

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. Nos.705, 823 and 923 of 2015 & connected Miscellaneous Petitions

K.S.K. Mahanadhi Power Company Ltd.

8-2/293/82/A/431/A

Road No.22, Jubilee Hills

Hyderabad 500 033

Appellant in WA No.705 of 2015

EMCO Energy Ltd

New Shakti Bhawan

Building No.302, I Floor

Opp Terminal - 3

IGI Airport, New Delhi 110 037

represented by its Authorised Signatory

Ajaya Kumar Nathani

Appellant in WA No.823 of 2015

1 Power Grid Corporation of India Ltd.
represented by its Chairman and
Managing director
"Chowdamani"
Plot No.2, Sector No.29, Gurgaon 122 001

2 The Chief Operating Officer
(Central Transmission Utility)
"Chowdamani", Plot No.2, Sector No.29
Gurgaon 122 001 Appellants in WA No.923 of 2015

Vs.

1 Ind Barath Energy (Utkal) Ltd.
represented by its President
(Commercial and Legal)
Mr. R. Jarard Kishore
having its Corporate Office at
No.20, Old No.129, Chamiers Road
Nandanam, Chennai 600 035

- 2 Power Grid Corporation of India Ltd.
Represented by its Chairman and
Managing director
"Chowdamani"
Plot No.2, Sector No.29, Gurgaon 122 001
- 3 The Chief Operating Officer
(Central Transmission Utility)
"Chowdamani", Plot No.2, Sector No.29
Gurgaon 122 001
- 4 The Tamil Nadu Generation and
Distribution Corporation Ltd.
(TANGEDCO)
represented by its Chairman and Managing Director
144 Anna Salai, Chennai 600 002
- 5 Jindal Power Ltd.
Plot No.2, Tower - B, Sector 32
Gurgaon, Haryana 122 001
- 6 Bharath Aluminium Company Ltd. (BALCO)
Balco Nagar, Korba 495 450, Chattisgarh
- 7 D.B. Power Limited
No.813, Udyog Vihar, Phase V
Gurgaon 122 016 Respondents in WA No.705 of 2015
- 1 Ind Barath Energy (Utkal) Ltd.
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(Commercial and Legal)
Mr. R. Jarard Kishore
having its Corporate Office at
No.20, Old No.129, Chamiers Road
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Represented by its Chairman and
Managing Director
"Chowdamani", Plot No.2, Sector No.29
Gurgaon 122 001

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(Central Transmission Utility)
"Chowdamani"
Plot No.2, Sector No.29, Gurgaon 122 001
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Distribution Corporation Ltd.
(TANGEDCO)
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- 5 K.S.K. Mahanadhi Power Company Ltd.
8-2/293/82/A/431/A
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Gurgaon 122 016

Respondents in WA No.923 of 2015

Prayer in all the writ appeals

Writ Appeals preferred under Clause 15 of the Letters Patent challenging the order dated 24.02.2015 passed in W.P. No.28024 of 2014 praying to call for the records of the 2nd respondent herein relating to the proceedings dt.22.9.14 and quash the same in solar as it relates to treating the letter dt.20.12.13 in favour of the petitioner as null and void and allocate 500 MW capacity of evacuation to the petitioner for supply of Electrical Energy to the third respondent herein pursuant to the letter dt.20.12.2013.

For appellant in Mr. R. Shankaranarayanan
W.A. No.705 of 2015

For appellant in Mr. P. Giridharan
W.A. No.823 of 2015

For appellants in Mr. Sriram Panchu, Sr. Counsel
W.A. No.923 of 2015 for M/s. Aiyar & Dolia

For R1 in Mr. AR.L. Sundaresan, Sr. Counsel
WA Nos.705 & 823/2015 for M/s. AL. Ganthimathi

For RR 2 & 3 in Mr. Sriram Panchu, Sr. Counsel
WA No.705 of 2015 for M/s. Aiyar & Dolia

For R4 in Mr. AL. Somayaji, Advocate General
Asst. by
WA No.705 of 2015 Mr. Abdul Saleem

For R7 in Mr. V. Adhivarahan
WA No.705 of 2015

For R5 in Mr. Divya Chaturvedi
WA No.705 of 2015

R6-Not ready in notice No appearance

COMMON JUDGMENT

(Common judgment of the Court was delivered by SATISH K. AGNIHOTRI,J.)

These intra-Court appeals involve common question of law and facts and as such, they are being considered and decided by this common judgment.

2 Feeling aggrieved by the impugned order dated 24.02.2015 passed in W.P. No.28024 of 2014, while the fourth respondent therein has preferred W.A. No.705 of 2015, the respondents 1 and 2 therein have preferred W.A. No.923 of 2015. The appellant in W.A. No.823 of 2015 was not a party to the proceedings before the learned Single Judge and it has preferred the said appeal with the leave of this Court.

3 For the sake of brevity, clarity and convenience, the parties are referred to as per their rank in the writ petition.

4 The writ petitioner, being aggrieved by the proceedings dated 22.09.2014, wherein, his application dated 03.12.2013 for grant of Long Term Access during for the month of November 2013 was not considered, has come up with the instant writ petition, seeking to quash the said proceedings and further to allocate 500 MW capacity of evacuation to it for the supply of electrical energy to the third respondent, pursuant to its letter dated 20.12.2013.

5 The writ petitioner made an application on 31.07.013 to the second respondent, i.e., Chief Operating Officer, Central Transmission Utility, to consider the evacuation/dispatch of power generated by it to the Southern Region. Thereafter, one more letter was addressed by the writ petitioner on 12.08.2013 to the second respondent, furnishing a copy of the Power Purchase Agreement dated 08.08.2013, inked with the third respondent, for supply of 500 MW of power, to consider the Long Term Open Access for the same. It was found that the writ petitioner's application was not proper. Accordingly, a fresh application in the prescribed proper format was submitted on 03.12.2013. The second respondent, considering all the applications made in the month of November 2013, granted Long Term Access of the available 365 MW as under:

Sl. No.	LTA applicant	Applied for (in MW)	Allocated (in MW)
1	M/s. Jindal Power	400	150
2	M/s. KSK Mahanadhi Power	500	179
3	M/s. BALCO	100	36

It was decided to consider the writ petitioner's application for the subsequent month, i.e., December 2013. Needless to state that during November 2013, the second respondent had received four applications, totalling to 1,208 MW, the break up of which is (i) KSK Mahanadi Power Company Ltd. for 500 MW (ii) Jindal Power for 400 MW (iii) DB Power Ltd. for 208 MW and (iv) BALCO for 100 MW. Considering the available transfer capability, three Long Term Access Applicants were allocated on pro rata basis as under:

Sl.No.	LTA Applicant	LTA sought (MW)	Allocation (MW)
i	M/s. Jindal Power	400	150
ii	M/s. KSK Mahanadi	500	179
iii	M/s. BALCO	100	36
	Total	1000	365

6 The learned Single Judge, without examining the availability transfer capability and also the grid system, set aside the order dated 22.09.2014, with a direction to the second respondent to allocate 500 MW capacity of evacuation to the writ petitioner for the supply of electrical energy to the third respondent pursuant to the letter dated 20.12.2013. Further the learned Single Judge, without considering all the aspects of the matter, particularly, the reasons for considering the applications made in the month of November 2013, held that the principle of first come first served goes against the principles of natural justice.

7 We have examined the order impugned herein carefully. We are unable to take a view that the first come first served principle is against the principles of natural justice. There is no basis to come to this conclusion, as all the applications filed during the month of November 2013 were considered. The first come first served principle is not unknown. It depends on the context and the provisions of law. Thus, holding that the first come first served principle is against the principles of natural justice is sans any basis without advertng to the provisions involved therein.

8 Regulation 12 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, deals with application for Long Term Access. In addition, it also deals with the manner in which an application is to be made. As per the said Regulation, it is required that if the quantum of power has not been firmed up in respect of a person to whom electricity is to be supplied or the source from which electricity is to be procured, the applicant shall indicate the quantum of power along with the name of the region(s) in which electricity is proposed to be interchanged using the inter-State

Transmission System. For taking a decision, the application is required to be submitted in a proper format, giving complete details as required under Regulation 12 for Long Term Access.

9 It is undeniable and indisputable that the proper rectified application was filed only on 03.12.2013 and as such, there was no occasion for the second respondent to apply mind on the writ petitioner's application and take a decision. The decision granting Long Term Access to other applicants on the basis of their applications, cannot be set aside on the basis of the writ petitioner's application which was not at all on record, for the said month, i.e., November, 2013, as per the practice and procedure adopted by the second respondent, viz., Central Transmission Utility. There is no challenge to such procedure, wherein, the applications are considered on a monthly basis for grant of Long Term Access. The writ petitioner has not pointed out as to how it was entitled to consideration during the month of November 2013 when it filed its application only subsequently. It is not a case, where, the application was considered and a decision was taken on merit, after application of mind for grant of Long Term Access and as such, the Court should restrain itself from considering the application and taking a decision. If it is found that the writ petitioner's application ought to have been considered along with other Long Term Access applicants, the learned Single Judge ought to have only directed the second respondent to consider the case of the writ petitioner and not to pass an order straightaway allocating 500 MW capacity of evacuation to the writ petitioner. (See G. Veerappa Pillai vs. Raman & Raman Ltd.¹ and Manoharlal (dead) by LRs vs. Ugrasen (dead) by LRs and others²)

10 Mr. Sriram Panchu, learned Senior Counsel appearing for respondents 1 and 2 fairly submits that the writ petitioner's application dated 03.12.2013 shall be considered for the month of December 2013 when the application was made by the writ petitioner, to which, the learned Senior Counsel appearing for the writ petitioner has no objection.

11 In view of the aforestated backdrop, we are not inclined to delve deep into the merits of the case, which is not required to be adjudicated in the given facts situation of the case, leaving the questions open to be considered in an appropriate case.

12 We, accordingly, set aside the order dated 24.02.2015 passed by the learned Single Judge, reserving liberty to the respondents 1 and 2 to consider the writ petitioner's application dated 03.12.2013 for the month of December 2013 and take appropriate decision on merits and in accordance with law, without being influenced by observation, if any, made by the learned Single Judge.

1 AIR 1952 SC 192

2 (2013) 5 SCC 448

13 The writ appeals stand disposed of with the above observations. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1 The Chairman and Managing director
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 - 3 The Chairman and Managing Director
The Tamil Nadu Generation and
Distribution Corporation Ltd.
(TANGEDCO)
144 Anna Salai, Chennai 600 002
- +1 cc to Mr.P.Giridharan, Advocate,SR.33883
- +3 cc's to M/s.Aiyar & Dolia, Advocate,sR.33845, 33847, 33848.
- +2 cc's to Mrs.Al.Gandhimathi, Advocate,SR.33856, 857.
- +1 cc to Mr.Divya Chaturredi, Advocate SR.34483
- +1 cc to Mr.V.Adhivarahan, Advocate,SR.9340.

Kv(co)
krd 13/7

Common judgment in
W.A. Nos.705, 823 and 923 of 2015