

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

Case No. 03 of 2020

Jharkhand Bijli Vitran Nigam Limited Petitioner

Versus

Solar Energy Corporation of IndiaRespondent

**CORAM: HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Mrinal Kanti Ray, Advocate and Rishi Nandan,
GM-JBVNL and Anjana Das, ESE-JBVNL

For the Respondents : Ms. Tanya Sareen, Advocates-SECI

For the Intervenor : Mr. Aniket Prasoon ,Ms. Shweta Vashist, Mr.Servesh
Kumar Singh and Mr. Prem Mardi, Advocates- Clean
Solar Power (Jodhpur) Pvt. Ltd.

Date -30thAugust,2022

1. The instant petition has been brought by the petitioner, Jharkhand Bijli Vitran Nigam Limited (**JBVNL**) for approval of Power Sale Agreement (**PSA**) between JBVNL and Solar Energy Corporation of India (**SECI**) for procurement of 700 MW Solar Power to be commissioned by various Solar Power Developer (**SPDs**), purported to be filed under Section 63 and Section 86 (1) (b) of the Electricity Act, 2003 and in terms of directives issued by Jharkhand State Electricity Regulatory Commission (**JSERC**) in its tariff Order dated 28thFebruary, 2019 on True up for FY 2016-17 & FY 2017-18, Annual Performance Review (**APR**) for FY 2018-19 and Annual Revenue Requirement (**ARR**) & Tariff for FY 2019-20 of JBVNL to strictly comply with Renewable Purchase Obligation (RPO) for future years and to submit quarterly compliance to this Commission.
2. The prayers of the petitioner-JBVNL are as under:
 - I. To admit the petition for approval of PSA between JBVNL and SECI for 700 MW ISTS connected solar power in accordance with under Section 63 and 86 1(b) of the Electricity Act, 2003 in order to enable it to fulfil its RPO.
 - II. To pass any other order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.
 - III. To condone any error/omission and to give opportunity to rectify the same.

3. The Petitioner-JBVNL signed PSA with SECI; as such SECI has been impleaded as necessary party - Respondent in this case. The matter was heard on several dates and finally the order was reserved on 16.08.2022.

The brief facts of the case as submitted by the parties are as follows:

4. The Petitioner-JBVNL is obligated to fulfil Renewable Purchase Obligation (RPO) in accordance with the Jharkhand State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2016 and its amendments thereof but due to paucity of Renewable Sources, the petitioner-JBVNL had not been able to fulfil its RPO and the procurement of 700 MW Solar Power for which JBVNL has signed PSA with SECI would help JBVNL to fulfil its RPO in future years.
5. Solar Energy Corporation of India (SECI) has been designated as the nodal agency for implementation of MNRE scheme for setting up of Inter State Transmission System (ISTS) connected Solar/Wind projects with mandate to call for bids under tariff based competitive bidding process (as per the Guidelines for tariff based competitive bidding process for procurement of power from Grid connected Solar PV power projects issued by Ministry of Power).
6. Tariff based competitive bidding was held for ISTS Tranche-I Solar scheme for procurement of an aggregate capacity of 2000 MW. SECI had issued the Request for Selection Document (RFS) dated 30.01.2018 as per the Guidelines notified by Govt. of India for selection of Solar Power Developers under the said ISTS scheme.
7. In pursuance to the above said bidding six bidders were declared successful namely (1) ACME Solar holdings Limited for 600 MW capacity, (2) Shapoorji Pallonji Infrastructure Capital Company Private Limited for 250 MW capacity, (3) Hero Solar Energy Private Limited for 250 MW capacity, (4) Mahindra Susten Private Limited for 250 MW capacity, (5) Azure Power India Private Limited for 600 MW capacity and (6) Mahoba Solar (UP) Private Limited for 50 MW capacity. SECI entered into PPA with Solar Power Developers (SPDs) at tariff discovered under the bidding process and enter into back to back Power Sale Agreement (PSA) with power utilities to enable them to fulfil their RPO. SECI therefore acts as an intermediary agency in purchase and sale of energy to realize the economies of scale.

8. SECI vide letter no. SECI/Power Trading/2000MW Solar/2018/4243 dated 27.02.2018 informed JBVNL that it had published RFP for 2000 MW Solar ISTS schemes to be procured at upper limit of Rs 2.93/kWh. SECI further requested JBVNL to purchase power being offered vide the given RFP.
9. Thereafter reverse e-auction was conducted by SECI on 2nd July, 2018 for total of six (6) bidders which were selected for supplying of 2000 MW solar power. The weighted average tariff discovered through the reverse bidding was Rs. 2.502 with additional Rs. 0.07 as trading margin. Hence, the total effective tariff payable by JBVNL for solar power from SECI comes out to be Rs. 2.572/kWh.
10. It was submitted that the Ministry of Power, Govt. Of India has waived off Inter-State Transmission charges and losses for sale of power by Solar and Wind power plants provided such projects are commissioned before 31st March, 2022 vide its notification 23/12/2016-R&R dated 13th February, 2018. The waiver would be applicable for whole life of the plant i.e. till 25 years. Hence, even at JBVNL's periphery, the effective tariff of Solar power from SECI comes out to be same i.e. Rs. 2.572/kWh.
11. The petitioner-JBVNL with regard to cost effectiveness of the PPA filed here for approval, submitted that while deciding in favour of signing PSA with SECI, JBVNL has exercised due diligence and opted for cheapest solar power offered to it, as JREDA vide its letter no. 761/2018 had sent proposal for executing PPA for 685 MW of solar power at Rs. 5.16/kWh for projects upto 25 MW and Rs. 4.95/kWh for projects from 26 MW to 500 MW. Besides, NTPC vide its letter no. CC:CD:NOKH dated 06.12.2017 had apprised JBVNL regarding development of 980 MW NOKH Solar PV plant with a ceiling tariff of Rs. 3.00/kWh. Again, NTPC informed JBVNL that in reverse auction conducted by it, tariff for Solar power has been discovered at Rs. 2.66-Rs2.67/kWh including trading margin.
12. The Petitioner-JBVNL submitted that in order to fulfil its RPO, Board of Directors of the JBVNL had also given approval for purchase of 700MW Solar Power from SECI to meet Solar Renewable Energy Purchase Obligation of JBVNL.
13. It was further submitted that the price discovered under present competitive bidding process is attractive and beneficial for JBVNL as the average power purchase cost for JBVNL in FY 2018-19 was coming to be

- Rs. 4.08/kWh, as such the power procured would not help JBVNL in fulfilling its RPO but also help it in reducing its power purchase cost.
14. The Respondent-SECI subsequently submitted that Arina Solar Power Limited, one of the SPDs identified for supply of 250 MW Solar Power to the petitioner-JBVNL has purported to terminate the PPA on alleged grounds of force majeure and on 30.07.2020 filed a petition no. 605/MP/2020 before the Central Electricity Regulatory Commission claiming consequential reliefs for termination of PPA.
 15. The Respondent-SECI submitted that the proposal of the uniform tariff to all the procurer of the 2000 MW including the JBVNL was not approved by the Central Electricity Regulatory Commission as a result it has become necessary to map the PPAs relevant to each state procurers and in the case of JBVNL for 700 MW are mapped as (1) Azure Power India Private Limited for 200 MW capacity, (2) Clean Solar Power Gulbarga (Jodhpur) Private Limited for 250 MW capacity, and (3) Arina Solar Private Limited for 250 MW. The mapping of the projects for supply to JBVNL has been done based on the Long-Term Open Access Availability from the place of Generation to the Jharkhand Periphery.
 16. It was submitted by the Respondent-SECI that the Central Commission has adopted the tariff of the individual projects of each bidder selected in pursuance of the competitive bidding of ISTS scheme and the Central Commission has not approved the pooled tariff/weighted average tariff, as such the admissible tariff payable by the petitioner is the individual tariff of the power projects which are mapped for supply to the petitioner-JBVNL for the respective quantum of supply.
 17. It was submitted with regard to the trading margin of Rs. 0.07/kWh that the trading margin of Rs. 0.07/kWh is mutually agreed to between JBVNL and SECI in the PSA and is in consistent with the Regulation 8 (1)(d) of the Central Electricity Regulatory commission (Procedure, Terms and Conditions for Grant of Trading License and other Related Matters) Regulations, 2020 which gives choice to the contracting parties to mutually agree on Trading Margin.
 18. In the meanwhile M/s Clean Solar Power (Jodhpur) Pvt. Ltd. (100% owned subsidiary of M/s Hero Solar Energy Private Limited i.e. parent Company of the applicant) filed an application seeking impleadment as a proper and necessary party in terms of the Principles analogous to Order I Rule 10(2) of the Code of Civil Procedure, 1908 read with Regulation 29 and 55.2 of the JSERC (Conduct of Business) Regulations, 2016 and

other relevant applicable provisions in view of the inordinate delay in approval of the PSA/power procurement from its project which has come to a standstill and the power generated from the applicant's project is to be procured by the petitioner-JBVNL in the state of Jharkhand through the trader/nodal agency i.e. SECI.

19. It was submitted by the intervenor/applicant that it will be able to set up the project once the PSA/power procurement is approved by this Commission and the electricity generated from the applicant's project will be procured by JBVNL. The inordinate delay in approval of the PSA has effectively restrained the disbursements of funds by the lenders, thereby delaying the execution of the applicant's project.
20. The Petitioner opposed the impleadment application of the intervenor M/s Clean Solar Power (Jodhpur) Pvt. Ltd and submitted that the intervenor is not a necessary party in the instant case and it has no locus standi as well as there is no brevity of contract between JBVNL and the proposed intervenor. Hence, the intervention application is fit to be dismissed.

Commission's Observations:

21. We considered the submission made by the parties and perused the materials available on records.
22. M/s Clean Solar Power (Jodhpur) Pvt. Ltd. has prayed for impleadment as party in this case. Since, it is related with the matter through M/s Hero Solar Energy Private Limited, hence for proper justice it should be get impleaded in this case and it will not affect any other party.
23. JSERC in compliance of policy decisions by Ministry of Power, Govt. of India has set the target of RPO both for solar and non-solar power to be fulfilled by all its obligated entities. Hence, all the obligated entities of the State should take sincere efforts to procure renewable energy from different sources to fulfil their RPO target. Therefore, the decision of the JBVNL to procure 700 MW Solar Power is in line to its power procurement plan to meet RPO.
24. Under Section 86 (1)(b) of the Electricity Act, 2003, the State Commission has the responsibility to regulate the electricity purchase and procurement process of Distribution Licensees. Hence, the Distribution Licensee is obligated to get the PPA signed by it, approved by the Commission.
25. The Solar power in question is being procured for 25 years by JBVNL through PPA signed between SECI and JBVNL and since one of the

signatories of the PPA is SECI, whose license has been issued by CERC and as such the disputes between the signatories, if any, would be adjudicated by CERC under section 79(1)(f) of the Electricity Act, 2003.

26. As regards to adopt the rate of the Solar power, we are of the view that as SECI is procuring Solar power from different Solar Power developers and sell it to different Utilities (Discoms) of various States including JBVNL, the CERC is the appropriate Commission to adopt the instant tariff u/s 62 & 63 of the Electricity Act, 2003. This Commission can not adopt the tariff under Section 63 of the Electricity Act, 2003. The role of this Commission u/s 86(1)(b) of the Electricity Act is limited viz. whether to allow the JBVNL to purchase or not to purchase such power from SECI through PPA for 25 years.
27. We have considered the submissions of the petitioner that the power procured through SECI shall certainly be cheaper than any other power procured through direct competitive bidding and shall help the petitioner to meet its specific Solar RPO requirement at a cheaper cost for its consumers.
28. The Commission finds that the instant proposal for procurement of 700MW solar power from SECI has been duly approved by the Board of Directors of JBVNL. JBVNL requires such power to fulfil its Renewable Purchase Obligation (RPO) as per JSERC (Renewable Purchase Obligation and its Compliance) Regulations, 2012 and amendments thereof.

In the result, it is ordered as;

ORDER

29. The application of the intervenor is allowed and M/s Clean Solar Power (Jodhpur) Pvt. Ltd. is impleaded as party Respondent in this case.
30. Considering the facts and circumstances mentioned herein above, the prayers of the petitioner are allowed and the Commission approves the proposal for procurement of 700 MW Solar power through SECI.

The prayer of the Respondent-SECI to adopt/fix the tariff cannot be granted by this Commission being beyond its jurisdiction.

31. The petition is disposed off accordingly.

Sd/-
(Mahendra Prasad)
Member(Law)

Sd/-
(Atul Kumar)
Member (Technical)