



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

I. A. No. 21 of 2017

in

O. P. No.6 of 2017

Dated 30.11.2017

Present

Sri. Ismail Ali Khan, Chairman

Sri. H. Srinivasulu, Member

Between:

M/s. Mytrah Vayu (Godavari) Private Limited,
Registered Office: 8001, Q – City, S. No. 109,
Nanakramguda, Gachibowli,
Hyderabad – 500 032

... Applicant /
Petitioner in O. P. No. 6 of 2017.

And

1. M/s. Southern Power Distribution Company of
Telangana Limited, 6-1-50, Mint Compound,
Hyderabad – 500 063.

2. M/s. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.

... Respondents.

This petition came up for hearing on 16.11.2017. Sri. Hemanth Sahani, Senior Advocate alongwith Ms. Mazag Andrabi, Advocate for Sri. Challa Gunaranjan, Advocate for the applicant and Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate are present on 16.11.2017. The application having stood for consideration to this day, the Commission passed the following further:

ORDER

The petitioner has originally filed O. P. No. 6 of 2017 seeking the relief as prayed therein. As the petitioner is not in respect of the amount towards power supplied, it filed the present petition.

2. The petitioner has sought the following prayer in this application.

“In light of the averments made under the present application read with the petition, it is most humbly prayed that this Hon’ble Commission be pleased to: ‘Direct the respondents to release the withheld payments to the tune of Rs. 21.75 crores immediately and to pay the monthly power purchase bills regularly in terms of PPA dated 26.03.2015 as amended on 03.12.2016 till the Hon’ble Commission gives suitable directions to the Respondent No. 1 on the O. P. No. 06 of 2017 filed by petitioner’.”

3. The application was earlier heard by us on 20.06.2017 and we had passed an order on 29.06.2017 on the following lines.

“Considering the submissions of the rival parties, the licensee is directed to release the payment of 75% of the amounts due to the applicant from January, 2017 to May, 2017 subject to the PPA to be scrutinized and consented by the Commission as well as the issue pending in this petition.”

Subsequently, the respondent licensee filed the PPA for consent and after examining it, we had required the licensee to undertake the following action.

“2. The Commission has examined the proposal made by you in the reference 3rd cited pursuant to its directions in the reference 1st and 2nd cited.

3. The Commission requires you to examine and file a fresh petition for determination of tariff of the project specifically considering the nature of the capacity, it being 100 MW project.”

4. While things stood thus, we had again listed the matter for hearing on 02.11.2017 and on the said date, the submissions were as below.

“The counsel for the petitioner stated that as per the directions of the Commission dated 29.06.2017, the licensee has paid the amounts due upto May, 2017 to the extent of 75%. He also stated that the subsequent period amounts have been withheld and the same is to the extent of Rs. 50 crores for the supply made by the petitioner.

The Commission pointed out that by its order the licensee was also directed to file the PPA for consent and a petition for revisiting the tariff. While the PPA is filed for consent, the necessary petition for tariff has not been filed by the licensee as yet. It also noted the fact that the petition was originally filed for

correcting the PPA in respect of metering conditions and to bring it inline with metering regulation. But, in the present argument seems to be contrary to the same. The counsel for petitioner stated that the petitioner has not been informed of the developments going on with the Commission by the licensee. He came forward to file necessary petition for obtaining consent to the PPA. The Commission having noticed that the consent to the PPA on regulatory side is yet to be issued and as it had already required the licensee to file a petition for tariff determination, in the absence of the standing counsel, was not inclined to proceed further in the matter.”

5. Now after adjournment and posting of the matter to 16.11.2017, we have heard the counsel for the parties and perused the material on record. The arguments as set out at the time of hearing are recapitulated below.

6. The counsel for the applicant made detailed submissions in the matter while prayer for interim order extension for a further period in I. A. No. 21 of 2017, wherein earlier the Commission directed the respondents for payment of 75% of the amount due upto May, 2017. Now four months have passed by and no amount is being released from June, 2017 onwards till date for the power already supplied. The reason offered is that the applicant had earlier given an undertaking that it would shift the meters to the location mentioned in the PPA instead of the location where the applicant had been installed. It is the contention of the applicant that the shifting of meters involved losses in transmission and distribution, which the applicant has pegged it at 0.1% whereas the licensee is assuming it to be around 4%.

7. The counsel for the applicant stated that the respondents could as well have allowed the meters installed already to remain as it is and further permit installation of check meters at the new point and paid him the charges for the supply after deducting losses as differentiated by the readings of both the main and check meters. The respondents are not coming forth to accept this proposal. The applicant is ready to install meters and has made a request for permitting it to install check meters at the location as suggested by the respondents. The application for such change of location of the meters made by the applicant is not disposed of even after four months of making such application have elapsed.

8. The counsel for the applicant in this I. A. stated that the applicant is filing additional documents in support of factual and legal issues. He has explained each of the additional documents and read out the relevant portions of the same, with which we are now not concerned at this stage. The counsel for the applicant emphasized the fact that the tariff determination is exclusive forte of the Commission under the provisions of the Act, 2003. While determining the generic tariff the Commission rightly adopted MYT regime and did not distinguish the capacity for such tariff to be applicable.

9. According to the applicant, the investment made is dependent on the factors like promissory estoppel and legitimate expectation. It is also dependent on consistent policy on investments, definite returns on such investments and risk free environment. It is also the case of the applicant that though the erstwhile Commission passed orders determining the tariff by a judicial order, it could not have issued any communication contrary to the said order subsequently. The scope of the Act, 2003 enables determination of the tariff by the Commission and to provide for such conditions for applicability of the tariff. It is the case of the counsel for the applicant that PPA had been entered with the licensee primarily to avail the benefit of the subsisting tariff at the relevant time, may be hurriedly in the circumstances obtained at that point of time. Across the board the MYT regime adopted by the Commission would not provide for capacity and it is for a specific period where the projects are envisaged to be established in that period only. Therefore, the applicant was rightly acting on the tariff. The proposition now sought to be made is that the Commission may consider passing fresh orders for payment and hear the matter finally on the next date of hearing. The licensees may also be directed to consider and clear the proposal for shifting of the meters or allow installation of check meters at new location for ascertaining losses.

10. The counsel for the respondent sought to emphasize that the licensee has made payment as per the directions of the Commission upto May, 2017, but the applicant having given an undertaking is yet to take steps in terms of the directions of the Commission to shift the meters. On the aspect of not giving clearance by the construction company, upon instructions from the officer present in the Court, he stated that he would look into and require the transmission company to take steps for clearing the application pending with them on the issue of the meters. He is of the view

that unless shifting of meters happens no payment can be made to the applicant for the power supplied.

11. While being aghast about the action of the licensees both transmission and distribution, we sought to know as to what pleasure the licensees were deriving by not according the permission to shift the meters as well as make payment of the amount due to the applicant from June, 2017 and onwards even after Commission's directions. We also observe that the licensee can release the amount to the extent upto 100%, but after deducting the amount that the licensees consider the amount towards losses. We are also of the opinion that the aspect of losses may be hammered out by having mutual discussion in the matter.

12. Keeping the rival contentions in the fore front, we direct the licensees to pay the amount due to the applicant from June, 2017 to October, 2017 and continue to do so until the matter is heard finally and orders are passed on it. We require the parties to report by the next date of hearing, the steps taken in respect of shifting of the meters as well as consensus arrived at in respect of line losses.

13. The order on payment of amounts as directed above shall be complied with within a period of 21 days from the date of this order. Office is directed to list the matter on 19.12.2017 for final hearing.

This order is corrected and signed on this the 30th day of November, 2017.

**Sd/-
(H. SRINIVASULU)
MEMBER**

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

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