



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.: 204/MP/2020

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I.S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member

आदेश दिनांक/ Date of Order: 05th of February, 2021

IN THE MATTER OF:

Petition invoking Regulation 1.5(i) read with Regulation 5.2(u) and Regulation 6.5(11) of the CERC (Indian Electricity Grid Code) Regulations, 2010 for enforcement of 'must run' status granted to solar and wind generators and Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 seeking direction to State Load Dispatch Centre to act in accordance with 'Indian Electricity Grid Code' provisions while issuing backing down instructions to the solar and wind generators.

AND IN THE MATTER OF:

Southern Regional Load Despatch Centre,
Power System Operation Corporation Ltd. (POSOCO),
(A Govt. of India Enterprise),
Registered office: B-9, Qutub Institutional Area, 1st Floor,
Katwaria Sarai, New Delhi -110016

... Petitioner

Versus

1. Andhra Pradesh State Load Despatch Centre
3rd Floor, APSLDC Building,
Vidyut Soudha Gunadala,

Vijayawada, Andhra Pradesh-520 004

2. Transmission Corporation of Andhra Pradesh Ltd

Vidyut Soudha, Gunadala,
Vijayawada,
Andhra Pradesh-520 004

3. Southern Regional Power Committee

No 29, Race Course Cross Road,
Bangalore,
Karnataka-560009

... Respondents

Parties Present: Shri Venkateshan M., SRLDC
Shri Asudi Janardhan, SRLDC
Shri S. Vallinayagam, Advocate, AP Transco
Shri A. K. V. Bhaskar, AP Transco
Shri M. Murali Krishna, AP Transco

आदेश/ ORDER

The Petitioner, Southern Regional Load Despatch Centre (SRLDC) is a statutory body set up under Section 27 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') and performs the functions specified under Section 28 of the Act. The National Load Despatch Centre (NLDC) and Regional Load Despatch Centres (RLDCs) are being operated by Power System Operation Corporation Limited (POSOCO) w.e.f. 01.10.2010 in accordance with the Gazette Notification dated 27.9.2010 and 19.12.2016 notified by Ministry of Power, Government of India. The functions of RLDCs are governed by the Act and Regulations of the Central Electricity Regulatory Commission. The Petitioner has filed the present Petition invoking Regulation 1.5(i) read with Regulation 5.2(u) and Regulation 6.5(11) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as 'the Grid Code') for enforcement of 'must run' status granted to solar and wind generators and under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking direction to the Andhra Pradesh State Load Dispatch Centre (APSLDC) to act in accordance with provisions of the Grid Code while issuing backing down instructions to the solar and wind generators.

2. The Respondent No. 1, Andhra Pradesh State Load Despatch Centre (APSLDC) is the apex body to ensure integrated operation of the power system in the State of Andhra Pradesh. APSLDC is responsible for the real-time load dispatch functions, operation and maintenance of the supervisory control, data acquisition system and energy accounting in the State of Andhra Pradesh in line with the Grid Code/ State Grid Code.
3. The Respondent No. 2, Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) is a wholly owned company of the Government of Andhra Pradesh and vested with the functions of transmission of power in the State of Andhra Pradesh, construction of sub-stations and transmission lines and maintenance of sub-stations. It operates under a license issued by Andhra Pradesh State Electricity Regulatory Commission (APSERC).
4. The Respondent No. 3, Southern Regional Power Committee (SRPC) has been constituted by the Government of India under Section 2(55) of the Act. In terms of Section 29(4) of the Act, SRPC may agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.
5. The Petitioner has made the following prayers:
 - a) *Admit the instant Petition;*
 - b) *Direct APSLDC for compliance to Regulation 5.2(u) and Regulation 6.5(11) of the CERC (Indian Electricity Grid Code) Regulations, 2010;*
 - c) *Direct APSLDC to ensure written communication detailing the exact reason(s) to RE Generator / QCA for curtailment if any;*
 - d) *Direct APSLDC to comply RLDC instructions issued under the provisions of section 29(1) of the Electricity Act 2003;*
 - e) *Direct APSLDC to furnish the daily reports on RE curtailment to SRLDC/SRPC; and*
 - f) *To pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.*

Background

6. The Petitioner vide letter dated 06.08.2019 brought to the attention of SLDCs of the Southern Region that generation based on renewable energy sources such as solar and wind are to be treated as 'must run' and such generation can only be curtailed or backed down if grid security or safety of equipment or personnel is endangered in line with Regulation 6.4.5 and

Regulation 5.2(u) of the Grid Code and similar provisions enshrined in respective State Grid Codes. Further, directions were issued to all SLDCs that any curtailment along with reason was to be made known to SRLDC in writing and through SLDC websites.

7. The Petitioner vide letter dated 22.08.2019 reiterated the 'must run' status of solar/ wind energy and highlighted that the matter was being monitored at the highest level and accordingly curtailment data was requested to be sent on daily basis to it. MNRE vide letter dated 01.08.2019 had taken note of the irregular curtailment of solar and wind power by various SLDCs and issued directions to all SLDCs to honour the 'must run' status of solar and wind generators in letter and spirit. MNRE has reiterated that curtailment of solar and wind power can only be done for reasons of grid safety and security and that too after communicating instructions detailing the reasons for curtailment to generator in writing. The issue of curtailment was also followed up by CEA. As per letter dated 05.08.2019, CEA observed that wind generation from SR states in July 2019 had declined as against that in July 2018. In this regard, a meeting was held by Member (Planning), CEA with SRPC & SRLDC on RE curtailment on 07.08.2019. The issue of curtailment of wind and solar generation was deliberated in 158th, 159th, 160th, 161st & 162nd OCC meeting of SRPC. Further, the need for communicating written instructions to solar/ wind generators and putting curtailment details on SLDC website was also emphasised in the said OCC meetings.
8. CEA vide letter dated 28.11.2019 requested States to furnish the reason for reduction in generation of power from wind and solar sources in October 2019 as compared to October 2018. In 162nd meeting of OCC, it was noted that Joint Advisor, NITI Aayog vide email dated 18.09.2019 had sought information about curtailment of RE generation for preparing a report on reference sent by PMO. It was observed that Andhra Pradesh was yet to furnish the reasons. SRLDC carried out analysis of wind and solar curtailment for the month of November 2019 based on the data obtained from APTRANSCO/ APSLDC website along with associated real time data archived in SRLDC SCADA and it was noted that grid security was cited as the reason for curtailment of wind/ solar generation. However, details of exact reason for curtailment could not be ascertained. SRLDC vide letter dated 08.01.2020 requested APSLDC to initiate immediate action to ensure compliance to the provisions of the Grid Code. It was also reiterated that RE must be treated as 'must run' and such generation may be curtailed or backed down only on consideration of grid security or safety of equipment or personnel. No response was received in this regard. Similar curtailment analysis

was carried out for the month of December 2019 and from 01.01.2020 to 21.01.2020, wherein findings were similar. In view of the continued curtailment of wind and solar power violating the 'must run' status thereby violating provisions of the Grid Code and not following the directions of RLDC, the Petitioner has filed the present Petition.

Hearing held on 14.07.2020

9. During the hearing, APSLDC objected to the maintainability of the Petition. APSLDC submitted that the same issue as raised by the Petitioner has been raised by *'Prayatna Developers Private Limited'* in Petition No. 342/MP/2019, wherein the Petitioner, SRLDC is also a party and has filed its reply. The Hon'ble High Court of Andhra Pradesh, vide its interim order, has stayed the proceedings in Petition No. 342/MP/2019. Per contra, the Petitioner submitted that reply filed by SRLDC in Petition No. 342/MP/2019 was limited to SRLDC's control area jurisdiction in respect of Ultra Mega Power Project and its scheduling in terms of provisions of the Grid Code. Pursuant to MNRE letter dated 01.08.2019 directing SLDCs to honour the 'must run' status of the solar and wind generators, SRLDC had been taking up the issue of curtailment of renewable generation in various OCC meetings. Therefore, reference to Petition No. 342/MP/2019 is not relevant in the context of the present petition. In terms of provisions of the Grid Code, wind and solar generators are required to be treated as must-run stations and can be backed down only on consideration of grid security or if safety of any equipment or personnel is endangered. In terms of the judgment of Hon'ble Supreme Court in *Central Power Distribution Co. & Ors. v. Central Electricity Regulatory Commission and Anr. [(2007) 8 SCC 197]*, the Commission has jurisdiction in respect of the matters pertaining to grid discipline even when there is a single State beneficiary. After hearing the Petitioner and the Respondent, the Commission directed APSLDC to file its reply on maintainability of the Petition by 30.07.2020 with advance copy to the Petitioner, which was directed to file its rejoinder, if any, by 14.08.2020. The Commission reserved order on 'maintainability' of the Petition.

Reply of APSLDC

10. APSLDC has submitted that Clause 1.10 of Andhra Pradesh Code of Technical Interface (APCTI) provides that in case of inconsistency in provisions of APCTI, the Grid Code takes precedence over APCTI. However, Section 86(1)(f) of the Act, stipulates that any dispute

between a generator and a licensee shall be adjudicated by the concerned State Electricity Regulatory Commission and not by the Central Electricity Regulatory Commission.

11. APSLDC has submitted that entire claim of the Petitioner is that the Grid Code has provided 'must run' status to wind and solar power generators who have Power Purchase Agreements (PPA) with Discoms and when it is found that an action of SLDC is contrary to the provisions of the Grid Code, NLDC (POSOCO) or SRLDC is required to approach this Commission.
12. APSLDC has submitted that the Petitioner appears to have mixed up two separate aspects: (i) the violation by APSLDC in respect of instructions given by SRLDC and POSOCO as to the grid safety and (ii) whether APSLDC has followed the 'must run' status vis-a-vis the RE generators (within State) injecting power into the State Grid in giving backing down instructions.
13. APSLDC has submitted that as far as the aspect relating to supervisory powers of POSOCO or SRLDC over SLDC is concerned, there is no dispute at all. But such supervisory powers are only in respect of grid stability, and not in relation to internal matters between generators on one part and SLDC on the other. Therefore, there is no locus standi of the Petitioner to approach this Commission in this case as there is no issue involving grid stability. Even otherwise, this Commission has no powers to adjudicate the impugned issue i.e. correctness or otherwise of the curtailment instructions issued by APSLDC.
14. APSLDC has submitted that the allegation in the Petition is that despite the specific provision of 'must run' status in the Grid Code and advice given by the Petitioner and MNRE, APSLDC went on giving backing down instructions to RE power generators in the State. The allegation can be taken up only by the aggrieved generator who is the sufferer and no one else. Certainly, the Petitioner in this petition is not an RE generator and hence not the aggrieved party. Some of the generators have already filed cases in the Hon'ble High Court of Andhra Pradesh as Writ Appeals vide W.A. No 383, 393, 435, 441, 447, 477 of 2019 and batch, which are pending. In the said cases, APSLDC has categorically stated that it is obliged to follow 'must run' status of solar/ wind generators as provided in law, but the same is subject to grid security and grid stability and that within the said exceptions, APSLDC is considering (i) the abnormal volume of variable RE power available within the State and (ii) the peculiar situation of hydel power availability during last year in the State. Taking into

consideration base load requirement from thermal power generation, APSLDC has no alternative but to issue backing down instructions during some periods. Thus, the issue of whether or not APSLDC is justified in issuing such backing down instructions to variable RE generators in the State of Andhra Pradesh is sub-judice before the Division Bench of Hon'ble High Court of Andhra Pradesh. Further, three generators have also filed cases vide O.P. No. 61, 74, and 76 of 2019 before APERC complaining that APSLDC went on giving arbitrary backing down instructions to them. APSLDC has filed replies justifying its actions. APERC has already heard the petitioners of O.P. No. 61 and 74 of 2019 and posted those cases for further to 10.03.2021 for final hearing.. Thus, the issue which is canvassed by the Petitioner in this case is already seized of by the above-said two forums i.e. Hon'ble High Court of Andhra Pradesh and APERC.

15. APSLDC has submitted that the judgment relied upon by the Petitioner relates to Order of this Commission directing implementation of ABT (availability-based tariff) in the case of generating stations supplying power to single State. The generating station is of NTPC, a Central Generating Station. The issue or functions and powers of SRLDC were not before the Hon'ble Supreme Court. Though the Hon'ble Supreme Court holds that this Commission has plenary powers to regulate the Grid, particularly in the context of the Grid being integrated and connected across the region comprising of more than one State, it also holds that State Grid cannot be isolated. In the present petition, the contention of the Petitioner is that State Grid cannot be seen as independent from the region. The prayer in the instant petition does not relate to ensuring stability of grid operation. It is on curtailment/ despatch of generation specifically referring to MNRE and SRLDC letters asking SLDC to ensure 'must run' status of solar generators.
16. APSLDC has submitted that the main purpose of filing the present petition is to implement the 'must run' status of the solar generators in the State of Andhra Pradesh. The Petitioner has placed its reliance upon a letter of MNRE dated 01.08.2019 which clearly establishes that the Petitioner is espousing the cause of solar generators. This letter has nothing to do with the functions of Petitioner under Section 28 of the Act. Further, SRLDC has written to four States in the Southern Region on the issue of stability of grid operation and achieving economy and efficiency in the operation of regional power system. In this letter, reference is made to Regulation 6.4.5 of the Grid Code. The said Regulation itself states that the regional grid shall be operated as power pools with decentralized scheduling and dispatch, in which

States shall have operational autonomy. This letter read with the law laid down by the Hon'ble Supreme Court in C.A. No. 2104 of 2006 dated 17.08.2007 establishes the fact that State Grid cannot be isolated. APSLDC has the ultimate and full control over its area. In the present petition, the Petitioner is seeking indirect control over the scheduling of generators embedded within the State of Andhra Pradesh which is against the mandate of Regulation 6.4.5 of the Grid Code. Any direction given by SRLDC under Section 29 can be the area of jurisdiction provided for under Section 28 of the Act. APSLDC is complying with the directions of SRLDC as far as they relate to the inter-State transactions within the Southern Region over which the Petitioner has jurisdiction under Sections 28 and 29 of the Act. There is no document placed on record to indicate that APSLDC has violated or not complied with any of the instructions given by the Petitioner as far as scheduling of power in inter-State transmission lines falling under the control of the Petitioner are concerned. No such grievance has been brought out in this context in the present petition. The Petitioner is praying for reliefs to be granted to solar generators embedded within the State of Andhra Pradesh, whose scheduling and despatch comes under the exclusive control of APSLDC under Regulation 6.4.5 of the Grid Code. The directions in the letter dated 06.08.2019 of SRLDC have nothing to do with Section 28 or Section 29 of the Act because the generators in the State of Andhra Pradesh are embedded generators within the control area of APSLDC and are not connected to ISTS. In the circumstances, the directions in the letter dated 06.08.2019 are against the express provisions of the Grid Code and the Act. SRLDC being a statutory authority under the Act should not indulge in activities of espousing the cause of solar generators in guise of enforcing provisions of the Grid Code.

17. APSLDC has submitted that there is no provision under the Act or the Grid Code which provide for the prayers (c), (d) & (e) sought by the Petitioner. The above prayers are sought by the Petitioner for the solar generators who have already filed Petition No. 342/MP/2019 in which the Petitioner is Respondent No.6.
18. APSLDC has submitted that the Petitioner is well aware of the status of Renewable Energy Management Centre (REMC) which is yet to be fully functional. The Petitioner is also aware that generation of any particular variable RE generator cannot be seen from APSLDC at the time of issuing instructions. APSLDC cannot assess the injection pattern accurately of the RE generator at any point of time with the present set of infrastructure. The Petitioner is well aware of the fact that except for grid security, there is no other reason for curtailment of RE

generation. SRLDC has prevented APSLDC from scheduling power from NP Kunta solar park. APSLDC has submitted details regarding the available infrastructure and inability to communicate with RE generators to the Hon'ble High Court of Andhra Pradesh in W.P. No. 9844 of 2019 and batch. The Hon'ble High Court of Andhra Pradesh passed an interim order on 01.08.2019 in the matter of written communication directing to publish the curtailment instructions on the website on weekly basis. These orders are being complied with.

19. APSLDC has submitted that Petitioner is the apex body of the region and is well aware that Automated Generation Control (AGC) is yet to be implemented and that Remote Terminal Unit (RTU) commissioning is not even completed at 132 kV level for communication. The Petitioner knows about absence of secondary response and tertiary control in the control area. The Petitioner itself presented in various fora that fully functional REMC, spinning reserves and ancillary service should be there to control variations in RE generation. The Petitioner never objected to integration of around 7500 MW RE generation into APSLDC control area. In fact, on one hand, the Petitioner is issuing messages under the Grid Code for under-drawl of more than 250 MW which is forcing curtailment of RE generation and on the other hand, the Petitioner is filing petitions for 'must run' of RE generation. Without prejudice to the above contentions, it is stated that the Petitioner ignored the practical implementation problem while filing this petition. The Petitioner is not clear on whether to follow 5.2(m) or 5.2(u) i.e. either reduce under drawl or not curtailing the RE generation.
20. APSLDC has submitted that the Hon'ble High Court of Andhra Pradesh had appointed POSOCO to inspect the issue raised and prayed for by the Petitioner in the present petition. The Respondent has filed review petition before the Hon'ble High Court of Andhra Pradesh and the same is pending. SRLDC is indulging in forum shopping even after being aware of all the proceedings before Hon'ble High Court of Andhra Pradesh.
21. APSLDC has submitted that the jurisdiction to resolve disputes by any tribunal or court is conferred by legislation and not by any other means. The Parliament in its wisdom has categorically restricted the jurisdiction of CERC as per the provisions of the Act. Therefore, the claim of the Petitioner that since APSLDC is alleged to have violated a few clauses of the Grid Code, this Commission gets jurisdiction is apparently baseless and untenable. The functions of SLDC in terms of Sections 32 and 33 of the Act require compliance to directions of SLDC and if any dispute arises in respect of such directions, the same shall be referred to

the State Commission. This Commission has no jurisdiction to entertain the dispute. Even otherwise it is settled law that issue of jurisdiction of the tribunal or court can be raised at any stage, including appellate stage or execution stage as the issue goes to root of the matter. Therefore, the said claim that matter is resolved by the Commission does not stand in the way of challenge on the ground of lack of inherent jurisdiction. The RE generators are connected to State-owned transmission system and are supplying power exclusively to Discoms of the State of Andhra Pradesh and are scheduled by AP Discoms. Therefore, as per Section 86(1)(f) of the Act, any dispute between generator and licensee shall be adjudicated by APSEERC and not by this Commission. Further, the same issue cannot be adjudicated before two or more courts at the same time i.e. Hon'ble High Court of Andhra Pradesh, this Commission and APSEERC. This may lead to conflicting orders being passed in respect of the very same issue. The matter has already been heard and order passed by the Hon'ble High Court of Andhra Pradesh and is pending before Division bench of Hon'ble High Court of Andhra Pradesh. The Petitioner has placed reliance upon order of High Court dated 24.09.2019 but suppressed the stay order dated 02.07.2020. A statutory body constituted under the Act is not expected to act in the manner it has acted to espouse the cause of private solar generators situated within the State of Andhra Pradesh.

Rejoinder filed by the Petitioner

22. SRLDC has submitted the following:

- (a) Issues raised by APSLDC are grouped and summarised as follows:
 - i) SRLDC is not the aggrieved party to file the petition;
 - ii) Prayers are same as the prayers sought by the generator in Petition No. 342/MP/2019 and the Petitioner is espousing the cause of solar generators;
 - iii) Solar and wind generation is variable in nature and with available infrastructure, generation from solar and wind plants must be backed down. Whether APSLDC is required to follow Regulation 5.2(u) or Regulation 5.2(m) of the Grid Code?
 - iv) SRLDC is not allowing to schedule NP Kunta by APSLDC and is trying to encroach upon the scheduling and dispatch within the State of Andhra Pradesh.

- v) Claim of the Petitioner that because of violation of a few clauses of the Grid Code, this Commission gets jurisdiction is baseless and unwarranted.
- vi) Same matter is pending before Hon'ble High Court of Andhra Pradesh in WA No. 383, 393, 435, 441, 447, 463 and 477 of 2019 and APSLDC has filed review petition on POSOCO committee issue. In the meanwhile, SRLDC has filed this petition on the same issue and is indulging in forum shopping. Hon'ble Andhra Pradesh High Court is already ceased of the issue of curtailment of renewable power by APSLDC.
- vii) APSEER is also dealing with the issue of compliance of 'must run' status by APSLDC in O.P. No. 61, 74 and 76 of 2019. Arguments of the Petitioner have been completed on 14.07.2020 and those of the Respondents are scheduled before APSEER.
- viii) Issue of Petition No. 342/MP/2019 filed before the Commission is pending before Hon'ble High Court of Andhra Pradesh in WP 1286 of 2020.
- (b) Regulation 1.5(i) related to compliance oversight of the Grid Code mandates SRLDC to report to the Commission on (i) instance of serious or repeated violation of any of the provisions of the Grid Code and (ii) incidence of persistent non-compliance of the RLDC's directions issued in order to exercise supervision and control required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control. Regulations 5.2(u) and 6.5.11 of the Grid Code provides 'must run' status on wind and solar generation to be honoured by SLDC/ SRLDC.
- (c) It has been continuously taking up with APSLDC to act as per the provisions of the Grid Code with reference to 'must run' status and curtailment through various letters subsequent to MNRE letter dated 01.08.2019. Despite issuing directions, there was no improvement/ positive response. The issue was also regularly taken up during 158th, 159th, 160th, 161st & 162nd OCC meetings of SRPC. Considering the instances of serious or repeated violation of Regulation 5.2(u) of the Grid Code, the Petitioner was left with no option other than bringing them to the notice of the Commission through the petition.

(d) Regulation 1.5(i) of the Grid Code mandates to report any violation of grid code provision in order to maintain grid security, safety and grid discipline. SRLDC need not be an aggrieved party for performing its mandated statutory functions under the Grid Code. SRLDC has filed this petition for violation of provisions of the Grid Code for ensuring 'must run' status for both wind and solar generators and not for solar generators alone.

(e) Letter of MNRE was referred in Petition No. 342/MP/2019 by the generator for commercial compensation whereas SRLDC has always performed its mandated duty under regulation 1.5(i) of the grid code to escalate the violation of any of the provisions of the Grid Code/ regulations of CERC/CEA when noticed on its own or brought to its notice by any of the entity viz. SRPC, States or in the instant case, the letter of MNRE. Some such petitions are Petition No. 420/MP/2014 on LVRT (wind & solar), Petition No. 178/MP/2011 on data and communication facilities, Petition No. 146/MP/2013 on protection, Petition No. 120/2011 on Over Drawl etc. Hence, the argument of APSLDC that SRLDC is espousing the cause of solar generators is baseless and rather SRLDC is performing its statutory duty.

(f) The argument forwarded by APSLDC that the prayers made in this petition and prayers made by generators in 342/MP/2019 are same, is misleading. The prayers of this petition are nowhere reflected in the prayers in Petition No. 342/MP/2019. Prayers (c) to (e) of this petition convey the following aspects:

- i. The intimation on curtailment is to be sent for RE generator (both wind and solar) rather than only for solar as quoted by respondent referring to Petition No. 342/MP/2019;
- ii. APSLDC failed to comply with the directions of SRLDC issued under Section 29(1) of the Act. It would be difficult for SRLDC to operate the grid in safe and secure manner if the directions are not complied by the entities on consistent basis. Hence, the direction to APSLDC given to comply with the Grid Code was issued under the provisions of Section 29(1) of the Act; and
- iii. The State grid is an integrated part of the regional grid and cannot be isolated. Any mismatch or variations in the load generation would affect the regional grid.

Hence, proper forecasting of demand and renewable energy has been mandated in Regulations 5.3 and 6.5.23 of the Grid Code.

(g) Non-intimation of curtailment details is a limitation for the regional grid operation in reliability and security assessment on RE forecast, RRAS requirement estimation, commitments of additional units for having adequate reserves, line loading etc. Accordingly, prayer to direct APSLDC to furnish the daily reports on RE curtailment to SRLDC/ SRPC was made by SRLDC.

(h) As regards operational difficulties faced by APSLDC due to commissioning of 7500 MW RE within the State, the same is a policy matter and SRLDC was neither a party to the policy making process nor involved during integration. Proper forecasting of demand and renewable energy is mandated in Regulations 5.3 and 6.5.23 of the Grid Code. Forecast was mandated since 2010 although scheduling with commercial mechanism of RE has come in recent years. Hence, REMC not being fully functional or deficiency in other infrastructure does not give APSLDC the right to violate provisions of the Grid Code. Non-visibility of renewable at 132 kV is also a violation of the mandate under the Grid Code. SRLDC is performing its mandated responsibility of bringing the deviation limits violation to the notice of constituents in the form of violation messages.

(i) APSLDC by raising the question as to whether to follow Regulation 5.2(u) or Regulations 5.2(m) of the Grid Code, is giving an indication that only one of the Regulations can be complied with since SRLDC is issuing under drawl message beyond 250 MW. SRLDC has submitted that grid frequency, voltage and network constraints are the main factors considered for grid security. However, State has not conveyed any of the intra-State constraints which caused grid security issues leading to curtailment and violation of provisions of the Grid Code. Each power system control area needs to balance its load and generation with portfolio management with technical and financial instruments available with them. Curtailment should be the last option to be exercised if the conditions are satisfied under the Regulation 5.2(u) of the Grid Code. Entities can balance their portfolio through various options like better RE and demand forecasting; maintaining reserves (both up and down); maintaining technical minimum of thermal generation as per CEA standards; hydro moderation to match the

RE schedule; exploring day ahead/ intraday markets; and utilization of RTM. Accordingly, APSLDC needs to ensure compliance to Regulation 5.2(u) as well as Regulation 5.2(m) of the Grid Code based on best utility practices.

(j) NP Kunta solar park is a UMPP under the scheduling control area jurisdiction of SRLDC as per Regulation 6.4.2(b) of the Grid Code. Accordingly, SRLDC is performing its responsibility of scheduling and control of NP Kunta solar park. Further, there is no provision in the Grid Code for revision of schedules by a buyer from a RE plant. Hence, APSLDC allegation that the Petitioner has prevented APSLDC from scheduling power from NP Kunta solar park is baseless and unwarranted. APSLDC is mixing the issue of decentralized scheduling and dispatch with the responsibility of following provisions of the Grid Code. SRLDC in no way tried to encroach upon the scheduling and dispatch within the state of Andhra Pradesh rather given directions to enforce upon the regulation 5.2(u) of the Grid Code.

(k) APSLDC has raised questions as regards, a) CERC has no jurisdiction in case of generators connected to only State, supplying to Discoms and scheduled by SLDC and b) CERC does not get the jurisdiction for violation of a few provisions of the Grid Code. Both the above questions raised by the respondent are settled by the Hon'ble Supreme Court in *Central Power Distribution Co. &Ors. v. Central Electricity Regulatory Commission &Anr. (2007) 8 SCC 197 (Civil Appeal No 2104 of 2006)*. In terms of the above said order, the Commission has jurisdiction in respect of the matters pertaining to grid discipline even when there is a single State beneficiary.

(l) This Commission has the plenary power to regulate the grid, particularly in the context of the grid being integrated. Any of the actions by APSLDC would be affecting the grid as a whole. This fact coupled with the provision in the Grid Code is sufficient for enabling this Commission to exercise its powers. Hence, the power to formulate the Grid Code as per Sections 79(1)(h) and 178(2)(g) includes the powers to enforce the provision of the Grid Code viz. in this case enforcing APSLDC to act in accordance with Regulation 5.2(u) of the Grid Code. The above-referred judgement of the Hon'ble Supreme Court establishes the jurisdiction of CERC and also establishes the jurisdiction of SRLDC.

(m) APSLDC is mixing the issue of decentralized scheduling and dispatch and the responsibility of complying with provisions of the Grid Code. SRLDC in no way had tried to encroach upon the scheduling and dispatch within the State of Andhra Pradesh rather it had given directions to enforce Regulation 5.2(u) of the Grid Code. APSLDC has referred to the Hon'ble Supreme Court Order only partially and that the order has to be read in totality.

(n) APSLDC's objection that the relief sought is not maintainable before this Commission as it has been taken up by Hon'ble High Court of Andhra Pradesh is wrong since the writ appeal mentioned above is different from the present case for the following reasons:

(i) The proceedings initiated by the wind and solar generators were against the decision of the Government of Andhra Pradesh to re-negotiate the tariff of concluded PPAs of solar/ wind generators with the AP Discoms and the steps taken pursuant thereto. Further, vide IA, the petitioners have prayed in respect of pending payments, seeking compensation for curtailment and to stop curtailment on their respective generation, to constitute an expert committee to look into the matter on curtailment.

(ii) The writ petition is pertaining to a set of wind and solar generators and outcome is applicable to only the petitioners of the writ petition. However, the present petition is filed for violating provisions of the Grid Code by APSLDC as a whole and not as regards specific generators. Hence, the issue is not simultaneous proceeding on the same issue before several forums but on a different aspect.

(iii) Hon'ble High Court delivered its Order in open court on 27.01.2020 in which POSOCO was not a party. The written Order was delivered on 30.01.2020 and the same was intimated to POSOCO on 30.01.2020. SRLDC has filed this petition on 28.01.2020 and was not aware of the said order at the time of filing the petition. POSOCO had submitted its report on 09.03.2020 ascertaining as to whether the curtailment undertaken by APSLDC is in line with or in contravention of the extant laws, regulations and policies in the context of 'must

run' status granted to solar and wind generators in line with the directions of Hon'ble High court of Andhra Pradesh.

(iv) APSLDC has filed a stay petition on the interim report of POSOCO quoting this petition.

(o) The petition was filed after exhausting all the possible avenues by taking up the issue in OCC meetings of SRPC and writing letters to the extent of giving directions under Section 29(1) of the Act.

(p) The petitions O.P. No. 61, 74 and 76 of 2019 filed by generators in APERC are for seeking commercial compensation and for ensuring 'must run' for their respective power plants whereas this petition is filed under statutory duty of SRLDC under Regulation 1.5(i) of the Grid Code. The Commission in its order dated 11.10.2017 in Petition No.95/MP/2017 (*Welspun Energy Private Ltd Vs. SECI & Others*) held that the projects executed by SECI under JNNSM Scheme are inter-State in nature and come under the jurisdiction of the Commission. Further the same was held in 287/MP/2019 (*Wardha Solar (Maharashtra) Private Ltd Vs. Karnataka SLDC*). There are a number of such SECI bid projects in Andhra Pradesh as well. It cannot be ruled out that this Commission would not have jurisdiction on the basis of 100% power being supplied to the State of Andhra Pradesh and connected to State network.

(q) APSLDC failed to appreciate that Prayatna Developers Private Limited may have invoked Regulation 5.2 of the Grid Code in Petition No. 342/MP/2019 on account of being aggrieved by the loss of generation due to back down along with jurisdiction issue. However, SRLDC had filed the present Petition under Regulation 1.5 (Compliance Oversight) of the Grid Code while performing its statutory duty. WP No. 1286 of 2020 pending before Hon'ble High Court of Andhra Pradesh with respect to Petition No. 342/MP/2019 is on jurisdiction of CERC with respect to single generator whereas the instant petition is about enforcement of the provisions of the Grid Code. Stay order in Writ Petition No.1286/2020 is with regard to a specific petition and cannot have general application in respect of all petitions filed before the Commission raising similar issue. Further, the litigants in the writ petition before Hon'ble High Court of Andhra Pradesh are not the same as in the present petition. The stay by the Hon'ble High Court of Andhra Pradesh issued vide order dated 23.01.2020 and as

extended from time to time, cannot be construed as stay of the proceedings in the present petition. SRLDC is not a party to the petition no. WP No 1286 of 2020 in the High Court of Andhra Pradesh in the matter of Petition No. 342/MP/2019. SRLDC had filed the petition on 28.01.2020. The intimation regarding the stay on 342/MP/2019 to SRLDC came subsequently in February 2020. APSLDC failed to appreciate that there is no hindrance for this Petitioner to do its mandated statutory duty under Regulation 1.5(i) of the Grid Code as a responsible statutory body.

(r) SRLDC has submitted that it referred the order in W.P No 9844 of 2019 Hon'ble High Court of Andhra Pradesh to point out the following:

(i) APSLDC was directed to discharge its statutory functions fairly and refrain from arbitrary curtailment of power generated by the wind/solar developers.

(ii) AP Transco was directed to adhere to its undertaking that written justification for curtailment of power be informed on weekly basis on the website of AP Transco.

(iii) Curtailment cannot be ordered either directly or indirectly except for the reasons which are mentioned in the PPA or as per the Act and APSLDC has failed to honour the above directions. The curtailment data is uploaded on the website only till 30.06.2020 despite directions of the Hon'ble High Court and SRLDC following up on the same. Hence the claim of the APSLDC that the directions are being complied is incorrect.

Analysis and Decision

23. We have heard the learned counsels for the Petitioner and the Respondent and have carefully perused the records. The Petitioner and Respondent APSLDC have filed detailed replies, *inter-alia*, on maintainability of the petition.

24. Various provisions of the Electricity Act, 2003 stipulate as under:

“Section 28. (Functions of Regional Load Despatch Centre): --- (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) *The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.*

(3) *The Regional Load Despatch Centre shall -*

- (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;*
- (b) monitor grid operations;*
- (c) keep accounts of quantity of electricity transmitted through the regional grid;*
- (d) exercise supervision and control over the inter-State transmission system; and*
- (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.*

Section 29. (Compliance of directions): --- (1) *The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.*

(2) *Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the Regional Load Despatch Centres under subsection (1).*

(3) *All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.*

(4) *The Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.*

(5) *If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision:*

Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

(6) *If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (2) or sub-section (3), he shall be liable to a penalty not exceeding rupees fifteen lacs.*

Intra-State transmission

xxxx

Section 32. (Functions of State Load Despatch Centres): --- (1) *The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*

(2) *The State Load Despatch Centre shall -*

- (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*
- (b) monitor grid operations;*

- (c) keep accounts of the quantity of electricity transmitted through the State grid;*
- (d) exercise supervision and control over the intra-State transmission system; and*
- (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

Section 33. (Compliance of directions): --- *(1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.*

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despatch Centre under sub-section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (1), he shall be liable to a penalty not exceeding rupees five lacs."

25. Thus, as per Section 28(1) of the Act, RLDC is the apex body in the region for ensuring integrated operation of the power system in the same manner as SLDC is the apex body in the State for ensuring integrated operation of the power system as per Section 32(1) of the Act, As per Section 28(3) of the Act, RLDC is responsible for optimum scheduling and despatch of electricity within the region; monitoring grid operations; keeping accounts of electricity transmitted through the regional grid; exercising supervisions and control over ISTS; and carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Code. Provisions analogous to Section 28(3) of the Act exist in Section 32(2) of the Act as regards functions of SLDC and it is responsible for optimum scheduling and despatch of electricity within the State; monitoring grid operations; keeping accounts of electricity transmitted through the State grid; exercising supervisions and control over Intra-STs; and carrying out real time operations for grid control and despatch of electricity within the State

through secure and economic operation of the State grid in accordance with the State Grid Code.

26. Section 29(1) of the Act empowers RLDCs to give directions and exercise supervision and control for ensuring stability of grid operations and for achieving maximum economy and efficiency in the operation of power system in the region. As per Sections 29(2) and 29(3) of Act, directions of RLDC under Section 29(1) of the Act have to be complied with by all concerned entities. In case of transmission licensees of State transmission lines or any other licensee of the State or generating company (other than those connected to ISTS) or sub-station in the State, RLDC is required to convey its directions through concerned SLDC. In terms of Sections 33(1), (2) and (3) of the Act, powers of SLDC in terms of giving directions to entities in the State are also similar to the powers of RLDC in the region as per Sections 29(1), (2) and (3) of the Act.
27. Section 29(5) of the Act provides that in case of any dispute with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under Section 29(1) of the Act, this Commission shall have jurisdiction. On the other hand, Section 33(4) of the Act provides that in case of any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under Section 33(1) of the Act, the relevant State Commission shall have jurisdiction.
28. As per Section 28(2) of the Act, RLDC is required to comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as this Commission may specify in the Grid Code. As per Section 29(5) of the Act, in case of any dispute in relation to any direction given under Section 29(1) of the Act, this Commission shall have jurisdiction to decide the dispute. Section 33(3) of the Act requires that SLDCs shall comply with directions of RLDCs.
29. A conjoint reading of Sections 29(1), 29(2), 29(3) and 33(3) of the Act makes it clear that RLDC can give directions to any person {In terms of Section 2(49) of the Act, “*person*” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person} for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system

in the region under its control and that any person connected with operation of power system is required to comply with such directions. While such directions to transmission licensees of State transmission lines or any other licensee of the State or generating company (other than those connected to ISTS) or sub-station in the State, are required to be conveyed through concerned SLDC and that SLDC is required to ensure that the directions of RLDC are complied with.

30. Various provisions of the Grid Code stipulate as under:

“1.5 Compliance Oversight

...

(i) RLDCs shall report to the Commission instances of serious or repeated violation of any of the provisions of the IEGC and incidences of persistent non-compliance of the directions of the RLDCs issued in order to exercise supervision and control required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

.....

(iv) In case of non-compliance of any provisions of the IEGC by NLDC, RLDC, SLDC, RPC and any other person the matter may be reported by any person to the CERC through petition.”

“5.2 System securities Aspects

(u) Special requirement for Solar/Wind generators

System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. However, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar/ wind generator shall comply with the same. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC.

(i) SLDC/RLDC may direct a wind farm to curtail its VAr drawl/injection in case the security of grid or safety of any equipment or personnel is endangered.

(ii) During the wind generator start-up, the wind generator shall ensure that the reactive power drawl (inrush currents in case of induction generators) shall not affect the grid performance.”

“6.5 Scheduling and Despatch procedure for long-term access, Medium-term and short-term open access

11. Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must run stations. All renewable energy power plants, except for biomass power plants, and non-fossil fuel based cogeneration plants whose tariff is determined by the CERC shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘merit order despatch’ principles”

31. Regulation 1.5(i) read with Regulation 1.5(iv) of the Grid Code mandates RLDC to report to the Commission (a) instances of serious or repeated violation of any of the provisions of the

Grid Code and (b) incidences of persistent non-compliance of the directions of RLDC. Further, Regulations 5.2(u) and 6.5(11) of Grid Code accord 'must run' status (except for reasons of grid safety or when security of equipment or personnel is endangered) for wind and solar generation.

32. Therefore, we are of the view that it is the statutory duty of SRLDC to bring to notice of the Commission any matter where provisions of Grid Code have been violated. Apart from having raised the matter with the Respondent APSLDC, the SRLDC has taken up the issue of violation of provisions of the Grid Code during 158th, 159th, 160th, 161st and 162nd OCC meetings of SRPC. Reportedly, violations of provisions of the Grid Code by APSLDC continue. Hence, SRLDC is well within its rights to invoke the provisions of Regulation 1.5(i) read along with Regulations 1.5(iv) of the Grid Code and file the present petition. The contention of APSLDC is that the affected generators should approach the Commission and not SRLDC. In our view, in light of provisions of Regulations 1.5(i) and 1.5(iv) of the Grid Code, SRLDC has statutory duty to approach this Commission.

33. It has been contended by APSLDC that the same matter was contested before Hon'ble High Court of Andhra Pradesh in W.P. Nos. 9844, 9867, 9869, 9870, 9871, 9872, 9873, 9874, 9875, 9876, 9877, 9938, 10135, 10138, 10212, 10244, 10486, 10487, 11175, 11872 and 12286 of 2019. We note that the matter was decided by the Hon'ble High Court of Andhra Pradesh vide common order dated 24.09.2019, wherein it has been held as under:

"Determination:

In the case on hand, as pointed out earlier, the raison d'etre for the State/GoAP to issue the impugned letter and the G.O is because the State feels that the prices being charged by the various petitioners are very high. While the object is laudable, the question is does the State/GoAP have such power?

....

In view of the fact that this Court is holding in the other batch of writ petitions (WP.Nos.2401 of 2019, 5710 of 2019 and batch) that all the issues are to be raised in OP.No.17 of 2019 before the APERC, this Court is not entering into the depth of the controversy.

....

Thus, this Court holds that a third party to the contract cannot give directions to modify the contract. If the DISCOMS feel that the tariff is high they have to avail the statutory remedies only subject to limitation res judicata etc. State should act as a 'model' employer. Fairness, reasonableness and transparency must be the core values as per which the State must act. If the state action is viewed against the large volume of case law on "fairness of State action" it is clear that it falls short of the expected standards.

....

Payments due and the financial quagmire:

The plea that is raised by the petitioners namely that their bills have not been paid and that the DISCOMS are using some subtle and not so subtle methods in order to force them to reduce the rate needs to be addressed at this stage. A large number of interlocutory applications have

been filed seeking directions to the respondents to refrain from arbitrarily curtailing generation; seeking payment of the outstanding dues etc. Some writs contain this prayer too; either directly or as a prayer not to take coercive steps.

....

Keeping in view the submissions made by both the parties and (a) as the petitioners need liquidity and consequential lubrication to keep the “wind mills” moving and (b) as the losses of the DISCOMS are high for whatever reason, this Court is of the opinion that the respondents/DISCOMS should be directed to honour the bills of the wind purchasers and solar purchasers and to pay the same at the “interim” rate of Rs.2.44p for solar power and Rs.2.43p for wind power. All the pending and future bills of all the petitioners should be paid at this interim rate. This interim arrangement is being suggested by this Court in order to balance the interest of both the parties. The argument that the petitioners will soon become NPA and their financiers would initiate insolvency and other proceedings can not be lost sight of. The State’s claim that they are bleeding cannot be lost sight of either. Hence, this interim arrangement. By making a payment at this rate the petitioners or DISCOMS are not losing any of their rights. By submitting a bill; by processing the bill; by paying the bill and by receiving the bill neither party will lose its rights. It is only an interim measure that is suggested till the dispute is resolved by the APERC. A time frame of six months was also suggested to APERC in the other batch of writ petitions to dispose the case.

.....

Curtailment:

All the learned senior counsels who argued in the batch argued about the State/respondents action in curtailing the power, failure to pay the bills and also the actions in disconnecting the evacuation of power etc.

Learned senior counsel argued IA.No.9 of 2019 filed in W.P.No.9844 of 2019 for which separate orders are passed. This was a case of abrupt disconnection of a generator to a sub-station from which the generated power is evacuated.

During the course of hearing in IA.No.9 of 2019, the learned Advocate General justified the State action by stating that the action was taken in that particular case because of a representation given by another generator. He, therefore, justified the action of the State and argued that the initial action was illegal; that in the interest of grid safety etc., the action was taken. **However, Mr. Sajan Poovayya, learned senior counsel in the course of his rejoinder argument has filed a document downloaded from website of the A.P.TRANSCO (Transmission Corporation to Andhra Pradesh Limited), which clearly shows that the solar power has been curtailed on the ground that the “price quoted” is too high.** Learned senior counsel points out that this downloaded document is for the period from 01.08.2019 to 01.09.2019, which includes the period during which the writ petitions were being heard.

This Court had already given an order dated 25.07.2019 to the respondents restraining them from taking coercive steps, but steps continued to be taken. Permission was not taken from the Court before complete curtailment in IA.No.9 of 2019 in WP.No.9844 of 2019. Once this Court was seized of the matter, permission must have been sought as there was no glaring emergency to disconnect the petitioners’ right to evacuate.

This Court after hearing all the learned counsels is of the opinion that the terms of the contract have to be honoured. The State cannot give a direction to the DISCOMS or to the generators that the price is high. This matter of “price” has to be determined as per law. The respondents cannot use tactics like this. Until it is determined that the price is high or for similarly determined reasons by which the contract is amended, the curtailment of the power for any reason whatsoever cannot be ordered. Except for the reasons which are mentioned in the PPA or as per the Electricity Regulation Act, 2003 etc., curtailment cannot be ordered

either directly or indirectly. Even if the price is high, it can lead to a monetary claim or adjustment/ set off etc., but not curtailment of power or stoppage of evacuation etc.

In view of the fact that these sort of orders will have serious consequences, apart from financial consequences all the generators are entitled to a notice before any such action is taken except in a very grave and sudden emergency. This action should also be supported by reasons which are strong and germane. Therefore, the respondents are once again directed not to take any coercive steps of any nature including curtailing production, stopping evacuation or the like except after giving due notice to the generators and as per the PPAs; the Regulation and 2003 Act. Therefore, this Court holds any restriction can only be imposed if it is as per the agreement or it has the sanction of law.

With these observations, this batch of writ petitions are allowed setting aside the GOMs.No.63 of 2019 dated 01.07.2019; the letter dated 12.07.2019 and all related and consequential actions.”

34. From the above, it is observed that the matter adjudicated in various writ petitions before the Hon’ble High Court of Andhra Pradesh and decided by the common order dated 24.09.2019 is with regard to modification of tariff, commercial compensation and curtailment of power due to high tariff. We observe that the parties have filed the Writ Appeal No. 383, 393, 435, 441, 447, 463 and 477 of 2019 before the Division Bench of Hon’ble High Court of Andhra Pradesh to set aside the common order dated 24.09.2019. However, the matter before the Commission in the instant petition is regarding violation of provisions of ‘must run’ as provided in the Grid Code. The contention of APSLDC that the Commission may not proceed in the matter in view of same matter being heard by Hon’ble High Court of Andhra Pradesh, is not correct.
35. Another issue contended by APSLDC is that similar matter is pending before APERC and that SRLDC should not indulge in forum shopping. We observe that the petitions O.P. No. 61, 74 and 76 of 2019 filed by generators which are pending before APERC for adjudication are for seeking commercial compensation and for ensuring ‘must run’ status for their respective power plants, whereas the instant petition is filed by SRLDC for violation of Regulations 1.5(i) and 1.5(iv) of the Grid Code.
36. It is further observed that the issue which arose during the hearing was whether the Commission can proceed with the matter since proceedings in Petition No.342/MP/2019 raising a similar issue by *Prayatna Developers Private Limited* in respect of its RE power project located in Andhra Pradesh was stayed by the Hon’ble High Court of Andhra Pradesh in Writ Petition No.1286/2020. The said writ petition was filed by APSLDC contending that only APERC has the jurisdiction to adjudicate the disputes raised in Petition

No.342/MP/2019. The Commission observes that Hon'ble High Court of Andhra Pradesh vide its Order dated 21.09.2020 in Writ Petition No.1286/2020, has held as under:

“Subsequent to the common order dated 24.09.2019 passed in the said writ petitions; writ appeals have been filed vide W.A.Nos.383, 393, 424, 433, 435, 441, 477 of 2019 and 6 of 2020 arraying APSLDC as respondent. The Division Bench of this Court issued notices to DISCOMs and APSLDC i.e., petitioner and posted the writ appeals for further hearing on 23.01.2020. Therefore propriety requires the CERC not to proceed with the issue. But, the CERC is proceeding with the enquiry in a petition filed by respondent No.2 vide petition No.342/MP/2019.

...

...

Considering rival contentions, perusing the material available on record, the points that arise for consideration are:

- 1) Whether the Writ of Certiorari can be issued in the circumstances stated in the writ petition?*
- 2) Whether the petition is liable to be dismissed for non-joinder of necessary parties?*
- 3) Whether CERC is competent to decide the dispute between respondent No.2 and the petitioner in terms of Section 79 (1) (h) of the Electricity Act, Regulation 111 of CERC (Conduct of Business) Regulations, 1999 and Regulation 5.2 (u) of IEGC? If not, whether respondent No.1 be restrained from proceeding with application No.342/MP/2019 by issuing Writ of Prohibition?*

P O I N T No.1:

Before going to decide the aspect of jurisdiction, it is appropriate to advert to the relief claimed in the petition to decide whether Writ of Certiorari or writ of prohibition can be issued in the facts and circumstances of the case.

The relief claimed in the petition is as follows:

“it is therefore prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of certiorari calling the records leading upto quash the impugned proceedings pending before the 1st respondent vide petition No.342/MP/2019 filed by the 2nd respondent against the petitioner for curtailment of generation of solar power as illegal, arbitrary and unreasonable without jurisdiction, and contrary to Section 86 (1) (f) of Electricity Act and contrary to Section 33 (4) of Electricity Act and be pleased to pass such other order or orders as deem fit and proper in the circumstances of the case.”

As seen from the relief claimed in the petition, the petitioner claimed only Writ of Certiorari.

...

...

In the present facts of the case, undisputedly, petition No.342/MP/2019 filed by respondent No.2 against the petitioner questioning the curtailment of generation of solar power is pending before respondent No.1, at this stage the appropriate remedy is Writ of Prohibition.

If an order is passed by CERC assuming jurisdiction though not vested in it or passed any order in violation of principles of natural justice or violating fundamental rights guaranteed under the Constitution of India, a Writ of Certiorari can be issued. Hence, I am of the considered view that Writ of Prohibition is appropriate remedy at this stage, when the petition No.342/MP/2019 filed by respondent No.2 is pending before respondent No.1. Accordingly, the point is answered

P O I N T No.2:

...

Undoubtedly, when necessary parties are not impleaded to the writ petition, the writ petition is liable to be dismissed in limini. But, who is necessary and proper party is a question of fact depending upon the facts of each case. Proper party is a party, in whose absence effective adjudication cannot be made. Necessary party is a party, in whose absence the dispute cannot be decided.

...

In the absence of NTPC, any decision of this Court is not binding on the NTPC, who is a party to the agreement entered into with respondent No.2. Hence, I find that NTPC is a necessary party, in whose absence the dispute as to the inherent jurisdiction of the CERC cannot be decided. On this ground alone by applying the law declared by the Apex Court in the judgments (referred above) and persuaded by the judgment of California Court, the petition is liable to be dismissed. Accordingly, the contention of the learned counsel for respondent No.2 is upheld and point is decided in favour of respondent No.2 and against the petitioner.

P O I N T No.3:

In view of my finding on point No.2, no finding need be recorded on the main issue as I have already held that such issue cannot be decided in the absence of necessary parties. Hence, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.”

37. It is evident from the above that the issues raised and decided in the aforesaid Writ Petitions by the Hon’ble High Court relate to the power of the State Government to modify the contracts including the curtailment of power evacuation by generators on the ground of high tariffs. The Hon’ble High Court of Andhra Pradesh has dismissed the Writ Petition No.1286 of 2020 for want of necessary parties and for seeking prayer under an incorrect writ. There were no observations on jurisdiction of the Commission. In view of above, there is no restriction on the Commission to proceed in the matter. It is pertinent to mention here that though the Respondent has submitted that the issue of APSLDC giving backing down instructions to RE generators is *sub judice* before the Hon’ble Court in the said writ appeals, it has not filed any documents in support of the same.
38. APSLDC has submitted that though Clause 1.10 of Andhra Pradesh Code of Technical Interface (APCTI) provides that in case of inconsistency in provisions of APCTI, the Grid Code takes precedence over APCTI, the dispute needs to be adjudicated by APERC under Section 86(1)(f) of the Act and that this Commission has no jurisdiction in the matter.
39. We observe that relevant provisions of the Electricity Act, 2003 stipulate as under:

“Section 29. (Compliance of directions): ---

xxxx

(5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision:

xxxx

Section 79. (Functions of Central Commission):

(1) The Central Commission shall discharge the following functions, namely:-

xxxx

(h) to specify Grid Code having regard to Grid Standards;

xxxx

Section 86. (Functions of State Commission):

(1) The State Commission shall discharge the following functions, namely: -

xxxx

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;”

40. Clause 1.10 of Andhra Pradesh Code of Technical Interface stipulates as under:

“1.10 Precedence of Indian Electricity Grid Code:

This CTI is prepared such that it is consistent with the IEGC. However if any clause of the APCTI (AP Grid Code) contradicts the provision of the IEGC during a real situation, the IEGC takes precedence. It is open to APTRANSCO to obtain from CERC exemption from any provision of IEGC in favour of a clause of AP CTI where the issue pertains solely to the internal system of A.P (considering the present, future, direct and indirect impacts) and does not impact the Southern Regional Grid or the system any of the other constituents of the Southern Regional Grid.”

41. The Hon’ble Supreme Court in its judgment dated 17.08.2007 in case titled *Central Power Distribution Co. &Ors. v. Central Electricity Regulatory Commission &Anr. (2007) 8 SCC 197 (Civil Appeal No 2104 of 2006)* has held as under:-

“17..... Under Section 79(1)(h) the Central Commission has the power to specify Grid Code. It also provides that the function of the State Commission to specify State Grid Code under Section 86(1)(h) should be consistent with the Grid Code specified by the Central Commission and therefore the power of the State Commission is subservient to the power of the Central Commission. Section 2(32) defines Grid as interconnected transmission lines. The expression used interconnected has a significant meaning. Sub-section (1) of Section 28 deals with the function of RLDC (Regional Load Dispatch Centre) to ensure integrated operation of the power system in the region concerned. The term power system is of wide import. It is not confined to inter-State transmission lines but extends to even supply lines, distribution, main service lines, etc. However, sub-section (3) of Section 28 deals with duties of RLDC using the expression “within the region” or “in the region”. Obviously it includes both “inter-State” and “intra-State” lines and is not restricted to inter-State lines. Section 29 of the Act empowers

RLDC to give directions and exercise such supervision and control to any person for ensuring stability of Grid operation. It also provides that the State Load Dispatch Centre shall duly enforce such directions. Sub-section (3) of Section 33 of the Act provides that the State Load Dispatch Centre shall comply with the directions of RLDC.

18. A fascicule reading of the above provisions would clearly show that the scheme of the Electricity Act is that RLDC is required to follow the principles, guidelines and methodologies specified by the Central Commission and all persons including the distribution licensees like the appellants herein are required to follow the directions of RLDC. RLDC can enforce such directions through SLDC. In turn SLDC is required to follow the directions of RLDC.

19. Having regard to the aforementioned provisions of law the contention that the Central Commission has no jurisdiction to deal with Grid discipline in regard to single State beneficiary station, in our view, has no merit. As already noticed ABT is to ensure discipline in the integrated system. Further ABT is being introduced stationwise and it is the Central Commission alone who has the jurisdiction particularly, in regard to generating stations of NTPC, which is a Central Government-owned and controlled generating company.

...

Question (C) (24) As already noticed, the Central Commission has the power and function to evolve commercial mechanism such as imposition of UI charges to regulate and discipline. It is well settled that a power to regulate includes within it the power to enforce. See InduBhusan vs. Rama Sunderi, AIR 1970 SC 228, K. Ramanathan vs. State of Tamil Nadu (1985) 2 SCC 116, V.S. Rice and Oil Mills vs. State of Andhra Pradesh, AIR 1964 SC 1781, Deepak Theatre, Dhuri vs. State of Punjab, 1992 Supp.(1) SCC 684.

Question (G) 25. In the facts and circumstances as alluded, and as per the scheme of the Electricity Act, 2003 mentioned above, the Central Commission has the plenary power to regulate the Grid, particularly in the context of the Grid being integrated and connected across the region comprising of more than one State. The State Grid cannot be isolated and can be seen as independent from the region”

42. A conjoint reading of provisions of Section 29(5), Section 79(1)(h) and Section 86(1)(h) of the Act; Clause 1.10 of APCTI; and above-quoted judgement of Hon’ble Supreme Court, it is clear that this Commission has jurisdiction to adjudicate matters involving ISTS and for failure on part of a SLDC to comply with directions of RLDC. Further, in terms of Section 29(5) of the Act, for any violation of directions of RLDC issued under Section 29(1) of the Act, this Commission is the appropriate forum for adjudication of disputes.
43. APSLDC, stating that APERC is the Appropriate Commission in the matter, has submitted that the issue of jurisdiction is pending before Hon’ble High Court of Andhra Pradesh and, therefore, the Commission should not proceed with this matter. It is noted that this Commission is not a party in the matter before the Hon’ble High Court of Andhra Pradesh in the referred matter and, therefore, the Commission is not in a position to appreciate the issues raised by APSLDC before Hon’ble High Court of Andhra Pradesh. It is, however, clarified that our decision in this order with regard to jurisdiction shall stand suitably modified in the

light of any findings to the contrary, if any, by the Hon'ble High Court in the subject writ petition.

44. In the present order, we have dealt with the issue of jurisdiction of the Commission, as to whether SRLDC can approach the Commission for violation of provisions of the Grid Code in matters within the State. We want to make it clear that other issues would be dealt with when the matter is heard on merit and we have not expressed any opinion on those issues as of now.

45. The Petition No.204/MP/2020 is admitted. The parties are directed to make their submissions on merit. The Petition shall be listed for hearing in due course for which separate notice will be issued.

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)