



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

WEDNESDAY, THE THIRTEENTH DAY OF MARCH
TWO THOUSAND NINETEEN

:Present:

Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member

R.P.No. 1 of 2014 in O.P.No. 44 of 2013

Between:

Transmission Corporation of Andhra Pradesh Limited & 5 others ... **Applicants/**
... **Petitioners**

A N D

M/s. Spectrum Power Generation Limited ... **Respondent**

This Review Petition has come up for hearing finally on 02-03-2019 in the presence of Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the review petitioners and Sri M. Naga Deepak, learned counsel for the respondent. 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

A Review Petition filed by the erstwhile Transmission Corporation of Andhra Pradesh Limited, the four distribution companies now located in the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee against M/s. Spectrum Power Generation Limited for review of the order dated 27-07-2013 in O.P.No.44 of 2013.

2. The erstwhile Andhra Pradesh Electricity Regulatory Commission passed the impugned order in O.P.No.44 of 2013 on 27-07-2013 on merits after contest, giving various directions about computation of variable charge and the various aspects governing the same. The Commission gave consequential directions for

reimbursement of the deducted amounts with interest and to follow the earlier practice evolved by the 6th respondent in making future payments. The Review Petition was filed on various grounds by all the six respondents together. While it was pending before this Commission for enquiry, the question of jurisdiction of the Commission after the bifurcation of the erstwhile State of Andhra Pradesh into the States of Telangana and Andhra Pradesh by the Andhra Pradesh Reorganization Act, 2014 and consequently constitution of Telangana and Andhra Pradesh State Electricity Regulatory Commissions with territorial jurisdiction over the respective States had arisen. A common order was passed by this Commission on 28-09-2016 in a batch of matters including this matter on the said question of jurisdiction. The common order was carried to the Hon'ble High Court in a number of Writ Petitions and a batch of Writ Petitions was disposed of by a common order of a Division Bench of the Hon'ble High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh on 31-12-2018.

3. However, this Review Petition was not covered by any of the Writ Petitions disposed of by the common order and hence the present consideration about the applicability of the *ratio decidendi* of the common order to the subject matter of this review.

4. The Hon'ble High Court concluded in Para 51 of the common order that if a generating company had entered into or otherwise have a composite scheme for generation and sale of electricity in more than one State, then the dispute involving such generating company would fall within Section 79 (1) (b). It is also held that similarly, if there was conveyance of electricity by means of main transmission line from the territory of one State to another State or the conveyance of electricity across the territory of an intervening State as well as conveyance within the State

which is incidental to such transmission of electricity, then it becomes interstate transmission within the meaning of Clauses (c) and (d) of Section 79 (1). The Hon'ble High Court held that from the appointed day viz., 02-06-2014, one single scheme the generating companies had, has become a composite scheme and that scheme was for generation and sale of electricity in two States, viz., the States of Telangana and Andhra Pradesh. It further held that the moment the State was reorganized and the companies, with which the generating companies had agreements, came to be located in two different States, the nature of the dispute assumed as that of an interstate dispute. The Hon'ble High Court further held that in respect of matters relating to jurisdiction conferred by special enactments, the date on which the cause of action arose and the date on which the dispute was raised, may not be the sole criteria to determine the continued existence of jurisdiction. The Hon'ble Division Bench referred to Energy Watchdog Vs CERC (2017) 14 SCC 80 for the proposition that the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Act and it is enough that the generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State to satisfy the expression composite scheme.

5. KSK Mahanadi Power Company Limited Vs APERC and the two distribution companies of the State of Andhra Pradesh in Appeal No.230 of 2017 is decided by the Hon'ble Appellate Tribunal for Electricity on 31-10-2018. That appeal was also against the common order passed by this Commission on 28-09-2016, which was the subject matter of the decision of the Hon'ble Division Bench of the Hon'ble High Court. The Hon'ble Appellate Tribunal also referred to the Energy Watchdog case holding that in the case of inter-state sale, it would be a composite scheme within the

exclusive jurisdiction of the Central Commission. The Hon'ble Appellate Tribunal also referred to Uttar Haryana Bijli Vitran Nigam Ltd. Vs Central Electricity Regulatory Commission & Ors in Appeal No.100 of 2013 decided by it on 07-04-2016 in which, it was held that mere sale of electricity by a generator to two or more States would mean it is a composite scheme attracting the provisions of Section 79 (1) (b) and therefore, it would be within the exclusive jurisdiction of the Central Commission to adjudicate disputes between the parties to Power Purchase Agreement. The Hon'ble Appellate Tribunal also had set aside the common order of this Commission dated 28-09-2016. Thus, the principles laid down in Energy Watchdog by the Hon'ble Supreme Court, in KSK Mahanadi Power Company Limited by the Hon'ble Appellate Tribunal for Electricity and in a batch of Writ Petitions disposed of on 31-12-2018 by the Hon'ble High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh clearly concluded that the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Electricity Act, 2003.

6. The dispute herein in the main petition is thus clearly falling within the principles laid down by the Hon'ble Supreme Court, Hon'ble High Court and the Hon'ble Appellate Tribunal for Electricity that the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Electricity Act, 2003 and that it is enough that the generating company has a scheme for generation and sale of electricity in more than one State making it a composite scheme.

7. Even regarding pending Review Petitions, the Hon'ble High Court made it clear in para 73 of the common order that "The petitions for review of the orders

passed by the APERC before the date of bifurcation of the States would have to be decided only by that Commission, which now has jurisdiction in respect of the disputes covered by such petitions. In other words, if the disputes in respect of which the petitions for review were pending as on the date of bifurcation relate to any of the matters enumerated in Clauses (a) to (d) of Section 79 (1) those review petitions should also be heard only by the Central Commission. The principle analogous to the rule applicable to applications for review in Civil Courts as found in Order XLVIII Rule 5 C.P.C., would naturally apply to such proceedings. Under Order XLVII Rule 5, there is an indication that in circumstances other than those covered by the said Rule, the application for review may be heard by some other Judge. This is based on the doctrine of necessity.”

8. As the disputes covered by the main petition now squarely fall within the jurisdiction of the Central Electricity Regulatory Commission, the Review Petition should also be heard only by the Central Electricity Regulatory Commission, as specifically laid down by the Hon'ble High Court.

9. Therefore, the records in R.P.No.1 of 2014 in O.P.No.44 of 2013 shall be duly indexed and transmitted to the Central Electricity Regulatory Commission for being proceeded with in accordance with law in compliance with the common order of the Hon'ble High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh in W.P.No.15848 of 2015 & batch dated 31-12-2018.

This order is corrected and signed on this the **13th day of March, 2019.**

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman