



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 40 of 2018

Dated 24.08.2018

Present

Sri. Ismail Ali Khan, Chairman

Between|

M/s. Jilesh Power Private Limited
Flat No.6J, Century Plaza, 560-562,Anna Salai,
Teynampet, Chennai – 600 018.

... Petitioner.

AND

1. Special Chief Secretary, Energy Department,
Government of Telangana, Telangana Secretariat,
Khairatabad, Hyderabad.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office: 6-1-50, Mint Compound,
Hyderabad – 500063.
3. Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.
4. The Chief General Manager (IPC &RAC),
TSNPDCL, Corporate Office, Hanamkonda, Warangal.
5. Transmission Corporation of Telangana State,
(TSTRANSCO), Vidyut Soudha, Somajiguda, Hyderabad. ...Respondents.

This petition came up for hearing on 18-06-2018 & 21-07-2018. Sri Challa Gunaranjan, Advocate for the petitioner appeared on 18-06-2018 & 21-07-2018. Sri Y.Rama Rao, standing counsel for the respondents along with Ms.Pravalika,

Advocate appeared on 18-06-2018 & 21-07-2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under 86(1) (b) (e) & (f) of the Electricity Act, 2003 seeking extension of SCOD by 180 days with the following material allegations:

(i) The TSSPDCL on behalf of TSDISCOMS floated tender for procurement of 2000 MW solar power through e-procurement platform as per the directions of the Energy Department, GoTS, Hyderabad. In the tender process, the petitioner was a successful bidder through open competitive bidding process to setup the solar photovoltaic power project of 45 MW capacity at Waddekothapally SS, Warangal Dist (presently Jangaon District). Thereafter, a Power Purchase Agreement (PPA) was executed on 04-03-2016 between the petitioner and the respondent no.3. As per the PPA, the petitioner was to make solar photovoltaic power project operational within 15 months from the date of PPA and achieve the Commercial Operation Date (COD) by 03.06.2017.

(ii) During the year, 2016 the Government of the State of Telangana initiated re-organisation of the districts and formation of new districts and there was uncertainty in the offices of the revenue authorities regarding jurisdiction of villages, Mandals etc. This has slowed down the pace of site mobilisation. There was severe heatwave causing several deaths. It stalled all land related activities like buying and selling of lands and there was decline in commercial activities. The people were not willing to venture out to carry out daily chores. The labour was not available.

(iii) The second major cause for delay is demonetization of high value currency by the central government, which resulted in shortage of cash and difficulties in bank transactions. The vendors / sub-contractors could not pay rents for machinery and labour charges and faced severe setbacks due to limited resources which had an adverse impact in the progress of the work. Land owners were unwilling to accept demand drafts for payment and wanted cash, encumbrances could not be cleared by the land owners for want of cash to settle the loans. Thus, the delay caused due to various factors narrated

above were beyond the control of the petitioner and they could not be regulated or controlled and the petitioner suffered badly in the process.

(iv) The third major cause for delay is unprecedented rains from July 2016 to September 2016 after heatwave which caused flooding of roads and also at project site which lead to stoppage of work, idling of labour and equipment, hampering the construction work.

(v) The fourth major cause for delay regarding further development of the project. The petitioner wrote letters dated 04.02.2017 and 17.04.2017 to TSTRANSCO seeking approval for providing estimate of cost towards engineering charges, spares, supervision charges etc., in respect of transmission lines and bay extension. The TSTRANSCO granted approval and gave estimation through letters dated 17.05.2017 and 08.06.2017. TSTRANSCO through letter dated 17.05.2017 informed the petitioner to deposit Rs.29,66,535/- towards engineering charges, spare parts and supervision of works. TSTRANSCO through letter dated 08.06.2017 directed the petitioner to follow directions while execution of 132 kV line and bay extension works.

(vi) Article 9 of PPA deals with various circumstances which constitute non-political events and direct political events under the force majeure clause. The petitioner suffered due to both direct political and non-political events. Article 9.2 of PPA permits delay in the COD owing to force majeure events or till such event of default is rectified by the DISCOM whichever is earlier up to a maximum period of 12 months.

(vii) The GOTS on representation, by way of letter dated 29.06.2017, extended the SCOD of all solar power developers without any penalty upto 30.06.2017 and directed the TSDISCOMS to take further action accordingly. The Commission after examining the merits of force majeure events narrated by the petitioner accorded in-principle approval for extending SCOD upto 30.06.2017. Further, Energy department, GOTS by way of letter dated 23.08.2017, taking into account several representations made by the solar power developers including the petitioner extended SCOD up to 31.10.2017 and directed TSDISCOMS to take further action.

(viii) The CGM (IPC & RAC), TSNPDCL informed the SE/OMC/Warangal about the work completion report of the proposed 45 MW solar power plant

with interconnection point at 220/132 kV Waddekothapally SS submitted by CE, Warangal TSTRANSCO vide letter dated 20.10.2017. Further, CE, SLDC & Telecom accorded permission for synchronisation of 45 MW solar power plant vide letter dated 21.10.2017 of CE (SLDC) / SE / (SLDC) / DE (SCADA) / F. Jilesh / D.No.453 / 17. Only 13 MW the petitioner's solar power plant was successfully synchronised and commissioned on 28.10.2017 i.e., before the extension of SCOD up to 31.10.2017 by the GOTS through letter dated 23.08.2017.

(ix) The project was synchronised and connected to the grid at 220 / 132 / 33 kV SS, Waddekothapally with interconnectivity at 132 kV level 13 MW on 28.10.2017, 5MW on 27.11.2017 and 5MW on 01.12.2017 i.e., 23 MW in total. For the balance 22 MW requested the committee officials to witness the energisation of balance inverters and the committee was preoccupied and could not witness the energisation. The additional inverters were ready for synchronisation within the extended time allowed in the month of December 2017 as per the PPA. The 22 MW balance power also into generation mode in the month of December 2017 itself after the initial synchronisation on 28.10.2017 which is within the extended time line allowed in the PPA (31.10.2017). Accordingly, the petitioner requested for immediate synchronisation as per the procedure.

(x) Force majeure events narrated by the petitioner apply to the present case for extension of SCOD based on the decision of the Hon'ble Supreme Court in Dhanrajamal Gobindram vs. Shamji Kalidas & Co (MANU / SC / 0362 / 1961). Similarly, the decision of APTEL in GUVNL vs GERC, Cargo Solar dated 04.02.2014 in Appeal No. 123 of 2012 and UPERC decision in M/s. Lanco Anpara in Petition No. 882 of 2012 by order dated 09.11.2012 considered the force majeure events pleaded and extended the COD which also apply to the present case. The petitioner was prevented from achieving SCOD as per PPA due to force majeure events and therefore under Article 9 of PPA pleaded for extension of SCOD in terms of Article 9.2(b) of PPA based on which the GOTS extended SCOD upto 31.10.2017.

(xi) The petitioner sought a declaration that SCOD for 23MW out of 45 MW in terms of letter dated 08.12.2017 of the respondent no.5, TSTRANSCO, that SCOD for balance 22MW deemed to have occurred in the month of

December 2017 itself in terms of letter dated 08.12.2017 without penalties and issue a direction to the TSTRANSCO to issue commissioning certificate for the balance 22 MW.

2. The respondent No.3, through its Chief General Manager (IPC & RAC) TSNPDCL, Hyderabad, filed counter-affidavit with the following material allegations:

(i) The petitioner has entered into PPA with the respondent no.3 on 04.03.2016 to set up 45 MW solar power project under competitive bidding of 2015 in group II category with interconnection point at 220/132 KV Waddekothapally SS at 132 kV voltage level with tariff at Rs.5.5949 per unit. As per the terms of the PPA, the petitioner has to commission the project within 15 months from the effective date of signing of PPA i.e., 03.06.2017. The petitioner has commissioned the project in a phased manner i.e., 13 MW on 28.10.2017, 5MW on 27.11.2017, 5MW on 01.12.2017 totalling 23MW out of 45 MW to the grid within 21 months i.e., maximum period as per Article 10 (e) of PPA and the balance 22MW out of 45 MW was synchronised to the grid on 23.04.2018 with a delay of 324 days and as per clause 10.5 of PPA, the petitioner is liable to pay penalty. The maximum penalty period for SCOD is six months as per clause 10.5 of PPA. In the present case, the delay is 324 days. The penalty to be levied for 183 days is Rs.10.48crores. Further penalty to be levied for the delay over 183 days i.e., 141 days has to be decided.

(ii) The petitioner requested the respondent vide letter dated 13.03.2018 for synchronisation of balance 22 MW duly enclosing undertaking as directed by the Commission. A letter was addressed to the Commission vide letter dated 21.03.2018 for concurrence of the Commission for synchronisation of balance 22 MW. In response the Commission vide letter dated 13.04.2018 accorded concurrence for synchronisation of the balance 22 MW. By way of letter dated 21.04.2018, approval for synchronisation for balance 22 MW was granted and synchronised to the grid on 23.04.2018.

(iii) There was no delay on the part of TSTRANSCO regarding scheme approvals and erection of 132 kV DC / SC line from existing 220 / 132 kV SS Waddekothapally to proposed 45MW solar power plant of the petitioner and 2 nos. 132 kV bays each at 220 / 132 kV Waddekothapally along with metering

arrangements and solar power plant. The petitioner requested TSTRANSCO for scheme approval vide letter dated 04.02.2017 (received at CE / Transmission office on 13.02.2017) without submitting the route length of transmission line. The petitioner requested SE / OMC / Warangal on 08.03.2017 for route approval without enclosing route map prepared by the surveyor. The petitioner requested TSTRANSCO for tentative scheme cost for a line length of 3.5 KM as per preliminary survey as there was some problem to submit exact route approval. The scheme approval was issued on 17.05.2017 for tentative transmission line length of 3.5 KM. The CE / Zone / Warangal accorded route approval by a Memo no. 12.05.2017 informing that the agency has represented that the pooling station site was shifted about 1.5 KM extra as such the length was found to be 4.26 KM on preliminary survey. On receipt of route approval for 4.26 KM, a revised scheme approval was communicated to the petitioner on 05.06.2017. Thus, the delay occurred due to non-finalisation of pooling station site / revision of pooling station site by the developer resulting in increase in length of transmission line and revision of scheme.

(iv) As per Article 6 of the PPA, the petitioner has to obtain all consent, clearances and permits required for supply of power to the respondent and procure land for setting up the project at least at 4 acres per MW in the name of the petitioner within 6 months at its own cost and risk, from the date of signing of the PPA. Infact, the Districts Reorganisation in the State of Telangana and demonetisation of high value currency in the country have occurred post scheduled date (i.e., 03.09.2016) to obtain necessary approvals and to procure land for the said project and therefore, the contention of the petitioner on this aspect is not tenable.

(v) The reasons given by the petitioner do not satisfy the requirement of Article 9 of PPA and the petitioner's attempt at arbitrarily declaring an event or circumstance as force majeure event cannot be termed as Force Majeure.

(vi) The petitioner vide letter dated 13.10.2017 made a request and on its basis work completion report submitted on 22.10.2017 for synchronisation of 45MW, CGM (IPC&RAC), vide letter dated 24.10.2017 instructed SE / OMC / Warangal to synchronise 45MW solar power project at 220 / 132 kV Waddekothapally SS duly following the department procedure in vogue.

Accordingly, the project was synchronised to the grid in a phased manner i.e., 13MW on 28.10.2017, 5MW on 27.11.2017, 5MW on 01.12.2017 totalling 23MW within the period of 21 months as per PPA. The petitioner requested through letter dated 13.03.2018 for synchronisation of balance 22 MW duly enclosing undertaking as per the directions of the Commission. As per the instructions of the Commission a letter dated 21.03.2018 was addressed to the Commission for concurrence for synchronisation of balance 22MW and in response the Commission by letter dated 13.04.2018 accorded concurrence and accordingly approval was issued and 22MW was synchronised to the grid on 23.04.2018.

(vii) It is clear that, delay has not occurred from the side of TSTRANSCO regarding scheme approvals and erection of 132 KV DC / SC line from the existing 220 / 132 KV SS Waddekothapally to the proposed 45MW solar power plant and 2 nos. 132 kV bays each at 220 / 132 kV Waddekothapally along with metering arrangements and solar power plants.

(viii) It is further stated that the Government of Telangana State (GoTS), Energy Department, through a letter dated 29-06-2017 gave extension for SCOD on representation up to 30-06-2017 to the solar power projects within the state, who have concluded the PPAs with TS DISCOMS without any penalty duly following the requirement under CEA and TSTRANSCO guidelines. The Commission had approved the extension of SCOD up to 30-06-2017 by its letter dated 18.08.2017 for the solar power projects of competitive bidding of the year 2015 with a condition to re-fix the tariff and also with a direction to the respondent to file a petition for amending the PPAs in respect of penalties and re-fixation of the tariff. The GOTS in its letter dated 23.08.2017 has issued extension of four additional months relating to SCOD upto 31.10.2017 to the solar power projects in the State who have participated in the bidding 2015.

3. I heard the arguments of both the counsel for the petitioner and counsel for the respondent.

4. The point for determination is -

(i) Whether the synchronisation of 23 MW in a staggered manner i.e., 13 MW on 28.10.2017, 5 MW on 27.11.2017, 5 MW on 01.12.2017 totalling 23 MW is within 21 months from the date of PPA as per Article 10.5 (e) of PPA.

(ii) Whether the petitioner is entitled to condonation of delay of 180 days in reaching SCOD i.e., 23.04.2018 of 22 MW as per the terms of PPA signed on 04-03-2016?

5. The petitioner was a successful bidder in the open competitive bidding process for setting up solar photovoltaic power project of 45 MW to be connected to 220 / 132 kV Waddekothapally SS, at 132 kV voltage level. The petitioner has entered into PPA with the respondent no.3 on 04-03-2016. As per the terms of the PPA, the petitioner has to complete the project and make it operational within 15 months from its date. The project work was completed as is clear from the work completion report issued by CGM(IPC&RAC), through letter dated 24.10.2017. The date of SCOD as per PPA is 03.06.2017 and whereas the actual SCOD achieved is 23.04.2018 with a delay of 180 days.

6. The facts in this case clearly show the following:

(i) The PPA signed on 04.03.2016 with interconnection point at 220 / 132 KV Waddekothapally SS at 132 KV voltage level with tariff of Rs.5.5949 per unit.

(ii) The date of SCOD as per the terms of PPA is 03.06.2017.

(iii) The entire project of 45MW has not been synchronised at one go.

(iv) Work completion report was submitted on 22.10.2017 for 45 MW synchronisation.

(v) CGM (IPC&RAC) vide letter dated 24.10.2017 issued instructions to SE / OMC / Warangal to synchronise 45MW solar power project.

(vi) 23 MW project only was synchronised in a phased manner i.e., 13 MW on 8.10.2017, 5 MW on 27.11.2017, 5 MW on 01.12.2017.

(vii) It is a fact that the balance 22 MW was synchronised to the grid on 23.04.2018. The DISCOM claims that when the petitioner requested through letter dated 13.03.2018 for synchronisation for balance 22 MW duly enclosing undertaking as directed by the Commission, a letter was addressed to Commission on 21.03.2018 for concurrence which was granted on 13.04.2018 and 22MW was synchronised to the grid on 23.04.2018.

7. The Government of Telangana (GoTS), Energy Department gave extension of SCOD upto 30-06-2017 to the solar power projects in the state, who have concluded PPAs with TSDISCOMs without any penalty by following all the technical requirements under CEA and TSTRANSCO guidelines. The Commission vide letter dated 18.08.2017 has approved in principle the proposal of the State Government for extension of SCOD up to 30-06-2017 without any penalty, after examining the merits of the matter. The respondent has admitted these facts and the proposal of the GOTS and concurrence of this Commission for the extension of SCOD upto 30-06-2017 without any penalty.

8. Further, it is to be noted that the GOTS in its letter dated 23.08.2017 has issued extension of further four additional months relating to SCOD up to 31.10.2017 to the solar power projects in the State, who have participated in the bidding 2015. It is clear from the material on record that the extension of SCOD up to 31.10.2017 is in continuation of extension of SCOD up to 30.06.2017 by GOTS.

9. From the above particulars given it is clear that the petitioner was permitted to synchronise 23 MW project to the grid without taking steps as required under Article 10.5 of the PPA beyond 31.10.2017 relating to 5 MW each synchronised on 27.11.2017 and 01.12.2017. Though the petitioner pleaded that 23 MW were synchronised within 21 months from the date of PPA, it is careful to avoid the implications of Article 10.5 (e) of PPA. The question remains that 10 MW were synchronised by the respondent beyond 31.10.2017 without taking any steps under the PPA. The balance 22 MW were synchronised to the grid on 23.04.2018 which is beyond the period contemplated under the terms of the PPA and Article 10.5 (e) of PPA as can be seen from the article extracted supra.

10. Out of 45 MW, the 13 MW of the project was synchronised on 28.10.2017 which is within the period of extended SCOD up to 31.10.2017. 5MW each (10 MW) was synchronised to the grid on 27.11.2017 and 01.12.2017 which is beyond the period of extended SCOD up to 31.10.2017. Further, balance 22 MW of the project which was synchronised to the grid on 23.04.2018 and this extent also is beyond not only the period of extended SCOD of 31.10.2017, it is also beyond 21 months and against the terms of Article 10.5(e) of the PPA. Why it has taken around 140 days to

synchronise the balance 22 MW is not clear and there is no material on record from the respondent to explain the delay.

11. The petitioner pleaded delay due to re-organisation of districts affecting land transactions, severe heatwave during March to June 2016 in the region which stalled sale of land, decline in commercial activities, non-availability of labour in the region. Further, incessant rains affecting normal life from July to September 2016 affecting project work and also acquisition of land as force majeure events. The respondent no.3 on the other hand contended that the incidents as force majeure pleaded by the petitioner are not force majeure events and the petitioner is not entitled to such benefit and the reasons given by the petitioner for delay cannot be termed as force majeure events covered by Article 9.2 of PPA.

12. The incidents mentioned by the petitioner have some force to treat them as non-political events, which included labour difficulties mentioned in Article 9.1.(b) (i) as one of the force majeure events. Further, Article 9.1(a) of PPA clearly mentions that if the *“events and circumstances are not within the affected party’s reasonable control and were not reasonably foreseeable and the effects of which the affected party could not have prevented by prudent utility practices or, in the case of construction activities, by the exercise of reasonable skill and care. Any events or circumstances meeting the description of force majeure which have the same effect upon the performance of any of the solar power project set up in accordance with solar policy announced by GOTS under the competitive bidding route and which therefore materially and adversely affect the ability of the project or, as the case may be the DISCOM to perform its obligations hereunder, shall constitute force majeure with respect of the solar power developer or the DISCOM, respectively”* which clearly encompasses the reasons given by the petitioner for the delay of 180 days as events termed as force majeure. The petitioner had no control or domain over the incidents mentioned causing delay in completing the project and therefore the delay cannot be totally attributable to the petitioner.

13. The delay caused due to the events narrated by the petitioner and not specifically contradicted by the respondent certainly entitles the petitioner to extension of SCOD. The mere denial of events claimed by the petitioner as having caused delay in reaching the SCOD as not force majeure events by the respondents

is untenable since the petitioner had no control over the events. Thus, the extension of SCOD by the GOTS through letter dated 23.8.2017 of Energy department is based on reasons and the Commission concurs with the extension of SCOD up to 31.10.2017. The contention of the respondent that the events narrated by the petitioner have no connection to the plea of force majeure is not tenable.

14. It is a fact that work completion report for 45 MW was issued by the TSTRANSCO on 22.10.2017 for synchronisation. Based on this report, the CGM (IPC&RAC) TSNPDCL granted synchronisation permission vide its letter dated 24-10-2017 making SE, OMC, Warangal as the coordinating officer of the Committee constituted to oversee the synchronisation process. Commissioning certificate issued by SE, Operation Circle, Warangal, on 08-12-2017 mentions that 23 MW out of 45 MW was synchronised in phases: 13 MW on 28-10-2017; 5 MW on 27-11-2017; 5 MW on 01-12-2017. However, there is no mention of the status of synchronisation of the balance 22 MW and there is no material evidence on record to show why synchronisation of balance 22 MW was delayed till 23-04-2018.

15. However, material on record shows that the petitioner requested the respondent vide its letter dated 21-01-2018 for synchronisation of the balance 22 MW. This letter mentions that the entire evacuation system along with bus bays were synchronised with the grid on 28-10-2017 as reported in SE, Warangal's certificate. It further states that the petitioner had approached the Committee Members for synchronisation of balance 22 MW but were informed that because of their pre-occupation with other works could not witness the energisation of the balance capacity. The petitioner has argued that as the system was ready with the energisation of 23 MW on 1st of December itself, the respondent could have charged balance 22 MW also immediately. The petitioner again made a request vide its letter dated 13th March 2018 to the respondent to immediately issue the synchronisation certificate for the balance 22 MW. However, synchronisation certificate for the balance 22 MW was issued by the respondent on 23-04-2018.

16. In principle, once the certified copy of the work completion report is issues by the respondent, the synchronisation of the solar plant is carried out based on the convenience of the designated Committee members and the concerned SE, who is the nodal officer for coordination. It may be noted that no reasons are given for delay

of around one month in the synchronisation of 10 MW (5 MW on 27-11-2017 and 5 MW 1-12-2017) after the first synchronisation of 13 MW on 28-10-2017. There is no material on record from the respondent to justify the delay of more than 4 months for the synchronisation of balance 22 MW. However, the counter filed by the respondent mentions that the delay is attributed to: finalisation of format for undertaking from the petitioners to abide by the decision of the Commission; concurrence of the Commission to synchronise each project. In the process, concurrence of the Commission for the subject project was received on 13-04-2018 and hence the 22 MW of the balance capacity was synchronised on 23-04-2018.

17. The certified copy of the synchronisation certificate issued by SE, OMC, Warangal on 08-12-2017 after synchronisation of 23 MW to the grid demonstrates that total 45 MW was ready for all purposes for synchronisation. The petitioner shall not be penalised for the delays due to administrative challenges and delays in obtaining approvals. Thus, the Commission accepts 1-12-2017 as the date of synchronisation of 23 MW completely in three phases (13 MW on 28-10-2017; 5 MW on 27-11-2017 and 5 MW 1-12-2017) as certified in the synchronisation certificate issued by the SE, OMC, Warangal (8-12-2017) as the date of synchronisation of the complete 45 MW capacity to the grid.

18. In view of the aforementioned reasons, the delay of 150 days as pleaded by the petitioner is liable to be condoned only up to 31.10.2017. Since 13 MW out of the total 45 MW was synchronised on 28-10-2017 within the agreed extended SCOD by the Commission, no penalty is applicable on this capacity. Next 5 MW was synchronised on 27-11-2017 with a delay of 27 days attracting a penalty for 27 days as per the terms of the PPA. Another 5 MW was synchronised on 01-12-2017 with a delay of 32 days attracting a penalty for 32 days as per the terms of the PPA. The Commission also concurs with 1-12-2017 as the date of synchronisation for the balance 22 MW for reasons stated in para above. Thus, the total capacity synchronised with the grid on 1-12-2017 works out to 27 MW with a delay of 32 days beyond the permitted and extended SCOD, which invites penalty as per clause 10.5 of the PPÄ. The point is answered accordingly.

19. The delay of 150 days in reaching the SCOD of 45 MW up to 31-10-2017 as concurred by the Commission is condoned. However, the project was synchronised

with the grid in all respect in phases on 01.12.2017. Thus, there is a delay of thirty-two days in achieving SCOD beyond the agreed and extended timeline of 31.10.2017, for which the petitioner is liable to pay the penalty as per clause 10.5 of PPA. The petition is allowed on the same tariff as approved by the Commission. The respondent No. 3 is directed to file a copy of the amended PPA with the revised date of commissioning.

20. The petitioner is directed to pay penalty as per clause 10.5 of PPA.

This order is corrected and signed on this the 24th day of August, 2018.

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