

JUDGMENT UPDATE

REGULATORY & POLICY



SECI v. Shapoorji Pallonji Infrastructure Capital Co Pvt Ltd & Ors

CERC Order dated 15.04.2021 in Petition No. 52/AT/2021

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Background facts

- Solar Energy Corporation of India (**SECI**) filed petition under Section 63 of the Electricity Act, 2003 (**Act**) before Central Electricity Regulatory Commission (**CERC**) for adoption of tariff for (3x50) MW grid-connected floating solar power projects selected through competitive bidding process as per the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' (**Guidelines**) dated August 3, 2017 issued by the Ministry of Power, Government of India.
- In the instant case, at the behest of Uttar Pradesh Power Corp Ltd (**UPPCL**), SECI issued Request for Selection (**RFS**) for setting up of (3x50) MW solar power projects in the state of Uttar Pradesh (**Project**) in terms of the Guidelines. Two developers i.e. Shapoorji Pallonji Infrastructure Capital Co Pvt Ltd and ReNew Solar Power Pvt Ltd (**SPDs**) were selected and awarded 50MW and 100 MW respectively for developing the Project. Accordingly, SECI entered into separate Power Purchase Agreements (PPA) with SPDs for purchase of power from their respective quantum of Projects and supply the same on back-to-back basis to UPPCL vide Power Sale Agreement (**PSA**).
- On the issue of jurisdiction, SECI contended that CERC is the 'Appropriate Commission' under Section 63 of the Act to adopt tariff for the project as it has entered into PPA and PSA in its capacity as the nodal agency of the Central Government. Further, since it has been designated as an inter-state trading license, it is vested with the authority to sell the power purchased from the SPDs at any time in other States.
- SECI further contended that the PPA also defined CERC as the 'Appropriate Commission'.

Issue at hand

- Whether CERC is the 'Appropriate Commission' under Section 63 of the Act for adoption of tariff for the Project?

Decision of the Commission

- CERC observed that mere involvement of an inter-State trading licensee as an Intermediary Procurer does not render the generating company to qualify as a composite scheme for generation and sale of power in more than one State in terms of Section 79(1)(b) of Act.
- Moreover, as RFS documents specify that all the generating companies shall be located in the State of Uttar Pradesh and sell power to the end-procurer, UPPCL, the entire transaction clearly qualifies as intra-state in nature.

Our viewpoint

The order has upheld the principles settled in the Apex Court's judgment passed in *Energy Watchdog v. Central Electricity Regulatory Commission*, and further clarified that irrespective of Intermediary Procurer being established under Central Government, if its role is limited to trading of electricity and the transaction involves the generation and sale of electricity within one state, the State Commission will be considered as an 'Appropriate Commission' under Section 63 of the Act. The Commission has also discussed the significance of Guidelines/Scheme under which the projects are set up in determining the jurisdiction of the 'Appropriate Commission'.

- With regard to CERC being defined as the 'Appropriate Commission' under the provisions of PPA, the Commission observed that it is a well settled principle that the parties cannot confer the jurisdiction on any forum by consent. Unless the jurisdiction of CERC can be traced to the provisions of the Act and the Guidelines, the definition under the PPAs as agreed to between the parties will not have any bearing while examining the jurisdiction of the Commission.
- SECI's contention that it is also a Central Government Company owning and maintaining generating stations in other states in terms of Section 79(1) of the Act is irrelevant for the instant case. Herein, SECI is not acting/functioning in its capacity of Central Government controlling/owning generating company. Accordingly, the jurisdiction of CERC under Section 63 read with Section 79(1)(a) of the Act cannot be invoked in the instant case particularly when SECI has been functioning in its capacity of an Intermediary Trader as provided in the Guidelines.
- With regard to SECI's reliance on the order passed in Petition No. 95/MP/2017 by CERC whereby the solar power project was located in Maharashtra and entire power was being supplied to Maharashtra distribution company, the Commission observed that project in the said petition was set-up under the Jawaharlal Nehru National Solar Mission (**JNNSM**) Phase-II, Batch-III State Specific Viability Gap Funding (**VGF**) Scheme (**Scheme**). As per the provisions of the said JNNSM Scheme, Ministry of New and Renewable Energy was required to specify the total State-wise capacity for the Projects based on commitments from the State for off-take of not less than 90% of power and for the remaining 10% of power, the host State is required to facilitate inter-State transfer of power to sell to other buying entities. Since the JNNSM Scheme itself envisaged that the power from the project developed under the Scheme shall be supplied to more than one State, accordingly, CERC exercised its jurisdiction in the said Project. However, in the instant case, the Project is not being set-up under the JNNSM scheme, hence, 95/MP/2017 is inapplicable.

