

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(867)DERC/2012-13/

Review Petition No 05/2013

In the matter of : **Review Petition u/S 94 of the Electricity Act, 2003 read with Regulation 7(iv) of the DERC (Conduct of Business Regulations), 2001 seeking review of the interim order dated 29.08.2012 passed in Petition No. 31 of 2012.**

M/s Delhi MSW Solutions Limited (DMSL)
6-3-1089/G/10 & 11, Gulmohar Avenue,
Raj Bhavan Road, Somajiguda,
Hyderabad-500082,
Andhra Pradesh

...Petitioner

Vs.

Tata Power Delhi Distribution Ltd.
Through its : Managing Director
Sub-Station Building,
Hudson Lane, Kingsway Camp
Delhi 110 009

....Respondent

Coram:

**Sh. P.D. Sudhakar, Chairman, Sh. Shyam Wadhera, Member &
Sh. J.P. Singh, Member.**

Appearance

1. Mr. Matrugupta Mishra, Adv. Delhi MSW
2. MR. K. Appi Reddy, Delhi MSW
3. Mr. N.V. Kumar, DMSWL
4. Mr. Shashwat Srivastave, Executive, TPDDL
5. Mr. Anurag Bansal, TPDDL

ORDER

(Date of Hearing: 19.02.2013)
(Date of Order: 11.04.2013)

1. Mr. Matrugupta Mishra, Ld. Counsel for the Review Petitioner submitted that M/s Delhi MSW Solutions Ltd. (DMSL is a special purpose vehicle company and it has executed a concession agreement dated 17.07.2009 for 20 years with Municipal Corporation of Delhi (MCD) for door to door collection, transfer, transportation, development of an integrated Municipal Solid Waste Processing facility and Engineered sanitary landfill facility on long term build operate and transfer ('BOT') basis.

2. In accordance with the Concession Agreement scope of work is divided into two phases. Under the Phase-I the review Petitioner shall collect and transport waste to the project site and under phase-II it shall develop an integrated Municipal Solid Waste Management treatment and disposal facility. The environmental clearance for the Phase II was obtained from Ministry of Environment & Forests, Govt. of India. The said environment clearance is also for two phase implementation of the phase II by which the Phase – I will be for composting, Refuse Derive Fuel (RDF) and sanitary landfill and the Phase-II for implementing Waste to Energy (Thermal Processing of Municipal Waste).
3. The Ld. Counsel further submitted that Phase-I of Concession Agreement and Phase-II i.e. composting, RDF, Sanitary Landfill are already operational since August, 2009 and September, 2011 respectively.
4. Ld. Counsel further submitted that they are in an advanced stage of establishing a waste to energy power plant with an installed capacity of 24 MW as part of integrated municipal solid waste management in Bawana Delhi.
5. Ld. Counsel further submitted that they intend to commission the proposed project in August, 2013 and the power generated from this project would be evacuated at 66 kV voltage level of DTL's network at DSIIDC area. Further they have also applied to the Ministry of New and Renewable Energy for the exemption from payment of excise duty as well as concessional duty for imports for this project.
6. Ld. Counsel further submitted that the Petitioner is aggrieved by the Commission's impugned Order dated 29.08.2012. The said order suffers from patent error and has been passed without due observation of the facts on record and the mandate of law. It has also been passed in derogation of the policies made by the Govt. of India and its agencies.
7. Ld. Counsel further submitted that the observation of the Commission in the impugned order suffers from error which is apparent on the face of the record. The Commission has failed to implement the policy initiatives on the subject.
8. In support of above contentions he has submitted the following:
 - a. Section 5.10.5 of the National Electricity Policy also stipulates setting up of Solid Waste to Energy Projects in urban areas and recovery of energy from industrial effluents with a view to reduce environmental pollution apart from generating additional energy.
 - b. The Commission has made the impugned order without following the guidelines prescribed under the CERC (Terms & Conditions of Tariff determination from Renewable Energy Sources) Regulations, 2012 wherein under Regulation 2(v) municipal waste is categorized as one of the Renewable Energy Sources.
 - c. The reasons for equating the terms and conditions with the Okhla-Timarpur plant Municipal Solid Waste Management for possible sale of energy from that plant is devoid of logic.

- d. The Commission has failed to appreciate the detailed account of the cost and other expenses submitted by the Petitioner.
 - e. As per the Regulation 4 of Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations 2012 every obligated entity shall have to purchase electricity from renewable sources of energy for fulfillment of a defined minimum percentage of the total quantum/consumption under the Renewable Purchase Obligations. Waste to Energy projects offer huge potential for power generation in Delhi which can also help obligated entities like the respondent to meet their non-solar RPO obligations by way of procuring power from such MSW based Power Generation projects, which need to be promoted by all stakeholders.
 - f. The Commission failed to appreciate that with the increase in standard of living in urban areas in view of economic growth the problem of waste disposal by the Urban Local Bodies is becoming severe day by day in India. 6500 TPD MSW is generated daily within city of Delhi. Thus there is a need of systematic process of waste and disposal of residue in the landfills by dedicated agencies.
9. The Ld. Counsel further contended that the Petitioner is aggrieved by the suggestions of the Commission to sell the power on merchant basis. The power generation from MSW varies widely in a day and thus it is not possible to meet the contractual terms for sale of energy to a merchant facility and the MSW WTE plants are prone to wear and tear. The suggestions of Commission to sell the power on merchant basis are not tenable at all.
10. The Ld. Counsel further submitted that under the Electricity Act, 2003, tariff for procurement of power by the Distribution Licensee may be determined by two methods. Firstly u/S 62 of the Act, the Distribution Licensee may enter into a power Purchase Agreement with the Generator and tariff is determined in accordance with the Provisions of the Act and also policies framed on the principles established u/S 61 read with the appropriate regulation. Secondly, u/S 63 the Commission shall adopt the tariff which has been determined through transparent process of bidding in according with the guidelines issued by the Central Government. However, no bidding guidelines were framed for procurement of power from renewable sources of energy.
11. Ld. Counsel further submitted that in absence of any bidding guidelines for procurement of power from renewable sources of energy the same shall be determined by the Appropriate Commission u/S 62, in terms of the principles established in Section 61 of the Act.

12. The Ld. Counsel further submitted that ATE in its order dated 14.05.2007 had directed the Karnataka Regulatory Commission to issue guidelines for competitive bidding for procurement of energy for renewable sources. This order was stayed by the Supreme Court.
13. Ld. Counsel has also referred to the Civil W.P. No. 7659 of 2007 in the matter of Indian Wind Energy Association vs. Appellate Tribunal for Electricity & Anr., wherein Ministry of Power, Govt. of India has filed an affidavit that the power to issue guidelines for competitive bidding as set out in Section 63 of Electricity Act, 2003 rests only with the Central Government. The ATE does not have the legislative competence to direct KERC to issue guidelines for competitive bidding for procurement of energy from renewable sources.
14. Ld. Counsel also submitted that bidding guidelines to be issued by Ministry of New and Renewable Energy is in draft stage only.
15. The Ld. Counsel Further submitted that the respondent has shown a keen interest in buying the power generated from this plant.
16. Mr. Sheshawat Srivastava, appearing on behalf of the Respondent submitted that the contention of the Petitioner is not correct. They have not made any commitment for buying the power from this Municipal Solid Waste Plant.
17. The Commission heard the review petitioner and the respondent at length. The Commission has considered the written and oral submissions of the Petitioner and the Respondent and also considered the entire record placed before the Commission along with relevant provisions of the Electricity Act, 2003, Regulations made there under and Civil Procedure Code. .
18. Under Section 94(f), the Commission is empowered to review its decision, directions and orders.
19. Further order 47 Rule 1 of Civil Procedure Court provides that

1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or

evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

20. The above mentioned provisions of Civil Procedure Court mandates that Court of review may allow a review only on three specific grounds which are as under:-
 - (i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
 - (ii) Mistake or error apparent on the face of the record; or
 - (iii) For any other sufficient reason which is analogous to the above two grounds.
21. The Commission in its impugned Order dated 29.08.2012 has already observed that in case the developer intends to sell power to any of the distribution utilities in Delhi, the Commission could consider petition filed by such distribution utility for approval of PPA.
22. On a query from the Commission, TPDDL clarified that they have no proposal to enter into any power purchase agreement for buying the power from this Municipal Solid Waste Energy Plant.
23. The Commission has examined Section 62 and 63 of the Electricity Act, 2003 and is of the view that it is difficult to accept the contentions of the Petitioner that as Tariff cannot be determined u/S 63 in the absence of bidding guidelines for purchase of power through renewable sources of energy, the Commission is bound to determine tariff of this project u/S 62 of the Electricity Act, 2003. Such contentions of the Petitioner are legally unsustainable and liable to be rejected.
24. In view of the above, the Commission is of the view that the impugned order does not suffer from any mistake or error apparent on the face of the record. Further no new evidence which after the exercise of due diligence was not within the knowledge of the Petitioner at the time when order was made was brought to the notice of the Commission.
25. In the light of above discussion the Commission is of the considered view that the contentions raised above by the Petitioner are not legally sustainable and devoid of any merits and therefore this Review Petition needs to be dismissed at the admission stage itself.

26. Accordingly, Review Petition is dismissed at the admission stage itself.
27. Ordered accordingly.

Sd/-
(J. P. Singh)
Member

Sd/-
(Shyam Wadhera)
Member

Sd/-
(P. D. Sudhakar)
Chairman