

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 276/MP/2024
Along with IA No. 67/2024

Subject : Petition under section 79(1)(f) of the Electricity Act, 2003 seeking quashing of invoices raised by the Respondent No. 1 on the Petitioner for being void, illegal and non-est, and seeking appropriate directions against the Respondent No. 1 to withdraw the invoices uploaded on the PRAAPTI portal and restraining it from issuing or uploading any further invoices on the said portal and from taking any coercive actions in furtherance of such invoices, including by way of seeking regulation of open access under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.

Petitioner : MSEDCL

Respondents : RGPPL and 2 others

Date of Hearing : **20.8.2024**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Parties Present : Shri Sanjay Sen, Senior Advocate, MSEDCL
Ms. Mandakini Ghosh, Advocate, MSEDCL
Shri Ramanuj Kumar, Advocate, MSEDCL
Shri Vishal Binod, Advocate, MSEDCL
Shri Sagnik Maitra, Advocate, MSEDCL
Shri Siddharth Dharmadikary, Advocate, MSEDCL
Shri Abhikalp Singh, Advocate, MSEDCL
Ms. Swapna Seshadri, Advocate, RGPPL
Ms. Ritu Apurva, Advocate, RGPPL
Shri Kartikeyan Murigan, Advocate, RGPPL
Ms. Sanjeevani Mishra, Advocate, RGPPL
Shri Gajendra Singh, NLDC
Shri Alok Mishra, NLDC

Record of Proceedings

During the hearing, learned senior counsel for the Petitioner submitted brief background of the petition and made further detailed oral submissions summarized as under:

- (a) The Petitioner and Respondent RGPPL entered into a PPA dated 10.4.2007 for supply of 95% of power generated by the Respondent RGPPL from its project.
- (b) Under the said PPA, the GSA/GTA was separately to be approved by the Petitioner.



- (c) The said PPA was terminated by the Petitioner on 8.5.2014. This termination of PPA has not been challenged by the Respondent RGPPL.
- (d) After termination of said PPA, no power has been supplied to the Petitioner by the Respondent RGPPL.
- (e) There has been a previous dispute between the Petitioner and the Respondent RGPPL which was primarily adjudicated by the Commission in its order dated 30.7.2013 in Petition No. 166/MP/2012. The said order of the Commission was challenged by the Petitioner before the APTEL in Appeal No. 261 of 2013. The APTEL decided the matter on 30.7.2023. The Petitioner preferred an appeal against the said order of the APTEL before hon'ble Supreme Court, which was dismissed vide its judgment dated 9.11.2023 in CA No. 1922 of 2023. The Petitioner also filed a Review Petition (C) No. 1997 of 2023 before hon'ble Supreme Court against the above judgment, which was dismissed vide its order dated 19.3.2024.
- (f) The Respondent RGPPL filed an Execution Petition No. 12 of 2023 before the APTEL wherein final order has been reserved on 30.7.2024.
- (g) The Respondent RGPPL is taking undue advantage of LPS Rules, 2022 as the said Rules prescribe a methodology for dealing with previous dues before operation of these Rules and the disputed amount pertains to period before 2022.
- (h) By way of uploading invoices on PRAAPTI portal, the Respondent RGPPL is compelling the Petitioner to enforce the contract, which stands terminated by the Petitioner w.e.f. 8.5.2014.
- (i) The scope of previous proceedings viz. the CERC order dated 30.7.2013 in Petition No. 166/MP/2012, the APTEL order dated 30.7.2023 in Appeal No. 261 of 2013 and the hon'ble Supreme Court judgment dated 9.11.2023 in CA No. 1992/2023 is limited to the disputes between the parties till 2012-13. Whilst, uploading the previous invoices till date is beyond the scope of previous proceedings.
- (j) The Petitioner was compelled to approach Hon'ble High Court of Bombay by way of Writ Petition (L) No. 24685 of 2024, wherein the Hon'ble High Court requested this Commission to take up the matter on 20.8.2024 and disposed the said writ petition, while granting an interim protection against power regulation till 20.8.2024.
- (k) The IA No. 67/2024 be decided at the earliest possible convenience of the Commission.

2. The learned counsel for the Respondent RGPPL submitted that reply to the IA has been filed and served to the Petitioner. She opposed the petition and the IA by way of detailed oral submission summarized as under:

- (a) The said PPA does not have any termination clause and the said termination of the PPA has been repudiated by the Respondent.
- (b) The issues raised by the Petitioner has already been covered under the previous proceedings before the Commission, the APTEL and hon'ble Supreme Court, including issue of the alleged termination of the PPA. Therefore, present petition is barred by limitation as well as constructive *res-judicata*.



- (c) The PRAAPTI proceedings are ongoing since January 2024 and the Petitioner has raised the same grounds in the Execution Petition No. 12 of 2023 before APTEL, therefore, present petition, as well as IA is not maintainable.
- (d) The Petitioner has already made an interim payment of Rs. 500 crore for outstanding dues from July 2013 till date.
- (e) The alternate resolution of dispute efforts made by the Respondent in the MOP meetings held on 15.3.2024 and 4.4.2024 has been frustrated by the Petitioner, therefore, it is not entitled to any interim relief.
- (f) The Petitioner has mentioned about a claim of approximately Rs. 1600 crore in para 66 of the petition, therefore, before considering any interim protection, the mentioned amount of Rs. 1600 crore and outstanding amount on PRAAPTI portal of Rs. 471 crore is required to be paid by the Petitioner as the total dues are amounting to more than Rs. 7000 crore.
- (g) Pending Execution Petition No. 12 of 2023 before APTEL, no relief, whatsoever is admissible to the Petitioner.

3. In rebuttal, the learned senior counsel for the Petitioner submitted that the issue of power regulation after uploading the invoices on PRAAPTI portal has arisen recently and not decided yet, therefore, the PRAAPTI portal invoice uploading and consequential actions are neither barred by limitation nor by constructive *res-judicata*. The learned senior counsel for the Petitioner further submitted that it has been consistently stating that the PPA stands terminated from May 2014 and circulated judgment of Hon'ble Delhi High Court in *Rajasthan Breweries Limited Vs The Stroh Brewery Company, 2000 (55) DRJ (DB)*, wherein it was held that the contract can be terminated any time by way of giving notice. He also circulated a judgment of the Hon'ble Supreme Court in *I.S. Sikandar Vs K. Subramani and others, (2013) 15 Supreme Court Cases 27*, wherein it was held that if a relief is not sought against termination of contract, its specific performance is not maintainable.

4. In response to a specific query of the Commission, the learned senior counsel for the Petitioner informed that due to compulsion of power regulation, an interim payment of Rs. 500 crore has been made to the Respondent RGPPL, however, the Petitioner cannot be subjected to such practices without deciding the issue of uploading the invoice for periods even after PPA termination.

5. The learned senior counsel for the Petitioner also submitted that the Respondent RGPPL supplied power to Railways after availing concession by the Government of Maharashtra and has been simultaneously billing the Petitioner, which is not permissible in law. He requested for issuing directions to the Respondent RGPPL to not regulate power supply considering the festival of Ganesh Chaturthi in the State of Maharashtra.

6. In response, the learned counsel for the Respondent RGPPL reiterated her earlier submissions and requested for dismissal of the petition as well as IA being not maintainable.

7. The learned senior counsel for the Petitioner requested for early disposal of the IA. The learned counsel for the Respondent RGPPL agreed that till an order is passed in the IA No. 67/2024, no coercive action shall be taken by RGPPL and interim relief granted by the Hon'ble High Court of Bombay in its order dated 8.8.2024 in the Writ Petition (L)



No. 24685 of 2024 shall remain applicable to the Petitioner. This submission of the learned counsel for the Respondent RGPPL is taken on record.

8. The learned senior counsel for the Petitioner requested for time to file a note of submissions. This request was not opposed by the learned counsel for the Respondent, who, however, sought time to file her response to the said note.

9. The Commission, after hearing the learned counsel for the parties, directed Petitioner to file its note of submissions, on or before **23.8.2024** after serving a copy to the Respondents, who may file a response till **26.8.2024** after serving a copy to the Petitioner. Subject to this, order in the IA No. 67 of 2024 was reserved.

By order of the Commission

**Sd/-
(Deepak Pandey)
Assistant Chief (Law)**

