

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION  
RANCHI**

Case No. 4/ 2004-05

CORAM  
S.K.F. KUJUR

IN THE MATTER OF

Dispute in the amount of bills claimed by the Damodar Valley Corporation for the supply of power to Jharkhand State Electricity Board.

AND

IN THE MATTER OF

Jharkhand State Electricity Board ..... Petitioner

Versus

1. Damodar Valley Corporation  
2. Tata Iron & Steel Company ..... Respondents

**ORDER**  
(06.09.2004)

The Jharkhand State Electricity Board filed a petition on 28.04.2004 against the Damodar Valley Corporation before the Commission for a direction to the Respondent No.1 (Damodar Valley Corporation) to charge for the power supply at the same rate at which it was charging for power supply to Bokaro Steel Plant/Durgapur Steel Plant and to other States, like Delhi and Andhra Pradesh through Power Trading Corporation etc., which it claimed was much less. It was also claimed that from 1.4.2001 the differential amount as per the tariff of the petitioner (Jharkhand State Electricity Board) and that of the Respondent No. 1 (DVC) on the power supply by the Respondent No.1 (DVC) outside its command area to Respondent No.2 (TISCO) was not being adjusted and line loss for the power supply was being included in the bills where as per the agreement the supply was to be metered at the supply point (of JSEB) thus the line loss could not be included in the bills.

A copy of the petition was given to the Respondent No.1 (DVC) with three weeks time for filing the reply. In the meantime on 13.5.2004 a supplementary petition was filed on behalf of the petitioner (JSEB) for restraining the Respondent No.1 (DVC) from enforcing load regulation in the form of load shedding in the area where the Respondent No.1 (DVC) was supplying the power (so called command area). The same day a notice was also given to the Respondent No.1 (DVC) to file their comments on the supplementary petition. As no reply was received from the Respondent No.1 (DVC) till 19.5.2004 an interim order on the same day was passed restraining the Respondent No.1

(DVC) from regulating the power following the order of the Central Electricity Regulatory Commission dated 12.9.2001 which has been extended upto 10.7.2004 vide their orders dated 15.3.2004 stating that regulation of power supply is an extraordinary step to be resorted to only in extreme conditions after exhausting all available avenues for recovery of dues. The regulation of power would have affected directly to the consumers in the area. Keeping this in mind and also the plight of the consumers affected by the regulation of power by the respondent Damodar Valley Corporation in that area and that the power supply by the respondent could be regulated only after exhausting all the avenues for recovery of dues and that too as an extraordinary step, which did not seem to have been exhausted. Pending final hearing on the petition filed by the petitioner JSEB, the respondent DVC was restrained from regulating power supply in the so-called command area. In the meantime both the parties were advised to discuss and settle the dispute as per conditions of the agreement.

The written statement was filed on behalf of the Respondent No.1 (DVC) on 31.5.2004, which was passed on to the petitioner (JSEB) for filing rejoinder, if they wanted and 3.7.2004 was fixed for next hearing. On 2.7.2004 the petitioner (JSEB) filed comments and rejoinder on written statement filed by the Respondent No.1 (DVC) and hearing was held on 3.7.2004. During the hearing the Respondent No.1 (DVC) prayed for some time on the ground of unavoidable circumstances and requirement of relevant papers and it was also pointed out that M/s TISCO was also a necessary party and as such M/s TISCO may be made a party. Accordingly, the prayer was allowed and M/s TISCO was added as Respondent No.2 and notice to M/s TISCO was also issued and it was decided that the case would be taken up again for hearing on 31.7.2004.

The case was taken up again on 31.7.2004. The Respondent No.1 (DVC) filed a supplementary affidavit praying to make some corrections in the original Written Statement. Respondent No. 2 (M/s TISCO) also appeared and requested for grant of four weeks time to file the reply and also prayed for the direction to be issued to the petitioner as well as Respondent No.1 (DVC) to serve the copies of the petitions, rejoinders filed by them. The prayers of both the respondents were allowed.

The Respondent No.1 (DVC) had challenged the jurisdiction of Jharkhand State Electricity Regulatory Commission over the DVC and had claimed that they did not come under the jurisdiction of the Jharkhand State Electricity Regulatory Commission in view of the Electricity Act, 2003.

The attention of the learned counsel for the Respondent No.1 (DVC) was drawn to the fourth proviso under Section 14 of the Electricity Act 2003 and after going through the said provision of the Electricity Act 2003 he had agreed that as far as tariff fixation was concerned Section 20 of the Damodar Valley Corporation Act 1948 seemed superseded by the provisions of the Electricity Act 2003. The learned counsel also had agreed that the matter came within the jurisdiction of Jharkhand State Electricity Regulatory Commission as per the provisions of Section 86 (1) of the Electricity Act 2003. However, later, on the next date of hearing on 28.8.2004, the Respondent No.1 (DVC) filed a supplementary petition disagreeing that they had conceded that the provisions of the Electricity Act 2003 superseded the provision of Section 20 of the DVC Act 1948:

The fourth proviso under Section 14 of the Electricity Act, 2003 reads as under:

*“PROVIDED also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a*

*license under this Act and the provisions of the Damodar Valley Corporation Act, 1948, insofar as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation.”*

The learned counsel for the Respondent No.1 (DVC) claimed that DVC did not come under the purview of the Jharkhand State Electricity Regulatory Commission as it was a separate class by itself as it was generating power and selling power and there could not be two tariffs. The learned counsel for the Respondent No.1 (DVC) claimed rightly, quoting the fourth proviso of Section 14 of the Electricity Act 2003, that the DVC was a licensee under the Act and did not require any license under the Electricity Act, 2003.

The Commission noted that the learned counsel was accepting one part of the fourth proviso under Section 14 of the Electricity Act 2003 that it was a licensee but has left out the second part of the sentence under which it has laid down that the provisions of the DVC Act insofar as they are not inconsistent with the provisions of the Electricity Act 2003 shall continue to apply to DVC. In other words, if there were any inconsistency between the DVC Act 1948 and the provisions of the Electricity Act 2003, the provisions of the Electricity Act 2003 would prevail. Thus this over-riding provision of the Electricity Act 2003 empowers the Jharkhand State Electricity Regulatory Commission to fix the distribution tariff, which will prevail upon the fixation of tariff (distribution) by the DVC itself within the State of Jharkhand. Under section 86 (1) of the Electricity Act 2003 the Jharkhand State Electricity Regulatory Commission is required to fix the tariff for supply (distribution) in the State of Jharkhand and hence the Respondent No.1 (DVC) cannot fix the distribution tariff on its own in the jurisdiction of Jharkhand State Electricity Regulatory Commission. As regards two tariffs it may be noted that when the generation tariff of the Central Government Undertakings Generating Stations are fixed by the Central Electricity Regulatory Commission under Section 79 of the Electricity Act 2003, which reads as under:

#### Section 79: Functions of Central Commission

*(1) The Central Commission shall discharge the following functions, namely:-*

- (a) to regulate the tariff of generating companies owned and controlled by the Central Government,*
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have composite scheme for generation and sale of electricity in more than one state.*

And the power, which is bought by the distribution licensee as per the tariff fixed by the Central Electricity Regulatory Commission, is distributed by the distribution licensee the distribution tariff is fixed by the State Electricity Regulatory Commission under section 86(1) of the Electricity Act 2003, which reads as under:

#### Section 86: Functions of State Commission:

*(1) The State Commission shall discharge the following functions, namely: -*

- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail as the case may be, within the state:*
- (b) regulate electricity purchase and procurement process of distribution licensee including the price at which electricity shall be procured from the generating companies or licensee or from other source through agreements for purchase of power for distribution*

*and supply within the state:*

*(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute or arbitrations.*

As the Respondent No.1 (DVC) is also a generating company owned and controlled by the Central Government and have a composite scheme for the generation and sale of electricity in more than one State, the generation tariff of DVC has to be fixed by the Central Electricity Regulatory Commission in terms of Section 79 of the Electricity Act and if DVC is selling power in Jharkhand as a distribution licensee then the distribution tariff has to be fixed by the Jharkhand State Electricity Regulatory Commission as per the provisions of the Electricity Act 2003.

As the generation tariff has not been got determined by CERC as required under the provisions of Electricity Act, 2003 the tariff being charged by the Respondent No.1 (DVC) can not be treated as correct and authorized by CERC, there is a dispute in the amount claimed by the Respondent No.1 (DVC) and the amount to be paid by the petitioner (JSEB).

The Section 30 of the Electricity Act, 2003 deals with “Intra-State Transmission” and lays down the jurisdiction of the State Commission within the territory of the concern state.

Keeping the above points and the provisions in the Electricity Act, 2003 the Commission disagrees with the views of the Respondent No1 (DVC) that the matter is not under the jurisdiction of the Jharkhand State Electricity Regulatory Commission.

From the petitions and the pleadings of the parties it came out that there were three main issues on which JSEB had filed the petition. They are as follows:-

- i) The fixation of tariff – The petitioner had claimed that the tariff was fixed arbitrarily which was much higher than what it should have been;
- ii) The Respondent No.1 (DVC) was supplying power to the Respondent No.2 (TISCO), which was outside the command area of DVC and the Respondent No.1 (DVC) was neither paying the differential amount of JSEB tariff and DVC tariff to JSEB nor adjusting the differential amount in their bills preferred to the petitioner (JSEB); and
- iii) The placement of meter was not done by the Respondent No.1 (DVC) as per the agreement due to which the bills of the DVC included the charges on account of line loss.

These three issues resulted in dispute regarding the amounts of bills, which was claimed by the Respondent No.1 (DVC) and thus the petitioner (JSEB) claimed that the bills needed revision.

As per the provisions of Section 86(1)(b) and (f) of the Electricity Act 2003 the Commission is required to regulate the electricity purchase and procurement process of distribution licensees including the price at which the electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State and to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.

The Respondent No.1 (DVC) had claimed in their written statement that they fixed the tariff as per the provision of Section 20 of the DVC Act 1948 and denied that they had fixed the tariff arbitrarily. It was further claimed by the Respondent No.1 (DVC) that tariff being charge by DVC was at the same rate from all its consumers.

Regarding the placement of meters it was seen that as per the agreement between the Petitioner (JSEB) and the Respondent No.1 (DVC) regarding the supply of power, the meters were required to be placed at the supply point of the petitioner (JSEB). It was submitted by the Respondent No.1 (DVC) that they had put the meters in the right places excepting in eight cases for which they had given the estimate of expenditure to the petitioner (JSEB) for shifting the meters. As the meters were to be placed at the petitioner (JSEB)'s end the Respondent No.1 (DVC) should have put the meter there and by not putting it at the correct place initially they cannot seek the expenditure from the petitioner (JSEB) for shifting the meters now.

Another point that was raised by the Petitioner (JSEB) was regarding the Respondent No.1 (DVC) selling the power outside the command area without paying the differential tariff to the petitioner (JSEB) or adjusting the differential amount in the bill. In this connection the Respondent No.2 (TISCO) filed the reply in which they have stated that in the proceeding was basically the dispute between the Respondent No.1 (DVC) and the petitioner (JSEB). The Respondent No.2 (TISCO) raised the point that the Government of Bihar had extended the tripartite agreement between DVC, BSEB and TISCO for the supply of power by the DVC to TISCO from time to time and the period of this agreement was last extended up to 31.3.2001 and the agreement ceases to exist after that date. The learned counsel for the Respondent No.2 also stated that the concept of deemed supply did not exist either in the DVC Act or in the Electricity Act existing at that point of time. But it was seen from the agreement that all the three parties had agreed that the supply of power by the Respondent No.1 (DVC) to Respondent No.2 (TISCO) was treated to be a deemed supply from BSEB and the differential amount of tariff between the BSEB tariff and DVC tariff was to be paid by the DVC to BSEB. It was also brought out that there was a meeting held in April 2001 in which the Chairman, DVC had categorically stated that the tripartite agreement had expired and all the future bills in respect to supply of power by DVC to TISCO would be raised as per DVC tariff. The learned counsel for the Respondent No.2 (TISCO) also submitted that the issue of supply of electricity by DVC beyond its command area after 31.3.2001 is a matter entirely between the petitioner (JSEB) and the Respondent No.1 (DVC). The Respondent No.2 (TISCO) had denied that they were liable to pay any differential amount to BSEB. In this context it was seen that the erstwhile Government of Bihar had given permission to DVC to extend DVC transmission line beyond the command area to Jamshedpur and Ghatsila vide its letter-dated 10.12.1949. On 21.6.1950 the Government of Bihar accorded permission under section 18(3) of DVC Act to sell power in the area of operation at sub-station of Ranchi and Jamshedpur. This permission was granted by the Government of Bihar under Section 18(3) of the DVC Act 1948. Thereafter the Government of Bihar had permitted the sale of power by the DVC to TISCO laying down the conditions for that sale under which the DVC was treated as deemed supplier on behalf of BSEB. This permission was granted under Section 18(3) of the DVC Act 1948.

The learned counsel for the Respondent No.1 (DVC) submitted that the permission accorded by the Government of Bihar was perpetual and was absolute. After seeing the permission for the sale of power, having been granted by the Government of Bihar from time to time under the provision of Section 18(3) of the DVC Act 1948, the Commission does not agree to the pre-supposition that the permission was perpetual. Though it is absolutely clear that the agreement, which was signed between BSEB, DVC and TISCO with the permission of Government of Bihar was valid only upto 31.3.2001. Following the provision of Section 18(3) of the DVC Act 1948 which held good even on the day, the agreement expired i.e. 31.3.2001, the Respondent No.1 (DVC) should have obtained the permission of the State Government to continue beyond that date for sale of power. The provision of Section 18(3) of the DVC Act 1948, which

was accepted and honoured by all, should have been honoured after the expiry of the date of agreement for further continuation of sale of power by DVC to M/s TISCO. The only difference should have been that the permission in this instant case was required from the Government of Jharkhand instead of Government of Bihar, being the successor State in which lies DVC's partial operational area and also the area beyond the so called command area to which the power was to be supplied by the DVC. The Respondent No.1 (DVC) pleaded to make the Government of Jharkhand a party to the proceeding.

The Respondent No.2 has nothing to do with the payment to the petitioner (JSEB). Neither it was there earlier in the first instance. It was the duty of the Respondent No.1 (DVC) to pay the differential amount to BSEB as per the old agreement. But the Respondent No.1 (DVC) has gone against the provision of Section 18(3) of the DVC Act 1948 by selling power without the approval of the State Government after 31.3.2001. The Commission finds it strange that the agreement was stated to have been signed without the permission of the Government of Jharkhand in July 2002 making it effective from April 2001 when both the parties were fully aware of and were operating under the provisions of Section 18(3) of the DVC Act 1948. In this connection the learned counsel for the Respondent No.2 (TISCO) had filed a petition praying therein to modify the order-dated 31.7.2004 (it was a note of the proceeding and not an order. The actual order of the Commission is being issued now) saying that the petitioner (JSEB) had not raised the issue of supply of power by the Respondent No.1 (DVC) outside the command area but has raised the point of non-payment of differential amount. The learned counsel also submitted that it was settled in law that the Commission should not go into the issue, which has not been raised by the petitioner at all. However, it was noticed by the Commission that in the original petition the petitioner (JSEB) had raised the issue of supply of power to the Respondent No.2 (TISCO) by the Respondent No.1 (DVC) which was outside the so called command area of DVC and the question of differential amount in tariff has arisen only on account of DVC selling power outside its command area to M/s TISCO (which needed State Government's permission) which was treated as deemed supply and hence there is no need to modify the proceedings dated 31.7.2004.

### **Conclusions:**

Based on the points raised, points put forward by learned counsels, the documents made available to the Commission and Commission's own assessment, it has arrived at the following conclusions:

- (a) There is a dispute between the Respondent No.1 (DVC) and the Petitioner (JSEB) on the amounts in the bills claimed by DVC for the sale of power to JSEB on account of the following reasons:
1. The rate, at which the claimed was prepared that based on the tariff fixed by DVC under Section 20 of DVC Act 1948, was not determined by CERC as required under the provisions of the Electricity Act, 2003 and cannot be treated as correct and authorized.
  2. The sale of power by DVC outside its command area without the permission of the State Government was violation of the provision of Section 18(3) of DVC Act 1948. Absence of permission by the State Government also resulted in the absence of condition of sale which in turn fails to indicate whether the differential tariff amount is payable or not. The agreement between the Respondent No.1 (DVC) and the Respondent No.2 (TISCO) cannot be treated as correct and valid as it does not have the necessary permission of the State Government as required under Section 18(3) of DVC Act 1948.

3. DVC while supplying the power to JSEB had fixed the meters in eight cases at their end instead of JSEB's supply point as per the agreement, due to this the line loss that was included in the bills was not correct.
  4. If JSEB was purchasing power from DVC outside its command area, it required Government of Jharkhand's permission under Section 18(3) of DVC Act 1948. (Corrigendum issued on 8-9-04)
- (b) The plea made by the Respondent No.1 (DVC) that it did not come under the purview of Jharkhand State Electricity Regulatory Commission (JSERC) cannot be accepted in view of the over-riding provision in the fourth proviso under Section 14 and harmonious construction of other provisions of the Electricity Act, 2003.
- (c) The stand taken by the Respondent No.2 (TISCO) that it was not required paying to JSEB any differential amount and that the present proceeding was a dispute between the Petitioner (JSEB) and the Respondent NO.1 (DVC) are correct. But their agreement to purchase of power from DVC outside DVC's command area needed State Government's permission.
- (d) The plea of the Respondent No.1 (DVC) to make Government of Jharkhand a party to this proceeding was unacceptable as it is the failure on the part of the Respondent No.1 (DVC) to obtain the permission of the State Government to sell power outside its command area, in continuation of the agreement which expired on 31.03.2001

#### **Order of the Commission:**

- (1) Fixation of tariff –The Respondent No.1 (DVC) should get the generation tariff fixed as per the provisions of the Electricity Act, 2003 without any further delay. Thereafter if they are distributing power in the Jharkhand State, the distribution tariff has to be got fixed by the Jharkhand State Electricity Regulatory Commission, while supplying power as a generating company to licensees they will have to follow the tariff as determined by Central Electricity Regulatory Commission.
- (2) The Commission orders that the Respondent No.1 (DVC) should approach the Government of Jharkhand to get the permission for the sale of power outside its command area ex-post-facto.
- (3) The tariff fixed by concern Commission, on application and ex-post-facto permission by the Government of Jharkhand, the prayer of the Petitioner (JSEB) with regard to relief on amount of differential tariff can be ascertained.
- (4) If JSEB was purchasing power from DVC outside DVC's command area the Commission orders that both the parties together should approach the Government of Jharkhand to get the permission ex-post-facto to the sale by DVC under Section 18(3) of DVC Act 1948.
- (5) The Commission orders that the Respondent No.1 (DVC) should shift the meters to the correct places (at their cost) as per the agreement and the line loss may to be worked out and on that basis it should be adjust the bills where the line losses were included.

- (6) The interim order, which was passed by the Commission on 19.5.2004, is hereby vacated.
- (7) The Commission rejects the plea of the Respondent No.1 (DVC) to make the Government of Jharkhand to this proceeding.

With the above observations and directions the petitions of the respective parties are disposed off accordingly.

(S.K.F. Kujur)  
Chairman

Ranchi, dated, the 06<sup>th</sup> September 2004