

CENTRAL ELECTRICITY REGULATORY COMMISSION

Record of Proceedings

PETITION No. 241/2009

Sub: Petition under Sections 142 and 149 of the Electricity Act, 2003.

Petition No. 301/2009

Sub: Petition under Sections 11, 12, 76 and 94 of the Electricity Act, 2003

Date of hearing : 17.12.2009

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member

Petitioner : Bhaskar Sharachi Alloys Limited, Kolkata

Respondents : 1. Damodar Valley Corporation, Kolkata
2. Chairman, Damodar Valley Corporation, Kolkata
3. Chief Engineer (Commercial), Damodar Valley Corporation, Kolkata

Parties present : 1. Shri Amit Kapoor, Advocate for the petitioner
2. Ms. Apoorva Mishra, BSAL
3. Shri Sachin Das, Advocate for DVC

This application has been made for initiation of appropriate proceedings under Sections 142 and 149 of the Electricity Act, 2003 (the Act) against Damodar Valley Corporation, respondent No. 1 herein, for the acts of persistent willful and deliberate violation of the order dated 29.3.2005, 3.10.2006 and 6.8.2009 in Petition No. 66/2005. It has been stated that the respondent have successfully evaded and avoided implementation of the Act for over 6 years since it came in to the effect, rendering the legislation – defunct so far as DVC is concerned. It has been further stated that the first respondent is abusing the process of the Commission and using the pending proceedings before the Appellate Tribunal as a ruse to continue to flagrantly violate and defy the legislative mandate of the Act.

2. Learned counsel for the petitioner submitted that the fuel price formula in the Commission's order dated 3.10.2006 in Petition No. 66/2005 was upheld by the Appellate Tribunal and the said formula has been reiterated in order dated 6.8.2009 in Petition No. 66/2006. Even though the said formula has not been

challenged/ interfered with or set aside by any competent court till date, yet the respondents continue to flout the orders of Commission with impunity and without valid justification. Learned counsel prayed that in the interest of justice, this Hon`ble Commission may take cognizance of the contumacious overt acts by the respondents and initiate proceedings against them under Sections 142 and 149 of Act.

Petition No. 301/2009

3. Learned counsel for the petitioner mentioned that this petition to be taken up for hearing along with Petition No. 241/2009 since it involved identical set of facts arising out of same orders passed by the Commission and same judgment of the Appellate Tribunal for Electricity. The prayer was granted.

4. Learned counsel for the petitioner submitted that the present petition has been filed seeking emergent directions to respondents to implement the Commission's order dated 8.9.2006 in Petition No. 66/2005.

5. Learned counsel for the respondents accepted notice and submitted that in view of the above order dated 16.9.2009 passed by the Appellate Tribunal for Electricity in Appeal No. 146/2009, the present petitions are not maintainable. Learned counsel for the petitioner submitted that the said order has no bearing on the present petitions. He further contended that the fuel price adjustment formula decided by the Commission in its order dated 3.10.2006 in Petition No. 66/2005 has neither been challenged nor interfered with nor set aside by the Appellate Tribunal. In fact, the order of the Commission on fuel price adjustment has been challenged.

6. The Commission directed the learned counsel for the respondents to file detailed affidavits stating the reasons for non-compliance of the orders of the Commission.

7. Subject to the above, Commission reserved its order.

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