



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

O. P. No. 18 of 2017

Dated 04.06.2021

Present

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

Between:

M/s Madhucon Sugar & Power Industries Limited,
Rajeswarapuram, Ammagudem Post,
Nelakondapalli Mandal, Khammam District.

... Petitioner

AND

1. Telangana State Power Coordination Committee,
TSTRANSCO, Vidyut Soudha, Hyderabad – 500 0082.
2. Chief Engineer (Commercial),
TSPCC, Vidyut Soudha, Hyderabad – 500 0082.
3. Deputy Chief Controller of Accounts (PP & A),
TSPCC, Vidyut Soudha, Hyderabad – 500 0082.
4. Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound, Hyderabad-500 063.
5. Northern Power Distribution Company of Telangana Limited,
2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.

... Respondents

The petition came up for hearing on 30.04.2018 before the earlier Commission and stood adjourned. It is now posted for hearing on 01.02.2021. Sri Challa Gunaranjan, Advocate for petitioner on 30.04.2018 and 01.02.2021, Sri Y.Rama Rao, Standing Counsel for respondents along with Ms. M.Pravalika, Advocate on 30.04.2018 and Sri D.N.Sarma, OSD (Legal and Finance) for respondents on 01.02.2021 have appeared through video conference, having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Madhucom Sugar and Power Industries Limited (petitioner) has filed a petition under Sec 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking to recover shortfall amounts from the licensee for the energy supplied in October and November 2010. The contentions of the petitioner are as hereunder:

- a) It is a company incorporated under the provisions of the Companies Act, 1956, engaged in the business of manufacture and sale of sugar, further engaged in ancillary activities such as generation and sale of power. It has acquired the sugar mill from Paleru Co-operative Sugar factory through public auction conducted by the then Government of Andhra Pradesh. Thereafter it has set up a co-generation power plant of 24.2 MW.
- b) The State Government of the composite State of Andhra Pradesh notified the third transfer scheme in G.O.Ms.No.58, Energy (Power – III) dated 07.06.2005 in exercise of the powers conferred by the A. P. Electricity Reform Act, 1998 (Reform Act) whereby the generating capacities of the electricity generating stations including all obligations of APTRANSCO to purchase energy from these stations stood allocated and transferred by operation of law to the various DISCOMs. 4th and 5th respondents are two of such DISCOMs.
- c) Prior to bifurcation of the State for the convenient transaction of business and to ensure coordination between the four distribution companies in the composite State of Andhra Pradesh, a committee in the name of Andhra Pradesh Power Coordination Committee (APPCC) was constituted vide G. O. Ms. No. 59, dated 07.06.2005 to advise and guide the four government distribution companies in discharge of their functions. One of the principal reasons for constituting the committee was that in regard to one or more generators of electricity or other parties all the four distribution companies were bound by a common contract.
- d) Subsequent to the reorganization of the composite State of Andhra Pradesh under the provisions of the Andhra Pradesh State Re-organisation Act, 2014 (Central Act 6 of 2014), the 1st respondent is coordinating the affairs of the 4th and 5th respondents that is Southern Power Distribution Company of Telangana Limited (TSSPDCL) and Northern Power Distribution Company of Telangana Limited (TSNPDCL). The 4th and 5th respondents are presently the distribution licensees in the State of Telangana.
- e) It is engaged in the business of generation and sale of electricity and has its co-generating plant situated at Rajeswarapuram, Ammagudem Post, Nelakondapalli Mandal, Khammam District in the State of Telangana. The

installed capacity of the plant is 24.2 MW. The respondents through the then APPCC issued purchase order (PO) by letter No. CE / Comml. / APPCC / SE / C2 / DE / BPP–III / F–Madhucon / D. No. 859 / 10 dated 21.06.2010 to the petitioner for purchasing 22 MW RTC power on firm basis during period from 23.06.2010 to 31.03.2011. The rate for supply of electricity has been fixed at Rs. 4.50 per unit. One of the conditions stipulated is that it shall supply minimum 95% of the contracted quantity on monthly basis and for any shortfall of the same, petitioner has to pay compensation of Rs.1/- per kWh per such shortfall of energy.

- f) It started supplying electricity to the respondents and other DISCOMS which are now in State of Andhra Pradesh as per the terms set out in PO dated 21.06.2010. That being so the respondents issued revised purchase order by letter No. CE / Comm. / APPCC / SE / C2 / DE / BPP–III / F–Madhucon / D. No. 1034 / 10 dated 14.08.2010 for the period from 15.08.2010 to 31.03.2011. Under this order the quantity of power to be supplied varied from 19 MW to 22 MW and further the rate of procurement has been reduced to Rs. 4.25 per unit. With respect to clause relating to compensation it has been amended and specified that the minimum power to be scheduled shall be 80% of the contracted quantity on monthly basis and for any short supply compensation at the rate Rs.1/- per kWh shall have to be paid to the 1st respondent similarly the APPCC has to pay compensation whenever it does not avail the contracted quantity. The clause reads as under:

“Compensation Clause:-

a) If generator fails to schedule power equal to 80% of monthly (calendar month) energy for which quantum is contracted, then generator shall pay compensation at Rs.1.00/kWh for the difference (shortage) quantity to APPCC.

b) Similarly, if APPCC doesn't avail the power equal to 80% of monthly (calendar month) energy for which quantum is contracted, then APPCC shall pay compensation at Rs.1.00/kWh for the difference (shortage) quantity to generator.”

- g) The respondents through the then APPCC there after informed the petitioner by letter No. CE / Comml. / APPCC / SE / C2 / DE–BPP–III / F–Madhucon / D. No. 1061 / 10 dated 25.08.2010 requesting to limit the schedule of supply of electricity to 80% of the contracted capacity from 00.00 hours of 26.08.2010 until further orders in view of the grid condition.
- h) It is also specified that any power exported more than 80% of the contracted

capacity shall not be admitted and paid. It has been requested to provide daily schedules. The petitioner in response has orally informed the respondents that in as much the revised purchased order dated 14.08.2010 stipulates that the 80% of the contracted capacity shall be calculated on monthly basis, requisition of daily schedule will be contrary to the said condition. In other words, filing daily schedule not exceeding the 80% of the contracted capacity would be in violation of the condition specifying the supply to not exceed 80% of the contracted capacity on monthly basis. As the respondents have not taken any steps to withdraw the stand of filing daily schedule of supplying power not exceeding 80% of contracted capacity, it by letter dated 04.10.2010 requested the respondents to abide by the revised purchase order and amend the letter dated 25.08.2010.

- i) The respondents through then APPCC by letter No. CE / Comml. / APPCC / SE / C2 / DE-BPP-III / F-Madhucon / D. No. 1120 / 10 dated 14.10.2010 issued amendment to the said letter dated 25.08.2010 by following the terms and conditions set out in revised PO dated 14.08.2010. The amendment reads as follows:

“Any power exported more than 80% of the contracted capacity during the above period (i.e. from 00:00 hrs of 26.08.2010 until further orders) is not admissible and no payment will be made for the extra energy exported” shall be read as

“Any power exported more than 80% of the contracted capacity on monthly basis during the above period (i.e. from 00:00 hrs of 26.08.2010 until further orders) is not admissible and no payment will be made for the extra energy exported and compensation will be levied for shortfall of 80% of contracted capacity as per Lol on monthly basis”.

The petitioner stated that as per this amendment the supply of energy shall not exceed 80% of the contracted capacity on monthly basis. In case of short fall of supply below 80% the petitioner shall be liable for paying compensation to the respondents.

- j) For the period from 01.10.2010 to 01.11.2010 that is during the billing month of October has supplied electricity to the respondents and filed Invoice No. MSPIL / APPCC / FY 10-11 / NOV 10 / INV No. 37 dated 02.11.2010 for Rs. 5,56,61,400/-, like wise for the month of November 2010 for the supplies during 01.11.2010 to 30.11.2010 raised Invoice No. MSPIL / APPCC / FY 10-11 / NOV 10 / INV No. 38 dated 03.12.2010 has been filed for Rs. 5,41,72,625/-. Surprisingly, the respondents in respect of these two bills paid only Rs.

4,83,77,905/- and Rs. 4,11,55,160/- with a short payment of Rs. 72,83,495/- and Rs. 1,30,15,465/- respectively. Immediately the petitioner addressed letter dated 14.12.2010 to the respondents informing about the short payment of the bills for the months of October and November 2010 and requested to clarify the reasons for the short payment. No reply is received to the said letter. There after the petitioner has by letters dated 21.12.2010, 04.01.2011, 30.03.2011 and 09.05.2011 requested the respondents to clear the short payment. In spite of these repeated requests the respondents have neither come forward to settle the short payment amount nor replied to the same giving any reasons for withholding the short payment amount pertaining to the billing months of October and November 2010.

- k) The respondents having received the electricity supplied by it and not disputed the receipt of the power are bound to pay for the same in terms of the purchase order dated 14.08.2010. As per the terms of the P.O. the payments have to be settled within 10 days of the receipt of invoice availing rebate of 2% as otherwise the bill to be settled within 07 days. So far, the respondents have not settled the total billed amount under bills dated 02.11.2010 and 03.12.2010. The respondents are liable to pay the short fall amount of Rs. 72,83,495/- and Rs. 1,30,15,465/- along with interest @ 18% P.A. from the due date of payment.
- l) It got issued a notice to the respondents on 27.08.2012, calling upon the respondents to release the shortfall amounts of Rs.72,83,495/- and Rs.1,30,15,465/- along with interest @ 18% per annum within 60 days from the due date till the date of receipt of the said notice. The respondents received the said notice. In spite of receipt of notice the respondents neither bothered to reply for the same nor arranged for payment of shortfall amounts within the notice period.
- m) It was advised to file a suit for recovering the amounts payable by the respondents along with other two DISCOMs of Andhra Pradesh and accordingly, the petitioner instituted a suit bearing O. S. No. 839 of 2012 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad on 03.12.2012 seeking decree for recovery of Rs. 72,83,495/- and Rs. 1,30,15,465/- along with interest @ 18% per annum from 02.12.2010 to 03.12.2012 that is for Rs. 72,83,495/- and 03.01.2011 to 03.12.2012 that is for Rs. 1,30,15,465 and till the date of payment.
- n) The respondents have filed an interlocutory application, I. A. No. 2550 of 2013 in O. S. No. 839 of 2012 under Order VII Rule 11 read with Sec 151 of Code of Civil Procedure, 1908 (C.P.C). to reject the suit as barred by the provisions of

the Reforms Act and Act, 2003 and stated that as the petitioner is a generating company and respondents are distribution companies, as per Section 86 (1) (f) of the Act, 2003 any dispute between a generating company and distributing company has to be decided or arbitrated by Andhra Pradesh Electricity Regulatory Commission (APERC). The petitioner filed a counter denying the contention of the respondents that under the Act, 2003, the powers of the civil court are excluded and that as the dispute in the matter involves questions of various legal issues including those relating to contract, rights of parties, determination of the quantum of amount and interest to be decreed on recording and appreciating evidence it was stated that the Civil Court had jurisdiction. The Hon'ble Court vide order dated 16.06.2017 returned the suit with a specific direction to present the same before a proper forum for proper adjudication of the dispute.

- o) It has been all this while pursuing its remedy before the civil court and therefore the date from when the suit has been filed till the date of obtaining the certified copy of the decretal order passed by the Hon'ble Chief Judge, City Civil Court, Hyderabad in I. A. No. 2550 of 2013 in O. S. No. 839 of 2012 will have to be excluded for the purpose of determining the limitation and therefore, the present petition has to be construed as having been filed within limitation.
- p) It has incurred huge amounts towards input cost and variable cost and huge commitments to clear the bills of the vendors, make statutory payments, salaries to the employees, operational costs and further it is financially crippled on account of non-payment of the outstanding dues by the respondents which are causing huge financial burden and severe hardship to the petitioner company. It has made out prima facie case and balance of convenience is in its favour for granting the relief as prayed for in order to protect the interest of company as well as the employees.
- q) The total outstanding dues payable by the erstwhile APPCC and four DISCOMs is Rs. 2,75,21,784/- but in view of the reorganization of the State of Andhra Pradesh under the provisions of Central Act 6 of 2014, the respondent 4 and 5 herein are operating in the State of Telangana and other two distribution companies viz., Southern Power Distribution Company of Andhra Pradesh Limited and Eastern Power Distribution Company of Andhra Pradesh Limited are operating in the State of Andhra Pradesh. In pursuance of G. O. Ms. No. 20 dated 08.05.2014, the shares of the distribution companies in the State of Andhra Pradesh and Telangana are allocated in respect of all the existing PPAs. According to the above said G.O., the share of respondents 4 and 5

together is 53.89% after deletion of the districts of Kurnool and Anantapur from the then Central Power Distribution Company of Andhra Pradesh Limited, for the purpose of fastening liability one needs to go by the share of the consumption by respective DISCOM's. From the present G.O., it is very much clear that the power distribution ratio inter-se among the then DISCOMs was as per G. O. Ms. No. 58 dated 20.04.2008 which got amended by G. O. Ms. No. 20 dated 08.05.2014 to be effective after 02.06.2014. The ratio of distribution / allocation was derived considering last five years pattern therefore, by going with said analogy the respondents 4 and 5 would be liable to be extent of 53.89% together. As this Commission is having jurisdiction in respect of respondents 4 and 5 herein, it is claiming 53.89% of the total amount of bills amounting to Rs. 1,48,31,490/-. It retains its liberty to claim the balance amount from the distribution licensees operating in the State of Andhra Pradesh through appropriate legal process.

r) The respondents are liable to pay interest towards shortfall amounts as against the invoices payable to the petitioner at the bank rate from the date of payment to the date of realization in terms of the purchase order dated 14.08.2010.

2) The petitioner has sought the following prayer in the petition.

"It is most respectfully prayed that this Hon'ble Commission may be pleased to direct the respondents to pay the petitioner a sum of Rs.1,48,31,490/- towards shortfall amounts as payable against the Invoice No./APPCC/FY 10- 1/NOV 10 /INV No.37 & MSPIL/APPCC/FY 10-11/NOV 10/INV No.38, dated 02.11.2010 & 03.12.2010 respectively on account of energy supplied during October and November, 2010 in terms of the purchase order dated 14.08.2010 together with interest."

3) The respondents have filed their counter affidavit and the contentions of the respondents are as below:

- a. The basic prayer of the petitioner is to direct the respondents (TSPCC & TSDISCOMs) to pay them a sum of Rs. 1,48,31,490/- towards short fall amounts payable against the Invoice No. MSPIL / APPCC / FY 10-11 / Nov 10 / INV No. 37 dated 02.11.2010 and MSPIL / APPCC / FY 10-11 / Dec / 10 / INV No. 38 dated 03.12.2010 respectively for the energy supplied during October, 2010 and November, 2010 in terms of the purchase order together with interest.
- b. The claim of the petitioner pertains to the year 2010, during when the united APDISCOMs were all parties to the purchase order.
- c. The petition has been filed under section 86 (1) (f) of the Act, 2003, seeking adjudication of dispute between the generating company and the distribution company.

- d. Before going into the merits of the case that the claim of petitioner is time barred as per the Limitation Act as the period of limitation is 3 years as per Article 55 of the Limitation Act. In this context the attention of the Commission is drawn to the judgment dated 16.10.2015 passed by the Hon'ble Supreme Court in Civil Appeal No.6036 / 2012, wherein the Apex Court held that
- “... Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.”*
- The Apex Court further clarified that
- “... such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of section 86 of the Electricity Act, 2003.”*
- e. At para 12 of the petition by the petitioner that it had filed a suit bearing O. S. No. 839 of 2012 before the Hon'ble Court of Chief Judge, City Civil Court, Hyderabad on 03.12.2012 seeking decree for recovery of Rs. 72,83,495/- and Rs. 1,30,15,465/- along with interest till date of payment. The petitioner further stated at para 13 that the Civil Court vide its order dated 16.06.2017 returned the suit with a specific direction to present the same before a proper forum for proper adjudication of the dispute.
- f. As could be seen from the order of the Hon'ble Civil Court that the court returned the suit to the petitioner in O. S. No. 839 of 2012, upon taking into consideration, the submissions of united DISCOMs that any dispute between licensees and generating companies has to be adjudicated by the Commission in terms of section 86 (1) (f) of the Act, 2003 directing the petitioner in O. S. No. 839 of 2012 to present it before proper forum for adjudication of the dispute.
- g. The Hon'ble Civil Court rightly concluded that since the petitioner in the suit has not filed any agreement between the parties to show that they can claim the suit amount in the civil court and the dispute shall be adjudicated in terms of the section 86 (1) (f) of the Act, 2003, returned the suit to petitioner as it was not having any jurisdiction to adjudicate the suit. In this context, the Hon'ble Civil Court directed the petitioner in the suit to present before the proper forum for proper adjudication of the dispute.
- h. The petitioner seeks this Commission to exclude the time spent before a wrong forum under section 14 of the Limitation Act, 1963, so as to enable them to seek adjudication before the Commission after a lapse of 4 years, which may not be permitted as the petitioner has not prosecuted that the suit before the City Civil Court with due diligence and good faith which are prerequisite

conditions as stipulated in section 14 (2) of the Limitation Act, 1963.

