



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

CIN: U40100KL2011SGC027424

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ABSTRACT

Petition before KSERC seeking approval for the 350MW of contracted power under Bid-2 under DBFOO guidelines - engaging counsel for hearing - Sanctioned - Orders issued.

Corporate Office (Commercial & Tariff)

Board order (FTD)No. 767 /2020(KSEB/CG/DBFOO/2020-21/

dtd. 21 .12.2020

Read: 1. Common order dated 14-8-2020 in RP 2/2020 and RP 4/2020 of KSERC.

2. Petition filed by KSEBL before KSERC.

3. IA No. 1455 of 2020 in DFR No. 369 of 2020 filed by JITPL.

4. B.O(FTD)No. 713/2020(KSEB/TRAC/CG/JITPL/2020-21/ dtd. 24.11.2020

5. Note no.KSEB/TRAC/CG/DBFOO/2020-21 dtd. 10-12-2020 of Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer to the Full Time Director (Agenda 32/12/20)

ORDER

Kerala State Electricity Regulatory Commission (KSERC) as per the common order read I above has rejected the prayer of KSEBL to allow fuel surcharge corresponding to the payment towards 350MW of contracted power under Bid-2 (Jindal Power Ltd-150MW, Jhabua Power Ltd.-100MW and Jindal India Thermal Power Ltd – 100MW). In the said order, KSERC had ordered to file a separate petition under section 86(1)(b) seeking specific orders with respect to continuance of drawal of the 350MW of contracted power under Bid-2 (Jindal Power Ltd-150MW, Jhabua Power Ltd.-100MW and Jindal India Thermal Power Ltd – 100MW) pending approval of PPA with these generators. Accordingly, KSEBL filed a petition before KSERC on 9-11-2020.

Pursuant to the common order dated 14-8-2020, KSEBL had restricted the payment to the above generators at the rate of BALCO for the months August, September and October 2020. In the meanwhile, JITPL (Jindal India Thermal Power Ltd) one of the generator under bid-2 read 3 above has filed an appeal before APTEL challenging the order of KSERC dated 14-2-2020 in Petition No.OA 29 of 2019 and order dated 27-4-2020 in OA 2 of 2020, read with common order dated 14-8-2020 passed in Review petition no.2 of 2020 and 4 of 2020. JITPL has also prayed that the procurement of power of 100MW capacity by Respondent no.2 from the Appellant's power project stands approved in the PSA dated 29-12-2014 stands adopted in terms of section 63 of the EA,2003 and the guidelines issued thereunder.

KSEBL is the second respondent in the appeal. The admissibility of hearing of the matter was held on 6-11-2020 and in the hearing, deliberations were held on approval of PSA and APTEL directed to issue notice to KSEBL and has directed KSEBL to file reply. M/s.JITPL, in the appeal, has contented that the onus of obtaining approval of PSA lies with KSEB Ltd. and thus the action of curtailing payments citing KSERC order dated 14-8-2020 is illegal. Consequences, if any, out of the order of KSERC is to be suffered by KSEBL alone, as per contention of JITPL.

The Hon'ble APTEL, during the hearing observed that the interim arrangement of drawing power has been perpetuated, there being no eagerness shown by any side to ensure expeditious decision for approval of PSA. Since the matter involved has great significance to KSEBL and the version of KSEBL has to be appropriately presented before Hon'ble APTEL to safeguard interests of KSEBL, KSEBL has engaged Adv.Prabhas Bajaj, who has dealt with the PSA of Jhabua Power (contracted under same bid) before CERC and presently before APTEL for the matter. The matter came up for hearing on 20-11-2020. In terms of the order dated 06.11.2020 passed by Hon'ble APTEL, Affidavits had been filed on behalf of KSEBL before the Hon'ble APTEL, placing on record

their submissions in relation to the disputes arising in the said Appeal. The Appeal was taken up for further hearing on 20.11.2020. The Hon'ble APTEL - by its order dated 20.11.2020, inter alia, held as under:-

"..... During the hearing today, we were informed that the second Respondent i.e. Kerala State Electricity Board Ltd. (KSEBL) has approached the State Commission (first Respondent) by a fresh petition seeking approval for procurement of power from the Appellant and the PSA as also adoption of tariff discovered in bid process. The State Commission, we are further informed, has issued notice to the Appellant as well.

All sides through their respective counsel submitted that they would rather await the decision of the State Commission on the fresh petition referred to above. The Appellant, at the same time, seeks protection of its interest in the context of the impugned order dated 14.02.2020 on the fuel surcharge. The learned counsel representing KSEBL also expressed the difficulties that would arise as consequences flowing from the said order. In the facts and circumstances and bearing in mind also the fact that the approval of the State Commission for the PSA and the prayer for tariff adoption is still awaited, we feel it just and proper to direct stay against the operation of the impugned orders dated 14.02.2020 and 27.04.2020 on subject of fuel surcharge and, in the consequence, restoring status quo ante to the dispensation prevailing immediately anterior thereto, as an ad-interim arrangement, such ad-interim order to continue till the application for stay and appeal are adjudicated upon after final hearing. We clarify that the appeal and application filed therewith will be taken up for final hearing after the decision on the fresh petition for approval/adoption has been rendered by the State Commission. Ordered accordingly. Since the matter is simmered too long before the State Commission, we would expect the State Commission to conclude the proceedings on the fresh petition expeditiously and render its decision as early as possible. Be listed on 15.02.2021. The State Commission will submit its status report well in advance....."

The Hon'ble APTEL vide the above order has granted stay of the orders dated 14.02.2020 and 27.04.2020 passed by KSERC till the application for stay and appeal are adjudicated upon after final hearing. APTEL has ordered that the appeal and application filed therewith will be taken up for final hearing after the decision on the fresh petition for approval/adoption has been rendered by the State Commission. APTEL further directed the State Commission to conclude the proceedings on the fresh petition expeditiously and render its decision as early as possible.

Therefore, the petition filed by KSEBL before KSERC seeking final orders on the drawal of power from 350MW of generators under Bid-2 of DBFOO will have to be heard and decided by KSERC before the next hearing of APTEL on 15-2-2021. Meanwhile, the Receiving officer, KSERC vide notice dated 2-12-2020 notified certain defects along with elaborating note of the APTEL order dated 20-11-2020 on the petition and previous history of OA 29/2019 filed by KSEBL. The Advice was sought from Adv.Prabhas Bajaj on the action to be taken on the defect notice.

The Deputy Chief Engineer(Commercial & Planning) with full powers of Chief Engineer as per the note read 5 above placed the matter before the Full Time Directors and recommended that since the matter involved in this petition is significant to KSEBL and the proceedings of this petition is connected with the appeal of JITPL before APTEL for which Adv.Prabhas Bajaj is engaged, Board may engage Adv.Prabhas Bajaj for appearing before KSERC on behalf of KSEBL for the petition filed by KSEBL seeking final orders with respect to the drawal of power from 350MW of generators under Bid-2 of DBFOO. Adv.Prabhas Bajaj has intimated that the following fee charged for his appearance before CERC would be applicable for appearing through online hearing before KSERC.

FEE SCHEDULE OF MR. PRABHAS BAJAJ, ADVOCATE

Sl.No.	Description	Amount
1	Towards drafting petitions/appeals/special leave petitions/Statement of claim	Rs.60,000/-
2	Towards drafting counter/rejoinder/applications/affidavits etc	Rs.40,000/-
3	Towards conference (per hour)	Rs.15,000/-
4	Towards appearance before CERC/APTEL/Delhi High Court/Supreme Court Effective Hearing Non effective hearing	Rs.50,000/- Rs.20,000/-
5	Clerkage	@10%
6	Miscellaneous Expense	On actual basis
7	For cases outside Delhi, the terms shall be agreed separately	


Having considered the matter in detail the Full Time Directors in its meeting held on 16.12.2020 resolved to accord sanction to engage Adv.Prabhas Bajaj for appearing before KSERC on behalf of KSEBL for the petition filed by KSEBL seeking final orders with respect to the drawal of power from 350MW of generators under Bid-2 of DBFOO at his memo of fees charged for his appearance before CERC.

Orders are issued accordingly.

By order of the Full Time Directors,
Sd/
Lekha G.
Company Secretary

To

The Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer
Copy to: Deputy Chief Engineer (TRAC), PA to Director (Finance) FCA to Secretary (Administration),
Stock file,Library

Forwarded by order

Asst: Exe.Engineer