



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A. No.9 of 2013
I.A. No.10 of 2013
I.A. No.11 of 2013
I.A. No.12 of 2013
I.A. No.13 of 2013

in
O.P. No.4 of 2008

Dated 17.04.2013

Present

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

Between:

1. Sri M.Venugopala Rao
2. Sri K.Raghu
3. Sri B.V.Raghavulu
4. Sri T.Harish Rao
5. Sri K.P.Reddaiah Yadav

... Implead Petitioners

AND

M/s. GVK Industries Limited.
Paigah House, 156-159, Sardar Patel Road,
Secunderabad – 500 003.

.....Petitioner in main O.P

1. Eastern Power Distribution Company of A.P. Ltd
2. Southern Power Distribution Company of A.P. Ltd
3. Central Power Distribution Company of A.P. Ltd
4. Northern Power Distribution Company of A.P. Ltd
5. Andhra Pradesh Power Coordination Committee (APPCC)

.....Respondents in main O.P

These petitions have come up for hearing on 03.04.2013 in the presence of (i) Sri M.Venugopala Rao, (ii) Sri K.Raghu and (iii) Sri K.P.Reddaiah Yadav (on behalf of implead petitioners). Sri M.G. Ramachandran, Advocate for the petitioner and Sri P.Shiva Rao,

Advocate on behalf of Sri O.Manohar Reddy, Advocate for the respondents, the Commission passed the following:

COMMON ORDER

The petitioners filed these petitions under Clause 55 of APERC (Conduct of Business) Regulations, 1999 to implead them as parties and permit them to participate in the hearings of O.P. No. 4 of 2008.

2. The petitioners have filed separate applications to implead them as parties, but in all the petitions they have narrated the following grounds:

- i) M/s. GVK Industries Ltd entered PPA with the then APSEB and commenced supply of power from 1997 onwards and the same is going to expire by 2015.
- ii) M/s. GVK, as per law in force, obtained techno-economic clearance of the project from CEA with provisional capital cost, and thereafter by exercising its powers under the law in force, the GoAP passed order freezing the capital cost.
- iii) Thereafter, M/s. GVK reported to have approached several authorities, who have no jurisdiction, with a request to approve the enhanced capital cost. Finally, through O.P. No. 4 of 2008, it has approached the commission, seeking approval of enhanced capital cost.
- iv) Any changes in the capital cost will have direct impact on the tariff, as the tariff of the project is capital cost based unlike other projects. As prospective order that may be passed in O.P. No. 4 of 2008 may have direct detrimental effect on the consumers, public / consumers' interest is involved. This case cannot be compared to that of any adversarial litigation between the stakeholders of agreement on certain claims / disputes arising under the agreement.

- v) In fact, this issue is a tariff related matter and the consumers have every right to participate in the proceedings, as they are the ultimate affected parties, but not the DISCOMs. The DISCOMs have a right to pass on their cost of service to consumers. Earlier, in NCE matters, this Commission, at the time of revision of tariff permitted the consumers to participate in the proceedings.
- vi) The applicant learnt that the DISCOMs have not properly projected important components of the matter in the dispute to dislodge the claims of M/s. GVK.
- vii) In view of the above facts, it is just and necessary to permit the applicant consumer to participate in the hearings to be held on 03.04.2013 and thereafter.
- viii) The Commission has wide powers to permit consumers in the hearings of tariff related matters.
- ix) It is, therefore, prayed that the Commission may be pleased to permit the applicant consumer to participate in the hearings of O.P. No. 4 of 2008 in the interest of justice.

3. The learned advocate for the petitioner though not submitted his reply to the implead petitions submitted his arguments by projecting the following grounds:

- (i) This is a petition filed by the petitioner u/s 86(1)(f) of the Act and it is a dispute between licensee and generating company and there is no question for impleadment by any other person, in particular in the form of this petition .
- (ii) The lis is in between the petitioner and the respondents (licensee) and there is no question of any hearing from public and the implead petitions cannot be entertained and the same are liable to be dismissed.
- (iii) The dispute in between the petitioner and the respondents is on account of rights accrued under the PPA in between the licensee and the

generating company and there is no possibility of hearing public in general and the adjudication is to be made in between the petitioner and the respondents only.

(iv) If at all there is any thing to be represented, they can make through Discoms but not by obstructing the proceedings pending before the Commission u/s 86 of Electricity Act, 2003.

4. Now, the point for consideration is, "Whether the petitioners are entitled to implead as parties to the proceedings as prayed for?"

5. The petitioner in IA 9/2013 argued that the petitioner in OP No.4/2008 filed the above said petition claiming Rs.1025crs towards capital cost and if the Commission approves enhancements of capital cost it may have detrimental effect on the consumers / public and thereby interest of the consumer is involved in the petition and it cannot be compared to that of any adversarial litigation between the stakeholders of agreement on certain claims / disputes arising under the agreement.

6. The petitioner in IA 10/2013 argued that the result of the OP No.4/2008 ultimately have an impact on the consumers as it has to be passed through Discoms to the consumers and they are the affected parties and they must be heard before passing an order.

7. The petitioner in IA 13/2013 argued that the Discoms have not properly projected the important components of the matter in the dispute to dislodge the claims and in the NCE matters, the Commission has permitted them to participate in the proceedings and unless the consumers are heard they are going to sustain great loss at large and therefore the petitioners may be permitted to be allowed to appear before the Commission.

8. The counsel for the respondents argued that they had filed a petition I.A.No.7/2013 to reopen the matter and the said petition was allowed and that they are going to submit some documents to substantiate their contentions raised in the main OP itself.

9. The petitioner filed the above said petition to allow the capital cost of Rs.1025crs with a direction to make payment of the outstanding amounts of the claims along with incentives thereon raised by the petitioner forthwith in 12 monthly installments and the tariff payments dates in accordance with the provisions of the PPA. This matter has come up for hearing and finally reserved for orders on 28.04.2012. The respondents in the OP filed I.A.7/2013 seeking reopening of the matter and the Commission allowed the said petition to reopen the matter to hear and posted for arguments and for filing documents by the respondents in the main OP. At the time of hearing of OP No.4/2008, the petitioner filed the above said petitions to implead the above said petitioners. The petitioner in OP No.4/2008 filed the above said petition u/s 86(1)(k) read with 86 (1)(a) of EA 2003. The petitioner filed the above said petition 4/2008 claiming capital cost of Rs.1025crs in accordance with provisions of PPA. The PPA is in between the licensee and the generating company. The nature of adjudication is in between the licensee and the generating company and no role is contemplated anywhere by the consumer at any time to participate in the proceedings entertained basing on a PPA. In the case of tariff or while fixing rates of FSA, direct impact is on the public and the Commission is receiving the information from the public by giving dates for public hearing and the persons representing on behalf of the consumer are also heard before fixing the tariff and also FSA charges.

10. Whereas, the lis is in between the petitioner and the respondents is purely adjudicating in nature in accordance with the terms & conditions of the PPA. The consumers are nowhere in the picture to represent directly

before the Commission projecting their grievance and they are no way connected with the PPA in between the petitioner and the respondents. If at all, if there is any grievance, they can as well represent before the Commission through the Discoms who are the representatives in safeguarding the interests of the consumers. In this case, the Discoms have filed IA No.7/2008 to reopen the matter on the ground of filing additional evidence and also for submission of additional arguments. They have approached the Commission with a request to reopen the matter to produce additional evidence. It cannot be said that the Discoms have not properly projected important components of the matter in the dispute to dislodge the claims of the petitioner in OP No.4/2008.

11. The petitioners have represented that it is a tariff matter and that they have every right to participate in the proceedings. This contention is not correct since this is not a tariff matter.

12. Every dispute covered by a PPA will have an impact on the consumers by way of Tariff fixation / FSA / True up. But this cannot be a reason to convert every adjudicating proceeding under Section 86(1)(f) of the Electricity Act as a public hearing by impleading consumers or consumer groups. The Discoms, as licensees perform their functions including litigation in terms of PPAs keeping all factors including eventual consumer interest in view. Every dispute between a Discom and a generator in terms of a PPA cannot be adjudicated in public hearing mode or by impleading large numbers of consumers. Matters like Tariff fixation and FSA are a different proposition, suited for public hearing mode, since they are not in the nature of adversarial litigation. But matters of interpretation of conditions of PPA have to be dealt as a case between Petitioner & Respondent in terms of PPA.

13. The above said discussion clearly discloses that the petitioners have no case to represent either in the form of impleading them as parties or in

the form of participating as parties by making their own submissions independently.

14. Hence, we are of the considered opinion that the petitions filed by the petitioners are not maintainable and the same are liable to be dismissed.

15. In the result, the petitions filed by the petitioners are hereby dismissed.

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

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

Sd/-
(A.Raghotham Rao)
Chairman