

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 149/MP/2019

- Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Article 11 of the Power Purchase Agreement entered into between Solar Energy Corporation of India and Parampujya Solar Energy Private Limited seeking directions to Solar Energy Corporation of India to act in accordance with Article 11 of the PPA accepting the impact of Force Majeure Events and extend the timeline for fulfillment of Condition Subsequent and Scheduled Commissioning Date of the Petitioner's Projects.
- Date of Hearing : 27.8.2020
- Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
- Petitioner : Parampujya Solar Energy Private Limited (PSEPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and Anr.
- Parties present : Shri Aditya Kumar Singh, Advocate, PSEPL
Ms. Jyotsna Khatri, Advocate, PSEPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Nirnay Gupta, Advocate, CSPDCL
Shri Manoj Mathur, SECI
Shri Ajay Sinha, SECI
Shri Abhinav Kumar, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasish Das, SECI

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Respondent, Chhattisgarh State Power Distribution Company Limited (CSPDCL) objected to the maintainability of the Petition on the ground of jurisdiction. Learned counsel further submitted as under:

(a) The Petitioner's generating station does not have a composite scheme for supply of power in more than one State as the entire power is being supplied to CSPDCL only. In this regard, reliance was placed on the judgment of Hon'ble



Supreme Court in the case of Energy Watchdog v. CERC and Ors. [(2017) 14 SCC 80].

(b) CSPDCL has also challenged the Commission's order dated 18.4.2019 in Petition No. 165/MP/2018 filed by the Petitioner regarding certain Change in Law events, *inter-alia*, on the ground of jurisdiction before the Appellate Tribunal for Electricity (APTEL) in Appeal No. 120/2020, which is pending for adjudication.

(c) In the present case, the Petitioner has alleged an inordinate delay of eight months on the part of Chhattisgarh State Power Transmission Company Limited (CSPTCL) in granting of connectivity and has claimed such delay as a Force Majeure event. Therefore, CSPTCL is also a necessary party in the present dispute and ought to be impleaded as party to the Petition.

3. In response, learned counsel for the Petitioner submitted as under:

(a) The Commission in its order dated 18.4.2019 in Petition No.165/MP/2018 has already held that this Commission has jurisdiction over the dispute arising out of the Petitioner's Project. While CSPDCL has filed an appeal against the said order, there is no stay on operation of the said order.

(b) In addition to the above case, the Commission has also examined the provisions of the Jawaharlal Nehru National Solar Mission Phase-II, Batch-III-State Specific VGF Scheme Guidelines (in short, 'JNNSM Phase-II Batch-III Guidelines') in its order dated 9.10.2018 in Petition No. 188/MP/2017 and Ors. (ACME Bhiwadi Solar Power Pvt. Ltd. v. SECI and Ors.) and has held that the Projects (such as the Petitioner's) set-up under the said Guidelines will be 'composite scheme' in terms of provisions of Section 79(1) of the Electricity Act, 2003 and, therefore, this Commission will have the jurisdiction.

(c) As per the settled law, test for determining 'necessary party' is (i) there must be a right to some relief against such party in respect of the controversy involved in the proceedings, and (ii) no effective decree can be passed in absence of such a party. In the present case, the Petitioner has sought extension of scheduled date of commercial operation on the ground of occurrence of force majeure events and to that effect has produced all the necessary documents.

(d) Accordingly, CSPDCL ought to be directed to file its detailed reply on merits.

4. Learned counsel for the Respondent, CSPDCL submitted that as regards filing of detailed reply, no averment or allegation has been made against CSPDCL. Learned counsel further submitted that even though no specific relief has been sought against CSPTCL, the basis for relief sought is delay/ inaction on its part and, therefore, it is a necessary party to present case. Learned counsel sought liberty to file detailed written submissions on the aspect of jurisdiction in the present case.

5. Learned senior counsel for the Respondent, SECI submitted that as far as jurisdiction is concerned, the Commission has already held that it has jurisdiction in respect of the Projects set-up under JNNSM Phase-II Batch-III Guidelines in its various orders.



6. After hearing the learned counsels for the parties, the Commission observed that the issue of jurisdiction in respect of the Solar Power Projects set-up under JNNSM Phase-II Batch-III Guidelines has been considered and dealt with by the Commission in order dated 11.10.2017 in Petition No. 95/MP/2017 (Welspun Energy Pvt. Ltd. v. SECI) as well as in order dated 9.10.2018 in Petition No. 188/MP/2018 and Ors. (ACME Bhiwadi Solar Power Private Limited v. SECI and Ors.), wherein the Commission, after examining the provisions of the Guidelines, has held that it has the jurisdiction to adjudicate dispute in respect of such Projects. Moreover, the Commission has also exercised its jurisdiction in respect of the Petitioner's Project while dealing with Change in Law claims in its order dated 18.4.2019 in Petition No.165/MP/2018. Though the said order has been challenged by CSPDCL, *inter-alia*, on the ground of jurisdiction, there is no stay on the operation the said order.

7. The Commission directed the Petitioner to implead CSPTCL as party to the Petition and to file revised memo of parties by, 5.2.2021. The Petitioner was further directed to serve copy of the Petition on CSPTCL immediately. The Respondents including CSPTCL were directed to file their reply on merits, if any, by 5.3.2021 with advance copy to the Petitioner, who may file its rejoinder by 26.3.2021.

8. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

Sd/-

(T.D. Pant)

Deputy Chief (Law)

