

Before

# UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 34 of 2019

**In the matter of:**

Selection of Developer(s) for setting of 200 MW Aggregate Capacity Grid Connect Solar PV Power Projects in the Hilly region of Uttarakhand for procurement of power on long term basis by Uttarakhand Power Corporation Limited (UPCL) through tariff based competitive bidding process under Type-I project of "Uttarakhand Solar Energy Policy-2013"(Amended -2018).

**In the matter of:**

M/s Kumar Enterprise

M/s Prakash Enterprise

M/s Joshi Enterprise

... Petitioners

**AND**

**In the matter of:**

Uttarakhand Renewable Energy Development Agency (UREDA)

Uttarakhand Power Corporation Ltd.

... Respondents

**CORAM**

**Shri D.P. Gairola      Member (Law)**

**Shri M.K.Jain          Member (Technical)**

**Date of Hearing: November 14, 2019**

**Date of Order: November 15, 2019**

This Order relates to the Petition dated 26.09.2019 filed by M/s Kumar Enterprise, M/s Prakash Enterprise and M/s Joshi Enterprise (hereinafter collectively referred as to "Petitioners") under Regulations 7, 9, 10, 58 & 59 read with Regulation 60 of UERC (Conduct of Business) Regulations, 2014 and Regulation 15, 16, 17 and 18 of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and relevant provisions of the Electricity Act, 2003 and Uttarakhand Solar Policy requesting the Commission to hold that the cancellation of

the bid of the Petitioners as per Clause 1 of the minutes of TAC and non-allocation of the project to the Petitioner was wrong, arbitrary and without jurisdiction and also direct Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "Respondent-1" or "UREDA") to consider the bid of the Petitioners and award the project to the Petitioners by publishing the fresh allotment letters.

## **1. Background**

- 1.1. UREDA had invited bids for setting up Solar PV plants of cumulative capacity of 200 MW in the hilly region of Uttarakhand for procurement of power on long term basis by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Respondent-2" or "UPCL"), through tariff based competitive bidding under Type-I category, i.e. *"Projects selected as per the competitive bidding process for selling power to Uttarakhand DISCOM i.e. UPCL for meeting their RPO Obligations as specified by UERC from time to time"*, of Uttarakhand Solar Energy Policy, 2013. UREDA had received total 237 nos. of bids for the setting up of the Solar PV plants out of which 29 nos. of bids including bids submitted by the consortium of M/s Kumar Enterprise & M/s Joshi Enterprise and consortium of M/s Prakash Enterprise & M/s Joshi Enterprise were rejected due to non submission of complete documents in accordance with the RfP.

## **2. Petitioner's submissions**

- 2.1. The Petitioners submitted that they had applied for the bids as two separate consortiums, one of M/s Prakash Enterprise & M/s Joshi Enterprise and another of M/s Kumar Enterprise & M/s Joshi Enterprise. The Petitioner submitted that their bids were rejected on the ground that instead of submitting the domicile certificate of all the members of the consortiums, the Petitioners had submitted the domicile certificate of only the leading member in the respective consortium.
- 2.2. The Petitioners submitted that they attended the pre-bid meeting held on 20.02.2019 by the UREDA alongwith the other bidders. It was notified in the meeting that the bidders taking part as individuals or as a Bidding Company shall have a domicile/permanent residence certificate of Uttarakhand whereas for those taking part in consortium only one of the partner (Leading member) of the consortium with at least 51% of the share in the bidding consortium shall have the domicile of Uttarakhand. The Petitioner further

submitted that the rejection of the bids on the ground that all the members of the consortium were required to submit domicile certificate is arbitrary and factually incorrect.

- 2.3. The Petitioners also submitted that as per clause 2.14.1 of the Request for Proposal (RfP) any question raised by the bidders in respect of RfP in the pre-bid meeting was to be clarified by the Respondent-1 and as such as a compiled list of questions asked and the responses to the same was to be uploaded at [www.ureda.uk.gov.in](http://www.ureda.uk.gov.in) whereas the clarifications were uploaded at [www.uk.tenders.gov.in](http://www.uk.tenders.gov.in) which is a complete violation of clause 2.14.1 of RfP.
- 2.4. The Petitioners stated that as per minutes of Technical Appraisal Committee (TAC), some of the bidders were given opportunity to meet the criteria for qualification as a successful bidder but the Petitioners' technically correct bids were rejected without given any opportunity.
- 2.5. The Petitioners submitted that the Commission is the appropriate authority to promote and regulate the renewable energy in the State and also the regulator of the Respondent-2 for whom and on whose behalf RfP was floated for complying with the renewable purchase obligation. The Petitioner also submitted that the Commission is the appropriate and competent authority to adjudicate in the matter.

### **3. Respondents' submissions**

- 3.1. The Commission had forwarded the copy of the Petition to UREDA and UPCL for its comments, if any, in the matter. UREDA vide its letter dated 25.10.2019 submitted its reply to the Commission whereas no comments were submitted from UPCL.
- 3.2. UREDA submitted that as per the definitions of the RfP dated 13.02.2019 it is clear that Proprietorship firm shall be treated as Individuals and under the category of individuals; everyone was required to submit the domicile certificate of Uttarakhand. Further, during the pre-bid meeting it was clarified that all the members of the consortium are required to submit domicile certificate of Uttarakhand. Total 11 bids had been filed by consortiums out of which all the members of the 9 selected consortium firms had submitted the relevant domicile certificate.
- 3.3. With regard to the opportunities given to other bidders, the Respondent-1 submitted

that in some of the cases, there was ambiguity w.r.t. name, in the documents submitted by some of the bidders and opportunity was given to them to clear such doubts. However, such approach cannot be a ground for submitting additional documents which should have been submitted at the time of submission of the bids.

#### **4. Commission's Analysis and view**

- 4.1. The present Petition has been filed under Regulations 7, 9, 10, 58 & 59 read with Regulation 60 of UERC (Conduct of Business) Regulations, 2014 and Regulation 15, 16, 17 and 18 of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and relevant provisions of the Electricity Act, 2003 and Uttarakhand Solar Policy requesting the Commission to hold that the cancellation of the bid of the Petitioners and non-allocation of the project to the Petitioner was arbitrary and without jurisdiction and also direct Uttarakhand Renewable Energy Development Agency (hereinafter referred to as "Respondent-1" or "UREDA") to consider the bid of the Petitioners and award the project to the Petitioners by publishing the fresh allotment letters.
- 4.2. The Commission conducted a hearing on the admissibility of the Petition on 14.11.2019. During the course of hearing, the Petitioners and UREDA reiterated their submissions. After examining the relevant material available on records, issues raised by the Petitioners have been dealt in the subsequent paragraphs of this Order.
- 4.3. The Petitioners have stated that the Commission is the appropriate authority to promote and regulate the renewable energy in the State of Uttarakhand.

With regard to the function of promoting and regulating renewable energy, Section 86(1)(e) of the Electricity Act, 2003 specifies that the State Commission shall promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. The role of the Commission under Section 86(1)(e) is limited to providing suitable measures for connectivity of RE based generators with the grid for sale of electricity as well as specifying certain percentage of the power to be procured from such RE sources by the distribution licensee. Accordingly, the Commission specifies the RE Regulations which

includes, interalia, the tariffs, provisions on connectivity of RE generating stations as well as RPO percentage from time to time to promote and regulate the renewable energy sector in accordance with the provisions of the Electricity Act, 2003 & rules made there under.

Further, it is to be noted that the bids for setting up of Solar PV plants of cumulative capacity of 200 MW were invited by UREDA under Type-I category of Solar Energy Policy of Uttarakhand, 2013 based on the UPCL's letter dated 02.06.2018 vide which UPCL had requested UREDA for arrangement of 200 MW Solar Power to achieve the renewable purchase obligation for FY 2018-19 under Type-I category of Solar Energy Policy of Uttarakhand, 2013. Here, it is pertinent to mention that under Type-I category, GoUK/UREDA invites proposals from time to time for selection of Solar Power projects through tariff based competitive bidding process based on the qualification criteria fixed by GoUK/UREDA.

Further, RfP for the development of Solar PV plants under Type-I was approved by the GoUK vide letter no. 232/I/2019-05/14/2009 dated 08.02.2019 subject to certain conditions. In such RfP(s), the role of the Commission is limited to the Regulations and tariff rates specified therein for renewable energy based power plants and approval or otherwise of the RfP comes under the purview of GoUK.

Accordingly, based on the above discussion, the Commission is of the view that the issues raised by the Petitioners does not come under the jurisdiction of the Commission, and therefore, they are advised to approach relevant authority in the matter which in the present case would be Director, UREDA or Secretary (Energy), Government of Uttarakhand. Thus, there is no merit in the submissions of the Petitioners and the Commission, hereby, decides to reject the Petition.

4.4. Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law)**