

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 132 of 2017

Dated : 11th November, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF :

M/s. Minopharm Laboratories Private Limited
105, B-Block, Usha Enclave, Navodaya Colony,
Near Satya Sai nigam, Srinagar Colony
Hyderabad – 500 073
Telengana.

.... **APPELLANT**

Versus

- 1. Telengana State Electricity Regulatory Commission**
Through its Chairman
5th Floor, Singareni Bhavan, Red Hills
Hyderabad - 500 004, Telengana
- 2. M/s. Southern Power Distribution Company
of Telengana Limited,**
Through its Chairman and Managing Director,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad – 500 063, Telengana.
- 3. M/s Enrich Energy Private Limited**
Through its Managing Director
201-A, The Orion Building, 5 Goregaon Park Road
Pune, Maharashtra – 411001.

4. **M/s Abbas Construction Private Limited**

Through its Managing Director,
D. No. 141-135 / 66, Flat No. XI-LA,
J.K. Modern Homes, Maharani-peta,
Nowroji Road, Visakhapatnam
Andhra Pradesh – 530 002.

.... **RESPONDENTS**

Counsel for the Appellant(s) : Mr. Raghavendra M. Bajaj
Ms. Renu H. Bajaj
Mr. Anoop Kaushik
Mr. Shreyas Malhotra
Mr. Sanskar Agarwal
Mr. Samar K. Kolhwaha

Counsel for the Respondent(s) : Ms. D. Bharathi Reddy
Ms. Gitanjali N. Sharma **for R-1**

Mr. Rakesh K. Sharma
Mr. Nishant Sharma **for R-2**

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg
Ms. Ritu Apurva **for R-3**

J U D G M E N T

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. This Appeal is directed against the Order dated 30.11.2016 passed by the 1st Respondent – Telengana State Electricity Regulatory Commission (**hereinafter referred to as “Commission” or “State Commission”**). The Appellant was the 3rd Respondent before the State Commission.

2. The Appellant has sought for the following reliefs:

- a) To set aside the impugned order dated 30.11.2016 passed by the Respondent Commission to the extent challenged in the present appeal and to grant the Appellant 60 days' time to synchronize the plant and to adopt Rs.6.45 as rate per unit/tariff for electricity proposed to be supplied by the Appellant;
- b) to pass such other or further orders as this Tribunal may deem appropriate, keeping in view the facts and circumstances of the present case.

3. The background/brief facts which led to filing of the Appeal are as under:

- The Appellant is a private limited company aggrieved by refusal of the 1st Respondent–Commission to adopt the tariff of Rs.6.45 per unit in respect of solar project established by the Appellant.
- In response to the policy of the Government of Andhra Pradesh, vide GO dated 27.11.2012 to purchase solar power by Andhra Pradesh Southern Power Distribution Company, competitive bidding process was envisaged to ensure that 1,000 MW of solar power project plants are set up before June 2013.

- It is also not in dispute that by letter dated 12.07.2013, the Government of Andhra Pradesh authorised Andhra Pradesh Power Co-ordination Committee (**hereinafter referred to as “APPCC”**)/APTRANSCO to invite open offer to all the prospective solar developers with an offer of Rs.6.49 per unit.
- Admittedly, one M/s. Enrich Energy Private Limited (**hereinafter referred to as “EEPL”**) submitted proposal to set up solar plant under the solar park scheme concept to supply power to Andhra Pradesh Central Power Distribution Company Limited (**hereinafter referred to as “APCPDCL”**) at 132 KV substation at Zaheerabad.
- Letter of Intent (“**LOI**”) was issued by APTRANSCO to EEPL to enter into a Power Purchase Agreement (“**PPA**”) for long term power purchase contract i.e., for 20 years by a letter dated 22.02.2014.
- Accordingly, the 2nd Respondent–Southern Power Distribution Company of Telengana Limited entered into a PPA with M/s. Sansui Electronic Unit (customer of EEPL) for purchase of 1.05 MW solar power plant out of 60 MW solar power park proposed at Zaheerabad substation.

- So far as the Appellant is concerned, he is one of the 31 individual Solar Power Developers (“**SPDs**”) who entered into a PPA dated 29.04.2015 for supply of 2.5 MW solar power to the 2nd Respondent-DISCOM.
- Apparently, the Appellant provided Performance Bank Guarantee dated 15.04.2015 for an amount of Rs.25 lakhs which is valid for 24 months in favour of the 2nd Respondent.
- It is not in dispute that a tripartite agreement came to be executed between the Appellant, 2nd Respondent-DISCOM, and EEPL.
- Admittedly, the power project was to be commissioned within a period of one year i.e., on or before 28.04.2016 from the date of execution of PPA dated 29.04.2015. However, in terms of Clause 10.5 of PPA, the period of one year may be extended by four months i.e., till August 2016 subject to payment of penalties.
- According to the Appellant, on 19.06.2015, EEPL approached 1st Respondent-Commission by addressing a letter dated 19.06.2015 seeking for early approval of various PPAs entered into by individual SPDs along with copies of the respective

tripartite agreements. As per the tripartite agreement, the 2nd Respondent and EEPL have to jointly take the meter reading at the interconnection point and the meter readings of individual SPDs are to be taken by EEPL.

- In terms of the PPA, the tariff agreed between the DISCOM and 3rd Respondent-EEPL was Rs.6.49 per unit. In terms of Clause 12.2, no amendment to PPA shall be valid without the approval of 1st Respondent-Commission.
- Apparently, on 19.06.2015, 1st Respondent-Commission raised certain issues and directed 2nd Respondent-DISCOM and EEPL to make a presentation before the 1st Respondent-Commission on 29.07.2015.
- Again on 06.08.2015 and 11.12.2015, some other issues were raised by the 1st Respondent-Commission and directed 2nd and 3rd Respondents to make a presentation before the Commission wherein they directed 2nd Respondent to renegotiate the price with the individual SPDs.
- According to the Appellant, since solar power park scheme and the tariff was not approved, it became a hindrance to the Appellant to get financial assistance from the banks.

Therefore, on 16.04.2016 the Appellant addressed a letter bringing its difficulties to the notice of 2nd Respondent-DISCOM. They also sought for grant of four months' time from the date of grant of approval by 1st Respondent-Commission.

- The Respondent-Commission issued a public notice pertaining to renegotiation of the PPA tariff which was strongly objected and resisted by the Appellant by a letter dated 20.05.2016.
- According to the Appellant, the 2nd Respondent-DISCOM filed Original Application No. 11 of 2016 seeking approval of PPAs without intimating the Appellant or making the Appellant a party. Enquiry was conducted by the 1st Respondent-Commission and on 16.07.2016, the Respondent-Commission sanctioned the solar power park project and fixed tariff at Rs.6.49 per unit for the projects which have been commissioned on or before 31.03.2015 and fixed tariff at Rs.6.45 per unit for the projects which were commissioned between 31.03.2015 to 31.03.2016. However, with respect to projects which are yet to be commissioned beyond 31.03.2016, 2nd Respondent-DISCOM was directed to approach 1st Respondent-Commission for proper fixation of the tariff.

- The Appellant further contends that being unaware of the said developments, the Appellant continued to develop its project diligently.
- Only in January 2017, it came to the knowledge of the Appellant that the 2nd Respondent without intimating the Appellant, had sought for review of the orders of the Respondent-Commission with regard to extension of time for commercialisation and approval of the proposed amendments to PPA. The 1st Respondent-Commission, vide order dated 03.12.2016 had extended time till 31.12.2016 for commercialisation of the projects. However, it rejected the proposed amendments directing the 2nd Respondent-DISCOM to file a separate petition.
- The 2nd Respondent, according to the Appellant, again filed another petition for approval of the proposed amendments.
- On being informed by some acquaintances of the Appellant that the matter was coming up on 23.01.2017 for hearing of the petition by the 1st Respondent-Commission, the Appellant's counsel appeared before the 1st Respondent and took service

before the 2nd Respondent. At this stage only the Appellant learnt about the Original Petition and the Review Petition.

- In terms of the order dated 03.12.2016, the 2nd Respondent filed a new Original Petition for tariff fixation in which the Appellant was added as a party by the 1st Respondent-Commission; but no notice was received by the Appellant, though the Appellant continues to occupy the premises at the address given in this Appeal.
- On 23.01.2017, the Appellant intimated the 2nd Respondent that its project is completed and requested the 2nd Respondent to grant permission for synchronization since the Appellant was ready with the project of 2.5 MW. Even before the 1st Respondent-Commission, the Appellant as 3rd Respondent made its position clear.
- On 27.01.2017, another petition was filed for fixation of tariff in relation to the projects commissioned after 31.03.2016.
- There was no clear communication from the 2nd Respondent for synchronization of the project. Therefore, the Appellant filed additional submission on 01.02.2017 before 1st Respondent-Commission explaining that its Solar Park was

ready for synchronisation and to substantiate its claim, filed documentary proof i.e., the certificate issued by the Chief Electrical Inspector dated 31.12.2016.

- According to the Appellant, the 1st Respondent, vide order 08.02.2017 wrongly refused to adopt the tariff discovered in the competitive bidding i.e., at Rs.6.45 per unit so far as the solar project of the Appellant in terms of Section 63 of the Electricity Act, 2003.
- The Appellant contends that the 1st Respondent failed to consider the disadvantage or the hardships suffered by the Appellant that no notice of synchronisation was sent to the Appellant by the 2nd Respondent in spite of repeated demands by the Appellant. Therefore, the Appellant contends that the impugned order has not taken into consideration the factual position and in fact the Appellant had no notice of 60 days prior to synchronization.
- The Appellant further contends that the 1st Respondent-Commission failed to appreciate that in the absence of any notice by the 1st and 2nd Respondents to the Appellant communicating 31.12.2016 to be the last date for synchronisation, it cannot insist upon the Appellant to

synchronize the solar plant to the grid by 31.12.2016. Further, the Respondent-Commission failed to appreciate that the process of synchronisation requires 60 days under the PPA and had fixed 31.12.2016 as the last date before which the synchronisation is to be completed. Since order dated 03.12.2016 was not communicated, question of synchronisation within the time fixed was not possible.

- The Appellant further contends that the Respondent-Commission failed to appreciate the fact that the project of the Appellant was complete in all respects much prior to 31.12.2016 except for synchronisation. The Chief Electrical Inspector's report establishes the said fact; but the Respondent-Commission did not take into account that fact.
- According to the Appellant, the inspection carried out on 28.12.2016 refers to certain clarification sought during the inspection. The 1st Respondent-Commission failed to appreciate that the 2nd Respondent approached the 1st Respondent-Commission without taking consent of the Appellant. The 1st Respondent-Commission was not justified in expecting the Appellant to synchronize its project without

fixing the tariff, since the project would remain and generate revenue for the next 20 years.

- The Appellant also contends that the Respondent-Commission failed to appreciate that the Appellant had invested its own monies and now face with unprecedented situation i.e, the PPA was not valid for quite some time. Though the contract provided notice of synchronisation, the same was not complied with. Further, for no fault of the Appellant, the 1st Respondent-Commission passed the impugned order.

4. With these submissions, the Appellant sought for the reliefs as stated above.

5. The 1st Respondent-Commission has filed its reply to the Appeal and gist of the same is as under:

6. According to the 1st Respondent, the impugned order is in accordance with law and no interference is called for since it is neither arbitrary nor an illegal one.

7. The 1st Respondent contends that the order of the Commission was sent to the address which was communicated by the Appellant while filing the submissions. The proceedings in OP No. 11 of 2016 pertain to the

issue of approval to the agreement entered into between the 2nd and 3rd Respondents. After hearing the parties, detailed order came to be passed on 16.07.2016. In the said order, the 2nd Respondent was directed to approach the Commission with a proper petition for extension of Scheduled Commercial Operation Date (“**SCOD**”) and also tariff in view of non-extension of the SCOD in the order dated 16.07.2016. But the licensee (2nd Respondent) filed a Review Petition instead of fresh petition. The said petition was dismissed by the order dated 03.12.2016, except the prayer for extending SCOD up to 31.12.2016. Except one solar park developer, the Appellant was not a party to the proceedings. It was the responsibility of the 2nd Respondent to inform the parties about the future course of action. However, the 1st Respondent observed in the said order dated 03.12.2016 that either of the parties was at liberty to approach the Commission on the respective issues by filing separate and fresh petition.

8. Further, the Appellant was added as a party to the proceedings in which the impugned order came to be passed with the sole purpose of fair adjudication in OP No. 05 of 2017. The Advocate for Appellant represented the Appellant before the Commission on 23.01.2017 so also on 27.01.2017.

9. According to the 1st Respondent, the certificate issued by the Chief Electrical Inspector did not indicate that the project was complete in all

respects prior to 31.12.2016. On the other hand, since the Appellant sought for synchronisation of the project subsequent to the first hearing of the matter on 23.01.2017, one is to presume that the project was not completed by 31.12.2016.

10. The 1st Respondent further contends that in July 2016 itself, the Government had extended time up to 31.12.2016 for achieving SCOD; but the Appellant did not take advantage of the time granted to get the project synchronized to the grid. Therefore, the approval sought for tariff under Section 63 of the Electricity Act could not be acceded to by the 1st Respondent. Further, establishment of the project is the responsibility of the Appellant and as soon as it is ready, the project developer must apprise the same to the licensee, so as to enable the licensee to take steps to synchronize the project.

11. The Commission further contends that the agreement indicates that the project has to be established within a period of one year and with penalties another four months' time is granted. After the PPA was signed on 29.04.2015, it was very much within the knowledge of the Appellant that the time available to commission the project would end on 28.04.2016. But the factual situation indicates that the Chief Electrical Inspector had accorded approval for equipment installation only on 31.12.2016.

12. Since the tariff was discovered in the open offer on the condition that the project would be established within the time frame in terms of agreement, any period beyond the said time frame would amount to nullifying the sanctity of such tariff discovered is the stand of the 1st Respondent.

13. Further, 1st Respondent-Commission contends that if the Appellant was ready for synchronisation of the project with the grid, nothing could stop the Appellant to approach the Commission for approval of tariff afresh. Only if the Appellant had synchronized the project and the 2nd Respondent is inclined to draw power from the Appellant, question of determination of tariff would arise. Since the Appellant had not completed the project and synchronized the same within the period stipulated in the agreement, the Appellant has to blame itself for the present position.

14. Further, it is contended that in the absence of completion certificate in favour of the Appellant by the 2nd Respondent for evacuation of power, the Appellant cannot blame the 1st Respondent for passing the impugned order. The Appellant could have taken steps for complying with the provisions of the agreement. Nothing on record was placed to show that the Appellant had approached the 2nd Respondent-licensee within the time indicated seeking for synchronisation of the project.

15. According to 1st Respondent-Commission, the Commission in the orders dated 16.07.2016 had emphatically made it clear that the 2nd Respondent should approach the Commission for enlargement of time for SCOD post 31.03.2016. Subsequently, the Government of Telengana in its wisdom allowed the 2nd Respondent and other licensees to extend SCOD up to 31.12.2016. In line with the decision of the Telengana Government, the 1st Respondent, vide its order dated 03.12.2016, extended SCOD up to 31.12.2016. In accordance with the procedure, the said decision was communicated to the 2nd Respondent.

16. Further, the 1st Respondent contends that Clause 3.10 under the Agreement would arise only if the installation and synchronisation of the equipment are completed and the 2nd Respondent-licensee is satisfied that it can draw power from the project of the Appellant. Article 3 is very clear with regard to synchronisation, commissioning and commercial operations. The said Clause, apart from indicating 60 days notice to SLDC also imposes several other tasks to be complied with. Nothing is placed on record by the Appellant before the 1st Respondent-Commission to show that the Appellant had complied with those conditions.

17. The project in question was selected in the open offer made by the 2nd Respondent. The tariff applicable was also made clear in the said offer. The Appellant seems to have entered into the agreement with the

2nd Respondent based on such tariff. Therefore, it is not open to the Appellant now to say that there was no determination of tariff and therefore, the Appellant was not able to make investment on the basis of the agreement with the 2nd Respondent, since there was no certainty of tariff. Article 3.10 clearly indicates that the Appellant is required to complete the project within the stipulated time or such extended time subject to penalties. Therefore, after complying with the same, the Appellant should have intimated the 2nd Respondent within time for synchronisation of the project with the grid, is the stand of the 1st Respondent.

18. The 1st Respondent further contends that as a matter of fact, the 1st Respondent-Commission allowed PPAs to be entered into with individual solar developers instead of solar park. The impugned order extended SCOD as it had earlier directed to file petition for the purpose and get it approved. Extension of SCOD beyond the time stipulated in the PPA by a person who is not a party to the Agreement could not be recognised by the Commission.

19. Further, the 1st Respondent-Commission was satisfied that few of the projects were on the verge of synchronisation; therefore, acceded to the decision of the Government by proceedings dated 18.08.2017. But such extension cannot be applied to the projects which arise from the

bidding route of 2012, 2013 and 2014. Similarly, the Appellant cannot claim such benefit to the projects which have been established under the bidding route of 2015.

20. With these averments, the 1st Respondent-Commission sought for dismissal of the Appeal.

21. The 2nd Respondent-DISCOM has also placed its counter affidavit to the Appeal and gist of the same is as under:

22. After reorganization Act of 2014, the erstwhile APCPDCL which is now known as TSSPDCL, all the tariff orders of the erstwhile Andhra Pradesh Electricity Regulatory Commission (“**APERC**”) were translated and adopted as it is from the year 2014.

23. This Appeal is filed against the Order dated 08.02.2017 passed by the 1st Respondent-Commission. The order of the Respondent-Commission regarding approval to PPA in OP No. 11 of 2016 was communicated to the Solar Power Developers individually under solar park concept.

24. On 26.09.2016, the 2nd Respondent addressed a letter to the 1st Respondent-Commission in the matter of approval for the proposed amendments to several clauses of the PPA of individual Solar Power Developers as well as fixation of tariff for the projects commissioned or yet

to be commissioned after 31.03.2016. In turn, the 1st Respondent directed 2nd Respondent to present proper petition in respect of the solar power projects under solar park concept commissioned or yet to be commissioned after 31.03.2016 for modification of quasi judicial order. Meanwhile, on 14.10.2016, the 1st Respondent had consented for extension of SCOD timelines up to 31.12.2016 at a tariff of Rs.6.45 per unit in respect of individual Solar Power Developers under open offer route of 2013 except the Solar Power Developers covered by the project of solar power park. Then the Appellant and three other individual Solar Power Developers of solar park (developed by EEPL), vide letter dated 08.11.2016, informed 2nd Respondent that Government of Telengana has extended SCOD up to 31.12.2016 in so far as the Solar Power Developers under the Competitive Bidding Process of 2012, so also open offer route of 2013 with tariff of Rs.6.45 per unit and requested for the same tariff to be applied to them for their projects, since they are also covered under open offer route of 2013 which are commissioned or scheduled to commission after 31.03.2016.

25. A Review Petition came to be filed before the State Commission on 12.11.2016 seeking review of the order dated 16.07.2016.

26. The 2nd Respondent further contends that 1st Respondent-Commission passed order on 03.12.2016 extending SCOD up to

31.12.2016 without determining tariff for the following projects which are commissioned or yet to be commissioned after 31.03.2016:

Sl. No.	Name of the Project	Capacity	Date of PAA	Synchronized
1	M/s Enrich Energy Private Limited	3 MW	05.05.2015	27.05.2016
2	M/s Abbas Constructions Private Limited	2.5 MW	29.04.2015	29.12.2016
3	M/s Minopharm Laboratories Private Limited	2.5 MW	29.04.2015	Not Commissioned
4	M/s Enrich Energy Private Limited	2 MW	05.05.2015	29.12.2016

27. Further, they contend that there was no proposal for amendment to the PPA of the Appellant and other three Solar Power Developers for extension of SCOD up to 31.12.2016. Since the tariff was not determined, the 2nd Respondent filed a Petition on 27.12.2016 under Section 63 of the Electricity Act for adoption of tariff in line with Solar Park Developers under open offer route of 2013 at Rs.6.45 per unit. This was numbered as OP 5 of 2017. During the proceedings of this Petition, the Appellant contended that the 2nd Respondent-DISCOM did not communicate information regarding the last date fixed for completion of the project and hence, it did not know the last date as 31.12.2016 for completion of the project. The

Appellant had also contended there that the work of erection of 2.5 MW capacity solar project was completed in all respects by 31.12.2016.

28. According to 2nd Respondent, the Appellant claimed that the project was ready for synchronisation to the grid; but the DISCOM did not inform the fact that the SCOD was extended only up to 31.12.2016 in line with the decision of the Government. The notice sent by the State Commission returned un-served to the Appellant with the statement that “as addressee left”.

29. Further, 1st Respondent-Commission instructed the officials of the 2nd Respondent to verify status of the project of the Appellant physically and submit a report. Accordingly, the following report came to be submitted:

- i) Solar panels were removed due to right of way issue and land related disputes.
- ii) 33 kV CTs and PTs structure were removed from the structure.
- iii) ABT meters were not erected at the site
- iv) PTRs and inverter are erected.

30. The order of the State Commission was communicated by placing the same on the website of the State Commission. That apart, the Appellant and three Solar Power Developers were keenly following the proceedings of the 1st Respondent.

31. The 2nd Respondent further contends that in terms of Clause 3 of PPA, the Solar Power Developers shall give a written notice to the concerned SLDC as well as DISCOM, at least 60 (sixty) days in advance indicating on which date they intent to synchronize the project to the grid system. The 2nd Respondent never received such communication from the Appellant pertaining to Zaheerabad solar power plant.

32. Further, on 23.01.2017, the Appellant sent a letter to the 2nd Respondent seeking permission to synchronize their project that too without enclosing any document substantiating the fact of completion of the project in all respects. The Appellant and three Solar Power Developers of EEPL were pursuing the matter with the 2nd Respondent and it is not right on their part to contend that the 2nd Respondent did not inform about the order dated 03.12.2016.

33. According to the 2nd Respondent, the order dated 08.02.2017 in OP No. 5 of 2017 was passed by the 1st Respondent-Commission approving the tariff at Rs.6.45 per unit in so far as the projects of 3rd and 4th Respondents and dismissed the petition in so far as Appellant, since the Appellant did not commission its project by 31.12.2016.

34. Further, the certificate issued by the Chief Electrical Inspector to the Government clearly indicates that the inspection took place only on 28.12.2016. There is no date recorded at the top of the Inspection Report;

but the date near the signature is 31.12.2016. The contents of this Certificate do not indicate that the project was complete in all respects. It only refers to installation of equipment and the wiring part. Apart from equipment and wiring being in place, metering part and synchronisation system must be available for synchronisation of the project to the grid. Then only it could be treated as complete. The Appellant failed to take advantage of the extension of time up to 31.12.2016 by the Government.

35. The request for synchronisation was made only after hearing took place on 23.01.2017. This also clearly indicates that the project was not ready as on 31.12.2016.

36. With these averments, the 2nd Respondent sought for dismissal of the Appeal.

37. Objections of 3rd Respondent-EEPL, in brief, are as under:

38. Against the 3rd Respondent, no reliefs, as such are sought by the Appellant.

39. In response to the direction of the State Commission to the 2nd Respondent to renegotiate tariff with individual generators of solar park of 3rd Respondent, the 2nd Respondent called upon individual developers of solar park to renegotiate the tariff. This was opposed by the Appellant, vide its letter dated 30.12.2015.

40. In response to the public notice dated 29.04.2016 by the State Commission, the Appellant had uploaded its opinion and expressed displeasure, vide its letter dated 20.05.2016. Public hearing was held in respect of O.P. No. 11 of 2016 by the 1st Respondent-Commission. The said public hearing was held on 17.06.2016. On 16.07.2016, orders came to be pronounced in OP No. 11 of 2016. The said order was uploaded on the website of the 1st Respondent-Commission.

41. According to 3rd Respondent, several plants were not ready for commissioning within 31.03.2016; however, extension was sought and Government of Telengana allowed extension of SCOD up to 31.12.2016 to the Solar Power Projects in the State who have concluded PPAs under Competitive Bidding of 2012 and Open Offer Route of 2013, so also the concluded PPAs and competitive bidding of 2014. This was in public domain. Further, in line with the said timeline, the 2nd Respondent sought extension of SCOD from the 1st Respondent-Commission. The same came to be allowed, vide order dated 03.12.2016 extending timelines up to 31.12.2016. The letter of 2nd Respondent was available on the website of the 2nd Respondent which was in public domain. By Order dated 03.12.2016, the Respondent-Commission extended SCOD up to 31.12.2016.

42. The 3rd Respondent further contends that the Appellant was a party to the proceedings and it was served with the copy of the petition filed by the 2nd Respondent under Section 63 of the Electricity Act, 2003. Though the address of the Appellant on the envelop seems to be correct, the Appellant claims that it has not received the said notice. The notice issued by the State Commission was put on the website indicating the details of hearing scheduled. The Appellant was represented through its counsel and sought time to reply. Ultimately, the impugned order came to be passed wherein the case of this Appellant (3rd Respondent before the Commission) was rejected.

43. The Counsel for the parties addressed arguments at length and reiterated the contentions raised by them in their pleadings. The point that would arise for our consideration is **“Whether the impugned order warrants our interference?”**

44. The 2nd Respondent herein approached the Respondent-Commission seeking adoption of tariff for individual generators of solar park developed by EEPL. The order dated 03.12.2016 was referred in the impugned order, which came to be passed in OP No. 11 of 2016. In terms of this Order, it was pointed out that SCOD timeline was extended up to 31.12.2016 to enable the projects, which were due for completion or already completed, to get the benefit of the orders passed by the

concerned Government. The Appellant herein was one of the individual Solar Power Developers who opted for open offer route of 2013. Apparently, the Appellant had not developed and commissioned its project by 31.03.2016.

45. Apparently, in response to G.O. No. 46 dated 27.11.2012, Government of Andhra Pradesh issued policy orders so far as purchase of solar power by DISCOMs. Bidding process was conducted opting competitive bidding process by Chairman of APPCC for 1,000 MW of solar power plants. Government of Andhra Pradesh, vide letter dated 12.07.2013 had determined the lowest tariff of Rs.6.49 per unit on the recommendation of a Committee of Group of Ministers. When several bidders did not approach for sale of power to DISCOMs, Government of Andhra Pradesh authorised APPCC/APTRANSCO to invite open offer to all respective Solar Power Developers at Rs.6.49 per unit. The then APTRANSCO identified substations including 132/33 kV SS Zaheerabad. Subsequent to finalisation of the financial bid, LOI was issued to 14 individual SPDs apart from 31 individual SPDs of solar park developed by EEPL. There was one individual Solar Park Developer (“**SPD**”) of solar park developed by RPIPL. Therefore, total capacity of 202 MW was opted out under open offer route-2013, including 46 numbers of SPDs who entered into PPAs with TSSPDCL.

46. It is also not in dispute that all individual solar power projects selected under the open offer route in 2013 were approved for extension of SCOD timeline up to 31.12.2016 at a tariff of Rs.6.45 per unit, except the solar park concept. There were 4 (four) individuals/corporate generators in the solar park concept developed by EEPL. One of them is the Appellant.

47. According to 2nd Respondent-DISCOM, the Appellant and other 3 (three) were requested by letters dated 26.09.2016 to submit their willingness to sell the power to TSSPDCL under long term PPA route along with a proposal on fixation of tariff in respect of their solar power projects. In response, the individual SPDs in the solar park developed by EEPL informed the 2nd Respondent that Government of Telengana had considered extension of SCOD up to 31.12.2016 to the SPDs under the open offer route-2013 at a tariff of Rs.6.45 per unit; therefore, they being under the open offer route-2013, requested the 2nd Respondent to consider the same at Rs.6.45 per unit for their projects which are commissioned/scheduled to commission after 31.03.2016. This request of individual SPDs in the above said park, made the 2nd Respondent to file a petition seeking the following reliefs:

“Adopt the tariff at ₹ 6.45/- unit in respect of the individual solar power projects namely M/s Enrich Energy Private

Limited, 3 MW, M/s Abbas Constructions Private Limited, 2.5 MW, M/s Minopharm Laboratories Private Limited, 2.5 MW and M/s Enrich Energy Private Limited, 2 MW who commissioned or yet to commission after 31.03.2016; which has been determined by the Hon'ble Commission in respect other solar power developers in open offer route – 2013.”

48. The Appellant, who was the 3rd Respondent before the Commission, filed its written submission stating that only through M/s Abbas Construction Private Limited it came to know about the Original Petition filed by the present 2nd Respondent.

49. According to Appellant, by abundant caution, 3rd Respondent filed its Vakalatnama before the Commission on 23.01.2017. The stand of the Appellant before the Respondent-Commission was that it had executed the PPA with DISCOM with the assumption that such PPA under the tariff mentioned therein was already approved by the Commission. Later on, only after 4 (four) months from the date of PPA, it learnt that the PPAs were defective and were not approved by the Commission. According to Appellant (3rd Respondent before the Commission), when it sought financial assistance from the banks for completion of its project, the banks imposed approval of PPA by the Commission as a precondition for release of the amount against the sanctioned loans.

50. The Appellant's contention before the Commission was that even in the absence of financial closure on account of inaction on the part of DISCOM and EEPL, it continued to develop its project with the limited resources it could arrange. Categorical stand of the Appellant was that it never received any communication pertaining to sanctioning of the project by the Commission and so also it did not receive any information with regard to final tariff fixation under the PPA. Its stand throughout the proceedings was that there was no intimation about cancellation or extension of timelines for commissioning the project under the PPA.

51. The Appellant further contended before the Commission that on the information of another solar project i.e., M/s Abbas Construction Private Limited, it learnt about the hearing date 23.01.2017 on the petition filed by the Respondent-DISCOM. It also claimed that only after perusal of papers after 23.01.2017, it learnt that the DISCOM, without any information to the Appellant had filed a review application before the Commission seeking extension of time and accordingly the Commission, though extended time for commercialisation of the project till 31.12.2016, rejected the proposed amendments, advising the DISCOM to file fresh petitions for the same, vide order dated 03.12.2016. The proposed amendments were also rejected by the Commission which were sought by the DISCOMs. Therefore, the Appellant contends that for the first time on 23.01.2017, it

learnt about the timelines to complete the project on or before 31.12.2016; therefore the Appellant was not at fault.

52. The appellant also contended that immediately they asked DISCOM to complete the formalities for synchronisation of the power plant since it was completed. Therefore, the consistent plea of the Appellant before the Commission as well as this Tribunal is that the DISCOM did not inform 3rd Respondent about the Order dated 03.12.2016 including the rejection of the proposed amendments to the PPAs.

53. The grievance of the Appellant is also that non-fixation of tariff has incapacitated the Appellant to arrive at financial closure and complete the project within a period as contemplated under the PPA. It also contended that since it was subjected to serious financial stress as financial institutions were not inclined to disburse the amounts, though loans were sanctioned. They further contended that in spite of such deficits and constraints, it did seek synchronisation of the project, once the entire information came to its knowledge.

54. The Appellant sought intervention of the Commission seeking the following prayers:

“a) Direct the DISCOM to put forth the proposed amendments to the PPA before the respondent No. 3 and appropriately

approach this Commission after taking consensus of the parties involved.

b) To direct the DISCOM to synchronize the project as the same stands completed as on date.”

55. From the proceedings before the Respondent-Commission, it is seen that the Commission did give an opportunity to the Appellant to file documentary evidence which substantiates its contention that project of the Appellant was completed before 31.12.2016.

56. According to the Appellant, a certificate was given to the Appellant after conducting an inspection by Chief Electrical Inspector to Government of Telengana. This certificate, according to the Appellant, categorically establishes that the solar park of the Appellant was completed much prior to 28.12.2016 which was acknowledged in the above said certificate.

57. According to the Appellant, since there was no clear communication with regard to last date for synchronization of the project from the concerned DISCOM, the Appellant continued its effort requesting the DISCOM concerned for synchronisation of the project. Therefore, as stated above, they sought for intervention of the Commission to permit them to synchronize the project.

58. On directions of the Respondent-Commission, DISCOM filed its report on 01.12.2017 after inspecting the plant of the Appellant indicating the following facts:

“i. Solar panels were removed due to right of way issue and land related dispute.

ii. 33 KV CTs and PTs structure were removed from the structure.

iii. ABT meters were not erected at the site.

iv. PTRs and Inverter are erected.”

59. Contention of the DISCOM was that in terms of Clause 3.10.1 of the PPA, the Solar Power Developer had to give a clear 60 days notice to the concerned SLDC and DISCOM in advance to the date on which it intends to synchronize the project. But at no point of time such notice was received by DISCOM is the stand of the Respondent-DISCOM.

60. It is relevant to see and consider whether the Appellant was in fact, ready to synchronize its power plant to the grid, since it was completed much prior to 31.12.2016. According to the Appellant, though they were made a party to the proceedings, it did not receive any notice either in the previous proceedings or the present proceedings. There is no denial that the Commission made this Appellant as a party to the proceedings and the notice sent to the address given by the Appellant was returned un-served with an endorsement that “as addressee left”.

61. During the course of the arguments, counsel for the Appellant did accept and confirm the address mentioned on the envelope sent through the Commission, but there was no explanation as to why the Appellant was not found at the address it had given. Therefore, if the notice was not served upon the Appellant, one cannot find fault with the Respondent-Commission because the Respondent-Commission did add Appellant as a necessary party and even sent notice to the address which was indicated by the Appellant and later confirmed by its Advocate during the proceedings before the Commission. There is no proper explanation which could be accepted by us for this lapse on the part of the Appellant. Therefore, the Appellant had to be blamed itself for not participating in the proceedings earlier.

62. Next contention of the Appellant is that the power plant was complete in all respects before 31.12.2016. To support this contention, it rely on a certificate issued by the Chief Electrical Inspector dated 31.12.2016. Since there was contradictory statement made by the Appellant pertaining to the date of completion of the project and the inspection said to have been made by the Chief Electrical Inspector, a physical verification of the project was directed by the Respondent-Commission. Accordingly, the Respondent-DISCOM conducted physical verification and filed a report on 01.02.2017. In terms of the project report as stated above, solar panels were removed on account of right of way

issue and land dispute; CTs and PTs structures were removed from the spot; ABT meters were not erected at the site; and PTRs and inverter alone were erected. On perusal of the report (page 161 of the Appeal Paper Book), it is noticed that though the letter is dated 31.12.2016, inspection was dated 28.12.2016 in response to the letter of the Appellant received on 31.12.2016. The Respondent-Commission was justified in opining that if the letter of the Appellant is dated 31.12.2016, how inspection took place prior to that date on 28.12.2016? Below the signature of the Chief Electrical Inspector date is mentioned as 31.12.2016. If the request letter and inspection were to be on 31.12.2016, why the letter indicates that inspection was on 28.12.2016? Therefore, the Commission was justified in not placing reliance on this certificate.

63. Clause 3.10.1 of PPA pertaining to Synchronization, Commissioning and Commercial Operation, which reads as under:

“The Solar Power Developer shall give a written notice to the concerned SLDC and DISCOM, at least sixty (60) days in advance to the date on which it intends to synchronize the Project to the grid system.”

64. It clearly indicates that clear 60 (sixty) days notice in advance had to be given by the Appellant both to SLDC as well as DISCOM. But there is nothing on record to show that in compliance of this Clause of PPA, such notice was given to DISCOM and SLDC at any point of time.

65. The Respondent-Commission has further noted that even if the certificate of the Chief Electrical Inspector were to be considered, this certificate does not constitute or indicate the fact of completion of the project, since the inspection relates to installation of equipment and wiring part only because the project could be completed only if metering part and synchronization system are in place, so that Respondent-DISCOM can undertake synchronization of the plant by treating the project as complete. Therefore, we are of the opinion that the certificate of the Chief Electrical Inspector does not indicate that the project of the Appellant was complete.

66. There is yet another deficit which is glaring at us i.e., the reply filed by the Appellant before the Commission which clearly indicates that it had chosen to request for synchronization of the project only after receiving information from M/s Abbas Construction Private Limited, that too after participating in the hearing on 23.01.2017. This further confirms the fact that at any stretch of imagination, the project of the Appellant was not complete in all respects as on 31.12.2016.

67. The Respondent-Commission was justified in observing that it was on account of failure of the Appellant to take advantage of the time extended to get the project synchronized to the grid, the Appellant could not succeed before the Respondent Commission. The Appellant was not able to point out any acceptable and convincing material before us to

opine otherwise than that of the opinion of the Respondent-Commission. Therefore, we are of the opinion that the Appeal does not warrant interference with the opinion of the Respondent-Commission in the impugned order so far as the Appellant is concerned. Accordingly, the Appeal is dismissed.

68. No order as to costs.

69. Pronounced in the open court on this the 11th November, 2019.

(S. D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

✓
REPORTABLE / ~~NON-REPORTABLE~~

tpd