

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 532/MP/2020

Subject : Petition under Section 79(1)(a) and Section 79(1)(f) of the Electricity Act, 2003 and Regulation 36 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 seeking intervention on the lignite transfer price fixed by Neyveli Lignite Corporation of Limited for the period 2019-24.

Date of Hearing : 27.8.2020

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

Petitioner : Kerala State Electricity Board Limited (KSEBL)

Respondents : NLC India Limited (NLCIL) and 14 Ors.

Parties present : Shri Prabhas Bajaj, Advocate, KSEBL
Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Latha Sv, KSEBL
Shri Anil Kumar Sahni, NLCIL

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking intervention on the lignite transfer price fixed by the Respondent, NLC India Limited (NLCIL) for the period 2019-24. Learned counsel further submitted as under:

(a) The price of lignite from NLCIL's captive mines was being determined based on the relevant Guidelines issued by the Ministry of Coal (MoC), Government of India from time to time based on the proposal forwarded by the Board of Directors of NLCIL and in consultation with stakeholders, which was subsequently approved by the Commission. The Guidelines for fixation of transfer price of lignite for NLCIL mines for the period 2014-19 were issued by Ministry of Coal, Govt. of India vide order No. 28012/1/2014-CA-II dated 2.1.2015 and the lignite transfer price computed on that basis, were approved by the Commission vide its order dated 8.3.2017 in Petition No. 256/GT/2014.

(b) For the tariff period 2019-24, Regulation 36 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short, 'the 2019 Tariff Regulations') provides that input price of lignite from the integrated mines will be computed in accordance with the Regulations to be



notified by the Commission separately and till the time such Regulations are notified, the input price of lignite shall be continued to be determined as per the Guidelines specified by MoC.

(c) NLCIL approached MoC for fixation of transfer price of lignite for NLCIL mines from 1.4.2019. MoC vide its letter No. 28012/1/2014-CA-II dated 24.6.2019 permitted the NLCIL's Board to decide the lignite pricing in consultation with the stakeholders at such frequency as the situation may demand.

(d) As per the above letter, while MoC assigned the responsibility for determining the transfer price of lignite to NLCIL's Board and for deciding the frequency of undertaking the process of price determination, the principles for determining the transfer price are required to be governed by the Regulation 36(3) of the 2019 Tariff Regulations. NLCIL was only entitled to determine the lignite price and not to modify MoC's existing Guidelines or to frame fresh Guidelines for fixing the lignite price.

(e) However, NLCIL, in complete violation of Regulation 36(3) of the 2019 Tariff Regulations, has issued fresh Guidelines for fixing the lignite transfer price for 2019-24, the provisions of which were also in deviation from the earlier methodology issued by MoC. NLCIL has also proceeded with billing the beneficiaries based on this lignite price.

(f) The fresh Guidelines issued by NLCIL for fixing lignite transfer price is without any lawful authority and contrary to the 2019 Tariff Regulations.

(g) In Petition No.219/GT/2019, NLCIL has itself considered pooled lignite transfer price @ Rs. 2132.239 per MT based on the MoC Guidelines, which was allowed by the Commission in its order dated 29.1.2020, subject to revision in accordance with the lignite transfer price notified by the Commission. Therefore, in the interim, NLCIL ought to be directed to consider the lignite transfer price @ Rs. 2132.239 per ton based on the MoC Guidelines till the Regulations for computation of input price of lignite are notified by the Commission.

3. Learned counsel for the Respondent, NLCIL accepted the notice. Learned counsel submitted that up to 2019, the transfer price of lignite was being determined on basis of the MoC Guidelines, which was also being approved by the Commission from time to time. Thereafter, as per the Regulation 36 of the 2019 Tariff Regulations notified on 7.3.2019, determination of the input price of lignite from the integrated mines is to be in accordance with the Regulations to be notified by the Commission separately. While draft Regulations in this regard have already been issued on 1.6.2020 and public hearing thereon also concluded, for interim period, MoC vide its letter dated 24.6.2019 stated that NLCIL's Board in consultation with the stakeholders can decide the lignite pricing at such frequency as the situation may demand. The said letter was in response to the NLCIL's letter dated 23.1.2019 for fixation of transfer price of lignite mine from 1.4.2019 onwards as the MoC Guidelines of 2015 were operative only till 31.3.2019. Accordingly, NLCIL only after meeting and consulting all stakeholders including KSEBL, has issued the said Guidelines for lignite transfer price.



4. After hearing the learned counsel for the Petitioner and the Respondent, NLCIL, the Commission admitted the Petition and directed to issue notice to the Respondents.
5. The Commission directed the Respondents to file their reply by 22.2.2021, with advance copy to the Petitioner, who may file its rejoinder, if any, by 15.3.2021. The Commission further directed that the due date of filing of reply and rejoinder should be strictly complied with.
6. The Commission further observed that the input lignite price from NLCIL's integrated coal mines, even though determined on the basis of the MoC Guidelines, was subject to approval of the Commission. Thereafter, for the tariff period 2019-24, in terms of Regulation 36 of the 2019 Tariff Regulations, the input price of lignite from the integrated mine is required to be computed in accordance with the Regulations to be separately notified by the Commission. While the Commission has already issued draft Regulations in this regard, Regulation 36(3) of 2019 Tariff Regulations clearly provided that till the time such Regulations are notified by the Commission, the input price of lignite shall continue to be determined as per the Guidelines specified by MoC.
7. In the above circumstances, the Commission observed that it was not appropriate for NLCIL to devise its own Guidelines for fixation of transfer price of lignite from NLCIL's mines for 2019-24 and proceed to bill the beneficiaries in accordance thereof without prior approval of the Commission on the transfer price of lignite so arrived at. Accordingly, the Commission directed NLCIL to keep the said Guidelines in abeyance. Learned counsel for the Respondent, NLCIL agreed for the same.
8. In the interim, till the Regulations for computation of input price of lignite are notified by the Commission, NLCIL is directed to continue to consider the lignite transfer price based on the MoC Guidelines issued vide order No. 28012/1/2014-CA-II dated 2.1.2015. The Commission notes that, in the Petition No. 219/GT/2019, NLCIL has itself considered pooled lignite transfer price @ Rs. 2132.239 per MT based on the MoC Guidelines, which was allowed by the Commission in its order dated 29.1.2020, subject to revision in accordance with the Regulations for computation of lignite transfer price to be notified by the Commission.
9. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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

