

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

RECORD OF PROCEEDINGS

Petition No. 47/2010

Subject: Non-compliance of Commission's order dated 31.3.2009, 7.1.2010 and 27.1.2010 (Commission's direction to TNEB to clear the income tax dues and excess rebate availed with interest).

Date of Hearing: 20.4.2010

Coram: Shri V.S. Verma, Member
Shri M.Deena Dayalan, Member

Petitioner: Neyveli Lignite Corporation Ltd

Respondent: Tamil Nadu Electricity Board (TNEB)

Parties present: Shri. N.A.K Sarma, Advocate, NLC
Shri. R. Suresh, NLC
Shri. P.H.Parekh, Sr. Advocate, TNEB
Shri E.Kumar, Advocate, TNEB
Shri Shakun Sharma, Advocate, TNEB
Shri Kumar Shashank, Advocate, TNEB
Ms. Debjyoti Bhattacharya, Advocate, TNEB
Ms. Maheshwari Bai, TNEB

The learned counsel for the petitioner submitted that it has filed the said present petition seeking intervention of the Commission, since TNEB had not made payments of Rs. 79.52 crore and Rs. 481.46 crore towards excess rebate and income-tax dues respectively, in terms of the orders of the Commission dated 31.3.2009, 7.1.2010 and 27.1.2010. He also pointed out that despite the earlier orders of the Commission dated 19.10.2005 and 14.9.2006 in Petition Nos. 97/2005 and 17/2006 filed by it, and order dated 17.12.2009 in Review Petition No. 98 & 99 /2009 filed by the respondent, no payments were made by the respondent. The learned counsel also submitted that the generating company cannot be allowed to suffer due to the non-payments of the said amounts, and the Commission should ensure the compliance of its orders by the respondent. The learned counsel further submitted that the respondent has unilaterally made payment of an amount of Rs 33.7962 crore on 17.3.2010 (vide letter dated 10.3.2010) to it and in the absence of break-up details, it had sought clarification from the respondent. He added that even if the said payment was set-off/reconciled against the power bills and the dues payable in terms of the above orders of the Commission, there would be an outstanding amount of Rs 306.824 crore (as on 28.2.2010) payable by the respondent. The learned counsel submitted that its prayer for reimbursement of income-tax dues was based on payments already made by it to the

income-tax authorities and the issue of "grossing-up "of income-tax raised by the respondent, has been settled by an order dated 21.3.2010 of the Appellate Tribunal for Electricity (Appellate Tribunal). Summing up, the learned counsel prayed that the Commission should take note of the non-compliance of its orders by the respondent and should be directed to make payment of the said amounts at the earliest.

2. In reply, the learned counsel for the respondent submitted that the prayer of the petitioner to initiate proceedings against TNEB under Section 142 of the Electricity, 2003 (the Act) for non-compliance of the order, may not be considered by the Commission, in view of the Appeal No.50/2010 and Appeal No. 49/2010 filed by it before the Appellate Tribunal, which is listed for hearing on 29.4.2010 and 22.4.2010 respectively. He also pointed out that a similar petition on the issue of grossing-up of tax, was pending for a decision by the Commission. As regards the details of the payment made to the petitioner by letter dated 10.3.2010, the learned counsel clarified that the payment of Rs 33.7962 crore was made on account of reimbursement of income-tax (non-grossed) and after adjustment of the power credit and debit notes issued by the petitioner and that no further amounts were payable. The learned counsel submitted that it has filed reply in the matter and prayed that the matter be listed after 29.4.2010.

3. In response to the above, the learned counsel for petitioner pointed out that it has not made a specific prayer for initiation of proceedings against the respondent under Section 142 of the Act, but has brought to the notice of the Commission the non-compliance of its orders by the respondent. He further submitted that the compliance of the orders of the Commission by the respondent should not depend upon other remedies available as per law. The learned counsel reiterated that as the Appellate Tribunal has not granted any stay or interim order, as prayed for by the respondent, in the said appeals, it should be directed to make payments in terms of the order, however, subject to the final outcome of the appeals.

4. On a specific query by the Commission on the legal proposition as to whether the directions contained in the order of a lower court would remain valid or not, in the absence of any stay /interim order by an higher court, the learned counsel clarified that it would depend upon the facts and circumstances of each case. He further submitted that as the Commission does not have any power to execute its orders, recourse could be had only under Section 142 of the Act, for non-compliance of its orders. The learned counsel reiterated that the matter may be listed after 29.4.2010, (i.e after the hearing of appeal by Appellate Tribunal).

5. The Commission directed to admit the petition. Considering the submissions of the counsel for the respondent, the hearing of the matter was adjourned. Matter to be listed on 18.5.2010.

Sd/-
T.Rout
Joint Chief (Law)