

No. N/62/18

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated : 07.01.2020

Present:

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

OP No.25/2013

BETWEEN:

GEM Sugars Limited,
A Company registered under the
Companies Act, 1956,
Having its Registered Office at
Hoodi Apartments, III Floor,
120, Cunningham Road,
Bengaluru-560 052.
Represented by its Managing Director, Sri Sekar.

... PETITIONER

*(Represented Smt. Poonam Patil, Advocate,
Bengaluru)*

AND

1. Karnataka Power Transmission Corporation Limited
Having is Registered office at
Cauveri Bhavan, K.G. Road,
Bengaluru-560 009.
Through its Managing Director

2. Hubli Electricity Supply Company Limited,
(Government of Karnataka Undertaking
A Company incorporated under the
Companies Act, 1956, Having its Corporate Office
at P.B. Road, Navanagar,
Hubli-580 029.

.... RESPONDENTS

Through its Managing Director
(Represented by M/s JUSTLAW, Advocates, Bengaluru)

ORDERS

(Under Section 86 (1) (f) of the Electricity Act, 2003)

- 1) The petitioner has sought the direction of this Commission against the Respondent-1 to pay Rs.19,82,703/- and against the Respondent-2 to pay Rs.84,53,080/- (total of Rs.1,04,35,783/- as per Annexure-Q) towards arrears of interest on delayed payments on regular tariff invoices @ 6.5% per annum for the periods from 2002-03 to 2005-06 and from 2005-06 to 2009-10 respectively.

- 2) The case of the petitioner in brief is that:
 - a) The petitioner/Power generating company entered into Power Purchase Agreement (PPA) with the Respondent-1/KPTCL on 30.03.2001 (Annexure-A) for a period of 20 years and was supplying energy to the Respondent-1 till 09.06.2005 and thereafter to the Respondent-2/HESCOM who was assigned with said PPA.

 - b) The petitioner earlier by filing OP No.18/2008 before this Commission, had claimed the arrears of Rs.1,90,06,094/- from Respondent-1 and Rs.15,68,01,662/- from the Respondent-2 with interest @ 18% p.a. The parties therein got the said petition disposed off as settled among them on 16.04.2009(Annexure-D), in terms of their meeting held on 24.01.2009 (Annexure- B & C).

 - c)The petitioner sought the compliance of the order of O.P.No.18/2008, with the Respondent-1 through the letter dated 28.04.2009

(Annexure-E) and also through reminders demanding the overdue interest of Rs.28.92 lakhs on 06.01.2011 (Annexure-F), 24.10.2011 (Annexure-H), 13.07.2012 (Annexure-K) and also on 26.04.2013 (Annexure-N) for which the Respondent-1 issued the reply vide letter dated 30.05.2013 (Annexure-P), denying its liability, contending that it has cleared all dues as per the order of this Commission, relying on the PPA.

- d) The petitioner similarly sought compliance with Respondent-2 demanding the dues of Rs.247.16 lakhs, through letter dated 18.06.2011 (Annexure-G) and also reminders dated 25.01.2012 (Annexure-J), dated 05.10.2012(Annexure-L), dated 12.10.2012 (Annexure-M) and also requested to adjust the dues with Power Import Bills of Rs.11,32,635/- and Rs.88,33,122/- for June 2012 and July 2012 respectively.
- e) The non-compliance of the orders of O.P.No.18/2008, compelled the petitioner to file this petition on 25.09.2013, claiming the arrears of 2002-03 to 09.06.2005 from Respondent-1 and of 10.06.2005 to 2009-10 from Respondent-2.
- 3) The Respondent-1/KPTCL has not filed the objection statement. But filed the memo with calculation on 13.02.2014, contending that it has complied the order in O.P.No.18/2008 by making payments of Rs.27,02,853/- on 14.08.2009 towards interest including TDS of Rs.6,12,466/-.
- 4) The Respondent-2/HESCOM by filing the statement of objections on 13.11.2014, though disputed the maintainability of this petition on various

grounds, contended that it has complied the order dated 16.04.2009 in O.P.No.18/2008, by making payment of Rs.11,51,20,098/- on 07.03.2012 and thereby there is no dues.

- 5) The petitioner in his reply on 10.04.2014, has disputed the procedure adopted in the memos of calculation of both the Respondents.
- 6) After hearing the arguments of parties of both the sides and on perusal of the relied on records, final order was passed on 26.02.2015. But the petitioner succeeded in getting the proceedings re-opened by filing the R.P. No 2/2015. Hence the proceedings continued from 28.07.2016.
- 7)The petitioner in the meantime preferred the Appeal No.252/2016 before the Hon'ble Appellate Tribunal and got the proceedings of this petition stayed by obtaining Status Quo order, till the receipt of the final order dated 21.01.2019.
- 8)The Hon'ble Appellate Tribunal has observed in the Appeal No.252/2016, that *"No claim remains so far as the 2nd respondent is concerned. Therefore, there is no necessity to keep the proceedings in O.P. No.25 of 2013 as against the 2nd Respondent"* and accordingly has directed to continue as against the 1st Respondent-KPTCL alone.
- 9) The learned counsel for the Respondent-1/KPTCL submitted the computation statement on 07.11.2019, showing the total amount becoming due of Rs.18,00,436/-, for the period from November 2002 to June 2005, contending that his due amount was wrongly claimed as

Rs.19,82,000/- by the petitioner. The Respondent-1 further contended that by operation of law, under the statutory transfer scheme, the PPA dated 30.03.2001 stood transferred to the Respondent-2, by virtue of Section 131 of the Electricity Act, 2003 as supported by the Government Order dated 15.02.2002, and hence the claimed amount ceased to be a liability in its books of accounts.

10) We have perused the pleadings and documents produced by all the parties and also the order of the Hon'ble Appellate Tribunal. The points that arise for our consideration are,

Whether the respondent-1 becomes liable to pay Rs,19,82,000/-to the petitioner towards arrears of interest on delayed payments on regular tariff invoices for the period from 2002-03 to June 2005?

11) Our findings on the above point is in the partly affirmative for the following

REASONS.

12) In the proceedings of earlier filed O.P. No.18/2008 of these parties ended with settlement terms, the Respondent-1 has admitted at the term No.2 (i) that "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 dated 30.03.2001". The compliance report with memo and calculation statement was filed on 13.02.2014, by the Respondent-1 praying for dismissal of this petition, with the contention that there is no due to the petitioner as the Respondent-1 has complied the order of O.P.No.18/2008, by clearing Rs.27,02,853/- on 14.08.2009- towards interest including TDS of Rs.6,12,466/-

for the period April 2003 to June 2005. The Respondent-1/KPTCL has no defence pleadings in this petition, as the objection statement is not filed. The result is that the contention of the petitioner/ GEM Sugars Limited that it was supplying the energy to the Respondent-1 till 09.06.2005 is remained unchallenged. The Respondent-1 being power purchaser admitted the PPA as in force and also reported the compliance to the final order of the O.P.No.18/2008 and hence impliedly the liability to clear balance amount is also on the Respondent -1.

- 13) The Respondent-1 has filed the Memo and the copy of the G.O.No.DE 69 PSR 2001 dated 15.02.2002, on 28.11.2019, to place it on record about the unbundling of electricity sector and incorporation of four independent distribution companies. The respondent-1 in its affidavit dated 16.10.2019 contended that by virtue of Section 131 of the Electricity Act, 2003, all the assets and liabilities of Respondent-1, with respect to Distribution business were transferred to the respective ESCOMS as per the said statutory transfer scheme. The PPA dated 30.03.2001 also stood transferred to the 2nd Respondent by operation of law and hence the claimed amount ceased to be a liability in the books of 1st Respondent.
- 14) The careful verification of the materials placed by the Respondent-1 in reporting the settlement terms and the compliance of the order in O.P. No.18/2008, even after 2009, are not as per referred G.O. Hence, it becomes difficult to accept the referred G.O. so as to shift its liability to the Respondent-2 in the absence of production of cogent materials in support

of the same. It appears that liability to the extent of Rs.18,00,436/- as on June 2005, undoubtedly payable to the petitioner by 2nd party to the PPA, namely the Respondent-1, as the Respondent-2 was not in existence then. Now, the Respondent-1 has been trying to shift its liability on the Respondent-2 relying on the G.O. dated 15.02.2002 produced at the later stage. The G.O does not show transfer of assets and liabilities and it was regarding the unbundling of the distribution business from the Respondent-1 and about the creation of the distribution companies only. The G.O. is passed subsequent to the PPA and it is only for carving out four Distribution Companies by bifurcating the responsibilities between the respondent-1 and 2 without referring to the petitioner or the power generating companies and without referring to the PPA terms and hence the petitioner being stranger to the G.O. cannot be expected to deal outside the purview of the PPA. Moreover, the bulk power supply business continued to be dealt with by KPTCL till 09.06.2005. It is in between the respondents to settle the amounts of the strangers namely the petitioner by making needful entries in their books of accounts.

- 15) The petitioner has filed the memo dated 14.11.2019, accepting the contents of affidavit dated 17.10.2019 and memo of calculation dated 07.11.2019 filed by the Respondent-1 admitting its liability to the extent of Rs.18,00,436/ for the period upto June 2005 and prays this Commission for disposal of this petition with a direction against the Respondent-1 to pay the said calculated amount to the petitioner, by fixing the reasonable

period. The result is that the petitioner reduces/restricts the claim amount to Rs.18,00,436/- as against petition claim amount of Rs.19,82,000/-

16) In view of the reasons stated above, the petitioner has to succeed against the Respondent-1 to recover the restricted amount of Rs.18,00,436/- within the reasonable time now fixed by this Commission and accordingly, we answer the point in the partly affirmative and pass the following:

ORDER

a) This petition continued against the Respondent-1 (vide order in Appeal No.252/2016 of Hon'ble Appellate Tribunal for Electricity) is partly allowed; and

b) The Respondent-1/KPTCL shall pay Rs.18,00,436/- due for the period from November 2002 to June 2005, towards payment of interest at 6.5% p.a. to the petitioner within 3 months.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER