



Petition No. 1555/2020
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order: 02.07.2020

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Kaushal Kishore Sharma, Member
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF

Under Section 86 (1) (f) read with Section 86 (1) (b) read with Section 86 (1) (e) of the Electricity Act, 2003, against the termination by NTPC of 300 MW, Wind Power Sale Agreement dated 14 March, 2019, entered into at Lucknow between NTPC Ltd. and U.P. Power Corporation Ltd.

Uttar Pradesh Power Corporation Limited,
(through its Chief Engineer, PPA)
Shakti Bhawan, 14- Ashok, Marg,
Lucknow

..... Petitioner

National Thermal Power Corporation, (NTPC),
Through the General Manager, (Commercial)
NTPC Bhawan, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

Mytrah Vayu (Brahmani) Private Limited,
Through Chief Operating officer,
8001, Q-City, S No.109, Nanakramguda,
Gachibowli
Hyderabad, Telangana-500032

.....Respondent



The following were present:

1. Shri Sitiesh Mukherjee, Advocate, UPPCL
2. Shri Abhishek Kumar, Advocate UPPCL
3. Shri Deepak Raizada, CE, PPA-II, UPPCL
4. Shri Prateek Kumar Uppal, AGM, NTPC
5. Shri Manish Malviya, NTPC

ORDER
(Date of Hearing 23.06.2020)

1. The Petition has been filed by UPPCL for invoking the justification of the Commission against the invalid, unfair, illegal termination of 300 MW wind power PSA dated 14.03.2019 entered between NTPC Ltd, and UPPCL at Lucknow through letter dated 18.07.2019.
2. The Petitioner has prayed as follows;-
 - (i) declare the impugned letters dated 24.06.2019 and 18.07.2019, whereby, NTPC, respondent no.1, has terminated the PSA dated 14.03.2019 entered into between NTPC and UPPCL, as illegal and quash the aforesaid letters of termination issued by NTPC;
 - (ii) declare the action of M/s Mytrah Vayu (Amrawati) Pvt. Ltd., respondent no.2, in having demanded the payment of Performance Bank Guarantee deposit from NTPC as illegal;
 - (iii) grant consequential reliefs to UPPCL, the petitioner, by allowing prayers no. (i) and (ii), as above;
3. Shri Sitiesh Mukherjee, legal Counsel of the Petitioner submitted that NTPC as an intermediary conducted a tariff based competitive bidding, in terms of Scheme and Guidelines dated 08.12.2017 issued by Ministry of New and Renewable Energy, Govt. of India, under Section 63 for supply of wind power to different States. Against the offered and accepted 800 MW capacity to UPPCL, NTPC had signed two PSAs dated 14.03.2019 for supply of 350 MW wind power. Out of 350 MW power, 300 MW was to be supplied by Mytrah Vayu Pvt. Ltd and remaining 50 MW by Srijan Energy Pvt. Ltd. NTPC signed PPAs with Srijan Energy, Pvt. Ltd. for 50 MW on 25.03.2019 and Mytrah Vayu Pvt. Ltd. for 300 MW on 25.03.2019.

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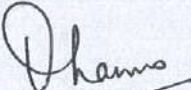
4. The legal Counsel further submitted that NTPC has terminated PSA dated 14.03.2019 for supply of 300 MW wind power vide their letter dated 18.07.2019 on the ground that UPPCL could not obtain the approval of PSA by UPERC adopting the tariff and trading margin of 7 paisa/unit to NTPC and approving the procurement of the contracted capacity. NTPC has also contended that wind power developer Mytrah Vayu Ltd. has terminated the PPA dated 25.04.2019 vide communication dated 24.06.2019. The Legal counsel sought time for filing its detailed submission before the Commission.
5. The legal Counsel averred that the said obligation of tariff adoption was that of NTPC by filing petition before CERC, being a multi- state power supply as in the other similar cases done by SECI and PTC. The Counsel also argued that NTPC did not provide necessary documents relating to approval of power procurement by UPPCL.
6. Shri Manish Malviya, Representative of the NTPC submitted that they would be presenting their case before Commission through legal Counsel and sought one- month time for filing their reply to the Petition.
7. No one was present on behalf of Mytrah Vayu Pvt Ltd.
8. The Commission observed that the matter of approval of wind power procurement of 350 MW capacity (300 MW + 50 MW) had come up earlier in Petition No. 1483/2019 filed by UPPCL, wherein NTPC Representative had submitted before the Commission that NTPC would be filing Petition before CERC for Tariff adoption and NTPC would be providing necessary documents to UPPCL relating to approval of the power procurement. However, NTPC did not provide such documents and terminated 300 MW PSA dated 25.04.2019. The said Petition No 1483/2019 was ultimately withdrawn by UPPCL.
9. The Commission granted stay on above referred 300 MW PSA (dated 14.03.2019) termination notice dated 18.07.2019 by NTPC and all activities incidental to and resultant of PSA till disposal of the Petition.
10. UPPCL is directed to serve copies of the Petition to Respondents, if not served earlier. The Respondents are allowed one-month time to file their reply to the Petition and UPPCL shall file its rejoinder within two weeks thereafter. The Commission also directs UPPCL to and place on record the



back to back PPAs dated 25.03.2019 and 25.04.2019 along with status of remaining 50 MW PSA dated 14.03.2019.

The matter is fixed for next hearing on 04.08.2020.


(Vinod Kumar Srivastava)
Member


(Kaushal Kishore Sharma)
Member


(Raj Pratap Singh)
Chairman

Place: Lucknow

Dated: 02.07.2020