

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 154/MP/2015

Subject : Petition under Section 79 (1) (f) of the Electricity Act, 2003 seeking adjudication of dispute between Adani Power Limited and Gujarat Urja Vikas Nigam Limited regarding the payment for electricity supplied by Adani Power Limited prior to Scheduled Commercial Operation Date

Petitioner : Adani Power Limited

Respondents : Gujarat Urja Vikas Nigam Limited

Date of Hearing : **10.12.2015**

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Parties present : Shri Amit Kapur, Advocate, APL
Ms. Poonam Verma, Advocate, APL
Shri Gaurav Dudiya, Advocate, APL
Shri M. G. Ramachandran, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Ms. Poorva Saigal, Advocate, Advocate, GUVNL
Shri S.K. Nair, GUVNL

Record of Proceedings

During the hearing the learned counsel for respondent GUVNL submitted as under:

- (a) The petitioner cannot seek the implementation of the order dated 21.10.2011 passed by the Gujarat Electricity Regulatory Commission (GERC) which has been upheld by the judgment of the Appellate Tribunal dated 4.10.2012 before this Commission, since GERC has no jurisdiction over the petitioner in terms of the findings of this Commission in order dated 16.10.2012 in Petition No. 155/MP/2012.
- (b) In order dated 16.12.2012, this Commission had concluded that after the petitioner executed PPAs with the discoms of Haryana on 7.8.2008, the power to regulate tariff of petitioner came to be vested with this Commission. Accordingly, from 7.8.2008, this Commission has got the jurisdiction over the petitioner instead of GERC. The order dated 21.10.2011 of the GERC is *non est* since GERC had no jurisdiction over the petitioner as on the said date.
- (c) The petitioner cannot rely upon the order of GERC dated 21.10.2011 and/ or the judgment of the Tribunal dated 4.10.2012, since the said order dated 21.10.2011 suffers from want of jurisdiction. It is settled law that lack of jurisdiction can be challenged at any stage of the proceedings, since it goes into the root of the matter. Judgments (of the Hon'ble SC in 2004 8 SCC 706, 2012 12 SCC 573 and AIR 1954 SC 340) referred to.



- (d) The judgment of the APTEL cannot be implemented by this Commission since GERC has no jurisdiction over the petitioner.
- (e) The petitioner is at liberty to file petition before any appropriate forum having jurisdiction for adjudication of the claims, independent of any order of the higher forum. There is pecuniary or territorial jurisdiction involved in the matter.
2. In response the learned counsel for the petitioner submitted as under:
- (a) Since the question of jurisdiction was decided and settled by this Commission only by order dated 16.10.2012, the question of GERC order dated 21.10.2011 being *non est* is incorrect.
- (b) Even otherwise, the petitioner cannot be left without a remedy, after relief was granted to it by GERC order dated 21.10.2011 and the judgment of the Tribunal dated 4.12.2012. The submissions of the petitioner would amount to nullifying the said judgment of the Tribunal.
- (c) This is a case of overlapping jurisdiction which has been settled by this Commission by order dated 16.10.2012 and hence, the question of want of jurisdiction as on GERC order dated 21.10.2011 does not arise. The petitioner had never approached the GERC seeking any reliefs pursuant to this Commission's order dated 16.10.2012.
3. On an observation by the Commission as to whether the relief sought for by the petitioner in the petition would amount to execution of an order passed by GERC, by this Commission, the learned counsel of the petitioner replied in the negative and stated that it had quantified the claims in the petition for adjudication by this Commission.
4. On a specific query by the Commission as to whether the matter, which is pending before the Hon'ble Supreme Court, can be adjudicated at this stage by the Commission, the learned counsel clarified that no stay has been granted by the Hon'ble Court against the judgment of the Tribunal dated 4.12.2012, despite the prayer of GUVNL.
5. On a further query by the Commission as to whether the petitioner is willing to amend the petition for adjudication of the claims, the learned counsel for the petitioner prayed for grant of time to seek instructions. The Commission accepted the prayer of the petitioner and granted two weeks time to amend the petition, if so advised. In case no amendment is filed, the parties shall file their written submissions within one week thereafter.
6. Subject to above, order in the petition is reserved.

By Order of the Commission

-Sd/-
(T. Rout)
Chief (Legal)

