

**Record of proceedings dated 25.04.2022**

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 32 of 2015 & I. A. No. 5 of 2015	M/s. Tata Power Trading Company Ltd.	TSDISCOMs, APSPDCL, APEPDCL and APPCC

Petition filed seeking questioning the illegal, unilateral and wrongful deduction of Rs. 9,72,00,000/- and Rs. 96,48,000/- towards illegal compensation claim for supply of short term power.

I. A. filed seeking release of Rs. 9,72,00,000/- and Rs. 96,48,000/- in lieu of bank guarantee for corresponding amounts.

Sri M. Ramakanth, Advocate for petitioner and Sri D. N. Sarma, OSD (Legal and Commercial) for respondents are present. The counsel for petitioner stated that the matter before the Hon'ble High Court is yet to be decided, though efforts are made for listing, it is not seeing the light of the day. Therefore, adjournment may be granted for a longer period. The representative of the respondents did not oppose the same. Accordingly, the matter is adjourned.

Call on 11.08.2022 at 11.30 A.M.

Sd/-  
Member

Sd/-  
Member

Sd/-  
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 59 of 2018	TSDISCOMs	APGENCO, APTRANSCO & APDISCOMs

Petition filed seeking certain directions to APGENCO and APDISCOMs

Sri M. Eshwardas, DE / IPC for petitioners is present. There is no representation on behalf of the respondents. The representative of the petitioners stated that the authorized representative of the petitioners is on long leave and hence sought adjournment of the matter. Accordingly, the matter is adjourned.

Call on 11.08.2022 at 11.30 A.M.

Sd/-  
Member

Sd/-  
Member

Sd/-  
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 8 of 2021	M/s. Singareni Collieries Company Limited	TSDISCOMs

Petition filed seeking resolution of disputes regarding billing u/s. 86 (1) (f) of the Act, 2003.

Sri. P. Shiva Rao, counsel for petitioner and Sri. D. N. Sarma, OSD (Legal & Commercial) for the respondents are present. The counsel for petitioner stated that the petition has five prayers and one of the prayers (viz., (b) for payment from respondents towards the power received by them as reflected in JMR) has been substantially settled between the parties and the last (5<sup>th</sup>) prayer (i.e., interest from the date of claim till full realization) as may be decided by the Commission and as such he is confining the argument to three (3) other prayers. He relied on the provisions of the PPA and the order passed by the Commission determining the tariff for generation in the year 2017 along with the Memorandum of Understanding (MOU) entered between it [Singareni Thermal Power Plant (STPP)] and the Singareni Collieries Company Limited. It is his case that the additional amount of Rs.118 crore towards landed cost of coal due to factoring beyond 75% of agreed quantity of 4.52 MMT of coal per annum at 20% over notified base price of non-power sector in terms of the supplementary MOU. For the year 2018-19, the Commission had pegged the supply from the petitioner to be 8.42 MU, whereas it had only supplied approximately 8200 MU.

The coal charges cannot be identified regarding excess consumption during the course of the year and can only be ascertained at the end year. As such, the cost incurred towards excess consumption has been identified and invoices have been raised for the same after close of the financial year. The Commission had while determining the tariff relied upon the CERC Regulation with regard to consumption of coal and refused to entertain the proposals and considered the request of the petitioner to factor the normative as provided in the Regulation No. 1 of 2008 of the then APERC as adopted by this Commission. This was done so primarily for the reason that the AP Regulation did not provide for normatives in respect of 600 MW project. The CERC had provided for the normatives for 600 MW power plants and the same were considered while determining the tariff in case of the petitioner's project.

The counsel for petitioner raised the issue of incentive which is 3<sup>rd</sup> prayer in the petition and item c in the array of prayers. It is his case that the petitioner is

entitled to payment of incentive upon supplying power more than 85% of the PLF at the flat rate of Re. 0.50 per unit for the additional generation of power. It is his case that the petitioner has generated and supplied 90.79% of the capacity for the year 2017-18 and this is misunderstood by the respondents as the claim for the year 2018-19, which is not so. The petitioner did not achieve the capacity directed by the Commission for the year 2018-19. The claim now made is therefore with reference to the previous year only. The counsel for petitioner emphasized the aspect of scheduling generation and more particularly corresponding schedule as provided in the CERC Regulation. Therefore, the petitioner may be allowed to claim the amount towards excess generation.

The counsel for petitioner stated that though the petitioner made excess generation but was well within the contracted capacity. The State Load Despatch Centre did issue notice for deviating from the schedules but a suitable reply was given to it and it dropped the action against the petitioner. The petitioner had amply made it clear that generation was made based on availability of coal and nothing stopped the SLDC from levying penalty, if at all excess generation was pumped into the grid duly endangering the grid. The DISCOMs have no right to allege that they have not allowed payment and have denied additional claims as the petitioner had deviated from the schedules. It is not for the DISCOMs to allege or claim action against the petitioner in the matter of scheduling the energy and it is for the SLDC to take action in the matter. Thus, the petitioner sought intervention of the Commission for payment of incentives earned by it due to achieving of higher PLF.

The counsel for petitioner extensively relied on the provisions of the PPA, CERC Regulation, tariff order passed in favour of the petitioner in the year 2017 as also the true up order passed by the Commission in the year 2020 with regard to the control period of 2016-19. It is his case that the Commission emphatically refused to consider the provisions of the Regulation No. 1 of 2008, but substantially relied on CERC Regulation of 2014 while determining the tariff or for that matter the true up petition. This was done so as the normatives and parameters in respect of several aspects relating to the above prayers were not found in the Regulation No. 1 of 2008 and the same were provided in the CERC Regulation including the project capacity

for 600 MW as the installed capacity is 2 X 600 MW. He also relied on the judgments submitted earlier as rendered by the Hon'ble ATE.

The counsel for petitioner sought a decision on the reimbursement of water charges and stated that the said amount is payable by the DISCOMs as confirmed by the Commission in the tariff order as also in the true up order. It is his case that the same have to be reimbursed in terms of the provisions of the PPA as also CERC Regulation. At the same time, he also distinguished the judgments referred to by the DISCOMs on the earlier occasion.

The representative of the respondents, while continuing his earlier submissions, defended the action of the DISCOMs stating that the petitioner is not entitled to any amount claimed by the petitioner in this petition. He stated that excess energy injected into the grid would attract penalties and SLDC had issued notice for violation of the schedules. It is his case that the petitioner did not deliver the quantum of energy as directed by the Commission but is now claiming incentive as also additional coal cost. He has extensively quoted from the order of the Commission determining the tariff in the year 2017 as also the true up order passed by the Commission in the year 2020 and also interpreted the provisions of the Regulation No. 1 of 2008 along with CERC Regulation. It is stated that the petitioner has entered into MoU with the coal supplier by providing that excess quantum of coal over 75% of the requirement would be paid for at the rate of 20% higher than the applicable to non-power supply coal price. This has led to additional cost to the petitioner, which it wants to pass on the same to the consumers through DISCOMs, which is not permissible under law. The petitioner is not entitled to the same. In fact in the year 2020, the MoU is modified to include power supply tariff instead of non-power supply tariff. This has happened in view of the objection raised by the DISCOMs only.

The representative of the respondents endeavoured to submit that the petitioner is not entitled to any incentive as the petitioner has provided excess generation and violated the schedules given by itself. Claiming that it has generated excess amount of energy more than required and violation of the schedules would attract penalty, however, the DISCOMs have honoured payment only to the extent of

applicable scheduled generation and refused to pay the amount both for coal charges as well as incentive.

The representative of the respondents further submitted that the petitioner, in fact, had questioned the order of the Commission determining the tariff before the Hon'ble ATE and the same is pending consideration. The petitioner is making an attempt to pick and choose according to his choice the clauses which are beneficial to it and seeking to omit the clauses which provide fetters on the actions of the petitioner. He also relied extensively on the clauses in the PPA, the orders passed by the Commission and the regulations applicable to the case both for the relevant and subsequent period. He has strenuously explained the background of the claims as also the intention of the petitioner to make such claims. The petitioner has gained in terms of certain economics of true up, which has to be shared with the DISCOMs, which is not done by the petitioner.

The representative of the respondents also pleaded the legal aspects by relying on latin maxim and the understanding thereof along with judgments of the Hon'ble Supreme Court on the mode of interpretation regarding reading of act, rule, regulation etc. He sought to emphasize that any act, rule or regulation have to be read in toto and not in bits and pieces according to the requirement or which provide for beneficial understanding to one party.

The counsel for petitioner replied that the submissions made by the representative of the respondents are confusing and contradicting to each other. It is his case that the DISCOMs are seeking to make submissions contrary to applicable law and regulations so as to ensure rejection of the petition at the hands of the Commission. It is also stated that several submissions are made, which are beyond the written down pleadings made before the Commission. He stated that the Commission, while deciding the matter, is requested to carefully check the submissions and consider the case of the petitioner as the claims made are of bonafide nature and cannot be negated. The petitioner has incurred the expenditure and it has to rightfully be reimbursed the same. In support of his contention, he has relied upon section 61 of the Act, 2003 extensively. At the same time, he also stated that the consumer cannot be mulcted with unnecessary burden and the DISCOMs cannot claim dual benefit both from the generator and consumer.

The generator has to run on commercial principles and it should be allowed to recover the cost and at the same time, the sector should be run on economic principles. Stating so, he has pleaded for allowing the petition.

Insofar as the 2<sup>nd</sup> prayer i.e., (b), on which both the parties have reached some understanding, the petitioner would file a memo to that effect if not the same has to be argued subsequently. The representative of the respondents also stated that he has no instructions on the issue from the management and would report back, if a decision is taken by them.

Having heard the submissions of the parties in detail, the matter is reserved for orders.

Sd/-  
Member

Sd/-  
Member

Sd/-  
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 25 of 2021	M/s. Singareni Collieries Company Ltd.	TSDISCOMs

Petition filed seeking adjudication on the secondary billing disputes for FY 2016-19 for 2 X 600 MW Jaipur project.

Sri. P. Shiva Rao, counsel for petitioner and Sri. D. N. Sarma, OSD (Legal & Commercial) for the respondents are present. The counsel for petitioner stated that the matter is connected to O. P. No. 8 of 2021 and substantial issues have been argued in the matter, however, he needs further time to make submissions in this matter. The matter may be adjourned for enabling him to make submissions. The representative of the respondents opposed the adjournment of the petition, stating that the matter can be proceeded with as the earlier matter has been heard and concluded. However in view of the request made by the counsel for petitioner, the matter is adjourned.

Call on 02.05.2022 at 11.30 AM.

Sd/-  
Member

Sd/-  
Member

Sd/-  
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 28 of 2022	M/s. Sri Sai Ram Ice Factory	TSSPDCL& its officers

Petition filed seeking refund of the amounts paid towards electricity charges and punishing the respondents for non-compliance of the order of the Vidyut Ombudsman U/S. 146 of the Electricity Act, 2003.

Ms. Nishtha, Advocate representing Sri. Yogeshwar Raj Saxena, Advocate for petitioner and Sri. M. Eshwardas, DE / IPC for the respondents are present. The advocate representing the counsel for petitioner stated that the respondents have filed writ petition before the Hon'ble High Court and obtained stay, however, as it was limited period stay, it got expired and the Commission can proceed with the matter. She also stated that the writ petition is scheduled for hearing today. The representative of the respondents stated that the authorized representative of the respondents is on long leave and hence sought adjournment of the matter. Accordingly, the matter is adjourned.

Call on 23.05.2022 at 11.30 AM.

Sd/-  
Member

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Member

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 43 of 2022	M/s. Pemmasani Solar Power Private Limited	TSSPDCL alongwith its officer & TPCC

Petition filed seeking payments of interest due along with late payment charges on such amount due in respect of 10 MW project near 132 / 33 KV Makthal substation in Mahabubnagar district.

Sri. P. Soma Sekhara Naidu, Advocate representing Sri P. Srinivasa Rao, counsel for petitioner and Sri. M. Eshwardas, DE / IPC for the respondents are present. The advocate representing the counsel for petitioner stated that the matter is coming up for filing counter affidavit. The officer present on behalf of the respondents stated that the authorized representative of the respondents is on long leave and hence sought adjournment of the matter. He also stated that he needs further time to file counter affidavit in the matter. Accordingly, the matter is adjourned.

Call on 23.05.2022 at 11.30 AM.

Sd/-  
Member

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Member

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 24 of 2021	M/s. Prashanth Narayan G (PNG)	TSSPDCL & TSTRANSCO

Petition filed seeking the energy generated fed into the grid for the period before open access as deemed purchase of licensee or pay for the same.

Sri Deepak Chowdary, Advocate representing Sri Challa Gunaranjan, counsel for the petitioner and Sri M. Eshwardas, DE / IPC for respondents are present. The counsel for petitioner stated that the rejoinder will be filed during the course of the day duly serving a copy of the same to the respondents. The matter may be taken up at the earliest date for making submissions. The officer present on behalf of the respondents stated that the authorized representative of the respondents is on long leave and hence sought adjournment of the matter. Accordingly, the matter is adjourned.

Call on 02.05.2022 at 11.30 AM.

Sd/-  
Member

Sd/-  
Member

Sd/-  
Chairman