

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.329/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S.Jha, Member

Shri Arun Goyal, Member

Date of Order: 30th July, 2020

In the matter of

Petition under Section 79 (1) (a) & (f) read with Section 62 (4) and other applicable provisions of the Electricity Act, 2003 read with Regulation 54 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

And

In the matter of

Tata Power Delhi Distribution Limited
Sub Station Building, Hudson Lines, Kingsway Camp,
Delhi - 110009

..... Petitioner

Vs

1. Power Grid Corporation of India Limited
Saudamini, Plot No.2, Sector 29, Gurgaon,
Haryana- 122001

2. Pragati Power Corporation Limited
Himadri, Corporate Office,
Rajghat Power House Complex,
New Delhi- 110002

3. Maithon Power Limited
Jeevan Bharti, 10th Floor, Tower-I
124, Connaught Circus,
New Delhi-110001

..... Respondents

Parties present:

Shri Buddy Ranganadhan, Advocate, TPDDL

Shri Rahul Kinra, Advocate, TPDDL

Shri M.G. Ramachandran, Senior Advocate, PPCL

Ms. Poorva Saigal, Advocate, PPCL



ORDER

The Petitioner, Tata Power Delhi Distribution Limited (TPDDL) has filed this Petition seeking for the following reliefs:

- a) Relax Regulation 7(8)(i-a) of the Tariff Regulations 2014 and permit the amounts payable to PPCL under Order dated 26-11-2019 in Petition No. 221/GT/2015 be paid in 12 equal instalments instead of 3 as at present;*
- b) Direct that any amounts already paid to PPCL may also be included in the apportionment of the 12 instalments and necessary credit/ adjustments be given to the Petitioner for the same in next bills;*
- c) Direct that any amounts already paid to MPL under the order dated 1.10.2019 in Petition No. 152/GT/2015 may also be included in the apportionment of the 6 equal instalments;*
- d) Direct that the amounts payable to PGCIL under Order dated 31-7-2019 in Petition No. 20/RP/18 and dated 17/12/2019 in Petition No. 363/TT/18 be paid in 6 equal instalments; and*
- e) Direct that any amounts already paid to PGCIL may also be included in the apportionment of the 6 instalments and necessary credit be given to the Petitioner for the same; and*
- f) Pass such further or other orders as may be deemed, just, fit and necessary in the circumstances of the case.*
- g) Exempt the Petitioner for filing duly affirmed affidavit in the prevailing circumstances in continuation of the Commission's notice dated 16.3.2020 and in pursuance of Ministry of Power, Government of India O.M. No. 2-18/7/2019-Admin-II dated 25.3.2020. However, the Petitioner duly undertakes to file the affirmed affidavit and submit the same subsequently.*

Background

2. TPDDL is a joint venture between Tata Power Company Limited (hereinafter referred to as 'Tata Power') and Delhi Power Company Limited (A fully owned company of Government of National Capital Territory of Delhi) with majority stake i.e. 51 per cent shareholding held by Tata Power. TPDDL is a distribution licensee in terms of Section 14 of the Electricity Act, 2003 (hereinafter referred to as '2003 Act') read with the Delhi Electricity Reforms Act, 2000 and is operating in North and North West areas of Delhi in terms of the distribution license issued by the Delhi Electricity Regulatory Commission. The Petitioner purchases power from various Central Generating Stations (CGS) and other intra-State & inter-State



generating stations, including the Respondent No. 2 (PPCL) and the Respondent No. 3 (MPL). The power is drawn through the transmission network of the Respondent No. 1 (PGCIL).

Submission of the Petitioner

3. The Petitioner in this petition has submitted the following:

(a) The present petition is being filed pursuant to the direction of the Delhi Electricity Regulatory Commission (DERC) in its letter dated 6.3.2020. The Petition has been filed under Section 79(1)(a) & (f) of the 2003 Act read with Regulation 54 of CERC (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”) *inter alia*, pertaining to the tariff determined for PGCIL, PPCL and MPL under the orders of this Commission, namely, (i) Order dated 17.12.2019 in Petition No. 362/TT/2018; (ii) Order dated 31.7.2019 in Petition No. 20/RP/2018; (iii) Order dated 26.11.2019 in Petition No. 221/GT/2015; and (iv) Order dated 1.10.2019 in Petition No. 152/GT/2015.

