

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL No.23 of 2012**

**Dated: 06<sup>th</sup> Sept, 2012**

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**BSES Yamuna Power Limited,  
Shakti Kiran Building,  
Karkardooma,  
Delhi-110092**

**...Appellant**

**Versus**

- 1. Delhi Electricity Regulatory Commission  
Viniyamak Bhawan,  
'C'Block, Shivalik,  
Malviya Nagar, New Delhi-110 017**
- 2. The Chief Secretary,  
Government of National Capital of Delhi  
Delhi Secretariat, Players Building  
IP Estate, New Delhi-110 002**
- 3. National Thermal Power Corporation Limited,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003**
- 4. NHPC Limited,  
NHPC Office Complexd, Sector 33  
Faridabad, Haryana-121 003**

- 5. Power Grid Corporation of India Limited,  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110006**
- 6. Indraprastha Power Generation Company Limited,  
Himadri Rajghat House Complex,  
New Delhi-110002**
- 7. Pragati Power Corporation Limited  
Himadri Rajghat House Complex,  
New Delhi-110002**
- 8. Satluj Jal Viduyt Nigam Limited  
Sharma Niwas, Below BCS  
New Shimla-171 009**
- 9. Tehri Hydro Development Corporation Limited  
Alaknanda Bhawan, Pragatipuram,  
Bypass Road,  
Rishikesh-249 201**
- 10. Nuclear Power Corporation of India Limited  
Rawatbhata Rajasthan Site, Plant Site,  
Anushakti-323 303,  
Kota, Rajasthan**
- 11. Aravali Power Company Private Limited  
1<sup>st</sup> Floor, Pawan Hans Towers,  
C-14,  
Sector-1, Noida-201 301 (UP)**
- 12. Damodar Valley Corporation Limited  
Copmmercial Department  
DVC Towers, VIP Road,  
Kolkata-700 054**

**13. Delhi Transco Limited  
Shakti Sadan, Kotla Marg,  
New Delhi-110 002**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Amit Kapur,  
Mr. Vishal Anand  
Ms. Deepika Kalia  
Mr. Nikhil Sharma

Counsel for the Respondent(s): Mr. Meet Malhotra, Sr Adv  
Mr. Ravi S S Chauhan  
Mr. Prateek Dhaiya for R-1

Mr. S B Upadhyay, Sr Adv  
Mr. Pawan Upadhyay  
Ms. Anisha Upadhyay,  
Mr. Param Kumar Mishra  
Mr. Saravjit Pratap Singh for R-5

Mr. Swetaketu Mishra  
Mr. Ritin Rai  
Mr. Siddhartha Jha for DVC

Mr. Jayant Nath, Sr Adv for  
Mr. Vivek Narayan Sharma  
Mr. Vishal Sharma for R-13

Mr. M.G Ramachandran  
Ms. Ranjitha Ramachandra  
Mr. Anand K Ganesan  
Ms. Swapna Seshadri  
(for NTPC, IPGCL & PPCL)

**APPEAL No.24 of 2012**

**In the Matter of:**

**BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019**

**...Appellant**

**Versus**

- 1. Delhi Electricity Regulatory Commission  
Viniyamak Bhawan,  
'C'Block, Shivalik,  
Malviya Nagar, New Delhi-110 017**
- 2. The Chief Secretary,  
Government of National Capital of Delhi  
Delhi Secretariat, Players Building  
IP Estate, New Delhi-110 002**
- 3. National Thermal Power Corporation Limited,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003**
- 4. NHPC Limited,  
NHPC Office Complexd, Sector 33  
Faridabad, Haryana-121 003**
- 5. Power Grid Corporation of India Limited,  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110006**
- 6. Indraprastha Power Generation Company Limited,  
Himadri Rajghat House Complex,  
New Delhi-110002**

- 7. Pragati Power Corporation Limited  
Himadri Rajghat House Complex,  
New Delhi-110002**
- 8. Satluj Jal Viduyt Nigam Limited  
Sharma Niwas, Below BCS  
New Shimla-171 009**
- 9. Tehri Hydro Development Corporation Limited  
Alaknanda Bhawan, Pragatipuram,  
Bypass Road,  
Rishikesh-249 201**
- 10. Nuclear Power Corporation of India Limited  
Rawatbhata Rajasthan Site, Plant Site,  
Anushakti-323 303,  
Kota, Rajasthan**
- 11. Aravali Power Company Private Limited  
1<sup>st</sup> Floor, Pawan Hans Towers,  
C-14,  
Sector-1, Noida-201 301 (UP)**
- 12. Damodar Valley Corporation Limited  
Copmmercial Department  
DVC Towers, VIP Road,  
Kolkata-700 054**
- 13. Delhi Transco Limited  
Shakti Sadan, Kotla Marg,  
New Delhi-110 002**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Amit Kapur,  
Mr. Vishal Anand  
Ms. Deepika Kalia  
Mr. Nikhil Sharma

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Ms. Anisha Upadhyay,  
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Mr. Saravjit Pratap Singh for R-5

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Mr. Ritin Rai  
Mr. Siddhartha Jha for DVC

Mr. Jayant Nath, Sr Adv for  
Mr. Vivek Narayan Sharma  
Mr. Vishal Sharma for R-13

Mr. M.G Ramachandran  
Ms. Ranjitha Ramachandra  
Mr. Anand K Ganesan  
Ms. Swapna Seshadri  
(for NTPC,IPGCL & PPCL)

## **J U D G M E N T**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. The BSES Yamuna Power Limited and BSES Rajdhani Power Limited are the Appellants herein.

2. They have filed these two Appeals challenging the order passed by the Delhi Electricity Regulatory Commission (Delhi Commission) passed on 25.1.2012 directing the Appellants to liquidate the current outstanding dues from September, 2011 onwards of all the Generating Companies and Transmission Companies latest by 1.2.2012. Since the common order has been passed by the Delhi Commission relating to both the Appellants, this common judgment is rendered. The short facts are as follows:

- (a) The Appellants received Regulation notices issued by various Central and State Generating Companies for Regulation of Power Supply. The Appellants brought to the notice of the Delhi Commission about the notices on 16.11.2011.
- (b) On the basis of this information, the Delhi Commission initiated suo-moto proceedings in Petition No.67 of 2011 and 68 of 2011 and issued 'Show Cause Notices' to the Appellants u/s 24 of the Electricity Act. In both the matters, the Appellant filed their replies.
- (c) The Delhi Commission on 8.12.2011 passed an interim order directing the various Generating Companies to maintain status quo in respect of power supply to the NCT of Delhi.

- (d) On 13.12.2011, the Delhi Commission directed both the Appellants to give one week's time to come up with an alternative financing plan for raising the requisite resources in order to meet their pending commitments.
- (e) On 20.12.2011, the Appellants filed a status report containing various developments with regard to financial package. They also filed relevant documents before the State Commission.
- (f) In the meantime, NTPC one of the Generating Companies, issued notice to the Appellants to make the outstanding payment and establish Letter of Credit immediately failing which Regulation of Power Supply will commence from midnight of 31.12.2011.
- (g) The Appellants requested NTPC through the letter to reconsider their decision in the interest of resolving the issue.
- (h) On 2.1.2012, the Appellants filed a status report before the Delhi Commission to place on record the status of the financial package, the threat of Regulation of supply to Delhi etc. The Appellants also tendered plant-wise Letter of Credit



amounting to Rs. 226.41 Crores to NTPC. However, the NTPC refused to accept the plant-wise Letter of Credit furnished by the Appellants.

