

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
MONDAY, THE FIFTEENTH DAY OF MARCH, TWO THOUSAND AND TWENTY ONE

:PRESENT:

THE HON'BLE SRI JUSTICE M. V ENKATA RAMANA

I.A.No. 1 of 2019

IN

WRIT PETITION No. 15950 OF 2019

And

Vacate Stay Petition Nos. 4, 6, 9, 10, 11 and 13 to 16 of 2019

I.A.No. 1 of 2019 :

Between:

1. Southern Power Distribution Company of Andhra Pradesh Limited,, Rep. by its Chairman and Managing Director, Beside Srinivasa Kalyana Mandapam, Tiruchanoor Road, Tirupathi - 517501, Chittoor District.
2. Eastern Power Distribution Company of Andhra Pradesh Limited,, Rep. by its Chairman and Managing Director, P & T Colony, Seetammadhara, Vishakhapatnam 530020.

Petitioners
(Petitioners in W.P.No. 15950 of 2019
On the file of High Court)

AND

1. Union of India, through Ministry of Power represented by the Secretary/Ministry of Power Shram Shakti Bhawan, Rafi Marg, New Delhi-1
2. Union of India, Ministry of New and Renewable Energy (Wind Energy Division), Block 14, CGO Complex, Lodhi Road, New Delhi - 110 003
3. Power System Operation Corporation Limited, Registered Office B-9 (1st Floor), Qutab Institutional Area, Katwaria Sarai, New Delhi -110016.
4. Mytrah Vayu (Pennar) Private Limited, Having its registered office at 8001, Survey No. 109, Q-City, Nanakramguda, Gachibowli, Hyderabad -500032, Telangana, Represented by its Authorized Representative, Sri S. Nagarjuna Reddy.
5. Mytrah Vayu (Krishna) Private Limited, Having its registered office at 8001, Survey No. 109, Q-City, Nanakramguda, Gachibowli, Hyderabad -500032, Telangana, Represented by its Authorized Representative, Sri S. Nagarjuna Reddy.
6. Mytrah Vayu (Indravati) Private Limited, Having its registered office at 8001, Survey No. 109, Q-City, Nanakramguda, Gachibowli, Hyderabad -500032, Telangana, Represented by its Authorized Representative, Sri S. Nagarjuna Reddy.
7. Mytrah Vayu (Tungabhadra) Private Limited, Having its registered office at 8001, Survey No. 109, Q-City, Nanakramguda, Gachibowli, Hyderabad -500032, Telangana, Represented by its Authorized Representative, Sri S. Nagarjuna Reddy.
8. Wind Independent Power Producers Association, 6th Floor, Tower 4 A, DLF Corporate Park, DLF Phase -III, MG Road, Gurgaon, Haryana -122 002, Represented by its Authorized Representative, Mr. Sunil Jain.
9. Vayu Urja Bharat Pvt. Ltd., 3rd Floor, Plot No.201, Okhla Industrial Estate, Phase III, New Delhi -110020, Represented by its Authorized Representative, Mr. Awnish Pandey.
10. ReNew Vayu Urja Pvt Ltd., (Formerly known as KCT Renewable Energy Pvt. Ltd.) 138, Ansal Chambers-II, Bhikaji Cama Place, New Delhi -110066, Represented by its Authorized Representative, Mr. Ishan Nagpal.
11. M/s. Azure Power Infrastructure Pvt. Ltd., Having its registered Office at 3rd Floor, Asset 301-304 and 307, Worldmark 3, Aerocity, New Delhi -110 037, Represented by its Authorized Representative, Mr. Syed Nazeer Ahamed.
12. ACME Solar Holdings Limited, Represented by its Authorized signatory Mr. Vangari Maheswar, S/o. Vangari Yadagiri R/o. S-1, 2nd Floor saroja residency IT Colony RK Puram, Saroornagar, Rangareddy-500035 Having its office at: Plot No. 152, Sector 44, Gurugram, Haryana - 122002
13. M/s Aarohi Solar Private Limited, Represented by its Authorized signatory Mr. Vangari Maheswar, S/o. Vangari Yadagiri R/o. S-1, 2nd Floor saroja residency IT Colony RK Puram, Saroornagar, Rangareddy-500035

Contd...2....

14. M/s ACME Jaisalmer Solar Power Private Limited, Represented by its Authorized signatory Mr.VangariMaheswar, S/o.VangariYadagiri R/o.S-1, 2nd Floor saroja residency IT Colony R.K Puram, Saroornagar, Rangareddy-500035
 - 15.M/s.Dayanidhi Solar Power Private Limited, Represented by its Authorized signatory Mr.VangariMaheswar, S/o.VangariYadagiri R/o: S-1, 2nd Floor saroja residency IT Colony RK Puram, Saroornagar, Rangareddy-500035
 - 16.M/s Niranjan Solar Energy Private Limited, Represented by its Authorized signatory Mr.VangariMaheswar, S/o.VangariYadagiri R/o.S-1, 2nd Floor saroja residency IT Colony RK Puram, Saroornagar, Rangareddy-500035
 - 17.M/s Vishwatma Solar Energy Private Limited, Represented by its Authorized signatory Mr.VangariMaheswar, S/o.VangariYadagiri R/o.S-1, 2nd Floor saroja residency IT Colony RK Puram, Saroornagar, Rangareddy-500035
 - 18.M/s. Tata Power Renewable Energy Limited, Represented by its Authorized Representative, Mr. Allamaraju Karthik having its registered office at A-Block, 34, Sant Tukaram Road, Carnac Bunder, Mumbai - 400 009.
 - 19.M/s Walwhan Renewable Energy Limited, (formerly M/s Welspun Renewable Energy Pvt. Ltd.), Represented by its Authorized signatory Mr. Allamaraju Karthik, C/o Tata Power Company Limited Corporate Center, B-34, Sant Tukaram Road Carnac Sunder, Mumbai-400009
 20. Green Infra Wind Solutions Ltd., 5th Floor, Tower C, Building No. 8, DLF Cybercity, Gurgaon, Haryana - 122002 Rep. by its Authoised Representative, Mr. Rakesh Rathore.
- (RR 4 to 7, 8 to 10, 11, 12 to 17, 18 & 19, 20 are impleaded as per Court Order dt. 28.11.2019 in IA Nos. 2, 3, 5, 7, 8, 12 respectively)

Respondents
(Respondents in -do-)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the proceedings dt. 10-10-2019 issued by the second respondent to enable the petitioners to operate through the power exchange as well as secure power through open access, pending disposal of WP No. 15950/2019 on the file of the High Court.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ or direction one more particularly in the nature of writ of mandamus declaring the action of the respondents 2 and 3 in requiring the petitioner to comply with the requirement of opening letters of credit in respect of long term PPAs with solar and wind power developers with a consequence of depriving the petitioner of access to power from power exchange and short-term open access vide the impugned proceeding dt. 10.10.2019 in pursuance of the impugned communication dt. 6.6.2019 addressed by the 2nd Respondent to the 3rd Respondent as illegal, arbitrary contrary to the provisions of the Electricity Act 2003 and consequently set aside the same with a direction to the respondents not to interfere with the operations of the petitioners including power procurement from power exchange and open access.

Contd..3...

I.A.No. 4 of 2019 :-

Petition under Article 226(3) of the Constitution of India R/w. Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Affidavit, the High Court may be pleased to vacate the interim stay order dated 15.10.2019 in IA.No. 1 of 2019 in W.P.No. 15940 of 2019.

I.A.No. 6 of 2019 :-

Petition under Article 226(3) of the Constitution of India R/w. Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Affidavit, the High Court may be pleased to vacate the interim stay granted vide its order dated 15.10.2019 in I.A.No. 1 of 2019 in W.P.No. 15950 of 2019.

I.A.No. 9 of 2019 :-

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to vacate the interim order dated 15-10-2019 granted in I.A.No. 1 of 2019 in W.P.No. 15950 of 2019.

I.A.No. 10 of 2019 :-

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to vacate the interim directions vide order dated 15-10-2019 in the above writ petition.

I.A.No. 11 of 2019 :-

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to vacate the interim order dt. 15.10.2019 granted in I.A.No. 1 of 2019 in W.P.No. 15950 of 2019.

I.A.No. 13 of 2019 :-

Petition under Article 226(3) of the Constitution of India R/w. Section 151 of CPC, praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to vacate the interim stay order dated 15.10.2019 in I.A.No. 1 of 2019 in W.P.No. 15950 of 2019.

I.A.No. 14 of 2019 :-

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to (a) vacate the stay granted in order dated 15-10-2019 passed by this Hon'ble Court.

(b) direct the Petitioners to forthwith open LCs in terms of the requirements of their respective PPAs, failing which POSOCO and SLDC would be at liberty to curtail power through STOA or through Power Exchange, in terms of MoP Order dated 28.06.2019.

I.A.No. 15 of 2019 :-

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to (a) vacate the stay granted in order dated 15-10-2019 passed by this Hon'ble Court.

(b) direct the Petitioners to forthwith open LCs in terms of the requirements of their respective PPAs, failing which POSOCO and SLDC would be at liberty to curtail power through STOA or through Power Exchange, in terms of MoP Order dated 28.06.2019.

I.A.No. 16 of 2019 :-

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Counter Affidavit, the High Court may be pleased to (a) vacate the stay granted in order dated 15-10-2019 passed by this Hon'ble Court.

(b) direct the Petitioners to forthwith open LCs in terms of the requirements of their respective PPAs, failing which POSOCO and SLDC would be at liberty to curtail power through STOA or through Power Exchange, in terms of MoP Order dated 28.06.2019.

These petitions coming on for hearing, upon perusing the petition and the affidavit filed herein and order of High Court dt. 15-10-2019 made in I.A.No. 1 of 2019 and upon hearing the arguments of Advocate General for Petitioners in I.A.No. 1 of 2019 and respondent Nos. 1 to 3 in Vacate Stay Petitions Nos.4, 6, 9, 10, 11 and 13 to 16 of 2019 and of Sri Avinash Desai, Sri N. Harinath, Assistant Solicitor General, Sri Sarang J. Afzulpurkar, Sri Kilaru Nithin Krishna, Advocate for petitioners in Vacate Petition Nos. 4, 6, 9, 10, 11 and 13 to 16 of 2019, the Court made the following

ORDER

IN THE HIGH COURT OF ANDHRA PRADESH

I.A.No.1 of 2019 in W.P.No.15950 of 2019

And

Vacate Stay Petitions No. 4,6,9,10,11 and 13 to 16 of 2019

Between:

Southern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman & Managing Director,
Beside Srinivasa Kalyana Mandapam, Tiruchanoor Road,
Tirupathi, Chittoor District and another

... PETITIONERS

AND

Union of India through Ministry of Power
Rep. by the Secretary/Ministry of Power
Shram Shakti Bhavan, Rafi Marg, New Delhi-1 and 19 others

... RESPONDENTS

Date of Order pronounced on : 15.03.2021

HON'BLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ I.A.No.1 of 2019 in W.P.No.15950 of 2019

And

Vacate Stay Petitions No. 4,6,9,10,11 and 13 to 16 of 2019

% Dated:15.03.2021

Between:

#1. Southern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman & Managing Director,
Beside Srinivasa Kalyana Mandapam, Tiruchanoor Road,
Tirupathi, Chittoor District and another

... PETITIONERS

AND

\$ 1. Union of India through Ministry of Power
Rep. by the Secretary/Ministry of Power
Shram Shakti Bhavan, Rafi Marg, New Delhi-1 and 19 others

... RESPONDENTS

! Counsel for petitioners : Mr. S.Sriram

^Counsel for Respondents : Mr. Sajjan Puvayya, learned Senior Counsel

Mr. Challa Gunaranjan

Mr. T.Surya Karan Reddy

Mr. Anikith Prasoon

Mr. P.Sri Raghuram

<GIST:

>HEAD NOTE:

? Cases referred:

1. (2010) 10 SCC 43
2. (2007) 4 SCC 221
3. (2010) 11 SCC 557
4. (2009) 9 SCC 485
5. (2004) 10 SCC 665
6. (2000) 9 SCC 94
7. (1994) 1 SCC 1
8. AIR 1974 SC 1755
9. (1975) 1 SCC 737
10. (1980) 3 SCC 599

11. AIR 1968 SC 522
12. AIR 1960 SC 588
13. (2004) 8 SCC 229
14. (2017) 1 SCC 487
15. (2001) 5 SCC 629
16. (1974) 2 SCC 725
17. (1969) 3 SCC 445
18. 1959 Supp.(2) SCR 217
19. 1945 SCC Online Bom 113
20. 2010 SCC Online APTEL 49
21. (2010) 5 SCC 23
22. (2012) 8 SCC 524
23. (2011) 2 SCC 782
24. (2011) 14 SCC 337
25. (2012) 2 SCC 108
26. (2015) 7 SCC 728
27. (1983) 2 SCC 433
28. (2014) 1 SCC 603
29. (2014) 1 SCC 648
30. (2019) 20 SCC 38
31. (2007) 11 SCC 427
32. (2011) 8 SCC 161

HON'BLE SRI JUSTICE M. VENKATA RAMANA
I.A.No.1 of 2019 in W.P.No.15950 of 2019
And
Vacate Stay Petitions No. 4,6,9,10,11 and 13 to 16 of 2019

ORDER:

This writ petition is filed by two Power Distribution Government companies in the State of Andhra Pradesh against the respondents 1 and 2, which are the Ministries of the Government of India and third respondent being a Government Corporation of Union of India for the following reliefs:

“To issue a writ or direction more particularly in the nature of writ of Mandamus declaring the action of the respondents 2 and 3 in requiring the petitioners to comply with the requirement of opening letters of credit in respect of long term PPAs with solar and wind power developers with a consequence of depriving the petitioners of access to power from power exchange and short-term open access vide the impugned proceeding dated 10.10.2019 in pursuance of the impugned communication dated 06.09.2019 addressed by the 2nd respondent to the 3rd respondent as illegal, arbitrary, contrary to the provisions of the Electricity Act 2003 and consequently set aside the same with a direction to the respondents not to interfere with the operations of the petitioners including power procurement from power exchange and open access and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.”

2. This Court granted an ad-interim order restraining the respondents 1 to 3 from disallowing the power transactions under STOA (Short Term Open Access) or through power exchange, on 15.10.2019. Respondents 4 to 20

got themselves impleaded filing I.As.2, 3, 5, 7, 8 and 12 and as per orders therein dated 28.11.2019.

3. Except respondent No.8, others among the respondents 4 to 20 are power generators. Respondents 4 to 7, 9, 10 and 20 have installations (Wind Farms) in the State of Andhra Pradesh in different locations producing wind energy. Respondents 11 to 19 have been producing solar energy in different locations having their installations in the State of Andhra Pradesh. They came up with petitions in I.As.— 4, 6, 9, 10, 11 and 13 to 16 to vacate the afore stated interim order raising several grounds. Among them I.As.9 to 11 are filed on behalf of the respondents 1 to 3.

4. Special Leave Petitions (Civil) Nos.432 of 2021 and 408 of 2021 were filed by the respondents 18 and 19, against the order dated 15.10.2019 where by an order dated 01.02.2021 the Hon'ble Supreme Court was pleased to direct as follows:

“In the meantime, the High Court may hear and decide the applications which have been filed by the petitioners for vacating or, as the case may be, modification of the interim orders dated 15.10.2019.”

5. By another order dated 22.02.2021, the Hon'ble Supreme Court directed this Court to hear the applications filed by the petitioners therein, viz., respondents No.18 and 19, viz., M/s.Tata Power Renewable Energy Limited and M/s.Walwhan Renewable Energy Limited(formerly M/s.Welspun Renewable Energy Pvt.Ltd.) and dispose of the same for vacating or as the case may be, modification of the interim order dated 15.10.2019 on or before 12.03.2021. It was further ordered that the *ad interim* order dated 15.10.2019 shall be limited in terms of its tenure until 12.03.2021 by which date a fresh reasoned order be passed either confirming, modifying or vacating the interim order in terms of the order referred to above.

6. The parties as arrayed in writ petition shall be referred to hereinafter, for convenience.
7. The Government of India and the Government of Andhra Pradesh initiated certain measures to augment power generation including by means of non-conventional or renewable sources of energy and unveiled policies. Solar and wind energies are among them. A target of solar power and wind generation of 9000 MW by 2021-22 is sought to be achieved on account of these efforts for DISCOMs in the State of Andhra Pradesh. In this process, private investments were also encouraged and the power generating companies were allowed to borrow their working capital from financial institutions to a limited extent and beyond a point, no financial institution lends to these companies. Loans were obtained from institutions like banks and there is also substantial foreign direct investments in this sector. If these power generators are not paid, they would not be in a position to repay the amounts due to the banks or financial institutions nor would be in a position to give any return on the capital invested to their foreign lenders.
8. There was large scale default in payments by the State Distribution Companies all over the country and situation went to the extent of representing to the Ministry of Power, Government of India of their concern, since it was leading to drying up of investments from foreign sources in the event the payment security is not honoured. This payment security is by way of either advance payment or by opening a letter of credit (LC for short) as per power purchase agreement (PPA, for short), which a licensee distributor (DISCOM) under The Electricity Act 2003 enters into with the power generator. This mechanism is to ensure payments for the power purchased.

9. Power purchase agreements were entered into by the Southern Power Distribution Company and Eastern Power Distribution Company of Andhra Pradesh, who are the petitioners in the writ petition and the power generators. These PPAs were entered into not only between these distribution companies and the generators from non-conventional energy sources like wind and solar power generators but also the power generators from conventional power sources.

10. The DISCOMS pay the bill on monthly basis for the delivered energy purchased calculating them at the tariff as agreed upon mutually by opening a one month revolving letter of credit in case of solar power generation and an year revolving letter of credit in case of wind energy generation. This bill should be furnished for the billing month on or before 5th working day following the meter reading date.

11. This letter of credit should be issued by a scheduled Bank, which the parties to this writ petition admit, is stated in Article 5 under the head 'Billing and Payment' in PPA relating to purchase of solar power as follows:

"5.3: The DISCOM shall pay the bill on monthly basis as per Clause 5.5, by opening a one month revolving Letter of Credit in favour of Solar Power Developer.

5.4: Letter of credit: Not later than 30 days prior to the Scheduled COD of the Generating Unit, DISCOM shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of Solar Power Developer by a Scheduled Bank (the "Letter of Credit") for one month's billing value.

a. However Letter of Credit shall not be invoked for any disputed bill amount.

- b. *Further LC can be invoked only when DISCOMs fail to pay bill amount by due date of bill payment.*

5.5: Payment for bills raised: Solar developer shall submit bills for the energy delivered during billing period as per the provision of this PPA and there upon DISCOMs shall make payment for the eligible bill amount by the due date of payment."

12. In case of purchase of wind power, the PPA contained in Article 5 under the head "Billing and Payment" as follows:

"5.3 The DISCOM shall pay the bill on monthly basis as per Article 5.1.

5.4 Letter of Credit: Not later than 30 days prior to the Scheduled COD of the Generating Unit, DISCOM shall cause to be in effect an irrevocable revolving Letter of Credit issued in favour of Wind Power Developer for a minimum period of one year by a Scheduled Bank (the "Letter of Credit").

- a. *However Letter of Credit shall not be invoked for any disputed bill amount.*

5.5 Direct payment: Wind developer shall submit bills for the energy delivered during the billing period as per the provision of this PPA and there upon DISCOMs shall make payment for the eligible bill amount by the due date of payment."

13. Admittedly, the petitioners (Distribution Companies) and other distribution companies in the State have fallen in arrears in paying these

bills. According to the respondents 2 and 3, it was to a tune of about Rs.3,136/- crores as on 31.08.2019. It is the admitted situation as informed by Sri Sajjan Puvayya, learned Senior Counsel that these power producers are not paid their dues since March 2020, as of now. Sri P.Sri Raghuram, learned Senior Counsel, informed that the petitioners are due about Rs.1500/- crores at contractual rates to his clients.

14. It is also admitted that these power distribution companies in the State of Andhra Pradesh have not opened revolving letters of credit as contracted, in between these parties.

15. It appears that failure to open these letters of credit did not confine to the State of Andhra Pradesh and the distribution companies in all the States defaulted to open them up. It is the contention of the respondents 2 and 3 that on account of this situation, since representations were made to the Ministry of Power, Government of India by the power producers, on account of financial stringency faced by them due to inaction of the power distribution companies to pay the dues on time, a directive was issued by Ministry of Power, Government of India by its order dated 28.06.2019.

An image of this order is incorporated hereunder for convenience and for easy reference:

No. 23/22/2019-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 28th June, 2019

ORDER

Subject: Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees -Reg

1.0 Under the Electricity Act 2003, Regional Load Despatch Centres (RLDC) and State Load Despatch Centres (SLDC) are cast with the statutory responsibility to ensure that the supply of electricity is made in accordance with the contracts.

2.0 Section 28 (3) (a) of the Electricity Act 2003 provides that the Regional Load Despatch Centre shall be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region.

3.0 Similarly as per provisions of Section 32 (2)(a) the State Load Despatch Centre shall be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State.

4.0 The Power Purchase Agreements have the provision regarding maintenance of adequate Payment Security Mechanism mainly in the form of Letters of Credit by the Distribution Licensees/ Procurers of Power. A robust Payment Security System requires adequacy and validity of Letter of Credit to cover the payments due on account of drawal of power.

5.0 It has been seen that despite the above provisions, the Letters of Credit are not being given and there is huge outstanding on account of unpaid power bills. This makes it difficult for the Generators to pay for the fuel, which has to be pre-paid, to continue the generation. The Generators are also required to pay to the Railways in advance for the rakes. If this situation persists, the Generators will not be able to pay for fuel/transportation leading to shortfall in generation of electricity. There will thus be wide spread load shedding on account of lack of generation. It is essential therefore that all the provisions mentioned above are implemented strictly. NLDC & RLDC are therefore directed as follows:

- i. In accordance with Section 28 (3) (a), the NLDC & RLDC shall despatch power only after it is intimated by the Generating Company and /Distribution Companies that a Letter of Credit for the desired quantum of power has been opened and copies made available to the concerned Generating Company.
- ii. The intimation to NLDC and RLDC shall specify the period of supply.

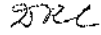
- iii. RLDC shall dispatch electricity only up to the quantity equivalent of value of Letter of Credit.
- iv. The dispatch shall stop once the quantum of electricity under LC is supplied.
- v. The concerned generating company shall be entitled to encash the LC after expiry of grace period, i.e. 45 to 60 days as provided in the PPA.
- vi. In the event power is not dispatched for any reason given above, the Distribution licensee shall continue to pay the Fixed Charge to the Generating Company.

6.0 It shall also be ensured by the Load Despatch Centre that the regulated entity, during the period of regulation, has no access to procure power from the Power Exchanges and they shall not be granted Short Term Open Access (STOA).

7.0 In case scheduling and despatch of power produced by any generator is not done due to non-opening of Letter of Credit by the Distribution licensee, then the Distribution licensee would be liable to pay compensation to the generator as per the terms of Power Purchase Agreement or Power Sale Agreement, as the case may be, the distribution licensee has entered in with the generator.

8.0 NLDC/ RLDC/SLDC shall carry out such duty cast under Electricity Act, 2003 from 01.08.2019.

9.0 This issues with the approval of Minister of State (I/C) for Power and NRE.


(Debranjana Chattopadhyay)
Under Secretary to the Government of India
Ph: 011-2373 0265

To,

1. CMD, POSOCO / Heads of NLDC & RLDCs
2. Principal Secretary/Secretary (Power/Energy), State Governments/UTs – For necessary communication to Discoms/ SLDCs
3. All Generating Companies
4. All Distribution Companies
5. Secretaries of All State Electricity Regulatory Commissions(SERCs)/JERCs.

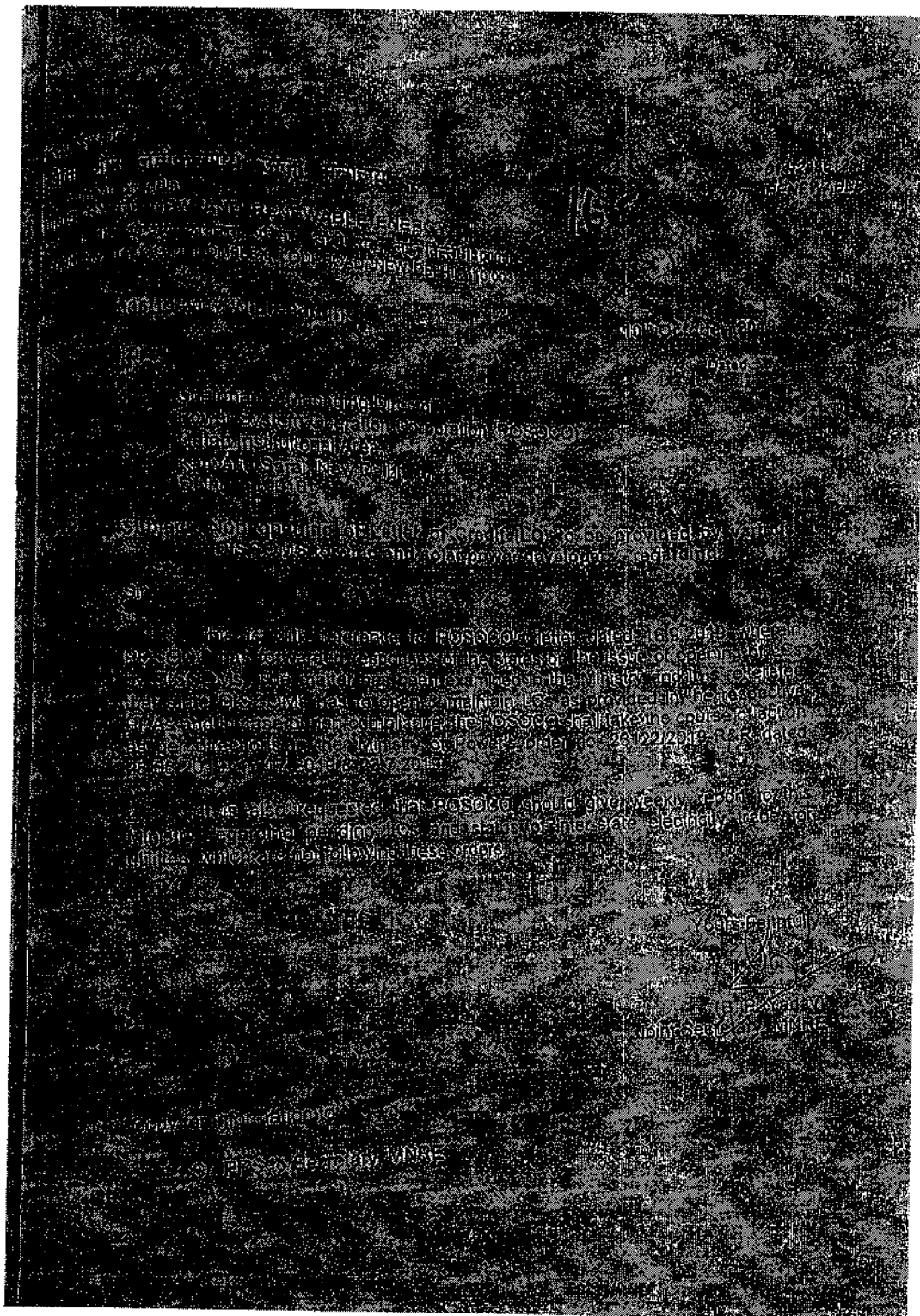
Copy to:

1. Chairperson, CEA, Sewa Bhawan, RK Puram, New., Delhi
2. Secretary, CERC/FOR, Chandralok Building, Janpath, New Delhi

Copy also for information to:

1. All Joint Secretaries, Ministry of Power
2. PS to MOS (I/C) for Power and NRE
3. PPS to Secy.(P), PPS to AS(SNS), PPS to CE(RR)

16. Pursuant to it and other orders of the first respondent, the second respondent addressed a letter dated 10.10.2019 to The Chairman and Managing Director of the third respondent - Power System Operation Corporation, Delhi. An image of this letter is also incorporated hereunder:



17. On the same day, i.e. 10.10.2019, the third respondent addressed letters in the same context to state level load discharging centres of Andhra Pradesh, Telangana, Karnataka and Tamilnadu. An image of the same is brought out hereunder for facility.

