

Jharkhand State Electricity Regulatory Commission

Ranchi

Form of Proceedings

Case No. 03 of 2018

Jharkhand Bijli Vitran Nigam Limited (JBVNL) Petitioner
Vrs.
Adhunik Power & Natural Resources Ltd. Respondents

For the petitioner : Mr. Navin Kumar, Mr. Amitabh and
Mr. Amit Sinha, Advocates

For the Respondents : Mr. Sumeet Garodia, Advocate

Sl.No	Date of Proceeding	Proceeding of the Commission with signature	Office action taken with date
1	2	3	4
05	18.07.2018	<p>Heard.</p> <p>A copy of Order dated 6th June, 2018 passed by Hon'ble Central Electricity Regulatory Commission (CERC) in Petition No. 305/MP/2015 and Petition No. 255/MP/2018 has been brought on record in which it has been observed by Hon'ble CERC that the petitioner (Adhunik Power and Natural Resources Limited) has a composite scheme for generation and supply of electricity in more than one State and this Commission (CERC) has the exclusive jurisdiction u/s 79 (1) (b) to regulate the tariff of the petitioner (APNRL) including adjudication of dispute relating to tariff. Therefore, the petitioner (APNRL) shall also be required to approach this Commission (CERC) for supply of power to JBVNL.</p> <p>Further, the Hon'ble CERC has also observed that the</p>	

petitioner (APNRL) has approached this Commission (CERC) in Petition No. 84/MP/2018 for amendment to the PPA/PSA for supply of power to TANGEDCO in order to pass on the benefits of the discount under SHAKTI Scheme. The Commission (CERC) in its order dated 18.05.2018 in Petition No. 84/MP/2018 has held that this Commission (CERC) has the jurisdiction to regulate the tariff of the project of the petitioner (APNRL) u/s 79 (1)(b) of the Act and has also approved the amendments to the relevant PPA/PSA.

Ld. Counsel for the respondent (APNRL) submitted that the instant petition in respect to PPA dated 15.02.2018 under SHAKTI Scheme may be disposed off in the light of the Order of Hon'ble Central Electricity Regulatory Commission.

In view of the above, the JBVNL/APNRL is at liberty to approach the Hon'ble CERC for approval of the PPA dated 15.02.2018 under SHAKTI Scheme.

The petition in respect of PPA dated 15.02.2018 under SHAKTI Scheme is disposed off, accordingly.

Sd/-
Chairperson

Views of Member (Engg.)

The said petition No. 03 of 2018 dated 07.03.2018 regarding approval of Principal PPA dated 28.09.2012 & Supplementary PPA dated 06.11.2017 was actually bifurcated in two parts 1st part being Principal PPA for purchase of 122.85 MW of Power and Supplementary PPA for 66 MW and 2nd part being supplementary PPA between Jharkhand Bijli Vitran Nigam Limited (JBVNL), the

		<p>State distribution company and M/s Adhunik Power & Natural Resources Limited (APNRL) supplying power of 122.85 MW to State DISCOM regarding passing on the discount of 3 Paise/unit as per SHAKTI Scheme. This 2nd part of the petition was heard on 18.07.2018 after JBVNL responded to JSERC letter No JSERC/Case No. 03 of 2018/110 dated 21.05.2018 on 13.07.2018 in the light of direction of Hon'ble High Court, Ranchi to respond by 2nd July 2018.</p> <p>I do not agree with the opinion of Hon'ble Chairperson, JSERC while disposing of the petition due to reasons mentioned below:-</p> <ol style="list-style-type: none"> (1) Actually the petitioner is the JBVNL which is under exclusive jurisdiction of JSERC. (2) It has entered into an agreement for a discount of 3Paise./unit while making payment to M/s APNRL. (3) The principal PPA was entered into, in the light of MOU between M/s APNRL and the Jharkhand State Govt. with the condition of supplying 12% at only energy charge ie privileged price as it was facilitated by GoJ and the rest 13% at fixed and energy charge which were to be fixed by JSERC. (4) JSERC used to issue tariff orders till date for supply of power. (5) JSERC have been allowing the Power Purchase Cost while processing the tariff order of JBVNL. (6) JSERC has issued verdict with reference to PPA entered into. (7) The tariff issued by JSERC Has been valid only for Jharkhand State region as referred by the petitioner JBVNL, 64(5) clause of the Electricity Act, 2003 quote:- <i>“Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties</i> 	
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intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.”

- (8) It would have been better that 1st part of the petition i.e. PPAs were disposed of avoiding undue delay as requested earlier for this being a matter of mass public interest of Jharkhand State. The said petition was filed on 07.03.2018. And now we have taken up the processing of 1st part of petition i.e. Principal PPA and supplementary PPA.

With the above points, I disagree with the opinion of Hon’ble Chairman, JSERC and I do not find any reason restricting the State DISCOM entering into an agreement while passing on the discount of 3Paise/unit in making payment for power purchased through SHAKTI Scheme, to M/s APNRL, if eligibility criteria fulfilled.

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

Central Electricity Regulatory Commission in its order dated 6th June 2018 passed in Petition No. 305/MP/2015 and Petition No. 255/MP/2017 has concluded as follows:

“Para 16 – In view of the above discussion, we hold that the petitioner has a composite scheme for generation and supply of electricity in more than one State and this Commission has the exclusive jurisdiction under Section 79(1)(b) to regulate the tariff of the petitioner including adjudication of disputes relating to tariff. Therefore, the petitioner shall also be required to approach this Commission for supply of power to JBVNL.”

Thus, if the jurisdiction lies with Central Electricity Regulatory Commission, it is not open for JSERC to make any decision relevant to SHAKTI scheme or any other scheme relating to power purchase from APNRL by JBVNL. CERC in arriving its conclusion that JSERC has no jurisdiction regarding determination of tariff has discussed, in detail, in para 14 of its order dated 6.6.2018 as to how Section 64(5) of the Electricity Act 2003 under which an exemption is granted to the Distribution licensee and the Generating Company to approach State Commission instead of Central Commission is not relevant in the case of APNRL. The last portion of para 14 of the order of CERC is quoted below:

“Para 14 :In the above quoted para, the Hon’ble Supreme Court has observed that the non-obstante clause in Section 64(5) clearly indicates that in case of inter-State supply, transmission and wheeling, the Central Commission alone has the jurisdiction. Notwithstanding the jurisdiction being with Central Commission, by application of the parties concerned, the jurisdiction can be given under Section 64(5) to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. “By application of the parties concerned” would mean the parties to the inter-State supply in terms of Section 64(5) of the Act i.e. parties to the inter-State supply involving territories of two States. If the party who intends to make inter-State supply and the party who intends to receive such inter-State supply are located in the same State or the inter-State supply to more than two States, then the requirement of inter-State supply “involving the territories of two States” are not fulfilled and the provisions of Section 64(5) shall not be attracted. In the present case, generation of electricity and supply thereof qua the PPA of JSEB/JBVNL takes place within

the same State. Moreover, there is also arrangement for supply of electricity from the project to three States. Therefore, the requirement of inter-State supply involving the territories of two States is not fulfilled in case of supply of power by the petitioner to JBVNL.”

As CERC has rightly pointed out that Section 64(5) of the Electricity Act, 2003 applies only when it relates to inter-State involving two States which is not the relevant situation in the present case. The order of CERC is based on the order of the Hon’ble Supreme Court and there is detailed discussion while arriving at the said conclusion by the CERC. It is not required to quote the entire argument given by CERC.

In view of the above, in exercise of the power vested under Section 92(3) of the Electricity Act 2003, I cast my vote to conclude that in the present case CERC has the exclusive jurisdiction and I make no comment on the merit of the case. I find no reason to differ with the conclusion of the CERC that APNRL is a composite scheme and CERC has the exclusive jurisdiction.

As observed earlier, APNRL/JBVNL is at liberty to approach Central Electricity Regulatory Commission.

Sd/-
(Arbind Prasad)
Chairperson