

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 17th December, 2018

Present:

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

O.P. Nos. 95/2016 and 96/2016

BETWEEN:

Prakash Silks and Sarees Private Limited,
Old No.87, Gandhi Nagar,
Kanchipuram-631501. ..

PETITIONER in OP No.95/2016

[Represented by Navayana Law Offices, Advocates]

Babu Sarees Private Limited,
Old No.83-B, New No.36,
Nadu Street, Seikpet,
Kanchipuram-631501. ..

PETITIONER in OP No.96/2016

[Represented by Navayana Law Offices, Advocates]

AND:

1) State Load Despatch Centre,
Anandrao Circle,
Race Course cross Road,
Bengaluru – 560 001.

- 2) Bangalore Electricity Supply Company Limited,
K.R.Circle,
Bengaluru – 560 001.
- 3) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bengaluru-560 009.
- 4) Giriraj Enterprises,
Malpani House, I.G. Road,
Sangamaner – 422 605.
(District Ahmednagar)
- 5) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi-585 101

.. **COMMON RESPONDENTS**

[Respondents 1,2,3 & 5 represented by Indus Law, Advocates]

COMMON ORDER

- 1) As these two Petitions involve common questions of law and facts, they are clubbed together and this common Order is being issued in the said Petitions.
- 2) The Petitioners have filed these Petitions, under Section 86(1)(f) of the Electricity Act, 2003, in effect, praying to:
 - (a) Declare the demand of Rs.29,24,096 in OP No.95/2016 and Rs.34,89,386/- in OP No.96/2016, raised as compensation charges raised by Respondent No.2 vide letters dated 7th October, 2016, for the month of August, 2016 (Annexure-P11), as illegal and unauthorized, and for a consequent direction;

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- (b) Set aside letter dated 5th December, 2016 (Annexure-P18), issued by Respondent No.2 to the Petitioner, to recover the excess energy drawn from Respondent No.2, and declare such recovery as invalid; and,
- (c) Recognize the supply made from Giriraj Enterprises to the consumers of the Petitioners and consequently, set aside the letter dated 22nd September, 2016 (Annexure-19), issued by the Respondent BESCOM.
- 3) The facts of the cases, which are similar, as submitted by the Petitioners, may be summarized, as follows:
- (a) The Petitioner in OP No.95/2016 operates a 2 MW Wind Power Project at Hirehesrur Village and the Petitioner in OP No.96/2016 operates a 2 MW Wind Power Project at Nilogal Village, Lingasugur Taluk. On the request of the Petitioners to wheel energy to their consumers, within the jurisdiction of the Respondent No.2 (BESCOM), it conveyed its concurrence to the Petitioners and the SLDC (Respondent No.1), by letters dated 02.01.2016, to execute a Non-REC Route Wheeling and Banking Agreement (W&BA). Based on the consent of the SLDC, the Petitioners entered into the W&BAs dated 25.2.2016 with the BESCOM and the GESCOM (Respondent No.5), to wheel the energy to the consumers in the BESCOM's jurisdiction.
- (b) Based on the monthly projection of the wind turbine installer, the Petitioners, in their letters dated 22.08.2016 to the SLDC, indicated their customers and

also the wheeling of energy of 6,70,000 units, each to them. The BESCO, in the Official Memorandums (OM) dated 30.08.2016, accorded approval to wheel 6,70,000 units to the Petitioner's customer, Weinberger India Private Limited, at Kunigal Taluk, Tumkur District, in OP No.95/2016, and the Petitioner's customer, M/s.Apotex Pharmachem India Private Limited, at Anekal Taluk, in OP No.96/2016.

- (c) However, the Petitioner, in OP No.95/2016, could generate only 2,33,415 units and the Petitioner, in OP No.96/2016 could generate only 2,52,585 units, as against 8,04,600 units each, estimated by the wind turbine installers, due to the Petitioners being subject to backing down in the month of August, 2016 by the KPTCL / GESCO, because of sudden release of water in Almatti and Narayanapur Dams to increase hydro-power generation, causing severe financial strain to the Petitioners, who had raised loans for their Projects. Therefore, the Petitioners, by their letters dated 15.09.2016, requested the BESCO to revise the quantity of energy to be wheeled, from 6,70,000 units each to 4,00,000 units, each during the month of August, 2016. Meanwhile, the Petitioners, in order to make up for the shortfall in the quantity of energy wheeled to their consumers, arranged to wheel 2,70,000 units each through the BESCO, during the same period, from another power producer, M/s.Giriraj Enterprises.
- (d) Therefore, the Petitioners, by letters dated 15.09.2016, explaining the situation, requested the Chief Engineer, the SLDC, to approve the wheeling and issue

the revised bills for August, 2016. Based on such request, the BESCO issued revised OM dated 17.09.2016 to wheel 4,00,000 units each. Pursuant to such revised OM, the Petitioners, by letters dated 22.09.2016, requested the SLDC to issue revised bills for August, 2016. However, the Respondent No.1 (SLDC), rejecting all the facts and circumstances, issued bills dated 07.10.2016, demanding the Petitioner in OP No.95/2016 to pay Rs.29,24,096/-, as a compensation for overdrawal of 2,15,044 units, and the Petitioner in OP No.96/2016 to pay Rs.34,89,386/-, as a compensation for overdrawal of 2,55,445 units.

- (e) The Petitioners, by letters dated 13.10.2016, while narrating the above facts and circumstances, requested the KPTCL to issue appropriate directions to the SLDC, to consider the Petitioners' request made on 15.09.2016, so as to enable the BESCO to revive the revised OM, issued for the reduced quantity. Pursuant to this, the Office of the Chief Engineer, SLDC, by letters dated 19.10.2016, directed the Transmission Division, KPTCL, Lingasugur, to furnish the details of power availability and to confirm the alleged daily load shedding during August, 2016. Finally, the Petitioners, by letters dated 04.11.2016, requested the BESCO to regularize the wheeling of 2,70,000 units to their consumers, during August, 2016, from another IPP (Giriraj Enterprises), to make up for lesser quantity of energy, wheeled by the Petitioners and to issue revised OM, pointing out that the BESCO has not been put to any financial loss. The SLDC, by letters dated -5.11.2016, forwarded to the BESCO, the statements received from the Executive Engineer, KPTCL,

Lingasugur, for necessary action. The Petitioners, in letters dated 30.11.2016, requested the SLDC for appropriate action. The SLDC, by its letters dated 30.11.2016, informed the BESCO to issue a revised OM, if necessary.

- (f) However, the BESCO, disregarding all the facts and circumstances and the directions issued by the SLDC, by its letters dated 05.12.2016, demanded the Petitioner in OP No.95/2016 to pay for the excess energy of 2,15,044 units, and the Petitioner in OP No.96/2016 to pay for the excess energy of 2,55,445 units, drawn from the BESCO, as per bills dated 07.10.2016, within 15 days, failing which the Petitioners would not be allowed to wheel the energy generated by them.
- 4) The almost similar grounds urged by the Petitioners, in support of their prayers, may be stated, as follows:
- (a) The Petitioners, who are diligent and have not violated the terms of the W&BA dated 25.02.2016, were subjected to backing down by the KPTCL, Lingasugur, which is not within the control of the Petitioners and was a *Force Majeure* act. Therefore, the levy of compensation charges for the over-drawal, is illegal.
- (b) Based on the wheeling requisition, submitted in Forms 'C' dated 15.9.2016, by Giriraj Enterprises, the 2nd Respondent issued revised Official Memorandums dated 17.09.2016, acknowledging and approving the wheeling of 2,70,000 units to the Petitioners' customers. The 2nd Respondent, after having

permitted Giriraj Enterprises, to wheel the energy through its network and accepting the energy supplied, cannot unilaterally revise or undo it, by withdrawing the revised OMs dated 17.09.2016.

- (c) The generation loss, caused to the Petitioners, owing to KPTCL's backing down is well documented and there is no dispute or doubt. The Petitioners' Wind Mill Projects have must-run status and the Petitioners, reasonably and legitimately expected that the power generated would not be backed down and, therefore, provided estimates for Form C, based on historical data. Immediately, after coming to know of the backing down, the Petitioners revised the Forms C. The BESCO having accepted the requests, cannot renege on its acts and cancel the revised OMs.
- (d) As per the KERC (Open Access) Regulations, 2004, made under the Electricity Act, 2003, the State Transmission Utility is the Nodal Agency for the Petitioners' long term Open Access transactions, using STU's system. Therefore, neither the BESCO nor the SLDC, can levy any changes, including the impugned charges.
- (e) The Petitioners have not caused any energy or monetary loss to the Respondent-BESCO and once the Petitioners made their own arrangements for the backup supply, the Respondent-BESCO, cannot cancel it and insist on illegal levies.

- 5) On issuance of Notices, the Respondents, except Respondent No.4, appeared through their counsel. Respondent No.4 remained unrepresented. The objections filed by the Respondents Nos.1 to 3, may be stated, as follows:
- (a) The Petitioners have acted in breach of the terms of the W&BA and drawn the excess energy.
- (b) The allegations of the Petitioners that, the low energy generation during August, 2016 was due to daily load shedding by the Respondent No.3 (KPTCL), is incorrect. The allegations of load shedding, is denied. Even assuming that there was load shedding, as per law and contractual terms between the parties, the Respondents are not liable to compensate the Petitioners, for the same.
- (c) The interconnection approval dated 30.12.2015, given to the Wind Power Plants of the Petitioners and the other two generators, of an aggregate 40 MW capacity, has the following clauses:

"7) At any point of time the exportable capacity through the plant shall not exceed 15 MW in accordance with T.O. Letter cited under ref (9).

8) You have to back down generation as per the KPTCL instructions when the load of 1x100 MVA transformer at 220 kv Lingasugur R/s exceeds its capacity & also undertake that you will not hold KPTCL responsible for loss of generation due to any system constraints/line outages."

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- (d) The Petitioners, along with the other two generators, were under an obligation to restrict the injection of power into the grid, only to the extent of 15 MW and were well aware that they would be subject to back down, if the exportable capacity exceeds 15 MW. Further, it was agreed between the parties that the Petitioners would not hold the Respondents responsible, for any loss of generation due to the same.
- (e) The Respondent Nos.1 & 3, as per the Grid Code, are under obligation to maintain balance between demand and supply of electricity, which includes load shedding in cases of necessity. There was no excess load shedding as alleged by the Petitioners and Respondents, who are governmental authorities, cannot be made responsible for any load shedding.
- (f) As per clause 6.1.1 of the W&BA, the Petitioners were required to submit a list of customers, to whom the Petitioners propose to wheel power, within 15 days prior to the commencement of wheeling. However, for August, 2016, the Petitioners presented C-Forms, only on 22.08.2016, i.e., 22 days after the commencement of wheeling, which is in violation of the W&BA. Even then considering the anticipated generation, the Respondents permitted the Petitioners to wheel 6,70,000 units each, by issuing OMs dated 30.8.2016.
- (g) Subsequently, the Petitioner in OP No.95/2016 submitted revised Form C, stating that only 2,33,415 units were generated, and the Petitioner in OP No.96/2010 submitted revised Form C, stating that only 2,52,585 units were

generated in August, 2016, and sought to wheel only 4,00,000 units each. The Respondents, under the presumption that only 4,00,000 units could be wheeled to the Petitioners' customers, issued revised OMs for 4,00,000 units each. On verification of B-Forms and considering the transmission loss, import, wheeling and banked energy, it was observed that, in the case of the Petitioner in OP No.95/2016, its customer had drawn 6,70,000 units i.e., an excess of 2,15,044 units, making the Petitioner liable to pay Rs.29,24,096/- inclusive of all other charges, and the Petitioner in OP No.96/2016, its customer had drawn 6,70,000 units i.e., an excess of 2,55,445 units, making it liable to pay Rs.34,89,386, inclusive of all other charges. Such payments, sought towards excess energy drawn from the Respondents' grid, which is not free and also not part of the contracted energy, agreed to be drawn as per W&BA, are as per the KERC Regulations and Orders and, thereby, valid and legal.

- (h) The Petitioners' claim that, the excess energy of 5,40,000 units (2,70,000 units each) were injected into the grid by another IPP – M/s.Giriraj Enterprises and there was no loss to the Respondents, is not acceptable, as there is no concept of interchanging of IPPs and one IPP compensating for another. Further, for August,2016, wheeling and transaction bill for M/s.Giriraj Enterprises was issued on 16.09.2016, i.e., even before the revised OMs were issued by the BESCO on 17.04.2016. The averment of the Petitioners that, once OMs were issued to M/s.Giriraj Enterprises, the 2nd Respondent cannot revise or undo the OMs granted, is denied. The Petitioners cannot be

permitted to unilaterally ask the other IPPs, to generate and compensate, on behalf of the Petitioners, as it is not provided under law and it was never the understanding of the parties that the Giriraj Enterprises will be compensating for the shortfall of the Petitioners' energy.

- (h) The Respondents have, therefore, sought dismissal of the Petition.
- 6) We have heard the learned counsel for the parties and perused the material on record. The following issues would arise, for our consideration:
- (1) Whether the demand made by the 1st and 2nd Respondents, on the Petitioners, to pay charges for excess energy drawn during August, 2016 is valid and enforceable?
 - (2) Whether the Petitioners' plea, for recognizing supply of energy, made from another generator – M/s.Giriraj Enterprises, can be upheld?
 - (3) What Order?
- 7) After hearing the learned counsel for the parties and considering the pleadings, arguments and material placed on record, our findings on the above issues are as follows:

8) **ISSUE No.(1):** *Whether the demand made by the 1st and 2nd Respondents, on the Petitioners, to pay charges for excess energy drawn during August, 2016 is valid and enforceable?*

ISSUE No.(2): *Whether the Petitioners' plea, for recognizing supply of energy, made from another generator – M/s.Giriraj Enterprises, can be upheld?*

As the above two issues are interconnected, we proceed to deal with them together.

(a) It is not in dispute that, the customers of the Petitioners, to whom they sought to wheel energy, as per the W&BA, are 'non-exclusive consumers' of the BESCO (2nd Respondent) and that the total energy consumed by such consumers, is within their contract demand. Similarly, there is no dispute with regard to the quantity of energy, actually generated and wheeled by the Petitioners, to their customers and the quantity of energy, consumed by their consumers, during August, 2016. We are not going to examine the correctness of the submissions of the rival parties, with regard to the reasons for the Petitioners, not being able to generate and inject into the grid, the anticipated quantity of energy during August, 2016, as there is no claim or any pleadings for compensation by the Petitioners for loss of generation, because of any alleged fault of the Respondents.

(b) As regards the averments of the Petitioners that, the energy stated to have been wheeled during August, 2016, by M/s.Giriraj Enterprises to the Petitioners' customers, to compensate the shortfall in the energy generated

and wheeled by the Petitioners, as declared in the Forms C, submitted by them, we note that, such an arrangement is not contemplated or permitted under the W&BAs. We also note that, the wheeling and banking transactions of the Giriraj Enterprises for August 2016 was finalized by BESCO on 16.09.2016 and therefore, the BESCO's revised OMs, recognizing wheeling of energy by the Giriraj Enterprises to the Petitioners customers, that were subsequently issued and withdrawn, have not altered the already finalized wheeling and banking transactions of the Giriraj Enterprises. Therefore, we are unable to consider the plea of the Petitioners, to recognize the wheeling of energy by the Giriraj Enterprises to the Petitioners' customers, as done on behalf of the Petitioners.

- (c) The issue of procedure to be followed, for adjustment of the rights and the liabilities of the parties, under the W&BAs, especially in cases of wheeling of the energy, lesser than declared earlier by the generators, has been dealt by us in our Order in OP No.95/2017. The relevant extract of the suggested procedure, as at Paragraph 9(a) of the said Order dated 20.3.2018 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."

- (d) In view of our earlier observations, it is clear that, the energy bills raised by the 1st Respondent-SLDC, against Petitioners, for the month of August, 2016, are incorrect. Any energy, consumed by the Petitioners' customers, in excess of the energy wheeled, including any opening balance of the banked energy

by the Petitioners, shall be billed, under the tariff applicable to such customers, who are 'non-exclusive consumers' of Respondent No.2.

(e) We, therefore, answer Issue Nos.(1) and (2), as above.

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

For the foregoing reasons, we pass the following:

ORDER

- (a) The demand / bill (ANNEXURE P11), raised by Respondent Nos. 1 & 2, in respect of the Petition in OP No.95/2016 for Rs.29,24,096 (Rupees Twenty-Nine Lakhs Twenty-Four Thousand and Ninety-Six) only, as compensation charges, is set aside. Respondent No.2 (BESCOM) shall revise the bill of August, 2016, issued to such Petitioner's customer towards the energy consumed, in excess of the actual wheeled and banked energy of 2,33,415 units, by the Petitioner, for the month of August, 2016, at the applicable tariff, and at the applicable interest on the balance due;
- (b) The demand/bill (ANNEXURE –P11), raised by the Respondent Nos.1&2, in respect of Petitioner in OP No.96/2016, for Rs.34,89,386 (Rupees Thirty-Four Lakhs Eighty-Nine Thousand and Three Hundred and Eighty-Six) only, as compensation charges, is set aside. Respondent No.2 (BESCOM) shall revise the bill of August, 2016, issued to such Petitioner's customer towards the energy consumed, in excess of the actual wheeled and banked energy of 2,52,585 units, by the Petitioner, for the month of August, 2016, at the applicable tariff, and at the applicable interest on the balance due;

- (c) Any amounts paid by the Petitioners, during the pendency of these Petitions, shall be refunded within six weeks, from the date of this Order;
- (d) The Respondent No.2 and Respondent No.5, shall adjust their rights and liabilities, at the time of energy balancing, keeping in mind the principles stated in the Order dated 20.3.2018 in OP No.95/2017;
- (e) The Petitioners and their open access consumers, are at liberty to adjust their rights and liabilities, as per the revised bills, to be issued to the open access consumers; and ,
- (f) The Petitioners are not entitled to any other reliefs, sought for, in the Petitions.

The original of this Order shall be kept in OP No.95/2016, and copy, thereof, in OP No.96/2016.

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

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

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