

Electricity Regulatory Commission Act, 1998. After repeal of the 1998 Act w.e.f. 10.6.2003, the proceedings were continued under the Electricity Act, 2003.

2. By its order dated 25.11.2005, the Commission had constituted a one-Member Bench (hereinafter "the Bench") headed by Shri Bhanu Bhushan, Member to make appropriate recommendations to the Commission for its consideration and decision in view of the complexities involved, on the dispute raised. After elaborate and detailed inquiry, the Bench made its recommendations by order dated 27.7.2006. The substance of the recommendations made by the Bench is reproduced herein below:

"26. Considering all the above aspects, I consider it fair to stipulate that APSEB/APTRANSCO shall pay interest at a moderate rate of 6% (six percent) per annum, without compounding, on the outstanding amounts as follows:

- (i) On Rs.3075 lakh, from 1.11.1996 to 30.9.1999, i.e. $3075 \times 0.06 \times 35/12 = \text{Rs.}538.12$ lakh.
- (ii) On Rs.1609 lakh, from 1.10.1999 to 30.9.2003, i.e. $1609 \times 0.06 \times 48/12 = \text{Rs.}386.16$ lakh
- (iii) On Rs.191 lakh, from 1.10.2003 to 30.9.2006, i.e. $191 \times 0.06 \times 36/12 = \text{Rs.}34.38$ lakh

"27. I recommend that the above compensation amount, adding to Rs.958.66 lakh shall be paid by APTRANSCO to GRIDCO in three equal instalments, by 31st October, 30th November and 29th December, 2006. The payment for energy exported still outstanding, that is, Rs.191 lakh as per para 23 above, shall be paid by APTRANSCO to GRIDCO latest by 30.9.2006. If any of the above payments are delayed beyond the dates stipulated, APTRANSCO shall be liable to pay further interest @ 1.25% per month of delay on the outstanding amount.

28. Since only GRIDCO has come to the Commission for redressal of its grievance, and it is the party which has suffered the most, I have proposed above that all payments are to be made by APTRANSCO directly to GRIDCO. As per EREB's affidavit dated

29.9.2003, GRIDCO, WBSEB, DVC, BSEB, Sikkim and PGCIL were to receive Rs.1583.5 lakh, Rs.32.9 lakh, Rs.23.4 lakh, Rs.82.2 lakh, Rs.0.7 lakh and Rs.31.3 lakh respectively out of a total outstanding amount of Rs.1754 lakh, as in August 2003, as per EREB account. This was before the receipt of Rs.1418 lakh from APTRANSCO in September, 2003, and its distribution. Member-Secretary, ERPC may, therefore, ascertain if any part of the amount now payable by APTRANSCO should be passed on by GRIDCO to any other constituent and have it ratified by ERPC. GRIDCO should honour the decision of ERPC in this regard.”

3. A copy of the report and recommendations made by the Bench was sent to the parties with a view to affording them opportunity to file their views/comments thereon. APTRANSCO, under its letter No. CE(Comml)/DE-BPP I/Gridco/D. No 221/06 dated 30.8.2006 conveyed its acceptance to the recommendations made by the Bench. The petitioner has also filed its affidavit on 16.10.2006 confirming its acceptance to the recommendations. The petitioner, in its affidavit, has further stated that a sum of Rs.1.91 crore, the principal amount, was received from APTRANSCO by a Demand Draft sent under letter dated 5.10.2006. In the said affidavit, the petitioner has sought directions to Respondent No. 4, West Bengal State Electricity Board (WBSEB) for refund of an amount of Rs.45,49,955/- stated to have been received by the latter in excess.

4. Respondent No. 3, Eastern Regional Power Committee has sought a clarification whether APTRANSCO was required to make payment to PGCIL instead of the petitioner since in accordance with the original agreement, all payments were required to be made to PGCIL, who was to disburse the amount due to each constituent of Eastern Region. A further clarification has been sought whether simple interest @ 6% per annum recommended by the Bench

was payable by any other constituents of Eastern Region, who received amount in excess of its entitlement.

5. We heard the representatives of the parties present at the hearing. No one attended hearing on behalf of WBSEB.

6. For the reasons recorded by the Bench, we accept its recommendations which have also been agreed to by major contesting parties, in terms of which, all payments considered by the Bench are to be made by APTRANSCO to the petitioner directly, without involvement of PGCIL. However, Member-Secretary, ERPC shall ascertain if any part of the payment made by APTRANSCO to the petitioner is payable to any other constituent of Eastern Region and communicate the same to the petitioner, who will honour the decision of Member-Secretary, ERPC as recommended by the Bench and also re-affirmed by learned Counsel for the petitioner at the hearing. It is also clarified that as a corollary of the recommendations made by the Bench, if any of the constituents in Eastern Region had already received any amount in excess over its entitlement, it will pay interest @ 6% per annum from the first day of the month following the month of payment and up to the date the amount is refunded, along with interest.

7. The petition stands disposed of in above terms of the above order.

Sd/-
(A.H. JUNG)
MEMBER
New Delhi dated the 26th October, 2006

Sd/-
(ASHOK BASU)
CHAIRPERSON