

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

R.P.No.2 of 2014 in O.P.No.41 of 2014  
Dated: 19-08-2015

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

**Between:**

Eastern Power Distribution Company of  
Andhra Pradesh Limited (APEPDCL)  
Seethammadhara, Visakhapatnam ... Petitioner

**A N D**

M/s. Sai Renewable Private Ltd.  
Regd. Office 6-3-668/10/4  
Durga Nagar Colony, Punjagutta, Hyderabad ... Respondent

The review petition has come up for hearing finally on 14-08-2015 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioner and Smt. N. Malathi Naidu, learned counsel for the respondent. After carefully considering the material available on record and after hearing the arguments of both the counsel, the Commission passed the following:

**ORDER**

The Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL) filed a petition under Section 94 (1) (f) of the Electricity Act, 2003 to review the order dated 01-09-2014 in O.P.No.41 of 2014 passed by the erstwhile Andhra Pradesh Electricity Regulatory Commission.

2. O.P.No.41 of 2014 was filed for determination of fixed charges payable for energy purchases from the industrial waste based power project by the petitioner from the respondent for the period from 08-04-2014 to 07-04-2024. In the impugned order, after narrating the background of non-conventional energy

generation particularly in the State of Andhra Pradesh and determination of tariff for the same, the Commission narrated about the making of Regulation No.1 of 2008 and passing of the common order dated 19-07-2014 in O.P.No.11 of 2010 and batch determining the generic fixed cost for biomass based power projects which have completed 10 years of operation. After referring to rival pleadings and submissions, the Commission analysed the same to conclude that industrial waste based power projects are identifiable with those of biomass based projects and interests of justice would be met, if tariff granted to biomass based projects in its order dated 19-07-2014 would be made applicable to industrial waste based power projects also. Accordingly, the Commission determined the generic tariff (fixed cost) for 11<sup>th</sup> to 20<sup>th</sup> year of operation of industrial waste based projects payable by the distribution companies of the States of Andhra Pradesh and Telangana to all the industrial waste based NCE projects which have completed 10 years of operation, irrespective of the fact, whether they have approached the Commission for determination of such tariff or otherwise.

3. In seeking a review of the order, the petitioner primarily questioned the correctness of the orders of the Appellate Tribunal for Electricity dated 20-12-2012 which are pending appeal before the Hon'ble Supreme Court and also requested for review of the auxiliary consumption, the operation and maintenance cost and the incentive fixed by the Andhra Pradesh Electricity Regulatory Commission in its order dated 20-03-2004. While the respondent did not file a specific counter, the submissions of Sri P. Shiva Rao, learned Standing Counsel for the petitioner reiterating the grounds for review were contested by Smt. N. Malathi Naidu, learned counsel for respondent.

4. For considering whether the request for review is sustainable, it has to be noted that the same questions were the subject of the review petitions disposed of by the order of this Commission dated 07-02-2015 in R.P.No.3 of 2014, SR No.81 of 2014 and SR No.82 of 2014. Referring to the contention about the order of the Appellate Tribunal for Electricity dated 20-12-2012 being in jeopardy because of the pending challenge before the Hon'ble Supreme Court in appeals, it was concluded that what can be said to be in jeopardy is the finality of the subject matter of the lis or the finality of a decree or order or judgment under challenge but not the effective and binding nature of the judgment under appeal so long as it is not set aside or modified or varied by the Appellate Court or suspended or stayed during the pendency of the appeal. Hence, it was concluded that mere filing of appeal without anything more will not make the impugned orders referring to or relying on the judgment of the Appellate Tribunal for Electricity dated 20-12-2012 vitiated on any ground of mistake apparent on the face of the record. Referring to the other grounds which are identically raised herein, it was specifically stated that a deliberate and conscious decision of the Commission based on express reasons can be subjected only to an appeal, if any conclusions are considered incorrect or illegal or untenable on merits but not a petition for review. The aspects covered by the said conclusion include questions raised about the auxiliary consumption, operation and maintenance cost and incentive raised herein also and the review petition therein was held to be beyond the scope of Section 94 of the Electricity Act, 2003 read with Section 114 and Order XLVII Rule 1 of the Code of Civil Procedure, 1908. The said review petition was therefore negated and the order dated 07-02-2015 is not stated to have been under any challenge since then. Hence, this review petition based on identical grounds and questioning the order which is based on the order sought to be reviewed therein is equally untenable and not maintainable.

5. Consequently, the review petition is dismissed and the parties shall bear their own costs.

This order is corrected and signed on this the 19<sup>th</sup> day of August, 2015.

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

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

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