



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

I. A. No. 35 of 2018  
in  
O. P. No. 59 of 2018

Dated: 29.12.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between:

1. Northern Power Distribution Company of Telangana Ltd.,  
H. No. 2-5-31 / 2, Corporate Office, Vidyut Bhavan,  
Nakkalgutta, Hanamkonda, Warangal – 506 001.
2. Southern Power Distribution Company of Telangana Ltd.,  
Corporate Office, # 6-1-50, Mint Compound,  
Hyderabad – 500 063. .... Applicants / Petitioners.

AND

1. Andhra Pradesh Power Generation Corporation,  
Vidyut Soudha, Gundala, Eluru Road,  
Vijayawada, Krishna Distgrict, Andhra Pradesh – 520 004.
2. Transmission Corporation of Andhra Pradesh Limited,  
Vidyut Soudha, Gundala, Eluru Road,  
Vijayawada, Krishna Distgrict, Andhra Pradesh – 520 004.
3. Eastern Power Distribution Company of Andhra Pradesh Limited,  
Corporate Office, P & T Colony, Seethammadhara,  
Visakhapatnam, Andhra Pradesh – 530 013.
4. Southern Power Distribution Company of Andhra Pradesh Limited,  
Tiruchanoor Road, Tirupati, Andhra Pradesh – 517 503.  
.... Respondents / Respondents.

This application came up for hearing on 22.09.2018, 27.10.2018, 17.11.2018, and 01.12.2018. Sri. Y. Rama Rao, standing counsel for the petitioners along with Ms. M. Pravalika, Advocate appeared on 22.09.2018, 27.10.2018, 17.11.2018, and 01.12.2018. Sri. G.V. Brahmananda Rao, Advocate representing Sri. P. Shiv Rao,

Counsel for the respondents appeared on 22.09.2018, 27.10.2018, 17.11.2018 and 01.12.2018. This application having stood over for consideration to this day, the Commission passed the following:

### **INTERIM ORDER**

The applicants who are petitioners in the original petition mentioned above have filed an interlocutory application seeking directions to the Andhra Power Generation Corporation Limited (APGENCO) not to take any coercive steps before any other forum in respect of the alleged claims against the them under sec 94 (2) of the Electricity Act, 2003 (Act, 2003).

2. The applicants stated that by effect of provisions of Andhra Pradesh Reorganization Act, 2014 (Central Act 6 of 2014) Telangana State was formed on 02.06.2014. As per clause 8 of schedule 12 (C) the applicants fall under the jurisdiction of Telangana State and became the distribution licensees of the Commission and bestowed with the responsibility to ensure uninterrupted power supply to the electricity consumers in the state of Telangana. As per the provisions of Central Act 6 of 2014, Ananthapur and Kurnool Districts were taken out of the jurisdiction of the TSSPDCL and attached to APSPDCL, a distribution licensee which falls within the residuary state of Andhra Pradesh.

3. The applicants stated that in accordance with the provisions laid down in sections 53 and 68 of the Central Act 6 of 2014, a Committee is constituted under the Chairmanship of Smt. Sheela Bhide, Retd. IAS Officer, to get the assets and liabilities of the power companies divided between the residuary state of A. P. and state of Telangana. The final allocation of the assets and liabilities between Transmission Corporation of Telangana Limited (TSTRANSCO) and Transmission Corporation of Andhra Pradesh Limited (APTRANSCO), Telangana State Power Generation Corporation (TSGENCO) and APGENCO as also the distribution companies serving in the state of Telangana (TSDISCOMs) and distribution companies serving in the state of Andhra Pradesh (APDISCOMs) is yet to take place and yet to be gazetted by the Government of Andhra Pradesh. As per clause (2) of schedule 12 (C), the existing Power Purchase Agreements (PPAs) with respective DISCOMs shall continue for both ongoing projects and projects under construction.

The Twelfth schedule of Central Act 6 of 2014 propounded allocation of APGENCO plants on geographical location.

4. The applicants stated that earlier, soon after the bifurcation of the erstwhile state of Andhra Pradesh, APGENCO raised disputes by withdrawing the power purchase agreements entered in by all the 4 DISCOMs (of both AP and Telangana) in the erstwhile state of Andhra Pradesh with the power plants that fall now under the residuary state of Andhra Pradesh creating a lot of inconvenience to the electricity consumers in the new born state of Telangana and hampering the power purchase plants of the applicants.

5. The applicants stated that by virtue of the bifurcation of the erstwhile state as per the provisions of the Central Act 6 of 2014, a lot of disputes, right from sharing of employees, sharing of pension fund to sharing of assets and liabilities, among the power utilities functioning in both Telangana and the residuary state of Andhra Pradesh have arisen and many of these disputes are presently under adjudication before various forums / committees, right from State Electricity Regulatory Commissions (SERCs) to Supreme Court and committee under the chairmanship of Smt. Sheela Bhide, retired IAS officer. After the bifurcation of the state, power purchase dues to be paid by TSDISCOMs to APGENCO is one of the many payments related disputes that are under adjudication before various forums / committee.

6. The applicants stated that it is evident that under section 53 of Central Act 6 of 2014 the assets and liabilities of the companies have to be bifurcated to quantify the assets and liabilities of the successor states on locational basis. This means, even the dues to be paid by TSDISCOMs to APGENCO shall also be considered as part of the assets, liabilities and other financial settlements to be made between the power utilities situated in the states of Andhra Pradesh and Telangana.

7. The applicants stated that APGENCO did not dispatch power to the state of Telangana from their hydel generation stations since the formation of the state of Telangana, inspite of the relevant provisions of the Central Act 6 of 2014 that the PPAs entered by the distribution companies (DISCOMs) with that of the power generation plants under the APGENCO. Further, even the scheduling of power from the thermal generation plants in the residuary state of Andhra Pradesh has been

disrupted in October, 2017. Not only the provisions contained in the Central Act 6 of 2014, even the power sharing formula laid down in G. O. No. 20 dated 08.05.2014, issued by the erstwhile state of Andhra Pradesh allocating the power between the state of Telangana and residuary state of Andhra Pradesh were violated by the APGENCO. However, APGENCO recommenced the scheduling of power from their thermal power plants at the directions of Southern Regional Load Dispatch Center (SRLDC) and continued till October, 2017, when the scheduling of power from both the sides of 2 states is stopped permanently.

8. The applicants stated that challenging the actions of APGENCO in their Proc. No. CE / Commercial / APGENCO / D. No. 8 / 2014 dated 16.06.2014 and others, to stop the scheduling of the power from the power plants located in the residuary state of Andhra Pradesh to the state of Telangana's DISCOMs, the applicants approached the Joint Commission, constituted as per Schedule 12 Part C (3) of Central Act 6 of 2014, in the year 2014 and filed a petition in. O. P. No. 75 of 2015, making respondent No. 1 in the present petition as a party before the Joint Commission. However, after the bifurcation of the state, both the ERCs that is this Commission and the present APERC claimed jurisdiction over the various power plants, PPAs that were entered into in the erstwhile state of Andhra Pradesh and issued independent orders, which landed before the Hon'ble High Court for adjudication u/s 105 of Central Act 6 of 2014.

9. The applicants stated that even after 4 years since the formation of the state of Telangana, various issues, including the sharing of assets and liabilities and sharing of employees between the power utilities in the residuary state of Andhra Pradesh and the state of Telangana are not yet finalized, waiting for adjudication before various legal forums / committees. Amidst these disputes between the power utilities of states of Andhra Pradesh and Telangana, APGENCO raised bills on TSDISCOMs, basing on the generation tariff order issued by present APERC on 26.03.2016, for the power supplied by the power plants of APGENCO to TSDISCOMs. Initially, APGENCO raised bills based on the power sharing ratio proposed in G. O. Ms. No. 20 of 08.05.2004 intentionally ignoring the actual schedule of power to applicants. This was objected by the TSDISCOMs and requested respondent No. 1 in this petition, to bill only for the actual generation.

10. The applicants stated without any prejudice to the prevailing dispute raised by TSDISCOMs in respect of this claim of APGENCO, TSDISCOMs have paid Rs. 3886 Cr. to APGENCO on provisional basis subject to reconciliation and settlement of dues at state level, considering the fact that all these power utilities that is APGENCO and TSGENCO, APTRANSCO and TSTRANSCO and APDISCOMs and TSDISCOMs, are owned by the respective governments of residuary state of Andhra Pradesh and the state of Telangana. It is stated that APGENCO is insisting that the claims of APGENCO for the power supplied by them to TSDISCOMs till October, 2017, may be paid after netting of the power purchase claim of TSGENCO against APDISCOMs for the power supplied by the power plants under TSGENCO to APDISCOMs.

11. The applicants stated that APGENCO is cleverly side-lining the final claims to be settled among all the power utilities at state level between the 2 successor states in accordance with the provisions of Central Act 6 of 2014 and is insisting for clearing the payment on account of the power supplied to petitioners. The other receivables on account of reorganization of the state according to the provisions of the Central Act 6 of 2014 particularly with reference to section 68 (2) of read with section 53 (2) of the Central Act 6 of 2014 specifically contemplates in respect of provision as to certain corporation states that

“Upon apportionment of the assets and liabilities such assets and liabilities shall transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor state.”

12. The applicants stated that section 68 of Central Act 6 of 2014 states that

“(1) The companies and corporations specified in the ninth schedule constituted for the existing state of Andhra Pradesh shall on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section.

(2) The assets, rights and liabilities of the companies and corporations referred to in sub-section (1) shall be apportioned between the successor States in the manner provided in section 53.”

Therefore, the dispute between the two companies including power purchase dues that is present claim made against the applicants herein is still pending adjudication and not finally resolved in all respects of the power utilities of two states.

13. The applicants stated that consequent to the bifurcation of the erstwhile state of Andhra Pradesh disputes have arisen between state of Telangana and State of Andhra Pradesh, APDISCOMs, TSDISCOMs, APGENCO and TSGENCO. That so far as the bifurcation of government companies and corporations was concerned, an expert committee headed by Dr. (Mrs.) Sheela Bhide, IAS (Retired) (Expert Committee) was constituted by the government of Andhra Pradesh vide G.O. Rt. No. 2065 and 2066, GA (SR) Department dated 26.09.2016 for division of assets, liabilities and employees of government companies, corporations and institutions (including the GENCO and DISCOMs) listed in Schedule IX of Central Act 6 of 2014.

14. The applicants stated that the Chairman of the Telangana State Power Co-Ordination Committee (TSPCC), Telangana government authorized representative to coordinate the power purchases of the TSDISCOMs, had sent a letter on 08.06.2017 to the Managing Director of the respondent No. 1 in this application, stating that the Telangana State power utilities have on several instances requested for settling of issues at state level by adjusting the APGENCO power bills against the dues payable to power utilities (TSGENCO, TSTRANSCO and TSDISCOMs) and release the net amount which is owed by power utilities of state of Andhra Pradesh to Telangana power utilities, but there was no response to the requests made. It is stated that the settlement of all dues of power utilities in the 2 successor states should be done at the state level was previously communicated to the A. P. Companies vide letters dated 24.09.2016, 19.10.2016 and 29.10.2016 by the Chairman of the TSPCC.

15. The applicants stated that on 29.06.2015, another letter was sent by the Chairman of the TSPCC to the respondent No. 1 in this application disputing the amounts in relation to interest on pension bonds were not admitted either by the TSPCC or the Andhra Pradesh Power Co-ordination Committee (APPCC). It was also communicated that there was no regulation or direction from the Commission which mandates the TSDISCOMs to admit interest on pension bonds and therefore, the claim towards interest bonds was not tenable. That vide letter of October, 2014, addressed to the respondent No. 1 in this application, it was disputed by TSPCC that

in respect of the hydel stations in the state of Andhra Pradesh, the TSDISCOMs had not received any power as per the share earmarked for the TSDISCOMs, but claim towards fixed costs of the hydel generation plants situated in the residuary state of Andhra Pradesh were raised by the respondent No. 1 in this application.

16. The applicants stated that apart from these disputes, consequent to the bifurcation of assets and liabilities between the two DISCOMs of A. P. and Telangana that is APSPDCL of the residuary state of Andhra Pradesh and TSSPDCL (earlier it was APCPDCL and later became TSSPDCL after the Anantapur and Kurnool Districts have been merged with APSPDCL) of Telangana State, there are certain dues payable by APSPDCL to TSSPDCL, amounting to Rs. 1391 Cr. Further, TSNPDCL (as per the provisions of the Central Act 6 of 2014, 7 Mandals from TSNPDCL have been subsequently taken out and merged with APEPDCL) has given intercorporate deposits to APEPDCL and APSPDCL during the existence of combined state. Similarly, APTRANSCO also owes certain dues to TSTRANSCO by virtue of demerger of the transmission company, amounting to Rs. 101 Crs. TSGENCO has to receive an amount of Rs. 3096 Crs. from APGENCO upon demerger of assets and liabilities like excess liability discharged for common loans, employee pension funds etc.

17. The applicants stated that apart from the dues that are receivable by Telangana power utilities that is TSGENCO, TSTRANSCO and TSDISCOMs from Andhra Pradesh power utilities that is APGENCO, APTRANSCO and APDISCOMs, as detailed in the above paragraphs, Telangana power utilities have made an investment in APPDCL which is looking after Krishnapatnam Ultra Mega Power Project, amounting to Rs. 929 Cr. On the whole, if all the payables of Telangana power utilities to Andhra Pradesh power utilities are set off and adjusted, the net amount receivable from Andhra Pradesh power utilities is Rs. 2137.57 Crs. It is stated and brought to the notice of the Commission that these staggering financial figures have alerted and compelled the Telangana power utilities in general and the applicants in particular to withhold the dues against the power purchase bills raised by APGENCO, with a view to wait till the final settlement of all the disputes related to the dues of all the power utilities on both sides of the 2 successor states are resolved.

18. The applicants stated that from the above, it is evident that the claims of the respondent No. 1 are disputed amounts and not clear dues, as is being claimed. The so called disputed amount is linked to multiple contentious issues and needs interpretation of law. Moreover, these claims are based on the generation tariff order issued by the present APERC on 26.03.2016, which is another dispute in terms of Section 64 (5) of Act, 2003. Sec. 64 (5) of Act, 2003 is as below.

“Notwithstanding anything contained in Part X, the tariff for any interstate supply, transmission or wheeling of electricity, as the case may be, involving the territories of two states may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefore”

19. The applicants that while several disputes at various forums / committees constitutes between the power utilities of Andhra Pradesh and Telangana states have been going on, the respondent No. 1 filed a petition against the applicants in this petition before the National Company Law Tribunal (NCLT) in terms of provisions of the Insolvency and Bankruptcy Code, 2016 (IBC – 2016), demanding payment of bills raised based on the present APERC generation tariff order dated 26.03.2016, towards the power supplied by them to TSDISCOMs till October, 2017, with the following prayers:

- a) “Admitting application under section 9 (5) (1) of IBC Code 2016.
- b) To appoint IRP (Interim Resolution Professional) in terms of section 16 of the IBC Code 2016.
- c) Declaring the moratorium in terms of section 13 and 14 of IBC 2016.
- d) Directing the public announcement of corporate insolvency resolution process made in terms of Section 3 and Section 16 of IBC Code 2016.
- e) And pass the necessary consequential orders and deemed fit and proper by the Hon’ble National Company Law Tribunal under IBC 2016.”

20. The applicants stated that section 86 (1) of the Act, 2003 relating to functions of the Commission provided at sub clause (f) that the Commission has the function to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration and Section 2 (b), the Insolvency and Bankruptcy Code, 2016 gives way to Act, 2003. But, the respondent No. 1 instead of

first approaching the SERC available to them under Act, 2003, directly filed a petition before NCLT under the provisions of IBC 2016. It is stated that section 23 of the Act, 2003 states that

“If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof”.

21. The applicants stated that in the light of the petition filed by respondent No. 1 against the them and in the light of the various ongoing disputes among the power utilities in the states of Andhra Pradesh and Telangana, it is stated that in case NCLT takes up the application of APGENCO before it, the TSDISCOMs being the government companies and therefore an instrumentality of the state that exists purely for the service of the state and its citizens and primarily not formed for no profit making, will be subjected to the insolvency and bankrupt proceedings of NCLT as per the provisions of IBC 2016. Further, it is stated that any order as to wind up of TSDISCOMs could lead to total chaos in the power supply throughout the state of Telangana which would be completely against the interests of the public at large and regulation of distribution business under the supervision and control of the Commission.

22. The applicantr stated that the very purpose of section 14 of Act, 2003 wherein the ERC has granted license to TSDISCOMs to distribute electricity as a distribution licensees, sub-section 5 of section 64 of the Act, 2003, wherein Commission has jurisdiction in respect of the licensee who intends to distribute electricity and make payments, section 86 (1) of the Act, 2003 to adjudicate upon the disputes between the licensee and generating company and to refer any dispute for arbitration is defeated. This will lead to total disarray disruption, chaos and anarchy in the distribution of power supply in TSDISCOMs. It is stated that the Commission may take cognizance of the impending dispute raised by APGENCO at a different forum other than the Commission for resolution of dispute and cause necessary orders / direction that deem fit in the present circumstances.

23. The applicants stated that the intervention of Commission is sought to preserve the status quo of the business of the applicants / licensees which are granted licenses under section 14 of the Act, 2003 and thereupon the TSERC has

absolute power on the overall business and functioning of the applicants. The Commission may give necessary directions in the interest of the state and to avoid disruption of the core activity of the applicants that is supply of electricity to each of the electricity consumers in the state of Telangana.

24. The applicants / petitioners have sought the following reliefs in this application:

“To cause necessary interim directions to APGENCO not to proceed with any coercive measures before any other forum in respect of the alleged claim to be paid by TSDISCOMs that is the petitioners until the main petition is disposed of by the Commission.”

25. The respondents have not filed any counter affidavit either in the original petition or this interlocutory application.

26. I have heard the counsel for the petitioner and perused the material on record. Though the counsel for the respondents did cause appearance on their behalf yet did not make any submissions in the matter. In this regard the Record of Proceedings as recorded by this commission is reproduced.

*ROP dt: 22.09.2018*

“The counsel for the respondents filed vakalat in respect of the respondent No.1 and also sought adjournment for four weeks for filing counter affidavit. The counsel for the petitioners has no objection. However, he requested that the respondents may file counter affidavit at least by 12.10.2018 giving time for filing rejoinder if any.

Considering the request of the parties, while making it clear that no further time in respect of filing counter affidavit or rejoinder will be considered, the matter is adjourned.”

*ROP 27.10.2018*

“The counsel for the respondents sought adjournment of the hearing for four weeks for filing counter affidavit, while filing a memo of objections to the petition regarding the pendency of the issue before Smt. Sheela Bhide Committee, before NCLT and before the Hon’ble High Court on the issue of the jurisdiction of the Commission. The counsel for the petitioner stated that the counter affidavit is not filed but memo is filed, which is not the procedure

for opposing the petition. The Commission may direct the office to scrutiny the memo and take necessary action in terms of filing procedure.

The Commission pointed out that memo is not the procedure in the place of counter affidavit. The respondents should file counter affidavit. The counsel for the respondents sought adjournment of the petition by four weeks, which is not acceptable to the Commission. Accordingly the matter is adjourned, the counter affidavit shall be filed on or before 09.11.2018 by serving a copy of it to the counsel for the petitioner.”

*ROP 17.11.2018*

“The counsel for the respondents sought further time for filing counter affidavit and stated that the respondents have filed a memo for adjournment. The counsel for the petitioner opposed the adjournment and sought orders of the Commission on the interim application filed by the petitioners.

The advocate representing the respondents stated that considerable time is required as the record relating to 20 years has to be gathered. The Commission expressed the view that it is not in a position to grant long adjournment as desired by the respondents. The counsel for the petitioners insisted on passing interim orders. However, an opportunity is provided to the respondents to file counter affidavit by the next date of hearing. Accordingly, the matter is adjourned.”

27. Even on the last date of hearing that is on 01.12.2018 no counter affidavit is filed but time is sought for filing counter affidavit stating that the respondents have to trace out the record pertaining to long old period and for that they need sufficient time.

28. Prima facie on the basis of above position as obtained in the matter the question that arises for consideration is ‘whether there is balance of convenience in favour of applicants for interim order and if so to what extent?’

29. The Commission is empowered to pass such order or orders as may be appropriate under sec 94 (2) of the Act, 2003. In this case the applicants are seeking interim directions not to take coercive by the respondent No. 1 in proceeding with any litigation before any forum till this Commission decided the dispute raised by them under sec 86 (1) of the Act, 2003.

30. This Commission is of the view that prima facie a dispute between a generator is amenable to its jurisdiction as provided under Act, 2003 and as upheld by judgments of courts of law. More over the applicants are the licensee of this Commission and are required to under power supply in the state of Telangana. Any hinderance to discharge of this function of the applicants would not be in the interest of the public at large. Therefore, the balance of convenience lies in favour of the applicants.

31. This Commission is also of the view that the actions of the respondents more particularly the respondent No. 1 if allowed to be proceeded with may cause not only cause severe damage to the interest of the applicants, but are also contrary to law and provisions of the statute. No prejudice will be caused to the respondents if the actions of the respondents are stopped pending disposal of the petition as such actions can be proceeded with after disposal of this petition. Moreover, the respondents have not chosen state their case by filing a proper counter affidavit as to why interim relief shall not be given to the applicants.

32. In these circumstances and for the reasons recorded therein, exercising the power conferred on the Commission under sec 94 (2) of the Act, 2003, the respondents more particularly the respondent No. 1 is restrained from taking any coercive action before any forum till this Commission decided the original petition in the larger public interest. The interlocutory application is disposed of accordingly.

***This order is corrected and signed on 29<sup>th</sup> day of December, 2018.***

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

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