

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member**

Case No. 28/2020

GRIDCO Ltd.	Petitioner
Vrs.		
M/s. JITPL & another	Respondents

In the matter of: Application of GRIDCO Limited under Section 142 of the Electricity Act, 2003 seeking compliance of Order dated 04.06.2019 of the Commission passed in Case No.01 of 2017 & Case No.64 of 2017.

For Petitioner: Shri Pronoy Mohanty, Advocate along with Shri B. K. Das, Sr. GM (RT&C) and Mrs. Susmita Mohanty, DGM (Elect.), GRIDCO Ltd. Shri L.K. Mishra, DGM (F), R&T.

For Respondent: Shri Matrugupta Mishra, Learned Advocate on behalf of M/s. Jindal India Thermal Power Ltd. along with Shri Pulak Shrivastav.
Non-appears on behalf of DoE, GoO.

ORDER

Date of hearing: 26.12.2023

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The Petitioner-GRIDCO has filed the present Application under Section 142 of the Electricity Act, 2003 seeking compliance of Order dated 04.06.2019 of the Commission passed in Case No.01 of 2017 & Case No.64 of 2017 and prayed before the Commission to direct the Respondent-M/s. Jindal India Thermal Power Limited (JITPL), (a) to pay the amount due to the Petitioner-GRIDCO pertaining to compensation against shortfall quantum of power for the period from FY 2015-16 to FY 2019-20 (upto January, 2020), (b) to sign the amended and consolidated PPA and (c) further to pay the amount due to the Petitioner-GRIDCO, pertaining to compensation against shortfall quantum of power from February, 2020 onwards in accordance with the above order dated 04.06.2019 of the Commission.

2. The factual matrix of the case is that the Memorandum of Understanding (MoU) between Government of Odisha and M/s. Jindal Photo Limited (JPL) was executed on 26.09.2006 for setting up of a thermal power plant at Derang in the District of Anugul, Odisha having installed capacity of 1000 MW. Accordingly, PPA was executed between

the Petitioner-GRIDCO Ltd. and M/s. JPL on 28.09.2006. Subsequently, the name of 'M/s. Jindal Photo Ltd.' was changed to 'M/s. Jindal India Thermal Power Limited', the Respondent and the capacity of the said power plant was enhanced to 1800 MW. As a result, a fresh PPA was executed between the Petitioner-GRIDCO Ltd. and the Respondent-M/s. JITPL on 05.01.2011 incorporating all the changes made in the MoU. Subsequently another supplementary PPA was executed on 23.07.2013 in which there was an agreement between the parties regarding interim arrangement of sharing of transmission charges. The Petitioner-GRIDCO approached the Commission for approval of the main PPA dated 05.01.2011 and the supplementary PPA dated 23.07.2013 which were registered by the Commission under one case i.e. Case No. 01/2017. When the proceeding in Case No. 01/2017 was underway before this Commission, the Respondent-M/s. JITPL also approached the Commission seeking modification of certain provisions mentioned in the PPA. The application of the Respondent-M/s. JITPL was registered by the Commission as Case No. 64/2017. Both the Case No.01/2017 and Case No.64/2017 were heard by the Commission analogously. The Commission in their order dated 04.06.2019 in Case No.01/2017 and Case No.64/2017 had directed as follows:

“13. (ii) xxx xxx xxx
Under the MoU and its consequent PPA M/s. JITPL is contract bound to supply 14% of power sent out from its thermal power plant at variable cost. if coal block is allocated to the IPP with the State, otherwise it will provide 12% power at variable cost. In case of default GRIDCO will purchase the required quantum of power from other sources to meet the State demand. Generally, it is expected that under merit order GRIDCO will purchase the same from power plant situated at the margin of the merit order. The State consumer should not be burdened for the lapses of M/s. JITPL. Therefore, a compensation provision in the PPA in case of default of M/s. JITPL to supply the GRIDCO share of power should be incorporated. The compensation should be equal to the variable cost of the Central Thermal Generating Station approved by the Commission for power purchase of GRIDCO and situated at the margin of the merit order dispatch for that year. Any other compensation mechanism such as DSM linked compensation cannot be adopted here because it is meant for grid stability and not for power purchase.”

3. While the matter stood thus, the Respondent-M/s. JITPL filed a writ petition against State Government and GRIDCO, vide WP(C) No. 18150/2018, before the Hon'ble High Court of Orissa challenging the legality and validity of MoUs with the State Government, State Thermal Policy dated 08.08.2008 and the PPAs with the Petitioner-GRIDCO. Hon'ble High Court in their interim order dated 16.05.2019 had directed that

no coercive action shall be taken against the Petitioner of the said Writ Application i.e. M/S. JITPL till the next date.

4. Subsequent to the order of the Commission dated 04.06.2019 passed in Case No.01/2017 and Case No.64/2017, the Petitioner-M/s. GRIDCO approached this Commission with the present case on 24.06.2020 invoking the provision under Section 142 of the Electricity Act, 2003 stating that the first two units having capacity of 600 MW each of the Respondent-M/s. JITPL were synchronized and the Commercial Operation Date (COD) of both the units were 19.04.2015 and 12.02.2015 respectively. Since the COD, the Respondent-M/s. JITPL was always supplying less quantum of power against the stipulation in the PPA. Subsequently, the Respondent-M/s. JITPL unilaterally stopped the supply of power to the Petitioner-GRIDCO from 23.05.2019 grossly violating the terms and conditions of PPA on the pretext of interim order of the Hon'ble High Court of Orissa dated 16.05.2019 passed in W. P (C) No.18150/2018. However, as submitted, as per the observations of the Commission in Case No.01/2017 and Case No.64/2017, Respondent-M/s. JITPL has violated the order of this Commission and is liable to pay the compensation to Petitioner-GRIDCO for the period from FY 2015-16 to January, 2020.
5. The Hon'ble High Court of Orissa, in their interim order dated 29.04.2022 in W.P.(C) No.18150 of 2018, had issued the following directions:

“The Petitioner-company as per its commitment shall supply the power of 100 MW by 6th of May, 2022 and the supply shall be scaled upto 120 MW latest by 13th of May, 2022. It is further directed that payment security shall be provided by GRIDCO in the form L/C as agreed upon and to ensure the payment within seven days of submission of the tariff bill by the petitioner. The aforesaid arrangement is purely provisional, to be continued till the end of July, 2022 or disposal of the writ petition whichever is earlier, so also the same is without any prejudice to the claims made by the rival sides in the writ petition with regard to tariff and the other rights and liabilities.”

6. While the legal battle between the parties was continuing before the Hon'ble High Court, another front opened between the parties, when the Respondent-M/s. JITPL challenged the order dated 04.06.2019 of the Commission passed in Case No.01/2017 and Case No.64/2017 before the Hon'ble APTEL in Appeal No. 297/2019, on the prime ground that, despite objections taken by the Respondent-M/s. JITPL, the Commission directed inclusion of Clauses in PPA for compensation to be payable, in case there is less/no supply of power by the Respondent-M/s. JITPL. The Hon'ble APTEL in their

interim order dated 28.08.2020 passed in Appeal No.297/2019 and IA No.1276 of 2019 was pleased to stay the operation of the above order of the Commission dated 04.06.2019, the operative portion of which runs as under:

"Xxx x x x x x x.

Meanwhile, the operation of the impugned order and all consequential action taken thereupon shall remain stayed.”

7. Subsequently, vide order dated 24.11.2023, the Hon'ble APTEL disposed of the IA No.1276/2019 & IA No.2432/2023 arising out of Appeal No.297 of 2019 lifting the interim stay order passed earlier. The relevant extract of the order dated 24.11.2023 of the Hon'ble APTEL is as under:

" x x x x x x x x x x x x

In light of this submission of the Learned Senior Counsel, it is unnecessary for us to consider the submission urged by Sri Arijit Maitra, Learned Counsel for the second Respondent, that the interim order passed by this Tribunal earlier should be vacated. IA No.1276 of 2019 stands dismissed as withdrawn. Consequently, no orders need be passed in IA No.2432 of 2023 (for vacation of stay) and the said IA is closed. Needless to state that, as a result of IA No.1276 of 2019 being dismissed as withdrawn, the interim order passed therein shall cease to remain in force.”

8. Now, the Petitioner-GRIDCO states that the total compensation amount payable by Respondent-M/s. JITPL upto June, 2023 has been computed to be Rs.959.43 Crore which has been communicated to the Respondent-M/s. JITPL by GRIDCO vide their letter dated 22.08.2023. The Respondent-M/s. JITPL has been supplying only 60 MW of power (against 120 MW), which is in violation of interim order of Hon'ble High Court of Orissa dated 29.04.2022. The Petitioner has filed a Contempt Petition bearing No. CONTC 6451/2023 before Hon'ble High Court which is clubbed with the Writ Petition WP(C) No.18150/ 2018. In its reply, the Respondent-M/s. JITPL has submitted that less quantum of power is being supplied against the direction of the Hon'ble High Court due to non-availability of linkage coal. The Respondent-M/s. JITPL further states that the matter before the Hon'ble APTEL in Appeal No. 297/2019 is likely to come up in the month of January, 2024. Under above scenario, the matter may be adjourned to a later date after the month of January, 2024.

9. Heard both the parties through hybrid mode. From the chronology of events as stated above, it is amply clear that there is no embargo on the operation of the Commission's order dated 04.06.2019 with effect from 24.11.2023 inasmuch as the Hon'ble APTEL, while disposing of the Interim Applications vide its order dated 24.11.2023 in Appeal No.297 of 2019, has been pleased to lift the stay on the operation of the Commission's order dated 04.06.2019 passed in Case No.01/2017 and Case No.64/2017. Therefore, the Respondent-M/s. JITPL and Petitioner-GRIDCO are directed to incorporate the compensation Clause in the PPA as directed by this Commission in its order dated 04.06.2019 passed in Case No.01/2017 and Case No.64/2017. After such incorporation, the Petitioner-GRIDCO shall be at liberty to raise the compensation claim against short/no supply of power by the Respondent-M/s. JITPL. The direction of the Commission for incorporation of the compensation Clause in the PPA shall be carried out within a month of issuance of this order failing which the Petitioner-GRIDCO can take any legal recourse as deemed fit.
10. Accordingly, the case is disposed of.

Sd/-
(S.K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson