

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 4th December, 2018

Present:

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

O P No.57/2017

BETWEEN:

Dnyanayogi Shri Shivkumar Swamiji Sugars Limited,
Shri Siddeshwar Nagar,
Hirebevanur,
Bijapur.

.. **PETITIONER**

[Represented by Navayana Law Offices, Advocates]

AND:

- 1) Karnataka Power Transmission Corporation Limited.,
Represented by its Managing Director,
Cauvery Bhavan, K.G. Road,
Bengaluru- 560 009.
- 2) State Load Despatch Centre,
Represented by its Chief Engineer,
#28, Race Course Cross Road,
Bengaluru-560 009.
- 3) Hubli Electricity Supply Company Limited,
Represented by its Managing Director,
Navanagar, PB Road,
Hubballi- 580 025.

.. **RESPONDENTS**

[Respondents represented by Shri Shahbaaz Husain, Advocate]

ORDERS

- 1) The Petitioner has filed this Petition under Section 62 read with Sections 64 and 86 (1) (f) of the Electricity Act, 2003, in effect, praying to:
 - (a) Direct the Respondent to pay Rs.1,05,54,200/- at Rs.4.67 per unit, as per the generic tariff Order dated 22nd January, 2015, for 20,66,000 units of energy delivered by the Petitioner's Project, during the Month of December, 2014;
 - (b) Direct the Respondent to pay compensation for the harassment at the rate of 12% for the above amount till the date of realization; and,
 - (c) Pass such other and incidental order as may deem fit in the facts and circumstances of the case.

- 2) The facts of the case and the grounds urged by the Petitioner in support of its prayers, as submitted in the Petition, may be summed up, as follows:
 - (a) The Petitioner is the owner of a sugarcane based cogeneration Power Plant of 9 MW at Shri Siddeshwar Nagar, Hirebevanur Village, Indi Taluk, Vijayapura District. During January, 2013, the Petitioner applied for Provisional Inter Connection approval for interconnection of 6 MW exportable capacity out of 9 MW gross capacity (Phase-I). The Respondent No.1, by its letter dated 04th February, 2013, granted permission for the provisional Interconnection approval, upto 16th March, 2013.

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- (b) One of the terms and conditions of the approval dated 04th February, 2013, required the Petitioner to take a 'No Objection Certificate' (NOC) from the State Load Despatch Centre (SLDC) [Respondent No.2], before injecting power into the Grid, as it intended to sell power through open access.
- (c) Though the approval was granted up to the period ending 16th March, 2013, the Petitioner wheeled power to the State Grid and to a third party named, Global Energy Pvt. Ltd., under Open Access, beyond 16.03.2013, by obtaining NOC from the SLDC. For the injected energy, monies were paid by the Respondent / third party, without any demur, though the provisional interconnection approval expired on 16th March, 2013.
- (d) The SLDC had given NOC during 2013-14 crushing season, when the State Government passed an Order dated 26.03.2014, invoking Section 11 of the Electricity Act, 2003, for injecting power to the grid, even though Petitioner did not have interconnection approval.
- (e) The Petitioner approached the Chief Engineer, KPTCL (ELE), by letters dated 10th November, 2014, 1st December, 2014, 2nd December, 2014 and 10th December, 2014, for extension of the period of the Provisional Interconnection approval, for 6MW exportable capacity. The Petitioner had fulfilled all the terms and conditions imposed in the provisional interconnection approval dated 04th February, 2013, except for obtaining

NOC from the Karnataka State Pollution Control Board (KSPCB). The Petitioner had applied for the NOC from the Karnataka State Pollution Control Board, by paying Rs.1,50,000/- towards Renewal of Consent for Operation on 20th May, 2014. Respondent No.1, vide letter dated 30.12.2014 granted extension of the provisional interconnection approval, from 17.03.2013 to 16.03.2015, with the condition that, a valid NOC had to be obtained from the Karnataka State Pollution Board.

- (f) The Petitioner was constrained to pump power to the Grid, in the month of December, 2014 to the tune of 20,66,000 units, without NOC, from the SLDC for open access. Respondent No.1 has issued joint meter reading dated 06.01.2015 and B-Form, showing export of 20,66,000 units in the month of December, 2014. The Respondents accepted the power supplied by the Petitioner without any protest, even though there was no NOC from the SLDC, but failed to make payments for the energy.
- (g) Thereafter, the Petitioner sold the power to third party named Global Energy Pvt. Ltd, from 02nd January 2015, under Open Access.
- (h) The Petitioner approached Respondent No.1, by its letter dated 27th January, 2015, seeking the permanent interconnection approval for 6 MW exportable capacity, along with the NOC dated 08.01.2015, issued by the KSPCB.

Respondent No.1, by its letter dated 19th February, 2015, issued the Regular interconnection approval.

- (j) As the Respondents failed to pay for the energy injected in December, 2014, the Petitioner issued legal Notices dated 13th August, 2015 and 14th October, 2015, calling upon them to pay for the 20,66,000 units of energy. The Respondents have not given any reply to the legal notices.
- (k) During the period, when Section 11 of the Electricity Act was invoked by the Government, the Respondent has paid the Petitioner, for the energy delivered and following the same principle, the energy delivered, subsequent to the Section 11 period, too, has to be paid for.
- (l) The Power delivered during the non-PPA period has been compensated, at the rate of generic tariff applicable to the cogeneration Power Projects, in the case of *Shamanur Sugars Limited Vs. KPTCL and others* (OP No.22/ 2011, vide Order dated 15th November, 2012). Therefore, it is equitable to compensate the Petitioner, as per the generic tariff applicable to the cogeneration Power Projects.
- (m) All requisite permissions, sanctions and approvals were taken by the Petitioner, before supplying the power to the Respondent. The Respondent has not assigned any reason for the non-payment.

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- 3) Upon Issuance of Notice, the Respondents entered appearance through their Counsel and Respondent Nos.2 and 3 filed the Statements of Objections. The Objections filed by Respondents No.2 and No.3 may be stated, as follows:
- (a) Whereas, the Petitioner states to have wheeled power under open access, beyond the period of the interconnection approval, granted till 16.03.2013, in fact the NOC was granted by the Respondent No.1 only till 31.03.2013 and not beyond.
- (b) The Petitioner submitted the STOA application on 28.01.2013 and the provisional interconnection approval was issued on 04.02.2013. The STOA application was under process and the field report from Respondent No.3 was received by the Respondent No.1 on 26.02.2013. Since the application period had expired, the Petitioner submitted a fresh application on 01.03.2013 and the NOC was issued on 04.03.2013 to export 6MW, from 05.03.2013 to 31.03.2013.
- (c) The Petitioner was denied the NOC for open access in December, 2014, as it did not have the interconnection approval.

- (d) Subsequent to the extension of provisional interconnection approval on 30.12.2014, NOC was granted on 31.12.2014 to the Petitioner for export of 6 MW for sale of power through IEX for the period from 02.01.2015 to 31.01.2015.
- (e) The Respondents are not duty bound or legally required to pay for the energy infused in the month of December, 2014, as the same was injected into the grid by the Petitioner without obtaining NOC from and without even informing Respondent No.2. The letter issued by the Respondent No.1 dated 04.02.2013, granting provisional interconnection approval makes it clear that any infusion of the power without any contractual agreement or obtaining NOC from Respondent No.2 shall be at the cost of the Petitioner alone and that the Respondents shall not be responsible for any payment towards such injection of power. The relevant para of the said letter reads as follows:

“Further it is to be noted that pumping of power without any contractual agreement is not permitted and for any claim for payments and consequences in this regard KPTCL is not responsible. You should obtain prior approval of SLDC for injection of power into the grid since you have opted and executed a power purchase agreement with Global Energy Pvt Ltd for third party sale under open access mechanism.”

Thus, the Petitioner had knowledge that it could not inject power into the State grid without necessary approvals from the Respondents and, also that the Respondents had no liability to pay for the same. The Petitioner having acted in contravention of the direction of Respondent No.1 and having

injected power without approval of Respondent No.2, has no basis or authority to claim for payment of such power injection. The Respondents cannot be made to pay for the defaults committed by the Petitioner.

- (f) The reliance placed by the Petitioner on the judgment of the Commission in the case of Shamanur Sugars Limited Vs KPTCL and others (in OP No.22/2011 dated 15th November, 2012) is misplaced and the case cannot be relied upon for the reason that at para 7, page 14 of the said order, the Commission has stated that:

"This order in the context of the present petition is specific to the case on hand and will not set a precedent".

The Commission has ruled that the said case cannot be used as a precedent and the findings are specific to the facts therein. In the said case, it was found that NOC was not granted on time and application was inordinately delayed, which is not an allegation in the present case.

- (g) The Hon'ble APTEL, has in the judgment dated 08.05.2017 in Appeal No.120 of 2016 in the matter of *Kamachi Sponge & Power Corporation Ltd. Vs TANGEDCO & TNERC*, at para 10 (b) (iii), held as follows:

"From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1 it is clearly established that the Appellant has pumped the energy on its own without entering

into any contract with Respondent No.1 and without the knowledge/schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is No.1 is unauthorized and does not call for any payment by the Respondent No.1."

Further, at para 10e(i), it is held that *"the Respondent is not liable to make any payment for unauthorized injection of power into the grid by the appellant."*

The above judgment of the Hon'ble APTEL has direct relevance and applicability to the facts of the instant case and thus it is settled principle of law that the Respondents are not liable to pay for any unauthorized injection power by the generating companies.

- (h) Therefore, the Respondents have prayed for dismissal of the Petition.

- 4) We have heard the Counsel for both parties and perused the records. The following Issues would arise, for our consideration:
 - (1) Whether injection of power by the Petitioner, in the month of December, 2014, without consent of SLDC and provisional interconnection approval, was valid and authorized?

 - (2) Whether the Petitioner is entitled to payment, for the energy injected into the grid, during the month of December, 2014, as the ESCOMs and SLDC had allowed the Petitioner to supply power during the

earlier period, when the State Government's Order, issued under Section 11 of the Electricity Act, 2003, was in force, though there was no valid provisional interconnection approval during such period?

(3) What Order?

5) After hearing the counsel for the parties and the pleadings and other material placed on record, our findings on the above Issues are as follows:

6) **ISSUE No.(1)**: *Whether injection of power by the Petitioner, in the month of December, 2014, without consent of SLDC and provisional interconnection approval, was valid and authorized?*

a) In the opening part of para 8 of the petition, the Petitioner has stated that during December, 2014, when crushing season started, NOC for OA was denied by SLDC, because the Petitioner did not have interconnection approval. This fact is not denied by SLDC. It is not the case of the Petitioner that denial of NOC for OA in December 2014, was illegal or unauthorized. The further, pleadings of the Petitioner shows that it obtained CFO from KSPCB for the year 2014-15 and applied for extension of provisional interconnection approval, thereby the Petitioner has also accepted that without extension of provisional interconnection approval, NOC for OA could not have been granted by SLDC. Therefore, the Petitioner has based its claim against the Respondents for compensation on the ground that it was compelled to inject power in December, 2014 even without NOC for

injection of power into the grid. The Petitioner has not urged that there was negligence on the part of SLDC in denying NOC for OA, for December, 2014. The Petitioner has not produced document evidencing denial of OA for December 2014, to ascertain the exact reason for denial. We also note that SLDC had granted NOCs for OA during the period from 28.11.2013 to 31.03.2014 on different dates though there was no provisional interconnection approval. It appears to us that NOC for OA could not have been granted in the absence of valid interconnection approval. Merely, because of NOC for OA was granted irregularly, it does not mean that even for December, 2014, the NOC for OA should have been granted. Therefore, we hold that refusal of NOC for OA during December 2014 cannot be found fault with. Therefore, we proceed to consider Issue No.1 only on the grounds urged by the Petitioner.

