

CENTRAL ELECTRICITY REGULATORY COMMISSION

Record of Proceedings

Petition No. 74/2006

- Coram : Dr. Pramod Deo, Chairperson
Shri R.Krishnamoorthy, Member
Shri S. Jayaraman, Member
Shri V.S. Verma, Member
- Date of hearing : 21.4.2009
- Subject : Approval of charges for Unified Load Despatch and Communication (ULDC) Scheme in Eastern Region for the period from 1.9.2005 to 31.8.2020
- Petitioner : Power Grid Corporation of India Ltd, Gurgaon
- Respondents : 1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Kolkata
3. Grid Corporation of Orissa Ltd. Bhubanswar
4. Damodar Valley Corporation, Kolkata
5. Power Deptt., Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
- Parties Present : 1. Shri M.G. Ramachandran, Advocate, Powergrid
2. Ms. Swapna Seshadri, Advocate, Powergrid
3. Shri N. Roy, Powergrid
4. Shri V.V. Sharma, Powergrid
5. Shri M.M. Mondal, Powergrid
6. Shri Sakya Singha Choudhuri, Advocate, WBSEDCL
7. Shri R.B. Sharma, Advocate, BSEB
8. Shri S.R. Sarangi, Gridco

Learned counsel for the petitioner submitted that the West Bengal State Electricity Distribution Company (WBSEDCL) has in its reply raised the question of maintainability of the proceedings and sought to clarify the same. According to learned counsel, the present petition was maintainable under section 28(4) of the Electricity Act, 2003 (the Act) which empowers the Commission to specify the fees and charges in respect to regional load despatch centres. As regards the question of validity of the Electricity (Removal of Difficulty) Sixth Order, 2005 dated 8.6.2005 issued by Central Government in the Ministry of Power, learned counsel for the petitioner submitted that Section 183 of the Act conferred full power on the

Central Government to pass such orders as appeared necessary. Once such an order was passed it became a part of the parent Act and the validity of the order could not be raised in the proceedings before the Commission. Learned counsel submitted that it was well settled that the Commission, a creature of the Act could not question the validity of any statutory order or rules made under the parent Act. He also referred to the practice of the Hon'ble Appellate Tribunal in refraining to entertain the questions of vires in respect of the regulations specified by the Commission. In support of the proposition, learned counsel referred to certain judgments of the Hon'ble Supreme Court, including the judgment in case W.B. Electricity Commission Vs CESC [(2002) 8 SCC 715].

2. As regards submission by WBSEDCL that regulation 86 of the Conduct of Business Regulations, 1999 was not applicable to the instant case, learned counsel for the petitioner submitted that the term "tariff" was not defined in the Act or the regulations. Accordingly, the term must be construed in its generic sense so as to include within its ambit the fees and charges as well. He also invited attention to paras (1) and (2) of the petition which specifically referred to sections 28 and sub-section (1) of 27(A) of the Act. Mere reference to regulation 86 in the title of the petition, according to him, would not affect the validity of the proceedings. As regards the contention that the Commission could not determine the fees and charges under section 28(4) of the Act, learned counsel for the petitioner submitted that powers to determine the fee and charges of the RLDC could be exercised by the Commission even in the absence of the regulations. In support of his contention, the learned counsel cited the decision of the Hon'ble Supreme Court in City Board Mussorie vs UPSEB [(1985) 2 SCC 16]. He submitted that pending finalization of regulations, powers could be exercised by the Commission for determination of fees and charges.

3. Responding to the above, learned counsel for WBSEDCL submitted that regulation 86 of the Conduct of Business Regulations, 1999, does not apply to the instant case because RLDC was neither a generating utility nor a transmission utility. Relying upon the ruling of the Hon'ble Supreme Court in AIR 1958 SC 722, he contended that the role of the petitioner as a transmission utility and as the operator of RLDCs needed to be distinguished. He emphasized that the term "tariff" had definite connotation and had to be understood in the context in which it was used in the Act. Inviting attention to the heading of Part VII of the Act, learned counsel submitted that as per the scheme of the Act, there were only four kinds of tariff as listed in section 62 of the Act. According to him, powers of the Central Commission to determine tariff were confined to the three instances mentioned in section 79(1)(a)(b) and (d). Applicability of the powers for determination of tariff to ULDC scheme, he contended, was not sustainable. He added that powers under section 28(4) could be exercised by the Commission only through regulations specified thereunder.

4. Learned counsel for WBSEDCL submitted that while the regulations framed under section 178 of the Act stood at higher footing, the same status could not be extended to the orders passed under section 183 of the Act. He questioned whether there was any difficulty at all, for the removal of which the order was

passed by the Central Government. While referring to the question of right of way, learned counsel for WBSEDCL submitted that he wanted to seek instructions from the client and accordingly sought time for filing his response together with a compilation of judgments in support of his submissions.

5. Learned counsel for Bihar State Electricity Board (BSEB) adopted the submissions made by the learned counsel for WBSEDCL. He added that the power to determine RLDC fee and charges which were to be exercised through the regulations specified under section 28(4) could not be availed indefinitely in the absence of the regulations.

6. Responding to the submissions on behalf of the respondents, learned counsel for the petitioner submitted that order passed under section 183 of the Act was at par with the rules framed under section 176. He clarified that the Parliament in its wisdom had anticipated that during the first two years, difficulties could surface regarding the application of any of the provisions of the Act and to overcome such a situation, the Central Government had been empowered to make appropriate orders. He also added that the respondents had already agreed to pay fees and charges for RLDC vide para 3.1 of the agreement annexed to the petition as Enclosure 4. He emphasized that the respondents were already availing of the facility and even in equity they were liable to pay for the use of the facility.

7. Learned counsel for WBSEDCL, submitted that the issue involved was of jurisdiction and could not be conferred with the consent of the parties. He added that rights and liabilities of the parties to the above mentioned agreement were distributed among various agencies and he was to ascertain the correct position in this regard.

8. The Commission granted two weeks time for the counsel for WBSEDCL to file his response and the compilation of judgments on which he proposed to base his case, with copies to the petitioner and other respondents.

9. With the above, the Commission reserved its orders in the case.

Sd/=
(K.S. Dhingra)
Chief (Legal)