

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 128/MP/2022 along with IA No. 50/IA/2022

- Subject : Petition under Section 11(2) of the Electricity Act, 2003 read with 79 of the Electricity Act, 2003, along with Regulations 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 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 : 28.7.2022
- 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 Sanjay Sen, Sr. Advocate, TPCL
Shri Shreshth Sharma, Advocate, TPCL
Ms. Nehul Sharma, Advocate, TPCL
Shri M. G. Ramachandran, Sr. Advocate, GUVNL
Shri Anand Ganesan, Advocate, GUVNL
Ms. Swapna Seshadri, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL
Shri Sanjay Mathur, GUVNL
Shri Kripal Chudasama, GUVNL
Shri Shubham Arya, Advocate, HPPC and PSPCL
Ms. Poorva Saigal, Advocate, HPPC and PSPCL
Shri Ravi Nair, Advocate, HPPC and PSPCL
Shri Nipun Dave, Advocate, HPPC and PSPCL
Ms. Reeha Singh, Advocate, HPPC and PSPCL
Shri Rahul Sinha, Advocate, MSEDCL
Shri Saahi Sood, Advocate, MSEDCL

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 ('Directions') 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 submitted that the Petitioner has filed IA No. 50/IA/2022, *inter-alia*, seeking directions to the Respondents to immediately comply with the order dated 17.6.2022 passed by the Commission in the present proceedings wherein the Commission, till the time it examines the claims of the Petitioner under Section 11(2) of the Act, has directed the parties to comply with the Directions along with subsequent clarifications in letter and spirit. Learned senior counsel mainly submitted the following:

(a) Presently, only GUVNL is procuring power from the generating station of the Petitioner in terms of the MoP's Directions. MSEDCL has stopped procuring the power w.e.f 25.6.2022. Whereas, rest of the procurers, PSPCL, Rajasthan and Haryana Utilities have not procured any power from the Petitioner in terms of the MoP's Directions.

(b) However, GUVNL is making certain deductions from the invoices raised by the Petitioner which are not only in contravention to the Directions read with subsequent clarifications but also the order of the Commission dated 17.6.2022 directing the parties to comply with the Directions in letter and spirit.

(c) GUVNL is deducting an amount of Rs. 0.20/kWh from the fixed charges which is outside the ambit of the Directions. MoP through its clarification dated 13.5.2022 has stated that the fixed charges are payable in terms of the PPA or as has been already agreed mutually between the parties. Despite there being no final agreement have been reached between the parties, GUVNL is making such deduction by incorrectly relying on the terms of unexecuted SPPA and minutes of the meeting reflecting reconciliatory efforts prior to the Directions. GUVNL in its affidavit dated 15.6.2022 has itself stated that negotiation between the parties have not fructified so far to the final settlement on account of certain outstanding issues.

(d) While making the payments for the invoices raised by the Petitioner, GUVNL is also restricting the capacity charges upto normative availability of 80%. However, under the Directions, the Petitioner has been mandated to operate its plant at full capacity and presently, the generation and supply is being undertaken in terms of the Directions, outside the scope of PPA, and therefore, it is imperative that its capacity charges are not to be capped upto normative availability and the Petitioner is to be compensated for the actual adverse financial impact.

(e) Haryana & Rajasthan Utilities and PSCPL, which have not procured the power from the Petitioner, have also failed to follow the Directions and subsequent clarifications as they have failed to make payment towards the invoices raised by the Petitioner for the fixed charges.

(f) GUVNL is making wrongful deduction on account of rebate based on the misconceived and distorted understanding of the Directions and the subsequent clarification dated 20.5.2022. The Directions/clarifications themselves provide that the payment is to be made on weekly basis and even through encashment of LC, in case such payments are not made on weekly basis. Considering such payments are to be made within a period of 5 days from the presentation of bills, it cannot be

a case that provisions of PPA are to be made applicable by grading/reducing the rate of rebate provided therein as being done by GUVNL.

(g) The procurers, particularly, GUVNL and MSEDCL have failed to open the Letter of Credit (LC) for an amount commensurate to the rate determined by the Committee as per the Directions read with subsequent clarifications.

(h) There is also a considerable under recovery of energy charges on account of the Committee's reliance upon the Argus Index for arriving at the landed cost of coal instead of HBA Index. However, this issue is no longer *res-intergra* as the Commission in its order dated 13.6.2022 in Petition No. 111/MP/2022 (GUVNL v. APMuL) has already observed that plain reading of Ministerial Decree No. 7 of 2017 (Indonesian Regulations) shows that it is impermissible to export coal from Indonesia below the benchmark price failing which the coal company shall be subject to the administrative sanctions.

(i) According to the Petitioner, there can be no consideration of mining profit while determining the rates/ compensation under Section 11 of the Act. The offer of sharing of the mining profit with procurers was for the purpose of execution of SPPA. Since the terms of SPPA have not been fructified, the same has no relevance whatsoever for the present Petition. It is also one of the outstanding issues between the parties for entering into SPPA as according to GUVNL, 100% of mining profit is required to be shared by the Petitioner, whereas as per the Petitioner, it is to be shared in proportionate to the quantum of coal being supplied from such owned mine for operation of the Petitioner's power plant.

(j) Till the time the Commission determines the rate/compensation to off-set the adverse financial impact of the Directions under Section 11(2) of the Act in the main Petition, the Respondents be directed to immediately comply with the Commission's order dated 17.6.2022 and to make all such payments as per the invoices raised by the Petitioner in terms of the Directions along with subsequent clarifications. The Petitioner is particularly insisting upon restraining GUVNL from making deduction of Rs. 0.20/kWh from the invoices raised by the Petitioner till the pendency of the Petition.

3. Learned counsel for the Respondent, GUVNL submitted that arguing senior counsel is occupied in a part-heard matter before another forum and requested to keep the matter in a second half of the day. Learned counsel sought liberty to file the reply to IA No. 50/IA/2022 and urged that the grant of interim directions/relief, if any, be considered only after taking into account the reply of GUVNL on IA. In response, the learned senior counsel for the Petitioner expressed his difficulty in keeping the matter in the second half.

4. Learned counsel for the Respondent, MSEDCL sought liberty to file reply to the IA as well as to main Petition.

5. Learned counsel for the Respondents, PSPCL and Haryana Utilities submitted that the Respondents have also filed Petition Nos. 85/MP/2022 and Petition No. 123/MP/2022, *inter-alia*, seeking damages from the Petitioner for non-performance of its obligations under the PPA. Learned counsel added that since some of the issues in these Petitions and the present Petition are overlapping, these Petitions may be listed together for hearing.

6. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed the Respondents to file their reply to the IA No. 50/IA/2022 by 4.8.2022 with copy to the Petitioner, who may file its rejoinder thereof, if any, by 11.8.2022. The Commission categorically clarified that the parties shall complete the pleadings in IA within the above specified time limit and no extension of time shall be granted for whatsoever reason.

7. The Commission also permitted the Respondents to file their reply in main Petition including on the data/details furnished by the Petitioner, if any, by 4.8.2022 with copy to the Petitioner, who may file its rejoinder thereof, if any, by 11.8.2022.

8. The Commission directed the Petitioner to file the information on affidavit by 4.8.2022 regarding basis of arriving at the weekly values of Blend - GCV of consumed coal kCal/kg as furnished in Annexure A-3 of their affidavit dated 1.7.2022

9. The Petition along with IA shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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