- (b) The Petitioner's averment is that the provisional inter connection approval for 6 MW exportable capacity of its plant was granted on 04.02.2013 up to 16.03.2013, but it wheeled power beyond 16.03.2013 by obtaining NOC from SLDC. However, the Respondents have contended that the NOC was issued on 04.03.2013 to export 6 MW from 05.03.2013 to 31.03.2013. The Petitioner has not countered the Respondents' claim.
- (c) It is the case of the Petitioner that even in the absence of the provisional interconnection approval, apart from the Petitioner being allowed to sell

power to third parties, the power from the plant was procured by the ESCOMs when the Government Order issued under Section 11 of the Electricity Act, 2003 was in force. That, considering such arrangement, the energy pumped during December 2014 when the plant did not have interconnection approval, should be paid for by the Respondents. The Respondents have contended that the power was injected unauthorisedly, without any contract or permission from SLDC and the provisional interconnection approval issued provides specifically that such injected energy, will not be paid for. Hence, the Respondents have pleaded that they are not liable to pay for the said energy.

- (d) We note that, the Provisional Interconnection Approval was granted for 6 MW exportable capacity of the plant on 4.2.2013. with the validity up to 16.3.2013. One of the conditions mentioned was that pumping of power without any contractual agreement was not permitted and for any claim for payments and consequences in this regard, KPTCL is not responsible; that the Petitioner should obtain prior approval of SLDC for injection of power to the grid as it had executed a PPA with Global Energy Pvt. Ltd., for third party sale under open access mechanism. It was also mentioned that all statutory approvals had to be obtained by the Petitioner. On 10.11.2014 (Annexure-P4), the Petitioner addressed a letter to Respondent No.1 requesting for provisional interconnection approval for 6 MW capacity. In the said letter, the Petitioner has accepted the condition No.5 mentioned in the provisional

interconnection approval dated 04.02.2013 in respect of injection of power and stated as follows:

"We will obtain prior approval of SLDC for injection of power to the grid as we are going to execute a PPA with Global Energy Pvt Ltd for third party sale under open access mechanism and undertaking by us is enclosed."

The above request was followed up by the Petitioner in letters dated 27.11.2014 and 01.12.2014 to the Respondent No.1, in which CEIG's certificate and NOC from SLDC were submitted. Subsequently, on 02.12.2014, the Petitioner made a request for regular interconnection approval for 6 MW capacity, while admitting that permission from KPTCL had been obtained earlier for pumping of power into the grid. Again on 10.12.2014, the Petitioner requested for grant of provisional interconnection approval while furnishing consent for operation of the plant (CFO) issued by the Karnataka State Pollution Control Board (KSPCB). On 30.12.2014, vide Annexure P-6, the Respondent No.1 extended the time period of Provisional Interconnection Approval from 17.03.2013 to 16.03.2015. Thereafter, the Petitioner requested for regular interconnection approval on 27.01.2015 while furnishing NOC from KSPCB for 2014-2015 and the same was granted on 19.02.2015.

- (e) In the meanwhile, on 26.03.2014, the Government issued an Order under Section 11 of the Electricity Act, 2003, directing all the generators in the State

to supply the maximum exportable capacity to the grid. The Petitioner states that it had supplied power to the grid pursuant to the said order without there being any interconnection approval and received payment, and therefore, following the said principle, the energy pumped during December, 2014 without any contract or interconnection approval, should be paid for. The Respondents have denied to make such payment relying on the condition in the provisional interconnection approval barring it and the recent rulings of the Hon'ble APTEL. As noted above, the Petitioner had given acceptance to the condition and also undertaken that it would not pump energy into the grid without obtaining prior approval from the SLDC.

- (f) The Petitioner has relied on the order of the Commission dated 15.11.2012 in OP No. 22/2011, stating that in similar circumstances, generic tariff was paid to the Petitioner therein. We note that the facts of the said case are different and the decision cannot be applied to the facts of this case. In that case, there was unjustified delay by the authorities in granting open access to the generator and no intimation was given to the generator about the status of the application for open access. In this case, the facts are entirely different. Hence, the decision of the Commission in OP No. 22/2011 cannot be made applicable to this case.
- (g) The Hon'ble Appellate Tribunal for Electricity (ATE) has held in the *Kamachi Sponge* case that, unauthorized injection of energy into the Grid by the

generating companies should be discouraged for the safe operation of the Grid.

- (h) We note that, the Provisional Interconnection Approval stipulated that, such approval was given only to provide technical connectivity of the Petitioner's Project with the KPTCL's grid for synchronization. Injection of the energy into the Grid, cannot take place without grant of open access to wheel the energy to the permitted destination. Further, the electrical energy injected into the Grid cannot be stored and would be consumed instantly, and there would be no option for the Respondents either to accept or reject the said energy.
- (j) The judgment of the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal Nos.123 and 124 of 2007, decided on 08.05.2008, in the case of *Hyderabad Chemicals Limited -Vs- Andhra Pradesh Electricity Regulatory Commission and others* can be usefully referred to. In this case, the Generating Company approached the APTRANSCO by means of a letter, stating that, in case the generator pumps the energy into the Grid of the APTRANSCO before entering into a PPA or necessary Banking-cum-Wheeling Agreement, the APTRANSCO would not be required to pay any consideration for the same. After giving such a letter, the Generating Company pumped certain quantity of power into the Grid before entering into PPA and subsequently made a claim for the quantity of power injected. The Hon'ble ATE has held

that the principles under Section 70 of the Contract Act cannot be applied on the facts and in the circumstances of that case, stating that, once the energy is injected into the Grid it is instantaneously consumed and the Distribution Licensee has no choice to reject the supply of energy, and also held that the Appellant intended to deliver the energy gratuitously and there was no obligation on the person, to whom delivery had been made, to pay compensation to the former. In the present case, also the Petitioner had in its letter dated 10.11.2014, undertaken that it would obtain prior approval of SLDC for injection of energy into the Grid and in the absence of such approval by the SLDC, injection of energy by the Petitioner cannot be treated to have been done as per law. On the other hand, it would be against the provisions of the Grid Code. Further, the utilization of such energy cannot be treated as 'voluntary acceptance' of the benefit by the ESCOMs, as it would amount to thrusting the benefit upon the ESCOMs.

(k) For the above reasons, we answer Issue No.(1), in the negative.

7) **ISSUE No.(2):** *Whether the Petitioner is entitled to payment, for the energy injected into the grid, during the month of December, 2014, as the ESCOMs and SLDC had allowed the Petitioner to supply power during the earlier period, when the State Government's Order, issued under Section 11 of the Electricity Act, 2003, was in force, though there was no valid provisional interconnection approval during such period?*

- (a) The Petitioner has stated that it had injected power into the grid during the period when the Section 11 Order was in force and was paid for the same although there was no subsisting inter connection approval. The said GO under Section 11 is issued under 'extra ordinary circumstances' due to acute shortage of power in the State. The direction in the GO dated 26.03.2014 reads as follows:

"All the Generators in the State of Karnataka shall operate and maintain their generating stations to maximum exportable capacity and shall supply all exportable electricity generated to the State Grid for utilization within the State ..."

Due to the compulsion on the generators to supply all exportable capacity to the State grid, it can be said that during the Section 11 period, the interconnection approval is deemed to have granted. The same principle cannot be applied to any other period when electricity was injected by the generator without statutory approvals/ required permissions. The two situations are not comparable. Injection of power without a contract with any ESCOM or permission for sale to third parties, is unauthorized and not in the safety of the Grid. It has been held by the Hon'ble ATE in the decisions relied by the Respondents that such injection of power need not be paid for. Therefore, the Petitioner having injected energy in December 2014, without NOC from SLDC, cannot be entitled to payment for the same.

- (b) Therefore, we answer Issue No.(2), in the negative.

8) **ISSUE No.(3):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

The Petition is dismissed.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER