No. N/149/17

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 2nd August, 2018

Present:

Shri M.K. Shankaralinge Gowda .. Chairman
Shri H.D. Arun Kumar .. Member
Shri D.B. Manival Raju .. Member

OP No. 83/2017

BETWEEN:

Shri. C.S. Sunder Raju,
Partner, M/s. Perpetual Investments,
1st Floor, No.11,
Commissariat Road,
Bengaluru-560 025. .. **PETITIONER**

[Represented by Navayana Law Offices, Advocates]

AND:

1) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bengaluru – 560 009.

2) Bangalore Electricity Supply Company Limited,
K.R.Circle,
Bengaluru-560001. .. **RESPONDENTS**

[1st Respondent remained unrepresented,
2nd Respondent represented by Justlaw, Advocates]

- - - - - -

O R D E R S

1) This Petition is filed under Section 86 (1) of the Electricity Act, 2003, in effect, praying to;

(a) Set-aside the bill dated 27.4.2017 issued by the 2nd Respondent (ANNEXURE - P8), by declaring it as illegal, untenable and issued without following the principles of natural justice; and,

(b) Pass such Orders, to meet the ends of justice and equity.

2) In essence, the present Petition involves declaration as to, whether a generator who could not generate and wheel energy in a month, as anticipated, due to lack of evacuation arrangement at the 1st Respondent's Sub-station can be charged by the 2nd Respondent-BESCOM for the energy consumed by the 'non-exclusive' consumer, in excess of the energy generated and wheeled.

3) The material facts, relevant for the disposal of the present Petition, may be stated, as follows:

(a) The Petitioner's partnership firm has established a 20 MW capacity Solar PV Power Project, in the jurisdiction of the 2nd Respondent, which was commissioned on 24.01.2017. The Petitioner executed a Wheeling and Banking Agreement (WBA) with the Respondents on 30.12.2016 for

wheeling the electricity from the 1st Respondent's Sub-station at Nagalamadike to the 'non-exclusive' consumers located in the jurisdiction of the 2nd Respondent itself.

(b) The Petitioner, anticipating energy generation of 8,00,000 units during the month of January,2017 submitted on 23.01.2017 to the 2nd Respondent, a C-Form for wheeling 6,00,000 units of energy, during the month, to one of its 'non-exclusive' consumers, viz., Exora Business Park Pvt. Ltd., Bengaluru ('Exora' for short) and the 2nd Respondent accorded approval for such wheeling, by its Official Memorandum dated 31.01.2017. However, as per the joint meter reading by the Petitioner and the 2nd Respondent, as recorded in the 'B' Form dated 03.02.2017, the actual generation and export from the Petitioner's Plant was only 1,36,800 units for January, 2017.

(c) Subsequently, after about three months the 2nd Respondent has issued letter / bill dated 27.04.2017, demanding payment of Rs.82,64,972 (at twice the applicable tariff) towards excess energy of 4,68,720 units, purported to have been drawn by the Petitioner in January, 2017.

4) The grounds submitted by the Petitioner, in support of the prayers, may be summed up, as follows:

(a) The WBA dated 30.12.2016 does not empower or entitle the 2nd Respondent to collect the charges in the impugned bill dated 27.04.2017 and in fact, as per Article 5.4 of the WBA, the 2nd Respondent

has the right to recover charges only from 'non-exclusive' consumers, and the Petitioner in the present case is not such a consumer.

(b) In case of underdrawal or overdrawal of the energy under open access, the settlement has to be effected as per the Unscheduled Interchange (UI) charges prevailing at the time of the transaction. The Petitioner would have been liable to pay these UI charges, but for the fact that, the Petitioner has been restrained from supplying the power contracted under the WBA due to *Force Majeure* Events, and as per Article 9 of the WBA, the Agreement is treated as being temporarily suspended.

(d) The 1st Respondent is responsible for operating and maintaining upstream evacuation structure and undisputedly, the 1st Respondent's Sub-station is incapable of taking the power generated by the Petitioner beyond certain capacity, because of non-completion of the additional bay and allied works, to be carried out by the 1st Respondent. Therefore, the Petitioner cannot be made liable to pay charges for the 1st Respondent's fault.

(e) The rights and obligations of the parties under the WBA are well defined and as per the WBA, neither the Petitioner nor his 'non-exclusive' consumers are required to pay any charges, thereby, the charges levied in the impugned bill is illegal and *ultra vires* of the WBA.

(f) The impugned demand is also liable to be quashed, as it is raised without providing an opportunity of hearing to the Petitioner, to show cause against it and it is against the principles of natural justice.

5) On issuance of Notice, the 2nd Respondent appeared through its learned counsel. The 1st Respondent remained, unrepresented.

6) The 2nd Respondent filed its Statement of Objections and the submissions made therein may be summed up, as follows:

(a) The terms of the evacuation approval dated 07.12.2015 and the provisional interconnection approval dated 20.01.2017 granted to the Petitioner's Project, clearly state that the Petitioner would have to back-down generation, if the other generators are interconnected to the same 66 kV Single Circuit line, before commissioning of the Kotagudda (Pavagada) Sub-station. The Petitioner cannot claim any charges for the resultant loss of generation. Further, the Petitioner was aware of the existing system constraints, restricting the export of energy generated by the Petitioner and, therefore, cannot claim non-liability to pay for the over-drawn energy under the *Force Majeure* Events, which result in suspension of the WBA.

(b) The claim of *Force Majeure* Events can be only in respect of an unforeseen event, as per Article 9 of the WBA and not constraints in evacuation of the line, which the Petitioner was fully aware of. Further, no material has been

placed on record to substantiate the claim of constraint on the generation and wheeling of power.

(c) The claim that, the onus of the upstream development was on the 1st Respondent, is not tenable, as the IPPs present in the meeting, held on 13.04.2017, had confirmed taking up of the work on cost-sharing basis, as per the minutes of the meeting, produced as ANNEXURE - P9, by the Petitioner.

(d) The penalty / charges for over-drawal of the energy have been rightly levied on the Petitioner, under Article 5.4 of the WBA and the application of the U.I. mechanism would not arise in the case. Further, there is no requirement for providing an opportunity of personal hearing prior to raising any invoice. Also, the Petitioner was present during the joint meter reading and there is no dispute about its recording.

(e) In the interest of maintaining stability of the grid, for the benefit of all the stake-holders, action is necessary against generators failing to adhere to Schedules. The Petitioner had over-drawn 4,68,720 units of energy from the grid, without any intimation to the Respondents and for such energy over-drawal, the Petitioner has been billed at twice the applicable tariff of the consumer category, as per the applicable KERC Regulations/ Orders.

(f) The 2nd Respondent has, therefore, sought for dismissal of the Petition.

7) We have perused the records and heard the learned counsel for the parties. The following issues arise for our consideration:

(1) Whether the demand raised against the Petitioner for the energy overdrawn by his 'non-exclusive consumer', in the circumstances of the case, is proper?

(2) What order?

8) After considering the submissions made by the parties and perusing the pleadings and documents placed on record, our findings on the above issues are, as follows:

9) **Issue No. (1):** *Whether the demand raised against the Petitioner for the energy overdrawn by his 'non-exclusive consumer', in the circumstances of the case, is proper?*

(a) It is the case of the Petitioner that, his Solar Power Plant could not generate and wheel energy to his 'non-exclusive consumer', as stated in the C-Form submitted to the 2nd Respondent, because of evacuation constraints, caused by the 1st Respondent and he cannot be made liable to pay any charges or penalty for the energy consumed by the consumer, in excess of the energy generated and wheeled by the Petitioner. That, the WBA does not provide for such demand and also the Petitioner has not been provided an opportunity to present his case.

(b) Per contra, the 2nd Respondent has contended that, the demand raised on the Petitioner is as per the WBA signed by the Petitioner and is aimed at maintaining the grid stability.

(c) We note that, admittedly, in the present case, 'Exora' the Petitioner's consumer is a 'non-exclusive' consumer, who has a power supply Agreement with the 2nd Respondent. It is also not the case that, the energy consumed by 'Exora' exceeds the contract demand with the 2nd Respondent. Thus, we find that, the 2nd Respondent was not right in invoking Article 5.4 of the WBA, to raise the demand in the case. We note that, as per Article 5.4 of the WBA, the liability to pay charges at twice the rate, as applicable to the relevant category of consumers, would apply only in the case of an 'exclusive consumer', who is not having any contract demand with Electricity Supply Company (ESCOM), and a provision is made to collect the said amount from the generator, only in case that amount is not recovered from the 'exclusive consumer'. We further note that, the procedure adopted by the ESCOMs, in a Wheeling and Banking transaction, would show that the quantum of energy indicated in the 'C' Form is taken as 'wheeled' from the 'Injection Point' ESCOM to the 'Drawal Point' ESCOM, and the 'Drawal Point' ESCOM allows the Open Access Consumer to draw the quantum of energy indicated in the 'C' Form, without imposing any energy charge. We are of the considered opinion that, this procedure is not contemplated under the terms of the W&BA, entered into between the parties.

(d) In the matter of dealing with the over-drawal or under-drawal of energy by the Open Access consumers under WBA, we have, in our Order dated 20.03.2018 in OP No.95/2017, at para 9(g), laid down the procedure that could be followed for adjustment of the rights and liabilities of the parties under the WBA. The same reads, thus:

> *"(i) The particulars of the quantum of energy injected by a Generator and the quantum of energy drawn by an Open Access consumer, during a billing period, are admittedly available with the ESCOM concerned, on the Metering Date. Therefore, the net energy available for wheeling could be ascertained after deducting the wheeling and banking charges.*
>
> *(ii) The 'Drawal Point' ESCOM concerned has to inform the quantum of energy, consumed by the Open Access consumer, to the 'Injection Point' ESCOM.*
>
> *(iii) The 'Injection Point' ESCOM shall, in turn, inform the quantum of energy that could be wheeled to the Consumption Point.*
>
> *(iv) If the net energy injected by the Generator is more than the total quantum of energy consumed by the Open Access consumer, the entire consumption of such Open Access consumer should be treated as 'wheeled energy'. The balance quantum of energy remaining, after wheeling, has to be treated as 'banked energy'.*
>
> *(v) If the net energy injected by the Generator plus the banked energy, if any, is less than the total consumption of energy of the Open Access consumer, the excess energy consumed is to be billed as per the tariff applicable to the said 'Non-Exclusive Consumer' or the 'Exclusive Consumer', as the case may be, and such excess energy consumed is deemed to be supplied by the 'Consumption Point' ESCOM.*
>
> *(vi) The quantum of unutilized banked energy at the end of the year, deemed to have been purchased by the*

ESCOM where the energy is injected, shall be credited to the account of the 'Injection Point' ESCOM at the time of energy balancing.

(vii) The required entries shall be made at the time of the energy balancing, to reflect the net quantity of energy injected and wheeled."

(e) In the light of our observations, we hold that, the demand raised by the 2nd Respondent on the Petitioner in the present case, is not tenable. The bills issued to the Petitioner and his Open Access consumer, require re-doing.

(f) Therefore, we answer Issue No.(1), in the negative.

10) **ISSUE No.(2):** *What order?*

For the foregoing reasons, we pass the following;

O R D E R

(a) The impugned bill dated 27.04.2017, issued by the 2nd Respondent is hereby set-aside. The 2nd Respondent shall issue a fresh bill for the month of January, 2017 to the Petitioner, for the reactive energy drawn and the meter reading charges;

(b) The 2nd Respondent shall redo the energy bill for the month of January, 2017, issued in respect of the Petitioner's Open Access consumer viz., Exora Business Park Pvt.Ltd., Bengaluru, taking into account the quantum of net energy injected by the Petitioner (i.e., energy available for wheeling) and the quantum of energy drawn by such consumer, and raise fresh demand, accordingly, as explained in paragraph 9(d) of this Order; and,

(c) The amount paid by the Petitioner in terms of the interim Order dated 18.05.2017, shall be refunded to the Petitioner, soon after the payment of the bills by the Petitioner and the Open Access Consumer viz., Exora Business Park Pvt. Ltd.

Sd/-	Sd/-	Sd/-
(M.K. SHANKARALINGE GOWDA)	(H.D. ARUN KUMAR)	(D.B. MANIVAL RAJU)
CHAIRMAN	MEMBER	MEMBER