

**IN THE JHARKHAND STATE ELECTRICITY
REGULATORY COMMISSION AT RANCHI**

Case No. 02 of 2018

M/s Jharkhand Renewable Energy Development Agency (JREDA).....Petitioner

**CORAM: HON'BLE DR. ARBIND PRASAD, CHAIRPERSON
HON'BLE MR. R.N. SINGH, MEMBER (ENG)**

For the Petitioner : Shri N.K. Pasari, Advocate

ORDER

Dated: 12th April 2018

1. The case was heard and the petitioner has also filed written submission.
2. In this petition the petitioner, Jharkhand Renewable Energy Development Agency, hereinafter referred to as "JREDA", has filed a petition under Section 63 of the Electricity Act 2003 (hereinafter referred to as "The Act") for adoption of following tariff proposed in para 39 of the petition:-

Sl.No.	Name of Bidders	Category (I/II)	Capacity allocated as per Lol (MW)	Revised allocated capacity to bidders (MW)	Negotiated tariff per unit (Rs.)
1.	M/s MadhavInra Projects Ltd., Vadodara	I	20	15	5.16
2.	M/s Karvy Solar Power Ltd., Hyderabad	I	10	7.5	5.16
3	M/s Renew Solar Power, Gurgaon	II	522	392	4.95
4	M/s OPG Power Generation Pvt. Ltd, Chennai	II	124	100	4.95
5	M/s Suzlon Energy Ltd., Pune	II	175	130	4.95
6	M/s Adani Green Energy Ltd, Ahemdabad	II	50	40	4.95
	Total		901	684.5	

3. The provision of Section 63 of the Electricity Act 2003 reads as follows:

“Section 63 - (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.”

4. Thus the tariff proposed can be adopted by the Commission under section 63 if such tariff has been determined through (i) Transparent Process of Bidding; and (ii) the bidding process has been conducted in accordance with the guidelines issued by the Central Government.

5. As regards the bidding process conducted as per the guidelines of Central Government, Para 16 of the petition is relevant and is quoted below:

“Para 16: Meanwhile, JREDA asked MNRE via letter no.16/2016 dated 05.01.2016 regarding confirmation to formulate its own bidding documents format in compliance of State Solar Policy by suitably customizing the best practices of Centre and State for bidding purpose. The copy of letter is enclosed at Annexure 10.”

6. The petitioner (JREDA) has not brought on record the response of the Ministry of New & Renewable Energy, Government of India, to its request to allow it “to formulate its own bidding documents format in compliance of State Solar Policy by suitably customizing the best practices of Centre and State of bidding process”. In the absence of such approval it cannot be said that the very unique process adopted by the petitioner (JREDA) to arrive at the proposed tariff qualifies the basic requirements of Section 63 of the Act to the effect that the bidding process has been conducted as per the guidelines issued by the Central Government.

7. As regards the other requirement for adoption of proposed tariff under Section 63 of the Act, the tariff should have been determined through transparent process of bidding. We need to examine the process adopted in arriving at the tariff proposed for adoption as mentioned in para 1 above:

(i) As mentioned para 12 of the petition, the petitioner (JREDA) on 03.12.2015 requested Jharkhand Bijli Vitran Nigam Limited (the distribution licensee) for concurrence regarding finalized model Power Purchase Agreement (PPA), Escrow Agreement and Deed of Hypothecation.

(ii) The very next day i.e. on 04.12.2015, the petitioner (JREDA) issued a tender notice for 1200 MW solar PV Grid Project – for 200 MW under category 1 of 25 MW & below, and 1000 MW under category 2 for projects of 26 MW to 500 MW.

(iii) The list of successful bidders and their tariff as given in para 24 of the petition is quoted below:

Para 24: *The list of the successful bidders under Category No.I and Category No.II projects is as below:*

a) Category No. I Projects

Sl.No.	Name of Bidders	Category (I/II)	Bench Mark Tariff (Rupees/Kwh)	Discount Offered (Rupees/Kwh)	Offered Tariff After Discount (Rupees/kWh)
1.	M/s MadhavInra Projects Ltd., Vadodara	10	7.97	2.77	5.20
2.	M/s MadhavInra Projects Ltd., Vadodara	10	7.97	2.68	5.29
3.	M/s Suzlon Energy Ltd., Pune	15	7.97	2.60	5.37
4	M/s Suzlon Energy Ltd., Pune	10	7.97	2.54	5.43
5	M/s Renew Solar Power Gurgaon	11	7.97	2.42	5.55
6	M/s Renew Solar Power Gurgaon	11	7.97	2.42	5.55
7	M/s Karvy Solar Power Ltd., Hyderabad	10	7.97	2.39	5.58
8	M/s OPG Power Generation Pvt. Ltd, Chennai	25	7.97	2.38	5.59

b) Category No.II Projects

Sl.No.	Name of Bidders	Category (I/II)	Bench Mark Tariff (Rupees/Kwh)	Discount Offered (Rupees/Kwh)	Offered Tariff After Discount (Rupees/kWh)
1	M/s Renew Solar Power Gurgaon	35	7.97	2.98	5.08
2	M/s Renew Solar Power Gurgaon	35	7.97	2.85	5.12
3	M/s Renew Solar Power Gurgaon	45	7.97	2.81	5.16
4	M/s Renew Solar Power Gurgaon	50	7.97	2.76	5.21
5	M/s Renew Solar Power Gurgaon	35	7.97	2.69	5.28
6	M/s Renew Solar Power Gurgaon	45	7.97	2.69	5.28
7	M/s OPG Power Generation Pvt. Ltd, Chennai	50	7.97	2.67	5.30
8	M/s OPG Power Generation Pvt. Ltd, Chennai	49	7.97	2.66	5.31
9	M/s Renew Solar Power Gurgaon	50	7.97	2.64	5.33
10	M/s Suzlon Energy Ltd., Pune	50	7.97	2.61	5.36
11	M/s Sunedision Solar Power, Chennai	50	7.97	2.58	5.39

12	M/s Renew Solar Power Gurgaon	40	7.97	2.58	5.39
13	M/s Renew Solar Power Gurgaon	45	7.97	2.57	5.40
14	M/s Sunedision Solar Power, Chennai	50	7.97	2.54	5.43
15	M/s Renew Solar Power Gurgaon	45	7.97	2.53	5.44
16	M/s Suzlon Energy Ltd., Pune	50	7.97	2.52	5.45
17	M/s Suzlon Energy Ltd., Pune	50	7.97	2.52	5.45
18	M/s Adani Green Energy Ltd, Ahmedabad	50	7.97	2.52	5.45
19	M/s Renew Solar Power Gurgaon	30	7.97	2.52	5.45
20	M/s Sunedision Solar Power, Chennai	50	7.97	2.50	5.47
21	M/s Renew Solar Power, Gurgaon	45	7.97	2.50	5.47
22	M/s Acme Solar Holdings Pvt. Ltd., Gurgaon	50	7.97	2.49	5.48

8. Subsequent to determination of tariff through the bidding process, the petitioner (JREDA) issued the Letters of Intent (LOIs) on 23.05.2016 to all the successful bidders mentioned above. The subject of issue of Letters of Intent (LOIs) to successful bidders is discussed in para 25 of the petition and is quoted below:

“Para 25: *Subsequent to the recommendation and approval of SLSC, SLEC & JREDA Management Committee, JREDA issued Letter of Intents (Lols) on 23-05-2016 to all the above successful bidders with following conditions:*

- A) Provide “Unconditional Acceptance” of the Lol and return the copy of the letter duly signed and sealed by the authorized signatory within seven (7) days of the issuance of the Lol.*
- B) Provide valid Performance Bank Guarantee (PBG) @ Rs.30 Lacs/MW in terms of three Nos. Bank Guarantees as per the provisions of RFP within 30 days of the issuance of the LOL.*
- C) Execute the PPA with Jharkhan Bijli Vitran Nigam Ltd. (JBVNL) and other RFP Documents (i.e Default Escrow Agreement and Agreement to Hypothecate-cum-deed of Hypothecation) as per the provisions of RFP within 30 days of the issuance of the Lol.*
- D) Incorporate a SPV (Project Company) for executing the project as per the provisions of RFP within 30 days of the issuance of the Lol.*
- E) Lol’s were issued subject to adoption of rate by JSERC. “*

9. The State Level Screening Committee (SLSC) and State Level Empowered Committee (SLEC) mentioned above being chaired by the Principal Secretary (Energy), Govt. of Jharkhand and the Chief Secretary, Govt. of Jharkhand respectively are constituted under Section 31 of Jharkhand State Solar Power Policy 2015.

10. Interestingly, Jharkhand Bijli Vitran Nigam Limited (JBVNL), from which the petitioner (JREDA) sought concurrence of finalized model of Power Purchase Agreement (PPA), Escrow Agreement & Deed Hypothecation, has not communicated its concurrence; yet, the petitioner (JREDA) issued the Letter of Intents (LOIs) directing the bidders to execute the PPA and other RFP documents within 30 days of issue of LOIs with JBVNL.

11. In absence of concurrence and willingness of Jharkhand Bijli Vitran Nigam Limited (JBVNL) to sign such documents, the direction issued by the petitioner (JREDA) to the bidders to sign these documents within 30 days (subsequently extended by another 15 days) with Jharkhand Bijli Vitran Nigam Limited (JBVNL) seems to be meaningless.

12. The Jharkhand Bijli Vitran Nigam Limited (JBVNL), after the lapse of time prescribed in LOIs, wrote to the Government vide its letter No. 978 dated 27.07.2016, essentially saying:

- (i) Proposed quantum of renewable energy to be procured under these PPAs are way above its requirement; as such it would have to pay fixed charges for the power it does not require;
- (ii) Tariff is above its marginal cost of procurement of Rs. 3 per Kwh and average power purchase cost of Rs. 4.14 Kwh.

The Jharkhand Bijli Vitran Nigam Limited (JBVNL) requested financial support from the Government for execution of PPAs. A copy of the letter was given to the petitioner (JREDA) as well.

13. The issues raised by Jharkhand Bijli Vitran Nigam Limited (JBVNL) were deliberated at different levels in the State Government and finally the decision of the Government was issued vide its Resolution dated 09.10.2017 by the Department of Energy, Government of Jharkhand. Final para of the resolution reads as follows:

“Para 13 of resolution: उपरोक्त परिपेक्ष्य में अंतर मंत्रालय समिति द्वारा Solar RPO की बाध्यताओं के अनुरूप आवश्यक सोलर पावर में परियोजनाओं के माध्यम से सौर उर्जा क्रय करने संबंधित अनुशंसा एवं तदनुसार संबंधित सफल डेवलपर्स के द्वारा Solar RPO के अन्तर्गत विद्युत क्रय एकरारनामा करने हेतु उनके द्वारा समर्पित

संशोधित सोलर संयंत्र की क्षमता (कुल 684.5 मेगावाट) एवं पुनः Negotiated दर पर कंडिका 11 एवं 12 में उल्लिखित शर्तों के आधार पर झारखण्ड बिजली वितरण निगम लिमिटेड के साथ विद्युत क्रय एकरारनामा करने की स्वीकृति मंत्रिपरिषद की बैठक दिनांक 19.09.2017 के मद संख्या - 23 में दी गई है ।”

[Emphasis added]

14. The State Government has mentioned the condition in para 11 and 12 of the said resolution for signing of PPA by JBVNL for 684.5 MW. Those selected to develop 684.5 MW and tariff approved for them are given in Para 9 of the resolution and is given below:

“**Para 9 of resolution:** संबंधित डेवलपर्स के साथ दिनांक 17.07.2017 को झारखण्ड बिजली वितरण निगम लिमिटेड के RPO की बाध्यताओं के अनुरूप सोलर संयंत्र की क्षमता निर्धारण एवं प्राप्त दर को कम करने के संबंध में विचार-विमर्श किया गया । संबंधित डेवलपर्स द्वारा निम्नवत् क्षमता एवं दर पर पीपीएए करने का प्रस्ताव दिया गया :-

Sl.No.	Name of Bidders	Category (I/II)	Capacity allocated as per Lol (MW)	Negotiated rate per unit (in Rs.)	Proposed capacity by bidder (MW)
1.	M/s MadhavInra Projects Ltd., Vadodara	I	20	5.20	15
2.	M/s Karvy Solar Power Ltd., Hyderabad	I	10	5.20	7.5
3	M/s Renew Solar Power Gurgaon	II	522	4.99	392
4	M/s OPG Power Generation Pvt. Ltd, Chennai	II	124	4.99	100
5	M/s Suzlon Energy Ltd., Pune	II	175	4.99	130
6	M/s Adani Green Energy Ltd, Ahemdabad	II	50	4.99	40
	Total		901		684.5

15. The approved capacity of 684.5MW against the bidding for 1200MW, selections of six developers from amongst those who were issued Letters of Intent, approved tariff rates as against the tariff discovered through bidding, tariff discovered through bidding conducted in other parts of the country at the time bid was conducted by the petitioner (JREDA) in December 2015 and as discovered by bids in October 2017 when the State Government approved the negotiated tariff, have all been subjects of several litigations, complaints and media reportings.

However, those are not being discussed here, as the Commission did not examine them on merit. Moreover, they are not relevant at this stage to arrive at the conclusion for the petition under consideration.

16. It is enough to note that the proposed tariff has been arrived at **through negotiations** and has not been discovered through transparent bidding process as required under Section 63 of the Act. The tariff mentioned in the resolution is somewhat different than what has been proposed in the petition under consideration i.e. Rs.5.20 and Rs.4.99 as against Rs.5.16 and Rs.4.95 for projects in Category I & Category II respectively.

17. Thus, this petition under consideration fails to meet both the essential components of Section 63 of the Act- (i) bidding to be conducted as per the guidelines of Government of India, and (ii) determination of tariff through transparent process of bidding. As such, the petition for adoption of tariff cannot be accepted and approved.

18. It is interesting to note that even today the concurrence of distribution licensee Jharkhand Bijli Vitran Nigam Limited (JBVNL) for signing PPAs has not been brought on record.

19. The State Government approved the signing of PPAs by JBVNL at the negotiated tariff with certain conditions mentioned in Para 11 & 12 of the said resolution dated 09.10.2017. Some of the conditions mentioned are very onerous for JBVNL. The para 11 (i) of the resolution is reproduced below :

“**i** : राज्य सरकार पर अतिरिक्त वित्तीय भार नहीं पड़े इस हेतु उर्जा विभाग झारखण्ड बिजली वितरण निगम लि० को निर्देशित कर कि निगम शतप्रतिशत विद्युत विपन्न निर्गत कर उसकी शतप्रतिशत वसूली की कार्रवाई करें । उदय योजना में घाटे को कम करने, वसूली क्षमता बढ़ाने, प्रत्येक फीटर प्वाइंट पर उर्जा अंकेक्षण लागू करने, आइ०टी० और टेक्नोलॉजी का इस्तेमाल कर सभी उपभोक्ताओं को वसूली दायरे में लाने, विद्युत चोरी के विरुद्ध सघन अभियान चलाने तथा एटी एण्ड सी० हास को कम करने की दिशा में कार्य कर विद्युत क्रय एवं विक्रय के अन्तर को कम करने पर जोर दिया जायगा जिससे राज्य सरकार पर पड़नेवाले अतिरिक्त भार को यथासंभव शून्य किया जा सके ।”

CONCLUSION

For want of - (a) concurrence of JBVNL to sign PPAs at the negotiated tariff under conditions mentioned in the resolution of the State Government and (b) the approval of Government of India to the process adopted by the petitioner (JREDA) as sought by JREDA from MNRE, and also the proposed tariff failing to meet the essential requirements of Section 63 of the Act, the petition for adoption of tariff of Rs. 5.16 per unit for the projects upto 25MW, and Rs. 4.95 per unit for the projects from 26 MW to 500 MW is not approved.

Sd/-
(R.N. Singh)
Member (Tech)

Sd/-
(Arbind Prasad)
Chairperson