WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. B-5/2

Date of hearing: 23rd September, 2019

Time of hearing: 15.00 hours

Coram:

Shri Sutirtha Bhattacharya, Chairperson

Shri Durgadas Goswami, Member

In the matter of

Applications by Graphite India Limited (GIL) and Damodar Valley Power Consumers' Association (DVPCA), seeking intervention of the Commission in the matter of high restrictions on power drawal by Damodar Valley Corporation (DVC) and imposition of penal charges for over drawal during frequent restrictions.

And

In the matter of

Graphite India Limited
31 Chowringhee Road
Kolkata 700 016

..... **Petitioner**

And

Damodar Valley Power Consumers' Association
Ideal Centre, 4th Floor
9 AJC Bose Road
Kolkata 700 017

..... **Petitioner**

Damodar Valley Corporation
DVC Towers
VIP Road
Kolkata 700 054

..... **Respondent**

Representatives attended:

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Graphite India Limited (GIL) [Petitioner]

1. **Sri S. W. Parnerkar, Senior Vice President (Finance)**
2. **Sri T. K. Mitra, Power Consultant.**

Damodar Valley Power Consumers' Association (DVPCA) [Petitioner)

1. **Sri Rajesh Kumar Gupta**
2. **Sri Aditya Mishra**
3. **Sri Himanshu Goel**

Damodar Valley Corporation (DVC) [Respondent]

1. **Sri Subodh Kumar Datta, Executive Director (Commercial)**
2. **Sri Manik Chandra Rakshit, Chief Engineer – I (Commercial)**
3. **Sri Pratik Biswas, Executive Engineer (Commercial)**
4. **Sri Amit Kumar Sil, Deputy Chief Engineer (Commercial)**

CASE IN BRIEF

1.0 Graphite India Limited (GIL) and Damodar Valley Power Consumers' Association (DVPCA) filed two separate complaints dated 10th December, 2018 and 11th December, 2018 respectively alleging unreasonable imposition of load restriction and penal charges by Damodar Valley Corporation (DVC) for drawal of power over the restricted drawal by the consumers during the months of August, September and October, 2018. The matter was referred to DVC by the Commission with direction to justify reasons for imposition of restriction on GIL for such a long period.

2.0 After several communications, DVC submitted block wise generation, consumer demand met, deviation and export vide their letter No. DVC/Coml./WBERC/1980 dated 23rd May, 2019. Not being satisfied with the reply of DVC, the Commission took a joint hearing of DVC, GIL and DVPCA on 11th July, 2019, where the representatives of the parties were present.

3.0 Upon hearing the parties present, the Commission passed an interim order dated 22nd July, 2019 directing, inter-alia, that the next date of hearing is fixed on 19th September, 2019 at 15.00 hours.

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4.0 The hearing was rescheduled on 23rd September, 2019 at 14.00 hours instead of 19th September, 2019, as was directed vide order dated 22.07.2019 at the office of the Commission and served notice upon all the parties concerned vide letter no. WBERC/B-5/3/4647-4649 dated 12.09.2019. Representatives from all the parties, i.e., DVC, GIL and DVPCA were present at the hearing.

SUBMISSIONS DURING HEARING

5.1 During the hearing, the representative of DVPCA, inter-alia, submitted that –

1. The members of DVPCA are HT consumes of DVC located in Asansol - Durgapur Region of West Bengal and receiving power at 132 KV and 33 KV since last 30 years under long term power firm supply contracts;
2. The financial viability of member Industries of DVPCA operating with power from DVC has eroded due to imposition of erratic load restrictions during August, 2018 to October, 2018 and they were forced to incur huge losses due to continuous load restrictions imposed by Damodar Valley Corporation;
3. The member industries of DVPCA suffered crores of rupees towards production loss as well as penalty for over drawing more than restricted but within its contracted demand and damages to plant & machineries. This lead to loss of trusted customers and they were forced to get entangled into litigation for late delivery penalties and risk purchases.
4. Despite written assurance given by DVC to the members of DVPCA, DVC imposed load restriction on Industries in West Bengal and chose to export power to outside the State;
5. DVPCA filed a complaint / representation dated 11.12.2018 before this Commission praying for direction on DVC that private consumers in west Bengal be suitably compensated for losses suffered by them by the imposition of exemplary penalty on DVC for non supply / curtailment of power in violation of long term power supply agreements, review of existing penalty clause under West Bengal Regulations in case of non - supply and load restrictions and instruction on DVC to give standing clearance to all the member industries to procure power from energy exchange;

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6. In the meantime, DVPCA has obtained a chart of consumption by private consumers of DVC in the States of Jharkhand and West Bengal for the period of May 2018 and October 2018 under Right to Information Act, 2005. From the said chart it is evident that during the period of complaint, i.e., August 2018 to October 2018, there is almost no restriction on power consumption in the State of Jharkhand by the private consumers of DVC, whereas the power consumption in West Bengal decreased by more than 12% due to restrictions;

7. DVC imposed "Restricted Drawal" on the consumers under Regulation 4.4 of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 and penalized them for its own fault in not being able to generate power as per contracted demand;

8. The inefficiency in the performance of DVC is being rewarded by penalizing the consumers, whereas, the interest of the consumers is not protected since the consumers are being penalized for the inability of DVC to produce electricity;

9. The term "Restricted Drawal" is vague, uncertain, ambiguous, incapable of being made certain and there is a sea of uncertainty. Neither the term "Restricted Drawal" is defined nor the power to exercise the same is prescribed nor the parameters of levying penalty is set out;

10. The said Regulation 4.4 of the Tariff Regulations purport to confer unguided and un-canalized power upon DVC to "restrict drawal" on their whims and caprice and at any time which results in gross damage to the properties and assets of the consumers without due process of law and amounts to excessive delegation and is unreasonable, arbitrary and violative of Article 14 and 19 (1) (g) of the Constitution of India;

11. On a plain meaning, "restricted drawal" means restriction on drawal of contract demand as per Regulation 2(l)(e) of the Supply Code Regulations. Regulation 2(e) of the Supply Code Regulations provides that the consumer has the right to draw the contract demand at the point of supply at all time during the continuance of the contract. Thus imposition of "Restricted Drawal" is contrary to the right of the consumer to draw the contract demand as provided by the Supply Code;

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12. By not providing the contract demand to a consumer, DVC is in breach of the contract and/or default of the contract and in violation of Contract Act, 1872 and DVC is liable to compensate to the members of DVPCA for loss or damage caused by the breach of contract;

13. In the event, Regulation 4.4 of the Tariff Regulations is given the meaning as sought to be given by DVC then the same militates Regulation 2(e) of the Supply Code Regulations as well as is contrary to the common law and also the Electricity Act, 2003;

14. There is no provision of such penalty in the neighboring State of Jharkhand. Hence, from the chart annexed to this submission it will be evident that during the period of restriction no such restriction was imposed on the consumers of Jharkhand whereas the Consumers of West Bengal were imposed with restricted drawal since there was provision for imposing penalty for drawal of electricity above "Restricted Drawal". In the premises, the consumers of DVC in two States are treated differently;

15. This discrimination leads to unfair advantage to the consumers of Jharkhand and imposes unreasonable restriction on the consumers of West Bengal to carry on their business;

16. As far as DVPCA is aware, there is no such provision of penalizing for restricted drawal in any other State in India except West Bengal;

17. On the one hand, the penalty amount on excess drawl is three times the rate of energy charge in the state of West Bengal under Tariff Regulation, on the other hand, the compensation for interruption of supply is at the rate of Rs. 500/- for each additional day or part thereof under West Bengal Electricity Regulatory Commission (Standard of Performance of Licensees Relating Consumer Services) Regulations, 2010;

18. In view of above, DVPCA prayed before the Commission to the following extant:

a) DVC be directed to compensate for losses suffered by the members of DVPCA and also refund excess amount collected by imposing restricted drawal under Regulation 4.4 of 2011;

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b) The Term "Restriction" to be defined under Tariff Regulations;

c) To suitably increase the amount of compensation on DVC for interruption / restriction period;

d) DVC be directed to allow Open Access to the members of DVPCA, so that the members can procure power from alternate resources including energy exchange.

5.2 Upon submission of DVPCA, the Commission asked as to whether DVPCA members have ever asked for open access during the period of restricted supply, in reply of which, the representative of DVPCA informed that DVPCA has no such instance.

5.3 The representative of DVC denied all the allegations and submitted that –

1. DVC supplies power to its consumers based on the availability of the power as per the agreement entered into by and between the consumers and DVC;

2. Due to coal crisis during the period, DVC faced a huge demand supply gap. Thus, to ensure grid security, DVC imposed restrictions to its consumers;

3. There was no discrimination between Jharkhand and West Bengal consumers regarding imposition of load restrictions. DVC imposed load restrictions to its consumers in rotational manner based on the category. This means the same category of consumers will get load restrictions in both the States at same time. DVC imposed load restriction on its consumer in percentage terms on contracted demand. However, consumers in Jharkhand area did not strictly comply with such restrictions.

4. During the restriction period, DVC charged the 'contract demand charge' payable by the consumer upto restricted demand, leading to huge loss to DVC;

5. During the period of shortage of power, DVC also restricted supply of power to the consumers under long term PPA and also restricted their export of the power in the same ratio;

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5.4 Upon hearing DVC, the Commission asked the representative of DVC to explain their computation of restrictions. The Commission also asked as to whether the equality has been maintained for restriction of drawal of power in both the States of West Bengal and Jharkhand, as the allegations made by both GIL and DVPCA in this regard are serious in nature. The representative of DVC could not provide documentary evidence / data against the queries raised by the Commission.

5.5 The representative of GIL, inter-alia, submitted that –

1. As per the direction given by the Commission in its last order dated 22.07.2019, GIL tried to come to a mutually agreed solutions with DVC, but failed to do so;

2. GIL has submitted a rejoinder to the written statement made by DVC vide their letter dated 29.08.2019 which inter-alia states that –

   As per the clause 4 of the power purchase agreement dated 20.11.2012 entered into by and between DVC and GIL, DVC can impose restrictions under the conditions of force majeure which includes, strike, lock-out, fire, accident, cyclone or any other act of God beyond the control of DVC. DVC has been asked several times through letters to confirm force majeure condition in DVC for such frequent restrictions imposed by DVC on GIL in the year 2018 – 2019. But, DVC did not reply;

3. DVC is duty bound to ensure supply of uninterrupted power to its consumers who have agreements with DVC even by purchasing power in the event of shortage of power.

OBSERVATIONS OF THE COMMISSION

6.0 The Commission observes that –

1. If the allegation of inequality in imposition of restriction of drawal in the States of West Bengal and Jharkhand is true, it is in contravention of the principle of the Electricity Act, 2003 and the Regulations framed thereunder;

2. From the statement submitted by DVPCA, the load growth in Jharkhand area in the months of August 2018, September 2018 and October 2018 shows a

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increasing trend, whereas load in West Bengal area during those months records decreasing trend;

3. Neither DVPCA nor GIL applied to DVC for open access during the period of restriction;

4. The time block wise calculation submitted by DVC is not clear. DVC is required to establish their uniform approach of load restriction in both Jharkhand and West Bengal areas by providing block wise computation details.

ORDER

7.0 Upon hearing the parties present at the hearing and examining the documents submitted, the Commission directs that –

1. DVC shall submit a report in the form of affidavit by 25th October, 2019 confirming / showing - i) uniformity in restriction; ii) number of consumers upon which restriction imposed; iii) contracted demand of the consumers upon which restriction imposed; iv) amount of restriction in percentage of contracted demand; v) calculation of time blocks and vi) principles of restriction and equality maintained in restriction in both the States i.e., West Bengal and Jharkhand. DVC shall also serve a copy of the same to both GIL and DVPCA.

2. GIL and DVPCA shall submit their rejoinder, if any, on the report to be served upon them by DVC within 13th November, 2019.

3. The next date of hearing is fixed on 18th November, 2019.

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 11.11.2019

(T. K. MUKHERJEE)
SECRETARY

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