

Court-II

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

O.P. NO.1 OF 2015 & I.A. NO. 195 OF 2015

Dated : 25th May, 2015

**Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:

**Tata Power Delhi Distribution Ltd. Appellant(s)
Versus
Delhi Electricity Regulatory Commission Respondent(s)**

Counsel for the Appellant (s) : Mr. Gopal Jain, Sr. Adv.
: Mr. Alok Shankar
: Mr. Anuraj Bansal
Mr. Ajay Kapoor
: Mr. Rama Pratap Singh
Ms. Ranjana Chauhan

Counsel for the Respondent (s) : Mr. Buddy A. Ranganadhan
: Mr. Aditya Panda for BRPL/BYPL
: Mr. Prashant Bezboruah for DERC

ORDER

IA No.195 of 2015 in OP No.1 of 2015 has been moved by the Petitioner namely Tata Power Delhi Distribution Ltd with a prayer that Delhi Electricity Regulatory Commission (DERC) be directed to implement the Power Purchase Adjustment Cost (PPAC) for 3rd and 4th quarter of Financial Year 2014-15 immediately. 3rd Quarter of the FY 2014-15 means the period from October, 2014 to December, 2014 and 4th Quarter means for the period from January, 2015 to January, 2015.

The grounds in the Interim Application are that the Petitioner is already suffering huge financial crunch, firstly, on account of non determination of PPAC on time bound basis and secondly arising out of the revenue gap of Rs.2359 Crores which is well acknowledged by the DERC vide its letter dated 1.3.2014. The Petitioner finds it very difficult to wait for hearing and conclusion of the tariff proceedings and ultimately tariff determination for the year 2015-16.

This Application is based on the order/directions passed by this Tribunal in OP No.1 of 2011 on 11.11.2011 wherein this Tribunal gave directions to various State Commissions to the effect that every State Commission must have in place a mechanism for fuel and Power Purchase Cost Adjustment which should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter.

It was further provided in our directions, that any State Commission which does not have such Formula/mechanism in place, must within six months of the order dated 11.11.2011 put in place such formula/mechanism. The relevant part of the order/directions dated 11.11.2011 of this Tribunal is given as under:

“65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions.

(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62(4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/mechanism”.

Apart from our aforesaid directions in our order dated 11.11.2011, Section 62 (4) of the Electricity Act, 2003 provides as under:

“62(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressively permitted under the terms of any fuel surcharge formula as may be specified”.

Learned Counsel for the DERC in Para-3, 4 and 5 of its Written Submissions has stated as under:

“3. The PPAC could not be decided earlier and within the time frame as directed by this Hon’ble Tribunal, as the Petitioner was not able to provide the complete information for calculation of PPAC.

4. The Respondent has already started the process of tariff determination for FY 2015-16 and comments from the stakeholders and public have already been called and received in this regard. The next step is to receive comments of the entities to the stakeholder/public comments and hold a public hearing.

5. The PPAC for the 3rd and 4th quarters would therefore, automatically get subsumed in the tariff schedule for FY 2015-16 for which the process is already at an advanced stage”.

We have heard Mr. Gopal Jain, learned Senior Advocate for the Appellant and Mr. Prashant Bezboruah, learned Counsel for the DERC and gone through the contents of the Application/Written Submissions of the DERC and our directions contained in our order dated 11.11.2011 and also Section 62(4) of the Electricity Act, 2003.

Without directly hitting the directions in our order dated 11.11.2011, the learned Counsel for the Delhi Commission submits that it would be unfair to first dispose of the quarterly PPAC matters without determination of the tariff and the Petitioner can wait for four more weeks till the exercise of tariff determination after hearing the representatives is concluded and tariff is determined after

adopting the procedure for tariff determination to be passed by the Delhi Commission.

There is an admission on the part of the DERC through its written submissions that the PPAC could not be decided earlier and within the time frame directed by this Tribunal vide order dated 11.11.2011 as the Petitioner itself was not able to provide the complete information for calculation of the PPAC.

Refuting these submissions, the Petitioner's Counsel is submitting that even the data have already been furnished in compliance of the subsequent order of the DERC. The learned Counsel for the DERC is repeatedly justifying the stand of the DERC in not determining the PPAC for 3rd and 4th quarter of the Petitioner on one excuse or the other.

In the hierarchy of the Courts, there is a committing of discipline and such discipline should be maintained by all, otherwise that would lead to chaos in the whole Country particularly, in the Power Sector if such trend of slackness or arbitrariness is allowed to the State Commission like DERC in the present case.

We do not want to elaborate on the actions or behavior of the DERC with regard to compliance of our directions contained in our order dated 11.11.2011 because it would not be proper at this stage for us to enter into the merits or demerits of the case.

Thus, we are confining to the present situation namely disposal of the IA 195 of 2015. We direct the Delhi Commission to determine the PPAC for the above said 3rd and 4th quarter within three weeks from today otherwise face the

consequences and action will be taken by this Tribunal in terms of our directions contained in order dated 11.11.2011 in OP No.1 of 2011.

Copy of this order may be made available to the Chairperson, DERC within three days so as to avoid any excuse for non compliance of the order being passed today.

In the light of the above, **the aforesaid IA is allowed.** Since, hearing of the Appeal is already fixed for 9th July, 2015, **there is no need for fixing the date again.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

HCI/DK