



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE TWENTY THIRD DAY OF NOVEMBER,
TWO THOUSAND AND TWENTY TWO

:Present:

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

O.P.No.41 of 2022

Between:

M/s. Balaji Energy Pvt. Ltd,
5-9-19, 1st Floor, Laxmi Narsinh Estate,
Secretariat Road, Saifabad, Hyderabad-500068
Rep. by its Authorised signatory,
Sri G. Sai Krishna Reddy, S/o. Late G.Adi Sesha Reddy.

...Petitioner

AND

1. The Southern Power Distribution Company of A.P Limited, Kesavayana Gunta, Tiruchanoor Road, Tirupati - 517501, A. P. Represented by its Chairman & Managing Director.
2. Transmission Corporation of Andhra Pradesh Limited (APTRANSCO), Having its office at Vidyut Soudha, Gunadala, Vijayawada - 520 004, A.P.
3. Andhra Pradesh Power Coordination Committee, Vidyuth Soudha, Vijayawada, Represented by its Chief General Manager

...Respondents

This Original Petition has come up for hearing today in the presence of Sri S.Ravi, learned Senior Counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents; and that after carefully considering the material available on record and after hearing the arguments of the learned Counsel for both the parties, the Commission passed the following:

ORDER

This O.P. is filed for a direction to the respondents to grant No Objection Certificate to the Petitioner to sell the power to third parties under Open Access Regulation 2 of 2006, updated as on 01.7.2020 by cancelling the existing Power Purchase Agreement dated 31-1-2005 amended on 25-11-2019 for the power generated through the 2x6 MW mini hydel power project at Somasila, Nellore District, Andhra Pradesh.

The main premise on which the OP is instituted is that the respondents have been committing defaults, time and again, in payment of the admitted bills and that, therefore, the petitioner is entitled to repudiate the PPA and avail Open Access facility under the extant Regulation. In support of its stand, the petitioner mainly relied upon Article 9 of the PPA dated 31-1-2005 entered between respondent No.2 and the petitioner, which has got transferred to respondent No.1 on the latter's incorporation in terms of G.O.Ms.No.53, Energy (Power-III) Department, 28-4-2008. It is the further case of the petitioner that in view of the persistent defaults on the part of the respondents, the petitioner gave repeated Notices on different dates, viz., 11-12-2020, 07-1-2021 and 26-6-2021, wherein while pointing out the respondents' failure to pay the admitted bills, the petitioner has requested the respondents to allow it to sell the power to third parties by cancelling the extant PPA.

On behalf of the respondents, a common counter-affidavit has been filed, wherein, it is, *inter alia*, admitted that payments to the petitioner were being made regularly upto 2019 from the date of COD, but due to precarious financial position of

the DISCOMs, they could not pay monthly power purchase bills within the stipulated time to all the suppliers, including the petitioner.

In spite of the candid admission by the respondents of the defaults in payment of the admitted bills, this Commission has indeed allowed the respondents time to pay the admitted dues of Rs.6.00 cores within two months by order dated 27-7-2022, so that the necessity of rescission of the PPA could be obtained.

On 12-10-2022 the learned Standing Counsel for the respondents again sought further time for payment of the dues. While accepting the said request, the Commission made the following observations in its order dated 12-10-2022:

“It is unfortunate that inspite of unequivocal undertaking given by the learned Standing Counsel for the respondents that a sum of Rs.6.00 crores will be paid within two months on 27-7-2022, the respondents have not stood on their commitment.

Sri S.Ravi, learned Senior Counsel, submitted that the further part of the undertaking, viz., that the respondents will continue to pay future monthly bills within the due dates, as agreed in the extant PPA, is also being breached.

It is not in dispute that the PPA enables the petitioner to wriggle out of the same, if the respondents commit default in payment of the dues.

Sri S.Ravi, learned Senior Counsel, submitted that even if the disputed amounts are kept aside, the respondents have failed to pay the admitted dues. He requested time for placing material before the Commission in support of his submission.

Call on 23-11-2022 for hearing. Meanwhile, the respondents shall pay the balance dues, which are not in dispute”.

Today, during the hearing, Sri P.Shiva Rao, learned Standing Counsel for the respondents, submitted that out of the sum of Rs.6.00 crores, Rs.1.50 crores was paid, still leaving a balance of about Rs.4.50 crores of the admitted dues, in addition to the current monthly dues payable from 31-3-2022 onwards.

Articles 9.1 to 9.3 of the PPA read as under:

“9.1. In the event, APTRANSCO Commits a breach of any of the terms of this Agreement, the Company shall be entitled to specific performance of this Agreement or claim such damages as would be available under Law or both, at its option, by giving 30 days notice to APTRANSCO.

9.2. In the event, Company commits a breach of any of the terms of this Agreement, the APTRANSCO shall be entitled to specific performance of this Agreement or claim such damages as would be available under Law or both, at its option, by giving 30 days notice to Company.

9.3 If the default continues for a period of 30 days or more, either party will have a right to issue a preliminary notice for termination of this Agreement. If the default is not cured within 30 days thereafter, either party can terminate this Agreement and can claim damages at its option”.

The above reproduced Articles of the PPA envisage, in unequivocal terms, that if the default continues for 30 days or more, either party will issue a preliminary notice of termination of the agreement; and if the default is not cured within 30 days thereafter, either party can terminate the agreement and can claim damages at its option.

As noted above, the petitioner has issued notices, as envisaged under Article 9.3, on several occasions i.e., on 11-12-2020, 07-1-2021 and 26-6-2021. Despite the above notices, the respondents could not cure the default even till today. In the above admitted facts of the case, the petitioner is entitled to terminate the PPA. Therefore, the PPA is, accordingly, terminated with immediate effect.. The petitioner is entitled to Open Access as per the extant Regulations. The petitioner is reserved with the right to seek recovery of the dues by availing a fresh remedy.

The OP is, accordingly, allowed to the extent indicated above.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman