

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004

O.P.No.49 of 2014

Dated: 25-04-2015

Present: 1. Justice Sri. G. Bhavani Prasad ... Chairman
2. Dr. P. Raghu ... Member
3. Sri P. Rama Mohan ... Member

Global Energy Private Limited (GEPL) ... Petitioner
Ushdev Engitech Ltd. (UEL) ... Objector

This petition is filed under Sub-Section (1) of Section 15 of the Electricity Act, 2003. This petition came up for final hearing on 04-04-2015 in the presence of Sri P. Vikram, learned counsel for petitioner, Sri Anand K Ganesan, learned counsel for Objector and Sri P. Shiva Rao, learned Standing Counsel for APEPDCL & APSPDCL, who was earlier requested to assist the Commission in the matter. The Commission having heard the arguments of counsel for both parties and considering the submissions and material available on record, passed the following:

ORDER

A petition for grant of Intra State Electricity Trading License to the petitioner was filed under the A.P. Electricity Regulatory Commission (Intra State Electricity Trading) Regulation 2005 (Regulation No.6 of 2005). The petition filed in compliance with Appendix - 2 of the above referred to Regulation has been found by the office of the Commission to be duly satisfying the requirements of the said Regulation in every aspect, including the necessary documents that have to accompany such a petition.

2. As the petitioner was stated to be already having an Inter State Electricity Trading License from the Central Electricity Regulatory Commission and as rule 9 of the Electricity Rules, 2005 specifies the absence of any need to take a separate license for Intra State Electricity Trading from a state Commission for a person holding an Inter State Electricity Trading License, the Central Electricity Regulatory Commission was addressed by this Commission on 01-08-2014 for a clarification on the issue of granting an Intra State Electricity Trading License to an Inter State Licensee. It was also requested therein to furnish any issue relating to the petitioner with the Central Electricity Regulatory Commission. In spite of this

Commission awaiting a response from the CERC for a considerable time, there was no response and hence the petition was taken on file by this Commission on 09-09-2014.

3. The petitioner has filed copies of publication of notice of this application along with the particulars as mentioned in Appendix-1 of Regulation No.6 of 2005, published in Business Standard dated 20-06- 2014 (a financial Newspaper in English) and Times of India dated 20-06-2014, apart from the publication in Andhra Jyothi and Andhra Bhoomi dated 22-06-2014 (Two Telugu newspapers having wide circulation within the State). This Commission did not receive any objections to the grant of requested license to the petitioner in response to such publication within or after the prescribed time.

4. The written submission of the petitioner has invited attention to the absence of any prohibition or restrictions against grant of an Intra State Electricity Trading License to an Inter State Electricity Trading License holder with reference to the provisions of the Electricity Act, 2003 and the Electricity Rules, 2005 or Regulations made by this Commission. The petitioner has explained in the written submission that an Intra State Electricity Trading License gives it a strong and credible local presence in such trading answering any apprehensions of any persons dealing with the petitioner in the course of such trading. As there is no material on record to suspect the *bona fides* of the petitioner or the truth of the contents of the petitioner's pleadings or written submission and in the absence of any legal impediment, the request of the petitioner appears to deserve positive consideration. In addition to the oral submission of Sri Ashish Singh, in-house counsel of the petitioner, Sri P. Shiva Rao, learned Standing Counsel of APEPDCL & APSPDCL, who was earlier requested to assist the Commission in the matter, also stated that there appears no objection for consideration of the request of the petitioner.

5. Therefore, this Commission through its order dated 20-12-2014, provisionally decided to grant such Intra State Electricity Trading License to the petitioner subject to the general terms & conditions specified in Regulation No.6 of 2005 and Appendix-3 thereof and any specific terms and conditions that may be found necessary by the office of the Commission on a thorough examination of the entire matter.

6. As it has been so decided provisionally to grant an Intra State Electricity Trading License to the petitioner, the office of the Commission has prepared a notice with the particulars and details as prescribed by the Regulation 5.8 (3) of Regulation No.6 of 2005 and published on the website of the Commission on 27-01-2015 seeking objections/suggestions within 15 days. It was also mentioned in the public notice that the application for grant of Intra State Electricity Trading License will be heard on 21-02-2015 at 11:00 AM.

7. A representation dated 18-12-2014 was first received from the objector and again a detailed objection affidavit was filed on 07-02-2015 said to be pursuant to the notice dated 20-12-2014.

8. The contention of the objector is that it had a Power Purchase Agreement with the petitioner dated 31-03-2011 for a period of 5 years, which was prematurely terminated. The petitioner was alleged to be not adhering to trading margins and trading license conditions of the Central Electricity Regulatory Commission, thus gaining unlawfully from the trade in Maharashtra, though the trading license granted by the Maharashtra Electricity Regulatory Commission expired on 27-09-2012. The objector also referred to the order of the Maharashtra Electricity Regulatory Commission dated 28-09-2007 in Case No.28 of 2006 granting license subject to conditions for a period of 5 years and the refusal by the said Commission to extend the period of license to 25 years by modification of the earlier order dated 28-09-2007 for the reasons specified in the order of the said Commission in Case No.22 of 2014 dated 05-08-2014. Therefore, the objector desired that the circumstances indicating the conduct of the petitioner which was detrimental to the interests of the consumers and the generators may be taken into account and the grant of license as requested by the petitioner may be refused.

9. The petitioner in its reply affidavit firstly contended that the objection of the objector was delayed and time barred with the Commission having no power to condone such delay. The petitioner also claimed the allegations of the objector to be false, baseless and misleading and the objector has no *locus standi* to raise any objection, as it is neither a licensee nor a generator nor a consumer in the State of Andhra Pradesh in respect of which the Intra State Electricity Trading License was requested to be granted. The petitioner also claimed that any commercial dispute

between it and the objector cannot be the basis for an objection in this petition and the matter with respect to Intra State Electricity Trading License from Maharashtra is still *sub judice* before the Appellate Tribunal for Electricity. The petitioner stands in compliance with all the provisions of law in relation to the trading margins and other terms and conditions fixed by the Central Electricity Regulatory Commission. All the objections need to be raised before the appropriate Forum through an appropriate remedy and cannot be subject of consideration in this petition. Therefore, the petitioner desired that the malicious objection be rejected and a license be granted as requested by it.

10. The objector filed a rejoinder claiming that it filed its objection in response to the public notice issued by the Commission and hence it has a *locus standi* and is within time to raise the objection. The objector denied the denials of the petitioner and claimed that the petitioner should place on record the details of its trading in Maharashtra and it is not for the objector to give any information about the violation of the trading margin fixed by the Central Electricity Regulatory Commission and the objector reiterated its request to reject the petition.

11. The point for consideration is whether the petitioner should be considered for grant of Intra State Electricity Trading License under the circumstances.

12. The objector referred to a Power Purchase Agreement between it and the petitioner dated 31-03-2011 and its premature termination. Either the agreement or reasons for its termination cannot be the subject matter of consideration in this petition and the objector has not shown as to how the agreement or its termination, have any bearing on the entitlement of the petitioner to the license as requested. Any dispute between the parties concerning the agreement needs to be agitated before the appropriate Forum in accordance with law and not here.

13. Similar contention regarding the refusal of the Maharashtra Electricity Regulatory Commission to extend the period of Intra State Electricity Trading License of the petitioner to 25 years is firstly *sub judice* before the Hon'ble Appellate Tribunal for Electricity and secondly it does not appear to be due to violation of any statutory provisions or regulations or rules or licenses by the petitioner as seen from the extracts of the order of the Maharashtra Electricity Regulatory Commission dated 05-08-2014 in Case No.22 of 2014. Even otherwise,

exercise of its jurisdiction by the Maharashtra Electricity Regulatory Commission in fixing the period of license of the petitioner as 5 years will have no relevance to consideration of the present request unless the orders of the Maharashtra Electricity Regulatory Commission are shown to be indicating any positive ground for refusal of the license to the petitioner by this Commission. At any rate having been armed with an Inter State Electricity Trading License granted by the Central Electricity Regulatory Commission, the petitioner is admittedly continuing its trading in Maharashtra even now and nothing illegal or irregular in such trading has been stated to have been found by the Maharashtra Electricity Regulatory Commission or any other authority.

14. The main complaint by the objector which has relevance to the present petition is about the conduct of the petitioner in not complying with the trading margin fixed by the Central Electricity Regulatory Commission and violation of the terms and conditions of its trading license granted by the Central Electricity Regulatory Commission. However, the objector did not produce any material to probablise such deviation from the fixed margins or violation of the other terms and conditions of the license. The burden of proof cannot be negatively placed on the petitioner in this regard and the basic principle of law of evidence is that a person who asserts a fact has to prove it. As the objector has not placed any material in support of its contention in this regard, the same also cannot hinder grant of any license to the petitioner.

15. The provisional decision to grant such a license to the petitioner as per the order of this Commission dated 20-12-2014, thus need not be deviated from. However, to ensure that the petitioner does not indulge in contravention of the terms and conditions of the license granted by the Central Electricity Regulatory Commission under the guise of this license, appropriate conditions have to be imposed. Necessity to impose specific terms and conditions on examination of the entire matter was specified even in the order dated 20-12-2014 and as the Inter State Electricity Trading License is operative throughout the country including the State of Andhra Pradesh, a harmonious working of both the licenses will be an essential legal and factual requirement.

16. Under Section 15 (8) of the Electricity Act, 2003, a license shall continue to be in force for a further period of 25 years unless revoked earlier and

no ostensible reasons to deviate from the statutory provision. It should be also stated that there is no need to cause a deep probe into the question of the objection being time barred or not, as on merits, the contentions of the objector did not stand in the way of the entitlement of the petitioner to a license. Similar is the question about the *locus standi*. Hence, a license has to be granted to the petitioner accordingly.

17. Therefore, -----

(a) an Intra State Electricity Trading License is granted to the petitioner subject to the general terms and conditions specified in Regulation No.6 of 2005 and Appendix-3 thereof and subject further to all the terms and conditions specified in the Inter State Electricity Trading License granted to the petitioner by the Central Electricity Regulatory Commission;

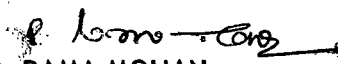
(b) Any deviation from or contravention of or non compliance with the relevant statutory provisions or rules or regulations or specific terms and conditions of the Intra State Electricity Trading License granted by this Commission or the Inter State Electricity Trading License granted by the Central Electricity Regulatory Commission in so far as such trading in the State of Andhra Pradesh is concerned shall lead to the revocation of the license hereby granted;

(c) The Intra State Electricity Trading License granted by this Commission shall be in force in terms of Section 15 (8) of the Electricity Act, 2003 for a period of 25 years with effect from today, unless such license is revoked earlier

and

(d) the office of the Commission shall cause compliance with this order accordingly.

This Order is corrected and signed on this the 25th day of April, 2015.


P. RAMA MOHAN
MEMBER


P. RAGHU
MEMBER


G. BHAVANI PRASAD
CHAIRMAN