

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 13 of 2011

In the matter of
Petition of Reliance Infrastructure Ltd seeking adoption of tariff under Section 63 of
the Electricity Act, 2003 in respect of Power Purchase Agreement entered into between
Reliance Infrastructure Limited and Chitrangi Power Private Limited

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Reliance Infrastructure Ltd.

.... Petitioner

ORDER

May 16, 2011

Reliance Infrastructure Limited (“RInfra”) had submitted a Petition under affidavit on January 27, 2011 seeking adoption of tariff determined through transparent process of bidding under Section 63 of the Electricity Act, 2003 (“EA 2003”) in respect of the Power Purchase Agreement entered into between M/s. Reliance Infrastructure Limited and M/s. Chitrangi Power Private Limited.

2. The prayers made by RInfra are as under:

“

- a) *That this Hon'ble Commission may be pleased to approve extension of time taken for the entire bidding process under Case 1- procurement of power on long term basis and to condone the delay under para 5.16 read with para 5.19 of the Guidelines;*
- b) *That this Hon'ble Commission may be pleased to note the certification/certificate and relevant approvals and documents being Annexures J and K hereto.*
- c) *That this Hon'ble Commission may be pleased to adopt the tariff in the Power Purchase Agreement entered into between Reliance Infrastructure Ltd. and Chitrangi Power Pvt. Ltd. dated 21st January 2011 (Annexure H hereto).*
- d) *For such and further and other reliefs as the Hon'able Commission may deem appropriate in the facts and circumstances of the case."*

3. The submissions of RInfra, in its Petition are as under:

- a) RInfra had filed a Petition bearing Case No.137 of 2008 before the Commission for approval of proposed quantum of power for Long Term Power Procurement ("LTPP") through Competitive Bidding Route via Case 1 and approval of Bid document. The petition was filed in consonance with the Competitive Bidding Guidelines (CBG) issued by the Government of India, Ministry of Power, for determination of tariff for bidding process for procurement of power by Distribution Licensees, dated January 19, 2005, as amended from time to time . The said petition was disposed of by Commission by its Order dated July 15, 2009. By the said Order dated July 15, 2009, the Commission inter alia, approved a load of 1500 MW for procurement from FY 2014 onwards.
- b) After the approval of the quantum of power to be procured for Long Term for the period of 25 years, RInfra issued a Request For Proposal ("RFP") in or about 20th July 2009 for procurement of power through competitive bidding process for Long Term.
- c) Though the original bid submission date in respect of the said RFP was 3rd October 2009, the bidders asked RInfra to delay the bid submission as their bids were blocked with other LTPP bids in Maharashtra, Gujarat, Punjab, and Rajasthan. Accordingly, the bid date was extended from time to time and ultimately till 3rd March 2010. This has been duly informed by RInfra to the Commission vide letter dated 19th May 2010.

The following are the details of LTPP Technical Bid opened on 3rd March 2010.

Sr. No	Bidder	Plant Location	Plant Capacity (MW)	Offered Capacity (MW)	Fuel
1	M/s. KSK Wardha Power Co. Ltd	Maharashtra	540	320	Domestic Coal
2	M/s. RKM Powergen	Chattisgarh	1440	300	Domestic Coal
3	M/s. Hindustan Electric Generation Co	Maharashtra	355	100	Gas
4	M/s. Corporate Group (Abhijeet)	Jharkhand	540	380	Domestic Coal
5	M/s. RPower	Madhya Pradesh	2640	1391	Domestic Coal
		Maharashtra	600		Domestic Coal
Total Capacity Offered (MW)				2491	

- d) The Commission, by a letter dated April 27, 2010 sought information on the actual status, *inter alia*, in regard to LTPP, which was duly replied to by RInfra by their letter dated May 19, 2010. In the said letter, RInfra informed the Commission that since LTPP Case 1 bid process for State of Gujarat, Maharashtra, Punjab and Rajasthan were in progress during the same period, bid submission for RInfra's LTPP Case 1 was extended twice and since the non-financial bids were opened and evaluated, the preparation for financial bid opening and evaluation being done. By a further letter dated May 24, 2010, RInfra further apprised the Commission that the following 4 bidders were qualified, namely – M/s. KSK Wardha Power Limited, M/s. Corporate Group (Abhijeet), M/s. RKM PowerGen and M/s. Reliance Power Limited and that RInfra would be inviting all the qualified bidders for opening of financial bid.
- e) The Financial Bids in respect of the RFP were opened May 28, 2010 and were as follows.

Sr. No	Name of the Bidder	Quantum (MW)	Levellised tariff (Rs./kWh)
1	M/s. KSK Wardha Power Limited	320	3.421
2	M/s. Reliance Power Ltd (M/s. Chitrangi Power Private Limited)	1241	3.69
3	M/s.RKM Power Gen	300	3.724
4	M/s. Reliance Power Ltd. (VIPL)	150	3.99
5	M/s. Corporate Group (Abhijeet)	380	4.553

The Evaluation Committee thereafter evaluated the said bids and attempts were made to reduce the per unit price quoted by each of the aforesaid bidders in negotiations. However, this process took additional time.

In reply to a letter written by the Commission on June 15, 2010 directing RIntra to submit the current status, inter alia, of LTPP at the earliest, RIntra informed the Commission on June 22, 2010, *inter alia*, stating that the financial bids had been opened and RIntra was in the process of negotiation with the bidders and would be finalizing the PPA's at the earliest.

- f) RIntra in course of negotiations with M/s. KSK Wardha Power Ltd., who was the lowest bidder and had bid for 320 MW, could not persuade the said bidder to reduce their per unit price. A Letter of Intent (LoI) was issued to the said bidder on July 21, 2010 for the per unit price quoted by the said bidder on the said bidder having categorically extended its bid validity during negotiations and on an assurance that the same would be given in writing. However, the said bidder contested, *inter alia*, the issue of the extension of the validity before the Commission and did not extend the bid validity as well as refused to accept the LoI.
- g) RPower's bid was for 1391 MW from its power plants located in Madhya Pradesh having a plant capacity of 2640 MW and from Maharashtra having a capacity of 600 MW. The offer in respect of the plant in Madhya Pradesh was for 1241 MW at a levellised tariff of Rs.3.69 per kWh and from the plant in Maharashtra of 150 MW at a levellised tariff of Rs.3.99 per kWh. By a letter dated 1st December 2010, RPower offered to supply 1000 MW power at levellised tariff of Rs.3.26 per kWh as per Clause 3.5.8 of the RFP subject to terms and conditions mentioned in Clause 3.5.11. This power was to be procured from the 2640 MW coal based power plant at Chitrangi, District- Sangrauli, Madhya Pradesh.

- h) In reply to RPower's bid dated March 3, 2010 and the final revision of tariff as per the letter dated December 1, 2010, RInfra issued a LoI dated December 2, 2010 which was unconditionally accepted by RPower by its letter dated December 7, 2010.
- i) Thereafter, RInfra has entered into a PPA dated January 21, 2011 with Chitrangi Power Pvt. Ltd. (A Group Company of RPower) that would be supplying the offered quantity of 1000 MW at levelled tariff of Rs.3.26 per kWh.
- j) Further in reply to the letter dated October 25, 2010 and December 21, 2010 directing RInfra to submit the current status of Power Procurement Process, RInfra *inter alia* wrote to the Commission on January 15, 2011 that RPower (Chitrangi Power Pvt. Ltd.) has accepted the Letter of Intent and offered 1000 MW of power for a period of 25 years and that the execution of PPA is in progress. Further, RInfra has also informed the Commission that it has also in place an Acceptance from Dhariwal Infrastructure Limited (CESC) for 200 MW @ levelled tariff of Rs.3.27/kWh from FY 2014-15.
- k) As stated herein above, the order dated 15th July 2009 approves power procurement of 1500 MW. Further, the LoI issued to KSK Wardha has not been accepted by them. RPower being the second lowest bidder and having reduced the per unit price in respect of its power plant at Madhya Pradesh to Rs. 3.26/kWh for 1000 MW only, the same was accepted by the Evaluation Committee as being most competitive.. The Evaluation Committee of RInfra has issued appropriate certification that the evaluation of the bid process is done according to the provisions of the issued RFP document and procurer's Certificate has also been issued regarding conformity of the bid process with the Guidelines.
- l) The other bids, despite negotiations could not be brought down and were not considered by the Evaluation Committee. In any event, in view of the approval of the quantum by the Commission of 1500 MW and RInfra being short by approximately 500 MW, RInfra rather than follow the LTTP Competitive Bidding route had explored the possibility of tying up power for long term through Power Purchase Agreement ("PPA") on MOU basis. RInfra in this regard has issued a LoI to Dhariwal Infrastructure Limited for procurement of 200 MW from their power plant at Tadali, District Chandrapur, Maharashtra which is being developed by them on a long term basis at a levelled tariff of Rs.3.273 per kWh, inclusive of Green Cess of 3 paise per unit.
- m) The entire bidding process upto the signing of the PPA with Chitrangi Power Pvt. Ltd. was completed on January 21, 2011. The delay in completion of the

said process, in the submission of RInfra, is on account of various factors, including the extension of the period for receipt of bids by reason of the prospective bidders requesting the same (as the bid process at some stage in India was in progress) as well as RInfra's endeavor to reduce the Financial Bids as originally received by them. RInfra has kept the Commission duly informed, *inter alia*, by RInfra's letter dated May 19, 2010 and May 24, 2010. The LTTP approved by the Commission by its Order dated July 25, 2009 is for the period beginning FY 2014. RInfra submitted that the Commission may be pleased to approve the deviation in the Guidelines under Para 5.16 therefore by reason of RInfra having exceeded the stipulated period mentioned in Para 5.19. Approval of such deviation would not cause any loss or prejudice inasmuch as the price at which the PPA is entered into and the tariff which is requested to be adopted under Section 63 of EA 2003 is competitive and assured supply for huge quantity of 1000 MW would begin April 1, 2014.

4. The Commission vide Notice dated February 4, 2011, scheduled a hearing in the matter on February 17, 2011. During the hearing the Petitioner submitted the following points before the Commission

- a) Subsequent to the opening of the financial bid the Petitioner negotiated with the L1 bidder (M/s. KSK Wardha Power Limited) to further reduce the per unit price of the Bid but M/s. KSK Wardha Power being the lowest bidder refused to reduce the per unit price. LOA was issued to L1 bidder but M/s KSK power refused the LOA since bid validly had expired.
- b) Subsequently, the Petitioner could persuade the L2 (second lowest bidder) L2 and L3 (third lowest bidder) namely M/s. Reliance Power Ltd (Chitrangi) and M/s.RKM Power Gen to reduce the per unit price. M/s. Reliance Power Ltd (Chitrangi) agreed to provide 1241 MW of power at Rs.3.26 per unit where as M/s. RKM Power Gen agreed to provide 300 MW power at Rs.3.71 per unit.

Rank	Name of the Company	(MW)	Bid rate (Rs./kWh)	Remarks
L1	M/s. KSK Wardha Power Limited	320	3.421	KSK refused to accept LoI
L2	M/s. Reliance Power Ltd (Chitrangi)	1241	3.69	Negotiated rate Rs.3.26/kWh
L3	M/s.RKM Power Gen	300	3.724	Negotiated rate Rs.3.71/kWh

L4	M/s. Reliance Power Ltd. (VIPL)- Butibori	150	3.99	No Reduction
L5	Abhijeet (Corporate Power)	380	4.569	No Reduction

- c) The Petitioner further submitted that the entire negotiation was done in consumer interest. Negotiation with the bidders would save approximately 8% in power purchase cost. This would result in saving of Rs.7700 Crore for the entire term of the PPA.
- d) The Petitioner submitted that the price at which the power has been negotiated from the L2 and L3 bidders are substantially lower than the per unit price of The Tata Power Company Ltd. (TPC) which is Rs.3.76 per unit in FY 09-10 and Rs.5.03 per unit in FY 15-16.
- e) The Petitioner further submitted that the negotiated price is substantially lower than the price discovered through the Competitive Bidding process in the recent past.

Name of the State	Bidder	Capacity (MW)	Levelling tariff (Rs./kWh)
Uttar Pradesh	PTC Athena Energy	300	3.324
	RPower (Chitrangi)	2456	3.702
	Jaiprakash	200	3.9
Karnataka (3000 MW)	Monnet Ispat	150	3.757
	Thermal Powertech	430	3.771
	Coastal Energen	200	3.801
	JSW Energy	600	3.812
Bihar (1500 MW)	Essar	450	3.057
	PTC-India Monnet	700	3.619

State	Capacity required (MW)	Comparable price Rs./kWh	% higher than RInfra
UP	2000	4.76	46%
AP	2000	3.48	7%
UP	3000	3.58	10%
Karnataka	3000	3.81	17%
Bihar	1500	3.43	5%

5. The Commission vide Notice dated March 04, 2011, scheduled a hearing in the matter on March 17, 2011.

6. During the hearing on March 17, 2011 Sri J.J.Bhat, Sr. Advocate and Ms. Anjali Chandurkar Advocate appeared on behalf of the Petitioner.

7. The Commission vide Notice dated March 18, 2011, scheduled a hearing in the matter on March 30, 2011. During the hearing the Petitioner submitted the following status report with respect to the project status of the Chitrangi Power Project before the Commission.

Status as on 30 th March, 2011	
Capacity	2640 MW (4 x 660) + 1320 MW (2 x 660) = 3960 MW
Land	100% required land is under possession Extra land acquired to accommodate further expansion
Water	120 MCM of water allocated from Gopad river
Environment Clearance	Environment Clearance granted by MoEF Consent to Establish granted by MPPCB
Coal	Coal required for 1000 MW committed to RInfra ~ 4 MTPA Approvals available - 9 MPTA from Sasan UMPP coal blocks
Engineering Studies	All major studies completed
Site Activities	Area grading, boundary wall construction and early enabling works commenced
BTG Order	Awarded to SEC

8. In between Wardha Power Company Limited (here in after referred to as Intervener) applied before the Commission to intervene in the ongoing case. The Prayers made by the Intervener are as under-

- a) Allow the applicant to intervene in the present case namely Case No. 13 of 2011
- b) Stay the present proceedings pending final disposal of the review petition namely Petition No. 17 of 2011 in Case No. 53 of 2010.
- c) Pass such Order or orders as the Commission deems fit and proper under the facts and circumstances of the present case.

9. The submissions of the Intervener (WPCL) , in its application are as under:
- a) In July 2009, M/s. RInfra invited bidders to participate in the bidding process for procurement of 1500MW. The last date of submission of bids as provided in the bid documents was September 3,2009
 - b) Thereafter, the time schedule stated in the RFP was modified on several occasions by RInfra. Finally on the closing date of the bid i.e, March 3, 2010 WPCL submitted it's bid. The Intervener also submitted a Bid Bond dated February 26, 2010 as stipulated in the RFP document for an amount of Rs. 9.6 Crore in terms of Clause 4.9 and Clause 2.12 of the RFP. Clause 2.12 stipulated that the Bid Bond should be valid for a period of 30 days beyond the validity of the bid.
Therefore, in terms of the RFP, the guarantee was to be valid only till July 30, 2010, since the bid validity period was to lapse on July 1, 2010 (being 120 days from the date of submission of the bid). The Intervener made the bank guarantee valid upto August 14, 2010 and the claims valid upto September 14, 2010 so as to enable the Bank Guarantee to be valid for a maximum of 195 days as provided in the bid process.
 - c) On June 05, 2010, RInfra by an email provided the details of the financial bids of various precipitants which were opened on May 28, 2010. RInfra by a letter dated July 08, 2010 requested Intervener to send the final revised financial bid before 13.00 hrs. on July 12, 2010.
 - d) Thereafter, on July 17, 2010, WPCL received an email containing formal request of RInfra seeking extension of the bid validity and also extension of bid bond time by additional 3 months. WPCL by an email dated July 20, 2010 informed it's intention of not extending the bid validity.
 - e) On July 21, 2010 RInfra sent the Letter of Intent (LoI) by email and asked WPCL to accept the LoI unconditionally within 7 days of the issue. WPCL by it's letter dated July 26, 2010 returned the LoI and requested for the return of the Bid Bond at the earliest. The said letter was sent by email dated July 27, 2010. In the same letter, the Intervener requested RInfra to return the bid bond of Rs. 9.6 Crore.
 - f) On September 7, 2010, WPCL was informed by the State Bank of India, IFB Branch that it had received a letter from RInfra invoking the Bank Guarantee supporting the Bid Bond. WPCL immediately addressed a letter dated September 7, 2010 asking RInfra not to invoke the Bank Guarantee as the bid had already expired on July 1, 2010. WPCL also put RInfra on notice that if it proceeded with the said invocation it would be liable for all costs and damages

- g) RInfra by a letter sent by fax on September 8, 2010, allegedly replied to the Intervener's letter dated July 26, 2010 the said reply was sent by RInfra after 40 days and after encashing the Bank Guarantee, which was invoked 5 days prior to the expiry of the claim period.
- h) Aggrieved by the aforesaid illegal actions on the part of RInfra the Intervener on or around September 28, 2010 preferred a petition being preferred Case No.53 of 2010 before the Commission under Section 86 (1)(e)(f) and (k) of the Electricity Act, 2003 read with MERC (Terms of Conditions of Tariff) Regulations, 2005. The Intervener had preferred the petition for adjudication of dispute in connection with request for proposal for Procurement of Power for long term under Case 1 bidding process issued in July 2009, by RInfra.
- i) Following were the main prayers of the Intervener in the petition-
- “
- a) *Direct the Respondent to return the amount of Rs.9.60 Crores to the Petitioner together with interest at the rate 18% from the date of encashment of the guarantee till the actual date of payment.*
 - b) *Direct the Repondent to deliver up and thereafter cancel the purported Letter of Intent dated 21.07.2010;*
 - c) *Cancel and terminate the process under the RFP issued by the Respondent in July 2009 and direct the Respondent to go for a fresh tender in accordance with Law;*
 - d) *Direct that the Petitioner shall not be constrained by any consequence under the Central Government Guidelines Under Case-1 Bidding procedure through tariff based competitive Bidding process on account of the wrongful encashment of Bid bond by the Respondent”*

The Commission was pleased to admit the matter and issue notice to RInfra on November 9, 2011. After several hearings in the matter the Commission decided the case in favour of the Intervener. The Commission by its Order dated January 27, 2011 directed the following.

- “
- (a) *The Commission directs that present competitive bidding process for purchase of 320 MW out of 540 MW Power stands terminated for Wardha Power Company Limited due to expiry of the bid validity on July 1, 2010.*
 - (b) *Consequently, the Commission directs that LoI dated July 21, 2010 issued by RInfra be treated as null and void, as it was not issued before the expiry of bid validity.*

- (c) *The Commission observes that in view of the above ruling at (a) and (b), the bid bond (bank guarantee) was returnable to WPCL on or before expiry of 195 days from March 3, 2010 as per RFP, but instead of returning same it has been encashed by RInfra. The Commission therefore directs RInfra to return the entire sum of bid bond (bank guarantee) of Rs. 9.60 Crore along with interest at prevailing bank rate from the date of encashment to WPCL, within 30 days from the issuance of this Order.*
- (d) *The Commission takes into account the fact that the non-compliance of Clause 2.9.2 of the RFP has resulted in bid bond being forfeited by RInfra. The Commission further directs that Wardha Power Company Limited shall not be constrained by any consequence under Case -1 Bidding procedure through Tariff based Competitive Bidding Process on account of the wrongful encashment of the Bid bond by the RInfra..*
- (e) *The Commission directs RInfra to scrap this Competitive Bidding process for 1500 MW on long term basis and invite fresh RFP for procurement of Power under Case-1 single stage bidding process, so that all bidders would get a fresh opportunity to bid in the Competitive bidding process.”*
- j) On February 8, 2011, RInfra preferred a Review Petition against the aforesaid petition namely Petition No. 17 of 2011 in Case No. 53 of 2010, which is pending before the Commission. The Review Petition filed by RInfra is limited only to the issues of cancelation of the entire bid process. The Intervener filed its reply to the Review Petition on March 15, 2011 challenging the maintainability of the Review Petition.
- k) WPCL further submitted that a case for intervention of the Intervener in the present proceedings, namely Case No. 13 of 2011 is made out because of the following reasons.
- i. The entire bidding process for procurement of power on long term basis under Case 1 has come to an end by virtue of the Order passed by the Commission in Case No.53 of 2010 on January 27, 2011. RInfra by the present proceeding is attempting to reopen and re-agitate the issue without awaiting the outcome of the Review Petition i.e, Petition No. 17 of 2010 in Case No. 53 of 2010.
 - ii. It appears from the data available on the website of the Commission that the present proceedings were preferred before the Commission on January 27, 2011. On the same date, the Commission was pleased to pass as order in Case No. 53 of 2010 for scraping the entire Competitive Bidding process for 1500MW on long term basis with a direction to RInfra to invite fresh RFP

for procurement of power under Case 1 single stage bidding process. This was with a view to ensure that all bidders, including the Intervener get a fresh and equal opportunity to bid in the Competitive Bidding process. It is noteworthy that RInfra has in fact wrongfully executed LoI and PPA, while Case No. 53 of 2010 was pending before the Commission.

- iii. Adoption of tariff under Section 63 of Electricity Act, 2003, pre-supposes a transparent bidding process. It does not sanctify a scrapped bidding process and negotiation with L2 in violation of the directions of the Commission.
- iv. Invalid bidding process which has been set aside by the Commission cannot be revived by collateral proceedings seeking extension of the bid process.
- v. The Intervener is a serious bidder and is desirous of participating in transparent bidding process for supply of power at competitive rates.

10. The Commission vide Notice dated March 31, 2011, scheduled a hearing in the matter on April 25, 2011.

11. During the hearing Shri. Hemant Singh appeared on behalf of Wardha Power Company Limited.

12. He submitted following points before the Commission

- (a) The delay in the Bidding process was done intentionally by RInfra to give benefit to its Sister Concern Company i.e., M/s. RPower (Chitrangi Power Private Limited).
- (b) The entire Bid process has already been cancelled by the Commission and the order on the Review Petition is awaited. Therefore, the present PPA does not stand the merit for consideration.

13. Having heard both the Petitioner and the Intervener and after considering the materials placed on record, the Commission rules as under:

- a) It is necessary to appreciate the scheme of Section 63 of the EA 2003, which reads as follows:-

“Determination of tariff by bidding process.

63. *Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*”

b) While passing the Order dated January 27, 2011 in Case No.53 of 2010, the Commission has given certain clear findings as follows:-

“The Commission notes that actions of the Respondent RInfra, in this case violate several fundamental aspects of Competitive Bidding which are as under:

- (i) Uncertainty of bid opening date*
- (ii) Continuous attempts to negotiate the prices of L1 bidder.*
- (iii) Persuading the bidder to extend the bid validity against their willingness.*
- (iv) Issue of LoI despite a clear understanding that bidder is unwilling to extend the validity.*
- (v) Not returning the bid bond.*
- (vi) Invoking the bid bond and encashing the bank guarantee.”*

c) The above findings vitiate the process of bidding undertaken by RInfra. Obviously, the bidding process would not be vitiated only *qua* Wardha. If there are irregularities in the bidding process as has been seen and held in the Order dated January 27, 2011 in Case No.53 of 2010, RInfra has to *“invite fresh RFP for procurement of Power under Case-1 single stage bidding process, so that all bidders would get a fresh opportunity to bid in the Competitive bidding process.”*

d) If the bidding process stands vitiated *qua* Wardha Power Company Limited who emerged as the L-1 bidder it would be an anomalous situation to allow continuance of the bidding process *qua* Reliance Power who emerged as the L-2 bidder. If the Commission allows the bidding process to be cancelled only *qua* Wardha then Reliance Power would get a distinct advantage over Wardha. The Commission is of the view that this type of dispensation would not be in conformity with the transparent process of bidding in accordance with the guidelines issued by the Central Government. The impugned order suggests a fair approach with the direction to *“invite fresh RFP for procurement of Power under Case-1 single stage bidding process, so that all bidders would get a fresh opportunity to bid in the Competitive bidding process.”*

e) The Commission is not able to sustain the contention that the practice of negotiating price with L1, i.e., lowest bidder for reduction in price is in interest of consumer and considering the present market scenario, because accepting this contention would mean that in interest of consumers, procurers could violate and infringe upon the “transparent” process of bidding which is supposed to be in accordance with the guidelines issued by the Central Government. The Commission cannot certainly abet irregular practices such as have been seen in the proceedings in the Order dated January 27, 2011. RInfra did not act *qua* Wardha reasonably and acted rather arbitrarily. To accept RInfra’s contentions would mean that the credibility of the procedure of bidding would be lost. RInfra was bound to adopt a procedure which is 'fairplay in action'. Moreover, the Request For Proposal Notification For Supply Of Power through tariff based competitive bidding process (as per bidding guidelines, issued by the Government Of India, for determination of tariff by bidding process for procurement of power by distribution licensees) expressly states as follows:-

3.5.9 There shall be no negotiation on the Quoted Tariff between the Authorized Representative/ Procurer and the Bidder(s) during the process of evaluation.

f) As regards the adoption of tariff in the Power Purchase Agreement entered into between Reliance Infrastructure Ltd. and Chitrangi Power Pvt. Ltd. dated 21st January 2011, unless, fresh RFP is invited by RInfra for procurement of Power under Case-1 single stage bidding process, in view of the circumstances seen in the Order dated January 27, 2011 the Commission will not be able to adopt the tariff which should be determined through fresh process of bidding in accordance with the guidelines issued by the Central Government. The Commission in the Order dated January 27, 2011 in Case No. 53 of 2010 had directed scrapping of the Competitive Bidding process for 1500 MW on long term basis and directed RInfra to invite fresh RFP for procurement of Power under Case-1 through single stage bidding process, so that all bidders would get a fresh opportunity to bid in the Competitive bidding process.

g) As regards the PPA executed by Chitrangi Power Pvt. Limited is concerned, the tariffs thereunder cannot be adopted as the Competitive Bidding Process has already been scrapped by the Commission;

h) As regards the prayer for approval of extension of time taken for the entire bidding process under Case 1 procurement of power on long term basis is concerned, the prayer does not stand as the Commission had directed RInfra to initiate fresh bidding process for procurement of power on long term basis.

In view of the above, the present petition stands dismissed.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman