

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL No.30 OF 2011**

**Dated: 01<sup>st</sup> March, 2012**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. V J Talwar, Technical Member,**

**In the Matter Of**

DPSC Limited  
Plot X-1, 2 and 3, Block EP, Sector V,  
Salt Lake City, Kolkata-700 091

Appellant

Versus

West Bengal Electricity Regulatory Commission  
FD-415, Poura Bhawan,  
3<sup>rd</sup> Floor, Sector-III, Bidhan Nagar,  
Kolkata-700 106.

Respondent

Counsel for the Appellant : Mr. Atul Shankar Mathur  
Ms. Shruti Verma  
Mr. Aseem Chaturvedi  
Mr. Subir Sanyal  
Mr. Shaunak Mitra  
Mr. Gaurav Khaitan  
Mr. Ankur Sangal

Counsel for the Respondent : Mr. Pratik Dhar  
Mr. C. K Rai  
Mr. M. Kumar

## **JUDGMENT**

### **PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. DPSC Limited is the Appellant herein. West Bengal Electricity Regulatory Commission is the Respondent.
2. Aggrieved by the order dated 9.6.2010, passed by the West Bengal Electricity Regulatory Commission (State Commission) disallowing the additional cost incurred by the Appellant for Fuel and Power Purchase cost adjustment to the tune of Rs.52.42 lakh, the Appellant has filed this Appeal. The short facts are as follows:
  - (i) The Appellant is the power generation and Distribution Company, being the deemed distribution licensee under 1<sup>st</sup> proviso to Section 14 of the Electricity Act 2003.
  - (ii) The Appellant filed tariff Petition for the year 2007-08.
  - (iii) While determining the tariff by the tariff order dated 26.7.2007, the State Commission directed the Appellant to submit Fuel and Power Purchase Cost Adjustment Petition for the year 2007-08. Accordingly, on 22.9.2008, the Appellant filed the said Petition to approve the Fuel and Purchase Cost Adjustment charges to the tune of Rs.7,05,29,590/- against the energy sold during the period between April, 2007 and March, 2008.
  - (iv) The State Commission after considering the materials available on record by the order dated 27.5.2009 determined the amount of Fuel and Power Purchase Cost Adjustment for the Appellant for the year 2007-08. However, the State Commission disallowed

the additional cost incurred by the Appellant for purchasing the electricity from the DVC and the State Electricity Distribution Company Limited on the ground that the Appellant generated lesser amount of power with the available quantity coal than it ought to have generated and lesser generation had caused more import from other sources causing more expenditure. Thus the amount of cost which was disallowed comes to Rs.261.68 lakhs.

- (v) Being aggrieved by the aforesaid disallowance by the State Commission, the Appellant earlier had filed an Appeal in Appeal No.138 of 2009 before this Tribunal. After hearing the parties, this Tribunal allowed the Appeal by the judgment dated 4.5.2010 and set aside the order dated 27.5.2009 passed by the State Commission and remanded the matter to the State Commission for de-novo determination of the cost to be disallowed if any within a period of 06 weeks.
  - (vi) In terms of the said judgment dated 4.5.2010 by this Tribunal, the State Commission, after hearing the Appellant and on getting further information, re-determined the amount disallowable only to the tune of Rs.50.42 lakhs by modifying the earlier order disallowing the amount of Rs.261.68 lakhs considered in the earlier impugned order. Being not satisfied with the disallowance of the amount of Rs.50.42 lakhs, the Appellant has filed this present Appeal.
3. According to the Appellant, the State Commission on remand has not taken into consideration the audited figures/actual ex-bus generation of 201793 MU in determining the amount of allowable fuel and power purchase cost as directed in the remand order dated 4.5.2010 passed

by this Tribunal on the basis of the admission of the Learned Counsel for the State Commission regarding the mistake committed by the State Commission by not adopting audited figures. In short, it is the case of the Appellant that the State Commission has acted wrongly in taking into account total ex-bus generation of 217.607 MU as feasible without taking into account the audited/actual bus generation of electricity in utter defiance of the directions given by this Tribunal in the order dated 4.5.2010.

4. On the other hand, the Learned Counsel for the State Commission submitted that the State Commission has not at all violated the order passed by this Tribunal and in fact, the State Commission in the earlier impugned order disallowed Rs.261.78 lakhs and upon the remand, the Commission on the basis of the further information reduced that amount from Rs.261.78 lakhs to Rs.50.42 lakhs as a result of the consideration by the State Commission on different factors in the light of the remand order and as such, the impugned order passed by the State Commission on 9.6.2010 is perfectly justified.
5. In the light of the rival contentions made by the learned Counsel for the parties, the following question would arise for consideration:

**“Whether the State Commission acted wrongly in not taking into account the audited/actual ex-bus generation of 201793 MU determining the amount of allowable Fuel and Power Purchase Cost for the year 2007-08 which is in violation of the direction given in the remand order passed by this Tribunal for de-novo determination?”**

6. The main grievance of the Appellant is that the State Commission in the impugned order dated 9.6.2010 has not taken into account the audited figures of actual generation as directed by the remand order passed by this Tribunal dated 4.5.2010 and as such the State Commission should not have disallowed the amount of Rs.50.42 lakhs.
7. In view of the specific plea that the State Commission has not followed the direction given in the remand order passed by this Tribunal, it would be proper to refer to the order dated 4.5.2010 passed by this Tribunal containing the direction. The relevant portion of the order is as follows:

*“Learned Counsel Shri Pratik Dhar appearing for the Respondent Commission states on instructions from the Commission, that through an oversight there has indeed been a difference between the audited figures and the figures taken by them for determination of tariff in respect of the cost to be disallowed appearing at para 2.2.3 in the order of the Commission in case No. FPPCA-28/08-09 dated 27.5.2009. Mr. Chakraborty learned Counsel appearing for the Appellant says that in the appeal there is no other grievance and this was the only grievance which was prayed before the Tribunal.*

*In view of the above, we set aside the impugned order in respect of Fuel and Power Purchase Cost Adjustment(FPPCA) for the financial year 2007-08, as far as calculation of the cost to be disallowed as per para 2.2.3 is concerned and remand the matter to the Commission for de novo determination of the cost to be disallowed, if any, within a period of six weeks”.*

8. The perusal of this order shows that the learned Counsel for the State Commission admitted that due to the oversight there had been a difference between the audited figures and the figures taken by the State Commission for determination of tariff in respect of the cost to be disallowed and requested this Tribunal to remand the matter to the State Commission for the rectification of the mistake.

9. In view of the said aforesaid admission and the request for the remand, this Tribunal set aside the said impugned order and remanded the matter with the direction for de-novo determination of the cost to be disallowed, if any, in respect of the Fuel and Power Purchase Cost Adjustments for the Financial Year 2007-08 as per para 2.2.3.
10. In compliance of this order, the State Commission sought detailed information from the Appellant and on receipt of the same, the State Commission determined the Fuel and Power Purchase Cost Adjustment of the Appellant for the year 2007-08 by the impugned order dated 9.6.2010.
11. There is no dispute in the fact that the State Commission in its earlier impugned order dated 27.5.2009 had worked out feasible generation of 236.670 MU from available 180739 MT of coal against actual generation of 201.793 MU thereby disallowing the cost of 34.877 MU to the tune of Rs.261.78 lakhs. In pursuance of the remand order dated 4.5.2010 passed by this Tribunal, the State Commission has now re-determined the amount disallowed only to the tune of Rs. 50.42 lakhs after obtaining certain additional information and clarifications from the Appellant. Thus, it is clear that though the State Commission had disallowed Rs.261.78 lakhs in the earlier order, it has now allowed Rs.211.36 lakhs in pursuance of our remand order.
12. According to the Appellant, the State Commission should not have disallowed even this amount of Rs.50.42 lakhs as the State Commission is only required to take audited figures of generation as directed by this Tribunal and cannot make any variation in the said audited figures while determining the Fuel Power Purchase Cost Adjustments.

13. In short, the submission of the Appellant is that the State Commission was bound to take only the figures from the audited accounts while determining the factor  $C_D$  . This submission is misconceived. As a matter of fact, there was no direction by this Tribunal in its order dated 4.5.2010 that the State Commission is bound to take only the audited figures of ex-bus generation while making the de-novo determination of amount to be disallowed.
14. This Tribunal directed for de-novo determination to be disallowed if any by fixing the cost to be disallowed as per para 2.2.3. Therefore, this Tribunal did not direct the State Commission to take the audited figures only.
15. It cannot be debated that the Fuel and Power Purchase Cost Adjustment contains a statutory formula. In the said formula, there is a factor called  $C_D$  which means that:

*“ Cost disallowable by the Commission as having been incurred in breach of its economic generation/purchase obligation, or of order/direction of the Commission, if any, or for any other reason considered sufficient by the Commission during the period April, 2007 to March, 2008 and adjusted corresponding to actual level of sales. This disallowance shall also include the excess cost due to additional power purchase including cost for fuel on account of higher auxiliary energy consumptions, if any, in own generation of the licensee and/or higher T&D Loss than the respective norms as fixed by the Commission. In case of auxiliary consumption and/or T&D loss is better than the norms, then such disallowance, if any, for such parameter shall be nil, as applicable”.*

16. It is clear from the above definition, that the disallowance shall include the excess cost due to additional power purchase including the cost of fuel on account of higher auxiliary energy consumptions if any in own generation of the licensee and /or higher T & D Loss than the respective

norms as fixed by the Commission. So, in view of the same, the State Commission has to consider the factors like receipt of bad coal, forced outage and partial equipment availability while determining the amount of Fuel Power Purchase Cost Adjustments.

17. In the impugned order dated 9.6.2010 in the instant case, the State Commission showed by computations that the weighted average Heat Value of the different grades of coal consumed at Dishergarh and Chinakuri Power Station would have been 5906.64 K.Cal/Kg and 5857.47 K.Cal/Kg. respectively. As against the said weighted average Heat Value of coal, the Appellant got only 5801.61 K.Cal/Kg. and 5534.567 K.Cal/Kg on these two stations respectively. Such a shortfall in the receipt of the coal with requisite Heat Value would indicate that the grade slippage in supply of coal was partially responsible for the non-achievement of the target level of generation in the power stations.
18. It is pointed out in this context, that the Managing Director of the Appellant Company himself admitted that “ had there been no loss of generation due to poor coal stock, the Dishergarh and Chinakuri Power Station would have achieved generation of 50.18 MU and 205.08 MU respectively.
19. As against the referred figures, the State Commission worked out the level of achievable generation of 44.535 MU at Dishergarh and 195.573 MU at Chinakuri.
20. In the impugned order the computation of feasible quantum of generation in both these Power Stations had been done on the basis of audited figure of available coal i.e. 170053 MT (as against a figure of 180739 MT considered in 1<sup>st</sup> Impugned Order dated 25.7.2009) and

actual Heat Value of the Coal consumption by the Appellant as detailed in Annexure 2A to the Impugned Order dated 9.6.2010. The Commission has also taken in to account the loss of generation due to reasons other than poor quality of coal as evident from Annexure 2B to the Impugned Order dated 9.6.2010. Annexure 2A and 2B are reproduced below:

*“Annexure 2 A showing actual consumption of Coal and actual Gross Calorific value of available Coal at the two power stations*

Dishergarh Power Station			Chinakuri Power Station		
Fortnightly Coal Consumption (MT)	GCV as per Internal Lab Report (kCal/ kg)	MT X GCV	Fortnightly Coal Consumption (MT)	GCV as per Internal Lab Report (kCal/ kg)	MT X GCV
2050.04	5967	12232588.68	6238.30	5563	34703662.90
1940.35	5896	11440303.60	6391.03	5699	36422479.97
2083.82	5877	12246610.14	4452.70	5566	24783728.20
2176.67	6014	13090493.38	5179.70	5496	28467631.20
1884.67	6066	11432408.22	5001.50	5605	28033407.50
1648.91	6109	10073191.19	6693.82	5312	35557571.84
1863.30	5932	11053095.60	4376.00	5298	23184048.00
2472.11	5857	14479148.27	4821.50	5282	25467163.00
1701.46	5687	9676203.02	5752.30	5051	29054867.30
2326.26	5733	13336448.58	6148.60	5288	32513796.80
2082.08	5620	11701289.60	4387.30	5700	25007610.00
2156.81	5678	12246367.18	4195.50	5703	23926936.50
2173.31	5599	12168362.69	5242.90	5541	29050908.90
2036.67	5290	10773984.30	5851.10	5392	31549131.20
1018.81	5778	5886684.18	5903.00	5548	32749844.00
1095.10	5778	6327487.80	5708.20	5728	32696569.60
1087.42	5918	6435351.56	5058.90	5810	29392209.00
1178.79	5881	6932463.99	5285.09	5820	30759223.80
1470.88	5850	8604648.00	5086.90	5726	29127589.40
1389.26	5795	8050761.70	5411.90	5893	31892326.70
1059.59	5689	6028007.51	5332.20	5471	29169800.10
1265.58	5827	7374534.66	5019.60	5501	27610309.80
1255.57	5965	7489475.05	5771.80	5363	30954163.40
1259.57	5488	6912520.16	5406.62	5607	30314918.34
<b>40677.03</b>		<b>235992429.06</b>	<b>128716.46</b>		<b>712389897.45</b>
Average		5801.61			5534.567

*Annexure 2B of the impugned Order showing Computation of short fall in achieving Ex-bus Generation*

<b>Sl. No.</b>	<b>Particulars</b>	<b>Unit</b>	<b>Dishergarh</b>	<b>Chinakuri</b>	<b>Total</b>
1	Calarific Value of Coal Consumed	M.K.Cal/ Kwh	235992.429	712389.897	948382.33
2	Station Heat Rate (Normative)	K.Cal / Kwh	5391.000	3783.000	-
3	Feasible Generation (1/2)	MU	43.775	188.313	232.088
4	Loss of Generation for reasons other than poor stock of coal	MU	0.760	7.260	8.020
5	Achievable Generation Considered (3 + 4)	MU	44.535	195.573	240.108
6	Narmative rate of Auxiliary Consumption	%	11.000	9.000	-
7	Auxiliary Consumption	MU	4.899	17.602	22.501
8	Achievable Ex-bus Generation ( 5 - 7 )	MU	39.636	177.971	217.607
9	Actual Generation	MU	41.446	181.407	222.853
10	Actual Auxiliary Consumption	MU	5.170	15.890	21.060
11	Actual Ex-bus Generation ( 9 - 10 )	MU	36.276	165.517	201.793
12	Shortfall in achievable Ex-bus Generation ( 8 - 11 )	MU	3.360	12.454	15.814

21. From the above table, it became evident that the State Commission has taken into account 8.020 MU as loss of generation for reasons other than poor stock of coal. Therefore, it is not correct to contend that the State Commission has not considered the factors like forced outage and partial equipments availability etc.
22. In fact, it is clear from the impugned order that the concerned factors had duly been considered by the State Commission while fixing the targets of achievable Plant Load Factors and the level of generation in the Power Stations. The Plant Load Factor was considered for the

Dishergarh Power Station as low as 47% only in view of its old vintage. The same for Chinakuri Power Station which was set up in the recent past was considered only 80%. It is the responsibility of the Appellant to control the factors of forced outage etc to ensure the economic generation from the power stations so as to achieve the level of target Plant Load Factor and target generation.

23. The learned counsel for the Appellant has submitted that the Counsel for the Commission earlier admitted that the Commission has committed the mistake by not taking into consideration the figures of audited accounts of the consumed coal. This contention is strenuously refuted by the Learned Counsel for the State Commission stating that he made a submission before this Tribunal in the earlier Appeal that while taking some figure of the consumed coal, the State Commission made a mistake and on that ground, he requested this Tribunal to remand the matter for rectification of this mistake and accordingly, the matter was remanded by this Tribunal directing the Commission for de-novo determination of the cost to be disallowed i.e  $C_D$  Factor, if any. The learned Counsel for the State Commission has further clarified that in the earlier Order dated 27.5.2009 the State Commission had worked out 180739 MT of coal available with the Appellant for generation at both the stations. As against this the audited account showed 170053 MT of coal consumed by the Appellant during 2007-08 for generation at both the stations. Realising this, it was requested by the learned Counsel for the State Commission to remand back the case for redetermination of cost to be disallowed taking into account the audited quantity of coal available with the Appellant.

24. As indicated above, there was no specific direction by this Tribunal in its remand order dated 4.5.2010 that the State Commission is bound to take only the audited figures of ex-bus generation while making the de-novo determination. Therefore, the contention of the Learned Counsel for the Appellant that the State Commission has violated the order passed by this Tribunal on 4.5.2010 is not tenable.
25. On going through the impugned order passed by the State Commission which made a meticulous analysis on this aspect, it is clear that the State Commission applied its mind and reduced the amount from Rs.261.78 lakhs to Rs.50.42 lakhs as a disallowed amount as a result of the appropriate consideration of the relevant factors. Therefore, the submission of the Appellant that nothing was considered by the State Commission, is liable to be rejected.
26. On the other hand, as correctly pointed out by the learned Counsel for the State Commission it has taken into consideration all the relevant factors including the Statutory Formula for fixing the Fuel Power Purchase Adjustment and correctly arrived at a proper conclusion.
27. **To sum-up, the State Commission has not violated our Remand Order and on the other hand, it has followed the same in letter and spirit and passed the considered order which does not call for any interference.**

28. In view of the above, the Appeal is dismissed as devoid of merit.  
However, there is no order as to costs.

**(V.J. Talwar)**  
**Technical Member**  
Dated: 01<sup>st</sup> March, 2012

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Reportable/Not Reportable