



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 32 of 2023

Dated 27.05.2024

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s Winsol Solar Fields (Polepally) Private Limited,
Regd. Office at, H.No.7-1-414-35/A&A1,
3rd Floor, Srinivasa Colony East,
S.R.Nagar, Ameerpet, Hyderabad 500 038.

... Petitioner

AND

Southern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.6-1-50, Mint Compound,
Hyderabad 500 063.

... Respondent

The petition came up for hearing on 14.12.2023 and 11.01.2024. Sri Aditya K.Singh, Advocate for petitioner has appeared on 14.12.2023, Mrs. Anukriti Jain, counsel for the petitioner has appeared on 11.01.2024 and Sri Mohammad Bande Ali, Law Attaché for respondent has appeared on 14.12.2023 and 11.01.2024. The matter having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Winsol Solar Fields (Polepally) Private Limited (petitioner) has filed a petition under Section 142 read with Section 146 of the Electricity Act, 2003 (Act, 2003) read with clauses 26, 38 and 45 of Conduct of Business Regulations, 2015 seeking implementation of order dated 08.08.2022 passed by the Commission in O.P.No.15 of 2022 and issuance of appropriate directions against the respondent for non-compliance of the said order. The averments of the petition are extracted below:

- a. It is stated that the petitioner is aggrieved by the respondent's non-implementation of the directions issued by the Commission vide the order. Vide order, the Commission specifically directed the respondent to make the payment for the outstanding amount as prayed in the petition (principal and interest both). Till the date of the filing of the petition, respondent has not complied with major portion of the order i.e., *clearing the dues upto date, payment of late payment surcharge (LPS) on the delayed payments and opening of LC* in terms of the power purchase agreement (PPA) dated 10.04.2015 and its amendment 23.01.2016. The Commission vide order had directed the respondent to furnish the payment of outstanding invoices along with the LPS within 45 days from the date of passing of the said order.
- b. It is stated that the petitioner has approached the Commission by virtue of the present petition as the respondent has till date not complied with the directions as issued by the Commission. Further, it is respectfully submitted that the Commission's indulgence is required in the interest of the rights of the petitioner. Hence, by way of the present petition, the petitioner most humbly seeks issuance of directions in terms the extant legal/statutory framework to the respondent and further seeks absolute implementation of the order passed by the Commission.
- c. It is stated that the Commission under Section 142 of the Act, 2003 read with Section 146 of the Act, 2003 has the requisite powers/jurisdiction to issue appropriate directions for non-compliance of its directions, and further has power to issue direction to respondent to comply with its order.
- d. It is stated that the petitioner is a generating company as defined in Section 2(28) of the Act, 2003 and is engaged in the business of generation and sale of solar energy. The petitioner owns and operates a solar power-based generating plant of 10 MW capacity in the State of Telangana. The entire energy from the Project is being off-taken by the Southern Power Distribution Company of Telangana Limited.
- e. It is stated that Southern Power Distribution Company of Telangana Limited is a government owned company entrusted with the function of distribution of electricity in certain districts of the state of Telangana (respondent). The respondent entered into PPA dated 10.04.2015 with the petitioner to off-take the entire energy generated from the petitioner's 10 MW solar power project.

- f. It is stated that the petitioner is a generating company within the meaning of Section 2(28) of the Act, 2003 and has established and operates 25 MW of solar energy generating station, connected to 132/33 kV Kodangal substation in Mahabubnagar District, Telangana (project).
- g. It is stated that the Government of Telangana vide letter dated 18.07.2014 directed the Transmission Corporation of Telangana Limited and Telangana State Power Coordination Committee to initiate the process of floating tender on behalf of DISCOMs for purchase of 500 MW solar power. Thereafter, the TRANSCO and Telangana State Power Coordination Committee vide letter dated 25.07.2014 instructed the DISCOMs to initiate the process of floating tenders on behalf of DISCOMs for procurement of 500 MW solar power through e-procurement platform as per the directions of Energy Department, Government of Telangana.
- h. It is stated that accordingly, Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited (DISCOMs) by way of request for selection (RfS) issued tender for selection dated September, 2014, to which M/s First Solar Power India Limited (first solar), parent company of the petitioner, applied for setting up of 10 MW solar power project. Consequently, a Letter of Intent dated (LoI) 28.02.2015 was issued to first solar for setting up of a solar power plant at Rs.6.90 per unit.
- i. It is stated that in terms of the LOI issued to first solar, the respondent executed PPA dated 10.04.2015 with the first solar for purchase of energy generated from the 10 MW project for a period of 25 years. The first solar incorporated the petitioner as its 100% owned subsidiary and accordingly the PPA was amended vide an amendment dated 23.01.2016 (first amended PPA). The amendments of PPA were applicable from 10.04.2015 onwards. The relevant terms of the PPA are reproduced herein below:

“Article 1 Definitions

- 1.19 *‘Due date of payment’ shall mean the date on which the amount payable by the Discom to the Solar Power Developer hereunder for Delivered Energy, if any, supplied during a Billing Month becomes due for payment, which date shall be thirty (30) days from the Meter Reading Date provided the bill is received by Discom within 5 working days from Meter Reading Date, and in case of any supplemental or other bill or claim, if any, the Due Date of payment shall be thirty (30) days from the date of the presentation of such bill or claim to the designated officer of*

the Discom. If the last date of payment falls on a holiday, the next working day shall be considered as last date.

Article 2 Purchase of delivered energy and tariff

2.1 Entire Delivered Energy, as mentioned in Schedule 1, at the interconnection Point for sale to DISCOM will be purchased at the tariff provided for in Clause 2.2 from and limited to capacity of the Project only after the Date of Commercial Operation. Title to Delivered Energy purchased shall pass from the Solar Power Developer to the Discom at the Interconnection Point.

Provided the units of energy generated by the SPD prior to the COD of the Project shall be purchased by the DISCOM at the first year Tariff rate as provided in Clause 2.2.

2.2 The Discom shall pay a tariff of Rs.6.90 per unit to the Solar Power Developer as per the tariff quoted by the Solar Power Developer in the bid.

The Bidder has opted for Tariff Operation-I as specified in the Financial Bid Format 6.10 (b) of RfS, then Tariff for all Tariff years for the entire term of the Agreement shall be the quoted tariff.

2.5 For Delivered Energy corresponding to less than or equal to 25% CUF, the applicable Tariff shall be as per Article 2.2 of this Agreement. For Delivered Energy beyond 25% CUF, the applicable tariff shall be equal to the 50% of the Quoted Tariff specified for that Tariff Year. The calculation of CUF shall be done on a yearly basis i.e. over the Tariff Year.

Article 5 Billing and Payment

5.1 For the Delivered Energy Purchased, Solar Power Developer shall furnish a bill to the DISCOM calculated at the Tariff provided for in Article 2, in such form as may be mutually agreed between the DISCOM and the Solar Power Developer, for the billing month on or before the 5th working day following the Meter Reading Date.

5.2 The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, DISCOM shall pay interest at prevailing SBI bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction.

... ..
5.5 Payment for bills raised: The Solar developer shall submit bills for the energy delivered during the billing period as per provision of this Agreement and there upon DISCOMs shall make payment for the eligible bill amount by the due date of payment.”

A bare perusal of the afore quoted provisions of the PPA makes the following abundantly clear –

- i. The petitioner is obligated to sell the 10 MW of energy generated to respondent and respondent is obligated to pay Tariff for the energy supplied at the delivery point.
- ii. The Tariff rate i.e., Rs.6.90 per unit shall be firm for the entire term of the PPA and will not vary.

- iii. The billing has to be carried out on a monthly basis.
 - iv. The settlement period of the invoice of the petitioner for the energy supplied to respondent shall be 30 days from the meter reading date.
 - v. If respondent has any dispute in relation to a bill raised by the petitioner, it shall notify the petitioner of such dispute.
 - vi. In case payment of bill is delayed beyond the 'Due Date of Payment', respondent is obligated to pay late payment surcharge as specified in Article 5.2.
- j. It is stated that since the commissioning of the 10 MW project, the entire electricity generated by the project is being supplied to respondent in terms of the PPA. Till the date of filing of the instant petition, entire electricity generated from project has been supplied and billed by the petitioner and further sold to the consumers by respondent.
- k. It is stated that the petitioner has been issuing monthly invoices to the respondent for the energy supplied. As per Article 5.5 of the PPA, the respondent is mandated to pay for the energy purchased from the petitioner within the due date. Due date, in terms of the PPA, is the date on which the amount payable by the DISCOM to the petitioner for energy supplied during a billing month becomes due, which is 30 days from the meter reading date provided the bill is received by the DISCOM within 5 working days from the meter reading date or 30 days from the date of presentation of such bill or claim to the DISCOM. Further, the petitioner is entitled to LPS in terms of Article 5.2 of the PPA which provides that in case of delay in payment for the energy purchased by respondent beyond the 30 days, the respondent shall pay interest at prevailing SBI bank rate on the outstanding amount. The respondent is, therefore, liable to pay LPS on the outstanding invoices to the petitioner.
- l. It is stated that it is pertinent to mention here that the petitioner wrote various letters to the respondent for payment of outstanding dues, however, of no avail. The respondent never responded to the letters and communications sent by the petitioner, nor has it complied with the terms of the PPA.
- m. It is stated that therefore, the petitioner was compelled to approach this Commission on account of huge outstanding dues by filing O.P.No.15 of 2022 inter-alia seeking following relief(s):-
- i. Direct the respondent(s) to strictly comply and abide with the provisions of the PPA entered into between the petitioner and the respondent(s).
 - ii. Direct the respondent(s) to immediately release payments due, amounting to Rs.11,48,35,596/- to the petitioner which have been

outstanding for an unduly extended period of time along with the applicable interest for late payment, thereon.

- iii. Direct the respondent(s) to pay the due Late Payment Surcharge amounting to Rs 3,10,03,131/- for the energy invoices raised prior to November, 2020.
- iv. Direct the respondent(s) to make all future payments of valid invoices in a timely manner as per the provisions of the PPA.
- v. Direct the respondent(s) to open an irrevocable revolving Letter of Credit in favour of the petitioner in term of Article 5.4 of the PPA.”

n. It is stated that the Commission after duly considering the submissions of the petitioner and rival contentions of the respondent, passed an order dated 08.08.2022 in O.P.No.15 of 2022, wherein the Commission directed the respondent to settle unpaid energy bills and outstanding LPS within 45 days from the passing of the order. The relevant extract of the said order is produced herein below:

“11. *Prima facie, the prayer in this petition is about action of the respondent in not making the payment in accordance with the provisions of the PPA. The petitioner has identified the outstanding amount due against monthly bills for the period from November 2020 to September 2021 as Rs.11,48,35,596/- along with LPS amount thereof Rs.66,69,905/- as on 10.11.2021 and an amount of Rs.3,10,03,131/- towards LPS against monthly bills prior to November 2020 in terms of Article 5.2 of the PPA payable by respondent.*

....
13. *The Commission is of the view that in the absence of any contest made by the respondent as to the veracity of the claims made by the petitioner, there shall not be any dispute on the amounts payable by the respondent to the petitioners. However, as per the provisions of the PPA, when the petitioner has complied with its part to the PPA by delivering the electricity energy to the respondent, the respondent is bound to make payment for the same without any demur. Further, in terms of the PPA such occurrence and continuation of event of non-payment of dues by the respondent to the petitioner and the petitioner is unable to recover the outstanding amount, shall constitute “DISCOM (respondent) Event of Default”.*

....
16. *Therefore, the Commission is inclined to grant the relief as prayed for in the original petition, both for the billed amount and interest claims and directs the respondent to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month’s billing value as per Clause 5.4 of the PPA.*

....
17. *In the light of the above, the petition stands allowed and the respondent shall comply with this order within forty five (45) days from the date of receipt of this order. While complying with the order, the respondent would ensure that the amounts are settled completely upto date and shall endeavour to make payment for the eligible amount against the bills*

raised by the petitioner promptly in accordance with the provisions of the PPA.”

- o. It is stated that bare reading of afore quoted paras reflect that the Commission directed the respondent to undertake following:
 - a) Within 45 days from the date of the order (i.e., 45 days from 08.08.2022), pay all outstanding amount including Late payment surcharge;
 - b) Open irrevocable letter of credit.
- p. It is stated that the respondent has not complied with the afore mentioned portions of the order.
- q. It is stated that after passage of around 120 days, on 06.12.2022, vide a communication the respondent agreed to pay principal amount in 12 installments. The respondent did not provide a reason for failure to comply with the order that is payment of principal and LPS within 45 days of the order and opening of the letter of the credit.
- r. It is stated that it is pertinent to mention that the Commission had fixed a timeline of 45 days from passing of the order to settle the outstanding dues. The petitioner, in its bona fide, waited even after the passing of the stipulated timeline in the hope that the payments will be made by the respondent. After a long haul, the petitioner issued its communication dated 09.05.2023 to the respondent seek compliance of the order. It brought to the notice of the respondent that after comparison of the dues admitted by respondent in its letter dated 06.12.2022, with petitioner's books and records, it was observed by the petitioner that there was a difference of Rs.1,11,81,645/- (subject to reconciliation) in the total outstanding principal amount. Further, it was highlighted in the said communication that the LPS amount has not been accounted for while calculating the dues payable by respondent and the same is outstanding in terms of the order. Accordingly, it requested the respondent to make payments of the unpaid energy bills and LPS amounts.
- s. It is stated that thereafter, the petitioner issued another letter dated 18.07.2023 to the respondent seeking compliance of the order. It brought to the notice of the respondent that it is in receipt of 12 EMIs as per letter dated 06.12.2022 issued by the respondent. However, it clarified that the dues received are not complete, and have been paid without considering outstanding payables towards: (i) the invoice of May 2022; (ii) the difference of Rs.1,11,81,645/-

(subject to reconciliation) in the total outstanding principal amount as it appears in the books of the petitioner and the respondent; and (iii) the LPS amount outstanding in terms of the order.

- t. It is stated that on 21.08.2023 the petitioner issued yet another letter to the respondent, seeking payment of the outstanding LPS amount.
- u. It is stated that the respondent is flagrantly violating directions of the Commission by not paying the LPS amount. There is not an even attempt by the respondent to comply with directions of the Commission.
- v. It is stated that in addition, in terms of the order dated 08.08.2022, the respondent has also been directed to make endeavour to make payment of invoices promptly in accordance with the provisions of the PPA. However, the invoice of the month of May, 2022 is still pending despite several follow ups with the respondent. A follow-up letter dated 10.10.2023 was sent to the respondent for seeking disbursement of payment for the invoice of month of May, 2022.
- w. It is stated that consequently, the petitioner under clause 45 of the TSERC COB Regulations 2015 approached the Learned Secretary of the Commission seeking enforcement and compliance of the order passed by the Commission vide its letter dated 02.08.2023.
- x. It is stated that the Secretary responded vide its communication bearing No.S/RO-59/36/RO-2/D.No.562/2023 Dt.19.08.2023, whereby, it stated that it has examined the request of the petitioner seeking enforcement of the order dated 08.08.2022 and directed the petitioner to approach the Commission by filing a petition under the TSERC Conduct of Business Regulations, 2015.
- y. It is stated that hence, the petitioner is left with no choice and is constrained to approach the Commission for seeking appropriate directions to be issued to the respondent for implementation of order.
- z. It is stated that the Commission under Section 142 and 146 of the Electricity Act, 2003 along with clause 26, 38 and 45 of "Conduct of Business" Regulations, 2015 has the requisite powers to issue the appropriate direction to the respondent.
- aa. It is stated that as the Commission is the appropriate authority to consider the matter, no remedies have been sought from any other forum/Court/Authority

etc., and the petition is being filed only before the Commission and no other application is pending in the matter with any other Court.

ab. It is stated that the below are the grounds on basis of which the present petition is maintainable and may be allowed:

- i. For that, the respondent has failed to comply with the directions passed by the Commission in the order.
- ii. For that, the Commission in unequivocal terms had fixed a timeline for compliance of the order and there is no ambiguity on terms of the order.
- iii. For that the Commission's conduct of business regulation empowers the Commission to implement its own order. It is stated that Section 92 of the Act, 2003 enables the Commission to observe such rules of procedure in regard to the transaction of business at its meetings. Section 181 of the Act, 2003 lays down the power of a state commission to make regulations, including but not limited to Section 92 of the Act, 2003.

Section 92. (Proceedings of Appropriate Commission): - (1) *The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.*

Section 181. (Powers of State Commissions to make regulations)

- (1) *The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.*
- (2) *In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely: -*
 - (zi) *rules of procedure for transaction of business under sub-section (1) of Section 92.*

Accordingly, the Commission has issued the TSERC COB Regulations, 2015. It is pertinent to mention that under Regulation 26 of the said regulations, this Commission has the power to direct for compliance of its orders. Under Regulation 38, the Commission has inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of law. Further, Regulation 45 empowers the Secretary to the Commission to ensure enforcement and compliance of the orders passed by the Commission, accordingly, the petitioner has already approached the Secretary vide its letter dated 02.08.2023, however, of no avail. Therefore, the petitioner is now before the Commission Sections 142 and 146 of the Act, 2003 read with Regulation 26, 38 and 45 of the TSERC COB Regulations. Relevant provisions of the TSERC COB Regulations are extracted below for reference:

"Regulation 26: Non-compliance of orders and directions

- (1) *Where any complaint is filed before the Commission by any person or where the Commission is satisfied that any person has contravened any provisions of the Act or rules or regulations*

made thereunder, or any direction issued by the Commission, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under the Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which failure continues after contravention of the first direction.

