

**HIGH COURT OF ANDHRA PRADESH : AMARAVATI****MAIN CASE: W.A.Nos.388, 394, 418, 439 and 443 of 2021****PROCEEDINGS SHEET**

Sl. No.	DATE	ORDER	OFFICE NOTE
	20.07.2021	<p><i>(Taken up through video conferencing)</i></p> <p><b><u>I.A.No.1 of 2021 in W.A.No.418 of 2021, I.A.No.1 of 2021 in W.A.No.439 of 2021 &amp; I.A.No.1 of 2021 in W.A.No.443 of 2021</u></b></p> <p>These are the applications for dispensing with the filing of certified copies of the order under appeal.</p> <p>Dispensed with for the present.</p> <p>I.As. stand disposed of.</p> <p><b><u>I.A.No.2 of 2021 in W.A.No.394 of 2021</u></b></p> <p>This is an application for dispensing with the filing of annexures/material papers filed in the writ petition.</p> <p>Dispensed with for the present.</p> <p>I.A. is accordingly disposed of.</p> <p><b><u>W.A.Nos.388, 394, 418, 439 and 443 of 2021</u></b></p> <p>Challenge in these appeals is to a judgment and order dated 17.06.2021 passed by the learned single Judge in W.P.No.674 of 2021, which was filed praying for a writ of certiorari to quash the Requests for Selection (RfS) dated 30.11.2020 for a capacity of 6400 MW as well as the draft Power Purchase Agreements (PPAs) issued by the Andhra Pradesh Green Energy Corporation Limited (hereinafter referred to as 'APGECL') (respondent No.4 in the writ petition) and for a direction to APGECL to issue fresh RfS strictly in accordance with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Photo Voltaic Power Projects dated 03.08.2017 issued under Section 63 of the Electricity Act, 2003 (for short, 'the Act of 2003').</p>	

Sl. No.	DATE	ORDER	OFFICE NOTE
		<p>As W.A.Nos.418, 439 and 443 of 2021 are preferred by L1 bidders who were not parties to the writ petition, they filed applications for grant of leave to appeal, which are numbered as I.A.No.2 of 2021 in the respective appeals.</p> <p>Mr. Deepak Chowdhury, learned counsel, appears for the applicant/appellant in W.A.No.418 of 2021.</p> <p>Mr. Kapil Sibal, learned senior counsel, appears for the applicant/appellant in W.A.No.439 of 2021.</p> <p>Mr. Mukul Rohatgi, learned senior counsel along with Mr. S. Vivek Reddy, learned senior counsel, appears for the applicant/appellant in W.A.No.443 of 2021.</p> <p>Sri S. Sri Ram, learned Advocate General, appears for the State authorities/appellants in W.A.No.388 of 2021.</p> <p>Sri P. Sri Raghu Ram, learned senior counsel, appears for the appellants in W.A.No.394 of 2021 (respondent Nos.7 and 8 in the writ petition).</p> <p>Dr. Abhishek Manu Singhvi, learned senior counsel assisted by Mr. Shri Venkatesh, along with Mr. D. Prakash Reddy, learned senior counsel, appears for the writ petitioner.</p> <p>Mr. N. Harinath, learned Assistant Solicitor General of India, appears for Union of India.</p> <p>Mr. V.R.N. Prasanth, learned counsel appears for Andhra Pradesh Electricity Regulatory Commission.</p> <p>The applications for leave are not opposed by the learned senior counsel appearing for the writ petitioner and the other counsel appearing today.</p> <p>We have perused the applications and on due consideration, leave to appeal is granted. Accordingly, I.A.No.2 of 2021 in W.A.No.418 of 2021, I.A.No.2 of 2021 in W.A.No.439 of 2021 and I.A.No.2 of 2021 in W.A.No.443 of 2021 are disposed of.</p> <p>Also heard learned counsel for the parties on the writ appeals.</p> <p>Amongst many contentions advanced in the writ petition, it was projected that the writ petitioner could not take part in the bidding process as the impugned RfS and</p>	

