

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 382/MP/2023**

Subject : Petition filed under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003 read with Regulation 111 and 113 of the CERC(Conduct of Business) Regulations, 1999 for seeking correction of the error in date mentioned as 1.10.2013 instead of 1.6.2014 as Commencement date of first contract year (i.e. Scheduled Delivery Date) under Schedule 8 of the PPA dated 27.11.2013 and bring it in alignment with SDD, which is mentioned as 1.6.2014 under Article 4 of the PPA, and accordingly grant consequential relief.

Petitioner : Dhariwal Infrastructure Limited

Respondent : TANGEDCO

Date of Hearing : **10.10.2024**

Coram : Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V, Member  
Shri Harish Dudani, Member

Parties Present : Shri Avijeet Lala, Advocate, DIL  
Ms. Somya Sahni, Advocate, DIL  
Ms. Ritika Singhal, Advocate, DIL  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Shri Rahul Ranjan, Advocate, TANGEDCO

**Record of Proceedings**

During the hearing, the learned counsel for the Petitioner submitted that it had sought correction of the error in the Scheduled Delivery Date (SDD) as 1.6.2014 (instead of 1.10.2013), as the commencement date of the first contract year under Schedule 8 of the PPA dated 27.11.2013 and to bring it in alignment under Article 4 of the PPA. The learned counsel made detailed oral submissions on the 'maintainability' of the Petition, on limitation, as under:

- a) The RFP was issued by the Respondent on 21.12.2012 for long-term procurement of power under Case-I competitive bidding for a period of 15 years from the SDD. The LOI was issued on 14.11.2013 to the Petitioner, where the SDD was changed from 1.10.2013 to 1.6.2014 and the Petitioner conveyed acceptance to the same on 18.11.2013. Subsequently, on 27.11.2013, the PPA was signed between the parties. On 2.8.2014, Unit-II was commissioned, and the actual supply commenced from 16.12.2015. The Petitioner, vide letter dated 6.10.2020, raised the issues with regard to certain discrepancies in the PPA with the Respondent.
- b) There is no embargo or prohibition of law to agitate the issue of rectification of the PPA whenever the party came to know of it for the first time *[Relied on the*



*judgment of the Hon'ble Gauhati High Court in Gerela Kalita and anr. vs. Dharmeshwar Saikia & ors (AIR 1961 Assam 14).*

- c) There is a continuing cause of action since every year, the tariff is released in accordance with the incorrect date of 1.10.2013, as mentioned in Schedule 8 of the PPA;
- d) The Petitioner had raised the issue of correction of the typographical error in Schedule 8 of the PPA on account of oversight by both the parties in Petition No.14/MP/2021; However, the Commission, vide its order dated 4.6.2023, observed that the correction of the typographical error cannot be considered, as there was no prayer for the same in the Petition. Subsequently, the Petitioner preferred an appeal against the order dated 4.6.2023 before the APTEL;
- e) In the absence of the correction of Schedule 8, the expiry date will be mentioned as 30.9.2028, and the operating period will be reduced by a period of 8 months. Accordingly, the expiry date ought to be changed to 31.5.2029 to bring it in alignment with the 15-year operating period as stipulated in the RfP, Lol, and the PPA;
- f) The tariff mentioned for the respective years under Schedule 8 of the PPA should be shifted by one year, and therefore, the tariff mentioned for the first contract year should be paid for a period from 1.6.2014 to 31.3.2015 and the same principle may be applied for the subsequent years.

2. In response, the learned counsel for the Respondent, TANGEDCO, made oral submissions, mainly as under:

- a) Under Article 58 in Part III to the Schedule to the Limitation Act, 1963, the limitation period for instituting any suit or proceedings seeking declaration is three years from the date when the right to sue first accrues;
- b) The PPA was executed on 27.11.2013 and an addendum to the PPA was signed on 20.12.2013. The Petition was filed in November 2023, i.e., much beyond the 3 years from the execution of PPA. The Petitioner has failed to demonstrate any cause of action or right to sue having accrued;
- c) The Petitioner raised its first invoice in December 2015/January 2016, as per the rate applicable for the 3<sup>rd</sup> contract year in Schedule 8 of the PPA, consistent with the Respondent's interpretation of the PPA, without any such shifting of the 1<sup>st</sup> contract year as prayed for. In case of any error, the same should have been discovered with reasonable diligence. Therefore, the Petition is time-barred;
- d) In Petition No. 14/MP/2021, the Commission, vide its order dated 4.6.2023, had held that the Petition was time-barred and hit by the principle of waiver, estoppel, and acquiescence.

3. The Commission, at the request of the parties, permitted the Petitioner and the Respondent to file their written submissions 'on limitation' (not exceeding 3



pages), on or before **5.11.2024**.

4. Subject to the above, the order in the Petition was reserved on **'maintainability.'**

**By order of the Commission**

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