- (2) *Any amount payable under sub-regulation (1), if not paid, shall be recovered as if it were an arrears of land revenue.*

Regulation 38: Saving of inherent power of the Commission

- i) *Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.*
- ii) *Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary of expedient for dealing with such a matter or class of matters.*
- iii) *Nothing in these regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act or Reform Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.*

Regulation 45: Enforcement of orders passed by the Commission

The Secretary shall ensure enforcement and compliance of the orders passed by the Commission, by the persons concerned in accordance with the provisions of the Act or Reform Act and Regulations and if necessary, may seek the order of the Commission for directions.”

- iv. For that, this Commission not only has powers to adjudicate a dispute and pass necessary orders but also to implement its order and make it effective.
- v. For that, if a legislation confers jurisdiction upon a statutory body to adjudicate, it impliedly also grants the power of doing all such acts, or employing such means, as are necessary to its execution.
- vi. For that, the Commission which acting as a judicial body has all those incidental and ancillary powers which are necessary to make its own orders fully effective.
- vii. For that, it is well settled cardinal principle of interpretation of statute that courts or tribunals must be held to possess power to execute their own order.
- viii. For that, the Electricity Act, 2003 is a self-contained code, it has conferred the power to adjudicated upon this Commission, which comes along with the power to pass necessary direct for implementation of its order.

- ix. For that, the petitioner is truly and justifiably aggrieved because of non-implementation of the order by the respondent.
 - x. For that, the respondent is contractually obliged under clause 5 of the PPA to make the payment of the invoices by the due date. It is further stated that the respondent is obliged to furnish LPS on delayed payments in terms of the PPA, which it has not adhered to.
 - xi. For that, the Commission is guided by the principles set out u/s 61(b)&(d) of the Act, 2003 to ensure that the generation is conducted on commercial principles and that the cost of supply of electricity is recovered in a reasonable manner.
 - xii. For that, the timeframe enumerated under the PPAs is the only return on investment which a generator like petitioner is entitled to and the respondent herein has not implemented the order for the release of the admitted and outstanding amounts towards supply of energy for months.
 - xiii. For that, the petitioner has invested substantial amount of money in construction, operation, and maintenance of the project. In case of any delay in payment of the petitioner's invoices not only affects its ability to service its debts but also negatively affects its day-to-day operations.
 - xiv. For that, the present situation is not conducive to promote co-generation and generation of electricity from renewable sources of energy this is certainly against the principles enshrined under Sections 86(1)(e) of the Act, 2003 which provide for encouragement of renewable energy.
 - xv. For that, the petitioner is justifiably compelled to seek issuance of directions in terms of extant legal/statutory framework against the respondent for absolute implementation of the order passed by the Commission. Therefore, it is a fit case, where the Commission's intervention is required for being in the interest of the rights of the petitioner and the majesty of the Commission.
- ac. It is stated that in view of the above, the petitioner seeks the indulgence of the Commission to provide directions to implement the findings of the order. The petitioner seeks liberty to alter, amend and modify the present petition as and when necessary or if so directed by the Commission. The petition is being filed bona fide and in the interest of justice.
2. Therefore, the petitioner has sought the following reliefs in the petition for consideration.
- a. Allow the instant petition and declare that the respondent is in non-compliance of the order dated 08.08.2022 passed by the Commission in O.P.No.15 of 2022.
 - b. Issue directions to the respondent under Section 142 and 146 of the Act, 2003 for non-compliance of the order dated 08.08.2022 passed by the Commission in O.P.No.15 of 2022.
 - c. Issue appropriate direction to the respondent to comply with the order dated 08.08.2022 passed by the Commission in O.P.No.15 of 2022 in its entirety

including but not limited to complete payment of principal as well as late payment surcharge.

- d. Direct the respondent(s) to open Letter of Credit (LC) in strict compliance of the terms of the order dated 08.08.2022 passed by the Commission in O.P.No.15 of 2022.
 - e. Pass such order(s), further relief(s) in the facts and circumstances of the case as the Commission may deem just and equitable in favour of the petitioner.
3. The respondent has not filed its counter affidavit despite giving ample opportunity.
 4. The Commission has heard the parties to the present petition and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 14.12.2023:

"... .. The counsel for petitioner stated that the petition is filed under Section 142 of the Act, 2003 for implementation of the order of the Commission. The Commission had, in its order dated 08.08.2022, required the respondent to implement the order within 45 days from the date of receipt of the order. However, till date the interest component is not being paid by the respondent to the petitioner. The counsel for petitioner stated that the respondent should have forthwith come with implementation of the order. The representative of the respondent stated that the matter is coming up for hearing for the first time and he would like to have instructions in the matter and then submit the views of the respondent. Considering the request of the representative of the respondent, the matter is adjourned with a specific understanding that it will be taken up for hearing on the next date and by that date all the pleadings should be completed without fail."

Record of proceedings dated 11.01.2024:

"... .. The counsel for petitioner stated that the petition is filed under Section 142 of the Act, 2003 for implementation of the order of the Commission. The Commission had, in its order dated 08.08.2022, required the respondent to implement the order within 45 days from the date of receipt of the order. However, despite seeking time to file counter affidavit, the respondent has not filed any counter affidavit or made any submissions as regards payments due. The Commission notices that it had already passed specific directions in the matter at earlier round of litigation. The representative of the respondent stated that he has no instructions specifically on the payment of the amounts due and that he had required and advised the respondent on the course of action required to be undertaken by the respondent. Even on the same, nothing has been instructed to him. However, he sought one opportunity to appraise the Commission as to the action taken by the respondent in the matter. Keeping in view the background situation and the absence of any sort of action taken by

the respondent, the Commission presumes that the respondent has nothing to submit in the matter. Accordingly, the matter is reserved.”

5. Given the facts and circumstances, the petitioner has invoked the penal provisions under the Act, 2003, more particularly sections 142 and 146 along with the provisions in Regulation No. 2 of 2015. The said provisions are extracted below.

“142. Punishment for non-compliance of directions by Appropriate Commission:-

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

....
146. Punishment for non-compliance of orders or directions:-

Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence.”

6. The Commission had considered the material aspects while disposing of the original petition in O.P.No.15 of 2022 by order dated 08.08.2022. The Commission had directed the respondent herein to comply with three aspects of the litigation between the petitioner and the respondent, namely, (a) payment of arrears up to date, (b) payment of late payment charges to the extent where the amounts are due and yet to be paid and (c) open the LC in favour of the petitioner within 45 days from the date of the order. However, as stated by the petitioner, the respondent by letter dated 06.12.2022 had informed that it had made arrangements for payment of principal amount by availing loans from the Power Finance Corporation and Rural Electrification Corporation. But, the respondent did not comply the order of the Commission in toto.

7. Inasmuch as the petitioner had to be paid the LPS also along with principal amount due and also open the LC in favour of the petitioner. In effect, the respondent had complied with part of the order only. Thus, non-compliance of the order completely would constitute a violation of the directions given by the Commission and would attract the action under Sections 142 and 146 of the Act, 2003, which are extracted above.

8. The Commission, having examined the material on record more particularly the correspondence set out between the parties, is of the view that the petitioner is entitled to the relief to the extent of penalizing the respondent for non-compliance of the order in toto. Thereby, the respondent has invited its action to be punishable for non-compliance of the Commission order in toto within the stipulated time. However, the Commission is constrained not to take the matter beyond Section 142 of the Act, 2003 as the respondent had shown bona-fides in compliance of the order to a certain extent. Accordingly, a penalty of Rs.50,000/- (Rupee fifty thousand only) is imposed on the respondent for non-compliance of the order in toto, thereby the petition is disposed of. The penalty so imposed shall be deposited with the Commission immediately.

9. At the same time, the Commission reiterates that the original order dated 08.08.2022 in O.P.No.15 of 2022 to the extent, which is not complied shall be complied immediately. The petition is allowed with a cost of Rs.3,00,000/- (Rupees three lakhs only) to meet the ends of justice to be paid to the petitioner simultaneously along with the penalty so imposed.

This order is corrected and signed on this the 27th day of May, 2024.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

//CERTIFIED COPY//