

No.N/30/2021

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

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

Dated: 01.06.2022

Present:

Shri H.M. Manjunatha ... **Officiating Chairperson**
Shri M.D. Ravi ... **Member**

OP No.20/2021

BETWEEN:

M/s Hotel Panduranga International,
NH-17, Kumta,
Uttar Kannada,
Karnataka-581 343.

... PETITIONER

(Represented by Sri Aditya Narayana, Advocate
for Saakshya Law)

AND:

1. Bengaluru Electricity Supply
Company Limited (BESCOM),
Corporate Office, K.R circle,
Bengaluru-560 001.

.... RESPONDENT No.1

2. Karnataka Power Transmission Corporation Ltd.,
Kaveri Bhavan, K.G Road,
Bengaluru-560 009.

... RESPONDENT No.2

(Respondents 1 & 2 represented by
Smt. Sumana Naganand, Advocate
for M/s Justlaw Advocates)

ORDERS

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

- a) Direct the Respondent No.1 to pay Rs.50,06,816 to the Petitioner towards eleven outstanding invoices raised by the petitioner along with interest at 18% per annum till the date of payment of the amount; and
- b) Pass any other Order in the interest of justice and equity.

2. The brief facts as made out in the petition are as follows:

- a) That the petitioner is a partnership firm and it owns and operates 1 MW capacity solar power project in Nulenoor village, Chikkanayakanahalli taluk, Tumakuru district.
- b) The petitioner's power plant was commissioned on 13.08.2018 and the petitioner has been supplying power to the 1st respondent (BESCOM) since then. The latter has been duly accepting the same. However, upon invoices being raised and payment being sought from the 1st respondent (BESCOM) towards such supply of power, it has refused to make payments that are due to the petitioner on the ground that such payments cannot be made in view of the Order of the Commission dated 08.07.2014 and Order No. N/386/17 dated 29.05.2019 in O.P No. 208/2017 (Amplus Power Solutions Private Limited Vs. State Load Dispatch Centre and Others). Such refusal to make payments is not tenable in the facts and circumstances of the petitioner's case. Further delay of over one year in executing the Wheeling and Banking Agreement (WBA) between the petitioner and respondents was caused solely due to the fault of the respondents which could not come in the way of making payments that are lawfully due to the petitioner.

- c) Aggrieved by the refusal of 1st respondent (BESCOM) to make payments for the power supplied by the petitioner for a period of 11 months from the date of commissioning of the petitioner's power plant till the date of execution of the WBA, the petitioner has approached the Commission.
- d) Under clause 5.6 of the WBA dated 17.06.2019 executed between the parties herein, 1st respondent (BESCOM) has specifically agreed that it shall pay the petitioner for the infirm power injected by the petitioner into the grid during the period between synchronisation and commercial operation date of the petitioner's power plant.
- e) Regulation 9 of the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 (KERC Open Access Regulations) as amended in (Third amendment) Regulations, 2015 (for short Regulation 9 of amended Regulations, 2015), lays down the procedure to be followed when the prescribed Nodal Agency, i.e., the KPTCL (2nd respondent) herein, receives an application for long terms open access and execution of WBA. The gist of which are as follows:
- i) Upon the receipt of an application for Open Access (OA), the Nodal Agency/ 2nd respondent (KPTCL), is to forward it to the licensee concerned i.e., 1st respondent (BESCOM) within two working days from the receipt of the application for ascertaining system availability and subsistence of any Power Purchase Agreement (PPA) for the capacity applied for OA. The licensee shall acknowledge the receipt of the application by e-mail or fax by the end of working hours on the following working day. The

licensee after ascertaining the availability of network capacity and the subsistence of any PPA for the capacity applied for OA, shall communicate its concurrence or otherwise for OA to the Nodal Agency/ 2nd respondent (KPTCL), within 15 working days from the date of receipt of the application from 2nd respondent (KPTCL) in the case of long-term open access. If the licensee fails to communicate its decision within the said 15 days, it shall be deemed that it has given its concurrence for the open access. The scope of enquiry required by the 1st respondent (BESCOM) under the KERC OA Regulations is limited to the extent of ascertaining system availability and subsistence of a PPA.

- ii) After being informed of the decision by the licensee, the Nodal Agency / 2nd respondent (KPTCL) had to communicate to the applicant the grant of OA or otherwise within 3 working days. In the absence of any such communication to the applicant by the Nodal Agency/ 2nd respondent (KPTCL) within 15 days from the date of filing of the application for long-term open access, the open access applied for will be deemed to have been granted, subject only to system availability. The applicant shall be entitled for payment of energy charges at Average Pooled Power Purchase Cost (APPC) rate for any energy injected into the licensee's network from the date of grant of open access till the date of submission of WBA.

- iii) The applicant shall within 5 working days following the receipt of communication of grant of OA, execute the WBA in duplicate or triplicate sets and submit the same to the Nodal Agency/ 1st respondent (BESCOM) and the concerned licensee.
- iv) After receiving such executed agreement from the applicant, the licensee has to execute it within working 7 days and forward it to the Nodal Agency.
- v) The Regulation also provides that the effective date for commencement of operation of wheeling and banking of electricity by the applicant shall be the date of receipt of the executed WBA by the applicant (wrongly mentioned as the Nodal Agency and the licensee in the petition).
- f) In this case 1st respondent (BESCOM) is the licensee and the 2nd respondent (KPTCL) is the Nodal Agency within the meaning of Regulation 9 of amended Regulations, 2015.
- g) The 1st respondent (BESCOM) failed in following the above prescribed timelines for considering the petitioner's application for executing WBA whereby delaying (i) the grant of concurrence to the petitioner for wheeling power and (ii) execution of WBA. As a result, the petitioner was unable to sell the power generated by the power plant through OA for eleven months after its commissioning but was forced to inject power into the grid, the benefit of which the 1st respondent (BESCOM) had obtained.
- h) The Government of Karnataka by Order No. EN 121 NCE 2018, dated 05.03.2018 accorded its sanction to the proposal of the petitioner for

installation of the petitioner's power plant. Copy of the said order dated 05.03.2018 is produced as Annexure-A.

- i) In pursuance of the Order, the petitioner obtained requisite permissions and started setting up of the power plant. On 26.03.2018 the 2nd respondent (KPTCL) granted approval to the regular evacuation scheme for the power plant. The power generated at the power plant was to be evacuated to the 66/11 kV Dasudi Sub-station of the 2nd respondent (KPTCL). Copy of the regular evacuation approval dated 26.03.2018 is produced as Annexure-B.
- j) In order to utilise the transmission and distribution network of the respondents for wheeling the energy generated by the petitioner's power plant to its customers, the petitioner submitted on 26.03.2018, an application dated 24.03.2018 in the prescribed format to the 2nd respondent (KPTCL) expressing its interest to enter into a WBA with the respondents for wheeling the energy from the solar plant to its customer namely; M/s Chamundi Die Cost Private Limited, bearing RR No.KHT-05 within the jurisdiction of 1st respondent (BESCOM). All the necessary documents along with processing fee of Rs.5,000 and bank guarantee of Rs.10,000 were submitted along with the application. Copy of the application submitted is produced as Annexure-C.
- k) On 27.03.2018 the 2nd respondent (KPTCL) sought concurrence from 1st respondent (BESCOM) to wheel the energy from the petitioner's solar plant to the OA consumer's installation as prescribed by KERC OA Regulations. Copy of the letter seeking concurrence from the 2nd

respondent (KPTCL) is produced as Annexure–D. On 28.03.2018 the petitioner also issued a letter to the 1st respondent (BESCOM) requesting it to process the petitioner's application for execution of WBA. Copy of the letter dated 28.03.2018 is produced as Annexure–E. As per the Regulation 9 of amended Regulations, 2015, the 1st respondent (BESCOM) ought to have communicated its decision on the application of the petitioner within 15 days of receiving the said application from the Nodal Agency. But the 1st respondent (BESCOM) has failed to do so.

- l) In the meantime pending the petitioner's application for concurrence to wheel power, the pre-commissioning test was successfully conducted on 31.03.2018 in respect of the main and check meters installed at premises of power plant and it was found to be wired up to read flow of active energy from the petitioner's power plant to the grid of respondent No. 2 and vice versa. Copy of the pre-commissioning test report issued by respondent No. 1 is produced as Annexure – F.
- m) On 24.07.2018, the petitioner was granted provisional approval for interconnecting the power plant with the grid of respondent No. 2. The provisional interconnection approval was duly renewed and /extended from time to time till 25.09.2019 when regular interconnection approval was granted. Copy of the provisional interconnection approval dated 24.07.2018 issued by the respondent No. 2 is produced as Annexure –G.
- n) After delay of four months of the petitioner's submission of application for execution of WBA, respondent No. 1 conveyed to the respondent No. 2 its concurrence to wheel power generated from the petitioner's power

plant to its HT consumer Chamundi Di Cast Pvt. Ltd., Even though the petitioner would regularly follow up with the respondent No. 2 regarding an application for concurrence, the respondent No. 1 had delayed the grant of concurrence on one pretext or the other. In the letter communicating its concurrence, respondent No. 1 inter alia noted that the said HT consumer was yet to install the check meter as provided in Article 8 of the proposed WBA. This was merely an observation and the concurrence of respondent No.1 for wheeling the power was not subject to the installation of the check meter at the O.A consumer's premises. The role of 1st respondent (BESCOM) under Regulation 9 of amended Regulations, 2015 is limited to ascertain system availability and subsistence of any PPAs for the capacity applied for open access and it is not empowered to impose other conditions on grant of concurrence to wheel power. Copy of the respondent's letter dated 26.07.2018 is produced as Annexure –H.

- o) As per Regulation 9 of amended Regulations, 2015 the 2nd respondent (KPTCL) should have communicated the grant of open access or otherwise to the petitioner within 3 working days on receipt of concurrence from 1st respondent (BESCOM's). But no such communication was sent to the petitioner. On the contrary on 06.08.2018, over six months after the petitioner had filed its application and 10 days after 1st respondent's (BESCOM's) concurrence, the 2nd respondent (KPTCL) issued a letter to the petitioner stating that the petitioner's application for executing WBA could not be processed without the

installation of check meter at the O.A. consumer's premises. The petitioner was also asked to submit the synchronisation/interconnection approval, Electrical Inspectorate approval and Commissioning Certificate in order to process the application. The requirement of submitting the synchronisation/interconnection approval, electrical inspectorate approval and commissioning certificate arose only because, the respondents had delayed the approval of the application for such a long period that partial commissioning of the power plant occurred in the meantime. Copy of the respondent's letter date 06.08.2018 is produced as Annexure – J.

p) Installation of check meter at the O.A. consumer's premises was not a mandatory precondition for executing a WBA. The draft WBA approved by the Commission vide order dated 08.07.2014 does not provide that such installation of check meter is a precondition for executing the WBA. In fact, during the period the 1st respondent (BESCOM) was supplying power to the O.A. consumer of the petitioner, even in the absence of check meter at the premises of the said consumer. The petitioner believed that the respondents were imposing unlawful conditions for processing its application deliberately in order to delay the grant of concurrence to the petitioner.

q) Though the installation of check meter at consumer premises was not a prerequisite for execution of WBA, the petitioner took necessary steps for installing the check meter.

- r) On 13.08.2018 the petitioner's power plant was fully commissioned and interconnected with grid of 2nd respondent (KPTCL). The petitioner started injecting power to the grid thereafter. The power so injected was received by 1st respondent (BESCOM) which duly issued the B-Forms to the petitioner. The minutes of the meeting prepared by 2nd respondent (KPTCL) of the process of interconnection is produced as Annexure –K. The B-forms issued by the 1st respondent (BESCOM) for the months of August 2018 up to June 2019 are produced as Annexure–L (Colly.)
- s) At the time of synchronisation, the terminal bay and related infrastructure for the petitioner's power plant was not ready. The petitioner was injecting power generated by it into the grid by utilizing infrastructure spared by 2nd respondent (KPTCL) Thereafter 2nd Respondent (KPTCL) duly raised demands for monthly rent for the spared assets and such charges were duly paid by the petitioner. Copies of the demand notes raised by the 2nd respondent (KPTCL) for rental charges for sparing one 11 kV breaker for evacuation of power from petitioner's power plant are produced as Annexure – M (Colly.)
- t) The check meter was installed at the O.A. consumer's premises of the petitioner as demanded by 2nd respondent (KPTCL). On 18.09.2018 the officials of 1st respondent (BESCOM) conducted the rating and pre-commissioning check for the check meter. Rating Report was issued on 22.09.2018. Subsequently on 18.01.2019 the petitioner submitted the check meter installation report and all other documents demanded by 2nd respondent (KPTCL) for approval of the application and requested

that the application be processed at the earliest. Copy of the petitioner's letter dated 18.01.2019 is produced as Annexure – P.

- u) Delay in furnishing check meter installation report was because of the O.A. consumer's, hesitation to proceed with the agreement to purchase power itself, due to extraordinary delay in concluding the open access arrangement. Thus the delay was only because of the installation of check meter insisted by the respondents. Only after the consumer was satisfied with the discussion and negotiation with the petitioner, the consumer furnished copy of the report.
- v) In the meanwhile, the provisional interconnection approval of the petitioner's power plant expired on 22.01.2019. On 23.01.2019 the petitioner applied for extension of provisional interconnection approval. On the same day the 2nd respondent (KPTCL) issued a letter to the petitioner stating that the application for execution of WBA will not be processed with, in the absence of valid interconnection approval. But the petitioner was allowed to continue injecting power into the grid utilizing the infrastructure of 2nd respondent (KPTCL). Hence, there should have been processing of petitioner's application subject to renewal of provisional interconnection. The petitioner applied for extension of interconnection approval on 23.01.2019. The 2nd respondent (KPTCL) granted extension on 26.02.2019 after the expiry of more than one month. Thus, the petitioner's application for concurrence for the execution of WBA continued to remain pending during this period. Copy of the letter dated 23.01.2019 issued by the 2nd respondent (KPTCL) requiring renewed

copy of the interconnection approval is produced as Annexure – Q. Letter dated 26.02.2019 issued by the respondent extending the provisional interconnection approval for petitioner's power plant is produced as Annexure–R.

w) Even after the provisional interconnection was extended on 26.02.2019, 2nd respondent (KPTCL) failed to process the petitioner's application resulting in the application remaining pending and the provisional interconnection expiring again on 24.03.2019. Upon such expiry, 2nd respondent (KPTCL) issued another letter dated 27.03.2019 to the petitioner stating that the application for execution of WBA will not be processed until renewal of the provisional interconnection. Copy of the letter from the 2nd respondent (KPTCL) dated 27.03.2019 is produced as Annexure - S.

x) Therefore, in spite of the delay by 2nd respondent (KPTCL) in granting concurrence, the interconnection approval expired again during the pendency of the application. 2nd respondent (KPTCL) further delayed the processing of the petitioner's application for execution of WBA by demanding further renewal of petitioner's interconnection approval as a pre-condition for processing the petitioner's application. The petitioner had submitted applications on 21.03.2019 and then again on 23.03.2019 for further extension of interconnection approval for the period after 24.03.2019. The extension was granted by 2nd respondent (KPTCL) only on 01.04.2019. Copy of the application dated 23.03.2019 for extension of provisional interconnection approval and the letter dated 01.04.2019

extending the interconnection approval issued by the 2nd respondent (KPTCL) are produced as Annexure – T and Annexure – U respectively.

- y) It was solely on account of inaction on the side of 2nd respondent (KPTCL) the provisional interconnection approval lapsed on two occasions before the approval was granted to the petitioner's application.
- z) The petitioner had submitted application for execution of WBA before the commissioning of its power plant and in such a case, interconnection approval is not even required to be filed along with the application for execution of WBA. If the timeline prescribed under the Regulation 9 of amended Regulations, 2015 were strictly followed by the respondents, the petitioner's application would have been processed and approval for execution of the WBA granted much before the commissioning of the power plant. 2nd Respondent (KPTCL) should have processed petitioner's application immediately after report of installing check meter which was filed by the petitioner on 18.01.2019. Failure to do so caused delay which resulted in expiry of the petitioner's provisional interconnection approval.
- aa) On 12.04.2019, one year after petitioner submitted its application for execution of the WBA, 2nd respondent (KPTCL) issued a letter according its approval for wheeling and banking energy generated from petitioner's power plant from the date of said letter. The petitioner was also asked to submit the draft WBA approved by the Commission along with necessary security deposit to initiate action to sign the same. The draft WBA along with the security deposit as applicable was promptly submitted by the petitioner within two days i.e., on 15.04.2019. Copy of letter of 2nd

respondent (KPTCL) dated 12.04.2019 and the petitioner's letter dated 15.04.2019 by which WBA was submitted by the petitioner are produced as Annexure–V and Annexure –W respectively.

ab) Even after the WBA was produced by the petitioner as demanded by the 2nd respondent (KPTCL) the respondents took another two months to execute the WBA. The procedure prescribed by the Regulation 9 (8) of amended Regulations, 2015 was not followed in executing the WBA. Though, the said Regulation prescribes that the applicant has to produce, the WBA with his signature in duplicate/triplicate upon permission being granted for OA, the 2nd respondent (KPTCL) in its letter dated 12.04.2019 required the petitioner only to submit the draft WBA. The 2nd respondent (KPTCL) further took time for approving the same and also called upon the petitioner to be physically present at its office to sign the WBA. After delay of one year from the time, the petitioner submitted the application, the respondents executed the WBA only on 17.06.2019. Due to the non-adherence by the respondents to follow the procedure prescribed by Regulation 9 of amended Regulations, 2015, the execution of the WBA was further delayed. Copy of the WBA executed on 17.06.2019 is produced as Annexure–x.

ac) On 15.07.2019 the petitioner issued a letter the 1st respondent (BESCOM) issuing eleven invoices cumulatively amounting to Rs.50,06,816 for the power that the 1st respondent (BESCOM) had received from the petitioner after the petitioner's power plant was commissioned on 13.08.2018. Thereafter on 16.10.2019, 27.12.2019 & 15.02.2020 further letters were

issued by the petitioner to 1st respondent (BESCOM) reiterating the demand for payment of outstanding dues. Copies of petitioner's letters dated 16.10.2019, 27.12.2019 & 15.02.2020 are produced as Annexure–Y, Annexure–Z, Annexure–AA & Annexure–AB respectively.

ad) On 08.06.2020, the 1st respondent (BESCOM) informed the petitioner that the petitioner's request for making payment towards the energy supplied from 13.08.2018, the date of commissioning of the project to 17.06.2019, the date of execution of the WBA, would not be considered on account of the Order of the Commission dated 28.05.2019 in O.P No. 208/2017 (Amplus Power Solutions Private Limited Vs. State Load Dispatch Centre and Others). It is submitted that the Order dated 28.05.2019 could not have been applied to the petitioner's case, as the petitioner's WBA could not be executed in time due to unlawful delay caused by the respondents. As per Clause 5.6 of the WBA, 1st respondent (BESCOM) had specifically agreed to make payments towards infirm power injected into the grid by the petitioner from the date of synchronization till the date of commercial operation i.e., the date of signing of the WBA.

ae) The petitioner issued a letter to the 1st respondent (BESCOM) on 16.07.2020 reiterating its request for payment explaining that the application for signing of the WBA was submitted as early as 26.03.2018 and that the delay occurred in signing the same was solely on account of the delay caused by the respondents. It was also emphasised that the petitioner could not sell power through open access for over eleven months after

commissioning of the power plant on account of non-execution of WBA.

Copy of the said letter dated 16.07.2020 is produced as Annexure-AC.

af) However, the 1st respondent (BESCOM) has not made payment towards the power supplied to it by the petitioner. Being aggrieved by the said conduct of the 1st respondent (BESCOM), the petitioner has filed the present petition.

ag) From the above pleadings and other facts and circumstances, the petitioner has urged the following grounds:

i) As per Clause 5.6 of the WBA executed between the parties on 17.06.2019, 1st respondent (BESCOM) has agreed specifically to pay for infirm power generated between the period from synchronization of the petitioner's power plant to the date of commercial operation of the plant i.e., 17.06.2019, the date on which the WBA was executed between parties. Hence, specific consent was given at the time of execution of the WBA by 1st respondent (BESCOM) to make payment towards power already consumed by it before execution of the WBA. 1st respondent (BESCOM) could not shirk off its contractual liability to make such payments.

ii) The installation of the check meter at the petitioner's consumer's premises was not a pre-condition for execution of the WBA under applicable law or under the draft WBA approved by the Commission. In fact, the 1st respondent (BESCOM) was already supplying power to the petitioner's

consumer (M/s. Chamundi Dye Cast) even in the absence of a check meter at its premises.

iii) Even after installation of the check meter at the petitioner's consumer's premises and submission of certificate of check meter installation report to the 2nd respondent (KPTCL) on 18.01.2019, the 2nd respondent (KPTCL) caused further delay in granting permission to the petitioner to wheel power on the basis of expiry of provisional interconnection approvals from time to time.

iv) The 2nd respondent (KPTCL) should not have insisted on renewal of provisional interconnection approval as a pre-requisite for processing the WBA application. Even after the expiry of the provisional interconnection approval and during the pendency of the petitioner's application for its renewal, the petitioner continued to be allowed to inject power into the grid of 2nd respondent (KPTCL). Hence, after allowing the petitioner to inject power using the infrastructure of 2nd respondent (KPTCL) even though the provisional interconnection approval had expired, the respondent could not have insisted on provisional interconnection approval for processing the petitioner's application for execution of WBA. The petitioner had in both instances when its provisional interconnection approval expired, made timely application for extension of the same.

- v) Even after the provisional interconnection approval was renewed on 27.02.2019 after its first expiry on 23.01.2019, the 2nd respondent (KPTCL), did not grant approval to the petitioner for wheeling power and the delay led to the expiry of the petitioner's interconnection approval on 24.03.2019. The delay so caused in processing the WBA by the 2nd respondent (KPTCL) was deliberate and intentional.
- vi) The delay in renewal of provisional interconnection approval that expired on two instances namely 22.01.2019 and 24.03.2019 was solely caused due to inaction of the 2nd respondent (KPTCL).
- vii) As per the Regulation 9 of amended Regulations, 2015, the petitioner should have granted approval for wheeling energy within 20 days of its application. A delay of over one year was caused solely due to the respondents and hence, the petitioner should be compensated for the power injected and received by the 1st respondent (BESCOM) during the period between commissioning of the power plant and execution of WBA.
- viii) As per the Regulation 9 of amended Regulations, 2015 where the respondents failed to complete the action required to be done by them within the timeframe stipulated in the Regulation, the Regulation provides for deemed grant of approval. But the respondents overlooking the same, made

continual and untenable request for compliance which were unnecessary. The petitioner states that this was done solely with a view to render the deeming provisions unenforceable. Hence, the respondents should be made responsible and liable for their conduct.

- ix) As per Clause 6.2.2 of the WBA executed between the parties, any banked energy lying unutilized at the end of 6 months as prescribed in Clause 6.2.1 thereof, will be deemed to have been purchased by 1st respondent (BESCOM) and paid for as provided in Clause 5.7 of the WBA i.e., 85% of the applicable generic renewable energy tariff as determined by the Commissions from time to time. Hence the petitioner is eligible for payment under the said Clause of the WBA at APCC rate.
- x) The energy export by the petitioner into the grid from the date of commissioning of the power plant till the date of signing of the WBA was 13,03,239 kWh. Even though the WBA had not been executed by the petitioner, 1st respondent (BESCOM) started receiving power from the petitioner from August 2018 and continued to do so till 17.06.2019 when the WBA was executed. 1st respondent (BESCOM) also duly issued B-Form to the petitioner for the period. Thus, after receiving the power generated by the petitioner without demur, 1st respondent (BESCOM) could not refuse to make payments for such power utilised by it. The 1st respondent (BESCOM) having accepted

the power injected into the grid by the petitioner and having utilized it, is liable to compensate the petitioner for the benefit of the non-gratuitous act it enjoyed, on the principles stated in Section 70 of Indian Contract Act, 1872. The act of the 1st respondent (BESCOM) in not making payments to the petitioners for the energy already accepted and utilized by it amounts to unjust enrichment.

xi) The application for permission to execute WBA was filed by the petitioner on 26.03.2018 with all requisite documents. Had it not been for the artificial delay caused by the 1st respondent (BESCOM) by demanding compliances and documents not mandated in law for execution of WBA, the petitioner's WBA would have been executed within the time stipulated under the Regulation 9 of amended Regulations, 2015 and the petitioner would have started selling power through OA from the date of synchronization. The conduct of the respondents has resulted in loss to the petitioner and hence, the petitioner should be compensated for the same.

xii) It is necessary that the renewable energy generators like the petitioner are compensated for the losses incurred, at the instance of respondents who are the state transmission and distribution utilities.

ah) For the above reasons, the petitioner has prayed for a direction against the 1st respondent (BESCOM) to pay Rs.50,06,816 for the quantum of

13,03,329 kWh energy injected into the grid prior to the date of execution of the WBA.

3. Upon issuance of notices the respondents appeared through the counsel and filed separate objections urging similar defences and denying all the adverse allegations made by the petitioner. The gist of which are as follows:
 - a) Many of the events as narrated by the petitioner in establishing the one MW Solar power plant, applying for OA to wheel the energy from the Solar power plant to the OA customer of the petitioner, issuance of regular evacuation approval and of provisional interconnection approval and extension of it from time to time and the development of other events on different dates, are not disputed by the respondents.
 - b) On 26.07.2018 1st respondent (BESCOM) addressed a communication to 2nd respondent (KPTCL) wherein concurrence was given to permit wheeling and banking of energy from the petitioner's unit but as ABT compliant meter was not installed, the petitioner was informed that appropriate main meter and check meter would have to be installed at the installation in terms of Article 8 and Annexure – 1 of the WBA.
 - c) On 06.08.2018 2nd respondent (KPTCL) addressed a letter to the petitioner informing it about the concurrence received from 1st respondent (BESCOM) and requesting it to install both check meter and main meter at premises as it was found that appropriate check meter was not installed therein. The petitioner was informed that the application for grant of wheeling and banking could not be

processed until the check meter had been installed. The petitioner installed the check meter on 18.09.2018, a pre-commissioning check was conducted by the officers of the 1st respondent (BESCOM). On 18.01.2019 the petitioner submitted a check meter installation report along with all other documents requested for by 2nd respondent (KPTCL) and once again requested for its application to be processed forthwith.

d) The provisional interconnection approval dated 24.07.2018 was extended from time to time up to 22.01.2019. Due to the absence of a valid interconnection approval, the petitioner's application for execution of WBA could not be considered. The same was communicated to the petitioner vide letter dated 23.01.2019. On 26.02.2019 2nd respondent (KPTCL) extended a provisional interconnection approval and on 12.04.2019 the 2nd respondent (KPTCL) issued communication to the petitioner giving its approval for wheeling and banking energy generated from the petitioner's plant from the date of the said letter. The petitioner was also requested to submit a draft of the WBA approved by the Commission along with necessary security deposit etc. in order to execute the WBA. Thereafter the WBA was executed on 17.06.2019.

e) The petitioner had addressed letters to the respondents requesting for payment for the energy injected from the date of commissioning of the project up to the date of execution of the WBA. As the respondents have not paid the same, the petitioner has approached

the Commission seeking for payment of Rs. 50.06 lakhs towards eleven invoices along with interest at the rate of 18% per annum thereon.

f) That the question of giving credit for energy supplied prior to the date on which wheeling and banking agreement was executed would not arise as the agreement was only executed on 17.06.2019. Hence credit for energy injected by the petitioner can only be given from that day onwards and not prior to the same, as there was no contract between the parties for wheeling and banking of energy. Hence the petitioner was entitled to payment in terms of Article 6.2 of the WBA was untenable and deserved rejection.

g) That the respondents are entities created under a statute and are bound by the Electricity Act, 2003. A combined reading of the provisions of the Electricity Act would indicate that there is a bar on distribution licensee from purchasing power in the absence of an agreement duly approved by the Commission. Section 185 of the Electricity Act, 2003 deals with Repeal and Savings. It indicates that Karnataka Electricity Reforms Act 1999 had been saved. Section 17 of the KER Act 1999 requires an agreement to be executed by a licensee with a generating company for the purpose of purchase of electricity and the matter has to be approved by the Commission. Any agreement to purchase power without the approval of the Commission is a nullity. In the present case the respondents did not have an agreement for purchase of power with the petitioner and hence the direction for payment for the same at a particular rate

would not arise. It is settled law that no prayer that would perpetuate an illegality can be granted and hence the prayers sought by the petitioner are opposed to law and violate provisions of Electricity Act, 2003 and hence could not be granted.

- h) It is stated that Hon'ble Tribunal has categorically held that question of making payments for energy injected in the absence of a schedule or a WBA would not arise. The Hon'ble Tribunal has in Appeal 123/2010 in M/s Indo Rama Synthetics (I) Ltd., Vs. MSERC dated 16.05.2011 held that energy injected without intimation is to be considered to be unauthorised injection, for which no payment is to be made. The Hon'ble Tribunal has subsequently in Appeal No. 120/2016 in Kamachi Sponge & Power Corporation Ltd., Vs. TANGEDCO and Ors dated 08.05.2017 held that no payment is liable to be made for any energy injected, be it firm or infirm power, in the absence of a WBA or a schedule issued by the SLDC. The provisional interconnection approval clearly states that approval of SLDC is required to be obtained before injecting energy. Hence the claim for payment made by the petitioner is untenable and deserves to be rejected.
- i) The petitioner did not have a wheeling and banking agreement or a PPA in force during the period of injection. Neither the respondent distribution company nor the SLDC had any intimation about the generation and injection of power by the petitioner. Hence petitioner had injected energy in unauthorized manner and hence the respondent distribution companies are not liable to pay for the energy

injected by the petitioner prior to the execution of the wheeling and banking agreement.

j) There can be no contract without consensus ad idem. In the absence of a contract, no payment could be made to the petitioner. In the present case there was no offer made by the petitioner to supply energy nor there was any acceptance of the same. In the absence of the two, there can be no liability to pay the same claimed in the petition.

k) The petitioner cannot claim any payment from the respondents for energy injected to the grid for a period when the wheeling and banking agreement was not executed. Hence the question of giving the petitioner any credit for the energy injected would not arise. Therefore, the contention that the petitioner is entitled to payment in terms of Article 6.2 of the WBA is untenable.

l. It is to be noted that unscheduled energy cannot be effectively utilised. When a generator injects energy without a schedule, the utility is not in a position to make effective use of such energy, as most often, the said energy is injected without intimation. If payment for such energy is directed to be made, it would adversely affect the interest of the ESCOMs as all generators will resort to injecting unscheduled energy and claim payment for the same. The ESCOMs cannot be made to suffer at the benefit of unscrupulous private generators. Hence the petitioner could not take advantage of his wrongful action of injecting unscheduled energy into the grid.

- m. It is to be noted that the electrical energy injected into the grid cannot be stored, and it would be consumed instantly and there would be no option for the respondents either to accept or reject the said energy. Therefore, the contention of the petitioner that the 1st respondent (BESCOM) by utilising the energy injected by the petitioner and not making payment for the same is unjustly enriching itself and making wrongful gain at the cost of the petitioner is untenable as the act of the petitioner to inject power into the grid during the disputed period was detrimental to the grid discipline.
- n. Clause 8 of the provisional interconnection approval dated 24.07.2018 clearly states that the petitioner is not authorized to pump energy without executing any Contract, approval from KPTCL or attaining regular interconnection approval. As it was made clear to the petitioner that grant of provisional interconnection was only to grant technical connectivity and no payment were liable to be made for the injected power as KPTCL was not responsible for the payments for energy injected without any contractual arrangement.
- o. The averments made by the petitioner regarding payment for infirm energy are untenable and denied. The Commission has in O.P No. 208/2017 (Amplus Power Solutions Pvt. Ltd.Vs. SLDC and Ors.) clarified while dealing with identical provision that the question of paying for infirm energy would only apply where trial operation is required from synchronization of the project till the date of declaration of its commercial operation. In the event where there is no need for

declaration of its commercial operation after synchronization of the grid it cannot be construed that period was a trial operation period for which compensation can be claimed. Therefore, when energy injected is not infirm energy, the question of claiming payment in terms of Article 5.6 of WBA could not arise.

p) With regard to the contention of the petitioner pertaining to installation of check meter, it is submitted that the standard wheeling and banking agreement issued by the authority clearly states in Schedule-1 that the generator is required to adhere to conditions like:

- i) Wheeling and Banking approval of the Nodal Agency.
- ii) Approvals required under law for the time being in force.

The SLDC is the Nodal Agency in the State of Karnataka. Prior to the concurrence for wheeling, SLDC would have to seek the consent of BESCOM for executing the wheeling and banking agreement. BESCOM is bound by the Regulations issued by the Commission. Article 8 of WBA mandates for installation of special energy meters of accuracy class 0.2 required for the project (both main and check meters) hence the contention that the said requirement is not valid and tenable.

q) As regards the contention of violation of regulations issued by the Commission, it is submitted that the said contention is denied. It is submitted that on 24.03.2018 the petitioner requested SLDC for wheeling and banking. On 26.07.2018 the 1st respondent (BESCOM) gave concurrence to wheel energy the executing wheeling and

banking agreement. But it was found by 2nd respondent (KPTCL) that the metering requirement had not been complied with. Therefore, on 06.08.2018 2nd respondent (KPTCL) informed the petitioner that unless check metering requirement was not fulfilled, the application of the petitioner could not be processed. Only on 18.01.2019 the petitioner produced documents that the installation of check-meter was complied. Thereafter, on 01.04.2019 2nd respondent (KPTCL) requested the petitioner to pay necessary security deposit and furnish wheeling and banking agreement for signature. On 15.04.2019 the petitioner furnished wheeling and banking agreement and the same was executed on 17.06.2019. Therefore, it is submitted that there was no delay as alleged and the respondents had not acted in violation of the Regulations.

- r) These respondents have also replied para wise remarks denying the averments made by the petitioner.
- s) Regarding the averment that the respondent did not have authority to impose conditions namely fixing of check meter in order to execute WBA is untenable. When a request for WBA is received by distribution licensee, the distribution licensee is required to verify various aspects including whether the generator had pending arrears, whether meters installed are of 0.2 class. ABT compliant meters are required in standard WBA and a report with regard to the same is obtained from the Sub-divisional office as well as MT Divisional office respectively. Only after receipt of the same and due verification, execution of WBA

could be approved. On verification, it was found that the petitioner's unit did not have 0.2 class ABT compliant check meter. This could be found in the rating report dated 22.09.2018 (Annexure-N) wherein 1st respondent (BESCOM) clearly mentions that the petitioner's installation was inspected on 18.09.2018 and it was found that TOD, ABT features and DLMS protocol for wheeling energy had to be completed. Standard WBA approved by the Commission clearly requires installation of ABT compliant meters, the same had to be installed as indicated in Article 8 (2) of the WBA. Delay was due to the belated action by the petitioner in installing the meter. With regard to averments in para 23 regarding the delay of 2nd respondent (KPTCL) in communicating approval for grant of OA within 3 days of receipt of concurrence from the 1st respondent (BESCOM) on 26.07.2018, the 2nd respondent (KPTCL) found that the metering requirement was not completed. So, the 2nd respondent (KPTCL) informed the petitioner that unless check metering requirement was not fulfilled, its application could not be processed as main and check meters are mandatory for wheeling and banking of energy as per Article 8 of the WBA. Only on 18.01.2019 the petitioner furnished required documents indicating the installation of stipulated meters. On 01.04.2019, the 2nd respondent (KPTCL) requested the petitioner to pay necessary security deposit and furnish WBA for signature. On 15.04.2019, the petitioner furnished WBA and the same was executed on 17.06.2019.

t) The respondents have also traversed all the averments made in different paras of the petition. They denied the adverse averments made against the respondents.

u) For the above reasons, the respondents have prayed for dismissal of the petition.

4. The petitioner has filed the rejoinder to the statement of objections filed by the 1st respondent (BESCOM). The petitioner has denied and disputed all the averments made by the 1st respondent (BESCOM) in the statement of objections. It is reiterated that the 1st respondent (BESCOM) has failed to address or explain the gross delay caused in granting concurrence for wheeling power by the petitioner leading to consequent losses. In view of the above submission, it is prayed that the petition should be allowed and the reliefs sought therein ought to be granted to the petitioner by the Commission in the interest of justice and equity.

5. We have heard the learned counsel for the parties. The petitioner has also filed written submissions.

6. On consideration of the submissions by the parties and the pleadings and documents on record, the following issues arise for our consideration:

Issue No.1: Whether the energy injected into the grid, by the solar power project of the petitioner from 13.08.2018 to 16.06.2019 or any part of it, requires to be credited to the account of the petitioner or paid for, in terms of the Regulation 9 of amended Regulations, 2015 by the 1st respondent (BESCOM) or in terms of the WBA dated 17.06.2019 executed between the parties?

Issue No.2: Whether the petitioner is entitled to any compensation for the energy injected into the grid from 13.08.2018 to 16.06.2019 on the principles stated in Section 70 of the Indian Contract Act, 1872?

Issue No.3 Whether the petitioner proves that insistence for compliance of untenable grounds by the respondents, for processing the request for grant of open access has led to inordinate delay in approving the open access?

Issue No.4: To which reliefs the petitioner is entitled to?

Issue No.5: What Order?

7. After considering the submissions made by the learned counsel for the parties and the material on record our findings on the above issues are as follows:

8. Issue No.1: Whether the energy injected into the grid, by the solar power project of the petitioner from 13.08.2018 to 16.06.2019 or any part of it, requires to be credited to the account of the petitioner or paid for, in terms of the Regulation 9 of amended Regulations, 2015 by the 1st respondent (BESCOM) or in terms of the WBA dated 17.06.2019 executed between the parties?

a) Before dealing with the facts, we may note the effect of Clauses (1) to (10) of Regulation 9 of amended Regulations, 2015 as narrated below:

(i) Clause 1 of the amended Regulation 9 provides for filing of an application for grant of open access before the Nodal Agency (SLDC) by furnishing the required particulars and paying the prescribed processing fee and Bank Guarantee. Clause 2 provides for issuance of an acknowledgement for having received the application. Clause

3 provides for consequences of rejection of the application, for any deficiency or defect in it. Clause 4 provides for forwarding the application to the Licensees concerned, for ascertainment of the system availability and the subsistence of any PPA for the capacity applied for open access. Clause 5 provides for issuance of an acknowledgement by the concerned Licensee(s) for having received the application.

(ii) Clause 6 of the amended Regulation 9 provides for communicating the concurrence or otherwise of the Licensee(s) concerned, for the open access applied for, to the Nodal Agency, within the time schedule stated therein. The last proviso to Clause 6 provides that, if the Licensee concerned fails to communicate its concurrence or otherwise within the time specified, it shall be deemed that he has given his concurrence for the open access applied for. In the present case, the open access application relates to a long term open access. Therefore, if the licensee concerned fails to convey his concurrence or otherwise, for the open access applied for, within 15 (fifteen) working days from the date of receipt of the application from the Nodal Agency, it shall be deemed that the concurrence for the long term open access applied for, has been granted.

(iii) Clause 7 provides that, the Nodal Agency should communicate to the Applicant, the grant of open access or otherwise, within 3 (three) working days following the day of receipt of the concurrence or

otherwise of open access from all the Licensees concerned and in the absence of such communication to the Applicant from the Nodal Agency, the open access applied for long term, shall be deemed to have been granted, subject to system availability. Therefore, Clause 7 provides for the intimation of grant of open access or otherwise and in the absence of such intimation, the deemed grant of open access.

(iv) Clause 8 provides that, the open access customer shall execute the agreement for wheeling of electricity, in duplicate or triplicate sets, as the case may be, and submit the same to the Nodal Agency and also the concerned licensee(s) within five working days following the day of receipt of the communication for grant of open access or from the date deemed grant of such open access, as the case may be, failing which the open access granted or deemed to have been granted shall stand cancelled. Clause 9 provides that, the licensee(s) concerned shall execute the agreement for wheeling of electricity by signing his copy of the agreement and forward it to the Nodal Agency within seven working days following the day of receipt of such agreement.

(v) Clause 10 provides that, the effective date for commencement of operation of wheeling of electricity by the applicant shall be the date of receipt of the agreement by the licensee(s) for wheeling specified at Clause 8, stated above. Further, provides that the effective date shall also be applicable for considering the banking of energy.

b) For the purpose of this case, Clauses (7) to (10) of Regulation 9 of amended Regulations, 2015 are material, therefore, they are extracted below:

(7) - *“The Nodal Agency shall communicate to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, the grant of open access or otherwise, within three working days following the day of receipt of the concurrence or otherwise from all the licensees concerned and in the absence of any such communication to the applicant from the Nodal Agency within five working days from the date of filing the application in the case of short-term open access and fifteen working days from the date of filing the application in the case of long-term open access, the open access applied for shall be deemed to have been granted, subject to system availability. Provided that in the case of deemed approval, where the Nodal Agency is of the opinion that open access cannot be allowed without system strengthening, it shall identify the scope of the work for system strengthening and the probable date from which the open access can be allowed shall be informed in writing accordingly within five working days from the date of receipt of agreement for wheeling of electricity. Provided further that during the pendency of application for grant of open access, the applicant shall not inject any energy to the licensee’s network and the licensee shall not be liable to pay any charges for the energy injected during such period. Provided also that for any energy injected into the licensee’s network from the date of grant of open access till the date of submission of agreement for wheeling, the applicant shall be entitled for payment of energy charges at APPC rate.*

(8) *The open access consumer shall execute the agreement for wheeling of electricity in duplicate or triplicate sets, as the case may be, and submit the same to the Nodal Agency and also the concerned licensee(s) within five working days following the day of receipt of the communication for grant of open access or from the date*

deemed grant of such open access, as the case may be, failing which the open access granted or deemed to have been granted shall stand cancelled. Provided that in the case of deemed grant of open access, along with the agreement for wheeling of electricity, the applicant shall submit, an undertaking to the nodal agency, duly notarized, stating that the Nodal Agency has failed to communicate approval for open access or otherwise within the time specified in in the Regulations and enclose a copy of the acknowledgment, if any, given by the Nodal Agency or any other evidence in support of application having been delivered to the Nodal Agency.

