

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

Case No. 14 of 2020

Tata Power Company Limited (TPCL) Petitioner

Versus

Tata Steel Limited Respondent

**CORAM: HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)
HON'BLE MR. P.K. SINGH, MEMBER (LEGAL)**

For the Petitioner : Ms Richa Sanchita, Advocate
For the Respondent : Mr. Bishwajeet Kumar, Representative, TSL

ORDER

Date -02nd September 2020

1. The petitioner, Tata Power Company Limited (TPCL) has submitted a petition purported to be filed under Section 86 (1) (b) of the Electricity Act, 2003 read with Article 18.6 of the revised Power Purchase Agreement (PPA) dated 21.03.2018 for approval of SECOND amendment in the agreement as executed between Tata Steel Limited and TPC with an object to pass on the discount in tariff for the remaining life of the plants (30 years from COD as per PPA) on the proportionate generation due to consumption of coal sourced under Third Round of linkage auction conducted under Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI).

2. The Prayers of TPCL are as under :

"(a) Initiate the proceedings for approval of the Second Amendment Agreement.
(b) Approve the Second Amendment Agreement, after submission of LoI by the petitioner, to be executed between the petitioner and TSL;
(c) Pass such other Order/s, as this Hon'ble Commission may deem fit and proper, keeping in view the facts and circumstances of the case."

3. **Submission of the Petitioner :**

It is submitted that the factual matrix of the case may be appreciated in the following manner : -

A. TPCL had entered into a revised long term PPA dated 21.03.2018 with TSL (replacing the original PPA dated 12.09.1997) under Section 62 of the

Electricity Act, 2003 for TPCL's unit no.2 and 3 of Jojobera Plant, it is valid up to 31.01.2031 and 31.01.2032 respectively.

B. TPCL has been supplying power under the PPA by utilizing Imported/E-Auction/Market Coal to meet the shortage of Coal arising after expiry of FSA with MCL on 30.04.2018, which has increased the fuel supply risk also.

C. Ministry of Coal, Government of India has notified the Scheme for Harnessing and Allocating Koyala (Coal) in India popularly known as SHAKTI Policy.

D. Three rounds of auctions have been completed under the said SHAKTI Policy and TPCL for its Unit 2 and 3 (IPP units) of Jojobera Power Plant completed the registration process as a "specified End Use Plant" and participated in the Second and third Round of Auction completed on 22nd May, 2019 and 11th May 2020 respectively.

E. Second Round of linkage auction was completed on 22nd May, 2019, Tata Power could get allocation of 464300 Tons of coal per annum offering a 4 paise discount in tariff on the proportionate generation due to consumption of sourced coal from three different subsidiaries of CIL.

G. It was submitted that as per procedural requirement of SHAKTI Policy related to compliance of the specified clauses in the Scheme Document of Second Round issued on 18.03.2019, existing PPA dated 21.03.2018 underwent an amendment (hereinafter referred to as 'FIRST Amendment Agreement') to pass on the discount in Tariff which was approved by this Commission vide order dated 6th September, 2019 in case no. 14 of 2019 and subsequently, FSA was executed with ECL, CCL and MCL on 09.10.2019, 03.01.2020, 10.02.2020 respectively for commencement of supply of coal.

H. It was further submitted that the Second Round of linkage auction under SHAKTI policy, in the third round also, Tata Power has been able to get allocation of coal provisionally and for commencement of the supply of coal sourced under Third round vis-à-vis for passing on the discount in tariff, the existing PPA dated 21.03.2018 is required to be amended for the Second time (hereinafter referred to as SECOND amendment Agreement)

I. It was submitted that on 08.01.2020, PFC consulting Limited (PFCCL), the Authorised representative of CIL for conducting the Third Round of auction, issued Notice inviting Registration (Registration Notice) and liberty was granted to the bidders who had already registered their 'Specified End Use Plant' on the electronic platform during any of the previous rounds of auction of coal linkages under paragraph B (ii) of the SHAKTI Policy were not required to register the said 'Specified End Use Plant' again under the third round of auction.

J. It was further submitted that on 08.01.2020, PFCCL issued another notice inviting expression of interest. In the EOI notice, PFCCL announced linkage auction under para B (ii) of SHAKTI policy dated 22.05.2017 and amendment thereof for power producers/IPPs having already concluded long term PPAs as on 17.05.2017 for a third round and to submit their EOI in accordance with the "Request for submission of EOI" and the interested parties were required to submit their EOI by 23.01.2020.

K. The said PFCCL issued another notice informing the extension of date of registration and submission of EOI by the interested parties to 07.02.2020 and accordingly TPCL for its Specified End Use Plant submitted EOI to participate in third round of auction on 07.02.2020.

L. It was further submitted that the auction process was initiated wherein bidding under IPO (Initial Price Offer) stage and SPO (Subsequent Price Offer) stage was conducted on 08.05.2020 and 11.05.2020 respectively. The petitioner participated in the Auction process and got the allotment of 5,77,100 Tons per annum provisionally from CCL, a subsidiary of CIL.

M. It was pointed out that the provisional bidder were required to submit a year-on-year tariff discount stream for the source from which quantity is allocated on provisional basis, for the remaining terms of each concluded PPAs (Tariff Discount Stream) and accordingly, TPCL has submitted the discount stream for unit 2 and 3 on MSTC portal against the allocation of Coal from CCL in the third round.

N. It was submitted that TPCL issued a letter on 21.05.2020 to the respondent-TSL inter-alia explaining the allocation of Coal to TPCL under the SHAKTI policy and forwarded the copy of the draft Second amendment agreement to the existing PPA for concurrence which was agreed by the respondent-TSL vide its email dated 05.06.2020 and 11.07.2020.

O. It was pointed out that the draft terms and conditions of Agreement (Second Amendment Agreement) proposed for approval before this Commission are based on previously approved for first Amendment agreement and the formula for the discount computation in the proposed draft second Amendment agreement are aligned with the formula approved for the first amendment agreement.

P. It was pointed out that as per the scheme document, the petitioner is required to submit amended PPA after due approval of this Commission within 60 days of issuance of LOI.

Q. It was further pointed out that as per Clause 3.6.8 of the Scheme, within 60 days of issuance of LOI, TPCL is required to inter-alia submit the copy of the executed Second Amendment Agreement along with the approval from the appropriate Commission and such approval of the appropriate Commission is a pre-condition for execution of FSA.

4. Our attention was drawn towards Article 18.6 of the revised PPA dated 21.03.2018 which provides for amendment in the PPA with approval of this Commission, it reads as :

"18.6 Amendment

This Agreement may be amended or modified by a written instrument signed by the parties. Further such amendment shall be subject to review by the Jharkhand State Electricity Regulatory Commission."

5. It was submitted that such amendment to the PPA is for the benefit of the Consumers as it would reduce overall power purchase cost of TSL and the approval sought by TPCL is in accordance with the SHAKTI policy.

6. Learned Counsel for the petitioner reiterated the submissions made in the petition and prayed for the relief to approve the amended agreement/supplementary PPA to be executed between the petitioner and the respondent TSL as such approval by the Commission is a pre-condition for execution of FSA.

Submission of the Respondent

7. The representative of the respondent through its reply submitted that the instant petition has been filed for the purposes of seeking approval on execution of Second Supplementary Power Purchase Agreement between the petitioner and the Respondent in order to reduce the input power cost in generation of Power and thereby benefitting consumers at large.

8. The Respondent submitted that the petitioner in consultation with the respondent applied for Coal linkages in terms of the notification issued by the Coal India Limited and was successful in getting an allotment of 577100 tonnes per annum of Coal supply after the closure of bid process on 11th May, 2020. It was pointed out that the Respondent will be entitled to a Discount Rate (DR) of 7 paise/kWh by the petitioner (for each year till remaining PPA life) for the energy supplied utilising the coal procured under SHAKTI (Round 3) from CCL, a subsidiary of CIL.

9. It was submitted that the existing PPA between the petitioner and the Respondent also requires suitable amendment to incorporate the significant gains into the Power Purchase Agreement dated 21st March, 2018, which was earlier approved by this Commission by its order dated September 05, 2016.

10. It was further submitted that the Board of Directors has accorded its necessary approval to execute the supplementary Power Purchase Agreement vide its resolution dated 13th August, 2020.

11. The representative of the respondent further submitted that the Respondent Company has already agreed to execute the second supplementary Power Purchase Agreement, as such, the petition may be considered for grant of approval in terms of the Electricity Act, 2003.

Commission's Observations :

12. We considered the submission made by the parties and perused the materials available on records of the case.

13. It is observed that the petitioner has entered into a revised PPA dated 21st March 2018 and First Amendment Agreement dated 7th September, 2019 with the respondent duly approved by this Commission.

14. Government of India in 2017 issued a SHAKTI Scheme for allocation of Coal linkage to IPPs having already concluded long term PPAs which are approved or adopted by the Commission. Under the Scheme TPCL participated in third round of auction on 07.02.2020 and subsequently Letter of Intent by Coal India Limited was issued to TPCL for allocation of Coal linkages on the basis of offer of discount in the tariff of TSL.

15. According to the SHAKTI Policy, the discount so offered by TPCL would be adjusted from the gross amount of the monthly bill to be raised under the PPA and as such the PPA is required to be amended or supplemented to pass on the aforesaid discount to the purchaser TSL by adjustment from the bill raised thereunder.

16. It is also observed that under the SHAKTI Policy, TPCL has offered a discount rate of 7 paise per kWh (for each year till remaining PPA life) for the energy supplied utilizing the Coal procured under SHAKTI Policy.

17. Further, the parties have also mutually agreed upon amendment/supplementary PPA to be executed between them subject to approval of this Commission.

FINDINGS

18. Hence, having considered the entire facts and circumstances, the Second Amendment Power Purchase Agreement to be executed in between the petitioner TPCL and the respondent-TSL which provides the methodology for adjustment of the discount in the monthly bills to the procurer in terms of the 'SHAKTI Scheme', as stated above is approved.

19. Accordingly, the petition is allowed in the given manner.

Sd/-
(P.K.Singh)
Member (Legal)

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