



Petition No. 1685 of 2021
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order (14.07.2021)

PRESENT:

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member

IN THE MATTER OF: Petition under Section 86(1)(b) of the Electricity Act, 2003 for seeking approval of the Supplementary Power Purchase Agreement on account of addition of Clause 4.10 under Article 4 of the Principal PPA dated 21.11.2008 with regard to Alternative Source of Power supply by the Seller.

1. Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL)
4A, Gokhale Marg, Lucknow 226001.
2. Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL)
Urja Bhawan, Victoria Park, Meerut - 250001
3. Purvanchal Vidyut Vitran Nigam Limited (PuVVNL)
Purvanchal Vidyut Bhawan Vidyut Nagar, PO -BLW
Bikharipur, Varanasi - 221 004
4. Dakshinanchal Vidyut Vitran Nigam Ltd. (DVVNL)
Urja Bhawan, NH-2, (Agra-Delhi Bypass Road)
Sikandra, Agra-282002
5. Kanpur Electric Supply Co. (KESCO)
KESCO 14/71, Civil Lines, KESA House, Kanpur - 208001
6. U.P. Power Corporation Ltd. (UPPCL)
Shakti Bhawan, 14-Ashok Marg, Lucknow-226001 ----- **Petitioner**

Versus

1. Prayagraj Power Generation Co. Ltd.
Shatabdi Bhavan, B-12 & 13, Sector-4, Noida (U.P.), 201301
----- **Respondent**

The following were present:



1. Shri Venkatesh, Counsel PPGCL
2. Shri Abhishek Nangia, Counsel, PPGCL
3. Shri Suhael Butta, Counsel, PPGCL
4. Shri Sanjay Bhargava, PPGCL
5. Shri Pankaj Prakash, PPGCL
6. CE(Planning), UPPCL
7. Mohd. Altaf Mansoor, Counsel UPPCL

ORDER

(Date of Hearing 08.07.2021)

1. The Petitioners and the Respondent had entered "PPA" / "Principal Agreement" dated 21.11.2008 which is valid for a period of 25 years to supply of power up to contracted capacity from Respondent's Thermal Power Station situated at Tehsil Bara, District Prayagraj, Uttar Pradesh. The said PPA is under Case-2 bid as per Guidelines for Determination of Tariff by Bidding Process issued by the Ministry of Power, Government of India (GoI). The Petitioners and the Respondent has entered the 1st Supplementary PPA dated 23.12.2020 for amending the PPA dated 21.11.2008. By means of the said Supplementary PPA, a new clause numbered as "Clause 4.10" under the article head Article 4: "Development of the Project" has been added to the Principal Agreement dated 21.11.2008. The said newly added Clause 4.10 is with respect to Alternative Source of Power supply by the Seller i.e., PPGCL.
2. The Prayers of the Petitioner is as below: -
 - a. Approve the Supplementary PPA dated 23.12.2020 to the PPA dated 21.11.2008 (as contained in Annexure No.5) between the Petitioners and the Respondent for providing the Alternative Source of Power Supply by the Seller.
 - b. Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case.
3. During the hearing, the Commission observed that since this matter being adjudicatory in nature and as per Hon'ble Supreme Court judgement dated 12.04.2018 in Civil Appeal No. 14697 of 2015, Hon'ble Supreme Court concluded that in any adjudicatory function of the State Commission, it is mandatory for a legal member of the Bench. The relevant extracts of the said judgement is as below:

"Conclusion:

114. In view of our observations above, we conclude as under:



i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.

ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

iii. That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.

iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission.

v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.

vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above."

In view of the above and considering the unavailability of the Member (Legal) in today's Quorum, the Commission asked the parties whether they would like to proceed the hearing. The counsel of the parties responded that the matter can be adjourned till the availability of the Member (Legal).

List the matter for next hearing on 29.07.2021.

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Date: 14. 07.2021