

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 85/MP/2022 along with IA No.24/IA/2022

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Date of Hearing : 21.4.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Punjab State Power Corporation Limited (PSPCL)

Respondents : Coastal Gujarat Power Limited (CGPL) and 9 Ors.

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, PSPCL
Ms. Poorva Saigal, Advocate, PSPCL
Shri Shubham Arya, Advocate, PSPCL
Shri Sajjan Poovayya, Sr. Advocate, CGPL & Tata Power
Shri Shreshth Sharma, Advocate, CGPL & Tata Power
Ms. Nehul Sharma, Advocate, CGPL & Tata Power
Ms. Raksha, Advocate, CGPL & Tata Power
Ms. S Usha, WRLDC
Shri Aditya Prasad Das, WRLDC
Shri Gajendra Singh Vasava, WRLDC

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 the Respondent 1 & Respondent 2 to resume generation and supply in so far as the Petitioner is concerned to the extent of contracted capacity of 475 MW in terms of Power Purchase Agreement ('PPA') dated 22.4.2007, maintaining the proportionality of the total generation between the procurers and also direction to the Respondent, Western Regional Load Despatch Centre ('WRLDC') to schedule the quantum of power to the extent of aforesaid contracted capacity of PSPCL in term of the PPA dated 22.4.2007. Learned senior counsel further submitted the following:

(a) In terms of the PPA dated 22.4.2007, the Respondent, CGPL has a legal and binding obligation to maintain the supply of electricity from its Mundra Power Project and to make available the contracted capacity (475 MW) to the Petitioner. However, w.e.f. 18th September, 2021, CGPL has ceased to generate electricity. Thereafter, from 18.10.2021, CGPL, while undertaking the generation of electricity and declaring availability to some of the procurers (GUVNL and MSEDCL), has not been declaring availability to PSPCL.

(b) The earlier attempt of CGPL for increase in the tariff due to escalation of imported coal price already stands decided by the Hon'ble Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80], whereby CGPL was held not to be entitled for any relief on any count for increase in tariff. However, if at all, CGPL was aggrieved due to the existing tariff, it ought to have approached the Commission for redressal of its grievance and not directly stopped supplying power to PSPCL.

(c) The Respondent, WRLDC has also failed to undertake its scheduling and dispatch functions vis-à-vis CGPL in accordance with the provisions of the PPA entered into with the procurers including PSPCL as per Section 28 of the Act. WRLDC has been wrongly acting on the basis of declaration of availability made by CGPL contrary to provisions of the PPA.

(d) In view of the power crisis situation in the State of Punjab due to paddy season, PSPCL is willing to pay the same tariff as agreed between CGPL and GUVNL/ MSEDCL, reserving its right to pursue the present Petition and subject to adjudication thereof. Accordingly, the Commission may direct the CGPL to immediately commence supply of power to the Petitioner.

(e) CGPL and GUVNL are negotiating an arrangement of which certain issues (including sharing of mining profit) are pending. Further, after such settlement is arrived at between the parties, the same was to be shared with other procurers (including PSPCL).

(f) Various meeting had also been held by the Minister for Power, New and Renewable Energy regarding operationalization of CGPL Power Plant at Mundra.

(g) Further, the Ministry of Power has also issued the letter dated 13.4.2022 in the aforesaid subject matter to the procurer States, wherein, *inter-alia*, it is stated that the issue of operationalization of remaining units of CGPL was deliberated in the meeting chaired by Minister of Power and New and Renewable Energy on 12.4.2022 and that it was decided that the remaining procurer States viz. Maharashtra, Rajasthan, Haryana and Punjab shall take action as decided by Gujarat (the lead procurer State) for ensuring power supply by CGPL in the public interest.

3. In response to the query of the Commission regarding the Petitioner having taken any action as decided by Gujarat (lead procurer) as contemplated in the letter of Ministry of Power dated 13.4.2022, learned senior counsel for the Petitioner submitted that the Petitioner is yet to be communicated the final settlement arrangement agreed between CGPL and GUVNL. Learned senior counsel further submitted that the Commission may, however, take on record his submission that the Petitioner will abide by the settlement arrangement agreed between CGPL and GUVNL, albeit without prejudice to its rights and contentions on the subject matter, and accordingly, CGPL may be directed to immediately commence the supply of power to PSPCL.

4. Learned senior counsel for the Respondent 1 and Respondent 2 mainly submitted the following:

(a) The Petitioner has failed to place on record the relevant and necessary documents for consideration of the Commission. Sincere efforts are being made

by the Respondents since 2019 under the aegis of Ministry of Power and despite being a part of various meetings convened by the Ministry of Power for signing a Supplemental PPA and operationalization of CGPL units, PSPCL did not take a decision to execute the Supplemental PPA for the larger public interest. PSPCL has failed to place on record any document pertaining to the said meetings and instead has filed the present Petition.

(b) Gujarat and Maharashtra agencies are putting in substantial efforts as per the various discussions under the aegis of Ministry of Power and are in the process of execution of a Supplemental PPA in terms of revised energy charges and sharing of mining profit, etc.

(c) If specific performance is being sought for performance of obligations under a determinable contract, the party seeking such specific performance is only entitled to payment of compensation within the terms of the PPA. As such, PSPCL is not willing to participate in the negotiations for execution of Supplemental PPA and on the contrary, is seeking specific performance despite being aware of the events as occurring under the aegis of Ministry of Power.

(d) Despite several opportunities / offers been provided to PSPCL by CGPL as well as Ministry of Power to enter into the Supplemental PPA, it has failed to take a decision and communicate to CGPL/Tata Power regarding such decision.

(e) In fact, certain additional concessions were offered to PSPCL earlier. However, in view of there being no affirmation as regards the supplemental PPA on behalf of PSPCL and the stand taken by GUVNL that no additional concessions ought to be given to one of the procurers, such additional concessions were later withdrawn.

4. In rebuttal, learned senior counsel for the Petitioner referred to the Minutes of Meeting held on 12.4.2022 to review the operationalisation status of imported coal based power plants and import of coal blending with domestic coal as well as the provisions of tolling facility and submitted that as per the Paragraph 4.1.1 of the said minutes, the action taken by GUVNL (lead procurer State) was to be shared with the other procurer States. Further, they were advised to follow the methodology adopted by the State of Gujarat to operationalize all units of CGPL so as to enable getting power as per their entitlement in the PPA and in case of any procurer States wants to exit the arrangement after 31.10.2020, they may be allowed to do so. However, till date such actions including the detail of tariff arrived at have not been communicated to the Petitioner as the issue of sharing of mining profit between CGPL and GUVNL is still under deliberation. However, in the interim, as already stated, the Petitioner is agreeable to the terms and conditions agreed between CGPL and GUVNL, subject to reserving its right to pursue the present Petition and thus, CGPL be directed to immediately commence the supply of power.

5. Learned senior counsel for the Respondents submitted that in the letter of the Ministry of Power dated 13.4.2022, which also referred to meeting held on 12.4.2022, it is clearly stated that the procurer States (including PSPCL) were required take action as decided by GUVNL (being the lead procurer State) for ensuring the power supply from CGPL and were to issue appropriate instructions to CGPL to operationalise all its units. However, PSPCL has not taken any such action and instead is making an oral submission in the present Petition that such settlement arrangement between CGPL and GUVNL is agreeable and that too with reserving its

rights and contentions to such arrangement. Learned senior counsel and learned counsel further objected to reserving of any right regarding Supplemental PPA / arrangement as GUVNL has not filed any Petition similar to the present one and a draft Supplemental PPA is being negotiated between GUVNL and CGPL and added that the Supplemental PPA / similar arrangement cannot be subject to the rights of PSPCL as contended in the present proceedings. In response, learned senior counsel for PSPCL submitted that CGPL is in turn seeking re-writing of the existing contract and that the minutes as such are not binding to PSPCL as it is clearly recorded therein that if any other procurer State wants to exist the arrangement after 31.10.2022, they may be allowed to do so.

6. The Commission observed that various discussions and efforts to operationalise the units of CGPL are already ongoing under the aegis of Ministry of Power and without having benefit of records, it would not be appropriate to issue any interim directions at this stage. However, the Commission noted that learned senior counsel for the Petitioner has fairly submitted that the Petitioner is agreeable to terms and conditions of settlement arrangement entered into between CGPL and GUVNL, albeit reserving its rights and contentions in the present proceedings and accordingly, requested to direct CGPL to immediately commence the supply of power in view of the critical power requirement of PSPCL during the paddy season. On the other hand, learned senior counsel for the Respondent 1 & Respondent 2 also expressed the readiness of the Respondents to supply the power if PSPCL is agreeable to the terms and conditions of settlement arrangement (including signing of Supplemental PPA) as agreed between CGPL and GUVNL but pointed out that till date PSPCL has not communicated its willingness in writing in response to the various letters/ communications issued by CGPL and by the Ministry of Power. Moreover, Respondent 1 & Respondent 2 conveyed their disagreement regarding PSPCL seeking such arrangement to be subject to the present proceedings.

7. However, keeping in view that the matter of operationalisation of units of CGPL has already been discussed and deliberated at length during the various meeting conducted under the aegis of Ministry of Power, the Commission observed that the parties first ought to attempt to resolve the issues in terms of such discussions and deliberation. Accordingly, the Commission directed the Petitioner to approach the Respondent 1 & Respondent 2 indicating its willingness to the terms and conditions of settlement arrangement as submitted during the hearing and also to file an affidavit to this effect before the Commission within 15 days. Pursuant thereto, the Petitioner and the Respondent 1 & Respondent 2 are expected to make sincere efforts to resolve their differences and arrive at amicable solutions for commencement of supply. In the event, such efforts do not fructify, the parties may present the outcome before the Commission during the next date of hearing.

8. After hearing the learned senior counsel for the parties, the Commission ordered as under:

- (a) Admit. Issue notice to the Respondents.
- (b) The Petitioner to serve copy of the Petition on the Respondents immediately, if not already served and the Respondents to file their reply by 15.5.2022. after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 30.5.2022.

(c) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

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

**(T.D. Pant)
Joint Chief (Law)**