



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 11 of 2021

Dated 03.10.2022

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Dubbak Solar Projects Private Limited,
Regd. Office at 2nd Floor, Above Enkay Centre,
Vanijya Nikunj, Udyog Vihar, Phase V Gurgaon,
Guragaon, Haryana – 122 002.

... Petitioner

AND

1. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Somajiguda, Hyderabad 500 082.
2. Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound, Hyderabad 500 034. ... Respondents

The petition came up for hearing on 04.03.2021, 18.03.2021, 02.06.2021, 15.07.2021, 11.08.2021, 06.09.2021, 25.10.2021, 03.01.2022, 11.04.2022, 11.08.2022 and 01.09.2022. Sri. Challa Gunaranjan, counsel for petitioner has appeared through video conference on 04.03.2021, 02.06.2021 and physically on 03.01.2022, Sri. Sridhar, Advocate representing Sri. Challa Gunaranjan, counsel for petitioner has appeared through video conference on 15.07.2021, 11.08.2021 and physically on 11.08.2022, Sri. Deepak Chowdary, Advocate representing Sri Challa Gunaranjan, counsel for petitioner has appeared through video conference on 06.09.2021, 25.10.2021, Sri. N.Sai Phanindra Kumar, Advocate representing Sri. Challa Gunaranjan, counsel for petitioner is present on 11.04.2022 and Sri. Challa Gunaranjan, counsel for petitioner along with Sri. Deepak Chowdary, Advocate are present on 01.09.2022. There is representation for petitioner on 18.03.2021.

Sri. Mohammad Bande Ali, Law Attaché for respondents has appeared through conference on 04.03.2021, 18.03.2021, 02.06.2021, 15.07.2021, 11.08.2021, 06.09.2021, 25.10.2021 and physically on 03.01.2022, 11.04.2022, 11.08.2022 and 01.09.2022. The matter having been heard through video conference on 04.03.2021, 18.03.2021, 02.06.2021, 15.07.2021, 11.08.2021, 06.09.2021, 25.10.2021 and through physical mode on 03.01.2022, 11.04.2022, 11.08.2022 and 01.09.2022 and having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioner has filed a petition under Section 142 of the Electricity Act, 2003 (Act, 2003) seeking to punish the respondents for non-implementation of the orders/directions in O.P.No.47 of 2018 passed by the Commission.

2. The petitioner has sought the following prayer in the petition for consideration.
“to punish the respondents for non-compliance of the orders/directions issued in the order dated 02.01.2019 in O. P. No. 47 of 2018 passed by the Commission.”
3. The Commission has heard the parties and the submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 04.03.2021:

“... .. The counsel for the petitioner stated that the petition is filed seeking to punish the respondents for non-implementation of the order dated 02.01.2021 in O.P.No.46 of 2018 passed by the Commission. He also stated that the review petition filed by the respondent was rejected by dismissing the interlocutory application filed for condoning the delay in filing the review petition. There is no other option for the respondents except to implement the order passed by the Commission. Even the delay application stood rejected on 25.01.2021, it is more than a month now that the respondent has not implemented the said order. At this stage, the representative of the respondents stated that the respondents have decided to file an appeal before the Hon’ble ATE in the original order dated 02.01.2019 and therefore, he needs time of two weeks either to report in the matter or otherwise to implement the said order. The Commission pointed out that the respondents have no option except to implement the order of the Commission. The representative of the respondents

stated that in two weeks time, he would place the factual position about the implementation of the order or obtain orders of the appellate authority.

Having regard to the submissions of the parties, the matter is adjourned and the respondent shall report either the compliance of the order or obtain orders from the appellate authority and place the same before the Commission.”

Record of proceedings dated 18.03.2021:

“... .. The representative of the respondents stated that they have filed appeal against the order of the Commission before the Hon’ble ATE and it is likely to be numbered in a day or two. Therefore, the matter may be adjourned.”

Record of proceedings dated 02.06.2021:

“... .. The counsel for the petitioner stated that the matter involves implementation of the order of the Commission. The respondents have not been complying with the directions of the Commission. It was stated earlier that the respondents have approached the appellate forum questioning the order of the Commission but to his knowledge no notice or order has been communicated by any appellate forum be it Hon’ble High Court or the Hon’ble ATE. In the absence of any order from the appellate forum, the respondents are bound to give effect to the order of the Commission. In the event if they succeed in obtaining any order from the appellate forum, they can always revert back to the earlier stage. Either the respondents should implement the order or obtain order from the appellate forum by the next date of hearing, if the Commission is inclined to grant time. The representative of the respondent stated that as submitted earlier, the respondent have approached the Hon’ble ATE by filing an appeal. However, due to the pandemic situation they are unable to get the same numbered and obtain orders against the directions of the Commission. The Hon’ble ATE is not taking up the appeals. Further the respondents seek time to either implement the orders of the Commission or obtain orders from the Hon’ble ATE for which time may be granted upto 6 (six) weeks. Therefore, the matter may be adjourned. The counsel for the petitioner would urge the Commission that the Commission should not give leverage to the respondents for non-implementation of the order which is 2 years 5 months old.

Having regard to the rival submissions, the matter is adjourned with the condition that the respondent shall report about compliance of the order on or before the next date of hearing.”

Record of proceedings dated 15.07.2021:

“... .. The representative of the respondents stated that the respondents have filed appeal before the Hon’ble ATE and the stay petition is scheduled for hearing on 16.07.2021. The counsel for petitioner stated that no notice has been received in the appeal purported to have been filed by the licensee. The Commission pointed out that the respondents have filed a memo placing on record the daily order issuing notice to the respondents therein on the stay petition by the Hon’ble ATE. The counsel for petitioner then sought adjournment of the matter. Accordingly, the matter is adjourned.”

Record of proceedings dated 11.08.2021:

“... .. The advocate representing the counsel for petitioner stated that the respondents have filed an appeal before the Hon’ble ATE and the same is scheduled for hearing on 13.08.2021. Therefore, he requested that the matter may be taken up on any other date after 13.08.2021. The representative of the respondents stated that the appeal is scheduled for hearing on 13.08.2021. In the circumstances, the present petition may be adjourned. Accordingly, the matter is adjourned.”

Record of proceedings dated 06.09.2021:

“... .. The representative of the respondents stated that the Hon’ble ATE condoned the delay in filing the appeal and adjourned the matter to 05.10.2021 by granting stay of the proceedings pending before the Commission. Accordingly, the matter is adjourned.”

Record of proceedings dated 25.10.2021:

“... .. The representative of the respondents stated that the matter is pending before the Hon’ble ATE and it is awaiting completion of pleadings. The advocate representing the counsel for petitioner stated that it is a fact that the pleadings are to be completed and the Hon’ble ATE instructed the petitioner herein not to take any coercive steps in the matter orally. Therefore, the petitioner is not pressing the matter for the present. It may be adjourned to a future date. Accordingly, the matter is adjourned.”

Record of proceedings dated 03.01.2022:

“... .. The counsel for the petitioner stated that the petitioner has agreed before the Hon’ble ATE that it will not press this petition until further orders of the Hon’ble ATE. As such, the matter may be adjourned. The representative of the respondents stated that the appeal filed by them is likely to be listed during the course of next week before the Hon’ble ATE. However, the matter may be adjourned to a longer date. Having considered the submissions made by the parties, the matter is adjourned.”

Record of proceedings dated 11.04.2022:

“... .. The counsel for the petitioner stated that the appeal filed by the respondents before the Hon’ble ATE is pending and that the petitioner had undertaken not to press the petition filed before the Commission. Further, the Hon’ble ATE granted orders in favour of the respondents. Later, the petitioner had also approached the Hon’ble Supreme Court against the orders of the Hon’ble ATE. The said appeal is pending consideration before the Hon’ble Supreme Court. Therefore, the matter may be adjourned to a longer date. Considering the submission made by the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 11.08.2022:

“... .. The advocate representing the counsel for the petitioner stated that the matter had been adjourned earlier due to pendency of appeal before the Hon’ble ATE. The appeal has been disposed by the Hon’ble ATE and the Commission was directed to restore the original petition upon which the present proceedings arise and to dispose of the same within two months. However, he needs time to make submissions in the original petition now listed separately. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”

Record of proceedings dated 01.09.2022:

“... .. The counsel for the petitioner stated that the present does not survive in view of the fact that the original proceedings in O.P.No.46 of 2018 has been restored pursuant to directions of the Hon’ble ATE. Accordingly, he has proposed to file the necessary memorandum seeking closure of the original petition. The representative of the respondents has no objection. Upon filing of

the memorandum as stated by the counsel for petitioner, the petition stands closed.”

4. The petitioner had originally filed the present petition in respect of the relief as extracted above. As noticed from the proceedings on various dates, the respondents have approached the Hon’ble ATE in Appeal No.267 of 2021 questioning the orders passed by this Commission in O. P. No. 47 of 2018. The said appeal came to be disposed of by order dated 26.05.2022. The Hon’ble ATE while disposing of the appeal had observed as below:

“8. *Though appeals at hand were resisted on merits at the beginning, midway the hearing the learned counsel for the second respondent (SPPDs) having taken instructions fairly submitted that some aspects of the impugned original orders dated 02.01.2019 do call for a revisit by the State Commission so as to bring clarity. We also find that the State Commission has not examined the question as to who was responsible for the delay in grant of LTOA within the prescribed period and if such delay is attributable to Transco (third respondent) as to whether the burden can be shifted on to the appellant (Discom) for it to suffer the relief in the nature which have been granted. In addition to that, we are not satisfied with the way the issue of retrospective application of the third amendment of 2017 to the relevant regulations has been glossed over, the observation that it was the responsibility of the licensee to enlighten the generator in that regard being unfounded.*

9. *In the above facts and circumstances, with the consent of all the parties before us, we set aside the impugned orders and remit the original petitions of each SPPD to the State Commission with a direction for proper inquiry to be made into the question as to which entity was responsible for the delay in grant of LTOA, and as to whether the responsibility, if fixed on the Transco, can be shifted on to the appellant Discom for bearing the burden of relief as was granted by the order dated 02.01.2019. We may add that in the event of the claims being pressed by the SPPDs on the strength of third amendment to the relevant regulations as published in the official gazette on 25.03.2017, the State*

Commission will also examine if such regulations can be given effect to retrospectively.

10. *We clarify that the remit as above shall be limited to the examination of the claims through lens of above questions only. No further contentions shall be allowed to be urged by either side.*
11. *The issues cannot be allowed to fester for long. Therefore, we would request the State Commission to proceed expeditiously and render its fresh decision in accordance with law at an early date, preferably within two months from the date of this judgment.*
12. *Needless to add, the Commission will examine the issues hereby remitted with an open mind, without being influenced by the conclusions reached by its earlier order or by any observation made by this tribunal in this judgment.*
13. *The appeals are disposed of in above terms.”*

5. The Hon'ble ATE while allowing the appeals of the respondent duly remanded the original proceedings in O. P. No. 47 of 2018 on limited issues identified by it for fresh disposal. In view of the above, the present proceedings is required to be considered.

6. At the time of hearing, the counsel for petitioner stated that the present O.P. does not survive further as the original proceedings in O. P. No. 47 of 2018 has been restored to the file of the Commission by the Hon'ble ATE on limited issues. The petitioner is directed to file a memo to that effect. Accordingly, the counsel for petitioner has filed a memo on 30.09.2022 and it is stated therein as follows:

“It is submitted that in pursuance to the Common Order dated 02.01.2019, the Respondent have filed an appeal before the Hon'ble APTEL, the Hon'ble APTEL vide orders dated 26.05.2022, was pleased to set aside the order passed by this Hon'ble Commission and remanded back the matter for fresh consideration and to pass necessary orders. It is submitted that the cause in present petition filed u/s 142 of Electricity Act, 2003 seeking to punish the respondents for non-implementation of the orders in O. P. No. 47 of 2018 no longer survives as the Hon'ble APTEL has set aside the order dated

02.01.2019. Therefore, in the interest of justice, the petitioner herein seeks to withdraw the present petition. ”

7. In view of the submission of the counsel for petitioner and the memo filed thereof, nothing survives in the matter for adjudication. Accordingly, the petition is disposed of as not pressed, but in the circumstances without costs.

This order is corrected and signed on this the 3rd day of October, 2022.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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