(b) The Respondents, PGCIL, PPCL & MPL have raised bills on the Petitioner on the basis of the above said four tariff orders, which *inter alia*, contemplates that the differential in tariff originally determined and subsequently fixed would be billed and recovered in three equal installments with interest, in terms of Regulation 7(8)(1-a) of the 2014 Tariff Regulations and Regulation 2.1.3.2 of the Billing, Collection and Disbursement Procedure, 2011 under the CERC (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010. The status of the bills raised by the Respondents and the payments made by the Petitioner are as under:

Commission's Order	Generating Company/ CTU	Status of payments
Order dated 26.11.2019 in Petition No. 221/GT/2015	PPCL	<ul style="list-style-type: none"> • PPCL raised the same bill in 3 instalments as per Clause 7.8.i.ia of 2014 Tariff Regulations and CERC notification dated 5.11.2015 • 24.12.2019 - Raised bill for 1st instalment (Rs. 83.6 crore for total bill amount of Rs. 251 crore) as per Commission's order. • 23.1.2020 - 1st instalment paid • 24.1.2020 - PPCL raised 2nd instalment • 21.2.2020- 2nd instalment paid (since 22 & 23 Feb' 2020 was non-bank working day) • 25.2.2020 - PPCL raised 3rd & final instalment • The 3rd & final instalment is still to be paid for amount Rs. 83.67 crore.
Order dated 9.12.2019 in	PGCIL	<ul style="list-style-type: none"> • POC bills raised as per CERC Billing, Collection and Disbursement Procedure,



Petition No. 20/RP/2019 & Order dated 17.12.2019 in Petition No. 363/TT/2018		2011. There is no provision of raising such bills in instalments. <ul style="list-style-type: none"> • 1.1.2020 - PGCIL raised POC#3 bill for Rs. 100.23 crore as per Commission's orders and on 29.1.2020, the same was paid after taking the applicable rebate.
Order dated 1.10.2019 in Petition No. 152/GT/2015	MPL	<ul style="list-style-type: none"> • MPL raised the bill on 30.12.2019 for an amount of Rs. 85.75 crore. The same bill was paid on 29.1.2020, after taking applicable rebate and adjustment of sharing of gain on account of controllable parameter & on account of Re-financing of loan for period of 2014-19.

(c) Though appeal filed by PGCIL is pending before APTEL, the aforesaid increase were sought to be recovered in the PPAC procedure as mandated by DERC in its Tariff Regulations. The allowable increase was recovered in the PPAC upto 4.5% of the applicable tariff and the remainder was claimed before DERC by the Petitioner vide PPAC petition dated 26.2.2020.

(d) However, DERC by letter dated 6.3.2020 has directed the Petitioner to file petition before this Commission *inter alia*, to seek directions for relaxation in the time period for payment of dues of the Respondents, PPCL and PGCIL. The Petitioner is a regulated entity and the tariff for procurement of electricity by the Petitioner and also the determination of tariff and other factors contributing to the overall revenue requirement of the Petitioner is subject to the approval of DERC and that all expenses or income of the Petitioner are regulated by DERC.

(e) The Petitioner, on the directions of DERC had earlier filed Petition No. 115/MP/2018 seeking adjudication of disputes between the Petitioner and NTPC regarding the excess recovery of annual fixed costs for various generating stations of NTPC for the period 2014-19 and the Commission vide its order dated 28.8.2019 had disposed of the said petition with necessary clarification and directions to the parties therein.

(f) DERC is of the view that the PPAC hike sought by the Delhi Discoms, including the Petitioner herein, involves a substantial hike in tariff to be paid by the consumers of Delhi. The DERC has opined that for the same quarter (Q₃) in the previous year (2018-19), the PPAC approved was to the tune of 5-11% and similarly the average range of PPAC approved for the Discoms of Delhi in 2018-19 was 5-8%. Accordingly, DERC observed that the substantial hike in PPAC claimed by Delhi Discoms, including the Petitioner herein, on the basis of the increase mandated by the Commission's aforesaid orders would adversely impact the consumers of Delhi. In view of this, DERC opined that this Commission may consider the payment of arrears under the aforesaid orders, in installments as indicated therein.



(g) Though Regulation 7(8)(i)(a) contemplates that recovery of such differential is to be recovered in three installments, the Commission has all the powers under the Act and the Regulations to relax such requirement in the greater interest of the consumers of Delhi. As regards PGCIL payments, since the Regulations do not contemplate any installments, there is no bar for this Commission to provide for the payment of any such differential, in installments.

(i) The petition is within the jurisdiction of this Commission since the payment of tariff of the Respondent No. 1 (CTU) and the Respondent Nos. 2 & 3 (the generating stations) are covered by Section 79(1)(a) & (c) of the 2003 Act.

Submissions during hearing on 8.5.2020

4. The Petitioner was heard on 8.5.2020 through Video conferencing. During the hearing, the learned counsel for the Petitioner mainly submitted that the Petitioner has never escaped its payment obligations and the bills raised by the Respondents {as per table above at paragraph 3(b)} have been paid after taking the applicable rebate in terms of the 2014 Tariff Regulations. He also submitted that considering the fact that determination of tariff and other factors contributing to the overall revenue requirement of the Petitioner is subject to the approval of DERC, the Commission may grant relaxation, taking into account the amounts already paid by the Respondents. The learned counsel further submitted that while Regulation 7(8)(i-a) of the 2014 Tariff Regulations contemplates the recovery of any differential amount in three instalments in case of the Respondent generating companies, it does not contemplate any instalment payments in respect of the Respondent (PGCIL), the transmission licensee. Accordingly, the learned counsel prayed that the Commission may relax the aforesaid regulations and extend the period of payment by instalments, in the interest of the consumers of Delhi.



5. The learned Senior Counsel for the Respondent, PPCL raised preliminary objections with regard to the 'admissibility' of the Petition and submitted that the reliefs sought by the Petitioner cannot be entertained, as the Petitioner has not demonstrated any financial difficulty in making the payments to the Respondents. He also submitted that the observations of DERC regarding the substantial hike in the PPAC claims of the discoms cannot be a ground for this Commission to grant any relaxation in provisions of the 2014 Tariff Regulations. The learned Senior Counsel while pointing out that the Petitioner is entitled to seek appropriate reliefs from DERC, added that the burden of extended installment payments, if any, cannot be passed on to the generating companies.

6. The Commission after directing the Respondent PPCL to file its preliminary objections in the matter and the Petitioner to file its reply to the same reserved its order on the 'admissibility' of the Petition.

7. In compliance with the directions of the Commission, the Respondent PPCL and MPL have filed their written submissions vide affidavits dated 15.5.2020 and 18.5.2020 respectively. The Petitioner has filed its reply to the said written submissions vide affidavits dated 19.5.2020 and 25.5.2020 respectively.

Written Submissions of the Respondent PPCL

8. The Respondents PPCL and MPL vide affidavit dated 15.5.2020 and 18.5.2020 have raised issue on 'maintainability' of the Petition and have submitted the following:

(a) The relaxation sought by Petitioner TPDDL is on the premise that on 6.3.2020 certain directions have been issued by DERC (hereinafter referred to as 'State Commission') to the effect that on account of the tariff orders passed by this Commission in respect of PPCL, PGCIL and MPL, there has been an impact resulting in a substantial hike in the PPAC of TPDDL leading to an unduly large burden on the consumers in the State of Delhi.



(b) The relief sought by the TPDDL is misplaced, without any merit and is not maintainable for the following reasons:

(i) The State Commission is not entitled to direct the Petitioner to file an application for relaxation of the tariff decided for the generating company particularly, when the generation tariff has been decided by this Commission and stands duly implemented with 2/3rd of the amount already paid.

(ii) Even if the generation tariff had been determined by the State Commission, such a course of re-determining the timelines taken subsequently is unknown to law and is unprecedented. This is contrary to the specific Regulations notified by this Commission. Such basic regulations cannot be relaxed because of any impact on the retail supply tariff to the consumers.

(iii) The relaxation, as sought for, is allegedly on account of the substantial hike in the retail supply tariff payable by the consumers in the State of Delhi to TPDDL, consequent to the tariff orders passed in respect of the generating stations. The issue, if any, is a subject matter of design and structuring of the retail tariff including providing for regulatory assets and progressive liquidation of such regulatory asset with carrying costs. These are the accepted methods of deferring the recovery. The input costs duly determined and implemented as per the applicable Regulations for the generation/ transmission tariff payable to generators like PPCL/ PGCIL and the other entities cannot be re-visited. Such re-determination of concluded cases for adjustments on account of subsequent retail supply tariff will lead to anomalous and unwarranted impact when the generating companies and transmission companies have implemented their tariff orders.

(iv) Section 61(d) of the 2003 Act enjoins upon the Appropriate Commission to safeguard the consumer interest and at the same time, ensure recovery of cost of electricity in a reasonable manner. In the present case, with effect from 1.4.2014, PPCL has been deprived of its actual tariff i.e. commensurate to the expenditure prudently incurred for generation of electricity and such increase in tariff stands duly determined



by this Commission after due opportunities to procurers including the Petitioner herein.

(v) The beneficiaries, including TPDDL (and consequently the consumers of the State of Delhi) have benefitted from the lower tariff with effect from 1.4.2014, whereas Respondent PPCL has had to arrange for funds in order to meet its working capital requirements and make regular payments to its gas suppliers during the period from 1.4.2014 till December 2019. A period of three instalments has been given thereafter to reduce the impact to the Procurers including the Petitioner. Further, the interest allowed for the above deferred period to PPCL is only 9.6% p.a. In such circumstances, it will be unfair, unjust and arbitrary if the generators such as PPCL are called to bear the above adverse impact for further period of 12 months. The deferment of differential tariff as sought by TPDDL would deprive PPCL of its legitimately incurred expenditure duly determined by this Commission.

(vi) It is not the case of TPDDL that it does not have the funds to pay the third instalment of Rs.83.67 crore to PPCL. This is particularly when the first two instalments have been paid by TPDDL about 30 days before the last date for payment without late payment surcharge and TPDDL has availed the rebate of 1%. The above indicates that TPDDL is in a position to pay even the last and third instalment of the differential tariff to PPCL.

(vii) TPDDCL, cannot, under the cover of filing the present Petition, seek to circumvent the provisions of the 2014 Tariff Regulations. The Petition, though termed an application for relaxation, is an application for modification of the tariff regulations in disguise. The power of relaxation cannot be exercised in a manner so as to nullify the relevant provisions of the 2014 Tariff Regulations and render them otiose or completely redundant.

(viii) Any delay on the part of TPDDL in paying the differential tariff to PPCL beyond the third instalment would have led to the levy of Late Payment Surcharge in terms of Regulation 45 of the 2014 Tariff Regulations. TPDDL is seeking the application of lower interest rate of 0.80 (namely 8%) as provided in the third Proviso to Regulation 7(8) for the period of 12



months, in contrast to the rate of 1.50% Late Payment Surcharge, to the financial prejudice of PPCL.

(ix) In terms of the methodology for recovery of PPAC in the DERC (Business Plan) Regulations, 2017 and Regulation 136 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, it is open for the State Commission to adjust/amortize the PPAC in a manner that there is no tariff shock to the consumers in the State of Delhi.

(x) On account of the existing shortfall/ deficit in the tariff, PPCL has, from time to time, had to arrange funds from alternate sources in order to be able to function effectively and generate electricity. By virtue of the present Petition, TPDDL is in effect, seeking a transfer of burden from the Distribution Licensee to PPCL and the other entities for an extended period of 12 months. If the relaxation is granted, then PPCL shall continue to face a shortfall/ deficit for an additional 12 months over and above the period statutorily provided for in clause (i-a) to Regulation 7(8) of the 2014 Tariff Regulations.

(xi) Further, such a relaxation would set a precedent for all beneficiaries to seek a similar dispensation in order to prevent a tariff shock to the consumers of various States and shall render clause (i-a) to Regulation 7(8) of the 2014 Tariff Regulations redundant. Such a course would be contrary to the intent and object sought to be achieved by the time limit of three months prescribed in the 2014 Tariff Regulations i.e. to ensure recovery of cost by the generator in a reasonable manner while safeguarding the consumer interest.

(xii) This issue was never raised by the Petitioner at any stage and now as an afterthought, the Petitioner is agitating this issue after a period of more than four years after the 2014 Tariff Regulations were amended in November 2015. This is an attempt to reopen the settled issues.

(xiii) The regulations cannot be amended by way of a miscellaneous petition. Seeking review of 2014 Tariff Regulations for its amendment through a miscellaneous petition is highly arbitrary, misconceived, and without any legal basis and as such the present Petition is not maintainable.



(xiv) The object of the present Petition is to illegitimately delay the recovery of appropriate cost by the utilities, thereby failing to provide for 'cost reflective tariff'. Therefore, to such extent, the Petition is contrary to the 2003 Act and the Tariff Policy.

(xv) If the Petitioner is aggrieved by any of the provisions of the 2014 Tariff Regulations, it should have approached the appropriate High Court challenging the Regulations. Having failed to do so, the Petitioner is now trying to, in effect, challenge the 2014 Tariff Regulations before this Commission, which is not maintainable. If the Petitioner is aggrieved by this Commission's orders, it should have filed review petition before this Commission or an appeal before the Appellate Tribunal for Electricity.

(xvi) 'Power to Relax' the regulation has to be utilized by this Commission in the condition where no other alternative is available in implementing and giving effect to the provisions of the Regulations. Therefore, this Petition is liable to be dismissed at the admission stage.

Accordingly, the Respondents have submitted that the Petitioner has not made out a case for relaxation of clause (i-a) of Regulation 7(8) of the 2014 Tariff Regulations and the Petition may therefore be rejected being without any legal basis.

Reply of Petitioner to the Written Submissions of Respondents PPCL & MPL

9. The Petitioner while pointing out that the submissions of the Respondents are not on 'maintainability' but on the 'merits' of the case has submitted the following:

(a) For the purpose of maintainability, a Court may look at only three aspects namely, (i) the Court ought to have jurisdiction to entertain the matter, (ii) the petition should not be barred by any law including law of limitation, or (iii) if the Petition does not disclose a cause of action.

(b) The Respondent No. 2, PPCL has not raised a single issue either on (i) jurisdiction or (ii) bar of any law or limitation (iii) absence of cause of action. PPCL has actually filed reply on the merits of the matter, i.e. as to why the



reliefs ought not to be granted. That is not a matter of maintainability but of merits and on this ground alone the petition is required to be admitted and listed for final hearing after hearing all parties on merits.

(c) The second fundamental principle for consideration of maintainability of the petition is that the contents of the petition must be taken as true and correct on a demurrer and if the said contents are taken as correct and true, then could the relief lie. On this fundamental principle, the present petition is undoubtedly maintainable. There is not a single argument raised by PPCL to suggest that even if the averments in the petition were taken to be correct, even then this Commission would not have the jurisdiction to entertain this petition. Judgments in *Liverpool & London S.P. & I Assn. Ltd. Vs. MV Sea Success I* [2004] 9 SCC 512 (ii) *Ramesh B. Desai V Bipin Vadilal Mehta* [2006] 5 SCC 638 (iii) *Abdulla Bin Ali V Galappa* [1985] 2 SCC 54 and (iv) *Crescent Petroleum Ltd. Vs. M.V. MONCHEGORSK* AIR 2000 Bom 161 have been referred to

(d) From paragraph 5 of the written submissions of PPCL it is clear that PPCL is making submissions regarding the merits of the matter i.e. whether (a) the relaxation, if granted, would deprive PPCL of its legitimate costs and constrain PPCL to arrange funds from alternate sources to its financial detriment; (b) the relaxation, if granted, would deprive PPCL of its legitimate costs and constrain PPCL to arrange funds from alternate sources to its financial detriment; and (c) the prayer of the Petitioner, if granted, amounts to amendment of the 2014 Tariff Regulations.

(e) Once PPCL is filing its reply on the merits of the case, there is no question of admissibility or maintainability and the case ought to be admitted and finally heard and disposed of by this Commission.

(f) There is not a single objection raised by PPCL in its written submissions regarding jurisdiction of this Commission to entertain this petition or regarding the legal competence of this Commission to provide the relief(s) as prayed for by the Petitioner. Each and every objection raised by PPCL is as to why the prayers sought by the Petitioner ought not be allowed on merits. On this ground alone, the petition is necessarily required to be admitted and listed for final hearing.



(g) In fact, PPCL in paragraphs 11 to 14 of its written submissions has made submissions regarding the alleged difficulties PPCL may face in case the relief is granted to the Petitioner by this Commission. This again shows that there is no objection by PPCL to the jurisdiction of this Commission to entertain the petition. However, PPCL is addressing the issues on merits and as to why the relief(s) should not be granted to the Petitioner. On this ground alone, the petition is necessarily required to be admitted and listed for final hearing.

(h) All issues, whether maintainability or jurisdiction, need to be dealt together for expeditious adjudication of the matter. Even if PPCL has raised certain objections regarding jurisdiction of this Commission to admit and decide the present petition and its maintainability, even then these objections on jurisdiction and maintainability have to be considered together with the merits of the case for expeditious adjudication of the matter. Judgment dated 18.10.2012 of the Hon'ble Supreme Court in Civil Appeal No. 7524/2012 (PTC India v GERC) has been referred to.

(i) This Commission in order dated 31.12.2018 in Petition No. 66/MP/2017 - NTPC Limited Vs. Grid Corporation of Orissa Limited & Ors has applied and followed the above decision where the Respondent had raised preliminary objections regarding the jurisdiction and maintainability of petition, and proceeded to decide the issues on maintainability, jurisdiction as well as on merit. The same approach should be followed in the present case and issues of maintainability, if any, ought to be decided with the merits together after admission of the petition and at final hearing stage.

(j) The Preamble of the 2003 Act, *inter alia*, clearly recognizes the protection of interest of consumers and supply of electricity to all areas and rationalization of electricity tariff. Section 61 regarding tariff regulations, is applicable to both, the Central Commission as well as State Commissions. The safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner is recognized under Section 61(d) of the Act and is applicable to both the State Commission and the Central Commission. The Respondent PPCL's entire submission is predicated on the assumption that the recovery of cost is the only function of the Central Commission and the safeguarding of the consumers interest is the function of



the State Commission. The Respondent has tried to draw a divide between the two and such an argument or its premise militates against the fundamental principles of interpretation in general and of the principles of tariff determination under the 2003 Act in particular.

