

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 17/MP/2016

Subject : Dispute on the payment of tariff with interest in regard to power station of Neyveli Lignite Corporation Limited, namely NLC TPS I (600 MW), NLC TPS-II Stage-I (3X210MW), NLC TPS-II Stage-II (4X210MW) and NLC TPS I Expn (2X210MW) due to the increase in operation and maintenance expenses incurred by NLC's mines on account of wage revision to employees for the period from 1.1.2007 and pay revision to CISF personnel posted in NLC Mines for the period from 1.1.2006.

Date of hearing : 19.5.2016

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

Petitioner : Neyveli Lignite Corporation Limited

Respondents : TANGEDCO and others

Parties present : Shri M.G. Ramachandran, Advocate, NLC
Ms. Ranjitha Ramachandran, Advocate, NLC
Ms. Anushree Bardhan, Advocate, NLC
Ms. Poorva Saigal, Advocate, NLC
Shri Shubham Arya, Advocate, NLC
Shri Ashwini, NLC
Shri M.T. George, Advocate, KSEB Limited
Shri S.Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

Learned counsel for the petitioner submitted as under:

(a) The Commission vide order dated 12.5.2015 in Petition No. 65/MP/2013 increased operational and maintenance expenses incurred by NLCs mines on accounts of wage revision with effect from 1.1.2007 to 31.3.2009. Accordingly, the petitioner raised the claim along with the interest to the beneficiaries with effect from 9.9.2010 in accordance with Regulation 5 (3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

(b) The Commission vide order dated 11.12.2012 in Petition No. 201/MP/2011, has made the non-payment of interest on the arrears as a special case considering the peculiar circumstances then prevalent. Therefore, the special dispensation with regard to non-payment of interest was on account of the fact that but for a special stipulation contained in the order dated 11.12.2012, the beneficiaries would be liable to pay interest and increase in the capacity charges.

(c) In the subsequent order dated 12.5.2015 In Petition no. 65/MP/2013, there was no stipulation as contained in the earlier order dated 11.12.2012. Accordingly, on the impact and capacity charges payable on account of the increase in the operational and maintenance expenses of mines linked to thermal power plants, interest is payable by the beneficiaries. The Commission's order dated 11.12.2013 allowed NTPC to recover the wage revision amount directly from the beneficiaries without factoring in the variable charge. Therefore, the petitioner is entitled to claim and adjust the interest from the payment, made by the beneficiaries to it.

(d) The States of Puducherry and Karnataka have paid the interest whereas States of Tamil Nadu and Kerala have not made any payments.

2. Learned counsel for TANGEDCO submitted as under:

(a) The present petition is not maintainable. The relief which is prayed for recovery of increase in expenses along with interest was specifically prayed by the petitioner in its affidavit dated 10.10.2014, in the proceedings before the Commission in Petition No. 65/MP/2013 and the same was not granted.

(b) The petitioner should have filed review or appeal against the said order.

(c) According to the petitioner the cause of action for filing the present petition is due to the fact that the beneficiaries for the first time had denied the payment of interest. Whereas the petitioner has already sought the interest in the tariff petition which was refused by the Commission vide order dated 11.12.2012 in Petition No. 201/MP/2011.

3. Learned counsel for KSEB submitted as under:

(a) The Commission's order dated 12.5.2015 in Petition no. 65/MP/2013 is silent on the issue of recovery of the interest charges on account of pay revision arrears or enhanced pay of its employees.

(b) Explanation IV under Section 11 of Code of Civil Procedure provides that "any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit." Therefore, the issue of 'interest' should have

been raised/pleaded by the petitioner. Further, as per Explanation V, if any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused”.

(c) In case of any grievance on the order, the petitioner ought to have sought a review of the order or file an appeal before the Appellate Tribunal for Electricity. Without seeking any of these remedies, the petitioner is now challenging the order under the disguise of raising a claim which is not a part of the order nor was raised by the petitioner in the Petition No. 65/MP/2013.

4. After hearing the learned counsels for the parties, the Commission reserved order in the petition.

By order of the Commission

**SD/-
(T. Rout)
Chief (Law)**