



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 41/MP/2023

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 16th of October, 2023

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 to challenge the Respondents' wrongful action of insisting upon additional requirements, which are contrary to contractual terms and provisions of Power Purchase Agreement, for processing invoices and the communications of the Respondents calling upon solar/ wind power generators to obtain separate connections from Distribution Companies and avail power as per prevailing tariff category during the periods when their plant does not generate electricity.

AND IN THE MATTER OF:

Solar Power Developers Association (SPDA)
910, 9th Floor, Surya Kiran Building
19, KG Marg, New Delhi-110001

...Petitioner

Versus

- M/s Solar Energy Corporation of India Limited,**
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi-110023
- National Thermal Power Corporation (NTPC)**
NTPC Bhawan, Core 7, Scope Complex,

7 Institutional Area,
Lodhi Road, New Delhi – 110003.

3. **Uttar Pradesh Power Corporation Ltd. (UPPCL),**
Shakti Bhawan, 14- Ashok Marg, Lucknow
Uttar Pradesh – 226001
4. **Uttar Pradesh Power Transmission Corporation Ltd**
V25C+MJ2, Phase II, Vibhuti Khand,
Gomti Nagar, Lucknow,
Uttar Pradesh 226001
5. **Uttar Pradesh State Load Despatch Centre (UPSLDC)**
V25C+MJ2, Phase II, Vibhuti Khand,
Gomti Nagar, Lucknow,
Uttar Pradesh 226001
6. **Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL)**
Urja Bhawan, Victoria Park,
Meerut 250001
7. **Dakshinanchal Vidyut Vitran Nigam Ltd. (DVVNL)**
6X6C+MFG, Urja Bhavan Agra - Delhi,
Bypass Road, Sikandra, Agra,
Uttar Pradesh 282002
8. **Purvanchal Vidyut Vitran Nigam Ltd. (PVVVNL)**
DLW Bhikharipur,
Varanasi - 221004
9. **Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL)**
4A, Gokhale Marg, Block I,
Gokhale Vihar,
Butler Colony, Lucknow,
Uttar Pradesh 226001.
10. **Kanpur Electricity Supply Company Limited.**
Headquarter, Kesa House,
14/71Civil Lines, Kanpur

... Respondents

Parties Present: Shri Ankur Sood, Advocate, SPDA
Ms. Bheeni Goyal, Advocate, SPDA
Shri Ankit Gupta, Advocate, SPDA
Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Shrivastava, Advocate, NTPC
Shri Siddharth Nigotia, Advocate, NTPC

आदेश/ ORDER

The Petitioner, i.e. Solar Power Developers Association (SPDA), is an independent industry association, promoting the solar energy sector in India and providing a neutral platform for policy advocacy, discussions, and examination of issues critical to the development of the solar sector.

2. Respondent No.1, Solar Energy Corporation of India (SECI), is a Central Public Sector Undertaking under the administrative control of the Ministry of New and Renewable Energy (MNRE) for the facilitation of the implementation of NSM and the achievement of targets set therein.
3. Respondent No. 2, National Thermal Power Corporation (NTPC), is an Indian public sector undertaking engaged in the generation of electricity and allied activities.
4. Respondent No. 3, Uttar Pradesh Power Corporation Limited (UPPCL), is responsible for planning and managing the distribution sector in the State of Uttar Pradesh.
5. Respondent No.4, Uttar Pradesh Power Transmission Corporation Ltd (UPPTCL), is a transmission utility functioning with the main objective to acquire, establish, construct, take over, erect, lay, operating etc in the State of Uttar Pradesh, India and elsewhere Respondent No.5, Uttar Pradesh State Load Despatch Center (UPSLDC) is the despatch centre for Uttar Pradesh Power System engaging in the work of real time operation of the Uttar Pradesh Grid.
6. Respondents No. 6 to 10 are distribution companies in the State of Uttar Pradesh.
7. SPDA has made the following prayers in the Petition:

- a) *Hold and declare that the mechanism of netting of energy (Import and Export) between the solar power plants/ the Petitioner's members [being, Azure Power Jupiter Private Limited, Azure Power Venus Private Limited and Enviro Solaire Private Limited] and the Respondents is binding and has to be complied by the parties;*
- b) *Direct the Respondents not to take any coercive action against the members of the Petitioner;*
- c) *Quash and set aside the impugned communications dt. 04.09.2021 issued by Respondent No.1, dt. 26.10.2021 issued by Respondent No.2, dt. 20.11.2021 issued by Respondent No.1, dt. 06.12.2021 issued by Respondent No.1, dt. 04.02.2022 issued by Respondent No.1 and dt. 10.03.2022 issued by issued by Respondent No.2; and*
- d) *In the alternative, declare the promulgation of UPERC (Captive and Renewable Energy) Regulations, 2019 as a 'Change in Law' event and issue appropriate directions to compensate the Petitioner's members [being, Azure Power Jupiter Private Limited, Azure Power Venus Private Limited and Enviro Solaire Private Limited] on account of the Change in Law event through a suitable mechanism;*
- e) *To direct to Respondent Nos. 1 & 2 to disburse monthly invoice amounts to SPPs [being, Azure Power Jupiter Private Limited, Azure Power Venus Private Limited and Enviro Solaire Private Limited] in a timely manner as per PPA terms till disposal of this petition;*

In I.A. No. 6 of 2023:

- a) *Direct the continuation of the mechanism of netting of energy (Import and Export) between the solar power plants/ the Petitioner's members [being, Azure Power Jupiter Private Limited, Azure Power Venus Private Limited and Enviro Solaire Private Limited] and the Respondents during the pendency of the petition;*
- b) *To direct to Respondent Nos. 1 & 2 to disburse monthly invoice amounts to SPPs [being, Azure Power Jupiter Private Limited, Azure Power Venus Private Limited and Enviro Solaire Private Limited] in a timely manner as per PPA terms till disposal of the petition;*
- c) *Direct the Respondents not to take any coercive action against the members of the Petitioner;*
- d) *Pass any other or further orders as this Hon'ble Commission may deem fit.*

Factual Matrix:

8. The brief facts of the case are as under:

Scheme		Setting up of 2000 MW Grid-connected solar PV power projects under Batch-III scheme		
Request for Selection (RfS) was issued on		24.09.2015		
Power Purchase Agreement (PPA) was executed between:				
Parties	PPA Date	SCoD	Tariff	Joint Meter Reading (JMR) conducted on
Azure Power Jupiter Private Limited and NTPC	29.04.2016	28.05.2017	Rs.4.78/kWh	05.07.2017
Azure Power Venus Private Limited and SECI	21.10.2016	08.11.2017	Rs.4.43/kWh	14.05.2018-31.05.2022
Enviro Solaire Private Limited and SECI	16.05.2021	-	Rs.4.43/kWh	03.05.2018-03.03.2022
Power Sale Agreement (PSA) was executed between SECI and UPPCL on		10.05.2016		

Hearing dated 25.04.2023:

9. Hearing was conducted through physical mode on 25.04.2023. The Commission after hearing the submissions of the parties reserved the matter on admissibility of the Petition.

Submissions of the SPDA:

10. The SPDA has submitted as under:

- a) The test for initiating a proceeding under the Electricity Act, 2003 is based on a person aggrieved whereas under Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, (Conduct of Business Regulations, 1999) *a petition can be initiated by any affected or interested person*. Regulation 24 of the Conduct of Business Regulations, 1999 provides that:

*“The Commission may initiate any proceedings suo-motu or on a Petition filed by any **affected or interested person**”*

- b) Section 3 (49) of the Electricity Act, 2003 defines a person in the following manner:

“Person shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person”

- c) SPDA is an affected or interested person/aggrieved person because:
- i. SPDA is a society registered under the Societies Registration Act, and an incorporated body having the capacity to sue and be sued. The association has forty-three (43) Solar Power Developers (SPDs) as members including those with plants in Uttar Pradesh. In terms of the resolution of the General Body, the General Secretary of the Association has been duly authorized to present this petition to urge therein common view points on behalf of its members who are directly affected by the actions of the Respondents.
 - ii. The petition raises the larger industry issue regarding the treatment of auxiliary power consumed by solar power developers, which SPDA submits to be settled by this Commission in a uniform manner for all solar power producers under the Jawaharlal Nehru National Solar Mission (JNNSM) scheme. SPDA, having been established to promote the solar energy sector in India, is directly affected by and interested in the issue, which is likely to have a significant bearing on the growth and development of the solar energy sector in India.
- d) Applying the legal tests prescribed under the Electricity Act, 2003, read with the CERC (Conduct of Business) Regulations, the present petition filed at the behest of SPDA is maintainable and the substantive issues raised ought to be considered by the Commission.
- e) SPDA has filed the present petition in its capacity as the industry association to represent the interests of the affected members/SPDs and if deemed appropriate by the Commission, the affected SPDs i.e. Azure Power Jupiter Private Limited, Azure Power Venus Private Limited and Enviro Solaire Private Limited may be impleaded as co-petitioners as well.
- f) SPDA has submitted that in the past, it had filed a number of petitions in its representative capacity, on behalf of the affected members.
- g) As directed by the Commission vide RoP dated 25.04.2023, the SPDA filed the written submissions on 08.05.2023, wherein the SPDA has pointed out many instances where it has represented its members in proceedings before various courts and tribunals.

- h) Despite the issues being sub-judice before this Commission, the Respondents have been writing to the SPDA's members to take a separate connection from the Distribution Licensee and pay the charges as per the Scheduled Rate of tariff and have been threatening coercive measures. The Respondents' directions issued under the letters are illegal and unjustified. In any event, the Respondents ought to have awaited the outcome of the proceedings before this Commission before issuing any such communication, which is directly in the teeth of the pending challenge/ issues before the Commission. The action of the Respondents is tantamount to over-reaching the Commission's jurisdiction.
- i) SPDA qua letter dated 28.08.2023 has submitted that the Respondents are allegedly threatening the SPDA members. UPPCL (vide letters dated 30.06.2023 and 01.07.2023) has been writing to the SPDA's members to take separate connection from the Distribution Licensee and pay charges as per the scheduled rate of tariff and have been threatening coercive measures.
- j) SPDA is seeking urgent interim protection from CERC since the SPDA has a strong prima facie case in its favour and is seeking an urgent determination on the pending issue in order to enable them to take the necessary steps as per law.

Analysis and Decision:

11. We have heard the Petitioner and the Respondents and have carefully perused the records.
12. From the submissions of the contracting parties, the only issue for adjudication is *Whether a Petition filed by SPDA in a representative capacity (representing on behalf of SPDs) is admissible in terms of the relevant provisions of the Electricity Act, 2003, and regulations framed by CERC?*
13. During the course of the hearing on 25.04.2023, NTPC submitted that the SPDA, not being party to the PPAs, cannot seek enforcement of contractual rights arising therefrom in a representative capacity. *Per Contra*, SPDA submitted that it is a duly registered industry association of solar power developers. and its members are directly affected by the issues raised in the instant petition. Further, they had filed the instant petition on account of the wrongful action of the Respondents in interfering with the bills of SPDA's members and

calling upon the SPDs/WPDs to obtain separate connections from the distribution licensees for the period during which their plants did not generate electricity.

14. Section 3 (49) of the Electricity Act, 2003, stipulates as under:

*“Person shall include any company or body corporate or **association** or body of individuals, whether incorporated or not, or artificial juridical person”*

15. Regulation 24 of the Conduct of Business Regulations, 1999 stipulates as under:

*“The Commission may initiate any proceedings suo-motu or on a Petition filed by any **affected or interested person**”*

16. The Hon’ble Supreme Court, vide judgement dated 28.03.1980 in the matter of *Himalyan Tiles and Marbles Pvt. Ltd. v. Francis Victor (1980) 3 SCC 223*, held as under:

*.....Thus, the preponderance of judicial opinion seems to favour the view that the definition of **‘person interested’ must be liberally construed** so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience.*

17. APTEL vide judgement dated 06.01.2014 in A.No. 222 of 2014 in the matter of Reliance Industries Limited v. Petroleum & Natural Gas Regulatory Board, has held as under:

*.....**The scope and ambit of the word “person aggrieved” would include any person whose interest may be prejudicially affected by what is taking place. In other words, it includes any person who has a genuine grievance against something which has been done which affects him, determines or threatens with injury of his rights and obligation which has been created under a statute.***

18. APTEL vide judgement dated 20.04.2015 in O.P. No. 1 of 2013, titled *Indian Wind Energy Association v. Andhra Pradesh Electricity Commission*, has held as under:

