

IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Case No. 04 of 2019

Tata Power Company Limited (TPCL) Petitioner

Versus

Tata Steel Limited (TSL) Respondent

CORAM: HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)
HON'BLE MR. P.K. SINGH, MEMBER (LEGAL)

For the Petitioner : Ms Richa Sanchita, Advocate,
Mr. Pankaj Prakash, Representative

For the Respondent (TSL): Mr. Manish Mishra, Advocate

ORDER

Date - 19th August, 2020

1. This petition by petitioner Tata Power Company Limited is purported to be filed in terms of the liberty granted vide order dated 9.01.2019 passed by this commission in Review Petition no 6/18 for recovery of arrears of water charges for the period 1.04.2011 to 31.08.2015 for unit 2 & 3 of Jojobera Thermal Power Plant for FY 2015-2016. It is stated that by order dated 9.01.2019 this commission has allowed the raw water charges for FY 2015-2016 based on projections given in review order case no 12 of 2012. However, with regard to claim for arrears of water charges, it was held that since the matter with regard to water charges is *sub-judice* before Hon'ble Jharkhand High Court in WP(C) 4544/2011. Hence any final order is not being passed and to be examined on the basis of order passed by The Hon'ble Court.
2. It is submitted that from letter dated 14.02 2019 of The TSL, it came to the fore that that the subject matter of the WP(C) 4544/11 is only restricted to exorbitant increase in amount of water charges for municipal purposes and not with regard to industrial purpose with which the case of the petitioner is concerned. Thus following relief is claimed:-

(a) Allow Raw claim of Rs. 15,61,51,883 which is the unbilled / unrecovered amount out of arrears of water charges for period 01.04.2011 to 31.08.2015 and actual for FY 2015-16 for Jojobera TPP unit 2 and unit 3 for FY 2015-16 along with carrying cost as per Regulation 6.18 of JSERC (Terms and conditions of Generation Tariff Determination), 2010 and 2015; and/or

(b) Pass any other Order as the Hon'ble Commission may deem fit.

Backdrop of the case:-

3. The petitioner is a Generating Company and operates two units (unit 2 and unit 3) of 120MW each at Jojobera Power Plant and the said two units of

Jojobera Power Plant supply power to M/s Tata Steel Ltd. i.e. the Respondent herein. The power so generated by the petitioner is exclusively procured by the Respondent for its use as Distribution Licensee in the town of Jamshedpur.

4. A petition was filed before this Commission for approval of the business plan and determination of ARR for the control period FY 2016-17 to FY 2020-21 (including True up for FY 2015-16). This Commission passed the order on 19.02.2018 for approval of business plan and determination of ARR for the control period FY 2016-17 to FY 2020-21 (including True up for FY 2015-16). In the said order dated 19.02.2018, certain reliefs sought for by the petitioner with regard to the certain areas pertaining to Truing up for FY 2015-16 and MYT for FY 2016-17 to FY 2020-21 were not granted. The areas, for which reliefs were not granted by this Commission inter alia, included raw water charges for FY 2015-16 (including arrears for the period 01.04.2011 to 31.08.2015, it was also disallowed by this Commission.
5. A Review petition for order dated 19.02.2018 was preferred, being case no. 06 of 2018. The Commission while disposing off the said review case, by order dated 09.01.2019 in case no. 06 of 2018, provisionally approved the water charges of Rs. 1.60 Cr. and Rs. 1.62 Cr. for unit 2 and unit 3 respectively and refrained from allowing the arrears of water charges since the matter is *sub-judice* before the Hon'ble Jharkhand High Court and its decision may have an impact on the rate of charges to be levied subsequently. It reads as:-

"Commission's observation

- a. *As submitted by the petitioner the Commission in its Judgement dated 26.06.2012 in the review petition of Case no. 12 of 2012 approved the water charges after due apportionment to the units 2 and 3 which are under the regulatory review of the Commission.*
- b. *Even though the JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2010 do not have any provision for payment of water charges, the Commission based on the reliance on the mentioned review petition (case no. 12 of 2012) has allowed the same to the petitioner for True up till FY 2014-15. Since the FY 2015-16 is the last year of the same control period, we allow the raw water charges for this year as well.*
- c. *With respect to the arrears of raw water charges for the period from 01.04.2011 to 31.08.2015, the matter is sub-judice before the Hon'ble Jharkhand High Court and its decision will have an impact on the rate of charges to be levied subsequently. Also, the Hon'ble Jharkhand High Court had permitted Tata Steel to continue payment of Rs. 1.00 Cr per month pending decision on the writ petition. However, it is not clear, what part of that Rs. 1 Cr is the water charge to be paid by the Petitioner (for Unit 2 & 3) per month to Tata Steel as the Rs. 1 Cr may include charges for water consumed by Tata Steel or for any other purposes in addition to that of the Petitioner. Since the Petitioner has paid the billed amount as per new charges, it means that Tata Steel is recovering completely as per the revised rates while paying the Govt. of Jharkhand at only the rate permitted by Hon'ble High Court.*

In such a scenario wherein as matter is sub-judice before the Hon'ble Jharkhand High Court, the Commission is not inclined to allow pass through the arrears as claimed by the Petitioner to the consumers at this point of time. The decision on quantum of arrears will be examined only based on the order of the Hon'ble Jharkhand High Court.

- d. Just because the petitioner has paid the amount and it has been booked in audited accounts, doesn't mean that same has to be passed through. The Commission would like to highlight the relevant portion of para 20 of the Judgement of the Hon'ble APTEL passed in Appeal No. 177 of 2009 (Kerala State Electricity Board Vrs. Kerala State Electricity Regulatory Commission:

“20. At the outset, it shall be stated that the State Commission while examining the accounts is not bound by the audited accounts. The accounts may be genuine as per the Auditors Report. But, it is the State Commission which has to examine the accounts to ascertain the performance of the Licensee in relation to the desirability of the expenditure in the interest of the consumers”

(emphasis added)

Commission's Findings

In view of the above, the Commission has decided to allow the water charges for the year FY 2015-16 at Rs. 1.60 Cr. for unit 2 and Rs. 1.62 Cr. for unit 3 as per the review order of case no. 12 of 2012. The decision on quantum of arrears to be passed through will be examined after final orders of the Hon'ble Jharkhand High Court.

.....”

6. The Petitioner- Tata Power Company Limited, pursuant to the above said Order dated 09.01.2019 passed by this Commission in case no. 06 of 2018, wrote to the respondent-TSL vide letter dated 01.02.2019 for refund of excess water charges collected from TPCL as this Commission had not considered the entire water charges for FY 2015-16, incurred by the petitioner-TPCL on account of pendency of WP no. 4566 of 2011 filed before Hon'ble Jharkhand High Court.
7. The Respondent-TSL while replying vide its letter dated 14.02.2019, to the TPCL's letter dated 01.02.2019 stated that the subject matter of WPC no. 4544 of 2011 is only restricted to exorbitant increase in amount of water drawn for municipal purpose. The relevant portion of the letter dated 14.02.2019 of the respondent-TSL is produced below:

“.....

(1) The exorbitant increase in water tax was challenged by Tata Steel in respect of the amount of water drawn for municipal purpose only. It had been communicated to Water Resources Department of GoJ that the increased rates of water tax is acceptable for the water drawn for industrial purpose.....”

8. The petitioner-TPCL, in view of the above declaration by the Respondent-TSL vide its letter dated 14.02.2019, had brought the instant petition praying for the relief mentioned herein above.

Submission of the Petitioner

9. Learned Counsel for the petitioner submitted that the respondent-TSL has categorically admitted that the subject matter of WPC no. 4544 of 2011 is only restricted to exorbitant increase in amount of water drawn for municipal purpose. It is further submitted that the sole reason for this Commission to not entertain the claim of arrears of water charges was the pendency of the said issue before the Hon'ble Jharkhand High Court and therefore, the final decision of the Hon'ble Jharkhand High Court will have an impact on the rate of charges to be levied subsequently. Hence, any decision on quantum of arrear was to be

examined by this Commission on the basis of the Order of the Hon'ble Jharkhand High Court.

10.Learned Counsel for the petitioner pointed out that that the conspectus of challenge before the Hon'ble Jharkhand High Court is different and the above said issue is not the subject matter therein. Therefore, there is no reason, to defer the recovery of their legitimate claim of arrears for industrial water charges for the period extending from 01.04.2011 to 31.08.2015 as well as actual water charges for 2015-16. In view of the above, this petition is being filed seeking recovery of an amount of Rs. 15,61,51,883/- already paid to the respondent-TSL but not yet billed/recovered.

Submission of the Respondent

11.Learned Counsel for the Respondent objected on the point of maintainability and submitted that the petitioner in the instant case is actually seeking review of the order dated 09.01.2019 and as such pointed out that the review of a review order does not lie and is not maintainable.

12.Learned Counsel further submitted that the petitioners have repeatedly pleaded that the instant petition is being filed "in terms of liberty granted vide order dated 09.01.2019 passed by this Commission in review case no. 06 of 2018 for recovery of arrears of water charges for the period 01.04.2011 to 31.08.2015 for unit 2 & 3 of Jojobera Thermal Power plant for FY 2015-16 and pointed out that no such liberty was granted by this Commission in terms of the order dated 09.01.2019 in case no. 06 of 2018, which would permit the petitioner to raise the issue of recovery of arrears of water charges for the period 01.04.2011 to 31.08.2015 for unit 2 & 3 of Jojobera Power Plant at this stage.

13.Learned Counsel further pointed out that the issue of rates of water charges is still subjudice before the Hon'ble High Court of Jharkhand and no final orders have been passed by the Hon'ble High court in the case with regard to water charges pending before it.

14.Learned Counsel for the Respondent through its affidavit dated 05.02.2020 submitted that the Respondent-M/s Tata Steel Limited has issued the necessary corrigendum to the letter dated 14.02.2019 by issuing letter no. AO/CS/CCA/1723/20 dated 24.01.2020 and pointed out clearly that the challenge in W.P. (C) no. 4544 of 2011 by M/s TSL is for increase in water tariff for both Industrial and municipal supply by it. The relevant portion of the corrigendum letter dated 24.01.2020 is produced below:

".....

We once again confirm that the subject matter of writ petition, WP (C) no. 4544 of 2011 is general and includes industrial and along with the municipal supply of water."

15.Learned Counsel in its conclusion submitted that the entire case amounts to a review of the earlier order dated 09.01.2019 passed in review case no 06 of 2018, which is impermissible in law and hence, this case is fit to be dismissed in limine.

Commission's observation and findings

16. Considering the submission of the parties and after perusing the records of the case, it has been observed that the entire submission of the petitioner hinges around the letter no. 1345/19 dated 14.02.2019 issued by the respondent Tata Steel Limited by which TSL has been said to be informed the petitioner TPCL that the subject matter of WP(C) no. 4544 of 2011 is restricted to challenging exorbitant increase in amount of water drawn for municipal purpose only.
17. The above said letter dated 14.02.2019 was withdrawn by issuing a corrigendum to the said letter by letter no. AO/CS/CCA/1723/20 dated 24.01.2020, wherein the respondent-TSL has clearly and unequivocally explained that it has challenged the increase in rates of both industrial and municipal rates of water before the Hon'ble Jharkhand High Court in WP(C) no. 4544 of 2011.
18. The Commission by its order dated 09.01.2019 in review case no 06 of 2018 has already allowed the Raw water charges for FY 2015-16 and clarified for the arrear of the water charges that since the matter is *sub-judice* before the Hon'ble Jharkhand High Court in WP (C) no. 4544 of 2011 and the final order of Hon'ble Jharkhand High Court in WP (C) may have an impact on the rate of charges to be levied subsequently. Hence, any decision on quantum of arrears will be examined only based on the order of the Hon'ble Jharkhand High Court.

In the result, it is ordered as

ORDER

19. The prayers of the petitioner are rejected. We are of opinion that any further clarification of the Commission is not required in view of the earlier order dated 09.01.2019 passed in review case no. 06 of 2018. The decision on quantum of arrears will be examined only after the final decision of the Hon'ble Jharkhand High Court in WP (C) no. 4544 of 2011.
20. This Commission further finds that due to casual approach of the respondent the petitioner has been unnecessarily pushed to this litigation. It has also taken precious time of this commission. In view of the fact the respondent is directed to pay Rs fifty thousand as cost/compensation to the petitioner and Rs twenty five thousand by way of the cost to this Commission, to be paid within four weeks of this order.
21. The case is disposed off, accordingly.

Sd/-
(P.K. Singh)
Member (Law)

Sd/-
(R.N. Singh)
Member (Engg)