

**IN THE JHARKHAND STATE ELECTRICITY  
REGULATORY COMMISSION AT RANCHI**

**Case No. 06 of 2005-06**

M/s Tata Steel Limited (TSL) ..... Petitioner

Versus

Damodar Valley Corporation (DVC) &Ors. .... Respondents

**CORAM: HON'BLE DR. ARBIND PRASAD, CHAIRPERSON  
HON'BLE MR. R.N. SINGH, MEMBER (ENGG.)  
HON'BLE MR. PRAVAS KUMAR SINGH (LEGAL)**

For the Petitioner : Mr. M.S. Mittal, Sr. Advocate, Mr. Manish Mishra,  
and Ms. Varsha Ramsisaria, Advocates.

For the Respondents : Mr. Srijit Choudhury, Advocate and Mr. Rajib  
Goswami, C.E. (Comml.) DVC, Kolkata.

**ORDER**

**Dated: 24<sup>th</sup> July, 2019**

Heard the Learned Counsels for both the parties.

Perused the record.

The petitioner – Tata Steel Limited (TSL) had filed a petition for the following reliefs:

*“(a) For setting aside the demand of DPS amounting to Rs. 10.65 crores raised by DVC on account of payment of installments of bills in relation to Fuel Surcharge raised pursuant to BSEB’s Circular dated 11.07.2001 and 17.03.2001 as well as AMG charges for the year 2001-2002 in as much as the same is not payable on the ground that the amount of Fuel Surcharge as well as AMG charges have been paid in installments as per the directives and consent of DVC itself.*

*(b) For further direction upon the Respondent Corporation restraining them to adjust the disputed dues from the monthly advance payments made by the Petitioner Company every month and to further delete the DPS on the said amount of Rs.10.65 Crores.*

*(c) For a further direction upon the Respondents to set aside the bills from July 2004 to till date to extent that the advance payments made by the petitioner every month has been shown as short payment and consequently Delayed Payment Surcharge has been levied on the said short payment.*

*(d) For a further direction upon the Respondent to set aside the bills by which the Respondent Corporation has raised a demand on account of Delayed Payment Surcharge amounting to over Rs.80.00 Lacs allegedly on account of short payment of monthly advance.”*

After hearing the parties the then Member (Technical) on 28.02.2006 while rejecting the petition held that since the matter in the instant petition is not related to and/or falls under the purview of the enactments and/or provisions of the Electricity Act, 2003, therefore the petition is not

maintainable. This view of the Member (Technical) was disagreed by the then Chairman. The Chairman while using the casting vote conferred upon him under Section 92 (3) of the Electricity Act, 2003, ordered to admit the case and held that the case is maintainable and disallowed the waiver of DPS on fuel surcharge bills but allowed the petitioner's prayer for setting aside the DPS on AMG bills.

The petitioner being aggrieved by the Order of the Commission dated 28.02.2006 filed an appeal being Appeal no. 159/2006 before the APTEL which decided the matter on 19.09.06 and held that the dispute was not maintainable before the Regulatory Commission and consequently declined to examine the case of the parties on merits.

The petitioner again being aggrieved by the Order dated 19.09.06, challenged the order passed by the APTEL before the Hon'ble Supreme Court in Civil Appeal no. 2021 of 2007, which was allowed by order dated 03.05.2017. The Hon'ble Supreme Court set aside the order of the APTEL and remanded the case back to APTEL for deciding the same on merits of the case afresh. It was observed that *all points raised are kept open to be decided by the Appellate Tribunal after affording an opportunity of hearing the parties. It was ordered that question of jurisdiction will not be raised by the respondents*

The matter was heard by Hon'ble APTEL and on the basis of the submissions made by both the counsels for filing supplementary affidavit and additional evidence, APTEL by order dated 28.11.2018 has remitted back the case to this Commission for fresh disposal and deciding the same in accordance with law after affording reasonable opportunity of hearing to the parties. It was observed that the impugned order of this Commission sans reasoning and the finding of the Commission was set aside.

In compliance of the order of the APTEL, parties appeared before this Commission on 21.01.2019 and submitted their respective part.

Admittedly the petitioner is taking supply of electricity from Damodar Valley Corporation (DVC) through two connections 33KV and 132 KV and DVC had been supplying power to Tata Iron & Steel Company (TISCO) now Tata Steel Limited (TSL) on the basis of tripartite agreement signed by DVC, TISCO and Bihar State Electricity Board (BSEB) with the approval of the State Government of Bihar. According to the said agreement, the DVC's power supply was to be treated as deemed supply by BSEB and DVC was to charge and recover the cost of power supply as per the tariff of BSEB. The amount charged in excess over the DVC's own tariff was to be paid to BSEB by DVC. The power supply continued after the expiry of tripartite agreement i.e. 31.03.2001, on the

basis of bi-lateral agreement signed between DVC and TISCO whereas the approval of the State Government of Jharkhand, as required under the provisions of DVC Act, 1948 was not obtained.

The crux of the dispute is summarized by the Apex Court in following words” **the relief(s) sought for by the appellant before the Appellate Tribunal is not to insist upon the DPS raised by Respondent no. 2 upon payment of fuel surcharge bills as well as AMG bills paid in installments”**

The submissions of the parties are required to be appreciated in the narrow compass of the said crux:-Both the components (i) DPS on fuel surcharge and (ii) on AMG bills are to be separately considered.

**RE- Fuel Surcharge**-Admittedly BSEB issued a circular dated 11.07.2000 fixing fuel surcharge for the years 1996-97 and the provisional rates of fuel surcharge for the years 1997-98 and 1998-99. Accordingly, DVC issued a supplementary bill on account of the fuel surcharge. A meeting was held on 28.03.2001 and on reconciliation of the facts the bill was revised and the petitioner was required to pay Rs 51.57 Crores for 33 KV line and Rs 76.61 Crores for 132 line. It is admitted that the parties agreed in the meeting between the representatives of DVC and TISCO that payment against this bill would be made in six installments. The petitioner paid the bill accordingly.

BSEB issued another circular dated 17.03.2001 fixing the rate of fuel surcharge for the year 2000-01. Accordingly, DVC issued the supplementary bill on account of the fuel surcharge. The petitioner requested for granting permission to deposit the amount of the bill in six installments. The respondent DVC permitted the petitioner to make the payment as requested by them. The petitioner paid the bill accordingly.

**RE- AMG bills** :-Two bills for AMG charges were raised by The DVC for an amount of RS 14.75 Crores and Rs 22.82 Crores for the period 2001-2002 total Rs 37.57 Crores. A request was made for payment in six installments and the first installment was of Rs 14.75 crores was paid on 25.05.2002. the respondent informed that the installments is to be allowed but not without DPS. It is stated that on 28.06.2002 petitioner further paid Rs 12.49 crores. The respondent raised a bill of Rs 77,60,785 as DPS on account of AMG bills.

It is stated that in the month of May 2002, DVC raised the bills on account AMG charges for the year 2001-02. The petitioner requested the respondent to allow them to pay the amount of the bill in six installments without DPS and TSL made payment of Rs. 14.75 crores.

DVC vide its letter dated 10.06.2002 communicated the decision of its management, accepting the request of the petitioner for paying the amount of the bill in six installments. TSL requested to adjust the payment already made

against the first two installments. On 25.06.2002, DVC again communicated to TISCO that the Board had accepted the request of TISCO for allowing payment of the said bill in six installments but did not accept the waiver of DPS. The petitioner, on receipt of this communication, paid the entire balance amount. This non waiver of the DPS has arisen as dispute.

### **Submission of the petitioner**

It is admitted in the course of arguments that as per the agreement and the practice the BSEB used to fix provisional rates of fuel surcharge every year and at a later period used to finalize the rates and used to issue circulars regarding the finalization of rates, and on the basis of those circulars, supplementary bills for the differential amount of surcharge used to be raised by the BSEB. DVC in terms of tripartite agreement also raised bills on the basis of circulars of BSEB.

Learned Counsel for the petitioner submitted and pointed out that the Board raised supplementary bill of fuel surcharge for 33KV connection for a sum of Rs. 90.82 Crores and for 132 KV connection a sum of Rs. 116.29 Crores on 16.02.2001 and after reconciliation bills were revised to Rs. 51.56 Crores for 33KV and Rs. 77.60 Crores for 132 KV vide revised bills dated 28.03.2001. Learned Counsel stated that since initial bills were wrong and were revised, there was no question of payment of any delayed payment surcharge.

Learned Counsel for the petitioner submitted that the respondents raised AMG bills for the year 2001-02 for Rs. 14,75,96,839/- and Rs. 32,82,24,429/- for both the connections and the petitioner requested for installments without DPS which was allowed by the respondents by letter dated 10.06.2002. However, the respondent DVC vide letter dated 25.06.2002 modified the earlier letter dated 10.06.2002 by accepting the request for equal installments but did not approve the waiver of DPS on the installment payment. He has further submitted that the petitioner TSL after receiving the communication regarding charging of DPS on installments, made the entire payment of the balance amount on the same day it received the letter.

Learned Counsel for the petitioner submitted that even after the payment had been made in full in respect of AMG charges, the respondent DVC vide its letter dated 04.07.2002 stated that DPS on AMG would be charged, fully ignorant of the fact that the entire amount of AMG had already been paid. He has further submitted that the petitioner vide its letter dated 11.07.2002 also wrote to the respondent DVC, not to levy any DPS charges. He also submitted that this communication also did not mention that DPS would be charged on the deferred payments made with respect to supplementary bills on account of Fuel cost surcharge bills.

Learned Counsel for the petitioner submitted that the respondent DVC raised DPS charges on payment of AMG bills for Rs. 77,16,785/- and also raised DPS bill for fuel surcharge for Rs. 9,87,12,485/- which were protested by the petitioner. However, the respondent adjusted the DPS bill from the then current monthly demands.

Following law points were raised by the Learned Counsel where it has been pronounced that DPS will not be charged if the bill is subsequently rectified:

M/s. Hotel Woodland Vs. JSEB and others	L.P.A. No. 274 of 2004
M/s. Raj Laxmi Factories and Ceramics Works Vs. BSEB and others	(1999) 2 BLJR 1508
M/s. Gaya Roller Flour Mills Pvt. Ltd. Vs. BSEB and others	(1995) 2 PLJR 715
M/s. Incore Metal and Cement (P) Ltd., Deoghar, Jharkhand Vs. State of Jharkhand	W.P. (C) No. 6587 of 2007
Manvdranarain Agarwal Vs. BSEB and others	(2002) 3 PLJR 510
Subodh Kumar Poddar v. BSEB and Ors	(2002) 3 PLJR 532
Kusumam Hotels Pvt. Ltd v. Kerela State Electricity Board &Ors	(2008) 13 SCC 213
Kanoria Chemicals & Industries v. U.P. State Electricity Board &Ors	(1997) 5 SCC 772
Tata Iron & Steel Co. Ltd. Vs. The State of Bihar & others	1999 (1) PLJR 309

Other than above following law points were also raised by the Learned Counsel in the context as follows:

- (2003) 11 Supreme Court Cases 519 – Reasons to be recorded in Judgment
- (2010) 4 Supreme Court Cases 785 – Reasons to be recorded in judgment
- W.P. (C) No. 2887 of 2001 – MANU/JH/0654/2015 – BSEB circulars applicable to JSEB Reorganization Act
- (1979) 3 Supreme Court Cases 280 and (2011) 6 Supreme Court Cases 529 – Question of Law may be raised at any point of time
- (2005) 13 Supreme Court Cases 418 – Which Law will be applicable if some law has been amended
- 1993 (2) PLIR – 527 – Board can not raise unreasonable demand
- (1975) 1 Supreme Court Cases 199 – Conscience may be express or 1979, 3 sec, 280 implied

#### **Submission of the Respondent**

Learned Counsel for the respondent while quoting the Clause 16.2 of the tariff notification dated 21.06.1993 of BSEB which reads as follows:

**“16.2 INTEREST/SURCHARGE FOR DELAYED PAYMENT**

*(a) In case of all categories of consumers including E.H.T., Railway Traction, H.T., L.T.I.S., & L.T. consumers, if the consumers does not pay the bill in full by the due date indicated on the bill, he shall have to pay interest, surcharge on the outstanding amount. The interest/surcharge will be at the rate of 2.00 (two) percent per month or part thereof for the delay made, irrespective of the period of delay. The interest/surcharge will be leviable from the date immediately following the due date in all cases. No interest/surcharge will be charged on the interest/surcharge already accrued.*

*(b) Compensation charges:- The Board will charge a compensation to be paid by the consumer which will be uniform rate of 2.00 (two) percent per month or part thereof chargeable to all type of consumers who are allowed to pay the arrears in installments and rebate admissible on current dues shall be allowed if the consumer pays the installments and current dues on or before the due dates specified in the bill.”*

stated that the respondent- DVC charged interest/surcharge for delayed payment of Arrear fuel surcharge according to the above mentioned tariff notification of BSEB.

Learned Counsel for the respondent submitted that DVC raised two bills for fuel surcharge on 16.02.2001 according to the circular issued by BSEB dated 10.07.2000, the first bill of about 90.82 crores was for supply at 33KV and second bill of about Rs. 116.29 crores was for supply at 132 KV.

Learned Counsel for the respondent submitted that the petitioner did not pay the aforesaid two bills and the same were returned unpaid. He further submitted that the DVC had written two letters dated 07.03.2001 and 08.03.2001 clearly stating therein that non-payment of those bills will attract DPS as stipulated under BSEB tariff @ 2 percent per month after expiry of the scheduled date of payment.

Learned Counsel for the respondent submitted that a meeting of reconciliation was held on 28.03.2001 and on reconciliation an amount of Rs.51.57 crores for 33 KV and another amount of Rs.77.61 crores for 132 KV were admittedly payable by the petitioner on account of arrear fuel surcharge according to the revised tariff of BSEB dated 11.07.2000 and DVC, accordingly, issued two bills on 28.03.2001 itself for Rs.77,60,78,988/- and Rs. 51,56,94,267/-. He further submitted that on 29.03.2001, two further supplementary arrear bills were issued for a total sum of about Rs.54.00 crores.

Learned Counsel for the respondent submitted that the petitioner TSL paid all four bills of arrear surcharge in installments. He has further submitted that the petitioner claimed that two bills issued on 28.03.2001 were paid in installments in view of the minutes of meetings held on 28.03.2001 read with letter of the DVC dated 29.03.2001, and paid subsequent two bills dated

29.03.2001, in installments in view of the letter of the letter of the petitioner dated 27.04.2001 read with letter of DVC dated 04.05.2001.

Learned Counsel for the respondent submitted with regard to fuel surcharge that DVC had never and nowhere allowed installments payments without interest/surcharge and the petitioner- TSL had wrongly stated in its letter dated 27.04.2001 that DVC had allowed the installments without DPS.

Learned Counsel for the respondent submitted that in view of the tripartite agreement among BSEB, DVC and TISCO, the petitioner is liable to pay according to the tariff of BSEB and the said tariff of BSEB cannot be changed and/or altered and in terms of Clause 16.2 of the tariff of BSEB, the petitioner is bound to pay DPS on installment of arrears of fuel surcharge. Learned Counsel also submitted that DVC never waived the payment of interest/surcharge and even DVC does not have any jurisdiction to waive the same as the tariff of BSEB has statutory force and neither the DVC nor the petitioner- TSL has any competency/jurisdiction to change the tariff of BSEB, hence, the petitioner is bound to pay interest/surcharge on installments for the payment of arrears of fuel surcharge. It is vehemently argued that the letter of waiver dated 10.06.2002 upon which the case of the petitioner hinges upon with regard to bill of AMG charges is not to be taken in to consideration on three counts:-(a) the Chief Engineer Commercial by whom letter has been said to be issued was not competent to communicate (ii) it was immediately clarified by letter dated 25.06.2002 (iii) any provision for waiver is not given either in agreement or in The DVC Act.

Learned Counsel for the respondent submitted that the petitioner is liable to pay interest/surcharge on installment payment in respect of arrears of fuel surcharge as well as in respect of A.M.G. charge, according to the tariff which has been incorporated in the bilateral agreement dated 25.07.2002 between DVC and TISCO.

Learned Counsel for the respondent submitted that in respect of A.M.G. charges, a bill of Rs.14,75,96,839/- was issued on 29.04.2002 for 33KV and another bill of Rs.22,82,24,429 was issued on 08.05.2002 for 132KV and the petitioner requested DVC to allow six installments for payment of aforesaid two bills without attracting any Delayed Payment Surcharge for which DVC vide its letter dated 10.06.2002 informed the petitioner that DVC management has accepted the request of TISCO for installment payments of A.M.G. bills without Delayed Payment Surcharge. Learned Counsel further submitted that DVC vide letter dated 25.06.2002 informed TISCO with reference to its earlier letter dated 10.06.2002 that DVC-Board has only approved the payment A.M.G. bills in installments but the DVC-Board has not approved waiver of Delayed Payment

Surcharge on those installment payments and categorically stated that TISCO will have to pay applicable DPS for installment payments.

Learned Counsel for the respondent submitted that for same reasons in respect of Interest/Surcharge on installment payments of arrear fuel surcharge, petitioner is also liable to pay Interest/Surcharge in respect of installment payment of A.M.G. charges. It is submitted that despite of repeated letters by DVC to TISCO for payment of Interest/Surcharge, petitioner did not pay the same and under these compelling circumstances, DVC had to adjust outstanding Interest/Surcharge against the advance monthly payments made by the petitioner from the month of July 2004.

Learned Counsel for the respondent submitted that the Circular no. 345 dated 10.07.2000 and Circular no. 428 dated 16.08.2000 were in challenge before the Hon'ble High Court of Jharkhand at Ranchi and the Hon'ble High Court was pleased to uphold the same by its Judgment dated 08.05.2015, therefore, the bills raised by DVC are in accordance with Circulars and notification issued by BSEB.

Learned Counsel for the respondent in its conclusion submitted that the Chief Engineer, Chairman and/or Board of Director of DVC do not have any power to waive delayed payment surcharge and as such the petition filed by the petitioner is liable to be dismissed with compensatory cost.

**Commission's observation and findings**

After hearing the arguments of the Learned Counsel for the parties in detail and perusal of the records of the case, we find that main issues to be decided are as follows:

- (i) Whether DPS was payable for the fuel surcharge bill issued by DVC on the basis of BSEB's Circular since the bills were reconciled?
- (ii) Whether DPS was payable for the A.M.G. bills dated 29.04.2002 and 08.05.2002?

In regard to DPS on fuel surcharge, the respondent DVC charged Interest/Surcharge for delayed payment of arrear fuel surcharge in terms of tripartite agreement and BSEB tariff notifications with Circulars. The respondent-DVC on 16.02.2001 raised two bills of fuel surcharge according to the Circular issued by BSEB dated 10.07.2000 which was revised after the reconciliation meeting held on 28.03.2001. The petitioner-TSL paid the bills of arrear fuel surcharge in installments. Further, on perusal of the records and as submitted by the Learned Counsels for the parties, it is observed that the Circulars of the BSEB are under challenge on various grounds in CWJC before the Hon'ble High Court and Hon'ble High Court has revised the rates of fuel

surcharge subject to final outcome of the case. Thereafter, BSEB issued provisional rates of fuel surcharge in the light of the order of the Hon'ble High Court. Therefore, since the matter related to the fuel surcharge and its variance is pending before the Hon'ble High Court, we are not inclined to pass any orders regarding the quantum of DPS at this stage as it may be at variance after decision of the case. We are of the opinion that the DPS will be leviable as at no time DVC waived it and may be recalculated after final outcome of the case in the Hon'ble High Court. The petitioner may file a fresh petition after the final outcome of the C.W.J.C. if any dispute on the quantum of DPS persists.

With regard to DPS on AMG bills, the petitioner vide its letter dated 18.05.2002 requested the respondent DVC to allow six installments for payment of A.M.G. bills without attracting any Delayed Payment Surcharge which was allowed by the respondent DVC by its letter dated 10.06.2002. Subsequently, the respondent vide its letter dated 25.06.2002 modified the earlier letter dated 10.06.2002 by accepting the request for six installments but did not approve the waiver of DPS on the installment payments. The petitioner after receiving the communication regarding charging of DPS on installments, made the entire payment of the balance A.M.G. bills within three days of issuance of the letter dated 25.06.2002. However, the respondent even after the payment of entire A.M.G. bills, vide its letter dated 04.07.2002 stated that DPS on A.M.G. bill would be charged and the petitioner vide its letter dated 11.07.2002 wrote back stating not to levy any DPS charges.

In view of the above facts, as the petitioner- TSL made the entire payment of the balance amount of A.M.G. bills after receiving the communication regarding non-waiver of DPS on installments, we are not inclined to allow any Delayed Payment Surcharge (DPS) on the A.M.G. bills.

In the result, it is ordered

**ORDER**

The prayer of the petitioner is partly allowed to the extent that the DPS realized on AMG charges will be adjusted/paid in the account of the petitioner alongwith interest at a rate of 6% per annum within ninety days of this order.

Sd/-

Sd/-

Sd/-

Pravas Kumar Singh  
Member (Legal)

Rabindra Narayan Singh  
Member (Engg.)

Dr. Arbind Prasad  
Chairperson