

Record of Proceedings dated 22.02.2020

O. P. No. 2 of 2016

M/s. Ultra Tech Cement Limited Vs. TSSPDCL & its officers

Petition filed questioning the action of DISCOMs in not implementing the order of CGRF.

There is no representation on behalf of the petitioner. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Sri. Vamshi Krishna, Advocate is present. In view of the absence of the counsel for the petitioner as also due to pendency of writ petition on the subject matter before the Hon'ble High Court as stated by the standing counsel, the matter is adjourned.

Call on 25.04.2020 at 11.00 A.M.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 7 of 2019

M/s. Prathmesh Solarfarms Pvt. Ltd. Vs. TSTRANSCO, M/s. Mytrah Agriya Power Pvt. Ltd. & TSSPDCL.

Petition filed questioning the action of the TSTRANSCO in allowing another project to utilize transmission line and interconnection facilities developed by the petitioner contrary to the regulations.

Sri. Damodar Solanki, Advocate representing Smt. Swapna Seshadri, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent Nos. 1 and 3 alongwith Sri. K. Vamshi Krishna, Advocate are present. Insofar as the respondent No. 2 is concerned, there is no representation. The counsel for the petitioner stated that the counter affidavit on behalf of the licensee is received, but the counter affidavit of the contesting respondent No. 2 is necessary. As agreed the counsel for the petitioner had sent mail to the respondent No. 2 and a notice was also served on behalf of the Commission, as such, the matter may be adjourned.

The Commission having noticed the absence of the 2nd respondent on two occasions, directed sending of notice to the party once more with proper acknowledgement. Accordingly, the matter is adjourned.

Call on 07.03.2020 at 11.00 A.M.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 2 of 2020

M/s. Tejas India Solar Energy Pvt. Ltd. Vs. TSSPDCL & TSTRANSCO

Petition filed seeking directions to the respondents to synchronize the plant and consequently grant long term open access permission.

Sri. Kaushik, Advocate representing Sri. P. Vikram, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Sri. K. Vamshi Krishna, Advocate are present. The counsel for the respondent sought further time for filing counter affidavit. The advocate representing the petitioner opposed the same. However, as the issue relates to the synchronization of the project for open access, the matter is adjourned.

Call on 04.04.2020 at 11.00 A.M.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 4 of 2020

M/s. Sri Venkateswara Green Power Projects Ltd. Vs. TSSPDCL

Petition filed seeking determination of tariff for the remaining period of the PPA in accordance with the orders of the Commission passed in O. P. No. 18 of 2016.

Ms. Priya Ayengar, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Sri K. Vamshi Krishna, Advocate are present. The counsel for the petitioner made elaborate submissions in the matter. She stated that the petitioner has sought the tariff for the project commencing FY 2019-20. The Commission had passed orders providing for the generic tariff for the control period 2016-19, however, in its summary of the tariff enclosed to the order has identified the fixed cost at Rs. 3.83 per unit while providing the variable cost applicable during the control period and beyond the said period with 5% escalation shown therein. Though, no further order is required, but to enable fixation of variable cost beyond

the control period fresh determination has to be made. He sought to explain the various contents of the order passed by the Commission.

The counsel for the petitioner emphasized in her argument that there is need for providing tariff to the MSW and RDF projects so as to encourage investment. As at present, there is a need for several projects in the state of Telangana so as to ensure that environmental protection is taken care. Running a MSW project is a cumbersome exercise. The cost of establishment of this type of project is always moving upward only. Unless, the Commission provides a reasonable tariff drawing investment into such projects is difficult.

The counsel for the petitioner pointed out that the Hon'ble Supreme Court had in the matter of M/s. Gujarat Urja Vikas Nigam Limited Vs. M/s. Solar Semi-Conductor Limited had pointed out that the generic tariff once notified for a particular period can be extended provided there are no clauses in the agreement to state that the tariff determined will be applicable for the control period only. The said judgment according to him on facts is not applicable to the instant case, but the principle laid down would certainly allow the Commission to extend the applicability of the generic tariff order in the absence of subsequent determination. It is his case, that the Commission has ample power under section 64 (6) read with 86 and 62 of the Act, 2003.

It is expedient and necessary that the Commission may consider extending the generic tariff as notified earlier. The Commission is not required to do any exercise as it has already factored in the entire life span of a project in the table determining the tariff annexed to the earlier order of the Commission.

The counsel for the respondent explained and highlighted the provisions of the Act, 2003 and the power of the Commission to determine the tariff. It is his case that the earlier order of the Commission cannot be extended in view of the findings rendered by the Hon'ble Supreme Court in the judgment in the case of M/s. Gujarat Urja Vikas Nigam Limited Vs. M/s. Solar Semi-Conductor Limited. He also stated that section 64 (6) has to be read in the context of the tariff determination and an order made by the Commission will be applicable up to the period mentioned therein, unless, it is amended or modified. Any extension can take place before the expiry of the order

and not later. Also an order passed providing for generic tariff cannot be extended in favour or at the behest of single beneficiary as has been held in the above said judgment.

He stated that the Commission is required to undertake the determination of the tariff on project specific basis in terms of the policy of Government of India as also the regulation of the Central Electricity Regulatory Commission. He sought to rely on the regulation issued by CERC in the year 2019 with regard to the renewable energy sources. The said regulation has provided certain parameters, which can be adopted in determination of the tariff of the petitioner.

The counsel for the petitioner stated that there is a PPA between the parties and tariff has to be decided by the Commission alone. The tariff cannot be agreed between the parties as it is the exclusive domain of the Commission. Reference made to the provisions more particularly section 64 (6) cannot be interpreted in the negative manner, as the Commission has wide powers to extend the generic tariff order. Several other Commissions have also undertaken the extension of generic tariff order till the fresh order is passed by the respective Commissions. In the case of MSW projects, there were no subsisting projects during the control period mentioned in the Commission's order or no new projects have been established. This type of technology which is beneficial to the environment and which is at nascent stage, as such it needs preferential encouraging tariff. Though, the policy and the CERC Regulation require project specific tariff, nothing precludes this Commission from determining the generic tariff. The reliance placed on CERC Regulation of 2019 is irrelevant as it does not apply to the MSW projects. She sought time for filing rejoinder in the matter. Thus, the petition may be allowed and the tariff may be determined on generic basis.

Heard the counsel for the parties and the matter is reserved for orders.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 5 of 2020

CESS, Sircilla Vs. TSNPDCL

Petition filed seeking permission to release power supply connection above 75 KW / 100 HP commercial / industrial services within its jurisdiction upto 1500 KVA under HT category.

Sri. A. Raghuram, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Sri. Vamshi Krishna, Advocate are present. The counsel for the respondent stated that counter affidavit has been filed and that the respondent is not inclined to allow the petitioner to undertake the supply of power under HT category. The counsel for the petitioner sought time stating that he needs to file rejoinder in the matter. Accordingly the matter is adjourned.

Call on 07.03.2020 at 11.00 A.M.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 6 of 2020

M/s. Satech Engineering (India) Pvt. Ltd. Vs. TSSPDCL & its SE

Petition filed seeking extension of SCOD and granting time for completing the project.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with sri. K. Vamshi Krishna, Advocate are present. The counsel for the petitioner stated that the matter is coming up for the first time and counter affidavit has to be filed in the matter. The standing counsel requested for time to file counter affidavit. Accordingly, the matter is adjourned.

Call on 04.04.2020 at 11.00 A.M.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 7 of 2020

TSDISCOMs Vs. –Nil-

Petition filed seeking approval of pooled cost for FY 2018-19 to be adopted in FY 2019-20

Sri. Y. Rama Rao, Standing Counsel for the petitioners along with Sri. K. Vamshni Krishna, Advocate is present. Heard the counsel for the petitioners and the matter is reserved for orders.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 8 of 2019
&
I. A. No. 4 of 2020

M/s. Hyderabad MSW Energy Solutions Pvt. Ltd. Vs. TSSPDCL

Petition filed seeking extension of generic tariff as determined by the Commission by order dated 13.06.2016 passed in O. P. No. 18 of 2016 for MSW and RDF based project, adoption of fixed cost and variable cost in accordance with the above order and escalation for the same for the useful life of the project from the date of commissioning to a new control period from expiry of FY 2019-20.

I. A. filed seeking amendment / modification in RoPs dated 04.01.2020 and 25.01.2020.

Sri. M.G. Ramachandran, Senior Advocate representing Sri. Matrugupta Mishra, counsel for the petitioner along with Sri. Omar Waziri, Advocate and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Sri. K. Vamshi Krishna, Advocate are present.

The senior counsel made elaborate submissions in the matter. He stated that the petitioner has sought the tariff for the project commencing FY 2019-20. The Commission had passed orders providing for the generic tariff for the control period 2016-19, however, in its summary of the tariff enclosed to the order has identified the fixed cost at Rs. 3.83 per unit while providing the variable cost applicable during the control period and beyond the said period with 5% escalation shown therein. Though, no further order is required, but to enable fixation of variable cost beyond the control period fresh determination has to be made. He sought to explain the various contents of the order passed by the Commission.

The senior counsel emphasized in his argument that there is need for providing tariff to the MSW and RDF projects so as to encourage investment. As at present, there is a need for several projects in the city of Hyderabad so as to ensure that environmental protection is taken care. The petitioner is having a project in Delhi. Running a MSW project is a cumbersome exercise. The cost of establishment of this

type of project is always moving upward only. Unless, the Commission provides a reasonable tariff drawing investment into such projects is difficult.

The senior counsel pointed out that the Hon'ble Supreme Court had in the matter of M/s. Gujarat Urja Vikas Nigam Limited Vs. M/s. Solar Semi-Conductor Limited had pointed out that the generic tariff once notified for a particular period can be extended provided there are no clauses in the agreement to state that the tariff determined will be applicable for the control period only. The said judgment according to him on facts is not applicable to the instant case, but the principle laid down would certainly allow the Commission to extend the applicability of the generic tariff order in the absence of subsequent determination. It is his case, that the Commission has ample power under section 64 (6) read with 86 and 62 of the Act, 2003.

As the project is likely to be commissioned in the ensuing financial year that is June / July, 2020, it is expedient and necessary that the Commission may consider extending the generic tariff as notified earlier. The Commission is not required to do any exercise as it has already factored in the entire life span of a project in the table determining the tariff annexed to the earlier order of the Commission.

The counsel for the respondent explained and highlighted the provisions of the Act, 2003 and the power of the Commission to determine the tariff. It is his case that the earlier order of the Commission cannot be extended in view of the findings rendered by the Hon'ble Supreme Court in the judgment in the case of M/s. Gujarat Urja Vikas Nigam Limited Vs. M/s. Solar Semi-Conductor Limited. He also stated that section 64 (6) has to be read in the context of the tariff determination and an order made by the Commission will be applicable up to the period mentioned therein, unless, it is amended or modified. Any extension can take place before the expiry of the order and not later. Also an order passed providing for generic tariff cannot be extended in favour or at the behest of single beneficiary as has been held in the above said judgment.

He stated that the Commission is required to undertake the determination of the tariff on project specific basis in terms of the policy of Government of India as also the regulation of the Central Electricity Regulatory Commission. He sought to rely on the

regulation issued by CERC in the year 2019 with regard to the renewable energy sources. He has pointed out that the petitioner's project is yet to be commissioned as such there is no necessity for extension / determination of tariff in favour of the petitioner's project. The said regulation has provided certain parameters, which can be adopted in determination of the tariff of the petitioner. Thus, the Commission may reject the petition.

The senior counsel stated that there is a PPA between the parties and tariff has to be decided by the Commission alone. The tariff cannot be agreed between the parties as it is the exclusive domain of the Commission. Reference made to the provisions more particularly section 64 (6) cannot be interpreted in the negative manner, as the Commission has wide powers to extend the generic tariff order. Several other Commissions have also undertaken the extension of generic tariff order till the fresh order is passed by the respective Commissions. In the case of MSW projects, there were no subsisting projects during the control period mentioned in the Commission's order or no new projects have been established. This type of technology which is beneficial to the environment and which is at nascent stage, as such it needs preferential encouraging tariff. Though, the policy and the CERC Regulation require project specific tariff, nothing precludes this Commission from determining the generic tariff. The reliance placed on CERC Regulation of 2019 is irrelevant as it does not apply to the MSW projects. The petitioner will file a copy of the same. Thus, the petition may be allowed and the tariff may be determined on generic basis.

Heard the counsel for the parties on the main petition as also in the interlocutory application and the matter is reserved for orders.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman