

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 12/MP/2019

Subject : Petition under Sections 79 (1) (c), (f), (k) and other applicable provisions of the Electricity Act, 2003 in connection with the disputes and differences arising due to breach of Power Purchase Agreement dated 8.8.2005 entered between it and Nuclear Power Corporation of India Limited.

Petitioner : MP Power Management Company Limited

Respondents : Nuclear Power Corporation of India Ltd & ors

Date of Hearing : **22.10.2021**

Coram : Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties present: Shri P.C. Sen, Senior Advocate, MPPMCL
Shri Aadhar Madan, Advocate, MPPMCL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Anindya Khare, MPPMCL
Ms. Akansha, Advocate, NPCIL
Ms. Shreya Sethi, Advocate, NPCIL
Shri Aditya Das, WRLDC
Shri Alok Kumar Mishra, NLDC

Record of Proceedings

Case was called out for virtual hearing.

2. During the hearing, the Leaned Senior counsel for the Petitioner made detailed oral submissions mainly as under:

(a) The Petitioner had entered into PPA with the Respondent NPCIL on 8.8.2005, for supply of fixed capacity of 93 MW from Kakrapar Atomic Power Station (KAPS 1 & 2) and 180 MW from Tarapur Atomic Power Station (TAPS 3&4), based on the allocation made by the Govt. of India. The Petitioner is also liable to pay the transmission charges to Respondent No.2 (PGCIL) for use of its transmission system for evacuation of power from the generating stations of the Respondent NPCIL to Petitioner's drawl points.

(b) There has been breach of PPA by the Respondent NPCIL, as the Respondent had stopped the supply of power to the Petitioner, from KAPS 1 & 2 from April, 2016 onwards, though the said power was withdrawn for auxiliary consumption till



September, 2018. Though the PPA contains provision for Force Majeure events, the event of leakage in Primary Heat Transport (PHT) system does not fall under definition of force majeure under PPA. (*APTEL judgment dated 20.1.2011 in Appeal No. 169 of 2009 and Appeal No. 127 of 2009 in PGCIL vs CERC & ors was relied upon*). The mandatory condition of issuance of notice of the force majeure event was not complied with by the Respondent and, therefore, no relief can be considered on this count (*reliance placed on APTEL's judgment dated 30.4.2015 in Appeal No. 54 of 2014 in Himachal Sorang Power Ltd vs CERC & Anr*);

- (c) To establish an event as a force majeure event, the party has to prove that the event was beyond the control of the party or was of a similar kind i.e. ejusdem generis. The rusting of pipes and saline deposition which caused leakage in PHT system was apparently due to the negligence of the Respondent NPCIL and could have been prevented (*judgment of Hon'ble High Court of Orissa dated 24.1.1969 in Md. Serajuddin vs State of Orissa (AIR 1969 Ori 152) was referred to*);
- (d) The Petitioner has incurred losses due to payment of POC charges to Respondent PGCIL, and purchase of expensive power from alternate sources. The Respondent NPCIL is therefore liable to compensate for the POC transmission charges paid by the Petitioner to Respondent PGCIL along with damages and interest thereof. The Respondent NPCIL has unjustly enriched itself at the expense of the Petitioner, who had paid the POC charges for the auxiliary power consumed by the said Respondent;
- (e) Though the PPA dated 8.8.2005 does not contain any specific provision for the recovery of damages/ compensation due to breach of PPA, the Petitioner, in terms of the principles laid down under Section 70 of the Indian Contract Act, 1872 is entitled to be compensated, as the supply of power was not a gratuitous act (*Section 70 of the Indian Contract Act, 1872 was referred to*).
- (f) In terms of the principles of fairness and equity, the Respondent NPCIL, who is a Central Government entity, cannot be permitted to take advantage of an arrangement and also refuse payment for the same. The Petitioner is also entitled to payment of interest by Respondent NPCIL on the payment of POC charges made to Respondent PGCIL from April, 2016 till September, 2018. (*judgments of the Hon'ble Supreme Court dated 27.2.2019 in Civil Appeal No.1766 of 2019 in MTNL v TCL (2019) 5 SCC 341, judgment dated 13.10.2003 in South Eastern Coalfields Ltd. vs State of M.P. And Ors. (2003) AIR 2003 SC 4482 and the judgment dated 9.1.2015 in Civil Appeal No.193 of 2015 in M/S. Kailash Nath Associates vs Delhi Development Authority were referred to*).

3. The learned counsel for the Respondent NPCIL sought permission to put forth its submissions during the next date of hearing. She, however, prayed for grant of time to the Respondent NPCIL to file its written submissions, prior to the next date of hearing.

4. Matter is part-heard. The Commission directed the Respondent, NPCIL to file its written submissions by **11.11.2021** after serving copy to the Petitioner, who shall file its rejoinder submissions, if any, by **18.11.2021**. No extension of time shall be permitted.



5. The Petition shall be listed for hearing in due course for which separate notice will be issued to the parties.

By order of the Commission

Sd/-
(B.Sreekumar)
Joint Chief (Law)

