

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

(SPECIAL ORIGINAL JURISDICTION)

THURSDAY, THE SEVENTEENTH DAY OF OCTOBER, TWO THOUSAND AND NINETEEN

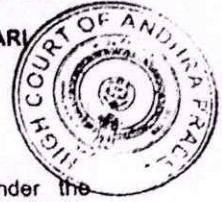
:PRESENT:

THE HONOURABLE THE CHIEF JUSTICE SRI JITENDRA KUMAR MAHESHWARI

AND

THE HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No. 15513 of 2019



Between :-

1. M/s. Animala Wind Power Private Limited, A company incorporated under the Companies Act, 1956 And having its registered office at Plot No.1366, Road No.45 Jubilee Hills, Hyderabad, Telangana - 500 033 Rep by its Authorized Signatory Mr.Suryanarayana Peri
2. M/s Anantapura Wind Energies Private Limited, A Company incorporated under the Companies Act, 1956 And having its office at Plot No.1071, Road No.44 Jubilee Hills, Hyderabad, Telangana - 500 033 Rep by its Authorized Signatory Mr.Suryanarayana Peri
3. M/s Sandia Wind Project Private Limited, A Company incorporated under the Companies Act, 1956 And having its office at 72, Madhuban, NR, Madhapur Under Bridge, Ellisbridge, Ahmedabad - 380 006 Rep by its Authorized Signatory Mr.Suryanarayana Peri
4. M/s SEI Green Flash Private Limited, A Company incorporated under the Companies Act, 1956 And having its office at 10th Floor, Menon Eternity, Old No.110, New No.165, St.Marys Road, Alwarpet, Chennai - 600 018, Tamilnadu Rep by its Authorized Signatory Mr.Suryanarayana Peri
5. M/s Skeiron Renewable Energy Amidyala Limited, A Company incorporated under the Companies Act, 1956 And having its office at Plot No. Godrej Millennium, 5th Floor, 9, Koregaon Park Road, Pune - 411 001, Maharashtra Rep by its Authorized Signatory Mr.Suryanarayana Peri
6. M/s Orange Anantapur Wind Power Private Limited, A Company incorporated under the Companies Act, 1956 And having its office at F-9, 1st Floor, Manish Plaza, Plot No.7, MLU, Sector - 10, Dwaraka, New Delhi - 110 075 Rep by its Authorized Signatory Mr.Suryanarayana Peri
7. M/s Zuvan Energy Private Limited, A Company incorporated under the Companies Act, 2013 And having its office at Menon Eternity, 10th Floor, New No.165, Old No.110, St.Marys Road, Alwarpet, Chennai - 600 018, Rep by its Authorized Signatory Mr.Suryanarayana Peri
8. M/s Divyesh Power Private Limited, A Company incorporated under the Companies Act, 2013 And having its office at Menon Eternity, 10th Floor, New No.165, Old No.110, St.Marys Road, Alwarpet, Chennai - 600 018, Rep by its Authorized Signatory Mr.Suryanarayana Peri
9. M/s SEI Baskara Power Private Limited, A Company incorporated under the Companies Act, 2013 And having its office at Menon Eternity, 10th Floor, New No.165, Old No.110, St.Marys Road, Alwarpet, Chennai - 600 018. Rep. by its Authorized Signatory Mr.Suryanarayana Peri
10. M/s SEI EnerStar Renewable Energy Private Limited, A Company incorporated under the Companies Act, 2013 And having its office at Menon Eternity, 10th Floor, New No.165, Old No.110, St.Marys Road, Alwarpet, Chennai - 600 018 Rep by its Authorized Signatory Mr.Suryanarayana Peri

..Petitioners

AND .

1. State of Andhra Pradesh, Department of Energy, Represented by its Principal Secretary, To Energy Infrastructure and Investment, Andhra Pradesh Secretariat, Velagapudi, Amaravathi. Guntur District - 522 503.
2. Andhra Pradesh Electricity Regulatory Commission, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills Road, Khairatabad, Hyderabad, Telangana 500004.
3. AP State Load Dispatch Center, Transmission Corporation of Andhra Pradesh Limited, 3rd Floor, APSLDC Vidyut Soudha, Gunadala, Vijayawada, AP -520004.

..Respondents.

Contd.2...

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in the nature of Mandamus or any other appropriate writ order or direction- a. to declare the Regulation issued by Respondent No.2 i.e., APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017 and consequential proceedings issued by Respondent No. 3 i.e., Procedure for implementation of DSM for Wind and Solar generation as per Regulation. 4 of 2017 of Hon'ble APERC, as arbitrary, discriminatory, unreasonable and ultra vires to the Constitution of India and as contrary to the provisions of the Electricity Act, 2003, b. to declare the action of Respondent No.3 in issuing the following Notices i.e., (i) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.395/2019 to Petitioner No.1, (ii) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.394/2019 to Petitioner No.2 (iii) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.3 (iv) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.354/2019 to Petitioner No.4 (v) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.5 (vi) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.441/2019 to Petitioner No.6 (vii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.361/2019 to Petitioner No.7 (viii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.345/2019 to Petitioner No.8 (ix) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.352/2019 to Petitioner No.9 and (x) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.353/2019 to Petitioner No.10 as arbitrary, illegal, unconstitutional and also violative of principles of natural justice.

I.A No. 1 of 2019 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of W.P., the High Court may be pleased to direct the Respondent No. 3 not to take any coercive action against the Petitioners including and not limited to encashment of the Bank Guarantees i.e., (1). BG. No. 0505518BG0003451, dated 04.08.2018 for an amount of Rs. 35,10,000/- furnished by Petitioner No. 1, (2). BG. No. 0505518BG0003449, dated 04.08.2018 for an amount of Rs. 4,50,000/-furnished by Petitioner No.2, (3). BG. No. 0505518BG0003350, dated 31.07.2018 for an amount of Rs. 6,88,500/- furnished by Petitioner No.4- (4) BG. No. 01720BG18015581, dated 13.08.2018 for an amount of Rs. 1,35,00,000/- furnished by Petitioner No.6, (5). BG. No. 0505518BG0003432, dated 03.08.2018 for an amount of Rs. 11,25,000/-furnished by Petitioner No.7, (6). BG. No. 0505518BG0003340, dated 31.07.2018 for an amount of Rs. 11,25,000/- furnished by Petitioner No.8, (7). BG. No. 0505518BG0003342, dated 31.07.2018 for an amount of Rs. 11,25,000/- furnished by Petitioner No.9 and (8). BG. No. 0505518BG0003338, dated 31.07.2018 for an amount of Rs. 11,25,000/-furnished by Petitioner No.10 pending disposal of W.P. No. 15513 of 2019, on the file of the High Court.

I.A No. 2 of 2019 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of W.P., the High Court may be pleased to suspend the operation and effect of Notice(s) issued by the Respondent No.3 i.e., (i) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.395/2019 to Petitioner No.1; (ii) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.394/2019 to Petitioner No.2; (iii) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.3; (iv) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.354/2019 to Petitioner No.4; (v) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.5; (vi) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.441/2019 to Petitioner No.6; (vii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.361/2019 to Petitioner No.7; (viii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.345/2019 to Petitioner No.8; (ix) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.352/2019 to Petitioner No.9 and (x) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.353/2019 to Petitioner No.10 pending disposal of this writ petition pending disposal of the above writ petition and to pas, pending disposal of WP No. 15513 of 2019, on the file of the High Court.

Contd...3...

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and order of High Court dt. 01-10-2019 and upon hearing the arguments of SRI P. Vikram, Advocate for Petitioner and of the G.P. for Energy on behalf of respondent No.1 and Sri P. Srinivasa Rao, Standing Counsel for Respondent No.2 and Sri Y Nagi Reddy, Standing Counsel for Respondent No.3, the court made the following
ORDER

"Three weeks' time is granted to all the respondents to file counters.

Interim order granted earlier to continue until further orders.

List this case after three weeks along with W.P.Nos.781 of 2018, 5706 and 13860 of 2019 or analogous hearing."

//TRUE COPY//

Sd/- V .SUDHA,
ASSISTANT REGISTRAR

* for ASSISTANT REGISTRAR

To

1. Two CCs to the G.P for Energy, High Court of A.P.,(OUT)
2. One CC to Sri P. Vikram, Advocate(OPUC)
3. One CC to Sri P. Srinivas Rao, Standing Counsel(OPUC)
4. One CC to Sri Y. Nagi Reddy, Advocate(OPUC)
5. Two spare copies.

TKK

HIGH COURT

HC-J & UDPR-J

DT.17-10-2019.

ORDER

W.P.No. 15513 of 2019.

**EXTENDING THE
INTERIM ORDER**



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)
TUESDAY, THE FIRST DAY OF OCTOBER TWO THOUSAND AND NINETEEN
:PRESENT:
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AND
THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

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The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of SRI P. Vikram, Advocate for Petitioner and of the G.P. for Energy on behalf of respondent No.1 and Sri P. Srinivasa Rao, Standing Counsel for Respondent No.2 ad Sri Y Nagi Reddy, Standing Counsel for Respondent No.3, the court made the following
ORDER

"The learned Standing Counsel for the respondents-Corporation states across the Bar that on the basis of the letter dated 27.8.2019, they are not intending to invoke the Bank guarantee and they are only referring to APERC.

The learned Counsel for the petitioners submits that such power is not available under the regulations.

Having regard to the above and in view of earlier orders passed by this Court in W.P.Nos.5706 of 2019 and 13860 of 2019, we are inclined to grant status quo.

Accordingly, status quo obtaining as on today shall be maintained.

Post after Dasara Vacation, 2019 along with W.P.Nos.781/2018, 5706/2019 & 13860 of 2019."

Sd/- U. SIVA LEELA,
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, (Department of Energy), To Energy Infrastructure and Investment, State of Andhra Pradesh, Andhra Pradesh Secretariat, Velagapudi, Amaravathi, Guntur District - 522 503.
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3. AP State Load Dispatch Center, Transmission Corporation of Andhra Pradesh Limited, 3rd Floor, APSLDC Vidyut Soudha, Gunadala, Vijayawada, AP -520004, Krishna District.
(Addressee Nos. 1 to 3 by RPAD)
4. Two CCs to the G.P for Energy, High Court of A.P., (OUT)
5. One CC to Sri P. Vikram, Advocate (OPUC)
6. One CC to Sri P. Srinivas Rao, Standing Counsel (OPUC)
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TKK

HIGH COURT

HAC.J & MSM.J

DT.01-10-2019.

ORDER

W.P.No. 15513 of 2019.

STATUS QUO



[3135]

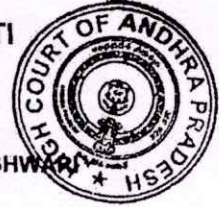
HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

MONDAY, THE THIRTIETH DAY OF DECEMBER,
TWO THOUSAND AND NINETEEN

:PRESENT:

THE HONOURABLE THE CHIEF JUSTICE SRI JITENDRA KUMAR MAHESHWAR
AMD

THE HONOURABLE SRI JUSTICE M. VENKATA RAMANA



WRIT PETITION No. 15513 of 2019

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..Respondents.

Contd.2...

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in the nature of Mandamus or any other appropriate writ order or direction- a. to declare the Regulation issued by Respondent No.2 i.e., APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017 and consequential proceedings issued by Respondent No. 3 i.e., Procedure for implementation of DSM for Wind and Solar generation as per Regulation. 4 of 2017 of Hon'ble APERC, as arbitrary, discriminatory, unreasonable and ultra vires to the Constitution of India and as contrary to the provisions of the Electricity Act, 2003, b. to declare the action of Respondent No.3 in issuing the following Notices i.e., (i) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.395/2019 to Petitioner No.1, (ii) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.394/2019 to Petitioner No.2 (iii) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.3 (iv) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.354/2019 to Petitioner No.4 (v) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.5 (vi) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.441/2019 to Petitioner No.6 (vii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.361/2019 to Petitioner No.7 (viii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.345/2019 to Petitioner No.8 (ix) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.352/2019 to Petitioner No.9 and (x) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.353/2019 to Petitioner No.10 as arbitrary, illegal, unconstitutional and also violative of principles of natural justice.

I.A No. 1 of 2019 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of W.P., the High Court may be pleased to direct the Respondent No. 3 not to take any coercive action against the Petitioners including and not limited to encashment of the Bank Guarantees i.e., (1). BG. No. 0505518BG0003451, dated 04.08.2018 for an amount of Rs. 35,10,000/- furnished by Petitioner No. 1, (2). BG. No. 0505518BG0003449, dated 04.08.2018 for an amount of Rs. 4,50,000/-furnished by Petitioner No.2, (3). BG. No. 0505518BG0003350, dated 31.07.2018 for an amount of Rs. 6,88,500/- furnished by Petitioner No.4- (4) BG. No. 01720BG18015581, dated 13.08.2018 for an amount of Rs. 1,35,00,000/- furnished by Petitioner No.6, (5). BG. No. 0505518BG0003432, dated 03.08.2018 for an amount of Rs. 11,25,000/-furnished by Petitioner No.7, (6). BG. No. 0505518BG0003340, dated 31.07.2018 for an amount, of Rs. 11,25,000/- furnished by Petitioner No.8, (7). BG. No. 0505518BG0003342, dated 31.07.2018 for an amount of Rs. 11,25,000/- furnished by Petitioner - No.9 and (8). BG. No. 0505518BG0003338, dated 31.07.2018 for an amount of Rs. 11,25,000/-furnished by Petitioner No.10 pending disposal of W.P. No. 15513 of 2019, on the file of the High Court.

I.A No. 2 of 2019 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of W.P., the High Court may be pleased to suspend the operation and effect of Notice(s) issued by the Respondent No.3 i.e., (i) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE / AO/DSM/F.No.14 / D.No.395 / 2019 to Petitioner No.1; (ii) Notice dated 27.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM / F.No.14/D.No.394/2019 to Petitioner No.2; (iii) - Notice dated 28.08.2019 vide Lr.No.ED/ SLDC / SE (EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.3; (iv) Notice dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.354/2019 to Petitioner No.4; (v) Notice dated 28.08.2019 vide Lr.No.ED / SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.468/2019 to Petitioner No.5; (vi) Notice' dated 28.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO /DSM/F.No.14 / D.No.441 / 2019 to Petitioner No.6; - (vii) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.361/2019 to Petitioner No.7; (viii) Notice dated 14.08.2019 vide Lr.No.ED / SLDC/SE(EBC)/EE / AO/DSM/F.No.14 / D.No.345 / 2019 to Petitioner No.8; (ix) Notice dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/ EE/AO/DSM/F.No.14/D.No.352/2019 to Petitioner No.9 and (x) . Notice . dated 14.08.2019 vide Lr.No.ED/SLDC/SE(EBC)/EE/AO/DSM/F.No.14/D.No.353/2019 to Petitioner No.10 pending disposal of this writ petition pending disposal of the above writ petition and to pas, pending disposal of WP No. 15513 of 2019, on the file of the High Court.

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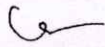
The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and order of High Court dt. 01-10-2019 & 17-10-2019 and upon hearing the arguments of SRI P. Vikram, Advocate for Petitioner and of the G.P. for Energy on behalf of respondent No.1 and Sri P. Srinivasa Rao, Standing Counsel for Respondent No.2 and Sri Y. Nagi Reddy, Standing Counsel for Respondent No.3, the court made the following

ORDER

**Rule nisi. Call for records. Notice returnable in four weeks.
List for final hearing in due course.
Interim order passed earlier to continue.**

//TRUE COPY//

**Sd/- K. MURALI
ASSISTANT REGISTRAR**


for ASSISTANT REGISTRAR

To

1. Two CCs to the G.P for Energy, High Court of A.P., (OUT)
2. One CC to Sri P. Vikram, Advocate (OPUC)
3. One CC to Sri P. Srinivas Rao, Standing Counsel (OPUC)
4. One CC to Sri Y. Nagi Reddy, Advocate (OPUC)
5. Two spare copies.

tvr

HIGH COURT

HC.J & MVRJ

DT. 30.12.2019

ORDER

W.P.No. 15513 of 2019.

**EXTENDING THE
INTERIM ORDER**



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4404 OF 2019
(Arising out of SLP (C) No. 4810/2019)

GREENKO ENERGIES PRIVATE LIMITED & ORS.

Appellant(s)

VERSUS

THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION Respondent(s)

O R D E R

Leave granted.

Nobody appears on behalf of the respondent though served. We are of the view that the impugned judgment passed by the High court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh needs to be set aside as the Writ Petition that was filed before it was to challenge the A.P. Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement Mechanism for Wind and Solar Generation Sources) Regulations, 2017. However, instead of either accepting or rejecting the challenge to the regulations, the High Court has relegated the appellant back to the Commission.

We therefore set aside the impugned judgment and remand the case to the High Court to be disposed of on merits.

The appeal is allowed in the aforesaid terms.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(VINEET SARAN)

Signature Not Verified
Digitally signed by R
NATARAJAN
Date: 2019.04.29
17:14:21 IST
Reason: []

New Delhi;
April 26 2019.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4810/2019

(Arising out of impugned final judgment and order dated 22-11-2018 in WP No. 781/2018 passed by the High Court Of Judicature At Hyderabad For The State Of Telangana And The State Of Andhra Pradesh)

GREENKO ENERGIES PRIVATE LIMITED & ORS.

