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

Coram*
Sh. S.K.Chaturvedi, Member
Petition No. 102/2013

In the matter of
Review petition under section 94 of the Electricity Act, 2003.
And in the matter of:
M/S Saheli Export Private Limited, Chennai.
And
1. Electricity Department, Puducherry
2. Renewable Energy Agency Puducherry (REAP)
Present:
For the Petitioner
1. Ms. Swapna Seshadri, Advocate, Saheli Export Pvt. Ltd.

ORDER

18.07.2013

M/S Saheli Export Private Limited- petitioner filed Petition No. 39 of 2011 for determination of tariff for 1.0 MW Power from Rooftop PV & Small Solar Power Generation Programme for supply to Electricity Department of Puducherry. The Commission vide Order dated 02.01.2012 dismissed the Petition. The petitioner filed Appeal No. 22 of 2012 titled **Saheli Export Private Limited Versus JERC and others** before Hon'ble APTEL against the Order dated 02.01.2012 of the Commission. Hon'ble APTEL vide judgment dated 29.03.2012 allowed the appeal while observing in Para No. 27 of the judgment as under:-

"To conclude, our findings are that the signing of a valid PPA between the generator and the distribution licensee is not a pre-condition for determination of tariff by the Joint Commission. An MOU or initialed draft PPA would suffice. Accordingly, the Joint Commission is directed to determine the tariff for sale of energy from the Solar Project of the Appellant to the Respondent No. 2 within 45 days from the date of this judgment."

The Commission in compliance of the judgment dated 29.03.2012 of the Hon'ble APTEL restored the petition No.39 0f 2011 and vide order dated 02.07.2012 determined tariff for 1.0 MW Power from Rooftop PV & Small Solar Power Generation Programme for supply to Electricity Department of Puducherry.

The petitioner feeling aggrieved by the order dated 2.07.2012 of the Commission filed appeal No. 161/2012 titled **Saheli Export Private Limited Versus JERC and others** in Hon'ble APTEL.

M/S Saheli Export Private Limited-Petitioner has also filed an application in petition no. 39/2011 stating that ED- Puducherry- Respondent be directed to execute Power Purchase Agreement (PPA) as per the initialled draft PPA. Wherein the Commission passed order dated 27.02.2013 which runs as under:-

Quote

"The Commission in order dated 30.01.2013 observed that following clauses, terms and conditions are either not included or incomplete or vague in the PPA:-

1. Tariff of the project and the conditions related thereto as contained in the Tariff Order dated 2.07.2012 issued by JERC in petition no. 39/2011.

2. The petitioner will neither sell power nor REC to any other party unless explicitly permitted by the licensee.

3. Payment of tariff including rebate, if any, will be as per practice of the utility. Clauses pertaining to GBI to be governed by MNRE Scheme of payment of GBI.

4. Provisions relating to share of CDM as contained in the Tariff Order referred to at Sl. No. 1 above.

5. Specific Number and address of the project in the area of Devampuram.

6. Governance relating to point of interconnection, cost relating thereto, sharing of losses before the licensee's receipt, compliance of JERC (State Grid Code) Regulations, 2010, CERC Regulations on interconnection of Renewable Solar Power Photovoltaic power.

The Commission in the order dated 30.01.2013 directed the parties to submit amended initialled PPA for approval of the Commission after inclusion of the above clauses. The petitioner filed revised PPA before the Commission complying part of the Commission order dated 30.01.2013. The Commission examined the PPA and observed that the parties failed to include clause no. 5 of the order dated 30.01.2013 in the PPA to be approved by the Commission. Hence the parties did not comply all the directions issued by the Commission vide order dated 30.01.2013. The PPA is signed by the petitioner only.

The representative of the petitioner submitted that the petitioner is searching alternate land to the originally proposed for the project. The representative of the respondent submitted that ED- Puducherry is not ready to initial the PPA without incorporating survey no. of the land where the project is to be constructed and compliance of clause 5 of the order dated 30.01.2013.

The Commission observed that the PPA submitted by the petitioner is not initialled by the respondent and directed the petitioner to incorporate all the clauses mentioned in the order dated 30.01.2013 including survey no. of land where the project is to be constructed. The Commission also directed the respondent to examine plant connectivity issue at the new location before submitting initialled PPA.

The representative of the petitioner prayed for long time for inclusion of all clauses of the order dated 30.01.2013 including survey no. of the land where the project is to be installed. The Commission keeping in view that the petition is lingering on since long for want of specific details of the land where the project is to be installed and the petitioner is still unable to disclose specific survey no. of the land where the project is to be installed. Therefore, the petition is kept in abeyance till the initialled PPA is filed for approval of the Commission after compliance of all the directions issued by the Commission including five directions issued in the order dated 30.01.2013".

Unquote

Now, the petitioner feeling aggrieved by the order dated 27.02.2013 has filed the present review petition no. 102/2013 for review of the order dated 27.02.2013 passed in petition no. 39/2011 broadly with submission that the Commission in order dated 27.02.2013 in petition no. 39/2011 decided that the petition is kept in abeyance till the initialled PPA is filed for approval of the Commission after inclusion of survey number of the land where the project is to be constructed. Whereas mentioning of survey number of land in draft PPA for approval of the Commission is not essential. Therefore, petition no. 39/2011 be restored and the draft PPA be approved without mentioning of survey number of the land where project is to be installed.

ED- Puducherry- respondent in reply submitted that the project proponent in the review petition has submitted that they are not in a position to identify land for setting up of the power plant on account of cost factor. ED - Puducherry further submitted that confirmation of Connectivity for evacuation of power generated from the power plant is also considered a vital factor for determination of plant location. Therefore, it is not possible for ED Puducherry to confirm Grid Connectivity without identification of location of land and as per Clause 5.4 of the Guidelines for Rooftop PV & Small Solar Power Generation Programme (RPSSGP) issued by the Ministry of New and Renewable Energy (MNRE), Govt. of India dated 16.06.2010 requires confirmation of ED Puducherry on Grid Connectivity.

In the above circumstance the project proponent may be allowed to identify at least three locations for setting up of power plant, so that ED Puducherry would be in a position to confirm feasible sites for Grid Connectivity and the project proponent can choose any one of feasible sites for implementation of the scheme.

ED - Puducherry further submitted that final PPA is to be executed between ED Puducherry and the project proponent and will be signed by ED- Puducherry only after finalizing of plant location and incorporating land details in the PPA.

The Commission in the order dated 11.06.2013 directed the petitioner to file rejoinder to the written submission of respondent on or before 8.07.2013.

The petitioner did not file rejoinder. The Commission heard Ms. Swapna Seshadri, Counsel for the petitioner at length and has gone through record carefully and thoroughly.

From the record, facts and circumstances of the case it is evident that petitioner has challenged the order dated 2.07.2012 passed by the Commission in petition no. 39/2011 before Hon'ble APTEL in appeal no. 161/2012. The petitioner has also filed an application in petition no. 39/2011 for directions to the respondent to execute initialled draft PPA with a prayer to the Commission to approve the draft initialled PPA as per the order dated 2.07.2012. Hence, it is clear that the petitioner is blowing hot and cold in one breath as before the Hon'ble APTEL petitioner has challenged the order dated 2.07.2012 and in the Commission petitioner has filed an application for execution of the order dated 2.07.2012. The petitioner at the one hand has filed appeal against the order dated **2.07.2012** in Hon'ble APTEL and on the other hand has filed an application for direction to the respondent to execute initialled PPA as per the same order dated 2.07.2012. The petitioner is also not ready and willing to comply order dated 27.02.2013 of the Commission passed in review petition no. 102/2013. The Commission is also of the opinion that if, the order dated 2.07.2012 passed by the Commission is set-aside by the Hon'ble APTEL in appeal no. 161/2012 the exercise of execution of draft initialled PPA and approval of the same will be an exercise in futility and the Commission will have to start de-nove hearing. It will be proper to adjourn the petition sinedie till disposal of appeal no. 161/2012. Therefore, the petition is adjourned sinedie and will be taken up after decision of the appeal no. 161/2012 titled **Saheli Export Private Limited Versus JERC and others** by the Hon'ble APTEL on application of either party or on its own.

Sd/-

(S.K.Chaturvedi)

Member

Chairperson (Vacant)

* Post of the Chairperson is vacant. As per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 for review of its own orders "Coram is all Members". Whereas according to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Member only constitute a valid quorum.

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19.7.13

(R.K. Malik)

Secretary