

**Record of Proceedings dated 25.09.2020**

O. P. (SR) No. 24 of 2020

&

I. A. (SR) No. 30 of 2020

M/s. L & T Metro Rail (Hyderabad) Ltd. Vs. TSSPDCL

Petition filed Seeking directions for deration of the CMD for the power supply availed in respect of its operations.

I. A. filed seeking directions to the respondents not to take any coercive steps including disconnection of electricity connections of the petitioner company.

Sri. Avinash Desai, Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee TSSPDCL along with Sri. K. Sathish Kumar, DE TSSPDCL for the respondent have appeared through video conference. The counsel for the petitioner stated that the paragraph 8 of the order passed by the Commission in O. P. No. 17 of 2020 is the relevant portion for consideration in this case. The Commission while passing the order was clear and emphatic that the deration would be applicable from the date of lockdown and simultaneously relaxed condition required to be followed under the general terms and conditions of supply as well as regulation on standards of performance. It is the case of the petitioner that as soon as order has been passed by the Commission, the petitioner made an application to the concerned authorities for deration of the demand in respect of its metro activities as well as malls.

The counsel for the petitioner stated that the lockdown has started from 22.03.2020 and ended in respect of malls on 07.06.2020, in respect of metro operations on 07.09.2020. The respondent / licensee did not extend the benefit of the order within five days of the application and insisted on signing the agreement. The petitioner has not availed deration and is now only interested for effecting deration for the period, for which the lockdown was in force as stated above. In fact, the petitioner had already sought the restoration of demand also in view of the lifting of lockdown. On instructions, the counsel also reported that the petitioner is inclined to sign the agreement for the period of lockdown for deration of the demand, but insisted that the demand has to be derated from 22.03.2020. He sought to rebut the contention of

the respondent that the order passed by the Commission is prospective in its application and not retrospective. He sought orders of the Commission as prayed for. The representative of the respondent on the other hand sought to contend that the paragraph relied upon by the petitioner cannot be interpreted to give a different meaning. Inasmuch as the respondents only insisted upon compliance of the regulation and condition, as the Commission had only allowed the deration of the demand by relaxing only the condition of waiting for the next billing month. The order of the Commission also is clear about the requirement of the petitioner duly complying with the provisions in the regulation and conditions of supply, except that the deration of load should be effected immediately within five days and other conditions remained unaltered. Any order passed by the Commission can only be prospective in its application and the same cannot be retrospectively applicable from an anterior date. The respondent is inclined to give effect to the orders of the Commission from the date when the order of review has been passed by the Commission. Accordingly the matter is reserved for orders.

Sd/-  
Member (F)

Sd/-  
Member (T)

Sd/-  
Chairman

O. P. No. 19 of 2020  
&  
I. A. No. 13 of 2020

M/s. Ener Sol Infra Pvt. Ltd. Vs TSSPDCL & TSTRANSCO

Petition filed seeking directions to the licensee for grant of approval of tripartite agreement for 2 MW solar power project for third party sale of energy synchronized to licensee's grid.

I. A. filed seeking directions to the respondents to enter into the tri-partite agreement dated 18.07.2018 for approval placed before them pending disposal of the petition.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee TSSPDCL and Sri K. Sathish Kumar, DE TSSPDCL along with Sri. G. Karunakar, SE (Commercial) TSTRANSCO for the respondents have appeared through video conference. The counsel for the petitioner stated that he has communicated the orders of the Hon'ble High Court on the last date of hearing itself to the respondents as directed by the Commission. While reiterating the facts of the case, he sought to rely on section 94 (2) of the Act, 2003. He also emphasized the provisions of the conduct of business regulations, 1999. This argument is made in

support of the request for passing interim order in the matter as expressed earlier and sought for by the petitioner. The Commission has authority to pass suitable orders to meet the ends of justice and to protect the interests of the parties. At present in this case, the balance of convenience lies in favour of the petitioner for passing interim order.

The counsel for the petitioner while explaining the orders passed by the Hon'ble High Court in W. A. No. 80 of 2019 between the respondent and another company stated about promissory estoppel. It is also his case that the respondents cannot act differently against different consumers and generators. The respondents have taken considerable time after synchronizing the plant to the grid without complying with the Act, 2003 and the regulations thereof. The petitioner had right and authority to invoke the penal provisions under section 142 of the Act, 2003, but did not choose to do so. He reiterated the fact that the permissions were accorded in May, 2018 and the power plant was synchronized with the grid with the intention of allowing third party sale only after conducting due inspection of the plant and the necessary grid conditions. Thereafter, they have drawn the power generated by the petitioner without any demur while not deciding on allowing the open access to the generator. Now stating that they are undertaking system studies and after receipt of the report only they will consider the open access application, is illegal and harsh. It is also violative of the regulations. The respondents have not informed the petitioner about the status of application for a period of two years and now are stating that they are undertaking study while they have drawn the power unjustly and enriched themselves.

The counsel for the petitioner also stated that the petitioner is under threat of invoking the loan recovery procedures availed by it under SARFAESI ACT, 2002 as seen from the letters addressed to it by the bankers. Therefore, the counsel for the petitioner pleaded for early disposal of the matter duly considering the above position of the facts and circumstances. He sought intervention of the Commission.

The representative of the respondents stated that the petitioner cannot rely upon on the letter on the DISCOM as it has not allowed open access nor consented to allow the same, except allowing the plant to connect to the nearest substation. That in itself does not constitute allowing open access as the nodal agency is yet to decide

on the application of the petitioner and the DISCOM has not yet conveyed its feasibility to the nodal agency. The judgment relied upon by the petitioner is not relevant to the petitioner's case as in that case the respondents were agitating that in view of the system constraints, they were not able to provide open access facility to the consumer. It is not the case with the petitioner. Synchronization of the plant does not amount to or constitute allowing of third party sale. Pumping of the energy generated by the petitioner without seeking banking of the same, would be illegal injection and nothing stopped the petitioner from stopping generation of power. Even otherwise, in the absence of agreement for banking, the respondents could not have taken the same as having been allowed and now alleged that the respondents have drawn the power and unjustly enriched itself.

The representative of the respondents stated that the respondents have constituted a committee for examining the feasibility of allowing open access and that open access would be allowed only upon receipt of such report. The energy pumped into the grid cannot be treated as banked energy in the absence of the agreement and no determination of tariff for such energy is made, which is to be procured by the respondents. There is no balance of convenience in favour of the petitioner and the petitioner is free to undertake such course as may be desirable in respect of energy generated from the plant. Such action cannot be against the respondents as it has not desired to procure the energy so generated. No relief may be granted to the petitioner at this stage. Payment of loans or any other aspect of financial issues is not the concern of the respondents.

The counsel for the petitioner prayed for interim order to direct the respondents to enter into agreement or in the alternative to pay for the energy already drawn by them. If neither is possible, the Commission may direct the respondents to procure the said energy also at the tariff determined by the Commission itself.

Having regard to the submissions in the matter, it is reserved for orders.

Sd/-  
Member (F)

Sd/-  
Member (T)

Sd/-  
Chairman