

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

Case No. 30 of 2020

Tata Steel Limited (TSL) Petitioner

Versus

Damodar Valley Corporation (DVC)..... Respondent

**CORAM: HON'BLE JUSTICE MR. AMITAV KUMAR GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner : Mr. M. S. Mittal, Sr. Advocate and Mr. Manish Mishra, Advocate
For the Respondent: Ms. Anushree Bardhan and Mr. A.K. Mehta, Advocates

Date – 31st October, 2023

1. The Petitioner-Tata Steel Limited has filed the instant case under Clause A13 of JSERC (Conduct of Business) Regulations, 2016 inter alia for directing the Respondent corporation to grant "Voltage Rebate" to the petitioner in terms of provisions of clause III of the heading "A13: TERMS AND CONDITIONS OF SUPPLY" of the tariff order of DVC dated 28th May, 2019.
2. The Prayers of the petitioner are as under: -
 - (a) To set aside the impugned bills raised on the petitioner by the Respondent Corporation for the month of June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, May 2020, June 2020, July 2020, August 2020, September 2020, October 2020, November 2020 to the extent the said bills and the future bills contain an unexplained outstanding amount of Rs. 10,64,68,097/- for the period May 2010 onwards and first reflected in the bill of June 2019.
 - (b) Upon setting aside the aforesaid bills, direct the Respondent Corporation to grant "Voltage Rebate" to the Petitioner in terms of provisions of Clause III of the heading "A13: TERMS AND CONDITIONS OF SUPPLY" of the tariff order of D.V.C. dated 28th May, 2019 (Ann P/3 to the instant petition)
 - (c) Direct the Respondent D.V.C. to refund amount of voltage rebate which has been unlawfully denied since the period June 2019 till date together with interest @ 18% per annum, the excess amount which the Petitioner has been forced to pay on account of the denial of "Voltage Rebate" to the Petitioner by the Respondent Corporation;
 - (d) Pass such other Orders as this Learned Commission may deem fit and proper in the facts of the instant case.

Submissions of the Petitioner

3. Learned counsel for the petitioner submitted that the petitioner - M/s Tata Steel Limited is engaged in manufacturing of steel and allied products and meets its electrical power requirement through a number of sources, which also includes long term power purchase agreement dated 25.07.2002 with the Respondent-DVC (**Annexure P/1**) for the supply of electricity at 132 KV having contract demand of 90,000 MW. Thereafter, the petitioner and the respondent entered into a supplementary power purchase agreement

(Annexure P/2) dated 31st July, 2018 by which the contract demand was increased from 90,000MW to 120,000 MW.

4. It was submitted that this Commission by order dated 28th May 2019 issued True up for FY 2017-18 & 2018-19; Annual Performance Review for the FY 2017-18 & 2018-19; and ARR and tariff for the FY 2019-2020 and in the said order dated 28th May, 2019 this Commission has approved grant of rebate to the consumers upon fulfilling certain conditions which is detailed under the heading - "A13: Terms and Conditions of Supply which reads as under:

Sl. No.	Rebate	Condition								
1.	Voltage Rebate	Voltage rebate was allowed for all HT consumers from 1st June 2019. The voltage rebate would be applicable on energy charges depending upon the category of HT consumers and would be available only on monthly basis. However, consumers having arrears shall not be eligible for this voltage rebate but would be allowed to such consumers with outstanding dues, wherein such dues have been stayed by appropriate authority/Court.								
2.	Load Factor Rebate	<p>This rebate would be applicable on energy charges as follows:</p> <table border="1"> <thead> <tr> <th>Load Factor</th> <th>Load Factor Rebate</th> </tr> </thead> <tbody> <tr> <td>Below 65%</td> <td>Nil</td> </tr> <tr> <td>65% - 80%</td> <td>5.00%</td> </tr> <tr> <td>80% - 100%</td> <td>10.00%</td> </tr> </tbody> </table> <p>This rebate is available only on monthly basis and consumers with arrears shall not be eligible for this rebate, however it would be allowed to those consumers with arrears where such dues have been stayed by appropriate authority/ Court.</p>	Load Factor	Load Factor Rebate	Below 65%	Nil	65% - 80%	5.00%	80% - 100%	10.00%
Load Factor	Load Factor Rebate									
Below 65%	Nil									
65% - 80%	5.00%									
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3.	Prompt Online Payment	<p>This rebate is for timely payment of the full amount of bills only through online web portal or digital mode and is applicable to all categories of consumers as under:</p> <table border="1"> <tbody> <tr> <td>Within 2 days</td> <td>1.50%</td> </tr> <tr> <td>3 days to 5 days</td> <td>1.00%</td> </tr> <tr> <td>6 days to 12 days</td> <td>0.50%</td> </tr> </tbody> </table>	Within 2 days	1.50%	3 days to 5 days	1.00%	6 days to 12 days	0.50%		
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"A13: TERMS AND CONDITIONS OF SUPPLY" contained a provision for providing "Voltage Rebate" to DVC consumers, including the Petitioner herein, as per the instant schedule and on the following terms & conditions: -

"Clause III: Voltage Rebate

Voltage rebate will be applicable on energy charges as given below:

Consumer Category	Voltage Rebate
HT 33 kV	2.00%
HT 132 kV	3.00%
HT 220 kV and above	4.00%

**Note: The above rebate will be available only on monthly basis and consumer with arrears shall not be eligible for the above rebate. However, the applicable rebate shall be allowed to consumers with outstanding dues, wherein such dues have been stayed by the appropriate authority/Courts."*

5. It was submitted that in terms of the tariff order dated 28th May, 2019 (**Annexure P/3**) of DVC, the Petitioner-TSL is entitled to receive voltage rebate and in this context, prior to June 2019, the Respondent-DVC had not shown any arrears due to be paid by the Petitioner and the Petitioner-TSL has also examined all bills, more specifically the bills pertaining to the period from May 2018 to May 2019 for the purposes of evaluating its entitlement for availing voltage rebate and none of bills raised by the Respondent-DVC on the petitioner-TSL for the period from May 2018 till May 2019 disclosed any amount as arrear which would disentitle it for grant of voltage rebate. The said bills do not indicate any arrears which has remained unpaid by the petitioner company to the Respondent Corporation (**Annexure P/4**).
6. It was pointed out that subsequent to the DVC's tariff order dated 28th May, 2019 the Respondent- DVC raised Bill No. MFN/201907/501128 dated 02.07.2019 which showed unpaid arrears of Rs. 10,64,68,097/- (Rupees Ten Crores Sixty-Eight Lakhs and Ninety-Seven only) for the period May 2010 till date as due and payable by the Petitioner to the Respondent Corporation and the said amount was not reflected in any bills of the past period and its inclusion in the bills remains a complete mystery for the petitioner company. Thereafter, the petitioner immediately sent a letter vide number COF/ETD/19 dated 04.07.2019 to the respondent, referring to the arrears due and payable by the Petitioner to the Respondent-DVC and pointed out that no such arrears had been mentioned in the bill of previous months, and that the Petitioner had checked the bills raised by DVC for the last 9 years and had found that there is no deviation in the payable and billing amount. The Petitioner further pointed out that it had cleared all bills till May 2019, and that voltage rebate (3% of bill amount) had not been considered in the aforesaid bill. The Petitioner further requested DVC to send the details of the dues for outstanding value amount, as mentioned in the bill, to enable the Petitioner to take further action on the same.
7. It was submitted that the respondent-DVC did not replied to the aforesaid letter dated 04.07.2019 of the petitioner and continued to repeat the newly included outstanding of Rs. 10,64,68,097/- in the subsequent bills. The respondent further denied the benefit of voltage rebate to the Petitioner in terms of the order dated 28th May 2019 and it happened with all the bills raised by D.V.C. from July 2019 till February 2020 (**Annexure P/7**). Thereafter, the respondent-DVC raised bill no. MFN/202002/501128 dated 01.03.2020 in which the arrears due and payable by the Petitioner-TSL to DVC was shown as NIL (**Annexure P/8**) however, the Voltage Rebate to which the Petitioner was entitled, was still denied to the Petitioner. Again, the respondent DVC raised similar bills bearing bill no.: MEN/ 202003/ 501128 dated 01.04.2020 and bill no. MFN/202004/501128 dated 08.05.2020 showing the arrears due and payable by the Petitioner to DVC as NIL and thereby also denying the Voltage Rebate to which the Petitioner was entitled (**Annexure P/9**).
8. It was submitted that the Respondent DVC on 02.06.2020 issued bill no.: MFN/ 202005/501128 (**Annexure P/10**), in which it showed an amount of Rs 12,67,55,897/- as arrears due and payable by the Petitioner for the period from May 2010 till April 2020 and there was no explanation given by DVC for having suddenly reintroduced the supposed arrears after having dropped them from the previous bills. Further, the respondent DVC also kept on denying the Voltage Rebate to which the Petitioner was lawfully entitled and also the amount of outstanding scaled up from Rs. 10,64,68,097/- to Rs. 12,67,55,897/-. Thereafter, the petitioner sent another letter no: COF/ETD/75 dated 21.07.2020 (**Annexure P/11**), reiterating the facts detailed in the earlier letter dated 04.07.2019 and had also given the details of

