

**JOINT ELECTRICITY REGULATORY COMMISSION FOR  
THE STATE OF GOA AND UNION TERRITORIES  
GURGAON**

Coram\*  
Sh. S.K.Chaturvedi, Member  
Petition No. 89/2012

**In the matter of**

Petition for fixation of completed / actual capital cost and Tariff of the project of the petitioner- a Power Generating Company under Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009 read with sections 62(1) (a) and 63 of the Electricity Act, 2003.

**And in the matter of**

M/s Suryachakra Power Corporation Ltd., Suryachakra House, Plot No. 304-L-III, Road No.78,  
Film Nagar, Jubilee Hills, Hyderabad- 500096 .....Petitioner

**Vs.**

1. Electricity Department, Rep. by its Superintending Engineer, Port Blair, Andaman & Nicobar Islands.
2. Chief Secretary, Andaman & Nicobar Administration Secretariat, Port Blair, Port Blair, Andaman & Nicobar Islands. ....Respondents

**Order**

**23.09.2013**

1. M/s Suryachakra Power Corporation Ltd.- Petitioner filed Petition No. 89/2012 for fixation of completed / actual capital cost and Tariff of the project of the petitioner- a Power Generating Company under sections 62(1) (a) and 63 of the Electricity Act, 2003 read with Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009.

2. The Commission after notice and hearings determined completed / actual capital cost of project of the petitioner vide order dated 3.07.2013 and at pages no. 89-91 of the order dated 3.07.2013 gave following directions:-

**Quote**

- 1) *The completed cost of the project is fixed at Rs. 7829.65 Lakhs.*
- 2) *The Liquidated Damages are not recoverable from the petitioner.*
- 3) *Beyond 10.12.2002 and upto the end of COD namely 02.04.2003, the petitioner is eligible to receive the deemed generation charges in terms of 3.3 (c) (iii) of PPA.*

- 4) The incentive of 0.65% is applicable on the "amount of equity" as defined in the PPA and "not on the return on equity" as pleaded by the respondent, for every 1% increase in annual PLF over normative PLF.
- 5) The interest on Debt is reimbursable in the monthly tariff billing, on the basis of actual interest amount paid by the Petitioner. Along with each monthly invoice, the Petitioner is required to provide necessary documentary evidence in support of its claim to the Administration, from the respective lenders, for the prevailing rate of interest, repayment of loan, interest amount due on the reduced balance of loan after repayment and the interest amount actually paid by the Petitioner. For the purpose of the debt portion of the project cost, the loan amounts from Citi Bank and Unsecured Loan as approved by the Commission are to be included.
- 6) Interest on working capital: It is seen from the Written Submissions of both the parties that the Administration had started supplying HSD and Lube oil at the request of the Petitioner from July 2008 and January 2009 onwards respectively. Since the respondent is providing HSD and Lube Oil, while calculating the Working Capital requirements, these elements (Thirty days primary fuel cost & sixty days Lube Oil cost) are not to be included. As per the documents and Written Submissions provided by the Petitioner, SPCL has taken a WC loan from SBI on floating interest rate basis. The interest on Working Capital is payable on actual basis on furnishing documentary proof of payment to the Bank.
- 7) HEAT RATE: Heat Rate beyond 2010 kcal/ kWh is presently not recommended. However, in future the aforementioned suggestion of the CEA regarding the major overhauling and subsequent determination of Heat Rate and its consideration by the Commission may be pursued.
- 8) LUBE OIL CONSUMPTION: No change in the specific lube oil consumption is recommended as of now as norms are decided over the life of the plant. While initially the lube oil consumption may be less than the normative value, over the years it may exceed the norm value but as norms are decided based on the average over the life of the plant, on the whole it would average out.
- 9) Density of HSD: The Commission directs the respondent to accept the authenticated MET data submitted by the petitioner for the purpose of calculation of density of HSD.
- 10) The Capital Cost as well as all operating parameters as approved by the Commission and the various tariff elements as enumerated in the PPA which flow from Capital Cost will become the basis for tariff determination with effect from the COD. The amount thus worked out month wise will be the Tariff due as per PPA. Actual payments made when compared with the "benchmark month wise due tariff" will determine the amount of Arrears/Recoveries.
- 11) The payment of arrears to the Petitioner will be made along with the interest on delayed payments as per terms of the PPA (as followed by the respondent on the recovery from the petitioner in the past). Similarly, recoveries from the Petitioner by the respondent will also be made along with interest as per terms of the PPA.
- 12) REFURBISHMENT OF THE PLANT: The plant having completed 10 years of operation, it is the right time for renovation of the plant after carrying out R&M study and Cost benefit analysis and proposal

submitted to the Commission for taking prior "in principle" approval before proceeding with the actual works. For this purpose the Petitioner should make a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension, financial package, phasing of expenditure, schedule of completion, estimated completion cost and any other information considered to be relevant and file a petition before the Commission.

13) The following charges being claimed as extra by the Petitioner are not admissible: Water Charges, Octroi Charges: (Administration may, however provide support to the Petitioner for exemption of Octroi charges as the plant is outside the bounds of Municipal Committee.) Reimbursement of fees payable to Port management Board and Increase in O&M expenses other than the escalation provided in the PPA.

14) REBATE: In view of the fact that the Capital cost was not finalised, both parties have been working with various figures of the Capital Cost, as also other tariff related parameters, therefore, the Invoices raised were being paid by the Administration on the basis of payment considered by them as due unilaterally as decided by the Administration. The rebate is applicable retrospectively since COD, on all Tariff Invoice amounts released within the PPA stipulated time for availing the Rebate. Any under-payment / over-payment be regulated by a para no. 11 of the directions as above in this order. If "amount paid" within the PPA stipulated time for availing the Rebate is equal or more than "Due amount" as calculated as per this order, then "Rebate" availed by A&N Admn. be retained by them. If "amount paid" (x) within the PPA stipulated time for availing the Rebate is less than the "Due Amount"(y) as calculated as per this order, then "Rebate" availed on excess of (y-x) be refunded alongwith the interest as per PPA provisions.

15) Loss of Opportunity claim: As there is no provision in the PPA regarding loss of opportunity claim, this claim of the petitioner is rejected.

16) As there is no provision in the PPA regarding payment of HSD evaporation losses as also viewed by CEA vide letter dated January 22, 2013 that there is no provision in the PPA to allow compensation for evaporation losses no compensation on account of HSD Handling/Transportation losses is payable to the petitioner; also, the same decision holds good in respect of HSD supply by the respondent to the petitioner.

#### **Unquote**

3. The parties to the petition were directed to submit compliance report of the directions given by the Commission in the order dated 3.07.2013 within a fortnight i.e. by 17.7.2013.
4. The petitioner vide letter dated 12.07.2013 intimated the Commission that the respondents are required to pay an amount of Rs. 84.18 Crs. as per the order dated 3.07.2013 of the Commission. The petitioner has also submitted its claim with the respondents and complied with the directions issued by the Commission in the order dated 3.07.2013.
5. The respondents did not submit compliance report of the order dated 3.07.2013 upto 17.07.2013 and despite expiry of period of 27 days. Therefore, the Commission reached to the conclusion that the respondents willfully and intentionally did not comply with the directions issued

by the Commission given in the order dated 3.07.2013 in petition no. 89/2012 within the stipulated period of a fortnight i.e. by 17.7.2013.

6. The respondents also failed to produce any stay order from any competent Court of Law/ APTEL/ Commission.
7. According to the provisions of Sections 142 and 146 read with Section 149 of the Electricity Act, 2003 non-compliance of provisions of the Electricity Act, 2003 and orders or directions issued by the Commission in the stipulated period attract penal action under Sections 142 and 146 read with Section 149 of the Electricity Act, 2003.
8. Therefore, the Commission decided that a show cause notice be sent to the respondents/ licensee that why proceedings under Sections 142 and 146 read with Section 149 of the EA, 2003 be not initiated against the licensee for willful and intentional non-compliance of the directions / order of the Commission dated 3.07.2013 in petition no. 89/2012 and for nonpayment of an amount of Rs. 84.18 Crs. (as claimed by petitioner) within the stipulated period of a fortnight i.e. by 17.7.2013 and thereafter.
9. Therefore, the Commission sent notice dated 1.08.2013 to the respondents/ licensee that why proceedings under Sections 142 and 146 read with Section 149 of the EA, 2003 be not initiated against the licensee for willful and intentional non-compliance of the directions / order of the Commission dated 3.07.2013 passed in petition no. 89/2012 and for nonpayment of an amount of Rs. 84.18 Crs. (as claimed by petitioner) within the stipulated period of a fortnight i.e. by 17.7.2013 and thereafter by 1.08.2013. The respondents/ licensee was directed to submit reply of the notice and compliance report of the order dated 3.07.2013 passed in petition no. 89/2012 on or before 8.08.2013 otherwise it will be presumed that the licensee is nothing to say in this matter.
10. The respondents/ licensee submitted reply dated 6.08.2013 of the show cause notice dated 1.08.2013 stating that the respondents received the order dated 3.07.2013 on 5.07.2013 and after thorough examination and careful consideration of the order dated 3.07.2013 the respondents came to the conclusion that some facts/ documents/ evidences available on the record is not considered while passing the order dated 3.07.2013 and provisions of Law either ignored or not examined in correct prospective and grave errors apparent on the face of records is committed and felt that a review petition of the order dated 3.07.2013 be filed. It is further submitted that as per Regulation 74 of JERC (Conduct of Business) Regulations, 2009, limitation of 45 days is prescribed for preferring review petition and respondents have already filed the review petition before this Commission on 02.08.2013 within 45 days of the order dated 3.07.2013 and the same is pending for adjudication before this Commission. The decision of the respondents to file review petition against the order dated 3.07.2013 was informed by the respondents vide their petition dated 13.07.2013 filed in JERC on 18.07.2013 well in the prescribed limitation. The respondents further submitted that in their affidavit dated 13.07.2013 they humbly prayed to the Commission that compliance of the order dated 3.07.2013 may be kept in abeyance till disposal of the review petition.

11. The respondents further submitted that the order dated 3.07.2013 in petition no. 89/2012 has huge financial implications in its implementation and if the Commission will not review the said order there would be irreparable loss to the respondents in particular and public at large. The respondents have always complied with the directions issued by this Commission and have not violated any direction of this Commission. It is submitted that the review petition has been filed within time prescribed by Law on the basis/ reasons/ grounds recorded in previous paragraphs, therefore, question of any willful disobedience or non-compliance of the orders of the Commission on part of respondents does not arise and prayed that show-cause notice dated 1.08.2013 issued u/s 142 & 146 read with section 149 of the Electricity Act, 2003 may be withdrawn/ recalled and review petition may kindly be taken up for adjudication.
12. The Commission sent notices to the parties for pre-admission hearing on 19.09.2013 at Commission's headquarter.
13. The Commission heard the representatives of the parties at length and has gone through the order dated 3.07.2013, show cause notice dated 1.08.2013 and reply of the respondents dated 13.08.2013 as well as provisions of the Electricity Act, 2003 and JERC (Conduct of Business) Regulations, 2009 carefully and thoroughly.
14. Admittedly M/s Suryachakra Power Corporation Ltd.- Petitioner filed Petition No. 89/2012 for fixation of completed / actual capital cost and Tariff of the project of the petitioner- a Power Generating Company and the Commission after hearing passed the order dated 3.07.2013. The order dated 3.07.2013 is well reasoned, speaking, as per pleadings of the parties and law on the point. The Commission in the order dated 3.07.2013 gave some directions to the parties at pages no. 89-91 and directed the parties to submit compliance report of the order dated 3.07.2013 within a fortnight i.e. by 17.07.2013. The petitioner vide letter dated 12.07.2013 submitted compliance report. But the respondents did not submit compliance report of the order dated 3.07.2013 within stipulated period and till date despite the fact that the Commission has sent show cause notice dated 1.08.2013 to the respondents with a direction to submit compliance report by 8.08.2013. The respondents failed to submit compliance report even by 19.09.2013 and a period of 76 days has already passed from the order dated 3.07.2013 despite the fact the order was to be complied on or before 17.07.2013. The stand taken by the respondents is that they intimated the Commission of their decision for filing review petition of the order dated 3.07.2013 vide affidavit dated 13.07.2013 filed on 18.07.2013 and they filed the review petition on 2.08.2013 within 45 days limitation provided under Regulation 74 of JERC (Conduct of Business) Regulations, 2009.
15. Learned counsel for the respondents argued that the order dated 3.07.2013 in petition no. 89/2012 has huge financial implications in its implementation and if the Commission will not review the said order there would be irreparable loss to the respondents in particular and public at large. The respondents have always complied with the directions issued by this Commission and have not violated any direction of this Commission. It is further argued that the review petition has been filed within time prescribed by Law on the basis/ reasons/ grounds available under Law,

therefore, question of any willful disobedience or non-compliance of the orders of the Commission on part of respondents does not arise and prayed that show-cause notice dated 1.08.2013 issued u/s 142 & 146 read with section 149 of the Electricity Act, 2003 may be withdrawn/ recalled and review petition may kindly be taken up for adjudication.

16. The Commission after receipt of the review petition on 8.08.2013 did not admit the review petition and after examination sent pre-admission hearing notice to the parties for 19.09.2013. The Commission after hearing all concerned at length and going through the review petition as well as order dated 3.07.2013 under review and record carefully and thoroughly dismissed the review petition. It seems that the respondents are bent upon to deprive the petitioner to enjoy fruits of the order dated 3.07.2013 despite the fact the matter is lingering on for the last more than ten years before one forum or the other. The respondents were required to implement the order dated 3.07.2013 and submit compliance report within a fortnight i.e. by 17.07.2013. But the respondents did not submit compliance report by 17.07.2013 and even thereafter till today despite the fact that a show cause notice sent to him to submit compliance report by 8.08.2013. But the respondents instead of complying the order dated 3.07.2013 within a fortnight i.e. by 17.07.2013 and thereafter by 8.08.2013 filed a false and frivolous review petition on 8.08.2013.

17. Therefore, the Commission is of the opinion that the respondents have intentionally and willfully disobeyed/ contravened the order dated 3.07.2013 passed by the Commission in petition no. 89/2012. The respondents are liable to be penalized u/s 142 of the Electricity Act, 2003. Therefore, the Commission directs that a notice be served upon the respondents u/s 142 of the Electricity Act, 2003 that why penalty should not be imposed upon them for non-compliance / contravention of the order dated 3.07.2013 passed by this Commission in petition no. 89/2012. The respondents are further directed to submit reply of the notice on or before 25.10.2013.

Scheduled for hearing on 30.10.2013 at 11:00 AM.

Sd/-

(S.K.Chaturvedi)

Member

Chairperson (Vacant)

\* Post of the Chairperson is vacant. As per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 for review of its own orders "Coram is all Members". Whereas according to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Member only constitute a valid quorum.

Certified Copy

(R.K. Malik)

Secretary