



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

O. P. No. 21 of 2015

(O. P. No. 33 of 2004 on the file of erstwhile APERC)

Dated 02.06.2021

Present

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

Between:

Northern Power Distribution Company of
Andhra Pradesh Limited, H.No.2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta, Warangal – 506001

... Petitioner

AND

Small Hydro Power Developers Association & Others

... Respondents

This petition came up for consideration on 01.03.2021 upon being mentioned by Sri Challa Gunaranjan, Counsel for the respondents and having been heard and having stood over for consideration, the Commission passed the following:

ORDER

The Northern Power Distribution Company of Andhra Pradesh limited as it then was in the combined State of Andhra Pradesh had filed a petition for determination of charges for distribution and retail supply business for the year 2005–06. The said petition was taken up by the then Commission (erstwhile APERC) vide O. P. No. 33 of 2004 on its file. An order came to be passed on 22.03.2005.

2. The said order came to be challenged Appeal No. 51 of 2005 and batch filed by the respondents herein. The said batch appeals came to be disposed off by order dated 08.05.2008. The Hon'ble ATE had allowed the appeals and the matter was remanded back to the Commission. It was observed therein as below:

“87. Accordingly, appeals are hereby allowed and the impugned orders passed by the Commission are set aside. The matters are remitted to the Commission for being considered and decided afresh in the light of the observations made by us. It will be open to the parties to raise before the Regulatory Commission such submissions as may be permissible in law.”

3. Thereafter the matters were carried in appeal to the Hon'ble Supreme Court by the then distribution companies of Andhra Pradesh in Civil Appeal No. 7029–7062 of 2008. The Hon'ble Supreme Court had ultimately allowed the said appeal by order dated 29.11.2019 and held as below.

“72. Thus, we find that the order of APTEL based on the Doctrine of Promissory Estoppel for continuing the benefit of Government Orders dated 18.11.1997 and 22.12.1998, cannot be said to be in accordance with the law. The order of APTEL is liable to be set-aside, and that passed by the APERC has to be restored.

73. Resultantly, we have to allow the appeals. The judgment and order passed by the High Court relating to wheeling charges and grid support charges and that passed by the APTEL regarding continuance of 57 incentive as per G. O. Ms dated 18.11.1997 and 22.12.1998, are set aside. The appeals are allowed, and the orders passed by APERC are restored. No costs.”

4. The then APERC had restored the said petitions to the file to a limited extent and issued notice for undertaking hearing. However, the same were not proceeded with and kept pending. Due legislative changes the petition came to be transferred in part to the present Commission and were kept pending for want of decision on jurisdiction. Subsequently, the issue of jurisdiction has been decided by the Commission in O. P. No. 25 of 2015 and batch and it came to be challenged before the Hon'ble High Court Hyderabad as it then was in W. P. No.15848 of 2015 and batch which had held that the Central Electricity Regulatory Commission (CERC) has jurisdiction.

5. Further, the said order of the Hon'ble High Court was questioned by the DISCOMs before the Hon'ble Supreme Court in Civil Appeal No. 3788–3790 of 2019 and batch. The said appeals were dismissed by the Hon'ble Supreme Court confirming the order of the Hon'ble High Court. The Hon'ble Supreme Court has held as below:

- “1. *Diary No.44511/2019 is taken on board.*
2. *Delay of 254 days in filing the special leave petition, in Diary No.44511/2019, is condoned. Leave granted.*
3. *Heard learned counsel for the parties.*
4. *As the controversy involves State of Andhra Pradesh as well as the State of Telangana and ultimate effect is going to be on more than one State, considering the provisions contained in Section 105 of the Andhra Pradesh (Reorganisation) Act, 2014, CERC is appropriate authority to hear and decide the dispute. In the facts and circumstances of the case, we find no ground to interfere with the decision of the High Court.*
5. *Let the dispute be decided by CERC, in accordance with law, after hearing the parties, as expeditiously as possible, within an outer limit of six months.*
6. *The appeals are, accordingly, disposed of.*
7. *Pending application(s), if any, shall stand disposed of.”*

Pursuant there to notice has been issued informing the parties that the matters pending before the Commission are being transferred to the CERC.

6. Upon such notice, the counsel for the respondent made a mention of the above said matter during hearing on 01.03.2021. The submissions and record of proceeding is as below:

“Sri Challa Gunaranjan, Advocate representing the respondents in the above said matters, has made a mention before the Commission of the same. He stated that the matter need not be transmitted to CERC in terms of the order of the Hon’ble Supreme Court on the issue of jurisdiction, as the substantive issue of levy of wheeling charges, which has been remanded by the Hon’ble ATE to the Commission, has been set aside by the order of the Hon’ble Supreme Court upholding levy of wheeling charges. As such, the matters may be closed as infructuous. Acceding to the request of the counsel for the respondents, he is directed to file a memo to that effect upon which the Commission will pass orders in the matters treating them as stand closed being infructuous.”

7. In view of the above legal position and the submission of the counsel for the respondents in the matter, the matter does not require further adjudication or transfer to CERC. Accordingly, the matter stands closed.

This order is corrected and signed on this the 02nd day of June, 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M. D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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