

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

IA No. 12 of 2022

Case No. HERC/Petition No. 16 of 2022

Date of Hearing : 08.06.2022
Date of Order : 08.06.2022

In the Matter of

Petition under Section 86(1)(b) of the Electricity Act, 2003 read with the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking source approval for procurement of 728.68 MW Thermal Power from NTPC's Dadri –Stage-II from 01.04.2022 till 31.10.2022 at CERC regulated tariff. (Petition No. 16 of 2022)

And in the matter of

Interim Application under Regulation 8 and 65 of Conduct of Business Regulations, 2019 requesting for an early hearing in the matter and approval for power procurement subject to allocation of power from Ministry of Power in terms of the order of the Hon'ble Delhi High Court dated 01.6.2022. (IA No. 12 of 2022)

Petitioner

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner

1. Smt. Sonia Madan, Advocate
2. Shri Amit Dewan, Dir/Fin, UHBVN
3. Shri Gaurav Gupta, XEN / HPPC

Quorum

Shri R.K. Pachnanda
Shri Naresh Sardana

Chairman
Member

ORDER

Brief Background of the case

1. The present petition has been filed by HPPC, a joint forum of the distribution licensees in Haryana i.e. UHBVN and DHBVN, seeking approval for procurement of 728.68 MW thermal power from NTPC's Dadri stage – II for the period from 01.04.2022 to 31.10.2022.
2. HPPC has submitted that the State of Haryana is experiencing critical power supply position due to non-availability / lesser availability of power from several generating stations i.e. Adani Power, CGPL Mundra, FGPP & RGTPP-II etc. The petitioner has submitted as under:-
 - i) That the Ministry of Power had reallocated 728.68 MW power, surrendered by Delhi, in Dadri-II Station of NTPC to Haryana w.e.f. 01.04.2022 to 31.10.2022.
 - ii) That the maximum demand felt during the FY 2020-21 was 10894 MW & FY 2021-22 is 12120 MW. Considering availability from all long-term sources, Haryana is expected to face shortage of power during summer/paddy season in the FY 2022-23 to the tune of 2300 MW to 4100 MW in various time slot of the day and the deficit, if met from the Power Exchange, shall bear a high price.
 - iii) That earlier, NTPC had offered power from Dadri Thermal Power station, Stage-I (210MW x 4) on dated 15.02.2022. In response, HPPC vide its email dated 02.03.2022 intimated NTPC that Haryana intends to procure power (756 MW) from Dadri Thermal Station from May to October for a period of 7 years. However, NTPC, vide its email dated 02.03.2022, intimated that power offered is round the clock (RTC) basis. HPPC vide letter no.

228/CE/HPPC/LTP-I /MoP dated 24.03.2022 requested MoP to allocate power from Dadri –Stage-I for three years on round the year basis, however, the same was not allocated to Haryana.

- iv) HPPC, vide letter no. 229/CE/HPPC/LTP-I /MoP dated 24.03.2022, requested MoP to reallocate surrendered power from various NTPC stations including Dadri TPS – Stage-II and reiterated its request vide letter no. 230/CE/HPPC/LTP-I /MoP dated 28.03.2022.
- v) MoP vide Order dated 28.03.2022, reallocated surrendered/available share of 728.68 MW Power to Haryana from Dadri-II Station of NTPC w.e.f 01.04.2022 to 31.10.2022 and the same was to be implemented with effect from 0.00 hours of 01.04.2022.
- vi) That the SCPP in its 64th meeting held on 28.03.2022, considered and accorded approval to the purchase of power from Dadri-II Station of NTPC w.e.f 01.04.2022 to 31.10.2022.
- vii) The landed cost of 728.68 MW power proposed to be purchased from NTPC Dadri –II at the Haryana periphery is as under:-

Station	Installed Capacity (IN MW)	Surrendered Capacity (IN MW)	Normative Capacity Charges @ 85% NAPA in (RS/Kwh)	Energy Charges for FY 2021-22 (till Dec. '21) in	Ts. Charges in (Rs/Kwh)	Ts. losses in (Rs/Kwh)	Total cost at Haryana periphery* (Rs/Kwh)
Dadri-II	980	728.68	1.44	3.16	0.56	0.14	5.30

*Tariff shall be determined by CERC in line with CERC Tariff Regulations, 2019.

- viii) That the rates in power exchanges for the peak hours are significantly on the higher side.
- ix) In view of the above, following prayers have been made by the petitioner:-
 - a. Grant approval of source for procurement of power i.e. 728.68 MW from NTPC's Dadri TPP–Stage-II from 01.04.2022 till 31.10.2022 at CERC regulated tariff, as per MoP allocation Order dated 28.03.2022.
 - b. Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
- 3. That it has been submitted that the DISCOM'S of Delhi challenged the order of the MoP allocating the share of the Government of NCT of Delhi in the power generated from Dadri-II Station of NTPC to Haryana. The said matter was filed before Hon'ble High Court of Delhi by way of Writ Petitions bearing nos. W.P.(C) 5340/2022 and W.P.(C) 6735/2022 titled as '*BSES RAJDHANI POWER LTD v NORTHERN REGIONAL POWER COMMITTEE & ORS.*' And '*TATA POWER DELHI DISTRIBUTION LIMITED v NORTHERN REGIONAL POWER COMMITTEE & ORS.*'
- 4. Since the matter before Hon'ble High Court of Delhi was pending adjudication subsequent to the filing of the present Petition. Accordingly, the proceedings in the present matter had been deferred to await outcome of the Writ Petitions. The said Writ Petitions have now been decided by the Hon'ble High Court of Delhi and the order was pronounced on 01.06.2022. In the said order, Hon'ble High Court, *prima facie*, observed that neither Government of National Capital Territory of Delhi nor Delhi Electricity Regulatory Commission ever in express terms withdrew the surrender of power which was conveyed by them in 2015 and there was no manifest or unequivocal retraction of that communication. In the light of said observation including others, it was held that MoP, by virtue of representing the authority of the Union, is the competent authority to examine and consider the case as set forth by the two competing

States for allocation of power generated by Dadri II and the MoP was therefore, directed to pass an appropriate order in respect thereof.

5. That the relevant extract of the order dated 01.06.2022, which records the contentions of the State of Haryana at Para 58 and operative portion of the order in subsequent paras, is as under -

“ 58. On the other hand, the Court is faced with the claims raised by the State of Haryana which appears to have responded to the offer of the Union Government to seek allotment of surrendered power. HPPC has placed on the record material and data in proof of the precarious power situation faced by that State. It has also alluded to the numerous unsuccessful attempts made by it to source power in the short term, the non-availability of power and the fact that purchases in the short term would seriously strain its financial resources. It has also referred to a failure to garner short term contracts for purchase of electricity with no viable offers being available. It has placed on the record material to establish the severe shortage that it may face during the summer and cultivation period. The competent statutory authorities of that State appear to have taken preparatory steps to secure the allocated power of Dadri-II having obtained preliminary approvals to proceed with the impugned allocation and having petitioned the appropriate SERC to enter into a PPA with NTPC. Its needs and claims cannot thus be cursorily brushed aside.

59. From the aforesaid recital of facts, **it is apparent that there is an emergent need for an exercise being undertaken to examine, evaluate and balance the interests and requirements of two competing constituents of the Union. This exercise of balancing would necessarily entail evaluation and examination of various factual aspects including the data that may be produced with respect to the demand of respective States, the availability of alternate sources to meet exigencies, the likely cost burden to be borne by the respective States and other germane considerations which may have a bearing on the issue.** Both in light of the prima facie conclusions recorded by this Court as well as the MoP by virtue of representing the authority of the Union would appear to be the competent authority to examine and consider the case as set forth by the two competing States for allocation of power generated by Dadri II and pass an appropriate order in respect thereof.

60. In proceeding along these lines, the Court also takes into consideration the fact that while exercising its power of review under Article 226 of the Constitution, it cannot assume or take upon itself the function or the role of the competent executive authority. While dealing with a writ petition, the Court must desist or at least refrain from taking on the mantle or adorning the role of the primary decision maker. Even while applying the Wednesbury test, Courts must remember that they are obliged to play a secondary role with the action of the executive being scrutinized on the grounds of rationality and non-arbitrariness.

61. Upon an overall consideration of all of the above, **it would appear to be expedient to require the MoP to examine the rival claims, consider the validity of the asserted right of the petitioners and GNCTD for continued allocation of Dadri-II power, explore avenues which may safeguard the interests and projected needs of the two States and take an appropriate decision based on a holistic examination of all the facts that may be placed before it.** The aforesaid exercise may be undertaken by the MoP after affording an opportunity of hearing to all concerned parties including the petitioners and all the

respondents before this Court.”
Supplied)

(Emphasis

6. That in light of the foregoing Order, HPPC shall present its case before MoP and MoP shall take decision in the matter regarding allocation of power from Dadri Stage-II, which is the subject matter of present Petition.
7. Accordingly, the petitioner-HPPC has filed the present IA in the Commission, seeking the indulgence of the Hon'ble Commission for an intervention in the matter by hearing the matter and according the approval to procurement of 728.68 MW thermal power from NTPC'S Dadri – Stage-II from the date as per the order to be passed by MoP till 31.10.2022 at CERC regulated tariff subject to the decision of MoP in this regard. Such an Order is necessitated to allow the commencement of power supply immediately in the event the MoP decides in the favour of allocation to State of Haryana.

Commission's Analysis and Order

8. The Commission has considered the submission and justification of the petitioner for procurement of 728.68 MW thermal power from NTPC'S Dadri – Stage-II. The Commission has also taken note of the averment of the learned counsel that, as per the order of the Hon'ble Delhi High Court in the present matter, MoP has held a meeting with the stakeholders including Haryana Discoms / HPPC in the present matter and would decide the issue in the due course of time after considering the rival claims.
9. The Commission is conscious of the fact that with the surge in demand during the peak demand months underway up to the month of October, due to power requirement of AP tube-well as well as air conditioning load, the supply of power is often inadequate. The supply side is further constrained because of the non-availability of power from certain sources as averred by HPPC. Added to this would be the surrender of power from the expensive gas based NTPC stations such as Anta, Auraiya and Dadri as well as uncertainty in power availability from a few other sources. Hence, the supply side constraints, as also evident from power regulatory measures implemented by the Discoms, cannot be ignored, given the adverse cascading effect including law and order issues that may crop up due to long hours of power supply disruptions.

Resultantly, given the requirement for power, the Commission approves the procurement of 728.68 MW thermal power from NTPC'S Dadri – Stage-II from the date of this order up to 31.10.2022, at CERC determined tariff as prayed for, subject to the decision of MoP and judgement of Hon'ble Delhi High Court in the present matter.

10. The present petition along with the IA filed in the matter, is disposed of in terms of the above order.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08.06.2022.

Date: 08.06.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman