

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 17/MP/2016

Coram:

Shri Gireesh Pradhan, Chairman
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of hearing: 19.05.2016

Date of Order : 30.08.2016

In the matter of:

Dispute on the payment of tariff with interest in regard to Power Station of Neyveli Lignite Corporation Limited (NLC), namely, NLC TPS I (600 MW), NLC TPS II - Stage I (3x210 MW), NLC - TPS II - Stage II (4 x 210 MW) and NLC TPS I Expn (2x210 MW) 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 01.01.2007 and pay revision to CISF personnel posted in NLC Mines for the period from 1.1.2006.

And

In the matter of

Section 79 (1) (f) of the Electricity Act, 2003 for adjudication of the dispute

And in the matter of

Neyveli Lignite Corporation Limited
Neyveli House,
135 EVR Periyar Road,
Kilpauk, Chennai – 600010

- Petitioner

Versus

1. The Chief Engineer/ Planning,
TANGEDCO
144, Anna Salai, Chennai – 600002
2. The Chief Engineer (Commercial)
Kerala State Electricity Board,
Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004.

3. Chief Engineer (Commercial), APPCC, APTRANSCO
Vidyut Soudha, Khairatabad, Hyderabad-500082.
4. Chief Engineer (Commercial),
TSPCC, TSTRANSCO,
Vidyut Soudha, Khairatabad,
Hyderabad-500082.
5. The Director(Commercial) Power Company of Karnataka Ltd,
KPTCL Complex, Kaveri Bhavan,
Bangalore - 560009.
6. The Managing Director, Bangalore Electricity Supply Company
Ltd.,(BESCOM)
Krishna Rajendra Circle,
Bangalore - 560 001.
7. The Managing Director,
Mangalore Electricity Supply Company Ltd, (MESCOM)
Paradigm Plaza, A.B. Shetty Circle , Mangalore - 575 001.
8. The Managing Director,
CESC Mysore (Chamundeshwari Electricity Supply Co. Ltd.)
Corporate Office, No. 927, L.J.Avenue,
New Kantharaj Urs Road, Saraswathipuram, Mysore - 570 009.
9. The Managing Director,
GESCOM (Gulbarga Electricity Supply Company Ltd.)
Main road, Gulbarga, Gulbarga -585 102, Karnataka.
10. The Managing Director,
HESCOM (Hubli Electricity Supply Company Ltd.) Corporate office , P.B.Road,
Navanagar Hubli - 580 025.
11. The Superintending Engineer I,
Puducherry Electricity Department,
137, NSC Bose Salai,Puducherry - 605 001. - Respondents

Following were 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

ORDER

The present petition has been preferred by Neyveli Lignite Corporation Limited (the petitioner) under Section 79(1) (f) of the Electricity Act, 2003 for adjudication of dispute arising out of the respondents not paying or otherwise raising issues on the interest payable on the increase in the tariff of power stations TPS I, TPS-II (Stage- I & II), TPS-1 Expansion due to increase in operational and maintenance expenses of linked mines on account of wage revision from 1.1.2007 for employees of mines and from 1.1.2006 to CISF personnel posted in NLC mines and the consequent impact on variable charges and capacity charges.

2. The petitioner has made following prayers to the Commission in the instant petition:

- a) Hold that the Respondent Beneficiaries are liable to pay the interest on the amount determined by this Hon'ble Commission as payable to the Petitioner - NLC in the Order dated 12.5.2015 passed in Petition No. 65/MP/2013 with effect from 9.9.2010;
- b) Hold that the Petitioner - NLC shall be entitled to adjust the payments made by the Respondent beneficiaries to NLC from time to time based on the provisions of and the priority clause set out in the Power Purchase Agreement;
- c) Direct the Respondent Beneficiaries to duly pay and discharge the interest amount claimed by the Petitioner -NLC; and
- d) Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

3. The background of the case and submission of the petitioner is as under:

3.1 The Commission vide Order dated 12.5.2015 in Petition No. 65/MP/2013, had decided for increase in the operational and maintenance expenses incurred by NLC's Mines on account of wage revision with effect from 1.1.2007 to 31.3.2009 and other pay hikes to the employees (Executive and Workmen) linked to NLC's Power Station, namely, NLC TPS I (600 MW), NLC TPS II -Stage I (3x210 MW), NLC - TPS II - Stage II (4 x 210 MW) and NLC

TPS I Expn (2x210 MW) and pay revision to CISF personnel posted in NLC Mines with effect from 1.1.2006 to 31.3.2009.

3.2 The Commission allowed the petition with the following directions:

"Accordingly, the petitioner is directed to calculate the impact on variable charge for the tariff period 2006-09 and capacity charge and variable charge in 2009-14 for its different generating stations due to increase in wage revision for Mines and accordingly, adjust tariff as approved by the Commission for NLC TPS-1, NLC TPS-II (Stage-I and Stage-II) and NLC TPS-I (Expansion).."

3.3 Pursuant to the above, NLC proceeded to raise the claim allowed along with interest with effect from 9.9.2010, i.e., the date of disbursement of the wage revision arrears on the Respondent -Beneficiaries by raising necessary debit notes.

3.4 As per petitioner, the claim for interest made was consistent with the provisions of the Regulation 5 (3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

3.5 In an earlier Order dated 11.12.2012 passed in Petition No. 201/MP/2011 dealing with the increase in the Operational and Maintenance Expenses on account of wage revision from 1.1.2007 in respect of NLC TPS I Expansion (2x210 MW) and the impact of capacity charges, the Hon'ble Commission in Para 20, inter alia, held as under:

"20. The case as made out by the petitioner is similar to the case of impact of wage revision on the various thermal power stations of NTPC which has been decided by the Commission vide its order dated 12.10.2012. Relevant portion of the said order is extracted as under:

"17. The Commission has allowed the benefit of wage revision in the O & M norms for 2009-14 considering increase in salary and wages to the extent of 50%. The relevant provision in the Statement of Reasons to the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2009 dated 3.2.2009 is extracted as under:

"19.10 The CPSU regulated by us were asked to make their estimation of hike on account of revision of scales of pay. The hikes on account of revision of scales of pay estimated by some of the CPSU's are as follows:

NTPC	56%
Power Grid	70%
NLC	73%
NEEPCO	70%

The estimates submitted by NLC and NEEPCO were not supported by the calculations. The estimates of NTPC and Power Grid were however, gone into and it was observed that the increase includes PRP and allowances in excess of 50% of the basic. Further certain facilities like school, hospital facilities etc. at site were not monetized. On all these consideration, estimates of CPSU's appears to be on higher side. Commission after due consideration of various aspects covered in the implementation of pay revision has come to a conclusion that a uniform normative increase of 50% in employee cost would be just and reasonable for all CPSU's."

" ..it is noted that the Commission had allowed only normative increase of 50% of the employee cost for all PSUs during the 2009-14 period. We are of the views that it would be just and reasonable if the same principle is adopted to consider the increase in salary and wages of CPSUs including the petitioner. Accordingly, we direct the further period

1.1.2007 to 31.3.2009, the actual increase in employee cost on account of wage revision is allowed which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006. In so far as increase in the salary of the CISF personnel posted at NTPC stations and the employees of Kendriya Vidyalaya are

concerned, the increase in salary shall be on actual basis and shall be a pass through to the beneficiaries.

18. In exercise of our power to remove difficulty under Regulation 12 of the 2004 Tariff Regulations, we allow the above increase in the employee cost of NTPC as additional O&M Charges. However, the arrears shall be paid by the beneficiaries in 12 equal monthly installments during the year 2013-14 in addition to the OEM Charges as per the 2009 Tariff Regulations. Keeping in view of the distance of time we order that as a special case, no interest shall be charges on the arrear which will benefit the consumer. In our view, this arrangement will protect the interest of both the petitioner and the beneficiaries".

- 3.6 Petitioner has submitted that the above stipulation in regard to non-payment of interest on the arrears was made by the Hon'ble Commission as a special case considering the peculiar circumstances then prevalent. Petitioner has further submitted that the very fact that the Hon'ble Commission was pleased to make a special dispensation in regard to non-payment of interest was on account of the fact that but for the specific stipulation contained in the Order dated 11.12.2012, the beneficiaries would be liable to pay interest on the amount held to be payable and the consequent increase in the capacity charges consistent with the Regulation 5 (3) of the Tariff Regulations, 2009.
- 3.7 Petitioner has submitted that in the subsequent Order dated 12.5.2015 passed in Petition No. 65/MP/2013, there has been no stipulation as contained in the earlier Order dated 11.12.2012 and accordingly on the impact/additional variable & capacity charges payable on account of the increase in the Operational and Maintenance Expenses of mines Linked to Thermal Power Plants, the interest is payable by the beneficiaries.
- 3.8 Whereas in the Order dt. 12.05.2015 in Petition No. 65/MP/2013 the Hon'ble Commission in para 21 directed to calculate the impact on variable charge for the tariff period 2006-09 and

capacity charge and variable charge in 2009-14 for its different generating stations due to increase in wage revision for Mines as under:

21. Accordingly, the petitioner is directed to calculate the impact on variable charge for the tariff period 2006-09 and capacity charge and variable charge in 2009-14 for its different generating stations due to increase in wage revision for Mines and accordingly, adjust tariff as approved by the Commission for NLC TPS-I, NLC TPS-I I (Stage-1 and Stage-II) and NLC TPS-I (Expansion).

4 The respondent KSEB vide affidavit dated 25.04.2016 has submitted a reply to the petition.

KSEB in the reply, has prayed before the Commission:

- *To dismiss of the petition filed by NLC in view of the fact that the petitioner is trying to reopen an issue which has already attained finality as per the orders of the commission and hence is barred by res judicata and hence petition is not maintainable.*

- *To issue necessary directions to the petitioner to revert the action of having adjusted the illegal claim of interest on wage revision on the energy charge bill of the petitioner and withdraw the illegal claims on interest on wage revision and surcharge claim.*

5 KSEB has further submitted as below:

"It is submitted that the petitioner by way of filing the instant petition is trying to challenge the order dated 12-5-2015 of Hon'ble Commission in Petition No.65/MP/2013. It is submitted that the petitioner has no right to challenge the order of Hon'ble Commission by filing a miscellaneous petition. Had the petitioner got any grievance on the order of Hon'ble Commission, the petitioner ought to have sought a review of the order issued by Hon'ble Commission as per the appropriate procedures, or file an appeal under section 111 of the Electricity Act. However, the petitioner has neither sought a review of the order of Hon'ble

Commission nor filed any appeal. 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 of Hon'ble Commission nor was raised by the petitioner in the said petition no.65/MP/2013."

"From the plea of the petitioner, it is evident that the petitioner, in the instant petition is trying to reopen an issue which has already attained finality as per the various orders of Hon'ble Commission , by wrongly invoking the provisions of Regulation 5(3) of the CERC (Terms and Conditions of Tariff) Regulations, 2009 which is not relevant in the instant case."

"Hon'ble Commission has issued the order dated 12-5-2015 in Petition No.65/MP/2013 in line with its earlier orders on wage revision for other generating stations, and the order has attained finality. As per the orders issued by Hon'ble Commission, interest on wage revision arrear is not recoverable from beneficiaries with a view to protect the interest of consumers considering the provision under section 61 of the EA,2003."

"It is additionally submitted that the petitioner had not made any claim for interest on wage revision in the original petition filed before this Hon'ble Commission and Hon'ble Commission has also not issued any directions on recovery of interest on wage revision from beneficiaries, keeping in view the interest of the consumers. Thus, the petitioner is estopped from raising the claim of interest at this stage."

"The petitioner in the instant petition is trying to reopen an issue which has already attained finality as per the orders of Hon'ble Commission as submitted above, by wrongly interpreting the provisions of Regulation 5(3) of the CERC (Terms and Conditions of Tariff) Regulations, 2009."

In this regard, it is submitted that the petitioner is not eligible to raise any claim of whatsoever nature from the beneficiaries without clear mandate from this Hon'ble Commission. Section 61 and 79 of the EA,2003, prescribes the function and role of Central Electricity Regulatory

Commission in framing regulations and in regulating tariff of Central Generating stations and stations having composite scheme of supply. In exercise of powers under section 61 and 79 of the EA,2003, Hon'ble Commission has notified tariff regulations for the period 2004-09 and 2009-14."

"In the tariff regulations notified by Hon'ble Commission , the O&M expenses are already specified for the control period. There is no provision in these tariff regulations, enabling the recovery of wage revision arrear from the beneficiaries over and above the specified O&M expenses."

"As the claim of wage revision arrear over and above the normative is not in line with any of the provisions of the terms and conditions of tariff regulations issued by Hon'ble Commission, Hon'ble Commission in order to address the issue of all Central Generating Stations has allowed the recovery of wage revision arrear by invoking the 'Power of Removal of difficulties' available in the said regulations. However, in view of the fact that the claim on interest on wage revision arrear will put onerous burden on the consumers, Hon'ble Commission has consistently through various orders disallowed the recovery of interest on wage revision arrear."

"The petitioner can recover from beneficiaries only those claims that are approved by Hon'ble Commission. The claim of interest on wage revision arrear is not approved by Hon'ble Commission and hence the petitioner has no right to claim the same from beneficiaries."

"The petitioner is trying to circumvent these clear legal provisions by wrongly interpreting Regulations 5(3) of the CERC (Terms and Conditions of Tariff) Regulations, 2009 for claiming interest on wage revision arrear. Regulation 5(3) of the CERC (Terms and Conditions of Tariff) Regulations, 2009 deals with provisional billing as per tariff for the previous control period until tariff for the relevant control period is determined by Hon'ble Commission and adjusting the shortfall or excess recovery due to such provisional billing, along with applicable interest rates."

Regulation 5(3) of the CERC Terms and Conditions of Tariff Regulations, 2009 is extracted below.

"(3) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the 2[transmission customers] with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance these regulations;

Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the rate equal to short-term Prime Lending Rate of State Bank of India on the 1st April of the concerned/respective year."

Provisional billing becomes applicable only in cases where approved tariff orders of Hon'ble Commission are not available. Once Hon'ble Commission issues a final order on tariff for a station, the billing based on the final tariff order becomes a final bill. Provisional billing becomes applicable in case of new generating stations till the approval of the tariff of the station by the Hon'ble Commission after due prudence check. In case of existing generating stations, provisional billing becomes applicable, when new tariff regulations are notified for the new tariff period and tariff orders based on new tariff regulations are not yet issued."

"The claim in the petition no.65/MP/2013 includes the differential claim in energy charges for the tariff period 1/1/2007 to 31/3/2009 and the capacity charge revision for the period 2009-14 consequent to wage revision implemented by the petitioner. However, the final tariff in accordance with the notified regulations of the petitioner's

generating stations were already determined by Hon'ble Commission and has been realized by the petitioner well before raising the present disputed demand."

"In the case of NLC's generating stations, the tariff for the NLC TPS-1 Expansion project for the period 2004-09 was approved by Hon'ble Commission vide the order dated 23-3-2007 in Petition No.68/2005 and subsequently had approved final tariff vide order dated 28-5-2008 in Petition No. 126/2007. The tariff of NLC TPS II Stage-I and II for the period 2004-09 was approved by Hon'ble Commission provisionally vide order dated 4-6-2008 in Petition no. 118/2007 The final tariff of NLC TPS -II Stage-1 and 2 was approved by Hon'ble Commission vide order dated 30-12-2009 in Petition No.11/2009. Similarly, the final tariff of NLC TPS-1 Expansion for the period 2009-14 was approved by Hon'ble Commission vide order dated 23-3-2011 in Petition No.230/2009 and that of NLC TPS-II Stage-I and II vide order dated 27-6-2011 in Petition No.231/2009. The difference between the provisional and final tariff had already been claimed and recovered by M/s.NLC from beneficiaries along with interest."

"Having raised all the claims by the petitioner based on final tariff orders, the billing by the petitioner was final and not provisional. Hence the present claim of the petitioner on interest on wage revision for the period from 1/1/2007 is not in line with the provisions of Regulation 5(3) of the CERC Terms and Conditions of Tariff) Regulations, 2009."

"As already submitted the order of Hon'ble Commission dated 12-5-2015 in Petition No.68/MP/2013 has attained finality. The petitioner is wrongly relying on Regulation 5(3) to reopen the matter, which is in effect a challenge of the order of Hon'ble Commission. The claim of interest was not even a prayer in Petition 65/MP/2013 and the petitioner is estopped from raising such a claim at this stage."

"Claim of interest on the wage revision arrear which was not a prayer of the petitioner in the original petition and not ordered by Hon'ble Commission vide the order dated 12-5-2015 in Petition No.65/MP/2013 is not legal and hence is barred by res judicata and hence the petition

is not maintainable. KSEB Ltd. humbly request Hon'ble Commission to dismiss the petition considering the above."

"KSEB Ltd. may also bring to the kind attention of Hon'ble Commission that in addition to raising an illegal claim, the petitioner has taken adverse step of adjusting the illegal claim of interest on wage revision in the monthly energy bill of the petitioner for the month of August 2015, leading to outstanding energy bill payment and surcharge claim of the order of Rs.19 Lakhs. This action of the petitioner in deducting claims not ordered by Hon'ble Commission, is illegal. KSEB Ltd. humbly request Hon'ble Commission to intervene and issue necessary directions to the petitioner for reverting the adverse action taken by the petitioner."

6 Submission by Respondent No. 1 TANGEDCO:

The respondent TANGEDCO has submitted its reply to the petition vide affidavit dated 16.04.2016 in following lines:

"It is submitted that the present petition filed by the petitioner is not maintainable. The petitioner is praying for a relief which was specifically prayed for in its affidavit dated 10.10.2014, in the proceedings before this Hon'ble Commission, in 65/MP/2013 and not granted in the order dated 12.05.2015 in 65/MP/2013."

"The petitioner intentionally did not bring on record prayer (c) made by it in its affidavit dated 10.10.2014 in 65/MP/2013 and filed this miscellaneous petition stating that the cause of action arose only when the answering respondent and some other respondents refused to pay interest quoting the orders of this Hon'ble Commission dated 11.12.2012."

"The petitioner did not file appeal or revision against the orders passed by this Hon'ble Commission in 65/MP/2013. The order had become final. In the circumstances the present petition is an abuse of process of law, liable to be dismissed with exemplary cost. The cost

of filing the present petition should be borne by the petitioner and should not be passed on to the beneficiaries.

The petitioner did not file appeal or revision against the orders passed by this Hon'ble Commission in 65/MP/2013. The order had become final. In the circumstances the present petition is an abuse of process of law, liable to be dismissed with exemplary cost. The cost of filing the present petition should be borne by the petitioner and should not be passed on to the beneficiaries."

- 7 We have examined the submissions of the petitioner and respondents. In case of O&M expenses incurred by NLC Mines and wage revision pertaining to employees the Commission in the order dated 12.05.2015 in Petition No. 65/MP/2013 has directed the following:

Quote:

20. Ministry of Coal vide its order dated 4.7.2013 has allowed recovery of increase in cost due to wage revision limited to 50% of the salaries and wages (Basic+ DA) of the Employees of Mines as on 31.12.2006 and actual increase in case of CISF personnel deployed in NLC Mines. Accordingly, we direct that for the period 1.1.2007 to 31.3.2009, the actual increase in NLC employees cost on account of wage revision is allowed which shall be limited to 50% of the salary and wages (Basic + DA) of the employees of the petitioner company as on 31.12.2006. In so far as increase in the salary of the CISF personnel deployed in NLC mines, the increase in salary shall be on actual basis and shall be a pass through to the beneficiaries.

Accordingly, the petitioner is directed to calculate the impact on variable charge for the tariff period 2006-09 and capacity charge and variable charge in 2009-14 for its different generating stations due to increase in wage revision for Mines and accordingly, adjust tariff as approved by the Commission for NLC TPS-I, NLC TPS-II (Stage-I and Stage-II) and NLC TPS-I (Expansion).

- 8 The Commission vide its order dated 12.10.2012 of NTPC decided:

18. In exercise of our power to remove difficulty under Regulation 12 of the 2004 Tariff Regulations, we allow the above increase in the employee cost of NTPC as additional O&M Charges. However, the arrears shall be paid by the beneficiaries in 12 equal monthly installments during the year 2013-14 in addition to the OEM Charges as per the 2009 Tariff Regulations. Keeping in view of the distance of time we order that as a special case, no

interest shall be charges on the arrear which will benefit the consumer. In our view, this arrangement will protect the interest of both the petitioner and the beneficiaries".

- 9 The Commission did not allow any interest on the arrear as a special case in order dated 11.12.2012 passed in Petition No. 201/MP/2011. Though the Commission in its order dated 12-05-2015 in Petition No. 65/MP/2013 did not specify anything on interest payment, the conclusion drawn by the petitioner that absence of any explicit mention about non-payment of interest in the above order dated 12-05-2015 gave the petitioner a liberty to claim interest, in our opinion, is not correct. Keeping in mind the benefit of the beneficiaries, the intent of the Commission for not allowing such interest payment, in this case too, is similar to what was held in order dated 11.12.2012. We therefore are not inclined to allow any such interest payment.
- 10 The petition is disposed accordingly.

Sd/-	Sd/-	Sd/-	Sd/-
(Dr. M.K.Iyer) Member	(A.S.Bakshi) Member	(A.K. Singhal) Member	(Shri. Gireesh Pradhan) Chairman