

HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.8060 of 2018

ORDER:-

Heard Sri S.Niranjan Reddy, learned Senior Counsel representing the Counsel on record for the petitioner, Sri J.Ashwin Kumar, learned Standing Counsel for R.1 and the learned Government Pleader for R.3.

2. According to the petitioner, it is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003 (hereinafter referred to as 'the Act'). It is further stated that the project was conceived to be developed in the undivided State of Andhra Pradesh by the parent company of the petitioner i.e., M/s.Hero Wind Energy Pvt.Ltd (for short 'Hero Wind') and accordingly, on 01.11.2013, Hero Wind had applied to the New and Renewable Energy Development Corporation of Andhra Pradesh Ltd., (NREDCAP) for capacity allotment for setting up of 100 MW Wind Power Project at Mangi Thanda, Zaheerabad Mandal, Sanga Reddy District. It is further averred that subsequently, NREDCAP vide its letter, dated 31.12.2013, communicated that the Government of Andhra Pradesh has accorded sanction for the Project and in accordance with the sanction, NREDCAP requested the Hero Wind to enter into an agreement with NREDCAP for the development of the project. Accordingly, Hero Wind entered into an agreement with NREDCAP on 17.01.2014 for the development of the project. It is further stated that on 18.03.2014, the Transmission Corporation of Andhra Pradesh Limited accorded the connectivity

for evacuation of power from the project. Subsequent to the formation of the State of Telangana, the Hero Wind vide its letter, dated 17.10.2014, informed the second respondent herein that the project would be developed by the petitioner, which is a wholly owned subsidiary of Hero Wind; that the Telangana State Electricity Regulatory Commission (TSERC) on 10.12.2014 issued an Order adopting the then existing regulations, decision, directions or orders, license and practice issued by the A.P.Electricity Regulatory Commission (APERC) and as a consequence of which, TSERC adopted the Tariff Order, dated 15.11.2012 passed by the APERC in O.P.No.13 of 2012 wherein the APERC fixed the tariff till 31.03.2015. It is further averred in the Writ affidavit that the project is being developed by the petitioner in two phases i.e., 31.5 MW (Phase-I), which is to be set-up on private land and the remaining capacity of 68.5 MW (Phase-II), which is to be developed on the forest land, and that the petitioner has successfully completed Phase-I of the project and the same is ready to be commissioned and the petitioner is all set to supply power from Phase-I of the project i.e., 31.5 MW capacity out of 100 MW capacity of the project. It is further stated that in the absence of generation tariff applicable for the period beyond 31.03.2015 for wind power projects in the State of Telangana, the petitioner is not being able to execute Power Purchase Agreement (PPA) with the State DISCOMs, which is resulting in delay in commissioning of Phase-I of the Project.

3. The Wind Independent Power Producer Association (WIPPA) filed O.P.No.87 of 2015 in the month of March, 2015

before the first respondent for determination of the generation tariff for the period beyond 31.03.2015 wherein the petitioner's parent company i.e., Hero Wind filed an application on 24.08.2015 for its impleadment as co-petitioner in the said proceedings. It is further stated in the writ affidavit that pending disposal of O.P.No.87 of 2015 before the first respondent, the petitioner herein also filed an independent application i.e., O.P.No.4 of 2018 on 19.01.2018 requesting to determine the tariff for supply of power from Phase-I of the project of the petitioner. In the above background, the grievance of the petitioner in the present Writ Petition is that the said applications are pending consideration before the TSERC and in view of the same, the petitioner herein is sustaining irreparable loss and hardship and is not in a position to enter into Power Purchase Agreement and in view of the same, the petitioner herein is losing lot of revenue.

4. It is the submission of the learned Senior Counsel that as per the provisions of Section 64 of the Act, an application for determination of tariff under Section 62 is required to be disposed of within a period of 120 days from the date of receipt of application under sub-section (1).

5. On the other hand, it is submitted by Sri J.Aswin Kumar, learned Standing Counsel for R.1, that as on date, the Commission is functioning only with two Members and some reasonable time is to be granted for disposal of the application filed by the petitioner on 19.01.2018.

6. In this context, it may be appropriate to refer to the provisions of Section 64 of the Act, which reads as under:-

“Procedure for tariff order:- (1) An application for determination of tariff under Section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving

the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this Section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefore:

(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

7. It is very much evident from the reading of the above provision of law that when an application for determination of the tariff under Section 62 of the Act is filed by the generating company or a licensee, the same needs to be answered within a period of one hundred and twenty days (120 days) as per sub-section (3) of Section 64 of the Act. It is the categorical case of the petitioner herein that in view of the non-compliance of the above provisions of law, the petitioner herein is sustaining irreparable loss and hardship though Phase-I of the Project is completed successfully.

8. In the facts and circumstances of the case, this Court deems it appropriate to dispose of the Writ Petition with a direction to the first respondent to pass appropriate orders on the application in O.P.No.4 of 2018 filed by the petitioner herein by the end of May, 2018, as per law.

Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

A.V.Sesha Sai, J

Date:22.03.2018
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