



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

I. A. No. 2 of 2017

in

O. P. No. 60 of 2015.

Dated: 22.03.2017

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member

Between

M/s KSK Mahanadi Power Company Limited,
8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad. ... Petitioner.

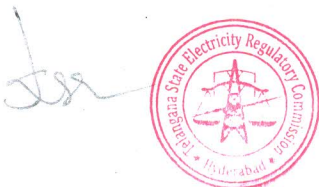
And

1. M/s. Southern Power Distribution Company of
Telangana Limited, 6-1-50. Mint Compound, Hyderabad,
(Formerly known as APCPDCL).
2. M/s Northern Power Distribution Company of Telangana Limited,
2-5-3/2, Vidyut Bhavan, Nakkalagutta, Hanmakonda, Warangal.
(Formerly known as APNPDCL) ... Respondents.

The petition having been filed and stood over for consideration before the Commission for entertaining or otherwise and taking it on the file of the Commission, the applicant having expressed urgency in the matter by letter dated 10.03.2017, the Commission passed the following ad-interim order:

ORDER

The applicant in this petition and the petitioner in O. P. No. 59 of 2015 as well as respondent in O. P. No. 60 of 2015, has filed an interlocutory application seeking extension of letter of credit by the DISCOMs for enabling it to extend the bank



guarantee to them, restrain the DISCOMs from invoking the bank guarantee and punish the officers of the DISCOMs under sec 142 of the Electricity Act, 2003 for violating the orders of the Commission.

2. The specific prayer in the application is as follows:

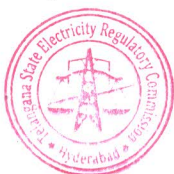
- a) Direct the distribution licensees to forthwith furnish the Letter of Credit worth Rs. 32.95 Cr in favour of KSK Mahanadi in compliance with the directions of the Commission dated 27.07.2016 as a condition for seeking the extension of the bank guarantee by KSK Mahanadi till the final adjudication of the claims of the parties in OP 59 of 2015 and 60 of 2015.
- b) Reiterate the restraint on the distribution licensees to invoke the bank guarantee furnished by KSK Mahanadi in favour of the distribution licensees.
- c) Initiate action against the distribution licensees and their officers under section 142 of the Electricity Act for willful violation of the directions of the Commission.”

3. The applicant further stated in the letter dated 10.03.2017 to the Commission that it has filed an I. A. on 21.02.2017 for directions against Telangana DISCOMs for;

- (i) Obliging orders of Hon'ble Commission in IA No. 05 of 2016 filed by Telangana DISCOMs and
- (ii) Arranging LC by Telangana DISCOMs is a precondition for maintaining the bank guarantees by KSK Mahanadi in favour of Telangana DISCOMs.

It is also stated that the Commission has in the order dated 27.07.2016, while directing the parties to maintain status quo in relation to the financial instruments of either parties, also directed the DISCOMs to maintain the Letter of Credit in favour of KSK Mahanadi while KSK Mahanadi is to maintain a bank guarantee in favour of the DISCOMs. However, the DISCOMs have failed to comply with the order and furnish the Letter of Credit. In addition to the above, the DISCOMs are threatening to invoke in event of non-extension / renewal of BGs, even before final orders in OP No. 59 of 2015 and OP 60 of 2015.

4. The applicant also stated in this connection that since the validity of the Bank Guarantees being maintained by the applicant are becoming due for renewal (whose validity is upto 15.03.2017 (with claim period till 15.04.2017) and since the present I.



A. is yet to be listed for hearing by the Commission. It sought early orders and for an urgent interim relief in order to restrain the Telangana DISCOMs not to proceed for any invocation of the Bank Guarantees of Rs. 41 Crores available with Telangana DISCOMs by following orders dated 27.07.2016 passed in I. A. No. 05 of 2016, till the Commission decides O. P. No. 59 of 2015 and O. P. No. 60 of 2015. This is particularly when the DISCOMs are acting in violation of the directions of the Commission and not furnishing the corresponding LC in favour of the applicant.

5. We have carefully examined the record and the status of the case with reference to the present applicant and the letter sent by the applicant. At first instance, we make it clear that single interlocutory application cannot be filed in two original petitions, therefore, we are limiting this application to original petition in O. P. No. 60 of 2015, wherein we had earlier passed orders on the issues raised herein in this application.

6. From the record, we must recollect that we had given directions as follows:

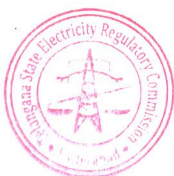
“a) We deem it appropriate to protect the parties equally in respect of the claims and liabilities and therefore direct the parties to invariably comply the directions as enumerated herein below.

b) The developer shall renew or provide fresh bank guarantee for a sum of Rs. 42 Crores in favour of the petitioners duly filing such information after such provision is made.

c) The DISCOMs shall provide LC for an amount of Rs. 32 crores due in favour of the developer and file a statement about compliance before the Commission.

d) Either party shall not invoke / redeem any other guarantees given to the other side and keep them in force pending disposal of this original petition as well as other petitions pending between the parties before this Commission.

e) Any other settlement made in respect of issues not covered by pending litigation can be brought to the notice of the Commission only through proper statement by either of the parties at the time of hearing of the pending litigation. “



7. We noticed from the above directions extracted from our earlier order, we had specifically made it clear that the parties shall provide the necessary financial instruments and keep them in force till the original petitions are decided. We had also made it clear that either of the parties shall not invoke any financial instruments given in support of their financial liabilities by either of the parties.

8. On a perusal of the correspondence made by the parties between themselves as filed before this Commission in this application, we are aghast at the attitude of the licensee and its tenacity to not to comply with the orders of this Commission while insisting the other party to do so and also threaten it if the generator does not comply with the orders of the Commission. By sheer statement of action of letters, the licensee seeks to invoke the guarantees given in their favour while it itself is not complying with the requirement of providing letter of credit. It appears to us at this stage that the licensee is seeking to browbeat and overreach the order of the Commission.

9. We are of the view the licensee should not have pushed the generator to this situation, in the teeth of the fact that it itself has filed a review petition on the orders of the Commission dated 27.07.2016, which is not decided by the Commission as yet. Nonetheless, prime facie it is our view that the licensee should not have issued letter seeking to invoke the BGs while failing to comply with its part of the order of this Commission.

10. Therefore, we are inclined to pass an order at this ad-interim stage restraining the licensee from invoking the bank guarantees given by the generator in their favour till the Commission disposes of this I. A. after notice and hearing and the review petition pending on the file of this Commission alongwith the original petitions in O. P. Nos. 59 and 60 of 2015.

11. Accordingly while reiterating the directions given by us on 27.07.2016, we deem it appropriate to direct the parties to keep the bank guarantees and the letter of credit by either side **live and valid** till the disposal of the original petitions and shall not precipitate any action detrimental or contrary to the orders of the Commission. At the cost of repetition, we direct the **parties shall not invoke / redeem any other guarantees given to the other side.**



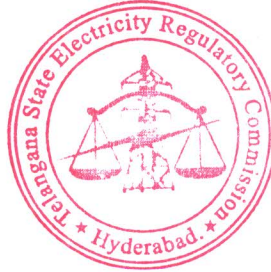
12. Subject to the above observations, the I. A. is directed to be numbered and posted along with original petition as and when the same is listed.

This order is corrected and signed on this the 22nd day of March, 2017.

Sd/-
(H. SRINIVASULU)
MEMBER

Sd/-
(ISMAL ALI KHAN)
CHAIRMAN

CERTIFIED COPY



SECRETARY
T.S. Electricity Regulatory Commission
D. No. 11-4-660, 5th Floor, Singare
RED HILLS, HYDERABAD-500 006