



## AP Judicial Preview – a commentary in the context of AP electricity sector

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This update introduces AP Judicial Preview (APJP), a new initiative in Andhra Pradesh state set up through a state Act in 2019, to preview all high value government infrastructure projects. From October 2019 to April 2021, APJP has processed 118 projects, a quarter of which were from the electricity sector. Based on a study of the electricity sector projects processed by APJP, the update analyses its strengths and limitations. APJP has indeed introduced some transparency in the infrastructure tendering process in AP, and a preview is anytime better than post review. But the limited mandate, low capacity, extremely short turnaround time and low public participation, limits the legitimacy of APJP.

### 1. What is AP Judicial Preview?

Andhra Pradesh Judicial Preview (APJP) is a new initiative started in September 2019 through an Act in the AP State assembly.<sup>3</sup> This is an initiative by the YSRCP government which was elected to power in April 2019. Allegations of malpractices in infrastructure projects by the previous TDP government was a major election issue. APJP was projected as one of the measures by the new government to reduce irregularities in award of government contracts, through enhanced transparency. All government infrastructure tenders above Rs. 100 Cr are to be submitted to APJP, which uploads the tender on its website, invites public comments and passes an order regarding the tender document's compliance with the AP state and national procedures, rules and guidelines. It is required to pass an order within 15 days of the tender document being communicated to it so as to avoid delays in the tendering process. The tender can be issued only after incorporating the recommendations in the order.

This article on APJP briefly describes the objectives, processes, the scale of operation from formation till April 2021, and provides a commentary on the way it has dealt with tenders in electricity sector.

The stated objective of APJP process, as per the Act is to *"bring transparency in the infrastructure bidding process in the state through judicial preview and thereby to ensure optimal utilisation of public resources"*. The vision of APJP, as articulated in its website, has a title *"Transparency Through Judicial Preview"*, and

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<sup>2</sup> This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analysis of important developments in the Indian power sector, in various states and at the national level. The portal with all the articles can be accessed [here](http://powerperspectives@prayaspune.org). Comments and suggestions on the series are welcome, and can be addressed to [powerperspectives@prayaspune.org](mailto:powerperspectives@prayaspune.org)

<sup>3</sup> Act available [here](#), and Rules [here](#).

states as follows: *“Our vision is to create Andhra Pradesh as a corruption-free state in the country by enhancing transparency through judicial preview for all projects envisaged in the schedule of the Judicial Preview Act, 2019. In the public procurement prior to inviting tenders, shouldering the responsibility of safeguarding the public money for effective and optimal utilisation giving no room for diversion.”* The list of five objectives on the website includes<sup>4</sup>: *“To uphold and achieve high integrity right from administrative and technical sanction till completion of the project with due diligence.”* We are including these quotes to indicate that the stated goals of APJP are indeed quite praise-worthy and one could fault it only by wondering if it is a bit too ambitious. We shall elaborate on this later in this article.

Table 1 captures key unique features of the Act and Rules which outline the constitution and functions of APJP.

Hon’ble Justice Dr B. Siva Sankara Rao (former judge of Telangana High Court) assumed office as the Judge – APJP on 14/9/2019. A total of 118 project documents were submitted to APJP from October 2019 till April 2021, and orders (called Findings & Recommendations by APJP) have been issued for almost all of them. These projects were from departments like health, power (electricity), roads & buildings, education, water resources, mines, port and rural water supply. Over the 19 months of functioning of APJP (October 2019 to April 2021), an average of 6-7 projects have been processed every month, with some months having high numbers like December 2020 (22) and September 2020 (17). It is also to be noted that some project requests involve multiple tenders.<sup>5</sup> Since only projects of value higher than Rs. 100 Cr are submitted to APJP, a modest estimate of the projects approved by APJP for tendering during this period would be in the range of Rs. 1-4 lakh Cr, quite high considering the GSDP of AP of around Rs.10 lakh Cr.<sup>6</sup>

Out of the total 118 projects, 30 (25%) were from the electricity sector, including the agriculture smart meter projects which were submitted in Oct-Nov 2020 and revised in Feb 2021. These projects are covered in a bit more detail in the next sections.

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<sup>4</sup> A word of caution is that this content at the website is not backed up by the Act or Rules of APJP, formulated by the government. For example, there is no mention in the Act or Rules about follow-up till completion.

<sup>5</sup> The summary information is consolidated from APJP [website](#). For example, agriculture smart meter projects involved separate tenders for meters and meter boxes, and in the case of APEPDCL, district-wise tenders.

<sup>6</sup> Gross State Domestic Product (GSDP) of Andhra Pradesh for 2019-20 (at current prices) is projected to be Rs. 9,72,782 crores, as per the FY21 budget speech

Table 1: Key features of AP Judicial Preview

| Feature                                   | Description   | Relevant Section of Act or Rule       |
|---|---|---------------------------------------|
| Identification                            | Andhra Pradesh Infrastructure (Transparency through Judicial Preview) Act 2019 - Act 34 of 2019, published in the Gazette on 20/8/2019  | Act Section 1 (1), Preamble           |
| Objective                                 | To bring transparency in the infrastructure bidding process and ensure optimum utilisation of public resources  | Act Preamble                          |
| Applicability                             | AP government, JV, SPV or PPP projects of value Rs. 100 Cr or more  | Act Sections 2 (12), 5                |
| Sectors covered                           | 25 sectors as per the Act, can be increased. Includes Roads, Health, Canals, Water supply, Power, Ports, Education, Urban development etc   | Act Section 2 (26) and Schedule       |
| Appointment of Judge for Judicial Preview | In consultation with the Chief Justice of the AP high court, government will appoint a person who is, or has been judge of high court   | Rule 3 (i)                            |
| Term of Judge                             | 3 years, extendable by 2 more years   | Rule 3 (i)                            |
| Staff and experts                         | APJP Staff strength of 24, APJP may engage persons of eminence for assistance, government may provide experts, tendering department to provide panel of experts to assist   | Act Section 4, Rules 3 (iii) and 4(i) |
| Preview process                           | <ol style="list-style-type: none"> <li>1. Department submits tender documents to APJP for preview in given formats</li> <li>2. APJP uploads tender documents on website for public comments, to be submitted within 7 working days</li> <li>3. APJP conducts the preview within 8 working days and informs the recommendations to the department, uploads on website</li> <li>4. Department complies with the recommendations and informs APJP within 7 working days</li> </ol> | Rules 6 (i) to 6(iv)                  |
| Powers of the Judge                       | For the purposes of any inquiry or any examination under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908   | Rule 7                                |
| Recommendations of APJP                   | Recommendations/order of APJP are binding on the state government   | Act Section 7 (2)                     |
| Overriding nature                         | Act does not override other central Acts, but overrides state Acts  | Act Sections 13 (1) and 13 (2)        |

Source: Compiled by Prayas (Energy Group), from Act and Rules of APJP

## 2. Judicial Preview and the AP electricity sector

An expert committee, consisting of CE-Constructions (APTRANSCO) and Chief General Manager – Projects of three DISCOMs, was appointed by the government in August 2020 to assist APJP for power projects. Table 2 gives a list of projects in the electricity sector handled by APJP during the period Oct 2020 to Apr 2021.

