

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Review Petition No. 02 of 2018
In Petition No. 47 of 2013
Date of Order:01.03.2019**

Present: **Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member**

In the matter of : Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and also read with Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for the review of the Commission's order dated 08.03.2018 in Petition No. 47 of 2013.

AND

In the matter of: Nabha Power Limited, Aspire Tower, 4th Floor, Plot No.55, Industrial and Business Park, Phase-1, Chandigarh-160 002.

Respondent-Petitioner

Versus

Punjab State Power Corporation Ltd., through its Engineer-in-Chief, Thermal Designs, PSPCL, Shed No.T-2, Thermal Design Complex, Patiala – 147001.

Petitioner-Respondent

ORDER

The petitioner has filed the present Review Petition for review of the order dated 08.03.2018 passed by the Commission in petition no. 47 of 2013. The review has been sought for expunging the reference of the following words mentioned at page No. 16 of the impugned Order.

“As per the order of the Commission dated 31.12.2012 in petition no.56 of 2012, the Commission has already decided on the issue of arrangement of coal for the enhanced capacity arising out of changed unit configuration”.

2. The Review petitioner has submitted that the Commission has incorrectly/inadvertently placed reliance on its order dated 31.12.2012 in Petition No. 56 of 2012 *vis a vis* the obligation for the arrangement of the coal for the enhanced Contracted Capacity from 1234.20 MW to 1320 MW and Gross Capacity from 1320 MW to 1400 MW of the Rajpura Thermal Power Project. The Petition No. 47 of 2013 was filed by PSPCL seeking amendment in the Power Purchase Agreement (PPA) in terms of Article 18 of the PPA and more specifically Article 18.1, which deals with the process of undertaking amendment in the PPA. The Commission appreciating the intent and objective of Article 18.1 of the PPA has allowed only those amendments with respect to which both PSPCL and NPL were ad-idem/agreeable. However, while doing so, the Commission has made an observation with respect to arrangement of coal/fuel for the Enhanced Capacity arising on account of the changed Unit configuration and in this regard referred its earlier order dated 31.12.2012 in Petition No. 56 of 2012 which is not legally tenable in the facts and circumstances of the present case and is an error apparent on the face of record.

2.1 The Review petitioner further submitted that the Commission while dealing with the issue of changed Unit

configuration/Enhanced Capacity has effectively referred to its earlier order dated 31.12.2012 with respect to the issue of arrangement of coal for the enhanced capacity. This is an error apparent on the face of record as the Commission has failed to take into consideration the subsequent order dated 16.03.2016 issued by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 68 of 2013 filed by NPL against the order of the Commission dated 31.12.2012 in Petition No. 56 of 2012. The final Order was issued pursuant to the unequivocal consent by both NPL and PSPCL and PSPCL never raised the issue of adopting a different mechanism for arrangement of coal for capacity up to 1234.20 MW Contracted Capacity / 1320 MW Installed Capacity and a separate mechanism for the Enhanced Capacity. PSPCL was well aware that the entire capacity of the Project is for the exclusive benefit for the Procurer where each and every unit of power is being sold to it and therefore, it never raked up the issue of different approach towards arrangement of fuel for the segregated capacity. Therefore, in view of the existence of the Hon'ble Appellate Tribunal's final Order, the reference to the issue of coal obligation only with respect to the Enhanced Capacity is an error apparent on the face of record and thus is untenable. In context of arrangement of coal for the Project, the Final Order does not refer to the order dated 31.12.2012, and therefore, the effect and essence of the order dated 31.12.2012, cannot be either directly or indirectly read into the Final Order by the Commission. Thus, there is an error apparent on the face of the Impugned Order in as much as it does not consider the

Hon'ble Appellate Tribunal's Final Order in Appeal No. 68 of 2013 with respect to the issue of arrangement of coal for the Project including the so called Enhanced Capacity.

- 2.2 The said order dated 31.12.2012 passed in Petition No. 56 of 2012 has got merged with the Final Order of the Hon'ble Tribunal and therefore, the reference to its earlier order could not have been given in view of the existence of the Hon'ble Appellate Tribunal's order dated 16.03.2018 which specifically deals with arrangement of coal for the entire capacity of the Project.
3. PSPCL in its reply to the petition has submitted that the petition filed by Nabha Power Limited, is misconceived and is liable to be dismissed. The Order dated 8.03.2018 passed by the Commission in petition No. 47 of 2013 does not contain any error apparent on the face of the record and there is otherwise no cause, much less any sufficient cause for reviewing the Order. The Review Petitioner is seeking to raise frivolous, vexatious and extraneous issues in the review petition.
 - 3.1 The review petition is beyond the scope of the provisions of Section 94 of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 as well as the settled principles laid down by the Hon'ble Supreme court. The Hon'ble Appellate Tribunal had decided the Appeal No. 68 of 2013 by following the interim order dated 21.08.2013 passed in I.A No. 227 of 2013. The challenge made by the review petitioner in appeal no. 68 of 2013, amongst other issues, was on the basis that obligation of arranging coal for

the enhanced capacity from 1320MW to 1400MW is of PSPCL. The said ground was neither allowed nor pressed by the review petitioner at the time when the matter was settled and the order was passed by the Hon'ble Appellate Tribunal recording the settlement between the parties. Accordingly the very basis on which the review petitioner has proceeded in the present petition that the order dated 31.12.2012 passed by the Commission is no longer effective or valid or has been modified on the aspect of the obligation related to the procurement by the order passed by the Hon'ble Appellate Tribunal, is patently erroneous and liable to be rejected.

3.2 The order dated 31.12.2012 was challenged by the Nabha Power Limited before the Hon'ble Appellate Tribunal by way of appeal no. 68 of 2013 including on the responsibility for procuring the additional fuel required for the increase in the project capacity from 1320MW to 1400MW. The Hon'ble Appellate Tribunal vide order dated 16.03.2016 disposed off appeal no. 68 of 2016 in terms of agreed arrangement between the parties. Having agreed to the specific terms and conditions laid down in the aforementioned order dated 16.03.2016 including on the aspect of requisitioning additional fuel, it is now not open to Nabha Power Limited to resile from its obligations. The obligation of the PSPCL was only restricted to arranging the coal linkage (5.5 MTPA) on the basis of which the bids were invited. NpL cannot cast the obligation upon the PSPCL to provide additional coal linkage, which was not there at the time of bidding and applicable to all the prospective bidders' This is particularly when Nabha

Power has infact been procuring and arranging coal for the entire 1400 MW.

- 3.3 The Review petition is mixing up the issue of the methodology and process to be adopted by the Review petitioner to procure alternate coal in case of shortage of coal availability from the linked mines of South Eastern Coalfield Limited (SECL), with the basic obligation to procure coal. The basic obligation to procure coal whether it is from SECL or from any other source in accordance with the consent terms recorded before the Hon'ble Appellate Tribunal is of the Review petitioner. In order to protect the interest of the consumers, the consent terms record the consultative process to be adopted by the Review petitioner before undertaking the purchase of coal from the alternate sources.

According, the obligation to procure coal for the entire 1400 MW capacity has always been and shall continue to be of the Review Petitioner. The fundamental basis on which the Review Petitioner is proceeding in the review petition is misconceived and is liable to be rejected. Further, the Order dated 06.03.2018 in Petition No. 67 of 2017 deals with the mode/process of acquiring the coal from alternate sources, the role of the Standing Linkage Committee etc. and not the fundamental question of the obligation to acquire coal in terms of the PPA. There is no self-evident error apparent on the face of the record for reviewing the Order.

4 Nabha Power Limited filed rejoinder vide letter dated 03.10.2018 to the reply filed by PSPCL denying the averments made by PSPCL and reiterating its submissions made in the petition. PSPCL vide memo No. 5864 dated 17.10.2018 filed its written submissions and the Nabha Power Limited vide letter dated 11.12.2018 filed its written submissions. The arguments by the parties have been heard on 13.02.2018.

5 **Observations, Findings and Decision of the Commission.**

The Commission has examined the petition, the reply filed by PSPCL, rejoinder filed by the petitioner, the submissions made by the parties and the other documents and case law adduced on the record. The petitioner has sought to expunge the reference to the Order dated 31.12.2012 in petition No. 56 of 2012 from the relevant para of the Order dated 08.03.2018 in petition No. 47 of 2013. The Commission while disposing of petition No. 47 of 2013 vide Order dated 08.03.2018 observed at page No. 16 of the Order as under:

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.....

The Commission observes that Article 3.1.1A of the PPA provides that the Seller shall have the option to change the Unit configuration after the Effective Date till NTP provided that Seller submits the undertaking that the changed Unit configuration meets all the conditions specified in Format 3 of Annexure 6 of RfP and the changed Unit configuration meets all Functional Specifications. It has been further provided in the Article 3.1.1A of the PPA that any additional cost arising

out of the changed Unit configuration shall be to the account of the Seller and no adjustment in the Tariff will be permitted. As per the order of the Commission dated 31.12.2012 in Petition no. 56 of 2012, the Commission has already decided on the issue of arrangement of coal for the enhanced capacity arising out of changed Unit configuration.

The Commission in its Order dated 14.07.2010 in petition No. 08 of 2010, adopted the tariff for the project and also recognized the change in the contracted capacity of the project. Considering the above, the Commission approves and allows the change in Unit configuration from Contracted capacity of 2x617.10MW (1234.20MW) to 2x660 (1320MW) and Gross capacity of 2x660MW (1320MW) to 2X700MW (1400MW) for the project in terms of Article 3.1.1A of the PPA and allows consequential changes in the PPA.”

A perusal of the Order dated 08.03.2018 clearly makes out that the Commission vide Order dated 08.03.2018 in petition No. 47 of 2013 approved and allowed the change in Unit configuration from Contracted capacity of 2x617.10MW (1234.20MW) to 2x660 (1320MW) and Gross capacity of 2x660MW (1320MW) to 2X700MW (1400MW) for the project in terms of Article 3.1.1A of the PPA and allowed consequential changes in the PPA, which is the operative part of the Order and the same has to be read and construed by the parties accordingly. During hearing the counsel for the review petitioner submitted that the Order of the Commission referred in the impugned Order is required

to be read with the Order dated 16.03.2016 passed by the Hon'ble Appellate Tribunal in Appeal No. 68 of 2013. With a view to avoid any apprehension and ambiguity the Commission finds it appropriate to clarify that the observations of the Commission in its Order dated 08.03.2018 at page No. 16, in petition No. 47 of 2013, after the words "Tariff will be Permitted" will be read as under:

"Further, the issue of the arrangement of coal for the enhanced capacity arising out of the changed Unit configuration stands already decided in the Commission's Order dated 31.12.2012 in petition no. 56 of 2012 read with the Order dated 16.03.2016 passed by Hon'ble Appellate Tribunal in Appeal No. 68 of 2013."

The Review petition No 02 of 2018 in petition No. 47 of 2013 is disposed of in terms of the above.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Date: **01.03.2019**