



**ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION**

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE NINTH DAY OF AUGUST,
TWO THOUSAND AND TWENTY THREE

:Present:

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

O.P.No.43 of 2019

Between:

M/s. ITC LIMITED

A Company incorporated Under Companies Act, 2013
Registered office at Virginia House, 37, J.L.Nehru Road,
Kolkata - 700 071, Divisional Headquarters at 106,
Sardar Patel Road, Secunderabad 500 003

.... Petitioner

AND

1. Southern Power Distribution Company of
Andhra Pradesh Limited, Office at 19-13-65/A,
Srinivasapuram, Tiruichanoor Road, Tirupathi 517503.

2. Eastern Power Distribution Company of
Andhra Pradesh Limited, Office at P&T Colony,
Seethammadhara, Visakhapatnam 530 013.

3. Andhra Pradesh Power Co-Ordination Committee
C/o. Transmission Corporation of Andhra Pradesh
Vidyut Soudha, Gunadala, Vijayawada.

4. State Load Despatch Centre for Andhra Pradesh
C/o. Transmission Corporation of Andhra Pradesh
Vidyut Soudha, Gunadala, Vijayawada

... Respondents

This Original Petition has come up for hearing before us on 05-7-2023 in the presence of Sri S.Ravi, Senior Counsel assisted by Sri M. Abhinay Reddy, 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

1) Brief facts of the case of the petitioner:

(a) M/s ITC limited filed this Petition under Section 86(l)(b) and 86(l)(f) of the Electricity Act, 2003 read with Regulation 55 of the APERC (Conduct of Business) Regulations, 1999 for issuance of directions to the Respondents, viz., APSPDCL, APEPDCL, APPCC and APSLDC, in relation to making payment for the stranded energy injected into the Grid owing to unlawful denial of Open Access; and also sought compensation from the Respondents against the loss incurred by it. The Petitioner also sought compensation against the sale of the surplus stranded power by it, which was forced to sell to the Respondents, in order to mitigate losses in view of the obstruction in securing inter-state Open Access, at a paltry price of Rs.2.44/- per unit as against the tariff rate approved by this Hon'ble Commission for the relevant period for wind energy at Rs.4.70/- per unit, or at least the

Average Pooled Power Cost of Rs.3.38/- per unit as determined by this Hon'ble Commission.

(b) The petitioner has set up a 46 MW Wind Power project as a captive generating plant to generate electricity for its own use. The electricity from this wind power project was intended to be used according to the varying electricity requirements of the Petitioner's Industrial Undertakings situated in Chirala in Prakasam District, Andhra Pradesh; Anaparthi in East Godavari District, Andhra Pradesh; and Sarapaka Village in Bhadrachalam District, Telangana State, from time to time. The wind power project of the Petitioner was synchronized on 25.06.2014 and Respondent No.1 vide its letter dated 06.08.2014, permitted the Petitioner to declare Commercial Operation Date (COD) of the project. Accordingly, the COD of the project was considered as 25.07.2014.

(c) The Petitioner claimed that as a condition for allowing synchronisation of the said Wind Power Project, it was compelled to provide undertakings to APCPDCL and APSPDCL, wherein a condition has been stipulated stating that the Petitioner would not demand any charges from APCPDCL and APSPDCL for energy pumped into the Grid till Long term/Short Term Open Access agreements were entered into with the concerned authority.

(d) Pursuant to the commissioning of the project on 25.07.2014, the Petitioner originally filed a single application on 20.08.2014 before the the APSLDC (Respondent No.4) for grant of Open Access for transmission of power generated at its wind power project to its manufacturing facilities at Chirala and Anaparthi in Andhra Pradesh State and Sarapaka in Telangana State. It is averred that the Petitioner also filed corresponding applications on 20.08.2014 for grant of Inter-State Open Access to the Telangana State Load Despatch Centre (TSLDC) for grant of concurrence and to the Southern Region Load Despatch Centre (SRLDC) for the grant of Inter-State Open Access for transmission and wheeling of wind power from the wind power project in Andhra Pradesh to the manufacturing facilities in the state of Telangana. However, the applications made by the Petitioner for grant of Intra-State Open Access and Inter-State Open Access were not processed. Subsequently, the Petitioner was told to allocate specific WTGs meant for captive consumption within the State.

