

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Interlocutory Application Diary No. 35/2022
in
Petition Diary No.20/2022

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 22nd April, 2022

In the matter of

Application for seeking waiver of filing fees

And

In the matter of

Lanco Kondapalli Power Limited,
Plot No.4, Softsol Building,
Software Units Layout,
Hitech City, Madhapur,
Hyderabad-500 08.

....Applicant

VS

- 1) Andhra Pradesh Power Coordination Committee,
Vidyut Soudha, Eluru Road,
Vijayawada- 520004,
Andhra Pradesh.
- 2) Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Eluru road,
Vijayawada- 520004,
Andhra Pradesh.
- 3) Southern Power Distribution Company of Telangana Limited,
(Formerly Central Power Distribution Company of Andhra Pradesh Limited)
11-5-423/1/a, First floor, Singareni Collieries Bhavan, Lakdi-ka-pul,
Hyderabad-506001.
- 4) Southern Power Distribution Company of Andhra Pradesh Limited,
Upstairs, Hero Honda showroom, Renigunta Road,
Tirupati 517501.

- 5) Northern Power Distribution Company of Andhra Pradesh Limited,
11-5-423/1/a, First Floor, 1-7-668, Postal Colony, Hanamkonda,
Warangal-506001.
- 6) Eastern Power Distribution Company of Andhra Pradesh Limited,
50-27, TPT Colony,
Visakhapatnam-530013.

...Respondents

ORDER

The Petitioner, Lanco Kondapalli Power Limited, had filed the Petition before the Andhra Pradesh Electricity Regulatory Commission (in short 'APERC') in the year 2012. On 1.3.2014, the Andhra Pradesh Reorganization Act, 2014 ("AP Reorganization Act") was notified. Pursuant to which, w.e.f. 2.6.2014, the erstwhile State of Andhra Pradesh was bifurcated into the States of Telangana and Andhra Pradesh. In terms of AP Reorganization Act, Eastern Power Distribution Company of Andhra Pradesh Limited and Southern Power Distribution Company of Andhra Pradesh Limited would operate in the new State of Andhra Pradesh, whereas, Central Power Distribution Company of Andhra Pradesh Limited and Northern Power Distribution Company of Andhra Pradesh Limited became Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited respectively, which would operate in the State of Telangana.

2. The issue as to 'Whether the Central Commission has the jurisdiction to regulate the tariff of the generating company after the implementation of the Andhra Pradesh Re-organization Act, 2014' had come up for consideration of the Commission in Petition No. 463/MP/2014 in the matter of GMR Vemagiri Power Generation Limited v. Andhra Pradesh Eastern Power Distribution Co. Ltd. and Ors. The Commission after examining the said issue in its order dated 27.4.2015 had,

inter-alia, held that after coming into effect the AP Reorganization Act, GMR Vemagiri had been generating and supplying power to more than one State and accordingly, the Commission has the jurisdiction to entertain the dispute arising out of the PPA therein.

3. The aforesaid order was challenged by the distribution companies of Andhra Pradesh before the Hon'ble High Court of Judicature at Hyderabad in WP No. 15848 of 2015, which was tagged with other Writ Petitions which had raised a common question as to whether the dispute that arose between the power generating companies and the power distribution companies before the bifurcation of the State are to be adjudicated by the Central Commission or by APERC or by the Telangana State Electricity Regulatory Commission (in short 'TSERC'). On 31.12.2018, the Hon'ble High Court of Judicature at Hyderabad disposed of the WP No. 15484 of 2015 and Ors upholding the jurisdiction of the Central Commission in respect of the generating station supplying power to the distribution companies of the Andhra Pradesh and Telangana after bifurcation of the erstwhile State of Andhra Pradesh. AP Discoms subsequently challenged the judgment of Hon'ble High Court of Judicature at Hyderabad dated 31.12.2018 before the Hon'ble Supreme Court in SLP(c) No. 8016 of 2019 and Ors. The said appeals came to be decided by the Hon'ble Supreme Court vide its order dated 4.2.2020, wherein the Hon'ble Supreme Court upheld the decision of Hon'ble High Court that the Central Commission is the appropriate authority to hear and decide the dispute and accordingly, disposed of the pending appeals.

4. In terms of the aforesaid order passed by the Hon'ble Supreme Court, TSERC, vide its letter bearing No. 284/2021 dated 29.05.2021, has transferred

various Petitions to this Commission, including the captioned Petition filed by the Petitioner above named. Similarly, APERC has also transferred the certain Petitions to the Commission. Upon transfer, the present Petition has been assigned Diary No. 1587 (OP No. 52/2015) dated 8.7.2021, this Commission vide its letter dated 10.8.2021 directed the Petitioner to take steps to file the Petition through e-portal of this Commission. Accordingly, the Petitioner has filed the present Petitioner along with the following prayers:

“(a) Allow the present Petition and direct that the pleadings in OP No. 85 of 2012 (renumbered as OP No. 52/2015) as filed before the Andhra Pradesh Electricity Regulatory Commission be taken on record by this Commission.

(b) Direct the Respondents to pay an amount of Rs. 9,11,91,478/-towards reimbursement of the Minimum Fuel Off-take Charges (imbalance charges, cost of Ship or Pay Quantity and cost of deficiency quantity of gas) as claimed by the Petitioner which are part of monthly tariff bills furnished by it to the 1st Respondent from September, 2009 to October, 2011 vide Bills bearing No.113 to 136 and interest/late charges ofRs.1,95,91,189/- till 31st July, 2012 for delay in payment of the said bills;

(c) Direct the Respondents to pay an amount of Rs.4,94,48,439/-towards reimbursement of Ship or Pay charges as being part of monthly tariff bills furnished by it to the 1st Respondent from October, 2011 to July, 2012 vide Bills bearing No.137 to 146 and interest/late charges of Rs.26,27,959/- till 31st July, 2012 for delay in payment of the said bills;

(d) Direct the Respondents to pay an amount of Rs.42,40,44,136/-which was availed by them by way of rebate from the Bills bearing No.113 to 146 and interest/late charges of Rs.7,72,05,492/- till 31st July, 2012 on the amount of rebate availed by the Respondents in respect of the above said Bills;

(e) Declare that the Petitioner company is entitled to be paid interest/late charges on the amounts claimed in above paragraphs (a); (b) & (c) from the date of this petition to till realization and consequently direct the Respondents to pay the same.”

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5. The Petitioner has filed IA along with the following prayers:

“(a) Grant waiver to the Petitioner for paying the appropriate court fees in the present matter;

(b) Pass any other or further order/reliefs which this Hon'ble Commission may deem fit and proper in light of justice, equity and good conscience."

6. The Petitioner has submitted that at the time of filing the present Petition before APERC, the Petitioner had paid Rs. 25,000/- as filing fees. Admittedly, the Petitioner has filed the present Petition again pursuant to order of Hon'ble Supreme Court upholding the jurisdiction of this Commission in the matter. Therefore, the Petitioner has submitted that the filing fees required to be paid before this Commission may be waived in order to avoid double payment of the same.

7. The Petitioner has submitted that during the pendency of the proceedings before the State Commission, Axis Bank Limited initiated Corporate Insolvency Resolution Process ("CIRP") against the Petitioner vide CP (IB) 678/HYD/2018 in Hyderabad. The Petitioner company was admitted into CIRP vide Order dated 23.4.2019. Thereafter, pursuant to an Interlocutory Application filed by the Resolution Professional, the Petitioner was admitted into liquidation vide Order dated 16.4.2021. Therefore, waiver of court fees is necessary since the Petitioner presently has limited resources at its disposal.

8. The IA is being decided by circulation.

9. We have considered the submissions of the Applicant. It is noticed that initially the Applicant had filed the Petition (bearing OP No. 85 of 2012) before APERC along with filing fee prescribed by the State Commission and then the said Petition appears to have been transferred to TSERC (and renumbered as OP No. 52/2015) after bifurcation of erstwhile State of Andhra Pradesh into the States of Telangana and Andhra Pradesh. However, pursuant to decision of Hon'ble Supreme Court upholding the jurisdiction of this Commission to decide upon the cases involving the

disputes between the generating companies and the distribution licensees of the States of Andhra Pradesh and Telangana, TSERC, owing to lack of jurisdiction to deal with the matter, has transfer the said matter to this Commission. Accordingly, this Commission, by exercising its jurisdiction under Section 79 of the Electricity Act, 2003, is now required to adjudicate the matter afresh after hearing the parties.

10. Order VII comes in to play in case of Return of Plaint for presenting in forum of proper jurisdiction, as is in the instant case. The Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 as amended from time to time does not provide for waiver of fees, as prayed for. However, considering the difficulties projected by the Applicant and keeping in view that there is no double payment of filing fees, the Applicant is permitted to remit the balance differential filing fee in terms of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time. Since the Applicant has already paid the filing fee of the Rs.25,000/- to APERC, the Petitioner is directed to move before the APERC for transmitting the said fees to this Commission.

11. In the meantime, the registry is directed to process the Petition for registration after receiving the differential filing fee.

12. This order will applicable to all the cases transferred by APERC and TSERC pursuant to the decision of Hon`ble Supreme Court in SLP(c) No. 8016 of 2019 and Ors. vide its order dated 4.2.2020.

13. The IA Diary No. 35/2022 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K.Pujari)
Chairperson