

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 33/MP/2012

Coram:

**Dr Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V. S. Verma, Member
Shri M. Deena Dayalan, Member**

Date of Hearing:20.03.2012

Date of Order :08.01.2013

In the matter of

Petition under Section 79 (1) (b), (c) and (f) under the Electricity Act, 2003 and seeking payment of ₹ 124,51,53,525/- along with interest @ 15% p. a. from 19.8.2011 till the date of payment from Punjab State Power Corporation Ltd (PSPCL) for abrupt discontinuance of drawl of Punjab from Baglihar Hydro Electric Project through the petitioner and short payment released by PSPCL amounting to ₹3,88,16.750/- plus Late Payment Surcharge

And in the matter of

PTC India Ltd, New Delhi

Vs

Petitioner

1. Punjab State Power Corporation Ltd
2. Jammu & Kashmir State Power Development Department

Respondents

Parties Present

1. Shri Atul Nanda, Sr.Advocate, PTC (I) Ltd.
2. Shri Ravi Prakash, Advocate, PTC (I) Ltd.
3. Shri Varun Pathak, Advocate, PTC (I) Ltd.
4. Shri Aditya Dewan, Advocate, PTC (I) Ltd.
5. Ms. Ramiza Hakim, Advocate, PTC (I) Ltd.

ORDER

The petition has been filed by PTC India Ltd, Category I inter-State trading licensee, for adjudication of dispute seeking payment of ₹ 124,51,53,525/- with



interest arising out of the alleged for abrupt discontinuance by the first respondent of drawl of 100 MW of contracted power w.e.f. 8.6.2011 and non-payment of trading margin dues amounting to ₹3,88,16.750/-. The petitioner has prayed this Commission to

- A. *Direct Respondent No 1 to compensate the petitioner with a payment of Rs. 124,51,53,626/-;*
- B. *Direct Respondent No 1 to pay interest @ 15% p.a. from 19.8.2011 till the time of receipt of payment;*
- C. *Direct Respondent No 1 to make Outstanding Payment amounting to Rs. 3,88,16,750 plus Late Payment Surcharge as per PSA till the time if receipt of payment.”*

2. The petitioner entered into Power Purchase Agreement dated 13.10.2008 (PPA) for purchase of 225 MW of power from the second respondent, Jammu & Kashmir State Power Development Corporation (JKSPDC) generated at Baglihar Hydro-electric Project for a period of 12 years during the months of November, December, January and February every year for further sale of 150 MW of power outside the State of Jammu and Kashmir. Out of 150 MW of power agreed to be sold outside the State, the petitioner executed Power Supply Agreement dated 19.6.2009 (PSA) with the first respondent for supply of 100 MW of power also for a period of 12 years. Clause 2.2 of Schedule B of PSA *inter alia* 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').

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.

4. The petitioner in its communications dated 9.4.2010 is said to have informed the first respondent that as per clause 2.2 of Schedule B of PSA the trading margin worked out to 11 paisa/kWh calculated on the basis of its purchase price of ₹3.65/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 and raised the invoice dated 10.4.2010 accordingly. The petitioner has alleged that on receipt of the invoice the first respondent informed it (the petitioner) that the long-term rates would apply after the agreement for long-term was signed and thus repudiated the petitioner's claim for trading margin at the rate of 9 paisa/kWh. The petitioner, however, claims to have insisted on payment of trading margin at the rate of 9 paisa/kWh as the power was being supplied under the PSA.

5. The petitioner has further alleged that the first respondent by its letter dated 8.6.2011 informed the petitioner that it had decided to discontinue supply of power from Baglihar HEP contracted through the petitioner. The petitioner has stated that subsequently it came to know that Punjab State Electricity Regulatory Commission in its order passed in January 2011 had not approved PSA and this was the probable reason for the first respondent's letter dated 8.6.2011. The petitioner has alleged that the decision of the State Commission was not conveyed to it immediately, otherwise it would have made arrangements for sale of power to some other State or entity.



The petitioner has claimed that after sustained efforts it was able to sell 100 MW of power to Power Corporation of Karnataka Ltd during the period 16.7.2011 to 31.8.2011 at a price much lower than the price agreed with the first respondent. The petitioner has alleged that it incurred a total loss of ₹ 124,51,53,525/- on account of abrupt refusal by the first respondent to continue to take supply of power. The petitioner has further alleged the first respondent is unjustifiably withholding an amount of ₹3,88,16.750/- due to the petitioner on account of trading margin and has submitted that the withheld amount is payable by the first respondent with Late Payment Surcharge.

6. The petitioner is claimed to have made efforts for resolving the matter and for this purpose claims to have sent a number of communications to the concerned authorities. Hence, the petitioner has filed the present petition.

7. We heard the learned for the petitioner on maintainability of the petition. We have also perused the written submissions filed on behalf of the petitioner and also the judgments/orders filed/relied upon by learned counsel.

8. 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. 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,
- (b) K Ramanathan Vs State of Tamil Nadu (1985) 2 SCC 116,
- (c) PTC India Ltd Vs CERC and Others (2010) 4 SCC 603,
- (d) Appellate Tribunal Judgment dated 4.11.2011 in Appeal No 15/2011 and 52/2011 Lanco Power Ltd Vs HERC and others,
- (e) Appellate Tribunal Judgment dated 23.2.2011 in Appeal No 200 of 2009 Pune Power Development Pvt Ltd Vs KERC and others,
- (f) CERC order dated 22.1.2008 in Petition No 107 of 2007,
- (g) CERC order dated 8.7.2008 in Petition No 107 of 2007,
- (h) Appellate Tribunal Judgment dated 21.7.2011 in Appeal No 151/2008, and
- (i) Renusagar Power Co Ltd Vs General Electric Company and others (1984) 4 SCC 679.

9. 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.”

10. The jurisdiction to adjudicate disputes is conferred on this Commission under clause (f) of sub-section (1) of Section 79 of the Electricity Act when such disputes are relatable to clauses (a) to (d) of that sub-section. The question is whether the dispute raised in the petition can be construed to be falling 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.

11. 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).

12. In the case on hand, the petitioner is an inter-State trading licensee; thus neither a generating company nor the transmission licensee. The first respondent against whom the claim is raised is neither the generating company nor a transmission licensee but is a distribution company. 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 generated at the generating station owned by the second respondent which is a generating company defined under sub-section (28) of Section 2 the Electricity Act. However, there is no dispute with the second respondent which is an intra-State entity and whose tariff is not regulated by this Commission under clause (b) of sub-section (1) of Section 79 of the Electricity 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. The petitioner's grievance arises out of failure of the first respondent to meet obligations of making payments for the electricity supplied or agreed to be supplied by the petitioner as an inter-State electricity trader. The dispute involves adjudication of claim for recovery of the dues and the petitioner has sought enforcement of obligations of the first respondent under an agreement. The dispute is unconnected with power of regulation of this Commission under Section 79 of the Electricity Act. It is purely a contractual dispute. The language of clause (f) of sub-section (1) of Section 79 of the Act does not embrace adjudication of contractual disputes.



13. 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 Electricity 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 power of 'regulation' and held that the power had very wide scope. However, the judgment is not an authority that the 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 Electricity 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 Electricity Act. In *Renusagar Power Company Pvt Ltd (supra)*, the Hon'ble Supreme Court was concerned with interpretation of arbitration clause in an agreement and has nothing to do with 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 Electricity Act under which the State Commission is conferred 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 power of this Commission exercisable under clause (f) of sub-section (1) of Section 79 of the Electricity Act. The power of adjudication of disputes under clause (f) of sub-section (1) of Section 79



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 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 was offshoot of 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.

14. 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/- [M. Deena Dayalan] Member	sd/- [V. S. Verma] Member	sd/- [S. Jayaraman] Member	sd/- [Dr. Pramod Deo] Chairperson
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