- (i) On 16.1.2012, the Appellants filed further status report before the Delhi Commission regarding the liquidation plan, tendering of Letters of Credit to NTPC and payment of current dues to the various Generating and transmission Companies.
- (j) On 18.1.2012, the Delhi Commission directed the Appellants to reconcile the figures of payment due to all the power suppliers and transmission utilities and furnish audited monthly accounts from April, 2011 to December, 2011.
- (k) On 19.1.2012, the Appellants filed a status report to place on record the audited monthly accounts from April,2011 to December,2011 and gave full details of the revenue received and application of funds.
- (l) Again another status report was filed by the Appellants on 20.1.2012 before the State Commission.
- (m) On 25.1.2012, the Appellants filed the Affidavits giving explanation duly supported by figures to

clarify the position with reference to historical data. On the same date, i.e. on 25.1.2012, the Delhi Commission passed the common impugned order directing both the Appellants to liquidate the dues from September, 2011 onwards of their all power suppliers and transmission utilities by 1.2.2012 failing which, the Delhi Commission will initiate appropriate proceedings against the Appellants.

(n) On being aggrieved, the Appellants filed these two Appeals, Appeal No.23 and 24 of 2012, as against the impugned order dated 25.1.2012.

3. The Appellants are aggrieved by the observation of the Delhi Commission in Para-2 to 6 of the impugned order making the adverse observations putting blame on the Appellants which is said to be made without giving any notice or opportunity of hearing to the Appellants, to explain the position. The relevant observations made by the Delhi Commission as pointed out by the Appellants are as follows:

*“2. The Commission observed from the information provided by BRPL & BYPL upto 19.01.2012, that in the case of BRPL revenue collection during April and May, 2011 was as low as 82.36% and 78.44% respectively of revenue billed. In April, 2011 revenue collection was only Rs. 175.42 crore which is about 40% of average revenue collected in the other months of FY 2011-12. The Commission further observed that*

*the above and other anomalies need to be examined and explained by the concerned distribution utilities. Also, energy billed in April and May, 2011 is about 100 MUs lower than MUs billed in the last year during the same period. Further, MUs billed in April 2011 is about 167 MUs lower than the energy sold in March, 2011.*

*3. The Commission also noticed that AT & C losses during first seven months (April to October, 2011) of FY 2011-12 are approximately 27.36% against the target of 15%. The collection efficiency during the April to October, 2011 in FY 2011-12 is approximately 92.6% against the target of 99.5%.*

*4. The Commission also observed that in the case of BYPL revenue collection during April and May, 2011 was as low as 61.37% and 79.24% respectively of revenue billed. In April 2011 revenue collection was only Rs. 89.36 Cr. which is about 40% of average revenue collected in other months. Further, energy billed in April and May, 2011 is about 60Mus lower than MUs billed in the last year during the same period. The Commission further noticed that AT & C losses from April to October, 2011 are approx. 32.28% against the target of 15%. The collection efficiency from April to October, 2011 is approx. 89.2% against the target of 99.5%.*

*5. The Commission has also noticed that there are prima-facie unexplained discrepancies in the information relating to power purchase by both BRPL & BYPL. The power purchase cost of BRPL in November, 2011 was Rs. 648 Cr. while in April 2011, it was Rs. 297 Cr., thus showing an increase of 117%. In case of BYPL, the power purchase cost in Nov. 2011 was Rs. 466.13 Cr. while in April, 2011, it was Rs. 216 Cr., thus showing an increase of 116%. The*

*Commission further observed that in case of both the utilities, the power purchase cost during the month shown in one statement and in the cash flow statements do not match. In addition, the information on power purchase has not been given in the desired format prescribed by the Commission for April to December, 2011.*

*6. In view of the above, the Commission is unable to accept the information submitted by BRPL & BYPL without any explanations/detailed justifications. The Commission observes that the gaps in revenue collection indicated during the first seven months of the year in case of both the utilities could have been eliminated if collection efficiency had been near 99.5%. The above, coupled with other indicators such as large net cash surplus in December, 2011 (Rs. 158.40 cr. in case of BRPL and Rs. 164.72 Cr. in case of BYPL), appear to indicate that revenue realized by BRPL & BYPL in the current months is sufficient to liquidate the current outstanding dues from September, 2011 onwards in respect of generation & transmission utilities”.*

4. According to the Appellants, the common impugned order has been passed by the Delhi Commission in violation of Section 86 (3) of the Electricity Act, 2003 pre-judging the issue at hand and ignoring the monthly filing of cash flow statement from the period April, 2011 onwards, when at no point of time were any issues raised in the proceedings of the Delhi Commission and without considering the Affidavits filed by the Appellants giving the detailed explanation on various dates, while passing the impugned order.

5. It is further stated that the findings given by the Delhi Commission in Para 2 and 3 regarding the methodology and approach adopted is quite wrong as this is against the approach adopted by the Delhi commission in its own earlier tariff order dated 26.6.2003 on the issue of evaluating collection efficiency.
6. It is also stated by the Appellants that the findings which have been given in the impugned order in Para 3 and 4 with reference to AT&C loss reduction was without considering the Affidavits filed by the Appellants on 25.1.2012 to clarify and explain the position.
7. The Appellants further contended that the Delhi Commission rendered a finding in Para 5 of the impugned order that there are prima-facie unexplained discrepancies in the information relating to power purchase by both the Appellants without taking note of the clarification made by the Appellants through their various Affidavits.
8. We have heard the learned Counsel for the Appellants as well as the Respondents. The Respondents, Delhi Commission as well as the Generating and Transmission Utilities in justification of the impugned order submitted that the Appellants have been continuously dodging from making the payments to the Generating Companies as well as the Transmission Utilities and regularly disobeying the orders of

the Delhi Commission passed periodically and as such, the impugned order is perfectly valid.

9. After admitting the Appeal, we have directed the Appellants to make substantial payments to the Generating Companies in line with the directions contained in the impugned order passed by the Delhi Commission on 25.1.2012 during the pendency of these Appeals.
10. The Appeals were periodically heard and adjourned to enable the Appellants to make substantial payments to the Respondents and Generating Companies. Even though several Affidavits have been filed before this Tribunal by the Appellants with regard to various payments made to the Generating and Transmission Utilities during the pendency of these Appeals, as directed by this Tribunal, the Appellants did not mention the time frame in their Affidavit filed before this Tribunal within which time, the entire balance payment as directed by the Delhi Commission by the order dated 25.1.2012 would be made.
11. Despite our directions through the number of orders directing to give such undertaking to make the payment of entire balance payment within a time frame, the Appellants expressed their inability to give the said undertaking due to so many reasons.

12. That apart, the figures mentioned in the Affidavits filed by the Appellants stated to have been paid to the Generating and Transmission Utilities have been disputed by the Respondents Utilities through their Counter Affidavits.
13. According to the Appellant BRPL, out of the current dues since September, 2011, they have paid Rs.3763 Crores as on 3.8.2012 and Rs.583 Crores is outstanding. According to the Appellant BYPL, out of the current dues since September, 2011, they have paid Rs.2395 Crores as on 3.8.2012 and Rs.414 Cores is outstanding. However, the Respondents Utilities have disputed this through their Affidavits.
14. In the light of the rival contentions of the parties we do not propose to verify the true state of affairs relating to the respective claims of the parties on the basis of the Affidavits filed by the Appellants and the Respondents. We are of the view that these details could be verified by the Delhi Commission itself, on the basis of the materials placed by both the parities before the Commission. Therefore, we intend to remand the matter to the Delhi Commission to reconsider the issue and decide the matter afresh on the basis of the statements made and the materials furnished by both the parties.

15. At this stage, we have to quote the statements made by the Appellants contained in the Appeals. The same are as follows:

**“25.01.2012** The Affidavits were filed at 10 AM by the Appellants in Petition No 67 and 68 of 2011 to address certain observations orally made by learned Delhi Commission in the hearing on 20.01.2012:

- (a) Reduction of (over 40%) in the number of Units accounted for and revenue realised in the cash flow statements for April to June, 2011.
- (b) Increased Power Purchase Cost (by 117%).
- (c) With 22% tariff hike with effect from 01.09.2011, BRPL has sufficient revenue to pay the current dues of all the suppliers.

The Appellants placed on record that explanation duly supported by figures along with diagrammatic representation to clarify the position with reference to Historical Data already submitted to Learned Delhi Commission from time to time since April, 2008.

**25.01.2012** Learned Delhi Commission issued its Order after 5 PM ignoring all affidavits/status reports filed by the Appellant for the consideration of learned Delhi Commission and by its order dated 25.01.2012



in Petition Nos. 67 and 68 of 2011; the following directions were given:

*“8. The Commission is of the view that the distribution utilities need to make payment of dues to the power generation/transmission agencies so that there is no threat of discontinuance of power supply to the distribution utilities by these agencies. As a first step, the Commission directs BRPL and BYPL to liquidate the current outstanding dues from September, 2011 onwards of all their power suppliers and transmission utilities latest by 01.02.2012 failing which the Commission shall initiate appropriate proceedings against them for non-performance of their obligations under the distribution licences granted to them.*

*9. The Distribution Utilities are also directed to liquidate the accumulated dues of the power generation/transmission agencies once the IDBI loan is sanctioned. The liquidation plan may be finalised by them in consultation with the creditors so that there is no fresh threat of regulation which may cause disruption of power supply in the National Capital Territory of Delhi.*

*10. BRPL and BYPL are directed to submit the compliance of this order latest by 02.02.2012”*

16. It is strenuously contended by the Appellant that the Appellants brought to the notice of the Delhi Commission the revenue gap of Rs.3658 Crores accumulated over the years and critical financial and cash flow problems faced by the Appellants by way of the Affidavits filed by the Appellants on

various dates. According to the Appellants, the Affidavits have been filed before the Delhi Commission on the following dates:

- (i) 16.11.2011,
- (ii) 25.11.2011,
- (iii) 02.12.2011,
- (iv) 07.12.2011,
- (v) 20.12.2011,
- (vi) 21.12.2011,
- (vii) 02.01.2012
- (viii) 16.01.2012
- (ix) 19.01.2012
- (x) 20.01.2012 and
- (xi) 25.01.2012 seeking appropriate reliefs.

17. It is strenuously contended by the Appellants that these 11 Affidavits have been filed by the Appellants giving full details on various dates i.e. from 16.11.2011 to 25.01.2012 but the same have not been considered by the Delhi Commission while passing the impugned order.

18. Though on behalf of the Delhi Commission, it is submitted that all the materials furnished by the Appellants have been considered, the impugned order does not show that the State Commission has taken into consideration the various

affidavits giving the relevant data and particulars filed before the Delhi Commission on the dates referred to above.

19. The main ground taken by the Appellants in these Appeals is that the Delhi Commission pre-judged the issues to make the observation as contained in Para 2 to 6 of the impugned order without giving an opportunity to the Appellant to file a reply or opportunity of hearing and without considering the earlier Affidavit filed by the Appellants.
20. In view of the above stand taken by the Appellants that without hearing the Appellants and considering their Affidavits, the adverse observations have been made by the Delhi Commission, it would be appropriate to direct the Delhi Commission to consider those affidavits and other materials; to give opportunity of hearing to both the Appellants as well as the Respondents and come to the conclusion in accordance with the law uninfluenced by the observations made by the Delhi Commission in the impugned order dated 25.1.2012.
21. Accordingly, the impugned order is set-aside.
22. As indicated above, the State Commission will give opportunity to the Appellants and Respondents and allow them to make submissions and to furnish the materials, if any and also consider the affidavits filed by the Appellants

before the Delhi Commission on various dates referred to above and pass an order according to law.

23. With these observations, both the Appeals are disposed of.

24. No order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 06<sup>th</sup> Sept, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~