



**Petition No. 1709 of 2021**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Date of Order (03.09.2021)**

**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), (e) & (f) of the Electricity Act 2003 read with Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019 for extension in the Schedule Commercial Operation Date ("SCOD") of the Bunda and Prayagraj (previously Nawabganj) Solar Power Plants of the Petitioner for supply of 75 MW of Solar Photovoltaic Power to the Uttar Pradesh Power Corporation Ltd. under the Power Purchase Agreements dated 12.02.2019.

1. Tata Power Renewable Energy Limited (TPREL)  
Corporate Centre, 34 Sant Tukaram Road,  
Carnac Bunder, Mumbai- 400009.

----- **Petitioner**

**Versus**

1. Uttar Pradesh Power Corporation Limited. (UPPCL)  
7th Floor Shakti Bhawan, Ashok Marg,  
Lucknow-226001
2. Uttar Pradesh New and Renewable Energy Development Agency, (UPNEDA)  
Vibhuti Khand, Gomti Nagar,  
Lucknow, 226010

----- **Respondent**

Following were present:

1. Sh. Venkatesh, Counsel, TPREL
2. Sh. Deepak Raizada, C.E (PPA), UPPCL
3. Ms. Namrata Kalara, Sr. Project Officer, UPNEDA
4. Sh. Neil Chatterjee, Advocate, TPREL

*2*



## ORDER

(Date of Hearing 24.08.2021)

1. The Petitioner was issued two Letter of Intents dated 14.12.2018 for the sale of 100 MW of Solar Power upon being selected as one of the successful bidders under RfP issued by UPNEDA on 12.10.2018 for procurement of 550 MW. The Petitioner, TPREL and the Respondent, UPPCL have entered "PPA" on 12.02.2019 (i.e., PPA-I) for the supply of 25 MW Solar Power from the Bunda Project at Distt. Shahjahanpur (U.P) at a levelized tariff of Rs. 3.08 per unit for a period of 25 years. The Petitioner also executed PPA (i.e., PPA-II) on dated 12.02.2019 with the "UPPCL" for supply of 50 MW Solar power at a levelized tariff of Rs. 3.07 per unit for a period of 25 years from Prayagraj Project at Distt. -Bareilly (U.P).
2. The Prayers of the Petitioner is as below: -
  - (a) *Admit and allow the present Petition,*
  - (b) *Extend the Scheduled Commercial Operation Date of the Bunda and Prayagraj Project to 12.09.2021,*
  - (c) *Extend the date of Financial Closure and Conditions Subsequent of the Prayagraj Project under PPA-II,*
  - (d) *Grant any further extension this Hon'ble Commission may deem fit due to further restrictions after March 2021 as may be imposed on account of Covid-19.*
  - (e) *Declare that the events described in the table forming part of paragraphs 10.49 and 11.41 are events in the nature of a force majeure under Article 11.3.1 of PPA-I and II dated 12.02.2019 read with Article 12.1.1 (iv) of the said PPAs, and*
  - (f) *Pass any such order(s) as deemed appropriate in the circumstance of this 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 to be member of the Bench. The relevant extract 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 could be adjourned.

4. After hearing the parties, the Commission adjourned the hearing.

List the matter on 21.09.2021.

(Kaushal Kishore Sharma)  
Member

(Raj Pratap Singh)  
Chairman

Place: Lucknow

Date: 21.09.2021