

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 78/2001

Subject : Incentive/Disincentive for Gandhar GPS (657.39 MW) and Kawas GPS (656.20 MW)

Date of Hearing : 26.3.2013

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

Petitioner : NTPC

Respondents : MPPTCL, MSEDCL, GUVNL, Goa Electricity Dept., ED, Daman & Diu, ED, Silvassa and CSPDCL

Parties present : Shri M.G Ramachandran, Advocate, NTPC
Shri Sachin Jain, NTPC
Shri Deepak Paliwal, NTPC
Shri K.K. Narang, NTPC
Shri S.K Sharma, NTPC
Ms. Suchitra Maggon, NTPC
Shri Pradeep Mishra, Advocate, MPPMCL

Record of Proceedings

During the hearing the learned counsel for the petitioner submitted that pursuant to the judgment of the Hon'ble Supreme Court dated 24.1.2013, the petitioner has filed the compilation of all documents. He further submitted as under:

(a) CEA after verification has issued the deemed generation certificate and the respondents GUVNL and MSEDCL have made payments accordingly. Only the respondent, MPPMCL has withheld the same on the ground that the said certificate of CEA was not available in terms of the earlier order of the Commission.

(b) The Appellate Tribunal in its judgment dated 7.1.2011 has observed that the payments shall be made only as per certification of deemed generation by CEA. In the Civil Appeal filed by the petitioner, the Hon'ble Supreme Court directed CEA who was a party in the said appeal, to take steps. Accordingly, CEA had considered all the issues and have certified the deemed generation which shall be considered by the Commission for implementation, as per the order of the Hon'ble Supreme Court.

2. The learned counsel for the respondent raised preliminary objection and submitted as under:

- (a) The instant petition was dismissed by Commission's order dated 24.10.2002 on the ground that there was no deemed generation certification by CEA.
- (b) The petitioner had filed appeal before the High Court of Delhi against the said order and also Review Petition before this Commission. The Review petition was allowed by interim order dated 4.4.2003 considering the deemed generation certificate of CEA for the period 1.8.1996 to 31.3.1998. However, for the period prior to 1996, the prayer of the petitioner was rejected and accordingly the petition was finally disposed off on 2.12.2003.
- (c) The Commission's interim order dated 4.4.2003 rejecting the claim for the period prior to 1996 had not been challenged nor the final order dated 2.12.2003 disposing of the said petition was challenged by the petitioner.
- (d) No fresh petition had been filed by the petitioner. The earlier orders of the Commission have become final and conclusive between the parties. In terms of the direction contained in the order of the Hon'ble Supreme Court, fresh petition is required to be filed by the petitioner before the Commission.

3. In response, the learned counsel for the petitioner clarified as under:

- (a) The submissions of the respondent, MPPMCL has no merit. The Appellate Tribunal had not rejected the said appeal on the ground of maintainability, but on merits. The Civil Appeal 2423/2011 filed by the petitioner arises out of the judgment of the Appellate Tribunal on merits.
- (b) It is clear from the orders of the Hon'ble Supreme Court that the matter was referred to CEA for verification of data and issuance of necessary certificate to the petitioner. The matter has been remanded to the Commission for implementation based on the certificate issued by CEA.
- (c) The issue regarding certification of deemed generation had been discussed in the 21st WRPC meeting on 9.11.2012 and the 20th WRPC meeting wherein the submission of data to CEA for grant of certificate was accepted by all the constituents.
- (d) The review petition was filed by the petitioner against order dated 24.10.2002 relating to the period from 1.8.1996 to 31.3.1998. CEA had issued certification subsequent to order dated 24.10.2002. No review was filed relating to the period prior to 1996, which had got finalized. The appeal was rejected by the Appellate Tribunal on the ground that without the certification of CEA the matter cannot be considered against which civil appeal was filed before the Hon'ble Supreme Court.

- (e) The matter is now pending for implementation and the CEA certificate dated 11.10.2012 is based on the verified data. The Commission may accordingly pass suitable orders based on the data available on record.

4. The learned counsel for the respondent, MPPMCL clarified that the submission of the petitioner was incorrect. He pointed out that the Commission by order dated 24.10.2002 dismissed the petition filed by the petitioner relating to the period from 1992 to 1998 because of the absence of certification. Another order was passed by the Commission on 2.12.2003. Review was filed by the petitioner against the entire order and for the entire period. Only during the pendency of the review petition, CEA had issued the certificate for the period from 1.8.1996 to 31.3.1998. Neither the order dated 4.4.2003 nor the order dated 2.12.2003 was challenged by the petitioner.

5. In response, the learned counsel for the petitioner referred to the relevant portions of the Commission's order in review petition and submitted that the Commission had rejected the claim of the petitioner for the period prior to 1996 as it had been categorically stated by CEA that loss generation due to shortage and non-availability of gas for the period prior to 1.8.1996 could not be certified by CEA. Since CEA has certified the deemed generation now, the prayer may be accepted.

6. The learned counsel for the respondent, MPPMCL further submitted as under:

(a) In view of the Hon'ble Supreme court order, fresh petition should be filed by the petitioner before this Commission since Petition No. 78 /2001 had already been disposed off. The order of the Hon'ble Supreme court was not based on merits and the respondent, MPPMCL has also not consented.

(b) Since CEA had granted the deemed generation certificate, the petitioner can move a fresh petition before the Commission. The Commission may consider that the fact that the Appellate Tribunal in its judgment dated 7.1.2011 has given a specific finding that even if Gujarat and Maharashtra has agreed for one-time settlement, it cannot be imposed on other respondents. Since this respondent has not agreed, the same cannot be imposed on me. Subsequently, the matter was heard in Supreme Court wherein the petitioner had requested for grant of time to take up the matter with CEA.

(c) Referring to the 62nd meeting of WRPC, the learned counsel submitted that the respondent, MPPMCL had not given its consent and the same was pleaded before the Hon'ble Supreme Court.

7. In response, the learned counsel for the petitioner further submitted as under:

(a) The order passed by the Commission on 24.10.2002 rejecting the claim of the petitioner on the ground that CEA had not certified the deemed generation was challenged before the High Court of Delhi under the provisions of the Electricity Regulatory Commission's Act, 1998. As per the judgment of the Appellate Tribunal in Page 13 para 17 of the judgment dated 7.1.2011, the notification does

not provide that the consent of any particular constituent was necessary. It is Regional Electricity Board which has to submit the required data and the said data is required to be certified by CEA. This is also reflected in para 24 of the said judgment

(b) The Review Petition was allowed by Commission's order dated 4.4.2003 and 2.12.2003 allowing deemed generation for the period from 1.8.1996 to 31.3.1998 as per certificate of CEA and before the Hon'ble Court it was submitted that the said portion of the order was not pressed for by the petitioner since it was aggrieved only by the disallowance of deemed generation for the period prior to 1996. Even before the Appellate Tribunal, the respondent, MPPMCL did not object that the said petition was not maintainable. Since, the Hon'ble Supreme Court has remanded the matter to the Commission, the original petition stands revived and hence the same is maintainable.

8. The learned counsel for the respondent, MPPMCL reiterated that decision of CEA to grant deemed generation due to shortage of gas was an administrative decision without consulting the beneficiaries and hence cannot be applied from the year 1992.

9. The Commission after hearing the matter directed the parties to file their written submissions by **22.4.2013**. Subject to this, order in the petition was reserved.

By order of the Commission

Sd/-
(T. Rout)
Joint Chief Legal