



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.(SR) No.31 of 2016
Dated: 18-02-2017

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

M/s. Weizmann Ltd.

... Petitioner

A N D

1. Andhra Pradesh Power Coordination Committee
2. Telangana State Power Coordination Committee
3. Southern Power Distribution Company of Andhra Pradesh Limited
4. Telangana State Southern Power Distribution Company Limited

... Respondents

This petition has come up for hearing finally on 31-12-2016 in the presence of Sri Challa Gunaranjan, learned counsel for the petitioner. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

ORDER

The petitioner contended that the Power Purchase Agreement it had with the erstwhile Andhra Pradesh State Electricity Board was transferred and vested in the then Central Power Distribution Company of Andhra Pradesh Limited as intimated by the Andhra Pradesh Power Coordination Committee on 12-09-2005. The power purchased prior to the bifurcation by the then Central Power Distribution Company of Andhra Pradesh Limited of the State of Andhra Pradesh is falling now under the distribution areas of the Southern Power Distribution Company of Andhra Pradesh Limited and the Southern Power Distribution Company of Telangana Limited. The monthly power purchase bills were paid at the full tariff rate of Rs.3.37 ps per unit upto and including December, 2010 and from January, 2011 only 50% of the bill amounts are being paid due to the pendency of the petition for determination of tariff before the State Electricity Regulatory Commission. The Commission passed an interim order on 16-11-2012 in I.A.No.8/2006 in O.P.No.17/2006 directing the then Central Power Distribution Company of Andhra Pradesh Limited to pay Rs.1.69 ps per unit beyond tenth year pending fixation of final tariff. The Commission ultimately fixed the tariff at

Rs.3.37 ps per unit from 11th to 20th years of CoD of the project by an order dated 06-09-2014 but letters and efforts of the petitioner failed to have any payment made. The Andhra Pradesh Power Coordination Committee gave a written communication accepting their liability to pay 17.45% of the differential tariff in terms of the Government Orders on apportionment of power between Andhra Pradesh and Telangana and the Telangana Power Co-ordination Committee orally intimated its rejection of the representations of the petitioner. Hence, the petition was filed for directions to the Power Coordination Committees of both the States and the Southern Power Distribution Companies Limited of both the States to pay differential tariff of Rs.1.685 per unit from January, 2011 to May, 2014 to a tune of Rs.3,81,04,344/- with interest at 14% in terms of the Power Purchase Agreement from the due dates.

2. The petition filed on 13-10-2016 was returned on 25-10-2016 with a letter by the office of the Commission informing that as the alleged dispute pertains to payment of 82.5% of the arrears due to the petitioner for the period from January, 2011 to May, 2014 from the power utilities of Telangana State, outside the jurisdiction of this Commission, this Commission does not appear to have jurisdiction to entertain and decide the petition. It was represented by the learned counsel for the petitioner along with a letter on 22-11-2016 stating that as the cause of action arose within the jurisdiction of the present Commission and previously the erstwhile Commission, the petition is maintainable. As the cause of action is inseparable, this Commission alone has jurisdiction and power to entertain the petition.

3. The petition was heard on the question of maintainability.

4. The point for consideration is whether this Commission has jurisdiction to entertain and adjudicate this petition.

5. The Electricity Act, 2003 contemplates constitution of an Electricity Regulatory Commission for the State by the State Government under section 82 (1) and the functions of the State Commission as enumerated in section 86 clearly confine the discharge of the said functions to be within the State. More particularly, the function under section 86 (1) (f) is to adjudicate upon the

disputes between the licensees and the generating companies and in-contrast with the definition of a generating company under section 2 (28), the definition of Licensee under section 2 (39) makes the word mean a person who has been granted a license under section 14. Section 14 makes the grant of license for transmission or distribution or trading to be one granted by the appropriate Commission which again as defined in section 2 (4) means for the present consideration, the State Regulatory Commission referred to in section 82 for the State. Hence, it is only adjudication of a dispute between the licensee who was granted a license by the appropriate Commission/the concerned State Commission and a generating company (irrespective of its location) that can be adjudicated or referred to arbitration under section 86 (1) (f). If so, on the bifurcation of the State of Andhra Pradesh and the formation of separate State Electricity Regulatory Commissions for the State of Andhra Pradesh and the Telangana State, Southern Power Distribution Company of Telangana Limited can no longer be considered or construed as a licensee under this Commission the disputes concerning which can be adjudicated by this Commission under section 86 (1) (f).

6. Under Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, Regulation 12 (5) prescribes that the Receiving Officer may decline to accept any petition which is not in conformity with the provisions of the Act or the Regulations or directions given by the Commission or otherwise defective, of-course the petitioner being given an opportunity to rectify any defect before any refusal for any defect. Regulation 12 (10) also provides for the Commission not passing an order refusing admission without giving the party concerned an opportunity of being heard. The present petition was heard giving full opportunity to the petitioner.

7. The provisions of the Andhra Pradesh Electricity Reform Act, 1998 which was saved by section 185 of the Electricity Act, 2003 to the extent its provisions are not inconsistent with the provisions of the Central Act does not contain any provision which runs contrary to the above understanding.

8. The Andhra Pradesh Reorganisation Act, 2014 provides for implementation of Twelfth Schedule to the Act by the successor States under section 92 thereof

and the erstwhile Andhra Pradesh Electricity Regulatory Commission was continued as a joint regulatory body for a maximum period of six months under C. Power.3 of the Twelfth Schedule within which time separate State Electricity Regulatory Commissions will be formed in the successor States. The Twelfth Schedule, C. Power.8 only states about the districts of Anantapur and Kurnool which fall within the jurisdiction of Central Power Distribution Company of Andhra Pradesh Limited being reassigned to the Southern Power Distribution Company of Andhra Pradesh Limited, while the existing Power Purchase Agreements with respective Discoms were continued for both on-going projects and projects under construction under C. Power.2. The Twelfth Schedule itself thus gives no indication of the consequences of Anantapur and Kurnool districts being reassigned to the Southern Power Distribution Company of Andhra Pradesh Limited in respect of the liabilities and responsibilities of the Central Power Distribution Company of Andhra Pradesh Limited existing by the appointed day. The Twelfth Schedule also gives no indication of the manner in which the proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission have to be dealt with on formation of the separate State Electricity Regulatory Commissions. Section 105 of the Andhra Pradesh Reorganisation Act, 2014 which speaks of transfer of pending proceedings does not speak of proceedings to be instituted in future after the appointed day and the deeming provision under section 104 of the Act in respect of the legal proceedings makes the respective State to be deemed to be substituted for the existing State of Andhra Pradesh and added as party to those proceedings and directed that the proceedings may continue accordingly. The other provisions of the Act relating to the apportionment of the assets and liabilities in different contingencies throw no further light except that the general principle governing such division is based on physical or geographical considerations only.

9. While even the proceedings pending by the appointed day stood transferred to the Telangana State Electricity Regulatory Commission on its formation in all matters exclusively relating to the territories of the State of Telangana, the question of this Commission exercising any jurisdiction over Telangana Power Co-ordination Committee or Southern Power Distribution Company of Telangana Limited now does not even remotely arise under the circumstances. While it is true that the Power Purchase Agreement (s) in question are much anterior to the

division of the erstwhile State of Andhra Pradesh, the correspondence between the parties shows that the Telangana Power Co-ordination Committee and the Southern Power Distribution Company of Telangana Limited specifically contended that the liability lies with the residual State of Andhra Pradesh after transfer of Anantapur and Kurnool districts to the Southern Power Distribution Company of Andhra Pradesh Limited and the Andhra Pradesh Power Coordination Committee ultimately stated by its letter dated 26-11-2015 that the Andhra Pradesh Power Coordination Committee will release its share of 17.45% towards proportionate liability in respect of Anantapur and Kurnool districts, if arrears payable by Telangana Power Co-ordination Committee and the Southern Power Distribution Company of Telangana Limited are admitted. The present petition shows that the petitioner did not in any manner assert the liability of the proposed respondents 1 and 3 to be anything more than 17.45% and if so, there cannot be considered to be existing any dispute relating to the liability of the respondents 1 and 3 to that extent and the petitioner may only have to take recourse the appropriate remedies available under law to enforce and recover such admitted liability. The petition as framed now does not appear tenable in respect of respondents 1 and 3 even in respect of the admitted liability. In so far as the proposed respondents 2 and 4 are concerned, even though the liability claimed appears to be in respect of a cause of action that arose prior to bifurcation of the State of Andhra Pradesh, as no proceeding was pending by the appointed day or till the date of formation of Telangana State Electricity Regulatory Commission for the State of Telangana, any adjudication of any dispute between the petitioner and the proposed respondents 2 and 4 can only be before the Telangana State Electricity Regulatory Commission and not before this Commission. As such, the petition as framed appears to be untenable in law and beyond the jurisdiction of this Commission. The claim that the common cause of action and the claim are inseparable is also *exfacie* unsustainable in the face of the claim of Andhra Pradesh Power Coordination Committee and the Southern Power Distribution Company of Andhra Pradesh Limited that their liability is only to the extent of 17.45% of the liability, which is not denied or disputed specifically. The inherent lack of jurisdiction since the formation of the Telangana State Electricity Regulatory Commission disables this Commission from entertaining the petition against the proposed respondents 2 and

4 and even against the proposed respondents 1 and 3 in the manner in which it is prayed to be considered.

Hence, the petition is declined to be accepted and refused under Regulation 12 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. No costs.

This order is corrected and signed on this the **18th day of February, 2017.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman