

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.19560 of 2018

ORDER:

Heard Sri S.Niranjan Reddy, learned Senior Counsel for Sri Avinash Desai, learned counsel for the petitioner, Sri N.Aswini Kumar, learned counsel for 1st respondent and Sri R.Vinod Reddy, learned Standing Counsel for respondent Nos.2 and 3.

2. The petitioner is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003 (for short “the Act”). It has set up a wind power project of capacity 100 MW located at Mangai Thanda, Zaheerabad Mandal, Sanga Reddy District in the State of Telangana. Out of total capacity of 100 MW, petitioner states that 27.3 MW is ready for commissioning.

3. According to the petitioner, the project was conceived to be developed in the undivided State of Andhra Pradesh and in the meantime on 02-06-2014, the State of Andhra Pradesh was bifurcated and the new State of Telangana was formed and as a consequence of the said bifurcation, the District where the project was set up fell in the State of Telangana.

4. The 1st respondent is the Telangana State Regulatory Commission. The 2nd respondent is its State Transmission Utility and the 3rd respondent is the Distribution Licensee.

5. Petitioner contends that on 10-12-2014, 1st respondent issued Regulation No.1 of 2014 adopting all the existing regulations, decisions, directions and orders etc. of the erstwhile Andhra Pradesh Electricity Regulatory Commission including the order dt.30-03-2010 in O.P.No.40 of 2010; that as per the said order

- (i) there is an obligation under the said order on the 3rd respondent to cooperate with the petitioner for commissioning of its project and in particular to take joint meter readings for individual meters at the Project's switchyard and common meter at EHT side of pooling SS every month;
- (ii) the 2nd respondent has a duty to approve the power evacuation scheme and also sanction the necessary estimates apart from approving necessary drawings;
- (iii) the meters for the project provided by the petitioner has to be tested at a Central Government approved laboratory before installation and the meters should be installed and sealed by the authorized officers of the respondent Nos.2 and 3;
- (iv) the officers of respondent Nos.2 and 3 should witness the test and satisfactory performance of the petitioner's project;

- (v) the 3rd respondent is also bound to issue permission for synchronization of the petitioner's project with the Grid for Commercial Operation;

but in view of certain disputes with regard to power purchase agreement between petitioner and the respondents, the respondent Nos.2 and 3 are refusing to comply with their obligations under the said order.

6. Learned counsel for the petitioner contends that in view of Regulation No. 1 of 2014, the respondent Nos.2 and 3 cannot disown their obligations under the order dt.30-03-2010 in O.P.No.40 of 2010 taking advantage of the dispute between the petitioner and the respondent Nos.2 and 3 with regard to power purchase agreement etc.

7. Learned counsel for the petitioner stated that at this point of time, the petitioner is not insisting on procurement of power by the respondents or to pay any money to the petitioner for commissioning of the power project, but since commissioning of project is required to be done before 30-06-2018, the respondents be directed to comply with their obligations under the order dt.30-03-2010 in O.P.No.40 of 2010 subject to the above conditions.

8. Sri R.Vinod Reddy, learned Standing Counsel, appearing for respondent Nos.2 and 3 contended that the petitioner has to approach the 1st respondent for adjudication of the dispute and they

cannot approach this Court for relief under Article 226 of the Constitution of India.

9. In my considered opinion, this contention has no merit for the reason that the respondents do not dispute that the order dt.30-03-2010 in O.P.No.40 of 2010 of the APERC continues to bind them as per Regulation 1 of 2014 issued by 1st respondent. Merely because there are other issues or disputes pending between the parties, the respondents cannot disown their obligations under order dt.30-03-2010 in O.P.No.40 of 2010 and refuse to cooperate with the commissioning of the petitioner's project. In my considered opinion, there is no disputed question of fact on this point which requires adjudication by the 1st respondent Commission warranting refusal of relief in this Writ Petition to the petitioner.

10. The other contention of the learned Standing Counsel for respondent Nos.2 and 3 is that petitioner cannot compel the respondent Nos.2 and 3 to purchase any power. Learned counsel for the petitioner having already stated that at this point of time, the petitioners do not wish to compel the respondents to procure any power from them or to pay any money to the petitioner for commission of the power project, this apprehension of the respondent Nos.2 and 3 is baseless.

11. Learned Standing Counsel for respondent Nos.2 and 3 lastly contended out that the petitioner had earlier filed W.P.No.18901

of 2018 with similar reliefs and that this present Writ Petition could not have been filed again for the first time.

12. The prayer in W.P.No.18901 of 2018 is as under:

“(i) To issue direction, Writ declaring the Regulation 3.1 of the RPPO Regulations to be ultra vires the Electricity Act, 2003, National Electricity Policy, and Tariff Policy and to also to direct the Respondent Nos.1 (TSERC) to reframe the RPPO Regulations having regard to uniform and equitable treatment of Solar and non-solar Renewable Energy generation and

(ii) To issue an order, direction, Writ directing the Respondent Nos.3 &/or 4 (TSSPDCL & TSNPDCL) to enter into PPA with the petitioner to the extent of 31.05 MW wind capacity set up by the petitioner etc. pending disposal of the Writ Petition.”

13. The prayer in the present Writ Petition is as under:

(i) Direction to respondent Nos.2 and 3 to act in accordance with law to fulfil all formalities required for the commissioning and functioning of the Project including procurement of power whether on regular basis or through UI, till the execution of the PPA is finally adjudicated by this Court in W.P.No.18901 of 2018.

(ii) Direction to respondent Nos.2 and 3 to witness the test of ABT meter at an approved NABL and further to permit the petitioner to charge the line, as requested by the petitioner vide letters dt.19-05-2017 and 04-06-2018;

(iii) Direction to respondent Nos.2 and 3 to appoint a team to survey the Project of the petitioner and approve commissioning of the petitioner's project at the earliest and before 30-06-2018;

(iv) Direction to the respondents to facilitate and extend all support for the commissioning of the project of the petitioner to the extent of 27.3 MW by 30-06-2018;

(v) Ex-parte ad interim reliefs in terms of the prayer made above and

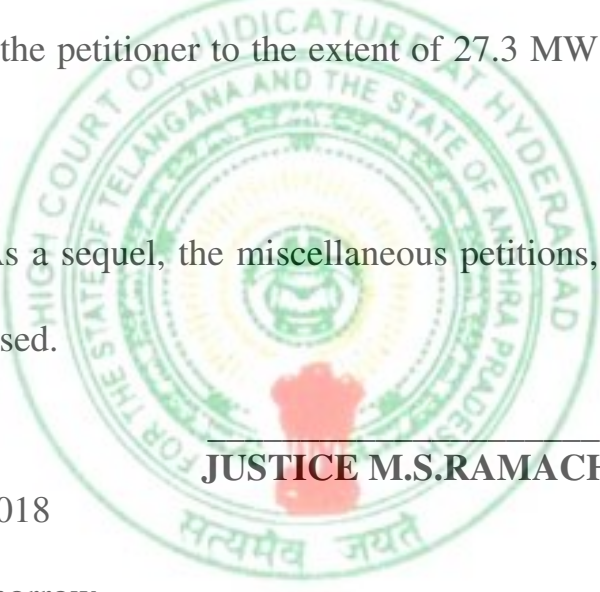
(vi) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

14. As can be seen from the above, the prayers in both the Writ Petitions are totally distinct and separate. While in W.P.No.18901 of 2018, the petitioner had challenged the regulation 3.1 of the RPPO Regulations and sought a direction to respondent Nos.3 and 4 to enter into PPA with the petitioner, such relief is not sought for in the present Writ Petition and the present Writ Petition is for a limited relief of requiring respondent Nos.2 and 3 to act in accordance with law to fulfil all formalities required for the commission of functioning of the petitioner's project, to witness the test of ABT meter at an approved NABL and to permit the petitioner to charge the line etc.

15. As already stated, the relief regarding procurement of power by respondents 2 and 3 sought in the Writ Petition is not being pressed by the petitioner. In this view of the matter, I am of the opinion that there is no merit in the contention raised by the learned Standing Counsel for respondent Nos.2 and 3 as well and there is no bar for this Court to entertain and decide this Writ Petition.

16. Accordingly, the Writ Petition is allowed and the respondent Nos.2 and 3 are directed to act in accordance with law on or before 30-06-2018 to fulfil all formalities required for the commissioning and functioning of petitioner's project; to witness the test of ABT meter at an approved NABL and permit the petitioner to charge the line as requested in its letters dt.19-05-2017 and 04-06-2018; to appoint a team to survey the project of the petitioner and approve commissioning of the petitioner's project on or before 30-06-2018; to facilitate and extend all support for commissioning of the project of the petitioner to the extent of 27.3 MW by 30-06-2018. No costs.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 26-06-2018

Note:-

Issue C.C. tomorrow.

B/o.

kvr