



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 71 of 2022
&
I. A. No. 53 of 2022

Dated 20.03.2023

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s Halo Energies Private Limited,
Registered Office at No.301,
3rd Floor, Niharika Jubilee One,
Road No.1, Jubilee Hills, Hyderabad 500033.

... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
Mint Compound, # 6-1-50, Corporate Office,
Hyderabad, Telangana State 500 063.
2. Superintending Engineer, Operation Circle,
TSSPDCL, Habsiguda, Uppal Ring Road,
Hyderabad 500 007.
3. Senior Accounts Officer, Operation Circle,
TSSPDCL, Habsiguda, Uppal Ring Road,
Hyderabad 500 007.

... Respondents

The petition came up for hearing on (at SR stage in O. P. (SR) No. 57 of 2021 & I. A. (SR) No.58 of 2021 on 20.12.2021, 17.01.2022, 18.04.2022, 11.08.2022, 01.09.2022, 22.09.2022 and 17.10.2022. Sri. Rohan Singh, Advocate representing M/s. R. S. Associates, counsel for petitioner appeared on 20.12.2021, Ms. Himangini Sanghi, Advocate representing M/s. R. S. Associates, counsel for petitioner appeared on 17.01.2022, no representation for petitioner on 18.04.2022, Sri S.Ravi, Senior Advocate along with Sri M.Naga Deepak, counsel for petitioner appeared on

11.08.2022 and 01.09.2022, Ms. Nishitha, Advocate representing Sri. M. Naga Deepak counsel for petitioner appeared on 22.09.2022 and Sri. S. Ravi, Senior Advocate along with Sri. M. Naga Deepak, counsel for petitioner appeared on 17.10.2022. Sri. Mohammad Bande Ali, Law Attaché for respondent appeared on 01.09.2022, 22.09.2022 and 17.10.2022. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Halo Energies Private Limited (petitioner) has filed the petition under section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking exemption of cross subsidy surcharge (CSS) for a period of 5 years from 31.05.2015 for 2 MW portion and for a period of 5 years from 12.09.2016 on 3 MW portion of the petitioner's project. The averments of the petition are as follows:

- a. It is stated that the petitioner is a company incorporated under the provisions of the Companies Act, 2013 and is engaged in the business of generation and sale of solar power. In pursuance of the same, the petitioner established a Solar Power Project at Kommireddypally Village, Adakkal Mandal, Mahbubnagar District, Telangana.
- b. It is stated that in the year 2015, the Government of Telangana (GoTS) formulated Telangana Solar Power Policy, 2015 with the aim to create an enabling environment for prospective solar power developers to harness substantial quantum of solar power in the best possible manner. The policy aims to encourage solar power production and to ensure a sustainable environment in long run.
- c. It is stated that Section 42 (2) of the Act, 2003 provides for formulation of an open access policy to the consumers, wherein, the generating Companies would be permitted to sell directly to private parties. In pursuance to the same, the erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) formulated open access Regulation No. 2 of 2006 (Interim Balancing and Settlement Code for Open Access Transactions). In accordance with the said regulations, the petitioner has been supplying energy directly to 3rd party consumers.
- d. It is stated that as per the Telangana Solar Power Policy 2015, a solar power plant like the petitioner herein who is selling power to third parties within the

State, 100% exemption was to be provided on the CSS for a period of 5 years from the date of commissioning of the solar power plant.

- e. It is stated that the first 2 MW out of 5 MW capacity solar power plant was established and connected to the grid on 02.10.2014 and the same date is considered as the Commercial Operation Date (COD) / synchronization date.
- f. It is stated that another 3 MW of the total 5 MW was synchronized to the grid on 12.09.2016. The same was confirmed by the respondent No.1, through its letter dated 21.04.2018.
- g. It is stated that the Commission vide order dated 27.03.2018 determined the CSS payable by consumers availing open access and located in the State of Telangana.
- h. It is stated that the Commission vide order dated 18.04.2018 modified the order dated 27.03.2018 had clarified about the exemption of CSS and categorically held that

“While determining the CSS and AS for FY 2018-19. CSS and AS shall not be applicable to solar projects commissioned during the period 01.07.2014 to 31.05.2015 i.e., the intervening period between the AP Solar Policy 2012 and new Telangana Solar Power Policy 2015 as per the Telangana State Govt. letter no.1380/Budget.A2/2015 dated 29.03.2016. Effective date for availing the incentive will be from the issue of the Telangana Solar Power Policy i.e., 01.06.2015.”

- i. It is stated that therefore, in accordance with the terms and conditions of the Telangana Solar Power Policy 2015 and the orders passed by the Commission, the petitioner is exempted from paying the CSS during the period 01.07.2014 to 31.05.2015 and is also entitled to exemption of CSS for a period of 5 years from 31.05.2015 on the 2 MW portion and for a period of 5 years from 12.09.2016 on the 3 MW portion.
- j. It is stated that the respondents erroneously considered the commercial operation date for the entire 5 MW solar power plant as 02.10.2014 and started to deduct CSS from the bills of the petitioner's consumers from the month of October, 2019 in gross violation of the orders passed by the Commission. The respondent No.1, contrary to its own stand had also deducted CSS for the periods, June, 2015 to September, 2015, March, 2016 to June, 2016 and August, 2016 to December, 2016 without any basis whatsoever. The cross subsidy surcharge for the periods, June, 2015 to September, 2015 and March, 2016 to June, 2016 were refunded. However, an amount of Rs.22,16,651/-

deducted towards CSS for the period August, 2016 to December, 2016 has not been refunded. The details of illegal levy of CSS is tabulated below:

Period	Cross Subsidy Charged	Cross Subsidy Refund
June, 2015 to September, 2015	Rs.28,36,305/-	Rs.28,36,305/-
March, 2016 to June, 2016	Rs.10,83,591/-	Rs.10,83,591/-
August, 2016 to December, 2016	Rs.22,16,652/-	-

Since the petitioner was selling electricity to third parties under the Open Access Regulations (OA Regulations), the respondent No.1 was recovering the CSS from the bills of the petitioner's 3rd party consumers which would consequentially be adjusted from the payments to be made by the third-party consumers to the petitioner.

- k. It is stated that as the respondent No.1 continued to recover CSS from the bills of the petitioner's consumers from October, 2019, the petitioner filed W.P.No.29086 of 2019 before the Hon'ble High Court of Telangana challenging the action of the respondents in recovering CSS from the bills of the petitioner's consumers. The Hon'ble High Court of Telangana vide order dated 31.12.2019 was pleased to direct the respondents not to take any coercive measures in pursuance of the demand CSS in pursuance of the bills issued for the months of October and December, 2019.
- l. It is stated that despite the directions of the Hon'ble High Court of Telangana the respondent No. 1 continued to deduct CSS every month from October, 2019 till date.
- m. It is stated that the petitioner has also addressed a letter dated 17.01.2020 requesting the respondent No. 1 not to levy CSS.
- n. It is stated that the petitioner has also filed W. P. No. 7118 of 2021 before the Hon'ble High Court of Telangana challenging the action of the respondents in deducting CSS and considering the commercial operation date of both 2 MW portion and 3 MW portion as 02.10.2014.
- o. It is stated that aggrieved by the action of the respondents in considering the commercial operation date of the 2 MW plant for the 3 MW plant and illegally denying the petitioner exemption of CSS, the petitioner is filing the present

petition on the following grounds, which are without prejudice to one another, amongst others which would be raised at the time of hearing.

- i. It is stated that the action of the respondents in treating 02.10.2014 (which is commercial operation date only for 2 MW) as the commercial operation date for entire 5 MW plant is void illegal, arbitrary and violative of Articles 14 and 19 of the Constitution of India.
- ii. It is stated that the respondents have acted in gross violation of the orders of the Commission and started recovering CSS from the bills of the petitioner's consumers from October, 2019 when actually the petitioner is entitled to exemption of CSS from 01.07.2014 to 31.05.2015 and a period of 5 years from 31.05.2015.
- iii. It is stated that the action of the respondents in not providing incentives to eligible power plants alike the petitioner is illegal and against the Telangana Solar Power Policy, 2015. The action of the respondents is discriminatory and displaces the petitioner from a level playing field.
- iv. It is stated that when the Telangana Solar Power Policy, 2015 explicitly states that a solar power plant is entitled to CSS for a period of 5 years from the commercial operation date. In the present case there are two commercial operation dates being 02.10.2014 for the 2 MW plant and 12.09.2016 for the 3 MW plant, then the subsidy would have to be accordingly apportioned as per the deferential commissioning. This would mean that the petitioner is entitled for CSS exemptions for a period of 5 years from 02.10.2014 for the 2 MW portion and for a period of 5 years from 12.09.2016 on the 3 MW portion.
- v. It is stated that the GoTS, Energy Department had issued G.O.Rt.No.79 dated 18.12.2017 stating that CSS has to be repaid to the solar power developers, however, the same is not being followed.

2. Therefore, the petitioner has sought the following reliefs in the petition:

“To declare the petitioner is entitled to exemption of cross subsidy surcharge from 01.07.2014 to 31.05.2015 and for a period of 5 years from 31.05.2015 for the 2 MW portion and for a period of 5 years from 12.09.2016 on the 3 MW portion of the solar project located at Kommireddypally Village, Addakal Mandal, Mahbubnagar District, Telangana and consequently refund the amounts collected towards cross subsidy surcharge.”

3. The petitioner has also filed an Interlocutory Application (I. A.) and reiterated the averments in the original petition. The petitioner/applicant has sought the following relief in the application:

“To direct the respondents not to deduct or recover cross subsidy surcharge from the bills of the petitioner’s consumers.”

4 Subsequently, the petitioner has filed a Memo on 11.08.2022 submitting that the petitioner has withdrawn W. P. No. 29086 of 2019 and W. P. No. 7118 of 2021 filed by it before the Hon’ble High Court of Telangana and annexed the copies of the Orders.

5. The respondent has filed the counter affidavit on 16.09.2022 and the contents of the same are extracted below:

- a. It is stated that the petitioner with an intention of setting up a 5 MW solar power plant has approached the respondent No 1 with a proposal dated 22.11.2012 and the respondent No. 1 vide letter dated 15.02.2013 has issued feasibility approval for setting up of the same.
- b. It is further stated that the respondent No.1 vide letter dated 06.05.2013 has intimated that the 5 MW plant has to be commissioned with the grid within two years (i.e., 25.03.2015) from the date of issuance of the bank guarantee (i.e., 26.03.2013).
- c. It is stated that the petitioner synchronized the 2 MW capacity out of approved 5 MW on 02.10.2014 within 2 years from the date of issuance of bank guarantee whereas commissioned another 3 MW capacity on 12.09.2016.
- d. It is stated that Telangana Solar Power Policy, 2015 came into effect on 01.06.2015. As per the said policy, the power plants synchronized to grid during the period 01.07.2014 to 31.05.2015, i.e., during the intervening period between A.P. Solar Power Policy 2012 and Telangana Solar Power Policy 2015, were given an option for migration to Telangana Solar Power Policy, 2015. The petitioner has opted to migrate to Telangana Solar Power Policy, 2015 and hence the petitioner is considered to be synchronized under the Telangana Solar Power Policy, 2015
- e. It is stated that in light of the above, it is relevant to look at the clause 11 of the Telangana Solar Power Policy, 2015 which is with regard to the Ease of Business – Enabling Provisions which is extracted for ready reference:

