

No.N/369/2017

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

Dated: 17.10.2019

Present:

Sri Shambhu Dayal Meena	..	Chairman
Sri H.M. Manjunatha	..	Member
Sri M.D. Ravi	..	Member

OP No.199/2017

BETWEEN:

1. Matrix Agro Private Limited,
No.10-3-316/A Masab Tank,
Hyderabad-500 028. ... **PETITIONER**
[Represented by Navayana Law Offices, Advocates]

AND:

1. State Load Despatch Centre,
Karnataka,
Anandrao Circle,
Bengaluru-560 009.
2. Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru- 560 001.
3. Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Kempegowda Road,
Bengaluru-560 009.
4. Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi-585 102.

5. Chamundeshwari Electricity Supply Corporation Limited,
No.29, Vijayanagara 2nd Stage, Hinkal,
Mysuru –570 017.

... **RESPONDENTS**

[Respondents 1,2,3 and 5 represented by
Just Law, Advocates]

ORDERS

1. The Petitioner has filed this petition under Section 86(1)(f) of the Electricity Act, 2003, seeking the following reliefs:

(a) To declare the bill dated 4.10.2017 for the month of July, 2017, raised by the 1st Respondent demanding from the Petitioner a sum of Rs.10,63,540/- (Rs. Ten lakhs sixty three thousand five hundred forty only) as excess energy charges payable to the 2nd Respondent and Rs.94,128/- (Rupees Ninety four thousand one hundred twenty eight only) as excess energy charges payable to 5th Respondent, produced at Annexure P-1, as illegal and unauthorised;

(b) To quash/set aside the bill dated 4.10.2017, for the month of July, 2017, issued by the 1st Respondent at Annexure P-1;

(c) To quash the Official Memorandum dated 29.7.2017 issued by the 2nd Respondent and produced as Annexure P-2.

2. The facts of the case are:

a) The Petitioner owns and operates a 6 MW biomass based power project at Chincholi Taluk, Kalaburagi District.

-
- b) On 23.12.2015, in order to wheel 5.4 MW energy, the Petitioner has executed a wheeling and banking Agreement (WBA) with Respondent Nos.2 to 5 for wheeling power on captive basis. (Annexure P-5).
- c) On 26.7.2017, the Petitioner submitted the wheeling requisition in Form-C to the 1st Respondent, in which the Petitioner had requisitioned wheeling of:
- i) 15,65,000 units of energy to Petitioner's captive users in 2nd Respondent's area of distribution; and
 - ii) 1,60,000 units of energy to Petitioner's captive users in 5th Respondent's area of distribution.
- (A copy of this Form-C was also copied to 2nd and 5th Respondents - Annexure P-6 collectively).
- d) After few hours of submission of the C-Form, the Petitioner received information from project site that due to a force majeure event the generation suddenly dropped and one of the turbines had to undergo repair. Hence, on the very same day, the Petitioner rushed to the 1st Respondent and submitted a revised C-form suitably factoring the revised generation and wheeling requisition. This was accepted by 1st Respondent.
- e) Based on the acceptance of the revised C-form, the 1st Respondent issued an instruction letter to the 2nd Respondent to issue necessary OM for wheeling requisition of 14,95,000 units in the month of July 2017 (Annexure-P3).

The 1st Respondent also issued an instruction letter to the 5th Respondent to issue necessary OM for wheeling requisition of 1,50,000 units in the month of July,2017. (Annexure P4).

- f) However, in clear contravention of the instruction letter of the 1st Respondent dated 29.7.2017, the 2nd Respondent issued an OM for a wheeling Requisition of 15,65,000 units instead of 14,95,000 units. The 5th Respondent followed the instructions of the 1st Respondent and issued an OM dated 1.8.2017 for 1,50,000 units.
- g) On learning that the 2nd Respondent had not honoured the instructions of the 1st Respondent, the Petitioner issued two representations dated 22.8.2017 to the 2nd Respondent. (Annexure P-8 collectively).
- h) However, the 1st Respondent issued a bill dated 4.10.2017 (Annexure P-1) containing energy accounting for the month of July 2017, demanding from the Petitioner:
- i) Rs.10,63,540/- as excess energy charges payable to the 2nd Respondent; and
 - ii) Rs.94,128/- as excess energy charges payable to 5th Respondent.

Aggrieved by the acts of the Respondents, this petition is filed.

3. The grounds urged by the petitioner are:-

- a) The 1st Respondent has issued instructions vide letter dated 29.7.2017 stipulating the energy requested to be wheeled for the month of July, 2017 at the non-exclusive captive user locations in BESCO and CESC. This should have been the basis for the 2nd Respondent to issue its OM. However, the 2nd Respondent issued an OM even before the instructions from the 1st Respondent. The 1st Respondent, instead of correcting the acts of the 2nd Respondent, has raised a bill in accordance with the illegal OM of the 2nd Respondent.
- b) Respondent-1 is the nodal agency/energy accounting body for the wheeling and banking transactions. Once it has issued a communication instructing 2nd Respondent to issue OM for a particular quantum of energy to be wheeled, it cannot renege on its own communication.
- c) The 5th Respondent has correctly issued the OM duly complying with the instructions in the 1st Respondent's letter dated 29.7.2017. However, the 1st Respondent has demanded excess energy charges to be paid to 5th Respondent too, which is improper.
- d) Even before the final instructions could be issued by the 1st Respondent on 29.7.2017, the Petitioner has duly corrected its generation/wheeling estimation in Form-C. The 2nd and 5th Respondents cannot go by the wheeling estimations submitted

by the Petitioner. They are bound by the 1st Respondent's instruction letter. The Petitioner had submitted a revised wheeling requisition well in time. This has been intentionally ignored by the 2nd Respondent. Instead of correcting the 2nd Respondent, the 1st Respondent deviated from its own correct stand.

- e) The 3rd Respondent KPTCL (the STU under the Act) should have been the nodal agency since the transaction is a long term open access transaction. Instead, SLDC operated by the KPTCL is acting as the nodal agency. All employees of SLDC and all ESCOMs are on deputation from KPTCL. Hence, the whole transaction is engineered and marked with bias.
- f) The official concerned of BESCO has acted with mala fide motive and bias in order to harass the Petitioner, which is manifest from the fact that OM was issued even before the SLDC could issue instructions. This can be contrasted with the actions of CESC in awaiting the instruction letter from SLDC. Subsequently, SLDC acted with malice and fear by surrendering to the OM issued by 2nd Respondent.
- g) The issuance of OM etc., is not statutory in nature. It is not prescribed under any regulations. It is only a matter of administrative convenience. Hence, it can be revised anytime by all parties concerned. Revision of the OM will merely result in altering the supplies for the subsequent months or the same month. The utilities keep revising their power purchase estimates, consumer bills and all other similar transactions.

Similarly, in this case too, the OM ought to have been correctly issued by 2nd Respondent in the first place, or it could have been revised at the earliest based on the instructions of the 1st Respondent. Hence, the acts of Respondents are illegal.

4. Upon issuance of notice, the Respondent 1,2,3 and 5 entered appearance through their Counsel, and filed Statement of Objections. The Respondent Nos.1,2 & 5 have has filed the Statement of Objections as follows:

- a) The Respondent Nos.2 and 5 have acted strictly in terms of the WBA and the Electricity Act. Article 6.1.1 of the WBA makes it clear that the Petitioner is required to submit a list of captive consumers to whom it proposes to wheel power to the Respondent No.2, 3 & 5 at least 15 days prior to commencement of wheeling. However, the Petitioner has failed to submit such a list of consumers to the Respondent No.2 within the stipulated time frame and has submitted it only on 25.7.2017. This has led to a circumstance where the Respondent No.2 is not able to issue OM within the HT billing cycle. The requirement of Petitioner submitting the quantum of energy it is intending to wheel is essential to balance the demand and supply and maintain grid security.
- b) The Respondent No.2 after considering the Form C dated 25.7.2017 submitted by the Petitioner, has accorded approval to the Petitioner to wheel 15,65,000 units of energy.

However, the Petitioner has drawn 68,500 units of energy in excess of what was stated in Form C. As per Article 5.4 of the WBA, for such energy, twice the demand charges and energy charges shall be payable by the captive consumers who do not have any supply agreement with GESCOM/BESCOM/ CESC for over-drawal of energy. Therefore, the Respondent No.1 raised the bill dated 4.10.2017 demanding payment from the Petitioner for overdrawn energy. The contention of the Petitioner that bill dated 4.10.2017 is arbitrary, illegal and ultra vires of the Electricity Act 2003, is untenable. The Respondent has computed the charges payable for over-drawal of energy in keeping with the terms of the WBA.

- c) With regard to the contention of the Petitioner that the Respondent no.1 should have issued a revised OM considering the revised form C of the Petitioner, it is submitted that the Petitioner has not submitted the revised form C to the Respondent No.1. As per Article 6.1.1 of the PPA, when the Petitioner intends to change the quantum of energy to be wheeled, it is required to seek approval of the Respondent No.2,3 & 5. However, the Petitioner has not made any such request to the Respondent No.1. The Respondent No.2 has received OM from the Respondent No.1 as per the revised form C only after the commencement of wheeling by the Petitioner. Therefore, question of revising the OM does not arise.

-
- d) With regard to the submission of the Petitioner that it has submitted revised form C to the Respondent No.1 as one of the turbines had to undergone repair and same is force majeure event, the Petitioner has not produced any proof substantiating the same. Hence, Article 9 is inapplicable.

The Respondents have prayed for dismissal of the Petition.

5. The Petitioner has filed a Memo on 27.11.2018 as follows:

- a) In response to the question of the Commission, whether the Petitioner has adhered to the revised 'C' Form, assuming that BESCO should have followed the instructions dated 29.7.2017 (Annexure P-3) indicating the energy requisitioned for the month of July, 2017 at 14,95,000 units. It is submitted that SLDC's OM dated 29.7.2017 in respect of BESCO (Annexure-P3) indicates the wheeling requisition at 14,95,000 units and SLDC's OM dated 29.7.2017 in respect of CESC indicates wheeling requisition of 1,50,000 units. Hence, the total wheeling requisition as per the OM dated 29.7.2017 for BESCO and CESC is 16,45,000 units. As against this the Petitioner has generated 17,55,750 units as total net energy export. The total import for the month is 18,750 units.
- b) The joint meter reading in Form 'B' for the billing period 1st July 2017 to 31st July 2017 produced as Annexure P9 reveals the following:
- Total energy available for wheeling for the month of July, 2017 is 16,46,400 units.

-
- | | |
|---|--------------------------|
| 1) Total export | .. 17,55,750 units. |
| 2) Total Import | .. 18,750 x 1.5 = 21,563 |
| 3) Wheeling charges in kind | .. 87,788 units. |
| 4) Total energy available for wheeling to captive consumers | .. 16,46,400 units. |

c) As against the total quantum available for wheeling at 16,46,400 units, the OM dated 29.7.2017 for BESCO and CESC sums up to 16,45,000 (14,95,000 for BESCO + 1,50,000 for CESC). Thus, there is no under injection by the Petitioner necessitating any penalty.

6. The Counsel for Petitioner has filed a Memo on 4.6.2019 furnishing a copy of Interim stay granted by the Hon'ble High Court of Karnataka in W.P.No.14480-81/2019 along with a screen shot of the online case status as available on the website of Karnataka High Court which shows that the Interim stay granted by the Hon'ble Court has been extended till the next date of hearing.
7. The Counsel for Petitioner has filed a memo dated 1.8.2019 producing a copy of the Order dated 2.8.2018 passed by the Commission in the case C.S. Sunder Raju vs KPTCL and Another (OP No.83/2017).
8. The Counsel for Respondents 1,2,3 & 5 have filed Written submissions on 17.9.2019 as follows:
 - a) Article 6.1.1 of the WBA makes it clear that Petitioner is required to submit a list of captive consumers to whom it proposes to wheel power to the Respondent No.2, 3 & 5 at

least 15 days prior to commencement of wheeling. However, the Petitioner has failed to submit such a list of consumers to the Respondent No.2 within stipulated time frame and has submitted it only on 25.7.2017. The Petitioner has caused confusion by revising the C Form at its whims and fancies without following the procedure contemplated. This has led to a circumstance where the Respondent no.2 is not able to issue OM's within the HT billing cycle.

b) The Commission in C.S. Sunder Raju vs. KPTCL and another - OP No.83/2017 and Shilpa Medicare Limited vs. HESCOM & another has held that in case of over drawal of energy by a consumer who has a power supply agreement with the distribution licensee, such consumer is liable to pay for the excess energy drawn as per the tariff applicable to that category of consumer. In the present case, the consumers of the Petitioner have power supply agreement with the Respondent No.2. Therefore, the Petitioner is liable to pay for the excess energy as per the orders of this Commission in C. Sunder Raju vs. KPTCL and another - OP No.83/2017 and Shilpa Medicare Limited vs. HESCOM & another.

9. We have heard the learned counsel for both the sides and considered the respective pleadings and documents produced by the parties. The following issues would arise, for consideration:

- (1) Whether the demand raised against the Petitioner at Annexure P-1 is proper?
- (2) What Order?

10. 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:

11. Issue No. 1: Whether the demand raised against the Petitioner at Annexure P-1 is proper?

a) This case pertains to the billing of the energy over drawn by the open access consumers of the petitioner, in excess of the quantum injected by the petitioner. It is the case of the petitioner that the Respondents have not acted according to the revised 'C' Form issued by it. The Respondents have contended that the revised 'C' Form was issued belatedly.

b) The Commission has passed several orders on the point of Issuance of 'C' Form by the generating companies and the billing methodology to be adopted in wheeling & banking transactions, in respect of 'Exclusive and Non Exclusive Consumers'. Important Orders which can be referred to are:

- (i) Complaint No. 5/2017 - Bidadi Industries Association (R) vs BESCO dated 24.10.2017,
- (ii) OP No. 95/2017 - Shilpa Medicare Limited vs HESCO & another dated 20.3.2018 and
- (iii) OP No. 83/2017- Shri C S Sunder Raju vs KPTCL & another dated 2.8.2018.

c) In the above cases, the Commission had discussed about the relevance of issuing the 'C' Form by the generator and suggested the method of billing the 'Exclusive and Non

Exclusive Consumers' as per the terms of the WBA. The Commission had held that for the over-drawal of energy from the Grid by the open access consumer, beyond the quantum wheeled under the WBA, the consumer cannot be charged twice the charges applicable to the relevant category of that consumer, if such consumer is a 'Non-Exclusive Consumer' (who has a contract demand with a Distribution Licensee). In this case, admittedly, the open access consumers of the petitioner have contract demand with the respective ESCOMs. For over-drawal of energy, they should not have been billed at twice the tariff applicable to the relevant category, but should have been billed as regular consumers of ESCOMs at the retail supply tariff determined by the Commission for the relevant period. As the principles are explained in detail in the above Orders, we do not wish to repeat the same in this case. The principles mentioned in the above cases apply to this case also.

d) We note that the petitioner has only produced a copy of the interim Order dated 1.4.2018 of the Hon'ble High Court in WP Nos. 14480-81/2019, without mentioning anything about the issue involved therein. Hence, we make it clear that if the issue decided herein is pending in the said WPs, this Order is subject to the outcome of the said WPs.

e) Hence, Issue No. 1 is answered in the negative.

12. Issue No. 2: What Order?

For the foregoing reasons, we pass the following:

ORDER

- a) The impugned Demand Notice dated 4.10.2017 (ANNEXURE – P-1) issued by the 1st Respondent is hereby set-aside;
- b) The 1st Respondent- SLDC acting on behalf of BESCOM and CESC, shall re-do the Monthly Energy Bill, for the month of July 2017 (Annexure P-1), in terms of the procedure explained and the orders passed in OP No. 95/2017 - Shilpa Medicare Limited vs HESCOM & another dated 20.3.2018;
- c) Thereupon, the 1st Respondent- SLDC shall issue fresh demands, within 04 (four) weeks from the date of this Order;
- d) The amount deposited by the petitioner, if any, in terms of the Interim Order passed by the Commission dated 24.10.2017 shall be taken into account while adjusting the rights and liabilities of the parties and the open access consumers.

The petition stands disposed of accordingly.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

sd/-
(H.M. MANJUNATHA)
MEMBER

sd/-
(M.D. RAVI)
MEMBER