Sl. No.	DATE	ORDER	OFFICE NOTE
		<p>draft PPAs are contrary to provisions of Sections 63 and 86 of the Act of 2003 and that the deviations in the impugned RfS and impugned PPAs had not been approved by the Andhra Pradesh Electricity Regulatory Commission (for short, 'APERC') and they oust the powers and jurisdiction of APERC, which is appropriate commission for adjudication of any disputes arising out of PPAs. It is also contended therein that the impugned RfS and draft PPAs are in gross violation of the Arbitration and Conciliation Act, 1996.</p> <p>The learned single Judge, by the order under assailment, set aside the impugned RfS and draft PPAs, reserving liberty to the APGECL to issue fresh RfS, if so advised, in accordance with the guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Photo Voltaic Power Projects dated 03.08.2017 issued under Section 63 of the Act of 2003.</p> <p>Arguments advanced on behalf of the L1 bidders, appellants in W.A.Nos.418, 439 and 443 of 2021, are primarily to the effect that they were necessary parties to the writ petition and the order passed in their absence is a nullity, being in violation of principles of natural justice and therefore, the impugned order cannot be sustained in law. They have also contended that the reasoning assigned by the learned single Judge is also not tenable in law. It is also submitted that the parent company of the writ petitioner had prayed for extension of time to bid by a period of six weeks along with prayer for modification in respect of some of the conditions of the bid document but the same having not been accepted, the writ petition came to be initiated at the instance of writ petitioner and therefore, present is not a bona fide litigation. When the writ petitioner did not participate in the tendering process, given the projections that were made in the writ petition, the learned single Judge ought not to have entertained the writ petition. It is further contended that allowing of the writ petition has affected public interest.</p>	

Sl. No.	DATE	ORDER	OFFICE NOTE
		<p>On behalf of the other appellants who were parties to the writ petition, it is contended, amongst others, that the order of the learned single Judge needs to be interfered with as conclusions reached on the touchstone of the provisions contained in the Act of 2003 are not tenable in the facts and circumstances of the case.</p> <p>It is also submitted that in the attending facts and circumstances, successful tenderers ought to have been arrayed as parties and, therefore, any adjudication made in their absence cannot receive judicial imprimatur.</p> <p><i>Per contra</i>, Dr. Abhishek Manu Singhvi has submitted that the order of the learned single Judge is a well reasoned order and on due consideration, the learned single Judge had come to the conclusion that RfS and draft PPAs are not in accordance with the guidelines for Tariff Based Competitive Bidding Process. He has further submitted that by reason of the interim order passed in the writ petition on 07.01.2021, no agreements had been entered into in relation to the impugned RfS and draft PPAs with successful bidders and despite such an interim order operating, the successful bidders did not assail the said order and also had not impleaded themselves in the writ petition.</p> <p>The weighty arguments advanced by the learned senior counsel for the parties will require in-depth deliberations.</p> <p>Learned senior counsel for the parties, however, submit that the matter is required to be heard as early as possible inasmuch as the Government intends to set up solar power projects in a phased manner in order to provide 9 hours day time free power supply to agricultural consumers.</p> <p>Admit the appeals for hearing.</p> <p>Registry will list these cases on 16.08.2021.</p> <p>In the attending facts and circumstances of the case, while suspending the impugned order 17.06.2021</p>	

Sl. No.	DATE	ORDER	OFFICE NOTE
		<p>passed by the learned single Judge in W.P.No.674 of 2021, we also direct that, as provided by the learned single Judge in the interim order 07.01.2021, the respondents in the writ petition shall not to enter into any agreements in relation to the impugned RfS and draft PPAs with successful bidders, until further orders.</p> <p><b>ARUP KUMAR GOSWAMI, CJ</b>      <b>NINALA JAYASURYA, J</b> IBL</p>	