

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 347/MP/2022

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Ramesh Babu V., Member**

Date of Order: 15th July, 2024

In the matter of:

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.

And

In the matter of:

Damodar Valley Corporation,
DVC Towers, VIP Road,
Kolkata – 700054

...Petitioner

Vs

Kerala State Electricity Board Limited,
8th Floor, Vydyuthi Bhavan, Pattom,
Thiruvananthapuram – 695004

...Respondent

Parties Present:

Shri Venkatesh, Advocate, DVC
Shri Ashutosh K. Srivastava, Advocate, DVC
Shri Aashwyn Singh, Advocate, DVC
Shri Punyam Bhutani, Advocate, DVC
Shri Bijoy Mukherjee, DVC
Shri Priyanshu Tyagi, Advocate, KSEBL

ORDER

The Petitioner, Damodar Valley Corporation (in short 'DVC'), has filed this petition under Section 79(1)(f) of the Electricity Act, 2003 (in short 'the Act') seeking the following relief(s):

(a) *Allow the present Petition;*



- (b) Direct the Kerala State Electricity Board Limited to promptly make payments towards the cost of procurement of imported coal for the bills raised in June and July 2022 i.e., 2,10,95,916/-;
- (c) Direct the Kerala State Electricity Board Limited to pay applicable late payment surcharge; and/or
- (d) Pass any such order(s) as deemed appropriate in the circumstances of the case.

Background of the case

2. The Petitioner is a generating company within the meaning of Section 2 (28) of the Act and is also a Corporation constituted under the DVC Act (Act No. XIV of 1948) notified by the Parliament. The Respondent, i.e., KSEBL, is one of the beneficiaries of the Petitioner's Meija Thermal Power Station and Raghunathpur Thermal Power Station and is being supplied the surplus power (250 MW) from the said two stations through a bilateral PPA dated 24.4.2014. The tariff of the aforesaid generating stations of the Petitioner is determined by this Commission under Section 62, read with Section 79(1)(a) of the Act. All the thermal power projects of the Petitioner are domestic coal-based power plants (through Coal India Limited and its subsidiaries) in terms of the fuel supply agreements.

3. The Petitioner has submitted that in view of the prevalent coal crisis, the CEA, vide its letter dated 11.10.2021 to the Petitioner, after taking note that the share of the coal-based generation has increased from 62% in 2019 to 66% in 2021 and that the supply of coal from CIL is not commensurate with the requirement, informed that the Secretary (Power) on 10.10.2021 had decided that the thermal power projects (TPPs) on domestic coal may use imported coal up to 10% for blending with domestic coal to meet the increased power demand. On 12.10.2021, MoP, GOI, through the CEA, issued a letter thereby mandating the TPPs based on domestic coal to use 10% of imported coal for the purposes of blending the same with the domestic coal. On



13.10.2021, the Petitioner issued a letter to NTPC to procure imported coal to the tune of 1MMT for the Petitioner. On 20.10.2021, MOP GOI issued an advisory to all the coal-based TPPs to maintain coal stocks as per their obligations and to ensure the full availability of their plants to meet the demand as per the requirements in the grid. It was further advised that if domestic coal supplies fall short of the requirements, the TPPs may blend imported coal up to fifteen (15) percent. MoP, vide letter dated 28.4.2022 *inter alia*, revised the targets for importing coal for blending purposes in 2022-23 for the Petitioner as 3.0 MT. Also, directions were given to the Petitioner to complete the process of placement of awards for importing coal for blending purposes by 31.5.2022. On 13.5.2022, the MoP issued a letter to the State Governments and the State Electricity Regulatory Commissions to ensure that all the generating companies under them take immediate action for the import of coal for blending as per the MOP orders and to ensure a 24x7 supply of electricity to consumers. Thereafter, MOP on 18.5.2022, after taking note that the 2019 Tariff Regulations restrict the generating companies from using a higher level of blending beyond a certain extent with imported coal without the consent of the beneficiaries, issued direction to this Commission under Section 107 of the Act, to allow a higher amount of blending of up to 30% imported coal, without beneficiaries' consultation, up to 31.3.2023.

4. In view of the aforesaid directions, the Petitioner, on 20.5.2022, intimated to KSEBL that it has started blending coal in a few stations and is expected to begin in other stations in the coming months. In view thereof, it was informed that the ECR in the Petitioner's coal-based power projects was expected to increase due to the blending of imported coal. KSEBL vide letter dated 16.7.2022 to the Petitioner while taking note that the total amount claimed by the Petitioner towards energy charges



during the peak period and off-peak period for June 2022 was Rs. 28,97,48,545/-, admitted only an amount of Rs. 27,82,30,164/- and the amount for Rs.1,15,18,381/- not being admitted by KSEBL. On 22.7.2022, KSEBL issued a letter to the Petitioner refusing to pay the energy charges in tune of Rs. 1,15,18,381. Thereafter, the Commission vide its Suo motu order dated 26.7.2022 in Petition No.10/SM/2022 amended the provision of Regulation 43 of the 2019 Tariff Regulations, modifying the requirement of consultation with the beneficiaries for blending up to 20% of coal from alternate sources of fuel supply including imported coal. As per the said order, the Commission had relaxed the provision of blending of imported coal and ordered blending up to 20% from alternate sources, including imported without any cap till 31.10.2022 or until further orders, whichever is earlier. Also, the 2nd & 3rd proviso to Regulation 43 of the 2019 Tariff Regulations was kept in abeyance till 31.10.2022. Thereafter, by letter dated 31.8.2022, KSEBL was also informed by the Petitioner that the ECR for the month of June 2022 was revised and a credit of Rs. 32,43,040/- had been given with the July 2022 energy bill. It was also requested that KSEBL shall admit the amount of Rs. 82,75,341/- (Rs. 1,15,18,381-Rs. 32,43,040). On 31.8.2022, KSEBL informed that with respect to the power supplies made from RTPS and MTPS, the amounts for Rs. 52,02,449/- and Rs. 76,18,126/- respectively, for the bill months of July 2022 had not been admitted. The Petitioner, vide letter dated 23.9.2022, referred to the directions of the MOP, etc., and requested KSEBL that the total amount of Rs. 2,10,95,916/- which includes the credit note of Rs. 32,43,040/- may be admitted. Since the payments were not admitted/made by KSEBL, the Petitioner had filed the present petition, seeking the reliefs as mentioned in para 1 above.



Hearing dated 2.5.2023

5. The Petition was heard on 'admission' on 2.5.2023 and the Commission, after hearing the parties 'admitted' the Petition and directed the parties to complete their pleadings in the matter. In response, the reply has been filed by KSEBL and the Petitioner filed its rejoinder to the same.

Hearings dated 12.7.2023

6. During the hearing of the petition, the learned counsels for the Petitioner and the Respondent KSEBL made detailed oral arguments. However, the Commission, after seeking certain additional information, adjourned the matter with directions to the parties to file their additional submissions.

7. The main contention of KSEBL is that the generator has a statutory obligation to comply with Regulation 43(3) of the 2019 Tariff Regulations and 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. While pointing out 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 argued that it has acted entirely in conformity with the law, as applicable at the relevant time, including the Regulations and orders of this Commission. KSEBL, while pointing out that amendment to Regulation 43 of the 2019 Regulations came into effect only from 26.7.2022, has submitted that it has duly implemented the said amended Regulation from the date of the order, i.e., 26.7.2022. it has also submitted that 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.



Hearing dated 5.12.2023 and 12.2.2024

8. Though the Petition was listed on 5.12.2023 and 12.2.2024, the same could not be finally heard. While so, during the pendency of the Petition, the Petitioner, vide its affidavit dated 4.7.2024 (filed on 5.7.2024), has submitted the following:

“4. It is respectfully submitted that due to subsequent developments in the matter, DVC no longer wishes to pursue the present Petition before this Hon’ble Commission. Therefore, without prejudice to the rights available to it in law, DVC seeks to withdraw the instant Petition.

5. That, accordingly, by way of the present Affidavit, DVC seeks the indulgence of this Hon’ble Commission to allow DVC to withdraw the present Petition.”

9. In the light of the above submission of the Petitioner, we find no reason to keep the Petition pending. Accordingly, the Petitioner is permitted to ‘withdraw’ the present Petition. Therefore, Petition No. 347/MP/2022 is disposed of as withdrawn.

**Sd/-
(Ramesh Babu V.)
Member**

**Sd/-
(Arun Goyal)
Member**

**Sd/-
(Jishnu Barua)
Chairperson**

