

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No. HERC/PRO 21 of 2011  
Date of Order : 27.09.2021**

**IN THE MATTER OF**

In the matter of petition filed by Haryana Power Generation Corporation Limited (HPGCL) u/s 86(1)(f) of the Electricity Act, 2003 seeking adjudication of dispute by the Commission/referring the matter for arbitration.

**Petitioner**

Haryana Power Generation Corporation Ltd. (on behalf of Uttar Haryana Bijli Vitran Nigam & Dakshin Haryana Bijli Vitran Nigam).

**Respondents**

1. Power Trading Corporation Ltd
2. GMR Kamalanga Energy Ltd

**Quorum**

**Shri R.K. Pachnanda**

**Shri Pravindra Singh Chauhan**

**Shri Naresh Sardana**

**Chairman**

**Member**

**Member**

**ORDER**

1. The present petition was filed on 22.09.2011 by the Haryana Power Generation Corporation Ltd. (on behalf of Uttar Haryana Bijli Vitran Nigam & Dakshin Haryana Bijli Vitran Nigam) seeking adjudication of dispute under section 86(1)f between HPGCL (now HPPC- Procurer) and PTC (felicitor) and GMR(Generator) in the matters relating to "Force Majeure" and "Change in Law" events i.e. visa policy, new coal distribution policy, land acquisition etc. The dispute raised by HPGCL was regarding higher tariff claimed by GMR and PTC due to the aforesaid reasons.
2. In the year 2014, the powers vested with HPGCL for power purchase / procurement got transferred to Haryana Power Purchase Centre (HPPC) and thereafter HPPC was responsible for purchase of power on behalf of the two Discoms i.e. UHBVNL & DHBVNL.
3. Brief background of the case:-
  - 3.1 GMR Energy set up a 1000 MW thermal power plant in the State of Odisha. The installed capacity of the said plant was subsequently enhanced to 1400 MW. GMR was supplying power to Odisha, Bihar and Haryana.
  - 3.2 While approving the PPA, the Odisha Electricity Regulatory Commission (OERC), by its order dated 20/8/2009, directed GMR Energy to file a petition under Section 62 read with Section 79(1)(b) of the Act before the Central Electricity Regulatory Commission (CERC) for approval of tariff as in the considered view of the OERC, the power project established by GMR Energy was an inter-state power generating station. Accordingly, GMR Energy filed a petition before CERC on 14/10/2011 for approval of provisional tariff for supply of power to GRIDCO.

- 3.3 By order dated 16/5/2012, CERC dismissed the said petition as not maintainable, on the ground that supply of power to the distribution companies in the State of Haryana and Bihar through PTC India after selection through competitive bidding was outside the scope of determination of tariff. GMR Energy was, however, granted liberty to approach CERC for approval of tariff after it entered into the 'Composite Scheme' for generation and sale of power in more than one state.
- 3.4 Thereafter, GMR Energy filed petition no.77/GT/2013 for approval of regular tariff for supply of electricity to GRIDCO in terms of the liberty granted by CERC order dated 16/5/2012. GMR Energy also filed petition no.79/MP/2013, inter alia, claiming compensatory tariff due to 'Change in Law' as defined under Article 13 of the PPA. As these events have either caused delay in construction or have adversely impacted GMR Energy by increasing the cost of construction and the same will increase the costs of supply of electricity by GMR Energy during the operating period of the PPA. GMR Energy also filed petition no.81/MP/2013, inter alia, claiming compensatory tariff due to Force Majeure events.
- 3.5 The CERC, vide interim orders dated 16/12/2013 and 03/01/2014 decided the preliminary issues of jurisdiction and maintainability. The CERC, in the given circumstances by its interim Order dated 16/12/2013, held that the supply of electricity by the GMR Energy to the States of Odisha, Haryana and Bihar is under the 'Composite Scheme' for generation and sale of electricity to more than one State and, hence, CERC has powers to regulate the tariff of the generating station of GMR Energy under Section 79(1)(b) of the said Act. It also held that the power of adjudication of the claims and disputes involving Force Majeure and Change in Law events under the PPAs is vested in the CERC. The CERC, by interim order dated 3/01/2014, decided that the said petition is maintainable.
- 3.6 Aggrieved by the interim Order dated 16/12/2013 passed by the CERC, HPPC filed Appeal No.44 of 2014 in the Appellate Tribunal for Electricity.
- 3.7 Vide order dated 16/12/2013, CERC had held that it has the jurisdiction to admit a petition for determination of tariff under Section 79(1)(b) of the Act. There is no dispute that GMR-Kamalanga Energy Limited, was supplying power to procurers in more than one State from its power plant at Kamalanga in the State of Orissa. The supply of power to more than one State from the same generating station of a generating company, ipso facto, qualifies as 'Composite Scheme' to attract the jurisdiction of CERC under Section 79 of the Act. Hence, vide order dated 07.04.2016, the Hon'ble APTEL dismissed the appeal.
4. HPPC had filed an appeal before the Hon'ble APTEL against CERC order dated 16.12.2013 in petition No. 79/MP/2013 & 81/MP/2013 establishing their jurisdiction to adjudicate petitions filed by GMR Kamalanga Energy Limited in PRO 21 of 2011 before this HERC. Therefore, as Hon'ble APTEL's judgement will have impact on the outcome of the case, the HERC, vide interim order dated 04.03.2014, adjourned the case sine die. The operative part of the Commission's Interim order is as under:-

*"Upon hearing the parties, the Commission observes that it may not be appropriate to hold parallel proceeding in the present case as pointed out by the Ld. Counsel of the Petitioner and agreed to by the Ld. Counsel of the Respondent (GMR Kamalanga Energy Limited).*

5. In view of the above disposition, the Commission adjourns the case sine die with the direction to the Counsel of the Petitioner to promptly inform the Commission about the decision/judgment of the Hon'ble APTEL."

5. Subsequently, Hon'ble APTEL, vide order dated 07.04.2016, disposed of the appeal preferred by HPPC. The operative part of the concerned order is as under:

*[M] Decision on GMR Group Appeals*

*Appeal No.44 of 2014 has been filed against Order dated 16/12/2013 passed by the Central Commission in Petition No.79/MP/2013 and Petition No.81/MP/2013. By the said order dated 16/12/2013, the Central Commission, while relying on the judgment and order dated 16/10/2012 passed in Petition No.155/MP/2012 (Adani Power Limited v. Uttar Haryana Bijli Vidyut Nigam Ltd.), has held that it has jurisdiction to entertain a petition for determination of tariff under Section 79(1)(b) of the said Act. There is no dispute that GMR-Kamalanga Energy Limited, the petitioners therein were supplying power to procurers in more than one State from its power plant at Kamalanga in the State of Orissa. We have already answered Issue No.3 of the Agreed Issues that the supply of power to more than one State from the same generating station of a generating company, ipso facto, qualifies as 'Composite Scheme' to attract the jurisdiction of the Central Commission under Section 79 of the said Act. In view of this, Appeal No.44 of 2014 is devoid of any merit and is dismissed.*

6. The Commission has taken note of the fact that neither HPGCL/ HPPC nor Power Trading Corporation Ltd. / GMR Kamalanga Energy Ltd intimated this Commission regarding the decision/judgment of the Hon'ble APTEL as directed vide this Commission's order dated 4/03/2014.
7. In view of the Hon'ble APTEL's order dated 07.04.2016, the case PRO 21 of 2011 is dismissed as infructuous.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 27.09.2021.

**Date: 27.09.2021**  
**Place: Panchkula**

**(Naresh Sardana)**  
**Member**

**(Pravindra Singh Chauhan)**  
**Member**

**(R.K Pachnanda)**  
**Chairman**