

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No. 133 OF 2021**

Dated : 24<sup>th</sup> January, 2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon`ble Mr. Virender Bhat, Judicial Member

1. **Southern Power Distribution Company of Telangana Limited**  
(Through CGM (IPC and RAC))  
Corporate Office: 6-1-50,  
Mint Compound,  
Hyderabad - 500063, Telangana
  
  2. **The Chief General Manager (IPC and RAC)**  
Southern Power Distribution Company of Telangana Limited  
Corporate Office: 6-1-50,  
Mint Compound  
Hyderabad - 500063, Telangana  
Email: lawyerrks@gmail.com
- ... Appellant(s)

*Versus*

1. **Telangana State Electricity Regulatory Commission**  
(Through its Secretary)  
11-4-660, 5th Floor,  
Singareni Bhavan,  
Red Hills Road ,  
Khairatabad, Red Hills,  
Hyderabad, Telangana – 500004  
Email: secy@tserc.gov.in
  
2. **M/s. Kranthi Ediffice Private Limited**  
(Through its Managing Director)  
H. No. 3-5-784/8/A,  
Sri Sai Sri Heights,

King Koti, Opp: Pardha Gate,  
Hyderabad, Telangana – 500029  
Email: info@kranti.co.in

... Respondent (s)

Counsel for the Appellant(s) : D. Abhinav Rao for  
App. 1 & 2

Counsel for the Respondent(s) : Somandri Goud Katam  
for Res. 1  
Abhishek Nath Tripathi  
Mani Gupta  
Yukti Anand  
Rajat Kumar  
Vedant Kumar  
Shelja Pradhan for  
Res. 2

## **JUDGEMENT**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. In this appeal, assail is to the order dated 19<sup>th</sup> December, 2018, passed by the First Respondent Telangana State Electricity Regulatory Commission in O.P. No. 64 of 2018 whereby the petition filed by 2<sup>nd</sup> Respondent has been allowed and it has been held entitled to extension of time for completion of the solar power project by 90 days with reduced tariff of Rs.5.52 per unit.
2. A bird's eye view of the facts of the case is that the 2<sup>nd</sup> Respondent was a successful bidder through open competitive bidding 2012 and open offer route 2013 to setup the solar photovoltaic power project of 10 MW capacity at Nagarkurnool village in Mahabubnagar Dist.,

Telangana State. It entered into PPA with the Appellants on 8<sup>th</sup> January, 2015 in this regard for sale of power to the Discom at a tariff of Rs.6.49 per unit. The project was to be commissioned by 7<sup>th</sup> January, 2016 and with penalties upto May, 2016. The Government of Telangana State, vide letters of 8<sup>th</sup> May, 2015 and 4<sup>th</sup> December, 2015 had extended the Scheduled Commercial Operation Date (SCOD) of the solar power project upto 31<sup>st</sup> March, 2016 on agreed tariff of Rs.6.45 per unit and further vide letter dated 26<sup>th</sup> July, 2016, the SCOD was extended upto 31<sup>st</sup> December, 2016 as a last chance for the solar power projects which had concluded PPAs under competitive bidding, 2012 and open offer route, 2013 at the same agreed price of Rs.6.45 per unit. The First Respondent, i.e. the Commission accorded approval to such extension of SCOD vide letter dated 14<sup>th</sup> October, 2016. Accordingly, a supplementary PPA dated 3<sup>rd</sup> December, 2016 came to be executed between the Appellants and the 2<sup>nd</sup> Respondent hereby extending the SCOD till 31<sup>st</sup> December, 2016 with further conditions that there shall not be any further extension of SCOD. However, on account of certain stated difficulties, that had allegedly arisen owing to the demonetization of high value currency by the Govt. of India, the 2<sup>nd</sup> Respondent could not complete the project by 31<sup>st</sup> December, 2016. It submitted a representation dated 31<sup>st</sup> December, 2016 to the Appellants seeking extension of time by 2 months to complete the project but there was no response from the Respondents. Thereafter, the 2<sup>nd</sup> Respondent approached the Hon'ble High Court of Hyderabad through Writ Petition No. 24 of 2017 which was

disposed of vide order dated 3<sup>rd</sup> January, 2017 while granting liberty to the 2<sup>nd</sup> Respondent to re-submit the representation dated 31<sup>st</sup> December, 2016 within one week of the order with further direction to the Appellants to examine the same in right perspective and not to initiate any coercive steps in this behalf pending its consideration. Accordingly, the 2<sup>nd</sup> Respondent submitted a representation dated 7<sup>th</sup> January, 2017 afresh to the Appellants seeking extension of SCOD. The Appellants vide order dated 19<sup>th</sup> January, 2017, refused to extend the COD on the ground that the reasons stated therein do not attract the Force Majeure clause of the PPA.

3. Thereafter, the 2<sup>nd</sup> Respondent again approached the Hon'ble High Court of Hyderabad by way of fresh Writ Petition No. 2490 of 2017 challenging the above noted order dated 19<sup>th</sup> January, 2017 which was dismissed as withdrawn on the ground that only 1<sup>st</sup> Respondent i.e. the Commission was empowered to extend the SCOD. While granting the permission to the 2<sup>nd</sup> Respondent to withdraw the Writ Petition, the Hon'ble High Court directed the Appellants not to take coercive action for a period of three weeks within which the Commission was mandated to pass appropriate orders on the interim application filed by the 2<sup>nd</sup> Respondent.
4. Accordingly, the 2<sup>nd</sup> Respondent filed the OP No. 64 of 2018 before the Commission i.e. the 1<sup>st</sup> Respondent seeking following prayers :-

*"1) Direct the M/s Telangana Southern Power Distribution Company Limited to extend the SCOD beyond the time stipulated under the Agreement dated 08.01.2015 and also the supplemental Agreement dated 03.12.2016 and permit a period of 6 months from*

*the date of the order of this Hon'ble Commission for completing the Power Plant and consequential commercialization.*

*2) Pass such order or orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances explained herein."*

- 5.** The Learned Commission, vide impugned order dated 19<sup>th</sup> December, 2018, has allowed the Petition of the 2<sup>nd</sup> Respondent and has passed following directions :-

*"In view of the findings, the following directions shall issue:*

*(a) The petitioner is entitled to the relief granted by the State Government vide its letter dated 05.09.2018 as petitioner's project is in the similarly placed position as compared to M/s Oberon Power Corporation Pvt. Ltd.*

*(b) The respondent is directed to amend the PPA with 90 days for achieving SCOD from the date of signing the PPA with fixed tariff of Rs. 5.52 per unit as decided by the Commission in case of the above similarly placed project from the date of entering into amended PPA*

*(c) The parties are directed to enter into an amended PPA for 25 years period within 15 days from the date of this order.*

*(d) No costs."*

- 6.** Perusal of the impugned order of the Learned Commission would reveal that it was satisfied that the 2<sup>nd</sup> Respondent had filed the petition within reasonable time on 10<sup>th</sup> September, 2018 i.e. within 11 days from the date of withdrawal of the 2<sup>nd</sup> Writ Petition bearing number 2490 of 2017 in the Hon'ble High Court on 27<sup>th</sup> August, 2018.

Further, despite coming to the conclusion that the 2<sup>nd</sup> Respondent is not entitled to any relief based on Force Majeure Clause in the PPA, as it had completed only a part of the project even by the date of filing the petition on 10<sup>th</sup> September, 2018 yet it felt inclined to grant the reliefs to the 2<sup>nd</sup> Respondent on the ground that the State Government vide letter dated 5<sup>th</sup> September, 2018 had given similar reliefs to another similarly placed project i.e. M/s. Oberon Power Corporation Pvt. Ltd. as a one time measure.

7. It was vehemently argued by the Learned Counsel for the Appellants that the 2<sup>nd</sup> Respondent had failed to complete the project by 31<sup>st</sup> December, 2016 despite two extensions granted by the State Government and therefore, it would not be entitled to any further extension of the SCOD. He would argue that the Learned Commission has erroneously compared the case of the 2<sup>nd</sup> Respondent with the case of M/s. Oberon Power Corporation Pvt. Ltd. for the reason that while granting second extension to the 2<sup>nd</sup> Respondent till 31<sup>st</sup> December, 2016, the State Government had stated in unequivocal terms that no further extension shall be granted to it for the project. It is submitted that the Learned Commission should not have made the Government letter dated 5<sup>th</sup> September, 2018, issued in case of M/s. Oberon Power Corporation Pvt. Ltd. applicable to the instant case without examining the reasonableness of the letter on the touch stone of justice and equity. It is, further, pointed out that by revising the tariff to Rs. 5.52 per unit for a period of 25 years, the Commission has granted relief to the 2<sup>nd</sup> Respondent which it had not cited at all in the petition. It is also

submitted that as on date, the latest renewable power tariff in the State of Telangana ranges from Rs.2.37 paise per unit to Rs 2.45 paise per unit for FY 2021-22 & FY 2022-2023 and therefore, the unilateral change of tariff done by the Commission without considering the prevalent tariff would be immensely prejudicial to the interest of the Appellants. He urged to this Tribunal to set aside the impugned order and dismiss the petition of the 2<sup>nd</sup> Respondent.

- 8.** Per Contra, the Learned Counsel for the 2<sup>nd</sup> Respondent argued that even the amended PPA dated 3<sup>rd</sup> December, 2016 does not prohibit extension of SCOD under Force Majeure Clause. It is submitted that due to the crises created by demonetization of high value currency notes by the Government of India vide circular dated 8<sup>th</sup> November, 2016, the 2<sup>nd</sup> Respondent suffered liquidity crunch to meet the expenditure and was unable to pay for the services of about 200 workmen, which it had engaged for the project. It is submitted that the Respondent had incurred about 30 crores towards capital expenses on the project in procuring the land, fencing it and installing various machineries on it but was unable to complete it due to reasons beyond its control and therefore, the Commission was justified in extending the COD by further period of 90 days. He would further argue that the case of Respondent No. 2 is in no way different from the case of M/s Oberon Power Corporation Pvt. Ltd. which was granted relief by the State Government vide letter dated 5<sup>th</sup> September, 2018 and, therefore, there is no reason for not extending the similar relief/benefit to the 2<sup>nd</sup> Respondent also.

9. We have considered the rival submissions made on behalf of the parties by their Learned Counsels and have perused the impugned order as well as the entire record.
10. So far as the delay of above 2 years in approaching the Learned Commission, is concerned, we note that since the 2<sup>nd</sup> Respondent did not receive any response to its representation dated 31<sup>st</sup> December, 2016, it approached the Hon'ble High Court of Hyderabad vide Writ Petition No. 54 of 2017 which was disposed of vide order dated 3<sup>rd</sup> January, 2017 thereby giving liberty to the 2<sup>nd</sup> Respondent to re-submit the representation within one week of their order. In pursuance to the said order of the High Court, the 2<sup>nd</sup> Respondent submitted a fresh representation dated 7<sup>th</sup> January, 2017 to the Appellants seeking extension of the SCOD which was rejected vide order dated 19<sup>th</sup> January, 2017. Immediately, thereafter, the 2<sup>nd</sup> Respondent approached the Hon'ble High Court again by way of Writ Petition No. 2490 of 2017 challenging the said order dated 19<sup>th</sup> January, 2017 which was dismissed as withdrawn on 27<sup>th</sup> August, 2018 as the High Court was not the appropriate authority to extend SCOD. Accordingly, the 2<sup>nd</sup> Respondent filed the Petition before the Commission on 10<sup>th</sup> September, 2018 i.e. just 11 days after the withdrawal of the Writ Petition from the Hon'ble High Court. Under these circumstances, since the 2<sup>nd</sup> Respondent was pursuing the remedy before the Hon'ble High Court, it cannot be said that it has committed any deliberate or contumacious delay in approaching the Commission. We feel in agreement with the observations of the Learned Commission that the 2<sup>nd</sup> Respondent



had approached it within reasonable time from the date of withdrawal of the petition before the Hon'ble High Court. Therefore, we are unable to hold that there was a delay on the part of the 2<sup>nd</sup> Respondent in approaching the Commission.

11. Further, as noted hereinabove, the Learned Commission has granted 90 days extension in SCOD to the 2<sup>nd</sup> Respondent, only upon finding that similar relief was granted by the State Government in similar situation to another project of M/s. Oberon Power Corporation Pvt. Ltd. vide letter dated 5<sup>th</sup> September, 2018 as a one time measure. The relevant portion of the said letter, as reproduced in para number 17 of the impugned order of the Commission, is :-

*“Government after careful consideration of the grievance of Solar Developer and report of the TSNPDCL 4th cited, hereby extend the SCOD to two units (2x5 MW) of M/S Oberon Power Corporation Pvt Ltd for 90 for completion of their project with reduced PPA tariff of Rs. 5.72 as per 2015-16 bidding as requested by the Company as one time measure and last chance”.*

12. Even though it was vehemently contended by the Appellants that the said letter dated 5<sup>th</sup> September, 2018 of the State Government issued in respect of the project of M/s Oberon Power Corporation Pvt. Ltd., should not have been made basis for granting relief to the 2<sup>nd</sup> Respondent in the instant case for the reason that there was no similarity in the facts and circumstances of both the cases yet no such dissimilarity between the case of the 2<sup>nd</sup> Respondent and that of M/s Oberon Power Corporation Pvt. Ltd. was brought to our notice by him.

- 13.** The facts of the case of M/s Oberon Power Corporation Pvt. Ltd. have been noted by the Commission in paragraph 18 of the impugned order which is reproduced herein :-

*“The M/S. Oberon Power Corporation Pvt Ltd has entered into PPA dated 31- 01-2014 with TSNPDCL under competitive bidding at a tariff of Rs. 6.45 per unit. The SCOD as per the terms of the PPA was 30-01-2015. The State Government gave extensions of SCOD three times and the final extension was valid until 31.12.2016. However, the project developer could not complete the project even as on 31.12.2016. Thus, the State Government granted relief as stated above.”*

- 14.** It is thus evident that the SCOD as per the terms of the PPA dated 31<sup>st</sup> January, 2014 for M/s Oberon Power Corporation Pvt. Ltd. was 30<sup>th</sup> January, 2015 and it was granted extension of SCOD three times by the State Government, the final extension being valid till 31<sup>st</sup> December, 2016. Since the project was not completed even till 31<sup>st</sup> December, 2016, still the State Government granted relief to it vide letter dated 5<sup>th</sup> September, 2018 thereby extending the SCOD by further 90 days at a reduced tariff of Rs.5.72 per unit as per 2015-16. In the case of 2<sup>nd</sup> Respondent herein, the SCOD, as per the PPA dated 8<sup>th</sup> January, 2015 was 7<sup>th</sup> January, 2016 and admittedly the SCOD was extended only twice by the State Government, the final extension being valid till 31<sup>st</sup> December, 2016 in this case also. Therefore, manifestly, the case of the 2<sup>nd</sup> Respondent stood at the better footing than the case of M/s Oberon Power Corporation Pvt. Ltd., and we see no reason why any different treatment should be meted out to 2<sup>nd</sup> Respondent by

not giving it similar relief as was granted to the project of M/s Oberon Power Corporation Pvt. Ltd.

- 15.** It hardly needs any reiteration that the State is bound to treat similarly placed projects on equal footing. This is the spirit of Article 14 of the Constitution of India which provides legal basis for equal treatment under the law. This provision in the constitution protects the individuals/corporations from discriminatory actions of the State and provides safeguard against the State's power to distinguish against individuals or groups. In essence, the Article provides a level playing field for all citizens of the country. Its scope is very wide in nature and encompasses all aspects of State action including legislation, executive action as well as administrative action. It applies to all executive/administrative action of the State such as issuance of licenses, granting approvals/extensions for projects and for providing other services etc.
- 16.** Considering the spirit of Article 14 of the Constitution of India as well as the principles of equity, fairness and justice, we are of the opinion that the project of the 2<sup>nd</sup> Respondent is entitled to similar relief as granted to M/s Oberon Power Corporation Pvt. Ltd. by the State Government and, therefore, no error or infirmity can be found in this regard also in the impugned order of the Learned Commission.
- 17.** We, therefore, uphold the direction given by the Learned Commission to the Appellants to amend the PPA with the 2<sup>nd</sup> Respondent thereby extending the SCOD of the project in question

for a further period of 90 days from the date of signing of the amended PPA.

- 18.** However, we find that the Learned Commission had not done any exercise before fixing the tariff for the project of the 2<sup>nd</sup> Respondent @Rs.5.52 per unit. There is nothing in the entire impugned order to show that any enquiry was made by the Learned Commission on this aspect or that any material was produced by the parties before it in this regard. It was contended before us on behalf of the Appellants that the prevalent tariff for renewable power in the State of Telangana ranges from Rs.2.37 paise per unit to Rs.2.45 paise per unit but no documentary evidence has been filed in support of such submission. Similarly, no material has been brought to our notice on behalf of the 2<sup>nd</sup> Respondent to justify the tariff of Rs.5.52 per unit granted by the Learned Commission except submitting that the tariff in the State of Telangana for a 33kv connection is Rs.5.52 per unit under the PPA route based on publicly available information.
- 19.** It cannot be disputed that the tariff of Solar projects of lower capacities (10MW and below) is higher as compared to tariff of larger projects of higher capacities connected at high voltage levels. Further, the R-2 has already completed works for the commissioning of the project as submitted by him vide affidavit dated 11.12.2023.
- 20.** In view of the same, we consider it just and reasonable to agree to the tariff as fixed by the State Commission, which is lower to the tariff as fixed in the case of M/s Oberon Power Corporation Pvt. Ltd.

21. Hence, we do not find any error or infirmity in the impugned order of the Commission. The appeal is without any merits and is hereby dismissed.
22. Pronounced in the open court on this 24<sup>th</sup> day of January, 2024.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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