

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA

Sai Engineering Foundation, Sai Bhawan,
New Shimla-171009, through its
Chief Executive Officer, Sh. Raj Kumar Verma.

...Petitioner

V/s

1. H.P. State Electricity Board,
through its Secretary.
2. Chief Engineer (Comm.),
HPSEB, Shimla.
3. Chief Engineer (PSP),
HPSEB, Shimla.
4. Superintending Engineer
Operation Circle, HPSEB,
Rampur.
5. Executive Engineer,
Electrical Division.
HPSEB, Reckong Peo,
Dist. Kinnaur.

...Respondents

Petition No. 139/07

(Decided on 25.2.2008)

CORAM
YOGESH KHANNA, CHAIRMAN

Counsel:-

For the petitioner
For the respondents

Sh.B.S.Chauhan.
Sh. Bimal Gupta,
Advocate

Order

Sai Engineering Foundation, Sai Bhawan, New Shimla a Generating Company (hereinafter referred as the petitioner) which is operating Titang Mini Hydel Project in Kinnaur Distt. since 2002 on build, own, operate and transfer basis (BOOT), has moved a petition under section 86 (1)(f) and section 158 of the Electricity Act, 2003, read with regulations 9, 12 and 53 of the HPERC (Conduct of Business) Regulations, 2005 for reference to an arbitrator for adjudication of the dispute, concerning the evacuation of power from the said project, arisen between the said generating company and the HPSEB (hereinafter referred as the respondent Board). When the petition came up for hearing on 16.6.2007, the respondent Board was directed to file its reply to the petition by the 15th July, 2007. But the respondent Board, instead of filing the reply to the petition moved an application under section 8 of the Arbitration and Conciliation Act, 1996.

2. Sh. B.S. Chauhan, Learned Counsel, representing the petitioner submitted that the good faith negotiations as envisaged in Article 13.1 of the Power Purchase Agreement (PPA) has already been resorted to through a legal notice dated 8th April, 2007 served upon the respondent Board and the respondent failed to respond thereto.

3. Sh. Bimal Gupta, Advocate for the respondent Board stated that his client is still ready to resolve the dispute through good faith negotiations and the respondent No.3 i.e. the Superintending Engineer, Operation Circle, HPSEB, Rampur, has already made request to the petitioners for this purpose vide its letter dated 11.7.07 (the copy which was produced/passed on during the course of hearing on 4.8.2007 to the Commission as well as to the petitioner). In view of the submissions made by the Learned Counsel for the respondent Board, the Commission directed the parties to settle the dispute by resorting to good faith negotiation clause embodied in the PPA within four weeks starting from the date of the order i.e. 4.8.2007, failing which the petitioner i.e. Sai Engineering Foundation were given liberty to approach this Commission.

4. Subsequently on 17.11.2007 the petitioner stated that in pursuance of order dated 4.6.2007 passed by the Commission the parties to the petition met

to settle the dispute by resorting to good faith negotiation clause embodied in the PPA, but no settlement has been arrived at between the parties and as such the Commission was requested to proceed with the main petition. Sh. Bimal Gupta, Advocate for the respondent Board opposed the request of the petitioner on the ground that the request of petitioner is premature and further alleged that the petitioner has not yet complied with the requirement of Article 13.2, read with clause (c) of Article 13.1 of the PPA. Sh. B.S. Chauhan, Learned Counsel for the petitioner, undertook to comply with the said requirement by sending notice to the respondent, and thereafter to move the petition for reference to arbitration for adjudication of the dispute. Thereafter the petitioner through M.A. No. 275/07 and 276/07 brought to the notice of the Commission that despite serving a registered notice to the respondent Board for appointment of the arbitrator, no response has been received from the respondent Board. The petitioner, therefore, again approached this Commission for the appointment of the Arbitrator. Again on 4.1.2008, Sh. Bimal Gupta, Advocate for the respondent Board, stated that the matter for appointment of the Arbitrator, mutually, in this case is under consideration and the Board will be making the same at the earliest. At the request of the respondent Board, the matter was adjourned upto 23.2.2008. Even when the matter was again taken up by the Commission on 25.2.2008, no appointment of the arbitrator had been made and to the contrary the respondent Board is praying for more time. The Commission has already given sufficient and reasonable time to the respondent Board for this purpose. Section 86(1)(f) and Section 158 of the Electricity Act, 2003, gives power to the State Commission to refer a dispute between the Licensee and Generating Companies for adjudication and settlement through an arbitration.

5. The Commission after taking into consideration the facts and the circumstances of the case, the arguments advanced, is satisfied that no plausible reason or cause has been shown against the arbitration request, and is convinced that the reference to the sole arbitrator will be justified to meet the ends of justice. To eliminate further unnecessary delay and the possible apprehension of any bias, the Commission directs that the dispute be referred for adjudication and settlement through arbitration by a person, having adequate knowledge and experience in dealing with the matters relating to

electricity generation, transmission and distribution, to be nominated by the Commission. The Learned Counsels of both the parties to the dispute agree for the nomination of Sh. D.N. Bansal, retired Chief Engineer and Ex-Member of the HPSEB, as arbitrator in this case. The said nomination can be made after ascertaining the willingness of Sh. Bansal to accept this assignment. The arbitrator to be nominated by the Commission shall start the arbitration process immediately after the nomination and may follow such procedure as he may consider appropriate, consistent with the principles of natural justice and fair opportunity to be given to the parties to the arbitration. The arbitrator shall pass an award giving reasons for the decision on all the issues arising from adjudication and forward the award with relevant documents to the Commission within a period of three months from the date of his nomination. The award made by the arbitrator shall be an award under the Arbitration and Conciliation Act, 1996 (26 of 1996).

6. The Commission further orders the parties, to make their submissions before the arbitrator to be nominated by the Commission. Further the Board is to ensure that all facilities and co-operation as may be stipulated in the terms of reference, are made available to the said arbitrator. The respondent Board shall also produce or cause to be produced all documents/records required during the course of the arbitration proceedings.

This order is made and signed on the 25th day of Feb., 2008.

(Yogesh Khanna)
Chairman.