पुणे विद्युत वितरण कंपनी लि.
POWER SYSTEM OPERATION CORPORATION LIMITED
पुणे, महाराष्ट्र.
मुख्यालय, पुणे, महाराष्ट्र.
दूरध्वनी क्र. ०२०-२६६६६६६६
फॅक्स क्र. ०२०-२६६६६६६६
वेबसाईट: www.pso.co.in

Ref: MOP/PSM/2019

Executive Director, SLDC V Jayawada, Andhra Pradesh
Chief Engineer, SLDC Hyderabad, Telangana
Chief Engineer, SLDC Hengaturna, Karnataka
Chief Engineer, SLDC Chunnarayana, Andhra Pradesh

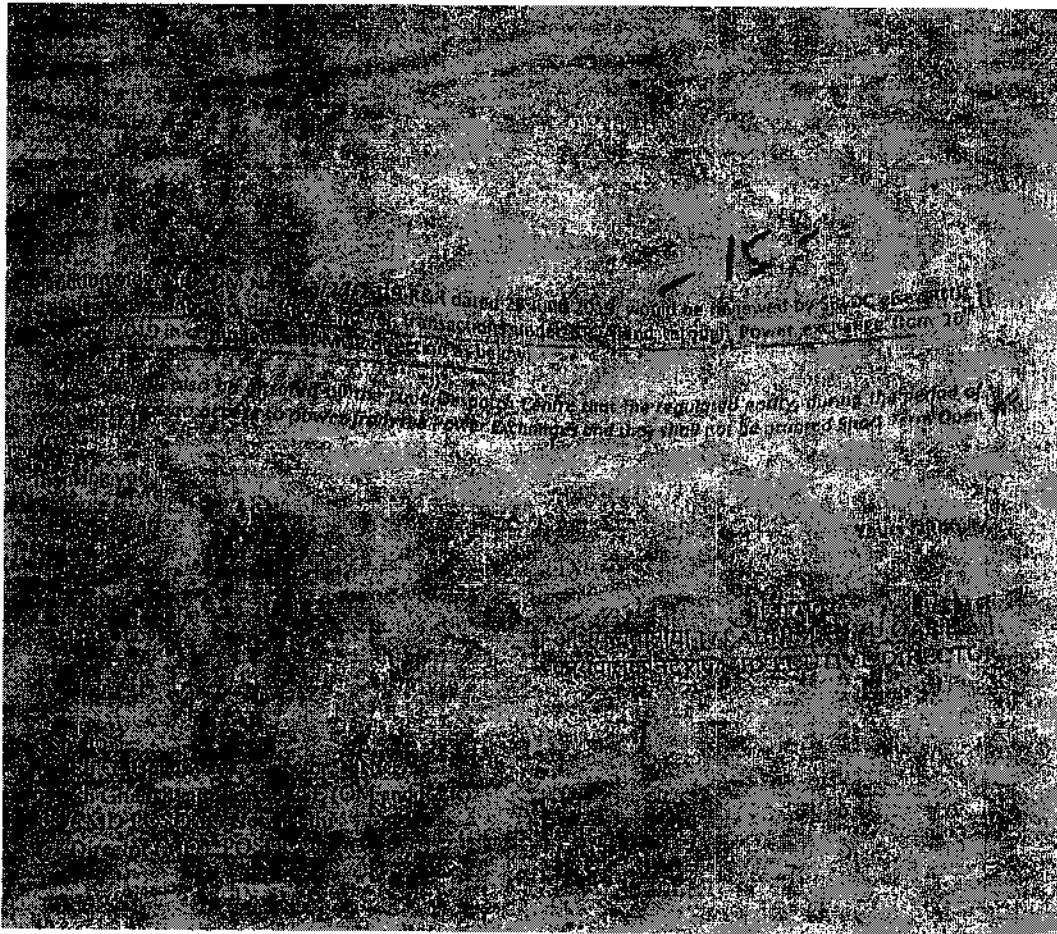
This letter of Credit (LC) to be provided by various DISCOMs and other communication from MRE. Ref.

M. M. MRE letter no 336/19/2019 dated 13/09/2019
M. MOP OM No. 23/22/2019-R&R dated 13/09/2019
Subject: Opening and maintaining of adequate Letter of Credit as Payment Security under Power Purchase Agreements by Distribution Licensees.
M. M. MRE letter no 336/19/2019 dated 13/09/2019
M. MOP OM No. 23/22/2019-R&R dated 13/09/2019

The communication further states that various DISCOMs have not provided LC as per the MOU under. Your kind attention is drawn to the fact that in order to provide in place in PPAs for providing LC, these DISCOMs have not provided LC to the wind and solar developers as indicated in report.

In compliance, their support is required from DISCOMs on the basis of the report forwarded to MRE. MRE vide communication no 336/19/2019 dated 13/09/2019 has already indicated that DISCOMs are to open & maintain LC as provided in the report and compliance of directions as per Ministry of Power's order dated 13/09/2019 & 23/7/2019 must be ensured and are to be reported on weekly basis.

In view of the above, it is requested that the direction of MOP order mentioned in 14/11/2019 be followed and the action taken in this regard may be intimated to the office daily by Tuesday. The report to be submitted on weekly basis until the LC is provided to the wind and solar developers as indicated in report.



18. These communications became the source and the cause for the petitioners to file this writ petition questioning the directions in the letter of the third respondent dated 10.10.2019.

19. It is the contention of the petitioners that they have entered into 267 long term PPAs with wind and solar power generators as well as other long term PPAs with Central Generating Units of thermal power, private thermal stations and State Generating Thermal Stations. Further contention of the petitioners is that the obligation of distribution companies to open letters of credit, referred to supra, as per PPAs entered into with wind and solar power generators, is waived in as much as these generators did not insist to comply with the same and by their conduct.

20. It is further stated that these distribution companies have opened letters of credit, pursuant to PPAs between them and conventional suppliers from the inception. It is the contention of the petitioners that the

communication of the first respondent dated 28.06.2019 applied only to PPAs governing conventional power sources and did not relate to non-conventional energy suppliers, viz., wind and solar power generators. It is the contention of the petitioners that it is their specific demur with reference to the communication of the first respondent dated 28.06.2019 that the obligations to perform under PPAs have no nexus to the transactions between them and power exchangers and these issues could not have been linked.

21. The petitioners further contended that there are certain default clauses in PPAs with reference to payment of bills within time reflecting consequences whereby the generators could stop supply of power if the payment is delayed beyond 30 days or 90 days as the case may be and these power generators have a right to terminate these PPAs. It is also the contention of the petitioners that the terms of PPAs cannot be altered nor respondents 1 to 3 have right to interfere in the functions of State transmission utilities.

22. The petitioners further contend that they have right to participate in the trading in power exchange being members, to purchase and sell the power in open access, which is independent of these PPAs. Thus, the petitioners asserted their unfettered legal right to have access to the power exchange to purchase the power in open market.

23. The petitioners also contended that the letter of the third respondent dated 10.10.2019 prohibited the petitioners from having access to the power exchanges to procure short term or peak hour purchases at competitive rates in the event of default to open letters of credit, affecting their commercial viability and ultimately affecting the end consumers.

24. The petitioners have also referred the judgment of this Court, in a batch of Writ Petition No.2401 of 2019 and W.P.No.9844 of 2019 dated 24.09.2019 wherein directions were issued to pay Rs.2.43 or Rs.2.44 per unit to solar and wind power developers respectively and that, the second respondent is a party to the above proceedings. Since it was left to A.P. Electricity Regulatory Commission (APERC) to consider this issue by this judgment, the second respondent cannot be permitted to interfere with obligations arising from PPAs, in view of the order of this Court, referred to above, according to the petitioners. Calling such interference as usurpation of power, which is not permissible under The Electricity Act 2003, the petitioners requested interference of this Court. They further contended that if the directions in the impugned proceedings are implemented, they would be deprived of 1/3rd of daily power requirement in the State leading to load relief to the general public at large and also affecting industrial production for want of power.

25. In the counters of respondents 1 to 3, while denying the claim of the petitioners, almost an identical stand is taken asserting their action in terms of The Electricity Act 2003 and that the appropriate government in terms of Section 37 of this Act is empowered to issue directions to The Regional Load Despatch Centres or the State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any Region or State. Their further contention is that considering the huge volume of outstanding power bills, the first respondent by its order dated 28.06.2019 directed NLDC and RLDCs to schedule power only after ensuring that requisite payment security mechanism in terms of PPAs, is furnished by the distribution licencees, viz., distribution companies to the power generation.

Later on, by a corrigendum dated 17.07.2019, it is their contention that on account of issues raised by some of the states relating to opening Letter of Credits by distribution companies, opening of LC for a shorter duration and in case of difficulty in opening of LC, the distribution companies could pay in advance through electronic mode were added. It was so done, according to these respondents in the interests of power sector and to ensure financial viability.

26. The first respondent also stated in its counter that purchase of power through power exchange has to be done only through advance payment and the distribution company pays for it on the day of purchase, for the power being delivered. It is further stated by the first respondent that all the states except the State of Andhra Pradesh have complied these directions, either by paying in advance or opening adequate LC as per PPAs.

27. It is also contended by the first respondent that failure to open LC, is in breach of contract. It is denied that the wind and solar generators did not insist on compliance of obligation of opening letter of credit. It is also stated that there were large number of requests by them for this purpose. When the petitioners could comply this obligation with the conventional power generators, according to the first respondent, their non-compliance of similar obligation for renewal energy generators is not justified nor it is open for the petitioners to treat as if there has been waiver on their part, unilaterally.

28. The contention of the second respondent is that it is nodal ministry of Government of India for all matters relating to new and renewable energy including solar and wind energy, which has been receiving several representations from industry regarding delays in payment from various DISCOMs. Therefore, according to it, it was constrained to advice by its

communication dated 06.09.2019 requesting third respondent to issue necessary directions to strictly implement orders of the first respondent.

29. The third respondent also stated in its counter that the petitioners have admitted that the bills are being paid depending on availability of funds and as on 31.07.2019, these DISCOMs were to pay Rs.2509/- crores to these power generators, as per report published by Central Electricity Authority. According to the third respondent, if there is no deterrence for default of the petitioners in complying with the provisions of PPAs, the petitioners and similar DISCOMs would continue to procure surplus power from short term markets while keeping the power generators who have entered PPAs with the petitioners unpaid. It is also its contention that the petitioners have been trying to terminate PPAs with the solar and wind power generators in order to wriggle out of their commitment to procure power. It further contended that the petitioners cannot be left unchecked against their default under PPAs and the real time operations of the grid and despatch of electricity due to any technical or commercial defaults of the petitioners, require regulation of power supply through power exchanges including short term open access.

30. It is also stated by the third respondent that the power projects under these heads in the state have been accorded 'Must Run' status under the wind and solar power policy, which cannot be subjected to merit order despatch principles nor can be directed to back down generation. It is further contended that the petitioners are attempting to create situations, where it is impossible for the generators to run their power plants leading to a shut down and an automatic termination of PPAs, which is against public interest, that violate the provisions of the Electricity Act 2003.

31. Respondents 4 to 7, 9 to 20 almost raised similar pleas mainly pointing out the difficulties they have been facing in receiving payments from the petitioners and other distribution companies while also referring to their status as the power generators in the State of Andhra Pradesh who have PPAs in their favour. They contended that the *ad interim* order passed by this Court dated 15.10.2019 has direct bearing on their rights and obligations under PPAs between themselves and the distribution companies. They denied that they have waived their rights under PPAs on account of their conduct while pointing out that the order of the first respondent dated 28.06.2019 is not being challenged nor called in question. Their contention is also that the petitioners should approach Central Electricity Regulatory Commission under Section 29(5) of Electricity Act, since letters of the respondents 1 to 3 in question were issued under Section 28(3) of Electricity Act. It is further contended that the petitioners have approached this Court with unclean hands and suppressed material facts. These respondents also to a major extent adopted the line of the respondents 1 to 3 in resisting this writ petition.

32. The eighth respondent is 'Wind Independent Power Producers Association'. It has Pan India presence comprising of various independent power producers/wind power generators from different parts of the country. It is its contention that these generators of power, are in the activity of generation and sale of electricity to DISCOMs as well as various other commercial and industrial consumers directly under open access. It claimed that it has approximately 30 members, who are in wind energy business. This association adopted the stand of other respondents mainly. It also contended that a party to a contract cannot state that he would not follow its terms and the petitioners, being State under Article 12 of

Constitution of India, are rather expected to behave as modal employees. Stating that many of its members have filed petitions before A.P.Electricity Regulatory Commission, in the year 2017 itself seeking directions against APSPDCL to open LCs in accordance with the terms of PPAs and orders passed thereon dated 14.06.2018 in O.P.Nos.21 to 27 of 2017, 1 and 8 of 2018 and O.P.Nos.20 to 22 of 2018 dated 06.10.2018, it is stated that APSPDCL was directed to open LCs in favour of these producers within six months there from. It is further contended that the petitioners have approached this Court with unclean hands taking advantage of its own wrong.

33. On behalf of the petitioners, a common reply affidavit is filed denying the contentions of all the respondents including assertion of the respondents 1 to 3 of the right of the first respondent to issue directions. It is stated in this reply affidavit referring to consequences of the default to perform such part of PPA, when DISCOMs failed to pay the amounts due within the due date, that they are at liberty to sell to third parties and terminate the PPA. Asserting that the terms and conditions of PPAs did not contemplate the consequences as ordered by the respondents 1 to 3 in their letters preventing DISCOMS from accessing power exchange and short term open access due to default in performance of any of obligations, they have set out their financial difficulties to discharge their obligation in paying dues to these energy suppliers.

34. According to them, even after paying Rs.860 crores to wind and solar developers during November 2019 to January 2020, they are due more than Rs.15,000 crores to all power suppliers, besides suffering loss of Rs.20,000 crores. They also stated that PPAs were entered into with wind and solar developers at high cost during 2015 to 2017 and on account of average

demand of power in Andhra Pradesh State being 8000 MW, these DISCOMs have suffered huge losses on account of procurement of power. They stated that the revenue recovered from the consumers is sufficient only to meet the monthly bills of central generating stations like NTPC and since their borrowing capacity is already exhausted, there is no possibility of getting any further loans for which reason they are unable to open the letters of credit.

35. It is further stated in the reply affidavit that out of 267 power generators, only 13 have sought specific performance of these PPAs filing appropriate petitions before Andhra Pradesh Electricity Regulatory Commission(APERC), where orders were issued granting time directing DISCOMs to approach once again with detailed facts explaining their financial position.

36. It is further stated that arrangements are in process to clear balance payment bills at the rate suggested by this Court in the order in W.P.No.9844 of 2009 and batch. According to these petitioners, there is no necessity for them to approach Central Electricity Regulatory Commission (CERC) in this context, since they have canvassed their legal right in terms of Sections 42 and 59 of A.P.Electricity Act. They also questioned interference of the eighth respondent in this writ petition, which is not a generator of power. It also referred to W.A.No.393 of 2019 and batch, where the questions relating to 'must run' status are pending consideration, contending that it is an issue beyond the scope of this writ petition. Thus, the petitioners asserted their claim in their common reply affidavit in all these vacate stay petitions denying all the allegations set out against them therein.

37. Additional reply affidavit is also filed by the petitioners referring to a meeting dated 07.11.2019 at the instance of the Government of India deliberating the financial problems that cropped up due to procurement of wind and solar power and integration of such power in the State of Andhra Pradesh, which is almost 25% more than what all other states together have, leading to heavy financial burden.

38. Heard Sri S.Sriram, learned Advocate General for the petitioners. Lead arguments are advanced by Sri Sajjan Puvayya, learned Senior Counsel followed by Sri Challa Gunaranjan, learned counsel, Sri T.Surya Karan Reddy, learned counsel for learned Assistant Solicitor General and Sri Anikith Prasoon, learned counsel. Sri P.Sri Raghuram, learned Senior Counsel advanced separate arguments.

39. Now, the point for determination is: "Whether in the circumstances of the case, directions of the 3rd respondent by its letter dated 10.10.2019 be suspended and an interim order of the nature requested by the petitioners, be granted?"

40. **POINT:** The first respondent invoked Section 28(3)(a) and Section 32(2)(a) of the Electricity Act 2003 directing the respondents 2 and 3, in respect of contractual obligations of the distribution companies or distribution licencees to open and maintain letters of credit in favour of the power generators and in non-compliance thereof, to take action in the manner stated in paras 5.0 to 7.0 of the order of the first respondent dated 28.06.2019.

41. In the letter of the third respondent, which is none other than the Regional Load Despatch Centre at Bangalore relating to the States of Andhra Pradesh, Telangana, Karnataka and Tamilnadu, dated 10.10.2019, it

required compliance of the directions of the first respondent and to intimate by 15.10.2019 and later, on weekly basis. Implementation of the above direction of the first respondent was informed to be reviewed by the State Load Despatch Centre by this letter and that in the event of failure to follow these directions, the State Load Despatch Centre should not allow power transactions through Short Term Open Access (STOA) and through power exchange from 15.10.2019. The letter of the third respondent also stated that the Load Despatch Centre should see that the regulated entity, viz. DISCOMs or Distribution Licensees did not have access to power from Power Exchanges during the period of regulation and that they shall not be granted short term open access.

42. Part - 5 of the Electricity Act relates to transmission of electricity and interstate transmission. Section 25 of this Act refers to interstate, regional and interregional transmission. Section 26 describes establishment of National Load Despatch Centre by the Central Government at national level. Section 27 of the Act speaks of constitution of Regional Load Despatch Centre for each region, which shall be operated by a government company or any authority or corporation established or constituted by or under any central Act as may be notified by the Central Government.

43. Important is functions of Regional Load Despatch Centre stated in Section 28 of this Act. It reads as follows:

“28. Functions of Regional Load Despatch Centre. -

1. The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.
2. The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of

wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

3. The Regional Load Despatch Centre shall—
 - a. be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;
 - b. monitor grid operations;
 - c. keep accounts of quantity of electricity transmitted through the regional grid;
 - d. exercise supervision and control over the inter-State transmission system; and
 - e. be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.
4. The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.”

44. Therefore, the responsibility of Regional Load Despatch Centre included optimum scheduling and despatch of electricity within the region and for this purpose, it has to take into account the contract between distribution licencees (DISCOMs) or the generating companies operating within the region. Another responsibility this Regional Load Despatch Centre is to secure and economic operation of regional grid in accordance with grid standards and the grid code carrying out real time operations for grid control and despatch of electricity within the region.

45. Section 29 of this Act speaks of compliance of directions of the Regional Load Despatch Centre that included overseeing the matters

concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.

46. Section 37 of this Act is concerned to directions by the appropriate Government that may issue to Regional Load Despatch Centres or State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any region or State.

47. Appropriate Government is defined in Section 2(5) of this Act and in respect of National Load Despatch Centre and Regional Load Despatch Centre, it is the Central Government and in any other case, it is the State Government having jurisdiction under this Act.

48. Therefore, in terms of Section 37 of this Act, the central Government is entitled to issue directions to Load Despatch Centres referred to therein. Ministry of Power, Government of India (first respondent) represents the appropriate government in terms of Section 2(5) of this Act. By virtue of Section 37 of this Act, it is vested with the power and authority to issue such directions for the purposes contemplated by Section 37 itself for maintaining smooth and stable transmission for supply of electricity to any region or State.

49. State Load Despatch Centre is constituted under Section 31 of this Act. It is the duty of the State Government to establish the same for the purpose of exercising powers and discharging the functions under this Act. The constitution of the state level centre, is similar to the Regional Load Despatch Centre through a Government company or any authority or corporation established and constituted by or under any State Act, as may be notified by the State Government.

50. Section 32 of this Act is concerned to functions of State Load Despatch Centre and it is apex body to ensure integrated operation of power system in a State. Like Regional Load Despatch Centre, in terms of Section 32(2) of this Act. It has the same responsibility within the State (like Regional Load Despatch Centre in the region) for optimum scheduling and despatch of electricity within a State in accordance with the contracts entered into with the licensees or generating companies operating in that State. Secure economic operation of the State grid in accordance with the grid standards and the State grid code is another responsibility of the State Load Despatch Centre, carrying out real time operations for grid control and despatch of electricity within the State.

