

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 4th July, 2019

Present:

| | | |
|--------------------------|----|----------|
| Shri Shambhu Dayal Meena | .. | Chairman |
| Shri H.M. Manjunatha | .. | Member |
| Shri M.D. Ravi | .. | Member |

OP No.38/2015

BETWEEN:

M/s. Gem Sugars Limited,
'Hoodi Apartment', III Floor, 120,
Cunningham Road,
Bengaluru – 560 025.

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PETITIONER

[Represented by Smt. Poonam Patil, Advocate]

AND:

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

2) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.

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RESPONDENTS

[Respondents represented by Induslaw, Advocates]

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ORDERS

1) The Petitioner has filed the above Petition on 16.10.2015 under Section 86(1)(f) of the Electricity Act, 2003, praying for the following reliefs:

-
- (a) To direct the 2nd Respondent-Hubli Electricity Supply Company Limited (HESCOM) to make payment of Rs.95,87,483/- being the balance amount towards interest on delayed payment of non-grant of escalation price, as illustrated in ANNEXURE-K; and,
- (b) To grant such other Orders, as this Commission may deem fit, in the facts and circumstances of the case.
- 2) The material facts, leading to filing of the present Petition, may be stated as follows:
- (a) The Petitioner has installed a Co-generation Power Plant of 22.5 MW capacity at Kundargi village, Bilgi Taluk, Bagalkot District and has entered into a Power Purchase Agreement (PPA) dated 30.03.2001 with the 1st Respondent – Karnataka Power Transmission Corporation Limited (KPTCL) for a period of twenty years. The monthly energy charges payable is stated in Article 5.1 of the PPA, which reads thus :

“Monthly Energy Charges :

Corporation shall for the Delivered Energy pay, for the first ten years from the date of signing of Agreement, to the Company every month during the period commencing from the Commercial Operation Date on the basis of the Base Price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty Five Paise) per kilowatt hour (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines issued by the Ministry of Non-Conventional Energy Sources of the Govt.”

- (b) Pursuant to the terms of the PPA, the Petitioner was supplying energy to the 1st Respondent (KPTCL) up to 09.06.2005, and thereafter to the 2nd Respondent (HESCOM), as the PPA was assigned by 1st Respondent (KPTCL) to the 2nd Respondent (HESCOM), with effect from 10.06.2005.
- (c) The Petitioner had filed OP No.18 of 2008 before this Commission, seeking for a direction against the 1st Respondent (KPTCL) herein to pay a sum of Rs.1,90,06,094/- towards arrears as per the terms of the PPA, along with interest at 18% per annum, till the date of realization, and for a direction against the 2nd Respondent (HESCOM) herein to pay a sum of Rs.15,68,01,662 towards arrears as per the terms of the PPA, along with interest at 18% per annum, till the date of realization.
- (d) The above said OP No.18 of 2008 was disposed of on 16.04.2009 in terms of the settlement arrived at between the parties. The said Order reads thus:

"1. In this Petition, the Petitioner had sought for the following reliefs:

- (1) direct the 1st Respondent Corporation to release a sum of Rs.1,90,06,094/- towards arrears as per the terms of the Power Purchase Agreement along with the interest @ 18% till the date of realization;*
- (2) direct the 2nd Respondent Company to release a sum of Rs.15,68,01,662/- towards arrears as per the terms of the Power Purchase Agreement along with the interest @ 18% till the date of realization;*
- (3) and pass such other order and issue such other directions as this Hon'ble Commission deem fit under the facts and circumstances of the case, in the interest of justice.*

2. On 2.4.2009 the counsel appearing for both the parties submitted that they have come to a settlement in the following terms and the petition may be disposed of in these terms:

(i) The Respondents will abide by the PPA in force and will pay for the electricity supplied at the rate fixed in Clause 5.1 of the PPA which reads as under :

'Monthly Energy Charges :

Corporation shall for the Delivered Energy pay, for the first ten years from the date of signing of Agreement, to the Company every month during the period commencing from the Commercial Operation Date on the basis of the Base Price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty Five Paise) per kilowatt hour (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines issued by the Ministry of Non-Conventional Energy Sources of the Gol.'

(ii) For the amounts not paid on account non-grant of escalation as provided in Clause 5.1, the respondents will pay an interest of 6.5% per annum.

3. Recording the above submissions this petition is disposed of.

4. Parties have to bear their costs respectively."

(e) The Petitioner claims that, subsequent to the Order passed in OP No.18/2008, the 2nd Respondent (HESCOM) has made payments, as show in ANNEXURE-K to the Petition, towards the principal amount and a part of interest in respect

of non-grant of escalation of tariff, as provided in Article 5.1 of the PPA, and also claims that the balance outstanding interest still due from the 2nd Respondent (HESCOM) is Rs.95,87,483/-. The particulars of the claim as against the 2nd Respondent (HESCOM), made in ANNEXURE-K to the Petition, reads thus:

Details of HESCOM Differential Payment Outstanding

| Sl.No. | Particulars | Amount (Rs.) | | |
|--------|--|-----------------------|----------------------|-----------------------|
| | | Principal | Interest | Total |
| | HESCOM | | | |
| 1. | Differential Price Outstanding (May 05 to Nov 08) | 117,702,408.00 | - | 117,702,408.00 |
| 2. | Interest Rs. @ 6.5% | - | 24,707,581.00 | 24,707,581.00 |
| | | | | |
| 3. | Outstanding | 117,702,408.00 | 24,707,581.00 | 142,409,989.00 |
| | | | | |
| 4. | Less: Amount Received (Ch.No.911722 dt 23.09.10) | 59,000,000.00 | - | 59,000,000.00 |
| | Less: Amount Received (Ch.No.911793 dt 09.12.10) | 58,702,408.00 | - | 58,702,408.00 |
| | Less: Amount Received up to 31.07.2009 (through RTGS on 7.3.2012). | - | 15,120,098.00 | 15,120,098.00 |
| | | | | |
| | | 117,702,408.00 | 15,120,098.00 | 132,822,506.00 |
| | | | | |
| 5. | Differential Price Interest out- standing as on date-HESCOM | - | 9,587,483.00 | 9,587,483.00 |

| Sl.No. | Particulars | Principal Amount | No.of days Delay | Interest @ 6.5% |
|--------|--|------------------|------------------|---------------------|
| | Break up details | | | |
| 1. | Interest for the period 01.08.2009 to 23.09.2010 | 59,000,000.00 | 419 | 4,402,371.00 |
| 2. | Interest for the period 01.08.2009 to 09.12.2010 | 58,702,408.00 | 496 | 5,185,112.00 |
| | | | | 9,587,483.00 |

- (f) Therefore, in substance, the claim of the Petitioner in the present Petition is towards the balance interest payable by the 2nd Respondent (HESCOM), towards interest on delayed payment of non-grant off escalation price, as ordered in OP No.18/2008.
- 3) The 2nd Respondent (HESCOM) has appeared through its counsel and filed its Statement of Objections, the gist of which may be stated as follows:
- (a) That, the Petitioner had filed a Petition before this Commission in OP No.18/2008, seeking payments in respect of non-grant of escalation price, interest on delayed payments of regular bills and interest in respect of delay in payment of the escalation price. That, pursuant to the Order dated 16.04.2009 passed in OP No.18/2008, the Petitioner raised an Invoice dated 21.08.2009 (produced by the Petitioner as ANNEXURE-M to the present Petition) and claimed interest on delayed payment of escalation price, up to 31.07.2009. In the said Invoice dated 21.08.2009, the Petitioner also included a claim of Rs.65,60,711/-, allegedly in respect of interest for delayed payments up to 30.01.2009. That, the 2nd Respondent (HESCOM) made

payment of the principal amount of Rs.11,77,02,408/- in two instalments of Rs.5,90,00,000/- and Rs.5,87,02,408/-, towards payment of the escalation amount and a sum of Rs.1,51,20,098/- towards interest on delayed payment of the escalation amount.

- (b) That, the Petitioner could have raised the present claim in OP No.25/2013 itself and not having raised this issue therein, at that point of time, the Petitioner is estopped from raising such an issue, afresh, in a fresh round of litigation now. That, the Petitioner has frivolously filed multiple Petitions before this Commission and that the Petitioner cannot be permitted to approach this Commission as per his whims and fancies.
- 4) No relief is claimed against the 1st Respondent (KPTCL) and it is shown as a formal party in the Petition.
- 5) We have heard the learned counsel for the parties. They have also filed the Written Arguments, in support of their respective contentions. The learned counsel for the 2nd Respondent (HESCOM) raised a preliminary issue, apart from raising other issues, and contended that, the present Petition is not maintainable against the 2nd Respondent (HESCOM), as the claim in the present Petition was already included in the claims made in OP No.18/2008. Therefore, he submitted that, in respect of the said claim, the Petitioner cannot seek any relief in another round of litigation now. The learned counsel for the Petitioner submitted that, the present Petition has been filed, as the

claim made by the Petitioner, vide its letter dated 24.07.2015 (ANNEURE-N to the Petition) was denied by the 2nd Respondent (HESCOM), vide its reply dated 24.09.2015 (ANNEURE-P to the Petition).

- 6) The following Issues would arise, for our consideration:
- (1) Whether the whole of the claim, made in this Petition, is already covered in OP No.18/2008, decided by this Commission on 16.04.2009, and if so, whether the present is not maintainable?
 - (2) Whether the present claim is barred under Order II Rule 2 of the Code of Civil Procedure or barred by the law of limitation?
 - (3) What Order?
- 7) After considering the rival contentions of the learned counsel for the parties and perusing the material on record, our findings on the above Issues are as follows:
- (8) **ISSUE No.(1)** : *Whether the whole of the claim, made in this Petition, is already covered in OP No.18/2008, decided by this Commission on 16.04.2009, and if so, whether the present is not maintainable?*
- (a) It is not in dispute that, OP No.18/2008 was filed by the Petitioner, seeking payments in respect of: (i) Non-grant of escalation price; (ii) Interest on delayed payments of regular bills; and (iii) Interest in respect of delay in payment of escalation price.

In the present case, the 2nd Respondent (HESCOM) has not denied that the above reliefs were granted while reducing the rate of interest to 6.5% per annum from 18% per annum, as claimed by the Petitioner. It is not the case of the Petitioner that, subsequent to the disposal of OP No.18/2008, the 2nd Respondent (HESCOM) refused to pay the tariff at the escalated rate. Therefore, the interest that would become payable on the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate, could be calculated, as per the reliefs granted in OP No.18/2008. It is also not the case of the Petitioner that, this Commission has not granted any relief in OP No.18/2008 and has simply recorded the terms of the settlement. In respect of the same cause of action, there cannot be successive litigations. If a party has not complied with an Order passed by this Commission, the proper recourse available to the aggrieved party would be, to file a Complaint before this Commission, for taking appropriate action in the matter, but not to file a fresh Petition for the relief already granted. The Petitioner has not claimed, at any stage of the proceedings in this case, to convert this proceeding and treat it as a Complaint. In the absence of such a request by the Petitioner, this Commission, on its own, cannot treat the present Petition as a Complaint. For the above reasons, we are of the considered view that, the present Petition is not maintainable. Therefore, we answer Issue No.(1), in the affirmative.

- 9) **ISSUE No.(2)** : *Whether the present claim is barred under Order II Rule 2 of the Code of Civil Procedure or barred by the law of limitation?*

As Issue No.(1) above is answered in the affirmative, Issue No.(2) does not arise, for our consideration. Therefore, we answer Issue No.(2), accordingly.

- 10) **ISSUE No.(3)** : *What Order?*

For the foregoing reasons, we pass the following:

ORDER

The present Petition stands dismissed. The Petitioner is at liberty to seek appropriate remedy, as provided under law.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER