

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Interlocutory Application No 15/2014
in
Petition No. 35/MP/2014

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A. K. Singhal, Member

Date of Hearing: 27.3.2014
Date of order: 28.3.2014

IN THE MATTER OF:

Interlocutory Application (IA) in Petition no. 35/MP/2014 seeking directions towards payment of demand raised by the Income Tax Authorities from PSDF.

AND

IN THE MATTER OF

Power System Operation Corporation Ltd. (POSOCO)
B-9, Qutab Institutional Area,
KatwariaSarai, New Delhi -110016

----- PETITIONER

AND

1. Northern Regional Power Committee
18-A, Qutab Institutional Area,
KatwariaSarai, New Delhi-110 016
2. Eastern Region Power Committee,
14 Golf Club Road,
Tollygunge, Kolkata-700 033
3. Western Regional Power Committee,
F-3, MIDC Area, Marol,
Opp. SEEPZ, Central Road,
Andheri (East),
Mumbai - 400 093
4. Southern Regional Power Committee,
Central Electricity Authority,
No. 29 Race Course Cross Road
Bangalore-560 009
5. North Eastern Regional Power Committee,
Meghalaya State Housing Finance
Co-Operative Society Ltd. Building
Nongrim Hills, Shillong – 793003

_____RESPONDENTS

6. Secretary,
Central Electricity Authority
Sewa Bhawan, RK Puram,
New Delhi – 110 066

_____ PROFORMA RESPONDENT

The following were present:

- 1) Shri.V.K. Agrawal, POSOCO
- 2) Ms. Jyoti Prasad, POSOCO

ORDER

The Petitioner has filed this interlocutory Application (IA) to bring on record the steps taken by the petitioner since the issue of the order dated 13.3.2014 in Petition No.35/MP/2014 and seeking intervention of the Commission towards resolution of the issue. The petitioner has made the following prayers in the IA:

"14. Taking into account the gravity of the matter and in view of the DCIT order dated 24.03.2014, the petitioner humbly seeks the intervention of the Honourable Commission towards resolution of the issue and for the directions as prayed under prayer no.(ii) in our main petition dated 24.02.2014 towards payment of the tax from PSDF."

2. The representative of the petitioner submitted that consequent to the receipt of the demand notice dated 31.1.2014 from the Dy. Commissioner of Income Tax, Circle 14(1), New Delhi, the petitioner filed a writ petition {WP(C) No. 1396 of 2014} before the Delhi High Court on 28.2.2014 seeking stay of the demand notice. The Hon'ble Court in its order dated 3.3.2014 directed the petitioner to approach the Commissioner (Appeals) under the Income Tax Act,1961 and further directed that such an appeal if made within one week be disposed of by the Commissioner (Appeals) within four weeks from the date of the order. The High Court also directed that in the event of an application being moved by the petitioner under section 220(6) of the Income Tax Act, 1961, the same would be considered reasonably by the concerned authorities having regard to the problems expressed. The representative of the petitioner submitted that the petitioner filed an appeal on 3.3.2014 before the

Commissioner of Income Tax (Appeals) against the demand notice and the stay application was filed before the Deputy Commissioner of Income Tax (DCIT) on 5.3.2014. DCIT in its order dated 14.3.2014 stayed deposit of 50% of the demand till the disposal of the appeal and directed the petitioner to deposit 50% of the total demand (i.e. Rs. 4396458095/-) by 20.3.2014 and produce documentary evidence of the same by 21.3.2014. The petitioner filed an appeal against the order dated 14.3.2014 of DCIT before the CCIT on 19.3.2014. CCIT vide order dated 24.3.2014 has directed the petitioner to deposit 40% of the total demand on or before 29.3.2014 and the deposit of balance amount was stayed till disposal of the appeal. CCIT has further directed that in case of default, action for recovery of outstanding demand would be taken as per provisions of the Income Tax Act, 1961. The representative of the petitioner submitted that the appeal has been heard by the CIT (Appeals) and order has been reserved.

3. The representative of the petitioner submitted that in compliance with the directions of the Commission in order dated 13.3.2014, the petitioner also approached the Ministry of Power, Government of India vide letters dated 14.03.2014, 15.03.2014 and 19.03.2014. The Ministry of Power in its letter 21.03.2014 has asked the petitioner to take all legal recourse to settle the matter.

4. We have considered the submissions of the petitioner. This Commission in discharge of its statutory functions to regulate inter-State transmission of electricity under section 79(1)(c) of the Electricity Act, 2003 has taken various regulatory measures through imposition of UI charges, congestion charges and reactive energy charges etc. in order to ensure smooth operation of the inter-state transmission system and maintenance of the safety and security of the integrated national grid.

The funds created out of these charges are in the nature of Regulatory Funds which are to be utilized for improving and facilitating the inter-state transmission of electricity in the interest of the beneficiaries and consumers in accordance with the respective regulations. These Regulatory Funds are being maintained and operated by POSOCO as custodian of the said funds on the authority of the respective regulations notified by the Commission and the said funds do not form part of the income of POSOCO. The balance amounts from these Regulatory Funds are transferred to Power System Development Funds which is exempted from Income Tax under section 12 of the Income Tax Act, 2014. Accordingly, we reiterate our directions in order dated 13.3.2014 and direct the petitioner to pursue all legal options available for withdrawal or setting aside of the demand notice from IT Department.

5. With regard to the petitioner's prayer for permission to meet the tax liability from the PSDF in the event the petitioner is still required to pay the Income Tax on the said funds despite its efforts, we direct the petitioner to approach the Monitoring Committee in this regard.

6. IA No.15/2014 is disposed of in terms of the above.

Sd/-
(A K Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson