

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 23 of 2012

In the matter of
Implementation of the Judgement dated 17th February ,2012 of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 106 of 2011 filed by Vidarbha Industries Power Limited (VIPL) challenging the Commission's order dated 31.05.2011 passed in Case No. 12 of 2011

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

Vidarbha Industries Power Ltd

..... Petitioner

Vs.

1. Reliance Infrastructure Limited (RInfra)

2. Wardha Power Company Limited (WPCL)

..... Respondents

Present during the hearing:

For the Petitioner:

Shri. S.R. Nargolkar Advocate, VIPL

For the Respondents:

Shri. Hemant Singh, Advocate, WPCL ,Ms. Anjali chandurkar , Advocate , Shri. Surendra Khot ,Shri .P.S. Pandya ,Shri. G.J.Thakkar , Shri. S.N. Rao.

ORDER

Dated: May 21, 2012

Vidarbha Industries Power Ltd (VIPL) is engaged in the business of generating power. The Reliance Infrastructure Limited is engaged in generation and distribution business.

2. After Competitive Bidding Process RInfra entered into a PPA dated 16 June, 2010 with VIPL for supply of 134 MW at the levelised tariff of `4.80/kWh. Subsequently, RInfra asked the Petitioner VIPL to increase the contract quantum from 134 MW to 404 MW and to reduce the levelised tariff. The Petitioner agreed to increase the quantum to 404 MW and reduce the levelised tariff from `4.80/ kWh to `4.24 /kWh. On this basis, an addendum to the PPA was executed on 21 January, 2011 for the increased quantum of 404 MW for supply of power at the reduced rate of `4.24/kWh.

3. Thereafter, RInfra filed a petition before the Commission, under Section 63 of the Electricity Act, 2003, for adoption of tariff for revised contracted quantum of 404 MW at the levelised tariff of `4.24/kWh, as per the PPA dated 16 June, 2010 and its addendum dated 21 January, 2011.

4. After hearing the parties, the Commission vide its Order in the Case No. 12 of 2011 dated 31 May, 2011 approved the quantum of 134 MW as per the original PPA and disallowed the increase in quantum as included in the addendum to PPA dated 21 January, 2011 while taking the reduced levelised tariff of `4.24/kWh.

5. VIPL aggrieved by the aforesaid order in the Case No. 12 of 2011 dated 31 May, 2011, preferred an appeal from before the Hon. Appellate Tribunal for Electricity praying for approval of the original PPA and the addendum dated 21 January 2011 to the PPA for supply of total 404 MW of power at the Levelised tariff of `4.24/kWh.

6. Wardha Power Company Limited opposed the prayer of VIPL before the Hon. APTEL on the main ground that the original PPA dated June 16, 2010 also included an illegal addendum dated January 21, 2011 for supply of 270 MW of power even though the said quantum of power was not part of the said bid process, entered between RInfra and its sister Company VIPL. More so, the PPA and the addendum was entered into between Reliance Infrastructure Limited and Vidarbha Industries Power Limited (VIPL) on 16 June, 2010

and during the same period ,RInfra-D has signed PPAs with other two bidders namely Wardha Power Company Limited (WPCL) and Abhijeet MADC Nagpur Energy Private Limited (AMNEPL) and while filing the petition before the Commission under section 63 of the Electricity Act,2003, RInfra-D concealed about these PPAs .

7. During the hearing at APTEL, VIPL confined its appeal to its alternative prayer (C) referred to in the appeal seeking the approval of the original PPA dated 16 June ,2010 with reference to both the quantum and rate as specified therein. VIPL filed an affidavit on 2 February,2012 before the APTEL as per which the following was affirmed :

“ I state that in light of the Proceedings leading to the aforesaid order and in order to have amicable settlement of the dispute herein question ,Appellant company is willing to confine their relief to their alternative Prayer : ‘Prayer C’.

Prayer C is reproduced herein under:

“Alternatively, approve the PPA dated 16.06.2010 for supply of 134 MW power at a levellised tariff Of Rs.4.80/kWh”

8. Hon’ble APTEL delivered its judgment dated 17 February, 2012 in Appeal No. 106 of 2011 holding *inter as follows:-*

“14. In the light of the above principles laid down in the above judgement and in the light of the findings given by the State Commission in the impugned order the Addendum is an afterthought and on that basis the State Commission should have rejected the addendum in toto and approved the original PPA dated 16.6.2010 only. On the other hand, the State Commission has passed the order approving the quantum as per the original PPA dated 16.6.2010 and approving the rate as finalised in the addendum dated 21.1.2011. The relevant finding is as follows: “On perusal of project activities and progress of VIPL units, Commission is of the view that availability of power from April 2012 is unlikely. However, since the quantum and rate etc., are finalized based on competitive bidding process and also considering the PPA is for medium term till March, 2014, the Commission approves supply of 134 MW of power by VIPL to RInfra as per original PPA signed on 16th June, 2010. However, the rate applicable shall be as finalized in January, 2011”.

15. “To sum-up, this finding in our view, is not valid as the State Commission, as mentioned above, either should

have approved the original PPA dated 16.6.2010 in toto or rejected the same on the grounds mentioned in Section 63 of the Act. Since there are no valid reasons for the rejection of the PPA dated 16.6.2010 in respect of the rate, the State Commission ought to have approved the original PPA in toto in respect of both the quantum and rate”.

16. In view of the our above conclusion, we direct the State Commission to approve the PPA dated 16.6.2010 in respect of both the quantum and rate specified in the said document and pass a consequential order in terms of our above findings.

17. The Appeal is allowed. The order impugned has been set aside only to the extent indicated above.

18. With these observations, the Appeal is disposed of. However, there is no order as to cost.”

9. The Commission conducted a *suo motu* hearing on 18 May, 2012 to implement the aforesaid judgement of the Hon’ble Tribunal, which was attended by the Learned Advocates for the Petitioner Vidarbha Industries Power Ltd. (VIPL), Respondents and the Intervener .

10. Heard all concerned and considered all relevant materials placed on record. The process of competitive bidding was initiated by RInfra in July 2009 for procurement of power for medium term. M/s. Vidarbha Industries had participated and offered the quantum of 134 MW for the period April 2012 to March 2014. This was against approved capacity of 1200 MW in RFP. Petitioner M/s. RInfra entered into PPA with VIPL for the quoted quantity in month of June 2010. In the proceedings in Case No. 12 of 2011, RInfra had filed a petition for adoption of tariff for procurement of power from VIPL for supply of 134 MW at a levellised tariff of `4.80/kWh discovered through the transparent bidding process. As directed by the Hon’ble Appellate Tribunal in its judgment dated 17 February, 2012 in Appeal No. 106 of 2011, the Commission hereby accords its approval to the adoption of tariff for procurement of power by RInfra from VIPL for supply of 134 MW at a levellised tariff of `4.80/kWh discovered through the transparent bidding process and as per the PPA dated 16 June, 2010.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman

