



Petition No. 1555/2020

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order: 13.05.2021

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman

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 Sitesh Mukherjee, Advocate, UPPCL
2. Shri Abhishek Kumar, UPPCL
3. Shri Deepak Raizada, CE, PPA, UPPCL
4. Shri Venkatesh, Advocate, NTPC
5. Shri Ashutosh Kumar, NTPC
6. Shri Nitish Gupta, Mytrah Vayu Brahamani Ltd
7. Ms Kritika Angirish, Srijan Energy Pvt. Ltd.

ORDER



(Date of Hearing 21.01.2021)

1. The instant petition has been filed by UPPCL, the Petitioner, for invoking the jurisdiction of this commission, against the invalid, unfair and illegal termination of 300 MW, Wind power PSA dated 14th March 2019, entered between NTPC Ltd. and UPPCL Ltd. through letter dated 24.06.2019 and 18.07.2019. 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 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;
- (iv) Allow the petition

Brief Facts of the Case

2. NTPC intimated UPPCL that it has invited bids for 1200 MW Wind Power for ISTS connected Wind Power Projects anywhere in India under developer mode through tariff bidding followed by reverse auction. An offer was made by NTPC on 10.01.2019 to UPPCL for supply of 800 MW Wind Power @ of Rs.2.87/- per unit (including trading margin) for a period of 25 years. UPPCL, on 02.02.2019, gave its consent to NTPC for procurement of 800 MW Wind Power. NTPC, however, informed UPPCL that only 350 MW out of 800 MW, could be tied up for supply to UPPCL. Considering the competitive tariff rate of Rs.2.87/-KWh (including trading margin), having been discovered through reverse auction and to achieve the RPO targets given by this Commission to the petitioner, UPPCL gave its consent for signing of PSA with NTPC for supply of 350 MW Wind Power for a period of 25 years.
3. Two Power Sale Agreements (PSAs) were signed on 14.03.2019 between NTPC and UPPCL for aggregate supply of 350 MW Wind Power, subject to approval of this Commission. Out of 350 MW Wind power, 300 MW is from Mytrah Vayu Pvt. Ltd., generating plant and the remaining 50 MW is from the generating plant of Srijan Energy Pvt. Ltd. NTPC signed PPAs with Srijan Energy Pvt. Ltd., for 50 MW, on 25.03.2019 and with Mytrah Vayu Pvt. Ltd. for 300 MW on 25.04.2019.
4. NTPC has terminated the PSA dated 14.03.2019 for sale of 300 MW on the ground of violation of provisions contained in Articles 2.12 and 2.13, in the PPA dated 25.04.2019 between M/s Mytrah Vayu Pvt. Ltd. and NTPC Ltd.



The termination by NTPC is said to be in pursuance of the letter dated 24.06.2019, written by the Wind power generating company Mytrah Vayu (Amrawati) Pvt. Ltd., to NTPC.

5. The grounds sought by NTPC in its letters dated 24.06.2019 and 18.07.2019 are as below:

"As per the clause 2.12 and 2.13 of the referred PPA and corresponding provisions in PSA, the condition precedent for enforcement of the obligation of either party against the other in PPA and PSA is that within two (2) months from the effective date, the U.P. Discoms shall duly obtain the order of Uttar Pradesh Electricity Regulatory Commission (UPERC), adopting the Tariff and the trading margin of NTPC, and approving the procurement of the contracted capacity.

Since condition precedent which was expected to be met within two months of signing of PSA, is not yet met hence, M/s Mytrah requested return of Performance bank Guarantee deposit as PPA and corresponding back-to-back PSA stands cancelled and terminated.

In view of the above due to non-fulfilment of condition precedents by U.P. Discom (s), through this letter we hereby notify that PPA between NTPC and Mytrah and back-to-back PSA between NTPC and UPPCL for 300 MW wind power stands cancelled and terminated with no liability on either party to the other."

6. UPPCL, in its representation dated 05.08.2019, referred to the recital F of the PPA dated 25.04.2019 between NTPC and M/s Mytrah Vayu Pvt. Ltd. and recital M of PSA dated 14.03.2019 and reasoned that provisions contained in PPA dated 25.04.2019 are to be read in conjunction with the provisions contained in PSA dated 14.03.2019.
7. NTPC, vide its letter dated 03.09.2019 has requested UPPCL to take immediate steps for getting the tariff adoption order from UPERC and enquired whether any time was required to fulfil the Conditions Precedent.

Record of Proceedings

8. The Commission vide order dated 02.07.2020 granted stay on 300 MW PSA dated 14.03.2019 and termination notices issued by NTPC along with all activities incidental to and resultant of PSA till disposal of Petition. NTPC vide its counter affidavit dated 29.07.2020 filed objections relating to maintainability of Petition before adverting to the merits. UPPCL has filed



amended memo of parties to include Mytrah Energy (India) Pvt. Ltd. & Srijan Energy Systems Pvt. Ltd. as parties. UPPCL has also filed an additional submission on 23.7.20 placing on record the back-to-back PPA dated 25.3.19 between NTPC & M/s Kutch Windfarm Development Pvt. Ltd., SPV of Srijan Energy Systems Pvt. Ltd. and that dated 25.4.19 between NTPC & SPVs of Mytrah Energy (India) Pvt. Ltd. namely, M/s Mytrah Vayu (Brahmani) Pvt. Ltd. & M/s Mytrah Vayu (Amravati) Pvt. Ltd.

9. UPPCL's submission 23.7.20 covers argument on merit of the case stating that tariff adoption was within the ambit of NTPC and that not only the time of fulfilment the condition precedent is the essence of the contracts but also depends upon intention of parties.
10. UPPCL had filed its rejoinder dt.5.8.20 in response to the counter affidavit of NTPC dt.29.7.20 on maintainability of the petition. The following argument have been put forth by UPPCL on maintainability:
 - a. CERC jurisdiction under section 79 1(a) &(b) is limited to regulation of tariff of generating companies, whereas under the instant scheme of arrangements, NTPC is not acting as a generating company but as an intermediary.
 - b. The dispute in the present case relates to the very existence of the PSA /PPA and is not a case of termination on account of non-payment of tariff or other similar breach the terms of the contracts which relate to the tariff adopted by CERC. The dispute concerning the question that whether PSA/PPA would be legally 'voided' or 'made infective' by the respondents can only be decided by this Commission under section 86(1)(f) of the Act. Accordingly, section 79(1)(b) is not the appropriate section under which the instant dispute can be adjudicated.
 - c. The section 86(1)(f) of the Act has a much wider scope than section 79(1)(f) of the Act, as the later one relates to disputes covered by section 79(1)(a) to 79(1)(d) of the Act. The instant dispute does not fall any of the above-mentioned sections viz. 79(1)(a) to 79(1) (d) of the Act.
 - d. UPPCL has argued that jurisdiction ought to be decided by this Commission after hearing the parties on merits of the instant dispute.
11. The Commission vide order dt.27.8.20 directed parties to file their submissions on jurisdiction issues. UPPCL, on 15.9.20 and NTPC on 29.9.20 have filed their submissions.



12. UPPCL, considering the fact that outcome of present petition would have direct bearing on the rights & interests of SPVs / WPD as ultimately power is to be supplied by them through NTPC, vide its communication dated 30.9.20 filed an application for impleadment of wind power developers in the instant petition.

13. Hearing in the matter was held on 21.1.21 wherein the counsel of both parties argued the matter on maintainability of the petition. While Shri. Sitesh Mukerjee, learned counsel of the petitioner also argued that Commission may hear the arguments on merit of the case also as the facts of the case are related to termination of PPA, Sri. Venkatesh learned counsel of the Respondent, NTPC have argued to deal with maintainability of the instant petition.

Commission's analysis and decision

14. NTPC, as an intermediary, vide its letter dated 24.06.2019 and 18.07.2019 has terminated PSA dated 14.03.2019, for the reason of non-fulfilment of conditions precedent, to supply 300 MW from two Projects, each of 150 MW capacity, of Mytrah Energy India Pvt. Ltd. The details of PSA and PPAs are as follows:

<u>Name of Company</u>	<u>Name of SPV</u>	<u>Procurer</u>	<u>PSA between UPPCL and NTPC</u>	<u>PPA between NTPC and Developer</u>
Mytrah Energy (India) Pvt. Ltd.	M/s Mytrah Vayu (Brahmani) Pvt. Ltd. (Maharashtra)	UPPCL	14.3.19	25.4.19
	M/s Mytrah Vayu (Amravati) Pvt. Ltd. (Maharashtra)			25.4.19

15. UPPCL, contesting the termination has filed this Petition under Section 86 (1) (f) read with Section 86 (1) (b) read with Section 86 (1) (e) of the Electricity Act, 2003. NTPC has objected to maintainability of the Petition before the Commission and argued that CERC is the appropriate Commission for the present matter.

16. NTPC has made its case on following grounds:

- (a) NTPC, as an intermediary, is supplying the Petitioner (situated in Uttar Pradesh) power from Wind Power Developers Project situated





in Maharashtra, power is being supplied in more than one state and such supply is governed by binding arrangements i.e. the PSA and PPA executed with the WPD. The present case qualifies to have a composite scheme for generation and sale of electricity, under Section 79 (1)(b) of the Act, thereby falling within the jurisdiction of the Hon'ble Central Commission.

- (b) Section 79 (1) (f) is a special provision, which provides for adjudication of disputes involving generating company owned by the Central Government and those having a composite scheme of generation. The term "regulate" which is used in Section 79 of the Act, *would indicate that it not only involves the determination of tariff but it is of wider scope and implications*, thereby allowing the Central Commission to do everything necessary for the organized implementation of the mandate of Section 61 and 79. Therefore, under Section 79 the Hon'ble Central Commission can determine the Tariff as well as the disputes arising out of such arrangements.
- (c) NTPC filed a petition for tariff adoption before the Central Commission for the wind projects with valid PPAs & PSAs, though UPPCL was a respondent, yet it has not objected to termination of PSA/PPAs.
- (d) The PSA and the PPA are legally valid and concluded contracts. The same cannot be called being at the inception/formation stage as the contract has been signed by the parties after due deliberation. The contracts executed between the parties confer jurisdiction upon Hon'ble Central Commission
- (e) As per MoP guideline dated 08.12.2017, CERC is the appropriate Commission as also as per Rule 8 of Electricity, 2005.

17. Learned Counsel of the Respondent, NTPC, has placed reliance on Hon'ble APTEL in its Judgment dated 04.09.2012 in Appeal No. 94 and 95 of 2012, titled as '**BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission & Ors**', to contend that the State Commission jurisdiction is carved out in the present matter. The Hon'ble APTEL has held that: -

"31. As pointed out by the learned Counsel for the NTPC, the term 'Regulate' used in Section 79 (1) (f) of the Act has got a wider scope and implication not merely confined to determination of tariff.

32. Section 61 and 79 not only deal with the tariff but also deal with the terms and conditions of tariff. The terms and conditions necessarily include all terms related to tariff. Determination of tariff and its method of recovery will also depend on the terms and



conditions of tariff. For example, interest on working capital which is a component of tariff will depend on the time allowed for billing and payment of bills. This will also have an impact on terms and conditions for rebate and late payment surcharge. Similarly, billing and payment of capacity charge will depend on the availability of the power station. Therefore, the scheduling has to be specified in the terms and conditions of tariff.

33. Accordingly, the billing, payment, consequences of early payment by way of grant of rebate, consequences of delay in payment by way of surcharge, termination or suspension of the supply, payment security mechanism such as opening of the Letter of Credit, escrow arrangement, etc, are nothing but terms and conditions of supply.

34. **Section 79(1) (f) of the Electricity Act, 2003 provides for the adjudication of disputes involving a generating company or a transmission licensees in matters connected with clauses (a) to (d) of Section 79. Thus, anything involving a generating station covered under clauses (a) and (b) as to the generation and supply of electricity will be a matter governed by Section 79 (1) (f) of the Act.**

.....

41. When the Central Commission has got the powers to specify the terms and conditions of tariff, the State Commission cannot have any powers to nullify the impact of such Regulations. The harmonious construction of various provisions of the Electricity Act would indicate whatever is within the jurisdiction of the Central Commission, the State Commission cannot encroach upon the same by claiming to exercise concurrent jurisdiction by virtue of Section 86 of the Electricity Act, 2003.

42. **The Electricity Act, 2003 carves out the regulatory control over the Central Sector Generating Companies like NTPC^{CS} and the generating Companies having composite arrangements of generation and sale of electricity in two or more States.**

18. Learned Counsel of the Respondent, NTPC, has also placed heavy reliance on the Hon'ble Supreme Court's judgement in **Energy Watchdog vs. Central Electricity Regulatory Commission, [(2017) 14 SCC 80]** (Energy Watchdog judgement), particularly the lines: "The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Act.", to contend that since the power in the instant scheme of arrangement is envisaged to be supplied from outside the State where the generator is located CERC would have jurisdiction.



The Commission has gone through the various documents viz; PPA, PSA, bidding guidelines and various provisions of the Electricity Act'03 and discussed these in the following paras:

19. **Dispute Resolution as per PPA:** It is contended that by learned counsel of the Respondent, NTPC, that agreement in form of the Dispute Resolution clause in the Power Purchase Agreement and Power Sale Agreement, (by applying the provision of PPA *Mutatis Mutandis*, to the PSA) the parties have agreed to jurisdiction of the Hon'ble CERC. **In this regard, it is well settled principle of law that where parties have agreed to submit to a specific jurisdiction, but the said jurisdiction would not otherwise be proper jurisdiction to adjudicate a particular dispute, then the agreement to such extent is void being against public policy. It is equally a well settled principle of law that parties by agreement cannot confer jurisdiction on any court which it did not otherwise possess.**
20. **Bidding guidelines dated 08.12.2017:** The Competitive Bidding Guidelines dated 08.12.2017 have been formulated for wind power procurement through transparent process of competitive bidding under section 63 of the Electricity Act and Clause 4 describes "Appropriate Commission" for the purpose of tariff adoption. **In case of Wind Power Projects, supplying power to Distribution Licensees of more than one State, the Appropriate Commission is to be CERC. NTPC has accordingly filed the tariff adoption Petition before CERC. The Clause 23 of the Guidelines also provides that disputes related to change in tariff or determination of tariff or any tariff related matters, shall be adjudicated by CERC.**
21. **Section 79 of electricity Act, 2003:** Sections 79(1)(a) and 79(1)(b) are limited to regulation of the tariff. However, under the instant scheme of arrangement as stated in Table at para 14 above, NTPC is not acting as a generating company (*no power is being procured from the generating stations of NTPC*) but is rather acting as an intermediary in the capacity of an inter-State trading licensee. Section 79(1)(f) of the Act, only specific disputes related to those covered by Section 79(1)(a) to Section 79(1)(d) of the Act are adjudicated upon. **The dispute in the present case relates to the coming into effect of or the very existence of the PSA/PPA for supplying power to UPPCL from two generating plants located in Maharashtra. It is not a case of termination on account of non-payment of tariff or other similar breach of the terms of the contract, which relates to the tariff. Therefore, whether the instant scheme is a composite scheme or not is irrelevant for the instant dispute as no element of tariff regulation is involved.**



22. Learned Counsel of the Respondent, NTPC, has placed heavy reliance on the Hon'ble Supreme Court's judgement in **Energy Watchdog vs. Central Electricity Regulatory Commission**, [(2017) 14 SCC 80] (**Energy Watchdog judgement**), particularly the lines: "*The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act.*", to contend that since the power in the instant scheme of arrangement is envisaged to be supplied from outside the State where the generator is located CERC would have jurisdiction. **However, the Commission is of the view that a judgement ought not to be read as a statute but rather an effort should be made to understand the ratio of the judgement. It is imperative to see the context in which the observations and findings in the Energy Watchdog judgment have been made.** In this regard, reference is apposite to the Hon'ble Supreme Court of India's judgement in *Islamic Academy of Education v. State of Karnataka*, [(2003) 6 SCC 697]. The relevant extract of the said judgement is excerpted herein below:

"Interpretation of a judgment

139. *A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.*

140. *In Padma Sundara Rao v. State of T.N. [(2002) 3 SCC 533] it is stated:*

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 : (1972) 1 All ER 749 (HL)] (Sub nom British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

141. *In General Electric Co. v. Renusagar Power Co. [(1987) 4 SCC 137] it was held:*

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words 'adjudication of the merits of the controversy in the suit' were used by this Court in State of U.P. v. Janki Saran Kailash



Chandra [(1973) 2 SCC 96 : AIR 1973 SC 2071 : (1974) 1 SCR 31] the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

142. In *Rajeswar Prasad Misra v. State of W.B.* [AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] it was held:

"No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact."

143. It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

144. In *Keshav Chandra Joshi v. Union of India* [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom.

146. The judgment of this Court in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] will, therefore, have to be construed or to be interpreted on the aforementioned principles. The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the constitutional or relevant statutory provisions vis-à-vis its earlier decisions on which reliance has been placed."



23. Therefore, a judgement needs to be interpreted specifically on its facts and consequently its findings must be analysed in that light. The context in which the Energy Watchdog judgement has been issued is that there were separate Power Purchase Agreements which had been entered into at different points in time with the approval of the concerned State Electricity Regulatory Commissions, the issue before the Hon'ble Supreme Court was that who will decide the ongoing issues arising out of the existing and operational Power Purchase Agreements - whether it would be the State Commission or the Central Commission. The Hon'ble Supreme Court held that since multiple Power Purchase Agreements are involved, involving different states but only one generator, therefore, the same would qualify to be composite scheme and consequently, CERC would have jurisdiction in such a situation to regulate tariff in that context. **At best, it can be stated that once a Power Purchase Agreement becomes part of a composite scheme, in that event CERC will have the jurisdiction to decide issues concerning the regulation of tariff. However, the present matter involves adjudication of a dispute which has arisen before the commencement of composite scheme.**
24. Learned Counsel of the Respondent, NTPC, has placed reliance Hon'ble APTEL in its Judgment dated 04.09.2012 in Appeal No. 94 and 95 of 2012, titled as '**BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission & Ors**', to contend that the State Commission jurisdiction is carved out in the present matter. **The Commission has gone through the said judgement. The issue in the judgement is on the issue qua determination of tariff, regulating the terms and conditions of tariff and adjudication of dispute involving Generating Companies having a composite scheme or Central Generating Stations.**
25. Further, Hon'ble Delhi High Court has also held in the case of Delhi Regulatory Commission-BSES Rajdhani Power Ltd. V. Aravali Power Company Pvt. Ltd. (APCPL)-
- "14. From the wordings of the provisions of section 86(1)(b) Electricity Act, 2003, it is clear that the regulatory functions of the Commission, inter alia, includes approval of agreement (PPA), determination of price (tariff) and adjudication of PPA related disputes. In adjudication of dispute with regard to the implementation of the PPA, the powers of the Commission are wide enough but not to the extent of allowing dissolution of a PPA. The Commission has to regulate electricity procurement process including the price at which electricity is to be purchased through agreement for purchase of power for distribution and supply with the State. The duty



of the Commission is to see that the agreement for procurement of power should be made in a proper regulated manner at a reasonably arrived price. However, once an agreement is entered into between the two parties with the approval of the Commission, it becomes a bilateral agreement and thereafter it is governed by the terms & conditions Page 13 of 14 of the agreement and not by the directives of the Commission. Once the terms and conditions of the PPA and the tariff is determined by the Commission, the Commission becomes 'functus officio' and cannot interfere with the terms & conditions of the agreement unless agreed by both the parties or there is any observation from a judicial body."

26. Again, in the following case, Hon'ble Supreme Court of India has held in Maharashtra State Power Generation Co. Ltd. Prakashgad V. MERC, 2013 SCC online APTEL 15

"Section 86(1)(b) of the Act provides the **powers to the State Commission to approve the power purchase agreement entered into between the generators and distribution licensees**. This approval has got to be decided only after the proper scrutiny and prudence check. In its scrutiny of power purchase agreement, the State Commission is duty bound to scrutinise and satisfy itself as to the reasonability of the various terms & conditions including the quantum, the price, mode of supply and other financial terms contained therein.

Commission's View

27. Section 86(1)(b) empowers the State Commission to regulate the power procurement for the Discoms including the quantum and price concerning the Power Purchase Agreements. Pertinently, in a situation of tariff based competitive bidding process under Section 63 of the Act, only the adoption of tariff and tariff related disputes for composite scheme projects, have been conferred upon CERC under the Competitive bidding guidelines in line with Electricity Act, 03. The present dispute distinctly relates to whether PSA/PPA could be legally "voided" or "made ineffective" by the Respondents. Section 86(1)(b) & (1)(f) of the Act is much wider in scope as it prescribes that any dispute between licensees, and generating companies, may be adjudicated upon by the State Commission. Therefore, **the present dispute concerning the question whether PSA/PPA could be legally "voided" or "made ineffective" by the Respondents can only be decided by this Commission under Section 86(1)(f) of the Act.**

28. Accordingly, the Commission upholds the maintainability of the instant petition and decides to adjudicate the matter on merit. NTPC is directed to



file its reply on merit of the case within two weeks and UPPCL is directed to file its rejoinder within one week thereafter. The issue of impleadment of Wind Power developers (i) Mytrah Vayu (Brhamani) and (ii) Kutch wind farm developers shall be decided by the Commission upon hearing the matter on next date.

List the matter on 8th June 2021.

(Vinod Kumar Srivastava)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Dated: 13.05.2021