the losses suffered on account of the denial of Voltage Rebate to which the Petitioner was entitled.

9. It was further submitted that the respondent-DVC has never given the breakup of the aforesaid dues in spite of several request made by the petitioner and the respondent-DVC ignored the aforesaid letters and continued to raise bills showing an amount of Rs 12,67,55,897/- as arrears due and payable by the Petitioner for the period from May 2010 till April 2020 denying the Voltage Rebate to which the Petitioner was entitled (**Annexure P/12**). Thereafter, the petitioner made numerous correspondences with the DVC with regard to the denial of the voltage rebate and also sought an explanation on the arrears which was being shown to be due for period since May 2010 but was only reflected in the bill for the month of June 2019. However, the Respondent Corporation has chosen to remain silent on the issues raised by the petitioner and also failed to correct itself.
10. It was submitted that Respondent-DVC had recovered the aforesaid dues from the petitioner against the monthly advances paid by the petitioner to the respondent and such recovery had been admitted by the respondent at several instances and such reiteration clearly established the fact that the respondent was already in receipt the demanded amount against DPS with respect to FCS issued by BSEB and in this regard, the petitioner illustratively makes a reference to the reply filed by the respondent in Appeal No.: 179 of 2021, where the respondent clearly admits to having realized the amount through adjustment from the advance payments and has termed such an act as legitimate.
11. Learned Counsel for the petitioner reiterated that the amount of Rs. 10.65 Crores (approx.) was shown as due only from 1st June 2019. This amount was shown to be due from the month of May 2010, although it was not reflected in any bill which was served by the respondent on the petitioner company for the said period. Further, the Respondent-DVC was liable to provide voltage rebate to the petitioner in terms of tariff order dated 28th May 2019, however, the respondent started to reflect the aforesaid alleged dues which are with regard to Delayed Payment Surcharge (in short 'DPS') on account of Fuel Cost Surcharge (in short 'FCS') circulars issued by the Bihar State Electricity Board (in short 'BSEB') as well as the DPS on the delayed payment of Annual Minimum Guaranteed Charges (in short 'AMG') in the bills only for the purpose for denial of voltage rebate to the petitioner by taking undue advantage of the condition attached to availing voltage rebate.

Submission of the Respondent

12. Learned Counsel for the respondent has raised objections on the maintainability of the petition of the petitioner and submitted that the instant petition pertains to billing dispute, grant of voltage rebate and for refund of the amount of voltage rebate for distribution activity of Damodar Valley Corporation (DVC) in Jharkhand State as per the Tariff Order dated 28.05.2019 of DVC for FY 2020-21 and these grievances of the petitioner are to be dealt by the Consumer Grievance Redressal Forum constituted under as JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020.
13. Further, learned counsel for the respondent submitted that the petitioner is not eligible for availing the voltage rebate in terms of "Clause III of A13 : TERMS AND CONDITIONS OF SUPPLY". In the said clause this Commission has provided the applicability of voltage rebate as under:

Consumer Category	Voltage Rebate
HT 33 kV	2.00%
HT 132 kV	3.00%
HT 220 kV and above	4.00%

**Note: The above rebate will be available only on monthly basis and consumer with arrears shall not be eligible for the above rebate. However, the applicable rebate shall be allowed to consumers with outstanding dues, wherein such dues have been stayed by the appropriate authority/Courts."*

14. It was submitted that the petitioner has not yet liquidated the outstanding dues against the DPS for fuel surcharge and since the Case No. 06 of 2005-06 (TSL Vs DVC & anr) was under adjudication before this Commission, the outstanding amount was not reflected in the bill as this outstanding dues was sub-judice but not stayed and was also not co-related with passing of voltage rebate during part period. This amount has been shown as outstanding in the power supply bills since the consumption month of May 2019 and the voltage rebate has not been allowed on the same ground.
15. It was submitted that in compliance of the Judgment dated 20.6.2000 of the Division Bench of Patna High Court delivered in M/s Pulak Enterprises and analogous cases, the Bihar State Electricity Board (BSEB) issued circular No. 345 dated 11.7.2000 fixing the fuel surcharge for the financial years 1996-97, 1997-98 and 1998-99 and the said circular as well as the bills issued on the basis of the aforesaid circular were challenged before the Hon'ble High Court of Jharkhand at Ranchi and the Hon'ble Jharkhand High Court by its judgment dated 03.05.2015 passed in the case of Tata Yodogawa Ltd. Vrs Bihar State Electricity Board and others reported in 2015 (3) JLJR 223 (Jhr.) has been pleased to uphold the virus of the aforesaid circular and also held that the bills issued on the basis of aforesaid circular are valid and legal, as such the bills raised by the answering respondent DVC are in accordance with circulars and notifications issued by BSEB.
16. It was submitted that the petitioner has filed a petition, on affidavit, before this Commission on 26.9.2005 which was registered as Case No. 06 of 2005-06 and in paragraph 58 of the said petition the petitioner has stated as under:
- "That thereafter the Respondent Corporation continued raising the bills from August 2004 till date in which they have been showing shortfall on advance payments made by the petitioner on account of adjustment of Rs. 10.65 Cr."*
17. It was submitted that respondent is continuing to show the outstanding amount as due in the bills of the petitioner and the petitioner has not liquidated the same amount, as such DVC is not passing the voltage rebate to the petitioner. However, the outstanding dues were not reflected in two bills dated 01.03.2019 and 01.05.2019 inadvertently and the extra amount i.e around Rs.2.03 Cr shown as outstanding in the bill of April 2020 has been passed on to the petitioner in the power supply bill for the consumption month of January 2021.
18. It was also pointed out that since Case No. 06 of 2005-06 TSL Vs DVC & anr) was under adjudication before this Commission, as such the outstanding amount was not taken into consideration while raising the power supply bills prior to June 2019 as passing of voltage rebate was not related to outstanding dues but this amount has been shown as outstanding in the power supply bills since month of May 2019 and the voltage rebate has not been allowed.

19. Learned Counsel for the respondent submitted that the petitioner by way of the Petition no. 30 of 2020 cannot question whether or not the DPS claimed by DVC on account of FSC bills is correct or not, as the same has been duly decided by this Commission in the order dated 24.07.2019 in favor of DVC and the said order dated 24.07.2019 has not been stayed by the Hon'ble APTEL in the Appeal no. 179 of 2021 filed by the petitioner-TSL and in the absence of any stay of the order dated 24.07.2019, the DPS is payable and the DPS raised by DVC in the bills from TSL is legal and payable.
20. Learned Counsel for the respondent clarified on the issue raised by the petitioner that the outstanding was not reflected in the bills raised by DVC that since the Case No. 6 of 2005-06 was under adjudication before this Commission, the outstanding amount was not reflected in the bills raised by DVC as the said due amount was sub-judice and further, the bills raised by DVC on the DPS of FCS bills have not been stayed by any court, therefore in line with the tariff order dated 28.05.2019 which provides that no voltage rebate will be allowed in case of arrears, DVC has included the same in the bill of 02.07.2019 onwards. It was further submitted by the learned Counsel that inadvertently the outstanding dues were not reflected in the three bills dated 01.03.2020, 01.04.2020 and 8.05.2020 and at no point of time DVC waived these dues on account of DPS as it is evident that from 2001 upto the 2005 when the Case No. 6 of 2005-06 was filed by TSL, DVC has been writing to TSL for payment of the amount due towards DPS and as the litigation with regard to DPS on FCS Bills and AMG Charges in Case no. 6 of 2005-06 took substantial time, the amount was not included in the bills raised by DVC, however, the same was not given up by DVC and TSL had full knowledge of the same on account of the ongoing litigation and in light of the tariff order dated 28.05.2019 and the order dated 24.07.2019 passed in Case no. 06 of 2005 06, DVC included the said dues in the bill dated 02.07.2019. Further, on 06.06.2019 DVC wrote an email to TSL wherein DVC had invited officials of TSL for reconciliation of bills. On 30.07.2019, DVC sent an email to TSL with the reconciliation sheet on the points raised by the TSL for the period from April 2000 to May 2019.
21. It was also submitted that in terms of the above provision of the Tariff Order dated 28.05.2019, the contentions raised by TSL is erroneous as it is based upon the assumption that TSL is eligible for the Voltage Rebate as they do not have any past arrears/ outstanding dues against the DPS, however, DVC through its repeated communications submitted to TSL upto July 2005, sought for payments to be made by TSL on account of arrears towards Fuel Surcharge in accordance the notification issued by BSEB and thereafter the parties have been in litigation from the year 2005 onwards starting from Case no. 06 of 2005/06 upto the order dated 24.07.2019 passed by this Commission and now before the Hon'ble Tribunal in Appeal no 179 of 2021.
22. Learned counsel in its conclusion submitted that TSL is not eligible for availing the voltage rebates in terms of the Tariff order dated 28.05.2019 as on account of the adjustment done by DVC in the August 2004 bill vis-a-vis the amount of Rs. 10.64 crores, there is shortfall of payment of Rs. 9.87 crores even as on date (after adjusting an amount of approx. Rs. 77 lakhs towards DPS on AMG Bills) and it is patently erroneous on the part of TSL to contend that they were not aware what the nature of the arrears showed in the bill of 02.07.2019 which was for an amount of Rs. 10.64 crores, hence petitioner-TSL cannot be granted voltage rebate in terms of tariff order dated 28.05.2019 as the arrears has not been stayed and DVC is strictly complying with the tariff order and is right in denying the voltage rebate to TSL till such time the amount which is due to DVC is not fully cleared.

Commission's observation and findings

23. The Commission has considered the submissions made by the petitioner and perused the materials available on records.
24. Further, *clause III: Voltage Rebate* of the Order dated 28th May, 2019 states as follows,

"Clause III: Voltage Rebate

Voltage rebate will be applicable on energy charges as given below:

Consumer Category	Voltage Rebate
<i>HT 33 kV</i>	<i>2.00%</i>
<i>HT 132 kV</i>	<i>3.00%</i>
<i>HT 220 kV and above</i>	<i>4.00%</i>

Note: The above rebate will be available only on monthly basis and consumer with arrears shall not be eligible for the above rebate. However, the applicable rebate shall be allowed to consumers with outstanding dues, wherein such dues have been stayed by the appropriate authority/Courts."

25. It is further observed that the Commission vide Order dated 30th September, 2020 had issued DVC's Order on True-up for FY 2018-19, Annual Performance Review for FY 2019-20 and ARR & Tariff for FY 2020-21, wherein the Commission in order to have uniform approach across all distribution utilities had linked voltage rebate to be allowable to only those consumers who opt for higher voltages and meets the conditions specified in JSERC (Electricity Supply Code) Regulations, 2015, as amended from time to time. *Clause IV: Voltage Rebate* of the Order dated 30th September, 2020 states as under,

"Clause IV: Voltage Rebate

Voltage rebate will be applicable on Demand and Energy Charges as per the JSERC (Electricity Supply Code) Regulations, 2015 as amended from time to time at the rate given below:*

Consumer Category	Voltage Rebate
<i>HTS/HT Institutional - 33 kV</i>	<i>3.00%</i>
<i>HTS/HT Institutional - 132 kV</i>	<i>5.00%</i>
<i>HTS/HT Institutional - 220 kV</i>	<i>5.50%</i>
<i>HTS/HT Institutional - 400 kV</i>	<i>6.00%</i>

**Note: The above rebate will be available only on monthly basis and consumer with arrears shall not be eligible for the above rebate. However, the applicable rebate shall be allowed to consumers with outstanding dues, wherein such dues have been stayed by the appropriate authority/Courts.*

It is further clarified that the voltage rebate will not be applicable to all consumers who are connected to the voltages specified above. The Commission in order to have uniform approach across all distribution utilities has now linked voltage rebate to be allowable to only those consumers who opt for higher voltages and meets the conditions specified in JSERC (Electricity Supply Code) Regulations, 2015, as amended from time to time."

26. It is observed that the respondent DVC has admittedly realized/adjusted the dues of DPS on FCS as per the circulars of BSEB and AMG charges, total amounting to Rs. 10.65 crores (approx) in the year August, 2004 against the monthly advances paid by the petitioner-TSL and the respondent would have shown the deficit/dues of the advance payment in the future bills of the TSL

from the month of September, 2004 till July, 2019.

27. It is observed that the petitioner-TSL has requested the respondent-DVC for the details of the dues/arrears but the respondent-DVC has not filed the details. The Commission has also directed to file the details however the petitioner has reiterated that the arrears are outstanding as shown in subsequent bills.
28. At this juncture it is pertinent to state that the petitioner TSL has preferred an appeal before the Hon'ble APTEL being appeal no. 179 of 2021 against the order dated 24.07.2019 issued by this Commission in case no. 06 of 2005/06 wherein it has been held that the DPS will be leviable as at no time did the respondent-DVC waived its right towards the same and DPS may be recalculated after the final outcome of the case before the Hon'ble High Court of Jharkhand. Accordingly, the appeal is pending before the Hon'ble APTEL and the issues involved are the same.

Hon'ble Supreme Court in **Commissioner of Central Excise, Mumbai Vs Mahindra and Mahindra Ltd., reported in (2015) SCC Online SC 1093** at para 3 held as under:-

".....we are of the opinion, that judicial discipline requires that instead of disagreeing with the view taken by the first bench, the appropriate course for the second bench would have been to refer the matter to a larger Bench. This is the basic requirement of judicial discipline"

29. In the surrounding facts and circumstances of the case and the principle of Judicial discipline laid down by the Hon'ble Supreme Court, this Commission is not inclined to pass any orders regarding the DPS on FCS at this juncture considering the fact that the matter/issue is already pending before the Hon'ble APTEL as such passing any order will be in the teeth of the laid down principle.

In the result, it is ordered as;

ORDER

30. In view of the aforesaid discussion the prayer of the petitioner is hereby disallowed, the petitioner is at the liberty to file fresh petition after the final decision of the Hon'ble APTEL in appeal no. 179 of 2021.
31. The petition stands disposed off with the aforesaid observations.

Sd/-
Member (T)

Sd/-
Member (L)

Sd/-
Chairperson