



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

Vidyut Niyantrana Bhavan, Adjacent to 220/132/33/11 KV AP Carbides
Sub-Station, Dinnedevaram Road, Kurnool-518002, Andhra Pradesh

WEDNESDAY, THE TWENTY FIFTH DAY OF SEPTEMBER,
TWO THOUSAND AND TWENTY FOUR

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member
Sri P.V.R.Reddy, Member

O.P.No. 31 of 2024

Between:

M/s. Bharath Wind Farm Limited
Bascon Futura SV, IV Floor,
10/1, Venkatanarayana Road, T. Nagar.
Chennai - 600 017.

... Petitioner.

AND

Southern Power Distribution Company of Andhra Pradesh Ltd. (APSPDCL)
Rep. by its Chairman and Managing Director
19-13-65/A, Srinivasa Puram
Tiruchanoor Road, Tirupati - 517 503.

.. Respondent

This Original Petition has come up for hearing before us today in the presence of Sri Deepak Chowdary, counsel representing Sri Anand K. Ganesan, learned Counsel for the Petitioner; and Sri P.Shiva Rao, learned Standing Counsel for the respondents; that after hearing the learned counsel for both parties, and that after carefully considering the material available on record the Commission passed the following:

ORDER

This original petition is filed for the following relief :

- a. Direct the Respondent, APSPDCL, to refund the Grid Support

Charges paid by the Petitioner during the period between April 2022 to March 2024 amounting to Rs. 120 Lakh together with interest at the rate of 12% per annum computed from the date of levy made till the date of refund;

- b. Award the costs of the present petition in favour of the Petitioner; and
- c. Pass such further or other orders as this Hon'ble Commission may deem just and proper in the facts and circumstances of the present case.

Counter affidavit is filed by the Respondent. We have heard the learned counsel for both sides. The issue pertains to collection of grid support charges from the Petitioner which is running a non-captive co-generation generating plant. As per the Commission's decision contained in the RST order dated 30-02-2022, even non-captive co-generation units were also liable to pay grid support charges. One such generating company, namely, M/s Rain CII Carbon (Vizag) Ltd., filed an appeal i.e., Appeal No.391 of 2023 before the Hon'ble APTEL. The Hon'ble APTEL vide its judgement dated 14-12-2023, while allowing the appeal set aside the Commission's order. The operative portion of the Order read as under :

"79. Every Co-generation Plant cannot be termed to be a CPP, the Supreme Court in the case of SC Judgment has considered only CPPs to be liable for payment of GSC, therefore, in case a power plant is not a CPP, such power plants cannot be made liable to pay GSC.

80. Even the case of Shree Renuka Sagars (Supra) does not considered the

aspect where a Co-generation plant does not qualify as a CPP, in order to be liable for payment of GSC, an IPP must be co-located with the grid and should be categorized as CPP, these two conditions are necessary for imposition of GSC and absence of any one of them will exempt a plant from payment of GSC.

81. As seen from above, the State Commission passed the Impugned Order relying upon the SC Judgment and the Tribunal Judgments which are rendered in respect of CPPs having captive loads, however, extended the same by including the IPPs and non-captive Cogeneration Plants, further, excluded the IPPs which have signed PPAs with the distribution licensees, without having any statistical data or study carried out and without providing reasons and Justification.

82. The Appellant's power plants are cogeneration based plants, utilising waste heat for the generation of electricity, and are not falling under the category of CPPs, the fact which is not disputed by the Respondents also.

83. We are satisfied that none of the judgments as afore-quoted, including the SC Judgment and the Tribunal Judgments, are applicable in the instant appeals, the imposition of GSC on these non-captive co-generation plants the Appellant on the basis of such judgments is arbitrary, unjust and unreasonable and accordingly, deserves to be set-aside limited to its applicability on the Appellant.

84. The Appellant, however, submitted that the GSC levied on the capacity exported is misconceived, and, if at all any GSC has to be levied, can be limited to co-located load

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. Appeal No. 228 of 2022 and Appeal No. 391 of 2023 have merit and allowed, the levy of Grid Support Charges on the Appellant's non-captive power plant shall be limited to only the power consumed by the co-located load, also the direction to give an undertaking that he will pay GSC and only then his Format A Application for sale of power through IEX will be processed is also set-aside.

Accordingly, the Impugned Order is set-aside to the limited extent."

At the hearing Sri P. Shiva Rao, learned standing counsel for the respondent has not disputed that the Petitioner stands on similar footing as M/s Rain CII Carbon (vizag) Ltd., which succeeded before the Hon'ble

APTEL. In the light of the above, we allow the OP with the direction to refund the grid support charges already collected from the Petitioner within four weeks from the receipt of this order.

The learned counsel for the petitioner submitted that the Respondent may be directed to pay interest on the amount collected towards Grid Support Charges. We are not inclined to accept this request. The Respondent collected the charges bonafide, based on the tariff order passed by this Commission. Such collection was rendered illegal only upon the Hon'ble APTEL setting aside the said tariff order. Moreover, the Respondent is a public utility undertaking, supplying power to the general public. Imposition of interest has a cascading effect on the consumers as the said amount had to be recovered eventually from them. Hence we reject this submission of the learned counsel for the petitioner.

Order pronounced on this the 25th day of September, 2024.

Sd/-
P.V.R.Reddy
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
Thakur Rama Singh
Member