

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

Subject: Petitions under Section 62(6) read with Section 94 of the Electricity Act, 2003 and Regulation 22(iii) of the CERC Tariff Regulations, 2004

**Petition No. 277/2010**

Petitioner: Bhaskhar Shrachi Alloys Ltd, Kolkata

Respondents: Damodar Valley Corporation and another

**Petition No. 293/2010**

Petitioner: Steel Authority of India Ltd-Bokaro Steel Ltd

Respondents: Damodar Valley Corporation and another

Date of Hearing: 9.8.2011

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

Parties present:

1. Shri Amit Kapur, Advocate, BSAL
2. Shri Apoorva Misra, Advocate, BSAL
3. Shri M.Prahladha, Advocate, BSAL
4. Ms. Suganda Somani, Advocate, BSAL
5. Shri Rajiv Shankar Dvivedi, Advocate, SAIL-BSL
6. Shri Ajay Kumar, SAIL-BSL
7. Shri B.N.P.Singh, SAIL-BSL
8. Ms. Swapna Seshadri, Advocate, DVC
9. Shri A.K.Sil, DVC

**Record of Proceedings**

These petitions were taken up today for hearing the parties on the question of jurisdiction of the Commission to consider the prayers of the petitioner in the said petitions.

**Petition No. 277/2010**

2. The learned counsel for the petitioner submitted as under:

(a) In the petition filed under Section 62(6) read and Regulation 22 (iii) of the CERC Tariff Regulations, 2004, the basic question raised for consideration is

whether DVC was charging tariff beyond those approved by the Commission by order dated 6.8.2009.

- (b) As mentioned in paragraphs 13 to 17 of the petition, DVC has increased tariff by DVC by about 0.15 per unit towards capacity charges and in the disconnection notice, DVC has wrongfully included 'incentive for CTPS' amounting to Rs 9.949 crore which is an year to year earning for production beyond target and has also inflated figures for calculation of Fuel Price Adjustment (FPA) on month to month basis.
- (c) In terms of Regulation 22 (iii), in case of a dispute regarding FPA, separate application shall be made before the Commission and hence the present application. The Appellate Tribunal for Electricity (Tribunal) by its judgment in the case of DVC-v-JSERC (as stated in paragraph 30) has held that in case of dispute in the computation of Fuel Cost Surcharge (FCS) the Appropriate Commission having jurisdiction for determination of generation tariff will adjudicate the dispute.
- (d) Since the jurisdiction as regards the capacity charges and the calculation of FPA with regards to DVC lie with the Commission, this Commission has the jurisdiction to deal with the prayers in the petition made by the consumers, based on the findings of the Tribunal in its judgment dated 23.11.2007 Appeal No. 273/2006 and other connected appeals etc. The findings in paragraphs 48, 104, 110 and 111 of the said judgment are relevant.
- (e) Since DVC has recovered tariff in excess of the tariff allowed by the Commission, the dispute would be covered under Section 62(6) of the Electricity Act, 2003 (the Act). In terms of the judgment of the Tribunal in Appeal No.146/2009 dated 10.5.2010, DVC was given the option to either refund of the excess amount recovered or to adjust the amount along with interest @6% p.a in 24 equal prospective installments. In terms of the interim order of the Hon'ble Supreme Court in C.A. No.4881/2010 dated 9.7.2010, only the refund of amount has been stayed and not the adjustments, which needs to be looked into and appropriate directions be issued to DVC.
- (f) DVC has not been complying with the Act, the tariff orders and the Regulations of the Commission and has recovered tariff upto the year 2010 as per DVC Act. The HT consumers would not get remedy if the Commission is to exclude its jurisdiction on them. Taking into consideration the functions specified under Section 79(1)(a) of the Act and the scope of the judgments of the Tribunal (as stated), the Commission only has the jurisdiction to deal with the issues raised in the petition by the HT consumers.
- (g) The process for determination of tariff for the period 2009-14 based on petition filed by DVC could be accelerated and if need be, the present petition could be tagged with the tariff petition and disposed of by the Commission.
- (h) The Jharkhand High Court by its interim order dated 1.8.2011 has stayed the operation of the order dated 23.6.2011 granting provisional tariff for DVC for 2009-14 and the bills preferred on the HT consumers based on the same.

3. The Commission requested the clarification of the learned counsel for the petitioner on the following:

- (a) the definition of 'consumer' as in Section 2(15) of the Act in the backdrop of DVC undertaking activities of generation, transmission and distribution;
- (b) Whether or not the judgment of the Tribunal dated 23.11.2007 as relied upon the petitioner in the relevant paragraphs (110 and 111) indicate only the determination of transmission tariff; and
- (c) The provisions under which the interests of the HT consumers are protected under the Act, in the absence of any specified norms relating to the Conditions of Supply/Standards of Performance etc.

4. In response to the above queries, the learned counsel for the petitioner clarified as under:

- (a) The Tribunal by its judgments in no uncertain terms has held that the petitioners are HT consumers of DVC and tariff is to be determined by the Commission. Paragraph 111 of the judgment dated 23.11.2007 is relevant. Unlike other consumers, the status of the HT consumers have been taken note of and decided by the Tribunal in its judgment without any ambiguity. This judgment has not been stayed or set aside and hence the Commission is bound in terms of the findings in the said judgment.
- (b) The definition of 'consumer' under Section 2(15) would also include "*any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the license, the Government or such other person as the case may be.*" The transmission lines are held to be part of the inter-state transmission network/system of DVC and the premises of the petitioner is connected to the generating company of DVC. With the findings of the Tribunal in the said judgment, the supply of power directly by DVC to HT consumers is to be regulated by the Commission and is thereby within the jurisdiction of the Commission. The distinction as regards supply made by DVC as distribution licensee to the respective State Electricity Boards i.e the JSEB and WBSEB for retail supply to the individual consumers and supply made directly to the HT consumers should be differentiated and taken note of by the Commission.
- (c) The norms relating to standards of performance/conditions of supply need to be specified by the Commission for protection of HT consumers. By harmonization of Section 50 and Section 79 (1)(a) and (i) of the Act, the Commission could specify and enforce the standards with respect to quality, continuity and reliability of service by licensees. DVC being a deemed licensee in terms of the fourth proviso to Section 14 of the Act, powers could be exercised by the Commission in this regard.
- (d) Being an HT consumer with a direct supply by the generating company, DVC, whose tariff is regulated by the Commission, the Commission alone can

exercise jurisdiction in the matter and entertain the petition based on the findings of the Tribunal and by operation of law. Even in terms of the judgment of the Constitution Bench of the Hon'ble Supreme Court in PTC-v-Union of India & ors, the power of the Commission is 'plenary' under the Act.

5. In reply to the above submissions of the petitioner, the learned counsel for the respondent DVC clarified as under:

(a) The present petition is an abuse of the process of the Court, as the jurisdiction of HT consumers could not be inferred from Section 62(6) of the Act.

(b) The Tribunal in its judgment dated 23.11.2007 has only recorded the fact regarding the integrated transmission systems of DVC spread over the areas of the States of Jharkhand and West Bengal and the question of its segregation and had arrived at the conclusion as observed in paragraphs 104 to 110 of the said judgment. The context in which the findings were given by the Tribunal should be considered and the findings are relevant only for the purpose of determination of transmission tariff of DVC by the Commission and not as claimed by the petitioner.

6. On a specific query as to the jurisdiction under whom the HT consumers would fall, the learned counsel for the respondent, DVC submitted that the State Commission shall only have the jurisdiction with regard to HT consumers. The learned counsel while clarifying that the jurisdiction is to be found only in the provisions of Act, further submitted that the HT consumers are squarely governed under Section 86(1)(a) and (b) of the Act and tariff is to be determined by the State Commission. Relying upon the judgment of the Tribunal which has recorded a finding that DVC was supplying power to the HT consumers, would by no means confer jurisdiction upon the Commission. The Legislature has been conscious enough to differentiate between the scope of Section 79 and 86 of the Act.

7. Referring to Section 50 of the Act, the learned counsel for the respondent, DVC reiterated that the word used in the said section was the 'State Commission' and not the 'Appropriate Commission'. Merely because DVC is an integrated utility, differentiation of any kind cannot be drawn upon and all consumers are to be under the purview of the State Commission. As noticed in Section 2(15) of the Act, no special dispensation has been provided to HT consumers and the State Commission only has the jurisdiction to determine the tariff for supply to consumers after taking into consideration, the input cost as determined by the Central Commission.

8. The learned counsel for the respondent, DVC also submitted that the present proceedings are infructuous since provisional tariff as granted by the Commission by order dated 23.6.2011 was being charged on the respondents/consumers. The learned counsel also submitted that no review application has been filed by the petitioner and in case of difference in the bills, the petitioner should seek remedy only under Section 42(5) of the Act and approach the CGRF/Ombudsman and the issue has been settled by the Hon'ble SC in AIR 2008 SC 1042. The learned counsel further submitted that it would demonstrate that the bills raised were in consonance with the tariff approved by the Commission.

9. In reply to the above, the learned counsel for the petitioner reiterated his submissions made earlier and pointed out to the relevant paragraphs in the judgment dated 23.11.2007 and prayed that the Commission should consider the scope of the Act and Regulations and take into consideration the decision of the higher courts. While pointing out the difference between drawl of power by consumers through a distribution licensee and the supply made directly to HT consumers by DVC, the learned counsel prayed that DVC may be directed to file affidavit, indicating the details of the retail tariff filings made by it before the State Commission with copy to the petitioner. He also clarified that seeking alternate remedy under Section 42(5) would only be applicable for consumers for whom supply is made by the distribution licensee within the state and was not applicable to this case.

10. On a query by the Commission as to the basis on which the bills were raised on the HT consumers, the learned counsel for the respondent, DVC submitted that the bills have been raised in terms of the order of the Commission dated 6.8.2009. The learned counsel also submitted that HT consumers would be charged the retail tariff, only after the tariff petitions of DVC which are presently pending before the respective State Commissions of West Bengal and Jharkhand, are decided finally by these Commissions. Only in the interregnum to avoid any vacuum, these bills have been raised on HT consumers based on the order of the Commission dated 6.8.2009.

11. Summing up, the learned counsel for the petitioner prayed that the respondent DVC should be directed to file on affidavit, indicating that DVC is in compliance with the tariff determined by the State Commissions of West Bengal and Jharkhand for distribution business and is a licensee of these two Commissions.

12. The learned counsel for the respondent, DVC clarified that it would file necessary details regarding the retail tariff petitions filed before the respective State Commissions, the details regarding the bills raised by it based on the order dated 6.8.2009, along with its written submissions.

**Petition No. 293/2010**

13. The learned counsel for the petitioner adopted the arguments made by the learned counsel for the petitioner in Petition No. 277/2010 and prayed that it may also be granted time to file its written submissions on the issue of 'maintainability'.

14. The Commission after hearing the parties directed DVC to file its written submissions on affidavit, along with the necessary details as stated at paragraph 12 above, with advance copy to the petitioners, on or before 16.9.2011. Thereafter, the petitioners are directed to file their respective written submissions on affidavit, along with a copy of the Power Supply Agreement entered into by it with DVC, on or before 23.9.2011, with copy to the respondent, DVC.

15. Subject to the above, order in the petition 'on maintainability' was reserved.

Sd/-  
T.Rout  
Joint Chief (Law)