

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURUGRAM**

CORAM

Ms Jyoti Prasad, Member (Law)

Petition No. : 56 /2021

Date of Hearing :11.01.2022

Date of Order : 19.05.2022

In the matter of:

Petition for approval of Power Purchase Agreement for Purchase of Power through containerized DG Sets to Deliver 400 kW Electric Power round the clock to the existing LT Network Feeder of Electricity Department at Shaheed Dweep

And in the matter of:

.....Petitioner

The Electricity Department,
A&N Administration, Vidyut Bhavan,
Port Blair -744101

Present

For the Petitioner

1. Sh Karuna Jaydhar, Superintending Engineer
2. Smt Rizwana, Executive Engineer
3. Sh Pran Kumar Mistry, Assistant Engineer (Procurement)
4. Smt Usha Kapoor, Assistant Engineer (Planning)

ORDER

1. The Petitioner through this Petition sought the Commission's approval for Power Purchase Agreement (PPA) executed between Electricity Department, Andaman & Nicobar and M/s Express Engineers and Spares Pvt. Ltd. under Section 86(1)(b) of the Electricity Act, 2003.
2. The Commission has heard the Petitioner at length. The Petitioner's submissions in brief are as under:-
 - i. That the existing power requirement in Shaheed Dweep (Neil Island) is met through hiring DG Sets of M/s Express Engineers and Spares Pvt. Ltd. since 2013.

- ii. That Shaheed Dweep is a popular Tourist Centre and a number of resorts are there and more are being under construction. In order to meet the present power demand the Petitioner has decided to purchase 400 KW power through containerized DG set to deliver Power on round the clock basis. Accordingly a proposal for purchase of said power for a period of 3 years was duly approved by the Andaman & Nicobar Admn. vide its letter No. 3-14(64)/2015-Power dated 18.01.2021.
- iii. That a tender notice for “Purchase of Power through containerized DG Sets to Deliver 400 kW Power on round the clock basis to the existing LT Network Feeder at Shaheed Dweep” was issued vide Tender No. EL/PR/124A/Shaheddep/T-01/2021 dated 29.01.2021 with date of Opening on 22.02.2021.
- iv. That in response to the above tender notice, the following three firms submitted their offer and the technical bids were opened on the due date i.e., 22.02.2021: -
- I. M/s Express Engineers and Spares Private Limited.
 - II. M/s Mona Generator Services (P) Ltd., New Delhi
 - III. M/s Sunny Power Tech Pvt Ltd, Port Blair.
- v. That the price bid of the technically qualified firms were opened and analysed by the Technical Evaluation Committee and comparative statement was prepared. M/S Express Engineers and Spares Private Limited, New Delhi emerged as the lowest bidder (L 1). Details of L1 bidder is submitted below:

Name of the Firm	Description	Rate per unit (Rs.)
M/s Express Engineers and Spares Private Limited	Cost of per unit energy (KWh) to be delivered to the grid/LT Bus of Shaheed Dweep Power House for a period of three years (inclusive of operation & maintenance charges, lub oil, taxes & duties, levies & GST but excluding the cost of HSD oil)	0.890/-

- vi. That A&N Administration vide letter No, EL/PR/124A/SHAHEED DWEEP/T-01/2021/302 dated 08.06.2021 conveyed the approval of the competent authority for acceptance of L1 rate offered by M/s Express Engineers and Spares Private Limited.
- vii. That M/s Express Engineers and Spares Private Limited shall deliver minimum 2.4 lakh units per month. In case delivery is less than 2.4 lakh units per month penalty will be imposed on M/s Express Engineers and Spares Private Limited.
- viii. That M/s Express Engineers and Spares Private Limited in normal condition will try to maintain SFC at 3.6 unit per Ltr. In case of any excess consumption beyond 3.6 units per litre that will be recovered from him.
- ix. That COD of new DG Set is yet to be declared therefore cost benefit analysis is being done with available data from existing hiring power plant at Shaheed Dweep for FY 2020-21.

Generation	HSD (Ltr)	HSD SFC	Unit Cost (Rs./KWH)	Total Unit Cost (Rs.)	HSD Cost (Rs./L)	Total HSD Cost (Rs.)	Grand Total (Rs.)	Total Unit Cost (Rs./KWH)
	2	3	4	5=1x4	6	7=2x6	8=5+7	9=8/1
145795	9232 54	3.40	1.17	3680580	65.21	60205393	63885973	20.30

From the above, it is evident that the total unit cost from Hiring Power Plant is much less compare to the Average cost of supply/unit of Rs. 27.45/KWh duly approved by the Commission for FY 2020-21 and Rs. 36.06/KWh claimed by the Petitioner in True-Up Petition for FY 2020-21.

- x. That the Contractor shall keep the Electricity Department, Andaman & Nicobar indemnified against all claims whatsoever in respect of the persons deployed by the Contractor at various points. In case any person so deployed by the

Contractor enters in dispute of any nature whatsoever, it will be the responsibility of the Contractor to contest the same. In case Electricity Department is made party and is supposed to contest the case, the cost will thereof will be reimbursed by the contractor for the actual expenses incurred towards counsel fee and other expenses which shall be paid in advance by the contractor to the Electricity Department, Andaman & Nicobar on demand. Further, the contractor must ensure that no financial or any other liability comes on the Electricity Department as indemnified in this respect.

- xi. That if the diesel rate is taken @ Rs. 86 Per ltr as on date with minimum SFC of 3.6 unit per ltr. The APPC per unit will be Rs. 24.78 Per unit (Rs. 23.89 per unit fuel cost and Rs. 0.890 per unit for fixed cost of DG sets) which is lower than approved Acos of Rs 29.51 per unit.

- 3. The Commission has considered the submissions of the Petitioner. It has examined the Power Purchase Agreement and additional information placed on record by the Petitioner. The Commission has also examined the relevant provisions of the Electricity Act, 2003 and Rules & Regulations made thereunder.

- I. Section 63 of Electricity Act, 2003 provides that:

Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

- II. Section 86(1)(b) of Electricity Act, 2003 provides that:

(1) The State Commission shall discharge the following functions, namely: -

- b) *Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

4. The Commission has observed that the Electricity Department, Andaman & Nicobar has issued a tender notice vide Tender No. EL/PR/124A/Shaheddep/T-01/2021 dated 29.01.2021 with date of Opening on 22.02.2021 for procurement of 400 KW power round the clock to meet existing requirement at Shaheed Dweep. The technical bids were opened on due date i.e. 22.02.2021 and the bids were analyzed by Technical Evaluation Committee M/s Express Engineers and Spares Private Limited was emerged as the lowest bidder (L 1).
5. M/s Express Engineers and Spares Private Limited has quoted Rs 0.890 as rate of per unit energy (KWh) to be delivered to the grid/LT bus of Shaheed Dweep Power House for a period of 3 years (inclusive of Operation and Maintenance Charges, Lub Oil, Taxes & duties, Levies and GST but excludes the cost of HSD Oil).
6. The Andaman & Nicobar Admn.. Vide their letter No. EL/PR/124A/SHAHEED DWEEP/T-01/2021/302 dated 08.06.2021 has conveyed the approval of Competent Authority for acceptance of rate of Rs 0.890 per unit of energy KWh) offered by M/s Express Engineers and Spares Private Limited.
7. The Commission has perused the Power Purchase Agreement and noted as under:-
 - i. That the Contractor shall keep the Electricity Department, Andaman & Nicobar indemnified against all claims whatsoever in respect of the persons deployed by the Contractor at various points. In case any person so deployed by the Contractor enters in dispute of any nature whatsoever, it will be the responsibility of the Contractor to contest the same. In case Electricity Department is made party and is supposed to contest the case, the cost will thereof will be reimbursed by the contractor for the actual expenses incurred towards counsel fee and other expenses which shall be paid in advance by the contractor to the Electricity

Department, Andaman & Nicobar on demand. Further, the contractor must ensure that no financial or any other liability comes on the Electricity Department as indemnified in this respect.

- ii. That if the diesel rate is taken @ Rs. 86 Per ltr as on date with minimum SFC of 3.6 unit per ltr. The APPC per unit will be Rs. 24.78 Per unit (Rs. 23.89 per unit fuel cost and Rs. 0.890 per unit for fixed cost of DG sets) which is lower than approved Average Cost of Supply (Acos) of Rs 29.51 per unit.
 - iii. The Electricity Department shall provide an open area suitable for the installation of all weather proof DG Sets. Any site preparation/ development work if so required shall be carried out by the contractor.
 - iv. That the Raw Fresh Water requirement for topping-up of DG Set, if required will be supplied by the Department.
 - v. That HSD would be supplied by the Department.
- 8 The Commission noted that the procurement of power by the Petitioner is not in accordance with the transparent process of bidding as per the guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003. In this context, the Commission has further noted that in Energy Watchdog Versus. Central Electricity Regulatory Commission & Others and other related Appeals ((217) 14 SCC80) ,the Hon'ble Supreme Court observed that

“..... In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79 (1) (d), Section 79 (1) (b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its

regulatory functions, albeit under Section 79 (1) (b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79 (1) (b) can then be used."

9. It is clear from the above that where the guidelines issued by Central Government under Section 63 covers the situation, the Central Commission shall exercise its regulatory powers under Section 79 (1) (b) in accordance with the guidelines.

However, where there are no guidelines or the guidelines do not deal with a given situation then the Commission's general regulatory powers under Section 79 (1) (b) can be used. Extending the said principle in case of JERC, it emerges that where there are no guidelines or guidelines issued under Section 63 do not cover a situation, the Joint Commission shall exercise its regulatory powers under Section 86 (1) (b) along with Section 63 for approval / adoption of tariff and procurement process of distribution licensee.

10. In the present Petition, the Commission has noted that the guidelines issued by the Central Government under Section 63 of the Electricity Act does not cover the procurement of power from the DG Sets. In the light of the principle enunciated in Energy Watchdog judgement, the Commission approves / adopts the tariff discovered through the tendering process carried out by the Electricity Department, Andaman & Nicobar Administration under Section 86 (1) (b) read with Section 63 and approves the Power Purchase Agreement between the Electricity Department, Andaman & Nicobar Administration and M/s Express Engineers and Spares Private Limited under Section 86 (1) (b) of the Electricity Act, 2003.

11. In the light of above discussion, the Commission is of the considered view that till such time the requisite guidelines for procurement of power from DG Sets under Section 63 of the Electricity Act, 2003 are issued by the Central Government, for any future procurement of power through DG Set, the Petitioner is directed to develop a uniform procedure containing the terms and conditions for procurement through the tendering process and get the same approved from the Commission.
12. Ordered accordingly.

**Sd/-
(Jyoti Prasad)
Member Law**

(Certified Copy)



**(Rakesh Kumar)
Secretary, JERC**