(e) It is averred that since the original application presented by the Petitioner for grant of Inter-State and Intra-State Open Access was not processed, the entire energy generated from the 46 MW Windmill was injected into the APTRANSCO Grid from

the date of application on 01-09-2014 to 17-10-2014 from Feeder #6, and 01-9-2014 to 20-10-2014 from Feeders #4 & 5. i.e. till Intra-State Open Access was granted, which resulted in wrongful loss to the Petitioner and unjust enrichment to the AP DISCOMs i.e., the Respondents; and that due to denial of Open Access, the power was injected into the Grid and utilized by Respondents 1 & 2, who are the joint beneficiaries of the electricity utilized, but no payment has been received by the Petitioner for the power so injected.

(f) The petitioner claimed that the loss incurred by it to the extent of aforesaid units of electricity utilized by respondents 1 and 2 may be calculated on the basis of the prevailing energy tariff rate for wind energy in the State of Andhra Pradesh at Rs.4.70/- per kWh and paid to it; or, in the alternative, the loss incurred by it to the extent of aforesaid units of electricity may be calculated on the basis of the average pooled power cost per unit of Rs.3.44/- fixed by this Hon'ble Commission during relevant time and paid to it. The quantum of loss caused to the Petitioner during the period between 01-09-2014 to 20-10-2014 is Rs.3,67,69,444/- i.e., 106,88,792 units X Rs.3.44 ps [average pooled power cost] = [after manually excluding 124952 Units from Feeder #6 as per the MRI dump (uncertified)]. It is further claimed

that the applications made by the Petitioner for Inter-State Open Access for supply of wind power to its manufacturing facility in Sarapaka, Bhadradi Kothagudem District, Telangana State was repeatedly and unlawfully denied and frustrated by the Respondent No.4, SRLDC and TSLDC on various flimsy grounds contrary to the Open Access Regulations; that such a denial is arbitrary, unreasonable and capricious and based on irrelevant and unwarranted considerations; and that the loss incurred by the Petitioner on this count may be calculated on the basis of APNPDCL prevailing energy tariff rate for wind energy in the State of Andhra Pradesh of at Rs.4.70/- per kWh; or, in the alternative, the loss incurred by the Petitioner to the extent of the aforesaid units of electricity may be calculated on the basis of average pooled power cost of Rs.3.44/- decided by this Hon'ble Commission and paid to it.

(g) Along with the petition, the Petitioner filed the Terms and Conditions for Short Term Power Sale to Respondent No.3, vide: its letter dated 11.09.2014 for a price of Rs.5.45 ps per Kwh. In reply thereto, the Transmission Corporation of Andhra Pradesh Limited (TCAPL), vide: its letter dated 18.10.2014, informed the Petitioner that APDISCOMs have agreed to avail the power at Rs.2.44 ps per Kwh and sought consent of the Petitioner for the

said price. After discussions with the officials of Respondent No.3, the Petitioner was informed that the counter offer of Rs.2.44 ps per Kwh of the DISCOMs is final. Since the Petitioner had already injected a huge number of units of energy into the grid, without any payment, it was left with no other option but to accept the counter offer of Rs.2.44/- per kwh. The Petitioner while accepting the said price, vide: its letter dated 01.12.2014, specifically noted that “under this helpless situation”, they are giving their willingness to supply their wind power at Rs.2.44 ps per Kwh. Thereupon, Respondent No.3, on behalf of Respondent Nos.1 and 2, issued Order dated 04.12.2014 for the purchase of power on “as and when available” basis, during the period from 06.12.2014 to 28.05.2015 at the rate of Rs. 2.44/- per unit for delivery at the Kalyandurg substation on account of the Respondent DISCOMs.

(h) That on 09-8-2016 the Petitioner submitted a written proposal to Respondent No.3 for extension of wind power sale generated at its Wind Power Project in Anantapur, Andhra Pradesh, to the grid after 31.08.2016 on a short term basis, which was rejected by latter and communicated to the petitioner on 16.09.2016.

(i) It is averred that the Petitioner would not have sold the stranded energy at such a low price of Rs.2.44 per unit under normal circumstances, but was forced to do so, owing to repeated and continuous frustration of the petitioner's right to Inter-State Open Access, which resulted in loss being incurred by the Petitioner; that against such an illegal action of the relevant authorities, including the Respondents, the Petitioner had approached the Central Electricity Regulatory Commission, New Delhi (for short "the CERC") by way of filing Petition No.121/MP/2015 seeking various reliefs, including direction to the APSLDC and TS-SLDC to grant timely concurrence for Inter-State Open Access, upon consideration of availability of transmission capacity, in accordance with law; and that the CERC, vide: its order dated 13-6-2016 held the action of the State Load Despatch Centres of Andhra Pradesh and Telangana in denying the Inter-State Open Access to the petitioner as illegal and directed Respondent No.4-AP State Load Despatch Centre and TS-SLDC to process the applications of the petitioner for Inter-State Open Access in accordance with the CERC Open Access Regulations. The CERC also observed that the Petitioner is required to approach this Hon'ble Commission seeking compensation for the loss sustained on account of stranded

energy under distress sale to the distribution companies of Andhra Pradesh. The summary of findings of the CERC is reproduced hereunder:

“a) The petitioner is required to follow the procedure and the formats as applicable for grant of short term inter-State open access for transfer of power from its captive generating plant for use by its captive users.

b) Since the petitioner’s captive wind generation plant is an intra- State entity, the petitioner is required to obtain concurrence from SLDC for grant of inter-State open access in terms of the provisions of 2008 Open Access Regulations.

c) Since the State Commissions have not specified charges for deviation from schedule in respect of short term transactions, the provisions of the 2008 Open Access Regulations shall be applicable. AP-SLDC and TS-SLDC are directed to implement the Commission's regulations as well as the regulations of the respective State Commissions for facilitating non-discriminatory open access as enshrined in the Act.

d) AP-SLDC was required to either grant concurrence or deny short term inter-State Open access to the petitioner as per the provisions of Section 9 of the Act read with Regulation 8 (3) (b) and (c) of 2008 Open Access Regulations. Though AP-SLDC can seek details such as SCADA facilities, tools utilized for forecasting and LVRT details keeping in view the grid security, non-furnishing of the said information cannot be a ground to deny open access. Accordingly, AP-SLDC is directed to process the applications of the petitioner for issue of concurrence in the manner specified in the 2008 Open Access Regulations.

e) SRLDC was required to act in accordance with the provisions of 2008 Open Access Regulations by considering the lack of response by AP-SLDC as deemed concurrence.

f) As per Regulation 5.2 (j) of the Grid Code, no user is required to suddenly reduce his generating unit output by more than 100 MW without prior intimation to and consent of the RLDC. As the installed capacity of the petitioner's plant is 46 MW, the rejection of concurrence of inter-State Open Access for the months of April and May 2015 by AP-SLDC on the ground of non-compliance with the provisions of Regulation 5.2 (j) is contrary to the Grid Code.

g) Since the petitioner's power is to be scheduled from 33/132/220 kV substation of APTRANSCO for the purpose of intra-State and inter-State Open Access, AP-SLDC is required to schedule capacities (not WTGs) for inter-State and intra-State Open Access in consultation with the petitioner and finalize necessary accounting scheme accordingly.

h) State Electricity Regulatory Commissions are requested to implement Model Regulations on Forecasting, Scheduling and Deviation Settlement of Wind and Solar Generating Station evolved by Forum of Regulators to ensure grid integration of huge renewable resources to be connected to grid in next 5 to 7 years. wind generators are directed to carry out forecasting/scheduling as per applicable regulations. SLDCs/RLDCs are directed to seek forecast/schedule for wind generation as per applicable regulations.

i) The petitioner is required to approach the State Commission for compensation for the loss sustained on account of stranded energy under distress sale to the distribution companies of Andhra Pradesh”.

j) Pursuant to the aforesaid directions of the CERC, the Petitioner has approached this Commission seeking the following reliefs:

a) to direct the respondents to pay an amount of Rs.5,02,37,322/- for the losses sustained on account

of injection of 106,88,792 units into the Grid between 01-09-2014 to 17.10.2014 by feeder No.6 and between 01.09.2014 to 20.10.2014 by feeders No.4 & 5 of the wind power project of the petitioner owing to denial of both Intra-State and Inter-State Open Access, along with bank rate of interest;

- b) to direct the respondents to pay an amount of Rs.2,04,13,745/- for the losses sustained in respect of 43,43,350 units of power injected during the period from 20.10.2014 to 05.12.2014 from Feeders 4 and 5 of the wind power project of the petitioner owing to denial of Inter-State Open Access, along with bank rate of interest;
- c) to direct the Respondents to pay Rs.17,70,17,079/- for the period from 06.12.2014 to 31.08.2016 onwards by way of compensation for the loss sustained by it on account of the distress sale of stranded energy to the respondents; and
- d) to direct the respondents to pay the petitioner an amount of Rs.4,16,62,039/- as compensation for the power supplied from 01.09.2016 onwards and utilized by the respondents.

2. The Defence of the respondents:

(a) The Respondents have filed their counter-affidavits denying most of the allegations made by the petitioner. They mainly contended that a major part of the claim of the petitioner is barred by limitation; that the Petitioner has injected the power on their own volition; and that they have agreed to the price of Rs.2.44 as per their own undertaking dated 02-12-2014.

3. Contentions:

(A) Petitioner:

Shri S.Ravi, the learned Senior Counsel for the petitioner vehemently argued that they were forced to make distress sale of the stranded energy due to inaction on the part of the Respondents and that they are entitled for relief in terms of the order passed by the Central Electricity Regulatory Commission. He tried to explain various charts furnished by them of their entitlement for different periods. He has also relied upon the following decisions of the Hon'ble APTEL, viz., ***The Karnataka Power Transmission Corporation Vs Karnataka Regulatory Commission¹; Bangalore Electricity Supply Company Ltd Vs. Reliance Infrastructure Ltd²; and Hubli Electricity Supply Company Ltd Vs. Fortune Five Hydel Projects Private Ltd³.***

(B) Respondents:

(a) Sri P.Shiva Rao, learned Standing Counsel for the respondents, contended that the aforesaid claims, apparently, are barred by law of limitation; and that except the last relief, all other reliefs are barred by law of limitation, and deserves to be rejected at the threshold. In respect of last relief i.e., compensation for the

¹) APTEL Order dated 03-2-2014 in Appeal No.86 of 2013=Manu/ET/0017/2014

²) APTEL Order dated 24-1-2013 in Appeal No.170 of 2012=Manu/ET/0018/2013

³) APTEL Order dated 12-5-2016 in Appeal No.123 of 2015=Manu/ET/0059/2016

power supplied from 01.09.2016 onwards, he contended that it is liable to be rejected since there is no cause of action as well as no PPA and Open Access Agreement with the petitioner. In support of his contention, he relied upon the decision of the Hon'ble Supreme Court in **A.P. Power Co-ordination Committee Vs. M/s. Lanco Kondapalli Power Limited**⁴ and the order of this Commission in **TGV SRAAC Limited Vs. AP TRANSCO**⁵. Along with his written submissions he also filed the breakup of the demand pertaining to the period under dispute and contended that the entire demand is barred by limitation.

(b) On behalf of respondent No.4, written submissions have been filed, *inter alia*, contending that at the initial stage of Open Access permissions for Intra-state and Inter-State supply, to the petitioner and other VRE generators, some typical problem of segregation of energy of intra-state and inter-state on the same meter was faced by it; that the petitioner did not come forward with any methodology to resolve the issue; that due to the aforesaid ambiguity in the methodology of segregation by the respondents, the issue was taken to CERC, by the petitioner; that the CERC, which is the competent authority, has given

⁴) Supreme Court Judgment dt.16-10-2015 in Civil Appeal No.6036 of 2012.

⁵) This Commission's order dated 20-12-2021.

methodology to be adopted for segregation of inter-state and intra state open access of R.E power; that, subsequently, the said methodology is being followed and the intra-state and inter-state energy settlements are being done by the respondents as per the orders of CERC prospectively; and that, therefore, there was no delay on part of the respondents in granting Open Access permission to the petitioner. It is further contended that the APSLDC on its part, every year, issues hundreds of bilateral STOA concurrences, IEX NOC approvals and intra-state STOA approvals within the framework of Regulations; and that the APSLDC has no intention of denial of lawful right of the petitioner for Open Access, which is evidenced from the intra state open access approvals being given to the petitioner regularly; that in order to have a methodology to be adopted for segregation on the same meter, APSLDC was constrained to reject the Inter-State Open Access application of the petitioner; that, in fact, the petitioner had also not come forward with any methodology and also in the absence of deviation settlement mechanism and large variability of the wind generation, even the other SLDCs of bilateral transaction i.e., TSSLDC and SRLDC Dispatch Centres, have also rejected the bilateral transactions; that, after the CERC order, Open Access permissions were issued immediately; and

that the allegation made by the petitioner on the aspect of distress sale is baseless.

4. Consideration by the Commission:

The commission has gone through the record and the various submissions made by the petitioner and the respondents.

The main issue for consideration is - whether the petitioner has filed its claims within a period of three years or any of the claims for different periods are beyond the limitation period? If not, whether the petitioner is entitled to claim the charges at a higher Tariff Rate or Pooled Price Rate for various periods under dispute instead of at the agreed price of Rs.2.44 ps.?

Legal Position:

(a) The law of limitation finds its root in the maxims "*Interest Reipublicae Ut Sit Finis Litium*" which means that in the interest of the state as a whole there should be a limit to litigation and "*vigilantibus non dormientibus Jura subveniunt*" which means the law will assist only those who are vigilant with their rights and not those who sleep upon it. The law of limitation specifies the statutory time frame within which a person may initiate a legal proceeding or a legal action can be brought. If a suit is filed

before the court after the expiry of the time within which a legal proceeding should've been initiated will be restricted.

The time from which period of limitation begins to run depends upon the subject matter of the case and a specific starting point of such period is provided extensively by the Schedule in the Limitation Act. It generally starts from the date when the summons or notice is served, or the date on which the decree or judgment is passed, or the date on which the event that forms the basis of the suit takes place. The Supreme Court in **The Trustees of Port of Bombay Vs. The Premier Automobiles Limited**⁶ held that the starting point of limitation is accrual of the cause of action.

(c) The law of limitation prescribes the time within which a person can enforce his legal right. This Act keeps a check on the cases so that they are not dragged for over a long time .Section 12 deals with the exclusion of time under the Limitation Act for computing time of limitation in legal proceedings. Sub-section (1) says that the day on which the cause of action arises that day shall be excluded while computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned .

⁶) (1974) 4 SCC 710

(d) In **M/s. Lanco Kondapalli Power Limited (4 supra)**, the Hon'ble Apex Court dealt with the issue of limitation in proceeding before the Commission. The summary of the observations made in paras 29 and 30 of the said decision is that - *there is nothing in the Electricity Act 2003 to create a right in a suitor before the Commission to seek claims which are barred by law of limitation merits a serious consideration.* There is no possibility of any difference of opinion in accepting that on account of judgment of this Court in **Gujarat Urja Vikas Nigam Limited Vs. Essar Power Limited - (2008) 4 SCC 755** - the Commission has been elevated to the status of a substitute for the Civil Court in respect of all disputes between the licensees and generating companies. Such disputes need not arise from the exercise of powers under the Electricity Act. Even claims or disputes arising purely out of contract like in the present case have to be either adjudicated by the Commission or the Commission itself has the discretion to refer the dispute for arbitration after exercising its power to nominate the arbitrator. In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) appears to be for speedy resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even

ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.

(e) In view of the aforementioned legal precedents cited supra, it is settled law that time barred claims cannot be entertained by this Commission. It has, therefore, to be seen whether the claims are barred by limitation.

Sri S.Ravi, learned Senior Counsel for the petitioner, urged that all the claims are within the period of limitation, reckoned from the date of disposal of the case by the CERC. He has submitted that right to sue i.e., to approach this Commission, has accrued from the date of disposal of the case by the CERC, and, so calculated, all the claims are within the period of limitation.

Sri P.Shiva Rao, learned Standing Counsel for the respondents, has opposed the above submission and submitted that there was no reason for the petitioner to have not approached this Commission in respect of the part of the relief as raised in the present OP; and that reckoned from the date of accrual of right to claim, the claims upto March, 2015 were barred by limitation, even if the period during which the case before the CERC was pending is excluded.

We have carefully considered the submission relating to the date on which limitation starts running. It is not in dispute between the parties that the period of limitation has to be as three years as per Article 137 to the Schedule of the Limitation Act, 1963. As per the said provision, limitation commences “when the right to apply accrues”. However, the petitioner initially approached the CERC and the case before the latter was pending for 1 year 1 month and 19 days. The CERC, however, has left the petitioner with liberty to approach this Commission for the relief relating to claim for compensation for the stranded power. As the petitioner was pursuing its claim before the CERC, obviously a wrong Forum, Section 14 of the Limitation Act comes into play, which excludes the time during which the party has been prosecuting with due diligence another proceeding in a different Forum. We are,

therefore, inclined to exclude 1 year, 1 month and 19 days during which the proceedings initiated by the petitioner were pending before the CERC.

The respondents have prepared a comprehensive Table which depicted the details, such as, Bill Claim date and other relevant dates. This Table is extracted herein below:

Details of the period to the money claimed at higher rate month wise							
Billing Month	Bill claim date	Date of filing present petition in APERC	last date of supply on this claim upto filing of petition	Period spent in CERC petition	After deducting period spent in CERC from the date of alleged eligibility to date of present petition	Limita-tion	Amount paid ₹
Dec' 2014	1-1-2015	29-5-2019	4 years 4 months 28 days	1 year 1 month 19 days	3 years 3 months 9 days	Barred by Limitation except for April, 2015	Paid at Rs.2.44 per unit
Jan' 2015	1-2-2015	29-5-2019	4 years 3 months 28 days	1 year 1 month 19 days	3 years 2 months 9 days		
Feb' 2015	1-3-2015	29-5-2019	4 years 2 months 29 days	1 year 1 month 19 days	3 years 1 month 9 days		
Mar' 2015	1-4-2015	29-5-2019	4 years 1 months 28 days	1 year 1 month 19 days	3 years 9 days		
Apr' 2015	1-5-2015	29-5-2019	4 years, 0 month, 28 days	0 days (Since such relief not claimed as part of reliefs made before CERC)	4 years, 0 months, 28 days		
May' 2015	...	29-5-2019	3 years, 11 months, 28 days		3 years, 11 months, 28 days		
June' 2015	...	29-5-2019	3 years, 10 months, 28 days		3 years, 10 months, 28 days		
July' 2015	...	29-5-2019	3 years, 9 months, 28 days		3 years, 9 months, 28 days		

Aug' 2015	...	29-5-2019	3 years, 8 months, 28 days		3 years, 8 months, 28 days		
Sep' 2015	...	29-5-2019	3 years, 7 months, 28 days		3 years, 7 months, 28 days		
Oct' 2015	...	29-5-2019	3 years, 6 months, 28 days		3 years, 6 months, 28 days		
Nov' 2015	...	29-5-2019	3 years, 5 months, 28 days		3 years, 5 months, 28 days		
Dec' 2015	...	29-5-2019	3 years, 4 months, 28 days		3 years, 4 months, 28 days		
Jan' 2016	...	29-5-2019	3 years, 3 months, 28 days		3 years, 3 months, 28 days		
Feb' 2016	...	29-5-2019	3 years, 2 months, 28 days		3 years, 2 months, 28 days		
Mar' 2016	...	29-5-2019	3 years, 1 months, 28 days		3 years, 1 months, 28 days		
Apr' 2016	16-5-2016	29-5-2019	3 years, 0 months, 28 days		3 years, 0 months, 13 days		
May' 2016	14-6-2016	29-5-2019	2 years, 11 months, 28 days		2 years, 11 months, 15 days		₹1,85, 72,995/-
June' 2016	12-7-2016	29-5-2019	2 years, 10 months, 28 days		2 years, 10 months, 17 days		₹ 2,86, 80,050/-
July, 2016	12-8-2016	29-5-2019	2 years, 9 months, 28 days	...	2 years, 9 months, 17 days	Within time	₹ 3,36, 21,172/-
Aug' 2016	17-9-2016	29-5-2019	2 years, 8 months, 28 days		2 years, 8 months, 12 days		₹ 3,72,41,144/-

It can be seen from the above Table, the claims of the petitioner are clearly time barred upto March, 2015, even after excluding the period during which it was pursuing its case before the CERC. As regards the claims from April, 2015 to April, 2016,

they are within the period of limitation if the period during which the petitioner was pursuing its claims before the CERC is excluded. However, admittedly, the petitioner has not claimed any relief before the CERC for this period, except for the month of April, 2015 and, for the first time, these claims are made before this Commission in the present OP. Therefore, the benefit of Section 14 of the Limitation Act is not available to the petitioner in respect of the claims made from May, 2015 to April, 2016. It has therefore to be held that the claims for higher tariff/compensation for stranded power from December, 2014 to April, 2016 are clearly barred by limitation except for the month of April, 2015.

This leaves us with the rest of the claims relating to the period for April, 2015 and from May, 2016 to August, 2016 which are within the limitation period.

Pending grant of Open Access by the respondents, the petitioner has shared the Terms and Conditions for Short Term Power Sale to respondent No.3, vide: its letter dated 11-9-2014 claiming a price of Rs.5.45 ps per Kwh. In reply to the said letter, the Transmission Corporation of Andhra Pradesh Limited (TCAPL) informed the petitioner, vide: its letter dated 18-10-2014, that the AP DISCOMs have agreed to avail power at Rs.2.44 ps., per Kwh and sought the petitioner's consent for the said price.

After discussions between the petitioner and the officials of respondent No.3, the petitioner was informed that the counter offer of Rs.2.44 ps per Kwh was final. The petitioner has pleaded that having injected huge number of units of energy into the Grid by that time, it was left with no option other than to accept the said offer of Rs.2.44 ps per Kwh; and that, while communicating its acceptance, the petitioner in its letter dated 1-12-2014 specifically noted that “under this helpless situation, they are giving their willingness to supply their wind power at Rs.2.44 ps”. Respondent No.3, on behalf of respondents 1 and 2, issued order dated 04-12-2014 for the purchase of power on “as and when available” basis during the period from 06-12-2014 to 28-5-2015 at the rate of Rs.2.44 ps per unit for delivery at the Kalyandurg Sub-station. Indeed, on 09-8-2016 the petitioner submitted a written proposal to respondent No.3 for extension of wind power sale generated at its Wind Power Project at Anantapur to the Grid on 31-8-2016 on a short term basis at average Pooled Power Purchase Cost, which was rejected by respondent, vide: its letter dated 16-9-2016.

Sri S.Ravi, learned Senior Counsel for the petitioner, emphatically submitted that in view of the unjust action of SLDC in delaying grant of Open Access, the petitioner felt helpless in

accepting a very low price of Rs.2.44 ps and that, therefore, the petitioner is entitled to higher rate.

We are afraid, we cannot accept this submission. The petitioner's offer of supplying at Rs.5.45 per Kwh was unequivocally turned down by the DISCOMs and, instead, they have made a counter offer of Rs.2.44 ps., which was consented to by the petitioner, vide: its letter dated 01-12-2014, albeit by describing its position as "helpless situation".

Under Section 14 of the Indian Contract Act, 1872 (for short "the Contract Act"), a consent is said to be free if it is not caused by 'coercion' as defined in Section 15; or "undue influence" as defined in Section 16; or 'fraud' as defined in Section 17; or 'misrepresentation' as defined in Section 18; or 'mistake' subject to the provisions of Sections 20, 21 and 22. The petitioner has not specifically pleaded that the consent given by it in its letter dated 1-12-2014 for sale of power at Rs.2.44 ps per Kwh is vitiated by any of the above five factors mentioned in Section 14 of the Contract Act. To be fair to the learned Senior Counsel, he has not even attempted to refer to the provisions of Section 14 of the Contract Act to term the consent given by the petitioner as not a free consent. Moreover, except expressing its alleged helpless situation, the petitioner has not imposed any condition, such as,

reserving its right to claim higher price while accepting the DISCOM's counter offer. Therefore, on the admitted facts of the case, the petitioner has given its free consent as defined under Section 14 of the Contract Act, and, with its free consent, a valid contract was formed under Section 10 of the Contract Act. Once there is a valid contract, the petitioner cannot resile therefrom and claim a higher amount.

Even the plea of the petitioner that the petitioner gave its consent due to its helplessness is wholly unconvincing. The petitioner is a company of high networth and reputation. There could be no reason for it to slip into a state of helplessness even if the respondent did not accept its offer of Rs. 5.45 ps. It could have availed its legal remedies for recovering the price at which it intended to sell its power, instead of consenting for lesser price offered by the respondents. Having accepted the respondents' counter offer and received the price accordingly, it lies ill in the petitioner's mouth to claim higher price.

In the light of the above discussion, the following conclusions emerge:

- a) The claims for the period from December, 2014 to April, 2016 are barred by limitation, except for the month of April, 2015 ;

- b) Even if they are within the period of limitation, having regard to the valid contract between the parties, the petitioner is not entitled to more than the agreed price of Rs.2.44 ps., per Kwh; and
- c) Though the claims for the period for April, 2015 and from May, 2016 to August, 2016 are within the period of limitation, the petitioner is still not entitled to claim more than Rs.2.44 ps., per Kwh, for the same reasons as mentioned in b) supra.

The judgements relied upon by the petitioner have no application to the facts of the present case. In the light of the above findings, no further discussion is required to be undertaken.

In the result, the OP is dismissed, but without costs.

Sd/-
P.V.R. Reddy
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
Thakur Rama Singh
Member