

Record of proceedings dated 15.03.2021

O. P. No. 2 of 2020

M/s. Tejas India Solar Energy Private Limited Vs. TSSPDCL & TSTRANSCO

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

Sri. Abhinay Reddy, Advocate representing Sri P. Vikram, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee of TSSPDCL for the respondents have appeared through video conference. The counsel for the petitioner sought time stating that he would file the rejoinder to the counter affidavit today itself and sought short adjournment. The representative of the respondents stated that a copy of the same may be served on them. Accordingly acceding to the request of the counsel for petitioner, the matter is adjourned.

Call on 22.03.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O. P. No. 70 of 2018

M/s. Sugna Metals Limited Vs. TSSPDCL & its officers

Petition filed seeking directions to readjust the open access demand and to punish the licensee for not refunding the excess amount collected towards charges.

Sri. N. Vinesh Raj, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee of TSSPDCL for the respondents have appeared through video conference. The counsel for the petitioner sought time to make submissions in the matter. The representative of the respondents has no objection. Accordingly, the matter is adjourned.

Call on 19.04.2021 at 11.30 A.M.

Sd/-
Member

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Member

Sd/-
Chairman

I. A. No. 13 of 2019
in
O. P. No. 4 of 2013

M/s. VBC Ferro Alloys Limited Vs. TSSPDCL & SE (O) Sangareddy TSSPDCL

Application filed seeking revisiting the conditions stipulated in the retail supply tariff order for FY 2013-14 for category of HT-I (b) consumers.

Sri Challa Gunaranjan, Advocate for the applicant and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. Accordingly, the matter is adjourned.

Call on 29.04.2021 at 11.30 A.M.

Sd/-
Member

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Member

Sd/-
Chairman

I. A. No. 14 of 2019
in
O. P. No. 4 of 2012

M/s. VBC Ferro Alloys Limited Vs. TSSPDCL & SE (O) Sangareddy TSSPDCL

Application filed seeking revisiting the conditions stipulated in the retail supply tariff order for FY 2012-13 for category of HT-I (b) consumers.

Sri Challa Gunaranjan, Advocate for the applicant and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. Accordingly, the matter is adjourned.

Call on 29.04.2021 at 11.30 A.M.

Sd/-
Member

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Member

Sd/-
Chairman

I. A. (SR) No. 28 of 2019
in
O. P. No. 21 of 2017

M/s. VBC Ferro Alloys Limited Vs. TSSPDCL & SE (O) Sangareddy TSSPDCL

Application filed seeking revisiting the conditions stipulated in the retail supply tariff order for FY 2018-19 for category of HT-I (b) consumers.

Sri Challa Gunaranjan, Advocate for the applicant and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. Accordingly, the matter is adjourned.

Call on 29.04.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O. P. No. 3 of 2020

M/s. Rithwik Power Projects Limited Vs. TSSPDCL, its CGM and Dy. Chief
Controller of Accounts of TSPCC

Petition filed seeking declaration that the action of TSSPDCL in delay payment of bills as arbitrary and for payment of interest towards on such delayed payment bills.

Sri. Challa Gunaranjan, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee of TSSPDCL for the respondents have appeared through video conference. The counsel for the petitioner sought permission to withdraw the petition with a liberty to approach the Commission as and when found necessary. The representative of the respondents has no objection. Permission is accorded and the petition stands dismissed as withdrawn.

Sd/-
Member

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Member

Sd/-
Chairman

O. P. No. 26 of 2020

M/s. Arhyama Solar Power Private Limited Vs TSSPDCL, CGM (Revenue), SAO
(Operation Circle), Sangareddy & SAO (Operation Circle), Medchal.

Petition filed seeking to punish the respondents No.1 to 4 for non-compliance of the order dated 17.07.2018 in O. P. No. 10 of 2017 passed by the Commission.

Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee of TSSPDCL for respondents have appeared through video conference. The counsel for petitioner stated that the respondents have neither stated nor informed about the implementation of the order of the Commission. The representative of the respondents stated that they have filed writ petition before the

Hon'ble High Court and it is likely to be listed during the course of this week. In view of the position stated by the respondents, the matter is adjourned.

Call on 29.04.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

R. P. (SR) No. 132 of 2018
in
O. P. No. 36 of 2018

M/s. GEA BGR Energy System India Limited Vs. Spl. Chief Secretary, Energy Department, TSSPDCL & CGM (IPC & RAC) TSSPDCL

Review petition filed seeking review of the order dated 15.09.2018 passed in O. P. No. 36 of 2018.

Sri Challa Gunaranjan, Advocate for the review petitioner and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for petitioner stated that the counter affidavit is yet to be filed. The representative of the respondents stated that the counter affidavit is already filed. The counsel for the petitioner sought adjournment of two weeks to file a rejoinder in the matter and also to make submission thereof. Accordingly, the matter is adjourned.

Call on 19.04.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O. P. No. 6 of 2020

M/s. Satec Envir Engineering (India) Private Limited Vs. TSSPDCL & Spl. Chief Secretary, Energy Department

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

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee of TSSPDCL for the respondents have appeared through video conference. The counsel for the petitioner stated that he needs time to file rejoinder in the matter as he has noted the date of filing rejoinder as 17.03.2021 instead of 07.03.2021. The representative of the respondents stated that the counter affidavit

had already been filed and he has no objection for granting time to file rejoinder by the petitioner. Accordingly, the matter is adjourned.

Call on 22.03.2021 at 11.30 A.M.

Sd/-
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Member

Sd/-
Chairman

O. P. No. 72 of 2018

M/s. Kallam Spinning Mills Limited Vs. TSDISCOMs

Petition filed seeking directions to the DISCOMs to procure power from its hydel project.

Sri P. Srinivasa Rao, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee for the respondents have appeared through video conference. The counsel for the petitioner stated about the details of the case and also read out the various communications made between the parties apart from referring to orders of the erstwhile APERC as also the orders of the Hon'ble ATE and Supreme Court. He stated that a specific rejoinder alongwith documents has been filed duly serving a copy of it on the representative of the respondents. However, the representative of the respondents did not confirm the receipt of the rejoinder alongwith the documents. Therefore, the petitioner is directed to make available a set of those documents to the respondents. The matter will be heard on the next date of hearing finally. Accordingly, the matter is adjourned.

Call on 22.03.2021 at 11.30 A.M.

Sd/-
Member

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Member

Sd/-
Chairman

R. P. (SR) No. 99 of 2018

in

O. P. No. 21 of 2017

TSSPDCL Vs. None

Review petition filed seeking review of the cross subsidy surcharge and additional surcharge order dated 27.03.2018 passed in O. P. No. 22 of 2017.

Sri Mohammad Bande Ali, Law Attachee for the review petitioner has appeared through video conference. The representative of the petitioner explained in detail the

issues that require review by the Commission duly stating the facts and figures in the matter. While reserving the matter, the Commission required the petitioner to file true up for distribution activity of the licensee immediately for consideration of these issues.

Sd/-
Member

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Member

Sd/-
Chairman

O. P. No. 22 of 2020
&
I. A. No. 3 of 2021

M/s. ACME Dayakara Solar Power Private Limited Vs. TSSPDCL

Petition filed Seeking direction that the payment of entry tax may be treated as change in law and for reimbursement of the amount.

I. A. filed seeking amendment in the prayer of the original petition.

Sri. Hemant Sahai, Senior Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee of TSSPDCL for respondent have appeared through video conference. The counsel for the petitioner stated that the petitioner has filed the present petition seeking reimbursement of the tax paid by it to the state government known as entry tax pursuant to the assessment orders passed by the concerned department of the state government by treating it as change in law and the carrying costs. In order to explain the issue, the counsel for petitioner referred to various provisions of the power purchase agreement, the request for selection document and the judgments applicable in the facts and circumstances of the case.

The counsel for petitioner relied extensively on the concept of commercial agreement by quoting several provisions in the PPA with regard to change of law, force majeure and liabilities on the part of the generator. He stated that change of law has not been extensively explained in the PPA except for stating a simple definition of what constitutes change of law. He sought to link it up with force majeure events as understood in the agreement. It is the case of the petitioner that any liability including any taxes either levied or imposed by the government or any authority subsequent to the signing of the agreement would constitute change of law and thereby it is entitled to reimbursement of such amount, which it has spent in complying with such demand / obligation casted on it.

The counsel for petitioner stated that the petitioner is concerned in this case with the imposition of entry tax as demanded by the government. He stated that the entry tax was introduced by the erstwhile combined state in the year 2001. Subsequently, it came to be challenged before the Hon'ble High Court of Andhra Pradesh as it then was. The Hon'ble High Court quashed the enactment holding it to be unconstitutional. The matter was carried in appeal to the Hon'ble Supreme Court by then government in the year 2008, however, no stay was obtained. The Hon'ble Supreme Court had set aside the order of the Hon'ble High Court in the year 2016 bringing back to life the enactment on entry tax. Consequent thereof, the concerned authorities initiated proceedings for recovery of the amount due from the petitioner and passed necessary assessment orders. Prior to the order of the Hon'ble Supreme Court, the state government exercising the powers under the A. P. Reorganisation Act, 2014 adopted the earlier enactments including the Entry Tax Act, 2001. Therefore, the concerned authorities communicated the assessment orders after passing of the order of the Hon'ble Supreme Court.

He stated that the petitioner had approached the Hon'ble High Court pursuant to the assessment orders and obtained interim orders of stay on the demand subject to payment of 25% of the amount claimed. This amount is liable to be reimbursed by the respondents by treating it as change in law. In order to support his case, he relied on the judgments of Hon'ble Supreme Court as also the Central Electricity Regulatory Commission (CERC). The emphasis drawn from the judgments is that the agreements entered by the parties have to be treated for their interpretation on two concepts, namely, business efficacy and common man understanding. It is also his case that the petitioner cannot be pushed to wall simply for the reason that the agreement does not contain any clauses relating to compensation for change in law. The counsel for the petitioner would endeavour to state that the petitioner is bound to pay the amount, but at the same time, any taxes or levies have to be reimbursed as provided in the RFS and agreement.

It is also stated that the principles as laid down by the Hon'ble Supreme Court as also the CERC have considered section 70 of the Indian Contract Act, 1872, which require that no activity undertaken or offered to be undertaken is treated as gratuitous. The petitioner herein had offered to establish a power project based on

the proposal sought by the respondents and is undertaking supply of energy to the respondents pursuant to the award of contract through bidding route. It cannot sell the project being electricity to anybody else except the respondents as it is not a product that can be sold like any other product in the market it being bound by an agreement and is a producer of electricity. Having committed to be a supplier of power for the agreement period, it cannot be put to loss on account of any liabilities including tax that has been occasioned during the period of agreement, in this case the entry tax.

The counsel for petitioner stated that the tariff in the case of the petitioner is inclusive of the capital investment made and the return on equity derived thereof apart from servicing the loans that are obtained for establishing the project. The petitioner has to incur all the expenditure within the tariff quoted by it while bidding the project. Any additional burden in the form of taxes or levies has to be invariably passed on to the procurer of power, who may or may not recover from their consumers. This happens so, because the product is not being sold in the open market where the petitioner could change the tariff and recover all the costs and liabilities as is done in respect of other products.

The levy of entry tax is a subsisting liability as on the date of RFS issued by the respondents, except that it was subjudice before the Hon'ble Supreme Court pursuant to appeal by the government. The petitioner could not have factored in the levy that may happen or may not happen as it was dependant on the decision of the Hon'ble Supreme Court. If the Entry Tax Act were to be set aside, there would not be any liability and if the same is upheld, the said liability would arise. Also it is to be stated that the assessment orders have been challenged before the Hon'ble High Court, which may result in two possibilities being either the assessment order is set aside completely or the writ petition is rejected. The consequences of the same would be either the respondents would become liable if the petitioner fails to get the assessment orders set aside or there would not be any claim, if the petitioner succeeds in the writ petition. Corollary to this aspect is the cost that is incurred by the petitioner in complying with the directions of the Hon'ble High Court as also the levy of tax when the said amount towards payment of 25% of the assessed amount of entry tax. In complying with the said directions, the petitioner had to obtain funding

from promoters and other sources, which would entail carrying cost of either interest or return of capital employed as the case may be. Since the respondents are liable to pay the additional cost incurred by the petitioner, they are also liable to pay the additional cost incurred thereof for the present. Ultimately, the liability of the petitioner would be pressurized only when the proceedings before the Hon'ble High Court are concluded either way.

The counsel for petitioner would plead that this liability for the present is required to be made good by the respondents and such liability in any case be available for adjustment depending on the result of the proceedings before the tax authorities as also the Hon'ble High Court.

The representative of the respondents stated that the matter involves a simple issue of liability of entry tax payable by the petitioner, which the respondents are not liable to pay in terms of the agreement between the parties. It is his endeavour to state that the clauses in the agreement are specific and clear that the taxes and duties are to be borne by the petitioner itself and nothing is payable by the respondents. The respondents are not liable to pay the tax or reimburse it for the reason that as on the date of notifying the RFS, the said tax was not in vogue and any subsequent levy would be contrary to the terms of the PPA as the PPA would clearly state that the tariff is inclusive of all taxes and duties, which was condition in the RFS document, also based on which the petitioner has bid for the project. Having clearly understood the position of tariff and having signed the agreement, which obligates the petitioner to pay all the taxes and duties, it cannot now turn round and allege that there is change in law only because a tax which was nonest in law had become liable subsequently due to operation of law as laid down by the Hon'ble Supreme Court. The representative of respondents would urge upon that the Entry Tax Act cannot be invoked against the respondents by the petitioner as it is a new law, which has come into effect subsequent to the signing of the PPA. Thus, the respondents are not liable to pay nor are required to accede to the demand made by the petitioner. Therefore, the petition is liable to be dismissed as there is no involvement of change in law.

The counsel for petitioner drew attention to the policy of the Government of India with regard to change in law, which has been held to be a law by the Hon'ble Supreme Court. It is his case that the present claim of giving effect to the change in

law and requiring the respondent to reimburse the entry tax stems from the provisions of the policy also. The Commission may consider interpreting the provisions of the PPA in terms of the decisions of the Hon'ble Supreme Court and may be persuaded to follow the decisions taken by the coordinate body being CERC.

Having heard the submissions of the parties, the matter is reserved for orders. The parties are at liberty to file written submissions in the matter as sought by them.

Sd/-
Member

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Member

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Chairman