

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 124/MP/2017
Alongwith I.A. No. 33/2017**

Subject :Petition under section 79(1)(f) read with section 79(1)(c) & (d), section 38, section 39, section 40 and section 60 of the Electricity Act, 2003 concerning the unjust, arbitrary and illegal terms imposed by Himachal Pradesh Power Transmission Corporation Limited and Allain Duhangan Hydro Power Limited for transmission of power by the Petitioner on inter-State transmission lines operated by them.

Date of hearing : 20.6.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Kanchanjunga Power Company Pvt. Ltd. (KPCPL)

Respondents :H.P. Power Transmission Corporation Ltd. and Others

Parties present : Shri Sitesh Mukherjee, Advocate, KPCPL
Shri Jafar Alam, Advocate, KPCPL
Shri Vishal Binod, Advocate, KPCPL
Shri Uday Pratap, Advocate, KPCPL
Shri Vijay Sharma, Advocate, KPCPL
Shri Amit Aggrawal, Advocate, KPCPL
Shri Sohan Lal Verma, HPPTCL
Ms. Seema Jain, Advocate, ADHPL
Shri Sumit Garg, ADHPL
Ms. Kakoli Sengupta, ADHPL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed *inter-alia* seeking declaration that the terms of the Interim Power Transmission Agreement dated 28.4.2016 entered into between the petitioner and Himachal Pradesh Power Transmission Corporation Limited (HPPTCL) and Allain Duhangan Hydro Power Limited (ADHPL) as well as the invoices issued thereunder are void and *non est* insofar as they are inconsistent with the applicable inter-State transmission Regulations including the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

2. With regard to Commission`s specific query regarding jurisdiction of the Commission in the matter, learned counsel for the petitioner submitted as under:

(a) The petitioner has set up a 24 MW hydro electric power plant (Baragaon SHEP) at district Kullu in the State of Himachal Pradesh. The power generated by Baragaon SHEP is evacuated through its 33 kV line upto the 33/220 kV Fozal pooling station of HPPTCL. From the Fozal pooling sub-station, power flows through a 220 kV D/C line of HPPTCL into the 220 kV D/C Pirni-Nallagarh transmission line operated by Allain Duhangan Hydro Power Limited (ADHPL) through a LILO connection on the the 220 kV Pirni-Nallagarh D/C transmission line operated by ADHPL at Naggar. Therefore, the petitioner is using HPPTCL's 220 kV Fozal pooling station and 220 kV D/C line from Fozal to the loop-in-loop-out point on the 220 kV Pirni-Nallagarh D/C transmission line and AD Line.

(b) HPPTCL assets and AD Line are part of the ISTS in the meaning of Section 2 (36) of the Act as they are incidental to the inter-State transmission of electricity the Baragaon SHEP to Nallagarh sub-station of PGCIL.

(c) Everest Power Private Limited (EPPL) had filed a petition before this Commission for seeking direction/clarification on the methodology and process for computation and sharing of transmission charges by EPPL and ADHPL for use by EPPL and ADHPL of 220 kV D/C Allian Duhangan Hydro Electric Project-Nalagarh transmission line. The Commission vide order dated 1.6.2011 in Petition No. 259/2010 had directed that the Commission has the jurisdiction to adjudicate the dispute between EPPL and ADHPL with regard to the use of the 220 kV D/C Allian Duhangan Hydro Power Limited-Nalagarh transmission line and issued certain consequential directions. ADHPL filed Appeal No. 81/2011 before the Appellate Tribunal for Electricity (Appellate Tribunal). The Appellate Tribunal vide its judgement dated 2.1.2013 dismissed the appeal with direction to the Commission to pass the consequential order. Subsequently, the Commission vide its consequential order dated 18.1.2013 directed ADHPL to file the tariff petition for the 220 kV D/C ADHEP-Nalagarh transmission line in accordance with the provisions of the 2009 Tariff Regulations. Aggrieved by the Appellate Tribunal's judgment dated 2.1.2013, ADHPL filed a Civil Appeal No. 1795/2013 before the Supreme Court. The Hon`ble Supreme Court vide its judgment dated 24.4.2017 in Civil Appeal No. 1795 of 2013 (Allian Duhangan Hydro Power Ltd. Vs. Everest Power Private Limited) has held that AD line is part of the inter-State transmission system and falls within the jurisdiction of the Commission. The Hon`ble Supreme Court also vacated the interim order dated 8.3.2013 pursuant to which the petitioner was paying transmission charges under the IPTAs.

(d) Any payments to the respondents for the use of HPPTCL assets and AD line required to be made only as per the directions of the Commission. The AD Line is being used as the main transmission line for the inter-State transmission of power from three power plants, namely, Everest Power Private Limited, Baragaon SHEP and AD Hydro itself, and wheeling of power of Himachal Pradesh State Electricity Board Limited. Therefore, the petitioner's use of the HPPTCL Assets and the AD Line including the transmission charges ought to be governed by the provisions of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Sharing Regulations and the Tariff Regulations.

(e) As per the existing regulatory framework, the petitioner ought to have to pay one single transmission charge payable to the CTU for the petitioner's use of the HPPTCL Assets, the AD Line and the transmission assets directly managed by the CTU as per the PoC method as part of the inter-State transmission system operated and managed by the CTU. However, HPPTCL is wrongfully treating the petitioner's use of the HPPTCL Assets as if they are governed by the State Regulations and is imposing transmission charges on the Petitioner accordingly. Despite the judgment of the Hon'ble Supreme Court, HPPTCL and ADHPL have continued to demand payment of transmission charges based on the interim orders of the Hon'ble Supreme Court. Moreover, they have threatened the petitioner with disconnection from their assets, if it does not pay the said illegal transmission charges wrongfully demanded by HPPTCL and ADHPL.

(f) The petitioner has been paying the transmission charges demanded by HPPTCL and ADHPL albeit under protest. In this way, the Petitioner has paid a total of Rs. 404.14 lakh as transmission charges to HPPTCL and ADHPL till date. However, HPPTCL vide of its letter dated 14.6.2017 requested the petitioner to make payments due under the unpaid invoices issued under the IPTAs, within a week, failing which the petitioner's power plant shall be disconnected under Clause 4.23 of the IPTA.

(g) Despite Supreme Court's direction, ADHPL has not filed petition before the Commission for determination of tariff. Pending determination of tariff for the HPPTCL assets and the AD line by the Commission, the petitioner is not liable to pay any further transmission charges to the respondents.

3. Learned counsel for the petitioner submitted that the petitioner has filed IA for restraining HPPTCL and ADHPL from taking any coercive action, or from interfering with the petitioner's use of the 220 kV Fozal pooling station, the 220 kV D/C line from the Fozal pooling station to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission and requested to pass interim order in this regard.

4. The representative of HPPTCL requested for two weeks time to file its reply to the petition.

5. In its rebuttal, learned counsel for ADHPL submitted that the present petition is not maintainable. Learned counsel for ADHPL further submitted that there are two agreements, one has been entered into between ADHPL and HPPTCL and other one has been entered into between the petitioner and HPPTCL. The petitioner has no *locus standi* on the agreement between ADHPL and HPPTCL as the petitioner is not a party to that agreement. Moreover, the petitioner was not a party in the matters before the APTEL and Hon'ble Supreme Court. On a specific query of the Commission whether the respondents are claiming transmission charges as per the APTEL order, learned counsel for ADHPL affirmed the same. Learned counsel for ADHPL further submitted that the Hon'ble Supreme Court passed an ex-parte order and ADHPL has filed a Review Petition before the Hon'ble Supreme Court which would be listed for hearing after vacation. Therefore, ADHPL did not file the tariff petition before the Commission. Learned counsel submitted that the petitioner has not been paying the transmission charges and should be directed to pay the same.

6. As regards the prayer in the IA, the Commission directed HPPTCL and ADHPL not to take any coercive measure against the petitioner till further order.
7. With regard to the query of the Commission as to whether the transmission charges being charged by ADHPL to HPPTCL/petitioner are in accordance with the direction of the Appellate Tribunal regarding interim arrangement, learned counsel replied in the affirmative.
8. The Commission observed that as per the APTEL`s order which has been upheld by the Hon`ble Supreme Court, ADHPL is entitled to charge the tariff as per the interim arrangement till the Commission decides the tariff. Taking note of the submission of the learned counsel for ADHPL as recorded in para 7 above, the Commission directed the petitioner to pay 80% of the outstanding bills raised by ADHPL/HPPTCL and continue to pay the monthly charges, subject to adjustment after the outcome of the petition. Accordingly, the Commission disposed of the I.A. No. 33/2017.
9. The Commission directed respondents to file their replies, on affidavit, by 14.7.2017 with an advance copy to the petitioner, who may file its rejoinder, if any, on or before 28.7.2017. The Commission directed that due date of filing the replies, rejoinder and information should be strictly complied with. No extension shall be granted on that account.
10. The petition shall be listed for hearing on 10.8.2017.

By order of the Commission

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