51. On behalf of all the respondents, it is emphasized referring to these provisions of the Electricity Act, 2003, contending that the directions issued by the respondents 1 to 3 are in consonance and in accordance with the authority vested in the appropriate Government represented by the first respondent and complied by the third respondent when communicated through the second respondent, which directions are applicable to all the States including Distribution licencees or DISCOMs. Therefore, the contention of the respondents is that the petitioners are duty bound and are under an obligation to follow and comply these directions without any breach or else, according to their contention, the petitioners suffer the consequences as stated in the letter dated 10.10.2019 of the third respondent and more importantly denial of Short Term Open Access from the power exchangers.

52. One of the contentions of the petitioners, which is highlighted by learned Advocate General in his arguments is that these directions in turn did not apply to non-conventional power generators like the respondents 4

to 20 and the tenor of the letter of the first respondent dated 28.06.2019 referring to payment for the fuel to railways for the rakes, indicated its application.

53. A careful examination and consideration of the order of the first respondent dated 28.06.2019 made out that it did not confine itself to such entities as is sought to be canvassed on behalf of the petitioners. There is no distinction drawn either with reference to conventional power generators or non-conventional power generators. It is not in dispute that non-conventional power generators and conventional power generators should necessarily enter into a PPA with the distribution licencees or DISCOMs, as is the present case, where it is in between wind and solar power generators and the DISCOMs in the State of Andhra Pradesh. These directions, as per this order did apply to all the situations and all the entities, as contended by Sri T.Suryakaran Reddy, learned counsel for the respondents 1 to 3.

54. However, the question to consider is whether all these authorities under this Act from appropriate Government to State Load Despatch Centres have the power, authority and jurisdiction to interfere, regulate and oversee the terms of contract under the PPA between the power generators and the DISCOMs or the distribution licencees.

55. Sri Sajjan Puvayya, learned Senior Counsel appearing for the respondents 18 and 19 contended that these provisions did vest such right, authority and power in all these entities and particular emphasis is laid upon the impact of Section 28(3)(e) and Section 33(1) of this Act. This contention is also supported by Sri P.Sri Raghuram, learned Senior Counsel for the respondents 11 to 18.

56. Though Section 28(c)(e) and Section 33(1) of this Act refer to achieving maximum economy and efficiency in operation of power system in their respective operational spheres with the purpose and object of maintaining grid standards and grid code, the language used did not in plain terms or by implication suggested and indicated that they in turn enable these load despatch centres to oversee performance of the terms of the concluded contracts between the power generators and the distribution companies. They did not in specific terms state that the terms and conditions in a PPA entered into in between these parties are subject to their supervision and control regulating such affairs. These provisions of The Electricity Act, 2003 are completely silent in this respect. What is not stated or intended in the statute cannot be imported and added, banking upon the word 'economy' used therein. 'Maximum economy' is referred to in the context of ensuring stability of integrated grid operations and to achieve efficiency in operation of power system within area of their operation, be a region or the State.

57. The power vested in appropriate Government to issue directions in terms of Section 37 of this Act to all these entities, which are concerned to supervise and control the integrated grid operations as well as power systems should be only for these purposes and not otherwise.

58. The inference so drawn finds support from Section 86 of this Act, which states functions of State Electricity Regulatory Commissioner. One of the functions of the State Commission is to adjudicate upon disputes between the distribution licencees and the generating companies and to refer any dispute for arbitration. Thus, in terms of Section 86(1)(f) of this Act, when a quasi judicial authority, viz., the State Commission is empowered to adjudicate upon such issues, it can safely be concluded that

all such questions and issues remain away from the realm of appropriate Government or national or regional or State Load Despatch Centres. It appears, advisedly, the Statute did not advert to these aspects.

59. Admittedly in this case, when the PPAs were entered into in or about the year 2014 and 2015, they were all approved by State Electricity Regulatory Commission. Some of these respondents have also applied to A.P.State Electricity Regulatory Commission for specific performance of terms of the PPA against the petitioners and a batch of petitions in O.P.Nos.21 to 27 and 35 of 2017 and O.P.No.1 and 7 of 2018 were disposed of by A.P.State Electricity Regulatory Commission by an order dated 14.06.2018. Review petitions are filed against the orders issued by A.P.State Electricity Regulatory Commission, in these matters. I.A.Nos.29 and 30 of 2020 on 15.02.2020 are review petitions, as is referred to on behalf of the respondents 17 and 18, in O.P.No.1 of 2018 and O.P.No.7 of 2018.

60. When an adjudicatory mechanism is provided under this Act, to consider enforceability or otherwise of these PPAS between the power generators and the DISCOMs, in this case between un-official respondents and the petitioners in the State of Andhra Pradesh, in terms of The Electricity Act 2003, neither the first respondent being appropriate Government nor the third respondent has the power or authority or jurisdiction particularly to enforce the terms of the PPA, imposing such terms, as set out in the letter of the third respondent dated 10.10.2019, to the extent of denying access to purchase power in open market.

61. It is precisely the complaint of the petitioners pointed out in the arguments of learned Advocate General in this writ petition contending that

none of these respondents 1 to 3 has jurisdiction to make inroads into the PPAs so entered into, in between these parties.

62. One of the contentions of the respondents is that the relief sought in this writ petition is not in the manner questioning the order of the first respondent dated 28.06.2019 and therefore, the interim order granted on 15.10.2019 cannot stand. In support of this contention, Sri Sajjan Puvayya, learned Senior Counsel and Sri P.Sri Raghuram, learned Senior Counsel relied on *AMARJIT SINGH v. STATE OF PUNJAB*¹, wherein in Paras 19 and 20, it is observed thus:

“19. We may before dealing with this question on its merits, point out that the Notification dated 10.02.2004 granting exemption was never challenged in the writ petitions filed by the appellants. There is no foundation laid in the petitions by the appellants for them to contend that the exemption notification was vitiated either because of lack of authority or misdirection by the Government in exercise of its power under Section 178(2) of the Punjab Regional and Town Planning and Development Act, 1995. The High Court has noticed this aspect in the following paragraph of its judgment:

“Still further, since the factual situation with regard to the issuance of the notification under Section 178 of the 1995 Act granting exemption from the application of provisions of the 1995 Act is admitted by the petitioners, it is not open to them to challenge the acquisition on the ground that there is violation of the 1995 Act, without at least laying challenge to the notification granting exemption.

20. In the light of the above we find it difficult to appreciate how the issue regarding the validity of the exemption granted by the Government could be raised by the writ petitioners before the High Court or argued impromptu by the appellants before us. Any attempt to raise the question regarding validity of the exemption notification must therefore fail on that ground alone. Since,

¹ (2010) 10 SCC 43

however, Mr.Gupta took great pains to make his submissions on the subject we may as well deal with the same."

63. Therefore, it is the contention of the learned Senior Counsel that the order of the first respondent dated 28.06.2019 stands valid and the action taken by the respondents 2 and 3 is entirely in conformity with the above order of the first respondent. Further contention advanced is that this fact has been suppressed and it was not disclosed when interim order dated 15.10.2019 was passed by this Court. It is further contended that the petitioners in their reply affidavit dated 12.12.2020 have stated that this order of the first respondent dated 28.06.2019 is confined to State of Gujarat, though it is addressed to all the authorities across this country for application on pan India basis.

64. The impugned order dated 10.10.2019 of the third respondent is based on the directions in the order of the first respondent dated 28.06.2019. The question raised by the petitioners is with reference to jurisdiction of the respondents 1 to 3 to interfere with the contracts entered into in between the power generators and DISCOMs and prohibiting the DISCOMs from having access to securing electricity from the exchange market. When the primary source of the action so initiated by the third respondent by its letter dated 10.10.2019, is the order of the first respondent dated 28.06.2019, want of specific challenge to it, can have no impact. The proposed action of the third respondent by its letter dated 10.10.2019, is to implement the order of the first respondent dated 28.06.2019 and when, sought to be applied to the State of Andhra Pradesh it is questioned by the petitioners. When the petitioners are specifically addressing these facts and have also filed a copy of the order of the first

respondent dated 28.06.2019, along with this writ petition, it cannot be stated that it is a material fact suppressed.

65. Similarly, contentions are advanced as if the interim order was obtained by suppression of material facts, suggestive of fraud on the Court on behalf of the respondents, mainly on account of failure of the petitioners to refer the orders of A.P.Electricity Regulatory Commission, dated 14.06.2018. Learned Advocate General in his arguments stated that it was an unintentional omission and which has been referred to in the reply affidavit while expressing regret for this lapse. On this count in obtaining an interim order from this Court on 15.10.2019, and consequences to flow when this alleged suppression is exposed is sought to be supported by the unofficial respondents, relying upon *A.V.PAPAYYA SASTRY AND OTHERS v. GOVERNMENT OF A.P. AND OTHERS*² and *MANOHARLAL v. UGRASEN*³.

66. Contentions are also advanced for the unofficial respondents that the manner of institution of writ petition without impleading them is improper and makes out that the petitioners have approached this Court not only suppressing such facts but also with unclean hands. In as much as they are permitted to come on record and since they have participated in these proceedings, this question has become academic, as rightly contended by learned Advocate General. At the same time, in this context, they relied on *FERTILIZERS & CHEMICALS TRAVANCORE LTD. v. ESI CORPORATION*⁴, *DATTATREYA v. MAHAVEER*⁵, *STATE OF BIHAR AND OTHERS v. KAMESHWAR PRASAD SINGH AND ANOTHER*⁶.

² (2007) 4 SCC 221

³ (2010) 11 SCC 557

⁴ (2009) 9 SCC 485

⁵ (2004) 10 SCC 665

⁶ (2000) 9 SCC 94

67. In support of their contention that the petitioners have approached this Court with unclean hands, they relied on **S.P.CHANGALVARAYA NAIDU (DEAD) BY LRS. V. JAGAMATH(DEAD) BY LRS & OTHERS⁷**.

68. In this context, as rightly contended by the learned Advocate General, since these power generators stand in the position of proper parties, but not as necessary parties, (vide **THE GENERAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD AND OTHERS v. A.V.R.SIDDANTHI AND OTHERS⁸**), want of their presence initially in this petition, is not a matter of concern nor affects the petitioners' claim.

69. There is neither any suppression of fact nor necessary material on record. Hence, the contention so advanced in this context on behalf of the respondents is rejected.

70. Admittedly, the petitioners are due in making payments to all the unofficial respondents. Material on record also makes out that periodical payments are being made depending on the sources available for this purpose. The contract rate of purchase of electricity as per PPAs (Article 2) from both the sources, viz., wind and solar power producers is at Rs.4.83 paise and Rs.4.84 paise per unit respectively. It is the tariff, at firm rate contracted by these parties and it is for a period of 25 years from the date of scheduled commercial operation date. Thus, it is the rate per unit at which the petitioners and DISCOMs in the State have to purchase the electricity per unit.

71. The main contention of the petitioners is that it is an exorbitant price, which was not even prevailing when these PPAs were entered into. This question became a source for litigation. In the sense, these un-official

⁷ (1994) 1 SCC 1

⁸ AIR 1974 SC 1755

respondents approached A.P.Electricity Regulatory Commissioner for specific performance of these terms of PPA as already stated, directing these DISCOMs to pay.

72. On behalf of the respondent No.11, reliance is placed in this context contending that a contract cannot be avoided, since its terms are onerous in *HAR SHANKAR v. DY.EXCISE & TAXATION COMMISSIONER*⁹, *STATE BANK OF HARYANA v. JAGE RAM*¹⁰, *NAIHATI JUTE MILLS LTD. V. KHYALIRAM JAGANNATH*¹¹ and *ALOPI PARSHAD & SONS LTD. v. UNION OF INDIA*¹².

73. An attempt was made by Government of Andhra Pradesh to interfere in this process by issuing G.O.Rt.No.63, Energy (Power) II, dated 01.07.2019. The whole object of issuing this G.O. was to reduce the tariff per unit. This attempt of the State Government was subject matter of writ petitions 9844 of 2019 and batch, where it was struck down by the common order dated 24.09.2019, allowing them. The circumstances in which all these parties are placed and more importantly the difficulty being faced by these power generators in realizing their dues from the petitioners (DISCOMs), were considered. The Court went to the extent of stating that the actions of the State and DISCOMs would have a debilitating effect and ultimately directed an interim arrangement whereby the power producers could raise bills at a rate of Rs.2.44 ps., per unit for solar power and Rs.2.43 ps., per unit for wind power. This rate is described as the suggested rate and ultimately, while directing this interim measure to continue, it was suggested that the same should continue till the dispute is resolved by A.P.Electricity Regulatory Commission.

⁹ (1975)1 SCC 737

¹⁰ (1980) 3 SCC 599

¹¹ AIR 1968 SC 522

¹² AIR 1960 SC 588

74. Certain observations are also recorded in the common order in these writ petitions in respect of the complaint of curtailment of evacuation of the electricity so produced by these generators, restraining the DISCOMs from taking coercive steps. Writ Appeals were preferred against this batch of orders in the writ petitions and copies of some of them are made available in this matter by the parties in W.A.Nos.383 of 2019, 433 of 2019 and 441 of 2019, dated 20.12.2019. These Writ Appeals were dismissed as withdrawn. However, on account of directions of this Court in these writ appeals, an arrangement was directed to make payments to these power producers at the rate suggested by this Court in W.P.No.9844 of 2009 and batch. One of these power producers filed a review petition in I.A.No.9 of 2019 in W.P.No.9876 of 2019 (respondent No.9 herein) and it was allowed modifying the directions in so far as the claim of the petitioner therein is concerned.

75. The contention of the petitioners is that by their conduct the unofficial respondents have waived this condition of opening revolving LCs in PPAs. Specific averments are seen in the affidavit in this petition in this context. All the respondents have seriously assailed this stand of the petitioners. However, in the course of arguments, learned Advocate General contended in this context that this fact referred to in the affidavit is for the limited purpose of bringing to the notice of this Court that the power generators have opted for continuing supply of power, inspite of absence of LCs and that plea of waiver would not have a material bearing on the outcome of the present petition, since it is instituted questioning the power and jurisdiction of the respondents 2 and 3 in issuing the impugned orders.

76. Resistance of the respondents in this context that they did not waive and such question did not arise, is proper and correct. Admitted situation is that the terms and conditions of PPAs without any exception, are in force. Even to constitute waiver in terms of Section 63 of Contract Act, there are absolutely no circumstances made out in this case. In this context, on behalf of the respondents, *KRISHNA BAHADUR v. PUMA THEATRE AND OTHERS*¹³, *ALL INDIA POWER ENGINEER FEDERATION AND OTHERS v. SASAN POWER LTD. AND OTHERS*¹⁴ are relied on.

77. On behalf of respondents 11 to 17, other rulings relied on in this context are, *SIKKIM SUBBA ASSOCIATES v. STATE OF SIKKIM*¹⁵, *P.DASA MUNI REDDY v. P.APPA RAO*¹⁶, *JAGAD BANDHU CHETTERJEE v. NILIMA RANI*¹⁷, *WAMAN SHRINIVAS KINI v. RATILAL BHAGWANDAS & CO.*¹⁸, *PHOENIX MILLS LTD. v. M.H.DINSHAW & CO.*¹⁹ and *BANGALORE ELECTRICITY SUPPLY COMPANY LTD. v.DEVANGERE SUGAR COMPANY LTD.*²⁰

78. As rightly contended for the respondents, articles 11.1, 11.2 and 11.5 of PPAs are to the effect that waiver of any breach or failure to enforce any of the terms, covenants or conditions mentioned therein shall not in any way affect, limit, modify or waive the future enforcement of any of such terms, covenants and conditions. It is further to be noted that neither oral or written modification in respect of any of these terms shall affect nor failure of any party to insist in one or more instances upon strict performance of any of the provisions of the PPAs or to take advantage of

¹³ (2004) 8 SCC 229

¹⁴ (2017)1 SCC 487

¹⁵ (2001) 5 SCC 629

¹⁶ (1974) 2 SCC 725

¹⁷ (1969) 3 SCC 445

¹⁸ 1959 Supp.(2) SCR 217

¹⁹ 1945 SCC Online Bom 113

²⁰ 2010 SCC Online APTEL 49

any of the rights there under shall not be construed as a waiver of any such provisions or relinquishments or any such rights.

79. An intentional and voluntary relinquishment of a known right is invariably necessary to constitute waiver. A clear intention to relinquish a right fully known to the parties to the contract is the requirement. In the absence of any material expressly indicating it, a waiver cannot be construed.

80. The petitioners obviously intend to rely on the conduct of the power generators in remaining silent without insisting for opening letters of credit in terms of Article 5.4 and 5.5 of PPAs. However, when the admitted situation in this case is that of all the parties are bound by the terms, covenants etc. in PPAs, the petitioners cannot unilaterally assume that this conduct of the power generators, amounts to waiver. Therefore, this contention of the petitioners cannot stand.

81. Another contention of the petitioners is based on default clause in article 9 of PPAs. By virtue of these clauses, the power generators have liberty to sell the power so produced to the third parties and in terms of article 9.1 to 9.5, either party can terminate these agreements. An option is also available to claim damages there under.

82. This contention of the petitioners cannot be accepted for the reason that the power generators are continuing to supply power to the petitioners in the State of Andhra Pradesh, even though the petitioners are delaying the payments for the power purchased. The petitioners cannot on their own, on account of the incessant demand of these power generators to clear their bills and dues, require them to put an end to these contracts. When the stand of the petitioners in earlier writ petitions is that they are

continuing to abide by the terms of these PPAs, they cannot ask or require the power producers to invoke article 9 of these agreements.

83. Contentions are advanced on behalf of the respondents that the petitioners should have availed primary remedy under the Electricity Act, 2003, approaching the Central Electricity Regulatory Commission (CERC).

84. It is also contended that this writ petition is premature and is misplaced, since A.P.State Load Despatch Centre did not question or challenge these directions of the third respondent before Central Electricity Regulatory Commissioner (CERC) under Section 29(5) of the Act. It is also their contention that if such a dispute is raised, proviso to Section 29(5) of the Act would require State Load Despatch Centre to follow the directions of the third respondent during pendency of this dispute, before it. Therefore, according to the respondents, to avoid such contingency, this Court is approached by the petitioners.

85. In this regard, their contention is that the Electricity Act 2003 is a complete Code in itself and therefore approach of the petitioners by filing this writ petition under Article 226 of Constitution of India, is improper. In this context, they relied on **CHHATTISGARH STATE ELECTRICITY BOARD v. CERC**²¹ in para 23 it is observed thus:

“The brief analysis of the scheme of the Electricity Act shows that it is a self-contained comprehensive legislation, which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public (sic private) sector participation in the process but also ensures creation of special adjudicatory mechanism to deal with the grievance of any person aggrieved by an order made by an adjudicating officer under the Act except under Section 127 or an order made by the

²¹ (2010) 5 SCC 23

appropriate Commission. Section 110 provides for establishment of a Tribunal to hear such appeals."

86. Thus, it is contended for the respondents (the power producers) that without taking recourse to such remedy available under the Act, the petitioners are not justified in approaching this Court. *CICILY KALLARACKAL v. VEHICLE FACTORY*²²; *KANAIYALAL LALCHAND AND SACHDEV AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS*²³; *NIVEDITA SHARMA v. CELLULAR OPERATORS ASSOCIATION OF INDIA & OTHERS*²⁴; *EXECUTIVE ENGINEER, SOUTHERN ELECTRICITY SUPPLY COMPANY OF ORISSA LIMITED (SOUTHCO) AND ANOTHER v. SRI SEETARAM RICE MILL*²⁵ and *JOSHI TECHNOLOGIES INTERNATIONAL INC v. UNION OF INDIA*²⁶ are relied on for unofficial respondents in support of their contention.

87. On behalf of respondent No.3, *TITAGHUR PAPER MILLS CO.LTD AND OTHERS v. STATE OF ORISSA AND OTHERS*²⁷ and *COMMISSIONER OF INCOME TAX AND OTHERS v. CHHABIL DASS AGARWAL*²⁸ are relied on in the same context.

88. Learned Advocate General on behalf of the petitioners contended that they were compelled to approach this Court under Article 226 of Constitution of India questioning the action of respondents 2 and 3 in exceeding their jurisdiction and authority in terms of various provisions of the Electricity Act. When orders are passed without jurisdiction nor when the respondents 1 to 3 are not vested with such power or authority, the petitioners approached this Court for remedy. When the contract in

²² (2012) 8 SCC 524

²³ (2011) 2 SCC 782

²⁴ (2011) 14 SCC 337

²⁵ (2012) 2 SCC 108

²⁶ (2015) 7 SCC 728

²⁷ (1983) 2 SCC 433

²⁸ (2014) 1 SCC 603

between two parties is sought to be interfered with, in the present matter, when the role of Regional and State Load Despatch Centres is limited to scheduling and dispatching electricity and are no way connected with the commercial transactions between the power generators and the DISCOMs, the petitioners are justified in initiating this action. It is also contended by learned Advocate General that opening LC or otherwise would in no manner impact stability and smooth transmission of power.

89. It is also stated for the petitioners that there is no requirement to approach CERC in as much as they have not canvassed relying on their rights under PPAs with the generators. Their contention is also that their attempt is only to protect their rights under Sections 42 and 69 of Electricity Act to approach power exchanges and short term producers under open access. Therefore, it is the contention of the learned Advocate General that in the circumstances, this Court had to be approached for the relief.

90. The contention of learned Advocate General in this context and reasons assigned by the petitioners in approaching this Court are proper. When the orders were issued directing Regional Load and State Load Despatch Centres, to insist upon the petitioners to issue letters of credit, which is a direct interference with the contractual terms under the PPAs and without jurisdiction by the respondents 1 to 3, the petitioners are justified in approaching this Court under Article 226 of Constitution of India. It is also to be noted that 1/3rd of the necessities of the State, is being met through such open sources.

91. It is contended by Sri T.Surya Karan Reddy, learned counsel appearing for the respondents 1 to 3, that short term purchases are required from power markets, only to meet certain contingencies and that the existing long term arrangements in this context cannot be overlooked.

It is also contended that the petitioners are curtailing the power from these generators of renewable energy sources, though they have power generation and have been sourcing the same power from short term markets. It is also contended for the respondents 1 to 3 that there is justification to interfere by the respondents 1 to 3, subjecting the petitioners to such directions.

92. The contentions of all the respondents are also to the effect that in the event of the petitioners failing to pay the dues on time, clearing the arrears would ultimately lead to closing down the generating stations of these power generators, which is against contractual terms. Compliance of contractual provisions and discharge of contractual liability under these PPAs is an equally important aspect of maintaining the smooth functioning of the power markets. Thus, it is contended that paucity of funds etc., ultimately would lead to shutting down the power plants, which is detrimental to the markets and that the DISCOMs would be depending more on short time markets to meet their needs. It is also contended for the power generators that the provisions of The Electricity Act, which empower the Regional Load and State Load Despatch Centres, since obliged to secure economic operations, failure to honour the commitment made for payments under PPAs, enable them to issue directions, which is clearly in their realm.

93. In the backdrop of this situation, when the threat is looming large for the petitioners from the respondents 1 to 3 on account of the proposed action as afore stated from their communications, they are right in approaching this Court.

94. In fact, the threatened action of the respondents 1 to 3 in a way is suggestive of forcing and coercing the petitioners to yield to the demands of the power generators, to pay the dues. Therefore, when this action of

the respondents is appearing rather an extra statutory remedy, intervention of this Court is required.

95. At the same time, the complaint or grievance of the power generators cannot be overlooked. It appears that certain arrangements are being made by the petitioners including the first respondent to get over this difficulty in meeting the demands of the power producers to pay their bills. Additional reply affidavit of the petitioners refers to such an effort. A meeting was held on 07.11.2019 with the participation of the first respondent - Ministry of Power, Government of India and the Government of A.P., represented by The Secretary, Energy Department, where it was deliberated as to how these petitioners could meet the demands of the power generators. Certain measures have been carved out to meet the situation. In the course of hearing, when I enquired, if it is possible to open LC from 1st of April, 2021 and to continue, learned Advocate General, on instructions informed that the petitioners are not in a position to do so, since no bank is coming forward to lend, to these DISCOMS.

96. Another contention advanced by the unofficial respondents is that the petitioners have taken advantage of their own wrong in defaulting to abide by the terms of PPAs particularly in paying monthly bills and yet they approached this Court for the relief. In support of their contention, they relied on *ONGC LIMITED v. MODERN CONSTRUCTION AND COMPANY*²⁹; *GOA STATE COOPERATIVE BANK LTD. v. KRISHNA NATH A(DEAD) THROUGH LEGAL REPRESENTATIVES & OTHERS*³⁰; *KUSHESWAR PRASAD*

²⁹ (2014) 1 SCC 648

³⁰ (2019) 20 SCC 38

*SINGH v. STATE OF BIHAR & OTHERS*³¹ and *INDIAN COUNCIL FOR ENVIRO
LEGAL ACTION v. UNION OF INDIA*³².

97. Reasons are already assigned as to necessity of the petitioners in approaching this Court and the circumstances that have driven them to seek the relief. In these circumstances, particularly when the issue in this case is with reference to communications received from the respondents 2 and 3 propelled by the order of the first respondent dated 28.06.2019, it cannot be so contended by the unofficial respondents.

98. Contentions are also advanced for the unofficial respondents that the petitioners are discriminating these non-conventional power generators preferring thermal power generators, attracting article 14 of Constitution of India. This question obviously goes beyond the scope of the present dispute. There are other matters pending in between these parties including in Writ Appeals and before APERC. It is not necessary to consider this issue now.

99. Therefore, on conspectus, it is manifest that the petitioners are justified in approaching this Court. As rightly contended by the learned Advocate General if the proposed action of respondent No.3 materializes, it is the public at large, viz., the consumers of electricity that suffer immensely. Thus, element of public interest is involved in coming with this request by the petitioners to this Court. Though contentions are advanced for the respondents that the action of the respondents 1 to 3 is for the good of everyone, in public interest, the concern appears more to settle the issue relating to the power generators, for their receivables, majority of whom are private players in the field. When imminent threat is perceived

³¹ (2007) 11 SCC 427

³² (2011) 8 SCC 161

by the petitioners in the proposed action of the third respondent, interim order as requested by them should be granted.

100. The unofficial Respondents have sought in their vacate petitions, a direction to the petitioners to pay their dues. Scope of this petition and the matter in issue would not permit enlarging the purview of adjudication to that extent. Already certain measures are in place, in this direction in between these parties and this question is a subject matter for consideration in other matters pending in between these parties. Therefore, no relief in this direction can be granted now to the unofficial respondents.

101. Therefore, accepting the contentions of the petitioners, I.A.No.1 of 2019 has to be allowed granting the relief as prayed and against the respondents.


102. After hearing learned counsel for the parties on 04.03.2021, this matter was reserved for orders to 10.03.2021. On account of declaration of local holiday on 10.03.2021 due to local Urban bodies Elections, this order could not be delivered and pronounced that day. 12.03.2021 was also declared a holiday. Therefore, the next working day being this day, this order is being pronounced now. It is pertinent to mention that as per the order of Hon'ble Supreme Court dated 22.02.2021, this matter in I.A.No.1 of 2019 in W.P.No.15950 of 2019 could not be disposed of by 12.03.2021, in the above circumstances.

103. In the result, I.A.No.1 of 2019 is allowed suspending operation of the proceedings dated 10.10.2019 (by its letter) of the third respondent, enabling the petitioners to operate through power exchange and to secure power through open access till disposal of the writ petition. Consequently,

vacate petitions in I.A.Nos. 4, 6, 9, 10, 11, 13, 14, 15 and 16 of 2019 are dismissed. No costs.

//TRUE COPY//

Sd/- P. VENKATA RAMANA,
DEPUTY REGISTRAR


SECTION OFFICER

One Fair Copy to the Hon`ble Sri Justice M. Venkata Ramana(for his Lordships Kind Perusal)

To

- 1.The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
- 2.The Secretary, A.P. Advocates Association Library, High Court Buildings, Amaravati.
- 3.The Secretary/Ministry of Power, Ministry of Power, Union of India, Shram Shakti Bhawan, Rafi Marg, New Delhi-1
- 4.The Ministry of New and Renewable Energy (Wind Energy Division), Union of India, Block 14, CGO Complex, Lodhi Road, New Delhi - 110 003
- 5.The Power System Operation Corporation Limited, Registered Office B-9 (1st Floor), Qutab Institutional Area, Katwaria Sarai, New Delhi -110016.(By RPAD)
- 6.Two CCs to the Advocate General, High Court, A.P.(OUT)
- 7.8 L.R. Copies.
- 8.Sri N. Harinath, Asst. Solicitor General, High Court, A.P.(OPUC)
- 9.One CC to Sri Avinash Desai, Advocate(OPUC)
- 10.One CC to Sri Sarang J. Afzulpurkar, Advocate(OPUC)
- 11.One CC to Sri Kilaru Nithin Krishna, Advocate(OPUC)
- 12.One spare copy.

TKK

HIGH COURT

MVR.J

DATED :15-03-2021

ORDER

I.A.No. 1 of 2019

IN

WRIT PETITION No. 15950 OF 2019

AND

Vacate Stay Petition Nos. 4, 6, 9, 10, 11 and 13 to 16 of 2019

**INTERIM ORDER IS MADE ABSOLUTE
AND VACATE PETITIONS ARE DISMISSED.
NO COSTS.**

