

Record of Proceedings dated 06.10.2018

O. P. No. 27 of 2018

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I. A. No. 30 of 2018

M/s. Mytrah Aakash Power Private Ltd. Vs. TSDISCOMs & Spl. Chief Secretary
to Energy Department

Petition filed seeking orders for granting extension of time for SCOD for (426) days

I. A. filed seeking amendment in the prayer at paragraph 20 of the original petition.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate as also Sri. B. Shiva Kumar, Legal Counsel of the company representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that despite the observations of the Commissions and directions thereof earlier to synchronize the project, the respondents are yet to do the same. It is also relevant to state that earlier the counsel for the respondents sought time stating that the respondents are preferring the appeal in the matter, but however, the petitioner has received a copy of the review petition filed by the respondents only yesterday.

The counsel for the petitioner stated that since the said petition is yet to be listed or the directions of the Commission earlier have not been complied with so far, directions may be given to the respondents to report compliance of the directions of the Commission at first instance, then the matter can be proceed with including the so called review petition to be filed before the Commission. He also requested that the petitioner may be put to conditions with regard to the directions for synchronization of the project, that is to say that there will no rights accruing to it upon such directions.

The counsel for the respondents insisted on not giving any directions for that until and unless the petition filed by them is heard and disposed of. It is his case that implementing the order of the Commission having filed petition for review, would create a negative situation against the respondents, which is not desirable at this stage. However, the respondents are inclined and or bound to implement the orders of the Commission provided the petitioner does not claim any rights pursuant to the

implementation of the directions of the Commission. Equities may not be created as the same would jeopardize the interest of the respondents under the PPA. The Commission may give further direction putting the above special conditions for enabling the respondents to take necessary action.

Having heard the arguments of the counsel for the parties and having passed orders in favour of the petitioner, the Commission is of the view that the same orders cannot be repeated again and it is against the principles of law. Therefore, the respondents are expected to give effect to the orders of the Commission passed earlier without fail. However, such implementation of the order by the respondents shall not give rise any rights to the petitioner, which shall be subject to the result of the pending petition before the Commission. Accordingly the matter is adjourned for further hearing.

Call on 27.10.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 37 of 2018
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I. A. No. 31 of 2018

M/s. Mytrah Agriya Power Pvt. Ltd. Vs. TSDISCOMs & Spl. Chief Secretary

Petition filed seeking orders for granting extension of time for SCOD for (420) days

I. A. filed seeking amendment in the prayer at paragraph 20 of the original petition.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate as also Sri. B. Shiva Kumar, Legal Counsel of the company representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that despite the observations of the Commissions and directions thereof earlier to synchronize the project, the respondents are yet to do the same. It is also relevant to state that earlier the counsel for the respondents sought time stating that the respondents are preferring the appeal in the matter, but however, the petitioner has received a copy of the review petition filed by the respondents only yesterday.

The counsel for the petitioner stated that since the said petition is yet to be listed or the directions of the Commission earlier have not been complied with so far, directions may be given to the respondents to report compliance of the directions of the Commission at first instance, then the matter can be proceed with including the so called review petition to be filed before the Commission. He also requested that the petitioner may be put to conditions with regard to the directions for synchronization of the project, that is to say that there will no rights accruing to it upon such directions.

The counsel for the respondents insisted on not giving any directions for that until and unless the petition filed by them is heard and disposed of. It is his case that implementing the order of the Commission having filed petition for review, would create a negative situation against the respondents, which is not desirable at this stage. However, the respondents are inclined and or bound to implement the orders of the Commission provided the petitioner does not claim any rights pursuant to the implementation of the directions of the Commission. Equities may not be created as the same would jeopardize the interest of the respondents under the PPA. The Commission may give further direction putting the above special conditions for enabling the respondents to take necessary action.

Having heard the arguments of the counsel for the parties and having passed orders in favour of the petitioner, the Commission is of the view that the same orders cannot be repeated again and it is against the principles of law. Therefore, the respondents are expected to give effect to the orders of the Commission passed earlier without fail. However, such implementation of the order by the respondents shall not give rise any rights to the petitioner, which shall be subject to the result of the pending petition before the Commission. Accordingly the matter is adjourned for further hearing.

Call on 27.10.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 38 of 2018

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I. A. No. 40 of 2018

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I. A. No. 41 of 2018

M/s. Mytrah Agriya Power Pvt. Ltd. Vs. TSDISCOMs & Spl. Chief Secretary

Petition filed seeking orders for granting extension of time for SCOD for (436) days.

I. A. filed seeking directions to the respondent No. 1 to allow synchronization of the project subject to the final outcome of the petition.

I. A. filed seeking directions to the respondent No. 1 not take any coercive action against the applicant / petitioner including but not limited to invocation of B. Gs. and / or termination of the PPA pending disposal of the original petition.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Mazag Andrabi, Advocate as also Sri. B. Shiva Kumar, Legal Counsel of the company representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the petitioner has filed two applications for interim directions. One application is for directing the respondent No. 1 to synchronize the project and the other interlocutory application is with regard to the direction to the respondent No. 1 not to take any coercive steps including encashment of bank guarantees. This Commission has already passed directions to the respondents to synchronize the projects in two other cases pending disposal of the said petitions before the Commission. Similar direction may be passed in this matter also on the application filed by the petitioner. The Commission is at liberty to impose any conditions including but not limited to putting the applicant on the condition that synchronization of the project would not give rise to any other benefits and is subject to the result of the original petition.

The counsel for the respondents endeavored to state that the application may not be considered as the respondents have already issued notices in the matter. Even otherwise, the respondents are taking steps for obtaining orders of the Commission in other matters. In any case, this matter will be heard by the Commission and disposed of shortly, as such there is no urgency for passing any

interim order at this stage. However, he requires time to argue the original petition and the applications in the matter.

The Commission is of the view that pending disposal of the petition, the respondent No. 1 should synchronize the project, however, such synchronization shall not give rise any rights to the petitioner. Having heard the counsel for the parties, while directing the respondent No. 1 to synchronize the project as observed above, the matter is adjourned.

Call on 27.10.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 58 of 2018
&
I. A. No. 34 of 2018

M/s. Clean Solar Power (Chitradurga) Pvt. Ltd. Vs. TSSPDCL & TSTRANSCO

Petition filed seeking extension of time for SCOD beyond 21.05.2017 until the respondent No. 1 verifies the commissioning of the project, set aside or quash the letter dated 30.05.2018 written by respondent No. 1 to the petitioner and declare that the events delayed the project are in nature of force majeure and the petitioner is not liable for delay as specified under Article 10.5 of PPA or otherwise for delay in SCOD.

I. A. filed seeking directions to the respondent No. 1 to procure power from the petitioner's project subject to final outcome of the petition.

Sri. Niranjan Reddy, Senior Counsel for the petitioner along with Sri. Avinash Desai, Sri. Avijeet Lala, Ms. Shreya Mukerjee and Sri K. Jashwanth, Advocates and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The senior counsel appearing for the petitioner stated that the petitioner has approached the Hon'ble High Court and obtained orders not to take any coercive steps including encashment of bank guarantees. The petition is filed for directions respondents to extend the SCOD upto the date when the distribution licensee verifies the commissioning of the project as also to set aside the letter of termination issued by the respondent No. 1 by treating the events causing delay in commissioning the projects as force majeure. The present application for interim orders is with regard to procurement of power from the petitioner's project pending disposal of the same by duly synchronizing the project.

The counsel for the respondents stated that the PPA had already been terminated, however, there is a direction from the Hon'ble High Court not to encash the bank guarantees. The respondents are not inclined to synchronize the project as the period including all exemptions considered by the Commission has already expired.

At this stage while relying on the arguments in two other cases listed for the day, the senior counsel for the petitioner sought orders of synchronization pending disposal of this petition, but subject to the condition that no rights will accrue to the petitioner upon such synchronization. Having regard to the request, the Commission directs the respondents to synchronize the project pending disposal of the petition, but makes it clear that no rights will accrue to the petitioner upon such synchronization, which is also subject to the result in this petition.

Adjourned for further hearing, call on 27.10.2018 at 11.00 A.M.

Sd/-
Chairman

I. A. No. 38 of 2018
in
O. P. No. 10 of 2018

M/s. ACME Solar Power Technology Pvt. Ltd. Vs. TSSPDCL & TSTRANSCO

Application filed seeking inter orders directing the respondent No. 1 to clear the pending invoices of Rs.19,34,91,784/- with interest thereon @ 12% within 7 days.

Sri. Hemanth Sahai, Senior Counsel along with Ms. Puja Priyadarshini, Advocate as also Sri. Mast Ram Deswal, representative of the company representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present.

The counsel for the petitioner stated that the original petitioner has filed a review petition seeking review of the order dated 07.07.2018. It also filed an interlocutory application seeking directions for payment of charges for the energy delivered. The application is filed for payment of Rs. 19,34,91,784/-, which is due to the petitioner for the energy delivered from the date of synchronization of the project.

The counsel for the petitioner stated that the Commission while passing the order has fixed the SCOD as 18.12.2017 instead of 07.02.2018, which is the actual date of synchronization of the project. The respondent is seeking to levy penalty and requires it to pay the same for the period between 18.12.2017 and 07.02.2018. The petitioner is not liable for the same as the delay occurred in synchronization is due to administrative exercise carried out by the respondent with which the petitioner has no control. The petitioner cannot be penalized for the administrative delays of the respondents. The counsel for the petitioner sought to emphasize that for the present the Commission needs to clarify the position regarding the date of synchronization and direct payment of the amount due to the petitioner.

The counsel for the respondent stated that the purported review petition is not yet listed and there is no notice to the respondents on the same. Without reviewing or modifying the original order, the date of synchronization cannot be taken as 07.02.2018. Even assuming the review petition is to be considered, there is no error apparent on the face of the record, no arithmetical mistake or typographical error in the order, which requires reconsideration. Though, there may be power to the Commission to review under the Act, 2003, however, the present proceedings do not relate to the same. In the absence of the modification or consideration of the review, no payment can be directed at present, as the application is itself not maintainable. However, since the matter is before the Commission, synchronization or payment as the case may be, can be considered by the respondents only upon any such directions from the Commission.

Having heard the arguments of the counsel for the parties, the matter is reserved for taking a view in the matter.

Sd/-
Chairman

O. P. No. 61 of 2018

M/s. Sarvotham Care Vs. TSTRANSCO & TSSPDCL

Petition filed seeking directions for treating the units supplied after synchronization to be banked units or to pay for the same by the licensee.

Sri. N. Sai Phanindra Kumar, Advocate along with Sri. M. Tharun, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama

Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the present petition is filed for directions to the DISCOMs regarding banking of energy or payment thereof. Originally, the petitioner entered into LTOA with the DISCOMs. However, after application for LTOA, the plant was synchronized on 28.09.2015. The permission was accorded to the petitioner on 28.12.2015, but actual agreement was signed and enforced on 13.01.2016. The LTOA permission should have been given within 30 days from the date of commissioning that is 06.10.2015, which date being the date from issuance of the letter of commissioning of the project. There is a delay of more than 2 months during which time, the energy was pumped into the grid, which has to be treated as banked energy as per the regulations or else the same has to be paid by the DISCOMs.

The counsel for the respondents stated that the petition is coming up for the first time and the respondents need time for filing counter affidavit. Therefore, adjournment may be granted.

Having considered the submission and request of the counsel for the respondents, the matter is adjourned.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 62 of 2018

Hindustan Aeronautics Limited Vs. -Nil-

Petition filed seeking exemption from restriction on net metering regulation capacity of 1 MW and establishing a capacity of 2 MW solar power unit.

Sri. A. K. Sarkar, Deputy General Manager (Maintenance) on behalf of the petitioner is present. The representative has stated that the present petition is filed seeking exemption from the application of regulation on net metering as the capacity is higher than the capacity permitted under the said regulation. He stated that as per the policy of the Government of India, the Hyderabad Unit of the petitioner is establishing the solar plant through a developer for a capacity of 2 MW. Several other Commissions where the sister units of the petitioner are located have

exempted them from the limitation of net metering capacity. Therefore, he sought orders of the Commission to allow the petitioner to establish the solar plant and avail the benefit of net metering by making an exception, it being a defence unit.

The Commission observed that the net metering capacity has been pegged at 1 MW due to the reason that open access all over the country has been allowed to the consumers who are drawing power for more than 1 MW. The Commission sought to know the view of the DISCOM in the matter. The counsel for the DISCOM stated that it is not a party to this case. As such the Commission required them to assist it by stating why exception should not be made to the net metering regulation in favour of the petitioner or like situations. The matter is adjourned.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 63 of 2018

M/s. Srinivasa Power Pvt. Ltd. Vs. TSSPDCL

Petition filed seeking determination of tariff for the period 11th to 20th year of the project.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the petitioner is an existing hydel project of 0.5 MW. Initially the matter was not entertained by the Commission, even before the admission of the petition. Now as per the directions of the Hon'ble High Court, the petition is taken on file and posted for hearing today duly giving notice to the respondent for appearance. The Counsel for the respondent sought time for filing counter affidavit.

In view of the request of the counsel for the respondent, the matter is adjourned.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 64 of 2018

&
I. A. No. 39 of 2018

M/s. Kranthi Edifice (P) Ltd. Vs. TSSPDCL & its officer

Petition filed seeking extension of SCOD beyond 08.01.2015 and a direction to that effect to TSSPDCL to amend the PPA.

I. A. filed seeking directions to the TSSPDCL not to take any coercive steps against the petitioner including termination of the PPAs.

Sri. D. Raghavender Rao, Advocate for the petitioner along with Ms. Smriti Jaswal, Advocate and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the petitioner had entered into PPA with the DISCOM and the project was not ready for synchronization on 31.12.2016. As such it had requested the licensee to extend the time for completion of the project by two months. The same was not acceded by the licensee. Then the petitioner had approached the Hon'ble High Court for similar relief. The Hon'ble High Court disposed of the writ petition directing the licensee to consider the representation of the petitioner.

The counsel for the petitioner stated that the licensee refused to entertain the request of the petitioner. Therefore, it again approached the Hon'ble High Court questioning such refusal and also obtained orders from the Hon'ble High Court restraining the licensee from taking any coercive steps against the petitioner. However, the order was limited to a short period and was extended from time to time. Later, on legal advice the petitioner has withdrawn the said writ petition with permission to approach this Commission. While doing so, it obtained orders of protecting the petitioner for a period of three weeks till it approaches the Commission. There is urgency in the petition for interim direction to the licensee not to take any coercive steps against the petitioner including termination of the PPA.

The counsel for the petitioner stated that as per the directions of the Hon'ble High Court, the Commission may consider passing interim orders insofar as termination of the PPA and other coercive steps against the petitioner. The counsel for the respondent sought time to file counter affidavit as the matter has come up for the first time, however, he stated that there is no necessity of any order as the respondents are under the notice in this petition and as such bound not to take any action in the matter.

The Commission having regard to the status of the petitioner while granting time for filing counter affidavit to the respondents, directed the respondents not to take any coercive action in the matter pending disposal of the original petition.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 65 of 2018

M/s. Oberon Power Corporation Pvt. Ltd. Vs. TSNPDCL

Petition filed seeking adoption of tariff of Rs.5.72 / unit agreed by the petitioner before the government.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the petitioner has bid for 5 MW project in the year 2012 bidding, but could not complete the project within time due to several factors. He has represented to the government for extension of SCOD beyond 08.01.2015 and the government was considerate enough to grant time of 90 days from 05.09.2018 at the rate of Rs.5.72 / unit as a last chance. The counsel for the respondent stated that the matter is coming up for the first time and the respondent needs time for filing counter affidavit in the matter.

It has been observed by the Commission that the distribution licensee shall file a ground report on the status of the project along with the counter affidavit as the time period for completion of the project and the agreement had already been fixed by the government. Accordingly adjourned.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 66 of 2018

M/s. Oberon Power Corporation Pvt. Ltd. Vs. TSNPDCL

Petition filed seeking adoption of tariff of Rs.5.72 / unit agreed by the petitioner before the government.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the petitioner has bid for 5 MW project in the year 2012 bidding, but could not complete the project within time due to several factors. He has represented to the government for extension of SCOD beyond 08.01.2015 and the government was considerate enough to grant time of 90 days from 05.09.2018 at the rate of Rs.5.72 / unit as a last chance. The counsel for the respondent stated that the matter is coming up for the first time and the respondent needs time for filing counter affidavit in the matter.

It has been observed by the Commission that the distribution licensee shall file a ground report on the status of the project along with the counter affidavit as the time period for completion of the project and the agreement had already been fixed by the government. Accordingly adjourned.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 67 of 2018

M/s. Shalaka Infra-Tech (I) Pvt. Ltd. Vs. Spl. Chief Secretary (Energy), TSSPDCL
alongwith its officer and TSTRANSCO

Petition filed seeking declaration of SCOD of the project to be 11.11.2017 instead of 29.02.2017 of the 15 MW solar project in terms of the Article 9 of the PPA.

Sri. N. Sai Phanindra Kumar, Advocate along with Sri. M. Tharun, Advocate representing Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the petition is filed for extension of SCOD of the project beyond the period fixed in the PPA in view of the force majeure conditions that prevailed and obstructed the completion of the project. The counsel for the respondents sought adjournment of the hearing, as the matter is coming up for hearing for the first time and the respondents are required to file counter affidavit in the matter. In view of the request of the counsel for the respondents, the matter is adjourned.

Call on 03.11.2018 at 11.00 A.M.

Sd/-
Chairman