



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004**

**O.P.No.51 of 2015**  
**and**  
**I.A.No.25 of 2015**

**Dated 16.06.2021**

**Present**

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

Between:

M/s NILE Limited,  
Plot No.149/A, Old MLA Colony,  
Road No.12, Banjara Hills,  
Hyderabad – 500 034.

... Petitioner.

And

1. Central Power Distribution Company of Andhra Pradesh Limited,  
H.No.11-4-660, 3<sup>rd</sup> floor, Singareni Bhavan,  
Lakdi-ka-pul, Hyderabad – 500 004.
2. Southern Power Distribution Company of Telangana Limited,  
6-1-50, Corporate Office, Mint Compound,  
Hyderabad, Telangana – 500 063.
3. Southern Power Distribution Company of  
Andhra Pradesh Limited, #1-13-65/A,  
Srinivasapuram, Tirupati – 517 503.

... Respondents.

The petition came up for hearing on 21.12.2019, 18.01.2021 and 01.03.2021. Sri Deepak Chowdary, Advocate representing Sri Challa Gunaranjan, counsel for petitioner and Sri Y.Rama Rao, Standing Counsel for the respondents has appeared for the physical hearing on 21.12.2019. Sri.Deepak Chowdary, Advocate representing Sri Challa Gunaranjan, counsel for petitioner and Sri Mohammad Bande Ali, Law Attaché of DISCOM for respondents appeared through video conference on 18.01.2021. Sri Challa Gunaranjan, Counsel for petitioner and Sri Mohammad Bande Ali, Law Attaché for TSDISCOMs have appeared through video conference on

01.03.2021. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

M/s Nile Limited (petitioner) has filed a petition under section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with Conduct of Business Regulation, 1999 of the then APERC seeking directions for payment on the monthly power bills. The contentions of the petitioner are as hereunder:

- a) The petitioner is a company incorporated under the provisions of Companies Act, 1956 having its registered office at Plot No.149/A, Old MLA Colony, Road No.12, Banjara Hills, Hyderabad inter alia engaged in the business of wind power generation. The petitioner company had set up non-conventional energy project that is 2 MW capacity wind project at Ramagiri, Anantapur District. The project has achieved commercial operation on 30.08.1995. Initially the power generated from the project was captively consumed by the petitioner company, after paying the wheeling charges under power wheeling agreement dated 21.07.1995 entered with the erstwhile APSEB.
- b) The Commission came into existence pursuant to the A.P. Electricity Reform Act, 1998 (Reform Act), the Commission initiated proceedings and passed order dated 20.06.2001 in O.P.No.1075 of 2000 reviewing the incentives announced by the State Government and further by orders dated 20.03.2004 in R.P.No.84 of 2003 in O.P.No.1075 of 2000 reviewed the incentives. As per the said order the Commission fixed tariff of Rs.3.37 per unit from 01.04.2004.
- c) The petitioner agreed to supply power to the 1<sup>st</sup> respondent under Power Purchase Agreement (PPA) dated 20.05.2002 entered into between the petitioner and the then APTRANSCO. The State Government notified the third transfer scheme in G.O.Ms.No.58, Energy (Power-III) dated 07.06.2005 in exercise of the powers conferred by the Reform Act, whereby the generating capacities of the electricity energy stations including all obligations of APTRANSCO to purchase energy from the energy stations stood allocated and transferred by operation of law to the various DISCOMs. Consequently, the functions of purchase of

energy in respect of the petitioner's power plant which were hitherto vested in APTRANSCO stood severed. In this case the present agreement has been vested with the 1<sup>st</sup> respondent herein. Since then, the petitioner company has been supplying power generated by its wind project to the 1<sup>st</sup> respondent herein and the power bills submitted were being paid by the 1<sup>st</sup> respondent.

- d) As per the Article 2.2 of PPA, the 1<sup>st</sup> respondent is obligated to pay the tariff that is fixed by the Hon'ble Commission from time to time. The procedure for submitting bill and making payment is set out in Article 5.2 and 5.3. On submitting the bills as contemplated under these clauses the 1<sup>st</sup> respondent has to clear the same within 30 days from submission of the bill. The relevant Articles of PPA for the present purpose are extracted here under:

*"1.1 Billing Date: means the fifth (5<sup>th</sup>) day after the Metering Date.*

*1.5 Due date of payment: means the date on which the amount payable by the APTRANSCO TO THE Company hereunder for delivered energy, if any, supplied during a billing month becomes due for payment, which date shall be thirty (30) days from the metering date, and in the case of any supplemental or other bill or claim, if any, the due date of payment shall be thirty (30) days from the date of the presentation of such bill or claim to the designated officer of the APTRANSCO.*

*2.2 The company shall be paid the tariff for the energy delivered at the interconnection point for sale to APTRANSCO at Rs.2.25 paise per unit with escalation at 5% per annum with 1994–95 as base year and to be revised on 1<sup>st</sup> April of every year upto the year 2003–04 subject to the condition that the purchase price to arrived does not exceed 90% of the prevailing H.T. tariff of APTRANSCO. Beyond the year 2003–04, the purchase price by APTRANSCO will be decided by Andhra Pradesh Electricity Regulatory Commission. There will be further review of purchase price on completion of ten years from the date of commissioning of the project, when the purchase price will be reworked on the basis of return on equity, O&M expenses and the variable cost.*

- 5.1 *For delivered energy purchased, the company shall furnish a bill to the APTRANSCO calculated at the rate provided for in Article 2.2, in such form as may be mutually agreed between the APTRANSCO and the company for the billing month on or before the 5<sup>th</sup> working day following the metering date.*
- 5.2 *Any payment made beyond the due date of payment, APTRANSCO shall pay interest at a rate of 10% per annum as per existing nationalized bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction.*
- 5.3 *The APTRANSCO shall pay the bill on monthly basis as per Article 5.1 by opening a revolving letter of credit for a minimum period of one year in favour of the company.”*

- e) A reading of the above Articles would show that the 1<sup>st</sup> respondent has to make the payment as per the bill submitted under Article 5.1 within a period of 30 days at the rate as fixed by the Commission and for any delay in payment beyond the due date, the 1<sup>st</sup> respondent is liable to pay interest at the rate of 10% per annum as per existing nationalized bank rates. Further, Articles 5.3 and 5.4 contemplates the 1<sup>st</sup> respondent to open a revolving Letter of Credit in favour of the petitioner herein.
- f) Till the billing month of June 2011, the 1<sup>st</sup> respondent paid the monthly power purchase bills. From July 2011 bill they have been paying 50% of the bill amount and retaining the balance 50%. On noticing the short payment, the petitioner company by letter dated 07.09.2011 requested them to clear the payment immediately. As there was no response, another letter dated 23.09.2011 was addressed to the 1<sup>st</sup> respondent requesting to settle the payments and also not to withhold any amounts from the monthly purchase bills. In response, the 1<sup>st</sup> respondent has informed by letter dated 01.11.2011 that as the matter relating to revision of tariff is pending before the Commission, it has been advised to approach the Commission and seek for review of the case and interim orders. Thereafter, the petitioner has submitted detailed letter dated 20.12.2011 bringing to the notice of the 1<sup>st</sup> respondent that it has preferred O.P.No.14 of 2006 before the Commission for revision of tariff and in as much as the Commission has not passed any orders specifying

particular tariff, withholding of any amounts on account of revision of tariff from the power purchase bills would be contrary to the terms of the Power Purchase Agreement. Therefore, it has been requested to settle the amounts immediately. In spite of the same, the 1<sup>st</sup> respondent continues to withhold the amounts from the monthly power purchase bills, apart from not clearing the short fall amounts of the billing month of July, 2011 onwards which is contrary to the terms and conditions of the Agreement. The 1<sup>st</sup> respondent by letter dated 19.01.2012, decided to pay the monthly bills on adhoc basis pending revision by the Commission. The respondents are precluded from reducing the tariff unilaterally when the matter is pending before this Commission. It amounts to violating the terms of the agreement and may result in cancellation of the Agreement.

- g) Therefore, the present petition is filed seeking direction to the respondent to pay the monthly power bills as per the terms of the PPA. The Articles 5.3 and 5.4 of the PPA contemplate furnishing a revolving letter of credit in favour of the petitioner, which the respondent failed to do so. Therefore, directions need to be issued to the respondent for establishing the same for safeguarding the interest of the petitioner.
- h) The petitioner sought the following prayer in the petition. *“In these circumstances and for the reasons stated above, the petitioner herein prays that the Commission may be pleased to -*
- a) *Declare the action of the respondent in withholding the amounts from monthly power purchase bills submitted by the petitioner company as per the terms of PPA dated 20.05.2002 and the tariff fixed by the Commission as arbitrary, illegal and contrary to the terms of the PPA dated 20.05.2002 and consequently, direct the respondent to pay the amount so far deducted from the petitioner’s monthly bills of July, 2011 onwards.*
  - b) *Direct the respondent to pay the short fall amounts along with interest @ 10% per annum as per the nationalized bank rate of interest.*
  - c) *Direct the respondent to furnish revolving letter of credit in favour of the petitioner in terms of PPA dated 20.05.2002.”*



2. The 1<sup>st</sup> respondent, the then APCPDCL, have filed a counter affidavit in the matter and stated therein as below.

a) It is stated that the tariff as per the Article 2.2 of power purchase agreement is as follows:

*“The company shall be paid the tariff for the energy delivered at the interconnection point for sale to APTRANSCO at Rs.2.25 paise per unit with escalation at 5% per annum with 1994–95 as base year and to be revised on 1<sup>st</sup> April of every year upto the year 2003–04 subject to the condition that the purchase price so arrived does not exceed 90% of the prevailing H.T. Tariff of APTRANSCO. Beyond the year 2004, the purchase price by APTRANSCO will be decided by Andhra Pradesh Electricity Regulatory Commission. There will be further review of purchase price on completion of 10 years from the date of commissioning of the project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the Variable Cost”.*

b) Article 2.2 of PPA reads that *“there will be further review of purchase price on completion of 10 years from the date of commissioning of the project, when the purchase price will be reworked on the basis of return of equity, O&M expenses and variable cost.* The commissioning of the plant is 30.08.1995 (COD). The PPA was entered on 20.05.2002, the tariff must be revised as per Article 2.2. of PPA, after 10 years of commissioning of the plant, i.e., 30.08.2005. It filed petition in O.P.No.14 of 2006 for revising the tariff of 10 years old or more (wind plant). The same was pending before the then APERC. The then APERC passed interim orders dated 16.11.2012 directing the respondent to pay Rs.1.69 per kWh for the power supplied beyond 10<sup>th</sup> year, pending fixation of final tariff. In fact, it has been pursuing the Hon’ble Commission since 2006 for fixing revised tariff for the period after 10<sup>th</sup> year from the date of commissioning.

c) This is not a billing dispute. It is a tariff to be revised and re-fixed with consent of the Commission. The same was delayed due to the non-response from the respondents in O.P.No.14 of 2006. The due date for tariff revision is 30.08.2005.

- d) The petitioner was getting payments regularly till 30.06.2011 at the rate Rs.3.37 per kWh. In fact, as per the orders of Hon'ble APERC dated 16.11.2012, the petitioner is entitled for Rs.1.69 per kWh from 30.08.2005 onwards. The said orders since not challenged, attained finality. Therefore, by effecting the said order from 30.08.2005, the petitioner has to repay about Rs.2.32 crores to the respondent.
- e) The said excess amount paid by the then APCPDCL from 30.08.2005 to 30.06.2011 must be returned by the generator. Hence it is not possible to pay the regular tariff of Rs.3.37 per kWh to generation. The generator has already violated and enjoyed the excess of public amount by claiming invoice of Rs.3.37/unit, after ten years. Be that as it may the present claim of the petitioner is devoid of merits, as the action of respondent is in conformity with the orders of the Commission.
- f) It is prayed that the Commission may be pleased to dismiss the prayer of petitioner and direct the petitioner to refund the excess amount paid by the then APCPDCL for the period from 01.09.2005 to 30.06.2011.

3. Later on, the petitioner has filed Interlocutory Application (I.A.No.25 of 2015) seeking amendment of name of 1<sup>st</sup> respondent and impleadment of parties stating the following reasons:

- a) The petitioner filed the petition for declaration against the withholding of power purchase bills of the petitioner company by the respondent for the power supplied by the petitioner during the period July, 2011 to November, 2012 is arbitrary, illegal and contrary to the terms of PPA dated 20.05.2002 and consequently direct the respondent to pay the same along with interest for the delayed period. The petitioner filed the petition against APCPDCL as power was supplied to it at the relevant point of time.
- b) Upon enactment of the Andhra Pradesh Reorganisation Act, 2014 and formation of new State of Telangana, as per Schedule-XII, two districts i.e., Anantapur and Kurnool falling within the jurisdiction of APCPDCL were re-assigned to APSPDCL. Further, APCPDCL has been renamed as TSSPDCL.
- c) The power generated by the petitioner from its wind project situated in

Anantapur district was supplied to APCPDCL, with which PPA was subsisting. This power supplied was utilized by APCPDCL and sold in retail to the consumer within its area of distribution. The liability for the said power was on APCPDCL as on the date of division of the State. Thereafter the liability to pay would accrue to both APSPDCL and also TSSPDCL. However, so far as the dispute and the cause of action for instituting the present petition would remain intact, but for the consequential relief of payment, in order to decide the present dispute TSSPDCL and APSPDCL are also necessary parties. Unless both the Distribution companies are not impleaded in the petition the matter cannot be effectively adjudicated and if the same is not done, applicant will be put to irreparable loss and hardship. No prejudice or harm would be caused if the proposed respondents are impleaded to the petition.

- d) Therefore, it is prayed that the Commission may be pleased to implead TSSPDCL and APSPDCL as respondent No.2 and 3 in O.P.No.51of 2015.

4. The Commission heard counsel for the petitioner and the representative of the respondent. It also examined the material available on record. The issue that arises for consideration is whether the petition is maintainable before this Commission. In this regard the submission of the parties at the time of hearings are as extracted below:

Record of Proceedings on 21.12.2019

*“... The counsel for the petitioner stated that the matter involved payment of amounts and therefore, an I.A. is also filed for amendment of the title in the original petition. The counsel for the respondents stated that the matter involved jurisdiction as also payment of amounts. He would ascertain the correct position on the issue and place the same before the Commission on the next date of hearing. ...”*

Record of Proceedings on 18.01.2021

*“... The advocate representing the counsel for the petitioner stated that the matter is before the APTEL and hence, the matter cannot be proceeded with. On the other hand, the representative of the DISCOM stated that in the judgment on jurisdiction, the Hon’ble High Court held that CERC has jurisdiction and the petitioner has to make an application to transfer the case to CERC. In*



*view of the ambiguity in the matter, the advocate stated that he will ascertain the factual position and if necessary file a proper memo in that regard. Accordingly, he sought adjournment of the matter. The matter is adjourned. The petitioner / counsel shall file a detailed memo / statement on or before the date of hearing by giving the factual position in the matter as regards proceeding with the hearing. ...”*

*Record of Proceeding on 01.03.2021*

*“... .The counsel for petitioner stated that the matter is before the CERC and he was the counsel for the petitioner, when the matter was filed before the combined ERC. However, the matter involves four distribution companies and the matter falls under jurisdiction issue also and as such the matter has to be transferred to CERC. This is in view of the judgment of the Hon’ble Supreme Court in the matter of jurisdiction. The Commission may transfer this file to CERC. The representative of the respondents is in agreement with the submissions of the counsel for petitioner. Accordingly, the Commission will make necessary orders.”*

5. Before advertng to the issue, the relevant legislative changes and order having a bearing on the issue are noticed herein below. The matter arose under sec 86 (1) (f) of the Act, 2003. The present petition is filed claiming relief against the two distribution companies as they were existing at that time of united state of Andhra Pradesh, who are now located in two separate States by virtue of operation of law.

6. The A.P. Reorganisation Act, 2014 has created new State of Telangana and residuary State of Andhra Pradesh. Consequently, the DISCOMs are bifurcated geographically and claims relating combined State cannot be adjudicated by any one State. Therefore, the issue of jurisdiction arose in such matters where claims were in respect of two States. This Commission as well as the present Andhra Pradesh Electricity Regulatory Commission have decided the issue separately.

7. The issue of jurisdiction has been decided by this Commission in O. P. No.25 of 2015 and batch.

*“82. To sum up, the findings of this Commission are summarised as under:*

*(i) Three transfer schemes notified under section 23 and 24 of the Reform Act, 1998 are binding on the four Discoms located in the erstwhile*

*Andhra Pradesh and the generators who entered into the Power Purchase Agreements. The third transfer scheme notified u/s 23 stipulates the rights, obligations, agreements and contracts relating to the procurement and bulk supply of electricity or trading of electricity to which the erstwhile APSEB or APTRANSCO was originally a party were transferred and vested in the four DISCOMS respectively in specified ratios as per the Reform Act and Electricity Act, 2003 dated 9.06.2005, G.O.Ms.No.58 and amendments made thereto from time to time are still in force. In the third transfer scheme, the generating capacities allocated to the TSSPDCL and TSNPDCL is 60.28% and this has been amended to 53.89% vide G.O.Ms.No.20 dated 08.05.2014 on account of transfer of Kurnool and Anantapur districts to Southern Power Distribution Company of Andhra Pradesh Ltd. The rights, obligations, claims, compensations or any other claim in respect of power supply of any generator shall be in accordance with the ratio specified in the third transfer scheme or any amendment thereto from time to time. Similarly, the claims, compensation, rights, obligations, etc., by two Discoms located in Telangana state shall also be restricted to the purchase of power made by them in accordance with the ratio specified in the third transfer scheme or any amendment thereto from time to time. The PPAs have devolved on each Discom individually and not jointly.*

- (ii) The Central Electricity Regulatory Commission (CERC) does not have jurisdiction over the 34 petitions which were pending before the erstwhile APERC and the Joint regulatory commission on 01.08.2014. In 34 petitions, the supply of electricity was intra-state and at the relevant time to which the petitions relate to and there were no inter-state transactions to invoke the jurisdiction of CERC.*
- (iii) Generally, under Section 86 of the EA, 2003 the jurisdiction of a state Commission is coterminous with the jurisdiction of the state. Thus, the TSERC shall have the jurisdiction to regulate the purchases of TSSPDCL and TSNPDCL located in the state of Telangana and it shall also adjudicate the disputes involving the two Discoms of Telangana State.*
- (iv) Under section 105 of the A.P. Reorganisation Act, 2014, the jurisdiction*

over the pending 34 petitions relating to TSSPDCL, TSNPDCL and any other entity located in the State of Telangana shall vest with the TSERC. In the view of this Commission, sub-section (3) of Section 105 resolves the issue. Sub-section 3 of Section 105, stipulates that the authority before whom the proceedings would have laid if it had been instituted after the appointed day, i.e., 02.06.2014/ 01.08.2014. All appeals involving the two Discoms of the Telangana State shall be filed before this Commission for adjudication after 01.08.2014. Therefore, the pending 34 petitions involving the two Discoms of the Telangana State shall vest with this Commission for adjudication. After bifurcation of the state, i.e., 02.06.2014 all the disputes u/s 86(1)(f) of the EA, 2003 have to be adjudicated by this Commission and similarly, any petition relating to the two Discoms in respect of disputes prior to 02.06.2014 shall also vest within the jurisdiction of TSERC. The word 'exclusively' used in Section 105 must be given a practical construction and if the actual meaning of the word 'exclusively' is taken as 'substantially' or 'for a greater part' or 'principally' as given in the decision of the Supreme Court in Bihar Fodder scam case, the jurisdiction over 34 petitions shall lie with the TSERC as 32 petitions emanate from the PPAs and the power sharing ratio of TSDISCOMS according to the third transfer scheme is a greater part, i.e., 60.28% but we do not wish to encroach upon the jurisdiction of another Commission and restrict the adjudication functions of this Commission to the two Discoms, TSTRANSCO and TSPCC in accordance with the provisions of the Reform Act and the Electricity Act to the extent of ratio specified in the third transfer scheme.

- (v) The provisions of CPC are not applicable to the interpretation of Section 105 of the A.P. Reorganisation Act. Further, the provisions of Sections 10 & 11 of CPC are also not applicable as the authorities and the parties involved therein are not the same parties.
- (vi) TSERC shall have jurisdiction over the petitions involving TSSPDCL, TSNPDCL, TSPCC, TSTRANSCO which are located in the territorial jurisdiction of Telangana state which is coterminous with the jurisdiction of this Commission and this Commission shall adjudicate rights, liabilities and obligations in accordance with the third transfer scheme dated

*07.06.2005 notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003. To repeat, this Commission shall adjudicate on the rights and liabilities to the extent of ratio notified in the third transfer scheme dated 07.06.2005 and amendments made thereto from time to time relating to the entities located in the State of Telangana.*

- (vii) *32 petitions which emanate from the power purchase agreements, the petitioners are at liberty to revise their cause title and claims/liabilities/obligations/compensation or any other matter in the petitions in terms of third transfer scheme dated 07.06.2005 and the amendments made thereto from time to time confining their rights and liabilities to two Discoms of Telangana State, TSTRANSCO and TSPCC in accordance with the ratio specified in the transfer scheme notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003 within 45 days from the date of placing of this order on the website of this Commission, i.e., TSERC. This Commission shall adjudicate only the revised petitions which are going to be filed in accordance with the third transfer scheme notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003.*
- (viii) *In two review petitions, cause title have to be revised restricting the petitions to the TSDISCOMS, TSTRANSCO and TSPCC.*
- (ix) *This order shall be subject to the orders or directions that may be issued by the Hon'ble High Court of Andhra Pradesh and Telangana in the pending writ petitions including GMR Vemagiri and Bharath Aluminium Company Ltd ...”*

8. It came to be challenged before the Hon'ble High Court Hyderabad as it then was in W. P. No.15848 of 2015 and batch which had held that the Central Electricity Regulatory Commission (CERC) is the appropriate forum having jurisdiction to decide the disputes involving the four distribution companies. The Hon'ble High Court has held as below.

- “76. Therefore, in fine, the writ petitions are disposed of to the following effect:
- (i) *W.P.Nos.19894 and 15848 of 2015 challenging the orders of CERC, dated 27.04.2015 are dismissed and the CERC is held entitled to decide the disputes covered by the said order, on merits after giving*

*opportunities to all the parties.*

- (ii) W.P.No.22850 of 2016 challenging the order of the Central Electricity Regulatory Commission dated 15.06.2016 is also dismissed and the CERC is allowed to proceed further with the hearing of the case on merits.*
- (iii) W.P.Nos.38140, 38137, 38163, 38169, 35386, 35039, 35401 and 25761 of 2017 challenging the order of the APERC dated 28.09.2016 are allowed and the order of the APERC dated 28.09.2016 is set aside. It is declared that the disputes in relation to which APERC passed the order dated 28.09.2016 fall within the exclusive jurisdiction of the CERC and hence APERC shall transfer all such petitions, if not already done, to CERC. One portion of the prayer made in W.P.No.25761 of 2017 by the two distribution companies now located in the State of Telangana seeking to transfer the cases from APERC to TSERC is also dismissed, since that these disputes should be adjudicated by the CERC.*
- (iv) W.P.No.14033 of 2017 seeking a declaration that APERC alone has jurisdiction to adjudicate their claim in O.P.SR.No.31 of 2016 and also seeking to set aside the order dated 18.02.2017 is liable to be dismissed for the simple reason that the prayer with which they went before the APERC was to direct two distribution companies one located in Andhra Pradesh and another in Telangana, to make payment of differential tariff as fixed by the Joint Regulatory Body in O.P.No.17 of 2006. If two distribution Companies, one located in Telangana and another located in Andhra Pradesh are to be directed to make some payment, a direction can be issued only by the CERC and not by any one of the State Commissions. Therefore, W.P.No.14033 of 2017 is dismissed.*
- (v) W.P.Nos.38217, 45376 and 45378 of 2016 and W.P.No.30274 of 2018 are allowed and the order of the TSERC dated 31.10.2016, insofar as it enables the splitting up of the disputes into two parts for the purpose of entertaining petitions, is set aside.*
- (vi) W.P.Nos.11353 and 14254 of 2016 are allowed and it is declared that the disputes involving generating companies, relating to regulation of interstate transmission of electricity or determination of tariff for interstate transmission, shall be decided only by the CERC. The disputes*



*relating to regulation of tariff of generating companies which have entered into or which otherwise have a composite scheme for generation and sale of electricity in more than one State shall also fall only within the jurisdiction of CERC. The disputes arising out of single Power Purchase Agreement which the generating companies had with the distribution companies in the composite State of Andhra Pradesh, shall be deemed to have become a composite scheme for the generation and sale of electricity in more than one State under Clause (b) of Section 79 (1), if those distribution companies have now got located in the bifurcated States.*

- (vii) *W.P.No.36266 of 2018, does not challenge any order of any of the Commissions. The prayer in the writ petition is for a direction to the Eastern and Southern Power Distribution Companies of Andhra Pradesh and Central Power Distribution Company of Telangana to make payment of the rebates allegedly retained by the respondents against the terms of the purchase orders. The petitioner has chosen to come up with the above writ petition without approaching any of the Commissions on the ground that the APERC lost jurisdiction after the bifurcation of the State. But in such cases the appropriate remedy open to the petitioner is only to go to CERC. Therefore, W.P.No.36266 of 2018 is dismissed giving liberty to the petitioner to approach the CERC for the redressal of their grievances.*
- (viii) *W.P.No.8143 of 2017 is filed challenging the refusal of the Southern Power Distribution Company of Andhra Pradesh to release payments due to them. The problem of the petitioner is peculiar since the petitioner had an agreement with the Central Power Distribution Company, for carrying out high voltage distribution system certificate on the agricultural feeders in Kurnool District. The project was a turnkey project. After the bifurcation of the State the Central Power Distribution Company became a part of Telangana State, but the District of Kurnool went to the Southern Power Distribution Company of Andhra Pradesh. But the Southern Power Distribution Company has now refused to release payment on the ground that the work so executed in Kurnool District when it was part of the Central Power Distribution Company, has*



*benefitted a company which has now gone to the State of Telangana. But this logic is flawed, as the place where the project is executed is now in Andhra Pradesh. The dispute that the petitioner has, is not one of the disputes covered by Clauses (a) to (d) of sub-section (1) of Section 79. The petitioner does not appear to be a Power Generating Company. Therefore, the dispute will also not fall within Section 86 (1) (f). Therefore, the writ petition is maintainable and the only ground on which the claim was rejected by the impugned letter dated 07.01.2016 is wholly illegal and unconstitutional. Therefore, W.P.No.8143 of 2018 is allowed. The impugned communication is set aside and the matter is remanded back to the 1st respondent for a reconsideration on merits.*

- (ix) *W.P.No.7965 of 2016 is for a declaration that the CERC is the appropriate forum having jurisdiction to decide the disputes between the petitioner and the four distribution companies. In view of our findings, this writ petition is to be allowed. Accordingly, it is allowed directing the TSERC and APERC to transfer the pending proceedings to the file of the CERC for adjudication.*

*As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. There will be no order as to costs.”*

9. Further, the said order of the Hon'ble High Court was questioned by the DISCOMs before the Hon'ble Supreme Court in Civil Appeal No.3788–3790 of 2019 and batch. The said appeals were dismissed by the Hon'ble Supreme Court confirming the order of the Hon'ble High Court. The Hon'ble Supreme Court has held as below:

- “1. Diary No.44511/2019 is taken on board.*
- 2. Delay of 254 days in filing the special leave petition, in Diary No.44511/2019, is condoned. Leave granted.*
- 3. Heard learned counsel for the parties.*
- 4. As the controversy involves State of Andhra Pradesh as well as the State of Telangana and ultimate effect is going to be on more than one State, considering the provisions contained in Section 105 of the Andhra Pradesh (Reorganization) Act, 2014, CERC is appropriate authority to hear and decide the dispute. In the facts and circumstances of the case, we find no ground to interfere with the decision of the High Court.*

5. *Let the dispute be decided by CERC, in accordance with law, after hearing the parties, as expeditiously as possible, within an outer limit of six months.*
6. *The appeals are, accordingly, disposed of.*
7. *Pending application(s), if any, shall stand disposed of.”*

10. The Commission notices that issue raised in the present petition involves each one DISCOM of the State of Telangana and the State of Andhra Pradesh. The Commission cannot segregate the relief and pass an order in respect of the one DISCOM only, while the issue arose in the combined State of Andhra Pradesh and the matter cannot be decided by one Commission. As such this matter cannot be adjudicated by the Commission in view of the observations of the Hon'ble High Court and as reiterated by the Hon'ble Supreme Court.

11. The Commission is of the view that, the only course open to it is, to transfer the matter pending before the Commission, to the CERC. Therefore, the petition along with the Interlocutory Application (I.A.) is considered for transferring them to CERC.

12. In view of the above legal position and the submission of the counsel for the petitioner and the representative of the respondents in the matter, the matter is transferred to further adjudication by CERC. Accordingly, the office is directed to take necessary steps to transfer the matter to CERC.

***This order is corrected and signed on this the 16<sup>th</sup> day of June, 2021.***

<b>Sd/-</b> (BANDARU KRISHNAIAH) MEMBER	<b>Sd/-</b> (M.D.MANO HAR RAJU) MEMBER	<b>Sd/-</b> (T.SRIRANGA RAO) CHAIRMAN
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**//CERTIFIED COPY//**