

Record of proceedings dated 11-09-2019

O.P.No.54 of 2019 & I.A.No.18 of 2019
Wind Independent Power Producers Association (WIPPA) Vs APSLDC &
APTRANSCO

Petition u/s 33 (4) of the Electricity Act, 2003 r/w Section 86 (1) (e) along with Regulation 16 (2) of the APERC (Conduct of Business) Regulations, 1999 seeking appropriate direction(s) / orders(s) from the Commission against the statutory authorities namely APSLDC and APTRANSCO to address and adjudicate the dispute arising due to non-performance of statutory obligations by the said entities and further seeking constitution of an Independent Committee to enquire and examine the conduct and actions of the said entities which has severely prejudiced the rights and interests of the Wind Power Developers of the State of Andhra Pradesh

Interlocutory Application filed for interim directions in the main petition

O.P.No.54 of 2019

Counter Affidavit on behalf of respondents 1 and 2 is filed. For rejoinder, the matter is posted at request of the learned Senior Counsel for the petitioner to 21-09-2019.

I.A.No.18 of 2019

Heard Sri P. Sri Raghu Ram, learned Senior Counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for both the respondents. Counter Affidavit on behalf of respondents 1 and 2 is filed in this Interlocutory Application also.

2. In so far as the maintainability of the main petition and the Interlocutory Application is concerned, which issue was raised by the respondents 1 and 2 in their counter affidavit, the same needs to be adjudicated and decided in the main petition and not herein. However, *prima facie* this dispute is between a generating company and a licensee within the meaning of Section 86 (1) (f) of the Electricity Act, 2003, the adjudication of which is the statutory function of a State Electricity Regulatory Commission. Without expressing any opinion on the applicability or otherwise of Section 33 (4) and Section 86 (1) (e) of the Electricity Act, 2003 and Regulation

16 (2) of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2 of 1999 to the dispute in question at this stage, the question of jurisdiction is therefore relegated to be decided in the main petition in accordance with law.

3. Pleadings of both parties are also referred to the events, which are not directly connected to the location or functioning of the two ICTs in question, but which appear to be perceived by the parties to be forming the background for the happenings that led to the present dispute. It is well settled that motives are not relevant for determination of civil rights of the parties and the Commission refrains from expressing any opinion on that part of the pleadings at this stage.

4. The circumstances that led to either malfunctioning or dis-functioning of the two ICTs are described from their respective perceptions by the petitioner and the respondents. But, in so far as this interlocutory inquiry is concerned, better these factual controversies are also appropriately determined during the adjudication of the main petition, if found relevant and necessary. As concerns of the parties at this stage should be guided by the anxiety to bring back the ICTs to normal function and making the facility of evacuation of the power generated by the members of the petitioner through ICTs into grid of the respondents available, it is seen from the documents enclosed to the petition and the counter affidavit in the main petition that from 14-05-2019, an upward revision of evacuation of the power generated by the wind developers was proposed to be given effect to but by 17-08-2019 because of heavy oil leakage from the conservator valve of 500 MVA ICT-4, there was again a downward revision of receipt of wind energy to 55.13%. While the parties are in controversy about the truth or otherwise of the reasons that made both ICTs not to facilitate power evacuation by the members of the petitioner, the reason for ICT-4

becoming dis-functional is stated to be leakage of oil and the necessity for restoration of valve. The malfunctioning of ICT-3 was attributed to a loose connection in one of the buchholz Relay and a bend in the cable. M/s. Transformers & Rectifiers (India) Limited (hereinafter referred to as “M/s. T & R India Limited”) is concerned with ICT-4 and the correspondence shows that they are ready to depute their representative, provided the filtration machine is arranged by the respondents payable by M/s. T & R India Limited and process of filtration necessary for refilling again is carried out . In so far as ICT-3 is concerned, the correspondence ultimately shows that M/s. Toshiba Transmission & Distribution Systems (India) Private Limited (hereinafter referred to as “M/s. Toshiba”) which has to undertake restoration of transformer to a functional state, the same being beyond contractual warranty period, has ultimately informed on 05-09-2019 about those items to be carried out within the scope of the respondents and those items to be carried out by them for which they will submit a commercial offer on communication of the acceptance of the same by the respondents. They also informed that in case of any changes in the scope of the works, it shall be extra which will be submitted in due course. It is not in dispute between the parties that restoration of both ICTs to a working condition has to be carried out by M/s. T & R India Limited and M/s. Toshiba respectively, irrespective of other points in controversy between the parties. Sri P. Sri Raghu Ram, learned Senior Counsel for the petitioner has submitted that to avoid further loss and delay, the petitioner will liaise with M/s. T & R India Limited to see that its representative comes to the site for carrying out the necessary works and filtration is also provided on the site, of-course at the cost of M/s. T & R India Limited, the transformer being within the warranty period and Sri P. Shiva Rao, learned Standing Counsel for the respondents on instructions has stated that the respondents have no

objection and will facilitate the same and will not object to the presence of the representative of the petitioner when the restoration work is being carried on.

5. Sri P. Shiva Rao, learned Standing Counsel for the respondents submitted in so far as ICT-3 is concerned that the respondents have no objection for 12 activities of work pointed out by M/s. Toshiba in their letter dated 05-09-2018 and will communicate their acceptance forthwith and ask them to submit their commercial offer on the acceptance of which by the respondents, work can be immediately taken up. Sri P. Sri Raghu Ram, learned Senior Counsel for the petitioner had submitted on instructions that the petitioner is ready to provide necessary logistic support for carrying out all the 12 activities at the site of ICT-3 itself without need for transportation of the same to the factory site of M/s. Toshiba, so that delay and expense can be avoided.

6. That apart, the subject matter of the dispute under adjudication in the main petition and calling for the interlocutory intervention at this stage appears to justify the Commission invoking its powers under clause 17 of Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2 of 1999 under which the Commission can get a local inspection carried out by its officers etc., to know about the existence or status or any place or facility therein with reference to the issues or matters involved in a reference. In view of the conflicting statements of fact by the parties about the circumstances leading to the present situation, it will be reasonable, just and equitable to have a neutral evaluation of the existence of the factual affairs by a team of the Commission itself, though there was an earlier inspection by a team of representatives of SRPC-CEA, SRLDC, Power Grid and AP Transco on 28-08-2019. That report has noted the physical state of affairs in respect of the both ICTs and the scope of a local inspection by the team of the Commission

travels beyond noting the physical features alone and should facilitate restoration of the working condition of both ICTs at the earliest possible opportunity for the benefit of the petitioner, the power generated by whom cannot be sold and the respondents or the AP Discoms who may have to purchase such power from the open market if power from the generators with whom they have arrangements to supply are not able to supply the same and the demand exceeds the supply available from other sources. Therefore, Sri P. Rama Mohan, Hon'ble Member with enormous experience from the basic level to the top in the power sector of the State assisted by two officers of the Commission originally coming from the organization of the 2nd respondent itself with an in-depth knowledge and experience, makes a personal inspection at the earliest possible opportunity during which visit, the parties can facilitate the presence of the representatives of M/s. T & R India Limited and M/s. Thoshiba to appropriately plan and execute the restoration of both ICTs.

7. Sri P. Shiva Rao, learned Standing Counsel has stated on instructions that the respondents 1 and 2 are not proposing to remove ICTs-3 & 4 from their existing location or for that matter any part of the equipment of either and any action concerning the ICTs-3 and 4 will be taken up by the respondents 1 and 2 by duly intimating in advance the information to the Hon'ble High Court where the subject matter of the present dispute has already been raised by another person and this Commission during the pendency of the main petition.

8. Therefore, the petitioner shall coordinate with M/s. T & R India Limited regarding the visit of the representative of M/s. T & R India Limited to the site of ICT-4 to carry out the process of its repair and restoration with the petitioner also making necessary arrangements for making available a filtration machine and M/s. T & R India Limited making arrangements for replacing the damaged valve with

new valve. The respondents shall facilitate the same and may not object to the presence of the representatives of the petitioner along with the representatives of M/s. T & R India Limited to enable the petitioner to extend whatever assistance is required for carrying out the task.

9. The respondents 1 and 2 shall forthwith communicate their acceptance of the 12 activities communicated by M/s. Toshiba in its letter dated 05-09-2019 and obtain the commercial offer from them and give their response to the said commercial offer as expeditiously as possible, while there can be no objection for the petitioner for the same. In case of any changes in the work, it may be charged extra. The petitioner is at liberty to liaise with respondents 1 and 2 in expediting the process and respondents 1 and 2 shall extend every help in coordinating the entire activity by restoring the ICTs to normal functioning.

10. Respondents 1 and 2 shall maintain *status quo* as on today relating to ICTs-3 and 4 and any equipment forming part of the two ICTs and any action which they propose to take concerning them hereafter shall be under prior intimation to the Hon'ble High Court of Andhra Pradesh before which the subject matter of the present dispute is raised by way of a Writ Petition by another person and this Commission so long as this petition is pending. This direction will not preclude the petitioner or the respondents from carrying out necessary steps through M/s. T & R India Limited and M/s. Toshiba for restoration of ICTs-3 and 4 to normal functioning. As already directed above, Sri P. Rama Mohan, Hon'ble Member of the Commission assisted by Sri D. Ramanaiah Setty, Deputy Director (Tariff-Engineering) and Sri M.S. Vidya Sagar, Deputy Director (P&PP) shall make a local inspection of the place of the location of ICTs-3 and 4 and make a report on the existence and status of the physical features found thereat. Both the petitioner and the respondents 1 and 2

shall appear before the Hon'ble Member during his inspection and the Hon'ble Member assisted by the two officers of the Commission shall examine the site and the matter with reference to the contentions of the parties in the main petition and the Interlocutory Application and the counter affidavits. The Hon'ble Member assisted by the two officers shall also ascertain from the representatives of M/s. T & R India Limited and M/s. Toshiba about the manner in which they propose to carry out the restoration to normal functioning of both the ICTs-3 and 4. If necessary for the purpose of facilitating the restoration of ICTs-3 and 4, the Hon'ble Member with the assistance of the two officers may make multiple visits. The Hon'ble Member may direct the officers assisting him to file their report or reports of their visits before the Commission from time to time in due compliance with clause 17 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2 of 1999. For further hearing, the matter is posted to 21-09-2019 on which date both parties shall report about the progress made in the matter.

Call on:

21-09-2019
at 11:00 AM

Sd/-
MEMBER / PRM

Sd/-
MEMBER/PR

Sd/-
CHAIRMAN