

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.349/MP/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 read with Section 11(2), along with Regulation 111-113 of the CERC Conduct of Business Regulations, 1999 seeking quashing of impugned letters dated 23.11.2022 and 30.11.2022 issued by TANGEDCO qua discontinuation of power procurement, contracted under long-term on pass through basis w.e.f. 01.12.2022, in contravention to the Directions issued by the Ministry of Power, Government of India.
- Petitioners : Coastal Energen Private Limited (CEPL)
- Respondents : Tamil Nadu Generation and distribution Co. Ltd. (TANGEDCO) & Anr.

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- Petitioners : IL & FS Tamil Nadu Power Co. Ltd. (IL&FS)
- Respondents : Tamil Nadu Generation and distribution Co. Ltd. & Anr.
- Date of Hearing : 12.12.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present : Shri Basava Patil, Sr. Advocate, CEPL & IL&FS
Shri Hemant Singh, Advocate, CEPL & IL&FS
Shri Biju Mattam, Advocate, CEPL & IL&FS
Ms. Ankita Bafana, Advocate, CEPL & IL&FS
Shri Lakshayajit Bagdwal, Advocate, CEPL & IL&FS
Ms. Lavanya Panwar, Advocate, CEPL & IL&FS
Shri M.G. Ramachandran, Sr. Advocate, TANGEDCO
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO

Record of Proceedings

During the course of hearing, the learned senior counsel for the Petitioners and the Respondent No.1, TANGEDCO made their detailed submissions in the matters.

2. Learned senior counsel for the Petitioners, *inter-alia*, submitted that present Petitions have been filed, *inter-alia*, seeking quashing of the letters dated 23.11.2022 and 30.11.2022 whereby the Respondent No.1, TANGEDCO has arbitrarily proposed to discontinue the procurement of 558 MW (CEPL) and 540 MW (IL&FS) RTC power on pass through basis at the Energy Charge Rate (ECR)/ benchmark tariff as notified by the Respondent No.2, Ministry of Power, Government of India. The learned senior counsel mainly submitted the following:

(a) TANGEDCO vide its letters dated 23.11.2022 and 30.11.2022 while proposing to withdraw its approval given to the supply of RTC power on pass through basis as per Section 11 of the Electricity Act, 2003 (the Act) directions of the MoP dated 5.5.2022 with effect from 1.12.2022, has further stated that the Petitioners "shall" supply the power as per the provisions (rates) of the PPA and not at the pass through rate.

(b) In letter dated 30.11.2022, TANGEDCO has relied upon the MoP's clarifications on Section 11 direction issued vide letter dated 28.6.2022. While the said clarifications permit the PPA holders not to requisition the power under Section 11 regime, they, however, do not permit the PPA holders/TANGEDCO to insist upon the supply at the PPA rates during the subsistence of Section 11 directions.

(c) TANGEDCO cannot be permitted override the regime of Section 11 as long as directions under Section 11 of the Act are in force.

3. Learned senior counsel for the Respondent No.1, TANGEDCO mainly submitted as under:

(a) TANGEDCO, vide its letters dated 23.11.2022 & 30.11.2022, has categorically communicated to the Petitioners its withdrawal to the approval given to supply the RTC power on pass-through basis under Section 11 directions w.e.f. 1.12.2022.

(b) TANGEDCO has not compelled the Petitioners to supply the power at the PPA rates but has merely stated that in case the power is supplied to TANGEDCO, it will be only at the PPA rates and not as per the pass through rates. The issue of deemed capacity charges in case of not availing of supply under Section 11 directions is already under consideration of this Commission in Petition No. 128/MP/2022.

(c) Ministry of Power's clarifications dated 28.6.2022 clearly permits the PPA holder not to requisite the power under Section 11 regime and accordingly, to intimate the generator at least three days in advance. In the present case, TANGEDCO had clearly communicated its intention of non-requisition of supply under Section 11 regime for the month of December, 2022. i.e. seven days in advance vide its letter dated 23.11.2022.

(d) Similar issue was raised by another generator before the Hon'ble High Court of Judicature at Madras in W.P No. 32824 of 2022, which was disposed of by the Hon'ble High Court taking into the account the submission of TANGEDCO that word 'shall' occurring in 3rd paragraph of letter dated 30.11.2022 be read as 'may' and that TANGEDCO will not insist upon power supply as per the PPA till the time directions under Section 11 are in force. These matters may also be disposed of on the similar lines in view of the aforesaid clarification.

4. Learned senior counsel for the Petitioners, however, pointed out that TANGEDCO has been scheduling the power from the Petitioners from 1st December, 2022 onwards and such supply has to be treated as supply under Section 11 regime. Learned senior counsel added that the above-mentioned clarification and reading of term 'shall' as 'may' in its communications have been provided toady itself and as such do not flow from its letters. In response, learned senior counsel for TANGEDCO submitted that despite having clearly conveyed the non-requisition of supply under Section 11 regime and any supply by the Petitioners will be as per the terms of PPA only, the Petitioners continued to declare their availability qua TANGEDCO. Learned senior counsel for TANGEDCO further submitted that in any case these issues are not the subject matter of these petitions and in view of the above clarification the prayers made in the petitions do not survive and accordingly, dispose of these petitions without prejudice to rights & obligations of both the sides.

5. After hearing the learned senior counsels for the parties, the Commission reserved the matters for order.

By order of the Commission

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