(k) When a State Commission (DERC) has expressed a legitimate concern and approached the Central Commission to relax the time period for payment of dues on account of orders passed by the Central Commission pertaining to the Respondents, including Respondent No. 2 PPCL, in the larger public interest of the consumers of Delhi, in case such petition were thrown out at the threshold on maintainability, it would, most respectfully submitted be the ultimate abdication of the principle of comity between the Regulators at the State and Central level.

(l) DERC was of the view that the substantial hike in the PPAC claimed by the Delhi discoms, including the Petitioner herein, on the basis of the increases mandated by the tariff orders passed by this Commission, would adversely impact the consumers of Delhi. The DERC has also opined that the paying capacity of the consumers of Delhi is by and large restricted and, therefore, in the greater interest of the consumers this Commission may be pleased to consider the payment of arrears under the aforesaid Orders in installments as indicated therein.

(m) On account of the tariff orders passed by CERC in respect of the Respondents, there has been an increase of approx. 39.55% in PPAC claims in respect of the Petitioner for third quarter of 2019-20 as against the allowable increase of PPAC upto 4.5% as per the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017. Even if DERC were to carry forward PPAC to more than one quarter as submitted by PPCL, it would invariably not be able to avoid tariff shock to the consumers of Delhi. This, coupled with the fact that there would be further claims of PPAC for fourth quarter of 2019-20 and so on, if allowed to be paid only in three monthly installments, the same would add to the cascading effect of tariff shock to the consumers of Delhi in future tariff orders.

(n) The argument of PPCL that first two installments have been paid by TPDDL and that TPDDL is in a position to pay even the last and third installment of the



differential tariff to PPCL, firstly, is the submission by PPCL on merits and not an objection on maintainability. Secondly, the funds available with the Petitioner are public moneys received from the consumers of Delhi. Even if the Petitioner were to pay PPCL the third installment, it still has to recover the same in future tariff from the consumers of Delhi. This future recovery would undoubtedly result in tariff shock to the consumers as also observed by DERC, and the same is being sought to be avoided by way of the present petition.

In the above background, the Petitioner has prayed that this Commission may admit the petition and list the matter for further proceedings.

Analysis and Decision

10. Before deciding the issue of maintainability, we take note of the submissions of the Petitioner as regards the scope of consideration of maintainability at the preliminary stage. The Petitioner has argued that the scope of consideration of maintainability at the preliminary stage is confined to basic aspects such as patent lack of jurisdiction or absence of cause of action and that 'maintainability' should be decided without reference to the averments made in the reply and by accepting the contents of the Petition as correct. Also, the Petitioner has referred to the judgment of the Hon'ble Supreme Court in PTC V GERC to contend that all issues, whether preliminary or otherwise, need to be dealt with together in order to provide for expeditious disposal of matters.

11. The matter has been examined. In our view, the Petitioners' contention that (a) maintainability at the preliminary stage is confined to basic aspects such as patent lack of jurisdiction or absence of a cause of action and (b) maintainability should be decided without referring to the reply and by accepting the contents of the Petition, is misplaced. It is pointed out that the Electricity Act, 2003 is an exhaustive code and the provisions of Civil Procedure Code do not strictly apply to



the proceedings before the Commission. The Commission is well within its right to decide on its own procedure which satisfies the principles of natural justice and transparency. Accordingly, the Commission in the present case, having entertained doubts about the maintainability of the Petition has reserved its orders at the admission stage. The question as to whether the State Commission at the admission stage could decide the issue of maintainability of the Petition on the basis of the contents in the petition alone or on the basis of reply and defence by other side was examined by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 279/2013 and by judgment dated 22.8.2014, it was held by APTEL that the State Commission having doubt with regard to maintainability, could hear both the parties and consider their pleas before deciding the matter. The relevant portion of the judgment is extracted hereunder:

“25. As already indicated, the State Commission would follow its own procedures irrespective of the procedures referred to in the CPC either under Order-7 Rule-11 or Order 14 Rule-2 of the CPC. As long as the procedure adopted by the State Commission satisfies the said two requirements namely principle of natural justice and transparency, such procedures could not be called in question in this Appeal.

26. In view of the above, there is no infirmity in the procedure adopted by the State Commission in issuing notice to the other side before admission. In order to decide the question of maintainability of the Petition, the State Commission when it entertains the doubt with regard to the maintainability, has got the jurisdiction to get a clarification over the position of law by issuing notice to the other side.

27. Once the State Commission decided to issue notice to other side to give opportunity to the other side to make submissions with regard to the question relating to the maintainability of the Petition before admission, it means that the State Commission wants to decide the question of maintainability only after hearing both the parties on the basis of their respective pleas in the Petition filed by the Petitioner as well as the reply filed by the Respondents.

28. Therefore, the procedure adopted by the State Commission in this case by issuing notice to the other side for deciding the question of maintainability of Petition would show that the State Commission followed both principles of natural justice and the transparency to pass the appropriate order on the issue of the maintainability of the Petition before admission.

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40. In view of what is stated above, the first question is decided accordingly in favour of the Respondents holding that the State Commission is well within its rights to decide about the maintainability of the Petition not only on considering



the contents of the Petition but also the contents of the objections raised by other side through their reply and to reject the Petition at the admission stage itself.”

12. The Hon'ble Supreme Court in K. Kamaraja Nadar v. Kunju Thevar (1959 SCR 583) had set aside the order of the Election Tribunal and the High Court and had directed that the preliminary objection should be entertained and a decision reached thereupon, before further proceedings were taken in the election petition. The relevant portion of the judgment of the Hon'ble Supreme Court is extracted hereunder:

“43. The appellant no doubt made an application to the Election Tribunal to try his objection as regards the non-compliance with the provisions of that section as a preliminary objection and determine whether the second respondent had complied with the provisions of section 117 and if not to dismiss his petition. The Election Tribunal, however, did not decide this preliminary objection but ordered that the trial of the petition do proceed. The High Court before whom the Writ Petition M.J.C. No. 480 of 1957 was filed also came to the same conclusion as it thought that the matter could be decided at the time of hearing itself and dismissed the application.

44. We are of opinion that both the Election Tribunal and the High Court were wrong in the view they took. If the preliminary objection was not entertained and a decision reached thereupon, further proceedings taken in the Election Petition would mean a full-fledged trial involving examination of a large number of witnesses on behalf of the 2nd respondent”

13. The Petitioner has also placed reliance on the judgment dated 18.10.2012 of the Hon'ble Supreme Court in PTC V GERC and has submitted that all issues whether preliminary or otherwise, need to be dealt with together in order to provide for expeditious disposal of matters. Though we find merit in the submissions of the Petitioner, the said judgment, in our view, do not bar the Commission from deciding the question of maintainability at the outset, and if maintainable, to proceed with the matter and dispose of the same. The Hon'ble Supreme Court in Union of India V Ranbir Singh Rathaur & ors (2006) 11 SCC 696 has held as under:

“42. ...In any event we feel that the High Court's approach is clearly erroneous. The present appellants in the counter affidavit filed had raised a preliminary objection



as regards the maintainability of the writ petitions and had requested the High Court to grant further opportunity if the necessity so arises to file a detailed counter affidavit after the preliminary objections were decided. The High Court in fact in one of the orders clearly indicated that the preliminary objections were to be decided first. But strangely it did not do so. It reserved the judgment and delivered the final judgment after about three years. Since the High Court has not dealt with the matter in the proper perspective we feel it would be proper for the High Court to re-hear the matter. The High Court shall first decide the preliminary objections raised by the present appellants about the non-maintainability of the writ petitions...”

In the above background, the submissions of the Petitioner to admit the Petition and hear the matter on merits is rejected and accordingly, we proceed to decide the maintainability of the Petition in the subsequent paragraphs.

14. The Petitioner has submitted that the present petition has been filed pursuant to the direction dated 6.3.2020 of DERC to the Delhi Discoms, including the Petitioner, to file petitions before this Commission seeking relaxation in the recovery of dues on account of the impact of the tariff Orders dated 17.12.2019 in Petition No. 362/TT/2018, dated 31.7.2019 in Petition No. 20/RP/2018, dated 26.11.2019 in Petition No. 221/GT/2015 and dated 1.10.2019 in Petition No. 152/GT/2015 issued by this Commission in respect of the generating stations of the Respondents 2 and 3 and the transmission system of the first Respondent. The Petitioner has further submitted that said direction to the Delhi discom is in the backdrop of a communication dated 6.3.2020 by DERC requesting this Commission to consider the spread over of the time period for recovery of dues of the Delhi discoms, due to huge impact of the tariff orders and in the interest of electricity consumers of Delhi. The Petitioner has contended that when a State Commission (DERC) has expressed a legitimate concern and requested the Central Commission (CERC) to relax the time period for payment of dues on account of the said tariff orders of the Respondents, the rejection of the petition at the threshold of maintainability will result in abdication of the principle of comity between the



Regulators at the State and Central level. Accordingly, the Petitioner has prayed that that this Commission may consider the payment of arrears under the aforesaid orders in instalments as prayed for in paragraph 1 of this order. The Respondents PPCL and MPL have objected to the contentions of the Petitioner and have submitted that DERC is not entitled to direct the Petitioner to file application for relaxation of the tariff particularly, when generation tariff has been decided by this Commission and duly implemented with amounts already been paid. During the hearing of the matter, the learned counsel for the Petitioner, while affirming that payments have been made to the Respondents, added that the observations of DERC with regard to hike in the PPAC of the discoms on account of the tariff orders of this Commission, adversely impacting the consumers of Delhi, may be considered while granting relief to the Petitioner.

15. We have examined the submissions. Section 61(d) of the Electricity Act, 2003 enjoins upon the Appropriate Commission to safeguard the interest of the consumers and at the same time, ensure the recovery of cost of electricity in a reasonable manner. In accordance with the 2014 Tariff Regulations notified by the Commission, the tariff of the generating stations of the Respondents 2 and 3 and the transmission system of the first Respondent were determined by the aforesaid orders. Since there was no provision for adjustment of the difference between the tariff billed as per the 2009 Tariff Regulations and the tariff determined under the 2014 Tariff Regulations, the Commission, on 5.11.2015 by way of first amendment to the 2014 Tariff Regulations, incorporated proviso (i) to Regulation 7(8) of the 2014 Tariff Regulations, as under:

“(i-a) The difference between the tariff determined in accordance with proviso (i) above and the tariff determined in accordance with Regulation 6 of these regulations shall be recovered or refunded with simple interest at the rate equal



to the bank rate as on 1st April of the respective year, in three equal monthly installments.”

16. Thus, in terms of the aforesaid regulations, the differential tariff (difference between billed and determined) is recoverable by or refunded to the generating companies and transmission licensees, as the case may be, with simple interest at bank rate as on 1st April of the respective year, in three equal monthly installments.

17. The Petitioner has relied upon the DERC letter dated 6.3.2020 and has submitted that when DERC has expressed legitimate concern on the substantial hike in the PPAC claimed by Delhi discoms and requested this Commission to spread over the time period for payment of arrears in the larger interest of the consumers of Delhi, the non-consideration of the same would be against the principle of comity of regulators at the State and Central level. This submission of the Petitioner is not acceptable as the same is not binding on this Commission and only has a persuasive value. It is pertinent to note that Regulation 7(8)(i-a) was notified after stakeholder consultations, including the Consumer group, namely, the United Resident of Delhi. Also, the submission of the Petitioner that the appropriation of the amounts already paid/payable in terms of the aforesaid tariff orders of the Respondents in six or twelve instalments, by relaxation of Regulation 7(8)(i-a) is in the greater interests of the consumers, is misplaced. The Petitioner should be well aware that the appropriation of the amounts paid/payable in extended instalments would also be subject to carrying cost and the same will result in heavy burden to the consumers of Delhi. Therefore, the extension of the payment period by six or 12 instalments, would not, in our view, be in the interest of consumers of Delhi. Also, the inclusion of the amounts already paid by Petitioner, in the apportionment by instalments would result in the concluded



tariff orders of the Respondents being unsettled, due to adjustments on account of subsequent retail tariff. This according to us, would not only set a bad precedent, but will also not be feasible, by efflux of time. The Petitioner is advised to approach and seek the indulgence of DERC for recovery of PPAC in a staggered manner, to avoid any tariff shock to the consumers. Accordingly, the prayer of the Petitioner for extension of the instalment period for payment of amounts to the Respondents, in relaxation of Regulation 7(8)(i-a) of the 2014 Tariff Regulations is not entertained.

18. One more submission of the Petitioner is that in case of differential payments of Respondent 1 (PGCIL), the Billing, Collection and Disbursement Procedure, 2011 ('Procedure 2011') does not contemplate payment by installments and hence there is no bar for the Commission to relax the period of installment payments (i.e. 6 installments). This submission of the Petitioner is misconceived. The Billing, Collection and Disbursement Procedure, 2011 are pursuant to and in line with the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and admittedly does not govern the differential tariff payments. The differential tariff payments in respect of both the generating companies and transmission licensees are, however, governed by Regulation 7(8)(i-a) of the 2014 Tariff Regulations, which provide for the recovery or refund of tariff in three equal monthly installments. Moreover, clause 1.3 of the said Procedure, 2011 provides that in case of any conflict in interpretations between these procedures and the Regulations/Orders of Commission, the latter will prevail. Accordingly, the submission of the Petitioner for extension of the instalment period on this count, for payment of dues of the Respondent PGCIL is rejected.



19. Based on the above discussion, we hold that the Petition is not maintainable and is accordingly disposed of at the admission stage.

20. Petition No. 329/MP/2020 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S.Jha)
Member

Sd/-
(P.K.Pujari)
Chairperson

