



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

SATURDAY, THE TWENTY EIGHTH DAY OF JULY TWO THOUSAND EIGHTEEN

:Present:

Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member

O.P.Nos. 37, 38, 39 & 66 of 2017

O.P.No.37 of 2017

Between:

M/s. Tata Power Renewable Energy Limited ... **Petitioner**

A N D

1. Southern Power Distribution Company of A.P. Limited
2. The Andhra Pradesh Power Coordination Committee
3. The Chief General Manager, APSPDCL
4. The Dy. Chief Controller of Accounts ... **Respondents**

O.P.No.38 of 2017

Between:

JED Solar Parks Private Limited ... **Petitioner**

A N D

1. Southern Power Distribution Company of A.P. Limited
2. The Andhra Pradesh Power Coordination Committee
3. The Chief General Manager, APSPDCL
4. The Dy. Chief Controller of Accounts ... **Respondents**

O.P.No.39 of 2017

Between:

POLY Solar Parks Private Limited ... **Petitioner**

A N D

1. Southern Power Distribution Company of A.P. Limited
2. The Andhra Pradesh Power Coordination Committee
3. The Chief General Manager, APSPDCL
4. The Dy. Chief Controller of Accounts ... **Respondents**

O.P.No.66 of 2017

Between:

M/s. Jindal Aluminum Limited

... **Petitioner**

A N D

1. Southern Power Distribution Company of A.P. Limited
2. The Andhra Pradesh Power Coordination Committee
3. The Chief General Manager, APSPDCL
4. The Dy. Chief Controller of Accounts

... **Respondents**

All these four Original Petitions have come up for hearing finally on 21-07-2018, in the presence of Sri Challa Gunaranjan, learned counsel for the petitioners 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:

COMMON ORDER

These four Original Petitions are by wind power generators, who were also parties to O.P.No.1 of 2017 and O.P.No.5 of 2017 respectively filed for factoring in Generation Based Incentive also in the tariff determined by the Commission as per Regulation 1 of 2015 through its orders dated 01-08-2015 and 26-03-2016 in O.P.No.3 of 2015 and O.P.No.13 of 2016 respectively and to curtail the period of operation of Regulation 1 of 2015 to 31-03-2017.

In O.P.No.1 of 2017, the petitioners are the two distribution licensees of the State of Andhra Pradesh who sought for an amendment of the tariff orders dated 01-08-2015 and 26-03-2016 to enable taking into account the Generation Based Incentive received by any wind power generator under the relevant scheme of the Government of India, while fixing the liability of the distribution licensees for payment of tariff. 47 wind power generators said to be interested in the subject matter of that petition have been impleaded as respondents therein and a public notice was also issued to all interested persons and stakeholders to place their views / suggestions / objections before the

Commission on the subject. That matter came up for hearing and ultimately disposed of on merits in accordance with law today i.e., 28-07-2018 and there were no interim orders sought for or granted by the Commission in O.P.No.1 of 2017 and O.P.No.5 of 2017 relating to Generation Based Incentive. Still the distribution licensees started deducting the component of Generation Based Incentive from the monthly bills payable to the wind power generators as per their invoices in cases where such generators have availed the benefit of Generation Based Incentive.

The petitioners herein are four such wind power generators in respect of whom the distribution licensees deducted the Generation Based Incentive amounts from the monthly bills due to them as per their invoices, challenging which these petitions have been filed along with the Interlocutory Applications requesting for an interim direction against the distribution licensees not to make any such deductions further during the pendency of these four petitions. In the counters filed in the four petitions by the distribution licensees and the other respondents including either the Andhra Pradesh Power Coordination Committee or the officers representing it, what was stated was only the chronology of events and the justification for them to claim factoring of the Generation Based Incentive but not under what authority and law, they are making deductions of the Generation Based Incentive even during the pendency of O.P.No.1 of 2017 and O.P.No.5 of 2017 without any interim or final orders from the Commission or for that matter any other authority or tribunal or commission or court. The counters only stated about the Andhra Pradesh distribution companies having a meeting dated 23-11-2016 for a review of the wind power generation after the Wind Power Policy of the State Government in 2015 vis-à-vis the financial position of Andhra Pradesh Distribution Companies and nothing further. However, the enclosed copy of the minutes of the meeting of the Andhra Pradesh Power Coordination Committee held on 23-11-2016 shows that not only a decision was taken to approach the Commission to review the

tariff taking into account the Generation Based Incentive offered by the Central Government but also to henceforth deduct the Generation Based Incentive while making tariff payments to wind power project developers. It was also decided that recovery of Generation Based Incentive shall also be made from all the projects with whom the Power Purchase Agreements have been signed post issuance of APERC Regulation 1 of 2015. While the request has been made by the distribution licensees through letter dated 30-10-2015 to the Commission among other things to factor in the Generation Based Incentive into the tariff on which no decision was taken and no order was passed by the Commission, the distribution licensees took a further step only when O.P.No.1 of 2017 has been filed before this Commission on 14-02-2017. Even in that petition, no request was made for grant of any interim order. If the distribution licensees themselves have the jurisdiction, authority and power to deduct whatever they desire to deduct from the tariff payable under the relevant Power Purchase Agreement or as per tariff orders of this Commission under Regulation 1 of 2015, they need not approach this Commission at all invoking its adjudicatory jurisdiction in O.P.No.1 of 2017. The decision taken in the meeting on 23-11-2016 was by the Andhra Pradesh Power Coordination Committee which is not an entity owing its existence to the Electricity Act, 2003 or the Andhra Pradesh Electricity Reform Act, 1998 or rules or regulations or practice directions or orders made there-under. It is stated to be owing its existence to some administrative orders of the State Government. As to how it has the competence to control the fate of the distribution licensees or the persons or entities dealing with the distribution licensees is not known. The distribution licensees being cent percent State Government owned companies are governed in their administration, finances and decisions by the company law and the electricity laws in force and it is not known whether the decisions taken in the Andhra Pradesh Power Coordination Committee meeting dated 23-11-2016 have been duly ratified or adopted or accepted by the

distribution licensees in the manner provided by laws governing them. Even if it was done, when the adjudicatory functions, powers and jurisdiction of this Commission have been invoked and the matter is *subjudice* before this Commission, any appropriate relief which the distribution licensees desired to have as against the wind power generators should have been, in all propriety, sought for only from the Commission or a competent judicial forum and could not have been in negation of terms and conditions of the Power Purchase Agreements with the respective wind power generators unilaterally by the distribution licensees or any administrative entity having no statutory backing or existence.

Be that as it may, in O.P.No.1 of 2017, this Commission has found and directed that the Generation Based Incentive availed should be given credit to in the tariff payable to wind power generators respectively by the distribution licensees since the filing of O.P.No.1 of 2017 on 14-02-2017 where Generation Based Incentive is paid and has to be given credit to in the tariff payable by the distribution licensees respectively. Therefore, notwithstanding the irregularity and undue haste in deducting the Generation Based Incentive from the bills of these petitioners during the pendency of O.P.Nos.1 and 5 of 2017, the issue now becomes only of academic interest and of no legal consequence. Similarly placed wind power generators, who suffered the same action from the distribution licensees, have brought the position to the notice of the Commission in O.P.No.1 of 2017 and the Commission was compelled to observe that “there can be absolutely no doubt that the petitioners should not have taken recourse to deduction of the Generation Based Incentive from the monthly bills payable to the respective generators even without any determination by the Commission. Such unilateral action, more so, from a public utility fully owned by the State Government does not reflect any respect for rule of law guaranteed by the Constitution of India or the procedures duly established by law for getting any legal rights and obligations upheld or

enforced". Still in view of the ultimate conclusion about the applicability of clause 20 of Regulation 1 of 2015 to Generation Based Incentive also, no further action was contemplated to be taken therein. Similarly herein also, except recording the grave displeasure of the Commission about the manner in which the so called decision in the meeting of the Andhra Pradesh Power Coordination Committee dated 23-11-2016 was taken and implemented, no further consequences are proposed to be inflicted and we hope and trust that a sense of commitment and devotion to compliance with the procedure established by law will find its place in the future actions of the distribution licensees or any administrative arrangement to which they have made parties by the constitution of any administrative entity.

Therefore, though the deduction made during the pendency of O.P.Nos.1 and 5 of 2017 from the bills of the respective petitioners is irregular, even if not unlawful, no relief is being granted herein in view of the ultimate conclusion in O.P.No.1 of 2017 and the directions given therein. Though the petitioners are not at fault in having been driven to this petition, still in exercise of the judicial discretion of the Commission, the parties are to be directed to bear their own costs in these petitions. Accordingly, these petitions are disposed of without granting any relief to the petitioners regarding the Generation Based Incentive amount already deducted by the distribution licensees of the State of Andhra Pradesh, except recording the displeasure of the Commission about the manner in which such deduction has been made irregularly. No costs.

This order is corrected and signed on this the **28th day of July, 2018.**

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman