

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 17/RP/2018
In Petition No. 89/MP/2016 alongwith IA No.29/2018**

Subject : Petition for review of the order dated 2.11.2017 in Petition No. 89/MP/2016.

Date of hearing : 16.10.2018

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioners : BSES Yamuna Power Limited & Another

Respondents : Pragati Power Corporation Limited and Another

Parties present : Shri Gopal Jain, Senior Advocate, BYPL & BRPL
Shri Anupam Varma, Advocate, BYPL & BRPL
Shri Rahul Kinra, Advocate, BYPL & BRPL
Shri Ashutosh Kumar Srivastava, Advocate, BYPL & BRPL
Shri Anivesh Bharadwaj, Advocate, BYPL & BRPL
Shri Abhishek Srivastava, BYPL
Shri Sameer Singh, BYPL
Shri Surendra Kumar, BYPL
Shri S. Prakash, BYPL
Shri Amit Nagpal, BYPL
Shri Kanishk, BRPL
Shri M.G. Ramachandran, Advocate, PPCL
Ms. Poorva Saigal, Advocate, PPCL
Ms. Anushree Bardhan, Advocate, PPCL
Shri Shubham Arya, Advocate, PPCL

Record of Proceedings

Learned senior counsel for the Review Petitioners submitted that the present Review Petition has been filed for seeking review of the order dated 2.11.2017 in Petition No. 89/MP/2016. Learned senior counsel further submitted as under:

(a) The Commission while passing the impugned order dated 2.11.2017 took into consideration PPCL-III's submission dated 16.12.2016 wherein PPCL-III has stated that as per MoPNG Order of May, 2013, PPCL-III was allowed swapping and clubbing of APM, R-LNG and Non-APM gas which is approximately 3.64 MMSCMD (considering maximum diversion of all gases from IPGCL's GTPS and from its PPCL-I station). However, the Commission has ignored the fact that the above said submission of PPCL-III is contrary to the replies filed by PPCL-I and IPGCL before APTEL in Appeal Nos. 92 and 93 of 2016, wherein IPGCL and PPCL have respectively in their replies have stated that there has been no diversion of gas from GTPS and PPCL plants with PPCL-III. Therefore, there is an error apparent on the face of record while passing the impugned order dated 2.11.2017 which stipulates that there has been diversion of gas to PPCL-III from IPGCL and PPCL. As such, either it is PPCL-III which does not have adequate

quantum of gas or it is IPGCL and PPCL who do not have adequate fuel. In support of its contention, learned senior counsel placed its reliance upon the Hon'ble Supreme Court judgments in *BCCI & Another V. Netaji Cricket Club & Others* [(2005) 4 SCC 74] and *State of Maharashtra V. Ramdas Shrinivas Nayak* [AIR (1982) SC 1249].

(b) Learned senior counsel submitted that the Review Petitioners have filed Interlocutory Application (IA) for condonation of delay of 112 days in filing the Review Petition and submitted as under:

(i) The Review Petitioners were already occupied in assessment of their tariff orders passed by the Delhi Electricity Regulatory Commission (DERC) determining their Aggregate Revenue Requirement for financial year 2017-18 and true up of accounts upto 2015-16. Further, the Review Petitioners had also filed appeals against their respective tariff orders before the APTEL raising 55 issues. Therefore, filing of appeal and review in their respective tariff orders consumed considerable amount of time due to which the Review Petitioners were unable to examine and scrutinize the order dated 2.11.2017 for the purpose of challenging the same in review or appeal.

(ii) Due to sudden demise of Review Petitioner's lead counsel, the Review Petitioner could not get the legal inputs from the team of the counsel.

(iii) The Review Petitioners were busy in their Regulatory audit by DERC and after completing all the legal and regulatory formalities in the tariff petitions before DERC, the Review Petitioners have filed the present Review Petition before the Commission.

(iv) The delay in filing the Review Petition is neither intentional nor deliberate as it was caused due to certain unforeseeable and uncontrollable events. Learned senior counsel requested to condone the delay in filing the Review Petition. In support of its contention, learned senior counsel placed its reliance upon APTEL judgements in *New Usha Nagar Co-operative Housing Society Ltd. V. MERC & Others* and Hon'ble Supreme Court judgment in *Ramnath Sao V. Gobardhan Sao* [(2002) 3 SCC 195].

2. Learned counsel for Pragati Power Corporation Limited (PPCL) submitted that the issue raised by the Review Petitioners on the fuel/ gas availability to PPCL to generate and make available the requisite quantum of electricity to the Petitioners are contrary to the provisions of the PPA and factual matrix of the case. Learned counsel further submitted as under:

(a) PPCL had the availability of the fuel/ gas required to meet the quantum of electricity declared available by PPCL and the quantum of electricity scheduled by the Review Petitioners on a continuous and sustained basis.

(b) The Review Petitioners have contended that PPCL reduced its plant-availability to the tune of 50-52% when the Review Petitioners raised apprehensions about the fuel availability. However, the reduction in the plant was due to forced outages arising out of compressor-stall of gas turbine-1 and the burnout of gas turbine-3.

(c) PPCL has been declaring the plant-availability in due consideration of fuel-availability and the same is evident from its two-part DC- one on cheaper gas and the other on costlier gas on a daily basis to SLDC. Further, PPCL revises this two part DC whenever there is a curtailment or an enhancement in the quantity of cheaper gas being offered by the gas –supplier on account of any *force majeure* or otherwise.

(d) PPCL always gives details of availability of fuel with various commercial names and prices to SLDC. The declaration of generation capacity by PPCL is based upon actual availability of the fuel and consumption of availability and scheduling is done by SLDC which is also declared by SLDC on monthly basis.

(e) With regard to condonation of delay, learned counsel submitted that the Commission vide order dated 10.4.2018 in 36/RP/2017 has denied the condonation of delay in filing the Review Petition and observed that reasons given by the Review Petitioner for the delay in filing the review petition were within the control of the Review Petitioner. Therefore, the IA for condonation of delay in the present Review Petition is not maintainable.

3. After hearing the learned senior counsel for the Review Petitioners and learned counsel for PPCL, the Commission reserved order in the Review Petition and IA.

By order of the Commission

**Sd/-
(T.D.Pant)
Deputy Chief (Law)**