APHC010465652024

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench Sr.No:-25 [3483]

WRIT PETITION NO: 24693 of 2024

M/s. Sarada Metals & Alloys Ltd ...Petitioner

Vs.

Andhra Pradesh Electricity Regulatory Commission ...Respondent

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Advocate for Petitioner : Mr. P. Chidambaram, Senior Counsel appearing for Mr. Sai Sanjay Suraneni

Advocate for Respondent : Mr. V R N Prashanth

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : 11th March, 2025

P C :

The petitioner challenges Regulation 3.3 of the APERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulations framed by the APERC in the years 2017 and 2022 [for short, 'the RPPO Regulations'] as also the notice, dated 30.05.2023, issued by the APERC whereby penalty has been imposed for an amount of approximately Rs.16.46 Crores for not conforming to the RPPO Regulations.

Learned Senior Counsel appearing for the petitioner sought to urge before us that the RPPO Regulations insofar as the consumption of the renewable energy as has been prescribed by the APERC runs contrary to the National Tariff Policy as envisaged by the Central Government as also the clarifications, dated 01.02.2019 & 01.10.2019, issued in that regard which clearly envisaged that the renewable power purchase obligation of all captive power plants would be capped at 5% if the same were set up before 2015-16.

It is, therefore, stated that since the power plant of the petitioner was set up before the year 2015-16, the renewable power purchase obligation could not extend beyond the 5% so prescribed.

It was also stated with reference to various judgments i.e. **Tata Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission & Ors** [(2023) 11 SCC 1]**; PTC India Ltd., v. Central Electricity Regulatory Commission & Ors** [(2010 4 SCC 603]**; Hindustan Zinc Limited v. Rajasthan Electricity Regulatory Commission** [(2015) 12 SCC 611]**; Reliance Infrastructure Ltd., v. State of Maharashtra** [(2019) 3 SCC 352] **and GRIDCO Limited v. Western Electricity Supply Company of Orissa Limited and Ors.,** [(2024) 2 SCC 500], that the National Tariff Policy is binding on the various State regulatory authorities in regard to such a consumption.

Learned counsel for the respondent would submit that even when there was a remedy of appeal available to the petitioner against the order passed by the APERC before the APTEL, which is the appellate authority, no such appeal was filed.

It is also further stated that there is a presumption of the validity of the RPPO Regulations framed by the APERC and, therefore it was also urged that the National Tariff Policy was only prescribing the guiding factors and were not mandatory to be followed by the State regulatory authority, in this case, the APERC.

It has been brought to our notice that the petitioner has since preferred a review petition before the APERC notwithstanding the fact that no appeal has been preferred before the appellate authority.

However, we are told that on account of the fact that the APERC does not have the appropriate quorum to deal with the review petition, the matter stands still thus. It was also urged that the penalty which extends to approximately Rs.16.46 Crores is likely to be recovered from the petitioner based upon an erroneous power which is assumed by the APERC which is in gross contrast to the mandatory effect of the National Tariff Policy.

It is in those circumstances prayed that pending the final disposal of the writ petition and pending the filing of an appropriate response by the respondent including the APERC the recovery of the penalty be stayed

Learned counsel for the respondent however objects to any such interim relief being granted in the absence of a proper hearing on the matter.

Although we have heard learned counsel for the parties at some length, we defer our orders on the interim application till such time as an appropriate response is filed by the respondent and the matter is considered in the correct perspective. Today, we do not feel any immediate necessity or urgency in the matter inasmuch as according to the stand of both the counsel for the parties, the recovery mechanism in terms of the liability created as per the penalty orders is not there inasmuch as the APERC is not properly constituted.

Be that as it may, we allow the respondent to file an appropriate response within a period of two weeks and rejoinder by counsel for the petitioner within one week thereafter.

The matter shall be considered then on the IA.

List on 28.04.2025.

DHIRAJ SINGH THAKUR, CJ

RAVI CHEEMALAPATI, J

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