“9. Before we take up the main issue, let us consider the issue of maintainability raised by some of the State Commissions as according to them, the petitioners are not the affected parties. This issue has been considered by this Tribunal in judgment dated 25.04.2014 in Appeal No. 24 of 2013, wherein this Tribunal on the basis of an earlier judgment in Appeal No. 148 of 2010 has come to the conclusion that the Appeal filed by registered associations of the generators/developers was maintainable. The findings of this Tribunal in Appeal no. 24 of 2013 are reproduced below:

“O.P. No. 1 of 2013 & IA No. 291 & IA No. 420 of 2013, O.P. No. 2 of 2013 & O.P. No. 4 of 2013 ”15. This issue has already been dealt with by this Tribunal in the judgment dated 5.4.2011 in Appeal no. 148 of 2010 in the matter of South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors. as under:

“24. The first objection of the Respondent No. 1 to 6 that the appeal is not maintainable on the ground of it not having been preferred by any individual and the association of sugar factories does not have locus standi to prefer the appeal against the order for determination of tariff for the co- generation units attached to those factories is itself not maintainable in view of the fact that the appellant undisputedly is a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued. As we find from Annexure B, C and D of the memorandum of appeal, the association has 30 members having sugar mills in Karnataka, and the sugar factories with cogeneration units in Karnataka are 34 in numbers. In terms of the resolution of Committee the Secretary of the Association has been duly authorized to present this appeal. The appeal has been preferred thus by a registered body in its representative capacity to urge therein common view points. It is not an unregistered body, not are the members obscure and uncertain. The objection is thus repelled.”

16. The findings of the Tribunal in the above judgment will apply to the present case also. **The Appellant is a registered organization. The Appellant has also filed the supporting documents regarding its registration, list of members, including those operations in Gujarat who are aggrieved by the impugned order. Accordingly, we hold that the Appeal filed by the Appellant Association, as an aggrieved person is maintainable.**

10. Accordingly, **we hold that the Petitions filed by the Appellant Associations, as an aggrieved person, are maintainable.**”

19. APTEL vide judgement dated 05.04.2011 in A.No. 148 of 2010 titled as *South India Sugar Mills v. Karnataka Power Transmission Corporation Ltd.* has held as under:

.....The first objection of the Respondent No. 1 to 6 that the appeal is not maintainable on the ground of it not having been preferred by any individual and the association of sugar factories does not have locus standi to prefer the appeal against the order for determination of tariff for the co- generation units attached to those factories is itself not maintainable in view of the fact that **the appellant undisputedly is a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued.** As we find from Annexure B, C and D of the memorandum of appeal, the association has 30 members having sugar mills in Karnataka, and the sugar factories with cogeneration units in Karnataka are 34 in numbers. In terms of the resolution of Committee the Secretary of the Association has been duly authorized to present this appeal. **The appeal has been preferred thus by a registered body in its representative capacity to urge therein common view points. It is not an unregistered body, nor are the members obscure and uncertain. The objection is thus repelled.**

20. From the above, we observe that the ratio decidendi that emerges from the above decisions and statutory provisions is that any registered organization which has filed supporting documents regarding its registration, list of members, authorization certificates etc can file a

suit in a representative capacity. From the harmonious reading of Section 3 (49) of the Electricity Act, 2003, and Regulation 24 of the Conduct of Business Regulations, 1999, we are of the view, that a person is entitled to file a Petition in the representative capacity of an affected/interested person.

21. In the instant petition, we observe that the SPDA has submitted relevant documents to support the submission that the Petition can be filed in a representative capacity by the SPDA:

a. Certificate of Registration dated 10.01.2013

*I hereby certify that **SOLAR POWER DEVELOPERS ASSOCIATION** located at **E-44 3rd FLOOR LAJPAT NAGAR- III NEW DELHI** has been registered* under Societies Registration Act 1860.*

Given under my hand and seal at Delhi on this 10 day of January Two thousand Thirteen.

b. List of members of SPDA

List of members of Solar Wind Power Developers Association

1	<i>Avaada Energy Pvt. Ltd.</i>
2	<i>Azure Power</i>
3	<i>Acme Solar Energy Pvt.Ltd</i>
4	<i>Adani Power Limited</i>
5	<i>Renew Solar Power Pvt. Ltd</i>
6	<i>Mytrah Energy India Limited</i>
7	<i>Mahindra Sustain Pvt. Ltd</i>
8	<i>Fortum India Pvt. Ltd.</i>
9	<i>Hero Future Energies Limited</i>
10	<i>Green Infra Limited (sembcorp)</i>
11	<i>Amp Energy India</i>
12	<i>SPRNG Energy Private Limited</i>
13	<i>GRT Jewellers (India) Pvt. Ltd.</i>
14	<i>Phelan Energy Group</i>
15	<i>Vector Green Energy Pvt. Ltd.</i>
16	<i>Ayana Renewable Power Pvt. Ltd.</i>
17	<i>Rays Power Infra Pvt. Ltd.</i>
18	<i>Tata Cleantech Capital Limited</i>
19	<i>Vena Energy Infrastructure Services Pvt. Ltd.</i>
20	<i>TEPSOL Projects Pvt. Ltd.</i>
21	<i>Juniper Green Energy Private Limited</i>
22	<i>Aditya Birla Solar Limited</i>
23	<i>Eden Renewables India LLP</i>
24	<i>Svarog Global Power Private Limited</i>

25	<i>Maheshwari Mining & Energy Pvt. Ltd.</i>
26	<i>02 Power Private Limited</i>
27	<i>UPC Solar India Pvt. Ltd.</i>
28	<i>Engie Energy</i>
29	<i>Athena Renewable Energy India Private Limited</i>
30	<i>SOLARARISE INDIA PROJECTS PVT. LTD.</i>
31	<i>Torrent Power Limited</i>
32	<i>Sekura Energy</i>
33	<i>Aljomaih Energy and water India</i>

c. **Authorization certificates of Azure Power India Limited and Enviro Solaire Private Limited**

....Given that the SPDA is as an industry association to take issues having common interest for all stakeholders and members, **we request the SPDA to take up the issue by initiating proceedings before the Central Electricity Regulatory Commission on behalf of the SPD industry/ SPDA members for appropriate remedy and relief for clarity regarding the treatment of auxiliary power consumption.**

d. **Minutes of the Meeting (MoM) dated 16.09.2022**

EXTRACT FROM THE MINUTES OF THE MEETING OF THE GENERAL BODY OF SOLAR POWER DEVELOPERS ASSOCIATION HELD AT ITS REGISTERED ADDRESS AT 910, 9TH FLOOR SURYA KIRAN BUILDING KG MARG, NEW DELHI, DELHI - 110001 ON September 16th 2022 AT 10:00 A.M.

“RESOLVED THAT Mr. Daya Sagar, General Secretary is authorized to do various acts including initiating and defending legal proceedings, appearing before the various courts, tribunals and authorities, signing of various documents, petitions, applications, affidavits and other related documents for submission before the various judicial and quasi-judicial authorities in India and to appoint lawyers to represent the Company in any legal proceedings as may be required from time to time on behalf of the Company.

RESOLVED FURTHER THAT Mr. Daya Sagar, General Secretary shall be permitted to do all acts necessary or required for the above purpose.

RESOLVED FURTHER THAT any acts deeds and things done or to be done by them, shall be binding on the Association.

FURTHER RESOLVED THAT any of the members of the General Body of the Association are hereby authorized to issue a certified true copy of the aforesaid resolution as and when required.”

22. From the documents submitted by the SPDA, we observe that the SPDA is authorised to file suit in a representative capacity. As such, we hold that it is entitled to file a petition in the capacity an affected/interested person. The petition is *admitted* accordingly.

23. The Petitioner is directed to give a wide publicity amongst its members regarding the institution of this petition in a representative capacity before this commission. Any person on

whose behalf, or for whose benefits, this petition is instituted, or defended may apply to be a party to it. It is clarified that this Order is limited to the determination of the admissibility of the petition, and we have not expressed any view on the merits of the issues raised in the petition. The parties shall complete their pleading in the matter within four weeks of the issue of this order. No further extension of time for the completion of pleadings shall be permitted.

24. The Petitions shall be listed for hearing in due course, for which a separate notice shall be issued to the parties.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष