

Record of Proceedings dated 24.11.2018

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 PPA had already been terminated. These are only two projects where the government had directed extension of SCOD by 90 days as it is government order the DISCOM has to accept, however, the final discretion rests with the Commission. Synchronization of the project is dependent on completion of the project as submitted before the Commission. Insofar as the tariff is concerned, the same tariff as directed by the government is not feasible, the Commission may take a decision on the same. After communication of the government, the DISCOM again addressed a letter to the government appraising the factual position and requesting it to revisit the order. There is no response till date from the government. In the given facts and circumstances, the Commission may consider and decide the matter, it being a test case may open opportunity for several other generators.

The counsel for the petitioner stated that the decision of the government by itself would amount to cancellation of the termination of the PPA, as such there is no necessity for entering into fresh PPA. However, upon allowing this petition the parties have to enter into amendment agreement. Directions of the government constitute change of law. The Commission may consider allowing the petition in terms of the directions of the government.

The Commission directed the parties to file their written submissions on or before 01.12.2018. Having heard the submissions of the counsel for parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 66 of 2018

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constitute change of law. The Commission may consider allowing the petition in terms of the directions of the government.

The Commission directed the parties to file their written submissions on or before 01.12.2018. Having heard the submissions of the counsel for parties, the matter is reserved for orders.

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 Hon'ble High Court had disposed of the writ petition filed by the petitioner on 27.08.2018 granting three weeks time within which it has approached the Commission that is on 11.09.2018. The PPA has not been terminated as is claimed by the respondents. The extension of the SCOD is the only issue, which is required to be considered and the said prayer is asked in the petition.

The counsel for the respondents stated that there is no order from the Hon'ble High Court protecting the interest of the petitioner. No order is passed protecting the termination of the PPA. The interim order purported to have been passed and continued to be extended from time to time by the Hon'ble High Court is with reference to invoking bank guarantee and does not protect the PPA.

The counsel for the petitioner stated that the Commission extended SCOD to 2012 and 2013 projects by letter dated 14.10.2016 up to 31.12.2016. The project is comprised of 10 MW each at two locations. The second unit has to be synchronized after completion. The petitioner has informed the DISCOM that it needs two months

more time for completion of the project. However, the said request has not been acceded to. The petitioner filed writ petition before the Hon'ble High Court, which has been disposed of by directing the DISCOM to consider the representation of the petitioner and pass necessary orders within three weeks. The DISCOM disposed of its representation on 19.01.2017 refusing the request.

The counsel for the petitioner stated that the petitioner again approached the Hon'ble High Court against the refusal of the request of the petitioner before the DISCOM. While admitting the writ petition, interim order had been passed directing the DISCOM not to take any coercive steps against the writ petitioner therein. This order came to be extended from time to time till disposal of the writ petition. The counsel for the petitioner stated that the petitioner was advised to approach the Commission instead of the Hon'ble High Court which it has done earlier. Accordingly, the writ petitioner sought withdrawal of the writ petition and filed the present petition before the Commission. While withdrawing the said writ petition, it sought protection regarding bank guarantee and termination of the PPA, which was granted subject to Commission taking a decision in the matter within a period of three weeks.

The counsel for the petitioner stated that as observed on the last occasion it is not taking steps to change the name of the petitioner as otherwise to face financial difficulties. The prayer in the present petition is limited to extension of SCOD and consequently grant time of five months to complete the project. The extension of SCOD is required to be ordered and the PPA is not terminated in terms of the orders of the Hon'ble High Court as well as the order initially passed by the Commission. The period sought for completion is for the reason that it has to place orders and obtain material from the concerned reputed organizations, which will take some time to deliver. Thereafter, the petition has to obtain finances also from bankers for completing the project.

The parties are directed to file their respective written submissions on or before 01.12.2018. In view of the submissions of the parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 27 of 2018
&
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. Hemant Sahai, Senior Advocate along with Ms. Molshree Bhatnagar, Advocate as well as Sri. Varun Kapur, 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 physical synchronization was done on 22.11.2018. The synchronization now sought to be done is in respect of balance 20 MW of the project. In fact, the petitioner had informed the DISCOM about its readiness to synchronize the balance 20 MW on 30.04.2018 whereas the DISCOM claims it to be on 01.05.2018. The petitioner requested for CTPT approval on 06.06.2017, which was approved on 13.11.2017 to which 6 months have to be added being the delay in approving on the part of the TRANSCO thereby the SCOD stands extended up to 13.05.2018. As such the petitioner is not in delay as it had informed the DISCOM about its readiness as on 01.05.2018 claimed by the respondents which date is within the extended period of SCOD.

The counsel for the petitioner stated that one of the farmers had approached the Civil Court and notice of injunction had been ordered on 07.11.2017. The matter was ultimately settled on and after 15.12.2017. Thereby there is a delay of about 40 days, which is not within the control of the petitioner and can be treated as force majeure event. The issue of events beyond the control of the petitioner has been recognized and up held by the Hon'ble ATE in similar matters before it and the same is treated as force majeure condition. These events are beyond 31.10.2017, as such the SCOD gets extended.

The counsel for the petitioner stated that the SCOD pursuant to delays stood extended to 15.06.2018. As stated earlier, the delay in approvals by TRANSCO

towards line erection and CTPT have to be factored in, which favoured the petitioner as the delay occasioned for approval have to be added to the proposed SCOD as per PPA and the extension granted by the government. The PPA does not get terminated due to force majeure events.

The counsel for the respondents stated that the terms of the PPA emphasize on the action to be taken by the developer for obtaining approvals and sanctions and the same cannot be attributed to the respondents. The CEIG approval was issued on 23.05.2018. As regards submissions on force majeure, the ATE judgment and provisions of the PPA, he needs time to make submissions. The parties are bound by the clauses in the PPA and any deviations have to be mutually agreed upon. Therefore, in terms of the PPA delay is not applicable to the respondents.

Having heard the submissions made by the counsel for the parties, written submissions are directed to be filed on or before 01.12.2018 and the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 37 of 2018
&
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. Hemant Sahai, Senior Advocate along with Ms. Molshree Bhatnagar, Advocate as well as Sri. Varun Kapur, 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 informed that the actual synchronization of the project is underway. He further stated that CEIG approval was received on 30.04.2018 after application on 11.04.2018.

He further stated that the project was confronted with the canal of Kaleshwaram Project. It received a communication from the Irrigation Department in

September, 2017 that particular survey numbers which fall on the line are actually meant for canal works and the project is required to move the line further. It made an application for revised line along with bay. The same had ultimately been approved on 04.12.2017. This happened after completion of 70% of the work relating to the line, as there is a delay of 199 days in approval of the line and CTPT. Thus the SCOD under the PPA gets extended up to 22.12.2017 and with the addition of 6 months under the PPA itself the SCOD can be achieved before 22.06.2018. It gets further revised to 01.08.2018 for the reason that there is a delay in approval of CTPT also. The PPA cannot be said to be terminated as there is a delay on the part of the licensee and TRANSCO.

The counsel for the respondents stated that while the dates may be borne out of the record, but the petitioner ought to have completed the project in terms of the PPA. At this stage, the Commission sought to know why section 67 of the Act, 2003 is being given effect to and CEA Rules are not adhered to, as the said provision and rules require the TRANSCO to undertake the necessary formalities including the right of way issues and it is not for the generator. The counsel for the respondents stated that while it may be so with regard to section 67 of the Act, 2003, the provision being works of licensee, section 10 of the Act, 2003 mandates the generator to coordinate with the TRANSCO and the DISCOM while undertaking supply of energy.

The counsel for the respondents reiterated that the conditions of the PPA emphasize the responsibility on the generator to adhere to the conditions thereof. The delays happening in the approvals and sanctions cannot be termed as force majeure events. He wishes to submit in detail all the aspects on the next date of hearing including the application of force majeure, judgment of the Hon'ble Supreme Court and ATE relied upon by the petitioner.

Having regard to the request of the counsel for the respondents, the matter is adjourned.

Call on 01.12.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 38 of 2018
&
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 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. Hemant Sahai, Senior Advocate along with Ms. Molshree Bhatnagar, Advocate as well as Sri. Varun Kapur, 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 respondents are yet to synchronize the project. The counsel for the respondents stated that the steps are being taken to synchronize the project on Saturday itself.

The counsel for the petitioner stated that he informed the licensee that due to urbanization of the Wanaparathi Town the project is not in a position to lay a second transmission corridor. This information was given to the licensee on 23.01.2017. While informing about the said position, he sought permission to utilize the transmission structure of another project by sharing the same to lay the line. The same was refused on 11.09.2017. Subsequently, the project made a fresh request on 30.10.2017 and finally the same was agreed to after joint inspection on 27.01.2018. This delay is not applicable to the project developer and thus the delay occasioned in laying the line, cannot be attributed to the petitioner, consequently the SCOD gets extended by the said period under the PPA. The CEIG approval was received on 28.04.2018. Considering all the delays the revised SCOD as per PPA would be 31.05.2018 and adding the benefit of six months the SCOD would be 30.11.2018.

The counsel for the respondents pointed out that the SCOD as per PPA is 17.05.2017 and the Commission has to consider the alleged delay in terms of the provisions of the PPA. On the instructions of the officers of the transmission licensee, who were directed to appear by notice of the Commission, stated that time

of four months has been taken by them to verify as they have to clear permission for 14 towers which were sought for erection of line. He further stated that as requested in the other matters he would submit detailed arguments on the issue of force majeure, judgments of ATE and Supreme Court on the next date of hearing.

In view of the submissions of the counsel for parties and the request made by the counsel for the respondents, the matter is adjourned.

Call on 01.12.2018 at 11.00 A.M.

Sd/-
Chairman

O. P. No. 46 of 2018

M/s Medak Solar Projects Private Limited vs TSTRANSCO & TSSPDCL

Petition filed claiming the units fed into grid by the petitioner's 8.24 MW solar plant from the date of synchronization to the date of LTOA agreement as deemed to have been banked or in alternative to pay at Rs. 6.78 / unit.

Sri. Challa Gunaranjan counsel for the petitioner along with Sri. N. Sai Phanindra Kumar, Advocate and Sri. Y. Rama Rao counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the project is established based on the policy issued by the government in the year 2015. Under the policy banking is allowed for solar energy. The plant was established and synchronized with the grid in October, 2016. Thereafter, it sought permission for long term open access, which was allowed after lapse of three months contrary to the regulation of the Commission, which provided for giving approval within one month.

The counsel for the petitioner stated that from the date of synchronization till the date of giving LTOA energy was generated and pumped into the grid, which has to be treated as banked energy as per the solar policy of the government. The present petition is filed for treating such energy as banked energy and allow the generator to use it for either captive or third party sale as the case may be. The counsel for the petitioner stated that in the alternative of not allowing banking, the

petitioner should be paid for the energy generated and supplied at Rs.6.78 per unit, which was the rate discovered by the DISCOMs in the bidding.

The counsel for the petitioner stated that the Commission had already considered the issue and made regulation in the year 2017 giving effect to the provisions of the policy regarding banking. It had also an occasion to deal with the similar situation in O. P. No. 93 of 2015 filed by M/s. MLR Industries Limited. The case on hand is no different from the said case except that this particular case involved open access. The Commission may consider the alternate prayer also towards payment of charges for the energy purported to have been banked to the grid. The rate may be at the Commission approved tariff of Rs.5.96 / unit.

The counsel for the respondents stated that the regulation made by the Commission would be applicable prospectively from the date of its notification. In this case the regulation itself specifically mentions about the date of application. Moreover, the policy cannot be the guiding factor to decide the issue in the matter.

The counsel for the petitioner relied on the provisions of original regulation on banking issued in the year 2006, which provided for removal of difficulties if any in giving effect to the provisions of the regulation. He stated that the project has been established based on the policy of the government and the incentives allowed therein should be extended to the petitioner. Banking of energy or payment for the energy supplied is required to be considered and allowed. He sought to rely on Section 70 of the Contract Act, which requires treatment of goods kept in once possession and utilized by them have to be paid for by the person utilizing the same.

Having regard to the submissions made by the counsel for the parties, the matter is reserved for orders.

Sd/-
Chairman

O. P. No. 47 of 2018

M/s Dubbak Solar Projects Private Limited Vs. TSTRANSCO & TSSPDCL

Petition filed claiming the units fed into grid by the petitioner's 8 MW solar plant from the date of synchronization to the date of LTOA agreement as deemed to have been banked or in alternative to pay at Rs. 6.78 / unit.

Sri. Challa Gunaranjan counsel for the petitioner along with N. Sai Phanindra Kumar, Advocate and Sri. Y. Rama Rao counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the project is established based on the policy issued by the government in the year 2015. Under the policy banking is allowed for solar energy. The plant was established and synchronized with the grid in October, 2016. Thereafter, it sought permission for long term open access, which was allowed after lapse of three months contrary to the regulation of the Commission providing for giving approval within one month.

The counsel for the petitioner stated that from the date of synchronization till the date of giving LTOA energy was generated and pumped into the grid, which has to be treated as banked energy as per the solar policy of the government. The present petition is filed for treating such energy as banked energy and allow the generator to use it for either captive or third party sale as the case may be. The counsel for the petitioner stated that in the alternative of not allowing banking, the petitioner should be paid for the energy generated and supplied at Rs.6.78 per unit, which was the rate discovered by the DISCOMs in the bidding.

The counsel for the petitioner stated that the Commission had already considered the issue and made regulation in the year 2017 giving effect to the provisions of the policy regarding banking. It has also an occasion to deal with the similar situation in O. P. No. 93 of 2015 filed by M/s. MLR Industries Limited. The case on hand is no different from the said case except that this particular case involved open access. The Commission may consider the alternate prayer also towards payment of charges for the energy purported to have been banked to the grid. The rate may be at the Commission approved tariff of Rs.5.96 / unit.

The counsel for the respondents stated that the regulation made by the Commission would be applicable prospectively from the date of its notification. In this case the regulation itself specifically mentions about the date of application. Moreover, the policy cannot be the guiding factor to decide the issue in the matter.

The counsel for the petitioner relied on the provisions of original regulation on banking issued in the year 2006, which provided for removal of difficulties if any in

giving effect to the provisions of the regulation. He stated that the project has been established based on the policy of the government and the incentives allowed therein should be extended to the petitioner. Banking of energy or payment for the energy supplied is required to be considered and allowed. He sought to rely on Section 70 of the Contract Act, which requires treatment of goods kept in once possession and utilized by them have to be paid for by the person utilizing the same.

Having regard to the submissions made by the counsel for the parties, the matter is reserved for orders.

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. Sakya Singha Chaudhuri, Advocate, Sri. Avijeet Lala, Advocate, Sri. Avinash Desai, Advocate and Sri K. Jashwanth 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 there is a delay in acceptance of CTPT set and that is why there is no synchronization till date. The petitioner informed the DISCOM that it is ready on 18.05.2018 itself.

The counsel for the respondents stated that as requested in the other matters he would submit detailed arguments on force majeure and judgments of ATE and Supreme Court on the next date of hearing. Hence, the matter is adjourned.

Call on 01.12.2018 at 11.00 A.M.

Sd/-

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. Challa Gunaranjan counsel for the petitioner along with N. Sai Phanindra Kumar, Advocate and Sri. Y. Rama Rao counsel for the respondents along with Ms. M. Pravalika, Advocate are present. The counsel for the petitioner stated that the project is established based on the policy issued by the government in the year 2015. Under the policy banking is allowed for solar energy. The plant was established and synchronized with the grid in October, 2016. Thereafter, it sought permission for long term open access, which was allowed after lapse of three months contrary to the regulation of the Commission providing for giving approval within one month.

The counsel for the petitioner stated that from the date of synchronization till the date of giving permission for captive use with grid connection, which has to be treated as banked energy as per the solar policy of the government. The present petition is filed for treating such energy as banked energy and allow the generator to use it for captive consumption. The counsel for the petitioner stated that in the alternative of not allowing banking, the petitioner should be paid for the energy generated and supplied at Rs.6.78 per unit, which was the rate discovered by the DISCOMs in the bidding.

The counsel for the petitioner stated that the Commission had already considered the issue and made regulation in the year 2017 giving effect to the provisions of the policy regarding banking. It has also an occasion to deal with the similar situation in O. P. No. 93 of 2015 filed by M/s. MLR Industries Limited. The case on hand is no different from the said case. The Commission may consider the alternate prayer also towards payment of charges for the energy purported to have been banked to the grid. The rate may be at the Commission approved tariff of Rs.5.96 / unit.

The counsel for the respondents stated that the regulation made by the Commission would be applicable prospectively from the date of its notification. In this

case the regulation itself specifically mentions about the date of application. Moreover, the policy cannot be the guiding factor to decide the issue in the matter.

The counsel for the petitioner relied on the provisions of original regulation on banking issued in the year 2006, which provided for removal of difficulties if any in giving effect to the provisions of the regulation. He stated that the project has been established based on the policy of the government and the incentives allowed therein should be extended to the petitioner. Banking of energy or payment for the energy supplied is required to be considered and allowed. He sought to rely on Section 70 of the Contract Act, which requires treatment of goods kept in once possession and utilized by them have to be paid for by the person utilizing the same.

Having regard to the submissions made by the counsel for the parties, the matter is reserved for orders.

Sd/-
Chairman