PM visiting president's Mithamain home today

STAFF CORRESPONDENT

Prime Minister Sheikh Hasina is set to have lunch at President Abdul Hamid's home in Mithamain upazila of Kishoreganj today.

The premier is scheduled to reach Mithamain around 10:00am. She will inaugurate Bir Muktijoddha Md Abdul Hamid Cantonment and see for herself the progress made in the development projects of the haor area.

Following that, she will go to the president's ancestral home in Kamalpara area and have lunch there.

Hasina will attend a public meeting organised by the district Awami League at the Helipad Ground in Mithamain around 3:00pm.

A stage has been prepared there in the shape of a boat.

The district is in a festive mood and people from all walks of life have started gathering at the rally venue.

The streets have been adorned with arches, banners, and festoons to welcome the prime minister.

President Abdul Hamid and local AL leaders visited the rally venue yesterday.

"The prime minister has given a lot to the haor region. We don't need to ask for anything more from her. The people here are counting hours to see her just once," Kishoreganj-4 lawmaker Rejwan Ahmed Toufiq told reporters.

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Argentine Foreign Minister Santiago Cafiero and State Minister for Foreign Affairs Shahriar Alam cutting a ribbon to inaugurate the former's embassy building in the capital's Banani yesterday. Story on page 12.

PHOTO: COURTESY

Respect for rights gone into reverse

Warns UN chief, calls for renewal of Universal Declaration of Human Rights

AFP, *Geneva*

Respect for human rights has gone into reverse, the United Nations chief warned yesterday, calling for a renewal of the Universal Declaration of Human Rights, 75 years after its signing.

Pointing to the war raging in Ukraine, and threats to rights from soaring poverty, hunger and climate disasters, Antonio Guterres said the declaration was "under assault from all sides."

"Some governments chip away at it. Others use a wrecking ball," he told the opening of the UN Human Rights Council's main annual session, describing the disregard and disdain seen for human rights around the world as "a wake-up call".

He said the "Russian invasion of Ukraine has triggered the most massive violations of human rights" being witnessed in the world today.

"It has unleashed widespread death, destruction and displacement," he said.

While the past century has seen astounding progress in human rights and human development, Guterres warned that now, "instead of continuing this progress, we have gone into reverse."

Russia's war in Ukraine loomed large over the meeting, due to last a record six weeks, with calls for unity in condemning Moscow and extending a probe into war crimes in the conflict.

The session comes just days after the one-year anniversary of Moscow's full-scale invasion -- which UN rights chief Volker Turk warned that 75 years after the world agreed on the universality of rights, "the oppression of the past can return in various disguises."

Turk cited "the old destructive wars of aggression from a bygone era with worldwide consequences, as we have witnessed again in Europe with the

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BGB returns 2 firearms of BSF

BSF men left those behind after clashing with villagers in Bangladesh

STAFF CORRESPONDENT, *Rajshahi*

Border Guard Bangladesh returned two firearms to Indian Border Security Force at Nirmalchar border of Rajshahi's Godagari upazila Sunday afternoon, hours after two BSF members and three Indian nationals intruded into Bangladesh territory and clashed with villagers.

Lt Col Sabbir Ahmed, commanding officer of BGB 1 Battalion, said the trouble began on Sunday morning when some locals were prevented from grazing their buffaloes in Nirmalchar by BSF and Indian nationals.

The BSF members entered Bangladesh territory with three Indian nationals and assaulted three Bangladeshis. Among the three are Firoz, 30, and Babu, 32.

As locals attempted to intervene, the BSF members attacked them as well, triggering a clash. At one stage, the BSF members and Indian nationals fled, leaving their weapons behind.

Informed by the locals, BGB members went to the spot, brought the situation under control, and recovered the weapons.

A rifle and a submachine gun were returned to BSF, said Lt Col Sabbir.

He said they held a battalion commander-level flag meeting with the BSF on Sunday afternoon and lodged a strong protest against the illegal intrusion by BSF men.

The BGB has beefed up patrol at the border.

Two journalists acquitted in ICT case

OUR CORRESPONDENT, *Khulna*

A Khulna court yesterday acquitted two local journalists in a 6-year-old ICT case filed back in 2017.

Kazi Motahar Rahman Babu, former editor of local newspaper Somayer Khabor, and one of its reporters Shohag Dewan were cleared of the charges as the allegations brought against them were not proven in the investigation.

On May 18, 2017, a report was published in the Bangla daily headlined "Complexities again in recruiting staff in Khulna Chief Metropolitan Magistrate court! President resigned".

How could such a deal be signed?

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"I don't remember anything. It came through the chairman. I was the last step," said Mina Masud, who is now an additional inspector general at the Department of Inspection for Factories and Establishments.

Khaled Mahmood, who was the BPDB chairman from August 2016 to December 2019, declined to speak on the matter.

"I am not interested in talking about this. You realise that everything is vulnerable now," said Mahmood, who is now an independent director at Baraka Power.

What is unfortunate is there is virtually no scope for BPDB to get out of this contract for power purchase from the plant, which was built at an estimated cost of Rs 14,816 crore on 'unconditional and irrevocable' sovereign guarantee from the Bangladesh government that it would purchase the entire power generated for 25 years.

"If there is a material breach, you cannot terminate the contract. You have to seek for remedy and that description has to be in reasonable detail. And you have to give them time for remedy in all termination events," said a top corporate lawyer in Bangladesh, who specialises in drafting infrastructure contracts.

And even in the case of dispute resolution, the government has conceded sovereign ground: it waived off sovereign immunity, which would have given it an upper hand.

"It's a plain unfair contract. This is an agreement against public policy," said the lawyer on the condition of anonymity to speak candidly on the issue.

But it is not that the government did not have experience negotiating big PPAs before this: at The Daily Star's request, the experts also reviewed the Payra and Rampal deals and found those to be not ideal either but are much less predatory.

In so doing, Adani Power passed on the entire risks associated with its fixed and variable costs of the power plant, which was set up on a 68:32 debt-to-equity ratio, to BPDB and also line its pockets along the way.

In fact, this is the only PPA of Adani Power in which all variable costs are pass-through, making it a largely low-risk venture for India's largest private power company.

Major predatory aspects of the PPA with Adani Power, whose chairman Gautam Adani has longstanding ties with Modi, can be found in the pricing of coal and capacity charge.

Coal that would fire the 1,600 megawatt ultra-supercritical power plant located in the Indian eastern state of Jharkhand's Godda district would be calculated based on the average prices of benchmark coal with an energy value of 6,000 kilocalories per kg (kcal/kg) at the Indonesian coal index and the Australian Newcastle index for the relevant month.

"That means if Adani purchased coal from countries other than Indonesia and Australia at a lower cost, they would be able to charge extra," said M Shamsul Alam, an energy expert who reviewed the 163-page document for The Daily Star.

While the PPA mentions that BPDB would be charged for 4,600 kcal/kg, there are significant gains to be made by Adani Power for deciding to arrive at the price based on the rates for higher-grade coal.

The 4,600 kcal/kg coal is of inferior grade and trades at a fraction of the price of 6,000 kcal/kg coal.

"If you tie it to an index that is unrelated to the quality of coal Adani is using, how is that fair? It's probably the most generous coal PPA I have ever seen in the world in my decades of energy analysis," Buckley said.

While there is a provision in the Adani PPA to change the index based on which coal would be billed, it is almost impossible to explore that option, according to the lawyer.

"It can be deployed if any of the indexes is withdrawn, unavailable or inappropriate. But we do not know what constitutes inappropriate," he said.

Coincidentally, Adani Power's sister concern Adani Enterprises is India's biggest coal trader and owns mines in Indonesia and Australia -- and the coal for the Godda plant will most likely be supplied by that vendor.

The entire transportation and logistics related costs for coal are linked to the relevant global indices: Baltic Exchange Dry Index and Platts Oilgram Bunkerwire Singapore.

BPDB would also have to pay for the transport and logistics of the coal for the Payra and Rampal power plants, but this cost would be baked into the final price of the coal procured through the open tender. Subsequently, a competitive rate is expected that is immune from the vagaries of the indices.

The coal for the plant -- located in an Indian village about 100 kilometres from the Bangladesh border -- would be delivered to Odisha's Dhamra port, which is owned by another sister concern, Adani Ports and Special Economic Zone.

Dhamra Port Company has been tasked with port handling including coal unloading, storage, loading onto railway wagons and port-related documentation. From there, coal would travel 695 kilometres in wagons of Indian Railways to the power plant.

It is not known whether arm's length pricing would be used for this leg of coal's journey.

Arm's length pricing is the price at which a willing buyer and a willing unrelated seller would freely agree to transact or a trade between related parties that is conducted as if they were unrelated, so that there is no conflict of interest in the transaction.

For Payra and Rampal, separate coal purchase agreements are signed through an open tender and with BPDB's vetting and provisions for discounts.

Their coal purchases would be based on the year-ahead notification given by BPDB about its electricity purchase schedule. But the invoice would be as per the dispatch to BPDB.

If the coal purchase agreements have a minimum offtake guarantee and BPDB's dispatch is below that, there would be an additional invoice to make up the difference.

In the Adani PPA, BPDB must take and pay for at least 34 percent of the power generated by the plant every year. Failure to do so would entail reimbursing all the penalty, damages or compensation paid or incurred by Adani Power to its coal supplier, coal transporter and port operators.

There is no minimum offtake requirement for Payra and Rampal.

Another major point of difference between the Adani PPA with the other two is in the calculation of capacity payment, which, in essence, is the rent paid to the power plant for the contracted years regardless of how many hours the boiler, the turbine and the generator are run to generate electricity.

Where Payra and Rampal's authorities arrived at the sum using a formula based on the capital cost, return of equity, the interest on debt, depreciation, interest on working capital and so on, Adani Power arbitrability slapped on a sum. In addition, it will factor in the US Consumer Price Index for the capacity payment calculations for the 25-year contract duration.

Subsequently, the electricity that would be purchased from the Adani Godda plant, which was built with a Rs 10,075 crore loan from Indian state-run lender Power Finance Corp. and its unit REC at a subsidised rate, will end up costing more than the others for BPDB.

However, the government could have landed a windfall had it approached this PPA with more gumption.

A little over a year after the PPA was signed, India's ministry of commerce and industry designated the 425 hectares of land on which the state-of-the-art power plant was emerging as a special economic zone. This meant Adani Power got tax and levy exemptions.

Naturally, the capacity payment, energy tariff and coal invoices would come down as those were originally calculated factoring in the taxes and levies.

But a clause in the PPA states that Adani Power is obliged to make adjustments only in the cases of taxes or levies or costs going up, in yet another example of the one-sided nature of the contract.

"This proposition is absurd. It is a clear example of duress. No sane person agrees to such clauses," the lawyer said.

The SEZ designation is saving Adani Power upwards of $1 billion, according to Buckley.

Where in the other two PPAs, a political event like a strike or war or change in law is a force majeure, in the Adani PPA it is not.

If Adani Power is unable to supply power for a political event, it is not obliged to pay any liquidated damage to BPDB. But the converse is not true, in yet another instance of the one-sided nature of the contract.

"You cannot catch him [Adani] for his failure to deliver for political events. However, if he invokes a political event, you have to continue to pay the capacity payment, energy payment and the other dues," the lawyer said.

A political event should be force majeure and as per law, during force majeure, both sides are exempted from each party's obligations.

"He will take money by doing nothing. This is another robbery. This is absolutely an illegal clause. It's hard to stay in the right mood after seeing such clauses," he said.

If the plant gets damaged for a political event, Adani Power would bill BPDB for repair works and restoration of normal service, in another unfair inclusion in the PPA.

This supplemental tariff, which was not used in the other two PPAs, can also be invoked in the case of costs going up for Adani Power.

Another favourable clause for Adani is the option to take a second test to check the dependable capacity -- which is the total electricity the plant can supply to the grid -- should it fail the first one.

As is standard practice in PPAs, the test is carried just once and that result is valid for 300 months. If the plant fails the test, it has to pay a penalty.

Should the Godda plant fail the test, Adani Power could carry out another test at its own cost.

If it gets the expected reading this time, it will supersede the previous one and the compensation paid by Adani Power to BPDB until then would be adjusted with future invoices.

"In every layer, there is a loophole -- they are giving with one hand and taking it back with the other hand," the lawyer said.

Nasrul Hamid, the state minister for power, energy and mineral resources since 2014, and Tawfiq-e-Elahi Choudhury, the prime minister's energy adviser since 2009, declined The Daily Star's request for comment.

"It is a punishable offence to sign such a contract -- we believe that our agencies have the ability to identify the corruption in this deal," said Alam, also the vice-chairman of the Consumers Association of Bangladesh.

And cancelling the agreement will not solve matters. "We need to bring to book those who made such agreements."

It is highly unlikely that Bangladesh would be able to consume the 1,496 megawatts of electricity that would be produced by the Godda plant.

The dedicated transmission line from Godda would bring power to the northern part of Bangladesh, which is not an industries-dense region and hence the demand for electricity is not that much. "We will need to keep the power plant unutilised and keep spending dollars as capacity charges," Alam added.

"The whole contract is a gift by the Bangladesh government to the [previously] richest man in Asia," Buckley said.

What Adani Group has to say

FROM PAGE 1

for boiler and not really inferior) would be charged in proportion to the benchmark global index, as clearly defined in the PPA.

For instance, the reference HBA index for 6,332 kcal coal is $197, as announced for March 2023 and since the plant would consume 4,600 kcal coal, the effective free-on-board price would be $143 per metric tonne and not higher!

Would Adani Power not be passing on the benefits of the plant's SEZ designation?

Adani has not charged BPDB anything yet and hence all mischievous propaganda of vested interests.

It is pertinent to note that the cost of power from the Godda project would be lower than the comparable projects since PPA with Adani Power Jharkhand (APJL) provides for a lower freight.

As per the formula provided in the PPA, ocean freight for March would be $10.4, which would be far lower than other similar power projects that would be charging almost close to double the freight cost owing to pass-through provisions.

Since the Godda project is at a designated SEZ, power consumers of Bangladesh will not have to pay for custom duty, taxes and Cess, as applicable per the current norms.

This makes the power tariff of the Godda project more competitive, compared to other contemporary stations, which would eventually contribute to the people of Bangladesh getting more competitive power.

Is there no formula behind the excessive capacity payment; was it was arbitrarily decided?

This is yet another case of misinformation. Unlike other power generation projects whose electricity bill includes taxes and other duties, APJL's bills shall be without such levies as rightly indicated by you that it has been granted some tax benefits.

Capacity charge, under the PPA with Adani Power, is competitive with other similar generating stations in Bangladesh such as Rampal, S Alam and Matarbari.

Additionally, Adani Power has also, on its own goodwill gesture, waived off fixed charges for being available and never billed any capacity charge until the grid station at Bogura and the associated transmission system becomes operational.

APJL would charge fixed costs as per the terms defined in PPA, once the power supply starts in the right earnestness as envisaged from March 2023.

As for the addition of the supplementary tariff and political event clause that essentially protects Adani, please appreciate that all provisions of PPA in respect of the above aspects are the same as any other PPA that Bangladesh has signed with other contemporary and comparable stations such as Rampal Power Station, S Alam Power Plant and Matarbari Power Plant.

Is there no option for reconciliation at the end of the year?

BPDB executives have made arrangements for metering at Godda end (duly sealed by them) as also at their receipt end in Bangladesh and these are all data available online to the National Load Dispatch of Bangladesh.

Thus, the transaction is transparent and we request you highlight these facts.

There is an absolute right available to BPDB to have a metering counter check based on metering at sending and receipt end, which has been completely sealed and calibrated by BPDB engineers.

Moreover, PPA has adequate penalty provisions for failure in test readings and these are standard clauses similar in all PPAs like Rampal Power Station, S Alam Power Plant and others.

Would Adani Power be open to renegotiation on the PPA about some of the controversial aspects in it?

As clarified, the terms of the PPA are not only fair but also comparable with comparable power generation projects.

You would appreciate that PPA is a legally binding document drawn after much deliberations and negotiations by multiple stakeholders and lenders are party to the same.

However, we are committed to ensuring that the delivered tariff would either be competitive with peer stations like Payra and Rampal or lower.

This is being done because we are aware of its competitiveness, whereas vested interests have spread all kinds of miscommunications.

We would do all actions in the interests of the electricity consumers of Bangladesh.

Our gesture of not billing for fixed costs when transmission infrastructure to evacuate electricity has got delayed on the Bangladesh side demonstrates our commitment to the relationship with Bangladesh.

All the contractual clauses are palatable and equally embedded in the contract that already covers issues raised in your query.

Adani Power is a listed entity operating in a highly regulated environment and it will keep the concerned stakeholders posted from time to time with operational and financial details.