



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004**

R. P.(SR) No. 62 (a) of 2016

In

O. P. No. 11 of 2016.

Dated:03.12.2016

**Present**

Sri. Ismail Ali Khan, Chairman

Sri. H. Srinivasulu, Member

Between:

M/s. Southern Power Distribution Company of  
Telangana Limited, Corporate Office,  
# 6-1-50, Mint Compound, Hyderabad – 500 063.

... Petitioner.

And

M/s. Enrich Energy Private Limited, 302, Third Floor,  
The Orion, 11 / 1C, Koregaon Park Road, Pune – 411 001.

... Respondent.

This petition came up for hearing on 28.12.2014. Sri Y. Rama Rao, Counsel for the petitioner along with Smt. Priya Iyengar, Advocate and Smt. Dipali Seth, Advocate for the respondent are present. The petition having stood for consideration to this day, the Commission passed the following:

**ORDER**

The Southern Power Distribution Company of Telangana State Limited (petitioner) has filed a petition seeking for review of the order dated 16.07.2016 in O. P. No. 11 of 2016 under Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003).

2. The review petitioner stated that the Commission had passed an order on 16.07.2016 in O. P. No. 11 of 2016 in the matter of approval / consent to power purchase agreements (PPA) entered into by TSSPDCL with: (i) the individual generators in the solar park developed by Enrich Energy Private Limited (EEPL) at Zaheerabad, Medak District for 60 MW on a long term basis; (ii) M/s. Rays Power Infra Private Limited (RPIPL), for procurement of 2 MW on a long term basis out of 10 MW

solar park developed by it at Dharmajipet Village, Dubbak Mandal, Medak District. The sailent points of the order are given as under:

- i) The Commission determined the tariff of Rs. 6.49 / unit for the individual generators of the solar park developed by EEPL and RPIPL who have entered into the PPAs with the TSSPDCL and commissioned their projects on or before 31.03.2015.
- ii) The Commission directed to make necessary amendments to the PPAs of the individual generators:
  - a) Commissioned after 31.03.2015 upto 31.03.2016 and are willing to sell the power to the TSSPDCL under the long term PPA route with a tariff of Rs. 6.45 / unit.
  - b) For the projects Commissioned or yet to be commissioned after 31.03.2016 and are willing to sell the power to the TSSPDCL under the long term PPA route, DISCOMs were directed to approach the Commission for proper fixation of tariff for the projects commissioned post 31.03.2016.
- iii) Discoms were directed to obtain the approval of the Commission for any deviation in the terms of the PPA including the tariff payable to the generators and the schedule of commercial operation.
- iv) Commission held:
  - a) Non-Recognition of third party involvement in matters under the PPA;
  - b) Energy accounting (meter reading and losses allocation) to be done by the TSSPDCL;
  - c) the meter readings to be taken by the TSSPDCL in the presence of the individual generators.
- v) Rejected the tripartite agreement entered into by TSSPDCL.

3. The petitioner stated that the following individual solar power developers of open offer route – 2013 who are part of the solar park developed by M/s EEPL have not commissioned the projects by 31.03.2016.

| Sl. No. | Name of the project                  | Capacity | Date of PAA | COD                    |
|---------|--------------------------------------|----------|-------------|------------------------|
| 1.      | M/s Enrich Energy Pvt. Ltd.          | 3 MW     | 05.05.2015  | 27.05.2016             |
| 2.      | M/s Abbas Constructions Pvt. Ltd.    | 2.5 MW   | 29.04.2015  | Yet to be Commissioned |
| 3.      | M/s Minopharm Laboratories Pvt. Ltd. | 2.5 MW   | 29.04.2015  | Yet to be Commissioned |
| 4.      | M/s Enrich Energy Pvt. Ltd.          | 2 MW     | 05.05.2015  | Yet to be Commissioned |

Hence as per the directions of the Hon'ble Commission proper tariff has to be determined in respect of the above individual solar power developers. The above individual solar power developers have approached the TSSPDCL through open offer route – 2013.

4. For convenience, the back ground of open offer route – 2013 is briefly given below:

Open offer route – 2013 for setting up of solar power plants at designated substations:

Background (competitive Bidding Route – 2012): In FY 2012 – 13, after careful examination of the recommendations of the group of ministers (GoM) the then Government of Andhra Pradesh vide G.O. Ms. No. 46 dated 27.11.2012 had issued policy orders on purchase of solar power by DISCOMs and directed the Chairman / APPCC to conduct the bidding process of the competitive bidding to ensure that 1,000 MW of solar power plants are set up before June'13. Accordingly, the then APPCC / APTRANSCO had floated tenders under the competitive bidding route vide Bid No. 01 / 2012 – 13 / CE – IPC – APPCC / Vidyut Soudha / Khairatabad / Hyderabad. The then GoAP vide letter dated 12.07.2013 had determined the lowest tariff of Rs.6.49/- unit on the recommendation of the Committee of the GoM.

5. Open offer route – 2013: As the sufficient bidders did not approach for sale of power to DISCOMs, GoAP vide letter dated 12.07.2013 had authorized APPCC / APTRANSCO to invite open offer to all the prospective solar power developers at Rs.6.49 / unit (L1 rate of solar competitive bidding – 2012). Accordingly, the then APTRANSCO / APPCC had notified the open offer guidelines on its official website inviting the prospective solar power developers to establish the solar power plants at the identified substations including 132 / 33 kV SS Zaheerabad. Subsequent to the finalization of the financial bids and on issue of letter of intent to the solar power developers (SPDs) by the then APPCC, 14 (Individual SPDs) + 31 (Individual SPDs

of solar park developed by EEPL) + 1 (Individual SPD of solar park developed by RPIPL) = Total 46 No SPDs had entered into power purchase agreements (PPA) with TSSPDCL for a total capacity of 202 MW under the open offer route.

6. The review petitioner stated that the Commission vide letter No. TSERC / Secy / ACC / F. No. T-51 / D. No. 636 / 16, dated 14.10.2016 in respect of the solar power projects selected under the open offer route – 2013 had given its consent for extension of SCOD timelines upto 31.12.2016 at a tariff of Rs. 6.45 / - unit in respect of individual solar power developer under the open offer route – 2013 except the solar park concept.

7. The review petitioner stated that all the individual generators of the solar parks developed by EEPL and RPIPL were selected and covered under the open offer route – 2013. It is stated that four individual generators mentioned at para 3 are in the solar park developed by EEPL and they were requested vide letters D. No. 1180 / 31 to 34 / 16, dated 26.09.2016 to submit their willingness to sell the power to TSSPDCL under the long term PPAs route and their proposals on fixation of tariff for their solar power projects.

8. The review petitioner stated that the individual solar power developers in the solar park developed by EEPL have informed that the Government of Telangana considered the extension of SCOD upto 31.12.2016 to the solar project developers under open offer route – 2013 with tariff of Rs. 6.45 per unit. They are being under open offer route – 2013 requested to consider the same tariff of Rs. 6.45 per unit for their projects also which are commissioned / scheduled to commission after 31.03.2016. Therefore, TSSPDCL requested the Commission to consider the tariff of agreed price Rs. 6.45 per unit and extension of SCOD timeline upto 31.12.2016 for the solar power projects of individual generators of solar park commissioned or yet to be commissioned after 31.03.2016 on par with other individual solar power developers of open offer route – 2013.

9. The review petitioner stated that it proposed for consent / approval of Commission for the various amendments to the PPAs in respect of the individual solar power projects commissioned or yet to be commissioned after 31.03.2016 and furnished the details thereof Article-wise.

10. The review petitioner has made the following prayer in the petition:
- a) Fix the tariff at Rs. 6.45/ unit in respect of individual solar power projects namely M/s Enrich Energy Private Limited, 3 MW, M/s Abbas Constructions Private Limited, 2.5 MW, M/s Minopharm Laboratories Private Limited, 2.5 MW and Enrich Energy Private Limited, 2 MW who commissioned or yet to commission after 31.03.2016;
  - b) Extend SCOD timelines upto 31.12.2016.
  - c) To accord consent to the proposed amendments to the PPAs of the 4 nos. of individual quantum.
  - d) Accord consent to the amendments to the PPAs as proposed in letter dated 26.09.2016 in respect of individual solar power projects of solar park developed by EEPL and RPIPL those commissioned on or before 31.03.2015 and those commissioned between 31.03.2015 and 31.03.2016.

11. The review petitioner has filed a petition seeking for condonation of delay of 59 days in filing the review petition. The petitioner stated that the Commission passed an order on 16.07.2016 in O. P. No. 11 of 2016 in the matter of approval / consent to the power purchase agreements (PPA) entered into by TSSPDCL with (i) the individual generators in the solar park developed by M/s. Enrich Energy Private Limited (EEPL) at Zaheerabad, Medak district for 60 MW on a long term basis; (ii) M/s Rays Power Infra Private Limited (RPIPL), for procurement of 2 MW on a long term basis out of 10 MW solar park developed by it at Dharmajipet Village, Dubbbak Mandal, Medak Dist. The main contents of the Commission order were reiterated in this petition also.

12. The review petitioner stated that as per the direction of the Commission, TSSPDCL approached the Commission vide letter dated 26.09.2016 with regard to the (a) approval / consent for the proposed amendments to the Clauses of the Articles of the PPAs of individual generators; (b) fixation of tariff for the solar projects commissioned or yet to be commission after 31.03.2016; and (c) to cause such orders.

13. The review petitioner stated that the Commission vide letter dated 03.11.2016 directed it to file a proper petition before the Commission for the projects commissioned or yet to be commissioned after 31.03.2016 for modification of the

quasi-judicial order as per the request of its letter dated 26.09.2016. It is stated that TSSPDCL approached the Commission in the form of a letter dated 26.09.2016. Further, the Commission directed vide letter dated 03.11.2016 to file a proper petition. As such delay of 59 days occurred in filing the review petition. TSSPDCL therefore prayed the Commission to condone the delay of 59 days in filing the review petition.

14. We have directed the office to list the matter for hearing in view of the timelines involved in the matter and heard the parties on 28.12.2016. The counsel for the petitioner and the counsel for the respondent made submissions in the matter.

15. The counsel for the petitioner stated that a petition is filed as a review petition in pursuance of the directions in the order dated 16.07.2016 in O. P. No. 11 of 2016 in the matter of consent to power purchase agreements between the review petitioner and the respondent. The petition is filed under section 94 of the Electricity Act, 2003 for extending the period of COD up to 31.12.2016 from 31.03.2016. Several prayers are sought in the petition, which may or may not be relevant as per the directions of the Commission in the order or in the subsequent letter sent by the Commission Secretary conveying the decision of the Commission. The Commission may consider the communication of the Government of Telangana extending the time period by the letter issued in the month of July, 2016.

16. The counsel for the respondent has no objection for the prayers in the petition. She, however, sought to plead for relief of paying incentives as are payable to the solar generators of earlier bidding process or generators, who had already achieved COD before 31.03.2016. Such incentives are being paid except to the generators before the Commission. She also sought a prayer of fixing the tariff and non-payment of the dues.

17. The counsel for the petitioner opposed the idea of any relief to the respondent in a petition filed by the petitioner. He also stated that such an action is not known to law. At this stage, the Commission pointed out that there is no petition insofar as the relief sought by the counsel for the respondent and she is free to file such petitions as may be desirable, which will be considered separately at the appropriated time.

18. We have considered the rival contentions in the light of the provisions of the Act, 2003 as well as the communication on various issues resting in the matter.

19. We had directed the TSSPDCL as follows while disposing of the consent application of the licensee with regard to PPA with M/s. Enrich Energy Private Limited.

‘For the projects commissioned or yet to be commissioned after 31.03.2016, and are willing to sell the power to the TSSPDCL under the long term PPA route, the DISCOMs are directed to approach the Commission for proper fixation of tariff for the projects commissioned post 31.03.2016.’

20. We notice that the petition, as directed by us, is filed but in the form of a review petition. A review petition can be entertained by the Commission on the following aspects under the Code of Civil Procedure Code, 1908.

- a. Where there is a typographical mistake that has crept in the order.
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise.
- c. When there is a mistake committed by the Commission, which is apparent from the material facts available on record and / or in respect of application of Law.
- d. When the Commission omitted to take into consideration certain material facts on record and ‘law on the subject’ and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given.
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion

The petitioner has sought several fresh reliefs in the present petition.

In the covering letter, the TSSPDCL sought review of the order. However, the prayer does not reflect the intention expressed by it. If at all, the licensee intended any other reliefs, the petition could not have been couched as expressly stated in the review petition.

21. For undertaking a review by the Commission the full quorum should be available under the Act, 2003 and the provision in the Reform Act, however, the same is not restrictive as interpreted by the Hon'ble High Court. The relevant portion is extracted below.

“This is not a case where the petitioners have pleaded inherent lack of jurisdiction on the part of respondent No.1 in entertaining the review petition. The petitioners raised objection on the power of existing members of the Commission based on the proviso to Section 9(4) of the Reform Act. When this objection is raised, respondent No.1, in the above re-produced para of its order, observed that it will deal with this aspect while deciding the review petition. In my opinion, respondent No.1 is entitled to adjudicate on this contention of the petitioners and there is no legal bar on respondent No.1 for such adjudication, unlike in a case of objection pertaining to inherent lack of jurisdiction raised by a party. Therefore, I do not find any reason whatsoever for this Court to entertain the writ petition even before respondent No.1 has decided the issue raised by the petitioners.

In the premises as above, the writ petition is dismissed without going into the merits of the case with liberty to the petitioners to pursue the objection raised by them before respondent No.1 on the maintainability of the review petition in the absence of full strength. If the petitioners feel aggrieved by the order passed in I. A. No. 8 of 2011, they shall be free to avail the remedy of appeal before the appellate authority under the provisions of the Act.”

22. A reading of the provisions of Section 92 in the light of the order passed by the Hon'ble jurisdictional High Court would clearly demonstrate that the Commission has the power to entertain the petition.

23. We are of the view that in the review petition additional submissions with regard to amendments to the PPA cannot form a part of the review petition. The review petition is meant for the purpose of reviewing the order in respect of the findings made therein. There cannot be an extension or further directions, unless, such order has been suitably reviewed. In the instant petition altogether new reliefs have been sought, though, part of them emanate from the order dated 16.07.2016.



24. In fact, the Commission had directed for filing of a fresh petition and did not suggest a review petition in the order. In its letter the Commission pointed out that -

“I am directed to inform you that in respect of the solar power projects of the solar parks commissioned or yet to be commissioned after 31.03.2016, **a proper petition has to be filed expeditiously for modification of the said quasi-judicial order**, the other issues such as giving consent to the proposed amendments in your letter dated 26.09.2016 to the PPAs in respect of the solar power projects commissioned on or before 31.03.2015 and those solar power projects commissioned between 31.03.2015 and 31.03.2016 will be attended to.”

A combined reading of the order dated 16.07.2016 and letter dated 03.11.2016 the directions of the Commission have been thoroughly misunderstood, if not, erroneously acted to give effect to the orders of the Commission by the licensee. The Commission clearly required the TSSPDCL to file a separate petition for modifying the earlier order and another petition for determination of tariff. Post such filing, the Commission also made it clear that it would undertake consideration of the amendments to the PPA in the letter dated 26.09.2016. Contrary to this understanding, the licensee choose to file a review petition. However, such a review petition is loaded with prayers other than the review.

25. Despite all the above, infirmities and irrelevant actions, this Commission being the Regulator of the electricity industry is bound to secure the interest of all the stakeholders. Keeping in mind this objective, we deem it appropriate that prayer (b) of the petition needs consideration.

26. In order to encourage renewable energy and more particularly solar energy, it is noticed by the Commission that the Government of Telangana has been issuing orders extending the timeline for achieving SCOD of the projects being setup in the State of Telangana. It is stated that the Government had earlier extended the timeline twice in the year 2015 upto 31.03.2016. Now further time has been extended upto 31.12.2016 in the letter issued in June / July, 2016. Keeping this in view only, we had directed the licensee to approach the Commission with a separate petition as the said communication is addressed to the licensee only.

27. Since we had ourselves required the licensee to file a fresh petition, even though a review petition is filed, we are inclined to dispose of the same at SR stage itself. Accordingly, while leaving other prayers and the infirmity in filing the petition aside, we hereby allow the SCOD to be extended up to 31.12.2016. This extension is allowed to enable the projects, which were due for completion or already completed to get the benefit of the government orders. Therefore, we allow this extension up to 31.12.2016 in order to encourage the renewable energy source of solar power in the State of Telangana u/s 86(1) (c) of the Electricity Act, 2003.

28. At the same breath, we refuse the prayers at (a), (c) and (d) in this petition. However, this does not preclude either of the parties to come before the Commission on the respective issues except the above relief, if they are so advised by filing separate and fresh petitions.

29. Since the petition filed by the petitioner for review has itself been disposed of, we deem it appropriate to close the Interlocutory Application filed for condoning the delay in filing review petition and pending on the file of the Commission.

This order is corrected and signed on this the 3<sup>rd</sup> day of December, 2016.

**Sd/-**  
**(H. SRINIVASULU)**  
**MEMBER**

**Sd/-**  
**(ISMAIL ALI KHAN)**  
**CHAIRMAN**

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