“The State, in order to encourage solar based generation, has prepared the following measures for improving the ease of doing business. However the project developer has to ensure that the generation is within the time limit stipulated in the PPA or within a maximum period of 2 years from the date of application whichever is earlier, failing which the provisions under this policy automatically stands cancelled”

In view of the above clause, the synchronization date corresponding to 2 MW capacity i.e., on 02.10.2014 which is within 2 years from the issuance of Bank Guarantee has to be considered as the date of operation of the project of the petitioner. The date of synchronization of 3 MW capacity cannot be treated as the date of operation for the purpose of providing incentives as per clause 11 of Telangana Solar Power Policy, 2015.

- f. It is stated that the Commission vide order dated 27.03.2018 in the matter of determination of CSS and Additional Surcharge for FY 2018-19 directed that the exemption of CSS charges under the policies may be facilitated to the solar power developers subject to reimbursement of the same amounts to respondents by the GoTS and also directed that in the event of non-reimbursement of so exempted CSS the DISCOMs shall continue to levy the CSS as applicable.
- g. It is stated that moreover the plants synchronized during the period 01.07.2014 to 31.05.2015 were given an option for migration to Telangana Solar Power Policy 2015 vide letter No. 1380 / Budget. A 2 / 2015 dated 29.03.2016 and the applicability of incentives as per the said letter for such migrated plants similar to that of the plant of the petitioner is from the date of implementation of the policy i.e., 01.06.2015.
- h. It is stated that a conjoint reading of the Telangana Solar Power Policy, 2015 and the letter No. 1380 / Budget. A 2 / 2015 dated 29.03.2016 makes it clear that the incentives for the petitioner's plant are applicable from 01.06.2015 to 01.10.2019.
- i. It is stated that as per the amended orders of TSERC in O. P. No. 78 & 79 of 2015 and O. P. No. 6 & 7 of 2016, the applicable wheeling charges and CSS in respect of solar generator have been exempted subject to condition of reimbursement of the exempted amount by the GoTS to the DISCOMs and in the event of non-reimbursement by the GoTS, the DISCOMs shall continue to levy the applicable charges plus the sum accrued as arrears from the

consumers who are availing solar energy and who are exempted from payment of wheeling charges and CSS. As per the Telangana Solar Power Policy, 2015 the CSS amount exempted was transferred to State Government receivable account till September 2019 but not refunded as averred by the petitioner.

- j. It is stated that as the GoTS did not reimburse the incentive amounts of CSS/wheeling charges as per the Telangana Solar Power Policy, 2015, a letter was addressed to the Special Chief Secretary to the GoTS Energy Department with a request to reimburse the wheeling charges and CSS but the GoTS has not reimbursed any amount till July 2019.
- k. It is stated that subsequently, some of the solar generators have made representations to the Special Chief Secretary to Energy Department with a request to issue instructions to TSSPDCL not to levy the CSS and wheeling charge until the DISCOM receive the funds from the GoTS. The Special Chief Secretary to GoTS has forwarded the representations of the solar generators with a request to take necessary action as per the rules in the matter vide letter No.3071 / PR. A2 / 2019-1, Dt:16.09.2019.
- l. It is stated that therefore, based on the Commission's order in O. P. No. 78 & 79 of 2015 and O. P. No. 6 & 7 of 2016, whereby the Commission held that if reimbursement amount is not received from the Government, the DISCOMs can levy and collect the applicable wheeling charges and CSS, demand notices were issued to the scheduled consumers of the petitioner for payment of CSS. On receipt of such notice the generator filed W. P. No. 29086 of 2019 and obtained stay. Hence, the CSS amount till the period of stay is transferred to the court case account but the amount is neither refunded nor withdrawn as stated by the generator. The dues payable to end of policy period (i.e., September 2019) are shown below:

SC. No.	Name of the Consumer	Amount
BJH922	M/s I Labs HTC Pvt Ltd	1,80,08,780
HBG1509	M/s IDEA Cellular Ltd	1,19,02,183
Total		2,99,10,963

- m. It is stated that the consumers of the petitioner are liable to pay the CSS in view of non-reimbursement of CSS from the State Government in accordance with the directions of the Commission vide order dated 27.03.2018 in the matter of determination of CSS and Additional Surcharge for FY 2018-19.

- n. It is stated that the Writ Petitions W. P. No. 29086 of 2019, W. P. No. 7118 of 2021 filed by the petitioner before the Hon'ble High Court of Telangana were withdrawn by the petitioner itself and accordingly, the Hon'ble High Court by orders dated 11.02.2022 and 24.01.2022 had disposed of the same.
- o. It is stated that the synchronization date corresponding to 2 MW capacity i.e., on 02.10.2014 which is within 2 years from the issuance of Bank Guarantee is considered as date of operation of the project of the petitioner. The date of synchronization corresponding to the remaining 3 MW capacity cannot be treated as date of operation for the purpose of providing incentives as per clause 11 of Telangana Solar Power Policy, 2015.
- p. It is stated that with regard to the contention of the petitioner in respect of the periods of applicability of the incentives for the plants synchronized during the period 01.07.2014 to 31.05.2015 were given an option for migration to Telangana Solar Power Policy, 2015 vide letter No. 1380 / Budget. A 2 / 2015 dated 29.03.2016 and the applicability of incentives as per the said letter for such migrated plants similar to that of the plant of the petitioner is from the date of implementation of the policy i.e., 01.06.2015. In view of the above, since the petitioner has availed the option to migrate to Telangana Solar Power Policy, 2015, the incentives for the petitioner's plant are only applicable from 01.06.2015 to 01.10.2019.
- q. It is stated that moreover, the Commission vide order dated 27.03.2018 in the matter of determination of CSS and Additional Surcharge for FY 2018-19 directed that the exemption of CSS charges under the policies may be facilitated to the solar power developers subject to reimbursement of the same amounts to respondents by the GoTS and also directed that in the event of non-reimbursement of so exempted CSS the DISCOMs shall continue to levy the CSS as applicable. The relevant extract of the Commission order is as follows:

“6.2 Provided that the CSS shall not be applicable to the solar power projects as per the policy directive of the then Government of Andhra Pradesh and Government of Telangana State as given below:

A.P. Solar Power Policy, 2012	Telangana Solar Power Policy, 2015
Cross Subsidy Surcharge	

Cross subsidy surcharge shall not be applicable for Open Access obtained for third party sale within the state subject to the industries maintaining their demand within its contracted demand with the DISCOMs. It is not applicable for captive use.
These incentives will be in force for a period of seven years from the date of implementation of the Policy.

For SPP located within the state and selling power to third parties within the state, 100% exemption shall be provided on the cross subsidy surcharge as determined by TSERC for five years from the date of commissioning of the SPP.”

- 6.4 *Provided further that the Government of Telangana State shall reimburse the DISCOMs, the sum of money foregone by them due to the exemption of the CSS to the solar power projects. In the event of non-reimbursement by the Government of Telangana State of the CSS so exempted, the DISCOMs shall continue to levy the CSS as applicable.”*

In view of the above direction of the Commission, the respondent company has been levying the CSS to all open access consumers including the petitioner's consumers from the months of October 2019 since there is no reimbursement from the State Government.

- r. It is stated that hence, the allegations made by the petitioners that are not specifically dealt with herein are denied by this respondent. The petitioner may be put to strict proof of the same.
- s. It is prayed the Commission to dismiss the petition with costs.
6. The Commission has heard the parties and also considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 20.12.2021:

“... .. counsel for petitioner is present. He stated that the petitioner is taking steps to withdraw the writ petition filed before the Hon'ble High Court on the subject matter and sought adjournment by a week for reporting the same. The Commission made it clear unless the writ petition is withdrawn, this matter cannot be proceeded with. The Commission sought to know the time to withdraw the writ petition pending before the Hon'ble High Court. The counsel for petitioner stated that the matter may be scheduled for hearing after two weeks. Accordingly, the matter is adjourned.”

Record of proceedings dated 17.01.2022:

“... .. The counsel for petitioner stated that necessary application had been made for withdrawal of the writ petition before the Hon'ble High Court. The said application was also numbered, but it has not been listed for the reason that the Hon'ble High Court was in Sankranti vacation. The matter may be adjourned

to any other date and in the meantime the petitioner will obtain orders on the withdrawal application. Accordingly, the matter is adjourned.”

Record of proceedings dated 18.04.2022:

“... .. There is no representation for petitioner. The Commission, having noticed that the adjournment was granted earlier to apprise it about the withdrawal of the writ petition filed by the writ petitioner, finds no information placed on record. However, Sri Deepak Chowdary, Advocate assisted the Commission by stating that the writ petition filed by the petitioner has been withdrawn, which information, he is in the know of the same. In view of the situation obtaining the matter, the petition is adjourned.”

Record of proceedings dated 11.08.2022:

“... .. The counsel for petitioner stated that as directed by the Commission, the petitioner has withdrawn the writ petitions in W.P.No.7118 of 2021 and W.P.No.29086 of 2018. He has filed a memo duly enclosing the order passed by the Hon’ble High Court in the respective writ petitions. In view of the above, he requested the Commission to take the petition on the file of the Commission. The Commission, considering the memo filed by the counsel for petitioner, is agreeable to take the petition on record. The office is directed to number the petition and application as also issue notice to the parties in the matter. The matter is adjourned.”

Record of proceedings dated 1.09.2022:

“... .. The representative of the respondents sought further time for filing counter affidavit in the matter. The counsel for petitioner stated that the issue in the present petition is very small, for which time is being sought again for filing counter affidavit. The representative of the respondents stated that he needs some more time for filing counter affidavit. In view of the request made by the representative of the respondents, the matter is adjourned by observing that the counter affidavit shall be filed immediately duly serving a copy on the petitioner and rejoinder, if any shall also be filed by the petitioner by serving a copy to the respondents.”

Record of proceedings dated 22.09.2022:

“... .. The advocate representing the counsel for petitioner stated that the counter affidavit has been received and a rejoinder is required to be filed in the matter. Hence adjournment may be granted for filing rejoinder and hearing. The representative of the respondents has no objection. Considering the submissions of the parties, the matter is adjourned.”

Record of proceedings dated 17.10.2022:

“... .. The senior advocate appearing for the petitioner has submitted the background of the case. He has explained the need for exempting the petitioner from the levy of cross subsidy surcharge. The respondent did not consider the orders of the Commission in the matter duly taking into account the various dates of synchronisation of the project for the respective capacities. The representative of the respondent reiterated the contentions in the counter affidavit. He also sought permission of the Commission to file written submissions in the matter. As such, permission has been accorded for filing the same. Having heard the submissions of the parties, the matter is reserved for orders.”

