

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 91/MP/2018

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.07.2012 as amended on 19.12.2014 and 23.01.2018 in regard to non-payment of tariff and unilateral deduction of the monthly energy bills of the Petitioner by the Respondents.

Petition No.53/MP/2021 along with IA 26/2003 & 100/2023

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the PPA dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of capacity charges under the Bills of the Petitioner by the Respondents.

Petition No.61/MP/2021 along with IA. 28/2021 & 42/2022

Subject : Petition under Section 79(1)(f) and (k) of the Electricity Act, 2003 for adjudication of disputes arising on account of termination of the Power Purchase Agreement dated 31.7.2012 by Respondent Nos. 1 and 2.

Petition No.149/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of capacity charges under the Bills of the Petitioner by the Respondents.

Petitioner : KSKMPL

Respondent : APEPDCL and 3 Ors.

Date of Hearing : **8.4.2025 (2.30 pm)**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties present : Shri Anand K. Ganesan, Advocate, KSKMPL
Ms. Harsha V. Rao, Advocate, KSKMPL
Ms. Aishwarya Subramani, Advocate, KSKMPL
Shri Sanjay Sen, Senior Advocate, AP Discoms
Shri Ruth Elwin, Advocate, AP Discoms



Shri S. Vallinayagam, Advocate, AP Discoms
Ms. Neha M. Dabral, Advocate, AP Discoms
Shri K. Sudheer, AP Discoms
Shri V. Venkateswarulu, AP Discoms

Record of Proceedings

During the hearing, the learned counsel for the Petitioner made preliminary oral submissions, giving details of the background facts leading to the filing of these petitions. Pointing out that the total dues payable by the Respondent discoms is Rs 1202.61 crore, the learned counsel submitted that out of this, Rs 741.41 crore is the undisputed amount after reconciliation by the parties. However, the learned Senior counsel for the Respondent discoms clarified that in terms of the order dated 31.7.2018 of the Hon'ble High Court of Andhra Pradesh in W.P. No. 23887/2018, the question of 'jurisdiction' to entertain the petitions, is required to be addressed, prior to the claims of the Petitioner being considered.

2. On a specific query of the Commission with regard to the stand of the parties on the issue of jurisdiction and the arbitrability of the disputes, the learned Senior counsel for the Respondent, referring to the Hon'ble Supreme Court's judgment in Energy Watchdog case (2017) 14 SCC 80, submitted that while the said judgment concerns the determination/regulation of tariffs, the present dispute relates to the terms of the PPA and does not fall within the subjects covered under Section 79(1)(f) read with Section 79(1)(b) of the Act. He submitted that the petitions filed by the Petitioner relate to an alleged contractual dispute between the parties, and the money claim sought by the Petitioner can only be adjudicated by the State Commission or the Arbitral Tribunal upon reference made to it by the said Commission. Placing reliance on the Hon'ble Supreme Court's judgment in GUVNL v Essar Power Ltd (2008) 4 SCC 755, the learned Senior counsel submitted that Section 86(1)(f) alone provides for adjudication of the disputes between the generating company and licensee, on issues other than tariff determination or regulation, as per the legislative mandate of the Act. Referring to the APTEL judgment dated 28.8.2024 in Appeal No. 309/ 2019 (MPPMCL v DVC & ors) as affirmed by the Hon'ble Supreme Court vide order dated 23.9.2024, the learned Senior counsel submitted that in a matter relating to termination of PPA and also the disputes arising under the terms of the PPA, the Central Commission does not have the jurisdiction to adjudicate the claims of the Petitioner. He, however, sought time to seek necessary instructions on the issue of referring the disputes to arbitration.

3. In response to the above, the learned counsel for the Petitioner clarified that since the generating station of the Petitioner has a composite scheme for the supply of power to more than one state, APTEL vide its judgment dated 31.10.2018, upheld the Central Commission's jurisdiction to adjudicate the disputes between the parties inter se, and the same was affirmed by the Hon'ble Supreme Court vide its order dated 3.12.2018. Placing reliance on the judgment of the Hon'ble Supreme Court in the Energy Watchdog case, the learned counsel submitted that the Central Commission only has the jurisdiction to adjudicate the disputes, inter se the parties herein. However, on the issue of referring the matter to arbitration, the learned counsel sought time to seek instructions.

4. Accordingly, the Commission adjourned the hearing after directing the parties to seek instructions on the question of referring the disputes to arbitration and to place their submissions on affidavit within three weeks.



5. The Petitions shall be listed for further hearing on the question of 'jurisdiction' as well on merits on **13.5.2025 at 2:30 pm**.

By order of the Commission

**Sd/-
(B. Sreekumar)
Joint Chief (Law)**

