

**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

O.P No. 348 of 2000

Dated:15.04.2010

Present  
Sri A.Raghotham Rao, Chairman  
Sri R.Radha Kishen, Member  
Sri C.R.Sekhar Reddy, Member

Between

M/s. Astha Power Corporation Private Limited  
Regd. Office : B-1, Industrial Estate,  
Sanathnagar, Hyderabad – 500 018.

..... Petitioner

And

1. Transmission Corporation of Andhra Pradesh Limited.
2. Central Power Distribution Company of Andhra Pradesh Limited.
3. Southern Power Distribution Company of Andhra Pradesh Limited.
4. Eastern Power Distribution Company of Andhra Pradesh Limited.
5. Northern Power Distribution Company of Andhra Pradesh Limited

... Respondents

The petition filed by the above named petitioner having been heard on 06-03-2010 and 12.03.2010 in the presence Sri. R. Raghunandan, Advocate for the petitioner and Sri P.Shiva Rao, Advocate for the respondents and having stood over for consideration to this day, the Commission passed the following:

**ORDER**

On 24.12.1999 the petitioner herein made an application to APERC seeking exemption from the requirement of taking license to supply electricity to its consumers u/s 15 & 16 of the Reform Act.

2. After hearing on 18.04.2000, the APERC passed an order on 01.07.2000 rejecting the request for grant of license / exemption from license on the ground that G.O. No. 116 and 152 did not give any vested right to the Mini Power Plants to get a license or an exemption after the Reform Act had come into force. APERC also directed the developer not to sell electricity to third parties but sell to APTRANSCO

only at a fair and reasonable price to be mutually agreed to by the parties or in the event of failure to do so, to be decided by the APERC.

3. Against this decision of the APERC, the petitioner filed appeal to APHC challenging the prohibition of sale to third parties. The High Court allowed the said appeal. Against the said judgment, the appeal was preferred to the Apex Court. The Hon'ble Apex Court remanded the matter to APERC to consider and pass orders in the light of new statute by the Commission constituted under the 2003 Act. While so remanding the matter, certain directions were also given to the Commission by giving liberty to vary, modify, rescind the order of the old Commission and issue directions as may be considered just and reasonable including in the changed situation, also allowing the parties to effect third party sale. The Apex Court also directed that the Commission will be at liberty to evolve a scheme for revival of the company, keeping in view the public interest involved and in particular the interest of financial institutions.

4. In pursuance of the remand of the matter by the Hon'ble Supreme Court for fresh disposal by its order dated 14.05.2008 in the light of the Electricity Act, 2003, the same was restored to file by the Commission in the year 2008.

5. The principal request of the petitioner before the Commission during the hearing is that a direction may be given to respondents to recommend the case of the petitioner to the Gol through the GoAP for allocation of gas as was done in respect of two other projects namely., M/s. RVK Energy Pvt. Ltd and M/s. LVS Power Ltd., treating the petitioner as an existing project. On the other hand, the counsel for the respondents stated that, under law, the respondents are not bound to recommend the case of the petitioner and no direction can be issued by the Commission. However, on 02.05.2009, the counsel submitted before the Commission that the respondents are willing to recommend the case of the petitioner to the Gol through the GoAP for allocation of gas and requested for issuing suitable directions. In view of the orders of the Hon'ble Supreme Court, the Commission, on the said day, directed the respondents to send recommendations to Gol for allocation of gas to the petitioner duly mentioning the background of the case and the orders of the Hon'ble Supreme Court.

6. The counsel for the respondents sought several adjournments for filing letter of recommendation to the Government for supply of gas. However, subsequently it was submitted by the respondents that the petitioner had not apprised the status of its project for recommending gas supply to it. Whatever it might be, the respondents did not file any letter of recommendation for supply of gas and on 26.11.2009 the Commission resumed hearing of the matter, which was concluded and reserved for orders on 07.01.2010.

7. While it is so, on 10.02.2010 the petitioner filed a Memo stating that it obtained certain documents under RTI Act, which information was relevant for proper disposal of the matter and scheme for revival of the company as per directions of the Hon'ble Supreme Court. The petitioner also filed 'Additional Affidavit' stating certain facts which have come to light based on such information. It is further stated that the said facts are relevant and essential for proper disposal for the case by the Commission and therefore requested that the same may be taken on record.

8. Pursuant to the filing of information by the petitioner the matter was reopened by the Commission and the counsel for the both parties were heard extensively on 06.03.2010 in respect of the documents filed by the petitioner. After hearing the parties, the Commission observed as follows.

“Heard the arguments of the counsel for both the parties. For filing of documents by the petitioner and respondents in terms of the arguments submitted during the hearing in respect of entering agreement for sale of power and also commitment for recommending for supply of gas to the Government of India. Adjourned and posted to 12.03.2010”.

9. The matter was posted on 12.03.2010 for filing of the documents by the petitioner and appropriate orders thereof. On the said date of hearing, the petitioner filed the documents as directed by the Commission earlier. It was observed in the docket sheet as follows.

“The representative of the petitioner filed documents as directed on the earlier hearing. The representative of the respondent confirmed the receipt of the said document”.

10. The matter has been examined in pursuance of the remand order of the Hon'ble Supreme Court. The Hon'ble Supreme Court has remanded the case to pass orders in terms of the new statute, i.e., Electricity Act, 2003.

11. The petitioner had originally filed the above mentioned petition u/s 15 and 16 of the Reform Act which deal with grant of license by the Commission (Section 15) and exemption from requirement to have a license (Section 16). After the advent of Electricity Act, 2003, the question of exemption from the license does not arise.

12. However, in the context of the further directions given by the Apex Court, directing that the Commission will be free to evolve a scheme for the revival of the company keeping in view, the public interest involved and in particular, the interest of the financial institutions in the light of the provisions of the Indian Electricity Act, 2003, the matter has been examined by the Commission. In the context, the petitioner is insisting for recommendation from the APTRANSCO to the Government of India for supply of gas whereas the respondent's counsel has represented that unless a direction is issued by the Commission, they may not be in a position to recommend for the same.

13. Now, the point that is to be determined at this stage is, whether the Commission can issue a direction as requested by the petitioner?

14. Since the petitioner herein has filed an affidavit to the effect that he is going to supply the power to APDISCOMs at mutually negotiated and agreed rate as may be approved by APERC, he has now come on all fours with the other two companies, as far as supply of power to APDISCOMs is concerned.

15. It is clear from the record and representations that the respondent has recommended allocation of natural gas for revival of RVK Energy (Pvt) Ltd (RVK) and LVS Power Limited (LVS), the other two companies who are the parties before the Hon'ble Supreme Court, along with the petitioners, for increase of their installed capacity by 12.7 and 20MW respectively equivalent to the licenced capacity.

16. The petitioner has requested for assistance in reviving the unit by way of recommending the allocation of natural gas and is also willing to supply power to APTRANSCO. The petitioner has also submitted its undertaking to sell the power to APDISCOMS as given by the other two companies.

17. The contention of the petitioner is that as far as the issue of recommendation for supply of gas is concerned, the petitioner is on par with the other two companies. The only difference is that the case of the other two companies is regarding increase in the installed capacity already set up whereas in the case of the petitioner, the case is one of setting up the plant with an installed capacity upto the desired level directly in one go, in pursuance of certain steps already taken by him during the pendency of this case. The capacity increase beyond existing level in the case of other two companies, is on the same footing as the installation of capacity anew by the petitioner and all the three companies are on the same footing, as far as recommending for supply of gas is concerned.

18. When the status of the parties are equal, the action of the respondent in giving recommendation to the other two and refusing the same to the petitioner is not only against the principles of equity but also against the principles of natural justice. In pursuance of the direction given by Hon'ble Supreme Court, a duty is cast upon this Commission to evolve a scheme for revival of the companies, keeping in view of the public interest and interest of the financial institutions. Hence the Commission considers it fit to intervene and to issue a direction to the respondents to recommend for allocation of natural gas to the petitioner. Accordingly, the respondents are directed to recommend to Gol through the GoAP for allocation of natural gas to the petitioner within fifteen (15) days of the receipt of this order.

This order is corrected and signed on this day 15<sup>th</sup> of April, 2010.

Sd/-  
(C.R.SEKHAR REDDY)  
MEMBER

Sd/-  
(R.RADHA KISHEN)  
MEMBER

Sd/-  
(A.RAGHOTHAM RAO)  
CHAIRMAN

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