



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 37 of 2018

Dated 20.08.2018

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 petition came up for hearing on 21-07-2018 & 03-08-2018. Sri. Hemant Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate and Sri Varun Kapur, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 21-07-2018 and 03-08-2018. Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate appeared on 21.07.2018 and 03.08.2018. The petition having stood over for consideration to this day, the Commission passed the following:

INTERIM ORDER

This Interim Application is filed under 86(1)(f) & 86 (1)(k) of the Electricity Act, 2003 r/w Article 9.2 of the PPA 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 sought several reliefs which are part of the main relief in the O.P. and therefore, the interim direction sought by the petitioner is only being considered in this petition.

(ii) The petitioner is a successful bidder in the competitive bidding process conducted by the respondent no.1 for 50 MW solar power project at Kamareddy and entered into PPA on 08.03.2016 at a tariff of Rs.5.5949 per unit. The petitioner had to commission the project within 15 months from the date of PPA i.e., by 07.06.2017. The petitioner pleaded that project delay due to re-organisation of districts, the confusion in the offices of the revenue authorities, difficulty in cash flow, bank transactions, difficulties in procuring labour to carry out labour work. The petitioner further pleaded that land acquisition process got significantly delayed with the issue of a circular dated 10-06-2016 from Chief Commissioner of Land Administration directing all the concerned revenue officials to stop issuance of manual Pattadar pass books which have no linkage with Telangana Land Records Management System (TLRMS). The circular also directed the revenue officials to issue online Pattadar passbooks (e-Passbooks) automatically generated from the TLRMS Portal. The process further got delayed because of the data updation process and huge pendency in issuance of e-passbooks from MeeSeva centres. The Chief Commissioner of Land Administration vide its circular dated 29-09-2016 acknowledging huge pendency in issuance of e-passbooks advised the revenue officials to opt for alternative methods and issue manual pattadar passbooks to bring down the level of pendency till on-line services gets ready. This has resulted in delay in acquiring land attributable to the State Government agencies and which was beyond the control of the petitioner. It had a cumulative effect in tying up finances from financial institutions and obtaining financial closure of the project.

(iii) The petitioner has submitted that initially building of evacuation system for the project got delayed because of the delay in obtaining various approvals from TSTRANSCO. As per the procedure, the developer has to obtain first route proposal from its pooling station to multi-circuit tower. This was granted by TSTRANSCO on 24-05-2017 though application for the purpose was filed on 31-03-2017. Then the petitioner is required to finalise the site and route approval and submit survey report. TSTRANSCO approved the route approval on 18-07-2017. The petitioner further pleaded that during the construction of the switch yard and column posts at Somram village of Kamareddy District, Irrigation and CAD Department informed the petitioner that Min canal package 22 of the Kaleshwaram project is going to pass through the site of the switch yard of the solar project. As a result of these developments, the petitioner was forced to abandon the structures already built and identify another site and acquire land for the purpose. Total delay on account of all such difficulties was more than 200 days, which was beyond the control of the petitioner. The petitioner has been able to overcome all such problems and completed the project in all respect. This project of 50 MW has been ready for synchronization since 16.5.2018 and the petitioner had submitted the requisite undertaking to abide by the decision of the commission in the O.P.

(iv) The respondent have repeatedly refused to synchronize the project to the grid on the ground that the project was not commissioned within the extended timeline specified in the PPA.

(v) The Force majeure events were acknowledged and accepted by the Government of Telangana and therefore, under Article 9 of PPA, the petitioner is entitled to extension of SCOD for the period commensurate with the period of delay. Under Article 6.2 of PPA, the second respondent TSNPDCL has an obligation a) to make reasonable efforts for evacuation of power from the project, b) Co-ordinate with TSTRANSCO and guide the applicant in obtaining approval for inter connection facilities, Synchronization, Commercial operation and regular operation etc. In spite of the force majeure events, the petitioner could complete the project with a delay of 407 days and got it ready for synchronization on 16.05.2018.

(vi) Any further delay in synchronization/Commissioning will lead to degradation in solar modules, thereby reducing the life of the modules. The petitioner reproduced the relevant extract of the judgment dated 13.12.2016 of APTEL which is as follows in support of the petition:

“It is a 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.”

2. The CGM (IPC&RAC), TSSPDCL filed counter affidavit with the following averments:

(i) The petitioner has entered in to PPA on 08.03.2016 to setup 50 MW Solar Power Project under competitive bidding- 2015 in Group II category with interconnection point at 220/132 KV Kamareddy SS at 132 KV voltage level with tariff Rs.5.5949 per unit. As per the PPA the SCOD is 07.06.2017. The maximum time/period allowed for commissioning the full project capacity with encashment of performance bank guarantee and payment of liquidated damages shall be limited to 21 months from the effective date of the agreement and it is expired by 07.12.2017. After expiry of 21 months, the petitioner has requested on 21.05.2018 for synchronization of the plant duly submitting the undertaking as per the TSERC format without submitting the necessary documents like work completion report, SLDC clearance, EBC compatibility report. On 11.06.2018 the petitioner has submitted the work completion report dated 31.05.2018, SLDC clearance dated 07.06.2018 and EBC compatibility report dated 22.05.2018 for giving approval. The petitioner's reliance on APTEL Judgment is not applicable to the present case, because the facts are different in the two cases and further the project has not been synchronized in the present case and whereas, it was not so in the cited decision of APTEL.

(ii) The facts alleged as force majeure events are not coming within the definition of force majeure as per Clause 9.1 of PPA. As per Clause 6 of PPA, the petitioner has agreed to obtain all the consent, clearances and permits required for supply of power to the respondent and to procure land for setting of the project with at least Acres 4 per MW in the name of the petitioner within 6 months at own cost and risk (i.e. 07.09.2016) from the date of PPA. The events like districts re-organisation in the state and

demonetisation of High value currency have occurred in the country post scheduled date (i.e. 07.09.2016) to obtain necessary approvals and to procure land for the project and therefore the claim of the petitioner on this aspect is not tenable.

(iii) No delay occurred from TSTRANSCO regarding Route approval and CTs & PTs drawings approval for erection of 132 KV DC/SC line from the existing 220 / 132 KV SS Kamareddy to proposed 50 MW Solar power plant setup by the petitioner and 2 no's 132 KV bays each at 220/132 KV Kamareddy along with metering arrangements. The petitioner applied for Route approval vide letter dated 31.03.2017 which was approved on 17.05.2017 for transmission line length of 10.791 K.M. duly obtaining no objection for sharing of multi circuit towers from other solar power developers who laid the multi circuit towers.

(iv) The petitioner paid engineering charges to TSTRANSCO on 17.07.2017 and immediately, the tower profile was handed over to the petitioner on 18.07.2017 and there is no delay on the part of TSTRANSCO, while the delay was due to the petitioner only.

(v) The petitioner sustained delay due to the deviation in procurement of materials / equipments from the manufacturers not in the list of the approved manufacturers of TSTRANSCO and any delay on this score is attributable to the petitioner only.

(vi) The petitioner alleged that the delay occurred also on account of the module suppliers renegeing on orders and module reclassification is not justified. The petitioner claimed in his letter dated 31.08.2016 that the land was finalised for the project and the land acquisition is in progress and tied up with solar PV modules for the project. The petitioner entered into MOU with solar modules manufacturers on 30.06.2016 for supply of solar PV modules for development of 16 solar PV projects of 377 MW capacity and as such, the contention of the petitioner that the delay occurred on account of module suppliers renegeing on orders and reclassification of modules is not justified.

(vii) As per clause 3.8.1 of PPA, the solar power developer should give a 15 days' notice to show its intention to synchronize the project to the grid. The maximum period allowed for commissioning of the full project capacity with encashment of performance Bank guarantee and payment of liquidated

damages shall be limited to 21 months from the effective date of agreement, which is completed by 07.12.2017. The petitioner now has requested on 21.05.2018 for synchronization of the plant along with an undertaking as per the TSERC format without submitting necessary documents like work completion report, SLDC clearance, EBC compatibility report. The petitioner on 11.06.2018 has submitted the necessary documents like work completion report dated 31.05.2018, EBC compatibility dated 22.05.2018 and SLDC clearance dated 07.06.2018 for giving approval for synchronization.

(viii) The petitioner gave force majeure notice dated 07.11.2017 for extension of SCOD alleging that there was delay in procuring land on lease and sale basis, in getting conversion of land to non-agriculture use and that it came to know that a part of the land was proposed for acquisition under Kaleshwaram project left main canal, which also caused delay. The respondent rejected the request for extension of SCOD by letter dated 20.11.2017 on the ground that the reasons assigned do not attract the definition of force majeure.

(ix) The Government of Telangana, energy department vide letter dated 29.06.2017 gave extension for SCOD up to 30.06.2017 to the Solar power projects in the state who have concluded PPAs with TSDISCOMs without any penalty duly following all the technical requirements as required under CEA and TSTRANSCO guide lines. The Commission through letter dated 18.08.2017 has issued in principle approval for the extension SCOD upto 30.06.2017 for the solar power projects of competitive bidding 2015 with a condition to refix the tariff and each generator has been directed to file a petition for amending the PPAs. GoTs through letter dated 23.08.2017 has issued extension of additional 4 months for the SCOD upto 31.10.2017 to the Solar power projects in the state who have participated in the bidding 2015.

(x) The petitioner has no enforceable right in respect of the extension of the time fixed under Clause 9.2 of PPA as the terms and condition of the PPA are binding on the parties.

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

4. 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?

5. The petitioner was a successful bidder to set up 50 MW solar power project at Kamareddy. PPA was entered between the parties on 08.03.2016 in group II category with inter connection point at 220/132 KV Kamareddy SS at 132 KV voltage level with tariff Rs.5.5949 per unit. The date of SCOD as per PPA is 07.06.2017. 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.

6. 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 are 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.

7. 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.

8. 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.

9. The learned counsel for the petitioner sought a direction to the respondents to ensure synchronisation of the plant to the state grid subject to 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.

10. 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 07.06.2017 is not adhered to by the petitioner, who claimed to have been ready with synchronisation by 16.05.2018.

11. 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 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 07.12.2017. 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.

12. 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.

13. Under these circumstances, there shall be an interim direction to the respondent No. 2 to synchronise the 50 MW solar power to the grid pending disposal of O.P to avoid loss of investment already made and allow productive use of the assets.

This order is corrected and signed on this the 20th day of August, 2018.

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