

**Central Electricity Regulatory Commission
New Delhi**

RECORD OF PROCEEDINGS

Petition No. 125/2011

Subject: Signing of PPA by NTPC Ltd during the period October, 2010 to 5.1.2011 for supply of 37000 MW of electricity abusing its dominant position thereby causing adverse effect on competition in electricity industry.

Date of Hearing: 19.5.2011

Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner: Association of Power Producers, New Delhi

Respondent: NTPC, New Delhi

Parties present: Shri Amit Kapur, Advocate, APP
Ms. Poonam Verma, Advocate, APP
Shri Gautam Shahi, Advocate, APP
Shri R.S.Patnaik, APP
Shri S.K.Sharma, APP
Shri M.G.Ramachandran, Advocate, NTPC

This petition has been filed by the Association of Power Producers (APP), the petitioner herein, with specific prayers before the Commission as under:

- (a) Invoke its authority under Section 60 and 66 of the Electricity Act, 2003 and direct NTPC not to execute/implement the contract;
 - (b) Declare PPAs entered into/executed by NTPC between 1.10.2010 until 5.1.2011 as being null and void;
 - (c) Direct NTPC to discontinue such abuse of dominant position and not to enter into anti-competitive agreements in future; Refer to the competition Commission of India for its opinion on NTPC enjoying dominant position.
2. The learned counsel for the petitioner submitted as under:
- (a) The petitioner represents most of the private power developers in the country and in terms of Regulation 24 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Section 2(49) of the Electricity Act, 2003 (the Act), the petitioner has the *locus standi* to file this petition before the Commission.
 - (b) The Commission has the jurisdiction in the matter in view of the mandate provided to it under Section 60 and 66 of the Act.

- (c) The petition seeks adjudication upon certain anti-competitive conduct by NTPC, which has abused its dominant position and entered into anti-competitive agreements (PPAs) for supply of power thereby causing adverse effect on competition.
- (d) The objective of the Tariff Policy to introduce competition by the removal of exemption of Public sector projects from competitive bidding with effect from 5.1.2011 was sought to be defeated by NTPC by foreclosing the upstream and downstream market of coal supply/linkages and for sale of electricity respectively, thereby evading the discovery of price through competitive bidding. PPAs for 37000 MW has been signed between October 2010 and 5.1.2011 far beyond its demonstrated capacity. Out of the PPAs signed by NTPC for 23262 MW capacity between April 2008 to September 2010, only 3440 MW capacity had been installed and commissioned since April 2008.
- (e) NTPC enjoys the dominant position in the market for generation of thermal power in most states and its market share is open only to state owned generating companies. NTPC has not participated in competitive market for power procurement and the spurt in signing of PPAs was immediately after the advice of the Commission to the Central Govt. not to extend the exemption of public sector projects from competitive bidding.
- (f) The anti-competitive activities of NTPC if not neutralized/checked would severely restrict the development of a market in power. The prayer in the petition may be considered in the light of the above.

3. The learned counsel, Shri M.G.Ramachandran accepted notice on behalf of the respondent NTPC, since advance copy of petition has been served and raised preliminary objection to the issues raised in the petition. He submitted that the allegations made in petition were untenable and prayed that the petitioner be directed to implead the beneficiaries of NTPC in the matter.

4. In response, the leaned counsel for the petitioner clarified that since copies of the PPAs were not made available, it was not possible for him to implead the beneficiaries. He also requested the Commission to direct NTPC to provide the petitioner with the list of beneficiaries with whom the PPAs were entered into by NTPC, in order to serve copies of the petition on them.

5. The Commission after hearing the parties directed NTPC to submit copies of the PPAs entered into by NTPC in respect of supply of 37000 MW between the period October 2010 and 5.1.2011, on or before 6.6.2011.

6. The Commission also directed NTPC to provide the petitioner with a list containing the details of beneficiaries with whom PPAs have been entered into for the said period, on or before 6.6.2011. Thereafter, the petitioner shall amend the petition impleading the parties and serve copies of the petition, on or before 20.6.2011.

7. Matter shall be listed for hearing on the preliminary objection of the respondent NTPC, on 7.7.2011.

Sd/-
(T.Rout)
Joint Chief (Law)