

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 136/SM/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shi A.K.Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K.Iyer, Member

Date of Hearing: 06.11.2015

Date of Order: 10.11.2015

In the matter of

Default in opening of Letter of Credit in accordance with the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009.

And

In the matter of

1. Power Development Department, Jammu and Kashmir
2. Secretary, Power Development Department, Jammu and Kashmir

...Respondents

The following were present:

Shri H.K Chawla, NRLDC
Ms. Supriya Singh, NRLDC

ORDER

On account of failure of Power Development Department, Jammu and Kashmir (PDD J&K) to open the Letter of Credit in accordance with the provisions of the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (UI Regulations) penalty of ₹1 lakh was imposed vide order dated 30.8.2012 in Petition No. 201/SM/2011. Since, the penalty amount was not deposited despite reminders, action under Section 142 was initiated against Respondent Nos. 1 and 2 for non-compliance with the directions of the Commission vide order dated 18.7.2013.



2. During the hearing of the petition on 13.8.2013, the learned counsel for Respondent No. 1 raised a preliminary objection that the Electricity Act, 2003 does not extend to the State of J&K and therefore, PDD J&K is not amenable to the jurisdiction of the Commission. Subsequently, vide affidavit dated 5.9.2012, Respondent No. 2 made the following submissions:

- (a) That the State of J&K enjoys a special status under Article 370 of the Constitution of India. One of the key features of Article 370 is that the legislations enacted by the Parliament do not extend to the State of J&K till such time the Hon'ble President of India in consultation with the Government of Jammu and Kashmir declares them applicable to the State of Jammu and Kashmir.
- (b) The Electricity Act, 2003 was enacted by the Parliament. Section 1 (2) of the Electricity Act, 2003 lays down that the Act extends to the whole of India except the State of J&K. In view of Section 1 (2) of the Electricity Act, 2003, the Commission does not have the legislative mandate to adjudicate the matters pertaining to the Respondent. Therefore, the orders passed by the Commission are persuasive and not mandatory in nature in so far as the Respondent is concerned.
- (c) Even in the absence of the legislative mandate, the Respondent is considering in the right earnest the orders passed by the Commission and has initiated the process of consultation with other departments like Department of Finance and Department of Law, etc.
- (d) The present proceedings be disposed of on the ground of absence of legislative mandate/jurisdiction to proceed with the same.

3. In the meanwhile, in response to another notice dated 8.10.2013 in Petition No. 194/SM/2013, Respondent No. 1 filed Writ Petition No. 6599/2013 before the Hon'ble High Court of Delhi raising the issue of jurisdiction of the Commission over PDD, J&K. Since the objection regarding jurisdiction of the Commission were raised in the writ petition, the Commission refrained from issuing any order in the said petition. The pleadings in the writ petition are complete and the writ petition has been posted for hearing on 4.12.2015.

4. As the members of the Commission who heard the petition on 13.8.2012 have since demitted office, the petition was listed for hearing on 6.11.2015 after notice to the respondents. None appeared on behalf of the respondent Nos. 1 and 2. Accordingly, we proceed to dispose of the petition based on the available pleadings.

5. The issue of jurisdiction is presently *sub-judice* before the Hon'ble High Court of Delhi. Since the Hon'ble High Court is seized of the issue, we do not consider it appropriate to record our finding on the issue of jurisdiction on which the learned counsel for the respondents made elaborate submission on 13.8.2015. Further, we are of the view that no useful purpose will be served to keep the petition pending. Therefore, we withdraw the notice issued vide order dated 18.7.2013 against the respondents. The issue of non-payment of penalty by Respondent No. 1 shall be dealt with in accordance with law after final decision of the Hon'ble High Court of Delhi.

6. The petition is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson