



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.: 29/RP/2020 alongwith IA No. 59 of 2020

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member

आदेश दिनांक/ Date of Order: 27th of July, 2021

IN THE MATTER OF:

Review Petition under Section 79 read with 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of Order dated 04.10.2019 passed by this Commission in Petition No. 14/MP/2019.

And in the matter of

Renew Solar Power Pvt. Limited,
Through its authorized signatory,
138. Ansal Chambers II, Bhikaji Cama Place,
New Delhi-110066

...Review Petitioner

Versus

1. Solar Energy Corporation of India Limited,
Represented Through Director (Finance),
D-3, First Floor, A wing, District Centre, Saket,
New Delhi - 110017

2. Jaipur Vidyut Vitran Nigam Limited,
Represented through Superintending Engineer (IT),
Vidyut Bhawan, Janpath Jyoti Nagar,
Jaipur -302005
3. Ajmer Vidyut Vitran Nigam Limited,
Represented through Additional Chief Engineer (IT),
Vidyut Bhawan, Panchsheel Nagar, Makarwali Road,
Ajmer – 305004
4. Jodhpur Vidyut Vitran Nigam Limited,
Represented through Nodal officer, Superintending Engineer (IT),
New Power House, Industrial Area,
Jodhpur – 342003
5. Uttar Pradesh Power Corporation Limited,
Through its authorized Signatory,
10th Floor, Shakti Bhawan, Extn. 14,
Ashok Marg, Lucknow, Uttar Pradesh - 226001

...Respondents

Parties Present: Mr. Sujit Ghosh Advocate, RSPPL
Ms. Mannat Waraich Advocate, RSPPL
Shri M.G Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms Poorva Saigal, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Mr. Ajay Kumar Sinha, Advocate, SECI
Ms. Neha Singh, Advocate, SECI
Mr. Abhinav Kumar, Advocate, SECI
Mr. Uday pavan Kumar Kruthiventi, Advocate, SECI

आदेश/ ORDER

The Review Petitioner, Renew Solar Power Pvt. Limited, has filed the present Review Petition alongwith I.A. with the following prayers:

Prayers in Review Petition No. 29/RP/2020

- “(a) Allow the present Review Petition;*
- (b) Modify Order dated 04.10.2019 in Petition No. 14/MP/2019 to allow for*

compensation on account of imposition of safeguard duty for import of solar cells and modules even beyond the scheduled commissioning date of the project;
(c) Pass any such other and further reliefs as this Commission deems just and proper in the nature and circumstances of the present case.

Prayers in I.A. No.59/2020

(a) Condone delay of 177 days in filing the Review Petition; and
(b) Pass such order(s) as this Commission may deem fit and proper in facts and circumstances of the present case.

2. The matter was heard on 20.07.2021 through video conferencing.
3. Delay of 177 days in filing the review petition is condoned for reasons mentioned by the Review Petitioner. Accordingly, IA No. 59/2020 is disposed of.
4. During the course of hearing, the learned counsel for the Review Petitioner submitted that vide Order dated 04.10.2019 in Petition No. 14/MP/2019, the Commission held as under:

“85. The decisions in this Order are summed up as under:

a. Issue No.1: The imposition of the “Safeguard Duty” vide Notification No. 1/2018 (SG) dated 30.07.2018 is squarely covered as the event classified as “Change in Law” under first, second and last bullet of Article 12 of the PPAs. The Commission directs the Petitioners to make available to the Respondent No.1 all relevant documents exhibiting clear and one to one correlation between the projects and the supply of imported goods till Scheduled Commissioning date duly supported by relevant invoices and Auditor’s Certificate. ...”

5. The learned counsel for the Review Petitioner submitted that in its case, COD is defined as under:

“Commercial Operation Date shall mean the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part of the Project as the case may be.”

6. The learned counsel for the Review Petitioner submitted that the Commission has allowed compensation on account of imposition of safeguard duty for import of solar cells and modules even beyond SCoD. Since in the instant case, SCoD and COD are the same, the Commission may modify its Order dated 04.10.2019 in Petition No. 14/MP/2019 for compensation on account of safeguard duty beyond SCoD.
7. The learned counsel of the Respondent No. 1 (SECI) stated that the Commission has allowed compensation beyond SCoD but upto COD in cases where COD as per PPA is at a date later

than SCoD. This principle does not apply in the present case as SCoD and COD are on the same date.

8. We have considered the submissions of the parties and perused the documents on record. As per the provisions of Order 47 Rule 1 of Code of Civil Procedure, 1908, an application of review would be maintainable on account of (i) discovery of a new and important piece of evidence, which after the exercise of due diligence was not within knowledge or could not be produced at the time when the order was passed, or (ii) there exists an error apparent on the face of record, or (iii) any other sufficient reason.
9. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 stipulates as under:

“Amendment of Orders

103A. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either of its own motion or on the application of any of the parties.”

10. The Review Petitioner has submitted that in its case, since SCoD and COD are on the same date, the Commission may modify the impugned Order dated 04.10.2019 in Petition No. 14/MP/2019 for compensation on account of safeguard duty beyond SCoD. The Review Petitioner has not pointed out any grounds for review of the impugned order. Neither has the Review Petitioner pointed out any reasons for invocation of Regulation 103A of the CERC (Conduct of Business) Regulations, 1999. The Review Petitioner has merely made the statement that compensation be allowed on account of imposition of safeguard duty beyond SCoD, though SCoD and COD of the Review Petitioner are on the same date as has been allowed by the Commission in other petitions. In such petitions, the Commission has allowed compensation on account of imposition of safeguard duty up to the COD. In the case of Review Petitioner also, the Commission has effectively allowed compensation on account of imposition of safeguard duty up to the COD, by virtue of the fact that SCoD and COD of the Review Petitioner are on the same date. The Commission is of the view that there is no ground for review of the impugned order and as such the Review Petition is not allowed.

11. Review Petition No. 29/RP/2020 alongwith IA No. 59/2020 is disposed of in terms of the above.

Sd/-
आई. एस. झा
(सदस्य)

Sd/-
पी. के. पुजारी
(अध्यक्ष)