



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE TWENTY SIXTH DAY OF APRIL,
TWO THOUSAND AND TWENTY THREE

:Present:

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

O.P.No.86 of 2021

Between:

M/s. Sarda Metals & Alloys Ltd, A Company
Incorporated under the Companies Act, 1956,
Office at D. No.50-96-4/1, Floor- II & III,
Srigowri Nilayam, Seethammadhara NE,
Visakhapatnam - 530013, Rep by Mr Prabhat
Mohan, HT No. VZM 220

...Petitioner

And

Eastern Power Distribution Company of
Andhra Pradesh Limited, Rep by its Chairman
& Managing Director, Visakhapatnam.

... Respondent.

This Original Petition has come up for final hearing before us today in the presence of Sri M. Abinaya Reddy, counsel representing Sri P.Vikram, learned counsel for the petitioner, Sri P. Shiva Rao, learned Standing Counsel for the respondent, 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

The petitioner, which is a Ferro Alloys unit, is running a Captive Power Plant. It has supplied certain quantity of power to the respondent from 03-02-2013 to 28-02-2021. Though the pleadings on either side did not specifically refer, it is evident from the Purchase Orders issued on behalf of the respondent that for supply of power, the petitioner has obtained Open Access from APTRANSCO using its transmission system.

The grievance of the petitioner is that the respondent has withheld a sum of Rs.2,90,81,340/- representing the value of 1,07,69,675 KWH of power supplied for the period from 03-02-2013 to 28-02-2021 on account of over injection. According to the petitioner, this action of the respondent is contrary to Notification No.1-7/105921)/2007-CERC, dated 25-01-2008 and Notification No.1(1)/2011/CERC, dated 05-03-2012, and also Notification No.L-1/132/2013/CERC dated 06-01-2014. Further, the petitioner sought for a direction to the respondent not to insist on submitting an undertaking by the petitioner that it will not claim any charges for the energy injected over and above the scheduled energy.

In the counter-affidavit filed by the respondent it is, *inter alia*, pleaded that the CERC Regulation and the Notifications relied upon by the petitioner are confined to the aspect of liability for over injection or underdrawal by the Open Access Consumer; and that the said Regulations are no application in respect of the power, admittedly, over injected beyond the schedule by the petitioner. The respondent further pleaded that the instant case is covered by Clause 10.3 and 10.4 of Regulation 2 of 2006 framed by this Commission. The respondent also pleaded that while the petitioner is not entitled to any relief, alternatively, the claim made by the petitioner for the period prior to 13-08-2018 is barred by limitation.

No rejoinder has been filed by the petitioner.

After hearing Sri M.Abhinay Reddy, learned counsel for the petitioner and Sri P.Shiva Rao, learned Standing Counsel for the respondent, the points that fall for consideration are:

- 1) whether the petitioner is entitled to recovery of the value of the over injected power; and
- 2) whether the petitioner is required to submit an undertaking?

From a perusal of the CERC Regulations it is evident that they apply to the applications for grant of Open Access for use of

transmission lines or associated facilities, if such lines are on the interstate transmission system. From the material on record, it appears that no interstate transmission is involved since the petitioner's captive power plant and the delivery point are located within the residuary State of Andhra Pradesh. At any rate, the transactions between the petitioner and the respondent are governed by the Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions) Regulation, 2006 (for short "Regulation 2 of 2006"). Clause 3 of the said Regulation provides that it applies to Open Access Generators, Scheduled Consumers and Open Access Consumers. Though the petitioner was supplying power to the respondent, it falls within the description of "Open Access Generators". Clause 10 of the Regulation deals with settlement for Open Access Generators at the entry point. Clause 10.4, which is relevant for the present case reads as under:

10.4. Injection of energy by an OA Generator over and above the scheduled capacity at an Entry point shall not be accounted for. In such cases, only the scheduled capacity at exit point shall be accounted for as having been supplied by the Generator to the Scheduled Consumer or the OA Consumer, as the case may be.

It is clear from the above Clause that if the OA Generator injects energy over and above the scheduled capacity, at an entry point, such power shall not be accounted for. Evidently, in line with the above Clause,

every Purchase Order contains that any excess generation (15 months time block integration) pumped into the Grid without prior approval of APPCC/AP DISCOMs will not be accounted for or shall not be paid for. It is thus clear that not only Clause 10.4 of Regulation 2 of 2006 framed by this Commission, which applies to the intrastate supply of power, disallows accounting of/payment for the power supplied over and above the scheduled power, but also the term in the Purchase Orders specifically disallows payment for such over injection. At the hearing, the learned counsel for the petitioner has not disputed this position emerging from Regulation 2 of 2006 and also the Purchase Orders. In light of the above, the respondent is not liable to pay for the over injected power.

Having regard to the above finding, there is no need for dwelling into the issue whether the substantial part of the claim is barred by limitation.

As regards the plea of the petitioner on the undertaking, the Commission is of the view that there is no requirement for submission of an undertaking by the petitioner that it will not claim any charges for the energy injected over and above the scheduled energy, since the Purchase Orders as well as Clause 10.4 of Regulation 2 of 2006 disallow accounting of/payment for the said energy. Further, Sri P. Shiva

Rao, the learned Standing Counsel for the respondent, fairly agreed that the respondent will not insist on such undertakings in future.

For the aforementioned reasons, the OP is dismissed, except for the relief sought in respect of the undertakings, without costs.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

