



Petition No. 1612 of 2020

BEFORE

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Date of Order (07.06.2021)

PRESENT:

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

IN THE MATTER OF: Petition under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019 seeking directions that the Petitioner is not required to initiate fresh biomass-based power procurement competitive bidding process and determination of tariff payable to Gallant Ispat Ltd. on a stand-alone basis.

M/s U.P. Power Corporation Ltd.,
(through its Superintending Engineer, PPA-II),
14th Floor, Shakti Bhawan, 14-Ashok Marg, Lucknow – 226001

----- **Petitioner**

M/s Gallant Ispat Ltd., (through its GM- Commercial),
Plot No. AL-5, Sector-23, GIDA, Industrial Area,
Tehsil Sajanwa, Distt. Gorakhpur,

----- **Respondent**

Following were present:

1. Sh. Deepak Raizada, CE, PPA-RE, UPPCL
2. Sh. Karan Arora
3. Sh. Siteesh Mukherjee, Advocate, UPPCL
4. Sh. Abhishek Kumar, Advocate, UPPCL



ORDER

(Date of Hearing 10.02.2021)

1. The instant Petition is filed by UPPCL in terms of Section 86 (1) (e) of the Electricity Act, 2003 and also further invoking the inherent powers of the Commission under Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019 to pass such orders as may be necessary for meeting the ends of justice and to not initiate fresh biomass based power procurement competitive bidding process in terms of the Order of the Commission dated 19.11.2019 in Petition No. 1509 of 2019 & Petition No. 1510 of 2019.
2. The prayers of the Petitioner are as follows: -
 - a. pass an order directing that the Petitioner is not required to initiate fresh biomass-based power procurement competitive bidding process in terms of the Subject Order.
 - b. determine the tariff rate at which due payment has to be made to Gallant Ispat Limited on stand-alone basis; and
 - c. Pass any order or direction which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Brief facts of the Case

3. The Commission vide its order dated 15.03.2018 in Petition No. 1279/2018 approved the bidding documents for procurement of biomass-based power by UPPCL on long term basis to meet its Non-Solar Renewable Purchase Obligation ("**Non-Solar RPO**"). The tender was published with a ceiling levelled tariff at Rs. 6.463 per unit ("**1st TBCB Process**") based on the cost considered in the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2014 ("**CRE 2014**") for FY 2018-19. Superior Industries Ltd. ("**Superior**") and Gallant participated in the aforesaid bidding process.
 4. UPPCL vide Petition No. 1306 and 1301 of 2018 respectively sought approval of the PPAs dated 06.03.2018 and 13.02.2018 for procurement of 12.5 MW
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power from 35 MW power plant of Gallant situated in Gorakhpur ("PPA") and 3.5 MW from 5 MW plant of Superior situated at Bareilly respectively. The PPAs *inter alia* provided that the tariff for the electricity supplied shall be Rs. 5.56 per unit provisionally and the final tariff shall be the L-1 tariff discovered in the then ongoing bidding process scheduled to be concluded by 30.06.2018. The said PPAs also provided that if the bidding was not concluded within the given time frame, both the parties had the option to exit from the PPA or renegotiate the tariff. The Commission vide its Orders dated 04.04.2018 and 23.04.2018, approved the said PPAs on the conditions mentioned therein.

5. The financial bids were opened on 23.04.2018, and Superior emerged as the L1 bidder with the quoted tariff of Rs. 6.457/Kwh for 3.5 MW of power and Gallant emerged as the L2 bidder with the quoted tariff of Rs. 6.460/Kwh for 12.5 MW of power, both for a period of 20 years against the ceiling rate of Rs. 6.463/unit. Gallant agreed to match the L-1 tariff upon negotiation invitation by UPPCL in terms of the bid documents. However, 1st TBCB process was annulled by UPPCL in view of discovery of non-competitive bids and the bidders were intimated of the same.
6. Subsequently, amended PPA was entered into between Gallant & UPPCL on 13.09.2018 ("Amended PPA") based on renegotiations in terms of PPA. The Amended PPA *inter alia* provided under Clause 1 read with Clause 3 that the first-year tariff of plant shall remain at Rs. 5.56 per unit irrespective of the year of commissioning and total levelized tariff for 12 years shall be Rs. 6.19/unit. Gallant commenced supply of biomass power into the State Grid with effect from 02.11.2018.
7. The Commission vide its Order dated on 31.01.2019 in Petition No. 1375 of 2018 for approval of amended PPA directed UPPCL to conclude the bidding process at the earliest since it was unfair to enter into agreement bilaterally at mutually agreed tariff. UPPCL re-initiated the bidding process of biomass power in February 2019 with ceiling tariff of Rs. 4.81/unit and term of the PPA as 12 years ("2nd TBCB Process"). UPPCL, on 08.02.2019,



communicated Gallant Ispat to participate in the bidding and also that meanwhile any injection of power from Gallant's plant into state grid was at Gallant's risk subject to the final outcome of the above petition.

8. Subsequently, UPPCL during proceedings in Petition No. 1375/2018 apprised the Commission regarding abandoning 2nd TBCB Process for non-participation by any bidder and that UPPCL was resorting to procurement of other renewable energy ("RE") based power to meet its RPO. The Commission directed UPPCL vide its Order dated 18.09.2019 to carry out procurement of RE power based on its obligations and requirement in-line with its earlier orders.
9. Gallant filed Petition No. 1509 of 2019 seeking payments towards cost of energy supplied from 01.11.2018 to 08.02.2019 to UPPCL at the rate of Rs. 5.56/unit in line with the PPA and the Amended PPA. UPPCL also filed Petition No. 1510 of 2019 seeking a regulatory direction as to the rate of tariff that is to be paid by UPPCL to Gallant for supply of power during the aforementioned period.
10. Both Petition Nos. 1509 and 1510 of 2019 were clubbed and keeping in view its observations in Order dt. 31.01.2019 in Petition No. 1375 of 2018, the Commission vide its Order dated 19.11.2019 approved the amended PPA with the condition that tariff from the date of commissioning shall remain fixed at Rs. 5.56 per unit till the discovery of L1 tariff for biomass power through bidding process. After discovery of L1 tariff through bidding process, the same shall be applicable prospectively. The Commission directed UPPCL to again initiate bidding process after doing due diligence to make the bid competitive by attracting bidders.

Accordingly, the present Petition has been filed.

Record of Proceedings

11. The Commission heard the matter on 13.10.2020. During the hearing, Sh. Siteesh Mukherjee, learned Counsel of UPPCL submitted that the Petitioner



in past conducted the competitive bidding process but no bids were received when ceiling tariff was kept at Rs. 4.81 per unit. CRE Regulations, 2019 provided for generic tariff for biomass power for FY 2019-20 as varying tariff of Rs. 7.54 per unit to Rs. 8.52 per unit. Therefore, present Petition was filed before the Commission to determine / prescribe the tariff for the project without any need for UPPCL to conduct a competitive bidding process to determine L-1 price. He added that the Commission is well within its powers to decide cost plus tariff under Section 62 of the Electricity Act, 2003.

12. Sh. Dhruv Mathur learned counsel of M/s Gallant Ispat Ltd. has argued that the maintainability of the petition needs to be first decided. The Commission had directed the respondent (M/s Gallant Ispat Ltd.) to file its counter along with relevant case laws.

13. Thereafter the Commission heard the matter on 10.02.2021 wherein the Commission observed that neither the respondent has filed its counter, nor its counsel was present in the hearing. The Commission reserved the order.

Commission's analysis and decision

14. UPPCL conducted 1st bidding in Feb'18 with ceiling tariff of Rs. 6.463 per unit for 20 years based on the cost considered in the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2014 ("CRE 2014"). However, the same was annulled on technical grounds in May 2018. The PPA dated 06.03.2018 with Gallant Ispat approved by the Commission provided for provisional tariff of Rs. 5.56 per unit till the discovery of L1 tariff (final Tariff) in ongoing bidding process. Subsequently, the parties entered into amended PPA dated 13.09.2018 with condition that the first-year tariff of plant shall remain at Rs. 5.56 per unit irrespective of the year of commissioning and total levelized tariff for 12 years shall be Rs. 6.19/unit. However, the Commission vide order dated 31.01.2019 directed to conclude the bidding process since it was unfair to enter into agreement bilaterally at mutually agreed tariff.



15. UPPCL again conducted bidding in February 2019, after a year with reduced ceiling tariff of Rs. 4.81 per unit, with reduced contract period of 12 years and increased discounting rate. The bidding was aborted for want of bidders. UPPCL at this stage decided not to purchase uncompetitive bio-mass power against wind power available @2.59 to 3.53 per unit for which it had signed PPAs worth 1690 MW of capacity. The Commission while approving amended PPA dated 13.09.2018 has held that tariff from the date of commissioning shall remain fixed at Rs. 5.56 per unit till the discovery of L1 tariff for biomass power through bidding process. After discovery of L1 tariff through bidding process, the same shall be applicable prospectively.
16. UPPCL having conducted the bidding process twice without any result, having fulfilled its RPO obligations for FY 2019-20 and FY 2020-21 and having laid down the road map for fulfilling its RPO obligation till 2029-30 by way of wind, solar and hydro power tie-ups, is not interested in buying Bio-mass power anymore. However, the amended PPA dated 13.09.2018 hold that tariff for tariff from the date of commissioning shall remain fixed at Rs. 5.56 per unit till the discovery of L1 tariff for biomass power through bidding process. After discovery of L1 tariff through bidding process, the same shall be applicable prospectively.
17. The said Road Map makes it amply clear that no further bidding processes are required to be carried out for procurement of energy as there is no requirement under the Non-Solar RPO category. Rather, the tied power in the Non-Solar RPO category till FY 2023-24 is in surplus ranging from 2.5% to 4.7%, which is an adequate buffer in case of slippages in commissioning of existing contracted capacities. Under such conditions, following option is available before UPPCL:
- a. To conduct competitive bidding with ceiling tariff equal to
 - (i) UPPCL's average power purchase rate+ floor price of Renewable Energy Certificate ("REC")



(ii) The tariff specified in the CRE Regulations, 2019 i.e. Rs 7.54/ KWh for FY 2019-20 for biomass plants commissioned in 2018-19

b. To exercise their rights as per applicable provisions of the amended PPA.

18. In Option (i) wherein the ceiling price would be around Rs. 4.68/kWh. UPPCL had earlier kept ceiling price of Rs. 4.81 per unit based on some suppliers expressing interest in supplying around that rate, however, no one had turned up in the bidding. Under Option (ii), ceiling price based on CRE Regulations, 2019 is likely to be in range of Rs 7.75 to Rs. 7.95/ unit keeping in view the 18 months commissioning period under the new bid process which results in commencement of supply from FY 2021-22. However, one of the major disadvantages of having a ceiling price is that bidders tend to cartel by keeping bid prices close to ceiling floor price. The same has also been witnessed in 1st TBCB Process in the present case where against ceiling price of Rs.6.463/kWh, the two bids received offered tariff of Rs.6.457/kWh and Rs.6.460/kWh.

19. The Commission, therefore, prescribes that the ceiling tariff based on Average Power Purchase cost and floor price of REC may be offered to the Respondent's Project on a stand-alone basis, without any need for the Petitioner to conduct a competitive bidding process to determine L-1 price. Presently this would work out to Rs. 4.68 per unit. However, in view of last bid conducted @ceiling tariff of Rs. 4.81 per unit, the Commission prescribes tariff of Rs. 4.81 per unit prospectively i.e., from 01.04.2021 onwards for Gallant. The tariff from the date of commissioning till 31.03.2021 shall be as per amended PPA dated 13.09.2018 i.e. Rs. 5.56 per unit.

Commission's view

The Commission, in view of Respondent having participated in competitive bidding & plant being commissioned prior to 01.04.2019 and supplying power to UPPCL in terms of approved PPA dated 13.09.2018,



prescribes Rs. 5.56 per unit from date of commissioning to 31.03.21 and Rs. 4.81 per unit from 01.04.2021 onwards till the tenure of the amended PPA dated 13.09.2018. In case of either of the parties unwilling to accept Rs. 4.81 per unit w.e.f. 01.04.2021 onwards, may exercise their rights in terms of amended PPA dated 13.09.2018. Further, the Commission directs UPPCL to procure power for their future requirement through a process of competitive bidding under Section 63 of Electricity Act' 03 subject to any deviation getting approved by the Commission.

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Date: 07.06.2021