

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

**EXECUTION PETITION NO.1 OF 2017
IN
APPEAL NO.228 OF 2012**

Dated : 31st May, 2017

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri I.J. Kapoor, Technical Member.**

IN THE MATTER OF:

**M/s. S. N. J. SUGARS AND PRODUCTS)
LIMITED,)
Formerly known as M/s. Sagar Sugars)
and Allied Products Ltd. Nelavoy (V), Sri)
Rangarajapuram Mandal Chittoor District,)
Pincode 517 167, Andhra Pradesh) ...Execution Petitioner
(Appellant)**

Versus

1. **TRANSMISSION CORPORATION OF)
ANDHRA PRADESH LIMITED,)
Rep. By its Chariman and Managing)
Director, Vidyut Soudha,)
Khariatabad Rd., Hyderabad,)
Telangana - 500 004.)**
- 1a. Now through, **A.P. SOUTHERN)
POWER DISTRIBUTION COMPANY,)
(APSPDCL),)
Rep. By its Chairman and Managing)
Director, D.No. : 19-13-65-A,)
Srinivasapuram, Tiruchanoor Road,)
Tirupati-517503, Chittoor District,)
Andhra Pradesh.)**
2. **THE CHIEF ENGINEER I.P.C.,)
APTRANSCO, Vidyut Soudha,)
Khairatabad Road., Hyderabad,)
Telangana-500004.)**

3. The Petitioner has set up a sugar plant with co-generation power plant with 20 MW capacity. The Petitioner proposed to use bagasse as a fuel for power generation. The Petitioner entered into a Power Purchase Agreement with Respondent No.1 – Transmission Corporation of Andhra Pradesh Limited (“**APTRANSCO**”) on 10/07/2002 for supply of power. Disputes arose between the Petitioner and APTRANSCO. The Petitioner filed Writ Petition No.7395 of 2003 challenging APTRANSCO’s letter dated 17/03/2003 stating that the Petitioner could not be classified as a co-generation plant as the sugar plant of the Petitioner was not commissioned. An interim order was passed by learned Single Judge on 02/05/2003 directing APTRANSCO to purchase power from the Petitioner and to pay to the Petitioner at the rate of Rs.2.00 per unit. In the meantime APTRANSCO filed a review petition before the State Commission for cancellation of the earlier directions issued on 17/03/2003 to amend the PPA. By its order dated 01/10/2003, the State Commission cancelled the said order. The Petitioner challenged the said order in the High Court by filing an appeal being CMA No.3613 of 2003. Writ Petition No.7395 of 2003 was disposed of by learned Single Judge of the High Court on 15/12/2003 by quashing APTRANSCO’s

letter dated 17/03/2003. APTRANSCO challenged this order by filing writ appeal being W.A. No.191 of 2004. The Division Bench of the High Court by its Order dated 30/07/2004 disposed of writ appeal of APTRANSCO as well as appeal filed by the Petitioner. The order of the Single Judge was set aside and parties were directed to approach the appropriate forum for resolving the dispute as per the PPA.

4. The Petitioner challenged the order of the Division Bench dated 30/07/2004 by filing Civil Appeal Nos.5159 and 5157 of 2005. The Supreme Court by its Order dated 13/10/2011 disposed of the said appeal by remanding the matter to the State Commission and directing the State Commission to decide the dispute between the parties as to whether during the disputed period between 13/01/2003 and 21/01/2004 i.e. when the sugar plant of the Petitioner had not commenced its production of sugar, the unutilized power supplied by the Petitioner to APTRANSCO will have the same price at par with the price of power supplied by other non-conventional energy projects earlier determined by the State Commission and fix the price of supply of power by the Petitioner to APTRANSCO during the disputed period.

5. Pursuant to the directions of the Supreme Court the State Commission passed order dated 27/08/2012. By this order the State Commission fixed the price at the rate of Rs.0.92 per unit for the period 13/01/2003 to 31/03/2003 (FY 2002-03) and at the rate of Rs.0.97 per unit for the period 01/04/2003 to 20/01/2004 (FY 2003-04). Aggrieved by this order the Petitioner filed Appeal No.228 of 2012 in this Tribunal. This Tribunal by its judgment and order dated 04/02/2013 allowed the appeal and set aside the order passed by the State Commission. Relevant paragraph of the judgment dated 04/02/2013 is as under:

“42. Accordingly, as per the tariff decided by the State Commission for non-conventional energy sources during the period under dispute, the APTRANSCO has to pay Rs.3.32 per unit for the energy supplied by the Appellant Company during the period from 13.1.2003 to 31.3.2003 and at Rs.3.48 per unit for the energy supplied during the period from 01.4.2003 to 21.1.2004. In view of the above, the Appellant is entitled to get from APTRANSCO the amount on account of difference between the above tariff and the tariff at which payment has already been made, along with simple interest for which we decide the rate as 10% per annum.”

Final direction of this Tribunal is as under:

“(d) Accordingly, the Appellant is entitled to a tariff of Rs.3.32 per unit for the period 13.1.2003 to 31.3.2003 and at Rs.3.48 per unit

for the period 1.4.2003 to 21.1.2004. Accordingly, APTRANSCO is directed to make the payment to the Appellant on account of difference between the above tariff and the tariff at which the payment has already been made along with simple interest at the rate of 10% per annum.”

6. Being aggrieved by this order APTRANSCO filed appeal in the Supreme Court on 08/04/2013. On 12/07/2016 the Supreme Court dismissed the said appeal observing that there was no merit in the appeal. APTRANSCO filed a review petition which was dismissed by the Supreme Court on 04/10/2016. This Tribunal's judgment and order dated 04/02/2013 therefore assumed finality. Despite the dismissal of its appeal by the Supreme Court APTRANSCO has not complied with this Tribunal's judgment and order dated 04/02/2013. The Petitioner has therefore filed the present execution petition. The Petitioner has made following prayers:

- “(a) Direct Respondent No.1 to pay the Petitioner a total sum of Rs.21,79,37,386/- together with interest at 10% per annum till the date of realization in terms of the Final Judgment and Order dated 4.2.2013 passed by this Hon'ble Tribunal in Appeal No.228 of 2012 and the costs of taking out this Execution;*
- (b) In default to pay the amount referred in prayer (a) Attach and sell the Head Office building of the Transmission Corporation of Andhra Pradesh*

Limited situated at Vidyut Soudha, Khariatabad, Hyderabad, Andhra Pradesh-500082 and the Head Office Building of Andhra Pradesh, Southern Power Distribution Company having D.NO:19-13-65/A, Srinivasapuram, Tiruchanoor Road, Tirupati-517503, Chittoor District Andhra Pradesh and sale proceeds may be awarded to the Petitioner to the extent mentioned in prayer (a) ; and

(c) pass any further orders this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

7. Pursuant to the notice issued by this Tribunal Mr. Rakesh Sharma appeared on behalf of APTRANSCO on 09/02/2017. Counsel took two weeks time to obtain instructions. Considering the fact that though this Tribunal's judgment and order dated 04/02/2013 has assumed finality, it has not been complied with, this Tribunal directed APTRANSCO to pay Rs.7,88 crores to the Petitioner as part payment of the amount due to the Petitioner. On 21/03/2017 this Tribunal was informed that APTRANSCO had paid only an amount of Rs.3,63,73,150/- to the Petitioner. This Tribunal was further informed that the said amount was the share of APTRANSCO of the total amount due to the Petitioner. This Tribunal was also informed that the responsibility for payment of rest of the amount lies on the Telangana State Transco in view of the bifurcation of the State of Andhra Pradesh.

This Tribunal therefore directed APTRANSCO to file an affidavit and make its stand clear.

8. Accordingly, APTRANSCO has filed its objections alongwith affidavit of its Chief General Manager Shri Rao. The Petitioner has filed reply to the objections filed by APTRANSCO.

9. We have heard Mr. Krishanan Venugopal learned Senior Counsel appearing for the Petitioner/Appellant and Mr. Basava Prabhu S. Patil appearing for APTRANSCO. Mr. Krishnan Venugopal submitted that the judgment and order dated 04/02/1013 having assumed finality, APTRANSCO should have complied with it. Counsel submitted that frivolous objections are being raised by APTRANSCO to defeat this Tribunal's order. Counsel submitted that even after bifurcation of the State of Andhra Pradesh, APTRANSCO prosecuted the appeal and review petition in the Supreme Court. It is therefore not open to APTRANSCO to now contend that it is liable to pay only a part of the amount due to the Petitioner. APTRANSCO cannot raise unsustainable pleas as regards rate of interest and the period from which it should be paid. Counsel submitted that the

judgment of this Tribunal is clear and unambiguous. Counsel submitted that the petition must be allowed with costs.

10. Mr. Basava Prabhu S. Patil, learned counsel for APTRANSCO submitted that the power that was supplied to the Petitioner during the period between 2003-04 was pooled up at APTRANSCO. It was supplied to the entire State through four distribution companies. The differential amount now ordered to be paid is for the said power supplied during 13/01/2003 to 20/01/2004. Counsel further submitted that now due to the AP Reorganisation Act, 2014 (**“the Reorganisation Act”**) which has come into force on 02/06/2014, the power companies in erstwhile Andhra Pradesh are divided. APTRANSCO is divided into two entities i.e. APTRANSCO and TSTRANSCO. Two Discoms fall into the area of new AP State and other two Discoms fall into the area of Telangana State except transfer of Kurnool and Ananthpur districts which are transferred to APSPDCL from APCPDCL. Relying on the provisions of the Reorganisation Act, it is contended that in view of Section 104 read with Section 61(b) and 65 thereof the assets and liabilities which are not determined by 02/06/2014 shall be divided as per the population ratio or any

other ratio agreed by the two States. Counsel submitted that so far as this case is concerned as per G.O. Ms. No.20 dated 08/05/2014, APTRANSCO together with two distribution companies of new AP State is required to take over 46.11% and TSTRANSCO together with two distribution companies need to take over 53.89% of the liabilities. Counsel submitted that therefore the Petitioner must implead TSTRANSCO and its two distribution companies of State of Telangana as respondents. Some submissions are also advanced on quantification of the liability.

11. So far as APTRANSCO's prayer that the State of Telangana and TSTRANSCO should be made party to the present petition because in view of the Reorganisation Act the liability to pay money to the Petitioner will have to be shared by them is concerned we find no substance in it. Appeal against order dated 04/02/2013 was filed by APTRANSCO in the Supreme Court on 08/04/2013. The Reorganisation Act came into force on 01/03/2014 and the appointed day was 02/06/2014. Thereafter, rejoinder was filed in the Supreme Court appeal by APTRANSCO on 06/01/2014. In that rejoinder no ground was taken about the coming into force of the Reorganisation Act. On

14/11/2014 APTRANSCO sought time from the Supreme Court to consider the question of the effect of the Reorganisation Act. On 24/11/2014 APTRANSCO wrote a letter to the Registry of the Supreme Court informing it of its decision to prosecute the appeal. On 05/07/2016 APTRANSCO filed an application in the pending appeal before the Supreme Court for permission to circulate substantial questions of law. The Supreme Court dismissed APTRANSCO's appeal and review petition on 12/07/2016 and 04/10/2016 respectively. At no stage APTRANSCO raised the ground of coming into force of Reorganisation Act and its consequences. Having prosecuted the appeal and review petition upto the Supreme Court it is not open for APTRANSCO to raise the said ground at the stage of execution petition to defeat the judgment of this Tribunal which is confirmed by the Supreme Court. If in its opinion TSTRANSCO has to share the burden of the liability it will be open to APTRANSCO to initiate appropriate proceedings to recover the said amount from TSTRANSCO. If such a proceeding is initiated the court seized of the same will take decision in accordance with law. This submission of APTRANSCO will have to be therefore

rejected and is accordingly rejected. We make it clear that on merits of this claim we have not expressed any opinion.

12. This judgment of this Tribunal dated 04/02/2013 will have to be implemented. Pertinently, it is confirmed by the Supreme Court. It is therefore necessary to dispose of the present petition by directing the State Commission to calculate the exact amount due to the Petitioner as per judgment dated 04/02/2013. On such amount being calculated, 1st Respondent APTRANSCO will have to pay the said amount to the Petitioner without any loss of time. As already noted some submissions were advanced on behalf of APTRANSCO on quantification of the amount. They were rebutted by the Petitioner's counsel. We do not want to go into those submissions. The State Commission will consider them. But the judgment of this Tribunal dated 04/02/2013, particularly its operative direction dated 04/02/2013 is clear and unambiguous. The State Commission shall discourage any attempt to create ambiguity. Concluded issues cannot be reopened. Another round of litigation must not be started. That will violate the sanctity of this Tribunal's judgment dated 04/02/2013, which is confirmed by the Supreme Court. This must be borne in mind by the parties.

13. In the circumstances we remand the matter to the State Commission only for the purpose of calculating the amount due to the Petitioner as per the judgment of this Tribunal dated 04/02/2013. The State Commission shall complete the entire exercise after hearing the parties within a period of two months from the date of receipt of this order. Parties shall cooperate and assist the State Commission by producing necessary documents if required. Needless to say that amount already paid to the Petitioner pursuant to our order dated 09/02/2017 will be taken into account while deciding the final liability of APTRANSCO. On the amount being quantified APTRANSCO shall pay it immediately without any demur within a period of three weeks from the date of the State Commission's decision. Liberty to both sides to approach this Tribunal if circumstances so demand.

14. Execution Petition is disposed of in the aforesaid terms.

15. Pronounced in the Open Court on this **31st day of May, 2017.**

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

√ **REPORTABLE/NON-REPORTABLE**