

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.16588 OF 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Dr. Aditya Sondhi, learned Senior Counsel appears for Mr. S.Santosh Kumar, learned counsel for the petitioner.

Mr. A.Sudershan Reddy, learned Advocate General for the State of Telangana.

2. Heard on the question of admission.
3. In this writ petition, the petitioner has assailed the validity of G.O.Ms.No.9, Energy (Power.II) Department, dated 14.03.2024 issued by the State Government by which Commission has been appointed to conduct an enquiry into the correctness and propriety of the decision taken by the erstwhile Government of Telangana on procurement of power from the Distribution Companies (hereinafter referred to as 'the DISCOMS') of the State of Chhattisgarh and to enquire into correctness as well as the propriety of the decision taken by the erstwhile State Government of Telangana to establish Bhadradi Thermal Power Station (BTPS) at Manuguru and Yadadri Thermal Power Station

(YTPS) at Damaracherla. In order to appreciate the grievance of the petitioner, the relevant facts need mention, which are stated infra.

4. The State of Telangana was formed with effect from 02.06.2014. The petitioner served the State as the Chief Minister of the State for two terms i.e., from June, 2014 till 2018 and thereafter for a period from 2018 till 2023. As per the averments made in the writ petition, the State was facing acute power crisis and public in general suffered on account of deficit power supply. Therefore, the erstwhile State Government in order to tide over the immediate electricity crisis was required to take immediate medium and long term measures and to build power generating capacity in the State. The erstwhile State Government, therefore in the year 2014 decided to procure 1000 MW of power from the DISCOMS of the State of Chattisgarh and Power Purchase Agreement (PPA) was signed on 22.09.2015 for procurement of 1000 MW of power from the DISCOMS. The erstwhile State Government also took a decision to establish Bhadadri Thermal Power Station (BTPS) at Munuguru with subcritical technology and another Power Generation Station,

namely Yadadri Thermal Power Station (YTPS) at Damaracherla with coal supply.

5. The election of the State Assembly were held in the month of November, 2023. Thereafter, a new Government in the State was formed. The State Government in exercise of powers under the Commissions of Inquiry Act, 1952 by an order dated 14.03.2024 constituted a Commission to enquire into irregularities relating to procurement of power from Chattisgarh by Telangana State DISCOMS and construction of Bhadradi Thermal Power Station (BTPS) at Manuguru and Yadadri Thermal Power Station (YTPS) at Damaracherla by the erstwhile State Government.

6. The Commission, thereupon, by a communication dated 14.04.2024 requested the petitioner to apprise the Commission with regard to the role played by the petitioner in the matters mentioned in the Terms of Reference and requested him to visit the office of the Commission and present his oral version.

7. The petitioner responded to the aforesaid notice by a communication dated 01.05.2024 and in which *inter alia* it was mentioned that General Elections for the Lok Sabha is scheduled to be held on 13.05.2024 and the results will be

declared on 04.06.2024. It was further stated in the aforesaid reply that the petitioner being President of Bharatiya Rashtra Samithi (BRS) and being the Star Campaigner of the party in the elections, is unable to respond, and therefore, the Commission was requested to extend the time till 30.06.2024. Thereupon the Commission by a communication dated 04.05.2024 informed the petitioner that the Commission is required to submit the Report within a period of three months. The petitioner, therefore, was requested to make available his version either by 31.05.2024 or latest by 15.06.2024.

8. The Commission in the meanwhile recorded the Statement of fifteen witnesses. The Commission, thereafter, held a Press Conference on 11.06.2024. The petitioner by a communication dated 15.06.2024 requested the respondent No.3 to recuse himself from the responsibilities of heading the Commission on the ground that the respondent No.3 has a pre-determined opinion and his views reflect the bias. The Commission, thereafter, in exercise of powers under Sections 8B and 8C of the Commissions of Inquiry Act, 1952 issued a notice dated 19.06.2024 to the petitioner, by which the petitioner was asked to appear before the Commission within one week after

receipt of the aforesaid communication. The petitioner thereupon has filed the instant writ petition on 24.06.2024 seeking quashment of G.O.Ms.No.9, dated 14.03.2024.

9. Learned Senior Counsel for the petitioner has made the following submissions:

(i) The impugned order dated 14.03.2024, constituting Commission to enquire into the correctness and propriety of the decision taken by the then Government to procure power from the State of Chhattisgarh is *ultra vires* the provisions of the Commissions of Inquiry Act, 1952.

(ii) The impugned order dated 14.03.2024 is without jurisdiction as the terms of reference were subject matter of adjudication before both Telangana and Chhattisgarh State Electricity Regulatory Commissions and the Commission of Inquiry constituted under the Commissions of Inquiry Act, 1952 has no jurisdiction to record a finding with regard to the adjudication made by a quasi-judicial authority.

(iii) The petitioner was asked to file a reply before the Commission on or before 15.06.2024. However, even before the petitioner could submit the reply, the Commission

headed by the respondent No.3 held a press conference in which the opinion with regard to involvement of the petitioner was expressed. It is, therefore, submitted that the proceeding initiated by the Commission suffers from bias and the issue pending before it has already been pre-judged, and

(iv) Notice issued under Section 8B of the Commissions of Inquiry Act, 1952 is in violation of the law laid down by a Division Bench of this Court in **K.Vijaya Bhaskar Reddy v. Government of Andhra Pradesh**¹, which has been upheld by the Supreme Court in **Ghanshyam Upadhyay v. State of Uttar Pradesh**².

10. On the other hand, learned Advocate General, who has appeared on advance notice, submits that the writ petition preferred by the petitioner is not maintainable in view of the law laid down by the Andhra Pradesh High Court in **K.Vijaya Bhaskar Reddy** (supra) as well as the decision of the Supreme Court in **Ghanshyam Upadhyay** (supra) and the same have no application to the facts of the case. The attention of this Court has also been invited to the communication sent by the respondent No.3 to the petitioner and it has been contended that

¹ AIR 1996 AP 62 : 1995 SCC OnLine AP 356 : (1995) 3 ALD 534

² (2020) 16 SCC 811

the averments with regard to bias made in the writ petition are imaginary. It is further submitted that the news item does not disclose any bias on the part of the respondent No.3 and the writ petition has been filed with sole object to stall the proceedings before the Commission. It is contended that the allegation of bias has to be responded to by the respondent No.3.

11. Learned Senior Counsel for the petitioner by way of rejoinder has submitted that in the case of **K.Vijaya Bhaskar Reddy** (supra), Division Bench of Andhra Pradesh High Court has held that rule against bias applies to proceeding under the 1952 Act and the proceeding before the Commission are vitiated as the respondent No.3 has already pre-judged the issue pending before him.

12. We have considered the submissions made on rival sides and have perused the record.

13. Before proceeding further, it is apposite to take note of the provisions of the Commissions of Inquiry Act, 1952 (hereinafter referred to as 'the 1952 Act') and the Electricity Act, 2003. The 1952 Act is an Act to provide for appointment of Commissions of Inquiry and vesting such Commission with certain powers. Under Section 3 of the 1952 Act, appropriate Government may,

if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament, or as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification. Sections 4 and 5 of the 1952 Act deal with power and additional powers of the Commission. Section 8B of the Act incorporates the principles of natural justice and provides that if, at any stage of the inquiry, the Commission considers it necessary to inquire into conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to such person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

14. Thus from perusal of the Scheme of the 1952 Act, it is evident that a Commission of Inquiry appointed under the Act is purely a fact finding body. The Commission is required to collect facts through evidence led before it and on a consideration thereof, is required to submit its Report, which the appointing

authority may or may not accept. The Commission of Inquiry has neither any power to pronounce a binding or definitive judgment nor has power to enforce its Report. It has been held by the Supreme Court that sensitive matters of public importance, if left to normal investigation agencies, can create needless controversies and generate an atmosphere of suspicion. Therefore, in the larger interest of the community, such matters should be inquired into by a high-powered Commissions consisting of persons whose findings can command the confidence of the people (see **Ram Krishna Dalmia vs. S.R.Tendolkar**³ and **State of Karnataka vs. Union of India and another**⁴).

15. The Electricity Act, 2003 is an Act *inter alia* to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry etc. Section 86(1)(f) of the Act provides that the State Commission shall adjudicate the disputes between the licensees and generating companies and to refer any dispute to arbitration. Section 111 of the Act provides for an Appeal to Appellate Tribunal for

³ AIR 1958 SC 538

⁴ AIR 1968 SC 78

electricity. An Appeal against an order of the Appellate Tribunal, under Section 125 of the Act can be filed before the Supreme Court.

16. After having noticed the relevant provisions, we may advert to the issues which arise for consideration in this petition.

(i) Whether the Commission has jurisdiction to enquire into correctness and propriety of the decision taken by the then Government to procure power from the DISCOMS of the State of Chhattisgarh and in establishing Bhadradi Thermal Power Station (BTPS) at Manuguru and Yadadri Thermal Power Station (YTPS) at Damaracherla, as the issue has already been adjudicated by State Electricity Regulatory Commissions? and

(ii) Whether the proceeding before the Commission suffers from bias as the respondent No.3 in a Press Conference held on 11.06.2024 has pre-judged the issues pending before the Commission of Inquiry?

17. Firstly, we deal with the first issue. Admittedly, Power Purchase Agreement (PPA) was entered into on 22.09.2015 between Chattisgarh State Power Distribution Company Limited (CSPDCL) and Southern Power Distribution Company of

Telangana Limited (TSSPDCL) & Northern Power Distribution Company of Telangana Limited (TSNPDCL). Several persons, who were aggrieved by the proposed tariff determination under the said PPA, approached the Telangana State Electricity Regulatory Commission. The Telangana State Electricity Regulatory Commission after holding the public hearing, passed order on 31.03.2017 in O.P.No.93 of 2015, by which tariff was determined at the rate of Rs.3.90 per KWH. The said Commission further directed that the Telganana DISCOMS should get the tariff fixed by the Chattisgarh State Electricity Regulatory Commission. The Chattisgarh State Electricity Regulatory Commission vide order dated 07.07.2018 determined the project cost for arriving at tariff. The Telangana DISCOMS against the aforesaid order have filed an Appeal under Section 111 of the before the Appellate Tribunal, namely Appeal No.391 of 2018 which is pending before the Appellate Tribunal. However, the copies of the orders passed either by the Telangana State Electricity Regulatory Commission or by the Chattisgarh State Electricity Regulatory Commission have not been annexed with the petition. However, as per the averments made in the writ petition itself, it is evident that the issue with regard to project cost and fixation of tariff was adjudicated by the

Telangana State Electricity Regulatory Commission and the Chattisgarh State Electricity Regulatory Commission.

18. The Terms of Reference for inquiry read as under:

Notification-I

3. The above Commission of Inquiry shall have the following Terms of Reference for inquiry:

A. To enquire into the correctness and propriety of the decision taken by the Government of Telangana:

- i. in the year 2014 to procure power from the DISCOMS of the State of Chhattisgarh, without following the process of open competitive bidding but on nomination basis,
- ii. directing its DISCOMS to apply for corridor for 2000 MW with PGCIL solely on the basis of anticipation against the contracted capacity of 1000 MW.
- iii. to make full payment to PGCIL with respect to corridor for the full contracted capacity i.e., 1000 MW from the State of Chhattisgarh despite scheduling of power much below the contracted capacity, leading to huge financial implications for the State of Telangana.

B. To enquire into the correctness and propriety of the decision taken by the Government of Telangana:

- i. to establish the Bhadradi Thermal Power Station (BTPS) at Manuguru with “subcritical” technology rather than the more efficient “supercritical” technology on the grounds of shorter implementation

timeframe of two years while taking seven years to complete the project with significant cost overrun,

- ii. in awarding the EPC contract for establishment of the said unit without taking recourse to the process of open competitive bidding but purely on nomination basis.

C. To enquire into the correctness and propriety of the decision taken by the Government of Telangana:

- i. for establishing Yadadri Thermal Power Station (YTPS) at Damaracherla with coal supply from the coalfields of Singareni Collieries Company Limited located at distances ranging from 179 to 388 km resulting in considerable coal transport cost leading to higher cost of power for DISCOMs,
- ii. in awarding the EPC contract for establishment of the said unit without taking recourse to the process of open competitive bidding but purely on nomination basis.

19. Para 4 of the Terms of Reference provides that in addition to Terms of Reference made in para 3 of the Notification, the Commission shall also fix the responsibility for the lapses that may be identified in the matters and indicate financial implications of the lapses, so identified. The Commission is required to submit its Report to the State Government by 30th

June, 2024. Thus, it is evident that the Terms of Reference are far more wider than the issues adjudicated by the State Regulatory Commissions with regard to fixation of tariff and do not include the issues adjudicated by the aforesaid Commissions. Therefore, the contention that the Commission does not have jurisdiction to adjudicate the issues which have been decided by the Telangana State Electricity Regulatory Commission and the Chattisgarh State Electricity Regulatory Commission, which are quasi judicial bodies, does not deserve acceptance. Accordingly, the first issue is answered in the affirmative by stating that the Commission has jurisdiction to enquire into the Terms of Reference.

20. Now we may advert to the second issue. “Bias” in common English parlance means and implies predisposition or prejudice. It may be defined as a pre-conceived opinion or a pre-determination or a pre-disposition to decide a case or an issue in a particular manner. It can be said to be a predisposition to decide for or against one party without proper regard to the true merits of the dispute (see **Secretary to Government, Transco Department vs. Munuswamy Mudaliar**⁵). “Bias” is in fact can be described as a condition of mind which sways judgments and

⁵ AIR 1988 SC 2232

renders the judge unable to exercise impartiality in a particular case (see **A.K.Kraipak vs. Union of India**⁶ and **State of West Bengal vs. Shivananda Pathak**⁷). It is well settled legal proposition that presumption of bias is not legally available and the question of bias has to be established and not inferred (see **State of Rajasthan vs. Ram Chandra**⁸). The allegation of bias must be genuine and sufficient material in support thereof has to be furnished (see **Union of India vs. Vijay Kumar Garg**⁹). “Bias” has three major limbs, namely pecuniary bias, personal bias and official bias. It is equally well settled in law that to decide whether a proceeding may be vitiated by bias or not, the test always is whether there is a reasonable ground for believing that decision maker was likely to be biased. Therefore, the test of real likelihood of bias has to be applied to ascertain whether a proceeding is vitiated in law on account of bias.

21. Before issuing notice to the respondent No.3, the Court is required to satisfy, whether *prima facie* the allegation of bias against the respondent No.3 is made out. In the backdrop of the aforesaid well settled legal principles, we may now refer to the

⁶ AIR 1970 SC 150

⁷ AIR 1998 SC 2050

⁸ AIR 2005 SC 2221

⁹ 1997 (1) SCALE (SP) 24

facts of the case in hand. The respondent No.3 had sent a notice dated 14.04.2024 to the petitioner. The relevant paragraphs read as under:

“2. During the course of preliminary examination and perusal of the relevant files, it is prima facie noticed that you have taken part in the decision making process, in relation to the above cited matters.

3. It is felt that the information or inputs from you will help the Commission in arriving at proper conclusions and in recording correct findings.

4. You are therefore requested to apprise the Commission, of the role played by you in the matters mentioned in the Terms of Reference, extracted above or any of them. A written version of your view on the above subject may be forwarded to the Office of the Commission or through e-mail at coi2024.power@gmail.com within 15 days from the date of receipt of a copy of this letter. If you wish to peruse the relevant records, you may indicate the same and the Office of the Commission will make necessary arrangements in this behalf.

5. The Commission will be grateful to you, if you can make it convenient to visit the office and present your oral version, which would be recorded in accordance with law. In case, you express your willingness in this behalf, a convenient date and time will be fixed for this purpose by the Office of the Commission. You will also be extended the facility under Sections 8B and 8C of the Commissions of Inquiry Act, 1952.”

22. The petitioner thereupon made a request on 01.05.2024 for extension of time on the ground that elections to the

Parliament are due and sought time till the end of June, 2024.

The respondent No.3 thereupon by a communication dated

04.05.2024 informed the petitioner as follows:

“3. I would like to impress upon you that the Commission is required to submit its report within 3 months. Since the Polling in the Telangana State is taking place on 13.05.2024, you may consider the feasibility of making your version, in relation to the Terms of Reference by 31st May, 2024 or latest by 15th June, 2024. Your gesture in this behalf would be highly appreciated.”

23. Thereafter, the respondent No.3 held a Press Conference on 11.06.2024. The translated version of extract of the press conference annexed to the writ petition, reads as under:

“Press Reporters will be informed about the details of what happened in this Commission so far:-

1. Power Purchase Agreement
2. Bhadradi Thermal Power Station
3. Yadadri Thermal Power Station

All the three projects were awarded without tender process and awarded with direct negotiation. Firstly to Chhattisgarh Power Agency and secondly for construction, BHEL Contracts.

We have identified around 25 people (officials/un-officials) who have been involved in the contract and notices were served to all. Replies were received from all except Sri Chandrashekar Rao Garu, Former Chief Minister of

Telangana, requested time till 30th July, but we are addressing a letter to him stating to submit the reply before 15th June, as time is limited.

On the basis of the information secured and gathered, after the interaction with the former CMD of BHEL and the present CMD Sri Prabhakar Rao, Former CMD of GENCO and Sri Suresh Chandra, the then Principal Secretary, we asked them on what circumstances these contracts were signed. They stated that the decision was only taken by the then State Government. GENCO and other agencies were not involved in the contract.

Yesterday, Suresh Chandra said that he was in a limited period and he had not taken any decision on the project. Today we had an interaction with SK Joshi and Arvind Kumar. Sri SK Joshi said initially a Government Order (GO) was issued in which there was an acute power shortage in Telangana in the year 2014. 2000 megawatts of power purchase is required to negotiate with southern states.

It was further observed that after two months of issuance of the above said GO, an amendment was carried out in the GO. Initially the power can be purchased only from the southern states but after the amendment it was modified to the power can be purchased from anywhere in the country.

In the meanwhile, MOU was executed with Chattisgarh. After that Power Purchase Agreement was executed by CPDCL (Power Distribution Company) in which Government officials was not involved. Sri Arvind Kumar garu addressed a detailed letter at the end of November,

2016, letter to the Regulatory Commission, saying that after the execution of Power Purchase Agreement with Chhattisgarh, there is a lot of financial burden. They can save a lot of money if they go through the bidding process in the open market.

Sri Suresh Chandra said he was not in the post of Secretary, he was transferred to another post, he was looking for all the files for further developments, who has done what, after considering the detailed letter dated 30.11.2006, I have passed an interim order, after execution of Power Purchase Agreement (PPA). The Authority was given to only Chhattisgarh Regulatory Commission. Actually the Central Regulatory Commission is the competent authority. But, both States agreed and given to Chhattisgarh. Sri Arvind Kumar addressed a letter to State ERC, they advised that the matter shall be looked by the States only not here. Overall he suggested to go for the Chhattisgarh State only. The result is that there is a financial implication and we have not worked out in detail. According to the information given by them, costs will be very heavy.

The question is that why did tender process was not adopted, due to acute shortage power and in emergency direct nomination was adopted. But as per the record, the power plant is not in existence, it is under construction, it was started somewhere in the year 2017, it was supplied for three to four years, after that it was also stopped. We need to check in the entire process how much loss occurred.

Coming to Bhadradi, throughout India there is supercritical technology, but here subcritical has been adopted, subcritical technology causes not only pollution but we also have economic losses some persons estimated

roughly around 1000 crores. We have arrived at a preliminary estimate that the loss will be around 250 to 300 crores through an extra coal. It was done for the reason that we will get immediate access, but the Telangana Government has already established a super critical unit at Kothagudem and we got the information.

Coming to Yadadri, it was allotted under the nomination basis, but till now the production has not started, so it was initially imported and then the Indigenous pool, the railway line has not even finished. When I visited recently, they said that they will start the production of one unit by August, I have got my own doubts about the completion of railway line. Unless there is availability of coal, the railway line would not be able to finish. Apart from the officials, there have been suggestions from some other people too, especially Sri Raghu, Kodandaram and Venugopal, we are trying to get their opinion as well.

Thank you”

24. Thus, from perusal of the aforesaid relevant extract, it is evident that the conference was held to update the Media about the status of the proceeding before the Commission. The statement that “power plant is not in existence, it is under construction” is based on record. The relevant extract does not contain any material so as to indicate that the respondent No.3 has pre-judged the issues pending before him. The Commission is required to record the findings on the basis of material

produced before it. We cannot also lose sight of the fact that the respondent No.3 held the Constitutional Office of the Chief Justice and has worked as constitutional functionary. The allegation of bias against the respondent No.3 is solely based on the statement reportedly made in the press conference and no other material has been produced to show that the proceeding before the respondent No.3 is vitiated on account of personal bias. The allegation of bias cannot be inferred but have to be established. In the facts and circumstances of the case, we hold that the petitioner has failed to prove the plea of bias against the respondent No.3. Therefore, the proceeding before the respondent No.3 is not vitiated on the ground of bias. The second issue is therefore answered in the negative.

25. The contention that the order dated 14.03.2024 has been issued in violation of 1952 Act does not deserve acceptance. Similarly, the contention that the Notice issued under Section 8B of the 1952 Act is in violation of Section 8B of 1952 Act does not deserve acceptance as in the said Notice, it has been stated that from a perusal of relevant files *prima facie*, it appears that the petitioner had participated in the decision making.

26. In view of preceding analysis, we do not find any merit in the writ petition and the same fails.

In the result, the writ petition is dismissed *in limine*. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

01.07.2024
Pln