



Petition No. 1613 of 2020

BEFORE

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

PRESENT:

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Petition under Section 142 of the Electricity Act, 2003 read with Regulation 64 of UPERC (Conduct of Business Regulations, 2019), prevalent UPERC (Captive & Renewable Energy Generating Plants) Regulations, 2014 & provisions of PPA for taking appropriate action against Respondent for non-compliance of the order dated 05.03.2019 passed by the Hon'ble UPERC in Petition No. 1380/2018 – M/s Pinnacle Renewable Energy Pvt. Ltd. Vs. UPPCL and Others.

M/s U.P. Power Corporation Ltd.,
(through its Managing Director),
Shakti Bhawan, 14-Ashok Marg,
Lucknow – 226001

----- **Petitioner**

1. M/s Pinnacle Renewable Energy Pvt. Ltd., T-15, 2nd Floor, Green Park Main, New Delhi – 110016
2. Mr. Sharad Choudhry, Managing Director, M/s Pinnacle Renewable Energy Pvt. Ltd., T-15, 2nd Floor, Green Park Main, New Delhi – 110016
3. Mr. Rajnish Mathur, Authorized Signatory, M/s Pinnacle Renewable Energy Pvt. Ltd., T-15, 2nd Floor, Green Park Main, New Delhi – 110016

----- **Respondents**

Following were present:

1. Sh. Raghavendra Singh, A.G, Sr. Advocate, UPPCL
2. Sh. Deepak Raizada, PPA-RE, UPPCL
3. Sh. Md. Altaf Mansoor, Advocate, UPPCL
4. Sh. Aarohi Bhalla, Advocate, Respondent



ORDER
(Date of Hearing 13.10.2020)

1. The Petitioner (UPPCL) has filed the instant Petition under Section 142 of the Electricity Act, 2003 read with Regulation 64 of UPERC (Conduct of Business Regulations), 2019, prevalent UPERC (Captive & Renewable Energy Generating Plants) Regulations, 2014 and provisions of PPA for taking appropriate action against respondents for their intentional, deliberate and willful disobedience/defiance of directions contained in the order dated 05.03.2019 passed by the Commission in Petition No. 1380/2018 - M/s Pinnacle Renewable Energy Private Limited Vs. Uttar Pradesh Power Corporation Limited and others.
2. Sh. Raghvendra Singh, learned Counsel of UPPCL submitted that the Commission vide order dated 05.03.2019 in petition no. 1380 of 2018 has directed as follows:
"-----
" Keeping in view of status of the project and the willingness of the Petitioner, the Commission agreed to allow the petitioner to put up the power plant by 15th April 2019 subject to imposition of liquidated damages as per the PPA. The Commission also directed UPPCL to provide connectivity to the Petitioner from 33KV Kanduni substation on payment of cost of Bay within next 15 days from the date of this order. The Petitioner shall also deposit cost laying the 132KV transmission line to UPPCL in next 15 days. The Commission made it clear that no further extension will be granted. The 33KV connectivity shall continue till the 132KV transmission system is in place."
3. The Counsel further argued that Respondent have not complied with Commission's directions issued vide order dated 05.03.2019 and have challenged the said order before the Hon'ble APTEL. Therefore, the present petition has been filed to summon Respondents and further punish them u/s 142 & 149 and other relevant provisions of the EA, 2003 for deliberately and willfully flouting the orders passed by this Commission.
4. Sh. Aarohi Bhalla, Counsel of Respondents submitted that the Respondents have filed IA no. 1047 of 2019 in Appeal no. 191 of 2019 before the Hon'ble APTEL with following prayers:



"-----"

- A. Allow the present application directing the Respondents to stop raising any demands of liquidated damages during the adjudication of the present appeal and stay the Preliminary Default Notice dated 13.05.2019; and
- B. Direct the Respondent No. 2 to grant temporary connectivity from 33 Kv Kanduni sub-station to the solar Power Plant immediately, and
- C. Pass such other orders(s) and / or direction(s) as it may deem fit and proper in the facts and circumstances of the case in the interest of justice.

-----"

The Hon'ble APTEL vide order dated 22.05.2019 in the said Appeal has directed to grant temporary connectivity from 33KV sub-station subject to certain conditions. The relevant extract of said judgment is as follows:

"-----"

4 We are of the opinion that to ascertain as to whether the plant is complete in all respects, the same cannot be based on whether there are deficiencies in generation of power. Moreover, this is Renewable Power Generation. The case on hand pertains to renewable energy. At this stage we do not know whether RPO is complied with by the concerned discom and the same can be looked into at a later stage. In terms of Section 86 (1) (e), Renewable Energy Sector has to be promoted in all respects. Having regard to that, we direct Respondent No. 2 to grant temporary connectivity from 33 Kv Kanduni substation to the Solar Power Plant of the Appellant forthwith subject to following conditions:

- a) *The tariff for such supply shall be at Rs.5.07 per KWH.*
- b) *From the LD amount, one-fourth shall be adjusted out of the remaining Bank Guarantee amounting to Rs. 1.20 crores.*
- c) *Another one-fourth shall be deposited within 3 months from to-day.*



d) Balance 50 % of LD amount shall be adjusted from the monthly bills raised by the Appellant i.e. deducting to an extent of 50% of the monthly bills.

4.The above order is subject to outcome of order in the main appeal. Copy of this order is furnished to NEDA by respective Discom.

5.The connectivity must be done in the presence of responsible person from NEDA and State Chief Electoral Officer by 11 am on 23.05.2019.

-----"

5. The Commission enquired the Counsel of the Respondents to furnish information about present status of the project and also the compliance of direction issued vide order dated 05.03.2019 regarding (i) depositing cost of 33 kV Solar bay at 132 kV S/s and (ii) cost of 33 kV line from tapping point at Kundani S/s to 132 kV S/s.
6. Sh. Aarohi Bhalla, learned counsel submitted that he would have to seek instruction on status of Project as also the compliance of Commission's / Hon'ble APTEL. He further submitted that the Respondents have challenged the Commission's Order dated 05.03.2019 before the Hon'ble APTEL and the pleading in the matter were completed. Therefore, the Counsel requested the Commission to list the matter for further hearing only after 07th January 2021.
7. Sh. Aarohi Bhalla, learned counsel further argued that the Petitioner in its Petition has not made any allegation that the Order dated 22.05.2019 passed by the Hon'ble APTEL is not complied with by the Respondents. Moreover, he claimed that the present petition u/s 142 is not maintainable as proceedings u/s 142 can be initiated only when there is willful disobedience or non-compliance to the order of the Commission.
8. The Commission noted that Hon'ble APTEL in its order dated 03.05.2019 has observed that if Appellant / Petitioner had completed the setting up of solar plant in full, then only the question of generation of power then evacuating the same would arise. Commission also perused various communication written by UPPCL/ MVVNL/UPPTCL addressed to Petitioner for depositing cost of line and bay in terms of the PPA and SPPA dated



02.12.2015 and 19.05.2018 respectively so that the Power evacuation system vide connection agreement dated 06.10.2016 is effected.

9. Commission is also mindful of the fact that considerable time has lapsed since its last order dated 05.03.2019 vide which the Petitioner was directed for payment of cost of Bay and cost of laying the 132 kV transmission line to UPPCL within 15 days. Further, the Petitioner is aware that in compliance with the Hon'ble APTEL order dated 22.05.2019, temporary connectivity has been provided to the Solar Power Plant on 23.05.2019. Therefore, considering that more than one and a half year has passed since order of Commission dated 05.03.2019 and Counsel of Petitioner has not been able to place on record the present status of Project / compliance of Commission's directions, Commission is of the view that opportunity of being heard be given to the Respondents and submit their response.
10. **Accordingly, the Commission hereby directs the Respondents to show cause within 4 weeks as to why appropriate action u/s 142 should not be taken against them for non-compliance of the Commission Order's dated 05.03.2019 and a penalty of up to Rs. One lakh / applicable additional penalty under aforesaid section be imposed.**

The matter is accordingly listed on 19.11.2020.

(Vinod Kumar Srivastava)
Member (Law)

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Date: 16. 10.2020