Table 2: Electricity sector projects

| S. No | Filing date | Project  | Agency    | Project Cost (Rs. Cr) | No of projects | Remarks   |
|-------|-------------|--|-----------|-----------------------|----------------|---|
| 1     | Aug-20      | Augmentation of two 400 kV s/s (Talaricheruvu and Jammalmadugu) and construction of Mudigubba 220 kV s/s | APTRANSCO | 125                   | 1              | For evacuation of power to be generated from APGECL related solar parks to be set up in YSR Kadapa, Kurnool, Anantapuramu and Prakasam districts. |
| 2     | Sep-20      | Grid connected solar projects  | APGECL    | 19,200                | 10             | 10 projects totalling to 6400 MW, spread over four districts (Anantapur, Kadapa, Prakasam, Kurnool), cost assumed as Rs.3 Cr/MW.                  |
| 3     | Oct-20      | Flue Gas Desulphurisation (FGD) for NTTPS 800 MW Unit 8  | APGENCO   | 300                   | 1              | For Unit 8 under construction.  |
| 4     | Oct-20      | Agriculture smart meters for DBT   | APSPDCL   |                       | 7              | 11 lakh Smart meters and boxes in 7 projects. Revised project submitted in Feb 2021, hence cost not included                                      |
| 5     | Nov-20      | Agriculture smart meters for DBT   | APCPDCL   |                       | 2              | 4.5 lakh smart meters and boxes - two separate tenders. Revised project filed in Feb 2021, hence cost not included                                |
| 6     | Nov-20      | Agriculture smart meters for DBT   | APEPDCL   |                       | 1              | 2.1 lakh smart meters and boxes. Revised project submitted in Feb 2021  |
| 7     | Feb-21      | Agriculture smart meters for DBT   | APCPDCL   | 400                   | 2              | 4 lakh smart meters and boxes - two separate tenders.   |
| 8     | Feb-21      | Agriculture smart meters for DBT   | APSPDCL   | 1,100                 | 2              | 11 lakh smart meters and boxes - two separate tenders.  |
| 9     | Feb-21      | Agriculture smart meters for DBT   | APEPDCL   | 210                   | 2              | 2.1 lakh smart meters and boxes - two separate tenders.   |
| 10    | Mar-21      | Hydro power units 2 x 115 MW, Lower Sileru   | APGENCO   | 384                   | 1              | Extension of existing project.  |
| 11    | Apr-21      | FGD for SDSTPS Units 1-3, 3x800 MW   | APPDCL    | 900                   | 1              | Units 1 and 2 commissioned in 2015 and 3 under construction.  |
|       |             | Total  |           | 22,619                | 20             | Oct-Nov Agriculture smart meter projects (10 of them) not counted   |

Source: Compiled by Prayas (Energy Group) from APJP website.

It can be seen that 20 distinct projects, with an approximate project cost of over Rs. 22,600 Cr, have been submitted by state generation, transmission and distribution companies of AP. Agriculture smart meter projects submitted in Oct-Nov 2020 were revised and submitted in Feb 2021, hence only those submitted in February are considered. The cost estimates are approximate values given in the tender documents or calculated by the authors. A very brief description of the electricity projects processed by APJP is given in the following paragraphs. More details could be gathered from the tender documents and orders available at the [website](#) of APJP.

- Agricultural Solar power evacuation: Substation augmentation and erection projects submitted by APTRANSCO are phase-I for evacuation of solar projects proposed by APGECL's 10,000 MWp initiative.<sup>7</sup> There were no comments from the public and APJP passed the order with some comments.
- Agricultural solar capacity addition: Ten solar projects, with capacity adding to 6050 MW, out of APGECL's proposed 10,000 MWp capacity, were submitted for scrutiny in September 2020. There were comments from solar developers and few civil society organisations. Since there were government orders proposing the scheme, objections relating to the need and viability were not entertained. Based on comments, changes in tender clauses and conditions were suggested in the order. Tenders were invited for 6400 MW capacity in December and bids received for 14,900 MW, though for eight projects, bids were received from only two bidders. Tender results were declared in Feb 2021, with the with five winners and the tariff varying from Rs. 2.47/U to 2.58/U.<sup>8</sup> In response to a writ petition by Tata power renewable, in Jan 2021, the AP High Court issued interim directions that the bids could be finalised but the projects should not be awarded. Arguments cited were that APGECL deviated from competitive bidding guidelines<sup>9</sup>, APERC's jurisdiction has been removed and procedures as per Electricity Act were not followed. This case is ongoing in the High Court, as of May 2021.<sup>10</sup>
- FGD for new units of NTPS and SDS: Projects for Flue Gas Desulphurisation (FGD) plants for Narla Tata Rao Thermal Power Station (NTPS) Unit 8 (800 MW) was taken up in October 2020 and for Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS) Units 1,2 and 3(3 x 800 MW) in April 2021. There were some objections for NTPS plant from civil society and private companies, while there were none for SDSTPS.
- Smart metering for agriculture: Government of AP had decided in September 2020 to implement DBT for all agriculture connections by installing smart meters, which will communicate to a central computer. The cost will be borne by the government as part of state agriculture subsidy. A pilot was initiated in Srikakulam district and projects for remaining districts submitted to APJP by the three DISCOMs first in Oct-Nov 2020. Subsequently the DISCOMs modified these projects and submitted them again for preview in Feb 2021. Objections were received, mostly from bidders regarding change in technical and commercial terms (smaller packages, permitting JV, considering experience for single phase meters etc), and some farmer associations questioning the need for the scheme.

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<sup>7</sup> Andhra Pradesh Green Energy Corporation Limited (APGECL) is a subsidiary of the AP state owned generating company APGENCO and plans to set up solar plants adding upto 10,000 MWp, to supply day-time power to agriculture. For details see APGOs MS 5 (15/2/20), MS 18 (15/6/20) and MS 19 (17/7/20), available [here](#).

<sup>8</sup> Winners were: Torrent power (300 MW, Rs.2.47/U), Shirdi Sai Electricals (2200 MW, Rs.2.48-2.49/U), NTPC (600 MW, Rs.2.48/U), HES Infra (300 MW, Rs.2.49/U), and Adani Renewable (3000 MW, Rs.2.49-2.58/U).

<sup>9</sup> Competitive bidding guidelines for grid connected solar PV projects, issued by MNRE on 3/8/2017, available [here](#).

<sup>10</sup> See orders and case status for Writ petition 674 (2021), available [here](#).

Some suggestions from bidders were considered, but not those questioning the need for the scheme.

- Hydropower augmentation: Lower Sileru hydro project (4 x 115 MW) was commissioned in mid-1970s. This project to augment it by adding 2 x 115 MW turbine generators was submitted to APJP in Mar 2021.

### 3. The strengths and limitations of Judicial Preview

Any attempt to reduce irregularities in award of government contracts has to be viewed in a favourable light. Therefore, APJP deserves to be examined as a unique opportunity, especially since it aims to optimise utilisation of public resources through better transparency. But the legal mandate of APJP is limited to vetting the tenders, and the legal framework and rules are decided by the state government. Can it effectively reduce irregularities in contract awards by departments of the same government? What should ideally be included in the ambit of 'irregularities? In addition to the possibility of favouring some companies through technical and commercial tender conditions, should it also include factors like the need for the project, project monitoring guidelines (to ensure quality, avoid delays and prevent cost overruns) and payment terms? Should it include examining if the project would meet the stated objectives, or cause loss of public resources? <sup>11</sup>These are not easy tasks, especially for infrastructure projects. Ideally each department should have robust processes to plan projects, prepare tenders, monitor award, track execution, process payments and evaluate outcomes.

One could wonder if the setting up of APJP as a centralised watch-dog to prevent irregularities, is an admission that such mechanisms do not exist or are not sufficient. <sup>12</sup>But it is worthwhile to examine the strengths and limitations of this new initiative. These observations are based on our study of electricity sector, though some points may be relevant for other sectors too.

#### 3.1 Strengths of APJP

Preview at tendering stage is certainly better than post reviews carried out by CAG, anti-corruption agencies or through court cases. If done in a comprehensive fashion, with a broader understanding of 'irregularities', this could indeed ensure that public resources are deployed for public good.

APJP has certainly increased transparency in the tendering process. This is through features like availability of all the tender documents on its website, easy process for anyone to submit comments in the online or off-line mode and the availability of its orders on the website. These orders include background of the project, summary of objections, response from departments and the observations of APJP, especially on legal and procedural aspects. The proceedings of APJP are not public, but since representatives from the

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<sup>11</sup> Ideally one should take a broader view of irregularities or corruption, for example, as done by [Transparency International](#), which defines corruption as "*the abuse of entrusted power for private gain*".

<sup>12</sup> It is interesting to note that the In November 2020, it was clarified by the state government that internationally funded 24 x 7 power project (funded by the World Bank and Asian Infrastructure Investment Bank, commenced in 2017), will be exempted from APJP (AP GO MS 26 dated 23/11/20). This was done because these were finalised earlier and central government had communicated that state laws should not apply to such projects, but also perhaps because they have stringent tendering provisions.

department may also be called for clarifications, it provides an opportunity to raise some observations, which may improve the tendering process.

Most of the orders have been issued within the stipulated 15 working days. Hence APJP does not seem to have become a bottle-neck for infrastructure projects.

### 3.2 Limitations of APJP and suggestions to address them

APJP is headed by a retired judge, but appears to be performing the administrative functions of vetting the legal and commercial terms in tenders from multiple sectors. As of now, APJP seems to have limited staff and in any case, it is difficult to maintain a pool of experts from different sectors.<sup>13</sup> An expert committee has been constituted for providing inputs on electricity projects to the APJP, consisting of senior officers from APTRANCO and DISCOMs. It is surprising to see the absence of representation from APGENCO and disappointing to note the absence of representation from anyone outside the government power utilities. This could have been from the APERC, academic or civil society, on a permanent or a case to case basis. This can still be done by the state government or APJP, under Section 4 of the Act. As of now, the final decision making of APJP is by a single judge. It would have been much better if APJP was headed by the judge and also having competent members who contribute to the decision-making process and even write dissent notes, when required.

The Act or the Rules provide no room for discussing the need or scope of the project. A study of electricity sector orders shows that APJP has not attempted to do this and starts by justifying the need and broad scope of the project at hand. In case of APGECL's solar projects, issues like the requirement for additional solar capacity, suggestion to take inputs from APERC and the issue of setting up additional transmission infrastructure were raised by objectors.<sup>14</sup> These were not entertained. But as mentioned in Section 2, the AP High Court directed to stay the award of these projects, since the legal and regulatory provisions in national Electricity Act and competitive bidding guidelines were not followed. It is unfortunate that the APJP could not anticipate or pre-empt this development.

Similarly, in the case of the project for installing smart meters for agriculture connections in the state, ideally the lessons from the Srikakulam district pilot project should have been considered when the tendering for the whole state is being taken up. This does not appear to be the case.

Transparency is indeed the first necessary step to reduce irregularities, but needs to be followed up by many more steps to ensure it. While it is good that the tenders and orders are available online, only

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<sup>13</sup> As per the [website](#) of APJP, in addition to Hon'ble Judge, there is just one additional key staff, "Nodal Officer and Legal Assistance".

<sup>14</sup> Addition of 10,000 MWp of solar capacity, was not envisaged in a resource plan order passed by APERC in 2019, and would result in significant increase in installed capacity from the current 20,000 MW. These objections were brushed aside, since the government had issued an order supporting such capacity addition in February 2020. As for transmission capacity augmentation, the utilities' response that "*existing margins in the transmission system with only augmentation of existing intrastate transmission system and without any major investment*" will be used for power evacuation, was accepted. This is surprising since APTRANSCO had submitted a project with approximate cost of Rs. 125 cr, for phase 1 augmentation of transmission system to evacuate this power. And it is impossible that there is no need to invest substantially in transmission system when the installed capacity is proposed to be increased by 50%. Of course, utilities need to approach APJP only for projects above Rs.100 Cr.

summaries of objections and department responses are available in the order. All the objections, complete responses and observations of the Hon'ble Judge of APJP should also be available. It is also crucial to ensure that the final tender documents, after all suggested modifications are also available at the website.

Another aspect is about the current sequencing of the APJP process. As of now, tenders are submitted to APJP, which gives some publicity about submitting comments and limited time for it (more on this aspect in the next paragraph). Since APJP is relatively new and perhaps due to limited publicity, participation in the APJP comment process has been low. Many comments by developers are those which could be clarified in a pre-bid meeting. But the tenders are submitted before a pre-bid meeting and the guidelines for judicial preview make it clear that after the order, there will be no changes in the tender based on any pre-bid meeting.<sup>15</sup> Hence it is better to publicise the tender, modify it as per pre-bid meetings and then approach the APJP for tender preview, along with the pre-bid comments, if useful. This will also ensure that more serious bidders would participate in the APJP process.

Seven working days is hardly sufficient, especially for civil society groups or public-spirited citizens to study tender documents that run to hundreds of pages and submit comments. At least 3-4 weeks should be available. In addition, there has to be proactive effort by APJP to increase quality participation of civil society organisations in the process of submitting comments. It is also unfortunate that there is no public process where the department, objectors and APJP are present when the tender is discussed. After this process, eight more working days for APJP to finalise the order is too short for a detailed review.

One of the stated objectives of APJP is *"To uphold and achieve high integrity right from administrative and technical sanction till completion of the project with due diligence."*<sup>16</sup> This is indeed a lofty objective, though stated only at the website and not in the Act or Rules. But if APJP truly wishes to meet this objective, there is a need for active follow-up of the project after the order is issued.

#### 4. Conclusion

APJP is indeed a unique initiative with potential to reduce irregularities in infrastructure projects. It has been functional for only 20 months, and it is perhaps too early to check its impact on *"optimum utilisation of public resources"*. Even if one considers the limited mandate of scrutinising the tendering process, such a centralised initiative to handle tender process in multiple sectors has many limitations and risks. It is not a sustainable or effective model, unless robust transparency and participatory provisions are implemented, and its institutional capacity and independence significantly strengthened. With limited mandate, low capacity, very short time to complete the preview and low public participation, APJP cannot expect to inspire public trust or gain legitimacy. It does serve the purpose of shifting accountability from the government or its departments to a centralised agency.

It is not clear if sufficient steps were taken to strengthen departmental oversight processes related to project tendering and implementation. Such a decentralised decision-making process has long term

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<sup>15</sup> To quote from Section xi of the 'Instructions from the Judge Judicial Preview': ... *there will be no pre-bid negotiations/meeting by the concerned department with the intending bidders/ service providers except to clarify only to the extent not covered by the Judicial Preview Process.* See the full document [here](#).

<sup>16</sup> As per the 5<sup>th</sup> objective of APJP, given at its [website](#).






benefits. If at all a separate centralised initiative like APJP is set up, it could have started by handling a few departments, where oversight mechanisms are weak.


In case of electricity projects, many points discussed about specifications and project execution in APJP processes could have been handled in pre-bid meetings. The sector already has an Electricity Regulatory Commission from 1999, which has broad mandate to protect sector interest and has many provisions for transparency and public participation.<sup>17</sup> With some efforts, it could have handled tender approval process also for electricity sector. While this being considered, APJP could have at least worked in coordination with APERC.

But as of now, the best option for public is to use the APJP to improve the tendering process by submitting objections in the ongoing processes. The availability of tenders and orders at the website could be used to build public awareness through media, debates in Legislative Assembly and other platforms. After all, constant public vigilance at all levels is the best bet to ensure optimum utilisation of public resources.

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<sup>17</sup> These include making petitions available to public, requesting public comments, organising public hearings, implementing competitive bidding guidelines for generation and transmission projects, checking the prudence of costs, setting up advisory committees, making regulations and issuing reasoned orders.