



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

O.P. No.7 of 2019

Dated 23.06.2022

Present

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

Between:

M/s Prathmesh Solar Farms Private Limited,
Suzulon Energy Limited, One Earth,
Hadapsar, Pune – 411 028.

... Petitioner.

AND

1. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.

2. Mytrah Agriya Power Private Limited,
Saifabad, Hyderabad – 500 001.

3. Sothern Power Distribution Company of Telangana Limited,
H. No.6-1-50, 5th Floor, Mint Compound,
Hyderabad – 500 063.

... Respondents.

The petition came up for hearing on 04.01.2020, 22.02.2020, 07.03.2020, 11.02.2021, 22.02.2021, 18.03.2021, 09.06.2021, 28.06.2021, 15.07.2021 and 29.07.2021. Smt. Swapna Seshadri, Advocate for petitioner has appeared on 04.01.2020 physically, 11.02.2021, 09.06.2021, 28.06.2021, 15.07.2021, 29.07.2021 through video conference, Sri Damodar Solanki, Advocate representing Smt. Swapna Seshadri, Advocate for petitioner has appeared physically on 22.02.2020, on 07.03.2020 and 18.03.2021 through video conference and Sri Utkarsh Singh, Advocate representing Smt. Swapna Seshadri, Advocate for petitioner on 22.02.2021 through video conference. Sri Y.Rama Rao, standing counsel for respondent Nos.1

and 3 along with Sri Vamshi Krishna, Advocate has appeared physically on 04.01.2020, 22.02.2020, 07.03.2020, Sri Y.Rama Rao, Advocate for respondent No.1 has appeared on 11.02.2021, 22.02.2021, 18.03.2021, 09.06.2021, 26.06.2021 and 29.07.2021. Sri Omer Farooq, Advocate for respondent No.2 has appeared physically on 07.03.2020, Sri Avinash Desai, Advocate for respondent No.2 has appeared on 22.02.2021, 18.03.2021, 28.06.2021, 15.07.2021 and 29.07.2021, Sri Nathan, Advocate representing Sri Avinash Desai, Advocate for respondent No.2 has appeared on 09.06.2021 through video conference. There is no representation for respondent No.2 on 04.01.2020, 22.02.2020 and 11.02.2021. Sri Mohammad Bande Ali, Law Attaché for respondent No.3 has appeared on 11.02.2021, 22.02.2021, 18.03.2021, 09.06.2021, 28.06.2021, 15.07.2021 and 29.07.2021 through video conference. The proceedings of the matter has been conducted physically on 04.01.2020, 22.02.2020, 07.03.2020 and through video conference on 22.02.2021, 18.03.2021, 09.06.2021, 28.06.2021, 15.07.2021 and 29.07.2021. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Prathmesh Solarfarms Private Limited (petitioner) has filed the petition under Section 86(1)(c) and (f) of the Electricity Act, 2003 (Act, 2003) questioning the action of the Transmission Corporation of Telangana Limited (TSTRANSCO) (respondent No.1) in allowing M/s Mytrah Agriya Power Private Limited (Mytrah) (respondent No.2) to utilize the transmission line and interconnection facilities developed by it contrary to the regulations. The petitioner sought to action against the respondent No.1 by invoking Section 142 of the Act 2003 for not performing its statutory duty and instead aid the respondent No.2 to illegally continue to use the dedicated transmission system of the petitioner. The averments of the petition are extracted below:

- a. The petitioner has stated that it has commissioned a 50 MW solar power plant at Padamati Tanda, Alwal in Wanaparthy District along with 28 nos. multi-circuit transmission towers connecting the transmission lines from its power plant to the grid substation at Wanaparthy District operated by respondent No.1.
- b. The petitioner has stated that the 50 MW solar power plant was set up by it pursuant to open competitive bidding process conducted by the

authorized representative of the Government of Telangana (GoTS), namely, Southern Power Distribution Company of Telangana Limited (TSSPDCL) (respondent No.3) and the respondent No.1. One of the primary criteria for bidding was that the bidders had to submit a substation specific bid, namely that the substation along with their capacities were identified by the GoTS and the bidders had to submit their bid taking into account the substation at which the power would be evacuated to the DISCOM. The tariff of the bidders who stood successful in the bid is also different depending on the substation.

- c. The petitioner stated that pursuant to the same, it entered into a power purchase agreement (PPA) with respondent No.3 on 29.02.2016 for the project with a total capacity of 50 MW being set up in the Mahabubnagar District in the State of Telangana. It is stated that the COD of the project was declared on 29.09.2017 as against the SCOD of 28.05.2017. The delay of 4 months which occurred in the commissioning of the generating stations has been condoned by this Commission vide the order dated 21.08.2018 in O.P.No.44 of 2018.
- d. The petitioner stated that for the purpose of transmitting the electricity from its power plant to the grid substation (GSS) located at Wanaparthy in the year 2016-17, it erected a dedicated transmission line consisting of a total of 28 multi-circuit transmission towers having tower Nos.1 to 28 to string its 132 kV transmission lines from its power plant to the grid substation solely at its cost and expense to the tune approximately Rs.12 crores. These towers were constructed after obtaining all necessary approvals from the relevant authorities including the respondent No.1. The relevant extracts from the guidelines regarding the generator to build the transmission line is as under –
- “FOR DEVELOPERS COMING THROUGH BIDDING ROUTE:
- i. In case of developers who bid against the already notified substations, upon completion of the bidding process, CGM (Commercial & RAC) / TSSPDCL shall issue Lol to the successful developers for entering into PPA with DISCOMs.
 - ii. After the developers have entered into PPA, CGM (Commercial and RAC) / TSSPDCL shall communicate the list of developers

who have entered into PPA to Chief Engineer (Commercial) / TSTRANSCO or Chief General Manager (O&M) / TSDISCOM depending on the voltage level at which the developer is getting connected for preparation of estimation.

- iii. Chief Engineer (Commercial) / Chief General Manager(O&M) / TSDISCOM shall communicate the above developers list to the concerned Chief Engineer (Zone) / TSTRANSCO or CGM (Operation) / TSDISCOM respectively within 3 days of receipt of such information.
- iv. The developer shall approach the Chief Engineer (Operation)/ TSDISCOM or Chief Engineer (Zone) / TSTRANSCO as the case may be for furnishing their plant details, proposed line lengths and coordinate for giving required details for initial cost estimation.
- v. If the proposed solar power injection is at 33 kV or 11 kV voltage level at DISCOM 33 / 11 kV substation, the Chief General Manager (Operation) / TSDISCOMs shall prepare the initial cost estimates for line and bay and shall communicate the payments to be made by the developer within 10 days from the developer's request letter.
- vi. If the developers proposed solar power injection is at 33 kV voltage level and point of interconnection is at 132 / 33 kV substation of TSTRANSCO, the respective Zonal Chief Engineer / TSTRANSCO shall prepare the cost estimate for the 33 kV bay and communicate the payments to be made by the developer within 10 days from the developer's request letter. However, the developer shall approach the concerned Chief General Manager Operation / TSDISCOM for 33 kV sub-transmission line and plant end 33 kV bay estimate and CGM / Operation shall communicate the payments to be made by the developer within 10 days from the date of the developer's request letter.
- vii. If the developer's proposed solar power injection is at 132 kV voltage class and above, the respective Chief Engineer (Zone) / TSTRANSCO shall communicate within 15 days from the date of developer's letter to Chief Engineer (Transmission), the details

like the line length based on the preliminary survey, cost of the land for bay, any modifications to be made in the switchyard or control room to facilitate the developer's power injection for preparation of the initial cost estimates for construction of interconnection facilities.

- viii. However the developer shall extend all his cooperation and make his representative available to the concerned officials till all the inputs are made available for preparation of the initial cost estimates.
- ix. Chief Engineer (Transmission) / TSTRANSCO shall communicate the developer within 10 days from the date receipt of field information in respect of following cases.
 - I. If the interconnection facility to be executed by TSTRANSCO / TSDISCOMs
 - a. Tentative cost of the scheme to be paid by the developer, if he wants TSTRANSCO / TSDISCOMs to build the interconnection facilities for him.
 - b. The developer shall be informed to pay the balance payment after the approval of the line profile and substation single line diagram (SLD) and layout drawings duly revising the above initial cost estimate. The developer shall pay the balance payment as communicated by TSTRANSCO / TSDISCOMs.
 - II. If the interconnection facilities to be executed by the developer himself.
 - a. The tentative supervision and engineering charges and other applicable charges along with applicable taxes as per the policies and rules in vogue based on the tentative cost arrived as above.
 - b. The balance supervision and engineering charges and other applicable charges along with applicable taxes shall be paid by the developer as communicated by TSTRANSCO / TSDISCOMs

after the line profile and substation SLD & layout drawings approvals based on the revised cost estimates.

- c. However, the above charges shall be collected as per the state government policy for renewable energy in vogue.
- x. After payment of the necessary charges, the developer shall arrange for an approved surveyor of TSTRANSCO for exploring the possible routes from their pooling station to the interconnecting substation in coordination with the field construction wing of TRANSCO / DISCOM. The approved surveyors list is available with Chief Engineer (Transmission) and is put on the website of TSTRANSCO.
- xi. In order to save project time, the developer may request simultaneously for approval of work agency for substation and line works from the eligible contractors. The approvals for the same shall be accorded by Chief Engineer (Transmission) / TSTRANSCO or Chief General Manager (O and M) based on the agency eligibility for the proposed work within 7 days.
- xii. The EE (Construction) shall scrutinize the line route proposals and submit the same to the respective Chief Engineer (Zone) of TSTRANSCO for approval.
- xiii. If the proposal is not in order, the EE (Construction) shall inform the same to the developer for resubmission of data.
- xiv. After finalizing the site and route, the Chief Engineer (Zone) of TSTRANSCO shall communicate the route approval of the line to the developer.
- xv. The line route approval shall be accorded within 10 days from the submission of line survey report.”
- e. The petitioner stated that even as per Section 10 of the Act, 2003 read with Section 2 (16), it is the duty of a generator to set up and maintain dedicated transmission line for evacuation of power. It stated that the PPA recognises the above arrangements as under,

1.18 “Delivery Point” means the interconnection point at which the solar power developer delivers power to the TSTRANSCO or DISCOM.

... ..

1.27 “Interconnection Facilities” means all the equipment and facilities including but not limited to all metering, switchgear, substation facilities, transmission lines and related infrastructure, to be installed at the voltage of delivery at the solar power developer’s expense from time to time throughout the term of the agreement, necessary to enable the DISCOM to economically, reliably and safely receive delivered energy from the project in accordance with the terms of this agreement. The solar power developer has to bear the entire expenditure of interconnection facilities for power evacuation as per the approved estimate by the personnel of DISCOM.

1.28 “Interconnection Point / Injection Point” means the point at 220 kV bus of 400/220 kV substation, 220 kV bus or 132 kV bus of 220/132 kV substation, 132 kV bus or 33 kV bus of 132 / 33 kV substation or 33 kV bus of 33 / 11 kV substation where the power from the solar power project is injected into the state transmission or distribution system.

1.29 “Interconnection Substation” means the interconnection substation agreed in the allocation process between the successful bidder and the DISCOM for connecting the solar power project to the state transmission or distribution system, pursuant to the evaluation process specified in the RFS.

1.30 “Injection voltage or voltage of delivery” means the voltage at which the SPD injects the power at the interconnection point.

... ..

1.38 “Project” means the solar power generation facility of installed capacity of 50 MW, located near Wanaparthi SS,

Mahabubnagar District, Telangana State; which includes all units and auxiliaries such as water supply treatment or storage facilities, bay/s for transmission system in the switchyard and all the other assets, buildings / structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this agreement;

After the expiry of the PPA, facilities and infrastructures including all equipment installation at the bay extension by SPD for interconnection at the interconnection point of the interconnection substation needs to be transferred to DISCOM / TSTRANSCO. Interconnection point of the interconnection substation have to be handed over to the licensee concerned at a depreciated value as approved by the Commission in case the agreement has been terminated or expired, however the lines from the project to the interconnection point can be retained by SPD.

ARTICLE 3

INTERCONNECTION FACILITIES, SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPEATIONS

3.1 Upon receipt of a requisition from the solar power developer, TSTRANSCO or DISCOM shall prepare an estimate at the voltage of delivery. The solar power developer has to be bear the entire cost of the interconnection facilities as per the approved estimate made by TSTRANSCO or DISCOM.

Provided that the TSTRANSCO or DISCOM may allow the solar power developer to execute the interconnection facilities for power evacuation as per the approved estimate at its discretion duly collecting the supervision charges as per

the solar policy of the Government of Telangana from time to time.

In case the project connects to a 33/11 kV interconnection substation where available capacity is subject to bay extension and bay extension is not feasible then the bidder shall procure land and undertake bay extension at its own cost.

Further in case the project connects to EHT interconnection substations of 132 / 33, 220 / 32 kV and 400 / 220 kV, the SPD shall invariably pay land cost bays whether existing or to be constructed, to TSTRANSCO.

3.2 The solar power developer shall own, operate and maintain interconnection facilities from project to grid substation from time to time and shall bear the necessary expenditure. The maintenance work of the connected bay together with equipment at the interconnection substation has to be done in coordination with the TSTRANSCO and DISCOM personnel. Where TSTRANSCO or DISCOM carries out the maintenance work, the solar power developer shall pay the expenses to TSTRANSCO or DISCOM as applicable. The SPD have to be handed over to the licensee concerned, the facilities provided at interconnection point at a depreciated value as approved by the Commission in case the agreement is not extended or the project is shut.

3.3 Any modifications or procedures or changes in arranging the interconnection facilities for power evacuations shall rest with TSTRANSCO or DISCOM as the case may be.

3.4 The solar power developer shall be responsible to operate the projects as per this agreement and to provide appropriate facility or instrumentation or metering arrangement as per Clause 4.1.