Petitioner(s)

VERSUS

THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION Respondent(s)

IA 27649/2019 - EXEMPTION FROM FILING C/C/ OF THE IMPUGNED JUDGMENT
IA 56022/2019 - INTERVENTION/IMPLEADMENT
IA 56051/2019 - PERMISSION TO FILE ADDL. DOCUMENTS
IA 56050/2019 - STAY APPLICATION

Date : 26-04-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. S.B. Upadhyay, Sr. Adv.
Mr. Rana S. Biswas, Adv.
Mr. Sunil Kr. Sharma, Adv.
Mr. Nishant Kumar, Adv.
Ms. Sharmila Upadhyay, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Application for impleadment is dismissed.

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications stand disposed of.

(R. NATARAJAN)
COURT MASTER (SH)

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

*** HON'BLE THE CHIEF JUSTICE**
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

+W.P. No.781 OF 2018

% 22-11-2018

#Greenko Energies Private Limited and others

....petitioners

Vs.

\$ The Andhra Pradesh Electricity Regulatory Commission,
5th floor, Singareni Bhavan, Red Hills, Hyderabad,
Rep.by its Secretary

.... Respondent

!Counsel for the petitioners : Sri A. Satya Prasad, learned Senior
Counsel

appearing for Srinivas Mantha, learned
counsel.

Counsel for the Respondent: Learned Standing Counsel for APERC

<Gist :

>Head Note:

? Cases referred:

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

WRIT PETITION No.781 of 2018

ORDER: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

This writ petition is filed seeking issuance of a writ of certiorari or any other writ, direction or order quashing the Andhra Pradesh Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement Mechanism for Wind and Solar Generation Sources) Regulations, 2017 (for short, 'the Regulations') issued by the Andhra Pradesh Electricity Regulatory Commission.

2. We have heard the learned Senior Counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondent.

3. The challenge levied in the writ petition is that the impugned Regulations are discriminatory, unreasonable and *ultra vires* the Constitution of India. The petitioners have attempted to demonstrate their case through different aspects enumerated in grounds (A) to (V), as pleaded in the writ petition. Keeping aside the plea that on ground realities the resulting situation may workout practical issues which may result in arbitrariness and unreasonableness, we are of the view that in terms of the settled position of law relating to judicial review of such matters, there is nothing on record to hold that in making the Regulations, the respondent acted without authority or in defeasance of the authority conferred on it in terms of the provisions of the Electricity Act, 2003.

4. Be that as it may, we noticed that the petitioners have projected certain grievances relating to possibility of conflicting the scheduling of the wind generators.

5. As rightly pointed out by the learned Standing Counsel for the respondent, Clause 4.5 of the impugned Regulations provides the modality of dealing with such issue relating to forecasting and scheduling. Clause 4.7 of the Regulations is also noteworthy inasmuch as any commercial impact on account of deviation from schedule based on the forecast shall be borne by the wind or solar generator either by itself or through the representing Qualified Coordinating Agency (QCA). Obviously therefore, the wind generator may have grievances while applying the different clauses in the Regulations. The roles of the QCA and of the State Load Dispatch Center have also to be noted while dealing with energy account and deviation settlement under Clause 6 of the impugned Regulations. Clause 6.3 of the Regulations provides that in the event of actual injection of a generating station or a pooling station, as the case may be, being less or more than the scheduled generation, the deviation charges for shortfall or excess generation shall be payable by the wind or solar generator or QCA, as the case may be, to the State Pool Account in terms of the table formulated by the Regulatory Commission in that Clause for such purpose. Such action taken by the Regulatory Commission is a matter within the domain of the factors to be reckoned and decision to be taken in the realm of management of electrical energy generated through wind generators or solar generators, as the case may be. This is essentially a matter that would fall within the domain of the expertise of those who are well-versed with such matters. The

composition of the Regulatory Commission is so made that it is enabled to address such situation.

6. For the aforesaid reasons, we are of the view that if the petitioners have any grievances as regards the manner of enforcement of the Regulations or if they have a grievance to the effect that any difficulty arises in giving effect to the Regulations, it has an opportunity to move the respondent Commission in terms of Clause 8 of the impugned Regulations because that provision enables even an application by any affected party seeking issuance of directions as may be considered necessary in furtherance of the objective and purpose of the Regulation.

7. For the aforesaid reasons, this writ petition is ordered directing that the petitioners' grievances, if any, may be addressed by the respondent, if appropriate application is made before it invoking the clauses or any other enabling provisions, which enable the petitioners to make such representation before the respondent. We are sure that having regard to the objects sought to be achieved by the Regulatory Commission and the modality of the operations of that Commission, such representation of the petitioners will get expeditious consideration at that end.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

Date: 22.11.2018

Note: L.R. Copy to be marked

B/o

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