



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

I.A. No. 40 of 2018
in
O. P. No. 38 of 2018

Dated:15.10.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Mytrah Agriya Power Private Limited
Regd. Office: 8001, 8th Floor, Q-city, S.No.109,
Nanakramguda, Gachibowli, Hyderabad – 500 032.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
2. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.
3. Special Chief Secretary, Energy Department,
Government of Telangana, Telangana Secretariat,
Khairatabad, Hyderabad.

...Respondents.

This application came up for hearing on 06.10.2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri. Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the applicant / petitioner appeared as also Sri. Shiva Kumar, Legal Counsel of the company appeared. Sri. Y.Rama Rao, standing counsel for the respondents along with Ms. M. Pravalika, Advocate appeared on 06.10.2018. The application having stood over for consideration to this day, the Commission passed the following:

INTERIM ORDER

This Interim Application is filed under 86 (1) (f) and 86 (1) (k) of the Electricity Act, 2003 r/w Article 9.2 of the PPA entered into seeking interim direction to the respondents to allow synchronisation of the project with the grid pending disposal of OP with the following material averments:

(i) The petitioner is a successful bidder in the competitive bidding process conducted by the respondent No.1 for 50 MW solar power project at Wanaparthy SS at 132 KV voltage level and entered into PPA on 23.02.2016. The petitioner had to commission the project within 15 months from the date of PPA i.e., 22.05.2017. The petitioner alleged that due to Force majeure events affecting all solar power projects in the State of Telangana, the completion of the present project faced obstructions and caused delay in SCOD. These force majeure events have been acknowledged and accepted by GOTS. Therefore, the petitioner is entitled to extension of SCOD of the project as per Article 9 of PPA dated 23.02.2016 for the period commensurate with the period of delay. The petitioner expected the project to be completed by 25.09.2018. The petitioner sought leave to refer to and only upon the facts and submissions made by the applicant in the pleadings as if the same were incorporated in the present application.

(ii) As per Article 6.2 of PPA, the respondent No.1 is obligated to make all reasonable efforts for making arrangements for evacuation of power from the project and coordinate with TSTRANSCO and guide the applicant in obtaining the approval for inter connection facilities, synchronisation, commercial operation, regular operation, etc. The petitioner is seeking a direction to respondent No.1 to allow synchronisation of the project.

(iii) Taking into account the prima facie case, balance of convenience and irreparable loss, orders may be issued directing synchronisation of the project as otherwise the solar panels of the project being left idle would degrade thereby reducing the life of the modules resulting in irreparable loss to the petitioner who has invested heavily in the project. The APTEL in its judgment dated 13.12.2016 in Appeal No.307 of 2016 observed *infra* in paragraph – 7.

(iv) That the instant application is made bona fide and in the interest of justice.

2. The respondent No. 1 did not file any counter affidavit to the IA. However, the respondent no.1 filed counter affidavit in the OP denying the material allegations. It denied force majeure allegations and the delay occurred in reaching the SCOD by R-1 due to that reason.

3. The petitioner filed rejoinder to the counter filed by R-1 in O.P.

4. The arguments of both the counsel for the petitioner and the respondents heard.

5. The point for determination is whether the petitioner is entitled to an interim direction to the respondents to synchronise 50MW of the project to the grid pending disposal of O.P and on what terms?

6. The petitioner was a successful bidder to set up 50 MW solar power project at Wanaparthy. PPA was entered between the parties on 23.02.2016 in group II category with inter connection point at 220 /132 KV Wanaparthy SS at 132 KV voltage level with tariff Rs.5.5644 per unit. The date of SCOD as per PPA is 22.05.2017. The maximum period allowed for commissioning the full project capacity with encashment of performance Bank Guarantee and payment of liquidated damages which shall be limited to 21 months from the effective date of PPA.

7. The learned counsel for the petitioner contended that the prolonged disuse of the solar power project would damage the entire set up and relied on paras 11 & 13 of the order of APTEL in *I.A.No.637 of 2016 in Appeal No. 307 of 2016 dated 13.12.2016 at Para 11 & 13 of the decision*, which is extracted below:

“11. A prolonged outage may disrupt the normal operation & maintenance of solar PV plant as generation is reduced to zero due to no schedule and as such, all auxiliaries and systems of solar PV stations are switched of. As a result, large number of technical challenges crop in such as:

- (i) Moisture ingress in transformers may cause failure of transformer. Moreover, such failure may further increase down time if such faults are detected at the time of revival from long shut down.*
- (ii) Failure of UPS batteries due to lack of charging hence loss of control, protection and communication system.*
- (iii) Theft of un-energized solar panels may additionally leads to down time from theft etc.”*

13. *It is fact that the solar panels cannot be allowed to be left idle, as it would result in technical degradation which would result in irreparable loss to the generators who have invested in the project.”*

The main contention of the petitioner is based on the observations in the above cited order of APTEL. The petitioner emphasised about the total loss of investment of public in case interim order is not passed for synchronisation pending disposal of O.P.

8. The petitioner further relied on a decision rendered by the Hon'ble Supreme Court in C. A. Nos. 5399-5400 of 2016 in Energy Watchdog vs. CERC & Ors and batch wherein the Hon'ble Supreme Court observed that where there are no guidelines or in a situation which is not covered by the guidelines, the Central Electricity Regulatory Commission's general regulatory power u/s 79 (1) (b) can be used. Similar/equivalent provision for the State Commission is Sec.86 (1) (b). The present matter relates to examination of terms of PPA, which need no clarification to the parties. In fact, the arguments of both sides have not been about any clarification needed on the terms of PPA.

9. The learned counsel for the petitioner contended that the petitioner has a prima facie case for interim orders and as otherwise, the petitioner would sustain irreparable loss and relied on a decision of Hon'ble Supreme Court dated 11.09.2009 in SLP (Civil) No. 18934 of 2008 between Zenit Mataplast Pvt. Ltd vs. State of Maharashtra and Ors wherein, it was observed that the interim orders are passed on the basis of prima facie findings which are tentative.

10. The learned counsel for the petitioner sought a direction to the respondents to ensure synchronisation to the state grid and for purchasing power from the petitioner on a provisional tariff, subject to proper adjustment on the outcome of the present appeal, while referring to a decision of APTEL dated 13.12.2016 rendered in Subhash Infraengineers Pvt Ltd and another vs Haryana ERC through Secretary and another. In the cited case, the decision of HERC to the effect that PPA with the appellant's therein are not in line with the purported competitive bidding guidelines for renewable energy generators u/s 63 of the EA 2003 and that the deviations were not approved by the State Commission and hence, the power purchases are not valid, was questioned in the APTEL. In this decision APTEL observed about the

technical challenges and deterioration of the solar PV panels and machinery in case of long shut down / disuse. The learned counsel for the petitioner emphasised on this aspect and pleaded for interim orders.

11. The learned counsel for the respondent vehemently contended that the entire 50 MW capacity is not synchronised to the grid and the respondent has a vested right in refusing to connect the 50 MW to the grid, because as per clause 9.2 of PPA a maximum period of twelve months is permitted to defer COD to permit the solar power developer to overcome the effects of force majeure events affecting the solar power developer or DISCOM or till such event of default is rectified by the solar power developer or DISCOM whichever is earlier. Provided further that, the validity of performance bank guarantee shall be extended suitably covering the extended period. The learned counsel further contended that the date of SCOD 22.05.2017 is not adhered to by the petitioner, who claimed to have been ready with synchronisation by 25.09.2018 without mentioning it in the petition while mentioning so in I.A.No.41 of 2018. The respondent no.1 has alleged that the petitioner has neither submitted the work completion report nor readiness of the project for synchronisation in their counter affidavit filed in O.P. on 30.06.2018.

12. Whether the plea of force majeure events pleaded by the petitioner are really so, and if such is the case, the Commission has to examine those claims and decide whether the events can be accepted as force majeure events. In case the plea is not accepted, whether penalties can be imposed to that extent and in such case, the respondent has a right to avoid PPA and insist on fresh terms. Further, there is a contention of the respondent that the maximum time period allowed for commissioning of the full project capacity with encashment of performance bank guarantee and payment of liquidated damages shall be limited to twenty-one (21) months from the effective date of this agreement and it is expired by 23.11.2017. This aspect can be decided only in the O.P. The present matter has to be examined in relation to the prayer for interim order.

13. The petitioner has made out a prima facie case for interim direction and in case interim direction is not given, the petitioner has convincingly pleaded that the entire project and its investment relating to 50MW power would be lost, which would also be a blow to the philosophy of renewable energy sources and its

encouragement by the State. No doubt, the respondent also has effectively argued about the rights and obligations of both the parties, which are governed only under PPA and the right of the respondent to terminate the contract, which is so far not exercised.

14. The entire 50 MW capacity is not synchronized so far and there is no material on record to show that the respondent has issued any notice of termination. In case synchronisation is ordered, suitable instructions are called for. The learned counsel for the respondent contended that right of the petitioner to renegotiate the tariff may be reserved in case interim orders are issued. Thus, the right of the petitioner is reserved.

15. Under these circumstances, there shall be a direction to the respondents to synchronise the 50 MW solar power to the grid pending disposal of O.P only on the following terms:

(a) There shall be an interim direction pending disposal of O.P. to the respondent to synchronize 50 MW of the project to the grid.

(b) This order is subject to the right of the respondent to renegotiate the tariff.

I.A. is disposed of accordingly.

This order is corrected and signed on this the 15th day of October, 2018.

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

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