

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 347/MP/2022

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 to intervene, as Kerala State Electricity Board Limited has illegally withheld payment of in tune of Rs. 2,10,95,916/- from the bills raised by the Petitioner for the month of June 2022 and July 2022.

Petitioner : Damodar Valley Corporation

Respondents : KSEBL

Date of Hearing : **12.7.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present: Shri Venkatesh, Advocate, DVC
Shri Ashutosh K. Srivastava, Advocate, DVC
Shri Aashwyn Singh, Advocate, DVC
Shri Prabhas Bajaj, Advocate, KSEBL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner mainly submitted as under:

- (a) Through a bilateral PPA dated 24.4.2014, surplus power of 250 MW from Mejia TPS and Raghunathpur TPS, was allocated to Respondent KSEBL;
- (b) MOP, GOI, *vide* its letter dated 07.12.2021 decided that the Petitioner's thermal power projects are to provide 85% availability and accordingly provided an estimate of imported coal that would be required. The Petitioner was also directed to take the necessary steps to import and receive the projected quantity before the onset of the rainy season under intimation to the MOP and CEA.
- (c) On 28.4.2022, MOP, GOI revised the targets for importing coal for blending purpose in 2022-23 and directed the Petitioner to ensure an adequate stock of coal. On 18.5.2022, MOP, GOI, issued directions to this Commission under Section 107 of the Act to allow the higher amount of blending of up to 30% imported coal to the generating stations, without beneficiaries' consultation up to 31.3.2023.
- (d) Accordingly, the Petitioner was acting as per the directives of the MOP,



GOI and therefore, cannot be penalized for following the MOP's directions, in letter and spirit for public benefit.

- (e) The Petitioner, had given KSEBL prior intimation *vide* letter dated 20.5.2022 that it shall start blending imported coal in order to mitigate the shortage being faced by domestic sources. KSEBL was also apprised of the fact that the ECR of the Petitioner's projects' is expected to increase due to the blending of imported coal in the coming months depending upon the demand for power, generation levels and domestic coal receipts.
- (f) Therefore, KSEBL could not have withheld payment of an amount of Rs. 2,10,95,916/- from the Petitioner. If KSEBL was not inclined to pay the increased ECR, then it should have intimated the Petitioner that it does not require power as any shortage in supply of power or declaration of availability by the Petitioner would have attracted under-recovery of capacity charges.
- (g) Withholding of an amount of Rs. 2,10,95,916/-, by KSEBL, despite being aware that the imported coal shall be used for blending purposes through the Petitioner's letter dated 20.5.2022, ought to be declared arbitrary and illegal by this Commission.
- (h) While all other beneficiaries have paid their dues, only the Respondent KSEBL has not paid the said amount for the periods of June, 2022 and July 2022.

2. The learned counsel for the Respondent KSEBL made detailed oral submissions mainly as under:

- (a) The generator has a statutory obligation to comply with Regulation 43(3) of the 2019 Tariff Regulations. In cases, where prior consultation has not been made by the generator (the Petitioner herein), and the energy charge exceeds the limit of 30%, KSEBL is obliged to restrict the energy charge of the power purchased.
- (b) It is the settled position of law that the amendment of any statutory provision is always prospective in nature, and shall apply from the date of the amendment. KSEBL has acted entirely in conformity with the law, as applicable at the relevant time, including the Regulations and orders of this Commission. The amendment to Regulation 43 of the 2019 Regulations, came into effect only from 26.7.2022 i.e. the date of the order of this Commission bringing into force the said amendment;
- (c) KSEBL has duly implemented the said amended Regulation from the date of the order i.e. 26.7.2022. Any communication of the MOP, GOI does not constitute a 'mandate' and the parties are obliged to follow the statutory Regulations and the orders of this Commission.
- (d) On perusal of Form 15 of the Mejia TPS and the Raghunathpur TPS furnished by the Petitioner, it is apparent that the generating companies had a good stock of domestic coal and hence the usage of imported coal in the



months of June and July 2022 could have been reduced, thereby keeping the ECR within limits as stipulated in Regulation 43 of the 2019 Tariff Regulations.

(e) The Petitioner's letter dated 20.5.2022 does not provide details regarding the quantum of imported coal to be blended with domestic coal and the escalation in ECR.

3. After hearing the parties, the Commission directed the Petitioner to file following additional information on or before **31.8.2023**, after serving a copy to the Respondent:

(a) *The quantity of imported coal procured and consumed prior to and post 23.5.2022 in the Month of May, 2022 for MTPS units 7 & 8 and RTPS, respectively along with supporting documents.*

(b) *The reasons for procuring imported coal during the period April to June, 2022, in spite of having sufficient domestic coal available i.e. the consumption in the month was lower than quantity available at stock yard and quantity procured.*

(c) *The month wise and plant wise energy sold in market from May, 2022 to July, 2022.*

(d) *Distribution companies which have paid enhanced ECR for the power supplied from MTPS units 7 & 8 and RTPS due to blending of imported coal for the months from May, 2022 to July, 2022*

4. The Respondent to file their reply by **22.9.2023**, after serving a copy to the Petitioner, who may, thereafter file a rejoinder, if any, on or before **13.10.2023**. The parties shall complete pleadings within the due dates mentioned.

5. Matter shall be listed for hearing on **15.11.2023**.

By order of the Commission

Sd/-

(B. Sreekumar)
Joint Chief (Law)

