

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No. 1, 13th Floor, Cuffe Parade, Mumbai - 400005
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in**

Case No. 16 of 2010

**In the matter of
Petition of Tata Power Company Limited seeking directions against letters
dated 16-5-2010 and 18-5-2010 issued by MSLDC.**

AND

In the matter of Complaint under Section 142 of the Electricity Act, 2003

**Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member**

The Tata Power Company Limited

..... Petitioner

V/S

- 1. Maharashtra State Load Despatch Centre**
 - 2. Tata Power Trading Company Limited**
 - 3. The Government of Maharashtra
Through the Principal Secretary (Energy)**
 - 4. M/s Reliance Infrastructure Ltd.**
 - 5. Brihan-Mumbai Electric Supply and Transport Undertaking**
 - 6. The Managing Director Maharashtra State Electricity Transmission Co.
Ltd.**
- Respondents

ORDER

Dated: August 3, 2010

The Tata Power Company Limited (“TPC”), the Petitioner herein filed a Petition on affidavit on 20-5-2010, seeking to invoke Sections 86(1) (c) and 33 (4) of the Electricity Act, 2003 (“EA 2003”), read with Regulation 35 of the MERC (State Grid Code) Regulations, 2006, for challenging the legality, propriety and validity of letters



dated 16.05.2010 and 18.05.2010 issued by the Maharashtra State Load Despatch Centre (“MSLDC”), the Respondent No. 1 herein. By the said impugned letters, Respondent No. 1 has allegedly refused to schedule 160 MW power from the generation division of the Petitioner (TPC-G) to its distribution division (TPC-D) through a trading company (TPTCL) for which the Petitioner had made applications to MSLDC seeking open access and although open access had already earlier been granted at the request of Tata Power Trading Company Limited (“TPTCL”) with effect from 1-5-2010 to 31-5-2010. The Petitioner’s distribution division is stated to have entered into a Power Purchase Agreement (PPA) for the aforesaid quantum of power for which open access was requested, to meet the load requirements for the Petitioner’s consumers in Mumbai License area. According to the Petitioner, Respondent No. 1 is in flagrant violation of its statutory duties under the EA 2003 which makes this a fit case to issue a Show Cause Notice and thereafter impose exemplary penalty under Section 142 on Respondent No. 1.

2. The Petitioner has prayed as under:

“

- a. *direct the Respondent No.1 to comply with the provisions of the Electricity Act, 2003, the Maharashtra Electricity Regulatory Commission (State Grid Code) Regulations, 2006 and Scheduling and Despatch Code of 16.01.2008 and withdraw the letter dated 16.05.2010 and that 18.05.2010 issued by Respondent No.1 deferring the open access granted to the Respondent no.2 and refusing to schedule 160 MW power to Tata Power- Distribution from 00 hrs of 17.05.2010;*
- b. *direct the Respondent No.1 to schedule 160 MW of power to Tata Power-Distribution through Respondent No.2 in accordance with the open access approval granted by the Respondent no.1 by its approval No. MSLDC/OA/Mar10/Tata/355 dated 30.03.2010;*
- c. *declare that the impugned letter dated 16.05.2010 and that 18.05.2010 issued by Respondent no.1 deferring the open access granted to the Respondent No.2 and refusing to schedule 160 MW power to Tata Power-Distribution from 00 hrs of 17.05.2010 are in violation of the provisions of the Act and the Regulations of this Hon’ble MERC;*
- d. *direct the Respondent No.1 to show cause and thereafter impose the maximum penalty under section 142 of the Act.*
- e. *pass appropriate interim orders directing the respondent no.1 to schedule 160 MW of power to Tata Power-Distribution with immediate effect till the disposal of the present petition;*
- f. *direct that Tata Power-Distribution shall be entitled to compensate from the Respondent No.1 for the power bought from the spot/UI/ short term*



power market, up to 160 MW not scheduled to the Petitioner from 00 hrs on 17.05.2010 until such power is finally scheduled;

- g. pass ex-parte ad interim order in terms of prayer (e) above;*
- h. pass such other and further orders / directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case."*

3. Subsequently, the Petitioner filed an affidavit on 24-5-2010, stating that on 20-5-2010, after filing of the present petition, the Petitioner had received a communication from the Respondent No. 1 enclosing a copy of a Memorandum dated 19-5-2010 issued by the Secretary, Energy, GoM to the Managing Director, Maharashtra State Electricity Transmission Co. Ltd. ("MSETCL") which contained the following operative order: "*The Chief Engineer, State Load Desptach Centre, Kalwa and all the officers and employees working under him, are hereby directed to maintain status quo in respect of scheduling of 360MW power under reference till further directives are received or obtained from MERC or till further orders / directions in this behalf are issued by State Government.*"

4. The Commission vide its Notice dated 24th May, 2010, bearing No. MERC / Case No. 16 of 2010 / 00365, directed the Petitioners to implead the Government of Maharashtra, the Brihan-Mumbai Electric Supply and Transport Undertaking (BEST) and M/s Reliance Infrastructure Ltd., as Respondents in the matter as they were necessary parties and to serve copies of the Petition and annexures to the said parties. The Commission vide its further Notice dated 28th May, 2010, bearing No. MERC/Case No. 16 of 2010/00413 directed the Petitioner to implead the MD, MSETCL as Respondent in the matter. The Petitioner vide its letters dated 28th May, 2010 and 31st May, 2010 served a copy its Petition to all the new Respondents.

5. Respondent No. 1 filed its Affidavit in Reply on 22-6-2010. BEST filed its Affidavit in Reply on 23-6-2010. MSETCL vide its letter dated 23-6-2010 submitted its comments in this matter.

6. The Commission vide Notice dated 3-6-2010 scheduled a hearing in this matter on 24-6-2010. During the hearing held on 24-6-2010, Shri Sitesh Mukherjee, Advocate appeared for the Petitioner. Smt. Gautam Bala, Advocate i/b M/s M.V. Kini & Co., appeared for Respondent No. 1. Shri. Harinder Toor, Advocate appeared for BEST. Shri, J.J. Bhatt, Senior Advocate i/b M/s. Mulla & Mulla & Craigie Blunt & Caroe, appeared for Reliance Infrastructure Ltd.

7. During the course of the hearing, Counsel for the Petitioner filed an affidavit before the Commission submitting that the Petitioner has filed a Writ Petition Lodging No. 1224 of 2010 before the Hon'ble High Court of Judicature at Bombay, challenging the GOM Memorandum dated 7-5-2010. In the said writ petition, Hon'ble High Court passed



an order dated 11-6-2010 modified by order dated 16-6-2010, whereunder GOM's statement has been recorded to the effect that it has neither given any directions under Section 11 nor any direction to the MSLDC under Section 37. On the basis of the said order, the Petitioner called upon the MSLDC to implement the schedule with effect from 00hrs on 14-6-2010 for the power contracted by the Petitioner including the 160MW to TPC-D through TPTCL. However, MSLDC vide its letter dated 12-6-2010 insisted that it will continue to maintain status quo with respect to scheduling the Petitioner's generation capacity till it receives further directives from the Commission or from the GOM. Thereafter, on 23rd June, 2010, the Petitioner has filed Chamber Summons before the Hon'ble High Court praying for amendment of the Writ Petition to implead Respondent No. 1 and this Commission as Respondent No. 5 and 6, respectively, and to include additional prayers on account of repeated insidious interference of the GoM and consequent refusal of the Respondent No. 1, MSLDC to schedule the power. The Petitioner further submitted that in view of the Chamber Summons filed before the Hon'ble High Court it is not pressing on prayer clauses (a) to (c) and (e) of the present Petition, since the subject matter of these prayers have been placed before the Hon'ble High Court by filing of the aforesaid Chamber Summons filed by the Petitioner. The Petitioner in its affidavit further submitted that in relation to prayer clauses (d) and (f) to (h), the present Petition may be taken up after the decision of the Hon'ble High Court in respect of prayers in the Chamber Summons.

8. Counsel appearing for Reliance Infrastructure Ltd., submitted that the Petitioner in its affidavit is not pressing prayer clauses (a) to (c) and (e) and therefore the Petitioner does not desire that the Commission decide on the said three prayers as they would be decided by the Hon'ble High Court. He further submitted that if the Hon'ble High Court holds that the action of SLDC is correct then the consequential prayer clause (d) will not survive and there will be no question of imposing penalty on Respondent No. 1. He further submitted that presently the whole Petition has become infructuous and the Petitioner is merely asking an academic order from the Commission. Therefore, the petition is liable to be dismissed in view of the affidavit filed by the Petitioner. He further submitted that unless the main issues are decided the two consequential prayer clauses (d) and (f) for taking action against SLDC and direction for compensation, does not survive.

9. The Commission has heard the parties appearing before it. The Petitioner has filed an Affidavit before the Commission, stating *inter alia* that Chamber Summons have been filed by it before the Hon'ble High Court in Writ Petition Lodging No. 1224 of 2010, to include amongst others the following prayers:-

“(b)(i) issue appropriate writ, order and direction in the nature of Certiorari and / or any other appropriate writ to quash and / or set



aside the decisions of the Respondent No. 5 conveyed to the Petitioner No. 1 vide its letters dated 16 May 2010, 18 May 2010, 20 May 2010 and 12 June 2010;

(b)(ii) issue appropriate writ(s) and /or appropriate orders/ directions in the nature of Mandamus and / or any other appropriate writ restraining Respondent No. 5, its servants and agents, from giving any effect or further effect to the decisions of the decisions of the Respondent No. 5 conveyed to the Petitioner No. 1 vide its letters dated 16 May 2010, 18 May 2010, 20 May 2010 and 12 June 2010;
.....”

The genesis of the present petition arises from letters dated 16-5-2010 and 18-5-2010 issued by MSLDC. However, the Petitioner is not pressing before this Commission for a direction upon MSLDC to withdraw the said letters as being illegal or a direction upon MSDLC to schedule 160 MW of power to TPC-D, nor interim orders directing MSLDC to schedule the 160 MW of power, by not pressing prayer clauses (a), (b), (c), and (e). In the circumstances, the remaining prayers to direct MSLDC to show cause and impose penalty or to direct that TPC-D shall be entitled to compensation from MSLDC and other ex-parte ad interim orders, cannot and ought not be kept in abeyance pending the decision in Writ Petition Lodging No. 1224 of 2010 as there is no live dispute pending between the Petitioner and Respondent No. 1 before this Commission. In this view of the matter, the present petition is liable to be and is hereby dismissed.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V.P. Raja)
Chairman



(K.N. Khawarey)
Secretary, MERC