

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 253/MP/2012**

**Sub:** Petition under Section 79 of the Electricity Act, 2003 pertaining to adjudication of issues relating to Power Purchase Agreement between PTC India Limited and Lanco Budhil Hydro Power private Limited.

Date of hearing : 25.6.2013

Coram : Shri V.S. Verma, Member  
Shri M.Deena Dayalan, Member

Petitioner : PTC India Limited, New Delhi

Respondents : Lanco Budhil Hydro Power Pvt. Ltd., Gurgaon  
Haryana Power Purchase Centre, Panchkula

Parties present : Shri Ravi Prakash, Advocate, PTC  
Miss Puja Priyadarshini, Advocate, PTC  
Shri Deepak Khurana, Advocate Lanco  
Shri Vikas Sharma, Advocate, Lanco  
Shri Prabhat , Lanco  
Shri S.L.Batta, Lanco

**Record of Proceedings**

Learned counsel for the petitioner submitted that the respondent, Lanco Budhil Hydro Power Pvt. Ltd. (LBHPPL) in its written submission has made following main assertions/allegations:

- (i) The present petition has been filed concealing and suppressing the material fact that PTC had already challenged the judgment of APTEL before the Hon`ble Supreme Court;
- (ii) The petitioner has made a false and misleading statement that at each stage, PTC`s submissions have been that either of the regulatory forum have jurisdiction in the matter;

(iii) Petition filed by PTC is hit by doctrine of election – PTC is approbating and reprobating;

(iv) The Limitation Act, 1963 is not applicable to proceedings before CERC;

(v) Present dispute is a purely contractual dispute falling outside the purview of Section 79(1) (f) of the Act.

2. Learned counsel for the petitioner refuted the allegations as under:

(a) There has been no concealment or suppression of material fact regarding the Civil Appeal. The Petitioner has himself apprised the Commission about the filing of the Civil Appeal as is evident from the Record of proceedings dated 20.12.2012.

(b) To substantiate the assertion that PTC had each stage pleaded that either of the regulatory forums shall have jurisdiction, he placed reliance on the written submission filed by PTC before the APTEL and Civil Appeal No. 1054/2012 filed by PTC before Supreme Court.

(c) The Doctrine of Election is not applicable to the present matter for the following reasons:

(i) The rule of the estoppel is not applicable to decision on pure question of law such as invoking the jurisdiction of the court. Learned counsel placed reliance on the judgment of Hon`ble Supreme Court titled as Isabella Johnson Vs. M.A.Susai (Dead) by LRs [(1991) 1 SCC 494];

(ii) It is well settled that the doctrine of election is based on the equitable principle of estoppel and has no application when statutory rights and liabilities are involved. Lerner counsel placed reliance on the judgment in Chhaganlal Keshavlal Mehta Vs Patel Narandas Haribhai [(1982) 1 SCC 223] and P.R.Deshpande Vs. Maruti Balaram Haibatti [(1998) 6 SCC 507];

(d) Section 175 of the Act provides that this Act is in addition to and not in derogation of other Acts. Section 29 (2) of the Limitation Act, 1963 specifies that its applicability under other Acts will be restricted only if it is specifically excluded by that specific Act. APTEL has in various judgments relied upon the provisions of the Limitation Act, 1963.

(e) HPGCL (Respondent No. 2 herein) filed the petition before HERC challenging termination of PPA by LBHPPL. HERC, vide order dated 25.8.2011, held that it has jurisdiction to entertain the present dispute. Aggrieved by the said order dated 25.8.2011, Lanco Budhil filed an Appeal No. 188 of 2011 before APTEL. APTEL vide its order dated 9.8.2012 held that HERC does not have jurisdiction. In light of the said factual position and the settled law that there cannot be a regulatory vacuum and CERC has jurisdiction to adjudicate the matter.

3. In response to Commission`s query as to why the PPA was terminated, learned counsel for the petitioner submitted that Lanco Budhil by its letter dated 18.12.2009 cited the grounds for termination as (i) Delay in finalization of the evacuation system, (ii) Delay in signing of the BPTA, (iii) Delay in obtaining forest clearance, (iv) Increase in minimum flow, (v) Changes due to new hydro policy.

4. In response to Commission`s query as to how the present petition is maintainable during the pendency of the civil appeal before the Supreme Court, learned counsel for the petitioner submitted that the present petition may be kept abeyance till the disposal of the civil appeal before Hon`ble Supreme Court.

5. Learned counsel for the respondent requested for short adjournment to advance its argument, which was allowed.

6. The petition shall be listed for hearing on 25.7.2013.

**By Order of the Commission**

**SD/-**

**(T. Rout)  
Joint Chief (Law)**