



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

O. P. No. 58 of 2022
and
I. A. No. 45 of 2022

Dated 19.07.2023

Present

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

Between:

M/s. Sneha Renewable Energies Limited,
Registered Office Flat No.515,
Prime Legend Apartments, Masjid Banda Road,
Sriramnagar, Kondapur, Hyderabad 500 084.

... Petitioner

AND

1. State of Telangana,
Rep. by its Principal Secretary,
Department of Energy,
Secretariat Buildings, Hyderabad,
Telangana State 500 022.
2. The Chairman & Managing Director,
Southern Power Distribution Company of Telangana Limited,
Mint Compound, Hyderabad,
Telangana State 500 063.
3. Chairman & Managing Director,
Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad,
Hyderabad 500 082.

... Respondents

The petition came up for hearing on 22.08.2022, 12.09.2022, 17.10.2022, 21.11.2022, 12.01.2023, 04.04.2023, 24.04.2023, 05.06.2023 and 22.06.2023. Ms. P. Laxmi, Advocate for petitioner has appeared on 22.08.2022, 12.09.2022, 21.11.2022,

12.01.2023, 04.04.2023, 24.04.2023 and 05.06.2023 and Sri. P. Keshava Reddy, Managing Director of the petitioner has appeared on 12.09.2022, 17.10.2022 and 22.06.2023. Sri. Mohammad Bande Ali, Law Attaché for the respondents has appeared on 22.08.2022, 12.09.2022, 17.10.2022, 21.11.2022, 12.01.2023, 04.04.2023, 24.04.2023, 05.06.2023 and 22.06.2023. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Sneha Renewable Energies Limited (petitioner) has filed a petition under Section 86 (1) (a), (b) & (c) of the Electricity Act, 2003 (Act, 2003) seeking determination of tariff for the mini hydel project of the capacity of 0.90 MW (2x450 kW) for the energy generated and to be sold to Southern Power Distribution Company of Telangana Limited (TSSPDCL). The averments in the petition are extracted below:

- a. It is stated that the petitioner established as a public limited company in the year September, 2000 under the Companies Act, 1956. The main objective of the company is hydel power generation and supply. The main objective of the company is to promote, establish small hydel power projects with the guidelines of the Government of India (GoI) and erstwhile Government of Andhra Pradesh (GoAP) and now Telangana State. To achieve the said object, the petitioner has power generation location on Vemuleru Vagu (run off river) on existing Anicut at Mallaialappaiah Bandam near Kalvapally village, Garidepalli mandal, Suryapet district, Telangana State. The petitioner got cleared all the formalities and established a mini hydel power project with a capacity of 0.90 MW (2 x 450 kW). The petitioner entered an agreement on 13.04.2010 with Non-Conventional Energy Development Corporation of Andhra Pradesh Limited (NEDCAP). The petitioner has completed the project in the year 2013 and synchronization to the grid on 06.11.2013 respectively.
- b. It is stated that the petitioner had entered into long term open access agreement (LTOA) for captive generation with the then Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) on 05.02.2014. At the time of registering our interest to establish mini hydel power project (MHPP/MHES) with NEDCAP dated 04.04.2000 or agreement with NEDCAP dated 13.04.2010 or LTOA agreement with the then APCPDCL dated 05.02.2014, wheeling charges were exempted for mini hydel power projects. But, the Commission

through tariff order dated 27.03.2015 has removed the exemption of wheeling charges for HMPPs, which has drastically affected our petitioner's revenue and existence of our company has become questionable.

- c. It is stated that due to local issues, drought situations for more than 3 years and machinery erection related technical issues, till date they could not generate enough power and revenue more than the wheeling charges payable to the TSSPDCL (respondent No.2), hence they could not generate any bills to their captive consumers and did not get any revenue even after more than 7 years of synchronization with grid.
- d. It is stated that the petitioner wished to bring to the Commission notice that the petitioner has incurred more than Rs.15.0 crore to complete the project (one location) in the year 2014, more than Rs.22.0 crore for two locations, (have not completed the other location). But till date the petitioner has not earned single rupee from this project and are under serious debts. It is pertinent to state that the other location is not even synchronized till date due to the financial crunch of the company.
- e. It is stated that the petitioner has established the mini hydel power project with great innovative concept, but due to sudden policy change of the Government of Telangana (GoTS) in the year 2015 to charge wheeling charges on such a tiny MHES, the petitioner was unable to generate the revenue till date (even after more than 7 years of COD), which shall be clearly shown and reflect from the petitioner's latest balance sheet. The petitioner submitted a representation to the 2nd respondent on 30.05.2020 requesting them to enter into a power purchase agreement (PPA), considering the petitioner's financial problems for Rs.5/- per unit. The petitioner company stated that there are only three (tiny) mini hydel power projects in the Telangana State.
- f. It is stated that the 2nd respondent issued a Lr.No.CGM(IPC&RAC)/SE(IPC)/F. SREL/D.No.435/2020 dated 22.09.2020 declining our application, stating that the national policy stipulates the DISCOMs that procurement of power/PPAs should be entered through competitive bidding process, hence the petitioner is constrained to file this present petition.
- g. It is stated that the reliance placed by the 2nd respondent that the procurement of the power from the project has to be done through a competitive bidding route of a renewable source may be appropriate in a large size generator which

may be viable to it. For such a tiny MHPP project (900 kW), insisting on competitive bidding process only is not appropriate and will negate the purpose of encouraging renewable sources of energy and also loss of available natural resources. It is pertinent to state that at present water is available at its project and if power is not generated it will be a national waste. In the central amendment bill of 2020, the Government of India (GoI) has given a support enforcing for hydel power generation, if it is not purchased small generators will be collapsed. It is also not known when the 2nd respondent would undertake competitive bidding process. Till then the petitioner cannot be put unnecessary vagaries of financial difficulties. The 2nd respondents ought to have procured the renewable source of power through bilateral agreement without waiting for the competitive bidding process which they themselves are not sure when they would start and complete.

- h. It is stated that be that as it may, the Commission had fixed the target for renewable energy procurement in the Regulation No.2 of 2018 being TSERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2018. It is relevant to mention here the target fixed is as extracted below.

Year/RPPO	2018-19	2019-20	2020-21	2021-22
Non-Solar	0.67%	0.73%	0.79%	0.90%

- i. It is stated that even otherwise, the GoI has fixed very ambitious target to be achieved while procuring power from renewable sources of energy. The government had notified the targets as below:

Long Term Trajectory	2016-17	2017-18	2018-19
Non-solar	8.75%	9.50%	10.25%
Solar	2.75%	4.75%	6.75%
Total	11.50%	14.25%	17.00%

- j. It is stated that the Commission has been considerate enough to take note of the difficulty in procuring such high capacity and fixed a moderate percentage as shown above which is only a minimum rate of quantity to be procured by the DISCOMs in the Telangana State. The respondents ought to have procured more than the percentage fixed by the Commission, instead are now coming with a reason which are detrimental to the investment in generation of the

renewable sources, which is neither called for nor is appropriate in the teeth of the policies of the government encouraging renewable sources of energy. It is also contrary to the commitment set out by the country towards reducing the carbon emissions on the international fora.

- k. It is stated that Ministry of Power (MoP) notified resolution being National Tariff Policy (NTP) on 28.01.2016. Paragraph 5.5 states that:

“The developer of a hydroelectric project, including pumped storage plant (PSP), would have the option of getting the tariff determined by the appropriate Commission for the power to be sold through long term power purchase agreements (PPAs) on the basis of performance based cost of service regulations if the following conditions are fulfilled:

- (i) The appropriate commission is satisfied that the project site has been allotted to the developer by the concerned State Government after following a transparent two stage process. The first stage should be for prequalification on the basis of criteria of financial strength, past experience of developing infrastructure projects of similar size, past track record of developing projects on time and within estimated costs, turnover and ability to meet performance guarantee etc. In the second stage, bids are to be called on the basis of only one single quantifiable parameter, such as, additional free power in excess of percentage of free power, as notified by the Central Government, equity participation offered to the State Government, or any other parameter to be notified by the central government from time to time.*
- (ii) Concurrence of CEA (if required under Section 8 of the Act), financial closure, award of work and long term power purchase agreement (PPA) (of the duration of 35 years or more) of the capacity specified in (c) below with distribution licensees are completed by 15.08.2022.*
- (iii) Long term PPA is firmed up for 60% or more of the total saleable design energy, balance being allowed for merchant sale. Provided that distribution licensees can extend the duration of long term PPA beyond 35 years for a further period of 15 years at the existing terms and conditions subject to the approval of Appropriate Commission. Provided further that nothing contained in this clause shall apply to Pumped Storage Plants (PSP).*
- (iv) The time period for commissioning of all the units of the project shall be fixed at four years from the date of approval of the commissioning schedule by the Appropriate Commission. However, the Appropriate Commission may, after recording reasons in writing, fix longer time period for hydroelectric projects (reservoir as well as run-of-river projects) of more than 100 MW capacity. Agreed timelines to achieve the fixed commissioning schedule along with penalty for delay shall be decided by the Appropriate Commission in consultation with the Central Electricity Authority. The Appropriate Commission shall allow*

pass through the Interest During Construction (IDC) and Financing Cost (FC) only upto the period of delay not attributable to the developer, as approved by the CEA.

- (v) *Award of contracts for supply of equipment and construction of the project, either through turnkey or through well-defined packages, are done on the basis of international competitive bidding.*

- I. It is stated that Section 6.4(2) of MoP resolution on NTP dated 28.01.2016 stated that:

Renewable sources of energy generation including co-generation from renewable energy sources:

"However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003. While determining the tariff from such sources, the Appropriate Commission shall take into account the solar radiation and wind intensity which may differ from area to area to ensure that the benefits are passed on to the consumers."

- m. It is stated that the Commission has got ample power to determine the tariff for supply of electricity by a generating entity to a distribution licensee and to regulate electricity purchase under Section 86(1)(b) read with Section 62(1)(a), Section 61(h) of the Act, 2003. Hence, the present petition is filed.
- n. It is stated that the NTP is clearly contemplating that for encouraging mini hydel power project establishments, the 2nd respondent's reply is clearly depriving the sustenance of the mini hydel power projects (MHPPs), hence the Commission has got the power and jurisdiction to direct the 2nd respondent to enter into PPA with the petitioner.
- o. It is stated that the primary object of the power policy vis-a-vis the non-entering of PPA by the 2nd respondent with the petitioner itself is creating financial crunch for survival of the MHPPs. Hence, the interference of the Commission is warranted in the instant case to implement the NTP dated 28.01.2016 and more particularly clauses 5.5 and 5.6 issued by the MoP.
- P. It is stated that the 2nd respondent at present is not inviting or preparing for any competitive bidding process and when the 2nd respondents will invite the bids for determining the tariff for purchase of electricity, is not known to the petitioner. There is a complete vacuum in this process. Hence, the 2nd respondent's reply letter dated 22.09.2020 is contrary to National Power Policy (NPP).
- q. It is stated that the respondents are not creating conducive atmosphere for investment in renewable sources of energy. It is also pertinent to mention that

the Gol has set an ambitious target of 175 GW of renewable sources energy generation by the year 2022, while that be so, the action of the respondents appears to be retrograde in nature as it amounts to negating the existing investment also. Simply stated, the respondents have onerous duty to procure renewable energy as much as possible.

r. It is stated that the applicant is a small project and dependent on nature and that of water flow in the canal. The petitioner is wasting natural resources as they should have taken the benefit of water flow and availed the generation. In this regard, it may be appropriate to refer to the case of M/s Balaji Energy Private Limited, decided by the erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) in O.P.No.2 of 2007 decided on 07.03.2007, herein the Commission had directed that tariff be paid for the power drawn, as it is renewable source, which order has been adopted by the Commission in Regulation No.1 of 2014. Therefore, the petitioner is entitled for relief from the respondents by entering into PPA with the petitioner, without waiting for the competitive bidding process to be commenced.

2. The petitioner has sought the following reliefs in the petition.

“to direct the 2nd respondent to enter into PPA by fixing tariff per unit as Rs.5.00 as per Sections 61(h), 62(1)(a), 86(1)(b) of the Electricity Act, 2003.”

3. The petitioner has also filed an interlocutory application and the averments in it are extracted below.

a. It is stated that the applicant was established as a public limited company in the month of September, 2000, under the Companies Act, 1956. The main objective of the company is hydel power generation and supply. The main objectives of the applicant is to promote, establish small hydel power projects with the guidelines of the Gol and erstwhile GoAP and Telangana State. To achieve the said object, the applicant has mini hydel power generation location on Vemuleru Vagu (run off river) on existing Anicut at Malyalappaiah Bandarn near Kalvapally Village, Garidepalli Mandal, Suryapet District, in the Telangana State. The applicant got cleared all the formalities and established. a mini hydel power project (MHPP) with a capacity of 0.90 MW (2x450 kW). The applicant entered into an agreement on 13.04.2010 with NEDCAP. The applicant has

completed the project in the year 2013 and completed synchronization to the grid on 06.11.2013.

- b. It is stated that the applicant entered into LTOA for captive generation with APCPDCL on 05.02.2014. At the time of registering our interest to establish mini hydel power project (MHPP/MHES) with NEDCAP dated 04.04.2000 or agreement with NEDCAP dated 13.04.2010 or LTOA agreement with APCPDCL dated 05.02.2014, wheeling charges were exempted for mini hydel power projects. But, the Commission through tariff order dated 27.03.2015 has removed the exemption of wheeling charges for MHPPs, which has drastically affected the applicant's revenue and existence of the applicant has become questionable.
- c. It is stated that due to local issues, drought situations for more than 3 years and machinery erection related technical issues, till date they could not generate enough power and revenue more than the wheeling charges payable to TSSPDCL, hence the applicant could not generate any bills to their captive consumers and did not get any revenue even after more than 7 years of synchronization with grid.
- d. It is stated that the applicant wished to bring to the Commission notice that the applicant has incurred more than Rs.15.0 crore to complete the project (one location) in the year 2014, more than Rs.22.0 crore for two locations, (have not completed the other location). But till date the applicant has not earned single rupee from this project and are under serious debts. It is pertinent to state that the other location is not even synchronized till date due to the financial crunch of the applicant.
- e. It is stated that the applicant has established the mini hydel power project with great innovative concept, but due to sudden change of policy of the GoTS in the year 2015 to charge wheeling charges on such a tiny MHESs as the applicant, it was unable to generate the revenue till date (even after more than 7 years of COD), which shall be clearly shown and reflect from the applicant's latest balance sheet. The applicant submitted a representation to the 2nd respondent on 30.05.2020 requesting them to enter into PPA, considering the applicant financial problems for Rs.5/- per unit. The applicant stated that there are only three (tiny) mini hydel power projects in the Telangana State.

f. It is stated that 2nd respondent issued a letter No.CGM (IPC&RAC)/SE(IPC)/F. SREL/D.No.435/2020 dated 22.09.2020 declining the application, stating that the national policy stipulates the DISCOMs that procurement of power/PPAs should be entered through competitive bidding process, hence the applicant is constrained to file the present petition.

4. The petitioner has sought the following relief in the application as below:

“To direct the 2nd respondent to purchase the power from the petitioner on the payment of average pooled purchase cost till the Commission decides the main matter.”

5. The petitioner has filed written submissions and stated as below:

a. The Commission was pleased to pass an order in Madhucon Sugar and Power Industries in O.P.No.9 of 2021. Averments by the petitioner therein at page No.3, clause (e)

“e) that the Government of India (Gol) set up the Ministry for Non-Conventional Energy Sources (MNES) to promote and develop non-conventional energy projects and to evolve policy guidelines. Accordingly institutional mechanisms (Viz, IREDA etc..) were established and the Gol announced a policy package of incentives, which included duty concessions, tax exemptions, subsidies, concessional and promotional finance, etc.”

at page No.3, clause (f).

“That the State Governments were also required to promote and facilitate the establishment of NCE projects based on the guidelines issued by the MNES. For development of NCE projects in the composite state, the erstwhile State of AP established NEDCAP and also encouraged the establishment of NCE power projects by private enterprise. The facilitation and incentives to these power projects included sale of electricity to third parties, wheeling by the State utilities, banking of energy and purchase of electricity by the APSEB/APTRANSCO. The government of composite State of AP, keeping in view of the policy formulated and the guidelines issued by the central government for promotion and fiscal incentives, formulated incentives schemes for nonconventional sources of energy including bagasse based cogeneration plants and improved upon the same from time to time.”

at page No.4

*“Section 86(1)(e) of Act, 2003
Functions of State Commission*

(1) *The State Commission shall discharge the following functions namely:*

(e) Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources a

percentage of the total consumption of electricity in the area of a distribution license."

b. Petitioner's averments/request in the instant petition to the Commission is,

"The State Commission should provide us suitable measures for connectivity with the grid, by directing the DISCOM to enter into PPA with Rs.5.00 per unit."

As per APERC tariff order dated 9th May 2014, clause 113, para III, page no. 87, wheeling charges were exempted for mini hydro power projects. But, after bifurcation of state, as per TSERC order dated 27th March 2015, para 48 and 49, page No.50, wheeling charges were imposed on mini hydro power projects. But, the Hon'ble High Court for the Telangana State and Andhra Pradesh has stayed the above tariff order vide W.P.M.P.No.3648 of 2015 in W.P.No.2716 of 2015.

c. The petitioner further submit that the Madhucon Industries in their petition mentioned in Page No.5 the tariff policy.

"Tariff policy notified by Central Government under Section 3 of the Electricity Act, 2003 reflects the mandate under Section 86(1)(e) in Para 6.4(1), which is extracted here under:

Pursuant to the provisions of Section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of distribution licensee for purchase of energy from renewable energy sources taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall take into account while determining tariff by State Electricity Regulatory Commissions. Long term growth trajectory of Renewable Purchase Obligation (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE."

at Page No.6/7 it is also mentioned that;

"m) that in terms of Section 86 (1) (e), the Commission is required to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person.

d. In page No.12 of respondent's counter affidavit in O.P.No.9 of 2021 (Madhucon Sugar and Power Industries) it is mentioned that;

"Section 86 (Functions of State Commission) "(a), (b), (c) & (e) are important"

(1) *The State Commission shall discharge the following functions namely:*

(a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

Providing that where open access has been permitted to a category of consumers under Section 42, the State Commission

- shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*
- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*
 - (c) facilitate intra-State transmission and wheeling of electricity;*
... ..
 - (e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;*

That as submitted above, "Section 61 of the Act, 2003 confers powers to the Commission to specify terms and conditions for the determination of tariff, guided by several factors. However, the condition precedent under Section 62(1) and also Sections 86(1)(a) and 86(1)(b) mandating the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee is that there shall be a PPA subsisting between the parties for determination of tariff. Since, the respondent has no subsisting agreement with the petitioner as on date, the prayer of the petitioner seeking determination of the project specific tariff is not justified."

- e. It is further stated that several factors averred in the above paragraph are:
 - (i) Waiving of wheeling charges, imposing of wheeling charges is against encouraging small hydro power projects, ours is a tiny project, 900 kW, (less than 1.0 MW only.)*
- f. Hence, the petitioner requested the Commission to direct the respondent to enter into PPA at the rate of Rs.5/- per unit and help the unit from becoming sick and avoid closure of the project. It didn't had any revenue for the past more than 7 years.
- g. Its contention is that as on date it is having a subsisting agreement with respondent for LTOA for captive generation, but due to imposing of wheeling charges on such a tiny MHES by the Commission, which is against the spirit of developing non-conventional energy sources, the generating unit has become unviable, hence it is interested in supplying power to GoTS by entering into long term PPA with respondent at Rs.5.0 per unit. It is not interested in continuing the LTOA. It intends to sell the power to the respondent only.
- h. The respondent in O.P.No.9 of 2021 averred in page Nos.14 and 23 (c)

“(3) i) *that after bifurcation of the state, the Commission vide Regulation No.1 of 2014 adopted all regulations, decisions, directions, orders issued by the erstwhile APERC as in existence as on the date of constitution of the Commission. As per APERC tariff order dt. 9th May 2014, page no. 87, Section 113, clause III, (Wheeling charges are exempted), the extract of the regulation was inline with government policy, there shall be no wheeling charges for Non-conventional Energy generators using Wind, Solar and Mini Hydel sources.”*

But, as per TSERC tariff order dt. 27th March 2015, wheeling charges are imposed, mentioned at para 48 & 49, page no. 50 for mini hydro power projects.

i. Further in O.P.No.9 of 2021 the respondent therein page No.14, averred,

“(j) *that this commission is empowered to pass appropriate directions to the DISCOMs in case of non-fulfillment of Renewable Power Purchase Obligation and DISCOMs cannot be thrust by any party to enter into long term PPA at a tariff as demanded by the developers.”*

j. With regard to the tariff, it undertakes that it shall abide by and accept any decision made by the Commission. Further in O.P.No.9 of 2021 the respondent therein page No.15, averred as

“(n) *In light of the above, the respondent (TSNPDCL) prays this commission to grant liberty to the DISCOM to take a decision on entering into PPA with the petitioner, duly taking into consideration the power requirement of the licensee and non-solar RPPO % to be met.”*

The petitioner humbly submit that the above prayer clearly establishes that the jurisdiction and authority of Commission with regard to directing the DISCOMs to enter into PPA with the non-conventional power generators.

k. The averment/contention is that the DISCOM has not mentioned anywhere in the entire affidavit that as the NTP stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW/RDF based projects) through competitive bidding, as replied by respondent on 22.09.2020 to petitioner's request dated 30.05.2020. Nowhere, in the entire Madhucon Industries O.P.No.9 of 2021 the respondent DISCOM's affidavit has stated that "*as the National Tariff Policy stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW/RDF based projects) through competitive bidding, process only.*" Hence, the petitioner stated that the Commission can direct the DISCOM to enter into long term PPA with it.

l. Further in O.P.No.9 of 2021 the respondent therein at page Nos. 18, 19 and 20, averred as (Record of proceeding)

“5. The Commission has heard the counsel for the petitioner and the representative of the respondent. It has perused the material available on record. The submission on different dates are recorded below:

Record of Proceeding dated 29.07.2021, page no. 20, para 2

The counsel for petitioner adverted to the contentions of the respondent that the tariff cannot be determined unless there is an agreement between them and rebutted it by explaining the provisions of Sections 62, 86(1)(a) and (b) of the Act 2003. It is his case that variable cost is being determined by the Commission, this petition is limited to determination of fixed cost only. He also stated that the petitioner is a cogeneration project and the respondents (TSNPDCL) have sent a letter stating that they are willing to enter into an agreement provided the entire capacity (24.20 MW) is sold to them, which is uncalled for as it is a captive cogeneration plant.”

(The petitioner, Madhucon Industries, is ready to sell 18.50 MW to 22.20 MW only out of 24.20 MW generated)

m. Further in O.P.No.9 of 2021 the respondent therein at page No.20, averred on 29.07.2021

“The representative of the respondent stated that the petitioner had been supplying power to the DISCOMs all these years through the short term procurement process and never came forward to sign the PPA. Had the petitioner approached the DISCOM at the relevant time, the petitioner's case would have been considered. He opposed the contention that the DISCOMs are not required to enter into an agreement before the tariff is determined by the Commission by explaining the provisions of the Act 2003. It is his case that the DISCOM is willing to enter into an agreement and procure the power provided the petitioner is agreeable to sell the entire capacity (24.2 MW) of the unit.”

Based on the above, the petitioner requested the respondent to enter into PPA for the entire capacity of 900 kW (less than 1.0 MW) on 30.05.2020, but respondent on 22.09.2020 declined our request stating that as the NTP stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW/RDF based projects) through competitive bidding,

n. But, the DISCOM TSNPDCL has sent a letter to Madhucon Sugar and Power Industries willing to enter into an agreement for procuring the entire power of 24.20 MW dated 29.07.2021, without the process of competitive bidding. In fact, as per NTP for less than 1.0 MW, bidding process is not required. Therefore, the petitioner requests the commission to direct respondent to enter into PPA with Rs.5.00/unit for such a tiny plant, otherwise we shall become bankrupt and the result may end our life.

o. The petitioner further stated that the Commission in O.P.No.9 of 2021 at page No.25 (before Issue no.2) last para, observed that;

“However, the commission doesn't find it prudent to delve into the petitioner's submission that the respondent had not fulfilled RPPO, as neither material evidence has been placed by the petitioner nor the same is the subject matter of the present petition.”

The petitioner stated that renewable power purchase obligation RPPO fulfilment is the subject matter of our petition, it has mentioned in our O.P.RPPO fulfilment should be submitted by respondents not by petitioner, petitioner doesn't have the access nor the competency to submit the material for the same. It is the duty of DISCOMs to submit fulfilment of RPPO to the Commission.

p. The petitioner further stated that here is no dispute with regard to capacity, it is offering the entire capacity of 900 kW, less than 1.0 MW to enter into an agreement to sell to TSSPDCL.

q. The petitioner has relied on the case laws:

(State Commission has the Jurisdiction)

(i) Before the Appellate Tribunal for Electricity; Appeal No.310 of 2013, dated 20.11.2014

“17. Thus, these functions together with the other functions of the State Commission as laid down in Section 86 of the Act make it clear that so far as determination of tariff is concerned a power purchase agreement if to be concluded by and between a developer and a distribution licensee cannot be the final say in the matter. A power purchase agreement is always subordinate to the provisions of the Act which empowers the State Commission to determine tariff, to promote generation from renewable sources of energy, to promote competition, efficiency and economy and to ensure transparency while exercising its functions. Section 61 lays down the broad philosophy in the matter of determination of tariff.

20. No doubt, the provisions of S. 86(1)(b) permits execution of power purchase agreement between the licensee and supply with the generating companies, but the right is not absolute in as much as the Commission has the statutory duty and power to regulate electricity purchase and procurement process of distribution licensees including the price at which procurement is proposed through agreements.”

It further observed at Page no.21

“22. It is a fact. If the PPA does not take cognizance of components of tariff including capital cost and if intervening circumstances do happen, the Commission has authority to reopen PPA.”

The petitioner submitted that intervening circumstances are, imposing wheeling charges after bifurcation of State on 27.03.2015 against APERC tariff order dated 09.05.2014.

- ii. It was also observed in Appeal No.247 of 2013 and I.A.No.333 of 2013 at page No.39

“23. *Summary of Tribunal findings:*

- (i) *The findings of the Tribunal in the various cases clearly establish that the State Commission has a duty to encourage development of renewable sources of energy. The State Commission has powers to modify a concluded PPA between the distribution licensee and the generating company and revise the tariff keeping in view the circumstances of the case which are uncontrollable and revision of tariff is necessary to meet the objective of the Act and where the tariff of a renewable project agreed to between the parties is unviable resulting in closure of the power plant.”*

In the present case there is no revenue even after more than 7 years for the petitioner.

- iii. It is also observed in Appeal Nos. 90 to 93, 108 to 111 of 2006 at page No.41

“A distinction, however, must be drawn in respect of a case, where the contract is re-opened for the purpose of encouraging and promoting renewable sources of energy projects pursuant to the mandate of Section 86 (1) (e) of the Act, which requires the State Commission to promote cogeneration and generation of electricity from renewable sources of energy.”

Page Nos.42 and 43

35. *The preamble of the Act also recognizes the importance of promotion of efficient and environmentally benign policies. It is not in dispute that non-conventional sources of energy are environmentally benign and do not cause environmental degradation. Even the tariff regulations u/s 61 are to be framed in such a manner that generation of electricity from renewable sources of energy receives a boost. Para 5.12 of the National Electricity Policy pertaining to nonconventional sources of energy provides that adequate promotional measures will have to be taken for development of technologies and a sustained growth of the sources. Therefore, it is the bounden duty of the Commission to incentivise the generation of energy through renewable sources of energy. PPAs can be reopened only for the purpose of giving thrust to nonconventional energy projects and not for curtailing the incentives.”*

- iv. The Hon'ble Apex Court in Civil Appeal Nos.2926, 5940 to 5991 of 2006, 4106 of 2006, observed that;

“51. *The basic policy of both the Central as well as State Government was to encourage private sector participation in generation, transmission and distribution of electricity on the one hand and to further the objective of distancing the regulatory responsibilities*

of the Regulatory Commission from the Government and of harmonizing and rationalizing the provisions of the existing laws relating to electricity in India. The object and reasons of Electricity Act, 2003 as well as the Reform Act, 1998 are definite indicators of such legislative intent. The basic objects of these enactments were that the said Regulatory Commission may permit open access in distribution of energy as well as to decentralize management of power distribution through different bodies. The policy decisions of these constituents are to be in conformity with the object of the Act.

Thus, it is necessary that the Regulatory Commission, in view of the object, take practical decisions which would help in ensuring existence of these units rather than their extinguishment as alleged.”

- r. In view of the above facts and circumstances and as per the judgments of the Hon'ble Apex Court and Hon'ble Appellate Tribunal, considering the same the Commission may be pleased to overrule the office objection of the maintainability of the petition directing for interim PPA and tariff and consequently number the I.A.(SR) No.9 of 2021 in O.P.(SR) No.8 of 2021 and issue notice to the respondents and pass for such other orders in the interest of justice as deemed fit.
6. The respondents have filed counter affidavit and averments of the same are extracted below:
- a. It is stated that the petitioner has filed the present petition before the TSERC under Sections 62(1)(a) and 86(1)(a), (b) & (c) of the Act, 2003 read with Telangana State Electricity Regulatory Commission (Conduct of Business) Regulation No.2 of 2015 praying to direct the 2nd respondent to enter into PPA by fixing tariff per unit as Rs.5.00 and pass such other order or further orders as deem fit.
- b. It is stated that the petitioner established 0.90 MW (2x450 kW) mini hydel power project on Vemuleru Vagu (run off river) on existing anicut at Mallaialappaiah Bandam near Kalvapally village, Garidepalli Mandal, Suryapet district, Telangana State. The said project stated to have been completed in the year 2013 and synchronized to the grid on 06.11.2013.
- c. It is stated that also the case of the petitioner that it entered into LTOA on 05.02.2014 with the then APCPDCL (present TSSPDCL) for the purpose of wheeling energy to its consumers M/s Vamshi Rubber Limited, M/s Santhoshima Parboiled Modren Rice Mill, M/s Sri Sai Pavan Industries

Private Limited and M/s Vaishnavi Food Products Private Limited availing transmission and wheeling services provided by respondents 2 and 3/TRANSCO and DISCOM up to 30.10.2023 from the petitioner at 11 kV under captive purpose.

- d. It is stated that for convenience Sections 62(1)(a) and 86(1)(a), (b) & (c) of the Act, 2003 are extracted below:

Section 62 (Determination of Tariff): (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for

—

- (a) *Supply of electricity by a generating company to a distribution licensee:*

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

Section 86 (Functions of State Commission): (1) The State Commission shall discharge the following functions, namely:-

- (a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retails, as case may be, within the State :*

Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for said category of consumers;

- (b) *regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state;*

- (c) *facilitate intra-state transmission and wheeling of electricity;*

- e. It is stated that Section 61(1)(h) which is as stated below:

Section 61 (Tariff Regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely :-

... ..

- (h) *the promotion of co-generation and generation of electricity from renewable sources of energy;*

- f. It is stated that it becomes very much clear from the perusal of Section 62(1) and also Section 86(1)(b) is that subsistence of PPA between the parties is a condition precedent for determination of tariff.

- g. It is stated that Section 62(1) of the Act, 2003 mandates the Commission to determine the tariff for supply of electricity by a generating company to a

distribution licensee in pursuance of an agreement. Admittedly there is no agreement between the petitioner and 2nd respondent for purchase of power, the relief sought by the petitioner in regard to fixing of tariff becomes premature and hence not maintainable.

- h. It is stated that the petitioner cannot compel the respondent No.2 to purchase the energy/power generated by it. The Indian Contract Act, 1872 postulates that agreements are to be entered by the competent parties with free will, consent and without force and coercion. The agreements entered due to force and coercion are void. It is, therefore, stated that the petitioner cannot mount pressure on the respondent No.2 to enter PPA.
- i. It is stated that neither the provisions of the Act, 2003 nor the NTP obligate DISCOMs to purchase power without taking the requirements and policies/regulations into consideration.
- j. It is stated that an appropriate decision for procurement of power by the DISCOM through the project of the petitioner would have to be taken based on the load generation balance coupled with by following the relevant regulations in force.
- k. It is stated that in fact, clause 6.4(2) of the NTP notified by the Gol exercising power under Section 3 of the Act, 2003 directs that the states shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants.
- l. It is stated that the Commission may be pleased to appreciate the fact that the respondent No.2 cannot be compelled to enter into PPA with the petitioner. In view of the submissions made above coupled with the provisions of the Act, 2003, the petition under reply is liable to be dismissed.
- m. It is stated that the para-wise reply to the contentions of the petitioner is stated below:
 - i. It is stated that entering into LTOA is the business choice of the petitioner. The orders of the Commission are issued duly following the provisions stipulated in the Act, 2003 and the tariff order quoted is not specific to the petitioner alone. In fact, it is applicable to all the mini hydel generators of the state. Objections if any have to be put forth before the Commission during the process of determination of the tariff.
 - ii. It is stated that the decision to enter into PPA with any power developer is the sole discretion of the respondents governed by the power requirements of the State duly considering the existing policies and regulations in force.

- iii. It is stated that the respondent No.2 cannot be compelled to enter into PPA for procurement of power through the petitioner project. Also, respondents are bound to honour the NTP.
- iv. It is stated that the Commission issued RPPO Regulation No.7 of 2022 on 01.04.2022 mandating every obligated entity (including respondents) to purchase from renewable energy sources a minimum quantum (in Kwh) of electricity expressed as a percentage of its total consumption of energy, during FY 2022-23 to FY 2026-27. The same is specified below:

Year/RPPO	2022-23	2023-24	2024-25	2025-26	2026-27
Solar	7.50	8.00	9.00	10.00	11.00
Non-solar	1.00	1.25	1.50	1.75	2.00
Total	8.50	9.25	10.50	11.75	13.00

- v. It is stated that it is pertinent to submit that the DISCOMs have been complying the total RPPO targets mandated by the Commission. The DISCOMs are not yet mandated to comply with the higher RPPO targets fixed by Ministry of New and Renewable Energy (MNRE)/MoP. As such, the petitioner cannot compel the respondent to enter into PPA on the pretext of achievement of RPPO targets.
- vi. It is stated that entering into a long term PPA with generators by DISCOMs is a commercial proposition for which the cost benefit analysis has to be done. Earlier to encourage NCE sources, cost plus methodology was approved but the NTP mandates the procurement of power from RE sources except waste to energy projects on competitive bidding route. On this ground alone, the Commission may decline the prayer of the petitioner.
- vii. It is stated that the provisions from the NTP dated 28.01.2016 quoted by the petitioner are misinterpreted and the same does not apply to the mini hydel project of the petitioner. The quoted provisions are meant for the hydro-electric projects. As a matter of fact, CERC issues separate RE tariff regulations applicable for the renewable energy projects, which act as the guiding principles for issuance of RE tariff regulations by the State Commissions.
- viii. It is stated that clause 6.4(2) of the NTP resolution dated 28.01.2016 also mandates that,
“States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants”.
 As such, quoting a part of the provision is incorrect, unethical and amounts to misguiding the Commission.
- ix. *It is stated that the petitioner without referring to any provision of the applicable law, rules and regulations, vaguely states that the Commission has got ample powers to determine the tariff for supply of electricity by a generating company.*
- x. *It is stated that in fact, Sections 62(1)(a) and 86(1)(b) of the Act, 2003 mandates that there shall be a subsisting PPA between the parties for determination of tariff. Since there is no subsisting PPA between the parties, the determination of tariff for the project of the petitioner does not arise.*
- xi. *It is stated that the NTP mandates the State DISCOMs for procurement of power through competitive bidding process for achieving economical*

tariffs. The tariff regime has changed for procurement of RE power from cost plus methodology to competitive bidding route and it is the prerogative of the DISCOMs to procure RE power as per their requirement considering cost optimization.

- xii. *It is stated that clauses 5.5 & 5.6 of NTP 2016 referred by the petitioner are not related to the mini hydel power projects and are meant for the hydro-electric projects. Respondents cannot be blamed for the financial crunch of the mini hydel power projects.*
 - xiii. *It is stated that it is the prerogative of the DISCOMs to take decision for initiating competitive bidding process for procurement of power through mini hydel power projects which is governed by the power purchase requirements and existing policies/regulations.*
 - xiv. *It is stated that the respondents are obliged to adhere to the various policies/regulations issued by the Commission. The DISCOMs are also mandated to comply with the RPPO targets fixed by the Commission. However, setting up of mini hydel power project and its operation is the business choice of the petitioner and the respondents cannot be made responsible for operation of the project.*
 - xv. *It is stated that the petitioner having commissioned mini hydel project in the year 2013, having applied for grant of open access and having entered into LTOA agreement with the then APCPDCL on 05.02.2014 up to 30.10.2023, the petitioner approached the respondents during the year 2020, after about seven years of commissioning of the project, requesting to entering into PPA. The respondents acted on the representation duly considering the provisions of the NTP. The order dated 07.03.2007 in O.P.No.2 of 2007 of the erstwhile APERC referred by the petitioner is irrelevant and hence cannot be made applicable to the present petition. The said petition was filed by a mini hydel developer viz., M/s Balaji Energy Private Limited before APERC seeking consent of the Commission to enter into a PPA entered by them with APTRANSCO. The facts and circumstances of the cited case are different and distinguishable from the facts of the present petition. In the said order, taking note of the fact that there exists a concluded PPA between the parties, pending consent the Commission allowed the mini hydel developer to utilize the water for power generation and APTRANSCO was permitted to purchase the same. But, in the present case there is no such existence of PPA.*
 - n. Hence it is prayed that the Commission to dismiss the petition and to pass any other order or orders as the Commission may deem fit and proper in the circumstances of the case.
7. The respondents have also filed counter affidavit in the Interlocutory Application filed by the petitioner and the averments of the same are extracted below:
- a. It is stated that the petitioner has filed the application vide I.A.No.45 of 2022 in O.P.No.58 of 2022 praying the Commission to direct the respondent to purchase the power from the petitioner on the payment of average pooled

purchase cost till the Commission decides the main matter and pass such other order or further orders as deem fit.

- b. It is stated that the petitioner established 0.90 MW (2x450 kW) mini hydel power project on Vemuleru Vagu (run off river) on existing anicut at Mallaiappaiah Bandam near Kalvapally village, Garidepalli mandal, Suryapet district, Telangana State. The said project stated to have been completed in the year 2013 and synchronized to the grid on 06.11.2013.
- c. It is stated that the petitioner entered into long term open access agreement (LTOA) on 05.02.2014 with the then APCPDCL (present TSSPDCL) for the purpose of wheeling energy to its consumers M/s Vamshi Rubber Limited, M/s Santhoshima Parboiled Modren Rice Mill, M/s Sri Sai Pavan Industries Private Limited and M/s Vaishnavi Food Products Private Limited by availing transmission and wheeling services provided by respondents 2 and 3 up to 30.10.2023 from the petitioner at 11 kV under captive purpose.
- d. It is stated that entering into a long term PPA with by generators with DISCOMs is a commercial proposition for which the cost benefit analysis has to be done.
- e. It is stated that earlier to encourage NCE sources, cost plus methodology was approved but the NTP, 2016 mandates the procurement of power from RE sources except waste to energy projects shall be done through the route of competitive bidding. On this ground alone, the Commission may decline to grant the relief sought by the petitioner.
- f. It is stated that the present RPPO stipulated vide Regulation No.7 of 2022, mandates every obligated entity to purchase from renewable energy sources a minimum quantum (in kWh) of electricity expressed as a percentage of its total consumption of energy, during FY 2022-23 to FY 2026-27 as specified below:

Year/RPPO	2022-23	2023-24	2024-25	2025-26	2026-27
Solar	7.50	8.00	9.00	10.00	11.00
Non-solar	1.00	1.25	1.50	1.75	2.00
Total	8.50	9.25	10.50	11.75	13.00

- g. It is stated that TSDISCOMs have been fulfilling the RPO as mandated by the Commission and any instances of non-fulfilment of the same would be dealt in accordance with the extant RPPO regulations.
- h. It is stated that the Section 62 mandates that the appropriate Commission shall determine the tariff for supply of electricity by a generating company to a distribution licensee in pursuance of an agreement (PPA). Since there i

allegations/contentions s no subsisting PPA with the petitioner, the relief sought by the petitioner to direct respondent No.2 to purchase the energy with payment of average pooled purchase cost becomes untenable and hence liable to be rejected.

- i. Hence, it is prayed the Commission to dismiss the being devoid of merits.
8. The petitioner has filed rejoinder and averments of the same are extracted below:
- a. It is stated that all the allegations/contentions raised by the respondents are incorrect , false, baseless and contrary to the ground reality, hence all the said averments are denied and the respondents are to be put for strict proof of the same. It is stated that which are specifically admitted herein are true and correct.
 - b. It is stated that the Government of India (Gol) set up the Ministry for Non-Conventional Energy Sources (MNES) to promote and develop NCE projects and to evolve policy guidelines. Accordingly, institutional mechanism (viz., IREDA, etc.) were established and the Gol announced a policy package of incentives, which include duty concessions, tax exemptions, subsidies, concessional and promotional finance, etc.
 - c. It is stated that the State Governments were also required to promote and facilitate the establishment of Non-Conventional Energy (NCE) projects based on the guidelines issued by the MNES. For development of NCE projects in the composite State, the erstwhile State of AP established NEDCAP and also encouraged the establishment of NCE power projects by private enterprise. The facilitation and incentives to these power projects included sale of electricity to third parties, wheeling by the State Utilities, banking of energy and purchase of electricity by the APSEB/APTRANSCO. The Government of composite State of AP, keeping in view of the policy formulated and the guidelines issued by the Central Government for promotion and fiscal incentives, formulated incentives schemes for non-conventional sources of energy including bagasse based cogeneration plants and improved upon the same from time to time.

Section 86(1)(e) of Act, 2003

Functions of State Commission

- (1) *The State Commission shall discharge the following functions namely:-*

- (e) *Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources a percentage of the total consumption of electricity in the area of distribution licensee.*

It is stated that the State Commission may provide suitable measures for connectivity with the grid, by directing the DISCOM to enter into PPA at the tariff of Rs.5.0 per unit which is just and reasonable.

- d. Tariff policy notified by Central Government under Section 3 of the Electricity Act, 2003 reflects the mandate under Section 86(1)(e) in para 6.4(1), which is extracted hereunder:

“Pursuant to the provisions of Section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of distribution licensee for purchase of energy from renewable energy sources taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall take into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligation (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.”

Thus, it is submitted that in terms of Section 86(1)(e), the Commission is required to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and also ensure procurement of power from sources like the petitioner.

- e. It is stated that Section 56 (Functions of State Commission) (a),(b),(c) & (e) are important.

- (1) *The State Commission shall discharge the following functions namely:*
 - (a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*
Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said consumers.
 - (b) *regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

The Commission has ample powers to regulate the power purchase, directing TSSPDCL to enter into PPA with the petitioner including the price. It is therefore

requested that the Commission to kindly understand that “Regulate Electricity purchase” from renewable energy generators has a wider meaning including power purchase agreements and the price.

- f. It is stated that the entire capacity of 900 kW is available less than 1.0 MW to enter into an agreement to sell to TSSPDCL. It is stated that the petitioner has requested the respondent No.2 to enter into PPA for the entire capacity of 900 kW on 30.05.20-20, but TSSPDCL on 22.09.2020 declined stating “*as the National Tariff Policy stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW/RDF based projects) through competitive billing*” It is unbecoming of a licensee to stall a renewable source and that too of small capacity of less than 1 MW in the guise of policy. At the same time, it is not known how and what circumstances in O.P.No.9 of 2021 dated 09.09.2021 before the Commission, its sister TSNPDCL has sent a letter to Madhucon Sugar and Power Industries willing to enter into an agreement for procuring the entire power of 24.20 MW dated 29.07.2021, without the process of competitive bidding.
- g. It is stated that in fact, as per national tariff policy for less than 1.0 MW, bidding process is not required, since the minimum capacity requirement for participating in the competitive bidding process is 1.0 MW. Therefore, it is prayed that the Commission to direct respondent No.2 to enter into PPA with Rs.5.0/unit for such a tiny plant, otherwise the petitioner will become bankrupt and result in becoming insolvent.
- h. It is stated that the licensee has failed to show whether it has fulfilled the RPPO. The petitioner doesn't have the access nor the competency to submit the material for the same. It is the duty of DISCOMs to submit fulfilment of RPPO(Renewable Power Purchase Obligation) trajectory to the Commission. It is stated that in the case decided by the Hon'ble High Court of Karnataka at Bengaluru “*Antharangange Power Private Limited (Petitioner) & The State of Karnataka & Others*” in clause 5(ii) has observed:

It is mandatory to purchase a minimum quantity of electricity from Renewable Source of energy as fixed by the State Commission fixed for the particular year and does not prohibit purchase of Renewable Source of Energy by the distribution licensee beyond the minimum threshold fixed by the Commission.

Thus, the Commission may consider the case for supporting the contention of the petitioner.

- i. It is stated that the Hon'ble ATE in Appeal No.310 of 2013 vide order dated 20.11.2014 and likewise in Appeal No.247 of 2013 and I.A.No.333 of 2013 has held as below:

17. *Thus, These functions together with the other functions of the State Commission as laid down in Section 86 of the Act make it clear that so far as determination of tariff is concerned a power purchase agreement if to be concluded by and between a developer and a distribution licensee cannot be the final say in the matter. A power purchase agreement is always subordinate to the provisions of the Act, which empower the State Commission to determine tariff, to promote generation from renewable sources of energy, to promote competition, efficiency and economy and to ensure transparency while exercising its functions. Section 61 lays down the broad philosophy in the matter of determination of tariff.*

20. *... .. No doubt, the provisions of Section 86(1)(b) permits execution of power purchase agreement between the licensee and supply with the generating companies, but the right is not absolute in as much as the Commission has the statutory duty and power to regulate electricity purchase and procurement process of distribution licensees including the price as which procurement is proposed through agreements.*

22. *It is a fact If the PPA does not take cognizance of components of tariff including capital cost and if intervening circumstances do happen, the Commission has authority to reopen PPA.*

23. *Summary of Tribunal findings:*

(i) *The findings of the Tribunal in various cases clearly establish that the State Commission has a duty to encourage development of renewable sources of energy. The State Commission has powers to modify a concluded PPA between the distribution licensee and the generating company and revise the tariff keeping in view the circumstances of the case which are uncontrollable and revision of tariff is necessary to meet the objective of the Act and where the tariff of a renewable project agreed to between the parties is unviable resulting in closure of the power plant.*

- j. It is stated that in the case of the petitioner there is no revenue even after more than 9 years, despite making large investment.

- i. It is stated that the Hon'ble ATE has held in Appeal Nos.90 to 93, 108 to 111 of 2006 as below:

35. *The preamble of the Act also recognizes the importance of promotion of efficient and environmentally benign policies. It is not in dispute that non-conventional sources of energy are environmentally benign and do not cause environmental degradation. Even the tariff regulations u/s 61 are to be framed in such a manner that generation of electricity from renewable sources of energy receives a boost. Para 5.12 of the National Electricity Policy pertaining to Non-conventional sources of energy*

provides that adequate promotional measure will have to be taken for development of technologies and a sustained growth of the sources. Therefore, it is the bounden duty of the Commission to incentivise the generation of energy through renewable sources of energy.

k. It is stated that the Hon'ble Supreme Court of India in Civil Appeals Nos.2926, 5940 to 5991 of 2006, 4106 of 2006 has held that

51. *The basic policy of both the Central as well as State Government was to encourage private sector participation in generation, transmission and distribution of electricity on the one hand and to further the objective of distancing the regulatory responsibilities of the Regulatory Commission from the Government and of harmonising and rationalizing the provisions of the existing laws relating to electricity in India. The object and reasons of the Electricity Act, 2003 as well as the Reform Act, 1998 are definite indicators of such legislative intent. The basic objects of these enactment were that the said Regulatory Commission may permit open access in distribution of energy as well as to decentralise management of power distribution through different bodies. The policy decisions these constituents are to be in conformity with the object of the Act. Thus, it is necessary that the Regulatory Commission, in view of the object take practical decisions which would help in ensuring existence of these units rather than their extinguishment as alleged.*

l. It is stated that in view of the above, the Commission may be pleased to set aside the respondents No.2 impugned letter dated 22.09.2020 as there are no merits in the submission of the respondents in pursuance of the Hon'ble Apex Court and Hon'ble ATE Judgments.

m. It is stated that in view of the above said facts & circumstances that the Commission may be pleased to allow the O.P. by directing the respondent No.2 to purchase the power generated by the petitioner at the rate of Rs.5.0/unit and pass such other order or further orders as the Commission may deem fit and proper in the circumstances of the case in the interest of justice.

9. The petitioner has made representations to the TSGENCO and TSSPDCL vide their letters dated 24.09.2022, 16.11.2022, 30.11.2022 for a tariff of Rs.5.0/unit. Whereas with references to the Record of Proceeding of the Commission dated 12.09.2022 and the petitioner representation dated 30.11.2022, the respondent No.2 vide letter dated 29.12.2022 has offered a tariff of Rs.2.15/kWh (inclusive of all taxes, duties & other levies if any) towards purchase of power from the petitioner 0.9 MW mini hydel power plant.

10. Subsequently, the petitioner has made several representations to the TSGENCO and TSSPDCL vide their letters dated 02.01.2023, 28.01.2023,

17.03.2023, 24.04.2023 and 05.06.2023 to purchase the power generated at average pooled power purchase cost of Rs.4.50/kWh (APPC rate determined by the Commission for FY 2021-22 with 10% escalation per year.

11. The Commission has heard the counsel for the petitioner and perused the material available on record. The submissions made on the relevant days of hearing are briefly extracted below:

Record of proceedings dated 22.08.2022:

“... .. The counsel for petitioner stated that the counter affidavit is yet to be filed by the respondents. The representative of the respondents stated that the counter affidavit had already been filed and a copy of the same has been sent to the party. The Commission pointed out that the counter affidavit had been filed earlier, as such a copy of the same may be collected from the office of the Commission. The counsel for petitioner has requested for granting time to file rejoinder, if any. Accordingly, the matter is adjourned.”

Record of proceedings dated 12.09.2022:

“... .. The counsel for petitioner stated and explained in detail the issues involved in this petition. She pointed out the observations of the Hon'ble ATE and Hon'ble Supreme Court as mentioned in the rejoinder filed by the generator. She pleaded that a small project needs consideration at the hands of the licensee while narrating the sequence of the events why the generator had approached the Commission. She also stated that subsequent to the refusal of the case of the petitioner by the licensee, which is challenged in this petition, the licensee took a different stand in another matter and such contradicting stands by the licensee are uncalled for.

The Commission pointed out that it is a small hydro project and needs consideration. The representative of the respondents sought to highlight the provisions of the Act, 2003 and also the policy notified thereof. He also stated that the petitioner is not firm in his commitment and is seeking very high tariff, which may not be suitable to the respondents. The Commission was not satisfied with the submissions of the representative of the respondents. Considering that it is a renewable source, being a capacity of less than 1 MW and in view of the observations made by the superior fora, sought to observe that the matter may be negotiated between the parties amicably. It is also observed that the tariff sought in the petition may not be appropriate, but the said aspect also needs to be considered appropriately. To facilitate the above observations and enabling the parties to hammer out a solution to the issue, the matter is adjourned.”

Record of proceedings dated 17.10.2022:

“... .. The representative of the petitioner stated that the matter has been discussed with the respondent and the discussion is inconclusive. The representative of the respondent stated that the matter has been referred to the coordination committee of the licensee and a decision is awaited. In view of the position stated above, the matter is adjourned.”

Record of proceedings dated 21.11.2022:

“... .. The representative of the petitioner stated that though efforts have been made to arrive at a solution, the officers of the licensee have not yet conveyed

their views in the matter. The representative of the respondents stated that the matter may be adjourned by a month as the officers concerned are involved in the proceedings on service matters before the Hon'ble Supreme Court and they would take steps shortly to mitigate the grievance and report developments on the next date of hearing. The Commission required effective steps to be taken in the matter and also report the same to the Commission by 15.12.2022. The Commission will hear the matter finally on the next date of hearing. Accordingly, the matter is adjourned."

Record of proceedings dated 12.01.2023:

"... .. The counsel for petitioner stated that efforts are made to settle the issue and the proposals for tariff have been given. However, the licensee proposed very least tariff of Rs.2.15 per unit. The petitioner made further representation that the licensee may consider allowing pooled cost as determined by the Commission. The representative of the respondents stated that the proposals are received only recently and the matter is placed before the Coordination Committee. Necessary action will be taken based upon the decision of the Coordination Committee, which is awaited. The Commission emphasized that appropriate decision be taken at the earliest time by considering the issue of tariff in respect of the petitioner's project, which is of small capacity. The matter is adjourned to place the decision in the matter before the Commission."

Record of proceedings dated 04.04.2023:

"... .. The counsel for petitioner stated that the petitioner had made efforts to resolve the matter with the licensee and also proposed a revised rate of payment of average pooled cost as determined by the Commission. However, even this proposal was not acceded to by the licensee. The representatives of the petitioner have been making efforts to speak to the Chairman and Managing Director of the licensee as also the Chairman of the Power Coordination Committee. But, their efforts are in vain. The representative of the petitioner who was also present in the hearing, stated that for the past 8 years the petitioner has not been able to earn anything out of the project. Earlier, it had undertaken third party sale by availing open access, but that also became unremunerative, as such it was discontinued. He stated that huge expenditure had been made on establishment and are continuing to make the same for the purpose of payment of wages and other expenses. Also, whenever renewable source is available, power has been generated and injected into the grid. Even that amount is not being considered for payment. The counsel for petitioner requested that arguments may be heard in the matter on the next date of hearing due to her inability to submit the arguments on account of personal inconvenience. The representative of the licensee emphatically made it clear that the respondent is not inclined to procure power from the generating unit. In view of the prevailing situation and as requested by the counsel for petitioner, the matter is adjourned."

Record of proceedings dated 24.04.2023:

"... .. The counsel for petitioner stated that the respondent/DISCOM is not forthcoming to settle the issue. Therefore, the petitioner is making a fresh representation to the DISCOM as well as Chairperson of the coordination committee. The representative of the respondents stated that the matter will be referred to the coordination committee and a decision will be communicated. The Commission also observed that efforts may be made to settle the issue

amicably. In view of the submission of fresh representation, the matter is adjourned.”

Record of proceedings dated 05.06.2023:

“... .. The counsel for petitioner stated that despite the observations of the Commission to conciliate in the matter, no progress could be made as the parties have stuck to their stand. On being asked, the representative of the DISCOM stated that no headway is made despite the matter being referred to the coordination committee. The rate offered still stands at the same point as was there at the last hearing. The counsel for petitioner gave a copy of further representation to the DISCOM GENCO. The counsel for petitioner sought a short date for arguing the matter. Accordingly, the matter is adjourned.”

Record of proceedings dated 22.06.2023:

“... .. The representative of the petitioner sought further time to appraise the Commission about any development in the matter. The Commission observed that the matter is going on for long time and no concrete action is coming forth, hence it is not inclined to grant any adjournment. The representative of the respondents stated that the view of the respondents is made clear in the earing hearings itself. In view of the above, the matter is reserved for orders.”

12. The issue that arises for consideration in this petition is that -

'Whether the petition is entitled to the relief as prayed for?'

13. The petitioner in this case is a small hydro project of the capacity of 0.90 MW (2x450 kW) located at Vemuleru vagu (run off river) on existing Anicut at Mallaialappaiah Bandam near Kalvapally village, Garidepalli mandal, Suryapet district in the Telangana State.

14. The project was originally conceived to serve either captive use or third party consumers through open access and for that purpose it had also availed LTOA. At present, it is contended that due to several factors it is not able to undertake the generation of power and serve the captive or third-party consumers. Therefore, by the present petition it is seeking directions to the licensee to enter into PPA by determining tariff under the provisions of Act, 2003.

15. While submitting the arguments on the petition the counsel for the petitioner had relied on the orders of Hon'ble ATE as also the Hon'ble Supreme Court. Reference has been made to Civil Appeal No.2926/2006 decided on 08.07.2010 by Hon'ble Supreme Court and Appeal No.310/2013 decided on 20.11.2014 by Hon'ble ATE.

16. The counsel for petitioner extensively quoted from the NTP and the growth trajectory notified by the MoP apart from relying on the order of the Commission in O.P.No.9 of 2021.

17. The Commission appreciated the above contentions in the context of the provisions of the enactments and regulations applicable in the facts and circumstances of the case. Section 21(4) of the Reform Act, 1998 and Section 86(1)(b) of the Act, 2003 governing the aspect of power purchase and procurement by the licensees. The above said provisions provide for the mechanism of considering the power purchasers by the licensees and consequences thereof. It is appropriate to notice the Section 21(4) of the Reform Act, 1998 and Section 86(1)(b) of the Act, 2003. The same are extracted below:

“21: Restrictions on licensees and Generating Companies

... ..

- (4) *A holder of a supply or transmission licence may, unless expressly prohibited by the terms of its licence, enter into arrangements for the purchase of electricity from, -*
- (a) *the holder of a supply licence which permits the holder of such licence to supply energy to other licensees for distribution by them; and*
 - (b) *any person or Generating Company with the consent of Commission.”*

“86. Functions of State Commission (1) The State Commission shall discharge the following functions, namely: -

(a)

- (b) *regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through 46 agreements for purchase of power for distribution and supply within the State.”*

A conjoint reading of the above said provisions would emphatically make it clear that the Commission is required to regulate the power procurement through agreements and price that is required to be paid by the licensee. In both the provisions, the emphasis is laid on the licensees' actions and not of the generator or any other stakeholder. In fact, the Reform Act would lay emphasis that any agreement for procurement of power by the licensee if not consented by the Commission would stand to be void. Therefore, onus is on the licensee to enter into agreement, to obtain consent as also the price at which such power is to be procured by it.

18. The Commission would take judicial notice of the fact that the provisions of the Regulation No.7 of 2022 being the Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificate) Regulation, 2022 to claim that the licensee should procure power from the generator and that the Commission has authority to direct the licensee to procure the same under this regulation. It has to be stated here that clause 3(7) of the said regulation is only enabling provision that the licensee shall procure 100% capacity of the renewable source based projects and clause 11 thereof is a provision relating to giving effect to the provisions of the regulations if found necessary with regard to the implementation thereof. The said provisions neither support nor aid to the case of the petitioner.

19. It is appropriate to state that the licensee has to bring forth before the Commission procurement from renewable sources as is required to comply with the provisions of the regulations and it is not for the Commission to direct the licensee to facilitate itself to procure such renewable sources capacity. In the instant case also, it is for the licensee to bring forth the necessary agreement for procurement of power from the generator, the only liberty being that it can directly contract for the capacity without resorting to competitive bidding, as it is small hydel power project.

20. Section 86 (1) (e) of the Act, 2003 and NTP do provide for procurement of power from the renewable sources of energy. However, it is subject to the policy notified by the Government and regulations made by the Commission. At the same time, the Commission cannot upon the request of the generator step-in to direct procurement of the same.

21. The petitioner has extensively quoted from the order of the Commission in O.P.No.9 of 2021 filed by M/s Madhucon Sugar and Power Industries Limited. However, it may be appropriate to notice the relevant portions of the order, which is extracted below:

“9. *Section 86(1)(b) of the Electricity Act, 2003 empowers the Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.*

... ..

12. *Section 86(1)(e) of the Electricity Act, 2003 mandates promotion of cogeneration and generation of electricity from renewable sources by providing suitable measures for connectivity with the grid and sale of electricity to any person, 25 of 25 and also to specify, for purchase of electricity from such sources a percentage of the total consumption of electricity in the area of a distribution license. The Commission, in fulfilment of this mandate, had issued the Regulation No.2 of 2018 wherein the RPPO had been specified for the Obligated Entities (including respondent), for the period from FY 2018-19 to FY 2021-22. The Commission finds merit in the petitioner's submission that RPPO specifies the minimum quantity (in kWh) of electricity to be purchased from NCE sources.*

The Commission is on record as to the interpretation of the provisions of the Act, 2003 and the authority that is vested in it. However, the Commission cannot go beyond the authority as mandated by the Act, 2003. In this regard, it had further observed in the above said order as extracted below:

- "13. The respondent being a distribution licensee is empowered to purchase required energy for distribution and retail supply in accordance with the regulations, guidelines, directions issued by the Commission from time to time, which shall further be subject to approval of the Commission. A power purchase agreement (PPA) contains provisions related to commercial, technical, tariff and other related matters and therefore it is the exclusive domain of the respondent to take decisions on entering into PPA for availing the required power. In the petitioner's case, the Commission finds that there is a fundamental disagreement between the petitioner and respondent on the capacity itself. Essentially what emerges from the submission is that the parties are seeking adjudication, without even having PPA between themselves, which is unwarranted."*

It is, thus, clear that the Commission is of the considered view unless the licensee takes steps to enter into an agreement, this Commission cannot, of its own accord or at the instance of the petitioner, require the licensee to enter into agreement for procurement of power. As such, no relief can be considered in favour of the petitioner.

22. The Commission is also required to consider the provisions made by it with regard to procurement of power by the licensee in the Regulation No.4 of 2016 being "Distribution Licence" Regulation, 2016. The provisions made in the said regulation need to be appreciated as extracted below:

- "35. Power Procurement Procedure:
35.1 The Licensee shall purchase electricity from generators, traders and others as consented to by the Commission (except in cases of emergency purchases as per the relevant guidelines) in quantities which the Licensee considers sufficient to meet the expected demand of the Licensee's Consumers, or where appropriate, such lesser quantities*

generators, traders and others are able to provide on account of shortage of available sources of electricity generations, imports or supply.

- 35.2 The licensee shall not purchase electrical capacity and/or energy without an authorization granted by the Commission. The power procurement of licensee shall be consistent with the detailed power procurement plan submitted to the Commission as a part of resource plan.
- 35.3 The licensee shall purchase electrical capacity and/or energy in an economical and efficient manner and under a transparent power purchase or procurement process and in accordance with the Regulations, directions, guidelines and orders made for the purpose by the Commission from time to time. In case of purchase of additional power over and above the power procured through the Power Purchase Agreements (PPA) consented to by the Commission, the licensees shall adopt competitive bidding method as per the competitive bidding guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act, and seek approval of the Commission for such procurement.
- 35.4 In case of purchases of allocated share of electrical capacity and/or energy from the Central Sector generation and inter-utility exchanges of electrical capacity and/or energy from other/Regional Electricity Boards, such processes as are stipulated by the Central Electricity Regulatory Commission shall also be complied with in addition to the directions and orders of the Commission.
- 35.5 An authorization required under clause 35.1 shall be granted when the Licensee has demonstrated to the Commission's satisfaction that (a) the additional electrical capacity and/or energy is necessary to meet the Licensee's service obligation in accordance with Rule 24 of this regulation; and (b) The licensee has examined the economic, technical, system and environmental aspects of commercially viable alternatives to the proposals for purchasing additional electrical capacity and/or energy and such examination has been carried out in a manner approved by the Commission.
- 35.6 The restriction imposed in clauses 35.1 and 35.2 of this Rule shall not be applicable for short term purchases (less than one year in duration), provided that such short-term purchases are to be made in accordance with guidelines, if any, issued by the Commission.
Provided that the Commission may fix with in the maximum and minimum process for such purchase in terms of Section 62(1) of the Act. Provided further that the details of such purchases shall be submitted to the Commission in the manner the Commission directs.
- 35.7 Where the licensee proposes to procure power by a process different from that specified by the competitive bidding guidelines, it shall in its filing seek the consent of the Commission.”

From the above provision, it is clear that the licensee has to approach the Commission for procurement of the capacity and the Commission will examine the need and necessity for such procurement of power before the licensees are allowed to procure

the same. Therefore, the present petition cannot be entertained as it is from a generator to direct the licensees to procure the capacity of power at their instance.

23. The petitioner in its written submissions had enclosed an order passed by the Hon'ble High Court of Karnataka in W.P.No.11333 of 2022 (GM-KEB) between '*Antharagange Power Private Limited Vs. The State of Karnataka and others*'. The said judgment has no bearing on the facts of the case, as the Commission is now considering the request of the petitioner to direct the power procurement, which is not the case in the said judgment. In the said judgment, the Commission had already refused to entertain the request of the licensee to procure power as it has not shown the justification for procurement of the same.

24. At the instance of the Commission, the petitioner had time and again addressed letters to the respondent No.2 herein as well as TSGENCO. It is seen that despite such number of letters to the respondent No.2, which were in continuation of the proceedings before the Commission and where the representative was very much present, no response has been given to the petitioner conveying their view. As noticed from the submissions, the parties could not hammer out any solution with regard to the price to be paid by the licensee to the petitioner. In these circumstances, the Commission cannot improve upon the situation beyond the authority vested to it under the Act, 2003 and the regulations. However, if there is a PPA between the parties for purchase of power, the Commission could have determined the tariff under Section 62 of the Act, 2003.

25. Considering all the provisions and the interpretation thereof, the Commission is not inclined to consider the prayer of the petitioner in the petition. Accordingly, the petition is dismissed, but in the circumstances, there will be no costs. Consequently, nothing survives in the interlocutory application and is accordingly closed.

This order is corrected and signed on this the 19th day of July, 2023.

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