

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 342/MP/2019 and IA No.35/2021**

- Subject : Petition invoking Regulation 1.5(iv) read with Regulation 5.2(u) and Regulation 6.5(11) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 for enforcement of 'must run' status granted to solar power project and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking direction to State Load Dispatch Centre to stop issuing backing down instructions to the Petitioner.
- Date of Hearing : 28.5.2021
- Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri P. K. Singh, Member
- Petitioner : Prayatna Developers Private Limited (PDPL)
- Respondents : Andhra Pradesh State Load Dispatch Centre (AP SLDC) and 6 Ors.
- Parties Present : Shri Amit Kapur, Advocate, PDPL  
Ms. Poonam Verma, Advocate, PDPL  
Ms. Aparajita Upadhyay, Advocate, PDPL  
Shri Venkatesh, Advocate, NTPC  
Shri Ashutosh K. Srivastava, Advocate, NTPC  
Shri Abhinav Singh, Advocate, NTPC  
Shri Sidhant Kumar, Advocate, AP SLDC and AP Transco  
Shri Raeev Lochan, PDPL  
Shri Dipak Panchal, PDPL  
Shri Ishapul Uppal, NTPC

**Record of Proceedings**

Case was called out for virtual hearing.

2. At the outset, learned counsel for the Petitioner submitted that the Petition was heard in detail on both merits as well as on maintainability and the order was reserved on 21.1.2020. However, the matter is re-listed for hearing as per the order dated 4.2.2021 of Hon'ble High Court of Andhra Pradesh in Writ Petition No. 21512 of 2020 filed by the Respondent Nos.1 and 4, giving them liberty to raise all objections and submissions including the question of maintainability of the application and jurisdiction of this Commission to entertain the present Petition.

3. Learned counsel for the Respondent Nos. 1 and 4, on the maintainability of the Petition, mainly submitted the following:

(a) For any dispute with regard to the directions issued by the SLDC under Section 32 read with Section 33(1) of the Electricity Act, 2003 ('the Act'), the matter has to be referred to the State Commission as per Section 33(4) of the Act.

(b) Provisions of Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ('the Grid Code') cannot override the provisions of the Act and in particular Section 33(4) of the Act and have to be interpreted in harmony and consistent with the Section 33(4) of the Act.

(c) Section 79(1)(h) of the Act provides for this Commission only to specify the Grid Code. The said Section does not envisage the enforcement or adjudication of the matters relating to the Grid Code to lie before this Commission.

(d) As per the decision of Hon'ble Supreme Court in Energy Watchdog v. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80], for all the matter relating to the intra-State generation and supply, the Appropriate Commission is the State Commission.

(e) Even though the Grid Code is issued by this Commission, the appropriate Commission to look into any non-compliance or adjudication of provisions of the Grid Code is the State Commission in terms of Section 86 read with Section 142 of the Act.

(f) Reliance on the judgment of Hon'ble Supreme Court in Central Power Distribution Co. and Ors. v. Central Electricity Regulatory Commission and Anr. (2007) 8 SCC 197 by the Petitioner is misplaced. The said judgment does not deal with the issue of enforcement/ adjudication under the Grid Code in case of Intra-State generation and supply of electricity to lie before this Commission.

(g) Reliance was placed on the decision of the Hon'ble Supreme Court in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd. and Ors. to contend that no substantive rights/ obligations can be fastened by way of regulations (delegated legislation) if not provided for in the enabling Act.

(h) Reliance was also placed on the decision of Appellate Tribunal for Electricity in Himachal Pradesh State Electricity Board v. Himalaya International Ltd., [2007 SCC Online APTEL 94] to contend that the Commission cannot exercise the jurisdiction on the basis of the regulations if such jurisdiction is not vested through the provisions of the Act.

(i) Respondents may be permitted to file their written submissions on the maintainability of the Petition.

4. In rebuttal, learned counsel for the Petitioner mainly submitted as under:

(a) The Hon'ble Supreme Court in paragraphs 22.3 and 22.4 of its judgment in the case of Central Power Distribution Co. and Ors. v. Central Electricity Regulatory Commission and Anr. [ (2007) 8 SCC 197] has categorically held that the Central Commission has plenary power to regulate the grid and that a power to regulate includes within it the power to enforce. The various decisions as relied upon by the Respondents are irrelevant.

(b) Under Section 86(1)(h) of the Electricity Act, 2003, the State Commission is obligated to specify the State Grid Code which must be in conformity with the Grid Code specified by this Commission under Section 79(1)(h) of the Act and further that State Grid Code is subservient to the Grid Code issued by this Commission

(c) As per Regulation 1.5(iv) of the Grid Code, any non-compliance of the Grid Code by State Load Despatch Centre may be reported to this Commission by way of a Petition. As per Regulation 5.2(u) of the Grid Code, SLDC is mandated to make all efforts to evacuate available solar power and treat the solar power station as must-run stations. Further, Regulation 6.5(11) of the Grid Code provides that all renewable energy plants shall be treated as must-run stations and shall not be subjected to merit order dispatch principle.

(d) Andhra Pradesh Electricity Regulatory Commission, which has issued Andhra Pradesh Code of Technical Interface, defined to be synonymous with the Grid Code, (i) does not have any provisions which require AP SLDC to treat solar power plants as must run, and (ii) does not have any provisions to deal with AP SLDC's non-compliance of the Grid Code.

(e) In addition to the above, this Commission has the jurisdiction to entertain the present Petition under Section 29(5) of the Act, since the scheduling and dispatch of the Petitioner's generating station comes under the control of Regional Load Despatch Centre in terms of (i) Regulation 6.4.2(b) of the Grid Code, and (ii) decisions of Southern Regional Power Committee taken in the various meetings under Section 29(4) of the Act.

(f) This Commission in its order dated 16.7.2020 in Petition No. 287/MP/2019 (Wardha Solar (Maharashtra) Pvt. Ltd. and Anr. v. Karanataka State Load Despatch Centre and Ors.), which involved the identical issues to the present case, has already held that this Commission has jurisdiction to deal with such issues.

5. Learned counsel for the Respondent No.2, NTPC adopting the submissions made by the learned counsel for the Petitioner, submitted that the arrangement for generation and supply in the present case is also in the nature of composite scheme, thereby attracting the jurisdiction of this Commission. It was submitted that as per the provisions of NSM Phase-II Batch-II Scheme, under which the generating station of the Petitioner has been set-up, the power procured from the generating station is bundled with the power from NTPC's thermal generating stations and thereafter being supplied to the AP Discoms. It was also submitted that the present Petition also involves the issue of vesting the scheduling and despatch of power from AP SLDC to SRLDC, which cannot be adjudicated upon by Andhra Pradesh Electricity Regulatory Commission.

6. The representative of Respondent No.6, Southern Regional Load Despatch Centre ('SRLDC') submitted that as per Regulation 6.4.2(b) of the Grid Code, the Ultra Mega Power Projects and projects based on wind and solar resources having capacity of 500 MW and above need to be scheduled by the respective Regional Load Despatch Centres. Accordingly, SRLDC, during the various RPC meetings, had requested AP SLDC to handover the scheduling responsibility of Ghani Solar Park to SRLDC or in alternative, to take specific permission of this Commission to continue with the scheduling of the said Solar Park. However, no steps have been taken in this regard so far.

7. Considering the request of learned counsel for the Respondent Nos. 1 and 4, the Commission directed the Respondents to file their written submissions on maintainability by 4.6.2021 with advance copy to the Petitioner who may file their response thereon by 11.6.2021.

8. Subject to the above, the Commission reserved the order on 'maintainability' of the Petition.

**By order of the Commission**

**SD/-  
(T.D. Pant)  
Joint Chief (Law)**