



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

R.P. (SR) No.55 of 2010

Dated 17.04.2013

Present

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member

Between

Sri M.Thimma Reddy, Convenor
(Peoples Monitoring Group on Electricity Regulation)
C/o Centre for Environment Concerns,
3040142 / 6, Barkatpura, Hyderabad – 27.

.... Petitioner

And

1. M/s. BPL Power Projects
2. Central Power Distribution Company of AP Ltd
3. Eastern Power Distribution Company of AP Ltd
4. Northern Power Distribution Company of AP Ltd
5. Southern Power Distribution Company of AP Ltd

... Respondents

This petition coming up for hearing on 01.10.2011. Sri P.Shiva Rao, Advocate for the respondents present. No representation on behalf of the petitioner. The Commission passed the following:

ORDER

This review petition is filed to withdraw the order issued through the Lr. No. E-356 / (a) / Engg / DD(P&PP) 2010-02, dated 31.05.2010 immediately as the Commission did not follow the necessary rules and procedures in approving changes to some of the provisions of the PPA with BPL.

2. The case of the petition is briefly as follows:

- a) The BPL group was selected in 1994 through international competitive bidding for setting up 500 MW coal based thermal power project at Ramagundam. Power Purchase Agreement (PPA) between APSEB and BPL group was signed on 31.10.1994. Later this PPA was assigned to BPL Power Projects (AP) Limited and the project capacity was increased to 520 MW. The amended and restated PPA was signed on 29.01.1999 and it was approved by the APERC on 18.11.2002 after conducting public hearing on the same. This approved PPA was signed by APTRANSCO and BPL on 10.07.2003 and this contained the provision that financial closure need to be achieved by 09.07.2004. As the BPL failed to achieve financial closure by the above due date the same was terminated by APTRANSCO on 09.07.2004.
- b) Subsequently after a gap of more than five years the Government of Andhra Pradesh (GoAP) issued the following G.O. to reinstate the terminated PPA in its original form.
- c) The APERC through Lr. No. E-356 / (a) / Engg / DD(P&PP) 2010-02, dated 31.05.2010 gave consent to technical and financial changes in the PPA between BPL and APDISCOMs following the above G.O. and a letter from BPL to approve the above changes to the PPA. These changes include capacity increase, completed capital cost and technical standards. Though it is not mentioned in this order the Commission has approved the annulment of the termination of PPA with BPL in its meeting held on 27.04.2010.
- d) Through this review petition they claimed that the above order of the Commission needs to be withdrawn immediately as the Commission did not follow the necessary rules and procedures in approving changes to some of the provisions of this PPA, as the GoAP did not have any power to reinstate a terminated PPA, as the national policy was not followed in reviewing the project, as the provisions of National Tariff Policy are violated in reviewing

the PPA with BPL in its original form, as Grid Technical Standards approved are not in accordance with the Grid Code approved by the CERC and as the above order is against the public interest.

- e) The Commission in responding to a letter (BPL Power Projects (AP) Ltd letter dated 14.10.2009) indicated its pro-activeness.
- f) It is unfortunate that the Commission this time chose to do away with public hearings. Here in this context it is also to be noted that the Commission directed APPCC to submit the executed PPA, but not the draft PPA with the proposed changes (paragraph (x)).
- g) The other option left to implement the project is to select a company through competitive bidding process.
- h) Without following the above process the GoAP arbitrarily issued orders to reinstate the old PPA in its original form. This defeats the very purpose of the Act and reform process in the power sector, which calls for transparent, efficient and economical power procurement.
- i) Once a PPA is terminated it no longer exists and there will be no question of its reinstatement in its original form or in any other form. The present PPA in question did not contain any provision to reinstate or revive a terminated PPA.
- j) The Grid Frequency as placed by BPL and taken on record by APERC is a violation of this norm. We submit that on this ground also the above order of the Commission need to be withdrawn.
- k) The orders issued by both the GoAP as well as APERC adversely affects the consumer. Capital cost escalation because of foreign exchange component, which is a high of 54% will be quite considerable.
- l) The Commission's consent to the above capital cost pegged to US\$ is a violation of the National Tariff Policy and we request the Commission to withdraw the order.

3. Hence, the petitioner prays that the Commission may please to withdraw the orders issued through Lr. No. E-356 / (a) / Engg / DD(P&PP) 2010-02, dated 31.05.2010 as it is against public interest, and goes against National Tariff Policy.

4. After filing the above said petition, the office raised an objection on the maintainability. Hence the said matter was posted for hearing before admission.

5. Now the point for consideration is whether the petition is sustainable under law? If so whether it can be ordered for numbering of the petition?

6. The petitioner filed the above said petition to review the order dated 31.05.2010 on the ground that the Commission did not follow the rules and necessary procedures in approving changes to some of the provisions of the PPA as the Government did not have any power to reinstate a terminated PPA, as the national policy was not followed in reviewing the project, as the provisions of National Tariff Policy are violated in reviewing the PPA in its original form.

7. It is also mentioned that the grid technical standards approved are not in accordance with the Grid Code approved by CERC and that the said order is against to the public interest.

8. The petitioner has also mentioned some other grounds questioning the said order. Infact, the above said order is in the form of a letter by giving consent to the ceiling limit prescribed in G.O.Ms.No.51 dated 09.10.2009 to the effect that the estimated completed cost of the project shall not exceed Rs.4.76 crores per mega watt (at an exchange rate of Rs.43.50 US\$). It has also given consent to the changes in the Schedules O, G, etc.

9. It is clear from the Electricity Act, 2003 that the Commission has got power to review its own order but the review is in accordance with the provisions of Order 47 Rule 1 of CPC. The above said rule is as follows:

- 1. Application for review of judgment.- (1) Any person considering himself aggrieved,—**
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,**
 - (b) by a decree or order from which no appeal is allowed, or**
 - (C) by a decision on a reference from a Court of Small Causes,**

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

The facts narrated by the petitioner in the petition have not attracted any one of the ingredients of the above Order 47 Rule 1 of CPC. If at all if there is any grievance to the petitioner on the impugned order, he has to approach appropriate Forum seeking suitable relief but not by filing a petition to review the order of the Commission.

10. In the light of the above said discussion, we are of the considered opinion that the said order is not liable to be reviewed and the petition is liable to be rejected.

11. In the result, the petition is rejected.

This order is corrected and signed on this 17th day of April, 2013.

Sd/-
(C.R.Sekhar Reddy)
Member

Sd/-
(A.Raghotham Rao)
Chairman