

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under Section 82 (1) of the Electricity Act 2003
Central Act 36 of 2003)

PRESENT:-

Thiru.K.Venugopal Member

and

Thiru.S.Nagalsamy Member

D.R.P.No.5 of 2011

Saheli Exports Pvt. Ltd.
New No.25, Old No.10
Sir Madhavan Nair Road
Mahalingapuram
Nungambakkam
Chennai – 600 034.

..... Petitioner

Vs

The Tamil Nadu Electricity Board
Represented by tis Chairman
800, Anna Salai
Chennai – 600 002.

.... Respondent

Date of hearing : 26-09-2012

Date of order : 21-11-2012

D.R.P.No.5 of 2011 came up before the Commission for hearing in regard to jurisdiction of the Commission to entertain this Petition on 26-09-2012. The Commission upon perusing the above petition and connected records and upon hearing both sides passes the following

ORDER

1. Prayer in D.R.P.No.5 of 2011:-

The prayer of the Petitioner in D.R.P.No.5 of 2011 is to direct the Respondent to pay the Petitioner an amount of Rs.1,91,58,166/- being the amount payable at the

contractual rate for the 4,115,180 units supplied to the Respondent and further to direct the Respondent to pay interest at 18% on the amount of Rs.1,91,58,166/- from the date when the payments for the units supplied each month become due.

2. Facts of the case:

2.1. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 involved primarily in the business of setting up power plants and generating electricity. The petitioner had set up a natural gas based power plant in Komal West Village, Mayiladuthurai Taluk with an installed capacity of 8.81 MW and the plant was commissioned on 14-04-2005.

2.2. Since June 2009, the Petitioner has been supplying power to the Respondent through Power Trading Corporation (PTC). The petitioner has contracted to supply 4 MW power to the Respondent through PTC for the period from June 2009 to May 2010. The tariff payable to the petitioner for such supply was fixed at Rs.5.782 per unit. During 14-07-2009 & 24-07-2009, Respondent informed that the off take from the generators has been reduced to 80% of their respective contracted quantities. Since, the petitioner had contracted to supply specific quantity of power to the respondent through the term of the contract, the petitioner had not made any alternate arrangement for the contracted quantity. Therefore, the reduction in off take resulted in injecting additional units into the grid by the Petitioner. For the units injected, the petitioner raised monthly invoices. For the units supplied during 22-07-2009 to 22-08-2009, the respondent refused to consider making payment for 22,800 units. Similarly for the power supplied during the period from 22-01-2010 to 22-02-2010, the respondent did not make payment for 53,093 units. In terms of the

Contract, the respondent is liable to pay at the rate of Rs.5.782 for the power supplied by the petitioner.

2.3. Thereafter during May 2010, the respondent Board invited offers from Power Traders approved by the Central Electricity Regulatory Commission (CERC) for supply of 600 MW of Round the Clock power for the period from June 2010 to May 2011. The Power Trading Corporation (PTC) was selected as the successful bidder by the Respondent Board. PTC procures power from generators like the petitioner to meet the obligation to supply the contracted quantity of power to the respondent Board. The supply is directly made by the generators to the Respondent's grid and it is treated as a sale to the Respondent Board through PTC.

2.4. The petitioner offered to supply 5 MW power from its plant every month and also commenced supply with effect from 01-06-2010. Although as per the tender the power supply was to commence from 01-06-2010, the respondent Board delayed the signing of the Power Purchase Agreement with PTC. Consequently, PTC did not make payments to the generators for the power supplied from 01-06-2010 as it was not being paid by the respondent Board.

2.5. While continuing to accept the power being supplied to it, the respondent Board took a sudden decision on 26-06-2010 to reduce the off take from the generators to 60%. Consequently, the petitioner's supply to the respondent Board through PTC was restricted to 3 MW as against 5 MW which was offered initially. The petitioner had a third party sale permission which was confined to 3.5 MW and therefore it was left with a difficult situation as the generation in excess of 6.5 MW could not be allotted to any consumer and hence the present petition.

3. Before proceeding to frame the issues it is necessary to settle the preliminary question with regard to jurisdiction of the Commission to entertain a dispute between a generating company and a trading licensee. We are of the considered view that the jurisdiction goes to the root of the matter and any decision rendered thereon without examining the question of jurisdiction would be a nullity in law and therefore the issue of jurisdiction should be settled before proceeding to discuss the other issues.

4. Findings of the Commission on the preliminary issue of jurisdiction:-

4.1. The fact of the matter is that the PTC India which has been granted trading licence by the CERC has procured power from the generating company for the supply of energy to the distribution licensee and a dispute has arisen as to whether the petitioner could proceed against the distribution licensee i.e, TANGEDCO in regard to non-payment of dues for the energy injected into the grid of the distribution licensee in the absence of a contract. Thus, the moot point that arises for consideration is whether a State Commission has the jurisdiction to entertain a dispute involving PTC India which has been granted licence by the CERC. In order to appreciate the facts of the case and render a decision thereon, it is necessary to refer to the judgment dated 1-10-2012 of the Hon'ble APTEL in appeal No. 31 of 2012 in the matter of PTC India vs. GERC and another. The said judgment of the Appellate Tribunal deals with the question as to whether a State Commission has the jurisdiction to entertain a dispute which involves a licensee who has been granted trading licence i.e, PTC by the CERC. The findings of the Tribunal in Para 99 of its judgment would be of relevance in deciding the question of jurisdiction raised in the present petition. It may be seen that the Tribunal, overruling the objection raised by

the counsel for PTC that having been granted trading licence by the CERC it cannot be subjected to the jurisdiction of the State Commission under section 86(i) (f) of the Electricity Act, 2003 proceeded to hold that the Gujarat Electricity Regulatory Commission has the jurisdiction to decide disputes between PTC and Gujarat Urja.

4.2. The observation of the Appellate Tribunal for Electricity in this regard is reproduced for reference.

“87. Let us now go into the third question. The said question is as follows:

“Whether the State Commission has the jurisdiction to adjudicate upon the dispute raised against the Appellant which is Inter State Trading Licensee to whom, the licence was granted by the Central Commission?

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112. Summary of our findings:-

i) xxx xxx

ii) The State Commission has the jurisdiction under Section 86(1)(f) of the Act to adjudicate upon the dispute between two licensees. In this case as the PPA has a nexus with the distribution licensees of Gujarat, the State Commission has the Jurisdiction to adjudicate upon the dispute between the two licensees.

iii) The State Commission has the jurisdiction to adjudicate upon the dispute in this case even though PTC is an inter-state trading licensee, in terms of the findings of this Tribunal in Appeal No 200 of 2009 in the case of Pune Power Ltd. as the transaction had taken place within the jurisdiction of the State Commission”.

4.3. It may be seen from the above observations of the Appellate Tribunal that the question of jurisdiction in regard to disputes involving a licensee who has been granted licence by the CERC has been well settled and applying the ratio laid down by the Tribunal in the said case, we have no hesitation in concluding that this Commission has the jurisdiction to entertain the present petition.

4.4. The Petitioner is also directed to implead M/s.PTC as a necessary respondent and serve a copy of the petition to them.

4.5. A detailed order on the merits of the case will be pronounced after hearing the parties.

5. APPEAL:

An appeal against this Order lies to the Appellate Tribunal for Electricity under Section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission