



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

FRIDAY, THE EIGHTH DAY OF FEBRUARY  
TWO THOUSAND NINETEEN

:Present:

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

O.P.No. 40 of 2014 & I.A.No. 25 of 2015

**Between:**

Bharat Alluminium Company Limited ... Petitioner / Applicant

**AND**

PTC India Limited & others ... Respondents / Respondents

The Original Petition and the Interlocutory Application have come up for hearing finally on 02-02-2019 in the presence of Sri K. Gopal Choudary, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the utilities. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

**ORDER**

The petition is for declarations about the non-liability for any compensation for non-supply of power either under the Power Purchase Agreement dated 23-08-2011 with PTC India Limited or under any *force majeure* condition or otherwise and that the Central Power Distribution Company of Andhra Pradesh Limited at Hyderabad or the Andhra Pradesh Power Co-ordination Committee as they existed then, are not justified or entitled to claim any compensation from PTC India Limited and for a consequent refund by PTC India Limited to the Central Power Distribution Company of Andhra Pradesh Limited or the Andhra Pradesh Power Co-ordination Committee.

2. The petitioner, originally a Central Government undertaking, agreed to supply 200 MW RTC to PTC India Limited for onward sale to the Central Power Distribution Company of Andhra Pradesh Limited or the Andhra Pradesh Power Co-ordination Committee, which issued an order for such supply from 01-02-2012 to 31-05-2012 on 19-08-2011. The consent to the petitioner to operate was delayed for reasons beyond the control of the petitioner and it cannot be held liable for the periods of non-supply. The claim for compensation to recover from the petitioner for default in supply for the period from February, 2012 to May, 2012, is untenable. Subsequently, the Central Power Distribution Company of Andhra Pradesh Limited and the Andhra Pradesh Power Co-ordination Committee filed a Memo before the Commission stating that the compensation amount recovered from the petitioner was credited to the pool account of all the four distribution companies of the erstwhile State of Andhra Pradesh and hence all the four distribution companies are necessary parties to the petition.

3. Then the petitioner filed I.A.No.25 of 2015 for impleading the three other distribution companies of the erstwhile State of Andhra Pradesh in the petition stating that on bifurcation of the State of Andhra Pradesh, part of the area originally under the Central Power Distribution Company of Andhra Pradesh Limited stood vested with the Southern Power Distribution Company of Andhra Pradesh Limited and requested for impleadment of all the four distribution companies under the circumstances.

4. The learned counsel for the petitioner submitted a brief note on jurisdiction on 24-07-2015 stating that all matters pertaining exclusively to Telangana State be transferred to the Telangana State Electricity Regulatory Commission and all the

residual matters be continued with the Andhra Pradesh Electricity Regulatory Commission, being the authority for the State of Andhra Pradesh.

**5.** During the proceedings, it was stated on 07-02-2015 that the compensation amount recovered from the petitioner has been kept in the pool account of four distribution companies of the erstwhile State of Andhra Pradesh. Notices were given to all the distribution companies of the erstwhile State of Andhra Pradesh and a common order was pronounced by the Commission on the question of jurisdiction in this and other pending petitions on 28-09-2016. The Commission opined that all proceedings, which do not relate exclusively to the State of Telangana or the State of Andhra Pradesh fall within the jurisdiction of this Commission to be decided.

**6.** In the meanwhile, W.P.No.35039 of 2016 was filed before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, against this Commission's order in respect of this petition. The Hon'ble High Court delivered a Common Order in a batch of Writ Petitions among which was W.P.No.35039 of 2016. The Hon'ble High Court declared in so far as W.P.No.35039 of 2016 and 7 other matters are concerned that disputes which fall within the exclusive jurisdiction of the Central Electricity Regulatory Commission shall be transferred to the Central Electricity Regulatory Commission. Sri K. Gopal Choudary, learned counsel for the petitioner submitted on 19-01-2019 that the petitioner was pondering over the further course of action relating to the reliefs sought for by it. Again, on 02-02-2019, the learned counsel for the petitioner submitted on instructions that the matter may be transmitted to the Central Electricity Regulatory Commission for being proceeded with in accordance with law as per the directions of the Hon'ble Division Bench of the Hon'ble High Court.

7. The point for consideration is about the manner in which the directions of the Hon'ble Division Bench of the Hon'ble High Court have to be implemented in respect of this petition ?

8. The common order of the Hon'ble Division Bench of the Hon'ble High Court dated 31-12-2018 was on the issue of jurisdiction between the Central Electricity Regulatory Commission, Andhra Pradesh Electricity Regulatory Commission and the Telangana State Electricity Regulatory Commission, The Hon'ble Division Bench was of the considered view that the order of the Andhra Pradesh Electricity Regulatory Commission attempting to exercise jurisdiction over matters involving generating companies, who have a scheme, which has now become a composite scheme and whose transmission which was otherwise intra State, but which has become inter State after reorganization of the State, is unsustainable. The Hon'ble Division Bench also held that the view taken by the Central Electricity Regulatory Commission on the basis of Section 79 (1) (f) alone reflects the correct position of law and hence, the orders passed by the Central Electricity Regulatory Commission with regard to jurisdiction are liable to be upheld. With specific reference to W.P.No.35039 of 2016, the Hon'ble Division Bench of the Hon'ble High Court upheld the challenge to the order of the Andhra Pradesh Electricity Regulatory Commission dated 28-09-2016 and declared that the disputes in relation to which the Andhra Pradesh Electricity Regulatory Commission passed the order dated 28-09-2016 fall within the exclusive jurisdiction of the Central Electricity Regulatory Commission and hence the Andhra Pradesh Electricity Regulatory Commission shall transfer all such petitions, if not already done, to the Central Electricity Regulatory Commission. This petition in O.P.No.40 of 2014 is also the subject of the common order passed by this Commission on 28-09-2016 and when the result of the common order of the Hon'ble

Division Bench of the Hon'ble High Court clearly stated that the disputes covered by the order dated 28-09-2016 fall within the exclusive jurisdiction of the Central Electricity Regulatory Commission and shall be transferred to it, there can be no indulgence in any interpretative exercise as to the purport and effect of the order of the Hon'ble Division Bench, which has to be faithfully given effect to. In fact, after both parties reported that the compensation amount recovered from the petitioner has been credited to the pool account of all the four distribution companies and that all the four distribution companies are necessary parties to the petition, the principles laid down by the Hon'ble Division Bench about the disputes, subject matter of which travel beyond the territory of one State to the other becoming the subject of an inter State composite scheme makes it incumbent to treat such disputes as relating to matters connected with clauses (a) to (d) of sub-Section (1) of Section 79 of the Electricity Act, 2003 conferring jurisdiction on the Central Electricity Regulatory Commission alone. The effect of I.A.No.25 of 2015 is also the same. Hence, the Original Petition and the Interlocutory Application have to be transmitted to the Central Electricity Regulatory Commission.

9. Therefore, O.P.No.40 of 2014 and I.A.No.25 of 2015 on the file of the Andhra Pradesh Electricity Regulatory Commission be duly indexed and transmitted to the Central Electricity Regulatory Commission for being proceeded with in accordance with law as per the directions contained in the common order dated 31-12-2018 of the Hon'ble Division Bench of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

This order is corrected and signed on this the **8<sup>th</sup> day of February, 2019**.

**Sd/-**  
**P. Rama Mohan**  
Member

**Sd/-**  
**Dr. P. Raghu**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman