



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

I.A. No.7 of 2013
in
O.P. No.4 of 2008

Dated 28.03.2013

Present

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

Between:

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)

... Petitioners
(Respondents in main O.P.)

AND

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

...Respondent
(Petitioner in main O.P.)

This petition has come up for hearing on 20.03.2013 in the presence of Sri P.Shiva Rao, Advocate on behalf of Sri O.Manohar Reddy, Advocate for the petitioners and Sri L.Venkateswara Rao, Advocate for the respondent, the Commission passed the following:

ORDER

This petition is filed u/s 55 of APERC (Conduct of Business) Regulations, 1999 to reopen main petition.

2. The contention of the petitioners is briefly as follows:

- i) The above case was filed by M/s. GVK Industries Ltd., seeking approval of enhanced capital cost, than limited by Government of

Andhra Pradesh. In the above petition, the Commission was pleased to hear the arguments of both parties and reserved the same on 28.04.2012 for passing orders. It is pertinent to submit that, 10 months have elapsed from the date of reserving the orders by this Commission. But orders are not passed till date.

- ii) The Hon'ble High Court of Andhra Pradesh has settled the position of law that after reserving the orders, as far as possible orders shall be passed early, and that if the orders are passed beyond reasonable period, the same will be a good ground in the appeal to get the matter remanded to the lower court.
- iii) The said principle of law is evolved based on precedents of Supreme Court, to the effect that if there is delay in passing the orders, it may cause prejudice to the parties and that parties are entitled for rehearing / further hearing of the matter.
- iv) In view of the above facts in this case, justice demands to reopen the case and hear the parties further.

3. It is prayed that the Commission may be pleased to reopen the case and hear the parties further.

4. In addition to the above said petition, the petitioners also filed additional affidavit to the effect.

- i) That there are more than twenty claims on which the petitioner (in original petition) company seeks enhancement of capital cost. They have submitted some details denying the claim of the company. By the time hearings are closed, we could not submit complete data for want of sufficient time. Now they collected the additional data which would support our contention and dislodge the case of the company. If opportunity is not given, it will be prejudice to the respondents / DISCOMs.
- ii) It is therefore requested to give an opportunity to submit the additional data, material documents and oral arguments.

- iii) If the capital cost is increased without considering the data / documents / additional / oral arguments to be submitted by the respondents / DISCOMs, it will result miscarriage of justice.

5. The petitioner filed the above said petition to reopen the matter by projecting the following grounds:-

- (i) The Commission heard the arguments on 28.04.2012 and even after a lapse of 10 months, the orders are not pronounced and when the orders are not pronounced as per the decisions of the Hon'ble High court it is a settled position of law that the orders are to be finalised after reserving the matter as early as possible and if they are not passed beyond reasonable period, the same will be a good ground to reopen the matter.
- (ii) The above said principle is precedent by Hon'ble Supreme Court decisions wherein the Hon'ble Supreme Court held that the delay in passing the orders, it may cause prejudice to the parties and that parties are entitled for rehearing.
- (iii) There are more than 20 claims on which the OP is filed seeking enhancement of capital cost, they have submitted some details and by the time of hearing is closed they could not submit complete data for want of some data. Now, they collected the additional data in support of their contention.
- (iv) Therefore, it is requested to give an opportunity to reopen the matter and if the capital cost is increased even without considering the data, it will result in miscarriage of justice.

6. Though the respondents did not submit written submissions but they simply addressed arguments by narrating the following grounds:

- (i) Mere delay in pronouncing the order, it is not a good ground to reopen the matter as it is not envisaged no where in the Conduct of Business Regulations to pronounce the judgment on a particular date.
- (ii) The data which they want to submit they have not filed copies of the same before the Commission along with the petition and there are no grounds to reopen the matter and the petition is liable to be dismissed.

7. Now, the point for consideration is, “Whether the petitioner is entitled to reopen the matter as prayed for?”

8. It is clear from the record that the matter was heard on 28.04.2012 as there are several issues which are to be looked into. The Commission is preparing the order and the same may be pronounced within a short period. In the meanwhile, the petitioner herein filed the petition to reopen the matter on the ground that they have got additional data which would support their contention. When the party approaches with a request that there is additional data to be filed that too before pronouncing the order, there is no point in rejecting the request made by the Commission. If the Commission refuses to give an opportunity, it will definitely cause miscarriage of justice.

9. Furthermore, there is no procedure contemplated in the Conduct of Business Regulation to pronounce the judgment within a particular time. However, when the petitioner approaches this Commission with a request to reopen the matter and when there is some other material to be placed before the Commission, there is no point in rejecting the same solely on the ground that the copies of the documents are not filed before the Commission along with the petition.

10. In the light of the above said discussion, we are of the considered opinion that it is a fit case to reopen the matter for further hearing of the case.

11. In the result, this petition is allowed. The registry is directed to give a date of hearing. No order as to costs.

This order is corrected and signed on this 28th day of March, 2013.

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN