



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

O.P.No. 9 of 2017
Date: 14-06-2018

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

Between:

M/s. Rain Coke Ltd.

... Petitioner

A N D

Southern Power Distribution Company of
Andhra Pradesh Limited & another

.... Respondents

This Original Petition has come up for hearing finally on 14-06-2018 in the presence of Sri A. Satya Prasad, learned Senior Counsel & Sri Srinivas Mantha, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the utilities. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

Heard Sri A. Satya Prasad, learned Senior Counsel & Sri Srinivas Mantha, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents.

2. The petition has been filed to set aside the Letter of the Chief General Manager representing the 2nd respondent dated 20-09-2016 by which, it was informed that in default of the commissioning of the project to its full capacity before the dates specified in the letter, the Power Purchase Agreement entered into between the parties must be deemed to be terminated, without further notice and the

other reliefs prayed for are in effect and substance consequential to the said main relief. After filing of the counter by the respondents and rejoinder by the petitioner, during the course of hearing on 16-12-2017 after hearing the learned counsel for both parties, it was noticed that apart from the legal validity or otherwise of the letter from the Chief General Manager in question, the fact that the tariff for renewable energy has come down drastically during the years all around also has to be taken into consideration, which makes it necessary to discuss the feasibility of purchasing power from the generating company in question from a holistic perspective to arrive at a reasonable and workable solution. Accordingly, this Commission has directed both parties to negotiate between themselves the possible way out from the impasse before considering the matter on merits. Regarding any extent of consensus, the Commission will consider the manner in which such consensus can legally and factually be given effect to. In the event of absence of consensus, it was ordered that the petition will be heard on merits in accordance with law. The entire exercise is without prejudice to the respective rights and contentions of both parties in the main petition.

3. On the next date of hearing i.e., 06-01-2018, Sri P. Shiva Rao, learned Standing Counsel for the respondents submitted that the State Government constituted a committee to go into all the issues involved and make its recommendations to the State Government for consideration. Later, on 24-03-2018, the Government Orders dated 21-02-2018 constituting a committee were placed before the Commission by Sri Srinivas Mantha, learned counsel for the petitioner and ultimately on 19-05-2018, it was submitted by the learned counsel for the parties that the report of the committee was already submitted to the Commission through a letter dated 11-05-2018 and on 02-06-2018, Sri A. Satya Prasad, learned Senior

Counsel for the petitioner informed that the petitioner has no objection to receive the report of the committee dated 03-05-2018.

4. The report of the committee shows that after elaborate discussions with the parties by the committee, the committee ultimately decided to revive the Power Purchase Agreements of the four generating units, revise the tariff as Rs.3.74 per unit for the first year on par with the average pooled power cost approved by the Commission for FY 2017-18 in the place of the tariffs agreed under the Power Purchase Agreements at a higher quantum, to refund the Performance Bank Guarantee and to reckon the date of commercial operation as per the actual date of commissioning of the plant. The committee left two questions to be decided by the Commission. Firstly payment for the energy pumped into the grid during the period till the settlement of the dispute in the pending cases by the Commission and secondly the mode of refund of the amount already recovered from the petitioner through the Performance Bank Guarantee without interest.

5. The Andhra Pradesh Power Coordination Committee, which is the 2nd respondent herein in its subsequent meeting on 09-05-2018 has accepted this committee report in *toto* without any changes and directed the 1st respondent to submit the committee report to the Commission.

6. The learned counsel for both parties have therefore agreed under the circumstances that the reliefs originally prayed for in the petition have accordingly become redundant in the form in which they were made and the reliefs to be granted by the Commission may be suitably moulded in terms of the report of the committee accepted unconditionally, without any changes by both the parties.

7. If it were so, on the first question, which the committee decided to leave to the decision of the Commission, Sri P. Shiva Rao, learned Standing Counsel for the respondents has brought to the notice of the Commission that the petitioner has given an undertaking that any inadvertent power pumped into the grid during the period of synchronization will be free of cost to the 1st respondent and the petitioner will not claim for it. He also brought to the notice of the Commission that in consequence of the undertaking, the 1st respondent also issued proceedings giving effect to the understanding between the parties leading to the undertaking. Sri A. Satya Prasad, learned Senior Counsel for the petitioner, on instructions, submitted that it is true that such an undertaking has been given by the petitioner and accepted by the 1st respondent. As such the consensus between the parties to supply inadvertent power during the period of synchronization free of cost to the 1st respondent has to be given effect to by the Commission, as there is no legal or factual hindrance for recognizing and accepting the same.

8. In so far as the second issue of refund of the Performance Bank Guarantee amount already recovered from the petitioner is concerned, Sri P. Shiva Rao, learned Standing Counsel for the respondents submitted that the financial condition of the 1st respondent is precarious in view of the huge arrears of consumption charges being still not recovered, huge sums of subsidy due under various heads having to be still received and pay revision of the electricity employees placing further heavy burden on the distribution companies etc., and sought for a period of five (5) years for repayment of the amount, which was vehemently resisted by Sri A. Satya Prasad, learned Senior Counsel and Sri Srinivas Mantha, learned counsel for the petitioner. Striking a reasonable balance between the competing claims, the

Commission feels it desirable to permit the 1st respondent to pay such amounts in four (4) equal instalments with a gap of six (6) months each from today.

9. In so far as the relief of setting aside of the letter of Chief General Manager is concerned, the same becomes redundant in view of the understanding between the parties and in so far as the relief of declaration relating to the Power Purchase Agreement is concerned or other miscellaneous prayers are concerned, it is for the 1st respondent to appropriately come up before the Commission for giving effect to the understanding between the parties about the first year's tariff in deviation from the tariff agreed under the Power Purchase Agreement and about the reckoning of the date of the commercial operation as the actual date of commissioning and any other consequential changes that may have to be made in the Power Purchase Agreement in pursuance of the report of the committee accepted by the Andhra Pradesh Power Coordination Committee, the 2nd respondent herein and the petitioner and the Commission will have to deal with the same on merits in accordance with law as and when such an approach is made. The present petition therefore has to be disposed of in terms of the above discussion.

10. Accordingly, the report of the committee constituted under G.O.Rt.No.26 Energy, Infrastructure and Investment (Power.II) Department, dated 21-02-2018, accepted by the 2nd respondent in its meeting held on 03-05-2018 and consented to by the petitioner is hereby recorded and the parties are at liberty to act upon the said report for giving effect to the same in accordance with law. Apart from the parties taking necessary steps in this regard, the undertaking given by the petitioner to treat the energy pumped into the grid during the period of synchronization of its unit as supply free of cost is hereby recorded and accepted. The amount already recovered

from the petitioner from the Performance Bank Guarantee given by it shall be refunded without interest in four (4) equal instalments with a gap of six (6) months each between them, the 1st instalment falling due on the date of expiry of six (6) months from today. The 1st respondent shall take expeditious steps for submission of appropriate amendments to be consequentially made in the Power Purchase Agreement for the consideration of the Commission to be dealt with in accordance with law, on merits.

11. The Original Petition is ordered accordingly and the parties shall bear their own costs.

This order is corrected and signed on this the **14th day of June, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman