

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 128/MP/2022

- Subject : Petition under Section 11(2) of the Electricity Act, 2003 read with 79 of the Electricity Act, 2003, along with Regulation 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 *inter alia* seeking directions to Respondent Nos. 1 to 8 to procure the power generated and supplied by the Petitioner from 6.5.2022 onwards in terms of directions as issued by Ministry of Power on 5.5.2022 under Section 11 of the Electricity Act, 2003 and also seeking a declaration/direction with regard to rate/compensation at which such supply of power to Respondent Nos. 1 to 8 for the period between being 6.5.2022 to 31.10.2022, or such other period as extended by Ministry of Power from time to time, based on principles laid down with respect to Section 11(2) of the Electricity Act, 2003.
- Date of Hearing : 17.5.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Tata Power Company Limited (TPCL)
- Respondents : Gujarat Urja Vikas Nigam Limited (GUVNL) and 8 Ors.
- Parties Present : Shri Sajjan Poovayya, Advocate, TPCL
Shri Shreshth Sharma, Advocate, TPCL
Ms. Nehul Sharma, Advocate, TPCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking directions to Respondent Nos. 1 to 8 to procure power generated and supplied by the Petitioner from 6.5.2022 onwards in terms of directions issued by the Ministry of Power ('MoP') on 5.5.2022 under Section 11 of the Electricity Act, 2003 ('the Act') and also a declaration/direction with regard to rate/compensation at which such supply of power to Respondent Nos. 1 to 8 for the period between 6.5.2022 to 31.10.2022 is to be made. Learned senior counsel for the Petitioner mainly submitted the following:

(a) MoP vide its letter dated 5.5.2022 has issued the directions under Section 11 of the Act ('the directions') to the imported coal based power plants including the Petitioner's to operate and generate power to their full capacity. The said direction is valid up to 31.10.2022.

(b) In the said directions, the MoP has recognised that the present PPAs do not provide for pass through of the present high cost of imported coal and that at present

price of imported coal, running of imported coal based plants and supply power at the PPA rates will lead to huge losses to the generators and therefore, the generators are not willing to run such plants. Accordingly, the directions provide for constitution of a Committee to work out benchmark rates of power to meet all the prudent costs of using imported coal for generating power including the present coal price, shipping costs and O & M costs, etc. and a fair margin. Further, the benchmark rates are to be reviewed every 15 days taking into consideration the change in the price of imported coal and shipping costs, etc.

(c) However, Section 11(2) of the Act entrusts this Commission with the responsibility for off-setting the adverse financial impact caused to the generating company as a consequence of a directions given by the Government under Section 11(1) of the Act. Accordingly, the Petitioner has approached this Commission by way of present Petition under Section 11(2) read with Section 79 of the Act.

(d) The Petitioner has also prayed for interim relief(s) as to (i) grant of in-principle approval of generation and supply of power to the Respondents 1 to 8 in terms and during the currency of directions dated 5.5.2022 issued by MoP, (ii) Pending finalisation of the rate/compensation by the Commission, direction to the Respondents 1 to 8 to make timely and complete payment for the power supplied in terms of prayer (i) on a weekly basis at the provisional rate/compensation of Rs. 9.11/kWh and (iii) direction to Respondents 1 to 8 to cumulatively pay an amount of Rs. 450 crore, in advance, each week for supply of power throughout the period of operation of the directions dated 5.5.2022 issued by the MoP.

(e) The grant of in-principle approval of generation and supply of power in terms of the directions dated 5.5.2022 is necessary in order to avoid prejudice to the reconciliation efforts being made under the aegis of MoP including the execution of the Supplemental PPA and the power being already supplied to certain procurers (Gujarat and Maharashtra). The above efforts have already been brought to notice of the Commission in a Petition filed by one of the procurers, namely, PSPCL in Petition No. 85/MP/2022 wherein the Commission has directed the parties to attempt to resolve the issues in terms of discussions and the deliberations which took place under the aegis of MoP.

(f) The Petitioner has proposed the provisional rate/compensation @ Rs. 9.11/kWh by taking into account the (i) landed coal cost computation at HBA of \$ 275/MT, (ii) fixed capacity charges as per the PPA dated 22.4.2017, and (iii) parameters based on norms laid down by the Commission. Such provisional rate/compensation sought by the Petitioner is, albeit, subject to the final determination by the Commission as per Section 11(2) of the Act.

(g) As on the date of filing of the Petition, the Petitioner has an inventory of coal for supply of power for a period of 12 days only. Therefore, in order to operationalize all the units to supply the power as per the directions dated 5.5.2022, the Petitioner would require 1.5 shipments of coal, which works out to approximately Rs. 450 crore.

(h) Subsequent to filing of the present Petition, in continuation of its directions dated 5.5.2022, the MoP by way of communication dated 13.5.2022 has forwarded the recommendations of the Committee as regards the tariff/rate for the imported coal-based plant including the Petitioner's plant. The Energy Charge Rate ('ECR') for the Petitioner's plant has been worked out at Rs. 6.05/kWh. Whereas, the fixed charge will be as per the PPA or as has been already agreed mutually between the generating company and the procurers.

(i) However, the process to determine the rate/compensation for generation and supply of power from the Petitioner's plant to the procurers was inappropriate to not

to include/reflect the complete and correct factors as submitted by the Petitioner. The communication dated 13.5.2022 itself does not take into the consideration the commercial parameters provided in directions dated 5.5.2022.

(j) ECR of Rs. 6.05/kWh determined by the Committee has been arrived at by reducing the mining profit of the Petitioner, which ought not to have been reduced in respect of the generation and supply of power in terms of the directions issued under Section 11 of the Act. Passing of such benefits is relevant only in respect of SPPA that is currently being negotiated and not yet executed. The Committee has also incorrectly relied upon the Argus Index for determination of landed cost of coal instead of HBA Index.

(k) Thus, ECR of Rs. 6.05/kWh determined by the Committee do not correctly provide for complete pass through of costs of using imported coal for generating power, shipping costs and O&M costs, etc.

(l) In the above background, the Commission may kindly allow the aforesaid interim relief(s) as prayed for by the Petitioner.

3. In response to the certain queries of the Commission as to whether the Petitioner having acted upon the directions dated 5.5.2022, the Committee constituted by MoP having already decided the applicable rates as per the directions and the Petitioner seeking to invoke Section 11(2) of the Act beforehand, even prior to incurring such financial impact, learned senior counsel submitted that pursuant to the aforesaid directions of the MoP, the Petitioner had written to the procurers vide letters dated 7.5.2022 and dated 14.5.2022 seeking their consent for supply of power. However, no response from the procurers had been received by the Petitioner. Learned senior counsel further submitted that presently the Petitioner is supplying power to the GUVNL and MSEDCL to the tune of approximately 2100 MW. Learned senior counsel submitted that under Section 11(2) of the Act, the Commission is required to off-set the adverse financial impact on the generation owing to the issuance of the direction under Section 11(1) of the Act. Further, the said Section cannot be construed to mean that the Petitioner has to first suffer the losses and only then approach the Commission for determining the compensation. The Petitioner is entitled to invoke the jurisdiction of this Commission under Section 11(2) of the Act at this stage itself. Learned senior counsel further added that keeping in view the precarious financial position of the Petitioner, which has also been recognized by MoP in the directions dated 5.5.2022, it is necessary that the Commission may grant interim reliefs as prayed for by the Petitioner for supply of power in terms of the said directions.

4. After hearing the learned senior counsel for the Petitioner, the Commission directed to issue notice to the Respondents on the admissibility of the Petition and directed them to file their reply also on the interim prayers of the Petitioner on or before 30.5.2022 with copy to the Petitioner who may file its rejoinder thereafter by 3.6.2022

5. The Petition shall be listed for hearing on admissibility on 7.6.2022.

By order of the Commission

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