (Paras 13 to 15, 19 and 20),
- (g) CERC order dated 8.7.2008 in Petition No 107 of 2007 (Paras 17 and 19),
- (h) Appellate Tribunal Judgment dated 21.7.2011 in Appeal No 151/2008(Paras 29 and 38), and
- (i) Renusagar Power Co Ltd Vs General Electric Company and others (1984) 4 SCC 679 (Para 25).

6. The relevant statutory provisions of the Electricity Act are extracted hereunder for ease of reference:

“79. (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;



(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.”

7. The jurisdiction to adjudicate dispute is conferred on this Commission under clause (f) of sub-section (1) of Section 79 of the Act when such dispute is connected with clauses (a) to (d) of sub-section (1). The question is whether the dispute raised in the petition can be construed to be within the ambit of any of the clauses (a) to (d) of sub-section (1) of Section 79. A plain reading of clause (f) shows that the adjudication of disputes falls within the jurisdiction of this Commission on satisfaction the following conditions, namely-

(a) The dispute involves the generating company or the transmission licensee.



(b) The dispute is in regard to matters connected with clauses (a) to (d), that is, the dispute should be either connected with regulation of tariff of the generating company, or regulation of inter-State transmission of electricity, or with the determination of tariff for inter-State transmission of electricity.

8. The first and fundamental principle is that interpretation in the first instance is to be limited to the express language of the statute. Therefore, the exercise of power of adjudication under clause (f) needs to be limited to the disputes arising out of statutory functions and powers of the Commission expressly mentioned in clause (f).

9. In the case on hand, the petitioner is an inter-State trading licensee. Thus, the petitioner is neither a generating company nor a transmission licensee. The first respondent against whom the claim has been made is neither a generating company nor a transmission licensee. The first respondent acted as an agent of the distribution companies whose operations are confined to the State of Haryana. Therefore, the first ingredient of clause (f) of sub-section (1) of Section 79 of the Act is not satisfied. The energy contracted to be supplied to the first respondent was generated at the generating station owned by the second respondent and is a generating company defined under sub-section (28) of Section 2 the Act. However, the petitioner has no dispute with the second respondent. Moreover, the tariff of the generating station of the second respondent is not regulated by this Commission under clause (b) of sub-section (1) of Section 79 of the Act. Further, the dispute cannot be said to involve regulation of inter-State transmission of electricity so as to fall within the jurisdiction of this Commission by virtue of clause (c) of sub-section (1) of Section 79 of the Act. The petitioner's grievance arises out of failure of the first respondent to meet obligations of making payments for the electricity supplied by the petitioner as an



inter-State electricity trader. The dispute involves adjudication of claim for recovery of the dues arising out of the trading transactions between the parties and the petitioner has sought enforcement of obligations of the first respondent arising out of the PSA. It is purely a contractual dispute unconnected with power of regulation of this Commission under Section 79 of the Act. The language of clause (f) of sub-section (1) of Section 79 of the Act does not embrace adjudication of contractual disputes not connected with regulation of tariff or regulation of inter-State transmission of electricity.

10. The judgments/orders relied upon by learned counsel for the petitioner have no bearing on the subject matter of the dispute raised in the present petition. The ratio of the judgments/orders does not apply to the facts of the case on hand. In *Tata Power Company Ltd (supra)* in para 111 of the judgment, the Hon'ble Supreme Court dwelt upon the interpretation of clause (b) of sub-section (1) of Section 86 of the Act providing for the function of the State Commission. In *K Ramanathan (supra)* the Hon'ble Supreme Court in paras 18 and 19 examined the scope of term 'regulation' and held that the term had very wide scope. However, the judgment is not an authority that a statutory authority can exercise powers beyond those specifically conferred under the statute under which it has been established. In para 17 of its judgment in *PTC India Ltd (supra)*, the Hon'ble Supreme Court examined the background against which the Act was enacted. Again, this judgment does not constitute an authority for the proposition that this Commission can travel beyond the power conferred under clause (f) of sub-section (1) of Section 79 of the Act. In *Renusagar Power Company Pvt Ltd (supra)*, the Hon'ble Supreme Court was concerned with interpretation of arbitration clause in an agreement and nothing to do



with interpretation of exercise of statutory functions by an authority. In *Lanco Power Ltd (supra)* and *Pune Power Development Company Pvt Ltd (supra)*, the Appellate Tribunal was concerned with interpretation of clause (f) of sub-section (1) of Section 86 of the Act under which the State Commission is conferred the power of adjudication of disputes involving the generating companies and the licensees, which include the transmission licensees, distribution licensees and trading licensees, . The Appellate Tribunal in these judgments did not go into the scope of clause (f) of sub-section (1) of Section 79 of the Act under which power of adjudication of disputes is confined to the disputes involving the generating company or the transmission licensee. In other cases, one decided by the Appellate Tribunal and two decided by this Commission, relied upon by learned counsel for the petitioner, the dispute in those cases was regarding non-supply of electricity by one State to the other in terms of the agreement between them. It was held that since it involved conveyance of electricity across the territory of one State to the territory of another, it involved regulation of inter-State transmission of electricity and the dispute was within the jurisdiction of this Commission. No such dispute is raised in the instant case.

11. For the foregoing reasons, the dispute raised is found to be beyond the jurisdiction of this Commission. As such, the petition is dismissed at the admission stage itself.

Sd/-
[V.S.Verma]
Member

sd/-
[S.Jayaraman]
Member

sd/-
[Dr. Pramod Deo]
Chairperson