7. The respondents have filed written submissions on 18.10.2022 and the same are extracted below:

- a. It is stated that the petitioner with an intention of setting up a 5 MW solar power plant has approached the respondent No.1 with a proposal dated 22.11.2012. The respondent No.1 as it then was (APCPDCL) vide letter dated 06.05.2013 has intimated that the proposed 5 MW plant shall be commissioned with the grid within two years from the date of issuance of the bank guarantee (i.e., 26.03.2013). Hence, the petitioner was required to commission the proposed 5 MW project on or before 25.03.2015.
- b. It is stated that the petitioner instead of commissioning/synchronizing its 5 MW solar plant, commissioned plant of 2 MW capacity out of approved 5 MW on 02.10.2014 i.e., within 2 years from the date of issuance of Bank Guarantee.
- c. It is stated that the petitioner commissioned its plant for the balance 3 MW capacity on 12.09.2016 i.e., after 2 years from the date of issuance of Bank Guarantee.
- d. It is stated that Telangana Solar Power Policy, 2015 came into effect on 01.06.2015. As per the said policy, the power plants synchronized to grid during the period 01.07.2014 to 31.05.2015 i.e., during the intervening period between A.P. Solar Power Policy 2012 and Telangana Solar Power Policy 2015, were given option for migration to Telangana Solar Power Policy, 2015. The petitioner opted to migrate to Telangana Solar Power Policy, 2015 and hence the petitioner gets coverage under the Telangana Solar Power Policy, 2015.
- e. It is stated that the clause 11 of the Telangana Solar Power Policy, 2015 which is with regard to the Ease of Business – Enabling Provisions which is already extracted below for ready reference:

“The State, in order to encourage solar based generation, has prepared the following measures for improving the ease of doing business. However the project developer has to ensure that the generation is within the time limit stipulated in the PPA or within a maximum period of 2 years from the date of application whichever is earlier, failing which the provisions under this policy automatically stands cancelled“

- f. It is stated that it thus becomes very much clear that to avail the benefit of incentive under Telangana Solar Power Policy, 2015, the solar developer shall commission/synchronize his project within 2 years from the date of application. In the present case admittedly, the petitioner did not commission/synchronize his project for entire capacity of 5 MW within 2 years either from the date of application or at least from the date of furnishing Bank Guarantee.

- g. It is stated that in view of non-commissioning of the entire project within 2 years from the date of application or furnishing of bank guarantee, the petitioner is not entitled to any incentive. The petitioner by commissioning the project/plant for less than half capacity i.e., 2 MW cannot contend to have commissioned the plant. However, the respondent granted incentives for the plant (2 MW) commissioned within the stipulated period of 2 years.
- h. It is stated that it is also an admitted fact that the petitioner commissioned/synchronized its plant for 3 MW capacity on 12.09.2016 i.e., after about 1½ years of the stipulated period. Therefore, the petitioner is not entitled to claim any benefit/incentive under Telangana Solar Power Policy, 2015.
- i. It is stated that learned counsel for the petitioner submitted in a very casual manner that the respondent has not been granting eligibility for CSS exemption (incentive) by taking the date of synchronization of 3 MW capacity plant i.e., 12.09.2016.
- j. It is stated that the petitioner having come up with the proposal of establishing a plant of 5 MW on 22.11.2012 was not covered by A.P. Solar Power Policy 2012. Subsequent to formation of the Telangana State, Telangana Solar Power Policy, 2015 came into effect on 01.06.2015.
- k. It is stated that at the request of petitioner and others similarly situated developers to the Government of Telangana, they were permitted to migrate to the Telangana Solar Power Policy, 2015 which came into effect from 01.06.2015 vide letter No.1380 / Budget. A 2 /2015 dated 29.03.2016. As per the said letter the incentives covered by Telangana Solar Power Policy, 2015 are applicable from the date of implementation of the policy i.e., 01.06.2015. Therefore, the petitioner is not entitled to incentives i.e., CSS exemption from the date of COD of 2 MW that is 02.10.2014. The relevant portion of the aforementioned letter of the Government is extracted below:

“I am to invite attention to the references cited. Government after careful examination of the proposals submitted by the Chairman & Managing Director, TS-SPDCL vide reference 3rd cited hereby orders that the Solar Projects commissioned during the period 01.07.2014 to 31.05.2015 (i.e., the intervening period between AP Solar Policy 2012 and New Telangana Solar Power Policy 2015) shall be given option for migration into Telangana Solar Power Policy 2015 and the effective date for availing the incentives will be from the issue of the Telangana Solar Power Policy i.e., Dt: 01.06.2015.

2. *The Chairman & Managing Director, TS-SPDCL is requested to communicate to all such units commissioned during the above period and also requested to appraise the Secretary, TSERC in the matter.*”

- i. It is stated that in view of the categorical policy of the Government to provide incentives to the solar power developers who opted to be covered under Telangana Solar Power Policy, 2015 from the date of the implementation of the policy i.e., 01.06.2015, the petitioner cannot claim incentive i.e., exemption of CSS from the date of COD for the reason that the policy 2015 cannot be applied retrospectively though the plant of the petitioner for 2 MW was commissioned on 02.10.2014. Hence, the claim of the petitioner for the exemption of CSS for the period from 02.10.2014 to 31.05.2015 becomes untenable and hence deserves to be rejected.
- m. It is stated that a conjoint reading of the Telangana Solar Power Policy, 2015 and the letter No. 1380 / Budget. A 2 / 2015 dated 29.03.2016 makes it clear that the incentives for the plant of the petitioner is applicable from 01.06.2015 to 01.10.2019 only since the petitioner cannot invoke the application of Telangana Solar Power Policy, 2015 retrospectively. Hence, the contention of the petitioner that it is entitled for CSS exemption for a period of 5 years from 02.10.2014 becomes untenable being baseless.
- n. It is stated that it is pertinent to submit here that the Commission vide order dated 27.03.2018 in the matter of determination of CSS and Additional Surcharge for FY 2018-19 directed that the exemption of CSS under the policies may be facilitated to the solar power developers subject to reimbursement of the same amounts to respondents by the GoTS and also directed that in the event of non-reimbursement of so exempted CSS the DISCOMs shall continue to levy the CSS as applicable. The relevant extract is available in the submissions of the respondent.
- o. It is stated that the petitioner cannot claim incentives/exemption of CSS for the balance 3 MW plant since the petitioner failed to commission the plant for 3 MW within 2 years from the date of furnishing application or furnishing of bank guarantee. At the cost of reiteration, it is stated that the period of two years from the date of issuance of the bank guarantee i.e., 26.03.2013 comes to end by 25.03.2015 and whereas the petitioner commissioned its 3 MW plant on 12.09.2016. Hence the contention of the petitioner i.e., is entitled for CSS

exemption for a period of 5 years from 12.09.2016 becomes untenable being baseless.

p. Hence, it is prayed the Commission to dismiss the petition.

8. The issues that arises for consideration is, whether the petitioner is entitled to the relief of exemption of CSS for its 5MW (2 MW + 3 MW) Solar Power Project in terms of the Telangana Solar Power Policy, 2015?

9. The prayer made in the petition is "*to declare that the petitioner is entitled to exemption of CSS from 01.07.2014 to 31.05.2015 and for a period of 5 years from 31.05.2015 for the 2 MW portion and for a period of 5 years from 12.09.2016 for 3 MW portion of its solar project.*"

10. The respondents contention is for dismissal of the petition by making reliance over the provisions in Telangana Solar Power Policy, 2015, Government of Telangana letter dated 29.03.2016, the amendment order passed by the TSERC in O. P. No. 21 & 22 of 2017 dated 18.04.2018, the amendment order issued by the TSERC in O. P. No. 6 & 7 of 2018 dated 31.12.2016 relating CSS and the amendment order issued by TSERC in O. P. No. 78 & 79 of 2015 dated 06.04.2017 relating wheeling tariff for distribution business for 3rd control period FY 2014-15 to FY 2018-19.

11. The undisputed facts are on the proposal dated 22.11.2012 of the petitioner for setting up 5 MW Solar Power Plant under 3rd party sale, the 1st respondent vide letter dated 15.02.2013 has issued feasibility approval for setting up of the same. The Bank Guarantee was issued by petitioner on 26.03.2013. The 1st respondent asked the petitioner vide letter dated 06.05.2013 that the plant shall be commissioned with the grid within two (2) years from the date of issuance of Bank Guarantee i.e., 26.03.2013. Whereas out of 5 MW, the petitioner synchronised 2 MW capacity on 02.10.2014 which was within two (2) years from the date of Bank Guarantee and the remaining 3 MW was synchronised on 12.09.2016 which was after two (2) years from the date of Bank Guarantee. The A.P. Solar policy 2012 was there for the Composite State of Andhra Pradesh prior to the issuance of the Telangana Solar Power Policy, 2015. An option was given to the Solar Power Developers as per Government of Telangana letter No.1380/Budget.A2/2015, dated 29.03.2016 for opting Telangana Solar Power Policy, 2015 whose Solar Projects were commissioned during the period 01.07.2014

to 31.05.2015 (i.e., intervening period between AP Solar Policy 2012 and New Telangana Solar Power Policy 2015) and the effective date for availing the incentives will be from the issue of the Telangana Solar Power Policy i.e., dated 01.06.2015. The petitioner opted to migrate to Telangana Solar Power Policy, 2015.

12. Now it is to be seen whether the petitioner is entitled or not for the benefits of Telangana Solar Power Policy, 2015 in view of petitioner consenting to govern under Telangana Solar Power Policy, 2015. The Clause 11 of Telangana Solar Power Policy, 2015 says that the provisions under the policy automatically stands cancelled if the project developer fails to ensure the generation within the time limit stipulated in the Power Purchase Agreement (PPA) or within a maximum period of 2 years from the date of application whichever is earlier. Further, the Clause 11(g) of Telangana Solar Power Policy, 2015 says that for SPP located within the state and selling power to third parties within the state, 100% exemption shall be provided on the cross subsidy surcharge as determined by TSERC for five years from the date of commissioning of the SPP.

13. The Commission in the order dated 27.03.2015 of O.P.No.76 & 77 of 2015 while determining the cross-subsidy surcharge under Sections 39, 40 and 42 of the Electricity Act, 2003 for FY 2015-16 mentioned the Cross Subsidy Surcharge rates determined in the order are effective from 1st April 2015 to 31st March, 2016. The Commission subsequently has received representations from the consumers and consumer organisations stating that the application of the cross-subsidy surcharge from a retrospective date to the order is affecting them. In order to remove that difficulty the Commission *Suo Moto* issued an amendment order dated 07.05.2015 to the original order dated 27.03.2015 and under amended order it is stated that the cross subsidy surcharge rates determined in this Order are effective from 1st May, 2015 to 31st March, 2016.

14. This commission had an occasion to consider the determination of cross subsidy surcharge at the time of issuing the Retail Supply Tariff order in O. P. No. 06 & 07 of 2016 dated 23.06.2016 for the FY 2016-17 and the computation of CSS has been made DISCOM wise, voltage wise cross subsidy surcharge for different categories applicable to consumers availing open accesses at different voltages in the area of supply of respective Licensees.

15. This Commission in the order dated 26.08.2017 of O. P. No. 22 & 23 of 2017 while determining the cross subsidy surcharge for the FY 2017-18 has computed TSDISCOM-wise, voltage-wise cross subsidy surcharge for different categories applicable to consumers availing of open access at different voltages in the area of supply of the respective Licensees. Since the Commission has not approved any Tariff increase in the Retail Supply Tariff Order for FY 2017-18, the cross subsidy surcharge applicable for FY 2017-18 has been determined to be the value of the cross subsidy surcharge already approved for FY 2016-17.

16. In the mean while one of the Consumer i.e. M/s Agarwal Foundries Private Limited, HT-I category consumer [HT SC No. SDP-893 and RRN-620] of TSSPDCL and a member of the Federation of Telangana Chambers of Commerce and Industry (FTCCI, formerly FTAPCCI), had questioned the CSS order for FY 2016-17 before the Hon'ble High Court by filing W. P. Nos. 36090 & 36103 of 2016, inter alia I. A. No. 1 of 2018 and with the common order dated 31.08.2008 the TSERC order in O. P. No. 06 of 2016 was set aside by the Hon'ble High Court and has directed TSERC to provide hearing to the Petitioners and to the FTCCI, consider their objections to the levy of cross subsidy surcharge proposed by 2nd respondent (TSSPDCL) for FY 2016-17 and then pass a fresh reasoned order after considering all the objections. Following the said decision, the Hon'ble High Court has allowed several other batch Writ Petitions and in the common orders dated 30.10.2018 and 20.11.2018, order in O. P. No. 06 of 2016 was set-aside. Pursuant to these orders, some of the petitioners have filed separate original petitions before the Commission which are identical in nature with a prayer "*to declare that no cross subsidy surcharge need to be collected by the respondent for the FY 2016-17*", Aggrieved by the order of the learned single Judge of the Hon'ble High Court, the Commission filed Writ Appeals vide W. A. Nos. 3 & 4 dated 03.01.2019 challenging the common order dated 31.08.2018 and W. A. Nos. 111 & 112 of 2019 challenging the common order dated 30.10.2018 and 20.11.2018 before the Division Bench of Hon'ble High Court. The Hon'ble High Court dismissed the Writ Appeals with a common Judgement dated 07.03.2019 by giving directions to the Commission to consider the objections filed by writ petitioners same in accordance with law and by following due procedure as per the Regulations.

17. Accordingly, the Commission undertook the compliance of the directions of Hon'ble High Court and passed a fresh order in O. P. No. 06 & 07 of 2016 on 11.03.2020. In that order it has been stated that the CSS shall not be applicable to the SPPs as per the policy directions given under Section 108 of the Act 36 of 2003 by the Government of Telangana vide letter No. 608 / Pr. (A2) / 2016 dated 17.12.2016 to adopt the Telangana Solar Power Policy, 2015 and A.P. Power Policy, 2012.

18. This Commission issued an amendment order dated 18.04.2018 for the original order dated 27.03.2018 of O. P. No. 21 & 22 of 2017 under which Para 2.1.5 and Para 6.5 of the original order were amended and they as following:

2.1.5 The Commission has given due consideration to the stakeholders' submissions and the replies of the Licensees while determining the CSS and AS for FY 2018-19. CSS and AS shall not be applicable to solar projects commissioned during the period 01.07.2014 to 31.05.2015 i.e., the intervening period between the AP Solar Policy 2012 and new Telangana Solar Power Policy 2015 as per the Telangana State Govt. letter no.1380/Budget.A2/2015 dated 29.03.2016. Effective date for availing the incentive will be from the issue of the Telangana Solar Power Policy i.e., 01.06.2015

6.5 As per para 8(b) of the AP Solar Power Policy, 2012 effective from 26.09.2012 (Solar Policy, 2012) for solar power projects located (SPP) within the state and selling power to third parties within the state, 100% exemption is provided on the CSS for seven years from the date of implementation of the Policy. As per para 11 (g) of the Telangana Solar Power Policy, 2015 effective from 01.06.2015 (Solar Policy 2015) for solar power projects (SPP) located within the Telangana state and selling power to third parties within the state, 100% exemption is provided on the CSS as determined by TSERC for five years from the date of commissioning of the SPP. Also, as per para 7 of the Solar Policy, 2012 and para 11 (e) of the Solar Policy, 2015, banking of 100% of energy shall be permitted for all captive and open access / scheduled consumers during all 12 months of the year. Based on the aforesaid the developers have entered into PPAs with third parties. The solar policies do not specifically mention about AS but to encourage the renewable energy projects established under the Solar Policy 2012 and Solar Policy 2015, AS shall not be levied on such SPPs commissioned during the operative period of the Solar Policy, 2012 and Solar Policy 2015. The projects not commissioned under the Solar Policy 2012 and Solar Policy 2015 will be liable to pay AS to DISCOMs. This applies to wind generators also which are under operation and with PPAs. For new wind based projects, AS shall be levied."

19. The determination of CSS is the exclusive domain of the Commission which is subject to subvention that may be extended by the State Government under Sections 65 and 108 of the Act, 2003 from time to time. Whenever, the Commission has

considered the waiver of CSS for third party sale by solar generators, it has been made specifically clear that such waiver is subject to reimbursement being made by the State Government.

20. The 5 MW plant of the petitioner synchronised with Grid in two parts. The 1st part i.e., 2 MW was synchronised on 02.10.2014 and 2nd part i.e., 3 MW was synchronised on 12.09.2016. Therefore, basing on the date of 2nd part (3 MW) synchronisation i.e., 12.09.2016 at no stretch of imagination it can be said the entire 5 MW plant was synchronised after the effective date of Telangana Solar Power Policy, 2015 for the entitlement for 100% exemption from cross subsidy surcharges. The petitioner is not at all eligible and entitled for 100% exemption of CSS for the 2 MW (1st part) of SPP for the reason it is commissioned on 02.10.2014 i.e., prior to the effective date of Telangana Solar Power Policy, 2015. The amended order issued by the TSERC in O. P. No. 21 and 22 of 2017 dated 18.04.2018 prohibits petitioner from such entitlement and the provisions of Telangana Solar Power Policy, 2015 can't be applied retrospectively. Now coming to entitlement or eligibility of 100 % CSS for 3 MW (2nd part) of Solar Power Plant which was synchronised with the grid on 12.09.2016. As stated above the Clause 11 of Telangana Solar Power Policy, 2015 relating to EASE OF BUSINESS -ENABLING PROVISIONS says that the provisions under the policy automatically stands cancelled if the project developer fails to ensure generation within the time limit stipulated in the PPA or within a maximum period of 2 years from the date of application whichever is earlier. In the case on hand the question of generation of solar power within the stipulated period of PPA does not arise as it appears no PPA has been executed in between the parties. Now there remains the question of generation of energy with in maximum two (2) years period from the date of application.

21. The petitioner submitted proposal (application) for establishing 5 MW Solar Power Project on 22.11.2012 and after giving the feasibility for the proposal 1st respondent asked the petitioner vide letter dated 06.05.2013 that the plant shall be commissioned with the grid within two (2) years from the date of issuance of Bank Guarantee i.e., 26.03.2013. This statement of respondents has not been refuted by the petitioner. So, the date of proposal or application can be said if not as 22.11.2012 then as 26.03.2013 (Bank Guarantee date). If two (2) years period of the application

as mentioned in the Clause 11 of Telangana Solar Power Policy, 2015 is calculated from the date of Bank Guarantee i.e., 26.03.2013 then such two (2) years period comes to an end by 25.03.2015. Admittedly the synchronisation 3 MW (2nd part) was on 12.09.2016 which is much after the date of 25.03.2015. In such a situation the petitioner shall not become eligible for exemption of cross subsidy surcharge even for the 3 MW (2nd part).

22. It is the grievance of petitioner that 1st respondent for the period June 2015 to September 2015 deducted Rs. 28,36,305/- for the period March 2016 to June 2016 deducted Rs.10,83,591/- and for the period August 2016 to December 2016 deducted Rs.22,16,652/- towards cross subsidy surcharge illegally and later on except the amount of Rs.22,16,652/- (the alleged cross subsidy surcharge deduction for the period August 2016 to December 2016) the other two periods cross subsidy surcharge deductions are refunded. It is made to understand from the submissions of respondents that in view of Commission issuing amendment order in O. P. Nos. 06 & 07 of 2016 dated 31.12.2016 for the Retail Supply Tariffs and Cross Subsidy Surcharges for the year 2016-17 they constrained to withhold the amount of Rs. 22,16,652/- deducted for cross subsidy surcharge for the period from August 2016 to December 2016 for want of reimbursement from the Government of Telangana and that amount transferred to the Government receivable account.

23. In that amended order the proviso which was added to Paragraph 2.27 of the original order dated 22.06.2016 says that the Government of Telangana shall reimburse the DISCOMS, the sum of money accrued due to the exemption of CSS to the Solar Power Projects as stated in the first proviso to the Para 2.27 and in the event of non-reimbursement by the Government of the cross subsidy surcharge so exempted, the DISCOMs shall continue to levy the cross subsidy surcharge as applicable before this amendment plus the sum accrued as arrears from such consumers who are exempted under the amended order. According to respondents the Government of Telangana did not make reimbursement of CSS and Wheeling charges as per the Telangana Solar Power Policy, 2015 despite addressing a letter to the Special Chief Secretary, Energy Department of Government for reimbursement. The Special Chief Secretary to Energy Department upon the representations of some of the Solar Generators who requested for issuance of instructions to TSSPDCL not

to levy the cross subsidy surcharge and wheeling charges has forwarded those representations with a letter dated 16.09.2019 bearing No.3071 / PR. A2 / 2019-1 wherein it is said to take necessary action as per the rules. The Government has not made reimbursement of cross subsidy surcharge and wheeling charges, therefore demand notices were issued to the scheduled consumers of petitioner for payment of cross subsidy surcharge.

24. It appears that due to non-reimbursement of cross subsidy surcharge by the Government of Telangana the respondents were compelled to levy cross subsidy surcharge on third party consumers of the petitioner/Generator and they are likely to refund or adjust in future demand bills of the third-party consumers of the petitioner once the reimbursement of cross subsidy surcharge is made by the Government of Telangana.

25. The action of the respondents particularly 1st respondent is in conformity with the provisions Telangana Solar Power Policy 2015, the amendment order passed by the Commission in O.P.Nos.21 & 22 of 2017 dated 18.04.2018, the common order issued by the Commission in O.P.Nos.06 & 07 of 2016 dated 11.03.2020 relating cross subsidy surcharge and the amendment order issued by Commission dated 07.05.2015 in O.P.Nos.76 & 77 of 2015.

26. The original petition is disposed of in terms of the observations in the preceding paragraphs but in the circumstances without any costs.

27. Since the Commission has disposed of the original petition by passing final orders, therefore, there is no necessity of adverting to the contentions raised in the Interlocutory Application. Accordingly, the same stands closed.

This order is corrected and signed on this the 20th day of March, 2023.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M. D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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