

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A No. 12 of 2018
in
Petition No. 105/MP/2017

Coram:

**Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order: 19.3.2018

In the matter of

Interlocutory Application for directions to call for details regarding the certification of quantum of coal allocated to Haryana under FSA dated 26.3.2013 by CIL and direct GMR to produce document of the details of bids/ allocations carried under the Shakti Scheme

And

In the matter of

Petition under section 79 (1) (b) and (f) of the Electricity Act, 2003 read with Article 11.6 and 17 of the Power Purchase Agreements dated 7.8.2008 for recovery of unpaid dues towards fuel cost

And

In the matter of

1. Haryana Power Purchase Centre
Sector- 6, Shakti Bhawan,
Panchkula, Haryana- 134109

2. Dakshin Haryana Bijli Vitran Nigam Limited
Vidyut Nagar, Hissar
Haryana- 125005

3. Uttar Haryana Bijli Vitran Nigam Limited
Vidyut Sadan, plot No. C-16,
Sector-6, Panchkula,
Haryana- 134109

.....Applicants in IA/ Respondent Nos. 1to3

4. Haryana Power Generation Corporation Limited
Urja Bhawan, C-7, Sector- 6,
Panchkula, Haryana- 134109



5. PTC India Limited
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi- 110066

.....Respondents/ Respondents

Vs

GMR Kamalanga Energy Limited
Skip House, 25/1, Museum Road,
Bangalore- 560025

.....Respondent in IA/ Petitioner

Parties present:

Shri G. Umapthy, Advocate, Haryana Discoms
Shri Aditya Singh, Advocate, Haryana Discoms
Shri Ravi Juneja, HPPC
Shri Amit Kapur, Advocate, GKEL
Shri Vishrov Mukerjee, Advocate, GKEL
Ms. Raveena Dhamija, Advocate, GKEL
Shri Yashaswi Kant, Advocate, GKEL
Shri Gyan Prakash Gupta, GKEL

ORDER

This Interlocutory application has been filed by Haryana Power Purchase Centre (Respondent 1) and the Haryana discoms (Respondents 2 & 3) with the following prayers:

(a) To take on record the above application and call for details regarding certification of quantum of coal allocated to Haryana under FSA dated 26.3.2013 by CIL;

(b) Direct M/s GMR to produce documents/ records of the details of bids/ allocations carried under the Shakti scheme; and

(c) Pass any such other and further reliefs as this Commission deems just and proper in the nature and circumstances of the present case.

2. Petition No. 105/MP/2017 was filed by the Petitioner, GMR (the Respondent in IA) seeking for (a) declaration that the coal received under firm linkage corresponding to 500 MW is to be utilized on pro-rata basis against the existing long-term PPAs with GRIDCO, Haryana and Bihar respectively and (b) to direct the respondents therein to make payments (related to supply of power from July, 2016



to June, 2017 amounting to ₹130.04 crore) against the invoices raised by the Petitioner in accordance with the order dated 3.2.2016.

3. The said Petition was admitted on 20.6.2017 and the Commission, after hearing the parties therein had reserved its order on 20.12.2017. The order in Petition is yet to be pronounced by the said Bench.

4. While so, the Applicant has filed this IA with the prayers as stated in para 1 above. In this application, the Applicant has submitted the following:

(a) The agreement between GEL and PTC dated 31.10.2007 was substituted by PPA on 12.3.2009. The Agreement between PTC and Haryana discoms was executed on 7.8.2008 with delivery point at Haryana STU Bus Bar 300 MW. The Petitioner engaged with the Bihar PPA and Odisha PPA, after signing the Haryana PPA.

(b) The terms of Haryana PPA cannot be diluted by signing any amended PPA or entering into a new PPA which was executed two years after entering of Haryana and Odisha PPAs on the initial basis of tapering linkage and thereon, consumption of fuel was to be from the Petitioner's own mines.

(c) Model FSA between MCL and GMR was entered on 20.5.2014. Till the date of signing of the model FSA, only GRIDCO and Haryana PPAs were working and operational and the CIL/ MCL has taken the same into account while allocating the fuel on pro-rata basis against the stipulated terms and conditions of the PPAs, which works out to be 1.819 MTPA. Hence, Haryana PPA is solely through the above FSA and in terms of the order passed by the Hon'ble SC in Energy Watchdog case, Haryana is bound to pay the shortfall only proportionate to its PPA under the FSA dated 26.3.2013 (for 500 MW only) above said domestic proportioned to its contracted/ allocated capacity of coal only.

(d) The Petitioner participated in the bidding for allocation of FSA under the Shakti scheme and was declared as a successful bidder. It has offered a discount of ₹0.03/ kWh on 1500000 tonnes/ annum and ₹0.01/ kWh on 4300 tonnes/ annum. The Petitioner has entered into a supplementary PPA and sought approval of the Commission in Petition No. 41/MP/2018, which did not include the Applicant as evident from the Commission's order dated 21.2.2018. The Haryana discoms have not been allocated any discount on account of the said scheme. Thus, it is evident that the Petitioner itself conceded that Haryana PPA is solely through FSA dated 26.3.2013 as amended on 20.5.2014.

(e) GMR has misled the Commission by suppressing relevant documents and information to obtain favorable orders from the Commission. The Petitioner has filed Petition for approval of amended PPA between Petitioner and GRIDCO and has deprived the Haryana discoms of its legitimate benefits by not



producing the documents before the Commission which has a bearing on the reliefs to be granted in the above Petition.

(f) The Commission vide order dated 3.2.2016 has rightly adjudicated that the Haryana PPA is solely from FSA dated 26.3.2013 and the Petitioner is erroneously pro-rata distributing the generation achievable through linkage fuel undermining the implementation of para 48 of the said order.

5. In the above background, the Applicant has requested that the Commission may direct the impleadment of CIL or call for records in the matter for certification of quantum of coal allocated to Haryana under FSA dated 26.3.2013. It has also prayed that the Petitioner may be directed to provide all the details of bids/ allocations carried under the Shakti scheme before final order is pronounced in Petition No. 105/MP/2017. The Applicant has also pointed out that it has vide affidavit dated 16.10.2017, prayed for directions on the respondent, GMR for submission of certification of CIL establishing quantum for shortfall in linkage fuel in the FSA, but the same has not yet been furnished.

6. The IA was heard on 'maintainability' on 6.3.2018. During the hearing, the learned counsel for the Applicant reiterated the submissions in the application and prayed that the Commission may direct the Respondent, GMR to submit the documents as aforesaid and to consider the same at the time of passing order in Petition No. 105/MP/2017.

7. The learned counsel for the Respondent, GMR circulated notes of arguments and submitted that the application is an abuse of process of law and devoid of merits. He also submitted that the submissions of the Respondent, GMR regarding computation of coal shortfall are on record of the Commission. He further pointed out that the Commission's order dated 3.2.2016 in Petition No. 79/MP/2013 had attained finality and the Haryana discoms have complied with the same till June, 2016. The learned counsel has also stated that pursuant to the said order, GMR has



been apportioning linkage coal supplied under the provisions of FSA to all three procurers. He further submitted that the Haryana discoms had refused to certify the details of Haryana PPA for the purpose of participation in auction under the Shakti scheme and as such by their own acts and omissions, the Haryana discoms ensured that no coal could be allocated on account of their PPA under the Shakti scheme solely due to their refusal to grant consent. Accordingly, the Petitioner has submitted that the application suffers from material non disclosures and false statements on affidavit and may be dismissed.

Analysis and decision

8. We have examined the matter. Petition No. 105/MP/2017 was heard on 20.12.2017 by a quorum of three Members and orders were reserved. The Haryana discoms have filed the present IA to take on record the IA and direct the GMR to file the certified quantum of coal allocated to Haryana under FSA dated 26.3.2013. In the IA, the Applicant has also sought to place on record the FSA dated 20.5.2014, which is an amendment to the FSA dated 26.3.2013 and order of the Commission in Petition No. 41/MP/2018.

9. As regards the FSA dated 20.5.2014, we find that the FSA dated 26.3.2013 is already on record in Petition No.105/MP/2017. GMR has also referred to the FSA dated 20.5.2014 in its note of arguments in Petition No. 105/MP/2017.

10. As regards certification of coal, it is noticed that the Haryana discoms vide additional affidavit dated 11.10.2017 in Petition No. 105/MP/2017 have made the following prayers:

- (a) Direct GMR to give undertaking that there is no shortfall in linkage coal fuel along with supporting certification of CIL or else CIL may be asked to provide the certification of quantum of shortfall in linkage fuel in GMR Kamalanga FSA.



(b) If any misrepresentation from GMR is detected, the generator should be penalized in proportionate to the capacity charges of the prevailing year.

11. Since the submissions of the Haryana discoms in the IA are similar to the prayer in its additional affidavit dated 11.10.2017 in the main Petition, we find no reason to issue any further directions in this regard.

12. The Applicant has placed on record the order dated 21.2.2018 in Petition No. 41/MP/2018 for a direction on the Respondent, GMR to provide all details of bids/ allocations carried under the Shakti Scheme on the ground that these documents were not disclosed to the Haryana discoms and the same has been concealed to extract a favorable order from the Commission. During the hearing, the learned counsel for GMR produced letter dated 4.8.2017 from GMR to PTC and letter dated 7.8.2017 of PTC India Ltd to Haryana discoms, wherein proposal for participation of GMR in Shakti Scheme was brought to the notice of Haryana discoms for their consideration. The learned counsel for GMR submitted that since no response was received from Haryana discoms, they could not participate in the Shakti Scheme in respect of Haryana PPA. The learned counsel for applicant did not refute the claim of the learned counsel for GMR. In our considered view, the participation of GMR in the Shakti Scheme and the documents therein have no bearing on the reliefs sought for by GMR in Petition No. 105/MP/2017.

13. I.A No. 12 of 2018 is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(P. K. Pujari)
Chairperson

