



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5TH FLOOR, SINGARENI BHAVAN, RED HILLS, HYDERABAD-500004

O. P. No. 13 OF 2015
WITH
I. A. No. 21 OF 2015

Dated: 15.12.2015

Present

Sri Ismail Ali Khan, Chairman
Sri H.Srinivasulu, Member
Sri L.Manohar Reddy, Member

In the matter of

M/s. Global Energy Private Limited (GEPL)
207, Gera Imperium II, Patto Plaza,
Panjim, Goa - 403001

.. Petitioner

And

Ushdev Engitech Ltd. (UEL)
Shop No. A9. 1st floor(old No.18)
Parsn Commercial Complex, No. 600,
Mount Road, Chennai – 600 006

.. Objector / implead Petitioner

Telangana State Load Dispatch Center
Vidyuth Soudha, Hyderabad – 500 082

.. Impleaded by the Commission

This petition coming up for hearing on 28.01.2015, 13.04.2015, 22.06.2015, 16.07.2015, 04.08.2015, 25.08.2015, 02.11.2015 & 23.11.2015 in the presence of Sri. P. Vikram, Advocate for the petitioner and Sri. B. Tagore, Advocate for the objector on all the days and Sri Y. Rama Rao, Advocate for TSSLDC on 02.11.2015 & 23.11.2015. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

The Original Petition is filed under sub-sec 1 of Sec.15 of Electricity Act of 2003 seeking intra state trading license for trading in Electricity in the state of Telangana. The office has scrutinized the petition along with enclosures required to be filed under intra state Electricity Trading Regulation, 2005 (Regulation 6 / 2005). The petition is in order. The petition is in conformity with the requirement of conduct of business Regulation, 1999.

2. The petitioner filed petition initially in the undivided state of A.P. before AP Electricity Regulatory Commission which was numbered as O. P. 50 / 2014. Subsequent to bifurcation of state of AP and State of Telangana, consequent to constituting of Telangana State Electricity Regulatory Commission, the matter stood transferred as the petitioner is seeking to trade in electricity in the geographical territory of Telangana. The O.P. has been renumbered as 13 / 2015.

3. The case of the petitioner is that M/s. Global Energy Private Limited and its associated companies are in reality the first private power traders in the country, having traded power as early as in 1986 through the “wheeling and banking” scheme of the Government of Karnataka. It has already conducted trades of over 15.5. Billion units of power across all the five electricity regions in India. It is the first trader to schedule power from an embedded private power producer to customers in other regions and also holds the distinction of having scheduled power through all the five regions in a single transaction.

4. It is also stated that it had already obtained inter-state trading license from Central Electricity Regulatory Commission (CERC) and has also obtained intra state trading licenses from the states of Uttar Pradesh Electricity Regulatory Commission, Odisha Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission and Maharashtra Electricity Regulatory Commission.

5. It is seen that the petitioner had filed a separate affidavit dt.26.6.2014 before the erstwhile AP Electricity Regulatory Commission stating that the Company has caused paper publication of the application filed before the Commission on 20.6.2014 in two English newspapers and on 22.6.2014 in two Telugu newspapers i.e., in Andhra Jyothi and Andhra Bhoomi. The erstwhile Commission did not receive any objections

to the grant of license to the petitioner in response to such paper publication within or after the prescribed time.

6. This Commission directed the Telangana State Load Dispatch Centre (TSSLDC) to file the comments / objections.

7. The Ushdev Engitech Ltd (UEL) has filed petition U/s. 92 and 94 of Electricity Act of 2003 and Clause 55 of AP Electricity Regulatory Commission (Conduct of business) Regulations, 1999 seeking impleadment in the petition filed by the petitioner. The implead petitioner states that it had entered into a power purchase agreement (PPA) dt. 9.8.2010 with the original petitioner M/s. Global Energy Limited for a period of five years. However, the said PPA was prematurely terminated by the applicant prior to its expiration on the grounds of non-payment and non-compliance of the terms of the PPA by the original petitioner.

8. It is further stated that the original petitioner had obtained trading license from Maharashtra State Electricity Regulatory Commission for undertaking trading power in the state of Maharashtra vide orders dt.28.9.2007 of the Maharashtra State Electricity Regulatory Commission. However, the said license was valid for a period of five years and stood expired on 27.9.2012. The original petitioner continued further trading within the state of Maharashtra on the basis of trading license obtained from Central Electricity Regulatory Commission which is valid for a period of 25 years. The original petitioner had not adhered to the trading margins fixed by the CERC and is resorting to unlawful gains. The Maharashtra Electricity Regulatory Commission (MERC) vide its order dt.5.8.2014 observed that there has been delay in filing the petition after expiry of the license stipulated by MERC. Besides this, the original petitioner has failed to comply with the trading margins of CERC and thus, violated its trading license granted by CERC.

9. It is the further case of the implead petitioner that he is entitled to be heard in the matter as no prejudice will be caused to the original petitioner if the applicant is impleaded in the case. At any rate, the implead petitioner opposes the granting of intra state license to the applicant.

10. The original applicant has filed reply to the counter filed by the implead petitioner denying all the allegations lock stock and barrel. It is stated that the implead petition has been filed at much belated stage and contrary to the proviso of Sec.15 (2) of Electricity Act of 2003. The provision mandates that objection if any had to be filed within 30 days of the publication of the notice when such objections have been invited in case of grant of license. No objections received after expiry of 30 days from the date of publication of the notice deserves consideration. The objection petition has been filed after six months after publication of the notice. Therefore, it is wholly belated and time barred.

11. Nextly, it is contended that the impleaded party does not have locus standi to raise objections before this Commission with respect to grant of intra state trading license in the State of Telangana as it is neither a licensee nor a generator that is situated in the State of Telangana. Further, the impleaded party is not at all a consumer in the State of Telangana and as such has no interest in grant of intra state trading license in the Telangana State.

12. It is further stated that the litigation before Maharashtra State Electricity Regulatory Commission regarding intra state trading license is still subjudice before the Hon'ble Appellate Tribunal for Electricity. The subject matter pertains to grant of intra state trading license by the Hon'ble Maharashtra State Electricity Regulatory Commission. The said issue has no bearing on the present case of granting of intra state trading license in the state of Telangana. In any event, the original petitioner is enjoying an interstate trading license dt.28.11.2008 issued by the Hon'ble CERC.

13. The TSSLDC has also filed objections stating that the original petitioner is a trader for about 50 number of consumers in Telangana state. It is also trader presently for generators namely M/s. Gayatri Power Private, M/s Shalivahan Green (MSW) Energy Limited and was also a trader for M/s. Radical Bio Organics Limited. In relation to Radical Bio Organics Limited, the original petitioner did not adhere to their generation schedules and deliberately mis-declared the capacities in IEX of day ahead basis and thereby accrued undue commercial gain through sale of power from January 2013-2014. It has committed mischief and gaining. In this regard, TS Transco has addressed to the Central Electricity Regulatory Commission to amend the relevant regulations. The reply from CERC is awaited.

14. The original petitioner has denied the allegations as false and state that he is not liable to declare any capacities or adhere to any schedules as alleged by SLDC. It is the generator who is responsible for following the generating schedules and declaring its capacities in accordance with the applicable regulation. Therefore, by no stretch of imagination, the applicant be held responsible for mis-declaration of capacities by generator or deviations from generation schedule as the original petitioner has no technical control over the generator's capacity or schedule, in as much as the petitioner is entitled for granting of intra state trading license.

15. Heard the learned counsel for the petitioner Sri. P. Vikram and Standing Counsel for TSSLDC and TS Transco Y. Rama Rao. Perused the material on record.

16. The point that falls for determination is:

“1. Whether the original petitioner is entitled for grant of intra state Electricity Trading License?

2. Whether the objection of TSSLDC is tenable?”

17. The objector/implead petitioner referred to a Power Purchase Agreement between it and the petitioner dated 31.3.2011 and its premature termination. Either the agreement or reasons for its termination cannot be the subject matter of consideration in this petition and the objector has not shown as to how the agreement or its termination, have any bearing on the entitlement of the petitioner to the license as requested. Any dispute between the parties concerning the agreement needs to be agitated before the appropriate Forum in accordance with law and not here.

18. Similar contention regarding the refusal of the Maharashtra Electricity Regulatory Commission to extend the period of Intra State Electricity Trading License of the petitioner to 25 years is firstly subjudice before the Hon'ble Appellate Tribunal for Electricity and secondly it does not appear to be due to violation of any statutory provisions or regulations or rules or licenses by the petitioner as seen from the extracts of the order of the Maharashtra Electricity Regulatory Commission dated 5.8.2014 in Case No.22 of 2014. Even otherwise, exercise of its jurisdiction by the Maharashtra Electricity Regulatory Commission in fixing the period of license of the petitioner as 5 years will have no relevance to consideration of the present request unless the orders

of the Maharashtra Electricity Regulatory Commission are shown to be indicating any positive ground for refusal of the license to the petitioner by this Commission. At any rate having been armed with an Inter State Electricity Trading License granted by the Central Electricity Regulatory Commission, the petitioner is admittedly continuing its trading in Maharashtra even now and nothing illegal or irregular in such trading has been stated to have been found by the Maharashtra Electricity Regulatory Commission or any other authority.

19. The main grievance by the objector which has relevance to the present petition is about the conduct of the petitioner in not complying with the trading margin fixed by the Central Electricity Regulatory Commission and violation of the terms and conditions of its trading license granted by the Central Electricity Regulatory Commission. However, the objector did not produce any material or semblance of evidence to probablize such deviation from the fixed margins or violation of the other terms and conditions of the license. The burden of proof cannot be negatively placed on the petitioner in this regard and the basic principle of law of evidence is that a person who asserts a fact has to prove it. As the objector has not placed any material evidence or semblance of the same in support of its contention in this regard, the same also cannot hinder grant of any license to the petitioner.

20. However, to ensure that the petitioner does not indulge in contravention of the terms and conditions of the license granted by the Central Electricity Regulatory Commission under the guise of this license, appropriate conditions have to be imposed.

21. Under Section 15(8) of the Electricity Act, 2003, a license shall continue to be in force for a further period of 25 years unless revoked earlier and there appear no ostensible reasons to deviate from the statutory provision. It should be also stated that there is no need to cause a deep probe into the question of the objection being time barred or not, as on merits, the contentions of the objector did not stand in the way of the entitlement of the petitioner to a license. Similar is the question about the locus standi. Hence, a license has to be granted to the petitioner accordingly.

22. Now coming to the objection of the TSSLDC regarding mischief and gaining, it is seen that they have addressed to the Central Electricity Regulatory Commission to

amend regulations. More over the TSSLDC have not chosen to file any petition. We are of the opinion that the said objection does not come in the way of granting intra State Trading License.

23. Having regard to the facts and circumstances obtaining in this petition, this Commission makes the following order:

a) that the original petitioner is entitled for intra state Electricity Trading license and accordingly, granted subject to the general terms and conditions specified in Regulation No.6 of 2005 and Appendix-3 thereof and subject to further all the terms and conditions specified in the interstate Electricity Trading license granted to the petitioner by the Central Electricity Regulatory Commission.

b) In the event of any deviation from or contravention of or non-compliance with the relevant statutory provisions or rules or regulations or specific terms and conditions of the intra state Electricity trading license granted by this Commission or the interstate Electricity trading license granted by the Central Electricity Regulatory Commission in so far as such trading in the state of Telangana is concerned shall lead to the revocation of the license hereby granted.

c) The Intra State Electricity Trading License granted by this Commission shall be in force in terms of Sec.15 (8) of the Electricity Act, 2003 for a period of 25 years with effect from today, unless such license is revoked earlier.

d) the office of the Commission is directed to comply with this order accordingly.

24. The OP and I.A. stands disposed of.

This order is corrected and signed on this the 15th day of December, 2015.

Sd/-
L.MANO HAR REDDY,
MEMBER

Sd/-
H. SRINIVASULU,
MEMBER

Sd/-
ISMAIL ALI KHAN,
CHAIRMAN

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