

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No.8 of 2016**

**Date: 18 February, 2016**

**CORAM: Shri. Azeez M. Khan, Member  
Shri. Deepak Lad, Member**

Petition of PTC India Ltd. under Section 94 of the Electricity Act, 2003 read along with Regulation 85 of MERC (Conduct of Business) Regulations, 2004 for seeking review of the Commission's Order dated 06.11.2015 in Case No. 65 of 2015 (IEPL-PPA).

PTC India Ltd. (PTC) ...Petitioner

V/s

Ideal Energy Projects Ltd. (IEPL) ... Respondent No. 1

The Tata Power Company Ltd. (Distribution), (TPC-D) ...Respondent No. 2

**Present During the hearing**

For the Petitioner : Shri. Aashish Bernard (Adv.)

For the Respondent No.1 : Ms. Dipali Sheth, (Adv.)

For the Respondent No. 2 : Shri.Bhaskar Sarkar

**Daily Order**

Heard the representatives/Advocates of the Petitioner, Respondent No. 1 and Respondent No. 2.

Advocate of the Petitioner submitted that PTC entered into a Power Purchase Agreement with IEPL for supply of 240 MW (Net) on 21 August, 2013 for period of 25 years starting from 1 July, 2015. The PPA envisages selling of power by PTC for long term, medium term or short term as per Article 4.2 of PPA. During the proceedings of Case No. 65 of 2015, IEPL neither disclosed this fact of PPA to the Commission nor informed about the said proceedings to PTC. There is a process to be followed as per PPA, and till date the PPA is not terminated.

The Petitioner came to know about the Order of the Commission dated 6 November, 2015 in Case No. 65 of 2015 on 10 December, 2015. Within time limit after knowledge of the said Order, the Petitioner has filed a Review Petition.

As the Commission was in the dark about the PPA with PTC while adjudicating Case No. 65 of 2015, under Order 47 Rule 1 of CPC this is a new fact before the Commission, which is a ground for Review. The Petitioner cited Judgments of Supreme Court in 'Kishore Samrite V/s State of Uttar Pradesh & Others ', (2013), 2 Supreme Court Cases 398 (Para 32 to Para 36) and 'State of Chhattisgarh & Others V/s Dhirjo Kumar Sengar', (2009) Volume 13 Supreme Court Cases 600 (Para 20 and Para 21 on Page 607) and further submitted that a fraud has been committed on the Commission by IEPL.

Advocate of Respondent No. 1 stated that the preliminary submission is on maintainability of the Petition as it is barred by limitation beyond 45 days. She further stated that IEPL had informed PTC on 29 April, 2015 that, in spite of its best efforts, it could not establish sale of power under the PPA and continued to lack in getting a long term contract. PTC was also informed that it was in the process of Share Purchase Agreement with TPC-D.

The Commission asked why it was not informed in Case No. 65 of 2015 that a PPA exists between PTC and IEPL of 240 MW. Advocate of Respondent No. 1 submitted that Ministry of Power Resolution dated 9 November, 2013 does not allow Traders to take part in Competitive Bidding Process in long term power procurement. As per Section 56 of Indian Contract Act, 1872, the PPA is void.

The Commission expressed its displeasure that such an important fact that a PPA is in existence was suppressed from the Commission in Case No. 65 of 2015.

The Commission also enquired as to why TPC-D has not furnished its Reply to this Petition, and whether TPC -D did not considered it necessary. Shri. Bhaskar Sarkar stated that TPC-D intended to respond during the hearing, and would submit a written reply thereafter.

The Commission enquired that what due diligence was done by TPC-D while filing the Petition in Case No. 65 of 2015, which was for procurement of the power under long term PPA to provide power to consumers of its Licence area, and asked whether TPC-D knew of the PPA between PTC and IEPL.

Shri. Bhaskar Sarkar informed that TPC-D entered into 100% Share Purchase Agreement (SPA) from IEPL. During the discussion on SPA, IEPL informed it that there is a PPA between IEPL and PTC, and it is not possible for PTC to sell power under long term power because of MoP Resolution dated 9 November, 2013. It was a condition precedent that PPA of PTC should be terminated before entering into PPA and SPA.

The Commission further enquired as to the reasons for not disclosing this condition precedent to the Commission during the proceedings of Case No. 65 of 2015.

Shri. Sarkar informed that, based on MoP Resolution, PTC could not sell long term power. Therefore, TPC-D did not deem it necessary to involve PTC in Case No. 65 of 2015.

On a query from the Commission, Shri. Bhaskar Sarkar informed that Rs.3.05/kWh was the levelled base tariff in the PPA between PTC and IEPL. However, in Case No. 65 of 2015, TPC-D had submitted that the rate of IEPL for TPC-D PPA is competitive. In that scenario, TPC-D did not think it necessary to inform the Commission about the PPA between PTC and IEPL.

Advocate of Respondent No. 1 informed that TPC-D, through a press release, has said that it is not going forward with the SPA. The Commission noted that TPC-D had also filed a Petition seeking that its proposed PPA with IEPL be kept in abeyance.

The Commission asked the Petitioner regarding the penalty in case the Commission is satisfied that there was material concealment of facts. The Advocate of Petitioner responded that Commission can impose exemplary costs.

**The Case is reserved for Order.**

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**