

Record of Proceedings dated 18.08.2018

O. P. No. 8 of 2017

M/s. Shree Cement Limited Vs. TSSPSDCL & Vedanta Limited

Petition filed seeking recovery of the amounts due from the respondents towards sale of power on short term basis U/s 86 (1) (f) of the Act, 2003.

Sri. Buddy A. Ranganadhan, Senior Advocate representing Sri. P. Vikram, Advocate for the petitioner along with Ms. Ahana, Advocate and Sri. Y. Rama Rao, Standing counsel for the respondent No.1 and Sri. K. Gopal Chowdary, Advocate for respondent No. 2 are present. The counsel for the respondent No. 2 continued his submissions from the previous date of hearing. The plea in the petition is with regard to payment of 50% of the charges towards the relief prayed in the petition. He has explained the documents filed by the petitioner as well as the respondent No. 2 by highlighting the relevant portions of the said documents. In that process he highlighted the fact that all the charges are to be borne by the trader itself as per the agreement. Therefore, no relief can be granted to the petitioner against the respondent No. 2.

The counsel for the respondent No. 2 sought to make it clear that the issue arose and liable to be considered is with regard to payment of charges at point of connection charges that is at injunction and delivery due to change in the provisions made by the Central Commission in November, 2015, when it had issued revised regulation. Though power supply was contracted for May, 2015 to May, 2016, due to availability or otherwise of the corridor, supply was made only for about 45 days in April and May, 2016. In any case, the charges are payable by the respondent No. 1 and not by respondent No. 2 as is claimed by the petitioner. It is relevant to state that the Central Commission made distinction with regard to short term open access, medium term open access and long term open access in the amendment made to the regulation issued by it. It is also his case that the charges are attributable to the respondent No. 1 and the claim is also to be settled by the said respondent being the beneficiary of power purchase.

The counsel for the respondent No. 2 also stated that the clauses in the agreement relate and speak of jurisdiction of the litigation, if any and provided for

New-Delhi as the area and not Hyderabad as is now initiated by the petitioner. The petitioner also did not obtain the corridor for enabling power supply and ultimately after protracted correspondence, it was allowed medium term open access. Accordingly, no relief can be granted to the petitioner against this respondent. It is the case of the respondent No.2 that the petitioner cannot and ought not to have approached this Commission against it as the petition is not maintainable before this Commission, the appropriate remedy being filing of a suit in the competent court towards its claim.

The counsel for the respondent No. 1 stated that the entire issue is governed by the purchase order issued by the licensee. Though supply once contracted for the period 29.05.2015 to 26.05.2016, the MTOA was available only from 01.04.2015. The supply was availed by the licensee during the said period only. The DISCOM is not liable for payment of any amounts prior to the said period. There is no tripartite agreement. The judgment relied upon by the respondent No. 2 may be considered while the judgment relied upon by the petitioner is not relevant.

The counsel for the petitioner while reiterating the submissions already made stated that the issue is with regard to the payment of amounts due to them be it by the respondent No. 1 or 2. The claims relating to 1 and 3 of the reliefs sought in the petition are not disputed. The letter of intent issued to it and the subsequent purchase agreement provides for the basis of payment. Initially, the petitioner had applied for STOA from NLDC, which was refused and further application was made by the petitioner for LTOA, which was not considered within time, however, subsequently on further representation it was considered and MTOA was allowed from 01.04.2016 upto the end of the Lol and beyond.

The counsel for the petitioner stated that one of the prayers is with regard to backing down instructions, for which the respondents are liable to pay the charges. He explained the same with reference to the documents filed by the petitioner. The claims made by the petitioner are not disputed. The issue of jurisdiction arises and is based on the claim. Reliance is placed on the judgment of the Hon'ble ATE in Appeal No. 168 of 2014. Replying to the issue of jurisdiction, the counsel for the petitioner stated that it being a trader and as the amounts are due from the distribution licensee alongwith the generator, the Commission is only the appropriate

forum. Moreover, trader being interstate trader is a licensee under the Act, 2003, therefore also, this Commission alone has jurisdiction to adjudicate the matter.

The counsel for the petitioner stated that the issue of back to back agreement depends on the facts of the individual case and claims have to be decided by the State Commission, which has jurisdiction over the distribution licensee which has undertaken procurement of power for disbursement in its area of supply. Thus, there existed back to back agreement that is between trader and generator on one side and trader and distribution licensee on the other side. Accordingly, the petition is rightly filed before this Commission for proper adjudication and settlement of the case. The trader does not lay hands over any amounts payable by the licensee for the power supply made by the generator. As per the regulation of the CERC, it is only mandated to avail trading margin only at Rs. 0.04 paise per unit.

The counsel for the petitioner accordingly prays that the petitioner be reimbursed with the amounts which have been paid by it towards charges and the compensation payable towards backing down of power supply.

The detailed arguments have been heard and the matter is reserved for orders. The counsel for the parties shall file their rejoinder or written submissions on or before 10.09.2018.

Sd/-
Chairman