

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

DATE OF HEARING: 19.4.2018

Petition No.305/MP/2015

Petitioner : Adhunik Power and Natural Resources Limited (APNRL)

Respondents : West Bengal State Electricity Distribution Company Limited
and Others

Subject : Petition under Section 79 of the Electricity Act, 2003 read with the provisions of the Power Supply Agreement dated 5.1.2011 and Power Purchase Agreement dated 25.3.2011 for directions to make Energy Charges as pass through based on the actual fuel cost incurred by the Petitioner

Petition No. 255/MP/2017

Petitioner : Adhunik Power and Natural Resources Limited

Respondents : West Bengal State Electricity Distribution Co. Ltd. and Others

Subject : Petition under Section 79 (1)(b) and 79 (1)(f) of the Electricity Act, 2003 read with Article 10 of the PPA seeking compensation on account of events pertaining to "Change in Law" as per the Power Purchase Agreement (PPA) dated 25.3.2011 executed between the Petitioner and the Respondent No. 2 and as per the terms of the Power Supply Agreement (PSA) dated 5.1.2011 executed between Respondent No.1 and Respondent No. 2.

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Parties present : Shri S.B. Upadhayay, Senior Advocate, APNRL
Shri Nishant Kumar, Advocate, APNRL
Shri Anish Chakraborty, APNRL
Shri Vishrov Mukherjee, Advocate, WBSEDCL
Shri Janmali M., Advocate, WBSEDCL
Ms. Catherine Ayellore, Advocate, WBSEDCL
Shri Aashish Anand Bernad, Advocate, PTC India
Shri Paramhans, Advocate, PTC India
Shri M.G. Ramachandran, Advocate, Prayas
Ms. Ranjitha Ramachandran, Advocate, Prayas
Ms. Anushree Bardhan, Advocate, Prayas
Shri S. Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

At the outset, learned counsel for WBSEDCL submitted that the present petitions filed under Section 79 of the Electricity Act, 2003 are not maintainable as concurrent jurisdiction of Central Commission and State Commission on tariff related matters is beyond the scope and scheme of the Electricity Act, 2003. Learned counsel for WBSEDCL further submitted as under:

(a) The Petitioner has the arrangement for supply of 100 MW power to WBSEDCL, 122.85 MW power to Jharkhand State Electricity Board and 100 MW power to TANGEDCO.

(b) The Petitioner had approached the Jharkhand State Electricity Regulatory Commission (JSERC) for determination of tariff for the Control Period, namely financial years 2012-13 to 2015-16. Since the Petitioner has already approached the JSERC for determination of tariff, there is no question of composite scheme which would bring the Petitioner under the regulatory purview of the Central Commission and cannot be permitted to invoke concurrent jurisdiction of both the Central Commission as well as the State Commission.

(c) As per Section 64(5) of the Electricity Act, 2003, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. However, if the parties wilfully approach the State Commission, then they are clearly opting out of the scope of Section 79 (1)(b) of the Electricity Act, 2003. In support of its contention, learned counsel relied upon the judgement of Hon'ble Supreme Court in Energy Watchdog v. CERC and another [Civil Appeal Nos. 5399-5400 of 2016].

(d) Section 64(5) of the Electricity Act, 2003 talks about the locus. If any party has the locus to approach the State Commission, it can approach the State Commission for determination of tariff. Therefore, there is no requirement of mutual consent or agreement between the parties.

(e) Learned counsel requested the Commission to dismiss the present petition on the ground of maintainability.

2. Learned senior counsel for the Petitioner submitted that the Petitioner has implied the beneficiaries as per the Commission's direction dated 22.12.2017. Learned senior counsel for the Petitioner further submitted as under:

(a) Since, the Petitioner is supplying power to more than one State from the same generating station, it qualifies as composite scheme under Section 79 (1)(b) of the Electricity Act, 2003 and hence within the jurisdiction of the Central Commission.

(b) Section 64(5) of the Electricity Act, 2003 applies only in mutual consent/ agreement between the parties. Therefore, Section 64(5) can only apply if, the

jurisdiction otherwise being with the Central Commission alone, by application of the parties concerned, jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. In support of its contention, learned senior counsel relied upon Para 29 of the judgement of Hon'ble Supreme Court in Energy Watchdog v. CERC [Civil Appeal Nos. 5399-5400 of 2016].

(c) Learned senior counsel relied upon the judgment of Hon'ble Supreme Court in PTC India Ltd. v. GERC [Civil Appeal No.7524 of 2012] and submitted that the issue of jurisdiction needs to be finally decided along with merits of the matter to enable expeditious adjudication.

(d) Learned senior counsel requested for time to file its rejoinder to the reply of WBSEDCL in Petition No. 255/MP/2017.

3. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed the Petitioner to file written submission on the issue of maintainability on or before 9.5.2018, with an advance copy to the respondents, who may file their response, if any, by 16.5.2018. The Commission directed the Petitioner to file its rejoinder to the reply of WBSEDCL in Petition No. 255/MP/2017 by 9.5.2018 with an advance copy to the respondents.

4. The Commission directed that due date of filing the written submissions and rejoinder should be strictly complied with. No extension shall be granted on that account.

5. Subject to above, the Commission reserved the order in Petition Nos. 305/MP/2015 and 255/MP/2017 on the issue of maintainability.

By order of the Commission

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