

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 120/MP/2022**

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 11 and 22 of the Agreement for Procurement of Power dated 25.10.2021 seeking directions to Southern Regional Load Despatch Centre seeking revision of schedule in accordance with notified declared Availability by Jindal Thermal Power Limited.
- Date of Hearing : 19.5.2022
- Coram : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Jindal India Thermal Power Limited (JITPL)
- Respondents : Southern Regional Load Despatch Centre (SRLDC) and 3 Ors.
- Parties Present : Shri Amit Kapur, Advocate, JITPL  
Shri Akshat Jain, Advocate, JITPL  
Shri Pratyush Singh, Advocate, JITPL  
Shri Raghav Malhotra, Advocate, JITPL  
Shri Sitiesh Mukherjee, Advocate, SRLDC  
Ms. Abiha Zaidi, Advocate, SRLDC  
Shri Prabhas Bajaj, Advocate, KSEBL  
Shri Ajay Sabharwal, Advocate, KSLDC  
Shri Ravi Kishore, Advocate, PTC  
Shri Pulak Srivastava, JITPL  
Shri Gajendra Sinh Vasava, SRLDC

**Record of Proceedings**

Case was called out for virtual hearing.

2. During the course of hearing, learned counsel for the Petitioner made detailed submissions in the matter. Learned counsel mainly submitted as under:

(a) Being aggrieved by the non-grant of the relief as prayed for by the Petitioner seeking direction to SRLDC to downward revise the short-term open access schedule in accordance with the notified declared availability by the Petitioner, the Petitioner had approached the Appellate Tribunal for Electricity ('APTEL) in Appeal No. 177 of 2020 wherein the APTEL vide its order dated 13.5.2022 has held that this Commission must hear the Petitioner and the Respondents on the aforesaid issue on the urgent basis and take a decision without further delay.

(b) SRLDC has arbitrarily and illegally rejected the Petitioner's application requesting for downward revision of the Petitioner's STOA schedule from 270 MW to 0 MW for the period from 4.4.2022 to 30.4.2022 and from 1.5.2022 to 31.5.2022 based on the e-mail sent by KSEBL and on the pretext that consent from State/buyer i.e. KSEBL is required for processing such request for downward revision.

(c) The aforesaid action of SRLDC is violative of Regulation 14 of the Central Electricity Regulation (Open Access in inter-State Transmission) Regulations, 2008 as amended from time to time ('Open Access Regulations, 2008') and the Statement of Reasons issued along with the Open Access Regulations, 2008.

(d) As per Regulation 14 of the Open Access Regulations, it is the right and prerogative of STOA customer to seek downward revision of the approved STOA schedule and nodal agency, SRLDC is statutorily obliged to downward revise the approved STOA schedule upon the request of the STOA customer.

(e) The downward revision of the Petitioner's STOA schedule by SRLDC is not contingent upon the consent or concurrence of the buyer of such power i.e. KSEBL and SRLDC does not have discretion to reject such request made by the STOA customer for downward revision of the approved schedule.

(f) In the Statement of Object and Reasons issued along with Open Access Regulations, 2008 provides that (i) flexibility of revising or cancelling previously approved STOA schedule is being granted to the STOA customer/ generating company to take care of any contingencies, and (ii) the power of nodal agency to allow revision/cancellation of STOA schedule only in extraordinary circumstances has been omitted.

(g) Clause 3 of the Supplementary Agreement relied upon by the Respondents relates to the revision in the STOA quantum, whereas in the present case, the Petitioner had applied for revision of its schedule and not the quantum of STOA. The quantum of STOA (quantum of transmission corridor booked) remains as it is. Reliance was placed on Regulation 6 of the Open Access Regulations, 2008 to draw the distinction between the STOA quantum and the STOA schedule under Regulation 14.

(h) In any case, the provisions of the Open Access Regulations, 2008 override the provisions of the contracts. It is settled position of law that Regulation under Section 178 of the Act overrides the existing contracts. In this regard, reliance was placed on the Judgment of Hon'ble Supreme Court in the case of PTC v. CERC, [(2010) 4 SCC 603].

(i) APTEL vide its order dated 13.5.2022 has granted liberty to the Petitioner to pursue all requisite remedies including compensation or such other reliefs as admissible under the law in the given facts and circumstances. However, at this stage, the Petitioner is praying for direction to SRLDC to downward revise the approved STOA schedule of the Petitioner's Project forthwith.

3. Learned counsel for the Respondent, SRLDC also made the detailed submissions in the matter. Learned counsel mainly submitted as under:

(a) The Petitioner is misreading the Statement of Object and Reasons issued along with Open Access Regulations, 2008. It only speaks of omission of nodal agency's powers to allow revision/cancellation in extraordinary circumstances.

(b) SRLDC has acted as per the provisions of Section 28(3)(a) of the Electricity Act, 2003 ('the Act') which mandates that RLDC shall be responsible for optimum scheduling and despatch of electricity within the region in accordance with the contracts entered into with the licensees or the generating companies operating in the region.

(c) As per clause 3 of the Supplementary Agreement, the STOA application was required to be made on behalf of KSEBL. Further, the said clause also provides

that for any subsequent application for change in approved open access quantum shall be only with prior consent of KSEBL. Pertinently, such Supplementary Agreement was specifically entered into to supply the power under medium-term contract through the STOA scheduling.

(d) The contention of the Petitioner that the aforesaid clause applies to STOA quantum whereas it applied for revision of the schedule is specious.

(e) Regulation 14 of the Open Access Regulations, 2008 only provides flexibility of revision/ cancellation of STOA schedule and such flexibility given/provided by the provisions of the regulations can be surrendered.

(f) It is a settled position in law that a benefit conferred through a statute can be waived off if it does not affect public policy. In this regard, reliance was placed on the judgments of Hon'ble Supreme Court in the case of P. Dasa Muni Reddy v. P Appa Rao (1974) 2 SCC 725, Krishna Bahadur v. Purna Theatre and Ors., [(2004) 8 SCC 229] and Lahoo Mal v. Radhey Sham, [(1971) 1 SCC 619]. The waiver of the right of the Petitioner towards downward revision without the consent of KSEBL as per the SPPA does not affect the public interest.

(g) Strong reliance on the Regulation 14 of the Open Access Regulation, 2008 by the Petitioner is misplaced in as much as the Petitioner is not even the STOA applicant as envisaged therein.

4. Learned counsel for the Respondent, KSEBL adopted the submissions made by learned counsel for SRLDC and further submitted as under:

(a) The Petitioner has wrongly argued that it has been denied of its right to seek downward revision of the STOA schedule under Regulation 14 of the Open Access Regulations, 2008. In the instance case, the STOA applicant is PTC on behalf of KSEBL and not the Petitioner.

(b) PTC vide its reply dated 12.5.2022 has stated that as per the Supplementary Agreement, any revision in STOA can be made only with prior written consent of KSEBL and that the Petitioner is not the applicant and that in absence of prior written consent of KSEBL for downward revision, SRLDC has the legal right to refuse such downward revision in the approve schedule.

(c) The action of SRLDC in seeking the consent of KSEBL ( which was a condition in the contract) is entirely in accordance with the provisions of the Act in particular Section 28(3)(a) of the Act.

(d) The Petitioner sought downward revision of the STOA schedule by invoking the force majeure on account of Coal India Circular dated 1.3.2022 changing the mechanism/modalities for allocation of non-linkage coal and resulting into the increase in the cost of procurement of e-auction coal. However, aforesaid claim is misconceived as the agreements between the parties are not dependent on or specify any specific source of fuel and the Petitioner is obligated to supply the power under the agreements by procuring the coal from alternate sources.

(e) Earlier also the Petitioner had sought to wriggle out of its contractual obligations on the pretext of carrying out annual overhauling of Unit 2 during the very same period of peak summer demand.

(f) The Petitioner has been selling the power in the market even during the month when the schedule to KSEBL was reduced.

5. Learned counsel for the Respondent, PTC adopted the submission made by the learned counsel for SRLDC and KSEBL. Learned counsel further submitted that downward revision of the STOA schedule has been sought by the Petitioner on account of alleged force majeure event – (change in mechanism/modalities for allocation of coal through e-auction) and until such force majeure event is decided by the Commission in a separate petition to be filed by the Petitioner, the present Petition is misplaced. Moreover, change in mechanism/ modalities for allocation of coal through e-auction cannot be considered as contingencies which have to be understood in the context of IEGC.

6. Learned counsel for the Respondent, KSLDC adopted the submissions made by the learned counsel for SRLDC. Learned counsel further submitted that the role of KSLDC, in the instant case, was limited and the Respondent has already filed its reply which may be considered.

7. In rebuttal, learned counsel for the Petitioner mainly submitted as under:

(a) The arrangement for generation and supply of 270 MW power by the Petitioner to PTC under the Agreement of Power Purchase ('APP') dated 25.10.2021 for onward supply of power to KSEBL under the Power Supply Agreement dated 27.10.2021 is on back-to-back basis.

(b) Perusal of the provisions of the agreements clearly reveals that it was the Petitioner who was required to procure the access to the transmission system required for carrying electricity to the delivery point and that the event of non-grant of MTOA shall be mutually decided by the PTC and the Petitioner. PTC, being an aggregator, was also required to provide the support and assistance to the Petitioner in procuring the applicable permits required from any Government Instrumentality for supply of electricity. Reliance was placed on Article 4.1.3 (f), Article 5.1.5(a) and Article 6.1.2(a) of the APP.

(c) The Petitioner is entitled to enforce its rights through the aggregator, PTC.

(d) Reliance placed by the Respondents on the clause 3 of the Supplementary Agreement is completely misplaced as the Petitioner did not seek to change the approved open access quantum but only sought to revise its STOA schedule as per Regulation 14 of the Open Access Regulations, 2008.

(e) It is denied that the Petitioner has waived its rights to seek the downward revisions of the STOA schedule under the aforesaid Regulation as contended by the Respondents.

(f) SRLDC cannot be permitted to act in contravention to the Regulation 14 of the Open Access Regulations, 2008. Reliance was placed on the judgment of Hon'ble Andhra Pradesh High Court dated 15.3.2021 in the matter of Southern Power Distribution Company of Andhra Pradesh Limited and Anr. v. Uol and Ors.

(g) The Petitioner is entitled to sell its untied capacity to the Power Exchange.

8. After hearing the learned counsel for the parties, the Commission reserved the order in the matter.

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Joint Chief (Law)**