



Petition No. 1612 of 2020

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order 9.11.2020

PRESENT:

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Petition under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019 seeking directions that the Petitioner is not required to initiate fresh biomass- based power procurement competitive bidding process and determination of tariff payable to Gallant Ispat Ltd. on a stand-alone basis.

M/s U.P. Power Corporation Ltd.,
(through its Superintending Engineer, PPA-II),
14th Floor, Shakti Bhawan, 14-Ashok Marg,
Lucknow – 226001

----- Petitioner

M/s Gallant ispat Ltd.,
(through its GM- Commercial),
Plot No. AL-5, Sector-23,
GIDA, Industrial Area,
Tehsil Sajanwa, Distt. Gorakhpur,

----- Respondent



Following were present:

1. Sh. Deepak Raizada, SE, PPA-RE, UPPCL
2. Sh. Abhishek Kumar, Advocate, UPPCL
3. Sh. Pranav Agrawal
4. Sh. Dhruv Mathur, Advocate, M/s Gallant Ispat Ltd.,
5. Sh. Sitiesh Mukherjee. Advocate, UPPCL

ORDER

(Date of Hearing 13.10.2020)

1. The instant Petition is filed by UPPCL in terms of Section 86 (1) (e) of the Electricity Act, 2003 and also invoking the inherent powers of the Commission under Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019 to pass such orders as may be necessary for meeting the ends of justice and not to initiate fresh biomass based power procurement competitive bidding process in terms of the Order of the Commission dated 19.11.2019 in Petition Nos. 1509 and 1510 of 2019.
2. During the hearing, Sh. Sitiesh Mukherjee, learned Counsel of Respondent, UPPCL, submitted that the Commission approved the bidding documents vide its Order dated 15.03.2018, with a ceiling levelized tariff at Rs. 6.463 per unit ("1st TBCB Process"), as per the cost considered in the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2014 ("CRE 2014") for FY 2018-19. Counsel further added that the Petitioner, thereafter, filed Petition No. 1306 of 2018 seeking approval of the PPA dated 06.03.2018 for procurement of 12.5 MW of biomass power from plant of Gallant situated in Gorakhpur and Petition No. 1301 of 2018 seeking approval of PPA dated 13.02.2018 for procurement of 3.5 MW rice husk based power out of the 5 MW plant of Superior situated at Bareilly.
3. The PPAs submitted before the Commission inter alia provided that the tariff for the electricity supplied shall be Rs. 5.56 per unit provisionally and the final



tariff shall be the L-1 tariff discovered in the then ongoing bidding process for procurement of biomass energy, which was scheduled to be concluded by 30.06.2018. The said PPAs also provided that if the bidding was not concluded within the given time frame, both the parties had the option to exit from the PPA or renegotiate the tariff. The Commission vide its Orders dated 04.04.2018 in Petition no. 1306 of 2018 for procurement of 12.5 MW of biomass power and Order dated 23.04.2018 in Petition No. 1301 of 2018 for procurement of 3.5 MW rice husk based power approved the said PPAs on the conditions mentioned therein. However, the 1st TBCB process was annulled.

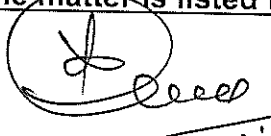
4. Further, Sh. Sitiesh Mukherjee, learned Counsel of UPPCL submitted that subsequently the Commission vide order dated 31.01.2019 in Petition No. 1375/2018 directed UPPCL to conclude the bidding process. Therefore, UPPCL conducted the 2nd TBCB process in February 2019 with ceiling tariff of Rs. 4.81 per unit. However, no response was received. The Commission vide Order dated 18.09.2019 in Petition No. 1375/ 2018 again directed UPPCL to carry out the bidding process after doing due diligence to make bid competitive for attracting bidders.
5. Sh. Sitiesh Mukherjee, learned Counsel of UPPCL argued that no bids were received when ceiling tariff was kept at Rs. 4.81 per unit. Further, CRE Regulations, 2019 provided for generic tariff for biomass power commissioned during 2018-19 as varying between Rs. 7.54 per unit to Rs. 8.52 per unit. Therefore, present Petition is filed before the Commission to determine / prescribe the tariff for the project without any need for UPPCL to conduct a competitive bidding process to determine L-1 price. He submitted that Hon'ble APTEL, in case of Maithon power, has held that power of the Commission to decide cost plus tariff under Section 62 of the Electricity Act, 2003 is not taken away due to competitive bidding process held under Section 63 of the Electricity Act, 2003. He argued that the judgment was



passed considering tariff policy which is of the nature of guidelines and not obligatory upon the Commission.

6. Sh. Deepak Raizada on behalf of the UPPCL submitted that the Commission has itself observed that when there are other cheaper options to fulfil the Non- Solar RPO, then why it is required to purchase costlier power like biomass. Therefore, by way of following the directions of the Commission to complete bid process for discovering the L-1 rates in order to derive a rate for this project, the Petitioner has to complete the entire bidding process along with adoption of tariff for benchmarking of tariff for this plant. However, the same will finally end up in tying up another high cost PPA with another biomass-based power plant. Therefore, he requested the Commission to determine the tariff in the present matter considering the larger public interest as otherwise same would amount to extra burden on the Consumers.
7. Sh. Dhruv Mathur, learned Counsel of Petitioner, M/s Gallant Ispat Ltd., submitted that the maintainability of the present Petition needs to be first decided.
8. The Commission heard the parties and directed respondent to file its counter in two weeks along with relevant case laws referred to during hearing and Petitioner to file its rejoinder thereafter in one week.

9. The matter is listed for hearing on 19th November 2020


(Vinod Kumar Srivastava)
Member (Law)


(Kaushal Kishore Sharma)
Member


(Raj Pratap Singh)
Chairman

Place: Lucknow

Date: 9.11.2020