

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 185/MP/2021

Coram:

Shri Jishnu Barua, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 25th July, 2023

In the matter of

Petition under Section 79 (1)(b), 79 (1)(f) and 79 (1)(k) of the Electricity Act, 2003, read with Article 8.6.7 of the PPA dated 15.03.2016 executed between the RKM Powergen Private Limited and Respondent No.1, Uttar Pradesh Power Corporation Limited imploring this Commission to direct the Respondent No. 1 to make payments, to the Petitioner of the amounts outstanding in terms of the PPA on account of (i) Late Payment Surcharge; (ii) reimbursement of the illegally deducted penalty for short supply of power.

And

In the matter of

R.K.M. Powergen Private Limited,

2nd & 3rd Floor, 14,

Dr. Giriappa Road, T-Nagar,

Chennai-600017.

... PETITIONER

VERSUS

1. U. P. Power Corporation Limited,

Through its Chairman

Shakti Bhawan Extension,

14- Ashok Marg,

Lucknow- 226 001.

2. Paschimanchal Vidyut Vitran Nigam Limited,

Represented by its Managing Director,

Urja Bhawan, Victoria Park,

MD Camp Office, Meerut - 250001, UP

3. Purvanchal Vidyut Vitran Nigam Limited,

Represented by its Managing Director,

DLW Bhikharipur,

Varanasi - 221004, UP

4. **Madhyanchal Vidyut Vitran Nigam Limited,**
Represented by its Managing Director,
4A, Gokhaley Marg,
Lucknow, UP

5. **Dakshinanchal Vidyut Vitran Nigam Limited,**
Represented by its Managing Director,
Urja Bhawan, NH 2, Sikandra,
Agra - 282002, UP

6. **Southern Power Distribution Company of Telangana Limited,**
Represented by its Chief General Manager (IPC & RAC),
Corporate office, 6-1-50, Ground Floor,
Mint Compound,
Hyderabad- 500 063.

.... Respondents

Parties present:

Shri Hemant Singh, Advocate, RKMPPPL
Ms. Alchi Thapliyal, Advocate, RKMPPPL
Shri Biju Mattam, Advocate, RKMPPPL
Shri Sitesh Mukherjee, Advocate, UPPCL
Shri Abhishek Kumar, Advocate, UPPCL
Shri Nived Veerapaneni, Advocate, UPPCL

ORDER

The Petitioner, R.K.M. Powergen Private Limited, has filed the present Petition along with the following prayers:

“(a) direct the Respondents to make payment to the Petitioner of Rs. 44.57 Crores towards the Late Payment Surcharge in terms of Article 8.3.5 of the PPA accrued for the months of April’ 2020 to March’ 2021, as raised under the Supplementary Bills, and as detailed in Annexure ‘P’(Colly.) of the present petition;

(b) direct the Respondents to refund/reimburse to the Petitioner the penalty deducted for short supply of power to the tune of Rs 41.25 Crores deducted for the period of June’ 2018 to December’ 2019, as raised under the final bills, detailed in Annexure ‘Q’ (Colly) of the present petition;

(c) direct that the Respondent Nos. 1 to 5 shall make the payments prayed in the present petition alongwith the applicable carrying cost/interest from the date it fell due till the date of actual recovery;

(d) direct that the Respondent Nos. 1 to 5 to continue to make payment of LPS to the Petitioner which is accrued on or after 01.04.2021; and

(e) pass such other and further order or orders as this Hon'ble Commission may deem fit, proper and necessary in view of the peculiar facts and circumstances of the present petition and in the interest of justice.”

2. During the course of the hearing on 21.7.2023, the learned counsel for the Petitioner submitted that since the issue of payment of LPS has been resolved between the parties, the said relief is not being pressed for by the Petitioner. With regard to other prayers, the learned counsel for the Petitioner reiterated the submissions made in the Petition.

3. Learned counsel appearing on behalf of the UPPCL submitted that the subject matter on which the present Petition has been filed before this Commission was directly and substantially an issue before the UPERC. Vide its order dated 26.10.2020 in Petition No. 1355/2018, UPERC has already decided the same issue between the same parties. Subsequently, the Petitioner has challenged the findings of the UPERC dated 26.10.2020 before the Appellate Tribunal for Electricity (APTEL) and as on date, there is no stay in the matter. Therefore, order of UPERC is valid, subsists and continues to govern the rights and obligations of the parties. The learned counsel submitted that UPERC having already decided upon the issues between the same parties, the present Petition is barred by *res judicata*, and therefore, the Petition is not maintainable before this Commission. The learned counsel submitted that the principle of *res judicata* envisages that a judgment/order of a court of concurrent jurisdiction directed upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment/order. Applying the aforesaid

principles in the instant case, UPERC having decided the issue of refund of penalty, the Petitioner is barred from raking up the same plea, i.e. refund of penalty, before this Commission having concurrent jurisdiction under the Electricity Act, 2003. In this regard, the learned counsel relied upon the judgment of the Hon`ble Supreme Court in the case of Swamy Atmananda & others Vs. Sri Ramakrishna Tapovanam & others, [(2005) 10 SCC 51]

4. In response, the learned counsel for the Petitioner sought permission to withdraw the present Petition with liberty to approach the Commission after the issue is decided by the APTEL. The learned counsel for the Petitioner requested to adjust the filing fees paid in the Petition against the Petition to be filed in future on the subject.

5. In view of the submissions of the learned counsels for the Petitioner and the Respondent, UPPCL, the Petitioner is permitted to withdraw the present Petition with liberty to approach the Commission, if required, in accordance with law. The filing fees paid in the present Petition shall be adjusted against the Petition to be filed by the Petitioner on the same subject in the future, if any.

6. Accordingly, Petition No. 185/MP/2021 is disposed of as withdrawn.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson