



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

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

**Dated 12.07.2021**

**Present**

Sri T. Sriranga Rao, Chairman  
Sri M. D. Manohar Raju, Member (Technical)  
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s GEA BGR Energy System India Limited,  
Regd. Office at 443, Anna Salai, Teynampet,  
Chennai – 600 018.

... Review Petitioner / Petitioner.

AND

1. Special Chief Secretary, Energy Department,  
Government of Telangana, Secretariat, Hyderabad.
2. Southern Power Distribution Company of Telangana  
Limited, Corporate Office, # 6-1-50,  
Mint Compound, Hyderabad – 500 063.
3. Chief General Manager (IPC & RAC),  
TSSPDCL, Corporate Office, # 6-1-50,  
5<sup>th</sup> Floor, Mint Compound, Hyderabad–500063. ... Respondents / Respondents.

The petition came up for hearing on 11.02.2021, 15.03.2021, 02.06.2021 and 28.06.2021. Sri Challa Gunaranjan, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attaché for respondents appeared through video conference on 11.02.2021, 15.03.2021, 19.04.2021, 02.06.2021 and 28.06.2021, having been heard and having stood over for consideration to this day, the Commission passed the following:

## ORDER

The review petitioner has filed the review petition under section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with clause 32 of the Principal Regulation Telangana State Electricity Regulatory Commission (Conduct of Business Regulations, 2015), seeking review of paragraph Nos.11, 12 and 13 (reproduced below) of the Commission order dated 15.09.2018 in O.P.No.36 of 2018.

- “11. In view of the aforementioned reasons, the delay as pleaded by the petitioner is liable to be condoned only up to 31.10.2017 and not up to 08.02.2018. However, the project was complete in all respects and it was synchronised with the grid of the respondent on 08.02.2018, with a delay of 100 days beyond the permitted and extended SCOD, which invites penalty as per clause 10.5 of the PPA. The point is answered accordingly. The contention of the petitioner that in view of force majeure events narrated in this case, the SCOD has to be extended up to 08.02.2018 since GOTS accepted the force majeure events and extended SCOD up to 31.10.2017 is untenable since many of the grounds pleaded by the petitioner are not covered under Article 9.2 of PPA.
12. The delay in reaching the SCOD of 2 MW up to 31-10-2017 as concurred by the Commission is condoned. However, the project was synchronised with the grid on 08.02.2018 which is a fait accompli achieved by the petitioner at the hands of the respondent. Thus, there is a delay of one hundred days in achieving SCOD beyond the extended timeline of 31.10.2017, for which the petitioner is liable to pay the penalty as per Article 10.5 of PPA. The petition is allowed accordingly on the same tariff as approved by the Commission. The respondent No.2 is directed to file a copy of the amended PPA with the revised date of commissioning.
13. The petitioner is directed to pay penalty for one hundred days delay in reaching SCOD as per Article 10.5 of PPA.”

The contentions of the petitioner are as hereunder:

- a) that it is its case that the project was completed by 23.11.2017 in all respects and was ready for synchronization. It had informed the 3<sup>rd</sup>

respondent that the plant was ready for synchronization on 20.11.2017 and requested the 3<sup>rd</sup> respondent to issue necessary clearance certificates for plant synchronization on 23.11.2017 and not on 08.02.2018, as mentioned in paragraph No.11 of the impugned order which was erringly arrived by the Commission and that there is a delay of 100 days in achieving SCOD as mentioned in paragraph No.11 and 12 of the order in O.P.No.36 of 2018 dated 15.09.2018, which is in contrary to the submissions made by it before the Commission.

- b) that the Commission even after recording the contention submitted by it in paragraph No.1 (vii) of the order that it's project was completed by October, 2017 and after recording the fact that it has addressed a letter dated 23.11.2017 to the respondents explaining the causes for delay of SCOD and informed that the plant was ready for synchronization, the Commission has erringly arrived at the conclusion that it's project was ready in all respects and synchronized with the grid on 08.02.2018 and thereby considering the delay as 100 days.
- c) that the Commission vide letter dated 18.08.2017 has approved in principle the proposal of the Government of Telangana State (GoTS) for extension of SCOD up to 30.06.2017 without levying any penalty after examining the merits of the matter. It is further stated that this Commission after considering merits in various matters for extension of SCOD, has condoned the delay up to 30.06.2017 without considering any factors and extended the COD of many solar power projects. It is stated that in O.P.No.5 of 2018 i.e., M/s Transform Sun Energy Private Limited Vs. TSSPDCL and Others, the Commission has condoned the delay of the solar power projects by extending the SCOD up to 30.06.2017 and held that delay as pleaded by the solar power projects is no longer an issue in this case, since the SCOD stood extended up to 30.06.2017.
- d) that the Commission while considering the O.P.No.42 of 2018 i.e., M/s Renew Solar Energy (Telangana) Private Limited Vs. Northern Power Distribution Company of Telangana Limited has held that the delay caused due to the events narrated by the petitioner i.e., statutory delays attributable to the DISCOMs, which are not specifically contradicted by the DISCOMs certainly entitles the solar power developers for extension of SCOD. Thus,

this Commission in recognizing the extension of SCOD up to 31.10.2017 by the GoTS through letter dated 23.08.2017 of Energy Department is based on reasons and the Commission concurs with the extension of SCOD. Therefore, the Commission, in certain matters where the statutory delays have been pleaded by the petitioners therein, has condoned the delay up to 31.10.2017 in O.P.No.40 of 2018 between M/s Jilesh Power Private Limited Vs. Special Chief Secretary, Energy Department and Others has condoned the delay upto 31.10.2017 and further held that the delay of 150 days in reaching the SCOD of 45 MW up to 31.10.2017 as concurred by the Commission is condoned. However, the project was synchronized with the grid in all respects in phases on 01.12.2017. Thus, there is a delay of thirty two days in achieving SCOD beyond the agreed and extended timeline of 31.10.2017, for which it is liable to pay the penalty as per clause 10.5 of PPA. In the present case, it has applied for synchronization permission on 23.11.2017, which there is a delay of 23 days from the period of the extended timeline of 31.10.2017 by this Commission. It has in due compliance with Article 3.8.1 of the PPA given notice of intention to synchronize the project with the grid system. Under Article 3.8.3 only after approval of the synchronization scheme, it could synchronize with the grid. The synchronization approval was granted on 05.02.2018 and immediately thereafter the synchronization was carried out on 08.02.2018. The period between the date of notice seeking synchronization approval and the date of synchronization cannot, therefore, be attributed to the petitioner and thus out of 100 days only 22 days alone can be attributed to the petitioner.

- e) that based on the impugned order dated 15.09.2018 passed by the Commission in O.P.No.36 of 2018, the respondent DISCOMs are treating the delay as 100 days considering the observations as recorded in the para 10, 11 and 12 of the impugned order dated 15.09.2018 passed by the Commission. In fact its project was ready for synchronization with the grid in all respects on 23.11.2017, so therefore, the delay attributable to its project is only 23 days and not 100 days which was erringly mentioned in paragraph Nos.11 and 12 of the order dated 15.09.2018 in O.P.No.36 of 2018. Therefore, there is an apparent error over the face of the order, which needs to be reviewed.

f) that the DISCOMs are treating the delay as 100 days and are levying penalty for 100 days for the petitioner's 2 MW project which was erringly arrived by the Commission without considering the fact that its project was completed in all respects by 23.11.2017 which can be established by the work completion report dated 20.11.2017 issued by the SE, Mahabubnagar and its letter dated 23.11.2017. Hence it is advised to file the review petition before the Commission seeking review of the para Nos.11, 12 and 13 of the impugned order to the extent as prayed for.

2. The review petitioner has sought the following relief in this petition.

“to review the Impugned Order dated 15.09.2018 to the extent impugned by the Petitioner in the present Petition and clarify at paragraph No.11, 12 and 13 of the impugned order that the petitioner's project was completed in all respects on 23.11.2017 and the delay for synchronization is attributable to the Respondents as administrative and statutory delay and as such there is delay of only 23 days for achieving SCOD.”

3. The respondents have filed counter affidavit and the pleadings of it are as below:

a) that the petitioner has filed the above review petition under section 94 (1) (f) of the Electricity Act, 2003 before the Commission seeking review of para 11 of the order dated 15.09.2018 issued by the Commission in O.P.No.36 of 2018 to the limited extent of correcting typographical errors or inadvertent mistakes in paras No.11, 12 and 13 of the order dated 15.09.2018.

b) that the review petition filed by the petitioner is not maintainable since no new and important matter or evidence which was not within the knowledge of the petitioner is found and is being produced now and there is no mistake or error apparent on the face of record. The Hon'ble Court and Apex Court held as follows:

(I) An application for review of decree or order is maintainable, in cases where there is discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or

error apparent on the face of the record, or for any other sufficient reason.

- (II) It has been held by the Hon'ble Courts that an error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of Review under Order 47 Rule I of Civil Procedure Code (CPC).
  - (III) It has also been held that in exercise of the jurisdiction under review, it is not permissible for an erroneous decision to be reheard and corrected. There is a clear distinction between an erroneous decision and an error apparent on the face of record. While the first can be corrected by the higher Forum, the later only can be corrected by exercise of Review Jurisdiction. A Review Petition has a limited purpose and cannot be allowed to be an appeal in disguise.
- c) that the petitioner under the guise of review wants to reopen the issue once again to get the petition re-heard for the purpose of incorporating the SCOD and penalty of its choice.
  - d) The Commission having considered the material and submissions made before it came to the conclusion that the petitioner is found entitled to extension of SCOD up to 31.10.2017 and not up to 08.02.2018. The Commission further held that the project was complete in all respects and it was synchronised with the grid of the respondent on 08.02.2018 with a delay of 100 days beyond the permitted and extended SCOD that is 31.10.2017, which invites penalty as per clause 10.5 of PPA.
  - e) that there is no clerical or arithmetical error or mistake apparent on the face of record. The Commission after considering case put forth by the petitioner that its project was completed by 23.11.2017 in all respects and it was ready for synchronization has categorically held that there was a delay of 100 days in synchronization of the project and that the petitioner is liable to pay penalty as per clause 10.5 of the PPA. Therefore, the petitioner instead of filing Appeal cannot file the present Review Petition to re-open the case.
  - f) that in obedience of the orders of the Commission, both the parties entered into amended PPA and encashed DD furnished by the petitioner towards penalty. Thus, the order of the Commission stood complied.

- g) that the petitioner is not entitled to seek the relief sought by it in the present R.P.(SR) No.132 of 2018. That the petitioner even cannot term the order sought to be reviewed as "impugned order".
- h) that the petitioner has entered PPA on 26.02.2016 to set up the 2 MW solar power project under Competitive Bidding-2015 in Group-I category with interconnection point at 33 / 11 kV Damaragidda SS at 33 kV voltage level at a tariff of Rs.5.7249 per unit. As per the terms of PPA, petitioner had to commission the project within 12 months from the effective date of signing of the PPA i.e., 25.02.2017, but the petitioner commissioned their project to the grid on 08.02.2018 with a delay of 347 days against Scheduled Commercial Operation Date (SCOD).
- i) that GoTS vide letter dated 23.08.2017 issued extension of additional four (4) months to SCOD up to 31.10.2017 to the solar power projects in the State, who have participated in the bidding 2015. The Commission citing the GoTS order was requested to give consent/approval to the extension of SCOD up to 31.10.2017. In response, the Commission did not accede to the request of the TSSPDCL and instead directed the TSSPDCL that each case has to be examined with reference to the terms of the PPA by following the principle of natural justice and also directed that each developer has to file a petition before the Commission furnishing the reason for extension of time which can be examined within the framework of the PPA.
- j) that in pursuant of the directions issued by the Commission, the petitioner has filed petition before the Commission and it was allowed and numbered as O.P.No.36 of 2018.
- k) that the Commission by order dated 15.09.2018 in O.P.No.36 of 2018 gave concurrence to the extension of SCOD by GoTS up to 31.10.2017. The relevant para is reproduced here:

The delay in reaching the SCOD of 2 MW up to 31-10-2017 as concurred by the Commission is condoned. However, the project was synchronised with the grid on 08.02.2018 which is a fait accompli achieved by the petitioner at the hands of the respondent. Thus, there is a delay of one hundred days in achieving SCOD beyond the extended timeline of 31.10.2017, for which the petitioner is liable to pay the penalty as per Article 10.5 of PPA. The petitioner is directed to pay

penalty for one hundred days delay in reaching SCOD as per Article 10.5 of PPA The respondent No.2 is directed to file a copy of the amended PPA with the revised date of commissioning. The petition is allowed on the same tariff as approved by the Commission.

- l) As per the contention of the petitioner, its project was completed by 23.11.2017 in all respects and ready for synchronization and the same was informed to this respondent on 23.11.2017 explaining the difficulty in executing the project with the SCOD and requested for extension of SCOD for commissioning of the project.
- m) Further, SE / OP / Mahabubnagar vide letter dated 20.11.2017 furnished the work completion report for evacuation arrangement for the project. In fact, as per the real time data the 2 MW solar power project of petitioner was integrated to the SLDC on 08.12.2017. It thus becomes clear that the project of the petitioner was not ready for synchronisation on 23.11.2017 as contended by the petitioner. Therefore, the Commission declined to accept the said contention of the petitioner and rightly held that the project of the petitioner was synchronised on 08.02.2018.
- n) The relevant clause of the PPA related to synchronization of the plant is extracted below for reference:
- "3.8.2 The Project may be synchronized by the solar power developer to the grid system when it complies with all the connectivity conditions specified in the Grid Code in force".
- It thus becomes clear that the plant can be declared to have complied with synchronization procedures only when it complies with all the connectivity condition specified in the Grid Code. Therefore, contention of the petitioner that the plant was ready on 23.11.2017 when it got work completion report from SE / OP / Mahabubnagar becomes untenable.
- o) that the petitioner vide letter dated 20.12.2017 has informed that the plant is ready for synchronization and requested for permission for synchronization of the plant and extension of SCOD without enclosing any supporting documents for completion of the project work in full shape.
- p) that on receipt of letter dated 20.12.2017 from the petitioner and in view of the SCOD of the petitioner's project was expired on 25.06.2017, a letter dated 31.01.2018 was addressed to the Commission requesting to give

consent/approval for the synchronization of the petitioner's project duly enclosing the work completion report and undertaking furnished by the petitioner under the format issued by the Commission.

- r) that the Commission vide letter dated 02.02.2018 has accorded concurrence to synchronize the petitioner's solar power projects based on the undertaking furnished by it to the respondent and also instructed to follow the directions of the Commission communicated in the letters dated 11.01.2018 and 30.01.2018.
- s) that in accordance with the clause 3.8.1 of the PPA, instructions were issued to SE / Operation Mahabubnagar vide letter dated 05.02.2018 to synchronize petitioner's 2 MW solar power project at Damaragidda SS, Mahabubnagar District duly following the department procedure in vogue. In response, the petitioner's project was synchronized to the grid on 08.02.2018.
- t) that in view of the above, the Commission has correctly arrived the conclusion that the petitioner's project was ready in all aspects and it was synchronized to the grid of respondent on 08.02.2018 and considered the delay as 100 days as against the extended SCOD that is 31.10.2017.
- u) that agreed tariff of the petitioner is Rs.5.7249/unit as per PPA which is discovered competitively through competitive bidding in the year 2015 expecting the synchronization of the solar plant in the year 2017. Since the petitioner could not commission the project within SCOD or extended SCOD granted by GoTS and synchronized the project with the grid on 08.02.2018 with a delay of 347 days, the very purpose of fixing SCOD stood defeated causing monetary loss to the respondent. Therefore, the respondent urged before the Commission to dismiss review petition R.P.(SR) No.132 of 2018 in O.P.No.36 of 2018. The price discovered through competitive bidding drastically came down to very low.
- v) that the Commission in the order dated 15.09.2018 in O.P.No.36 of 2018 has partially considered the request of this respondent by imposing penalty on the petitioner only for 100 days of delay; however, the actual delay of the petitioner's project was for 347 days.
- w) that in light of aforesaid facts and circumstance, it is prayed that the Commission may be pleased to dismiss the review petition.

4. The Commission has heard the counsel for the petitioner and the representative of the respondent. It has perused the original order, the attendant material on which the original order has been passed and the present contentions raised in the review petition by both the parties. The submissions as made by the parties are extracted below.

Record of proceedings dated 11.02.2021

“... The representative of the respondents stated that they need time to file counter affidavit in the matter and accordingly requested for adjourning the matter by two weeks. Since the pleadings are incomplete, the matter is adjourned, the respondents shall file their counter affidavits on or before 05.03.2021 duly serving copies of the same to the review petitioner either through email or physical form. Likewise, the review petitioner may file rejoinder, if any on or before 10.03.2021 duly serving the same to all the parties through email/physical form.”

Record of proceedings dated 15.03.2021

“... 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.”

Record of proceedings dated 02.06.2021

“... The counsel for petitioner stated that the counter affidavit purported to have been filed is not yet served on him. The representative of the respondents stated that the counter affidavit is already filed and he would make available the counter affidavit immediately. 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.”

Record of proceedings dated 28.06.2021

“... The counsel for petitioner stated that the short issue involved in the review petition, is with regard to extending the SCOD and consequent fixation of date of SCOD. The Commission, while allowing the petition, took into consideration the actual SCOD as 08.02.2018 instead of 23.11.2017, which resulted in SCOD being delayed by 100 days instead of 22 days only. He stated that the petitioner has informed to the respondent that the plant is ready for synchronization on 23.11.2017 itself, however, the respondent did not

proceed to synchronize the project within a reasonable time and completed the exercise only on 08.02.2018. The reasonable time should have been 10 to 15 days only. However, the respondent took three months to complete the exercise to synchronize the power project.

The representative of the respondents stated that the Commission has considered all the facts and the reasons for the delay in completing the project and allowed the matter by extending SCOD. The SLDC has recognized the project on 06.12.2017 itself. The present petition seeking review of the order is devoid of merits as it does not involve any of the reasons for undertaking review being any arithmetic error, error apparent on the record or that new material is discovered. In fact, the original petition was based on the conditions of PPA, which were also not satisfied relating to force majeure. However, the Commission considered the submissions and granted extension of SCOD as prayed by the petitioner.

The counsel for petitioner stated that no new material is being placed or being taken support of in reviewing the order of the Commission. It is his case that the contention available on record has not been considered earlier. The licensee delayed the synchronization of the project, probably due to awaiting instructions from the Commission. The petition is filed originally based on the conditions of the PPA invoking force majeure clause, which has been considered by the Commission. As such, the Commission did not appreciate specific contention, therefore, the present review petition is filed. The sole relief would be to consider the date of synchronization based on the information provided by the generator to the licensee.

The counsel for petitioner stated that while informing the DISCOM about the synchronization of the project, all the sanctions and permissions including that of CEIG were also communicated to the DISCOM. This review petition is not beyond the material that is available on record. Hence, the Commission may consider revising the date of SCOD suitably. The representative of the respondents sought to rely on certain judgments with regard to the scope of review, which the Commission directed him to file. ...”

5. Upon perusal of the arguments, the issue that arises for consideration is 'Whether the order dated 15.09.2018 of O.P.No.36 of 2018 is liable for review as sought by the Petitioner?'

6. Prima facie, the contentions and averments set out in the review petition appear to be an attempt to correct an error perceived by the petitioner. These contentions though have been raised at the time of hearing and disposal of the original petition, they neither constitute a material newly discovered nor amount mistake of fact. Moreover, the Commission clearly recorded its finding that the decision is taken on the basis of material available at the time passing the order. This Commission in the order dated 15.09.2018 has reproduced the averments of paragraph 1(vii) of the original petition in relation to the dates of specific events.

7. Section 94 (1) (f) of the Electricity Act, 2003 empower the Commission for reviewing its decisions, directions and orders and such review powers are same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (CPC). Section 114 of CPC as well as Order 47 of CPC says about the review power of a civil court. Under Section 114 of CPC a person feeling aggrieved either by decree or by an order of court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree may apply for review of the decree or order as the case may be in the Court, which passed the order. Order 47 Rule 1 of CPC stipulates that, a review of judgement or an order could be sought (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant/petitioner; (b) such important matter or evidence could not be produced by the applicant/petitioner at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

8. The review petitioner has sought review of the order dated 15.09.2018 in O.P.No.36 of 2018 by raising the plea of error in the order and not on account of discovery of a new important matter or evidence that could not be produced at the time of hearing of original petition.

9. According to the review petitioner the fixing of SCOD as 08.02.2018 in terms of Article 10.5 of PPA would become arbitrary for the reason that 2<sup>nd</sup> Respondent did

not affect the synchronisation as requested allegedly for want of necessary guidance/instruction from this Commission. Whereas in the original petition the review petitioner made a specific request to extend the SCOD upto 08.02.2018 by 347 days and did not make request to extend the SCOD upto 23.11.2017, the date on which the plant was said to be ready for synchronisation. Further, nowhere in the original petition the delay was attributed to the 2<sup>nd</sup> Respondent in synchronisation of the project. The contention of the review petitioner that, this Commission ought to have considered the SCOD as 23.11.2017 by recording the delay of SCOD as 23 days beyond the permitted extension granted by the GoTS lacks merit and is not proper and appropriate to review or revisit the order for the reasons enumerated above.

10. Though as recorded by the Commission, the grounds for review are limited and that nothing is shown/placed on record to show that the order under review satisfied any of the said conditions thereof, it is surprising that the petitioner would endeavour to seek reduction of the penalties only which are staring at it. Alas the petitioner cannot escape the sequence of events that have taken place and which have rested therein for a time lag now, having not got them set right original proceedings itself. Review proceedings are not meant to unsettle things which have taken place and stood concluded.

11. Post the conclusion of hearing, the respondent has sought to rely on the judgment of the Hon'ble Supreme Court made in the matter of Sri Ram Sahu (dead) through LRS vs Vinod Kumar Rawat in C.A.No.3601 of 2020 on the power of review of the court or tribunal. The Commission is bound by the finding on the aspect of review, but the same may not needed to be elaborated here for the sheer reason that the review petitioner has not made out any case for revisiting the order on the principles of review as enunciated earlier nor the Commission is satisfied that there exists any error in the finding.

12. The Commission, having noticed the background of the case and also noticed the factual matrix involved therein, is not inclined to interfere with the finding made earlier.

13. Thus, for all the reasons explained above, the review petition fails and is accordingly refused. In the circumstances there are no costs.

**This order is corrected and signed on this the 12<sup>th</sup> day of July, 2021.**

<b>Sd/-</b> (BANDARU KRISHNAIAH) MEMBER	<b>Sd/-</b> (M.D.MANO HAR RAJU) MEMBER	<b>Sd/-</b> (T.SRIRANGA RAO) CHAIRMAN
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