
(2000) 04 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5658 and 6230 of 2000

Ind-Barath Energies Ltd., Hyd.

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Andhra Pradesh Electricity Reforms Act, 1998 — Section 10, 11, 12, 54, 55
Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 — Regulation 11, 12, 13, 14, 16
Constitution of India, 1950 — Article 254
Electricity (Supply) Act, 1948 — Section 5, 76
Electricity Act, 1910 — Section 28, 52
Electricity Duty Act, 1930 — Section 3

Citation : AIR 2000 AP 298 : (2000) 3 ALD 546 : (2000) 3 ALT 257

Hon'ble Judges : B. Suderhsan Reddy, J

Bench : Single Bench

Advocate : Mr. R. Subhash Reddy, for the Appellant; Government Pleader for Irrigation, Mr. M. Vishnuvardhan Reddy, Mr. B.V. Rammohan Rao and Mr. E. Manohar for Mr. K.N. Jwala, for the Respondent

Judgement

B. Suderhsan Reddy, J.—These two writ petitions may be disposed of by a common order.

2. Both the petitioners herein challenge the Proceedings No.APERC/Secy/ Engg/ No.5, dated 6-3-2000 on the file of the third respondent herein. The petitioners seek a writ of certiorari from this Court calling for the records relating to the said proceedings dated 6-3-2000 on the file of the third respondent and quash the same.

3. Before advertng to the question relating to the validity, legality and propriety of the impugned order, it may be necessary to briefly notice the relevant facts leading to filing of these writ petitions.

4. The State Government of Andhra Pradesh in line with the Government of India Policy for Development of Non-conventional energy based projects have issued

orders reflecting its policy decision to provide uniform incentives to entrepreneurs who are setting up projects based on non-conventional energy sources vide G.O. Ms. No.93, Energy (RES) Department, dated 18-11-1997. The policy of the State Government as is evident from the said Government Order is to make available the incentives to all the Non-Conventional energy sources uniformly. The policy itself appears to have been formulated by the State Government after a review of the incentives made available to the various sectors of non-conventional energy. The incentives are envisaged to encourage power generation in the non-conventional sector, which are renewable. The earlier decision of the Government according certain revised incentives in respect of the developers with whom Non-Conventional Energy Development Corporation of Andhra Pradesh had already entered into memoranda of understanding is reflected in G.O. Ms. No.66/221/94-WE/ PG,dated25-II-1994,dated 16-3-1996. The Government of Andhra Pradesh through its revised policy decision vide G.O. Ms. No.93, dated 18-11-1997 allowed third party sales at a tariff not lower than HT tariff of A.P. State Electricity Board. We are not concerned with the other incentives for the present in these writ petitions.

5. The State Government of Andhra Pradesh delegated its powers in the matter by creating a Nodal Agency i.e., the second respondent-Corporation-State Government Corporation to entertain applications from the private sector. Both the petitioners herein attracted by the incentives of the third party sales claim to have decided to set up Biomass based power-generating plants. The petitioner in WP No.5658 of 2000 made an application in this regard and the same is approved by the Board initially for 5 MW, but subsequently the capacity is revised to that of 6 MW by the proceedings dated 14-12-1998. The plant is established at Miryalaguda in Nalgonda District. The petitioner in WP No.6230 of 2000 has set up a biomass based power generating plant with 4 MW at Vemulapalli village of East Godavari District. Necessary permissions and approvals have been granted by the Competent Authorities in this regard. For the present, we are not concerned with the investments and other particulars alleged to have been made by the petitioners for setting up the plants. However, both the petitioners claim that the units are completely established and the entire constructions are over and they are ready for commissioning. Both the petitioners claim that they have entered the agreements with third party consumers for supply of energy and obtained advances from them. It is also an admitted fact that both the petitioners have entered into memoranda of understanding with the second respondent-corporation. Even according to the said memoranda of understanding, the petitioners are entitled to sell the energy to third parties. The petitioners have entered wheeling agreements with A.P. TRANSCO for supply of energy to the third parties. It may be appropriate at this juncture to notice that the Government of Andhra Pradesh vide G.O.Ms.No.112, dated 22-12-1998 made certain amendments to its earlier policy decision notified in G.O.Ms.No.93, dated 18-11-1997 inter alia declaring that the uniform incentives specified in G.O. Ms. No.93 shall be available to the power projects where fuel used is from non-

conventional energy sources. One of the amendments relates to the operation of the incentive schemes. Clause (2) of the said Government Order says:

"The operation of the incentives scheme shall be watched for a period of 3 years and at the end of 3 years period from the date of G.O. Ms. No.93, the Andhra Pradesh State Electricity Board shall come up with suitable proposal for review for further continuance of the incentives in the present form or in a suitably modified manner to achieve the objectives of promotion of power generation through non-conventional sources"

6. The said Government Order further declares that such of the entrepreneurs/developers covered by G.O. Ms. No.93, dated 18-11-1997 who are entitled to third party sale of energy shall be deemed to be licensees for the purpose u/s 3 of the Electricity Duty Act, 1930 read with Section 28 of Indian Electricity Act, 1910.

7. The gravamen of the complaint in the instant writ petitions relates to the third respondent-commission initiating proceedings for review of various incentives given to the developers of non-conventional energy. The jurisdiction of the Commission itself is questioned. The procedure adopted by the Commission in reviewing the earlier incentives given to the developers is impugned in these writ petitions. The whole controversy centers around the review of incentives relating to the third party sales by the developers.

8. The Andhra Pradesh Electricity Reform Act, 1998 (Act No.30 of 1998) (for short "the Reform Act") came into force on 1-2-1999. The Act was enacted to provide for the Constitution of an Electricity Regulatory Commission, restructuring of the Electricity Industry, Rationalisation of the generation, transmission, distribution and supply of electricity avenues for participation of private sector in the electricity industry and generally for taking measures conducive to the Development and Management of the Electricity Industry in an efficient, economic and competitive manner and for matters connected therewith or incidental thereto. The statement of objects and reasons for enacting the Reform Act is as follows:

"The Andhra Pradesh State Electricity Board constituted u/s 5 of Electricity (Supply) Act, 1948 is charged with the responsibility for co-ordinated development of generation, transmission and distribution of electrical energy in the State. However, in the present set up .of the power sector, which is vertically integrated, functional priorities are getting distorted primarily due to resources crunch. This has resulted in inadequate investment in transmission and distribution, which has adversely affected the quality and reliability of supply. It is, therefore, considered necessary to unbundle the integrated power sector, recognise generation, transmission and distribution functions into compact commercially viable entities, providing operational, managerial and functional autonomy to the successor entities. In order to meet the above objectives, it is proposed to constitute two separate corporations one for generation and the

other for transmission and distribution of electrical energy, which will be incorporated by the State Government under Companies Act, 1956. It is also proposed to constitute subsidiary or associated transmission and supply companies or corporations initially, these corporations will function as wholly owned subsidiaries of the State Government but in due course it will be open for private sector participation. The essence of restructuring is to achieve the balance required to be maintained in regard to competitiveness and efficiency on the one part and the social objective of ensuring a fair deal to the consumer on the other part.

It is also proposed to establish and incorporate an autonomous statutory Electricity Regulatory Commission to balance the interests of all the stakeholders in the electricity industry and to promote healthy growth of the power sector in the State. Consequent to the creation of Electricity Regulatory Commission the State will be divested of its regulatory functions. However, the State Government shall have the power to issue policy directions and over all planning and co-ordination on the matters concerning electricity in the State. The Commission shall Act as the body, which issues and enforces licences for transmission and distribution of electrical energy in the State and strives for optimisation of costs and improvement in consumer service by promoting competition. The Commission also prescribes standards of performance for licensees and would gather information periodically to ensure compliance to the prescribed standards. The Commission has been vested with authority to prevent monopoly abuse and to regulate and adjudicate on tariffs and related issues and also to Act as a body to resolve or to set up machinery for speedy resolution of disputes between the licensees.

To achieve the above objectives, the Government have decided to make a separate law by undertaking Legislation.

This Bill seeks to give effect to the above decisions".

9. The Reform Act duly received the assent of the President of India as is required under Article 254 of the Constitution of India. The Act has come into force with effect from 1-2-1999.

10. The third respondent-Commission is a statutory body constituted u/s 3 of the Reform Act. The powers and functions of the Commission are specified in Sections 9 to 11 of the Reform Act. Section 11 deals with specific functions to be discharged by the Commission and it may be appropriate to have a look at Section 11 of the Reform Act.

11. Functions of the Commission :--(1) Subject to the provisions of this Act, the Commission shall be responsible to discharge amongst others, the following functions, namely:-

(a) to aid and advise, in matters concerning electricity generation, transmission, distribution and supply in the State;

(b) to regulate the working of the licensees and to promote their working in an efficient, economical and equitable manner including laying down standards of performance for the licensees in regard to services to consumers;

(c) to issue licences in accordance with the provisions of this Act and determine the conditions to be included in the licences;

(d) to promote efficiency, economy and safety in the use of the electricity in the State including and in particular in regard to quality, continuity and reliability of service and enable to meet all such reasonable demands for electricity;

(e) to regulate the purchase, distribution, supply and utilisation of electricity, the quality of service, the tariff and charges payable keeping in view of both the interest of the consumer as well as the consideration that the supply and distribution cannot be maintained unless the charges for the electricity supplied are adequately levied and duly collected;

(f) to promote competitiveness and progressively involve the participation of private sector, while ensuring fair deal to the customers;

(g) to collect data and forecast on the demand and use of electricity and to require the licensees to collect such data and forecast;

(h) to require licensees to formulate perspective plans and schemes in coordination with others for the promotion of generation, transmission, distribution and supply of electricity;

(i) to regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State;

(j) to lay down a uniform system of accounts among the licensees;

(k) to regulate working of licensees and promote their working in an efficient economical and equitable manner; and

(l) to undertake all incidental or ancillary things.

(2) The Commission shall always act consistent with the objectives and purposes for which the Commission has been established as an independent statutory body corporate and all acts, decisions and orders of the Commission shall be pursuant to and shall seek to achieve such objectives and purposes.

(3) Notwithstanding the provisions, of Section 52 of the Indian Electricity Act, 1910 (9 of 1910) or the provisions of Section 3(1)(ii) and Section 76 of the Electricity (Supply) Act, 1948 (54 of 1948), the Commission shall have the power to act as arbitrator or nominate arbitrator or arbitrators to adjudicate and settle the disputes arising between the licensees in accordance with the regulations to be prescribed and this shall be a condition precedent of the grant of licences.

11. Section 10 of the Reform Act confers certain powers that are vested in a civil Court under the CPC in respect of matters enumerated therein, sub-section (6) of

Section 10 confers power upon the Commission to call upon any person including the generating companies or the licensees to furnish to the Commission periodically or as and when required any information concerning the activities carried on by such person related to generation, transmission, distribution and supply or use of electricity, the connection between such person and any other person or undertaking. The Commission is also entitled to call for such other information relating to the organisation, business, cost of production and other requirements as may be prescribed to enable the Commission to carry out its functions under this Act.

12. Section 54 of the Reform Act confers power upon the Commission to make regulations for the proper performance of its functions under the Act. including the matters relating to the administration of affairs of the Commissions including the exercise of its administrative, quasi-judicial and judicial powers including arbitration and procedure for summoning and holding of the meetings of the Commission. Section 55 of the Reform Act confers power upon the State Government to make rules to carry out its functions under the provisions of the Act.

13. Indeed, very wide powers are conferred upon the Commission almost touching upon every aspect relating to generation, transmission, distribution and supply of electricity and with a particular reference to participation of private sector in the electricity industry. One of its obligations is to aid and advise the State in matters concerning electricity generation, transmission, distribution and supply in the State. Its power also includes regulation of purchase, distribution, supply and utilisation of electricity, the quality of service, the tariff and charges payable in the interest of consumers as well as the developers of energy. One of its functions relates to promotion of competitiveness and encourage the involvement of private sector while ensuring fair deal to the customers.

14. However, the State Government's power to issue policy directions on matters concerning electricity in the State including the over all planning and co-ordination is not effected in any manner whatsoever by the Reform Act. Section 12 of the Reform Act specifically recognises the general powers of the State Government in this regard. But such power of the State Government to issue policy directions shall in no manner adversely affect or interfere with the functions and powers of the Commission including but not limited to determination of the structure of tariffs for supply of electricity to various classes of consumers. The Commission is conferred with jurisdiction to issue licences in accordance with the provisions of the Reform Act and determine the conditions to be included in the licenses.

15. Sri R. Subhash Reddy, learned Counsel for the petitioners submits that the Commission has no authority in law to review the various incentives given to the developers of non-conventional energy. The learned Counsel contends that there is no such specific authority conferred upon the Commission to review the policy decision of the State Government, particularly in relation to the incentives

provided to the developers of non-conventional energy. It is submitted that the Commission could not have prohibited third party sale of energy by compelling the non-conventional energy developers to supply power to A.P.TRANSOCO at the fixed rates. The learned Counsel alternatively contends that the procedure adopted by the Commission is wholly unreasonable and arbitrary. The resultant decision by the Commission is ultra vires, is the submission made by the learned Counsel for the petitioners. The impugned order is violative of principles of natural justice.

16. Sri E. Manohar, learned senior Counsel appearing on behalf of A.P. Transco made elaborate submissions practically on behalf of all the respondents. The learned senior Counsel defended the decision of the Commission. It is submitted by the learned senior Counsel that very wide ranging powers are conferred upon the Commission and such powers includes review of the policy decision of the State Government relating to incentives earlier granted to the developers of non-conventional energy. The Commission is entrusted with regulatory functions and such functions include the power to fix the tariff. The Commission can grant permission as well as prohibit the sale of energy by the developers to the third parties. The procedure adopted by the Commission does not suffer from any legal infirmity.

17. Sri B. V. Rammohan Rao, appearing on behalf of the Commission adopted the submissions made by the learned senior Counsel.

18. It would be appropriate to take up the contentions relating to the procedural irregularity and violation of principles of natural justice, it would be necessary to notice as to in what manner the law is set in motion by the third respondent-Commission in purported exercise of its power under the Reform Act.

19. The Commission in exercise of the power conferred by Section 9, subsection (2) and Section 54, sub-section (2)(a) of the Reform Act made regulations for conduct of its proceedings and discharge of its functions. The regulations are known as "Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999" (for short "the Regulations"). Regulation 7 deals with proceedings before the Commission. The Commission is authorised from time to time to hold such proceedings, as it may consider appropriate in the discharge of its functions under the Act. Regulation 7(2) is very important which practically structures the discretion and the power of the Commission in the matter of exercise of its power and jurisdiction under the Act. Regulation 7(2)(i) mandates that all the matters, which the Commission is required under the Act to undertake and discharge through hearings, shall be done through hearing in the manner specified. Rule 7(2)(ii) declares except where the Commission may provide otherwise for reasons to be recorded in writing, all matters affecting the rights or interests of the licensee or any other person or class of persons shall be undertaken and discharged through hearing in the manner specified in these Regulations.

20. It is thus absolutely clear that except for the reasons to be recorded in writing by the Commission, all the matters affecting the rights or interest of the licensee or any other person shall have to be decided and disposed of after hearing the affected parties. Such affected party could be a licensee or any other person or class of persons.

21. Regulation 8(1) confers jurisdiction upon the Commission to initiate any proceedings suo motu or on a petition filed by any affected person. Whenever the Commission initiates suo motu proceedings it shall be only by a notice issued by the office of the Commission to be served upon the affected and interested parties for the filing of replies and rejoinders in opposition or in support of the petition in such form as the Commission may direct. The Commission may even appoint an officer of the Commission or any other person to present the matter in the capacity of a petitioner in the case whenever the Commission initiates suo motu proceedings. Regulation 9 deals with the petitions and pleadings before the Commission. Such petitions are required to be verified by an affidavit and every such affidavit shall be in Form 2. Regulation 1 provides the procedure and other related matters for filing such affidavit. Regulation 12 provides the manner of scrutiny of the pleadings. It is interesting to notice that the petitions are required to be posted for admission before the Commission enabling the Commission to issue notice to such person or persons, as it may desire to hear the petition for admission. Regulation 13 deals with service of notices and processes issued by the Commission. Regulation 14 provides for filing of reply, opposition, objections etc. Every person to whom the notice of enquiry or the petition is issued may oppose or support the petition. The replies to be filed shall be signed and verified and supported by the affidavit in the same manner as the case of the petitioner. Regulation 15 speaks about the hearing of the matters. The Regulatory Commission may determine the stage, the manner, the place, the date and time of the hearing of the matter as it may consider appropriate in its discretion consistent with such specific time required as set forth in the Act. The Commission may decide the matter on the pleadings of the parties or may call for the parties to produce the evidence by way of affidavit or lead oral evidence in the matter. It may even provide an opportunity to the other party to cross-examine the deponent of the affidavit. Regulation 16 authorises the Commission to call for further information from the parties and may require any of the parties to produce such documentary or other evidence as the commission may consider necessary for the purpose of enabling it to pass orders. Regulation 19 deals with the orders of the Commission and prescribes the procedure thereof.

22. A bare reading of these regulations would in unmistakable terms reveal the nature of the Commission and proceedings, which are practically quasi-judicial in nature. The regulations prescribe the procedure for issuing notice, presentation and scrutiny of the pleadings, filing of reply, opposition, objections etc., and hearing of the matter at the place and date specified by the Commission. The principles of natural justice are in built in all these regulations. It is clearly evident from the scheme of the regulations that suo motu proceedings initiated

by the Commission as well as the proceedings initiated on a petition filed by an affected person, are required to be heard and disposed of in the same manner as provided for in the regulations referred to herein above.

23. Now let us examine as to in what manner the suo motu proceedings are initiated by the Commission leading to passing of the impugned proceedings dated 6-3-2000. The Commission issued notice to the petitioners herein in the following Format:

Andhra Pradesh Electricity Regulatory Commission

Lr.No.APERC/DIR/Engg/Non-Convention/ D.No./2000, dated /1-2000

Sir,

Your Project for Bio-Mass Power Project of Capacity 6.00 MW is sanctioned by NEDCAP and APTRANSCO entered into Power Purchase & Wheeling Agreement for evacuation of Power: in order to assess the progress made by you for the above-mentioned Project, you are requested to attend a meeting with the "Commission" at 11-00 a.m., on 20-1-2000 in Court Hall at the Commissioner's Office located at premises No.8-2-282/B/I, Road No.3, Banjara Hills, Hyderabad - 500 034, duly furnishing the information as called for in the questionnaire enclosed to this letter, by filing an affidavit at least 3 days in advance to the date of meeting. In case you want to add any further information, which you consider necessary, you may do so.

Please acknowledge the receipt of this letter and confirm attending the meeting on 20-1-2000.

Yours faithfully, Sd/- Secretary

24. The record made available does not show anything as to whether each of the developer furnished the required information as is required by the Commission vide questionnaire annexed to the notice. The developers who have established the projects and those who are in the process of establishing (the projects were required to furnish the information as called for in the questionnaire by filing an affidavit in the prescribed format annexed to the notice. None of the developers appears to have filed any such affidavit. The record made available by the Commission would reveal that a representation dated 24-1-2000 was submitted by "All Renewable Energy Developers Association". That representation itself appears to have been submitted in response to the meetings held at the Commission's office on 19th and 20th January, 2000. In the counter-affidavit filed by the Commission, it is stated that after hearing all the developers and after giving due considerations to their submissions, the Commission came to a decision to issue proceedings dated 6-3-2000.

25. It is pertinent to note that the Commission issued notice requiring the developers to furnish the information "in order to assess the progress" made by

the project. In the notice it is not specified that the Commission intends to review the policy relating to third party sales. There is no whisper that the Commission intended to make any departure from the principles laid down in G.O. A.P. Ms., dated 17-11-1997. The petitioners and other developers were never put on notice by the Commission as to what it intended to do in the matter after calling the requisite information from the developers. Obviously, neither the petitioners nor any developers could have raised their objections with regard to third party sales. It is obvious from the record that the Commission expressed its view or desire to make a departure from the principles laid down in G.O. A.P. Ms., dated 17-11-1997 during the course of discussions with the developers on 19th and 20th January, 2000. The developers made their objection then and there which is summary in nature as is evident from their representation dated 24th January, 2000. It is so clear that the petitioners were in dark as to what the Commission intended to achieve by calling for the particulars from the developers. If we go by notice, the Commission merely "intended to assess" the progress made by each of the developer about their project. The impugned order, in my considered opinion, is violative of principles of natural justice. Neither the petitioners nor any developers were put on notice as to what the Commission intended to do after calling for the required particulars. On other hand, the notice issued by the Commission in categorical terms would reveal that the Commission merely wanted to assess the progress made by each of the developer in respect of the sanctioned project. The Commission could not have travelled beyond the notice and pass the impugned order. There is no dispute whatsoever that the impugned order passed by the Commission would result in far reaching consequences adversely affecting the existing rights of the developers relating to third party sales.

26. The notice obviously appears to have been issued by the Commission in purported exercise of power under subsection (6) of Section 10 of the Reform Act. It authorises the Commission by a general or special order, call upon any person including the generating companies or the licensees to furnish to the Commission periodically or as and when required any information concerning the activities carried on by such person related to generation, transmission, distribution and supply or use of electricity, the connection between such person and any other person or undertaking including such other information relating to the organisation, business, cost of production and other requirements. Such information may be required by the Commission to carry out its functions under the Act. Obviously this is what the Commission precisely intended when it got issued notice to the developers, as it is clearly indicated in the notice itself that the Commission intended to "assess the progress" made by each of the developer in respect of their projects. The notice is perfectly in conformity with the provisions of the Act referred to herein above. There is absolutely no difficulty to hold that every person, generating company or licensee is duty bound to furnish such information. The information may enable the Commission to carry out its functions under the Act in an effective manner. But if the

Commission intends to use such material for passing an order in discharge of its functions u/s 11 of the Reform Act, it has to necessarily set the law in motion in accordance with the regulations. The Commission has to necessarily follow the mandatory requirements as provided for in the regulations. The Commission, as we have already noticed, failed to follow the Regulations in initiating the proceedings leading to passing of the impugned order. The Commission could not have passed the impugned order on the basis of notice and questionnaire issued to the developers. The information if any received by the Commission may form the basis for setting the law in motion. It is a different matter altogether had the Commission taken into consideration the material and information received pursuant to the notice for proposing to make any departure from the principles laid down in G.O. A.P.Ms., dated 17-11-1997 relating to third party sales. If at all, such an order could have been passed departing from the principles laid down in G.O. A.P. Ms., dated 17-11-1997 but only after putting all the developers on specific notice of its intention to make such departure.

27. It is well settled that the notice serves the important functions of specifying the legal and factual issues to be discussed. The notice by a quasi-judicial body should invariably specify the legal basis upon which it proposes to exercise its jurisdiction and the consequences, which may follow from an adverse determination. A Tribunal cannot make any finding against a person if no notice is given specifying set of facts upon which a finding could be recorded detrimental to the interest of the recipient of the notice. The law requires that a notice should provide a party with sufficient indication of the issues involved so as to enable the party to prepare his case. Only in such cases, it could be said that there had been a meaningful opportunity of being heard. It is clear, therefore, that a quasi-judicial body cannot proceed upon any basis of liability, which has not been brought to the attention of the affected parties. Similarly, a Tribunal cannot specify one issue and then proceed to hear and decide other issues of which a party has received no notice.

28. In the instant case, the Commission straight away passed the impugned order adversely affecting the rights of the petitioners pursuant to the notice in which neither there is any proposal indicating for departure from the principles laid down in G.O. A.P. Ms. dated 17-11-1997 nor is there any proposal for sale of energy to A.P.TRANSCO.

29. The parameters of whole debate and its complexity would have been totally different had the Commission put the petitioners on notice proposing to make departure from the policy relating to third party sales. The petitioners would have put forth their version as to why the policy relating to the third party sales should not be reviewed which would have enable the Commission to arrive at a just and proper conclusion.

30. In the circumstances, the Commission could not have passed the impugned order.

31. The fixation of the purchase price is also obviously without any notice whatsoever to the developers. In the impugned order itself it is stated that the Commission discussed the issue regarding the purchase of power by A.P.TRANSCO and the purchase price with the Chairman and Managing Director, A.P.TRANSCO and the Principal Secretary to the Energy Department, Government of Andhra Pradesh on 11-2-2000. Obviously, the Commission discussed the issue with the Chairman and Managing Director, A.P.TRANSCO and the Principal Secretary to the Energy Department behind the back of the developers. Such a course is not permissible for the Commission.

32. The Commission is clothed with vast powers of far reaching consequences in relation to restructuring of the electricity industry, rationalisation of generation, transmission, distribution and supply of electricity avenues for participation of private sector in the electricity industry. One of its functions relates to regulating the purchase, distribution, supply and utilisation of electricity, the quality of service, the tariff and charges payable keeping in view of both the interest of the consumer as well as the industry. Another of its functions relates to promote competitiveness and progressively involve the participation of private sector, while ensuring fair deal to the customers. It is invested with the power to issue licences in accordance with the provisions of the Act and determine the conditions to be included in the licences. In the process of discharge of its functions it may have to resolve competing interests. It is a quasi-judicial body entrusted with the power to resolve even inter se disputes between various persons. It is clothed with the jurisdiction and power to pass orders and enforce its decisions. The Commission is entitled to impose fines and charges as may be prescribed for non-compliance or violation on the part of generating companies, licensees or other persons of the provisions or the requirements of the Act or the Rules and Regulations. No order or proceeding made under this Act by the Commission shall be appealable except as provided in the Act. The civil Court's jurisdiction is completely barred. However, the appeal against the orders of the Commission lies to this Court. Such is the extent of the power of the Commission. All its decisions are required to be fair and transparent. The Commission is duty bound to strictly follow the provisions of the Act and the regulations framed thereunder. All its binding decisions are required to be taken only after hearing all the affected parties and such hearing may have to be invariably in their presence. The proceedings are obviously open to the public. The proceedings before the Commission are akin to the proceedings in a Court of law. The Commission cannot consult or discuss any matter with any interested person or organisation in the absence of the affected or likely to be affected parties. Any such consultation or discussions in the absence of the affected parties may ipso facto vitiate the whole proceedings.

33. All quasi-judicial functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind. Quasi-judicial proceedings, like the judicial proceedings, are required to be held in open Court to ensure transparency and accountability. A hearing in open Court is not an end itself, but

only a means to instil and inspire confidence in the impartiality of the proceedings. The principles of natural justice are required to be observed strictly in letter and spirit. It would be appropriate to recall the most frequently quoted dictum of Lord Hewart, CJ in *R. v. Sussex JJ., ex p McCarthy* (1924) 1 KB 256 : 1923 All ER Rep 233 that "it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

34. It is well settled that a proper hearing must always include a fair opportunity to those who are the parties in the controversy for correcting or contradicting anything prejudicial to their view. (See: *R. v. Life Insurance Unit Trust Regulatory Organisation Limited Ex p Ross* (1993) QB 17) Lord Denning observed that "if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know that evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them". (See: *Kanda v. Government of Malaya*, (1962) AC 322)

35. The decision of the Commission compelling the petitioners to sell energy to A.P.TRANSCO at the specified price is thus contrary to law. The same cannot be countenanced.

36. May be there is a need for metamorphoses of the personnel manning the Commission.

37. The learned senior Counsel Sri E. Manohar, however, made an attempt to submit that the impugned order is in the nature of an administrative one, and therefore, the same is not required to be strictly in conformity with the regulations. I find it very difficult to accept the submission. The Commission is not entitled to pass any such administrative order, which is of binding nature. The administrative order if any that could be passed by the Commission may relate to its own organisational set up. The Commission cannot pass any administrative order whatsoever adversely affecting the interest of the licensees, developers or the generating companies as the case may be. An order intended to be binding may have to be necessarily a quasi-judicial order passed in accordance with the provisions of the Act and Regulations framed thereunder. At any rate, the impugned order cannot be characterised as an administrative order. It had virtually altered the position of the developers adversely affecting their right of third party sales. In the circumstances, the impugned order cannot be treated as an administrative one.

38. For all the aforesaid reasons, I am of the opinion that the impugned order suffers from incurable legal infirmities. The impugned order is ultra vires the Regulations and suffers from procedural infirmities, it is also violative of principles of natural justice.

39. The impugned order is accordingly set aside.

40. In this view of the matter, it may not be necessary to go into the various

other contentions urged by the learned Counsel for the petitioners. The issues raised are left open.

41. It shall be open to the Commission if it intends to further proceed in the matter it may do so, but only after putting the petitioners on notice of the grounds and specific proposals (hereof).

42. The Commission shall bear in mind the observations made in this order.

43. The writ petitions are accordingly allowed. The impugned order is set aside. No order as to costs.