

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 381/MP/2014**

Subject : Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulations 111 and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for adjudication of dispute in regard to matter connected with applicability of Generic Tariff for 5 MW Solar PV project of NTPC limited at Garacharama in South Andaman district.

Date of hearing : 19.5.2015

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member

Petitioner : NTPC Limited

Respondent : Electricity Department, Andaman and Nicobar Administration

Parties present : Shri M.G. Ramachandran, Advocate, NTPC Ltd.  
Ms. Poorva Saigal, Advocate, NTPC Ltd.  
Shri Ranjitha Ramachandran, Advocate, NTPC Ltd.  
Shri S.K. Mandal, NTPC Ltd.  
Shri M.K. Malviya, NTPC Ltd.  
Shri R. Chhabra, NTPC Ltd.  
Ms. Ruchi Sindhvani, Advocate for the respondent  
Ms. Megha Bharara, Advocate for the respondent  
Shri Mahesh Lal, Junior Engineer, Electricity Deptt, A&N Administration.

**Record of Proceedings**

Learned counsel for the petitioner submitted as under:

(a) As per Land Lease Agreement dated 14.7.2011, the Andaman and Nicobar Administration was to deliver the vacant possession of land free from all encumbrances to the lessee within one month from the date of signing of the agreement.

(b) After considerable delay of more than one year on the part of Andaman and Nicobar Administration, the construction work on the land could only commence in the month of September, 2012. Therefore, as against the one year

time available to NTPC from 13.8.2011, namely, to complete the project by 12.8.2012, NTPC was left with only seven months up to 31.3.2013 to, complete the project.

(c) The project with regard to 5 MW SPV Power plant at Garacharama Hill was commissioned and was completed in all respect by 31.3.2013. The same was acknowledged by Andaman and Nicobar Administration vide its letter dated 9.4.2013. Subsequently, Andaman and Nicobar Administration reiterated the admission in the proceedings before the Joint Electricity Regulatory Commission vide its letters dated 9.4.2013 and 1.10.2013.

(d) The power flow on the entire 5 MW Plant - 6 Modules block began to flow to Andaman and Nicobar Administration admittedly from 1.4.2013 onwards which was possible only if the entire 6 Modules were completed in all respects and commissioned on or before 31.3.2013.

(e) It is a well settled principle of law that an admission made by a party is the best evidence. Learned counsel relied upon the judgment of Hon`ble Supreme Court in Nagubai Ammal & Ors v B. Sharma Rao & Ors [ AIR (1956) SC 593].

(f) The petitioner is entitled for the tariff as per the Commission`s order dated 9.11.2010 in Petition No. 256/2010.

2. Learned counsel for the respondent argued at length and submitted as under:

(a) As per Article 1.2 (viii) of the PPA entered into between the petitioner and the respondent, the date of commercial operation of the station means the date on which "entire station capacity" is commissioned and power injected from power station to delivery point.

(b) The petitioner had set the target date of commissioning as 31.3.2013 for the contracted capacity of 5 MW based on which inspection was carried out. As per the inspection report dated 1.4.2013, out of six inverters, four inverters (Blocks 1, 2, 3 and 4) were synchronized with the grid and remaining Blocks 5 and 6 were not charged.

(c) The petitioner vide letter dated 30.3.2013 informed that COD is declared w.e.f 00:00 hrs of 31.3.2013. The said letter is unilateral and not in consonance with Article 1.2 (viii) and Article 4.1.1 of the PPA.

(d) Since the petitioner had completed the commissioning works of the project on 15.4.2013, it is entitled for tariff @ ₹ 7.87 per kWh with accelerated depreciation benefits if availed, or ₹ 8.75 per kWh if accelerated depreciation benefit is not availed.

(e) The Commission vide its orders dated 9.11.2011, 27.3.2012 and 25.10.2012 in Petition Nos. 256/2010, 35/2012 and 243/SM/2012 approved the levelised tariff which was accepted by the Joint Electricity Regulatory Commission while approving the PPA executed between the petitioner and the respondents.

(f) Learned counsel relied upon the judgment of Hon`ble Supreme Court in Udham Singh V Ram Singh and another [(2007) 15 SCC 529] and submitted that admission has to be clear, unambiguous and proved conclusively.

(g) As per Article 5 of the PPA, the tariff for the electricity supplied from the station would be the “applicable rate in Rs/kWh for the relevant year of commissioning as notified by CERC from time to time based on the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time”.

3. After hearing the learned counsels for the parties, the Commission directed the petitioner and the respondent to file their written submissions on or before 19.6.2015.

4. The Commission directed that due date of filing the written submissions should be strictly complied with. The written submissions filed after due date shall not be considered.

5. Subject to the above, order in the petition was reserved.

By order of the Commission  
Sd/-  
(T. Rout)  
Chief (Law)