



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

I.A. No.3 of 2013
in
O.P. No.70 of 2012

Dated: 12.03.2013

Present

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

Between

1. Central Power Distribution Company of AP Ltd (APCPDCL)
2. Southern Power Distribution Company of AP Ltd (APSPDCL)
3. Northern Power Distribution Company of AP Ltd (APNPDCL)
4. Eastern Power Distribution Company of AP Ltd (APEPDCL)
5. Andhra Pradesh Power Co-ordination Committee (APPCC)

...Petitioners

AND

M/s GMR Vemagiri Power Generation Limited (GVPGGL)

... Respondent

This petition has come up for hearing on 29.01.2013 in the presence of Sri P.Shiva Rao, Advocate for the petitioners and Sri Gopal Jain, Advocate for the respondent, the Commission passed the following:

ORDER

The petitioner filed the above said petition under clause 55 of APERC Conduct of Business Regulations (CBR) to withdraw the O.P. No.70 of 2012 on the ground that the above said O.P. filed by the petitioners seeking consent of amendments to the PPA with certain

conditions about the alleged losses claimed by the respondent. Subsequently, the respondent also filed another case O.P. No.71/2012 with the same relief besides another case O.P. No.72/2012 claiming relief of damages. Since the respondents filed O.P. 71/2012 for the same relief, the petitioner has decided to withdraw the present petition. Hence, it is prayed that the Commission may be pleased to permit the petitioners to withdraw OP 70/2012 in the interest of justice.

2. This petition is opposed by the other side though they have not filed any specific counter/ reply to the above said petition.

3. The counsel for the respondent argued that the petitioner cannot withdraw the petition as the same is filed in pursuance of the order passed by the Commission in the case of 80% - 20% on 05.12.2009 and having consented for option 'A' of the order dated 05.12.2009 and the petition is liable to be dismissed.

4. Now, the point for consideration is, whether the petitioner is entitled to withdraw OP 70/2012 as prayed for?

5. The petitioner herein filed O.P. (SR) 35/2011 against respondents now numbered O.P. 70/2012. The respondent filed OP(SR) 71/2011 now numbered O.P. 71/2012. The relief now sought in the said petitions is almost one and the same and similar in nature to the effect of seeking consent of Commission to the amendments of the PPA proposed by the parties. When the petitions are coming up for hearing, the counsel for the petitioner filed a Memo to the effect that GMR had already filed an application for the same relief and the petition filed by them becomes infructuous and sought permission for withdrawal of the petition. Again, the counsel for the petitioner filed another memo on 11.05.2012 withdrawing memo dated 05.05.2012. Now, again filed the above said petition to withdraw the above said

petition as similar matter is pending before the Commission for adjudication on the same issue.

6. The issue in O.P. 70/2012 filed by the petitioner and O.P. 71/2012 filed by the respondent is one and the same. The petitioner filed this petition with a request to withdraw O.P. 70/2012. The very objection raised by the respondent that having opted option 'A' of the order dated 05.12.2009 passed by the Commission, the petitioner has no right to withdraw the same.

7. The respondent has filed O.P. 71/2012 for the same relief and it is pending. The relief sought in the said petition can be worked out in pursuance of the direction given by the Commission in its order dt.05.12.2009. The parties are at liberty to workout the same in the said O.P. 71/2012.

8. Further, the respondent has also filed O.P. 72/2012 claiming loss sustained to a tune of Rs.447crs. The said petition is also pending. The parties are at liberty to workout their rights in pursuance of the order passed in O.P. Nos.9 to 12 of 2009 dt.05.12.2009. Hence, the objection raised by the counsel for respondent is not a valid objection and the same is rejected.

9. In this petition the petitioners themselves wanted to withdraw the same. It is for the Commission to look into the issue by avoiding multiplicity of the proceedings since two petitions are pending on the same issue and when one of the parties comes with a request to withdraw the petition filed by them, there is no point in rejecting the same.

10. Therefore, we are of the considered opinion that the O.P. No. 70/2012 filed by the petitioner can be permitted to be withdrawn, without prejudice to follow up action in pursuance of the

Commission's order Dated 05.12.2009 in O.P. Nos.9 to 12 of 2009. The registry is accordingly directed to delete O.P. No.70 of 2012 from the pending list.

11. This order shall not, in any manner, preclude the two parties of O.P.No. 12 of 2009 dated 05-12-2009, to come up afresh before the Commission for consent for any mutually agreed amendments to the PPA in terms of the three options prescribed in order Dated 05-12-2009 in O.P. Nos.09 to 12 of 2009 in the light of any determination of alleged foregone fixed charges, as and when such a determination is made by the Commission as an Order in O.P. No.72 of 2013.

12. In the result, the petition is allowed. No order as to costs.

This order is corrected and signed on this 12th day of March, 2013.

Sd/-
(R.Ashoka Chari)
Member

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

Sd/-
(A.Raghotham Rao)
Chairman