

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 218/MP/2011**

**Coram:**

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri S. Jayaraman, Member**
- 3. Shri V.S. Verma, Member**

**Date of Hearing: 19.1.2012**

**Date of Order: 21.8.2012**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003 for unilateral deduction by Punjab State Power Corporation Limited of the legitimate dues amounting to `315.11355 lakh payable to PTC India Ltd for supply of contracted power in violation of the terms and conditions of the Power Supply Agreement dated 6.5.2011 entered into between PTC and PSPCL.

**And in the matter of**

PTC India Ltd, New Delhi

**Petitioner**

**Vs**

1. Punjab State Power Corporation Limited, Patiala
2. Government of Himachal Pradesh, Shimla
3. Northern Region Load Despatch Centre, New Delhi
4. State Load Despatch Centre, Shimla

**Respondents**

**Present:**

1. Shri Ravi Prakash, Advocate, PTC
2. Shri Varun Pathak, Advocate, 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 unilateral deduction of payment of `315.11355 lakh by Punjab State Power Corporation Limited, the first respondent, which, the petitioner claims, became payable for supply of power under



the Power Supply Agreement (PSA) dated 6.5.2010. The relief claimed by the petitioner is

“a. Upon adjudication of the dispute between the parties, attribute the liability of payment of `315.11355 lac and direct such party to make payment of the said sum along with surcharge @ 15% per annum; or

b. Pass such other order/s which the Hon'ble Commission deems fit in the facts and circumstances of the instant case.”

2. The petitioner entered into Power Purchase Agreement (PPA) dated 4.11.2009 for purchase of power from the State Government of Himachal Pradesh, the second respondent, for two years from 1.11.2008 to 31.10.2010, generated at Nathpa Jhakri Hydro Power Station of Satluj Jal Vidyut Nigam Ltd (a joint venture between the Central Government and the second respondent) and Bairasuil, Chamera Stage I and Chamera Stage II Hydro Electric Projects of NHPC, specifically named in the PPA, against 12% share of free power of the second respondent as also its own share of power of Nathpa Jhakri Hydro Power Station as equity holder in Satluj Jal Vidyut Nigam Ltd. The petitioner executed the PSA for supply of 200 MW of power round-the-clock from 1.5.2010 to 30.9.2010 to the first respondent as also certain other utilities in Northern Region, out the power purchased from the second respondent.

3. Nathpa Jhakri Hydro Power Station was under forced shut down or low operation on 24.6.2010, 26.7.2010, 2.8.2010 and 4.8.2010; its generation was either reduced to zero or revised downward to a considerable extent. In view of this scenario, on the advice of the fourth respondent, the petitioner made efforts to revise the schedule for supply by the second respondent and drawal by the first respondent and other utilities on intra-day basis in terms of para 6.5 (19) of the Indian Electricity



Grid Code. However, the third respondent did not permit revision of schedule for various reasons, such as para 6.5 (19) was not attracted since the second respondent was not a generating company, consent of beneficiaries was not obtained. Consequently, the supply schedule of the second respondent and drawal schedule of the utilities in Northern Region, including the first respondent remained unchanged. In order to maintain supply of contracted power to other utilities with whom the petitioner signed PSA, Himachal overdrew power from the grid under UI. The second respondent protested against the practice as, according to the first respondent, the arrangement favoured the second respondent, UI rate being lower than the rate at which power was supplied by the second respondent through the petitioner. The petitioner at the instance of the first respondent took up the matter with the third respondent for *ex post facto* revision of schedule for the fateful days, but without any success. The first respondent repudiated its liability to fully pay for the contracted power on the ground that the supply was not maintained from the sources contracted, but it was on account of Himachal resorting to over-drawal from the grid. Against the invoices of a total amount of `48.4961 crore raised by the petitioner, the first respondent paid a total amount of `45.3450 crore, leaving the outstanding amount of `3.1511 crore. The petitioner has stated that all other utilities with whom he contracted to supply power settled their dues, but the first respondent has withheld payment of part amount. The petition has been filed for recovery of the outstanding amount as the petitioner was unable to resolve the dispute despite the efforts made.



4. We heard the learned for the petitioner on maintainability of the petition. We have also perused the written submissions and additional written submissions filed by learned counsel.

