

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 19/MP/2012 with I.A.No.4/2012

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 1.2.2012
Date of Order: 2.2.2012**

In the matter of

Illegal curtailment of Medium Term Open Access granted by Power Grid Corporation of India Limited for inter-State sale of electricity - setting aside the letter/order dated 07.01.2012 issued by Southern Region Load Despatch Centre purportedly intimating an illegal decision to curtail Medium Term Open Access granted to Jindal Power Limited and certain others.

And in the matter of

Jindal Power Limited (JPL)

...Petitioner

Vs

1. Southern Region Load Despatch Centre (SRLDC)
2. Power Grid Corporation of India Limited (PGCIL)

...Respondents

Parties present:

1. Shri S.B. Upadhyay, Advocate for JPL
2. Ms. Shikta Ohri, Advocate for JPL
3. Shri Matrugupta Mishra, Advocate for JPL
4. Shri Rana N. Biswas, Advocate for JPL
5. Shri A.S. Mathur, Advocate for JPL
6. Shri Bharmanandjhi, JPL
7. Shri V. Suresh, SRLDC
8. Shri V.V. Sharma, NRLDC
9. Shri Jyoti Prasad, NRLDC
10. Shri Rajiv Porwal, NRLDC



11. Shri Akhilesh Awasty, IEX
12. Shri Barmananda, NLDC

ORDER

The petitioner, Jindal Power Ltd., has filed the instant petition praying to quash and set aside the order dated 7.1.2012 (impugned order herein) issued by Southern Region Load Despatch Centre (Respondent No.1) for curtailment of Short Term Medium Access (STOA)/ Medium Term Open Access (MTOA) earlier granted by Power Grid Corporation of India Ltd. (Respondent No. 2) in its letter dated 24.11.2011. The petitioner has also filed an interim application praying for stay of the said impugned order dated 7.1.2012 and directions to Respondent No.1, SRLDC to schedule power under medium term open access, in terms of the agreement dated 30.11.2011 executed between the petitioner and the Respondent No.2.

2. Learned senior counsel appearing for the petitioner submitted that the petitioner was granted Medium Term Open Access by Respondent No. 2 for the period 1.2.2012 to 31.5.2012 for supply of power to Andhra Pradesh Central Power Distribution Company Ltd. for a quantum of 121.9 MW. As per the terms of the said permission, the petitioner has entered into MTOA Agreement with Respondent No. 2 on 30.11.2011. Para 4.0 of the agreement provides that the agreement "shall be valid from the date of signing of this agreement till the validity of Medium Term Open Access subject to its revision as may be made by the parties to the agreement provided that the agreement may be mutually renewed or replaced by another agreement on such terms as the parties may mutually agree. Para 2 of the agreement provides that all differences/disputes between the parties arising out of or in connection with the



agreement shall be resolved in terms of the Redressal Mechanism provided under Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and under Electricity Act 2003. The Learned senior counsel further submitted that as per Regulation 25 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hearing after "connectivity regulation"), the schedule transactions on the basis of the access can be curtailed by Regional Load Despatch Centre for the reason of transmission constraints or in the interest of grid security. However, Southern Regional Power Committee, Bangalore, in its letter dated 6.1.2012 has informed that in view of the surrendered share of power proposed by Delhi in various central generating stations, it was decided by Ministry of Power in consultation with Central Electricity Authority to revise the allocation of firm power of Dadari II TPS by allocating 100% surrendered power of Delhi to Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) and accordingly revised allocation of power from Dadri II TPS has been made effective from 0000 hrs of 8.1.2012 upto 29.2.2012. In pursuance to the revised allocation, Respondent No. 1 in its fax message dated 7.1.2012 has ordered for curtailment of STOA and MTOA by Southern Region w.e.f 8.1.2012 without giving an opportunity to the petitioner who has a MTOA during the period. He further submitted that as per Regulation 9(2) of Connectivity Regulations, the Central Transmission Utility can grant MTOA only if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution. Therefore, the

exercise has already been carried out at the time of granting MTOA to the petitioner. The Learned Counsel referred to Section 2(47) and Section 38 (2) (d) of the Electricity Act, (the Act) and submitted that the Act provides for non-discriminatory open access with the interested transmission system. Therefore, there cannot be any discrimination between the public and private sectors by giving preferential treatment to NTPC over the MTOA granted to the petitioner. The Learned Counsel relying upon the judgment of the Hon'ble Supreme Court in the matter of State of Bihar and others Vs Kalayanpur Cements Ltd [(2010) 3 SCC 274] submitted that the doctrine of *promissory estoppel* operates against the Respondents to curtail the MTOA granted to the petitioner.

3. The representatives of Southern Regional Load Despatch Centre (SRLDC) and National Load Despatch Centre (NLDC) submitted that they have received the notice and copy of the petition only on 31.1.2012 and require some time to file their replies. The representative of SRLDC submitted that as per note 3 of the MTOA permission dated 24.11.2011 granted by Respondent No. 2 and the MTOA Agreement between the petitioner and the Respondent No. 2 provides that the petitioner shall abide by the applicable Regulations, Guidelines, Acts, Codes, Rules and Amendments thereof from time to time. Therefore, the Connectivity Regulation which provides for priority of long term access over medium term open access has to be complied with by the petitioner. Referring to the definition of Long Term Customer in Regulation 2(1) (m) of Connectivity Regulation, he submitted that any person has been allocated power from the Central Sector Generation owned or controlled by the Central Government is a long term customers and there is no periodicity for allocation. He also referred to note-1 and

Note-2 under Regulation 32(2) of the 2009 Regulations, to contend that SRLDC has acted strictly in accordance with the Regulation while curtailing the MTOA after allocation of power by Central Government to the Tamil Nadu Generation Transmission Company Ltd. He also referred to the various provisions of the Grid Code and congestion regulations, particularly paras 27 and 28 of Clause 6.6.5 of the Grid Code and submitted that for the reasons of transmission constraints such as congestion or in the interest of Grid security, if it becomes necessary to be curtail power on a transmission corridor, the transactions already scheduled may be curtailed by the Regional Load Despatch Centre. The representative of SRLDC also relied on Regulation 15(2) of Central Electricity Regulatory Commission (Open access in inter-State transmission) Regulations, 2008 and contained that in case of inter-regional bilateral transactions, approved scheduled may be revised or cancelled by the Regional Load Despatch Centre, if the Central Government allocates power from a Central Generating Region from one region to the person in other region and such allocation, in the opinion of the Regional Load Despatch Centre, cannot otherwise be implemented because of congestion in inter regional links. The representative of the SRLDC submitted that the system operator has strictly acted in accordance with the Regulations of the Commission. The representative of CTU submitted that the available transmission capacity has been calculated and put on the website of the CTU and RLDCs for the information of all concerned.

4. The learned senior counsel for the petitioner submitted that the transmission constraint has been artificially created on account of scheduling of power by SRLDC

consequent to re-allocation of power by the Central Government to TANGEDCO which has vitally affected the rights of the petitioner under the contract.

5. The learned senior counsel further submitted that Central Power Distribution Company of Andhra Pradesh Ltd. has filed writ petition No. 1572/2012 before the Hon'ble High Court of judicature of Andhra Pradesh at Hyderabad challenging the order of SRLDC dated 7.1.2012. The petitioner had filed an application for impleadment in the writ petition which was withdrawn on 31.1.2012 in order to seek appropriate remedy under the Connectivity Regulation before this Commission. The representative of SRLDC submitted that reply to the Writ Petition has been filed by Respondent No. 1 and after detailed arguments, the Hon'ble High Court has reserved its order.

6. We have heard the learned senior counsel for the petitioner and the representatives of SRLDC, NLDC and CTU. The main cause of action leading to the present petition is the curtailment of MTOA by SRLDC in order to accommodate the scheduling of power from the Dadari-II station of NTPC to TANGEDCO. It is the submission of SRLDC that after allocation of power by the Central Government to the long term customers, such allocation is treated as long term access and as priority over MTOA and STOA. SRLDC has further submitted that as per Note-1 under Regulation 32(2) of the 2009 Tariff Regulations, the total capacity share of beneficiary would be sum of its capacity share plus allocation out of the un-allocated portion. Therefore, SRLDC is bound to schedule the allocation of TANGEDCO after taking into consideration the allocation from the Dadri-II station of NTPC for which the MTOAs

granted for scheduling of power in the corridor have been curtailed. On perusal of Note-2 under Regulation 32(2) of 2009 Tariff Regulations, we notice that the shares of the beneficiaries may be prospectively re-allocated by the Central Government for the specific period depending on the technical feasibility of power transfer and specific agreement reached by the generating company with other States within/outside the region for such transfers. Note-2 of Regulation 32(2) of 2009 Tariff Regulations is extracted as under:-

" NOTE 2

The beneficiaries may propose surrendering part of their allocated firm share to other States within / outside the region. In such cases, depending upon the technical feasibility of power transfer and specific agreements reached by the generating company with other States within/ outside the region for such transfers, the shares of the beneficiaries may be prospectively re-allocated by the Central Government for a specific period (in complete months) from the beginning of a calendar month. When such re-allocations are made, the beneficiaries who surrender the share shall not be liable to pay capacity charges for the surrendered share. The capacity charges for the capacity surrendered and reallocated as above shall be paid by the State(s) to whom the surrendered capacity is allocated. Except for the period of reallocation of capacity as above, the beneficiaries of the generating station shall continue to pay the full capacity charges as per allocated capacity shares. Any such reallocation and its reversion shall be communicated to all concerned by the Member Secretary, Regional Power Committee in advance, at least three days prior to such reallocation or reversion taking effect." (emphasis supplied)

7. It is noticed from the letter dated 6.1.2012 of Southern Regional Power Committee (Page-36 of the petition), that the surrendered power of Delhi in Dadri-II TPS of NTPC has been re-allocated by Ministry of Power in consultation with Central Electricity Authority in favour of TANGEDCO from 8.1.2012 to 29.2.2012. Such re-allocation of Power should have been done after taking into account the technical

feasibility of such power transfer on the inter-regional line. Therefore, there is a requirement to know whether the prior agreements entered into by the parties for transfer of power on the inter-regional lines have been taken into account at the time of deciding the re-allocation of the power from Dadri-II TPS to TANGEDCO. Accordingly, we issue notice to the Ministry of Power, Government of India and Central Electricity Authority to file their response. Since, NTPC and TANGEDCO are affected parties, we also issue notice to them in this matter.

8. All the parties are directed to file their replies by 6.2.2012. Central Transmission Utility is directed to file the details of the load flow studies regarding the constraints in the transmission corridors in the Southern Region.

9. Learned senior counsel for the petitioner urged that by way of interim relief, SRLDC should be directed to schedule the power of the petitioner under the MTOA till the matter is decided by the Commission. In response to our query as to why the petitioner has approached the Commission only on 31.1.2012 where as the curtailment order has been issued by SRLDC on 7.1.2012, the learned senior counsel clarified that the petitioner was in consultation with SRLDC which resulted in delay in filing this petition. Since the Respondent No. 1 has acted in accordance with the directions of the Ministry of Power and Central Electricity Authority, in our view it would not be appropriate to grant any interim relief without knowing the basis for re-allocation by Ministry of Power. However, Respondent No. 1 is directed to schedule the power of the petitioner and others who have been granted MTOA on non-discriminatory basis, if any

margin is available in the transmission corridor. Accordingly, I.A. No. 4/2012 is disposed of.

10. The petition shall be listed for hearing on 7.2.2012.

sd/-
[M.DEENA DAYALAN]
MEMBER

sd/-
[V.S.VERMA]
MEMBER

sd/-
[DR. PRAMOD DEO]
CHAIRPERSON