



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

I. A. No. 42 of 2018
in
O. P. No. 10 of 2018

Dated: 11.10.2018

Present: Sri Ismail Ali Khan, Chairman.

Between:

ACME Solar Power Technology Private Limited,
Registered office at Plot No.152, Sector 44,
Gurgaon – 122002.
Petitioner.

... Application /

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
2. Transmission Corporation of Telangana Limited,
Room No. 628, 6th Floor, Vidyut Soudha Building,
Khairatabad Road, Near Eenadu Office,
Khairatabad, Hyderabad, Telangana 500004. ...Respondents / Respondents.

This application came up for hearing on 22.09.2018 and 6.10.2018. Sri. Hemanth Sahai, Senior Counsel along with Ms. Puja Priyadarshini, Advocate and Ms. Himangini Mehta, Advocate representing Sri. Challa Gunaranjan, Advocate for the applicant / petitioner appeared on 22.09.2018 and Sri. Hemanth Sahai, Senior Counsel along with Ms. Puja Priyadarshini, Advocate as also Sri. Mast Ram Deswal, Representative of the Company representing Sri. Challa Gunaranjan, Advocate for the applicant / petitioner appeared on 06.10.2018. Sri. Y. Rama Rao, Standing Counsel for the respondents / respondents along with Ms. M. Pravalika, Advocate

appeared on 22.09.2018 and 06.10.2018. The application having stood over for consideration to this day, the Commission passed the following:

ORDER

The applicant / petitioner has filed an interlocutory application (I.A. No. 42 of 2018) under section 94 (1) of the Electricity Act, 2003 read with Regulation 32 of the TSERC (Conduct of Business) Regulations, 2015 seeking ad interim order.

2. The applicant / petitioner stated that it has filed the present application filed under sec 94 (1) of the Electricity Act, 2003 as the order erroneously mentions the SCOD date as 18.12.2017 instead of 07.02.2018.

3. The applicant / petitioner stated that the TSSPDCL is trying to take unfair advantage of inadvertent errors or mistakes which have crept in the impugned order and is acting in wilful defiance of the findings of this Commission at paragraph Nos. 30 and 36 of the impugned order.

4. The applicant / petitioner stated that it has earlier filed O. P. No. 10 of 2018 seeking this Commission's indulgence – (a) in giving effect to Article 9 of the Power Purchase Agreement dated 19.02.2016 (PPA) signed between it and respondent No. 1 being Southern Power Distribution Company of Telangana Limited (TSSPDCL) and (b) for implementation of the decision of Government of Telangana (GoTS) accepting the impact of force majeure events; and (c) extending the Scheduled Commercial Operation Date (SCOD) of the solar power project. As per the PPA, the SCOD of the 50 MW solar power project near 220 / 132 / 33 KV Bhongir S/s, Yadadtri-Bhongir District, Telangana (Project) was 18.05.2017 (i.e. within 15 months from the signing of the PPA). However, for reasons beyond the control of the petitioner, the actual COD of the project was achieved on 07.02.2018.

5. The applicant / petitioner stated that in O. P. No. 10 of 2018 it was its case that due to expansion of the Baswapur reservoir, it was forced to re-route and shift the transmission lines thereby leading to increase in length of the transmission lines and duplication of work. As a corollary of the Baswapur Reservoir expansion coupled with RoW issues, the commissioning of the project was delayed for 7 months (from 18.05.2017 to 18.12.2017). Thereafter, while the project was complete in all respects

and work completion certificate (WCC) was issued to ACME on 18.12.2017, there was a between 18.12.2017 and 07.02.2018 due to withholding of permission for synchronization by TSSPDCL.

6. The applicant / petitioner stated that in the said proceedings the TSSPDCL, by way of counter affidavit dated 29.05.2018 admitted that the project was impacted due to occurrence of force majeure and that –

- (a) The project was completed in all respects (pending synchronization) on 18.12.2017.
- (b) Thereafter, a letter dated 03.01.2018 was submitted by the TSSPDCL to this Commission to accord permission for synchronization.
- (c) This Commission by way of communication dated 02.02.2018 permitted TSSPDCL to allow synchronization of the solar projects.
- (d) The permission for synchronization was accorded to ACME on 05.02.2018 by TSTRANSCO.
- (e) Pursuant to it, the project was successfully commissioned on 07.02.2018.

7. The applicant / petitioner stated that upon due consideration of the admitted facts and the rival contentions of the parties, this Commission by way of the order dated 07.07.2018 in O. P. No. 10 of 2018 was pleased to allow the extension of the SCOD date for a period of 7 (seven) months from 18.05.2017 to 18.12.2017 and held that the delay was caused due to the interrupting proposal for the Baswapur reservoir resulting in re-routing and laying of the transmission lines amounts to “force majeure events” as described in Article 9 of the PPA. Further, this Commission also held that the applicant / petitioner was ready with SCOD on 18.12.2017 and the time taken to permit synchronization to the grid on 07.02.2018 is only an administrative delay for which applicant / petitioner had no control and that the applicant / petitioner’s project has come to fructification as per the terms of the PPA on 18.12.2017. In the light of the above it is clear that recognizing the genuine difficulties faced by the project, the entire delay in commissioning of the project has been condoned by this Commission without any penalties.

8. The applicant / petitioner submitted that the Commission has the jurisdiction to correct the typographical errors U/s 94 (1) of the Electricity Act, 2003 and clause 32 of Conduct of Business Regulations, 2015. The applicant / petitioner further

stated that in paras 30 and 40, the period of extension of SCOD has been mentioned as 18.12.2017 instead of 07.02.2018.

9. I have heard the arguments of the counsel for parties.

10. The application is filed under Section 94 (1) of the Electricity Act, 2003 read with clause 32 of Regulation 2 of TSERC Conduct of Business Regulations, 2015 seeking review of the order dated 07.07.2018 in paragraphs 30 and 40. On the question of maintainability raised by the respondent, it is clear from a reading of Section 94 (1) of the Electricity Act, 2003 that, it enables the Commission to review its decisions while clause 32 of Regulation No. 2 of 2015 enables the Commission on its own motion or on an application to review the order to carry out corrections to remove errors which inadvertently cropped up in the main order. In view of the enabling provision under clause 32 of Regulation 2 of 2015, the Commission has the power to carry out corrections and thus this Commission has the jurisdiction to take up the present application.

11. Perused the order dated 07.07.2018 in O. P. No. 10 of 2018. It is clear that inadvertently certain facts narrated in the said order is giving rise to apprehensions in the minds of the parties which need correction for the purpose of clarity and also to clear the ambiguities in certain paragraphs of the order without in any way disturbing the relief portion. The applicant is aggrieved because the order at one place notes extension of SCOD as up to 18.12.2017 and at another place up to 07.02.2018. On the question of clarification needed in the present case, the learned counsel for the applicant / petitioner has rightly relied on a decision of Hon'ble Supreme Court rendered in Islamic Academy of Education and Anr Vs. State of Karnataka and Ors., reported in 2003 (6) SCC 697, wherein, it was observed "a judgment, it is trite, is not to be read a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal." In the present case also, the totality of the order is relevant, but not the only relief portion.

12. Further, it is apt to mention here that after GoTS extended SCOD up to 30.10.2017, the present O. P. has been filed for extension of SCOD. The applicant /

petitioner was ready for SCOD with work completion report on 18.12.2017 and the DISCOM ought to have synchronized the project with the grid by 02.01.2018 (after 15 days). But the project was synchronized on 07.02.2018. The DISCOM submitted the letter dated 03.01.2018 to the Commission to accord permission for synchronization and the Commission by letter dated 02.02.2018 permitted the DISCOM to allow synchronization and on 05.02.2018 the SE / Op / Bhongir was permitted to synchronize 50 MW project which was synchronized to the grid on 07.02.2018. These facts would go to show that the delay from 18.12.2017 to 31.12.2017 the date up to which, the DISCOM recommended extension of SCOD and till 07.02.2018, the date of synchronization was solely due to the delay in administration decision making in which the applicant / petitioner has no role at all.

13. Further, it is to be seen that the respondent No. 2 through letter dated 10.02.2018 addressed respondent No. 1 recommending extension of SCOD by further two months beyond 31.10.2017 to offset the extra efforts the applicant / petitioner had to make, for diversion of transmission line. The respondent No. 1 too vide letter dated 23.03.2018 addressed this Commission recommending extension of SCOD for two months beyond 31.10.2017 which comes to 31.12.2017. The Commission treated this period as part of successful explanation for the delay as part of force majeure which is not of the making of the applicant / petitioner. This generosity of the respondents clearly reflects the ordeal of the applicant / petitioner in reaching SCOD.

14. Considering the submissions of the parties and the material available on record, as perused by me, I am of the view that the letters from Respondent No.2 dated 10-02-2018 and of Respondent No.1 dated 23-03-2018 recommend extension of SCOD for further two month from 31-10-2017 to offset the impact of delays due to diversion of transmission line for the project in view of the construction of a reservoir on the site. Effectively the extension shall be up 31-12-2017 covering the period of 31-10-2017 to 31-12-2017 as recommended by respondent. Thus, the Commission considers this period as part of successful explanation for the delay as part of force majeure which is not of the making of the applicant / petitioner. Also, the DISCOM submitted the letter dated 03.01.2018 to the Commission to accord permission for synchronization and the Commission by letter dated 02.02.2018 permitted the

DISCOM to allow synchronization and on 05.02.2018 the SE / Op / Bhongir was permitted to synchronize 50 MW project which was synchronized to the grid on 07.02.2018. This delay from 31-12-2017 onwards up to the date of synchronisation of the plant on 07-02-2018 is mainly because of administrative delays on the part of the respondent on which the petitioner has no control and needs to be condoned.

15. Therefore, in view of the foregoing reasons, the delay from 18-12-2017 onwards in reaching SCOD of 50 MW on 07-02-2018 is condoned and, therefore, for making payment, it is made clear that the date of synchronization would be 07.02.2018 and not 18.12.2017 as is ordered and considered by the distribution licensee in the main petition.

16. Subject to the above orders, interlocutory application (I.A. No.42 of 2018) is disposed of, but without costs. The respondent is directed to file a copy of the amended PPA with the revised date of commissioning. Accordingly carry out corrections in the order of the O.P. 10 of 2018 dated 07-07-2018.

The order is corrected and signed on this the 11th day of October, 2018.

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

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