

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 143 of 2012

Dated: 30th November, 2012

Present: HON'BLE MR. JUSTICE PARTHA SAKHA DATTA, JUDICIAL MEMBER
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,

IN THE MATTER OF

Bihar State Electricity Board
Vidyut Bhawan, Bailey Road
Patna – 800021

... **Appellant**

VERSUS

Bihar Electricity Regulatory Commission,
Vidyut Bhawan II,
Jawahar Lal Nehru Marg
Patna - 800021

...**Respondent.**

Counsel for the Appellant : Mr Mohit Kumar Shah

Counsel for the Respondent : Nil.

JUDGMENT

PER MR. V J TALWAR, TECHNICAL MEMBER

1. The Appellant Bihar State Electricity Board (Board) constituted under Section 5 of the Electricity (Supply) Act, 1948 is a transmission and distribution licensee in the State of Bihar.
2. The Respondent Bihar Electricity Regulatory Commission (Commission) is the only respondent.
3. The Commission vide its Order dated 20th March 2012 approved the Fuel and Power Purchase Cost Adjustment (FPPCA) charges for the month of January 2012 wherein the Commission had disallowed certain expenses. Aggrieved by the Impugned Order of the Commission the Appellant has filed this Appeal.
4. The facts of the case has very narrow compass as under:
 - 4.1. The Appellant filed a petition before the Commission for approval FPPCA charges for the month of January, 2012 on 12.2.2003. The Petition included an amount of Rs 35.796 crores paid to NHPC towards enhancement of fixed charges for the period April 2011 to December 2011 in accordance with Central Regulatory Commission's Orders dated 30.11.2011 and 5.12.2011 for Rangeet HEP and Teesta V HEP respectively.
 - 4.2. On 19.3.2012 the Appellant filed another petition before the Commission requesting that the cost of the power purchased

from NRVNL on short term basis may not be included in determination of FPPCA charges for the Month of January 2012.

4.3. The Commission passed the impugned order on 20.3.2012 disallowing the arrears paid to NHPC and including the cost of power purchased from NRVNL.

4.4. Hence this Appeal

5. The Appellant has raised two issues in this Appeal. These are:

I. Disallowance of the arrears for the period April 2011 to December 2011 paid to NHPC for Teesta and Rangit HEPs on account of revision of fixed charges for these projects by the Central Commission retrospectively.

II. Non-removal of Short term power purchase from NRVNL from the calculation of FPPCA for the month of January 2012.

6. We shall now take up both the issues one by one. The first issue before us for consideration relates to **disallowance of the arrears for the period April 2011 to December 2011 paid to NHPC for Teesta and Rangit HEPs of NHPC on account of revision of fixed charges for these projects by the Central Commission retrospectively.**

7. Assailing the impugned order of the Commission, the learned counsel for the Appellant made the following submissions:

- a) The Commission has disallowed the legitimate additional expenditure incurred by the Board in purchase of power from Teesta and Rangit HEP of NHPC, on account of revision of tariff by the Central Electricity Regulatory Commission vide orders dated 30.11.2011 and 05.12.2011, whereby and whereunder the fixed charges have been increased retrospectively with effect from 1.4.2011, resulting in raising of supplementary bills by NHPC in the month of January 2012, which has been paid by the appellant. The only reason provided by the Commission for disallowing the additional cost of power purchase is that the supplementary revised bills of NHPC pertains to more than a month period, hence the same cannot be passed on to the consumers in one month.
- b) The FPPCA formula approved by the Commission envisages recovery of the said additional cost of power purchase, actually incurred by Board, over and above what has been approved by the Commission from the consumers on a monthly basis.
- c) The said reasoning of the Commission has rendered the FPPCA formula redundant. The disallowance of the legitimate additional expenditure incurred by the Board in purchase of power from Teesta and Rangeet over and above what has been approved by the Commission would render the very basis and foundation of FPPCA charges otiose and would further push the Board into financial crises which is already cash starved in case the order of the Commission is permitted to exist.

8. In order to appreciate the issue in question it would be desirable to set out the FPPCA formula specified by the Commission in the Tariff Order dated 1.6.2011. The FPPCA formula approved by the Commission is quoted below:

“PART D: FORMULA FOR FUEL AND POWER PURCHASE COST ADJUSTMENT

The approved fuel and power purchase cost adjustment (FPPCA) formula is given below:

Where,

$$\text{FPPCA (Paise/ kWh)} = \frac{Q_c(RC_2 - RC_1) + Q_o(RO_2 - RO_1) + QPp(Rpp_2 - Rpp_1) \times 100}{(QPg + QPp) \times (1 - L) - PSE}$$

- Q_c = Quantity of coal consumed during the adjustment period (in M.T)
= $(SHR \times QP_g) (1 + TSL) \times 1000 / GCV$
- RC_1 = Weighted average rate of coal supplied ex-power station coal yard as approved by the Commission for the **adjustment period** in Rs. / M.T
- RC_2 = Weighted average rate of the coal supplied ex-power station coal yard as per actual **for the adjustment period** in Rs. / M.T
- Q_o = Quantity of oil (in KL) consumed during the **adjustment period**
= Generation (in MU) X Specific oil consumption approved by the Commission (ml. / kWh)
- RO_1 = Weighted average rate of oil ex-power station (in Rs./KL) approved by the Commission **for the adjustment period**
- RO_2 = Weighted average actual rate of oil ex-power station supplied (in Rs. KL) **during the adjustment period**
- QPp = Power purchased from different sources and fed into Board's system (in MUs)
- Rpp_1 = Average rate of power purchase as approved by the Commission (in Rs. / kWh)
- Rpp_2 = Average rate of power purchased **during the adjustment period (in Rs. / kWh)**
- QP_g = Board's own power generation (in MUs) at generator terminal – approved auxiliary consumption
- L = T & D loss as approved by the Commission or actual, whichever is lower.
- PSE = Power sold to exempted categories (agriculture (private) and BPL

consumers only)
SHR = Station Heat Rate as approved by the Commission.
TSL = Transit and Stacking Loss as approved by the Commission.
GCV = Weighted average gross calorific value of coal fired at boiler front during the adjustment period (in Kcal / Kg)

....” {emphasis added}

9. Perusal of the above FPPCA formula would reveal that it corresponds to differentials in power purchased during the adjustment period only. The Appellant has relied on the term QPp used in the formula as power purchased from different sources. The learned counsel for the Appellant argued that the arrears paid to NHPC for the period April 2011 to December 2011 for the power purchased during this period should have been included in FPPCA calculations. The contention of the Appellant is misplaced for the reason that the term Rpp2 reflects the Average rate of **power purchased during the adjustment period**. The arrears paid for the period from April, 2011 to December, 2011 cannot be considered as one of the components of power purchased during the adjustment period i.e. January, 2012.
10. In view of the above discussions we hold that the Commission has correctly disallowed the arrears for the period April 2011 to December 2011 paid to NHPC as FPPCA charges for the month of January 2012. However, since the Appellant has paid the said amount to NHPC, the same have to be allowed as pass thru along with carrying cost in subsequent tariff determination.

11. Next issue for consideration is non-removal of Short term power purchase from NVVNL from the calculation of FPPCA for the month of January 2012.

12. Admitting that the Appellant had included the cost of power procured from NVVNL in its original petition for FPPCA charges dated 12.2.2012; the learned counsel for the Appellant claimed that **the Commission has committed a grave error by not removing the NVVNL transaction from the calculation of FPPCA charges.** He made the following submissions in support of his contention:
 - a) On account of directions by the State Govt. to procure additional power, the Board had agreed to procure additional power provided the State Govt. compensates the Board for all financial losses arising out of such procurement. The Board had invited tenders for short term supply of 300 MW power and the minimum tendered rate of supply for the additional power came to Rs. 4.09 for the period 01.09.2011 to 30.11.2011 and Rs. 4.31 for the period December 2011 to February 2012 which was also approved by the Commission with the condition that any loss to be incurred by the Board as a result of the said procurement of power on short term basis and it being supplied to the consumers at the tariff determined by the Commission, the average energy realization rate calculated by the Commission being Rs. 2.71 per unit, shall be fully compensated by the State Govt.

- b) It is a matter of record that the State Govt. has been compensating the Board for the additional cost of power purchase incurred in procurement of additional power from NVVNL over and above the power purchase cost as approved by the Ld. Commission. The Ld. Commission failed to consider that since there is no approved rate of purchase of power from NVVNL, there can be no incremental amount to be recovered from the consumers specially on account of the fact that State Govt. is compensating the Board for whatever extra amount is being incurred by the Board on procurement of additional power. **Thus the entire row of NVVNL transaction at Sl. No. 13 of the Table reproduced in impugned Judgment at has to be removed, as has been done by the Board in its calculation** The Commission has failed to address the said issue raised by the Board supplementary petition dated 19.3.2012 in the impugned order dated 20.03.2012 in as much as there is no whisper about this aspect of the matter.
13. It is noted that the Appellant has filed petition on 12.2.2012 before the Commission for approval of FPPCA charges for the month of January 2012. This petition included the cost of power procured from NVVNL on short term basis is indicated in row 15 in table below:

Sl.No.	Source from which power purchased	Total Power Purchase MU	Total Purchase Cost Rs. Crore	Average Rate (4÷3) Paise/kWh
1	2	3	4	5
1	Farakka (T)	309.329	122.867	397.205
2	Kahalgaon Stage-I (T)	148.112	46.218	312.048

3	<i>Kahalgaon Stage-II (T)</i>	58.887	19.797	336.186
4	<i>Talchar (T)</i>	245.025	55.775	227.630
5	<i>Chukka (HE)</i>	13.622	2.166	159.007
6	<i>Tala (PTC)</i>	10.233	2.067	201.994
7	<i>NHPC (Rangeet)</i>	5.159	10.597	2054.080
8	<i>NHPC (Tista)</i>	18.512	32.816	1772.688
9	<i>BHPC</i>	2.991	0.745	249.081
10	<i>Kanti BUNL</i>	(-)0.808	(-)0.295	
11	<i>RE Purchase (a) Co-generation (b) Solar (c) Others</i>	19.739	8.649	438.145
12	<i>Sub Total</i>	830.801	301.401	362.784
13	<i>UI (Purchase – Sale)</i>	(-) 34.372	(-) 9.525	(-)277.115
14	<i>RLDC charges</i>		15.134	
15	<i>NVVNL</i>	220.508	95.039	431.000
16	<i>Grant from State Govt. for 300 MW short Term Power Purchase</i>		-60.977	
17	<i>Total</i>	1016.937	341.068	335.387

14. The Appellant filed a supplementary petition on 19.3.2012 before the Commission praying, inter alia, for non-inclusion of NVVNL transaction from the FPPCA calculation on the basis that such short term purchases has not been envisaged in the FPPCA formula. The Appellant has submitted that the Commission proceeded to pass the impugned order dated 20.3.2012 without referring to the Appellant's supplementary petition filed just a day prior i.e. on 19.3.2012.
15. The Appellant has submitted that the short term purchases had not been envisaged in the FPPCA formula and, therefore, should have been removed from the FPPCA calculations. This contention of the Appellant is misconceived and is liable to be rejected for the reason

that the term QPp in the formula has been defined as Power purchased from different sources and fed into Board's system. Power purchased from NVVNL falls within the definition of QPp. Rate for NVVNL power would be the amount paid by the Appellant less the Government grant for such short term purchases divided by the quantum of power procured from NVVNL. The Commission correctly adopted the same method in arriving at FPPCA. The table given below is extracted from the Impugned Order approving the FPPCA charges for the month of January 2012.

“Average Power Purchase Cost per unit during January, 2012

Sl.No.	Source from which power purchased	Total Power Purchase MU	Total Purchase Cost Rs. Crore	Average Rate (4÷3) Paise/kWh
1	2	3	4	5
1	Farakka (T)	309.329	122.867	397.205
2	Kahalgaon Stage-I (T)	148.112	46.218	312.048
3	Kahalgaon Stage-II (T)	58.887	19.797	336.186
4	Talchar (T)	245.025	55.775	227.630
5	Chukka (HE)	13.622	2.166	159.007
6	Tala (PTC)	10.233	2.067	201.994
7	NHPC (Rangeet)	5.159	1.791	347.124
8	NHPC (Tista)	18.512	5.826	314.721
9	BHPC	2.991	0.745	249.081
10	Kanti BUNL	(-)0.808	(-)0.295	
11	RE Purchase (a) Co-generation (b) Solar (c) Others	19.739	8.649	438.145
12	Sub Total	830.801	265.605	319.698
13	NVVNL	220.508	95.039	431.000
14	Total	1051.309	360.644	343.043
15	UI (Purchase – Sale)	(-) 34.372	(-) 11.791	343.043

16	RLDC charges		15.134	
17	Grant from State Govt. for 300 MW short Term Power Purchase		(-) 54.336	
18	Total	1016.937	309.651	304.44

16. Comparison of the two tables shown above would reveal that the Commission has changed only the power purchase cost from Rangeet and Teesta HEPs of NHPC and slight change in UI transaction. The Commission has also considered lesser amount of State Government's grant. It has taken Rs 54.336 crores instead of Rs 60.977 proposed by the Appellant. Accordingly, the cost of NVVNL power would work out to be Rs 1.84 per unit as against Rs 2.71 the average rate of power purchase approved by the Commission. This has resulted in reduction in FPPCA charges. The Appellant has not challenged the amount for Government grant adopted by the Commission which is less than the amount proposed by the Appellant itself. The basic nature of FPPCA is 'adjustment' i.e. passing on the increase or decrease, as the case may be, to the consumer. The Commission is bound to take into account any decrease in cost while approving FPPCA charges.
17. This issue is also decided against the Appellant.
18. At this stage we are constrained to express our displeasure on the conduct of the Appellant for the reason that it was the Appellant who had submitted the data for FPPCA calculations including NVVNL transaction on 12.2.2012. After more than one month it filed a

supplementary petition on 19.3.2003 requesting for non-inclusion of NVCCCL transaction admitting that the same had been 'inadvertently' included in the original petition. Clause (vii) of the FPPCA formula requires that the data in support of FPPCA claims to be duly authenticated by an officer of the Board, not below the rank of Chief Engineer **on affidavit**. Perusal of supplementary petition enclosed with the Appeal would indicate that it was filed without the mandatory affidavit and was titled as '**Before the Hon'ble Chairman and his Companion Member**'. The Commission could have rejected being defective or could have directed the Appellant to amend. It also contained many other issues including true up of FPPCA of various months which would require detailed examination. The fact that the Commission passed the impugned order on 20.3.2012 would indicate that the Commission had already carried out detailed exercise and the order was ready by the time the Appellant filed the supplementary petition which was yet to be admitted by the Commission. The delay in filing of supplementary petition is on the part of Appellant himself and the Appellant has admitted that it had 'inadvertently' included the NVVNL transaction. Despite these faults on its own part, the Appellant had the ill-conceived misadventure to state before us that the Commission has committed '**grave error by not removing the NVVNL transactions**'. We strongly depreciate the conduct of the Appellant. Both the Appellant and the Respondent Commission are the statutory authorities and should mutually respect each other. Use of harsh words in Appeal does not strengthen one's case.

19. We would also like to mention that despite the notice being served on the Commission by the Registry of the Tribunal on 12.10.2012, the Commission preferred not to appear and assist this Tribunal. The Commission did not even file the reply to the Appeal. Thus the Appeal was heard and decided exparte. Section 124 of the Act permits the Commission to authorize one of its officers to present its case with respect to the Appeal. This provision has been kept in the Act to assist the Tribunal in reaching the correct decision, especially in cases where there is no other party in the original petition such as the Tariff Petitions. In such cases there would be no party to represent the interests' majority of consumers. Accordingly it becomes all the more necessary for us to hear the views of the Commission before reaching to any conclusion.
20. In view of our above findings, the Appeal is dismissed being without merits. No order as to costs.

(V J Talwar)
Technical Member

(Justice Parth Sakha Datta)
Judicial Member

Dated: 30th November, 2012

REPORTABLE/~~NOT REPORTABLE~~