

Record of proceedings dated 12.09.2022

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 57 of 2022 & I. A. No. 52 of 2022	M/s. Surajkiran Renewable Resources Pvt. Ltd.	TSSPDCL

Petition filed seeking extension of SCOD and consequential reliefs.

I. A. filed seeking amendment of petition.

Sri. Khamar Kiran Kantamneni, counsel for petitioner and Sri. Mohammad Bande Ali, Law Attachee for respondent are present. The counsel for petitioner stated that the petition is filed for extension of SCOD of the power project. The counter affidavit is yet to be filed in the matter. The representative of the respondent stated that the counter affidavit is being filed today. The Commission observed that a copy of the counter affidavit be served on the counsel for petitioner and the counsel for petitioner may file rejoinder, if any, by the next date of hearing duly serving a copy of the same on the respondent. In view of the request of the parties, the matter is adjourned.

Call on 30.09.2022 at 11.30 AM.

Sd/-
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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 72 of 2022	M/s. Sunshakti Solar Power Projects Private Limited	TSNPDCL & its officer

Petition filed seeking extension of SCOD and consequential reliefs.

Ms. Meghana Sarma, Advocate representing Sri. P. Soma Shekar Reddy, counsel for petitioner and Sri. Mohammad Bande Ali, Law Attachee for respondent are present. The advocate representing the counsel for petitioner stated that the petition is coming for the first time seeking the prayer of extension of SCOD. The representative of the respondents sought time for filing counter affidavit. Considering the request of the representative of the respondents, the matter is adjourned.

Call on 30.09.2022 at 11.30 AM.

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Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 58 of 2022 & I. A. No. 45 of 2022	M/s. Sneha Renewable Energies Ltd.	Spl. Chief Secretary, Energy Dept., TSSPDCL & TSTRANSCO

Petition filed seeking directions to the respondents to enter into PPA by fixing tariff at Rs. 5/- per unit.

I. A. filed seeking interim order directing the respondents to purchase power from the petitioner on payment of average pooled purchase costs till the disposal of the petition.

Ms. Lakshmi, counsel for petitioner along with Sri. P. Keshava Reddy, Managing Director of the petitioner and Sri. Mohammad Bande Ali, Law Attachee for respondents are present. The counsel for petitioner stated and explained in detail the issues involved in this petition. She pointed out the observations of the Hon'ble ATE and Hon'ble Supreme Court as mentioned in the rejoinder filed by the generator. She pleaded that a small project needs consideration at the hands of the licensee while narrating the sequence of the events why the generator had approached the Commission. She also stated that subsequent to the refusal of the case of the petitioner by the licensee, which is challenged in this petition, the licensee took a different stand in another matter and such contradicting stands by the licensee are uncalled for.

The Commission pointed out that it is a small hydro project and needs consideration. The representative of the respondents sought to highlight the provisions of the Act, 2003 and also the policy notified thereof. He also stated that the petitioner is not firm in his commitment and is seeking very high tariff, which may not be suitable to the respondents. The Commission was not satisfied with the submissions of the representative of the respondents. Considering that it is a renewable source, being a capacity of less than 1 MW and in view of the observations made by the superior fora, sought to observe that the matter may be

negotiated between the parties amicably. It is also observed that the tariff sought in the petition may not be appropriate, but the said aspect also needs to be considered appropriately. To facilitate the above observations and enabling the parties to hammer out a solution to the issue, the matter is adjourned.

Call on 17.10.2022 at 11.30 AM.

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
R. P. (SR) No. 18 of 2022 in O. P. No. 71 of 2018	TSNPDCCL	M/s. MSR Mega Bio Power Private Ltd.

Petition seeking review of the order dated 02.12.2021 passed in O. P. No. 71 of 2018 regarding determination of fixed cost tariff for industrial waste based power plant.

Sri. Mohammad Bande Ali, Law Attachee for review petitioner is present. The representative of the review petitioner stated that the review petition is filed for reviewing the order passed by the Commission. In continuation of the representation made by the respondent on the earlier date of hearing that counter affidavit would be filed, the counsel for respondent stated that the same is being filed today. The representative of the review petitioner stated that he needs time to go through the counter affidavit being filed by the respondent and hence matter may be adjourned. In view of the submission of the parties, the matter is adjourned.

Call on 30.09.2022 at 11.30 A.M.

Sd/-
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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 1 of 2022 & I. A. No. 1 of Of 2022	M/s. Hyderabad MSW Energy Solutions Pvt. Ltd.	TSSPDCL

Petition seeking to quash notice dated 16.07.2021 issued by the respondent seeking reimbursement of the tipping fee from the petitioner.

I. A. filed seeking exparte ad-interim stay of the operation of the notice dated 16.07.2021 issued by the respondent seeking reimbursement of the tipping fee from the petitioner.

Sri. Avinash Desai, Advocate along with Sri. Matrugupta Mishra, counsel for petitioner as well as Ms. Ishita Thakur, Advocate and Sri. Mohammad Bande Ali, Law Attachee for respondent are present. The advocate representing the counsel for petitioner stated that the petitioner is questioning demand raised by the respondent seeking reimbursement of the tipping fee paid by the Greater Hyderabad Municipal Corporation (GHMC). The payment of tipping fee arises out of the concession agreement that has been entered by the GHMC the original concessionaire as such the generator cannot be burdened with such deduction. The Commission had determined the waste to energy tariff in the year 2020 and had imposed a condition that the tipping fee paid by GHMC shall be refunded to the distribution licensee as and when it is paid for. The Commission had determined the tariff of the WTE projects by front loading the tipping fee also into the tariff. The tipping fee per-se is neither part of the generation tariff nor it is component of expenditure involved in generation of power supply. The power generated by the petitioner is not a direct consequence of the action initiated under the concessional agreement. The concessionaire draws the waste from the GHMC and converts it to combustible material, which is used for generation of power. As such, the petitioner is not involved in collection or conversion of the material for generation of power.

The advocate representing the counsel for petitioner stated that the respondent has taken a stand that the Commission should lift the veil and see that the petitioner as well as the concessionaire are one and the same and hence is not entitled to claim exemption of the tipping fee. Eventhough, the concessionaire had agreed with the GHMC to undertake the collection, transportation and conversion of the waste for safeguarding environment, which enables it to claim tipping fee, it is not appropriate that the petitioner be made to reimburse the tipping fee. The said fee paid by GHMC is not to the petitioner but to the concessionaire. It is also relevant to state that though the concessionaire had established two separate entities as a holding entity, it does not mean that whatever is earned by the holding company would constitute an income of the subsidiary also. It is appropriate to state that the concessionaire had established two separate entities and one of them is the petitioner, though they have relationship between them, they cannot be treated as single entity.

The advocate representing the counsel for petitioner stated that the petitioner is not concerned with the responsibilities of the concessionaire or the agreement reached by the concessionaire with the GHMC. The petitioner has been established to undertake the generation of power using RDF, which is the product of the concessionaire. Had the concessionaire not established this unit, he would have sold the RDF to anybody else in the market. As also, if the concessionaire not established the generation facility, a third party could have established the generation facility and in that event, such generation facility creator would not be liable for reimbursement of the tipping fee.

The advocate representing the counsel for petitioner would endeavour to submit that the Commission had factored in the tipping fee and decided the tariff and if the same is not included, the Commission would have determined the levelized tariff of the generation facility at much higher rate than what is decided at present. The tariff at present, which includes the tipping fee after deduction of the same would be an unviable tariff. Though the submission is not relevant here, the parent company of the petitioner has, therefore, filed a review petition before the Commission to redetermine the tariff omitting the tipping fee and thus determine the tariff for WTE projects.

The representative of the respondent, while referring to the pending litigation between the petitioner and the respondent, has pointed out that the petitioner is only seeking waiver of reimbursement of the tipping fee, which has been factored in the tariff by the Commission and to be reimbursed to it by the petitioner. It is not relevant for the respondent as to from whom it is being received or who will gain from the same. The respondent is only insisting on the compliance of the directions issued by the Commission while determining the tariff for WTE projects. In that context only, the respondent sought to raise the contention that the petitioner and the concessionaire appears to be one and the same and therefore, the Commission should lift the veil and see to its satisfaction that they are one and the same entity. However, it is also his case, that once levelized tariff is fixed by the Commission, any issue with regard to components of such tariff, cannot be agitated by any of the parties before the Commission. At best, it could be a ground for appeal. Since, the Commission had determined generic tariff, which has been accepted by the

petitioner in terms of the provisions of the PPA, it cannot turn-round and approach the Commission to refix the generic tariff in the guise of questioning the demand for reimbursement of tipping fee as directed by the Commission.

The representative of the respondent would also submit that this proceeding initiated by the petitioner cannot be sustained unless and until the Commission modifies the tariff itself. In order to mitigate the issue, the parent company has already initiated proceedings for reviewing the order passed by the Commission with regard to self same issue, which is also pending consideration before the Commission and any decision therein would be having a bearing on the present proceedings. Without waiting for any decision in the matter or appropriate consequences, the petitioner rushed to the Commission. Though, the respondent had issued notice for recovery of the tipping fee as and when it is reimbursed by GHMC, it had already undertaken before the Commission that it would not take any coercive steps in the matter. Therefore, the Commission may not entertain this petition on the above grounds as also in terms of the submissions made by the respondent in its counter affidavit.

The advocate representing the counsel for petitioner, while explaining the consequences of demand made by the respondent, would endeavour to say that the tariff determined by the Commission cannot factor an expenditure or income related to another entity and deny the petitioner its rightful income including but not limited to reasonable return. If the tipping fee is allowed to be part of the tariff and to be reimbursed to the respondent, then the petitioner will be at grave loss and will not be a viable project. Therefore, he would submit that the Commission may consider restraining the DISCOM from claiming tipping fee from the petitioner by modifying the condition imposed in the tariff order. Having heard the submissions of the parties, the matter is reserved for orders.

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Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
R. P. No. 2 of 2022 & I. A. No. 39 of 202 in O. P. No. 14 of 2020	M/s. Ramky Enviro Engineers Ltd.	TSSPDCL

Review petition seeking to review of the order dated 18.04.2020 in O. P. No. 14 of 2020 (suo motu) regarding determination of generic tariff for RDF projects.

I. A. filed seeking amendment of the parties to the review petition.

Sri. Avinash Desai, Advocate along with Sri. Matrugupta Mishra, counsel for the review petitioner as well as Ms. Ishita Thakur, Advocate and Sri. Mohammad Bande Ali, Law Attachee for respondent are present. The advocate representing the counsel for review petitioner stated that the review petition is filed seeking review of the order dated 18.04.2020 determining generic tariff in respect of RDF based waste to energy projects. The issue is with regard to inclusion of tipping fee in the tariff as determined by the Commission.

The advocate representing the counsel for review petitioner stated that the order of the Commission needs review as is available to it under section 94 (1) of the Act, 2003 read with Order XLVII Rule 1 of Code of Civil Procedure, 1908. The ingredients of review are that the order under review should have any typographical error, arithmetical error or material that has been discovered by the parties subsequent to the passing of order, which if made available would make a difference in the decision of the authority. In this review petition, the main aspect that is to be considered is with regard to the material that has not been considered and as such, the order requires the review at the hands of the Commission itself.

The advocate representing the counsel for review petitioner stated that the review petitioner had originally entered into a concession agreement as early as 2008 but the GHMC and subsequently established the project of collection, transportation and conversion of the waste generated in the limits of GHMC. The review petitioner, who is the concessionaire of the project, has been established based on the viability gap funding of the Government of India and the state government. The concession agreement provided for sale of the products derived by the review petitioner after conversion of the material collected by it in the open market did not specifically provide for undertaking generation of electricity either itself or through any third party.

The advocate representing the counsel for review petitioner explained the mechanism of viability gap funding, the detailed project report and several committee

report on the aspect of tipping fee. It is his case that tipping fee, which has been made part of the tariff, cannot be treated as an expenditure or income of any activity undertaken by the review petitioner, as such, payment is with reference to the concession provided by the GHMC towards safeguarding the environment and cannot be said to be a component of any activity undertaken by the petitioner.

The advocate representing the counsel for review petitioner stated that the concession agreement entered by the GHMC with the petitioner provided for liberty to sell such products as may be derived by the review petitioner from the processing of solid waste collected by it. However, in order to create an environment friendly situation, the review petitioner has also established two other companies by holding substantial stake in them relating to sale of products derived from the solid waste as also using such products to generate electricity. There was no binding commitment under the concession agreement for the petitioner to establish a power project or for that matter for any other activity. Considering environmental policies and the need to undertake such projects only, the review petitioner ventured to undertake generation of electricity from the waste to energy concept by converting the waste collected by it from GHMC.

The advocate representing the counsel for review petitioner stated that in its preliminary report, it has been observed by GHMC that solid waste recovered would fetch about Rs.2,800/- per tonne in the year 2008 itself, but the Commission while determining the generic tariff for generation of power has only considered Rs. 1,800/- in the year 2020. As such, such material collected by the review petitioner would have to be sold to the power company at concessional rate and such sale would constitute a lossmaking proposition. Further, adding tipping fee as a part of tariff would result in the concessionaire being fastened with double penalty.

The advocate representing the counsel for review petitioner stated that the concession agreement did not specifically provide for what is to be done with the processed and converted solid waste and left it open to the concessionaire to act in a commercial manner. However, the concessionaire, keeping in mind the necessity of effective usage of the products derived from solid waste, has undertaken power generation, which otherwise, could have been sold in the open market at a higher cost to the industry involved in manufacturing of cement etc. The concession

agreement itself provided that the state was relieving itself from the burden of maintaining the environmental issues and handing over the same to persons and organizations like the review petitioner.

The advocate representing the counsel for review petitioner stated that there are several reports of the committees constituted by the Government of India to GHMC, which have specifically dealt with the aspect of tipping fee. He has quoted and narrated extensively the findings for which documents have been filed alongwith the review petition. He submitted that the Commission may consider reviewing the order on the aspect of tipping fee as said charge is neither a fixed cost for any activity nor an O and M income derived by the review petitioner or any other entity, but it is a cost paid by the GHMC or any other authority to relieve themselves from the waste generated and protect the environment.

The representative of the respondent stated that the present review petition is not maintainable as no ground is made out to satisfy the ingredients of the review as provided in law of the order passed by the Commission and sought by the review petitioner. The contentions and submissions made by the counsel for review petitioner in support of the review petition do not constitute any ground for review. The submissions made at best could be ground for appeal before the Hon'ble ATE. The Commission cannot and would not be required to substitute or substantiate its findings to suit the needs of the review petitioner. The review petition was itself filed belatedly, but as the Commission has entertained the same, this respondent is only opposing the contentions raised thereof. The review petitioner is seeking to set at naught an order which has survived for merely two and half years. If at all, the Commission intends to allow the review petition, it will be burdened with the exercise of redoing the tariff determination duly following the procedure to be adopted for tariff determination of tariff as was originally done. Therefore, the Commission may not venture to undertake such an exercise at this point of time and relegate the review petitioner to pursue such remedies as may be legally available to it. If the Commission proceeds to undertake determination of tariff afresh, there is a possibility of the DISCOMs losing the viable tariff determined by the Commission on their part. Hence, he requested for dismissal of the review petition.

The advocate representing the counsel for review petitioner stated that the contentions and submissions of the respondent are neither appropriate nor relevant to the context of issue in the review petition. No doubt, the review petition has its own limitations, yet as the original order came to be passed on erroneous consideration, it deserves to be reviewed even if it amounts to redoing the exercise of the determination of tariff. Also, it is relevant to submit that the Hon'ble Supreme Court elucidated on what constitutes 'sufficient reason' in the provision for review under XLVII Rule 1 CPC in the matter of Board of Control for Cricket in India Vs. Netaji Cricket Club reported in 2005 (4) SCC 741. Therefore, there is good and sufficient reason for the Commission to entertain the review petition and to review the order passed by it to the limited extent of including tipping fee in the tariff. Hence, review petition may be considered and allowed in favour of the review petitioner. Having heard the submissions of the parties, the matter is reserved for orders.

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