

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 59 of 2022

Petition filed by M/s. T.P. Saurya Limited seeking Review of the Order dated 11 March 2022 passed by the Commission in Case No. 15 of 2022.

M/s. T.P. Saurya Limited (TPSL) : Petitioner
M/s. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) : Respondent 1
M/s Azure Power India Pvt. Ltd. (APIPL) : Respondent 2

Coram

Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

Appearance:

For the Petitioner : Mr. Venkatesh, (Adv.)
For
the Respondent No.1 : Mr. Anup Jain
the Respondent No.2 : None

ORDER

Date: 7 July 2022

1. M/s. T.P. Saurya Limited (TPSL) filed the present Petition on 04 April 2022 under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 85 of MERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 seeking review of the Order dated 11 March 2022 passed by the Commission in Case No.

15 of 2022.

2. TPSL's main prayers are as follows:

A. *Admit the present Review Petition*

B. *Review/modify the Adoption Order dated 11.03.2022 passed in Case No. 15 of 2022 and revise the Tariff to Rs. 2.56 per unit*

And/or

C. *Pass such other order(s)/direction(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case. "*

3. TPSL in its Case has stated as follows:

31 By present Petition TPSL is seeking the Review of the Commission's Order dated 11 March 2022 passed in Case No. 15 of 2022 (Impugned Order). The Petition in Case No.15 of 2022 was filed by MSEDCL seeking adoption of tariff of Rs. 2.62 per unit discovered through Competitive Bidding in terms of Section 63 of the Electricity Act,2003.

32 The Review has been filed under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 (CPC).

33 The Commission by way of the Impugned Order has proceeded to alter/modify the Tariff of Rs. 2.62 per unit discovered through Competitive Bidding in terms of Section 63 of the Electricity Act,2003 and instead has proposed the Tariff of Rs. 2.49 per unit to bidders on the pretext that Solar Energy Corporation of India (SECI) in other tenders had discovered a lesser Tariff.

34 In view of the revised Tariff being proposed by the Commission, on 22 March 2022, TPSL filed a Miscellaneous Application being M.A. (Diary) No. 50 of 2022 thereby requesting the Commission to consider revising MSEDCL RfS in consonance with the bid floated by SECI and sought 10 days' additional time to evaluate matching of the Tariff of Rs. 2.49 per unit.

35 On the same date, i.e., 22 March 2022, upon the M.A. being mentioned by TPSL, the Commission vide its Order was pleased to grant an additional 10 days to match the Tariff of Rs. 2.49 per unit as proposed vide the Impugned Order.

36 However, TPSL is constrained to invoke the Review Jurisdiction of the Commission in view of the steep increase in the price of steel which is an essential component for establishing a

Hybrid Power Project which was neither pleaded nor considered by the Commission while Revising the discovered Tariff of Rs. 2.62 per unit to Rs. 2.49 per unit in the Adoption Order.

37 TPSL in its Petition mentioned following chronology of Events:

Date	Event
14.10.2020	The MNRE, GoI notified the Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects.
07.05.2021	MSEDCL issued a Request for Selection (RfS) for procurement of 500 MW Wind-Solar Hybrid Power on Long Term Basis through Competitive Bidding process (E-Reverse Auction) from grid connected inter and intra State Projects.
09.07.2021	The-Reverse Auction was conducted, TPSL and APIPL emerged as the successful bidders for development of Hybrid Projects at a Tariff of Rs. 2.62 per unit for a capacity of 300 MW respectively.
14.12.2021	MSEDCL issued a Letter of Award (LoA) in favor of TPSL.
29.12.2021	MSEDCL filed Adoption Petition under Section 63 of the EA-2003 seeking approval of the Tariff discovered via Competitive Bidding.
11.03.2022	The Commission passed the Order whereby it proceeded to disallow adoption of the Tariff at Rs. 2.62 per unit discovered through Competitive Bidding in terms of Section 63 of the Act and proposed the Tariff of Rs. 2.49 per unit to the Successful Bidders.
22.03.2022	Review Petitioner preferred an Application bearing Diary No. 50 of 2022 under Regulation 92 read with 94 of MERC (Conduct of Business) Regulations, 2004 with a request to revise the MSEDCL RfS in consonance with the bid documents floated by SECI and sought an additional time of 10 days to submit its acceptance to the revised Tariff proposed by the Commission.
	On the same date, the Miscellaneous Application was mentioned for urgent listing. After hearing the counsel for TPSL, the Commission was pleased to grant an additional time of 10 days to submit its acceptance to the revised Tariff.

38 Following grounds have been mentioned in the Petition:

(A) Revised Tariff does not factor in the Incremental Cost due to efflux of time:

39 In June 2021, TPSL had submitted its bid on the basis of cost that was applicable towards construction of Hybrid Project at that point in time.

3.10 Steel is a major component in the manufacturing of Solar PV Panels as well as Wind Turbine Generations in Hybrid Power Projects.

3.11 However, on account of factors not attributable to TPSL, such as

- Steep rise in iron ore prices

- Consequent supply crunch and a bottleneck caused by China’s decision to cut steel production, and
- Logistical restrictions due to the war between Russia and Ukraine,

Cost of Steel has increased drastically from the date of submission of Bid till the date of the Impugned Order passed by the Commission. Therefore, the cost implication basis which the bid price was submitted by TPSL has in effect now become redundant due to efflux of time and the increase in price of Steel.

3.12 The impact on price of steel from the date of Bid Submission till the Adoption Order as per the Steel Mint indices for July 2021 and March 2022 is tabulated here under:

Solar EPC = 51% of Hybrid project cost			
Particulars	% Increase from July 2021 to March 2022	% Contribution in Solar EPC	% Increase in total hybrid project cost
Steel	18.94% ²⁾	26.17%	2.46%
Wind = 35% of Hybrid project cost			
Particulars	% Increase from July 2021 to March 2022	% of WTG supply in Wind EPC	% Increase in total hybrid project cost
Steel	18.94% ²⁾	79%	0.89%

3.13 The increase in steel prices leads to a 3.35% increase in the total cost of the project thereby amounting to Rs.0.07 per unit increase in Tariff.

3.14 TPSL requested the Commission to graciously consider the drastic increase in the price of steel which admittedly is an essential commodity for manufacturing Solar PV Panels and WTGs. Therefore, there is ‘sufficient reason’ for the Commission to invoke its Review Jurisdiction. In this regard, reliance is being placed upon Judgment rendered by *the Privy Council in Chajju Ram vs Neki, AIR 1922 PC 112* wherein it was held that ‘sufficient reason’ means a reason sufficient on grounds analogous to reasons mentioned in the rule i.e. excusable failure to bring to the notice of the Court new and important matters or error on the face of the record.

3.15 The proceedings before the Commission at the time when the Impugned Order was passed was limited to the issue of whether the Tariff so discovered by MSEDCL ought to be adopted or not.

3.16 Therefore, TPSL had no occasion to bring the present facts on record considering the nature

of proceedings. However, by the Impugned Order the Commission has considered the SECI discovered tariff and has calibrated it to suit the requirement of MSEDCL. In doing so the Commission has not considered the changed circumstances in which now a Hybrid Project would be set up. TPSL is filing the present Petition placing such facts on record for consideration by the Commission.

4. MSEDCL in its reply dated 24 May 2022 submitted as below:

- 4.1 Respondent No.2 APIPL has assailed the Impugned Order before the APTEL in DFR No. 115 of 2022, which is pending adjudication.
- 4.2 The Commission vide its Impugned Order has rejected the Petition filed by MSEDCL. Further, liberty was granted to TPSL and APIPL to match the tariff of Rs. 2.49 per unit, which was found to be the landed cost at Maharashtra STU periphery for procurement from SECI. This is made completely voluntary for successful bidders and consequently it was also directed that if they do not wish to do so MSEDCL shall return their EMD as per process.
- 4.3 TPSL vide its letter dated 18 March 2022 requested for an additional period of 10 days to decide regarding the matching of the tariff as ruled in the Impugned Order and further also requested to waive off the Inter-State transmission losses.
- 4.4 MSEDCL thereafter vide its letter dated 22 March 2022, informed TPSL that any relaxation in time regarding matching of tariff Rs. 2.49 per unit shall be subjected to the Commission's approval and hence requested to approach the same in the concerned matter. Further, it was clarified in the said letter by MSEDCL that the waiver of Inter-state transmission losses cannot be allowed, as that would tantamount to deviating from the terms and conditions of RfS at this stage.
- 4.5 On 22 March 2022, TPSL filed a Miscellaneous Application being M.A. (Diary) No. 50 of 2022 wherein, the Commission vide its Order dated 22 March 2022 was pleased to grant additional 10 days further time for deciding their readiness to match the tariff of Rs. 2.49 per unit. Pertinently, the said ten (10) days' period has expired on 04 April 2022, however, no proposal for matching the tariff rate of Rs. 2.49 per unit was received either from TPSL or from APIPL.
- 4.6 After the expiry of the period as contemplated by the Commission in the Impugned Order and subsequent Order dated 22 March 2022, MSEDCL was constrained to give consent to SECI for procurement of 500 MW Wind-Solar Hybrid Power at the rate of Rs. 2.41-2.42 per unit.

- 47 TPSL in present Petition proposing to re-consider the Impugned Order and revise the tariff rate of Rs. 2.56 per unit, based on the fact that there has been steep increase in the price of steel.
- 48 MSEDCL's interest lies in the discretion of the Commission to decide whether an increase in the price of steel ought to be considered or not while adopting the proposed revised tariff cost.
5. At the e-hearing through video conferencing held on 27 May 2022, Advocate TPSL narrated the background of the Case and urged that revised tariff of Rs.2.56 per unit may be considered for power procurement. Advocate of MSEDCL submitted that it has approached the SECI for contracting of power but has not received any response. The Commission directed MSEDCL to file additional submission narrating developments in power procurement from SECI.
6. **MSEDCL in its additional submission dated 8 June 2022 stated as follows:**
- 61 MSEDCL vide its letter dated 08 April 2022 issued consent letter to SECI for procurement of 500 MW Wind Solar Hybrid power at the rate of Rs. 2.34-2.35/kWh (plus Trading Margin of Rs. 0.07/kWh) under ISTS (Tranche IV) Scheme. SECI has not responded to MSEDCL's proposal.
- 62 MSEDCL vide e-mail dated 31 May 2022 to SECI communicated the explicit directives of the Commission. It was again requested to inform the stand of SECI with respect to its consent dated 08 April 2022 for onward submission to the Commission. There was no response to the said e-mail from SECI. MSEDCL made subsequent follow up vide letter dated 03 June 2022.
- 63 While enquiring telephonically, it is learnt that, the hybrid power capacity under SECI's tranche IV has been exhausted.
- 64 Subsequently, Rs. 2.53-2.54 per unit tariff has been discovered in SECI's latest Tranche V (1200 MW) e- reverse auction.
- 65 The tariff calculated at STU periphery is as below:

Particulars	SECI-Tranche XI (Rs. 2.53-2.54)
Applicable transmission losses (in Paise per unit)	9
SECI trading Margin	7

Particulars	SECI-Tranche XI (Rs. 2.53-2.54)
At MSETCL/STU periphery with SECI charges (in Paise/unit)	16
LC impact due to 210 % LC	0.002
Tariff considering additional impact (Rs./unit)	2.69-2.70

- 66 It is observed that Rs. 2.69 to 2.70/unit will be the landed cost of RE Hybrid power procured from SECI. TPSL, vide present Review Petition offered the tariff rate of Rs. 2.56 per unit.

Commission's Analysis and Rulings

7. The present Petition has been filed under Section 94 of the Electricity Act, 2003 read with the Regulation 85 of MERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908.
8. Regulation 85 of MERC (Conduct of Business) Regulations, 2004 dealing with the review of decisions, directions, and orders which reads as follows:

“

85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

Thus, there is limited grounds for review of Orders. In the present case, impugned Order has been challenged by APIPL, Respondent No. 2 before the Hon'ble Appellate Tribunal for Electricity (APTEL). However, the Commission notes that APIPL has challenged Commission's jurisdiction to reject tariff adoption under Section 63 of the Electricity Act, 2003 whereas TPSL in present petition has not sought review on that aspect. Therefore, issue in present review Petition is different from the issue raised in appeal. Hence, the Commission is dealing with issues raised in present review Petition in following paragraphs.

9. TPSL in present Petition is proposing to re-consider the Impugned Order on the ground that there has been steep increase in the price of steel. Further, TPSL has proposed revised tariff of Rs. 2.56 per unit for 300 MW RE Hybrid power. The Commission notes that during the bidding exercise the discovered tariff is Rs. 2.62 per unit and now TPSL is proposing discounted tariff of Rs.2.56 per unit.

10. It is pertinent to note that the Commission in Impugned Order has no way calibrated/redetermined the discovered tariff rather it has only applied a test of market reflectiveness. During the said exercise the discovered tariff (Rs.2.62 per unit) was found to be on higher side and accordingly the Petition of MSEDCL for tariff adoption was rejected. Approaching SECI was one of the suggested options. The Commission in Impugned Order noted following:

“

16.10. *In view of above analysis, and after considering the fact that MSEDCL has option to procure Hybrid RE power from SECI at much lower tariff than the tariff proposed for adoption in present proceeding, the Commission finds that the discovered tariff is not reflective of market and accordingly MSEDCL's prayer for adoption of tariff of Rs. 2.62 P.U. for 500 MW Wind-Solar Hybrid can not be accepted.*

16.11. *The Commission notes that post e-reverse auction in the present bidding process on 9 July 2021, MSEDCL has submitted present Petition for adoption of tariff after the delay of 5 months. While justifying such delay MSEDCL submitted that they were analyzing discovered tariff with tariff discovered by other agencies. Prima facie this seems a good practice, as it is followed with the intention to reduce its power purchase expenses. But the same should be completed within reasonable period and should not take such long period of 5 months. MSEDCL needs to note and appreciate the concerns of the bidders also who have expressed their grievance about the delay in this tender. Further after undertaking such analysis, details of the same should be submitted along with tariff adoption process so that the Commission is aware of Distribution's Licensees efforts to reduce its power purchase expenses. In the present case, after taking such long period of 5 months and also after considering the fact that SECI has discovered much lower tariff, still MSEDCL has proposed adoption of such higher tariff. The Commission has already rejected adoption of such tariff in above paragraph. Therefore, in order to meet its RPO at lower tariff, the Commission is of the view that **MSEDCL could still approach SECI for signing of PSA for 500 MW (or any other quantum) of Wind-Solar Hybrid Power discovered under Tranche-IV (Rs. 2.34/2.35 P.U.). This would reduce the power purchase expenses of MSEDCL and would also be in the consumer interest. This is subject to MSEDCL's own due diligence.** ”*

11. Further, tariff matching option is provided to successful bidders in the impugned Order which reads as follows:

“

17. Having ruled as above and rejecting the adoption of tariff proposed in the present Petition,

*the Commission would like to **provide option** to the selected bidders to match the tariff of Rs. 2.49 P.U. (landed cost at Maharashtra STU periphery for procurement from SECI), if they so desire. **This is completely voluntary for successful bidders** and if they do not wish to do so MSEDCL shall return their EMD as per process. However, in case, successful bidders agree to match tariff of Rs. 2.49 P.U., the same should be communicated to MSEDCL within a week from date of this Order and within two weeks from receipt of such communication, MSEDCL shall sign PPA with such bidder, and submit copy of the PPA to the Commission for record purpose. This option given to the successful bidder should not be considered as direction to negotiate the tariff discovered under Section 63 of the EA, 2003 as the Commission has clearly stated that successful bidders are free to opt out without any implications and then MSEDCL may consider to procure such power from SECI at the same effective tariff at Maharashtra periphery. ”*

Thus, Tariff matching option was just a suggestion for successful bidders and was completely voluntary. It is also important to note that the Commission in impugned Order did not analyse factors which impacts tariff quoted by successful bidders and only compares other cheaper options available for MSEDCL to procure such power. Hence, in the impugned Order, the Commission was not required to look into increase in steel prices, which otherwise also is not permissible under Section 63 bidding process, and hence review on this aspect as sought by TPSL cannot be allowed.

12. However, during the present review proceeding, MSEDCL in its submission has stated that as suggested by the Commission, vide letter dated 8 April 2022, it had approached SECI for procurement of 500 MW RE Hybrid power under tranche IV, but no response has been received from SECI. MSEDCL has further stated that SECI has orally communicated that the RE hybrid power capacity under SECI's tranche IV has been exhausted. Further, tariff of Rs. 2.53-2.54 per unit has been discovered in SECI's latest e- reverse auction for Tranche V (1200 MW RE Hybrid) and landed cost of such power at Maharashtra STU periphery would be Rs. 2.69-2.70 per unit.
13. The Commission notes that its decision to reject adoption of tariff in impugned Order is based on premise that option of procuring same power from SECI at tariff lower than discovered tariff was available to MSEDCL. But, as stated by MSEDCL during present proceeding, said cheaper power capacity has been exhausted and SECI has discovered higher tariff in new bidding process. Considering this fact, the Commission notes that premise for impugned Order has completely altered which qualifies 'any other sufficient reasons' criteria for review of Order. Hence, the Commission is inclined to review its impugned Order.
14. The Commission in its impugned Order dated 11 March 2022 has noted that MSEDCL has

conducted bidding process for 500 MW RE Hybrid power as per Government of India's guidelines stipulated under Section 63 of the Electricity Act, 2003 in transparent manner and has discovered tariff of Rs. 2.62 per unit. Said tariff was not adopted only because option of procuring same power at cheaper tariff (Rs. 2.49 per unit landed tariff at Maharashtra periphery) was available with MSEDCL. But now MSEDCL has stated that such option is not available as SECI has exhausted such capacity at lower tariff. Under such circumstance, obvious option is to direct MSEDCL to conduct fresh bidding process, but this will take some time and will delay the availability of RE power for MSEDCL which will further increase RPO shortfall of MSEDCL. Therefore, considering the fact that TSPL in present petition has voluntarily offered tariff of Rs. 2.56 per unit which is lower than discovered tariff of Rs. 2.62 per unit, the Commission is inclined to adopt such tariff of Rs. 2.56 per unit.

15. In view of above, the Commission adopts the discounted tariff of Rs. 2.56 per unit for supply of 300 MW RE Wind Solar Hybrid power by TPSL to MSEDCL. Parties are directed to sign PPA within 15 days from date of this Order and submit the copy of the same for records of the Commission.
16. Having ruled as above, the Commission notes that SECI had sought consent from MSEDCL for RE Hybrid power under tranche IV in November 2021/ January 2022, but MSEDCL has given such consent only in April 2022 and that too after Order of this Commission. Such delayed decision in power procurement has probably led to situation that cheaper power capacity under tranche IV got exhausted. MSEDCL as distribution licensee needs to be vigilant and continuously strive to reduce its power procurement cost.
17. Hence, the following Order.

ORDER

1. **Case No. 59 of 2022 is partly allowed.**
2. **The Commission adopts the voluntarily offered tariff of Rs. 2.56 per unit for supply of 300 MW RE Wind Solar Hybrid power by T.P. Saurya Limited to Maharashtra State Electricity Distribution Co. Ltd.**
3. **Parties are directed to sign PPA within 15 days from date of this Order and submit the copy of the same for records of the Commission.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

