



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE NINETEENTH DAY OF OCTOBER,
TWO THOUSAND AND TWENTY TWO

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member

O.P.No.54 of 2022

Between:

Indian Railways, Rep. by Chief Electrical Distribution Engineer,
South Central Railway, Rail Nilayam, Secunderabad-500 025.

... Petitioner

Versus

1. Transmission Corporation of Andhra Pradesh Limited,
Rep. By Chairman-cum-Managing Director, Vidyut Soudha,
Gunadala, Eluru Road, Vijayawada - 520004.

2. Southern Power Distribution Company of Andhra Pradesh Ltd.,
Rep. By Chairman-cum-Managing Director, D.No. 19-13-65/A
Srinivasa Puram, Tiruchanoor Road, Tirupati - 517503.

3. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
Rep. By Chairman-cum-Managing Director, Corporate Office,
P & T Colony, Seethampadhara, Visakhapatnam - 530013.

4. Andhra Pradesh Central Power Distribution Corporation Ltd
Rep. By Chairraan-cuml-Managing Director, Beside Polytechnic College
ITI Road, Vijayawada 520 008, Krishna District, Andhra Pradesh.

... Respondents

This Original Petition has come up for hearing today in the presence of Sri Prashant Kumar, counsel representing Sri Santosh Jadav, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents, that 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

This Original Petition is filed, purported to be, under Sections 39, 40, 142, 146, 149 and 86 of the Electricity Act, 2003, seeking imposition of penalties on the respondents for the alleged non-compliance of the order dated 23-12-2020 passed in O.P.No.37 of 2020.

We have heard Sri Prasanth Kumar, counsel representing Sri Santosh Jadav, learned counsel for the petitioner; and Sri P. Shiva Rao, learned Standing Counsel for the respondents.

The petitioner has filed the aforementioned O.P., for the following reliefs:

- (a) Direct the respondents to provide ABT meters with associated equipment immediately as payments for all the above have been made towards provision of ABT meters to enable power procurement through Open Access by Indian Railways;
- (b) Direct the respondents to issue "No objection Certificate" to the Indian Railways for grant of open access to Indian Railways as deemed distribution licensee with immediate effect for facilitating the flow of power till the Railway traction substations situated in the State of Andhra Pradesh;
- (c) Direct respondents to facilitate open access to the Indian Railways in its status as a 'Deemed Distribution Licensee' in the State of Andhra Pradesh as per the order dated 05-11-2015 passed by the Central Commission in Petition No 197/MP/2015: and
- (d) pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case."

The respondents have filed a counter affidavit in the said OP, wherein they have explained the reasons for not completing the works to enable the petitioner to avail Open Access facility. The respondents have also undertaken to complete the works by the end of March, 2021. Having regard to the said averments in the counter-affidavit, the learned counsel for the petitioner requested the Commission to dispose of the said O.P., by recording the undertaking given by the respondents regarding the completion schedule mentioned in the counter-affidavit. Accordingly,

this Commission has disposed of the said OP by placing on record the undertaking of the respondents that the works of installation of ABT meters will be completed in all respects by the end of March, 2021 to facilitate the petitioner to avail Open Access as a “Deemed Distribution Licensee”.

The respondents filed a Review Petition, wherein they have disputed the status of the petitioner as the Deemed Distribution Licensee. The said Review Petition was, however, dismissed on the ground that respondent No.4 in the counter-affidavit has admitted the petitioner’s status as a Deemed Distribution Licensee. However, the Commission has made the following crucial observation in the said order:

“This order however will not preclude the Review Petitioners from contesting the claim of the respondent’s status as a deemed distribution licensee if and when such issue arises”.

Subsequent to the disposal of the said Review Petition, the petitioner has approached the respondents with a request to accord Open Access treating it as a Distribution Licensee. The Chief General Manager of respondent No.1, vide: his letter dated 13-5-2022, has informed the petitioner that as they are disputing the petitioner’s status as a Deemed Distribution Licensee, they are unable to accede to the petitioner’s request for grant of Open Access to it as a Deemed Distribution Licensee; that respondent No.1 was, however, willing to accord Open Access to the petitioner as a “Consumer”; and, in that regard, it has enclosed a “No objection Certificate” in Form LTA-3 to enable the petitioner to apply for Open Access as a “Consumer”. It is this letter, which sparked, filing of this OP by the petitioner.

After hearing the learned counsel for both the parties, we are of the opinion that the petition filed for the alleged non-compliance of the Order of this Commission

is wholly misconceived and not maintainable. Though in the order dated 23-12-2020 passed in O.P.No.37 of 2020 this Commission has observed that the petitioner is entitled to seek Open Access as a Distribution Licensee; as noted above, while dismissing the Review Petition filed by the respondents, this Commission has left the issue of status of the petitioner as a Deemed Distribution Licensee open, and also permitted the review petitioner to contest the claim of the petitioner's status as a Deemed Distribution Licensee, "if and when such issue arises". It is, therefore, clear that the respondents cannot be accused of violating the orders of the Commission simply because they have questioned the status of the petitioner as a Deemed Distribution Licensee. While the petitioner is entitled to seek a declaration in a substantive proceedings before the Commission that it is entitled to Open Access as a Deemed Distribution Licensee, the respondents are entitled to dispute the same; the petitioner, however, is, certainly, not entitled to maintain this O.P., *inter alia*, under Sections 142 and 146 of the Act on the purported ground that the respondents have violated the orders of this Commission. The respondents are well within their right to dispute the status of the petitioner as a "Deemed Distribution Licensee" by virtue of the order passed by this Commission in the Review Petition.

Therefore, the present OP for the alleged violation of the Orders of this Commission is not maintainable. However, we leave the petitioner free to file a substantive OP seeking a declaration that it is a Deemed Distribution Licensee.

Subject to the above observations, the O.P. is dismissed at the stage of Admission..

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member