

This appeal has been filed challenging the order dated 11.07.2020 passed by the Respondent State Commission in case No. 100 of 2020 whereby the Appellant had initially questioned the correctness, legality and propriety of communication dated 02.05.2020 of Respondent Maharashtra State Load Dispatch Center (MSLDC) directing the Respondent Maharashtra State Electricity Distribution Company Limited (MSEDCL) to disconnect the injection of power by such Wind Turbine Generators (WTGs) as do not have Energy Purchase Agreement (EPA), the Appellant concededly being one such entity (identified to be 7 in number). During the pendency of the proceedings before the State Commission the connectivity of the Appellant to the extent of one of its WTGs with installed capacity of 2 MW was discontinued on 11.06.2020 pursuant to dicta of MSLDC. In this view, additional/modified prayer was made before the State Commission for reconnection. The petition of the Appellant has been declined by the State Commission leading to the present appeal being filed.

On the application for urgent listing the matter has been brought before us alongside another application for interim relief in the nature of direction to the second Respondent (MSEDCL) to reconnect the WTG in question.

We have heard the learned senior counsel for the Appellant at length. Certain basic facts need to be noted at this stage.

The Appellant is a company based in New Delhi which had sometime around 2015 set up 17 WTGs at different places contiguous to each other in an area in District Sangli in the state of Maharashtra, each of such WTGs having installed capacity of 2 MW. Sixteen out of the said 17 WTGs are duly

covered by EPAs which were signed between the Appellant and the second Respondent in the year 2017. It may be mentioned that 11 of the said WTGs were commissioned on 31.10.2015, the EPA having been executed in their respect on 22.03.2017. Five of the other WTGs were similarly commissioned in March, 2017, the EPAs in their respect having been formally executed in August, 2017. The EPA in respect of the last WTG, though commissioned on 31.10.2015 (the date according to Respondent is 07.11.2015) is not covered by any EPA till date. Owing to the EPAs, the Appellant enjoys connectivity to the State Grid in respect of the 16 above mentioned WTGs. The dispute here is restricted to the one WTG in which context the EPA is yet to be signed.

The reason for non-signing of EPA, as was brought out by the senior counsel for the Appellant at the hearing, seems primarily to be that the Respondent Maharashtra Electricity Development Authority (MEDA) is yet to issue a registration in its respect as is necessary and requisite under the Maharashtra Government Renewal Policy 2015. It appears that there is some controversy existing respecting applicability of guidelines which are referred to as "Micro-sitting Guidelines dated 16.02.2008". A Public Interest Litigation (PIL) bearing No. 129 of 2013 was instituted before Bombay High Court in which proceedings some interim order was passed on 09.07.2014 having a bearing on the issues. It appears that it has been contended by certain quarters that the WTG in question though governed by the said guidelines falls foul of its inhibitions. The Appellant had moved an application in 2017 before Bombay High Court seeking vacation of the interim order passed in PIL or for clarification being issued as to its non-applicability to the WTG in question. The said application of the Appellant has been pending with the High Court.

It also needs to be noted that at the time of giving permission to commission (PTC) the project on 30.10.2015, the Respondent MSEDCL had clarified, *interalia*, that such PTC would not give any guarantee for purchase of power from the Appellant's WTG. Yet, the project having been commissioned the Appellant started generating power which was injected into the grid against which the payments have also been made in the year 2018. The said arrangement apparently would be interim pending execution of EPA between the parties.

The prime contention of the Appellant has been that Respondent MEDA has been illegally and unreasonably sitting over its application for registration which was moved in September, 2015. It appears that after the matter had been fully heard by the State Commission on 26.05.2020, MEDA submitted its reply on 30.06.2020 justifying its inaction on the application for registration. The State Commission took the said reply dated 30.06.2020 into consideration without, as is the grouse of the Appellant, its copy being shared with the Appellant or its response being called for. This, according to the submission of the Appellant, is a serious breach of the principles of natural justice vitiating the proceedings held by the State Commission and the order resultant there from.

Be that as it may, the main concern of the Appellant is that because of non-registration by MEDA it has been denied the execution of EPA with MSEDCL, this leading to wastage of its infrastructure and the energy that is being produced such denial being particularly hard hitting in the high wind season.

It is indeed a matter for shock and surprise to us that project set up seemingly within four corners of the renewable energy policy of the State Government and in which respect all authorities including the respondents appear to have given approvals for commissioning, which to their knowledge means commencement of generation of power, the infrastructure thereby created is being made to suffer on account of mere fact that registration is held up at the end of MEDA for the last five years. The fact, however, remains that for EPA, the registration is mandatory.

After some hearing, the learned senior counsel for the Appellant, upon instructions, submitted that he may be allowed to withdraw the present Appeal and take back the matter for review to the State Commission particularly because MEDA's stand has been taken into consideration without the version of the Appellant being called for. The Appellant also intends to move an interlocutory application before the State Commission during the hearing of the review petition for re-connectivity. The learned senior counsel further submitted that the Appellant has been advised to also pursue the pending matter before Bombay High Court for early adjudication in as much as that might have a bearing on the present controversy.

We grant the liberty to the Appellant to withdraw the present appeal, reserving its contentions to be agitated in light of what has been recorded above before the State Commission invoking its review jurisdiction. The petition for review may be filed not later than within two weeks hereof. We clarify, for removal of doubts, if any, that the time for submitting a review petition stands extended accordingly by the grant of liberty as recorded

above. We are confident that if such interlocutory application as mentioned above is moved, it would receive appropriate consideration by the State Commission. We hope and trust that the State Commission will bear in mind the fact that it is high wind season and that the matter concerning wind energy deserves to be decided expeditiously.

The appeal and the pending applications are disposed of in above terms.

(Justice R.K. Gauba)
Judicial Member
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(Ravindra Kumar Verma)
Technical Member