

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI

On this the 31st day of January' 2022
C.G.No.45 /2021-22/ Nellore Circle

Present

Sri. Dr. A. Jagadeesh Chandra Rao
Sri. Y. Sanjay Kumar
Sri. K. Ramamohan Rao
Sri. Dr. R. Surendra Kumar

Chairperson
Member (Technical)
Member (Finance)
Independent Member

Between

Indira Power (P) Ltd Rep by its authorized signatory
M. Gurumurthy,
1644 E, Sarayu Apartments, H-Block,
16th Main road, 14th Street,
Anna Nagar,
Chennai- 600040,
Tamilnadu.

Complainant

AND

1. Superintending Engineer/O/Nellore
2. Senior Accounts Officer/O/Nellore
3. Chief General Manager/O/Tirupati
4. Chief General Manager/R& IA/Tirupati
5. Executive Director/RAC & Plg.&IPC/Tirupati

Respondents

ORDER

1. Mr. Gurumurthy authorized signatory of the complainant filed this complaint.

The averments of the complaint in brief are:-

Incentives were offered for seven years for all those who commission the solar PV power plants as per A.P. Solar Policy, 2012 within the deadline on or before 30.06.2014. Complainant has commissioned their solar plant on 30.6.2014, They are eligible to avail the benefits mentioned in the AP. Solar Policy, 2012 for seven years from the date of commissioning i.e., from 30.06.2014 to 29.06.2021. The power was supplied to its consumers under

third party sales from their solar plant through 11 KV dedicated evacuation line which is within the distance of approximate 1 KM to their generating unit.

In the meantime Government of A.P. issued a G.O. vide No.8 dt; 12.02.2015 informing that AP Solar Policy is applicable upto the year 2017 and incentives were applicable for projects commissioned upto 30.06.2014. As they have commissioned their plant by 30.6.2014, they are eligible to avail the benefits as per the policy for 7 years upto 29.6.2021. But denied due to wrong interpretation of A.P. Solar Policy, 2012.

ASPDCL/AP Transco interpreted in the wrong way and provided incentive only for 4 years 9 months from the date of commissioning (30.06.2014) instead of 7 years mentioned clearly in GO Ms No.39 Dt:26.9.2012 and GO No.8 Dt:12.02.2015 upto June'2021,. By this wrong interpretation by APSPDCL/AP Transco has led to start levying transmission and cross subsidy charges from April' 2019 till March'2021. When the plant has been forcibly shut down its operation due to wrongful unviable charges levied on their consumers contrary to AP Solar Policy, 2012. By this wrongfully levying the above said charges on their customer, the per unit purchase cost has additionally gone up close to ₹.9 per unit. As per their mutual agreement, considering the incentives offered by the Government of AP, these charges were to be borne by the generator. Their consumer paid those charges and issued a debit note towards outstanding payments which is almost of ₹.60 Lakh. This has resulted to close their generation unit from 26.03.2021. They lost about ₹.4 Crores .

Therefore it is prayed that suitable appropriate clarifications in resolving the issue may be given for restarting the unit and sustained operations and investments made by first generation MSME Company.

2. Respondents No. 1, 4 and 5 filed separate written submissions:

The writ submission of Respondent No. 5 dt: 29.10.2021 is that complainant has commissioned their 0.7 MW solar power plant at Tada (V) Nellore District on 30.6.2014 for open access purpose under third party sales. The generator has availed open access under third party sales M/s. Saint Gobain Glass (I) LTD HT No.NLR- 215 for the period from 20.8.2014 to 17.03.2021. The developer did not obtain Open access approval from AP Transco for the period from 18.03. 2021 and the above solar power plant was disconnected on 23.3.2021 and remained under disconnection till to date. The present application is filed before this forum for exemption of wheeling and transmission charges and cross subsidy surcharges.

Clause. No.2 of AP Solar power policy, 2012 vide GO Ms no.39 Dt 26.09.2012 says that the policy shall come into operation from the date of issuance and shall remain applicable till 2017 .

Clause .8 of the above said policy says that “in order to encourage the immediate production of solar power to reduce the present gap in demand and supply position of power and provide industries with a possibility to utilize the power produced through solar power, following incentives will be extended to those solar power developers who commission their solar plant by June’ 2014. These incentives will be in force for a period of 7 years from the date of implementation”.

As per the A.P. Solar Power Policy, 2012 incentives will be extended to the solar power developers who have commissioned their solar power plants by June’ 2014 and those incentives were in force for a period of 7 years from the date of implementation of AP Solar power policy, 2012 dt: 26.09.2012 and incentives are upto 25.9.2019 only.

Wheeling and transmission charges and cross subsidy surcharges can be given to the generator i.e. complainant herein upto 25.09.2019 only as per A.P. Solar Power Policy, 2012.

Respondent No. 4 filed written submission on 04.10.2021 stating that Hon'ble APERC had issued tariff order dt:15.4.2019 regarding wheeling tariff for distribution business for the 4th control period of F.Y. 2019-20 to F.Y. 2023-24 under Chapter -VII Item No.107(i) which is as follows :

" All the distribution system users shall pay wheeling charges and bear losses in kind" .

The orders were implemented and wheeling charges were levied on all open access users from 01.04.2019 as there is no specific exemption in the order issued by Hon'ble APERC. Complainant established a solar power plant for sale of power to their scheduled consumers under third party sale but not for captive purpose.Hence exemption of cross subsidy surcharges to M/s. Saint Gobain Glass (I) Ltd HT Service No.NLR- 215 on the power availed from the complainant. i.e. Open Access Generator is not applicable.

Hon'ble APERC issued certain orders in OP No.30 of 2018 that while determining transmission and wheeling tariffs for the 4th control period i.e. from F.Y.2019-20 to F.Y.2023-24 has specified that all the open access users shall pay transmission and wheeling charges based on contractual capacities approved by the Commission in the orders and that the wheeling and transmission users were mandated to get wheeling an transmission losses based on contracted capacity in KW at entry point. The orders determined these charges without any reference to or considering NCE developers who used open access either for captive purpose or for third party sale as a class.

In view of the above, complainant is not eligible for exemption from levying of wheeling charges and cross subsidy surcharge from April'2019.

It is further submitted that the subject matter will not come within the jurisdiction of forum as the matter pertains to wheeling charges and cross subsidy surcharges between open access generator and licensee.

3. Respondents No. 1 and 2 filed separate written submissions. The contents of it are almost similar in nature with that of the written submission of Respondent. No.4.
4. Complainant filed rejoinder (dt : 3.11.2021 received on 5.11.2021). Briefly the averments are as follows:-

In the order in OP No.30 of 2018, point No.21 and 22, it is clearly shown that the Hon'bleAPEREC has taken cognizance of GO to NCE developers and the exemptions therein while upholding the applicability of the exemptions for the defined periods only to those units implemented during the operational period to the respective GO's and therefore a conflict with the Government policies especially GO MS No.39 if recovery of transmission and wheeling charges are levied prior to 29.6.2021.

It is to be clearly noted that the operational period of G.O. must not be confused with the control period in tariff order, as the operational period is the time given to implement the project and the incentives offered must accrue to all the projects commissioned during that period for the defined/ permitted duration and has nothing to do with the control period under tariff order in line with Hon'ble APEREC intent of not conflicting with Government policies as per point No.23 of OP .30 of 2018.

The forum has got jurisdiction as it is a matter of wrongful interpretation of A.P. Solar Polic ,2012 vide GO 39 dt: 26.9.2012 and its premature termination.

5. After personal hearing on 7.01.2021, Respondents No. 4 and 5 filed additional written submission after rejoinder filed by the complainant. The contents of the additional written submission of Respondent No. 5 are almost similar to the contents of her earlier written submission.

6. Respondent No.4 stated in additional written submission dt : 17.12.2021 that some of the generators have filed writ petitions on the same subject matters and counters were filed in writ petition No. 12726 of 2020 and WP No.4350 of 2021 and they are pending before Hon'ble High Court of Andhra Pradesh.
7. Complainant again filed additional re-joinder stating that APSPDCL did not state about the pendency of writ petitions before the Hon'ble High Court till 16.12.2021 and only mentioned about this fact after they filed re-joinder. The writ petitions are similar to their matters involving starting of the period of incentive whether from the date of implementation of the policy or the date of commissioning of the plant is pending for final disposal and the Hon'ble High Court had granted stay on levy of Cross Subsidy Surcharges and Wheeling charges.

Complainant prays to direct the respondents:-

1. To refund the wrongful levy of wheeling and Cross Subsidy Surcharges of ₹.64,87,375 along with interest to their customer which has resulted in closure of their company
 2. Restraining the respondents from levy of CSS & wheeling charges towards adjustment of balance pending 30% unit over last 15 months and
 3. With a liberty to approach competent authority for adjudication of the wrongful interpretation of policy and resultant claim of damages of 3.33 crores of investment due to premature imposition of untreated charges leading to closure of plant.
8. Personal hearing through video conferencing was conducted on 11.01.2022. Mr. A.K, Pradhan was present on behalf of complainant. Respondent No. 4 and GM of Respondent No. 5 were present and heard both sides.

9. The point for determination is whether the grievance of the complainant that the starting period of commencement of incentives of A.P.Solar Power Policy,2012 is from the date of implementation of policy or from the date of commission of the plant is maintainable before this Forum?

Admitted facts in this case are that complainant commissioned its solar power plant on 30.06.2014 under the 'AP Solar Power Policy, 2012' and the complainant is selling power to its consumer i.e. service No.NLR-215. Complainant is a generator.

Complainant is claiming that it is entitled for incentives i.e. exemption of cross subsidy surcharges and wheeling charges for 7 years from the date of commission of the plant whereas the contention of the respondents is that complainant is entitled for incentives for a period of seven years from the date of implementation of policy i.e. 26.09.2012 and they are entitled for incentives only upto 25.9.2019. So the dispute between the complainant and respondents is the dispute is between a generator and a distribution licensee.

It was held in Chairman & MD APSPDCL of AP, Tirupati and Ors vs M/s. Sudalagunta Sugars Ltd Rep. by its Chairman , MD S. Jayaram Choudary AIR 2013 AP -1 (DB) at para 10

Para 10:

" It is settled law that if there are any disputes between the parties as in the present case, the same have to be referred under Sec.86 (1) (F) of the Act, 2003 which reads as under

Sec.86 functions of State Commission –(1) The State Commission shall discharge the following functions namely:-

"(a) to (e)

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration ;

Para 11: A reading of the above section would make it clear that the adjudication of the dispute should be made through mechanism provided under the Act and in our opinion too, on the given facts, the dispute on hand would also be attracted and would come within the purview of Sec.86(1) (f) of the Act, and the observation in this regard by the Hon'ble single judge cannot be accepted by us for the reasons given by us in the preceding paragraphs of our judgment. We therefore hold that the dispute between the parties with regard to said bills in the matter has to be adjudicated upon in terms of Sec.86(1) (f) of the Act”.

It was held in a case between Superintending Engineer (O& M) Raipur (CG) Vs Indo Lahari Bio-Power Ltd, Raipur (CG) AIR 2020 (NOC) 917 (CHH)

“Power purchase agreement executed between licensee distributor and power plant, for purchase of electricity, Distributors using transmission lines laid at cost of power plant for transmission of electricity to other consumers, resulting in dispute. A perusal of the complaint clearly reveals that the dispute touches upon the rights and obligation of the parties as licensee and generating company under the power purchase agreement and not a dispute between the petitioner and respondent as licensee and consumer. A rational, fair and logical interpretation of the provision leads to conclusion that the Act seeks to establish a redressal Forum for consumers. The legislative intent is clear from the phrase “establish a Forum for redressal of grievances of the Consumer. Therefore, creation of the Forum under the statute is only aimed at redressal of grievances of Consumers’. As a logical corollary thereto, a dispute between the consumer and the licensee alone could be adjudicated upon/by the Forum. By no stretch of imagination, much less intended

expressly or by necessary intendment, the Forum can be said to have been invested with the jurisdiction of deciding all kinds of disputes including a dispute between distribution /licensee and a generating company. Tribunals which are creatures of statute do not exercise unlimited jurisdiction but sphere of jurisdiction is limited and circumscribed by the provision of the Act of which, they are creatures. Tribunal being creature of statute cannot travel beyond the scope and ambit of the jurisdiction conferred upon it under the law. Under the statutory scheme of the Act of 2003, as far as dispute between the distribution licensee and generating company are concerned, they are to be dealt with by the Commission itself. It would only be a case of grievance raised by the Consumer in the matter of supply of electricity to it that the Forum will have jurisdiction to enquire into such complaint and give its decision thereon. Thus, forum had no jurisdiction to entertain the nature of complaint which was raised by Generating Company against a distribution licensee” .

Since the dispute in this case is between generator and licensee in respect of period of commencement of entitlement of incentives i.e. Exemption of Cross subsidy surcharges and wheeling charges from the date of implementation of policy or commission of plant. Relying upon the above cited decisions, this dispute will not come under the jurisdiction of the Forum.

Both parties admitted that writ petitions are pending before the Hon'ble High Court of Andhra Pradesh on the aspect whether the period of seven years of implementation of policy will begin from the date of implementation of policy or from the date of commission of the plant.

Complainant also filed copy of the order in I.A.No. 1 of 2020 Dt:31.07.2020 in WP No.12726 of 2020. The prayer in that application is :-

“Restraining Respondents No. 1 to 3 (CMD of APSPDCL , SE/O/ Nellore and SAO/O/Nellore) from levying cross subsidy surcharge during the period of incentive entitlement i.e. upto 21.05.2021 in terms of AP Solar Power Policy, 2012 pending disposal of W.P. No.12726 of 2020 on the file of The Hon’ble High Court“

“The Hon’ble High Court was pleased to grant interim directions”.


It is also an admitted fact that the subject matter in this case is similar to the subject matter involved in the above said W.P 12726 of 2020 before the Hon’ble High Court. We are of the opinion that the Forum is not competent to pass any orders in the same subject matter when the similar subject matter is pending before the Hon’ble High Court.

In view of the above reasons the complaint is not maintainable and liable to be dismissed. The point answered accordingly.

10. In the result the complaint is dismissed.

Sd/- Sd/- Sd/- Sd/-
Member (Technical) Member (Finance) Independent Member Chairperson

Forwarded By Order


Secretary to the Forum

This order is passed on this, the day of 31st January'2022

If aggrieved by this order, the Complainant may represent to the Vidyut Ombudsman, Andhra Pradesh, 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008, within 30 days from the date of receipt of this order.

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer (Chief General Manager (O&M)/ Operation)/ CGRF/ APSPDCL/ Tiruati.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh , 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

Copy Submitted to the Secretary, APERC,11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.