



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

R. P. No. 3 of 2023
in
O. P. No. 46 of 2018

Dated 30.12.2023

Present

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

Between:

M/s. Medak Solar Projects Private Limited,
Flat No.1105-1106, Ashoka Estate,
New Delhi 110 001.

... Review Petitioner/Petitioner

AND

1. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Somajiguda, Hyderabad 500 082.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad 500 063. ... Review Respondents/Respondents

This petition came up for hearing on 31.07.2023 and 21.08.2023. Sri. Deepak Chowdary, Advocate representing Sri. Challa Gunaranjan, counsel for the review petitioner appeared on 31.07.2023 and Sri. Challa Gunaranjan, counsel for the review petitioner appeared on 21.08.2023. Sri. Mohammad Bande Ali, Law Attaché for respondents appeared on 31.07.2023 and 21.08.2023. The review petition having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Medak Solar Projects Private Limited (review petitioner) has filed a review petition under Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with

Conduct of Business, Regulations, 2015 (Regulation No.2 of 2015) seeking review the impugned order dated 11.04.2023 passed by the Commission in O. P. No. 46 of 2018 to the extent of not granting consequential relief in compensating the petitioner on account of power fed into grid during the delayed period i.e., from 31.12.2016 to 19.04.2017 as confirmed by the Commission. The averments in the review petition are extracted below:

- a. It is stated that the present review petition is filed seeking review of paragraph No. 9 of the order dated 11.04.2023 passed by the Commission in O. P. No. 46 of 2018 to the extent of not granting consequential relief in compensating the review petitioner on account of power fed into grid during the delayed period i.e., from 31.12.2016 to 19.04.2017 as confirmed by the Commission, which read as under:

“9. In the present case, the first Respondent being the nodal agency without any delay forwarded the application of the Petitioner to 2nd Respondent with a request to issue necessary feasibility for intrastate LTOA for transmission of power from the plant of the Petitioner. The first Respondent without any delay after receipt of the application of LTOA in order to process it within time frame had undertaken correspondence with the 2nd Respondent to ascertain the feasibility aspect. The pleadings would disclose that the second Respondent had allowed synchronization of the project and has also drawn power from the Petitioner without any demur. The 2nd Respondent should have taken precautions to desist from drawing power and ought to have submitted the feasibility report without any delay and intimated the 1st Respondent expeditiously within the window closure time as to feasibility or otherwise of allowing LTOA of Petitioner. Needless to say, the ultimate beneficiary with lapses is 2nd Respondent and not the 1st Respondent. It is appropriate to state that the 1st and 2nd Respondents should act in a cohesive manner and ensure the compliance of the regulation applicable. The 1st Respondent being a facilitator is not supposed to trade in the electricity as such; no burden can be cast upon it. The 1st Respondent is only expected to provide requisite facility of deciding the grant or otherwise of LTOA to the Petitioner. For want of timely action on the part of 2nd Respondent it appears the delay occurred in processing the LTOA of the Petitioner at the end of the 1st Respondent. The inactions on the part of the 2nd Respondent would lead to a conclusion that the 2nd Respondent was responsible for the delay in processing the LTOA of the Petitioner. That the 1st Respondent accorded approval on 06.04.2017 upon receipt of the feasibility report from the 2nd Respondent and after such approval, LTOA agreement in between Petitioner and 2nd Respondent was entered on 19.04.2017 i.e., with a delay of 13 days despite showing promptness by the Petitioner in submitting the demand drafts as required towards security deposit on account of wheeling charges imbalance in supply and consumption of electricity besides State Load Dispatch Centre charges.

The delay caused on the end of 2nd Respondent cannot also be overlooked. Neither the Petitioner nor the 1st Respondent can be found fault for the lapse of 2nd Respondent and they cannot be made responsible.”

- b. It is stated that under the present review petition, it is the review petitioner's case that the Commission held that for want of timely action on the part of respondent No.2 the delay was occurred in processing the LTOA of the review petitioner at the end of the respondent No.1. However, the inactions on the part of the respondent No. 2 led to a conclusion that the respondent No. 2 was responsible for the delay in processing the LTOA of the review petitioner. After considering the same, the Commission did not go into the aspect of granting consequential relief though the findings rendered in favour of the review petitioner herein, which clearly amounts to improper exercise and abdication of its functions and is error on the face of the order dated 11.04.2023 passed by the Commission.
- c. It is stated that the petitioner filed the O. P. No. 46 of 2018 before the Commission seeking to declare that the units fed into grid by the petitioner's 8.24 MW solar power plant from the date of synchronization i.e., 07.10.2016 to the date of LTOA agreement i.e., 19.04.2017 are deemed to have been banked in terms of Telangana Solar Power Policy, 2015 (solar policy) and Regulation No. 1 of 2017 and consequently direct the respondent Nos. 2 and 3 to wheel the said banked energy to the review petitioner's consumers under LTOA dated 19.04.2017 or in alternative direct the respondent No.3 (*there is no mention of respondent No. 3 in the proceedings before the Commission from the beginning*) to pay for the 56,58,600 units @ Rs.6.78 per unit amounting to Rs.3,83,65,308/- with 12% interest.
- d. It is stated that the Commission had, by its order dated 02.01.2019, disposed of the original petition by observing as below:
- “44. *In the result, the original petition is allowed to the extent indicated below subject to the observations made in the course of discussion above.*
- a) *The Petitioner is entitled to banking of energy injected from 31.12.2016 to 19.04.2017 and the energy injected prior to the said period is treated as inadvertent energy which the licensees are not required to pay for it.*
- b) *The Petitioner is allowed to wheel the quantum of energy banked for the above said period within one year from the date of this order or 31.01.2020 whichever is earlier.*

- c) *The SLDC shall provide the necessary data to enable the of energy banked Petitioner and the Respondent to arrive at the figures in respect*
- d) *The Petitioner is not entitled to any charges or tariff for the energy that is allowed to be banked.*
- e) *The parties are directed to bear their own costs in the circumstances of the case.”*

e. It is stated that aggrieved by the order dated 02.01.2019 passed by the Commission, the respondent No.2 preferred a review vide R. P. (SR) No. 39 of 2020 before the Commission with a delay of 223 days. The Commission was pleased to dismiss the same. Thereafter an appeal against the review order and the order date 02.01.2019 was filed under Section 111 (1) of the Act, 2003 before the Hon'ble APTEL vide DFR No. 127 of 2021 and Appeal No. 268 of 2021 respectively stating that the Commission erroneously allowed the review petitioner to bank energy injected from 31.12.2016 to 19.04.2017 in absence of any Regulation. That the Commission committed error in allowing the review petitioner to wheel the quantum of energy banked by wrongly relying on solar policy when the said policy was yet to be adopted by the Commission. That the Commission on one hand has held in the impugned order that any Regulation adopted by the Commission is prospective in nature, however, on the other hand, the Commission applied the Regulation No. 1 of 2017 retrospectively for the period 31.12.2016 to 19.04.2017 while the Regulation No. 1 of 2014 ought to have been applied. It is stated that the delay was condoned by the Hon'ble APTEL in filing the appeal against which an SLP was filed before the Hon'ble Supreme Court, however, the same were withdrawn in the light of order passed by the Hon'ble APTEL disposing the Appeal No. 268 of 2021 and batch.

f. It is stated that the Hon'ble APTEL disposed of the appeal on 26.05.2022 with the following observations.

“8. Though appeals at hand were resisted on merits at the beginning, midway the hearing the learned counsel for the second Respondent (SPPDs) having taken instructions fairly submitted that some aspects of the impugned original orders dated 02.01.2019 do call for a revisit by the State Commission so as to bring clarity. We also find that the State Commission has not examined the question as to who was responsible for the delay in grant of LTOA within the prescribed period and if such delay is attributable to Transco (third Respondent) as to whether the burden can be shifted on to the appellant (DISCOM) for it to suffer the relief in the nature which have been granted. In addition to that, we are not satisfied with the way the issue of retrospective application of the

third amendment of 2017 to the relevant regulations has been glossed over, the observation that it was the responsibility of the licensee to enlighten the generator in that regard being unfounded.

9. *In the above facts and circumstances, with the consent of all the parties before us, we set aside the impugned orders and remit the original petitions of each SPPD to the State Commission with a direction for proper inquiry to be made into the question as to which entity was responsible for the delay in grant of LTOA, and as to whether the responsibility, if fixed on the Transco, can be shifted on to the appellant DISCOM for bearing the burden of relief as was granted by the order dated 02.01.2019. We may add that in the event of the claims being pressed by the SPPDs on the strength of third amendment to the relevant regulations as published in the official gazette on 25.03.2017, the State Commission will also examine if such regulations can be given effect to retrospectively.*
 10. *We clarify that the remit as above shall be limited to the examination of the claims through lens of above questions only. No further contentions shall be allowed to be urged by either side.*
 11. *The issues cannot be allowed to fester for long. Therefore, we would request the State Commission to proceed expeditiously and render its fresh decision in accordance with law at an early date, preferably within two months from the date of this judgment.*
 12. *Needless to add, the Commission will examine the issues hereby remitted with an open mind, without being influenced by the conclusions reached by its earlier order or by any observation made by this tribunal in this judgment.”*
- g. It is stated that the Commission on 11.04.2023 passed the impugned order after considering the issues as directed by the Hon'ble APTEL holding that the respondent No. 2 is responsible for the delay in granting LTOA and that the respondent No. 1 and review petitioner herein are at no fault without granting any consequential relief to compensate the review petitioner herein. It is stated that the review petitioner herein approached the Hon'ble High Court by filing W. P. No. 13778 of 2023 questioning the order dated 11.04.2023 passed by the Commission to the extent of not granting consequential relief wherein the Hon'ble High Court after hearing both sides, disposed off the said Writ Petition directing the petitioner to approach the Commission by filing a review.
- h. It is stated that therefore, there is an apparent error on the face of the order dated 11.04.2023 passed by the Commission to the extent of not granting consequential relief in compensating the petitioner and thus, the review petitioner herein prefers this review petition based on the following grounds amongst others:

- i. It is stated that there is an apparent error in as much as the conclusion of the Commission on the issues as to whether which entity was responsible in delay for grant of LTOA and whether the responsibility to their liability can be shifted from respondent No.1 to respondent No. 2 in uncategorical findings without granting any consequential relief to compensate the review petitioner for the loss occurred/suffered during the period of delay. Therefore, there is an error on the face of the Order dated 11.04.2023 that needs to be reviewed.
- ii. It is stated that there is a prima facie error in as much as the Commission's findings which rendered the observations in favour of review petitioner on merits of the matter, which is extracted at point (a) supra. In view of the findings, there is an apparent error on the face of the order dated 11.04.2023 passed by the Commission which ought to have passed consequential directions granting the relief of appropriate compensation by not doing so the Commission failed to exercise its jurisdiction and the same has to be reviewed.
- iii. It is stated that there is an error in as much as the findings of the Commission which held that the respondent No. 1 was responsible for the delay however the benefit had been enjoyed by the respondent No. 2 and thus the liability has to be shifted from respondent Nos. 1 to 2, having considered that, the respondent No.1 failed to direct the respondent No. 2 to bear the burden of relief and consequently either to allow the banking of the units injected into grid from 31.12.2016 to 19.04.2017 or in alternative to pay the compensation thereof as per Section 70 of the Indian Contract Act, 1872 (Contract Act) which is an apparent error on the face of the order which needs to be reviewed.
- i. It is stated that the present review petitioner herein has been aggrieved by the order dated 11.04.2023 passed by the Commission in O.P.No.46 of 2018 to the extent of not granting consequential relief in compensating the petitioner on account of power fed into grid during the delayed period i.e., from 31.12.2016 to 19.04.2017 as confirmed by the Commission and hence the review petitioner is advised to file the review petition before the Commission seeking review of the paragraph No.9 of the impugned order to the extent as prayed for.

2. Therefore, the review petitioner has sought the following prayer in the review petition.

“Review the Impugned Order dated 11.04.2023 passed by the Commission in O.P.No.46 of 2018 to the extent of not granting consequential relief in compensating the Petitioner on account of power fed into grid during the delayed period i.e., from 31.12.2016 to 19.04.2017 as confirmed by the Commission.”

3. The respondent No.2 has filed counter affidavit stating as below:

a. It is stated that review petitioner has filed the review petition to review the order dated 11.04.2023 passed by the Commission in O. P. No. 46 of 2018 to the extent of not granting consequential relief in compensating the review petitioner on account of power fed into the grid during the delayed period i.e., from 31.12.2016 to 19.04.2017.

b. It is stated that, the petitioner established its 8.24 MW Solar power plant under solar policy at Dawoor Village, Manoor Mandal, Medak District with an intention to sell its power to the scheduled consumers under open access.

c. It is stated that as per clause 5.1 of Regulation No. 2 of 2005 being ‘*Terms and Conditions of Open Access*’, the nodal agency for processing the LTOA applications is State Transmission Utility (STU). The relevant clause is reproduced below:

“5. Nodal Agency:

5.1 For all long-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Transmission Utility (STU).”

d. It is stated that the review petitioner after synchronization of its 8.24 MW plant on 07.10.2016 submitted its LTOA application to the nodal agency on 03.11.2016 the same was received by this respondent on 14.03.2017 and processed the same by communicating the technical feasibility to the nodal agency on 24.03.2017 and the LTOA approval was accorded on 06.04.2017.

e. It is stated that the review petitioner had filed O. P. No. 46 of 2018 before the Commission seeking to declare that the units fed into the grid by its 8.24 MW solar power plant from the date of synchronization i.e., 07.10.2016 to date of LTOA agreement i.e., 19.04.2017 are deemed to have been banked in terms of solar policy and Regulation No.1 of 2017 and consequently direct the respondent No. 2 to wheel the said banked energy to the review petitioner’s consumers under LTOA dated 19.04.2017 or in alternative direct the

respondent No. 3 (*there is no mention of respondent No.3 in the proceedings before the Commission from the beginning*) to pay for 56,58,000 units @ Rs.6.78 per unit amounting to Rs.3,83,65,308/- with 12% interest.

- f. It is stated that the Commission vide order dated 02.01.2019 in O. P. No. 46 of 2018 has held that, the review petitioner is entitled to banking of energy injected from 31.12.2016 to 19.04.2017 and directed this respondent to consider the energy injected during the said period.
- g. It is stated that the Regulation No. 1 of 2017 being the Third Amendment to Interim Balancing and Settlement Code for Open Access Transactions, 2006 in paragraphs 6 to 8 of Appendix-3 provided that:

*“For captive generator, the energy injected into the grid from the date of synchronization shall be considered as deemed banked energy.
For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to open access approval date will be considered as deemed banked energy.
The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year.”*

This Regulation came into force from the day of its publication in the gazette for the State of Telangana i.e., 25.03.2017

- h. It is stated that Regulation No. 1 of 2017 provides for banking of energy from the date of synchronization. Clause 1 (c) of the said Regulation states that the said Regulation shall come into force from the date of its publication in the gazette for the State of Telangana i.e., from 25.03.2017. In such view of the matter though clauses 6 to 8 of Appendix-3 of the said Regulation provides for banking of energy from the date of synchronization, but in view of the fact that the said Regulation comes into force from the date of its publication in the gazette for the State of Telangana as provided in clause 1 (c) of the said Regulation, the review petitioner is not entitled to claim the relief sought by it for the period from the date of synchronization. Therefore, the review petitioner is not entitled to claim compensation for the injected energy from the date of synchronization. In view of the same, the respondent had challenged the order of the Commission's dated 02.01.2019 in O. P. No. 46 of 2018 before the Hon'ble APTEL and the same was taken on record vide Appeal No. 268 of 2021.

- i. It is stated that the Hon'ble APTEL vide orders dated 26.05.2022 disposed the Appeal No. 268 of 2021 with the directions in paragraphs 8 to 11. [which is extracted by review petitioner at point (f) supra].
- j. It is stated that the Hon'ble APTEL in the above appeal has set aside the order of the Commission dated 02.01.2019 in O. P. No. 46 of 2018 and remanded the matter back to the Commission with a direction for proper inquiry to be made into the question as to which entity was responsible for the delay in grant of LTOA and to examine if the Regulation No. 1 of 2017 can be given effect to retrospectively.
- k. It is stated that, the Commission vide the order dated 11.04.2023 in O. P. No. 46 of 2018 has held as has been extracted by the review petitioner at (a) supra.
- l. It is stated that the Commission has also held that -

“10. That it is common knowledge that any Act or any rules and regulations made there under will be applicable only prospectively. In a strict sense, the Clause 7 of Appendix –III of the Regulation No.1 of 2017 over which the petitioner relied upon cannot be applied to the facts and circumstances of the case. The Commission while exercising its power under Section 86(1)(e) of the Act, 2003 has authority to encourage renewable source of energy. It is also bound to follow the policy notified by the appropriate Government with regard to encouraging renewable sources of energy. The petitioner's project came to be established in the year 2016 and intended to undertake open access third party sale much prior to the regulation notified by the Commission. The Regulation No.1 of 2017 is a Third Amendment to (Interim Balancing and Settlement Code for Open Access Transactions) Regulation No.2 of 2006. It is the contention of the petitioner that the Clause 15 of the Regulation No.2 of 2006 (which is a principal regulation) provides that in case of any difficulty in giving effect to any of the provisions of the regulation, the Commission may by general or special order issue appropriate directions to open access generators, schedule consumers, open access consumers, transmission, distribution licensees(s) etc., to take suitable action not being inconsistent with the provisions of the Act, 2003, which appear to the Commission to be necessary or expedient for the purpose of removing difficulty and by invoking this Clause the difficulty can be removed and the Regulation No.1 of 2017 can be made applicable prospectively. No force is found behind this contention of the petitioner as such by treating the case of the petitioner a special one no such order causing benefit to the petitioner can be issued and any such order is issued it will be repugnant to the Regulation No.1 of 2017 wherein it is clearly stated that the said Regulation shall come in to force from the date of its publication in the official Gazette i.e., from 25.03.2017. Hence, the Commission is of the considered view that, the Regulation No.1 of 2017 shall be having the prospective effect and not retrospective effect”.

- m. It is stated that the Commission as per the direction of the Hon'ble APTEL in Appeal No. 268 of 2021 while deciding the O. P. No. 46 of 2018 afresh has categorically upheld the contention of the respondent that, the Regulation No. 1 of 2017 shall only have prospective effect at paragraph No.10 of the order dated 11.04.2023. Hence, the review petitioner is not entitled to seek consequential relief.
- n. It is stated that section 70 of the Contract Act cannot be made applicable to the facts and circumstances of the present case. Section 70 of the Contract Act becomes applicable where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. In the present case, the energy was forcefully thrust on the respondent without giving an option to refuse it. Therefore, the claim of compensation made by the petitioner under Section 70 of the Contract Act becomes untenable.
- o. It is stated that the Commission did not chose to grant any consequential relief since the petitioner is not entitled to any relief since the Commission came to the conclusion that Regulation No. 1 of 2017 shall have prospective effect.
- p. It is stated that the averments made by the review petitioner that are not specifically dealt with herein are denied by this respondent. The review petitioner may be put to strict proof of the same.
4. The respondent therefore prays the Commission to dismiss the review petition filed by the petitioner to review the order dated 11.04.2023 in O. P. No. 46 of 2018 with costs in the interest of justice.
5. The Commission has heard the parties to the petition and also considered the material available to it. The submissions on two dates of hearing are extracted for ready reference.

Record of proceedings dated 31.07.2023:

"... .. The advocate representing the counsel for review petitioner stated that the counsel for review petitioner is engaged in the Hon'ble High Court for the State of Andhra Pradesh at Amaravathi, hence he is unable to attend the hearing before the Commission. He sought adjournment of the matter to any other date. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 21.08.2023:

“... .. The counsel for review petitioner stated that the review petition is filed against the order dated 11.04.2023 in O.P.No.46 of 2018 filed by the petitioner. This order has been passed by the Commission pursuant to and in compliance of the directions issued by the Hon’ble ATE in Appeal No.268 of 2021 filed by the respondents. The Hon’ble ATE framed specific questions while disposing of the appeal and directed the Commission to decide the matter afresh limited to the questions framed therein.

The counsel for review petitioner started that aggrieved by the said order of the Commission, the review petitioner approached the Hon’ble High Court for suitable relief. The review petitioner filed W. P. No.13778 of 2023 questioning the order passed by the Commission for the relief of granting consequential directions in the context of the findings rendered by the Commission which was not granted thereof. The Hon’ble High Court noticing that the order passed by the Commission is incomplete gave liberty to the petitioner to approach the Commission itself by filing a review petition for grant of proper consequential relief as prayed for originally in the petition.

The counsel for review petitioner stated that the Commission had, while considering the original petition, granted the relief to the petitioner. The Hon’ble ATE while disposing of the appeal filed by the respondents herein had allowed the appeal by setting aside the original order of the Commission dated 02.01.2019. Therefore, the Commission is required to pass a consequential order further to the finding in respect of the points of issue required to be considered as per the observations of the Hon’ble ATE. Suffice it to state that the Commission had already considered the relief insofar as the points of issue placed by the Hon’ble ATE for consideration in favour of the petitioner. Thus, the main aspect would be to grant consequential relief towards the energy injected into the grid for the relevant period.

The counsel for petitioner pointed out that insofar as unjust enrichment is concerned, submissions were already made by relying on Section 70 of the Contract Act, 1872. At the same time, the petitioner had not pressed for any finding as to the applicability of the Regulation prospectively or retrospectively, as it had no bearing on the facts and circumstances of the case owing to the reason that the petitioner had established the project based on the policy enunciated by the government, which provided for the benefit of solar energy injected into the grid to be banked or paid for. In those circumstances, the review petitioner is entitled to the consequential relief apart from the finding rendered in the order dated 11.04.2023 insofar as payment of amount or any arrangement is made in respect of the energy injected into the grid by the review petition.

The representative of the respondents stated that the Hon’ble ATE remanded the matter to the Commission on specific issues and the Commission had rightly appreciated the issues and decided the matter on 11.04.2023. The Commission considered all the aspects including the policy of 2015 under which the relief is sought for. The respondents had suffered losses at the hands of the generator owing to injection of unwanted infirm power resulting payment of fixed cost to the large generators, having the effect of backing down them. Also, system charges have been incurred owing to deviations in draws of power.

The representative of the respondents also stated that the review petitioner ought to have approached the Hon’ble ATE if it was not satisfied with the order

of the Commission. Instead, it had filed writ petition before the Hon'ble High Court. Invoking of the jurisdiction of the Hon'ble High Court which is neither appropriate nor relevant in the context of the matter having been remanded by the Hon'ble ATE. It is appropriate to state that the order passed by the Commission would be well appreciated by the Hon'ble ATE and the review petitioner has not chosen to approach the Hon'ble ATE.

The representative of the respondents stated that the Commission has rightly complied with the directions of the Hon'ble ATE to the extent the matter has been remanded to the Commission. In the absence of any observations as regards consequential relief based on the findings towards the points in issue as specified by the Hon'ble ATE, the Commission could not have proceeded to pass any further order. Therefore, the order passed by the Commission is in accordance with the orders of the Hon'ble ATE and there is no case for review of the said order.

The counsel for review petitioner sought to emphasize that the Commission, while complying with the directions of the Hon'ble ATE, did rule in favour of the petitioner but the consequential orders have not been considered. As such, the review petitioner has no option but to approach the Hon'ble High Court to seek consequential directions to the respondents. The Hon'ble High Court, after appreciating the situation, had considered the relief of requiring the petitioner to approach the Commission itself under the review. Thus, the review petitioner seeks to review of the order dated 11.04.2023 passed in compliance of the directions of the Hon'ble ATE.

6. The review petition is filed pursuant to directions of the Hon'ble High Court in W. P. No. 13778 of 2023 filed by the review petitioner before the Hon'ble High Court. The review petitioner had in the said review petition sought the following prayer:

“pleased to pass an order or orders or direction more particularly one in the nature of a writ of certiorari calling for the records of the order dated 11.04.2023 in O.P.No.46 of 2018 passed by the 1st respondent to the extent of not granting consequential relief in compensating the petitioner on account of power fed into grid during the delayed period i.e., from 31.12.2016 to 19.04.2017 as confirmed by 1st respondent as arbitrary illegal and improper exercise of jurisdiction besides being violative of rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India and consequently direct the 1st respondent to pass appropriate consequential relief and pass such other order or orders”

7. The Hon'ble High Court at the admission stage itself had disposed of the said writ petition and passed the following order:

“7. In the light of the above, this Court is of the considered view that the petitioner has an effective and efficacious remedy of filing review and bringing the aspects that are sought to be agitated before this Court before the very same respondent No.1 – TSERC and if the same is brought to the notice of respondent No.1 – TSERC, respondent No.1 - TSERC would consider the same and pass appropriate consequential orders.

8. In view of the same, the writ petition is disposed of granting liberty to the petitioner to avail the remedy of review under section 94(1)(f) of the

Electricity Act, 2003 and in case, the review application is filed by the petitioner, respondent No.1 – TSERC shall dispose of the same on merits within a period of two weeks from the date of filing of such review application. There shall be no order as to costs.”

Accordingly, the review petitioner has filed the present review petition.

8. Prima facie, the Commission was undertaking proceedings under the directions of the Hon'ble APTEL which had remanded the original proceedings for a fresh consideration on limited questions framed by it. The point for consideration in the remand proceedings has already been extracted above by the petitioner. Hence, it is not reiterated here. The Commission had considered and complied with the directions of the Hon'ble APTEL with regard to the remand proceedings vide the order dated 11.04.2023 in O. P. No. 46 of 2018.

9. In the aforesaid order the Commission while considering the submissions of the parties, had concluded that the liability rests with the respondent No. 2 towards delay in providing long term open access (LTOA) to the petitioner and thereby the onus rests on the respondent No. 2 for the lapses on the aspect of timely disposal of the request for LTOA. However, the Commission did not award compensation owing to the reason that the relevant Regulation applicable for the period would not allow any banked energy for the period between application for LTOA and the actual permission accorded. Moreover, the Regulation No. 1 of 2017 would not aid the review petitioner as the period under issue is prior to the notification of the said Regulation. The said amendment Regulation would be applicable prospectively and cannot be applied retrospectively.

10. With regard to applicability of Section 70 of the Contract Act, to the facts and circumstances of the present case the Commission is in agreement with the contention of the respondent No. 2 that the energy injected was neither accepted nor enjoyed by the respondent No. 2 and the energy was thrust upon the grid of respondent No. 2 without their consent and without giving an option to refuse it. Hence, the claim of compensation of review petitioner under Section 70 of the Contract Act is not tenable.

11. The review petitioner claimed compensation or payment of charges for the energy so delivered to the respondent No.2 for the period from 31.12.2016 to 19.04.2017, the applicable regulations for the present case are Regulation No. 2 of

2014 till 24.03.2017 having no provision of compensation and Regulation No. 1 of 2017 w.e.f. 25.03.2017 which allows for compensation prospectively. Therefore, the Commission allows partly compensation for the period from 25.03.2017 to 19.04.2017 though it did find that there are lapses on the part of the respondent No. 2 in ensuring timely disposal of the request of petitioner for long term open access.

12. In view of the foregoing discussion and the reasons set out thereof, the review petition is disposed of. The parties shall bear their own costs.

This Order is corrected and signed on this the 30th day of December, 2023.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

//CERTIFIED COPY//