

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

IA No. 34/2020 in Petition No. 155/MP/2019

Subject : Application for directions invoking Section 94(2) of the Electricity Act, 2003 and Regulation 68 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with principles enunciated under Section 151 of the Code of Civil Procedure, 1908.

Petitioner : Udupi Power Corporation Limited (UPCL).

Respondents : Power Company of Karnataka Limited (PCKL) and Ors.

Date of Hearing : 11.6.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Amit Kapur, Advocate, UPCL
Ms. Poonam Verma, Advocate, UPCL
Ms. Aparajita Upadhyay, Advocate, UPCL
Shri M. R. Krishna Rao, UPCL
Shri Amit Mittal, UPCL
Shri Sameer Ganju, UPCL
Shri M. G. Ramachandran, Sr. Advocate, PCKL
Shri Arunav Patnaik, Advocate, PCKL
Shri Shikhar Saha, Advocate, KPTCL
Ms. Bhabna Das, Advocate, KPTCL

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioner submitted that present IA has been filed seeking direction to the Respondents, PCKL and ESCOMs (the Discoms of Karnataka i.e. Respondents. 2 to 6) not to make any deductions from the invoices of the Petitioner based on unilateral calculations (carried out in the letter dated 13.5.2020) till adjudication of Petition No. 155/MP/2019. Learned counsel further submitted as under:

(a) PCKL vide its letter dated 13.5.2020 has informed the Petitioner and the ESCOMs that since PCKL has calculated the disputed capacity charges, energy charges and re-imburement charges of the Petitioner for the period from 11.11.2010 to 31.3.2019, the Petitioner is liable to pay Rs. 276.64 crore to ESCOMs. However, no calculations or documents have been provided by PCKL in this regard.



(b) As per the letter dated 13.5.2020, computation of final settlement was placed before the 60th meeting of PCKL's Board of Directors. However, the reconciliation of payments cannot be based on internal meetings where the Petitioner has no representation but can be done only in a joint meeting with representatives of both parties.

(c) The dispute regarding computation of declared capacity resulting in disallowance of capacity charges, energy charges and differential tariff payment is already pending for adjudication of the Commission in main Petition No. 155/MP/2019. Further, PCKL/ESCOMs are themselves liable to pay Rs. 1922.01 crore to the Petitioner towards Late Payment Surcharge in terms of order dated 8.11.2019 in Petition No. 324/MP/2018 and 325/MP/2018.

(d) The Petitioner had filed IA No. 79/2019 in Petition No. 155/MP/2019 seeking production of Technical Committee Report, V.J. Talwar report and M/s Ramraj & Co. report based on which PCKL has calculated the charges payable by the Petitioner. The Commission in its order dated 26.3.2020 had directed PCKL to place on record the said reports within 30 days from the issuance of the order in a sealed envelope. However, till date, PCKL has not complied with the direction of the Commission.

3. Learned senior counsel for the Respondent, PCKL submitted as under:

(a) In terms of the Commission's order dated 26.3.2020, the reports were required to be submitted in a sealed envelope to the Commission. However, due to lockdown on account of Covid-19, the said reports could not be filed. PCKL is ready to submit the copies of the above reports in a sealed cover to the Commission and it would coordinate with the Registry of the Commission in this regard.

(b) Amount of Rs. 276.64 crore is differential amount between the provisional tariff paid to the Petitioner and the final tariff as determined by the Commission in its orders dated 27.6.2019 and 22.1.2020 in Petition Nos. 160/GT/2012 and 251/GT/2017 for the tariff period 2009-14 and 2014-19. The said adjustment has been carried out as per the provisions of Regulation 7(ia) of Regulation 7 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, which provides for adjustment of differential tariff in three equal monthly instalments. Accordingly, PCKL has already adjusted Rs. 208 crore out of differential amount of Rs. 276.64 crore.

(c) The aforesaid adjustment of Rs. 208 crore is independent of the adjudication of various claims pending in Petition No. 155/MP/2019 and the Petitioner had been informed about the aforesaid adjustment vide letters dated 15th February, 2020 and 6th March, 2020.

(e) As regard the LPS in terms of orders dated 8.11.2019 in Petition No. 324/MP/2018 and 325/MP/2018, PCKL has filed appeals including an application for stay before the Appellate Tribunal for Electricity against the said orders and notices have been issued therein. The said appeals along with IAs are listed for hearing on 2.7.2020 and 3.7.2020.



4. In rebuttal, learned counsel for the Petitioner submitted that the Petitioner has made efforts to convene joint meeting for reconciliation of disputed amount. However, no response was received from PCKL in this regard. PCKL cannot unilaterally withhold payments due to UPCL. Learned counsel submitted that it is a well settled principle of law that mere filing of an appeal does not operate as stay against the impugned order and that no stay has been granted by Appellate Tribunal in the said Appeals and IAs. Learned counsel further submitted that letter dated 15.2.2020 as referred to by the learned senior counsel itself refers to Ramraj & Co. Report, which is yet to be provided by PCKL. He further pointed out that as per instruction received from the Petitioner, no debit note on account of adjustment has been received by UPCL and accordingly, requested to direct PCKL and ESCOMs not to make any deduction from the invoice of the Petitioner until the final adjudication of Petition No. 155/MP/2019. Learned counsel submitted that the Commission may appoint an external committee to deliberate upon the disputes and reconcile the same in a transparent and rational manner.

5. Learned counsel for the Respondent, Karnataka Power Transmission Corporation Limited (KPTCL) submitted that as per the Commission's direction dated 12.3.2020, KPTCL could not file the reply to main Petition No. 155/MP/2019 on account of nation-wide lockdown and accordingly, sought liberty to file its reply.

6. Taking note of the submissions of the learned counsel for the Petitioner and learned senior counsel for the Respondent, PCKL, the Commission directed PCKL to maintain status quo as on date i.e 11.6.2020 on the claims made by PCKL under its letter dated 13.5.2020 and not to take any measures for adjustment of claims under Petition No. 155/MP/2019 till further order. Accordingly, the Commission disposed of IA No. 34/2020.

7. The Commission also directed KPTCL to file its reply to the Petition No. 155/MP/2019 by 22.6.2020 with advance copy to the Petitioner, who may file its rejoinder, if any, by 29.6.2020. The due date of filing of reply and rejoinder should be strictly complied with.

8. The Commission directed PCKL to submit the reports of Technical Committee and Commercial Committee of PCKL, final report of M/s Ramraj & Co., Chartered Accountant and report of Shri V.J. Talwar in a sealed envelope in terms of Commission's order dated 26.3.2020 in IA No. 79/2019 to the Bench Officer of the Commission.

9. The Petition shall be listed for final hearing for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

