

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

Coram\*  
Sh. S.K.Chaturvedi, Member  
**Petition No. 102/2013**  
**Date of Order 28.11.2013**

**In the matter of**

Petition under section 94 of the Electricity Act, 2003 for Review of order dated 27.02.2013 passed by the Commission in petition no. 39/2011.

**And in the matter of:**

M/S Saheli Export Private Limited, Chennai. .... Petitioner

**And**

1. Electricity Department, Puducherry
2. Renewable Energy Agency Puducherry (REAP) ..... Respondents

**Present:**

**For the Petitioner**

1. Shri Anand K Ganesan, Advocate, Saheli Export Pvt. Ltd.

**ORDER**

The petitioner - M/S Saheli Export Private Limited has filed the present petition under section 94 of the Electricity Act, 2003 for review of order dated 27.02.2013 passed by this Commission in petition no. 39/2011.

The Commission in petition no. 39/2011 passed order dated 27.02.2013 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**

Feeling aggrieved by the impugned order dated 27.02.2013 the petitioner filed the present petition for review of the order dated 27.02.2013 broadly with submissions 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, the 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 the 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 circumstances 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.

On filing the review petition it is numbered as petition no. 102/2013. The Commission held hearings on 30.04.2013 and 11.06.2013. Before proceeding further it is worthwhile to reproduce a part of the order dated 11.06.2013:-

#### Quote

Learned counsel for the petitioner submitted that they have received the submission filed by the respondent and have sent to the petitioner for filing rejoinder to the submission of the respondent and identification three locations for installation of power plant and prayed for One month time for filing rejoinders and identification of three locations for installation of power plant.

Representative of the respondent further submitted that Ministry of New and Renewable Energy, Govt. of India vide letter No. 29/5(5)/2010-11/JNNSM/ST-Part dated 30.04.2013 intimated all stakeholders and concerned that the Govt. of India is bringing a scheme to supply power to DISCOMS at a fixed levelised tariff of Rs. 5.50 per KW/ hour for 25 years and power is likely to be available by the end of December, 2014. Whereas the Commission in the order dated 2.07.2012 has determined tariff at the rate of Rs. 10.58 per KW for the PPA to be executed between the parties. The tariff determined by the Commission is on very higher side to that of the tariff proposed by the Govt. of India. Therefore, the respondent wants to file petition for revision of the tariff.

The Commission heard learned counsel for the petitioner and representative of the respondent, considered request of the petitioner, submissions made by representative of the respondent and has gone through the file carefully and thoroughly. The Commission acceded request of learned counsel for the petitioner and directed to file rejoinder to the submission of respondent on or before 8.07.2013 with advance copy to the opposite party.

The Commission also observed that the order dated 2.07.2012 passed by the Commission is under Appeal before Hon'ble APTEL and the Commission will take appropriate action at appropriate time on the petition, if any, filed before the Commission for revision of tariff determined by the Commission vide order dated 2.07.2012.

**Unquote**

The Commission again held hearing on 18.07.2013 and in the order dated 18.07.2013 observed and gave following directions as under:-

**Quote**

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- novo 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.

**Unquote**

Hon'ble APTEL vide order dated 12.08.2013 dismissed the appeal no. 161/2012, therefore, the Commission restored the petition no. 102/2013. The Commission held hearing on 19.09.2013 and in the order dated 19.09.2013 directed the petitioner to supply survey number of the land where the project of the petitioner is to be constructed within one week to respondent. The petitioner failed to supply survey number of the land where the project of the petitioner is to be constructed within one week and thereafter upto 29.10.2013.

The Commission again held hearing 29.10.2013 and in the order dated 29.10.2013 observed and gave directions as under:-

**Quote**

The Commission considered the request of learned counsel for the petitioner and observed that the matter is lingering on since long between the parties for one reason or the other. The petitioner is interested in delaying the matter. However, in the interest of the justice and for proper adjudication of the matter, the Commission acceded the prayer of counsel for the petitioner and adjourned the petition to 20.11.2013 for supplying by petitioner survey number of the land where project of the petitioner is to be constructed with advance copy to the opposite side. If, the petitioner failed to supply survey number of the land in time where project of the petitioner is to be constructed the petition shall stand dismissed.

**Unquote**

The petitioner failed to supply survey number of the land where project of the petitioner is to be constructed by 20.11.2013 and thereafter upto 28.11.2013 (today). Counsel for the petitioner today on 28.11.2013 filed an application/ petition for leave of the Commission to withdraw the present petition.

The application/ petition is as under:

**Quote**

The above petition has been filed seeking review of the order dated 27.02.2013 passed by the Hon'ble Commission. The petitioner seeks leave of the Hon'ble Commission to withdraw the review petition.

**Unquote**

The Commission keeping in view the above facts and circumstances as well as prayer of the learned counsel for the petitioner grants leave to the petitioner to withdraw the petition. The Commission has also gone through the order under review as well as the petition for review and reply filed by the respondent and accompanied documents carefully and thoroughly. There is no illegality or infirmity in the order under review. The order under review is as per fact and law on the point. There is no error on face of record. Hence there is no scope for review of the order. Therefore, the present petition is hereby dismissed as withdrawn as prayed for.

Before parting with the present petition the Commission finds and is of the opinion that the main petition no. 39/2011 was kept in abeyance by the Commission vide order dated 27.02.2013. From bare reading of the order dated 27.02.2013 passed by the Commission in petition no. 39/2011 (reproduced above) it is clear that the main petition no. 39/2011 is lingering on for the last more than two years and the petitioner has failed to submit initialled PPA for approval of the Commission after compliance of all the directions issued by the Commission including five directions issued in the orders dated 30.1.2013 and 27.02.2013. Since passing of the order dated 27.02.2013 already nine months have passed,

therefore, the Commission directs the petitioner to comply the order dated 27.02.2013 passed by the Commission in petition no. 39/2011 in totality on or before 20.12.2013 failing which the petition no. 39/2011 shall stand dismissed.

The petition no. 39/2011 is scheduled for hearing on 27.12.2013 at 11:00 AM.

A copy of this order be placed on record of petition no. 39/2011.

Records.

Sd/-

28.11.2013


(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.

Certified Copy

  
(Rajeev Amit)  
28.11.2013  
Secretary