



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.No. 17 of 2015
Date: 02-06-2018

Present
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

M/s. IL & FS Wind Farms Limited
The IL&FS Financial Centre, Plot C-22, 'G' Block
Bandra-Kurla Complex, Bandra (East)
Mumbai – 400 051, Maharashtra
Rep. by its Authorized Signatory

... Petitioner

A N D

1. Southern Power Distribution Company of Andhra Pradesh Limited
APSPDCL, Door No.19-13-65/A, Tiruchanoor Road
Behind Srinivasa Kalyanamantapam
Tirupati – 517 503, Chittoor District, Andhra Pradesh
 2. Transmission Corporation of Andhra Pradesh Limited
Vidyut Soudha, Khairtabad, Hyderabad – 500 082
 3. Andhra Pradesh Co-ordination Committee
Vidyut Soudha, Khairtabad, Hyderabad – 500 082
 4. New & Renewable Energy Development Corporation of Andhra Pradesh
Office: 5-8-207/2, Pisgah Complex, Nampally
Hyderabad – 500 001
- Respondents

This Original Petition has come up for hearing finally on 05-05-2018 in the presence of Sri D. Siva Darshan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the utilities. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

A petition under Sections 142, 143 and 129 of the Electricity Act, 2003 to direct the 1st respondent / Southern Power Distribution Company of Andhra Pradesh Limited to comply with the tariff orders of the Commission dated 06-09-2014 and

make good the short payment made for the electricity supplied by the petitioner from July, 2011 to November, 2012 with interest @ 21% per annum from July, 2011 till the date of payment, to punish the 1st respondent and its personnel for non-compliance with the orders of the Commission dated 31-03-2009, to award compensation of Rs.1,00,000/- towards losses suffered including opportunity cost due to such non-compliance and to initiate steps under Section 146 of the Electricity Act, 2003 against the contravention.

2. The petitioner also prayed for an interim relief of a direction to the 1st respondent to pay Rs.2,13,36,156/- being the short payment and interest @ 21% per annum till final payment.

3. The petitioner's case is that on allotment by the Non-Conventional Energy Development Corporation of Andhra Pradesh Limited on 10-02-1995, the petitioner commissioned its 6.5 MW wind power project at Ramgiri, Anantapur District in two phases, which commissioned on 06-11-1995 (3.5 MW) and 28-12-1995 (3 MW) respectively. A completion certificate was issued by the Corporation on 18-03-1996 and a Wheeling Agreement was entered into with the Andhra Pradesh State Electricity Board on 15-09-1995. The Andhra Pradesh government issued a policy for NCE projects on 18-11-1997 amended on 22-12-1998. On the formation of the Commission under the Andhra Pradesh Electricity Reform Act, 1998, a review was undertaken on renewable energy sector and orders were issued in O.P.No.1075 of 2000 on 20-06-2001. The Commission directed that the existing incentives be extended till 24-07-2001, that all NCE generators shall supply power to AP Transco / AP Discoms only and that the price applicable to the licensees for purchase shall be Rs.2.25 ps per unit with 5% escalation per annum with 1994-95 as the base year.

These and other directions were complied with by the petitioner by executing a Power Purchase Agreement with AP Transco on 24-03-2001 superseding all the terms and conditions of the Wheeling and Banking Agreement dated 15-09-1995. The Power Purchase Agreement and its underlying assets were transferred to the petitioner under an Agreement dated 08-09-2003. The power was being sold to AP Transco.

4. The Commission thereafter passed an order in O.P.No.1075 of 2000 on 20-03-2004 fixing the wind power tariff at Rs.3.37 / kWh. The petitioner was paid the said tariff from 01-04-2004 and subsequently till July 2011 vide orders of the Commission dated 31-03-2009. The then Central Power Distribution Company of Andhra Pradesh Limited filed O.P.No.15 of 2006 before the Commission seeking reduction of tariff in respect of the petitioner. On the Andhra Pradesh Reorganization Act, 2014 coming into force, the petitioner's plant located in Anantapur district was included in the 1st respondent and when O.P.No.15 of 2006 is still pending, the Commission passed the order dated 31-03-2009 continuing the tariff at Rs.3.37 / kWh. The decision of the Hon'ble Appellate Tribunal for Electricity dated 02-06-2006 was set aside by the Hon'ble Supreme Court in AP Transco Vs Sai Renewable Energy Private Limited (2011) 11 SCC 34 by an order dated 08-06-2010 holding that the State Electricity Regulatory Commissions have the power to fix the tariff for Non-Conventional Energy generators. The 1st respondent was therefore bound to pay the tariff as per the directions of the Commission. But, it took a decision unilaterally to pay only Rs.1.685 per kWh in violation of the orders of the Commission, resulting in short payment from July, 2011 to November, 2012. The short payment of Rs.96,22,792/- for FY 2011-12 in spite of demands by the petitioner makes the 1st respondent and its officers liable under Sections 142 and 146 of the Electricity Act,

2003. The Commission in its orders dated 06-09-2014 in O.P.No.15 of 2006 directed payment at Rs.3.37 / kWh and to settle the short payments within six months. The short payment of Rs.2,13,36,156/- for the period from July, 2011 to November, 2012 has to be hence made good and the 1st respondent, who is now making payment of Rs.3.37 / kWh did not comply with the orders of the Commission regarding short payment in spite of a number of representations and replied in its letter dated 01-11-2011 that the Commission can be approached concerning any grievance. Hence the petition without prejudice to the contentions in respect of upward revision of tariff.

5. In the counter filed on behalf of respondents 1 to 3, it was contended that the Power Purchase Agreement entered into by the petitioner was transferred to the then Central Power Distribution Company of Andhra Pradesh Limited and the respondents 1 to 3 were not the contracting parties in the period for which deficit price was paid. The petitioner failed to produce any material to show that it supplied power to the respondents in question and the petition is bad for mis-joinder or non-joinder of parties. Though Kurnool and Anantapur districts were assigned to the 1st respondent by the Andhra Pradesh Reorganization Act, it is not answerable for the liabilities in respect of cause of action that arose prior to 02-06-2014. Hence, the respondents 1 to 3 requested to dismiss the petition with costs.

6. The petitioner in its rejoinder contended that the order of the Commission in O.P.Nos.14 to 18 of 2006 dated 06-09-2014 to make good short payment within six months should be complied with and by virtue of Sections 53 and 68 (2) of the Andhra Pradesh Reorganization Act, the Government of Andhra Pradesh issued G.O.Ms.No.24 dated 29-05-2014 containing the guidelines for reassignment of the

distribution business of Kurnool and Anantapur districts and the liability of the 1st respondent is the same as that of Central Power Distribution Company of Andhra Pradesh Limited with regard to the two districts and accordingly the liability is now shifted to the 1st respondent which should be directed to pay the quantum of short payment with interest at 21% per annum till payment.

7. During the course of hearing, it was ascertained that the 1st respondent did not file any claim before the High Power Committee headed by Mrs. Shiela Bhide, IAS (Retd.) concerning the subject liability herein.

8. The points for consideration are:

Point No.1 Whether the 1st respondent is liable to make good the short payment for the electricity supplied by the petitioner including from July, 2011 to November, 2012 with interest at 21% per annum and whether the 1st respondent is further liable for any further action under Sections 142 and 146 of the Electricity Act, 2003 ?

Point No.2 To what relief ?

9. **Point No.1:** The Andhra Pradesh Reorganization Act, 2014 laid down in Section 92 that the principles, guidelines, directions and orders issued by the Central Government, on and from the appointed day, on matters relating to power generation, transmission and distribution as enumerated in the Twelfth Schedule shall be implemented by the successor States. The Twelfth Schedule in C.8 stated that the districts of Anantapur and Kurnool which fall within the jurisdiction of the A.P. Central Power Distribution Company Limited will now be assigned to the A.P. Southern Power Distribution Company Limited. On the Act coming into force with effect from 02-06-2014, the wind power unit of the petitioner stood reassigned to the

1st respondent with effect from that date and the rights and obligations of the Central Power Distribution Company of Andhra Pradesh Limited obviously were reassigned to the 1st respondent.

10. G.O.Ms.No.24 Energy (CC) Department, dated 29-05-2014 of the Government of Andhra Pradesh consequently reassigned the assets and liabilities to the 1st respondent in respect of the distribution business of the two districts of Kurnool and Anantapur with effective / appointed day of transfer of business as 02-06-2014. Para XVI of G.O.Ms.No.24 relating to agreements is crucial to the questions in issue herein and is as follows:

“XVI. **Agreements:** On the transfer and vesting of the distribution business of Kurnool and Ananthapur circles to APSPDCL in terms of the Act, APSPDCL shall be responsible in respect of Ananthapur and Kurnool for all contracts, rights, deeds, schemes, bonds, agreements, and other instruments of whatever nature to which APCPDCL was initially a party, subsisting or having effect on the effective date in the same manner as APCPDCL was liable immediately before the effective date and the same shall be in force and effect against or in favour of APSPDCL and may be enforced effectively as if APSPDCL had been a party thereto instead of APCPDCL”.

Para XVIII of the Government Order dealing with Assets and Liabilities stated that the assets and liabilities of the two circles of Kurnool and Anantapur have to be transferred to the 1st respondent as per Sections 53 and 68 (2) of the Electricity Act, 2003. The basis for apportionment of the assets and liabilities between APSPDCL and APCPDCL is the Audited Balance Sheet of APCPDCL as on 01-06-2014. It was clearly stated that the assets and liabilities which can clearly be assigned to the

operational units (Kurnool and Anantapur districts) be assigned to the 1st respondent based on the location. Para XXI clearly stated that any differences arising after the bifurcation in calculating the income and expenditure of the prior period have to be mutually resolved by the two distribution companies.

11. A look at the chronology of events relating to the petitioner since its birth up-to-date provides the background for appreciation of the mutual rights and liabilities of the petitioner and the 1st respondent. The documents on record commence from the proceedings of the Non-Conventional Energy Development Corporation of Andhra Pradesh Limited dated 10-02-1995, whereby the petitioner was allotted a wind farm of 6.5 MW at Ramagiri, Anantapur District. Consequently the petitioner entered into a Revised Wind Power Wheeling Agreement with the Andhra Pradesh State Electricity Board on 15-09-1995 as a sequel to the Memorandum of Understanding between the petitioner and the Non-Conventional Energy Development Corporation of Andhra Pradesh Limited. The Agreement is to be in force for 20 years and subsequently the petitioner entered into Power Purchase Agreement with the 2nd respondent on 24-08-2001 superseding the Revised Wind Power Wheeling Agreement dated 15-09-1995. This Agreement with the 2nd respondent is for a duration of 20 years from the Commercial Operation Date and in Article 2.2 of the Agreement, the tariff was agreed at Rs.2.25 per unit with escalation at 5% per annum with 1994-95 as the base year and to be revised on 1st April every year upto 2003-04, beyond which the purchase price will be decided by the Commission. A further review of purchase price was agreed to be made on completion of 10 years from the date of commissioning of the project, based on return on equity, O & M expenses and variable cost. It was agreed in Article 2.3 that the tariff is inclusive of taxes, duties and levies and Article 2.1 which provided for the purchase of delivered

energy and tariff did not provide for the liability for or payment of any interest. However Article 5.2 of the Agreement provided that for any payment made beyond the due date, the 2nd respondent shall pay interest at the rate of 10% per annum as per the existing nationalized bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction. Due Date of Payment was defined by Article 1.5 as 30 days from the Metering Date or the date of presentation of a bill or claim to the designated officer of the 2nd respondent, as the case may be.

12. Superseding this Power Purchase Agreement dated 24-08-2001, the petitioner and the 2nd respondent entered into another Power Purchase Agreement dated 08-09-2003. The tariff payable as per Article 2.2 of the Agreement is that applicable as on the date of commercial operation subject to review by the Commission from time to time, apart from a special review of purchase price on completion of 10 years from the date of commissioning of the project. The interest payable on payment beyond due date of payment under Article 5.2 is same as in the earlier Agreement.

13. The tariff payable for power from Non-Conventional Energy sources was initially governed by the policy framework by the Government of India of 1993-94 and the Government of Andhra Pradesh announced uniform incentives to all projects based on Renewable sources of Energy vide G.O.Ms.No.93 dated 18-11-1997 keeping in view the guidelines of the Ministry of Non-Conventional Energy sources, Government of India dated 13-09-1993. The Government of Andhra Pradesh issued an amendment by G.O.Ms.No.112 dated 22-12-1998 and after the Andhra Pradesh Electricity Reform Act, 1998 came into force, the Andhra Pradesh Electricity Regulatory Commission issued orders on 20-06-2001 in O.P.No.1075 of 2000 and

temporarily extended the existing incentives under G.O.Ms.No.93 as amended by G.O.Ms.No.112 till 24-07-2001. From August, 2001, all generators of Non-Conventional Energy were directed to supply power to the 2nd respondent herein only on the terms specified by the Commission and the order directing sale only to the 2nd respondent herein was stayed by the Hon'ble High Court. In respect of those developers, who accepted the order dated 20-06-2001, the Commission passed orders in R.P.No.84 of 2003 on 20-03-2004 fixing the base price as on 01-04-2004 at Rs.3.37 / kWh and as the projects have no variable expenses and negligible increase in maintenance cost, the tariff will be frozen for five years, to be reviewed thereafter.

14. The Commission again passed orders in O.P.No.5 of 2009 on 31-03-2009 continuing the tariff at the same rate from 01-04-2009 to 31-03-2014 subject to the final appellate orders of the Hon'ble Supreme Court, with the other terms and conditions remaining not modified.

15. There was correspondence between the parties and to the Commission in 2011 and 2012 about payment issues with the petitioner demanding payment with interest at the prevailing nationalized bank rates.

16. The Commission passed orders in O.P.Nos.14 to 18 of 2006 (including O.P.No.15 of 2006 filed by the 1st respondent against the petitioner) on 06-09-2014 directing that the present single tariff of Rs.3.37 per unit should be continued for all the projects under consideration till the expiry of the respective Power Purchase Agreements, subject to the terms and conditions indicated in the orders of the Commission in 2004 and 2009 and inclusive of all taxes. In Appeal Nos.31 and 8 of 2013, the Hon'ble Appellate Tribunal for Electricity in its Judgment dated 12-08-2013

directed interim payment at the same rate of Rs.3.37 per unit subject to adjustment on determination of tariff by the State Commission and in view of the final orders, nothing is left to be adjusted. Thus, the orders of the Commission became final and conclusive in view of the orders of the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court in AP Transco Vs Sai Renewable Energy Private Limited (2011) 11 SCC 34.

17. While the Power Purchase Agreement governing the relevant periods specified the rate of interest from the due date of payment to be 10% per annum as per the then existing nationalized bank rate and there was no material placed before the Commission by either party to indicate that this rate was reduced subsequently so that such reduced rate can be applied from the date of reduction as stipulated under the Power Purchase Agreements, the tariff was agreed under the Power Purchase Agreements to be determined by the Commission for the relevant period, which power of the Commission was upheld by the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court. The claim that the distribution company has taken a unilateral decision to pay only Rs.1.685 / kWh at 50% of the tariff fixed by the Commission is not disputed and the parties are not in dispute about the quantum of power supplied from July, 2011 to November, 2012 or short payment made by the 1st respondent to the petitioner for that period. The petitioner was also demanded interest since default in all its communications, but the 1st respondent did not dispute the same or the contractual stipulation of payment of interest in default in any of its communications. However, the Judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal Nos.31 & 8 of 2013 dated 12-08-2013 shows that the distribution licensee was permitted to pay an adhoc rate of Rs.1.69 per unit in O.P.No.15 of 2006 by an interim order passed by the Commission on 19-11-2012

and that interim order continued to be in force till the Hon'ble Appellate Tribunal for Electricity decided the appeal on 12-08-2013. So long as interim order was in force till it was set aside on 12-08-2013, the distribution licensee cannot be faulted for only paying as per the interim orders of the Commission and the petition itself shows that even the original orders dated 31-03-2009 were *subjudice* before the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court till 08-06-2010. Therefore, the 1st respondent cannot be considered to have defaulted in payment of the tariff payable so long as the interim orders of this Commission were in force, permitting it to pay at the rate it paid. It may also depend upon equitable considerations due to its filing O.P.No.15 of 2006 requesting the tariff to be fixed at Rs.1.43 per unit even by 20-03-2006, which was disposed of by the Commission only on 06-09-2014. The passing of the interim orders by the Commission deciding the adhoc tariff at Rs.1.69 per unit in I.A.No.6 of 2006 in O.P.No.15 of 2006 on 19-11-2012 after more than 6½ years of filing of O.P.No.15 of 2006 may be open to be contended by the 1st respondent as justifiably making it believe in the absence of any default in non-payment of the tariff fixed by the Commission at Rs.3.37 / kWh and paying only the amount permitted by the interim orders of the Commission. While the petitioner did not allege or prove any specific loss due to non-payment by the 1st respondent, the component of the contractual interest which is intended to compensate and not to penalize may not be automatically invocable under the circumstances. The interest stipulated in Article 5.2 of the Power Purchase Agreements between the petitioner and the 2nd respondent now invoked against the 1st respondent never stipulated 21% interest as now claimed by the petitioner and under both the Power Purchase Agreements, only 10% per annum was referred to as the rate of interest prevailing in respect of nationalized banks. No legal or factual

basis has been placed before the Commission by the petitioner to justify 21% interest per annum from July, 2011 till the actual date of payment. The petitioner did not claim to have taken any steps to execute the orders of the Hon'ble Appellate Tribunal for Electricity dated 12-08-2013 for payment of Rs.3.37 per unit for the energy supplied till the final determination of tariff by the State Commission and obviously the said direction was prospective and not relating to the energy supplied before the said orders, more particularly during the period interim orders of the State Commission were in force. This petition was filed before this Commission on 18-03-2015 and the petitioner did not take any steps for enforcement of the tariff at Rs.3.37 per unit even after disposal of O.P.No.15 of 2006 on 06-09-2014. Therefore, the entitlement of the petitioner to 21% per annum interest was not proved and its entitlement to interest at 10% as per Article 5.2 of the Power Purchase Agreements it had with the 2nd respondent is also absent during the period the interim orders of the Commission in O.P.No.15 of 2006 were in force. The relevant period was after O.P.No.15 of 2006 was filed for fixing a much lower tariff than what was even paid under the interim orders and due to various circumstances stated above, interest which is equitable and compensatory in nature cannot be imposed on the 1st respondent till the filing of the petition.

18. The above reasoning is further fortified by the fact that the Commission directed in O.P.Nos.14 to 18 of 2006 in its order dated 06-09-2014 that the short payments made by the licensees to the generators for supply should be adjusted within a period of six months from the date of the order i.e., by 06-03-2015. The Commission never considered the developers to be eligible for any interest or any other damages in any other form on the same set of facts as under consideration herein and as already stated, by 18-03-2015, the present petition has been filed.

While *pendente lite* and *post decreetal* interest have been recognized as being within the realm of adjudication but not contract, post decreetal interest can be considered as reasonable if the 1st respondent was still to commit default in payment in spite of the conclusions herein even after a reasonable period from the date of this order. It is true that the 1st respondent failed in making payment in spite of repeated demands raised prior to the petition, but in view of the interim directions in O.P.No.15 of 2006 and the various proceedings before this Commission, the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court, the 1st respondent cannot be straightaway condemned for its inaction, if it were awaiting the finality to the proceedings.

19. One more factor to be remembered is that this petition has been filed under Sections 129, 142 and 143 of the Electricity Act, 2003 and Section 146 was also referred to in the body of the petition and the prayer. Section 129 of the Electricity Act, 2003 is only about the Commission's power of securing compliance from a licensee concerning any condition of a license or exemption or a provision of the Act for which any loss or damage to any person due to contravention also have to be given due regard. As already stated, there is no material to show any specified quantum of loss or damage that occurred to the petitioner due to short payment and it cannot be a matter of presumption but proof. Section 142 of the Electricity Act, 2003 is about the imposition of penalty and additional penalty for any contravention or continuing contravention. This section itself uses the word 'may' in describing the power of the Commission to impose a penalty thus making the imposition of a penalty absolutely discretionary and the facts and circumstances of the case as described in detail earlier may not make the 1st respondent liable to the extreme step of such penalty. Section 143 of the Electricity Act, 2003 is about the power of

adjudication through a Member of a Commission to be appointed as an Adjudicating Officer and such a contingency did not arise here. Section 146 of the Electricity Act, 2003 read with Section 151 thereof indicates that a complaint by the Commission in writing is necessary for taking cognizance of an offence punishable under Section 146. While the contingency of a report of a police officer did not arise in this case, the Commission should conclude, in exercise of its quasi judicial power, whether it has to make such a complaint in writing concerning the present subject matter. The description of the various events that led to the petition may show that though the 1st respondent cannot be totally absolved of any fault, it may not be subjected to any criminal liability directly or vicariously through any of its personnel, in view of the quantum of tariff being the subject of conflicting claims before this Commission, the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court for long. The power of the Commission under the above provisions read with power of adjudication under Section 86 (1) (f) will make a direction for making good the short payments within a reasonable time and in default with interest at a reasonable rate suffice to serve the ends of justice and protect the rights and interests of the petitioner sufficiently and reasonably, while safeguarding the rights and interests of the public utilities.

20. Apart from balancing of rights and obligations of both parties, it has to be remembered that the original party to the contract with the petitioner was the Andhra Pradesh State Electricity Board and the 2nd respondent stepped into its shoes subsequently. As Anantapur and Kurnool districts were within the territorial jurisdiction of the then Central Power Distribution Company of Andhra Pradesh Limited, the supply of power during the period in question was made to that entity and the 1st respondent came into picture only in this petition, in the light of the

Andhra Pradesh Reorganization Act, 2014 under which Anantapur district became part of the 1st respondent in which the plant of the petitioner located. Even in that view, making the 1st respondent answer any penal provisions of Section 142 or 146 of the Electricity Act, 2003 will be unjust and unreasonable in respect of things happening since long prior to 02-06-2014.

21. However, that raises a further question about the liability of the 1st respondent which question seems to be sufficiently answered by the contents of G.O.Ms.No.24 dated 29-05-2014, notwithstanding that the 1st respondent was not a contracting party with the petitioner originally. In fact, in the letter from the Corporate Office of the 1st respondent in D.No.25/2016 in February, 2016, guidelines issued following G.O.Ms.No.24 stated that the assets and liabilities which can be clearly assigned to the operational units in Kurnool and Anantapur be assigned to the Southern Power Distribution Company of Andhra Pradesh Limited based on the location. It was further stated about the details not being available but the transfer, apportionment and assignment of the assets and liabilities were amply admitted. The 1st respondent relied on the common judgment of the Hon'ble High Court in W.P.No.16330 of 2015 and batch dated 02-02-2018 dealing with the disputes on allocation of employees of the power sector undertakings in the States of Telangana and Andhra Pradesh. Their Lordships of the Division Bench referred to G.O.Ms.No.24 but were dealing with only the question of allocation of employees but not the division of other assets and liabilities. However, in SNJ Sugars and Products Limited Vs AP Transco & others decided on 31-05-2017 in E.P.No.1 of 2017 in Appeal No.228 of 2012, the Hon'ble Appellate Tribunal for Electricity was following the principle laid down by the Hon'ble Supreme Court on the liability of the 2nd respondent herein and held that if the 2nd respondent is of the opinion that TS Transco has to share the burden of its

liability, it will be open to it to initiate appropriate proceedings to recover the said amount from TS Transco. The principle should squarely apply to the present case in view of the specific language of G.O.Ms.No.24, validity and binding nature of which are not disputed by either party in these proceedings and in clause XVI, the responsibility of the 1st respondent since the transfer and vesting of the distribution business of Anantapur district was unambiguously stated and in respect of all such matters to which APCPDCL was a party and for which APCPDCL was liable, the same can be enforced effectively as if the 1st respondent is a party to it instead of APCPDCL. The language of the Twelfth Schedule to and Sections 92, 53 and 68 (2) of the Andhra Pradesh Reorganization Act, 2014 do not convey any different meaning. The liability of the 1st respondent to answer the claim of the petitioner herein arising out of the statutory provisions and G.O.Ms.No.24 issued there-under cannot be diluted in any manner with reference to the proceedings before the High Power Committee. As stated in Para XXI of G.O.Ms.No.24, any such matter has to be mutually resolved by the two distribution companies with which the petitioner has nothing to do. Therefore, the entitlement of the petitioner to the short payments made for the power supplied during the period between July, 2011 and November, 2012 against the 1st respondent cannot be doubted. The quantum and value of such power at Rs.3.37 / kWh are not in dispute and the principal sum of Rs.2,13,36,156/- has to be therefore paid by the 1st respondent.

22. However, the claim for interest at 21% per annum from July, 2011 cannot be sustained and the *pendente lite* and *post decreetal interest* which is subject to the judicial discretion of the adjudicating body can be reasonably quantified at 10% per annum as agreed between the parties to be the contractual and reasonable rate of interest under Article 5.2 of both the Power Purchase Agreements. In the order of the

Commission dated 06-09-2014 in O.P.Nos.14 to 18 of 2006 (including O.P.No.15 of 2006 between the petitioner and the 1st respondent), the Commission clearly noted the plea of the petitioner about the short payment and specifically directed that any short payment should be adjusted within six months and did not consider grant of any interest at any rate on any such short payment from any date. This order on contest, on merits, has become final and upto 06-03-2015, the 1st respondent can never be made liable for any interest on any short payment which was raised but not considered by the Commission in the order dated 06-09-2014 and as already stated this petition itself was filed by 18-03-2015, thus leaving only the *pendente lite* and *post decreetal interest* alone to be open for consideration on merits herein. However, such interest can be directed to be paid only in the event of default by the 1st respondent in making payment of the principal amount within a reasonable time and given the quantum of the amount and the financial responsibilities of the 1st respondent to be discharged on the whole, grant of six months time, as granted by the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.Nos.14 to 18 of 2006 in its order dated 06-09-2014 will be reasonable and appropriate. No relief can be granted against the respondents 2 to 4 in these proceedings, as no liability can be fastened to them contractually or legally.

23. Point No.2: In view of the conclusions on Point No.1, the petition has to be ordered accordingly. However, in view of the multiplicity of proceedings over the subject matter since long, it will be reasonable and just to direct the parties to bear their own costs in this petition.

24. Therefore, the 1st respondent is directed to pay the principal sum of Rs.2,13,36,156/- (Rupees two crores thirteen lakhs thirty six thousand one hundred

and fifty six only) being short payment for the energy supplied by the petitioner during the period between July, 2011 and November, 2012 within six months from the date of this order. In the event of default by the 1st respondent, the said principal sum or the outstanding sum due by that date, as the case may be, shall be paid with simple interest at 10% (ten percent) per annum from then till payment. The petitioner is not entitled to any reliefs against respondents 2 to 4 and the parties are directed to bear their own costs in this petition.

25. The petition is ordered accordingly.

This order is corrected and signed on this the **2nd day of June, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman