

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 12 of 2012

In the matter of:

Application for review of the Commission's Order dated 14.02.2012 on the petition filed by M/s R.V. Akash Ganga Infrastructure Limited seeking amendments in Power Purchase Agreement executed on 21.08.2010 with UPCL.

And

In the matter of:

Uttarakhand Power Corporation Ltd

Petitioner

Vs

M/s R.V. Akash Ganga Infrastructure Limited

Respondent

Coram

Shri Jag Mohan Lal

Chairman

Dated: 6th September 2012

ORDER

This Petition has been filed by Uttarakhand Power Corporation Ltd. (herein after referred to as "UPCL" or "Petitioner") for review of the Commission's Order dated 14.02.2012 on the Petition filed by M/s R.V. Akash Ganga Infrastructure Limited (hereinafter referred to as "Respondent" or the "generator") under Section 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to as "Act").

1. Background

- 1) M/s R.V. Akash Ganga Infrastructure Limited is a generator having a solar PV generating station of capacity 2 MW, situated at village Salair Sallahpur Zadeed

Mustehkam, Pargana Bhawanpur, Village Roorkee, District, Haridwar, Uttarakhand.

- 2) UPCL entered into an agreement (PPA) dated 21.08.2010 with the generator for purchase of power to be generated at the aforesaid plant.
- 3) Subsequently, the generator filed a Petition before the Commission requesting it to approve the PPA with certain amendments proposed by the generator to make it in consonance with the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil fuel based Co-generating Station) Regulations, 2010 (hereinafter referred to as "Regulations, 2010").
- 4) The Commission after carrying out the proceedings in the matter, issued an Order dated 14.02.2012.
- 5) UPCL aggrieved by the findings of the Commission in the said Order, filed a review Petition against the said Order. In the meanwhile, the generator also filed an application u/s 142 and 146 of the Act alleging non-compliance by UPCL of the Commission's Order dated 14.02.2012. Since, UPCL had already filed the review Petition in the matter, the Commission decided to club the application filed by the generator along with the review Petition. The Petition was sent to the generator for its response and the generator's reply in the matter was forwarded to UPCL for submission of its response.

2. Submission of the Petitioner

UPCL in its Petition as well as in its response filed subsequently had submitted that the Commission had erred on the following grounds in its order dated 14.02.2012:

- (1) By not holding that as per Section 10 of the Act a generating company is required to construct a dedicated transmission line as defined u/s 2(16) of the Act.
- (2) By not considering that under Regulation 6 of Regulations, 2010, it has been provided that the generating stations shall establish and operate the dedicated transmission lines connected with the generating stations.
- (3) In interpreting the Regulations on the basis of definition of inter-connection point for the purpose of interpreting the obligation of the developer to construct the dedicated transmission line.

- (4) By not considering Regulation 38 & 39 of the Regulations, 2010 which provides for evacuation of power and maintenance of dedicated transmission line.
- (5) In holding that UPCL was under the obligation to construct the dedicated transmission line for the generating station of the developer.
- (6) In interpreting the judgement of the Hon'ble Appellate Tribunal for Electricity.
- (7) The Commission in its Order had recognised that the generator had already constructed the transmission line, however, the Commission by mistake held that UPCL would seek option from the generator as to whether the generator desires to construct the evacuation infrastructure at its own costs or not and based on the action so exercised, UPCL has to take necessary action in the matter.

3. Reply of M/s R.V. Akash Ganga Infrastructure Ltd.

- (1) In its reply, the generator submitted that the review petition was not legally maintainable. Order sought to be reviewed was issued by the Commission to the petitioner for compliance of the order and also to send compliance report to the Commission.
- (2) The generator also submitted that UPCL has, by not complying with the order, caused it huge loss and harassment.
- (3) The generator submitted that the said review petition is an appeal in disguise and the same is not permissible in law. It is a settled proposition of law that the review cannot be an appeal in disguise. The error apparent on face of record can only be corrected in review petition. The error apparent on face means the error which strikes at merely looking at the record and it does not require any investigation or inquiry and are in nature of typographical errors and mistake of calculation etc. and are for purpose of rectification of mistake that has crept in or occurred by some accident and without any blame. That the order is wrong is not a ground of reviewing such order, if the party is aggrieved, he can file appeal against the same.
- (4) The generator submitted that if the ground taken in review are in a nature of grounds in appeal the review is not maintainable and is liable to be rejected and also the order passed on wrong pretext also, cannot be ground of review, and even, an erroneous decision cannot be corrected in review, proper remedy is to file an appeal before the higher authorities.

4. Commission's Analysis

(1) Before going into the merits on the issues raised, the Commission first explores the powers vested in it to review its Orders in order to establish the legality of the Petition. In this regard, reference is drawn to Section 94(1)(f) of the Act which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court would exercise such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC). Under the said provisions, review of the Order is permitted on the following specific grounds only, namely:

- Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
- Mistake or error apparent on the face of the record;
- If there exist other sufficient reasons.

It is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This portion of order XLVII cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision. In this connection the decision of the Hon'ble Supreme Court, again in the case of Lily Thomas etc. vs. Union of India and others in AIR 2000 Supreme Court page 1650 spells out the position unambiguously. In view of this well settled position the scope of the third condition of order XLVII of the CPC that is, "any other sufficient reason", cannot be extended to include all other reasons irrespective of whether they are in conformity with the specific requirements stipulated under order XLVII itself or not.

Given this unambiguous position of law as spelt out above, it has to be now seen whether the review Petition under consideration meets these requirements or not.

(2) The contention of UPCL that the Commission erred in not relying upon Section 10 of the Act, Regulation 6, 38 and 39 of Regulations, 2010 which provides that a generating company is required to construct a dedicated transmission line and further, in holding that UPCL was under the obligation to construct the

dedicated transmission line for the generating station of the generator and also incorrect interpretation of the judgement of the Hon'ble Appellate Tribunal for Electricity is not correct.

The said provisions of the Act and Regulations have been discussed in detail by the Commission in Para 2.1.3 of its Order dated 14.02.2012 more so in light of its UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010, Removal of Difficulty (First) Order, 2010 (hereinafter referred to as "Order dated 28.10.2010"). The argument so rendered by UPCL is neither based on a new and important matter nor is a mistake or error apparent on the face of the record as the Commission has discussed these issues in detail in the Order dated 14.02.2012. The Petitioner's understandings and views on any or all of these matters are, and can indeed be different from those contained in the Commission's order. Relief against such perceived grievances cannot be granted by the Commission itself, reconsidering the issues through review under Section 114 and order XLVII of the CPC and revising the earlier decision. Such relief, if warranted at all, can be granted only by the appellate authority. Hence, instant request does not stand merit for review by the Commission.

- (3) UPCL's contention that the generator has already constructed the transmission line and therefore, UPCL has submitted that the Commission by mistake has held that UPCL would seek option from the generator as to whether the generator desires to construct the evacuation infrastructure at its own costs or not and based on the option so exercised, UPCL has been directed to take necessary action in the matter.

The Commission in its Order dated 14.02.2012 was of the view that UPCL by not providing an option to the generator, prior to the signing of the PPA, as to whether the generator desires to construct the evacuation line and other associated equipments at its own cost, has contravened the provisions of the Regulations in this regard. Hence, in order to bring the actions which transpired between the distribution licensee and the generator, within the framework of the Regulations and the Order dated 28.10.2010, the Commission directed UPCL to take necessary action, in accordance with the Regulations, which besides seeking prior option from the generator with regard to construction of the line, also

stipulates that licensee has the first right to buy the evacuation line of the generator at the depreciated cost indicated in the latest accounts of the generator so as to protect licensee's own commercial interest or pay an additional 5 paisa as per Regulations. Therefore, contention of the licensee is based on the misinterpretation of the Order of the Commission in this regard. Hence, it cannot be the ground for review.

- (4) The Commission would rely upon Hon'ble Supreme Court and Hon'ble High Court's decision in this regard who have time & again held that the review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of the issues already decided. The errors or mistakes for correction in review proceedings should be apparent on the face of the record, that the same should be self-evident. There has to be a patent error, which could be detected without advancing long drawn arguments. Hon'ble Supreme Court in the case of Lily Thomas etc. vs. Union of India and others in AIR 2000 Supreme Court page 1650 has categorically decided this question leaving no room for further doubts or interpretations. This position has been reiterated by the Hon'ble Supreme Court in State of Haryana vs. Mohinder Singh and others on 12.11.2002. None of the flaws alleged by the Petitioner in the Commission's Order is a self evident patent error, but on the contrary are merely Petitioner's perceptions and conclusions based on his own knowledge and understanding of facts and law which the Commission does not subscribe to.
- (5) For reason given as above the Petition for review/modification/ rectification etc. is not maintainable under Section 94(1)(f) of the Act read with section 114 and order XLVII of the CPC. The application, accordingly, stands rejected.
- (6) The Petition is disposed off accordingly.

(Jag Mohan Lal)
Chairman