

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.154/MP/2021

Subject : Petition under Section 79(1)(a) of the Electricity Act, 2003 read with Regulation 76 and 77 of the CERC (Terms and Conditions of Tariff) Regulations, 2019 praying for declaration of deemed availability for the period from 1.4.2020 to 30.4.2020 in respect of Ramagundam Super Thermal Power Station Stage-III (500 MW).

Petitioner : NTPC Limited

Respondents : APEDCL and 11 others

Date of Hearing: **24.4.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present: Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Nihal Bhardwaj, Advocate, NTPC
Shri Kartikey Trivedi, Advocate, NTPC
Shri Shivam Kumar, Advocate, NTPC
Shri A.S. Pandey, NTPC
Shri Shahrab Zaheer, NTPC
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri N. Sai Kaushal, Advocate, BESCO
Ms. Bhabna Das, Advocate, BESCO

Record of Proceedings

During the hearing, the learned counsel for the Petitioner made detailed submissions in support of the prayer for declaration of deemed availability in respect of Ramagundam STPS, Stage-III for the period between 1.4.2020 to 30.4.2020. He also referred to the communications made between the Petitioner and its contractor and submitted that the contractor's non-completion of the work was beyond the control of the Petitioner.

2. In response, the learned counsel for the Respondent, TANGEDCO mainly submitted as under:

- (a) The default by the contractor due to non-performance of the work, cannot be a ground to declare 'deemed availability' and burden the beneficiaries on this count.



- (b) The contractual obligations between the Petitioner and their contractor Vendor cannot be considered as a force majeure event, to grant relief to the Petitioner. Moreover, power sector was exempted from the lockdown restrictions imposed by the Central and State governments.
- (c) There is no provision for seeking deemed availability under the 2019 Tariff Regulations.
- (d) Reply filed in the matter may be considered at the time of disposal of the petition.

3. The learned counsel for the Respondent BESCO adopted the submissions of the Respondent TANGEDCO. In addition, the learned counsel submitted the following:

- (a) Though the steam leakage in turbine occurred on 11.3.2020, the Petitioner had awarded the repair work to the contractor only on 16.3.2020 *i.e.* after a delay of 5 days. This delay in the high demand season, has not been explained by the Petitioner.
- (b) WHO had declared Covid-19 to be a global pandemic on 11.3.2020. Thereafter, on 16.3.2020, that the Petitioner had awarded the work, which was accepted by the contractor with full knowledge of the Covid-19 pandemic and the risks thereof.
- (c) The work is stated to have resumed from 4.5.2020. It is not clear as to how Covid-19 can be held responsible for the delay in repair work prior to 4.5.2020, but not thereafter, even though the same state of affairs continued.
- (d) There is no provision for claiming 'deemed availability' under the 2019 Tariff Regulations, and hence only the actual declared availability that can be considered.
- (e) Though the Petitioner has claimed deemed availability on account of the force majeure event, it has not mentioned the steps taken by it to mitigate the delay.

4. The Commission after hearing the parties, directed the Petitioner to furnish the following additional information, on or before 25.5.2023, after serving copy to the Respondents:

- (a) The specific dates w.r.t. schedule start and schedule completion of the work along with the date of the actual start and actual work completion, the scope of work along with a copy of work order issued.*

5. The Respondents are permitted to file their replies, on the above, by **10.6.2023**, after serving copy to the Petitioner, who may, file its rejoinder, if any, on or before **20.6.2023**. The parties shall complete their submissions within the due dates mentioned and no extension of time shall be granted.



6. Subject to the above, order in the petition was reserved.

By order of the Commission

**Sd/-
(B. Sreekumar)
Joint Chief (Law)**

