

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 12th February, 2025

In the matter of:

Petition No. 100/MP/2021 with IA No. 94/2023

Petition under Section 142 of the Electricity Act, 2003 read with Regulations 111, 113, and 119 of the Conduct of Business Regulations, 1999 for the execution of Order dated 13.1.2020 passed by this Hon'ble Commission and directions and initiation of appropriate action against the Respondent for non-compliance of the directions issued under Order dated 13.1.2020 in Petition No. 78/MP/2018.

And

In the matter of:

Petition No. 102/MP/2021 with IA No. 97/2023

Petition under Section 142 of the Electricity Act, 2003 read with Regulations 111, 113, and 119 of the Conduct of Business Regulations, 1999 for the execution of Order dated 10.1.2020 passed by this Hon'ble Commission and directions and initiation of appropriate action against the Respondent for non-compliance of the directions issued under Order dated 10.1.2020 in Petition No. 236/MP/2017.

And

In the matter of:

Damodar Valley Corporation
DVC Towers, VIP Road, Kolkata

...Petitioner

Vs

Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur, Jabalpur - 482 008

...Respondent

And

In the matter of:

Petition No. 308/MP/2023 with IA Nos. 77/2023, 78/2023, 95/2023 & 96/2023

Madhya Pradesh Power Management Company Limited
Shakti Bhawan, Rampur,
Jabalpur - 482 008

...Petitioner

Vs

Damodar Valley Corporation
DVC Towers, VIP Road, Kolkata

...Respondent



Parties Present:

Shri Venkatesh, Advocate, NTPC
Shri Nihal Bharadwaj, Advocate, DVC
Shri Harsh Vardhan, Advocate, DVC
Shri G. Umamathy, Senior Advocate, MPPMCL
Shri Ashish Anand Bernard, Advocate, MPPMCL
Shri Rajiv Shankar Dwivedi, Advocate, MPPMCL
Shri Sushant Sarkar, Advocate, MPPMCL
Shri Paramhans Sahani, Advocate, MPPMCL

ORDER

Background

Petition No. 236/MP/2017 and Petition No. 78/MP/2018 were filed by the Petitioner, DVC, under Section 79(1)(f) of the Electricity Act, 2003, seeking the following reliefs:

Petition No.236/MP/2017

(a) Declare that MPPMCL shall have the obligation to pay for the contracted capacity in terms of the provisions of the PPA dated 14.5.2007 read with the Regulations and Orders of this Commission for the entire duration of the PPA and declare that MPPMCL shall not be entitled to treat the PPA having been terminated;

(b) Declare that DVC shall be entitled to interest for the delayed payment at the rate of 1.5% per month as provided in the Tariff Regulations of this Commission; (c) Direct MPPMCL to pay the outstanding amount due as on date together with interest at the rate of 1.5% per month and further pay all recurring amounts due to MPPMCL in failure;

(d) Pass interim orders in terms of the prayer (c) above

Petition No.78/MP/2018

(a) Declare that the Respondent-MPPMCL shall have the obligation to pay for the contracted capacity in terms of the provisions of the PPA dated 3.3.2006 read with the Regulations and Orders of this Commission;

(b) Declare that MPPMCL shall not be entitled to treat the PPA having been terminated from February 2018 contrary to the terms of the PPA dated 3.3.2016;

(c) hold that the Respondent-MPPMCL liable to pay the Tariff to the DVC namely the fixed charges and Energy Charges for the quantum of electricity scheduled by MPPMCL and deemed fixed charges for the quantum of electricity declared available by the DVC but not scheduled by the Respondent-MPPMCL;

(d) Direct that the Respondent-MPPMCL to pay the amount of Rs. 437.32 crore due and outstanding to the DVC as on 1.2.2018;

(e) Award the cost of proceedings

2. The Commission, vide a common order dated 26.7.2019, disposed of the said petitions, holding that the Petitions are maintainable and the Commission has the jurisdiction to adjudicate the disputes raised by the Petitioner, in terms of Section 79 (1)



(f) read with Section 79 (1)(a) of the 2003 Act. Against this common order dated 26.7.2019, the Respondent MPPMCL filed Appeal No. 309/2019 before the Appellate Tribunal for Electricity (APTEL). During the pendency of this appeal, the Commission, after hearing the parties on merits, disposed of the Petition Nos. 236/MP/2017 and 78/MP/2018 vide orders dated 10.1.2020 and 13.1.2020, respectively, granting the following relief(s):

Petition No.236/MP/2017

“(a) Proviso to Section 34 and Section 14 (1)(d) of the Specific Relief Act do not stand on the way to grant the relief sought by DVC in the present petition.

(b) The termination notice dated 2.5.2017 is not in accordance with the provisions of the PPA dated 14.5.2007 and is accordingly, held to be void. Consequently, MPPMCL is liable to schedule the contracted capacity and make payment therefor in terms of the PPA dated 14.5.2007 to DVC.

(c) MPPMCL is directed to pay the capacity charges to DVC w.e.f. 15.5.2017 with applicable rate of interest as per the Tariff Regulations of the Commission till the payment of outstanding dues are made

Petition No.78/MP/2018

(a) Proviso to Section 34 and Section 14 (1)(d) of the Specific Relief Act do not stand on the way to grant the relief sought by DVC in the present petition.

(b) The termination notice dated 28.2.2017 is in accordance with the provisions of Recital D of the PPA dated 3.3.2006 and accordingly, the PPA qua the contracted capacity from MTPS shall stand terminated w.e.f. 1st March, 2018. However, the PPA dated 3.3.2006 qua the contracted capacity from CTPS is still valid and the termination notice is held to be void in respect of contracted capacity from CTPS. Consequently, MPPMCL is liable to schedule the contracted capacity from CTPS and make payment therefor in terms of the PPA dated 3.3.2006 to DVC

(c) MPPMCL is directed to pay the outstanding dues to DVC in terms of our order with applicable rate of interest as per the Tariff Regulations of the Commission till the payment of outstanding dues are made”

3. Against the aforesaid orders dated 10.1.2020 and 13.1.2020, MPPMCL filed appeals (Appeal No. 93/2020 and Appeal No. 94/2020, respectively) before the APTEL. During the pendency of the said appeals, Petitioner DVC filed Petition No. 100/MP/2021 and Petition No.102/MP/2021 seeking, amongst others, directions on the Respondent MPPMCL to comply with the Commission’s order dated 13.1.2020 (in Petition No.78/MP/2018) and order dated 10.1.2020 (in Petition No.236/MP/2017) and/or to initiate proceedings against the Respondent, under Section 142 of the Electricity Act 2003, for non-compliance of the aforesaid orders.



4. While so, Petition No.308/MP/2023 (Dy no.436/2023) was filed by the Respondent MPPMCL (in terms of APTEL's order dated 26.9.2023) along with IAs (77 & 78/2023) to take on record the Execution Petitions filed by DVC and also seeking (i) ex-parte stay of the invoices issued by DVC (ii) directing DVC to ensure that there is no restriction of power supply in view of uploading of bills in the PRAAPTI portal, and (iii) direct DVC to remove these invoices from the said portal with immediate effect. While the IA for taking on record the execution petition was allowed by the Commission, vide its order dated 4.10.2023, the other IA was disposed of by the Commission in the same order, directing MPPMCL to make payments to DVC as per bills raised by it on PRAAPTI portal within the extended trigger date of 7.10.2023. Against this order, MPPMCL filed an appeal (DFR No.573/2023) before APTEL, and the APTEL, vide its order dated 10.10.2023, set aside the Commission's order dated 4.10.2023 and remanded the matter with directions to pass order afresh in the IA in accordance with law.

5. In terms of the above, Petition No.308/MP/2023 (along with IAs) was clubbed with Petition Nos.100/MP/2021 and 102/MP/2021 and listed for hearing on 18.10.2023, and the Commission, vide ROP of the hearing, directed MPPMCL to make certain payments to DVC, after extending the trigger dates of the invoices. The parties were also granted liberty to explore the possibilities for an amicable settlement, on the outstanding dues payable by MPPMCL.

6. Thereafter, MPPMCL filed IA No. 94/2023 (in Petition No. 100/MP/2021) and IA No. 97/2023 (in Petition No. 102/MP/2021) seeking reference of the disputes arising out of the termination of the PPAs dated 3.3.2006 and 14.5.2007, to mediation, in accordance with the law. Though the Petitions, along with the IAs, were listed on various dates, the matter could not be finally heard.



7. Meanwhile, APTEL vide its judgment dated 28.8.2024 (in Appeal No. 309/MP/ 2019) set aside the Commission's order dated 26.7.2019, as under:

"37. In the instance case, there is undisputedly a valid and subsisting arbitration clause contained in the PPAs. We have already held that the dispute between the parties primarily relates to the termination of the PPAs which is a non-tariff dispute and thus, referable to arbitration.

38. Hence, we find the impugned order of the Commission unsustainable in the eyes of law. Same is hereby set aside. The appeal stands allowed.

39. The Commission, shall within one month from this order, appoint an arbitrator and refer the dispute to him for adjudication as per law"

8. The above judgment was challenged by DVC before the Hon'ble Supreme Court vide Civil Appeal No.10480/2024, and the Hon'ble Court dismissed the same vide its order dated 23.9.2024, holding as under:

"We do not find any good ground and reason to interfere with the impugned judgment in view of the difference of language in Section 79(1)(f) of the Electricity Act, 2003, from Section 86(1)(f) of the 2003 Act. The power of the Central Electricity Regulatory Commission under 79(1)(f) is different from the discretion exercised by the State Electricity Regulatory Commission under Section 86(1)(f) of the 2003 Act.

The appeal is accordingly dismissed.

In view of the dismissal of the present appeal and with the consent of the learned counsel appearing for the parties who have requested the Court to nominate an Arbitrator, Mr. Justice K.M. Joseph, former Judge of this Court, is appointed as the sole Arbitrator to adjudicate upon the disputes inter se the parties and in terms of the impugned order dated 28.08.2024. The learned Arbitrator will make a declaration in terms of Section 12(5) of the Arbitration and Conciliation Act, 1996. Fourth Schedule to the 1996 Act shall apply"

9. Since the issues raised in Appeal Nos. 93 & 94/2020 (as detailed in para 4 above) were identical to the issue raised in Appeal No.309/2019 regarding the maintainability of the petition before the Commission with reference to the clause pertaining to reference to arbitration, the APTEL, in terms of the decision of the Hon'ble Supreme Court vide judgment dated 23.9.2024, set aside the Commission's orders (10.1.2020 and 13.1.2020) and disposed of the said appeals, vide its judgment dated 8.10.2024, as under:

"8. Considering that the Hon'ble Supreme Court has already settled the law with reference to arbitration vide judgment dated 23.9.2024 as quoted above, the appeals found to have merit and are allowed. The order of the Commission is set aside with the direction to the Commission to appoint an Arbitrator within one month from date of this Judgement and refer the disputes involved in these two appeals to him for adjudication"



Hearing dated 28.1.2025

Petition Nos. 100/MP/2021 and 102/MP/2021 with IA Nos 94/2023 & 97/2023

10. During the hearing of the Petitions on 28.1.2025, the learned counsel for DVC submitted that pursuant to the APTEL judgments dated 28.8.2024 (as affirmed by the Hon'ble Supreme Court on 23.9.2024) and 8.10.2024 and since the issues are pending consideration before the Sole Arbitrator, nothing survives in the Petitions filed by the Petitioner, for the execution of the Commission's orders dated 13.1.2020 and 10.1.2020. Accordingly, the learned counsel for the Petitioner prayed that the Petitioner may be permitted to withdraw these Petitions. This was also affirmed by the learned Senior counsel for the Respondent MPPMCL. In view of the submissions of the learned counsel, we permit the Petitioner to withdraw these Petitions. Accordingly, these Petitions are dismissed as 'withdrawn'.

Petition No. 308/MP/2023 with IA Nos. 77/2023, 78/2023, 95/2023 & 96/2023

11. During the hearing, the learned Senior counsel for MPPMCL submitted that the disputes between the parties with regard to the termination of the PPAs, including the payment invoices raised by DVC, are pending consideration of the Arbitrator appointed by the Hon'ble Supreme Court, as stated above. Accordingly, the learned Senior counsel prayed that the present Petition may be disposed of. This was also affirmed by the learned counsel for the Respondent DVC. Keeping in view that the matters are pending consideration of the Sole Arbitrator (appointed by the Hon'ble Supreme Court), the relief(s) sought by the Petitioner no more survive for the consideration of the Commission. The Petition stands disposed of accordingly.

12. The Petitions, along with the IAs, are disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

