

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.260 OF 2021  
APPEAL NO.263 OF 2021  
APPEAL NO.265 OF 2021  
APPEAL NO.266 OF 2021  
APPEAL NO.267 OF 2021  
AND  
APPEAL NO.268 OF 2021**

**Dated: 26.05.2022**

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**APPEAL NO.260 OF 2021**

**SOUTHERN POWER DISTRIBUTION  
COMPANY OF TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Corporate Office: # 6-1-50, Mint Compound,  
Hyderabad, Telangana -500063.

Email: [office.abhinavrao@gmail.com](mailto:office.abhinavrao@gmail.com)

..... Appellant(s)

**VERSUS**

**1. TELANGANA STATE ELECTRICITY  
REGULATORY COMMISSION**

*[Through Secretary]*

5th Floor, 11-4-660, Singareni Bhavan  
Red Hills, Hyderabad - 500 004

Email: [secy@tserc.gov.in](mailto:secy@tserc.gov.in)

**2. M/S. SARVOTHAM CARE**

*[Through its Director]*

Registered Office at H.No. 1-20-248,  
2<sup>nd</sup> Floor, Umajay Complex,  
Rasoolpura, Secunderabad,  
Telangana-500003

Email: [dopesh\\_raja@sarvothamcare.com](mailto:dopesh_raja@sarvothamcare.com)

**3. TRANSMISSION CORPORATION OF  
TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Office: Vidyut Soudha, Somajiguda,  
Hyderabad – 500082  
Email: [cmd@tstransco.in](mailto:cmd@tstransco.in)

....Respondent(s)

### APPEAL NO.263 OF 2021

#### **SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Corporate Office: # 6-1-50, Mint Compound,  
Hyderabad, Telangana -500063.

Email: [office.abhinavrao@gmail.com](mailto:office.abhinavrao@gmail.com)

..... Appellant(s)

#### **VERSUS**

#### **1. TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**

*[Through Secretary]*

5th Floor, 11-4-660, Singareni Bhavan  
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Email: [secy@tserc.gov.in](mailto:secy@tserc.gov.in)

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*[Through its Director]*

Registered Office at H.No. 1-20-248,  
2<sup>nd</sup> Floor, Umajay Complex,  
Rasoolpura, Secunderabad,  
Telangana-500003

Email: [dopesh\\_raja@sarvothamcare.com](mailto:dopesh_raja@sarvothamcare.com)

... Respondent(s)

### APPEAL NO.265 OF 2021

#### **SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Corporate Office: # 6-1-50, Mint Compound,  
Hyderabad, Telangana -500063.

Email: [office.abhinavrao@gmail.com](mailto:office.abhinavrao@gmail.com)

..... Appellant(s)

#### **VERSUS**

#### **1. TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**

*[Through Secretary]*

5th Floor, 11-4-660, Singareni Bhavan  
Red Hills, Hyderabad - 500 004

Email: [secy@tserc.gov.in](mailto:secy@tserc.gov.in)

**2. M/S. DUBBAK SOLAR PROJECTS  
PRIVATE LIMITED**

*[Through Director]*

Having its Regd. Office at Crown Plaza,  
1st Floor, Today Hotels, NH-8,  
Gurgaon-122001

Email: [nisha.shenoy@nereuscap.com](mailto:nisha.shenoy@nereuscap.com)

.... Respondent(s)

**APPEAL NO.266 OF 2021**

**SOUTHERN POWER DISTRIBUTION  
COMPANY OF TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Corporate Office: # 6-1-50, Mint Compound,  
Hyderabad, Telangana -500063.

Email: [office.abhinavr@gmail.com](mailto:office.abhinavr@gmail.com)

..... Appellant(s)

**VERSUS**

**1. TELANGANA STATE ELECTRICITY  
REGULATORY COMMISSION**

*[Through Secretary]*

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Email: [secy@tserc.gov.in](mailto:secy@tserc.gov.in)

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PRIVATE LIMITED**

*[Through Director]*

Having its Regd. Office at Crown Plaza,  
1st Floor, Today Hotels, NH-8, Gurgaon-  
122001

Email: [nisha.shenoy@nereuscap.com](mailto:nisha.shenoy@nereuscap.com)

**3. TRANSMISSION CORPORATION OF  
TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Office: Vidyut Soudha, Somajiguda,  
Hyderabad – 500082

Email: [cmd@tstransco.in](mailto:cmd@tstransco.in)

... Respondent(s)

**APPEAL NO.267 OF 2021**

**SOUTHERN POWER DISTRIBUTION  
COMPANY OF TELANGANA LIMITED**

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Email: [office.abhinavrao@gmail.com](mailto:office.abhinavrao@gmail.com)

..... Appellant(s)

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REGULATORY COMMISSION**

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Email: [secy@tserc.gov.in](mailto:secy@tserc.gov.in)

**2. M/S. MEDAK SOLAR PROJECTS  
PRIVATE LIMITED**

*[Through its Managing Director]*

Reg. Office at Flat No. 1105-1106, Ashoka  
Estate, New Delhi- 110001

Email: [projects@nereuscap.com](mailto:projects@nereuscap.com)

**3. TRANSMISSION CORPORATION OF  
TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Office: Vidyut Soudha, Somajiguda,  
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... Respondent(s)

**APPEAL NO.268 OF 2021**

**SOUTHERN POWER DISTRIBUTION  
COMPANY OF TELANGANA LIMITED**

*[Through Chairman and Managing Director]*

Corporate Office: # 6-1-50, Mint Compound,  
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Email: [office.abhinavrao@gmail.com](mailto:office.abhinavrao@gmail.com)

..... Appellant(s)

**VERSUS**

**1. TELANGANA STATE ELECTRICITY  
REGULATORY COMMISSION**

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Email: [projects@nereuscap.com](mailto:projects@nereuscap.com)

.... Respondent(s)

Counsel for the Appellant (s) : Mr. D Abhinav Rao  
Mr. Rahul Jajoo

Counsel for the Respondent (s) : Mr. Somanadri Goud Katam for R-1  
Mr. Challa Gunaranjan  
Mr. Hitendra Nath Rath  
Ms. Medha Singh for R-2

## **J U D G M E N T (Oral)**

### **PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON**

1. These matters have been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The six captioned appeals relate to the claims of three *Solar Power Project Developers* (“SPPDs”) which were granted by the respondent *Telangana State Electricity Regulatory Commission* (hereinafter referred to as “TSERC” or “the State Commission”) by similar separate original orders dated 02.01.2019, the appellant herein – the Distribution Licensee operating in the Southern region of the State of Telangana (hereinafter referred to as “the Discom”), feeling aggrieved, having gone back to the State Commission by review petitions on or around 26.11.2019 which were dismissed by a subsequent order dated 25.01.2021, the reasons primarily being that the delay in filing the review petitions had not been properly accounted for. Each of the said set of two orders i.e. original

order dated 02.01.2019 and the order on review petitions passed on 25.01.2021 is brought to challenge by the appeals at hand, the respective SPPDs having been impleaded as second respondent. It may be mentioned here that aside from the appellant being the Discom operating in the region in question, the *Transmission Corporation of Telangana State Transmission Utility* (“STU”) was also impleaded in the proceedings before the State Commission, it having been included in the fray of these appeals as the third respondent.

3. The facts pertaining to the claims of each SPPD leading to the impugned decisions of the State Commission are more or less identical. For illustration, we may pick up the facts pertaining to the case of Appeal no.267/2021 wherein the SPPD/Claimant before the State Commission was *M/s Medak Solar Projects Private Limited*. It is stated that the SPPD had achieved the commercial operation on 07.06.2016 and had been granted a certificate of completion on 29.10.2016. It appears, it had applied for the grant of Long-Term Open Access (LTOA) to the STU (Transco) on 14.03.2017, it having already synchronized its systems with those of the Discom (appellant) on 07.10.2016. The application for LTOA was made over by the Transco unto the appellant (Discom) on 14.03.2017. Eventually, the intra-state LTOA was granted on 06.04.2017 leading to execution of LTOA agreement on 19.04.2017 for period from 20.04.2017 to 20.11.2026.

4. The petitions which were filed by each SPPD before the State Commission in April 2018 invoked its jurisdiction under section 86(1)(e)&(f) of Electricity Act, 2003, the prayer being for directions that the units fed into the grid by the solar power plant from the date of synchronization to the date of LTOA agreement be deemed to have been banked or, in the alternative, for a direction to the Discom to pay for the said electricity injected @ Rs.6.78 per unit.

5. During the course of hearing before the State Commission, both the Transco and the Discom put in contest it being one of the contentions that the supply injected into the system of the Discom before the grant of LTOA was inadvertent power, there being no liability cast on the said entities to pay compensation there against. It appears at the hearing, question arose as to whether such claims could be so pressed on the basis of State policy, there being concededly no express provision in the extant regulations governing the subject, it being questioned if the third amendment to the Interim Balancing and Settlement Code for Open Access Transactions Regulation No. 2 of 2006, brought about by regulation 1 of 2017 published in the official gazette on 25.03.2017, could be given retrospective effect. The Commission took note of the objections (in para no.38 of the impugned order), holding that such amended regulation was to be applied prospectively and yet proceeded to observe that there was a legitimate

expectation created in the form of government policy on the subject, the licensee having abdicated its responsibility of enlightening the generator in that regard.

6. But then the relief was granted to each generator by the impugned original order dated 02.01.2019 on the ground that there had been inordinate unexplained delay in grant of LTOA, the timelines set out in the relevant regulation i.e. *Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005*, having not been adhered to. On such reasoning, the State Commission held that the SPPDs are entitled to banking of energy injected from the date on which the LTOA ought to have been granted (31.12.2016 in the case of M/s Medak Solar Projects Private Limited) till the date (19.04.2017) on which LTOA was actually granted with clarification that energy injected in the anterior period shall be treated as inadvertent energy, the SPPDs having been allowed to wheel the quantum of energy thus banked for the above said period with one year from the date of the order of the Commission or till 31.01.2020, whichever is earlier.

7. The Discom (appellant herein) had taken out the review proceedings before the State commission admittedly belatedly its plea being that the State commission had meanwhile become dysfunctional, its Chairperson, having demitted office on 09.01.2019, the Commission having not



functioned till 30.10.2019 when it was again properly constituted making the prescribed quorum available. The Commission, however, by the subsequent order dated 25.01.2021, threw out the petitions primarily observing that the vacancies in the offices of the Commission could not have come in the way of the petitioner approaching the office of the Commission with a review petition within the prescribed time.

**8.** Though appeals at hand were resisted on merits at the beginning, midway the hearing the learned counsel for the second respondent (SPPDs) having taken instructions fairly submitted that some aspects of the impugned original orders dated 02.01.2019 do call for a revisit by the State Commission so as to bring clarity. We also find that the State Commission has not examined the question as to who was responsible for the delay in grant of LTOA within the prescribed period and if such delay is attributable to Transco (third respondent) as to whether the burden can be shifted on to the appellant (Discom) for it to suffer the relief in the nature which have been granted. In addition to that, we are not satisfied with the way the issue of retrospective application of the third amendment of 2017 to the relevant regulations has been glossed over, the observation that it was the responsibility of the licensee to enlighten the generator in that regard being unfounded.

**9.** In the above facts and circumstances, with the consent of all the parties before us, we set aside the impugned orders and remit the original petitions of each SPPD to the State Commission with a direction for proper inquiry to be made into the question as to which entity was responsible for the delay in grant of LTOA, and as to whether the responsibility, if fixed on the Transco, can be shifted on to the appellant Discom for bearing the burden of relief as was granted by the order dated 02.01.2019. We may add that in the event of the claims being pressed by the SPPDs on the strength of third amendment to the relevant regulations as published in the official gazette on 25.03.2017, the State Commission will also examine if such regulations can be given effect to retrospectively.

**10.** We clarify that the remit as above shall be limited to the examination of the claims through lens of above questions only. No further contentions shall be allowed to be urged by either side.

**11.** The issues cannot be allowed to fester for long. Therefore, we would request the State Commission to proceed expeditiously and render its fresh decision in accordance with law at an early date, preferably within two months from the date of this judgment.

**12.** Needless to add, the Commission will examine the issues hereby remitted with an open mind, without being influenced by the conclusions

reached by its earlier order or by any observation made by this tribunal in this judgment.

**13.** The appeals are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING  
ON THIS 26<sup>th</sup> DAY OF MAY, 2022.**

**(Sandesh Kumar Sharma)**  
Technical Member

*tp/mkj*

**(Justice R.K. Gauba)**  
Officiating Chairperson