

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 32/MP/2022 along with IA No. 33/IA/2022**

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for recovery of amounts payable by the Respondent to the Petitioner against the Monthly Bills and the Late Payment Surcharge thereon under the Power Purchase Agreement dated 19.8.2013 entered into between the Petitioner and the Respondent.

Petitioner : D. B. Power Limited (DBPL)

Respondent : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

**Petition No. 181/MP/2022**

Subject : Petition under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the order dated 26.5.2022 passed in Petition No. 32/MP/2022.

Petitioner : D.B. Power Limited (DBPL)

Respondents : Tamil Nadu Generation and Distribution Co. Ltd. (TANGEDCO) and Anr.

Date of Hearing : 5.7.2022

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

Parties Present : Shri Sajjan Poovayya, Sr. Advocate, DBPL  
Shri Deepak Khurana, Advocate, DBPL  
Shri Ashwini Kumar Tak, Advocate, DBPL  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Shri Rahul Ranjan, Advocate, TANGEDCO

**Record of Proceedings**

Cases were called out for virtual hearing.

2. Learned senior counsel for the Petitioner, DBPL submitted that the Petition No. 32/MP/2022 has been filed, *inter alia*, seeking direction to the Respondent, TANGEDCO to pay outstanding amounts towards monthly bill for the period from March, 2020 to June, 2020 and July, 2021 to October, 2021 and Late Payment Surcharge (LPS) on monthly bills for the period from July, 2020 to November, 2021. Learned senior counsel mainly submitted the following:



(a) Vide Record of Proceedings for the hearing dated 26.5.2022, the Commission had directed TANGEDCO to pay 75% of the amount not under dispute before the next date of hearing preferably within two weeks of the said order.

(b) Accordingly, in terms of the aforesaid direction, TANGEDCO was required to release Rs. 417.19 crore (75% of the undisputed outstanding amount of Rs. 556.25) on or before 9.6.2022. However, despite the expiry of two weeks period on 9.6.2022 and the period till next date of hearing (i.e. till today), TANGEDCO has failed to pay the 75% amount in terms of the direction of the Commission. Accordingly, the Petitioner has filed Petition No.181/MP/2022 invoking the Section 142 read with Section 149 of the Electricity Act, 2003 for non-compliance of the aforesaid order of the Commission.

(c) TANGEDCO, in its reply, has made reference to certain payment made by it to the Petitioner. However, even the said payments were not made by TANGEDCO voluntarily or on its own accord but after inviting the adverse observations and comments from the Appellate Tribunal for Electricity ('APTEL') vide order dated 4.2.2021 in Appeal No. 56 of 2020 and order dated 31.4.2021 in Appeal No. 246 of 2018.

(d) TANGEDCO has relied upon the Electricity (Late Payment Surcharge and related matters) Rules, 2022 ('LPS Rules') to submit that liquidation of total outstanding dues of the generating stations including the Petitioner is being undertaken by TANGEDCO in terms of LPS Rules in 48 equal monthly instalment. However, its reliance on the LPS Rules is wholly misconceived and erroneous.

(e) The order dated 26.5.2022 of the Commission whereby TANGEDCO has been directed to pay 75% of the amount not under dispute predates the notification of LPS Rules on 3.6.2022. Moreover, LPS Rules cannot render the judicial order passed by this Commission nugatory. Accordingly, TANGEDCO is required to comply with the said order and to make payment in terms thereof.

(f) Moreover, the Petition No. 32/MP/2022 was filed on 3.1.2022 whereas LPS Rules have been brought into force w.e.f 3.6.2022. Also, the LPS Rules framed and issued under the provisions of the Electricity Act, 2003 and being delegated piece of legislation cannot and do apply retrospectively. In any event, the said Rules cannot affect the proceedings for recovery having already been initiated before coming into force of the Rules.

(g) The issue with regard to prospective applicability of the Rules as well as the applicability of Rules to the pending proceedings is no longer *res integra* and is squarely covered by the judgment of APTEL dated 5.4.2022 in OP No.1 of 2022 and Ors. in respect of Change in Law Rules.

(h) The decision of APTEL that Change in Law Rules cannot affect the proceedings already pending equally applies to the LPS Rules inasmuch as LPS Rules cannot be applied to divest the jurisdiction of this Commission to adjudicate upon the claim already laid before it, the cause of action for which had arisen much prior to the Rules coming into force.

(i) Without prejudice to the above, TANGEDCO's proposal dated 27.6.2020 by which it has proposed to liquidate total outstanding dues of the Petitioner is not compliance with LPS Rules inasmuch as TANGEDCO has stated that the

outstanding amount shall be paid in 48 instalments on the premise that TANGEDCO's outstanding amount is more than Rs.10,000 crore.

(j) Since outstanding dues to the Petitioner as per TANGEDCO's own letter is Rs. 655.80 crore, as per LPS Rules, the outstanding dues in the range of 501-1000 crore are to be paid in 20 equated monthly instalments. The contention of TANGEDCO that 'total outstanding dues' referred to in Rule 5 of LPS Rules means the total outstanding dues of Discom to all generator is completely misconceived and absurd. In this regard, reliance was placed on the various provisions of the LPS Rules.

(k) Accordingly, TANGEDCO be directed to immediately comply with the order dated 26.5.2022 of the Commission and make the payments to the Petitioner in terms thereof forthwith. IA filed by TANGEDCO seeking recall/ modification of order dated 26.5.2022 is also misconceived.

3. Learned counsel for the Respondent, TANGEDCO mainly submitted as under:

(a) TANGEDCO has filed IA bearing Diary No. 285/2022 seeking recall/modification of the Commission's order dated 26.5.2022 in Petition No. 32/MP/2022 in view of the subsequent developments, which may be taken up along with the present Petition.

(b) Even prior to the expiry of the period of two weeks from the Commission's order dated 26.5.2022 on 9.6.2022, the Ministry of Power, Government of India has notified the LPS Rules w.e.f 3.6.2022.

(c) In view of the aggravated financial position of TANGEDCO, the Board of TANGEDCO has sought to rescheduling of its outstanding dues in terms of the LPS Rules and accordingly, on 17.6.2022, resolved to submit its proposal for liquidation of total outstanding dues owned to generating companies, along with proposed schedule instalments as envisaged in Rule 5 of the LPS Rules.

(d) Since the total outstanding dues of TANGEDCO exceed Rs. 10,000 crore, TANGEDCO has proposed the liquidation of the outstanding dues in 48 equal monthly instalments starting from 5.8.2022. The details of outstanding dues with respect to the Petitioner as on date of notification of LPS Rules has been communicated to the Petitioner, well within 30 days period as envisaged under Rule 5(2) vide letter dated 27.6.2022.

(e) The contention of the Petitioner that the 'total outstanding dues' referred to in Rule 5(1) of the LPS is for each generator and not for the distribution licensee is entirely misconceived. In this regard, reliance was placed on the Rule 5(1) and 4<sup>th</sup> proviso to Rule 5(2) the LPS Rules. Similarly, the contention that LPS Rules do not apply to the pending proceeding qua outstanding dues is also misconceived as the definition of 'outstanding dues' in the LPS Rules itself envisages the pendency before the competent court/tribunal or dispute resolution agency.

(f) The decision of the APTEL dated 5.4.2022 in OP No. 1 of 2022 and Ors. in the context of Change in Law Rules cannot be applied to LPS Rules given the express provisions therein providing for rescheduling of arrears that have

accrued prior to the date of notification of LPS Rules. In this context, various observations of the APTEL in the judgment dated 5.4.2022 were referred to.

4. However, due to paucity of time, the submissions of Respondent, TANGEDCO could not be concluded.

5. The matters remain part-heard. The Petitions along with IA filed by TANGEDCO shall be listed for hearing on 15.7.2022.

**By order of the Commission**

**Sd/-**

**(T.D. Pant)**

**Joint Chief (Law)**