

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 10/RP/2016

Subject : Review of the order dated 9.2.2016 passed by the Commission in Petition No. 381/MP/2014 determining the generic tariff applicable for the 5 MW Solar PV Project of NTPC Limited at Garacharama in South Andaman District, Andaman and Nicobar Islands.

Date of hearing : 31.3.2016

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

Petitioner : NTPC Limited

Respondent : Electricity Department, Andaman and Nicobar Administration Limited

Parties present : Shri M.G. Ramachandran, Advocate, NTPC Ltd.
Ms. Poorva Saigal, Advocate, NTPC Ltd.
Shri Uday Shankar, NTPC Ltd.
Shri Rohit Chhabra, NTPC Ltd.
Shri V.K. Garg, NTPC Ltd.
Shri Somes Bandyapadhyay, NTPC Ltd.
Shri A.K. Bishoi, NTPC Ltd.
Shri Nishant, NTPC Ltd.

Record of Proceedings

Learned counsel for the review petitioner submitted the present petition has been filed seeking review of order dated 9.2.2016 on the limited aspect with regard to applicability of 'year' for the generic tariff for the 5 MW Solar PV Station of NTPC Limited (project) at Garacharama in South Andaman District, Andaman and Nicobar Islands, apart from other clerical errors. Learned counsel further submitted as under:

(a) In the impugned order, the Commission has proceeded to determine the generic tariff for the 5 MW Project in terms of the order dated 28.2.2013 applicable for the years 2013-14 pursuant to the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination for Renewable Energy Sources) Regulations, 2012 (RE Regulations).

(b) As per the Regulation 8 (2) of the RE Regulations, the RE developers are allowed to charge the generic tariff of a particular year of the control period for the projects/units commissioned during the following tariff year in case of solar PV projects and for the next two years for the solar thermal projects. Without prejudice to the contentions of the review petitioner that the entire capacity was commissioned during the year 2012-13, the Commission in the impugned order has held that the entire capacity of the project was commissioned in the years 2013-14. Accordingly, in terms of Regulation 8 of RE Regulations, the applicable tariff should be related to the previous financial year 2012-13 i.e.9.35/ kWh and not Rs 7.87/kWh which would be contrary to the RE Regulations.

(c) There is no such express prohibition in the RE Regulations that a Solar PV Project where the PPA has been entered into in a previous year and the project has been delayed beyond the subsequent year, shall not be subject to the generic tariff, as applicable for the year subsequent.

(d) The delay in the commissioning of the project was due to the late delivery of land by the Electricity Department, A &N Administration and was not attributable to NTPC. In terms of Clause 2 of the land lease agreement signed on 14.7.2011, the Electricity Department, A&N administration was to deliver vacant possession of the Land free from all encumbrances to NTPC within 1 month from the date of signing of the Agreement i.e. by 13.8.2011 whereas the Electricity Department, A&N administration could only allow NTPC to go ahead with the project construction work on the land during September 2012 i.e after a delay of more than a year.

(e) While taking cognizance of the said delay, the Commission in the impugned order held that the RE Regulations do not provide any relaxation or benefit to the petitioner due to such delay, even if the same is not attributable to the petitioner. The decision of the Commission is contrary to the settled principle of law. In this regard, learned counsel relied upon the various judgments of the Hon`ble Supreme Court that 'no party can be allowed to take advantage of its own wrong'.

2. After hearing the learned counsel for the petitioner, the Commission admitted the review petition and directed to issue notice to the respondent.

3. The Commission directed the petitioner to serve copy of the review petition on the respondent immediately. The respondent was directed to file its reply, on affidavit, by 12.4.2016 with an advance copy to the petitioner, who may file its rejoinder, if any, on or before 20.4.2016. The Commission directed that due date of filing the reply and

rejoinder should be strictly complied with. No extension shall be granted on that account.

4. The petition shall be listed for hearing on 26.4.2016.

By order of the Commission

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