



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

SATURDAY, THE SECOND DAY OF MARCH
TWO THOUSAND NINETEEN

:Present:

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

O.P.No.79 of 2012, O.P.No.12 of 2014 & I.A.No.3 of 2014, O.P.No.60 of 2013 &
I.A.No.37 of 2013 and O.P.No.6 of 2017

(1) O.P. No. 79 of 2012

Between:

Reliance Infrastructure Ltd

... Petitioner

A N D

Central Power Distribution Company of Andhra Pradesh Ltd
(now TSSPDCL) & others

... Respondents

(2) O.P. No. 12 of 2014 & I.A. No. 3 of 2014

Between:

Reliance Infrastructure Ltd

... Petitioner/Applicant

A N D

Central Power Distribution Company of Andhra Pradesh Ltd
(now TSSPDCL) & others

... Respondents/Respondents

(3) O.P. No. 60 of 2013 & I.A. No. 37 of 2013

Between:

Andhra Pradesh Power Coordination Committee (APPCC)
& others

... Petitioners/Applicants

A N D

Reliance Infrastructure Ltd

... Respondent/Respondent

AND

(4) O.P. No. 6 of 2017

Between:

APSPDCL & another

... Petitioners

A N D

Reliance Infrastructure Limited & others

... Respondents

These four Original Petitions and the two Interlocutory Applications have come up for hearing finally on 16-02-2019 in the presence of Sri P. Vikram, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the utilities in O.P.No.79 of 2012, Sri P. Vikram, learned counsel for the petitioner/applicant and Sri P. Shiva Rao, learned Standing Counsel for the utilities in O.P.No.12 of 2014 & I.A. No. 3 of 2014, P. Shiva Rao, learned Standing Counsel for the utilities/applicant and Sri P. Vikram, learned counsel for the 1st respondent in O.P.No.60 of 2013 & I.A.No.37 of 2013 and P. Shiva Rao, learned Standing Counsel for the utilities and Sri P. Vikram, learned counsel for the 1st respondent in O.P.No.6 of 2017. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

COMMON ORDER

O.P.No.79 of 2012 is a petition by M/s. Reliance Infrastructure Limited against the four distribution companies presently in the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee, to declare the respondents to be disentitled to deduct any discount of deemed generation from the monthly bills payable to the petitioner from April, 2012 being contrary as per the Power Purchase Agreement between the parties.

2. O.P.No.60 of 2013 is a petition by the erstwhile Andhra Pradesh Power Coordination Committee and the four distribution companies presently in the States of Telangana and Andhra Pradesh against M/s. Reliance Infrastructure Limited, to declare that the respondent had no facility of alternate fuel under the Power Purchase Agreement and for consequential reliefs and I.A.No.37 of 2013 therein is for appointment of a Committee of technical officers to investigate into the existence of Naptha storing tanks.

3. O.P.No.12 of 2014 is a petition by M/s. Reliance Infrastructure Limited against the four distribution companies presently in the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee, to declare that HSD can be used as alternate fuel in terms of the Power Purchase Agreement and questioning the deduction of the capacity charges etc., and I.A.No.3 of 2014 therein is for expediting the hearing of the main petition.

4. O.P.No.6 of 2017 is a petition by the two distribution companies of the State of Andhra Pradesh against M/s. Reliance Infrastructure Limited and the two distribution companies of Telangana, to direct the 1st respondent to pay for the units consumed and the imported energy every month at HT-1 tariff with interest @18% per annum.

5. These four petitions and the two Interlocutory Applications are pending enquiry before the Commission and they were heard on 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 the consequential constitution of the Telangana and the Andhra Pradesh State Electricity Regulatory Commissions with territorial jurisdiction over the respective States. A common order was passed in a batch of thirty four matters including these four matters on 28-09-2016 as follows:

- (a) all proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission functioning as a joint regulatory body till the formation of State Electricity Regulatory Commissions in the successor States, in so far as they relate exclusively to the territory which as from the appointed day are the territories of the State of Telangana, stood transferred to the Telangana State Electricity Regulatory Commission;

- (b) out of the remaining proceedings pending, all those proceedings relating exclusively to the territories of the State of Andhra Pradesh shall fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;
- (c) the remaining proceedings which may not exclusively relate to the territory of the State of Andhra Pradesh and do not exclusively relate to the territory of the new State of Telangana shall also fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;
- (d) in any pending proceeding, petitioner (s) is at liberty to proceed only against such parties/persons as respondents as he may desire, leaving open the question of maintainability of his petition in such form and sustainability of reliefs claimed against the particular party (s) severally and separately to be decided by this Commission in accordance with law;
- (e) all the 34 matters covered by this common order shall stand posted to **28-10-2016 Friday at 3:00 PM** for continuation of hearing on the remaining questions in controversy between the parties for determination of the disputes on merits in accordance with law;
- (f) the conclusions of this Commission in this order on the question of jurisdiction shall be applicable to all the remaining proceedings pending before this Commission also.
- (g) This order is subject to any order that may be passed or any direction that may be given by the Hon'ble Appellate Tribunal for Electricity or the Hon'ble High Court of Judicature at Hyderabad or the Hon'ble Supreme Court in any matters pending before them or that may be brought before them.

6. The common order was carried to the Hon'ble High Court in a number of Writ Petitions and the 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.

7. The learned counsel for M/s. Reliance Infrastructure Limited in all the four matters filed letters dated 15-01-2019 primarily stating that the Hon'ble High Court, following the Judgment of the Hon'ble Supreme Court in Energy Watchdog Vs CERC (2017) 14 SCC 80, held 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 consequently direct this Commission to transfer all such petitions to Central Electricity Regulatory Commission. Hence, the learned counsel requested to transfer all these four matters also to the Central Electricity Regulatory Commission.

8. During the hearing on 19-01-2019, it was submitted that the matters are not covered by any of the Writ Petitions disposed of by the common order dated 31-12-2018 of the Division Bench of the Hon'ble High Court. The learned Standing Counsel for the Andhra Pradesh distribution companies and the present Andhra Pradesh Power Coordination Committee desired to make submissions on the applicability of the principles laid down by the Hon'ble Division Bench to these matters.

9. Accordingly, on 16-12-2019, arguments of the learned counsel for both parties on this issue were heard and the learned counsel for M/s. Reliance Infrastructure Limited also filed Written Submissions in the matters.

10. The point for consideration is whether these four Original Petitions and the two Interlocutory Applications have to be transmitted to the Central Electricity

Regulatory Commission or retained with this Commission for being dealt with and disposed of in accordance with law ?

11. The contractual and legal relationship between the parties commenced under and arose out of the Power Purchase Agreement dated 31-03-1997 between M/s. Reliance Infrastructure Limited and the erstwhile Andhra Pradesh State Electricity Board, as amended from time to time. Subsequently in terms of the Andhra Pradesh Electricity Reform Act, State Act 30 of 1998, the Andhra Pradesh State Electricity Board was unbundled into Generation Corporation of Andhra Pradesh Limited, Transmission Corporation of Andhra Pradesh Limited, Southern Power Distribution Company of Andhra Pradesh Limited, Eastern Power Distribution Company of Andhra Pradesh Limited, Northern Power Distribution Company of Andhra Pradesh Limited and Central Power Distribution Company of Andhra Pradesh Limited. The disputes between the parties on different issues first led to the filing of these four petitions at different times. Thereafter came the bifurcation of the erstwhile State of Andhra Pradesh into the States of Telangana and Andhra Pradesh with effect from 02-06-2014 under the Andhra Pradesh Reorganization Act, 2014 due to which, the two distribution companies each fell within the jurisdiction of the two States out of the four such companies. Consequentially, the question of jurisdiction arose. As already stated, this Commission took a view through a common order dated 28-09-2016 and setting aside the same, a Division Bench of the erstwhile common High Court for both the States passed a common order on 31-12-2018, which is in force.

12. The Hon'ble High Court while disposing of a batch of Writ Petitions on the question, gave specific directions in Para 76 of the common order about the matters covered by different Writ Petitions constituting the batch.

13. However, as these four Original Petitions and the two Interlocutory Applications were not the subject matter of any of the Writ Petitions disposed of on merits by the common order. The present consideration is about the applicability of the *ratio decidendi* of the common order to the subject matter of these petitions.

14. 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.

15. The learned counsel for M/s. Reliance Infrastructure Limited also relied on KSK Mahanadi Power Company Limited Vs APERC and the two distribution companies of the State of Andhra Pradesh in Appeal No.230 of 2017 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.

16. In these four petitions M/s. Reliance Infrastructure Limited had a single Power Purchase Agreement with the four distribution companies, two of which are now located in the State of Andhra Pradesh and two are now located in the State of Telangana. The dispute consequently appears to clearly fall 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.

17. M/s. Reliance Infrastructure Limited filed Memos in all the four petitions stating that it withdrew W.P.No.32992 of 2014 before the Hon'ble High Court, which permitted the withdrawal on 27-02-2019 and that no other cases are pending before any other Court / Forum in relation to the subject matters of the four petitions.

18. Therefore, the records in O.P.No.79 of 2012, O.P.No.12 of 2014 & I.A.No.3 of 2014, O.P.No.60 of 2013 & I.A.No.37 of 2013 and O.P.No.6 of 2017 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 **2nd day of March, 2019.**

Sd/-
P. Rama Mohan
Member

Sd/-
Justice G. Bhavani Prasad
Chairman