

HIGH COURT OF ANDHRA PRADESH

MAIN CASE No: W.P.No.27320 of 2023

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE.
01.	16.10.2023	<p><u>RC,J</u></p> <p style="text-align: center;"><u>W.P.No.27320 of 2023</u></p> <p>Notice before admission.</p> <p>Sri Metta Chandrasekhar Rao, learned standing counsel takes notice for R6.</p> <p>Learned Government Pleader for Energy takes notice for R2.</p> <p>Sri V.R.Reddy Kovvuri, learned standing counsel takes notice for R5 and R7.</p> <p>Sri N.Harinath, learned Deputy Solicitor General takes notice for R1.</p> <p>Learned counsel for the petitioners is permitted to take out personal notice on the Respondent nos.3 and 4 through RPAD and file proof of service before the Registry.</p> <p>Post on 06.11.2023.</p> <p style="text-align: right;">_____ RC, J</p> <p style="text-align: center;"><u>I.A.NO.02/2023</u></p> <p>Heard.</p> <p>Sri Aniket Prason, learned counsel representing learned counsel for the petitioner contended that, pursuant to the tenders invited by the 3rd respondent, the petitioners being successful bidders entered into two agreements ie., Power Purchase Agreement(PPA) and Power Sale Agreement(PSA) wherein the petitioners have</p>	

to generate renewable energy and supply to 3rd respondent. He further contended that, as per the agreement, there is a condition that, the 3rd respondent has to obtain unconditional adoption tariff from the Central Regulatory Commission within 60 days from date of signing the agreement and unless the unconditional adoption of tariff is fixed, the petitioners cannot commence the project. He further submitted that, in the present case, though the agreement was entered in the year 2021, till today, the authorities have not placed unconditional adoption tariff.

He further contended that, after entering into agreements, one Sri Rama Krishna has filed PIL vide PIL.No.76/2022 before this Court and the same is pending adjudication and no interim orders are passed to his knowledge. He further contended that, pending PIL, Central Regulatory Commission has fixed adoption tariff, subject to the outcome of the PIL. Now, basing on the same, the 3rd respondent is insisting the petitioners to commence with the project.

Learned counsel for the petitioner further contended that, in this regard the 3rd respondent has sent communication dated 12.10.2023 to the petitioners stating that, due to pendency of PIL in AP High Court, the petitioners are not going ahead with the implementation of Projects and stated that the petitioners will get back on possible resolution of the matter by 30.09.2023, and requested to clear the petitioners stand on the 2333 MW capacity by 06:00 pm of 16.10.2023 so that further view/suitable action can be taken in line with the provisions of the PPA & Rfs Documents”.

He further submitted that, to the said

communication, the petitioners have given his reply dated 16.10.2023 duly stating that, on conditional adoption tariff fixed by the Central Regulatory Commission, it has become impossible to perform and thereby requested to return the bank guarantee and refrain the respondents from taking any coercive steps against the petitioner. He further submitted that, the authorities are contemplating to revoke bank guarantee at any moment and if the same is allowed to happen, the petitioners will be put to irreparable loss and great hardship for no fault on their behalf. He further submitted that, when such a condition has been imposed no banks will come forward to give loans to the petitioners.

In support of his contentions, he relied on the judgment of Appellate Tribunal for Electricity at New Delhi and contended that, though the said order is not binding it has persuasive value, the conditional adoption of tariff cannot be fixed and by virtue of the same they cannot insist the petitioners to proceed with the project. As such prayed to protect the interest of the petitioners.

Perused the record.

The relevant conditions 2.1.2 in the Power Purchase Agreement(PPA) and Power Sale Agreement (PSA) reads as follows:

"...2.1.2. Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under SECI-SPD PPA shall be that within 60 days from the date of submission to the Appropriate Commission, the Buying Entity (ies) shall obtain all requisite approvals including approval of PSA (including adoption of tariff and trading margin) Com its State Electricity Regulatory Commission and/ or CFRC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying

Entity(ies). The Parties agree that in the event, the order of adoption of tariff, trading margin and the approval of PPA & PSA, as mentioned above is not issued by the SERC and/ or CERC (as applicable) within the time specified above, the provisions of Article 2.1.3 of SECI SPD PPA shall apply. Any liability other than ISTS charges and losses arising on account of termination of such PAs to SECI shall be settled by the Buying Entity....”

In the present case, the Central Regulatory Commission has passed orders fixing adoption tariff subject to the outcome of the PIL referred supra. As rightly contended by the learned counsel for the petitioners that, when such a condition has been imposed no banks will come forward for giving loans to the petitioners. In these circumstances proceeding with the project by the petitioners, prima facie would be difficult. In the proceedings dated 12.10.2023, they have categorically mentioned and sought plan of action from the petitioners by 6:00 pm of 16.10.2023, now the petitioners are apprehending that, the respondents may invoke bank guarantee. Prima facie, a point is made out for consideration in the present writ petition. In the event, if the respondents take any coercive steps against the petitioners, it not only affects the rights of the petitioners but also the purpose of filing the writ petition would be defeated. As such this Court is inclined to pass the following order, as an interim measure:

The 3rd respondent is hereby directed not to take any coercive steps pursuant to the letter dated 12.10.2023 till next date of hearing.

RC, J

BRS