



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE FIFTEENTH DAY OF MARCH,
TWO THOUSAND AND TWENTY THREE

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member

O.P.No.39 of 2022

Between:

Danu Wind Parks Private Limited having its registered office
at Plot No. 1202,1215A, Door No. 8-2-293/82/A/1202,
S.L. Jubilee, RoadNo.61, Jubilee Hills,
Hyderabad - 500033

...Petitioner

And:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.,
19-13-65/A, Srinivasapuram, Tiruchanoor Road, Tirupati-517503.

2. Andhra Pradesh Power Coordination Committee,
A.P. TRANSCO, Vidyut Soudha, Gunadala, Vijayawada-500082.

3. The Chief General Manager, P & MM & IPC,
APSPDCL, D.NO.19-13-65/A, Corporate Office,
Raghavendra Nagar, Kesavayana Gunta, Tiruchanoor Road,
Tirupati-517501.

4. The Chairman, APPCC A.P. Transco,
Vidyut Soudha, Gunadala, Eluru Road,Vijayawada-520004.

...Respondents.

This Original Petition has come up for hearing before us today in the presence of Sri S.Vivek Chandra Sekhar, learned counsel for the petitioner, Sri P. Shiva Rao, learned Standing Counsel for the respondents, that after carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

In this OP., the grievance of the petitioner is that the respondents have not made payment for 2.3 MW Power Project, in respect of which PPA dated 17-7-2017, agreeing to pay the tariff of Rs.4.76 ps., per unit, was entered between the parties for the period from the date of COD i.e., 20-3-2018, to the date of disconnection i.e., 13-9-2020.

At the hearing, Sri S.Vivek Chandra Sekhar, learned counsel for the petitioner, submitted that the issue raised in this OP is squarely covered by the order passed by this Commission in ***Vibrant Greentech India Private Limited Vs. APSPDCL and others¹***.

Sri P.Shiva Rao, learned Standing Counsel for the respondents, submitted that while in principle the issue is covered by the said order, he has, however, invited the Commission's attention to letter No.APSPDCL/TPT/CGM/IPC/GM/IPC/DE-I/ F.509/D.No.321, dated 09-4-2018, addressed by the Chief General Manager of APSPDCL, Tirupati to the petitioner, wherein it is stated thus:

“After taking into consideration of the request made by M/s. Danu Wind Parks Pvt. Ltd., and the report submitted by Superintending Engineer/Operation/Anantapur under reference 5th cited, the developer is permitted to declare Commercial Operation Date (COD) of 12.3 MW which was commissioned on 20-3-2018 (Location Nos.T16) Wind Power project at Nelakota in Anantapur District, Andhra Pradesh, with effect from the date of synchronisation of the first unit of the project to the Grid (As per Article 1.4 of PPA) i.e., with effect from 20-3-2018 ***subject to receipt of consent for the PPA dt.17-7-2017 from APERC. However, the payments for the said project shall be made only after receipt of the consent for the PPA from APERC***”.

¹) APERC Order dated 05-7-2021 in OP Nos.9 and 20 of 2020.

Based on the above letter, the learned Standing Counsel submitted that the respondents agreed to make payments for the power received by them only after receipt of the consent of the PPA from this Commission and that since this Commission has not granted consent, the respondents are not liable to pay for the power received from the petitioner. In our opinion, the above mentioned letter, and, in particular, last sentence thereof does not unequivocally suggest that the respondents have taken the stand that payment for the power received will not be made unless this Commission grants consent for the PPA. In any event, irrespective of the stand taken by the respondents, this Commission unequivocally held in **Vibrant Greentech India Private Limited (1 supra)** that where the licensee has received power in pursuance of the PPA and derived benefit therefrom, the provisions of Section 70 of the Indian Contract Act applies; and that irrespective of whether the PPA is approved or not, a fresh relationship between the parties, *dehors* the PPA, will form the basis for a claim under Section 70 of the Contract Act. This Commission also held that the transaction of receiving power is separable from the obligations arising under the PPA and even though the PPAs are to be held unenforceable, the petitioners are nevertheless entitled to compensation under section 70 of the Contract Act for the power supplied by the developer to the licensee. In that case, even though Rs.4.84 ps per unit was agreed to be paid under the PPA, the Commission, having regard to much lesser price discovered in the year 2017 through bidding route for the Wind Power Projects, has directed payment towards value of the power received at Rs.2.93 ps., per unit.

Sri Vivek Chandsra Sekhar, learned counsel for the petitioner fairly agreed that the same amount per unit may be directed to be paid to his client.

In the light of the above, the respondents are directed to pay at Rs.2.93 ps., per unit for the power received by them from the petitioner's 2.3 MW capacity Wind Power Project from the date of COD to till the date of disconnection i.e., from 20-3-2018 to 30-9-2020, within one month from today. If the payment is not made within the stipulated time, the amount shall carry interest at the rate of 12% per annum till the date of payment.

The OP is, accordingly, allowed to the extent indicated above.

Sd/-
Thakur Rama Singh
Member/TRS

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