- i. In pursuance of the Andhra Pradesh Reorganisation Act, 2014, the united State of Andhra Pradesh was bifurcated and a separate State of Telangana was formed with effect from 02.06.2014. The DISCOMs of respective States were also divided based on geographical location. Since the stale claim was pertaining to united Andhra Pradesh period and also consequent bifurcation, the claim of the petitioner is not tenable.

4) In the light of the above, the respondent prayed the Commission to dismiss the petition.

5) The Commission heard counsel for the petitioner and the representative of the respondent. It also examined the material available on record. The issue that arises for consideration is whether the petition is maintainable before this Commission. In this regard the submission of the parties at the time of hearing are as extracted below:

“... .. The counsel for the petitioner stated that the petition is relating to recovery of shortfall amounts from the licensee for the energy supplied in October and November, 2010 under short term power purchase pursuant to purchase order issued by the DISCOMs. The counsel for petitioner explained the various bills and letters filed along with the petition. The petitioner approached the Hon’ble Civil Court in the year 2012 seeking to recover the amounts due towards the power supply made in accordance with the purchase order. The present petition is limited to 52.89% of the amount due being the share of amount payable by TSDISCOMs.

The counsel for the petitioner stated that the respondents have filed a counter affidavit and stated that the petition is not maintainable as it is filed beyond three years as per the provisions of the Limitation Act. However, in this particular case section 14 of the Limitation Act would apply, wherein the delay in approaching the proper forum while pursuing the remedies elsewhere has to be omitted from that limitation as in this case it was a bona fide action of approaching the Civil Court. The respondents have filed a counter affidavit before the Civil Court stating that the petitioner ought to have approached the Commission. The respondents did not state anything about the merits of the case. The claim made in this petition is in accordance with the orders of the government, which had identified the share of each distribution company.

The counsel for the petitioner stated that pursuant to the counter affidavit of the DISCOMs, the suit filed before the Civil Court had been dismissed at liberty to approach the proper forum being Commission. The counsel for the petitioner also highlighted the provisions of the purchase order about the claiming of damages/compensation for the amount due. He also sought payment of interest as the

amounts were not paid in time, the agreement being a commercial contract. He sought interest of 18% P.A. on the amount due from the date of institution of the suit till it is paid.

The representative of the respondents stated that DISCOMs in the combined state had floated the purchase order for procurement of energy and settlement of energy on monthly basis. The petitioner cannot claim only a part of the amounts due when the issue is relating to two states and it was an issue prior to the bifurcation of the state. The issue of claim made by the petitioner cannot be decided by this Commission and the matter has to be referred to CERC. The counter affidavit has been filed by the DISCOMs prior to the issue of the jurisdiction being decided by the combined Hon'ble High Court on 31.12.2018. The combined Hon'ble High Court had ordered that the matters involving two states have to be decided by CERC while setting aside the orders of the Commission. The said order of the Hon'ble High Court has also been confirmed by the Hon'ble Supreme Court by its order dated 04.02.2020.

The representative of the respondents stated that the issue of jurisdiction arises in this matter as the other two DISCOMs which are beneficiaries of the purchase order are not made parties to this petition and such petition cannot be decided by the Commission. The petition can only be decided by the CERC in terms of the judgment of the Hon'ble High Court as confirmed by the Hon'ble Supreme Court. Therefore, this petition may be decided by the Commission in terms of the decision of the Hon'ble Supreme Court and the petitioner may be relegated to pursue its case before the CERC.

The counsel for the petitioner stated that the Commission may consider the submissions in the matter and decide the jurisdiction and if required may direct transfer of this petition to CERC.”

6) Before advertng to the issue, the relevant legislative changes and order having a bearing on the issue are notice herein below. The matter arose under sec 86 (1) (f) of the Act, 2003. The present petition is filed claiming relief against 4 distribution companies as they were existing at that time of united State of Andhra Pradesh by limiting to the prayer two distribution companies in the State of Telangana and only to the extent of the liability indicated in the A.P. Reorganisation Act, 2014.

7) The A.P. Reorganisation Act, 2014 has created new State of Telangana and residuary State of Andhra Pradesh. Consequently, the DISCOMs are bifurcated geographically and claims relating combined State cannot be adjudicated by any one State. Therefore, the issue of jurisdiction arose in such matters where claims were in respect of two States. This

Commission as well as the present Andhra Pradesh Electricity Regulatory commission have decided the issue separately.

8) The issue of jurisdiction has been decided by the Commission in O. P. No. 25 of 2015 and batch.

“82. To sum up, the findings of this Commission are summarised as under:

(i) Three transfer schemes notified under section 23 and 24 of the Reform Act, 1998 are binding on the four Discoms located in the erstwhile Andhra Pradesh and the generators who entered into the Power Purchase Agreements. The third transfer scheme notified u/s 23 stipulates the rights, obligations, agreements and contracts relating to the procurement and bulk supply of electricity or trading of electricity to which the erstwhile APSEB or APTRANSCO was originally a party were transferred and vested in the four DISCOMS respectively in specified ratios as per the Reform Act and Electricity Act, 2003 dated 9.06.2005, G. O. Ms. No. 58 and amendments made thereto from time to time are still in force. In the third transfer scheme, the generating capacities allocated to the TSSPDCL and TSNPDCL is 60.28% and this has been amended to 53.89% vide G. O. Ms. No. 20 dated 08.05.2014 on account of transfer of Kurnool and Anantapur districts to Southern Power Distribution Company of Andhra Pradesh Ltd. The rights, obligations, claims, compensations or any other claim in respect of power supply of any generator shall be in accordance with the ratio specified in the third transfer scheme or any amendment thereto from time to time. Similarly, the claims, compensation, rights, obligations, etc., by two Discoms located in Telangana state shall also be restricted to the purchase of power made by them in accordance with the ratio specified in the third transfer scheme or any amendment thereto from time to time. The PPAs have devolved on each Discom individually and not jointly.

(ii) The Central Electricity Regulatory Commission (CERC) does not have jurisdiction over the 34 petitions which were pending before the erstwhile APERC and the Joint regulatory commission on 01.08.2014. In 34 petitions, the supply of electricity was intra-state and at the relevant time to which the petitions relate to and there were no inter-state transactions to invoke the jurisdiction of CERC.

(iii) Generally, under Section 86 of the EA, 2003 the jurisdiction of a state Commission is coterminous with the jurisdiction of the state. Thus, the TSERC shall have the jurisdiction to regulate the purchases of TSSPDCL and TSNPDCL located in the state of Telangana and it shall also adjudicate the disputes involving the two Discoms of Telangana State.

(iv) Under section 105 of the A.P. Reorganisation Act, 2014, the jurisdiction over the pending 34 petitions relating to TSSPDCL, TSNPDCL and any other entity located

in the State of Telangana shall vest with the TSERC. In the view of this Commission, sub-section (3) of Section 105 resolves the issue. Sub-section 3 of Section 105, stipulates that the authority before whom the proceedings would have laid if it had been instituted after the appointed day, i.e., 02.06.2014/ 01.08.2014. All appeals involving the two Discoms of the Telangana State shall be filed before this Commission for adjudication after 01.08.2014. Therefore, the pending 34 petitions involving the two Discoms of the Telangana State shall vest with this Commission for adjudication. After bifurcation of the state, i.e., 02.06.2014 all the disputes u/s 86(1)(f) of the EA, 2003 have to be adjudicated by this Commission and similarly, any petition relating to the two Discoms in respect of disputes prior to 02.06.2014 shall also vest within the jurisdiction of TSERC. The word 'exclusively' used 99 in Section 105 must be given a practical construction and if the actual meaning of the word 'exclusively' is taken as 'substantially' or 'for a greater part' or 'principally' as given in the decision of the Supreme Court in Bihar Fodder scam case, the jurisdiction over 34 petitions shall lie with the TSERC as 32 petitions emanate from the PPAs and the power sharing ratio of TSDISCOMS according to the third transfer scheme is a greater part, i.e., 60.28% but we do not wish to encroach upon the jurisdiction of another Commission and restrict the adjudication functions of this Commission to the two Discoms, TSTRANSCO and TSPCC in accordance with the provisions of the Reform Act and the Electricity Act to the extent of ratio specified in the third transfer scheme.

(v) The provisions of CPC are not applicable to the interpretation of Section 105 of the A.P. Reorganisation Act. Further, the provisions of Sections 10 & 11 of CPC are also not applicable as the authorities and the parties involved therein are not the same parties.

(vi) TSERC shall have jurisdiction over the petitions involving TSSPDCL, TSNPDCL, TSPCC, TSTRANSCO which are located in the territorial jurisdiction of Telangana state which is coterminous with the jurisdiction of this Commission and this Commission shall adjudicate rights, liabilities and obligations in accordance with the third transfer scheme dated 07.06.2005 notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003. To repeat, this Commission shall adjudicate on the rights and liabilities to the extent of ratio notified in the third transfer scheme dated 07.06.2005 and amendments made thereto from time to time relating to the entities located in the State of Telangana.

(vii) 32 petitions which emanate from the power purchase agreements, the petitioners are at liberty to revise their cause title and claims / liabilities / obligations / compensation or any other matter in the petitions in terms of third transfer scheme dated 07.06.2005 and the amendments made thereto from time to time confining their

rights and liabilities to two Discoms of Telangana State, TSTRANSCO and TSPCC in accordance with the ratio specified in the transfer scheme notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003 within 45 days from the date of placing of this order on the website of this Commission, i.e., TSERC. 100 This Commission shall adjudicate only the revised petitions which are going to be filed in accordance with the third transfer scheme notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003.

(viii) In two review petitions, cause title have to be revised restricting the petitions to the TSDISCOMS, TSTRANSCO and TSPCC.

(ix) This order shall be subject to the orders or directions that may be issued by the Hon'ble High Court of Andhra Pradesh and Telangana in the pending writ petitions including GMR Vemagiri and Bharath Aluminium Company Ltd”

9) It came to be challenged before the Hon'ble High Court Hyderabad as it then was in W. P. No. 15848 of 2015 and batch which had held that the Central Electricity Regulatory Commission (CERC) is the appropriate forum having jurisdiction to decide the disputes between the petitioner and the four distribution companies. The Hon'ble High Court has held as below.

“76. Therefore, in fine, the writ petitions are disposed of to the following effect:

(i) W. P. Nos. 19894 and 15848 of 2015 challenging the orders of CERC, dated 27.04.2015 are dismissed and the CERC is held entitled to decide the disputes covered by the said order, on merits after giving opportunities to all the parties.

(ii) W. P. No. 22850 of 2016 challenging the order of the Central Electricity Regulatory Commission dated 15.06.2016 is also dismissed and the CERC is allowed to proceed further with the hearing of the case on merits.

(iii) W. P. Nos. 38140, 38137, 38163, 38169, 35386, 35039, 35401 and 25761 of 2017 challenging the order of the APERC dated 28.09.2016 are allowed and the order of the APERC dated 28.09.2016 is set aside. It is declared that the disputes in relation to which APERC passed the order dated 28.09.2016 fall within the exclusive jurisdiction of the CERC and hence APERC shall transfer all such petitions, if not already done, to CERC. One portion of the prayer made in W. P. No. 25761 of 2017 by the two distribution companies now located in the State of Telangana seeking to transfer the cases from APERC to TSERC is also dismissed, since that these disputes should be adjudicated by the CERC.

(iv) W. P. No. 14033 of 2017 seeking a declaration that APERC alone has jurisdiction to adjudicate their claim in O. P. SR.No.31 of 2016 and also seeking to set aside the order dated 18.02.2017 is liable to be dismissed for the simple reason that

the prayer with which they went before the APERC was to direct two distribution companies one located in Andhra Pradesh and another in Telangana, to make payment of differential tariff as fixed by the Joint Regulatory Body in O. P. No. 17 of 2006. If two distribution Companies, one located in Telangana and another located in Andhra Pradesh are to be directed to make some payment, a direction can be issued only by the CERC and not by any one of the State Commissions. Therefore, W. P. No. 14033 of 2017 is dismissed.

(v) W. P. Nos. 38217, 45376 and 45378 of 2016 and W. P. No.30274 of 2018 are allowed and the order of the TSERC dated 31.10.2016, insofar as it enables the splitting up of the disputes into two parts for the purpose of entertaining petitions, is set aside.

(vi) W. P. Nos. 11353 and 14254 of 2016 are allowed and it is declared that the disputes involving generating companies, relating to regulation of interstate transmission of electricity or determination of tariff for interstate transmission, shall be decided only by the CERC. The disputes relating to regulation of tariff of generating companies which have entered into or which otherwise have a composite scheme for generation and sale of electricity in more than one State shall also fall only within the jurisdiction of CERC. The disputes arising out of single Power Purchase Agreement which the generating companies had with the distribution companies in the composite State of Andhra Pradesh, shall be deemed to have become a composite scheme for the generation and sale of electricity in more than one State under Clause (b) of Section 79 (1), if those distribution companies have now got located in the bifurcated States.

(vii) W. P. No. 36266 of 2018, does not challenge any order of any of the Commissions. The prayer in the writ petition is for a direction to the Eastern and Southern Power Distribution Companies of Andhra Pradesh and Central Power Distribution Company of Telangana to make payment of the rebates allegedly retained by the respondents against the terms of the purchase orders. The petitioner has chosen to come up with the above writ petition without approaching any of the Commissions on the ground that the APERC lost jurisdiction after the bifurcation of the State. But in such cases the appropriate remedy open to the petitioner is only to go to CERC. Therefore, W. P. No. 36266 of 2018 is dismissed giving liberty to the petitioner to approach the CERC for the redressal of their grievances.

(viii) W. P. No. 8143 of 2017 is filed challenging the refusal of the Southern Power Distribution Company of Andhra Pradesh to release payments due to them. The problem of the petitioner is peculiar since the petitioner had an agreement with the Central Power Distribution Company, for carrying out high voltage distribution system

certificate on the agricultural feeders in Kurnool District. The project was a turnkey project. After the bifurcation of the State the Central Power Distribution Company became a part of Telangana State, but the District of Kurnool went to the Southern Power Distribution Company of Andhra Pradesh. But the Southern Power Distribution Company has now refused to release payment on the ground that the work so executed in Kurnool District when it was part of the Central Power Distribution Company, has benefitted a company which has now gone to the State of Telangana. But this logic is flawed, as the place where the project is executed is now in Andhra Pradesh. The dispute that the petitioner has, is not one of the disputes covered by Clauses (a) to (d) of sub-section (1) of Section 79. The petitioner does not appear to be a Power Generating Company. Therefore, the dispute will also not fall within Section 86 (1) (f). Therefore, the writ petition is maintainable and the only ground on which the claim was rejected by the impugned letter dated 07.01.2016 is wholly illegal and unconstitutional. Therefore, W. P. No. 8143 of 2018 is allowed. The impugned communication is set aside and the matter is remanded back to the 1st respondent for a reconsideration on merits.

(ix) W. P. No. 7965 of 2016 is for a declaration that the CERC is the appropriate forum having jurisdiction to decide the disputes between the petitioner and the four distribution companies. In view of our findings, this writ petition is to be allowed. Accordingly, it is allowed directing the TSERC and APERC to transfer the pending proceedings to the file of the CERC for adjudication.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. There will be no order as to costs.”

10) Further, the said order of the Hon'ble High Court was questioned by the DISCOMs before the Hon'ble Supreme Court in Civil Appeal No.3788–3790 of 2019 and batch. The said appeals were dismissed by the Hon'ble Supreme Court confirming the order of the Hon'ble High Court. The Hon'ble Supreme Court has held as below:

- “1. Diary No.44511/2019 is taken on board.*
- 2. Delay of 254 days in filing the special leave petition, in Diary No.44511/2019, is condoned. Leave granted.*
- 3. Heard learned counsel for the parties.*
- 4. As the controversy involves State of Andhra Pradesh as well as the State of Telangana and ultimate effect is going to be on more than one State, considering the provisions contained in Section 105 of the Andhra Pradesh (Reorganization) Act, 2014, CERC is appropriate authority to hear and decide the dispute. In the facts and circumstances of the case, we find no ground to interfere with the decision of the High*

Court.

5. *Let the dispute be decided by CERC, in accordance with law, after hearing the parties, as expeditiously as possible, within an outer limit of six months.*
6. *The appeals are, accordingly, disposed of.*
7. *Pending application(s), if any, shall stand disposed of.”*

11) The Commission notices that issue raised in the present petition involves two DISCOMs of the State of Telangana and two DISCOMs of the State of Andhra Pradesh. The Commission cannot segregate the relief and pass an order in respect of the two DISCOMs only, while the issue arose in the combined State of Andhra Pradesh and the matter cannot be decided by one Commission. As such this matter cannot be adjudicated by the Commission in view of the observations of the Hon'ble High Court and as reiterated by the Hon'ble Supreme Court.

12) The Commission is of the view that, the only course open to it is, to transfer the matter pending before the Commission, to the CERC.

13) In view of the above legal position and the submission of the counsel for the petitioner and the representative of the respondents in the matter, the matter is transferred to further adjudication by CERC. Accordingly, the office is directed to take necessary steps to transfer the matter to CERC.

This order is corrected and signed on this the 04th day of June, 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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