

*** HON'BLE THE CHIEF JUSTICE**
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

+W.P. No.781 OF 2018

% 22-11-2018

#Greenko Energies Private Limited and others

....petitioners

Vs.

\$ The Andhra Pradesh Electricity Regulatory Commission,
5th floor, Singareni Bhavan, Red Hills, Hyderabad,
Rep.by its Secretary

.... Respondent

!Counsel for the petitioners : Sri A. Satya Prasad, learned Senior
Counsel

appearing for Srinivas Mantha, learned
counsel.

Counsel for the Respondent: Learned Standing Counsel for APERC

<Gist :

>Head Note:

? Cases referred:

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

WRIT PETITION No.781 of 2018

ORDER: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

This writ petition is filed seeking issuance of a writ of certiorari or any other writ, direction or order quashing the Andhra Pradesh Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement Mechanism for Wind and Solar Generation Sources) Regulations, 2017 (for short, 'the Regulations') issued by the Andhra Pradesh Electricity Regulatory Commission.

2. We have heard the learned Senior Counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondent.

3. The challenge levied in the writ petition is that the impugned Regulations are discriminatory, unreasonable and *ultra vires* the Constitution of India. The petitioners have attempted to demonstrate their case through different aspects enumerated in grounds (A) to (V), as pleaded in the writ petition. Keeping aside the plea that on ground realities the resulting situation may workout practical issues which may result in arbitrariness and unreasonableness, we are of the view that in terms of the settled position of law relating to judicial review of such matters, there is nothing on record to hold that in making the Regulations, the respondent acted without authority or in defeasance of the authority conferred on it in terms of the provisions of the Electricity Act, 2003.

4. Be that as it may, we noticed that the petitioners have projected certain grievances relating to possibility of conflicting the scheduling of the wind generators.

5. As rightly pointed out by the learned Standing Counsel for the respondent, Clause 4.5 of the impugned Regulations provides the modality of dealing with such issue relating to forecasting and scheduling. Clause 4.7 of the Regulations is also noteworthy inasmuch as any commercial impact on account of deviation from schedule based on the forecast shall be borne by the wind or solar generator either by itself or through the representing Qualified Coordinating Agency (QCA). Obviously therefore, the wind generator may have grievances while applying the different clauses in the Regulations. The roles of the QCA and of the State Load Dispatch Center have also to be noted while dealing with energy account and deviation settlement under Clause 6 of the impugned Regulations. Clause 6.3 of the Regulations provides that in the event of actual injection of a generating station or a pooling station, as the case may be, being less or more than the scheduled generation, the deviation charges for shortfall or excess generation shall be payable by the wind or solar generator or QCA, as the case may be, to the State Pool Account in terms of the table formulated by the Regulatory Commission in that Clause for such purpose. Such action taken by the Regulatory Commission is a matter within the domain of the factors to be reckoned and decision to be taken in the realm of management of electrical energy generated through wind generators or solar generators, as the case may be. This is essentially a matter that would fall within the domain of the expertise of those who are well-versed with such matters. The

composition of the Regulatory Commission is so made that it is enabled to address such situation.

6. For the aforesaid reasons, we are of the view that if the petitioners have any grievances as regards the manner of enforcement of the Regulations or if they have a grievance to the effect that any difficulty arises in giving effect to the Regulations, it has an opportunity to move the respondent Commission in terms of Clause 8 of the impugned Regulations because that provision enables even an application by any affected party seeking issuance of directions as may be considered necessary in furtherance of the objective and purpose of the Regulation.

7. For the aforesaid reasons, this writ petition is ordered directing that the petitioners' grievances, if any, may be addressed by the respondent, if appropriate application is made before it invoking the clauses or any other enabling provisions, which enable the petitioners to make such representation before the respondent. We are sure that having regard to the objects sought to be achieved by the Regulatory Commission and the modality of the operations of that Commission, such representation of the petitioners will get expeditious consideration at that end.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

Date: 22.11.2018

Note: L.R. Copy to be marked

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