3.5 The solar power developer shall use components or equipment for the SPV complying with approved or

minimum technical standards as per the International Electro-technical Commission (IEC) or Bureau of Indian Standards (BIS) or technical standards that are prescribed by the Ministry of New and Renewable Energy (MNRE) as amended from time to time at the cost of the solar power developer.

- f. The petitioner stated that respondent No.3 has constructed a solar power plant at village Madigatla, Paddamandaddi, Alwal, Wanaparthy the commissioning of which has been delayed by over a year. With a view to connect its power plant to the GSS at Wanaparthy, Mytrah had approached respondent No.1 for utilization of 4 nos. multi-circuit transmission towers owned and operated by respondent No.2 out of the 28 towers constructed by the petitioner. As per the applicable procedure that is the major guidelines for executing interconnection facilities by solar energy developers in the state of Telangana issued by respondent No.1, a solar power developer such as the petitioner or respondent No.2 or any other generator must obtain various approvals from respondent No.1 including route approval for its transmission line, which would necessarily include verification of title of the respondent No.2 on the proposed route and multi-circuit transmission towers.
- g. The petitioner stated that it was the case of respondent No.2 that it was facing right of way (ROW) issues at the location and in order to facilitate their connection, respondent No.1 vide a letter dated 27.01.2018 to the petitioner sought submission of a joint agreement between the petitioner and respondent No.2. The letter dated 27.01.2018, inter alia, reads as under –

“It is to inform that M/s Mytrah Agriya Power Pvt. Ltd. (SPV of M/s. Mytrah Energy (I) Ltd.) vide ref (4) cited has request approval for utilization of 4 nos multi-circuit towers erected by M/s Prathamesh Solar farms Pvt Limited SPV of Suzlon Energy Pvt. Ltd. on cost basis for erection of 132 kV DC / SC line from proposed solar power plant to 132 kV Wanaparthy SS due to severe ROW issues near 132 kV Wanaparthy sub-station.

In this regard, a joint deed of undertaking to be executed on non-judicial stamp paper worth Rs.100/- by both parties duly mentioning the details of maintenance issues, shut down requirements. All the technical related issues will be as governed TSTRANSCO.”

- h. The petitioner stated that the crucial aspect of the above letter is that it recognized respondent No.2’s case of not having the necessary land and infrastructure for their own transmission lines and also acknowledged its ownership of multi-circuit transmission towers. The respondent No.1 therefore wanted it and respondent No.2 to contractually provide for the use of multi-circuit transmission towers of the petitioner by respondent No.2 and to submit the agreement to respondent No.1 as proof that it had expressly permitted respondent No.2 to use its towers. It stated that the above position is also correct since it had exclusive ownership of the multi-circuit transmission towers which had been set up at the cost and risk of it and no person including the respondent No.1 had any ability to allow a third person to use the said towers.
- i. The petitioner stated that pursuant to the above, respondent No.2 had approached it seeking permission to use 4 nos. multi-circuit transmission towers out of the total 28, to string its transmission lines. After discussions, the petitioner and respondent No.2 entered into a line sharing agreement on 02.05.2018, vide which, in return for a significant financial consideration, it had permitted respondent No.2, to use 4 nos towers only to string its transmission lines. The use was specifically for transmission tower nos. 1 to 4, out of the total 28 towers owned by the petitioner.
- j. The petitioner stated that around the end of July, 2018 / beginning of August, 2018, it discovered that respondent No.2 had without any permission or legal authority and illegally climbed on the towers nos. 5 to 17 of it and strung its high tension electricity lines on them. This was done while there was electricity running through the existing lines on such towers that is without seeking a line-clearance/line-cut, as is required in the interest of security of the power plant and the grid, as well to ensure no harm comes to human life.

- k. The petitioner stated that the Commission has adopted the 'Transmission Planning and Security Standards Power Supply Planning and Security Standards, Transmission Operating Standards and Power Supply Operating Standards – 2003' framed by the erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC). The standards contain detailed provisions on security philosophy while planning and carrying on transmission works. It stated that on 02.08.2018, its officers over phone had strongly objected to respondent No.2 with respect to such illegal activities but to no avail. The petitioner also filed a letter/complaint dated 27.08.2018 with the Chief Engineer, Construction, Vidhyut Soudha, Hyderabad, seeking action against such unauthorized, illegal and patently hazardous activities by the respondent No.2 with a copy respondent No.1. However, no action was taken by either respondent No.1 or by respondent No.2.
- l. The petitioner stated that it continuously and repeatedly objected to respondent No.1 permitting such illegal activities and complained to them at the site as well as to their management. Each time they have accepted its objection and orally assured that they shall not trespass on its property that is towers 5 to 17 for which they have no authority or permission. The petitioner stated that however, the officers of respondent No.1 despite being aware have not taken a single action against respondent No.2 and with mala fides and have permitted respondent No.2 to continue their illegal activity and put their high tension electricity lines on the petitioner's towers, which are now in close proximity to the petitioner's existing high tension wires on these towers.
- m. The petitioner stated that the respondent No.1 being the state transmission utility has also by its actions and inactions endangered human lives and the electricity grid security by conducting such unauthorized trespass and encroachment activities while there was high tension electricity running through the existing lines owned by the petitioner on these towers. It stated that on 30.10.2018 the personnel belonging to respondent No.2 unlawfully accessed the OPGW cable and communication panel belonging to the petitioner for their own use and thereby affected petitioner's operations severely. The petitioner's team

personally met with the respondent No.1 to once again object to such illegal activities. However, the respondent No.1 continued to fail to take any action to stop such illegal activities.

- n. The petitioner stated that in the above backdrop, the petitioner lodged a complaint dated 01.11.2018 with the local police authorities. Upon investigation by the police, it was informed that respondent No.2 had claimed that they had approvals and permissions granted by the respondent No.1 to carry out its activities on tower Nos.5 to 17. However, it has neither been consulted, provided its consent nor provided with a copy of any such approval or permission. It is stated that in the above backdrop, it made a representation dated 13.11.2018 to respondent No.1, while describing the illegal activities carried out by the respondent No.2 stating as under –

“9. We reiterate that the multi-circuit transmission towers in question are owned and operated by us. We have invested significant capital for their construction and continue to incur costs towards up-keep and maintenance. These towers carry our transmission lines and equipment with electricity running through them. Any work or activity required to be done on these towers must be done with our express prior consent / approval to enable us to take adequate safety measures in advance to ensure no danger or damage is caused. Furthermore, the use of our multi-circuit transmission towers must necessarily be in lieu adequate compensation (as evidenced by the Line Sharing Agreement dated 02.05.208 for use of Tower Nos. 1 to 4). In the instant case, Mytrah has violated all these requirements.

10. The above facts clearly show that Mytrah, its officers and officials have prima facie, deliberately, illegally, without authorization and with malicious intent, trespassed upon our property, i.e. Towers 5 to 17 and put their electricity transmission lines that too while the existing lines were live and active i.e. with electricity running through them,

thereby endangering the government property such as the electricity grid, private property such our electricity plant, machinery and towers, nearby property and human lives. All these illegal activities are against the provisions of the law including the grid code. Furthermore, if Mytrah is allowed to charge these lines and transmit electricity, it will endanger our existing lines and prevent us from taking remedial action and also endanger the entire power grid in the area causing irreparable loss and damage to life and property as well as major financial loss to M/s. Prathmesh Solar. Such illegal actions can result in serious issues of safety and even cause death by electrocution.

11. In light of the above, we request your good selves to:
 - a. To cognizance of the instant complaint, as well as the complaint dated 27.08.2018 and enquire into the above highlighted issues.
 - b. To inform us of any action taken or proposed to be taken against Mytrah and its personnel.
 - c. Issue direction(s) to Mytrah and such other appropriate officials as necessary, to not take any further actions, such as permitting Mytrah to charge the illegally strung transmission lines, to avoid and any damage, injury and/or death at the site and from illegally benefitting from such trespass and encroachment.
 - d. Ensure that Mytrah is not assisted in any way, either directly or indirectly, by TSTRANSCO or its officials to carry out the aforementioned activities, especially without seeking the express prior consent / approval of Prathamesh Solar and only after adequate commercial compensation for the same, if so sought.

- e. To cooperate in all manner with the police officials in their investigation pursuant to our complaint dated 01.11.2018 annexed to the instant complaint. We request you to treat this matter as urgent and for your cooperation and understanding with respect to the same.”
- o. The petitioner stated that respondent No.1 being well aware that the multi-circuit transmission towers nos. 1 to 4 were owned by it, had asked respondent No.2 to enter into an agreement with it for use of the same. However, respondent No.1 has not applied the same benchmark insofar as the use of towers nos. 5 to 28 is concerned and in fact has aided the respondent No.2 to illegally use the property owned by it. It is stated that on 13.11.2018 it issued a letter to respondent No.2 to immediately cease and desist from its illegal activities and to remove its transmission lines illegally strung on the multi circuit transmission towers Nos. 5 to 17 owned by it.
- p. The petitioner stated that on 25.11.2018 it received a letter from the office of respondent No.1 along with an attached letter, whereby a line-cut was sought from it to do conduct jumpering work on multi-circuit transmission towers for respondent No.2. The letter states as under –
“Note: This office has requested through email dated 25/11/2018 for concurrence but M/s Prathamesh Solar didn't give the concurrence, due to internal disputes between M/s. Prathamesh and M/s Mytrah, to avail LC but as per the oral instructions of CE / RZone / Hyd, this LC request is applied.”
- q. It is stated that on 26.11.2018 once again the personnel belonging to respondent No.2 along with a mob of 50 persons trespassed upon the property owned by it and completed their illegal stringing of lines on tower no. 16. Thereafter, it was constrained to submit a representation on 27.11.2018 to the office of the Collector, Wanaparthy in the above regard seeking appropriate action.
- r. The petitioner stated that however on 28.11.2018 it came to its knowledge that respondent No.1 has now allowed respondent No.2 to charge its transmission lines (strung illegally on the petitioner's towers) and synchronize its power plant with the grid. Upon making enquiries, it

came upon the order dated 15.10.2018 passed by this Commission in I.A.No.40 of 2018 in O.P.No.38 of 2018, inter alia, directing as under –

- “10. The learned counsel for the petitioner sought a direction to the respondents to ensure synchronisation to the state grid and for purchasing power from the petitioner on a provisional tariff, subject to proper adjustment on the outcome of the present appeal, while referring to a decision of APTEL dated 13.12.2016 rendered in Subhash Infraengineers Pvt Ltd and another vs Haryana ERC through Secretary and another. In the cited case, the decision of HERC to the effect that PPA with the appellant's therein are not in line with the purported competitive bidding guidelines for renewable energy generators u/s 63 of the EA 2003 and that the deviations were not approved by the State Commission and hence, the power purchases are not valid, was questioned in the APTEL. In this decision APTEL observed about the 5 technical challenges and deterioration of the solar PV panels and machinery in case of long shut down/disuse. The learned counsel for the petitioner emphasised on this aspect and pleaded for interim orders.
11. The learned counsel for the respondent vehemently contended that the entire 50 MW capacity is not synchronised to the grid and the respondent has a vested right in refusing to connect the 50 MW to the grid, because as per clause 9.2 of PPA a maximum period of twelve months is permitted to defer COD to permit the solar power developer to overcome the effects of force majeure events affecting the solar power developer or DISCOM or till such event of default is rectified by the solar power developer or DISCOM whichever is earlier. Provided further that, the validity of performance bank guarantee shall be extended suitably covering the extended period. The learned counsel further contended that the date of SCOD

22.05.2017 is not adhered to by the petitioner, who claimed to have been ready with synchronisation by 25.09.2018 without mentioning it in the petition while mentioning so in I. A. No.41 of 2018. The respondent No.1 has alleged that the petitioner has neither submitted the work completion report nor readiness of the project for synchronisation in their counter affidavit filed in O. P. on 30.06.2018.

12. Whether the plea of force majeure events pleaded by the petitioner are really so, and if such is the case, the Commission has to examine those claims and decide whether the events can be accepted as force majeure events. In case the plea is not accepted, whether penalties can be imposed to that extent and in such case, the respondent has a right to avoid PPA and insist on fresh terms. Further, there is a contention of the respondent that the maximum time period allowed for commissioning of the full project capacity with encashment of performance bank guarantee and payment of liquidated damages shall be limited to twenty-one (21) months from the effective date of this agreement and it is expired by 23.11.2017. This aspect can be decided only in the O.P. The present matter has to be examined in relation to the prayer for interim order.
13. The petitioner has made out a prima facie case for interim direction and in case interim direction is not given, the petitioner has convincingly pleaded that the entire project and its investment relating to 50 MW power would be lost, which would also be a blow to the philosophy of renewable energy sources and its encouragement by the state. No doubt, the respondent also has effectively argued about the rights and obligations of both the parties, which are governed only under PPA and the right of the respondent to terminate the contract, which is so far not exercised.

14. The entire 50 MW capacity is not synchronized so far and there is no material on record to show that the respondent has issued any notice of termination. In case synchronisation is ordered, suitable instructions are called for. The learned counsel for the respondent contended that right of the petitioner to renegotiate the tariff may be reserved in case interim orders are issued. Thus, the right of the petitioner is reserved.

15. Under these circumstances, there shall be a direction to the respondents to synchronise the 50 MW solar power to the grid pending disposal of O.P. only on the following terms:

- (a) There shall be an interim direction pending disposal of O. P. to the respondent to synchronize 50 MW of the project to the grid.
- (b) This order is subject to the right of the respondent to renegotiate the tariff.

I.A. is disposed of accordingly.”

s. The petitioner stated that a perusal of the order dated 15.10.2018 reveals that the respondent No.2 has not revealed the correct facts of the matter and simply represented to this Commission as if its synchronization was being held up for certain reasons. It has sought the action under Section 142 of the Act, 2003 against the respondent No.1 for violating the provisions of sections 34 and 39 of the Act, 2003, which reads as under,

“Section 34. (Grid Standards):

Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority.

... ..

Section 39. (State Transmission Utility and functions):

- (1) The State Government may notify the Board or a Government company as the State Transmission Utility:

Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

- (2) The functions of the State Transmission Utility shall be
- (a) to undertake transmission of electricity through intra-state transmission system;
 - (b) to discharge all functions of planning and co-ordination relating to intra-state transmission system with -
 - (i) Central Transmission Utility;
 - (ii) State Governments;
 - (iii) generating companies;
 - (iv) Regional Power Committees;
 - (v) Authority;
 - (vi) licensees;
 - (vii) any other person notified by the State Government in this behalf;
 - (c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;
 - (d) to provide non-discriminatory open access to its transmission system for use by-
 - (i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-Section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission.

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.”

t. The petitioner stated that the transmission standards adopted by the Commission further provide as under –

“11. SAFETY COORDINATION

11.1 The licensee shall observe the general safety requirements as laid down in I.E. Rules for construction, installation, protection, operation and maintenance of electric supply lines and apparatus.

11.2 The licensee shall designate suitable control persons as specified in GRID CODE for coordination of safety procedures before work is taken up, during work and after work is completed till the concerned system component is energised both inside its own transmission system and across between licensee’s transmission system and that of any user.

11.3 The licensee shall develop its own safety manual for the purpose of safety coordination.

12. EVENT REPORTING

12.1 The licensee shall monitor all abnormal occurrence or events affecting the operation of system requiring attention, out lined in GRID CODE.

12.2 The licensee shall ensure that within ten minutes of an occurrence, verbal/telephone communication shall be made to a designated officer by SE/Grid Operation who shall be in position and authority to initiate follow up action as deemed fit. The SE/Grid Operation must, however, give utmost priority in safeguarding the system before initiating the reporting procedure.

12.3 Within 30 minutes, a preliminary report shall be prepared in a Form to be standardised by licensee and communicate to the designated officer / officers.

12.4 Within 48 hours, detailed report shall be prepared in a Form to be standardised by licensee and communicated to the designated officer/officers.

12.5 The name and designation of the officer shall be furnished to all stake holders for the communication of event data.

12.6 The generator shall give the computerized data to SLDC / RLDC whenever any event occurs affecting the system stability.

12.7 APTRANSCO should plan to provide event loggers to all existing important 220 kV substations and to all new 220 kV substations to be set up in future.

13. POST DISTURBANCE ANALYSIS

13.1 All major grid disturbances causing tripping of generating units (110 MW and above), tripping of EHT lines (220 kV and above) causing full or partial system black out, breakdown of interconnecting transformers (100 MVA and above), break down of EHT lines causing prolonged interruption and load restrictions shall be immediately discussed and analysed in the GRID CODE REVIEW PANEL. This shall promptly be done following

discussion and analysis in any sub-panel that may be formed by the panel for the purpose.

- 13.2 Disturbance reports and recommendations made in such meetings shall be compiled and circulated to all members of GRID CODE REVIEW PANEL for its implementation.
14. MAINTENANCE STANDARDISATION, SPARES, TESTING AND INSPECTION
 - 14.1 The licensee shall develop maintenance schedules of lines and substation equipment in conformity with I. E. Rules and relevant CBIU & P Manuals.
 - 14.2 The licensee shall establish a hierarchy for implementation of the maintenance standards and its monitoring.
 - 14.3 No EHT line shall suffer total interruption for more than 175 hours in a year including planned outages but excluding force majeure causes.
 - 14.4 No HT supply at points of interconnection shall suffer total interruption for more than 310 hours in a year including planned outages and excluding force majeure causes.
 - 14.5 For the purposes of reducing inventory, procurement time, installation time, the licensee shall adopt standardised designs for transmission line towers, structures for substations, standardise layouts for substations, substation lighting, control room lighting and ventilation, substation earthing, prepare standard specifications for line materials, transformers, substation equipment, cables, bus bar accessories, insulators and hardware, etc.
 - 14.6 For convenience of maintenance, repairs and replacement of line equipment and substation equipment, the licensee shall develop and observe a policy on spare parts.
 - 14.7 The licensee shall establish electrical testing laboratories of its own, equipped for routine testing of relays, meters, current transformers, potential transformers, condenser bushing and other electrical accessories used in substations in accordance with relevant Indian standards and manufacturers' instructions.

- 14.8 The licensee shall establish testing organisations under its control, staffed with qualified, trained and skilled persons and equipped with all necessary testing equipment, power supply etc. for conducting field tests and commissioning tests of substation equipment such as transformer, circuit breaker, current transformer, potential transformer, station battery, relays and meters, control wiring, cables, lightning arrester, substation earthing etc.
- 14.9 The licensee shall maintain in good order and condition all necessary equipment, tools, tackles etc. for carrying out maintenance of lines and substations equipment and ensure their availability at all substations.
- 14.10 The licensee shall carry out periodical inspection of all lines and substations in its transmission system through an independent inspection team qualified for the purpose to ensure that maintenance of lines and substations are carried out as per maintenance schedules.”
- u. The petitioner has sought the resolution of its disputes as well as action under Section 142 of the Act, 2003 on the following amongst other –
- i. The respondent No.1 has acted in complete violation of the line sharing agreement dated 02.05.2018 entered into between it and respondent No. 2, which permitted respondent No. 2 to use of only 4 Nos. multi-circuit transmission towers of it for an agreed consideration.
 - ii. The respondent No. 2 has acted in violation of Section 10 of the Act, 2003 which requires generating companies to have their own dedicated transmission lines for evacuation of power. Mirror like provisions are provided in the PPA which has been entered into by respondent No. 2 which required it to set up evacuation facilities for supply of power.
 - iii. The respondent No. 2 has acted in blatant violation of the guidelines for executing interconnection facilities by solar energy developers in the state of Telangana issued by respondent No. 1.

- iv. The respondent No. 2 having entered into a line sharing agreement for 4 Nos. multi-circuit transmission towers has illegally made use of towers Nos. 5-17 by giving such instructions to its personnel without approaching either the petitioner or this Commission.
- v. The respondent No. 2 has put to risk the power plant of the petitioner as well as the human life of its personnel by directing them to illegally use towers nos 5-17 of the petitioner.
- vi. The respondent No. 2 only for its personal gain has endangered the security of the state grid by resorting to illegal stringing of its line on the towers of the petitioner.
- vii. The respondent No.2 has misled this Commission in course of I. A. No. 40 of 2018 in O. P. No. 38 of 2018 by suppressing material facts and obtaining orders in its favour. The conduct on the part of respondent No. 1 in being aware of the actions of the respondent No.2 and not taking any action whatsoever is also wrongful and unsustainable.
- viii. The respondent No. 1 has not followed the statutory mandate under sections 34 and 39 of the Act, 2003 which require it to supervise and control intrastate transmission system and given directions to all parties including generating companies to ensure safe and efficient grid operations.
- ix. The respondent No.1 has not followed the mandatory requirements of the safety, security and stability of the grid provided in the IEGC as well as the transmission standards.
- x. The respondent No.1 has at the cost of human risk permitted the respondent No. 2 to illegally string its line on tower Nos. 5 to 17 on which the petitioner has sole ownership and control.
- xi. The respondent No. 1 being a public authority cannot act in a highhanded manner and support a generator in doing illegal activities at the cost and risk of others.
- xii. The respondent No. 1 was well aware that the respondent No. 2 had to contractually provide for use of it's towers and vide its letter dated 27.01.2018 asked the respondent No. 2 to enter into an

appropriate agreement. This being the case, there was no basis for the respondent No.1 to permit the respondent No.2 to use towers Nos. 5 to 17 without there being a contract for the same.

- xiii. The office of the respondent No.1 has acted in connivance with the respondent No. 2 to benefit to it by not acting on the various letters and representations of the petitioner.
- xiv. The respondent No. 1 at the very least should be concerned about safety of personnel and grid and not for its personal gain put to risk human life and the safety of the grid.
- xv. The respondent No. 1 has cut the line of it despite having no concurrence and being fully aware of the disputes between it and the respondent No. 2. Such line-cut was purportedly done upon “oral instructions”, as stated in its email dated 25.11.2018 and is prima facie evidence of the respondent No. 1 acting in an arbitrary and biased manner, favouring a party committing a patent illegality.

2. In the facts and circumstances stated above, the petitioner has sought the following reliefs in the petition –

- “a. Declare that the synchronization approval granted by TSTRANSCO/ respondent No. 1 to the respondent No. 2 as null and void, having been obtained by misrepresenting facts, being improper and without the authority of law and in contravention of major guidelines for executing interconnection facilities by solar energy developers in Telangana State issued by the respondent No. 1.
- b. Direct the respondent No. 1 to disconnect the power project of the respondent No. 2 from the petitioner’s transmission towers nos. 5 to 17 with immediate effect.
- c. Direct the respondent No. 2 to approach the petitioner and compensate the petitioner for the loss caused due to illegal activities of the petitioner as well the use of multi-circuit transmission towers 5 to 28.
- d. Initiate enquiry against the respondent No. 1 for violation of the Act, 2003 and also the guidelines for executing interconnection facilities by solar energy developers in the state of Telangana.

- e. Issue clear directions to the respondent No.1 as to how such cases should be processed in future.”

3. The respondent No. 1 has filed counter affidavit to the petition and the averments of the same are extracted below.

- a. It is stated that the petitioner has filed the present petition before the Commission under Section 86 (1) (c) and (f) of the Act, 2003 praying this Commission for adjudication of disputes which have been arisen between the petitioner and Mytrah being respondent No. 2 on the aspect of unauthorized and illegal use of petitioner’s dedicated transmission line to evacuate the power from the much delayed generating station of respondent No. 2. The petitioner is also invoking the powers of this Commission under Section 142 to take action against the TSTRANSCO for not performing its statutory duty and instead aid the respondent No.2 to illegally continue to use the dedicated transmission system of the petitioner.
- b. It is stated that the solar plant was commissioned on 18.09.2017. As per scheme approval, the line length from the proposed petitioner’s plant to existing 220 / 132 kV Wanaparthy substation is 6.55 KM.
- c. It is stated that respondent No.2, SPV of M/s. Mytrah Energy (I) Limited has entered PPA for evacuating 50 MW power at 132 kV level through the interconnection substation of 220 / 132 kV Wanaparthy SS.
- d. It is stated that it is general practice in recent times to string single circuit on DC towers instead of SC towers due to following reasons:
 - i. The cost difference has got reduced between two types of towers due to design improvement over a period.
 - ii. Laying single circuit towers will increase the land requirement for towers of each single circuit.
 - iii. DC towers have become order of the day as the corridor will be available for one more transmission line required to be laid in the same corridor without requiring additional land for new towers.
 - iv. All the developers and consumers have to lay DC towers eventhough the single circuit is approved to be strung as is the practice even for transmission lines constructed by utility.

- e. It is stated respondent No.2 vide letter dated 23.01.2017 has requested for utilization of towers laid by the petitioner by laying 2nd circuit for a line length of 6.14 KM from 220 / 132 kV Wanaparthy SS to loc no. 27 (AP-13) on 132 kV DC / SC line constructed by the petitioner, SPV of Suzlon Energy Limited solar plant as there were severe ROW problems.
- f. It is stated that respondent No.2 had furnished the consent letter dated 21.01.2017 given by the petitioner for utilization / sharing the second circuit of their 132 kV DC/SC transmission line for a span of 6.14 KM.
- g. It is stated that though there would not be any technical hindrances which would hamper the grid safety as the lines will be strung on 2 cross arms of the towers and would be connected to different bays along with switch gear and if any fault arises in any of the two transmission lines the faulty line will only be isolated.
- h. It is stated that the proposal for sharing of towers laid by the petitioner by stringing 2nd circuit for a span of 6.14 KM was rejected by respondent No.1 as the sharing of the transmission line is new business which would create financial loss to the respondent No.1, and the same was informed to both solar power developers through letter 11.09.2017.
- i. It is stated that respondent No. 2 vide letter dated 29.12.2017 has approached respondent No.1 with 2 Nos proposals for (1) sharing 4 Nos. multi circuit towers of the petitioner on cost basis for entering into the 220 kV Wanaparthy substation or (2) for laying of 132 kV underground cable for connecting their power project to Wanaparthy substation as there are severe ROW problems, instead of using multi circuit towers keeping the rest of the route as proposed by them.
- j. It is stated that the Chairman and Managing Director vide File No. 79, dated 11.01.2018 has instructed to obtain an undertaking by both solar power projects that any future maintenance and also the technical requirements required by respondent No. 1 shall be as dictated by respondent No.1.
- k. It is stated that respondent No.2 vide letter dated 20.02.2018 has furnished an undertaking duly accepting the conditions given by respondent No.1 and also furnished consent to respondent No.1 for

sharing of 50% cost towards 4 Nos. multi circuit towers which were erected by the petitioner from AP 19 to AP 22.

- I. It is stated that as per the instructions of Chairman and Managing Director of respondent No. 1, the respondent No. 2 and the petitioner vide letter dated 27.01.2018 were requested to furnish a joint deed of undertaking to be executed on non-judicial stamp paper worth Rs.100/- by both parties duly mentioning the details of maintenance issues, shut down requirements.
- m. It is stated that both solar parties that is respondent No.2 and the petitioner have furnished joint deed of agreement on a non-judicial stamp paper worth Rs.100 duly stating the following:
 - a. The maintenance of common facilities shall be the responsibility of petitioner and maintenance of respondent No. 2's circuit including the respondent No. 2's circuit coming on common facility shall be the responsibility of respondent No. 2.
 - b. Both the solar developers have agreed that the respondent No. 2 will conduct scheduled maintenance of common facility.
 - c. It is agreed between the parties that in case, respondent No. 1 intends to use the fourth circuit of the common facilities for its own purpose, it can use the same at free of cost.
 - d. Both the parties allowed respondent No. 1 to use the fourth circuit of common facilities and will not insist respondent No. 1 on any compensation for line shut down.
 - e. However respondent No.1 must intimate the parties at least 10 days prior to any foreseeable shut down/line clearance or any O and M maintenances to be undertaken.
 - f. Parties should not make claim with respondent No.1 regarding reimbursement of cost of common transmission lines.
- n. It is stated that further respondent No. 2 vide letter dated 02.08.2018 has requested respondent No. 1 for utilization of 14 Nos of towers laid by the petitioner for the work of 'Evacuation of 50 MW solar power connected to 220 / 132 kV Wanaparthy substation' duly informing that they have paid Rs. 2.35 Crores to the petitioner for obtaining joint deed of

undertaking and permit them to use 14 towers so as to enable them to complete and commission the project.

- o. It is stated that approval was accorded to respondent No. 2 for utilization of existing 4 Nos. multi circuit towers of the petitioner on 15.06.2018.
- p. It is stated that in light of the submissions made above, it is prayed that this Commission to dismiss the application filed by the petitioner.

4. The respondent No. 2 has filed counter affidavit to the petition and the averment of the same are extracted below.

- a. It is stated that at the outset, each and every averment of the petition is denied to be false. No averment shall be admitted to be true for want of specific traverse. It is stated that the petitioner in its petition has failed to make out a case for grant of any relief by the Commission and the petition is liable to be dismissed. It is submitted that before adverting to the allegations in the petition, the respondent No. 2 is herewith submitting the facts of the case.

Facts of the Case:

- b. It is stated that respondent No. 2 was declared as the successful bidder against the RFS for a capacity of 50 MW. The Southern Power Distribution Company of Telangana Limited and the Northern Power Distribution Company of Telangana Limited (TSDISCOMS) issued a letter of intent (LoI) to MEIPL for development of solar power project for generation and onward sale of solar power to the TSDISCOMS. The Commission by way of order dated 15.02.2016 in O. P. No. 3 of 2016 adopted the tariff discovered by TSSPDCL through the tariff based competitive bidding process.
- c. It is stated that pursuant to the LoI, MEIPL incorporated the respondent No. 2 for development of a solar power project in Wanaparthy, Mahaboobnagar. Subsequently, respondent No.2 entered into a PPA dated 23.02.2016 with respondent No. 3 for generation and onward sale of 50 MW solar power.
- d. It is stated that the synchronization of the respondent No. 2's project was delayed owing to reasons outside the respondent No.2's control. As per the route approval accorded, the respondent No. 2 was required to

- construct a pooling substation at the project and connect it to the 220 / 132 kV Wanaparthy substation by way of a 132 kV transmission line. It is stated that on a detailed survey of the route and upon initiating the process for acquiring land, the respondent No. 2 discovered several ROW issues that severely hindered construction of the transmission line.
- e. It is stated that respondent No. 2 shares the transmission corridor up to 6.14 km with the petitioner and the transmission line constructed by the petitioner connects to the Wanaparthy substation. In order to avoid the ROW issues and resistances from land owners and local leaders, the respondent No.2 requested the petitioner to use / share a circuit of the transmission line constructed by it and share the transmission corridor for 6.14 km to connect to the Wanaparthy substation. It is stated that the petitioner vide letter dated 21.01.2017 addressed to respondent No. 1 conveyed its consent/no-objection to permit the respondent No. 2 to utilize the transmission line.
- f. It is stated that the respondent No. 2 addressed a letter dated 20.05.2017 to the respondent No. 1 pointing out the ROW difficulties being faced by it and requested for approval to utilize the transmission line constructed by the petitioner. The respondent No. 1 rejected the aforesaid proposal at that point of time. It is stated that the petitioner has given consent for usage of their transmission line and the said consent/no-objection granted by the petitioner thereby permitting the respondent No. 2 to utilize the transmission line constructed by it to the extent of 6.14 km is absolute and un-conditional and was never withdrawn by the petitioner.
- g. It is stated that the respondent No. 2 vide letter dated 29.12.2017 brought it to the notice of the respondent No. 1 that there was lot of development in the area and there was no space for the transmission lines and that the alternate route considered by the respondent No. 2 also has serious ROW issues. The respondent No. 2 pointed out that no corridor was available to take its line independently into the Wanaparthy SS as the entire area had been converted into a residential locality and buildings had come up in the area. The aforesaid fact was also confirmed by the field engineers of respondent No. 1. The respondent No.2

accordingly requested respondent No. 1 to approve the utilization of the existing 4 multi circuit towers on cost basis.

- h. It is stated that the respondent No. 1 vide letter dated 27.01.2018 allowed the utilization of the existing 4 multi circuit towers and asked the petitioner and the respondent No. 2 to execute a joint deed of undertaking mentioning the details of maintenance issues, etc. The respondent No. 1 further specifically stated that it would utilize the 2 circuits of the multi circuit tower line at its discretion as per the technical feasibility/field conditions.
- i. It is stated that the respondent No. 2 and the petitioner entered into an agreement for sharing of transmission line dated 02.05.2018 with respect to the 4 multi circuit towers and submitted the same to the respondent No. 1 vide letter dated 16.05.2018. The respondent No. 1 vide letter dated 15.06.2018 accorded sanction and approval to the respondent No. 2 for erection of 132 kV line along with erection of 132 kV bay at the Wannaparthy substation to be connected to the respondent No.2's pooling substation at its solar power project.
- j. It is stated that the respondent No. 2 vide letter dated 02.08.2018 brought it to the notice of the respondent No. 1 that it was facing severe ROW issues in constructing the towers as the line has to pass close to the Wanaparthy town and the land has been converted into plots due to which the land owners are not permitting the passing of transmission lines. The respondent No. 2 requested permission to utilize the additional 14 towers constructed by the petitioner and stated that it is willing to pay the amount as directed by the respondent No. 1 to the respondent No. 1 towards utilization of the towers.
- k. It is stated that the petitioner had already accorded its consent/no-objection for utilization of one circuit out of the multi circuit towers constructed by it vide its letter dated 21.01.2017 and the said consent was never withdrawn by the petitioner. The execution of the agreement of sharing transmission line dated 02.05.2018 does not in any manner dilute or take away the specific and unequivocal consent accorded by the petitioner permitting the respondent No. 2 to utilize the towers constructed by it. Therefore, the respondent No. 2 was entitled to utilize

the towers constructed by the petitioner for its transmission line. The towers being utilized by the respondent No. 2 for its transmission line are less than the 6.14 km for which the petitioner had given its specific consent vide letter dated 21.01.2017. The petitioner is estopped from now contending that it had not accorded its consent for use of the towers by respondent No. 2. All through from the said date of consent the petitioner never raised any questions or issues on the said line sharing. There was no objection whatsoever.

- I. It is stated that the utilization of 15 towers for a line length of 3.236 Km was also approved and sanctioned by the respondent No. 1 vide its letter dated 22.09.2018. Without prejudice to the contention of the answering respondent that the petitioner had accorded its consent for the utilization of the towers, it is stated that the respondent No. 1 has the power and authority to grant such permission to the respondent No. 2 without obtaining any consent from the petitioner.
- m. It is stated that the respondent No. 1 as the transmission licensee has the authority to utilize the transmission towers in the manner it deems fit. In fact, the standardized terms and conditions under which sanction / approval is granted by the respondent No. 1 clearly specify that the respondent No. 1 has the authority to use the works in any manner as required from time to time. The petitioner would have been granted sanction on the basis of the same standardized terms and conditions imposed uniformly by the respondent No. 1. Further, the respondent No. 1 in its letter dated 27.01.2018 specifically stated that it would utilize the other two circuits of the multi circuit tower line at its discretion as per the technical feasibility / field conditions. The petitioner has never questioned or challenged the aforesaid letter of the respondent No. 1 and has not even raised any objections to the same.
- n. It is stated that as per the counter filed by the respondent No. 1 the very purpose of directing construction of multi-circuit towers is that the corridor will be available for one more transmission line required to be laid in the same corridor without requiring additional land for new towers. It is further stated that no loss or prejudice is caused to the petitioner by the respondent No. 2 utilizing a single circuit out of the multi-circuit

towers constructed by the petitioner, particularly when the same is being done under authorization of the respondent No. 1.

- o. It is stated that the Commission vide interim order dated 28.11.2018 in I. A. No. 40 of 2018 in O. P. No. 38 of 2018 was pleased to direct the respondent No. 1 to synchronize 50 MW of the project to the grid. Pursuant to the order of the Commission, the respondent No. 2's project was synchronized to the grid.
- p. It is stated that the contents of the project of the petitioner, the PPA of the petitioner and the guidelines for executing Inter-connection facilities. The petitioner is put to strict proof regarding the relevance and applicability of the provisions and clauses quoted by it. It is further stated that the contention of the petitioner that it had constructed a dedicated transmission line and was the owner of such line as per the terms of its PPA does not in any manner take away the specific consent of the petitioner permitting the respondent No. 2 to use its transmission towers accorded vide its letter dated 21.01.2017 or from the power of the respondent No.1 to impose conditions on the petitioner and to utilize the transmission tower in the manner it deems fit.
- q. It is stated that the delay in commissioning of the respondent No. 2's solar power plant was due to force majeure events and events outside the control of the respondent No. 2. The Commission has vide order dated 31.12.2018 in O. P. No. 38 of 2018 was pleased to declare the scheduled commercial operation date of the project as 28.11.2018.
- r. It is stated that the petitioner has deliberately suppressed the fact that it had accorded its consent/no-objection for utilization of one circuit out of its transmission towers for a length of 6.14 km by the respondent No. 2 vide its letter dated 21.01.2017. The petitioner has approached this Commission by suppressing material facts and with un-clean hands. It is stated that the petition is liable to be dismissed on this ground alone.
- s. It is stated that the petitioner has selectively quoted the letter of the respondent No. 1. In the letter, the respondent No.1 had also stated that:
"Further, TRANSCO will utilize the other 2 circuits of the multi circuit tower line at its discretion as per the technical feasibility / field conditions"

It is stated that the petitioner has not challenged or questioned the aforesaid letter issued by the respondent No. 1 at any point of time. It is stated that the respondent No. 1 merely required the submission of a joint deed of undertaking and did not in any manner acknowledge absolute ownership of the petitioner over the towers. The respondent No. 1 in fact specifically stated that it would utilize other 2 circuits of the tower line at its discretion.

- t. It is stated that the averment of the petitioner that no person including respondent No. 1 has any ability to allow a third person to use the towers is denied as being false and baseless. In any case, it is submitted that in the instant case the petitioner itself has consented for the use of its transmission towers by the respondent No. 2.
- u. It is stated that the line sharing agreement between the parties does not in any manner take away or dilute the specific and unequivocal consent granted by the petitioner vide its letter dated 21.01.2017.
- v. It is stated that the averment of the petition that the respondent No. 2 has without any permission or legal authority and illegally, climbed on the towers Nos. 5 to 17 of the petitioner and strung its high tension electricity lines is denied as being false and baseless. It is denied that the respondent No. 2 strung its high electricity lines on such towers without seeking a line-clearance / line-cut or that the respondent No. 2 endangered the security of the power plant and the grid in any manner. It is denied that the respondent No. 2 accepted the petitioner's objection or orally assured that they will not trespass on the towers 5 to 17. All these are invented, engineered and alleged for maintaining the present case and are denied as false.
- w. It is stated that the personnel of the respondent No. 2 unlawfully accessed the OPGW Cable and communication panel belonging to the petitioner and thereby the petitioner's operations is denied as being false and baseless. The petitioner is put to strict proof of its allegations.
- x. It is stated that it is denied that the petitioner had never been consulted or provided its consent for use of towers no. 5-17 by the respondent No. 2. It is stated that the petitioner through its letter dated 21.01.2017 specifically consented to the use of its towers to the extent of 6.14 km by

the respondent No. 2. Further, it is stated that the respondent No.1 has accorded its sanction and approval for the use of the towers by respondent No. 2 and the petitioner was well aware of the same. The petitioner has never challenged the approval/sanction granted by the respondent No. 1 to the respondent No. 2 for use of the transmission towers.

- y. It is stated that the contents of the letter issued by the petitioner to respondent No. 1 are denied as being false and baseless.
- z. It is stated that it is denied that the respondent No. 1 has aided the respondent No. 2 to illegally use the property of the petitioner. It is stated that the reliance of the petitioner on the direction of the respondent No. 1 to submit an undertaking in case of towers No.1-4 is misplaced. It is stated that the respondent No. 1 is not bound to seek the consent of the petitioner in permitting the respondent No. 2 to use a circuit of the towers constructed by the petitioner.
- za. It is stated that in any case the petitioner had already un-conditionally consented for use of the towers to the extent of length of 6.14 km through its letter dated 21.01.2017. The execution of the line sharing agreement does not in any manner affect the consent granted by the petitioner. It is denied that the respondent No.2 trespassed on the property of the petitioner on 26.11.2018. It is denied that the respondent No.2 illegally strung its lines on tower No.16.
- zb. It is stated that it is denied that the respondent No.1 illegally allowed respondent No. 2 to charge its transmission lines and synchronize its power plant with the grid. It is stated that the synchronization of the power plant to the grid was pursuant to the orders of the Commission in I. A. No. 40 of 2018 in O. P. No. 38 of 2018. It is denied that the respondent No. 2 has not revealed the correct facts of the matter to the Commission. The petitioner has made completely unfounded allegations without any basis. It is further stated that the petitioner has no locus to question the synchronization of the power plant of the respondent No. 2 to the grid by the respondent No. 1. The synchronization of the power plant is a necessary corollary of the project being undertaken by the respondent No. 2 and it does not in any manner impact or affect the

rights or interest of the petitioner. It is stated that the petitioner can only raise contentions with respect to the alleged unauthorized use of its towers and it does not have any standing or basis to question the synchronization of the plant of the respondent No. 2. Moreover, the petitioner has not challenged or questioned the order of the Commission dated 15.10.2018 pursuant to which the plant of the respondent No. 2 has been synchronized to the grid. Therefore, the prayer of the petitioner challenging the synchronization of the plant of the petitioner is wholly misplaced and is liable to be dismissed in limini.

- zc. It is denied that the respondent No. 2 has engaged in any illegal acts with the facilitation of the respondent No. 1. The petitioner is put to strict proof regarding the relevance and applicability of the provisions quoted by it.
- zd. It is denied that respondent No. 2 acted in violation of the line sharing agreement which permitted use of only 4 multi circuit transmission towers. It is reiterated that the petitioner had consented for use of transmission towers by the respondent No. 2 vide its letter dated 21.01.2017. It is further stated that any alleged violation of the line sharing agreement or any dispute arising under the same is required to be adjudicated through arbitration in accordance with the procedure contemplated under the contract and not before the Commission.
- ze. It is denied that respondent No. 2 acted in violation of Section 10 of the Act, 2003. The assertion that Section 10 of the Act, 2003 requires construction of dedicated transmission towers is denied. It is stated that in instances where there are ROW issues and it is not possible to have separate transmission towers in the same transmission corridor it is permissible for the respondent No. 1 to permit utilization of multi circuit towers for laying the transmission line. Moreover, the petitioner itself has consented for utilization of its transmission towers for laying the transmission line of the respondent No. 2. In any case, the transmission line of the respondent No. 2 is distinct from the transmission line of the petitioner.
- zf. It is denied that respondent No. 2 acted in violation of the guidelines for executing interconnection facilities by solar energy developers issued by

respondent No. 1. It is stated that the petitioner has failed to point out any violation of the guidelines by the respondent No. 2 and has baldly contended that the guidelines have been violated.

- zg. It is denied that respondent No.2 illegally made use of towers Nos. 5-17 without approaching the petitioner or this Commission. It is stated that the petitioner has categorically consented for the use of its transmission towers by the respondent No. 2. Further, the respondent No. 2 has obtained the sanction and approval of the respondent No.1 for utilization of the towers.
- zh. It is denied that respondent No. 2 has put to risk the plant and the petitioner or human life by illegally using the towers Nos. 5-17. It is denied that respondent No. 2 has for its personal gain endangered the security of the state grid by resorting to illegal stringing.
- zi. It is denied that respondent No. 2 has in any manner mislead the Commission in course of I. A. No. 40 of 2018 in O. P. No. 38 of 2018. It is denied that respondent No. 2 has suppressed material facts and obtained orders in its favours. The allegations of the petitioner are completely unfounded and baseless. The petitioner has merely made bald and baseless allegations of suppression without even providing any particulars or proof of the same.
- zj. It is stated that the petitioner is not entitled to the relief of disconnection of the power project from transmission tower Nos. 5-17 as the same was done with the consent of the petitioner. Alternatively, without prejudice to the contention that the petitioner consented to the use of the transmission towers, it is stated that the respondent No. 1 does not require the consent of the petitioner to authorize the respondent No. 2 to use the transmission towers. The answering respondent reiterates its contentions made earlier in this counter affidavit.
- zk. It is stated that the petitioner has sought a vague relief seeking a direction against the respondent No. 2 to approach and compensate the petitioner for the alleged loss caused to it. It is stated that such a vague and general relief ought not to be entertained by the Commission. In any case, it is stated that the petitioner has failed to establish or show that it has suffered any loss as a result of the use of the towers by the

respondent No. 2. In the absence of proof of any loss caused to the petitioner, such relief cannot be granted. Further, in view of the unequivocal consent / no-objection issued by the petitioner for the utilization of the towers by the respondent No. 2, the petitioner cannot be permitted to now seek compensation from the respondent No. 2. It is stated that the petition is not maintainable as it is filed by suppressing material facts and is liable to be dismissed.

zl. In view of the above, it is therefore prayed this Commission to dismiss the present original petition.

5. The respondent No. 3 has filed counter affidavit and the averments of it are extracted below.

- a. It is stated that petitioner has filed the present petition under Section 86 (1) (c) and (f) of the Act. 2003 praying the Commission for adjudication of disputes which arose between the petitioner and respondent No. 2 on the aspect of unauthorized and illegal use of petitioner's dedicated transmission line to evacuate the power from the much delayed generating station of respondent No. 2. The petitioner is also invoking the powers of this Commission under Section 142 to take action against the respondent No. 1 for the alleged non-performance of its statutory duty and further alleging that it aided respondent No. 2 to continue to use the dedicated transmission system of the petitioner.
- b. It is stated that respondent No. 2 has entered PPA with respondent No. 3 for supply of 50 MW solar power from their project connecting at 220 / 132 kV substation Wanaparthy in Wanaparthy District.
- c. It is stated that as per clause 3.2 of the PPA, respondent No. 2 is responsible for executing the interconnection facilities for evacuation of power from the proposed solar power plant to grid substation that is 220 / 132 kV Wanaparthy SS.
- d. It is stated that Chief Engineer / SLDC / TSTRANSCO vide letter dated 07.11.2018 informed that respondent No.2 has completed all necessary aspects pertaining to SLDC for synchronizing of their solar power plant.
- e. It is further stated that Chief Engineer / Rural Zone respondent No.1 vide letter dated 20.11.2018 has informed that all the works pertaining to

erection of 132 kV DC / SC transmission line from the proposed 50 MW capacity of solar power project to the existing grid substation that is 220 /132 kV Wanaparthy SS and erection of 132 kV bay at substation are completed in full shape and ready for charging.

- f. It is stated that the relevant clause of the PPA related to synchronization of the plant is extracted below for reference:

“3.7.1 The solar power developer shall give a notice in writing to the SLDC and DISCOM, at least (75) days before the date on which it intends to synchronize the Project to the grid system.

3.7.2 The Project may be synchronized by the solar power developer to the grid system when it complies with all the connectivity conditions specified in the Grid Code in force.

3.7.3 The synchronization equipment shall be installed by the solar power developer at its generation facility of the project at its own cost The solar power developer shall synchronize its system with the grid system only after the approval of synchronization scheme under the supervision of the concerned authorities of the grid system.”

- g. It is stated that in accordance with the clause 3.8.2 of the PPA, synchronization of the plant is required to be done 15 days after receipt of work completion report from the authorized officials. Accordingly, solar power project of respondent No. 2 was synchronized with grid on 28.11.2018. From the date of synchronization of plant the energy is being injected into the grid.

- h. It is stated that in light of the submissions made above, it is prayed the Commission to dismiss the application filed by the petitioner.

6. The petitioner has filed common rejoinder to the counter affidavit of the respondent Nos. 1 and 3. The averments of the same are extracted below.

- a. It is stated that the petitioner has filed the present petition under Section 86 (1) (c) and (f) of the Act, 2003 for adjudication of disputes which have arisen between the petitioner and the respondents on the aspect of unauthorised and illegal use of the petitioner's dedicated transmission line to evacuate the power from the generating station of the respondent

No. 2. It is stated that even after having been granted various opportunities to file its reply, respondent No. 2 has chosen not to do so. The respondent No. 1 and the respondent No. 3 however, have filed their replies to the present petition, the present common rejoinder to which is being filed hereunder by the petitioner.

- b. It is reiterated that the petitioner has commissioned a 50 MW solar power plant and has erected a dedicated transmission line consisting of a total of 28 multi-circuit transmission towers (tower Nos.1 to 28) to string 132 kV transmission lines from its power plant to the existing 220 / 132 kV Wanaparthy sub-station, solely at its own considerable cost and expense.
- c. It is stated that the petitioner further reiterates that respondent No. 2 also has constructed a 50 MW solar power plant, the commissioning of which was delayed by over a year. The respondent No. 2's power plant was also required to be connected to the existing 220 / 132 kV Wanaparthy sub-station.
- d. It is stated that at the first instance, with a view to connect its power plant to the sub-station at Wanaparthy, The respondent No. 2 approached respondent No. 1 on 29.12.2017, seeking approval for utilization of existing 4 Nos. of multi circuit transmission towers, out of the 28 towers owned and operated by the petitioner. In this regard, respondent No. 1 vide its letter dated 27.01.2018 requested respondent No.2 and the petitioner to execute a joint deed of understanding between both the parties for utilization of the 4 Nos. of the towers mentioning the details of maintenance issues and the shut-down requirements. Pursuant to the above, the petitioner and respondent No. 2 held discussions and entered into an agreement for sharing of transmission line (Line Sharing Agreement) dated 02.05.2018, vide which, the petitioner permitted respondent No. 2 to use only 4 Nos. multi-circuit transmission towers (from location Nos. 1 to 4) to string its transmission line to connect its power plant to the substation. The relevant provisions outlining the scope of the line sharing agreement between the petitioner and respondent No. 2 are as follows:

"This Agreement for Sharing of Transmission Line (Agreement) is made and executed on this the 2nd day of May, 2018, by and between:

(...)

(C) MEIPL has requested PSL to provide permission for stringing of one of the circuit on the Transmission Line (defined hereinafter), from Location No.4, (04 Nos. towers starting from TRANSCO Grid and towards PSL Project). A spare, single circuit on the Transmission Line which is electrically independent of the circuit of the PSL Project (MAPPL Circuit) for and on behalf of MAPPL and PSL has consented thereto. It is clarified that the MAPPL Circuit shall not include the towers holding up the MAPPL Circuit or the connected accessories of such towers.

(D) On the request of MAPPL, PSL has agreed to provide to MAPPL, an exclusive right to use (without possession or control) MAPPL Circuit and a non-exclusive right to use the Common Facilities (as defined below) for the purpose of evacuating power generated from the MAPPL Project to the TRANSCO Grid (Sharing).

... ..

1.1 Definition

"Common Facilities" shall mean the Transmission Line location nos.01, 02, 03 & 04 starting from TRANSCO Grid towards PSL Project including all associated infrastructure such as multi circuit towers, its foundations, tower stubs, bolts & nuts which are shared by the PSL with the MAPPL for the evacuation of power.

"MAPPL Circuit" shall have the meaning ascribed to it in Recital C.

... ..

3. SCOPE

3.1 PSL agrees to provide MAPPL with the access and an exclusive right to use the MAPPL Circuit without ownership and/or possession and the Common Facilities on non-

exclusive basis, for the purpose of evacuating power from the MAPPL Project to the TSTRANSCO Grid for the Term. It is agreed between the Parties that all the rights relating to operation and management of Common Facilities rests with PSL.

... ..

5. CONSIDERATION

5.1 The consideration for the performance of Scope of PSL as per clause 3 shall be the following:

- a. MEIPL paying the cost of construction to Suzlon for and on behalf of MAPPL, and
- b. MEIPL shall pay to PSL the sharing charges @ Rs.1000 per annum for and on behalf of MAPPL ("Sharing Charge") of sharing the Common Facilities.

5.2 The Sharing Charges shall be inclusive of all Taxes.

(A) O&M Charges

- a. MEIPL shall pay the O&M Charges in advance to PSL for the operation and maintenance of the Common Facility @ of INR 15000 (Fifteen Thousand only) per month (excluding tax), which shall be paid annually with 3% (three) percent year on year escalation.

... ..

11. OWNERSHIP & SHARING RIGHTS

11.1 Notwithstanding anything else contained in this Agreement, MAPPL acknowledges that the Transmission Line shall at all times be under the ownership and possession of PSL. MAPPL shall only have the right to use the MAPPL Circuit on exclusive basis and the Common Facilities on non-exclusive basis.

... ..

- e. It is stated that the terms of the line sharing agreement were quite clear that respondent No. 2 was permitted only to use the transmission tower

Nos. 1 to 4, starting from the respondent No. 1 grid at the sub-station and towards the petitioner's power plant. By a letter dated 16.05.2018, a copy of the said line sharing agreement was admittedly made available to respondent No. 1.

- f. It is stated that respondent No. 1's case that after receiving the said line sharing agreement, it accorded approval to respondent No. 2 to utilize the Petitioner's existing multi-circuit tower Nos. 1 to 4, as envisaged under the said line sharing agreement.
- g. It is stated that in and around July-August. 2018, the petitioner discovered that respondent No. 2 had, without the petitioner's permission or authority, illegally made use of petitioner's transmission tower Nos. 5 to 18 and while the electricity was running through the existing lines, had strung its high tension transmission lines on the tower nos. 5 to 18 of the petitioner. Barring the illegality, the same was done even without seeking a line-clearance/line-cut, as is required in the interest of security of the power plant and the grid, as well to ensure no harm to human life. The petitioner therefore wrote various letters and made representations calling upon respondent No. 1 to take an action in this regard, but to no avail.
- h. It is stated that upon enquiry, the petitioner came to know that the same was done with respondent No. 1's approval. It is stated that before granting approval with respect to use of the petitioner's multi-circuit transmission tower Nos. 1 to 4, respondent No. 1 being well aware that the said towers were owned by the petitioner, had asked respondent No 2, vide its letter dated 27.01.2018, to enter into an agreement with the petitioner for their use. However, the same benchmark appears to not have been applied by respondent No. 1 in so far as the use of the additional towers from location No. 5 onwards, was concerned.
- i. It is stated that the petitioner reiterates that respondent No. 1, who is responsible to supervise and control the intra-state transmission system and give directions to all parties including the generators to ensure safe and efficient operation of the grid, ought to have put a stop to the illegal activities undertaken by respondent No. 2, even after being made aware of the same by the petitioner vide its letter dated 27.08.2018.

- j. It is stated that it further came to the petitioner's knowledge that respondent No. 1 had allowed respondent No. 2 to charge its transmission lines (which were strung illegally on the petitioner's towers) and synchronize its power plant with the grid.
- k. It is stated that at the outset, it is stated that the contents of the reply filed by respondent No. 1 are devoid of merit and do not deal with any of the issue raised by the petitioner qua respondent No. 1 in the present petition.
- l. It is stated that in its reply, respondent No. 1 admits and acknowledges that the sharing of transmission line will cause financial loss to the petitioner, as also the rejection of respondent No. 2's initial application for stringing of its lines on the petitioner's transmission towers. The respondent No. 1 admits that vide a letter dated 29.12.2017, it was approached by respondent No.2 for seeking approval for utilization of existing 4 Nos. of multi-circuit transmission towers, owned and operated by the petitioner. The respondent No. 1 admits that upon instructions, it had instructed respondent No. 2 to enter into an agreement with the petitioner, and furnish a joint deed of understanding for utilization of the 4 Nos. of the towers mentioning the details of maintenance issues and the shut-down requirements. The respondent No. 1 admits that a copy of the line sharing agreement dated 02.05.2018 entered into between respondent No. 2 and the petitioner was made available by respondent No.2, which permitted respondent No.2 only to use transmission tower Nos. 1 to 4, starting from the respondent No. 1's grid at the sub-station and towards the petitioner's power plant. The respondent No. 1 admits that upon furnishing of the said line sharing agreement, it accorded approval on 15.06.2018 to respondent No. 2 to use the petitioner's tower Nos. 1 to 4. The respondent No. 1 admits that on 02.08.2018, it was further requested by respondent No.2 for utilization of 14 nos. of towers laid down by the petitioner.
- m. It is stated that the reply of respondent No. 1 ends abruptly thereafter and makes no mention of the treatment accorded by respondent No.1 to respondent No. 2's letter dated 02.08.2018 requesting approval for utilization of additional 14 nos. of the petitioner's towers.

- n. It is stated that on a perusal of a letter dated 22.09.2018 of TSTRANSCO addressed to respondent No. 2, annexed to the reply, makes it clear that respondent No. 1 granted approval to respondent No. 2 to utilize additional 15 nos. of the towers owned, operated and laid down by the petitioner. The letter, inter-alia, reads as under:

"Please refer to your letter in the ref 4th cited, where in you have requested approval for utilization of additional 14 Nos towers of M/s. Pratmesh Solar farms Pvt Ltd. so as to complete and commissioning of proposed solar power plant.

In this regard, it is to inform that TSTRANSCO hereby accords approval for utilization of additional 15 Nos towers for a line length of 3.236 KM laid by M/s Prathamesh Solar farms Pvt Ltd duly paying an amount of Rs.69.74 Lakhs to TSTRANSCO towards 50% cost of sharing of existing 15 Nos towers.

Hence, you are requested to deposit an amount of Rs.69.74 lakhs by way of RTGS to TSTRANSCO towards 50% cost of sharing of existing 15 Nos towers laid by M/s Prathamesh Solar farms Pvt Ltd for taking up the subject works under supervision of TSTRANSCO.

... ..

- o. It is stated that there is no explanation and also no basis behind the above mentioned approval granted by respondent No. 1. The letter further makes it clear that before granting the approval to respondent No.2 to utilize the petitioner's additional towers, respondent No. 1 did not apply the same benchmark as it had applied before while granting approval with respect to use of the tower nos. 1 to 4. The respondent No.1 was well-aware that the said towers were owned by the petitioner and thus, had asked respondent No. 2 to enter into an agreement with the petitioner for use of the tower Nos. 1 to 4.
- p. It is stated that what is interesting to note here is that even before the said approval was granted on 22.09.2018 by respondent No. 1 to respondent No. 2 to use additional transmission towers of the petitioner, the petitioner had written a letter dated 27.08.2018 to respondent No. 1, annexed to the reply at page 15, stating that respondent No. 2 is illegally

stringing its transmission lines on the petitioner's transmission tower Nos. 5 to 18, wherein as per the approved line sharing agreement, it could only make use of the petitioner's tower Nos. 1 to 4. However, in spite of the above letter, the respondent No. 1 granted approval to respondent No.2 to utilize additional 15 nos. of the transmission towers of the petitioner.

- q. It is stated that further, the respondent No. 1 did not take any steps to verify respondent No.2's claim made in its letter dated 02.08.2018, annexed to the reply at page 13, and / or stop respondent No. 3 from continuing to illegally use the petitioner's transmission towers. Unfortunately, respondent No. 1 did not even reply to the said letter of the petitioner.
- r. It is stated that respondent No. 1's letter dated 22.09.2018 is vitiated by the fraud committed by respondent No. 2 upon the petitioner as well as on respondent Nos. 1 and 3, by misrepresenting that it had secured the required consent and permission of the petitioner to utilize its transmission towers. If respondent No. 2's plant is permitted to continue operation in such circumstances, it would amount to perpetuating a fraud, and rewarding and incentivizing the illegal acts of respondent No. 2, as well as cause significant financial loss and operational constraint to the petitioner, which is entitled to utilize its transmission towers as required.
- s. It is stated that, at the very least, once it has come to the knowledge of respondent No. 1 (either by way of this petition, or by way the petitioner's earlier representations) that there was no consent obtained by respondent No.2 for utilizing the additional 15 nos. of towers, it was the statutory duty and responsibility of respondent No. 1 to take proactive action against respondent No. 2.
- t. It is stated that in view of the above, the contents of para 16 of the reply are wrong, misconceived and denied. The 'grounds' qua respondent No. 1 under paras 47 to 54 of the petition and the 'prayers' under para 62 of the petition are thus reiterated.
- u. It is stated that at the outset, it is stated that the contents of the reply filed by the respondent No. 3 are devoid of merit and do not deal with

any of the issue raised by the petitioner in the present petition, and thus, needs no reply by the petitioner.

- v. It is stated that the petitioner however, seeks to draw the Commission's attention to the letter dated 20.11.2018 of the Chief Engineer of respondent No.1 (in para 5 of the reply). The respondent No. 1 being aware that respondent No. 2 had illegally laid down its transmission lines on the multi circuit transmission towers of the petitioner, informed the DISCOM that all the works pertaining to erection of 132 kV DC / SC transmission line from respondent No. 2's solar plant to the Wanaparthy sub-station were completed in full shape and ready for charging.
- w. It is stated that the synchronization approval is a product of fraud and misrepresentation by respondent No. 2, and consequently, as also the commissioning of respondent No. 2's project.
- x. In view of the above stated facts and circumstances, it is reiterated that this Commission may be pleased to:
 - a. Declare that the synchronization approval granted by respondent No. 1 to respondent No. 2 as null and void, having been obtained by misrepresenting facts, being improper and without the authority of law and in contravention of major guidelines for executing interconnection facilities by solar energy developers in the state of Telangana, issued by respondent No.1 itself;
 - b. Direct respondent No.1 to disconnect the power project of respondent No. 2 from the petitioner's transmission towers (except tower Nos. 1 to 4) with immediate effect;
 - c. Direct respondent No. 2 to approach the petitioner and compensate the petitioner for the loss caused due to the illegal activities to the petitioner as well as the use of multi circuit transmission tower Nos. 5 to 28;
 - d. Issue clear directions to respondent No. 1 as to how such cases should be processed in future.

7. The petitioner has filed a separate rejoinder to the counter affidavit of the respondent No.2. The averments of the same are extracted below.

- a. It is stated that the petitioner has filed the present petition under Section 86 (1) (c) and (f) of the Act, 2003 for adjudication of disputes which have arisen between the petitioner and the respondents inter-alia on the aspect of unauthorised and illegal use of the petitioner's dedicated transmission line to evacuate the power from the generating station of the respondent No. 2.
- b. The present petition was filed on 31.12.2018 and thereafter, a notice was issued by the Commission to the respondents to file their respective replies and posted the matter for hearing on 04.01.2020.
- c. It is stated that despite the above notice and the further opportunities granted by this Commission on 04.01.2020, 22.02.2020, 07.03.2020 and 11.02.2021 to respondent No.2 to file its reply, the same has only been filed on 20.02.2021, with a huge and un-explained delay of more than a year.
- d. It is stated that to the said reply dated 20.02.2021 filed by respondent No. 2, the petitioner is hereby filing its rejoinder as under.
- e. It is stated that at the outset, it is stated that the contents of the reply filed by respondent No. 2 are devoid of merit and do not deal with any of the issues raised by the petitioner qua respondent No. 2 in the present petition.
- f. It is stated that it is wrong that the petitioner has failed to make out a case for grant of any relief by the Commission. In fact, in the petition, the petitioner has specifically demonstrated the wrongful and illegal acts of unauthorizedly using the petitioner's transmission towers by respondent No.2 and has further explained the losses being meted out to the petitioner on account of such acts.
- g. It is stated that the contents of paras 3 to 5 of the reply filed by respondent No. 2 do not require any rejoinder, except the timeline of respondent No.2 undertaking a detailed survey of the route and discovering ROW issues. The petitioner requests this Commission to direct respondent No. 2 to place on record all the survey reports of the route, including the original detailed survey report for ascertaining the correct timeline and all the requests / applications made by respondent No. 2 to TSTRANSCO for route approval of its project. Further,

respondent No. 2 admits that as per the initial route approval accorded, it was required to construct a pooling substation at its project and connect it to the Wanaparthi sub-station by way of a 132 kV transmission line. This itself establishes the case of the petitioner, namely that to save cost and time taken for establishing a transmission line for evacuation of its power, respondent No. 2 approached the petitioner for use of its 4 towers (for which a formal agreement was executed, as per requirement of TSTRANSCO), but later strung its line on all balance towers (for which neither a formal agreement was executed nor any sent was given to the respondent No. 2 by the petitioner).

- h. It is stated that the letter dated 21.01.2017 nowhere mentions the length of the transmission line. Further, the line arrangement that has been attached with the said letter by respondent No. 2 and by respondent No. 1 are totally different. Both the respondents 1 and 2 have placed-on-record completely different diagrams of the line arrangement, while alleging that petitioner has consented for utilization of the same by respondent No. 2. Not only is respondent No. 2 trying to mislead this Commission, but is also engaging in playing fraud on this Commission. Both the respondents be put to strict proof to prove their respective cases. The annexure along with the letter dated 21.01.2017, placed by respondent No. 2 bears the stamp from the petitioner before this Commission. Strangely, the letter dated 21.01.2017 placed by respondent No. 1 contains an annexure bears the stamp of respondent No. 2 and is also signed by one of its officers. Further, the line arrangements given in both the annexures are completely different. This one fact itself calls for strict enquiry from the office of this Commission.
- i. It is stated that in the reply filed by respondent No. 2, it admits of making a representation to respondent No. 1 for approval of utilization of the petitioner's transmission line, which representation was rejected by respondent No. 1. While it is respondent No. 2 case that the said representation was made on 20.05.2017, it is respondent No. 1's case that the said representation was made on 23.01.2017. The petitioner is unaware of both these representations and requests the Commission to

put both the respondents to strict proof to prove their respective cases. In any case, it is not disputed that the first representation made by respondent No. 2 for utilization of petitioner's transmission line, based on the petitioner's letter dated 21.01.2017, was out rightly rejected by respondent No. 1. Therefore, the letter dated 21.01.2017 can, under no circumstance, be taken as a consent from the Petitioner to respondent No. 2 to utilize any or every part of the transmission towers set up by the petitioner. In fact, the letter is nothing but an in-principal decision of the petitioner to permit respondent No. 2 to utilize its transmission towers based on an agreement being entered into in the future containing the commercial consideration for use of the same by respondent No.2. A perusal of the letter dated 11.09.2017 of respondent No.1 also clearly established that it did not read the petitioner's letter dated 21.01.2017 as a consent for line sharing by the petitioner, rather respondent No.1 expressly rejected it. It is thus wrong for respondent No.2 to contend that the consent letter of the petitioner dated 21.01.2017 was absolute, unconditional and was never withdrawn. It is also clear from the subsequent request dated 29.12.2017 made by respondent No.2 for approval of its revised route which included utilization of only 4 of the petitioner's transmission towers, for which the respondent No.1 requested for a joint deed of understanding/an express agreement to that effect between the petitioner and respondent No. 2. If indeed the consent letter dated 21.01.2017 was considered to be absolute and unconditional and to be valid in perpetuity, there would have been no requirement of entering into a joint deed of understanding/an express agreement between the petitioner and respondent No. 2. It is only an after-thought (and entirely contrary to the factual position) by respondent No. 2 to contend that the letter dated 21.01.2017 of the Petitioner is a consent for utilization / sharing of the 2nd circuit of its 132 kV transmission line.

- j. It is stated that in the reply, respondent No. 2 admits and acknowledges that after its initial request for utilization of the petitioner's transmission towers was rejected by respondent No. 1, it revised its route profile and

made a representation dated 29.12.2017 to respondent No.1 for utilization of only 4 transmission towers (Nos. 1 to 4) of the petitioner.

- k. It is stated that in the reply, respondent No. 2 admits that with respect to its representation dated 29.12.2017 for approval of its revised route involving utilization of the petitioner's transmission tower Nos. 1 to 4, respondent No. 1 asked respondent No. 2 and the petitioner to execute a joint deed of undertaking duly mentioning the details. It is imperative to note that had respondent No. 1 considered the earlier consent letter dated 21.01.2017 of the petitioner to be absolute and unconditional and to be valid in perpetuity, it would not have made any such request and have asked the parties to enter into an agreement. The contention of estoppel sought to be raised by respondent No. 2 is without any merit. The letter dated 21.01.2017 is not by any means a consent by the petitioner to simply use all its towers for a transmission line less than 6.14 kms. The veracity of the said letter is itself in doubt and the entire case of respondent No. 2 is based on this letter. None of the elements of estoppel gets satisfied. The petitioner's conduct has been to the contrary and immediately upon coming to know that respondent No. 2 was illegally stringing its line on the balance towers of the petitioner, objections were raised at all levels, including filing of FIR, representation to the collector, etc.
- l. It is stated that in the reply, respondent No. 2 admits entering into an agreement with the petitioner for sharing of transmission line with respect to the 4 transmission towers of the petitioner on 02.05.2018. It is only after the said agreement was submitted to respondent No.1 that respondent No. 1 approved respondent No. 2's revised route. It is to be noted that the line sharing agreement only envisaged sharing of 4 towers of the petitioner by respondent No. 2. Further, Articles 11.2 and 11.3 of the said agreement recognized that in case respondent No.1 intends to use the 4th circuit of the common facilities, that is these 4 towers, it can request the same to the petitioner and respondent No. 2. In the event the parties allow respondent No. 1 to use the 4th circuit, the parties would not claim any costs for the same or seek any reimbursement from respondent No. 1. This by means, is a general right to respondent No. 1

to use the entire transmission line or any combination of towers of the petitioner as and when it pleases. In fact, such contention is against the basic tenets of the contract and cannot be countenanced in law either. The petitioner craves reference to the provisions of the said line sharing agreement for their true scope and application.

- m. It is stated that in the reply, respondent No.2 acknowledges making another representation on 02.08.2018 to respondent No. 1 for approval of additional 14 towers of the petitioner. The perversity in the above action of respondent No. 2 is such that the petitioner, whose transmission towers were sought to be utilized, was however not made aware of the said representation. Further, the contents of respondent No. 2's letter dated 02.08.2018 are also wrong and are denied. It is wrong and denied that respondent No. 2 paid an amount of Rs. 2,35,00,000 to the petitioner for utilization of the additional towers. The respondent No. 2 should be put to strict proof of such a statement since no records indicate that such payments were made by respondent No. 2 to the petitioner.
- n. It is stated that it is wrong and denied that the execution of the line sharing agreement dated 02.05.2018 does not in any manner dilute or take away the specific and unequivocal consent accorded by the petitioner. It is not disputed that respondent No. 2's initial request, which was based on the letter dated 21.01.2017 of the petitioner for utilization of its transmission towers was not approved by respondent No. 1. This means that respondent No. 1 did not accept the letter as a general consent for line sharing by the petitioner, rather expressly rejected it. It is also clear from the subsequent request made by respondent No. 2 for approval of its revised route which involved utilization of only 4 of the petitioner's transmission towers, for which the respondent No.1 requested for a joint deed of understanding/an express agreement to that effect between the petitioner and respondent No. 2. If indeed the letter dated 21.01.2017 was considered to be absolute and unconditional consent and to be valid in perpetuity, there would have been no requirement of entering into a joint deed of understanding / an express agreement between the petitioner and respondent No. 2 and also for

respondent No. 1 to direct the petitioner and respondent No. 2 to enter into an agreement.

- o. It is stated that in any case, the veracity of the letter dated 21.01.2017 is itself in doubt since the version produced by respondent No. 2 and respondent No. 1 of the same letter in these judicial proceedings before this Commission are different. Therefore, it would be appropriate for the Commission to ignore the said letter dated 21.01.2017 altogether as well as impose cost on respondent No. 2 and respondent No. 1 for seeking to mislead the Commission.
- p. It is stated that it is also wrong and denied that the petitioner never raised any questions or issues. It is a matter of record that the petitioner had written a letter dated 27.08.2018 to respondent No. 1, annexed to respondent No. 1's reply at page 15, stating that respondent No. 2 is illegally stringing its transmission lines on the petitioner's transmission tower Nos. 5 to 18, wherein as per the approved line sharing agreement, it could only make use of the petitioner's tower Nos. 1 to 4. It is also important to note that the said letter dated 27.08.2018 was written to respondent No. 1 even before respondent No. 1 approved utilization of additional towers of the petitioner by respondent No. 2 on 22.09.2018. It is also wrong and denied that respondent No. 1 has the power and authority to grant such permission to respondent No. 2 without obtaining any consent of the petitioner. The petitioner is the lawful owner of the transmission corridor set up by it for its own use and no one can make use of its property without its consent.
- q. It is stated that there is also no explanation and no basis behind the approval granted by respondent No. 1 on 22.09.2018 to respondent No. 2 for utilization of additional towers of the petitioner. In fact, this is the very ground on which the present petition seeks initiation of Section 142 proceedings against the erring officers of respondent No. 1.
- r. It is stated that the letter further makes it clear that before granting the approval to respondent No. 2 to utilize the petitioner's additional towers, respondent No. 1 did not apply the same benchmark as it had applied while granting approval with respect to use of the tower Nos. 1 to 4. The respondent No. 1 was well aware that the said towers were owned by

the petitioner, and thus, had asked respondent No. 2 to enter into an agreement with the petitioner for use of the tower Nos. 1 to 4.

- s. It is stated that the contents of para 14 of the reply filed by respondent No. 2 are wrong and are denied. It is not clear as to what standardized terms and conditions are being referred to by respondent No. 2 under which sanctions / approvals are granted by respondent No. 1. The respondent No. 1 cannot grant any general sanction or approval for any developer to use the facilities / transmission towers of another developer. These matters are in the contractual realm and respondent No. 1's role is limited to assessing the technical justifications submitted by the parties who seek such use of transmission towers of others. Further, the letter dated 27.01.2018 which states that respondent No. 1 will utilize the other 2 circuits of multi circuit tower line at its discretion as per technical feasibility does not mean that such usage would be a unilateral action without any consent from the petitioner. In fact, Articles 11.2 to 11.4 of the line sharing agreement reads as under:

“11. OWNERSHIP & SHARING RIGHTS

11.2. It is agreed between the Parties that in case, TSTRANSCO intends to use the fourth circuit of the Common Facilities for its own purpose, it can use the same as free of cost.

11.3. Pursuant to above clause, in the event parties allowed TSTRANSCO to use fourth circuit of the Common Facilities then its agreed that parties will not insist TS Transco on any compensation for line shut down. However, TS TRANSCO must intimate the parties at least 10 days prior to any forceable shutdown / line clearance or any O & M maintenance to be undertaken,

11.4. Parties will not make claim with TS TRANSCO regarding reimbursement of cost of Common Transmission Lines."

A plain reading of the above indicates that only the 4th circuit of the 4 towers, if intended to be used by respondent No. 1 could be permitted by the petitioner without demanding any reimbursement or costs. Without prejudice to the above, the issue in the present

petition pertains to the illegal use of the 2nd circuit by respondent No. 2 and not the 3rd and 4th circuits.

- t. It is stated that the contents of para 15 of the reply filed by respondent No. 2 are wrong and are denied. The respondent No. 2 cannot imagine that the purpose of construction of multi-circuit towers is for charity and would enable others to use the very same corridor to put up transmission lines without making further efforts. Surely, it is understood that multi-transmission lines are in the very same corridor, but this does not mean that an illegal and unauthorized use of the towers set up by one generator by another is permitted. It is disingenuous on the part of respondent No. 2 to contend that no loss or prejudice is caused to the petitioner by respondent No. 2 utilizing a single circuit out of the multi-circuit towers constructed by the petitioner. Such contention would lead to chaos and would mean that as long as additional circuits are available on the towers constructed by a generator / transmission company, any person can claim to use the same, without either paying proper compensation or even taking permission from the generator or the transmission company. Furthermore, it goes without saying that in the event the petitioner would like to utilize its towers and additional circuits, it would be precluded from doing so by a trespasser that is respondent No. 2 in the present case.
- u. It is stated that the contents of para 16 of the reply filed by respondent No. 2 are wrong and are denied. The interim order dated 28.11.2018 has been obtained by respondent No. 2 by not placing the correct facts and instead, by suppressing various facts from this Commission. The respondent No. 2 has not only made illegal and unauthorized use of the petitioner's transmission towers, it has also made various fraudulent representations containing wrong information to respondent No. 1 and have obtained required consents from respondent No. 1 and the distribution licensees on the basis of such fraudulent representations. The respondent No. 2 has also put the petitioner's power plant as well as human lives at risk by directing its personnel to illegally use the additional towers of the petitioner. If respondent No. 2's plant is permitted to continue operation in such circumstances, it would amount to

perpetuating a fraud, and rewarding and incentivizing the illegal acts of respondent No. 2, as well as cause significant financial loss and operational constraint to the petitioner, which is entitled to utilize its transmission towers as required.

- v. It is stated that it is reiterated that since commissioning of respondent No. 2's project was based on the above-explained fraudulent actions, and illegal and unauthorized use of the towers set up by the petitioner, the commissioning of respondent No. 2's project also needs to be called into question by this Commission.
- w. It is stated that the petitioner has dealt in detail with all the contentions raised by respondent No. 2 in the foregoing paragraphs. Since the para-wise reply by respondent No. 2 is a reiteration of the contents of paras 1 to 16 of its reply, the petitioner reiterates the contents of the rejoinder above and the petition filed. As such, no separate para-wise rejoinder is being filed. Further, the contentions and averments of respondent No. 2 to the contrary are wrong and are denied.

8. The Commission had heard the counsel for the parties extensively and thoroughly examined the material placed on record. It had the occasion to examine the matter in the context of rival claims by two generators and two licensees in all as issue spread across all the parties. The hearings took place on several dates and the arguments as recorded by the Commission are extracted below.

Record of proceedings dated 04.01.2020:

“... ... The counsel for the petitioner stated about the issue involved in the petition and that the matter should be taken up for consideration by admitting it and calling for counter affidavits of the respondents. On the issue of non-serving of petition on the parties, the counsel for the petitioner agreed to serve a fresh copy to them. The counsel for the respondents sought time of four weeks to ascertain the factual position about stringing of transmission line on the towers of the petitioner by the 2nd respondent project and also to file counter affidavit. The counsel for the petitioner sought additional two more weeks after the four weeks period for filing rejoinder if any.”

Record of proceedings dated 22.02.2020:

“... .. The counsel for the petitioner stated that the counter affidavit on behalf of the licensee is received, but the counter affidavit of the contesting respondent No.2 is necessary. As agreed the counsel for the petitioner had sent mail to the respondent No.2 and a notice was also served on behalf of the Commission, as such, the matter may be adjourned.”

Record of proceedings dated 07.03.2020:

“... .. The counsel for the respondent No.2 has filed vakalat and sought time for filing counter affidavit. He sought four weeks' time. The counsel for the petitioner has stated that all the pleadings in the matter should be directed to be completed well before the next date of hearing. The pleadings shall be completed by 13.04.2020. Accordingly, the matter is adjourned.’

Record of proceedings dated 11.02.2021:

“... .. The counsel for the petitioner stated that on the last occasion the counsel for respondent No. 2 sought time for filing counter affidavit, but no counter affidavit is filed in the matter. The counsel for respondent No. 1 and the representative of the respondent No. 3 stated that they have filed the counter affidavit in the matter.

Considering that the pleadings are incomplete, the matter is adjourned and time is granted to respondent No. 2 to file counter affidavit immediately duly serving the same to all the parties through email/physical form, as otherwise, the Commission will proceed with the matter and hear the same finally.”

Record of proceedings dated 22.02.2021:

“... .. The counsel for the petitioner stated that he has received counter affidavit of the respondent no. 2 only the other day and he is required to file rejoinder against the said counter affidavit. He needs two weeks time to file the same. The counsel for respondent No. 1 and 2 as well as the representative for respondent No.3 have no objection for the same. Accordingly, the petitioner shall file rejoinder on or before 10.03.2021 duly serving a copy of the same to the respondents through email or in physical form. Accordingly, the matter is adjourned. “

Record of proceedings dated 18.03.2021:

“... .. The counsel for the petitioner sought the hearing to be held as a last matter. However, the Commission noticed that the counsel was not in the dress

code of an advocate. In view of the above, the matter is adjourned, despite the request made by the counsel on record for petitioner to hear the matter.”

Record of proceedings dated 28.06.2021:

“... .. The counsel for the respondent No. 2 pointed out that certain documents relating to permission accorded to the petitioner and respondent No. 2 are not part of the record and that the transmission company be directed to place the same before the Commission. The counsel for petitioner opposed the same and stated that all the relevant documents relating to both the parties are available on record and no further documents are required to be filed. The counsel for respondent No. 2 made an attempt to show as to what are the documents that are not found on record, which have been rebutted by the counsel for the petitioner. However, the counsel for respondent No. 1 sought time, stating that though arguments were heard on the last occasion of the counsel for the petitioner, he is not ready to make submissions in the matter.

While making it clear that no further adjournment will be given, the parties are directed to place on record all the documents, which are appropriate to the case, which are being relied upon by them with a copy to the other parties well in advance. Accordingly the matter is adjourned.”

Record of proceedings dated 15.07.2021:

“... .. The counsel representing the respondent No. 2 sought adjournment due to pre-occupation of the counsel for respondent No. 2 before the Hon'ble High Court. The counsel for petitioner vehemently opposed the request of the respondent No. 2 stating that the Commission had adjourned the hearing with a clear understanding that the respective parties will make submissions without fail on the next date of hearing. It is her case that the matter has been hanging over for the last three years. However, the Commission considering the fact that the respondents have to make submissions in the matter finally, adjourned the matter with an observation that the matter will be proceeded with, even if no submissions are made by the respondents on the next date of hearing.”

Record of proceedings dated 29.07.2021:

“... .. The counsel for the petitioner stated that the submissions on the part of the petitioner have been concluded on the earlier date of hearing.

The counsel for the respondent No. 1 stated that the matter does not attract the jurisdiction of the Commission, as it is a dispute between two generators.

Section 86 (1) (f) of the Act, 2003 is not intended for resolution of disputes between the generators. Insofar as transmission lines are concerned, the same are owned and maintained by the transmission licensee, ones they have been constructed and handed over to the transmission licensee. It is the duty and right of the transmission licensee to use the available towers and lines according to the requirement and neither of the parties have any authority over the transmission towers and line.

The counsel for respondent No. 2 stated that the said respondent had requested respondent No. 1 to make available the transmission towers and line to an extent of four towers as it is facing land availability and right of way issues. In pursuance of the above said request, the transmission licensee required the respondent No. 2 to have an agreement with the other generator, who had established the said line for sharing purpose and thereafter, it will consider further action in favour of the respondent No. 2. Accordingly, it entered into an arrangement with the petitioner for utilization of four towers for stringing the line of the respondent No. 2 to that extent. Thereafter, the plan for synchronization to the grid was undertaken.

The case of the counsel for respondent No. 2 is that the respondent No. 2 separately applied for establishment of transmission line by stringing another line on the existing towers laid by the petitioner. Having permitted the respondent No. 2 to lay additional line upto four towers by the petitioner, it cannot now allege that action be taken against the respondent for using the entire stretch of the line. The claim that there are damages also does not arise. The counsel for the respondent No. 2 relying on various documents filed by the petitioner and respondent No. 2, stated that no relief can be granted to the petitioner in the matter as the damages alleged have not been quantified, violation of safety norms alleged has not been shown specifically shown with reference to any rule or regulation and there is no action required for alleged violation of the respondent No. 1 in allowing the respondent No. 2 to lay the line contrary to and without following safety standards as notified by the Commission.

The counsel for petitioner stated that the petition is maintainable as has been held by the Hon'ble Supreme Court in M/s. Gujarat Urja Vikas Nigam Limited Vs. ESSAR Power Limited reported in 2008 (4) SCC 755. It is the case of the

counsel for petitioner that the dispute squarely falls within the jurisdiction of the Commission as it is between two generators and the licensee. In the above said judgment, the Hon'ble Supreme Court interpreted the word 'and' appearing in Section 86 (1) (f) of the Act, 2003 to mean either 'and' or 'or' and it can be used vice versa. In this case, the petitioner and respondent No. 2 are generators and the respondent No. 1 is the licensee. It is also her case that transmission licensee itself upon the request of the respondent No. 2 had required them to sign an agreement for extending permission. Thus, the action of the transmission licensee is also violative of the statutory rules and regulations. It has been alleged that despite informing the licensee about the stringing of the line without taking a load shedding, the transmission licensee did not bother to take safety measures and endangered the life and property of the people working around there.

The counsel for respondent No.2 stated that there is no specific pleading about safety and damages as also the correspondence made by the respondent No. 2 with respondent No. 1 including the plan submitted for execution of work for transmission line. The counsel for petitioner would urge that since the line has been executed by the petitioner appropriate relief may be granted as sought for in view of the material available on record.”

9. Now the issue that arises for consideration is whether the petitioner is entitled any relief and whether there is violation of the Act, Rules and Regulations by any of the parties?

10. The issue raised in the petition is primarily with reference to utilisation of the Multi Circuit Transmission (MCT) towers erected by the petitioner and allowed to be used by respondent No. 2 as permitted by respondent No. 1. Under the terms of Power Purchase Agreement (PPA), the Solar Power Developers have to erect and maintain the Interconnection Facilities including Transmission Lines from the generating point to the Interconnection Substation [i.e., Point of Connection (POC)]. It is a fact that the petitioner for the purpose of evacuation of power generated from its 50 MW solar power plant has erected the necessary Interconnection Facilities from its solar power plant upto the interconnection substation by providing extra capacity i.e., multi circuit other than required by it as per - a) route proposal accorded by respondent No. 1 vide

letter dated 16.05.2016, b) profile and tower schedule from Loc.No.1 to Loc. No.28 for erection of 132 kV/DC / SC line from, existing 220 / 132 kV SS Wanaparthy substation to petitioner's solar power project for evacuation of generated power as approved by respondent No. 1 vide letter dated 08.06.2016.

11. It is also a fact that the petitioner had allowed the respondent No. 2 to lay its transmission lines on the multi circuit towers established by the petitioner to the extent of 4 towers by entering into an agreement for sharing of transmission line upon directions of the respondent No. 1. However, from the pleadings of the parties, it is established that the respondent No. 2 overstepped the agreement reached between it and the petitioner and laid transmission lines on additional 14 towers apart from what has been permitted to it.

12. Several contentions have been raised by either side including the transmission and distribution licensees which have raised several questions as to the actions of the petitioner, respondent No. 2 as well as the actions of the licensees themselves. While it is an agreed fact that the power developer establishing a power plant particularly a solar plant under the bidding route is required to establish the interconnection facilities to the interconnection substation, but such action should be subject to availability of right of way and necessary space at the connecting substation for installing the necessary equipment.

13. The distribution licensee had allowed 2 major solar power projects to be connected to the same substation but appears to have not assessed the right of way issues before allowing the projects to be established. This failure has resulted in the present uncalled for and unnecessary litigation between the parties. Further, the transmission licensee also did not appreciate as to why it should allow or it should not allow either the petitioner or the respondent No. 2 to lay the multi circuit lines in excess of the requirement.

14. In this case, originally the petitioner had conveyed its consent to the respondent No.1 on 21.01.2017 as below:

“With reference to above referred sl. No.03, wherein the route profile has been approved for 132 kV/DC TL Construction for 50 MW solar power project at Padmati Tanda (V), Wanaparthy (D), M/s. Prathamesh Solar farms Ltd. having

registered office at Suzlon”, 5, Shrimali Society, Near Shri Krishna Complex, Navrangpura, Ahmedabad, do hereby certify that we are the rightful owner of 132 kV / DC TL, Wanaparthy (D).

Further, we have permitted M/s. Mytrah Agriya Power Private Limited having the registered office at 8001, Q-City, S. No.109, Nanakramguda, Gachibowli, Hyderabad (500032), to use/share the second circuit of our 132 kV D/C transmission line in accordance with the proposed arrangement referred in annexure (Wanaparthy 132 kV DC line arrangement attached. It is hereby solemnly affirmed that we have no objection in the above property / 132 kV transmission line towers being used for the business purpose.”

This document has been placed on record by the respondent No.2 and it clearly establishes that the petitioner has itself allowed the use of transmission towers laid by it by the respondent No. 2 and it is in response to the communication of the respondent No.1 only. As such, all the parties to this petition are in the knowledge of this development. This document is also filed by the respondent No. 1 as part of its material papers, therefore, the same cannot be denied.

15. The proposal for sharing of tower laid by the petitioner by stringing 2nd circuit for a span of 6.14 km was rejected by respondent No.1 vide letter dated 1.09.2017 on the grounds that the sharing of the transmission line is new business which would create financial loss to respondent No. 1.

16. Subsequently, the respondent No. 2 (having earlier obtained permission to lay their line) again went back to the transmission licensee seeking permission to string lines on 4 of the multi circuit towers belonging to the petitioner and thereupon the respondent No. 1 issued a letter dated 27.01.2018 requiring the petitioner and the respondent No.2 to enter into arrangement with regard to usage of the towers required by respondent No. 2. In the said letter, the transmission licensee has stated the following, being reproduced again at the cost of repetition:

“It is to inform that M/s. Mytrah Agriya Power Pvt Ltd (SPV of M/s. Mytrah Energy (I) Ltd vide ref (4) cited has requested approval for utilisation of existing 4 nos multi circuit towers erected by M/s. Prathamesh solar farms Pvt Ltd SPV of Suzlon Energy Pvt Ltd on cost basis for erection of 132 kV DC/SC line from

proposed solar power plant to 132 kV Wanaparthy SS due to severe ROW issues near 132 kV Wanaparthy substation.

In this regard, a joint deed of undertaking to be executed on non-judicial stamp paper worth Rs. 100/- by both parties duly mentioning the details of maintenance issues, shut down requirements. All the technical related issues will be as governed by TSTRANSCO.

Further, TSTRANSCO will utilise the other 2 circuits of multi circuit tower line at its discretion as per the technical feasibility / field conditions.”

17. Now, it is appropriate to state that the parties have not applied their mind as to permissions, consent, authorisation and approval vis-à-vis between them and between the contesting parties. It is appropriate to state that the transmission licensee ought to have made attempts to settle the right of way issue before allowing the petitioner and respondent No.2 with regard for sharing of transmission tower. From the extract above of the two letters it has to be noticed that the petitioner made unequivocal consent for utilisation of the line, but the transmission licensee lost sight of the consent and allowed the respondent No. 2 to obtain fresh limited consent by entering into an agreement for sharing of it. At the same time the respondent No.2 has not stated anything about the earlier consent given by the petitioner and went on to request the respondent No. 1 to allow it to utilise the transmission tower of the petitioner to a certain extent. This act of the respondent No. 2 and subsequent overstepping despite the consent of the petitioner has led to the present dispute.

18. Prima facie, as stated in the clauses of the PPA, the solar developers, both the petitioner and respondent No. 2 have established solar projects of identical capacity located at different places in Wanaparthy district but were required to connect to the same substation. Since right of way issues arose for the respondent No. 2 it initially obtained consent of the petitioner for laying lines on the towers established by the petitioner and later after rejection of the same by the respondent No. 1 sought to identify the specific towers on which it would lay lines. Alas, subsequently, the respondent No.2 trespassed to string line beyond the consent of the respondent No. 1 by discarding the agreement between it and the petitioner with the aid and help of respondent No. 1.

19. The transmission licensee despite being receiving complaint about the actions of the respondent No. 2 beyond its consent, had not acted on the same. This resulted in unnecessary hostile atmosphere between the petitioner and respondent No. 2. Thus, the lapses on the part of all the parties are apparent on the face of record. Inasmuch as the transmission licensee failed by allowing unconnected people to handle the lines without its proper supervision, as alleged by the petitioner.

20. Coming to the resolution of the issue at the cost of repetition, the provisions of the PPA at clause 1.27 provide the interconnection facilities and includes the transmission lines along with related infrastructure. This provision is similar to both the petitioner and respondent No. 2 which is extracted below:

“1.27. **“Interconnection Facilities”** means all the equipment and facilities including but not limited to all metering, switchgear, substation facilities, **transmission lines** and related infrastructure, to be installed at the voltage of delivery at the solar power developer’s expense from time to time throughout the term of the agreement, necessary to enable the DISCOM to economically, reliably and safely receive delivered energy from the project in accordance with the terms of this agreement. The solar power developer has to bear the entire expenditure of interconnection facilities for power evacuation as per the approved estimate by the personnel of DISCOM.” (emphasis supplied)

Further, in the agreement between the petitioner and respondent No. 2 there is a provision of ‘Common Facilities’ and the same is reproduced hereunder:

“**Common Facilities**” shall mean the Transmission line location nos. 01,02,03 & 04 starting from TRANSCO grid towards PSL Project including all associated infrastructure such as multi circuit towers, its foundations, tower stubs, bolts and nuts which are shared by PSL with the MAPPL for the evacuation of power.

Both the clauses have to be read in conjunction and harmoniously, which would ensure compliance of both the provisions.

21. The petitioner mainly sought the reliefs of declaring the synchronisation approval granted by respondent No. 1 to respondent No. 2 for utilisation of additional 15 MCT towers through the letter dated 22.09.2018 as null and void, to direct the respondent No. 1 to disconnect the line of solar power project of respondent No. 2 from the additional 15 transmission towers laid down by the petitioner and for initiation

enquiry against erring officials of respondent No. 1 for according approval for utilization of additional 15 MCT towers erected by petitioner in violation of the Electricity Act, 2003 and the Guidelines for Executing Interconnection Facilities by Solar Energy Developers in Telangana State. Further, the petitioner stated that the respondent No. 2 not only violated the PPA but also agreement reached between them with regard to utilisation of towers and laid lines beyond the four locations agreed by them upto tower No.17. Further, the petitioner prayed the Commission to take action u/s 142 of the Act, 2003 for violating the Grid Standards enumerated under Section 34 of the Act, 2003 by the transmission licensee.

22. The Commission as observed earlier notices and presumes that the inter se correspondence made by the parties was in the knowledge of either of the parties. The transmission licensee as well as respondent No. 2 conveniently acted against the interest of petitioner without informing it. The petitioner on the other hand has also abdicated its responsibility by simply representing to the transmission licensee at the relevant time and realised its difficulty only subsequently after the work is completed and the respondent No. 2 has synchronised its project. The respondent No. 2 raised right of way issues in the earlier proceedings before the Commission in O. P. No. 38 of 2018 seeking synchronisation and extension of SCOD but appears to have not mentioned the real arrangement made by it to overcome the right of way issue. All these factors contributed to the present litigation. Therefore, the Commission has no option but to set right the lapses on the part of all the parties and to mitigate the need for further litigation.

23. This Commission is of the considered view that no useful purpose is going to serve at this belated stage if such disconnection of the line is ordered as sought by the petitioner which may lead to further complications. To meet the ends of justice and to make good of the loss sustained by petitioner, it is proper and appropriate to direct the respondent No. 1 to call for both the petitioner and respondent No. 2 for execution of another Joint Deed of Agreement for the usage of additional 15 towers which are now being under unauthorised use in the same manner which the petitioner and respondent No. 2 executed earlier for the usage of 4 MCT towers. The respondent No. 2 shall extend its whole hearted cooperation with respondent No. 1 and petitioner in executing another Joint Deed of Agreement for the usage of additional 15 MCT

towers. In case the respondent No. 2. fails to come forward in executing another Joint Deed of Agreement and fails to make good the loss suffered by the petitioner then either the petitioner or the respondent No. 1 may approach this Commission for necessary instructions. Further, the respondent No. 1 has to refund the amounts collected from respondent No. 2 towards line charges, if any, for laying the transmission lines over the towers of the petitioner, however, the respondent No. 1 has right to collect the legitimate supervision charges for laying the transmission line as per the rules in vogue. The parties are directed to report the compliance of this direction at an early date.

24. The Commission in order to facilitate functioning of the both the projects and to avoid further litigation has arrived at the above findings and the settlement in the matter. Suffice it to state that though there are clear instances of violation of the Act 2003 and rules thereof by the parties, it does not wish to venture to dwell into the same for the reason that no tangible result would be achieved except penalising the transmission licensee for the lapses of all the parties, as in any case, it is being burdened otherwise. At the same time, this Commission expects the transmission licensee to properly assess the requirement of transmission lines from the generating stations to the grid substations and advise the generators properly in future.

25. Accordingly, the Commission allows the petition to the extent indicated in the preceding paragraphs and requires petitioner and respondents to act upon the observations made therein to put a quietus to the litigation.

26. Subject to observations made above, this petition is disposed of but in the circumstances without any costs.

This Order is corrected and signed on this the 23rd day of June, 2022.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D.MANO HAR RAJU)
MEMBER

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

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