

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 62/MP/2013**

**Subject** : Petition under Section 79 (1) (f) of the Electricity Act, 2003 for adjudication of the disputes between the petitioner and the respondent No. 1

**Date of Hearing** : **29.5.2014**

**Coram** : Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A.K. Singhal, Member

**Petitioner** : Kanti Bijlee Utpadan Nigam Ltd.

**Respondents** : Bihar State Power Holding Company Ltd. and State Load Despatch Centre

**Parties present** : Shri M. G. Ramachandran, Advocate, KBUNL  
Shri Avinash Menon, Advocate, KBUNL  
Shri M. K. Sinha, KBUNL  
Shri S. K. Mandal, NTPC  
Shri R. P. Bhatt, Sr. Advocate, BSPHCL  
Shri Mohit Kr. Shah, Advocate, BSPHCL

**Record of Proceedings**

During the hearing, the learned counsel for the petitioner submitted as under:

- (i) In terms of Clause 2.2.3 of PPA, both the parties have agreed that for any reduction in generation on account of non-availability of appropriate Letter of Credit/ non-payment of dues, the generating station shall be treated as available.
- (ii) The respondent No.1 has defaulted in making payment of bills to the petitioner from time to time and as a result, the petitioner was not in a position to operate the plant for supply of electricity to the respondent. Accordingly, the power plant could not be operated for reasons attributable to respondent No. 1 namely, the failure of the said respondent to make regular payment of the amount due to the petitioner.
- (iii) Disputes and differences have arisen between the petitioner and the respondent no. 1 for the period from 12.12.2010 to 9.3.2011 and from 20.3.2011 to 30.3.2011 mainly on account of the

failure on the part of said respondent to pay the capacity charges for the said period when the unit was forced to stop due to non-availability of coal caused due to mounting energy bills:

(iv) While the respondent no. 1 has calculated capacity charges of the above period considering pro-rata Monthly Plant Availability Factor (PAFM) as 'zero', the petitioner has considered PAFM based on Declared Capacity (DC) of 68.81 MW.

(v) The unit was forced to stop due to non-admittance of capacity charges for the period from 3.11.2011 to 29.3.2012 and the petitioner was left with no fund to arrange coal as the respondent No.1 did not agree to compensate for increased coal/oil prices. The respondent no. 1 has wrongly calculated capacity charges for the above period by considering PAFM as 'zero' whereas the petitioner considered PAFM based on declared capacity of 60 MW.

(vi) While the respondent No. 1 has calculated capacity charge considering Declared Capacity (DC) equal to Actual Generation (AG), the petitioner has calculated capacity charges considering DC of the generating station. Thus, the respondent no.1 has not considered the Energy Accounts prepared by the petitioner based on IEGC regulations and the calculations made by it are not in line with the order of the Commission.

(vi) The petitioner is entitled to payment of dues as per bills raised by the petitioner on respondent no.1 along with delayed payment surcharge. The petitioner is further entitled to claim capacity charges as 'deemed generation charges' till such time the respondent no.1 liquidate all outstanding dues of the petitioner.

2. In response, the learned Sr. Counsel for the respondent no.1 submitted as under:

(a) The respondent has paid 95% of the balance outstanding dues of the petitioner without prejudice to the claim and pending final adjudication by the competent authority.

(b) Whenever the petitioner was not able to run the unit, it had taken the pretext of non-payment of bills and coal shortage as reasons for not operating the unit despite the fact that the unit was not in a position to run consistently.

(c) Though the outstanding dues were meagre, the Unit-II was shut down by the petitioner with effect from 3.11.2011 on the pretext of huge outstanding dues and non availability of coal. This despite the fact that a sum of ` 471.80 crore was spent on R&M to be treated as debt without any repayment and interest liability.

(d) The *erstwhile* BSEB did not consider the capacity charges for shut down period of the said unit and had computed PAFM for the existing units older by 10 years (as per Commission's order dated 23.02.2012), on the basis of actual energy fed into the grid of BSEB.

(e) The outstanding dues had mounted only after revised bills were submitted by the petitioner during March/May, 2012 in accordance with the provisional tariff order dated 23.2.2012.

(f) The PPA dated 22.8.2006 does not contain any provision that even if the plant is shut down unilaterally by the generating company, the respondent no.1 will have to pay capacity charges.

(g) Since 100% power generated by the petitioner is purchased by the respondent no.1, the capacity charges can only be computed considering the actual generation and any other mode would be against the provisions of Regulation 21 of the 2009 Tariff Regulations.

(h) Though the respondent has no objection to the implementation of ABT mechanism, except that UI charges would not be applicable as the 100% generation by the petitioner is regarded as Scheduled Generation by SLDC, Patna. Hence, the extent of applicability of ABT tariff may be clarified by the Commission in order to prevent any dispute in future.

(i) The Commission has no jurisdiction to adjudicate the dispute under Section 79(1)(f) of the Electricity Act,2003 (Act) since the dispute does not involve 'generating companies' in regard to matters connected with Section 79(1)(a) to (d) of the said Act. Hence, the matter should be referred to Arbitration as per Dispute Resolution clause in the PPA.

3. In response to the above, the learned counsel for the petitioner reiterated the submissions made in the petition and stated that the reliefs prayed for made be granted. On the question of jurisdiction, the learned counsel submitted that since tariff of the generating station is determined by this Commission in terms of Section 79(1)(a) read with section 62(1)(a) of the Act, this Commission has the jurisdiction to adjudicate the dispute in terms of Section 79(1)(f) of the Act (*judgment of the SC in GUVNL case was referred to*).

4. The Commission after hearing the parties directed the petitioner and the respondent no.1 to submit on affidavit, the detail computation of the capacity charges for the period from 12.12.2010 to 9.3.2011, 20.3.2011 to 30.3.2011 and from 3.11.2011 to 29.3.2012, with copy to the other, on or before 30.6.2014. Subject to this, order in the petition was reserved.

By order of the Commission

Sd/-  
(T. Rout)  
Chief (Legal)