5. Learned counsel for the petitioner in the written submissions has stated that the petition has been filed under clauses (a) and (b) read with clause (f) of sub-section (1) of Section 79 of the Electricity Act. According to learned counsel, since the supply of power to the first respondent was from the generating stations owned or control by the Central Government, adjudication of the dispute on account of non-payment of dues by the first respondent was within the jurisdiction of this Commission. Learned counsel has further submitted that the supply was under the composite scheme to more than one State. On this basis, according to learned counsel, by virtue clauses (a) and (b) of sub-section (1) of Section 79 of the Electricity Act read with clause (f), dispute falls within the jurisdiction of this Commission. Learned counsel has next argued that the dispute also falls within the purview of this Commission under clause (c) read with clause (f) of sub-section (1) of Section 79 of the Electricity Act as the question involves regulation of inter-State transmission of electricity. Learned counsel has argued that in exercise of its power under clause (c), this Commission is required to make an authoritative pronouncement whether the third respondent was justified in refusing revision of schedule which was inevitable because of either shutdown of Nathpa Jhakri Power Project or lowering of output. In support of the contentions urged, learned counsel has relied upon the following judgments:

(a) Judgment dated 15.5.2012 In OMP 677/2011 by Delhi High Court,



(b) Judgment dated 4.11.2011 in Appeal No 15/2011 and 52/2011 by the Appellate Tribunal,

(c) Judgment dated 21.7.2011 in Appeal No 151/2008 by the Appellate Tribunal.

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 under clause (f) of sub-section (1) of Section 79 of the Electricity 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 might be construed to be within the ambit of any of the clauses (a) to (c) 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 satisfying 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 neither a generating company nor the transmission licensee. The respondent is a distribution company whose operations are confined to the State of Punjab. Therefore, the first ingredient of clause (f) of sub-section (1) of Section 79 of the Electricity Act is not satisfied. The energy contracted to be supplied to the first respondent was owned by the second respondent, either as its share of free power or its share on account of equity contribution made to Satluj Jal Vidyut Nigam Ltd, the



generating company. The second respondent itself is not a generating company defined under sub-section (28) of Section 2 the Electricity Act, by virtue of its equity holding. The second respondent in itself does not own Nathpa Jhakri Power Project, the generating station. We next examine the petitioner's argument that the dispute is related to regulation of inter-State transmission of electricity or any matter incidental thereto. 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. The petitioner's grievance arises out of failure of the first respondent to meet obligations of making payments for the electricity supplied 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. The petitioner made efforts with the respondent for settlement of dues. The dispute seeks enforcement of obligations of the first respondent arising out of the PSA. The language of clause (f) of sub-section (1) of Section 79 of the Act does not embrace within its ambit the adjudication of contractual disputes. Falling under clause (f) are the disputes arising out of exercise of statutory functions by this Commission.

10. It is also urged by learned counsel for the petitioner in the written submissions that an important question requiring attention of this Commission is whether the third respondent could have refused to revise the schedule when it was certain that schedule for supply could not be adhered for reason of the forced outage of the generating station. The petitioner has not claimed any relief on account of the refusal of the third respondent to permit revision of intra-day schedule. It is the petitioner's case that the first respondent was not affected by non-revision of schedule as its



schedule remained intact and it was able to draw power as per schedule. Therefore, the question cannot be said to have arisen in the present proceeding.

11. Lastly, we examine the applicability of the judgments invoked by learned counsel for the petitioner. While examining the matter the principle that every judicial pronouncement takes colour from the context in which it is rendered has to be borne in mind. In that view of the matter, in our considered opinion these judgments are of no avail to the petitioner since they were rendered under different sets of circumstances. The judgment relied upon is in OMP 677/2011 decided by Delhi High Court. In this case the issue was whether adjudication of dispute involving the generating company and the electricity trader where there was back-to-back arrangement for sale of power in more than one State through the electricity trader, was within the jurisdiction of this Commission or it could be settled through adjudication by the Arbitral Tribunal. The other judgment on which reliance has been placed is of the Appellate Tribunal in Appeal No 15/2011, where the question was whether the Haryana Electricity Regulatory Commission had jurisdiction to adjudicate upon the disputes between the generating company and the deemed distribution licensee. In both these cases, the generating companies were involved in the dispute. In the case before us, the dispute does not involve the generating company. Therefore, ratio of these two judgments does not apply to the facts of the case on hand. The third judgment referred to by the learned counsel was also decided by the Appellate Tribunal in Appeal No 151/2008. The dispute in this case 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.

12. For the foregoing reasons, the present dispute is 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**