(9) On receipt of the aforesaid agreement, the licensee (s) concerned shall execute the agreement for wheeling of electricity by signing his copy of the agreement and forward it to the Nodal Agency within seven working days following the day of receipt of such agreement.

(10) The effective date for commencement of operation of wheeling of electricity by the applicant shall be the date of receipt of the agreement for wheeling specified at Regulation (8) above by the licensees."

c) The amended Regulation 9 has come into force with effect from 08.10.2015. The present petition relates to the claim arising subsequent to the date of coming into force of the amended Regulation 9. Therefore, the rights & liabilities of the parties should be decided as per this amended Regulation.

d) The second proviso to Clause (7) specifies that the energy injected during the period when the application was pending is not liable for payment. The third proviso to the said Clause (7) provides that for the energy injected from the date of grant of open access till the date of submission of agreement for wheeling, the applicant shall be entitled for payment

of energy charges at Average Pooled Power Purchase Cost (APPPC) rate.

e) The Clause (8) of the said Regulation provides for submission of the WBA agreement signed by the applicant to such of the ESCOMs and to the Nodal Agency within five days from the date of receipt of the communication for grant of open access. Clause (9) provides that the concerned licensees shall execute the WBA agreement by signing his copy of the agreement and forward it to the Nodal Agency within seven days following the date of receipt of such agreement.

f) Clause (10) is material for the purpose of this case. This Clause provides that the effective date for commencement of operation of wheeling and banking of electricity shall be the date of receipt of the agreement by the Nodal Agency specified at Clause (8), irrespective of the actual date of execution of WBA by the concerned licensees. Such a Clause is introduced to avoid any losses to the applicant, in the event of delay in executing the WBA by transmission licensee and the concerned distribution licensees, for any reason.

g) In the present case, the material events have taken place on the dates stated below:

(i) The date of commissioning of the project	-	13.08.2018.
(ii) The date of grant of open access	-	12.04.2019.
(iii) Submission of WBA to the concerned licensees	-	15.04.2019.
(iv) WBA actually executed	-	17.06.2019.

h) In view of the above provisions, the petitioner is entitled to payment of energy charges at average APPC rate for the energy injected into the grid from the date of approval of open access till the date of submission of WBA to the concerned licensees i.e., from 12.04.2019 to 14.04.2019 (b.d.i.). Further, the petitioner is entitled to credit of the quantum of energy towards wheeling & banking transaction as provided in Clause (10) of Regulation 9 of amended Regulations, 2015. Therefore, the energy injected into the grid from 15.04.2019 to 16.06.2019 should be credited to the account of the petitioner towards wheeling & banking transactions. However, the petitioner is not entitled to inject any energy to the licensee's network and the licensee is not liable to pay any charges for the energy injected during the pendency of the application for the grant of open access. There is a specific bar not to inject energy before the approval of open access applied for. Therefore, in terms of the Regulation 9 of amended Regulations, 2015, the petitioner is entitled to the above benefits.

i) The petitioner has claimed reimbursement of the energy charges for the energy injected into the grid in terms of Articles 5.6 & second para of Article 6.2.1 of the WBA. The relevant part of the above Articles read as follows:

5.6 – *“Charges for infirm power:*

The infirm energy injected during the period from trial operation date after synchronization up to the commercial operation date shall be deemed to be sold to the BESCO in whose jurisdiction the

project is located and shall be paid for by such BESSCOM at the applicable average pooled power purchase cost determined by the Commission.

6.2.1 - xxxxx

Any banked energy unutilised at the end of six months as reckoned above, shall be deemed to have been purchased by the BESSCOM in whose jurisdiction the project is located and shall be paid as per clause 5.7."

j) Considering the submissions made by the learned counsel for the parties on this point, we are of the considered view that the petitioner cannot be granted any relief for the energy injected prior to the date of grant of open access. The reasons may be stated as follows:

(i) The question of payment for the infirm power injected from trial operation date up to the commercial operation date, would arise only when there is need of trial operation for declaration of Commercial Operation of the Project. Such instance may arise in the case of bagasse based & bio-mass based thermal units. In the case of solar power project, as in the present case, the question of declaration of commercial operation of the unit does not arise. The petitioner has contended that the date of commercial operation is to be considered as the date of execution of the WBA. Therefore, it is contended on behalf of the petitioner that the energy injected from the date of synchronization of the project up to the date of execution of WBA would fall under Article 5.6 of the PPA. This contention also

appears to be not correct. The WBA defines commercial operation date as the date declared jointly by the Company (Project Owner) and the Corporation/BESCOM on which the project or any of its units is/are declared as available for commercial operation. Therefore, in the present context the "commercial operation date" cannot be interpreted as the date of execution of WBA from which date the commercial transaction of wheeling & banking of energy takes place between the Generator and OA consumer. Therefore, we hold that the petitioner is not entitled to any relief under Article 5.6 of the WBA.

(ii) The payment towards 'unutilised banked energy' would arise only after the execution of the WBA. This provision for payment for unutilised banked energy is not applicable to the energy injected prior to the date of submission of WBA soon after approval of open access. Therefore, we hold that the petitioner is not entitled to any relief under second para of Article 6.2.1 of the WBA.

k) For the above reasons, we hold Issue No.1 partly in affirmative to the extent as noted above.

9. Issue No.2: Whether the petitioner is entitled to any compensation for the energy injected into the grid from 13.08.2018 to 16.06.2019 on the principles stated in Section 70 of the Indian Contract Act, 1872?

a) Section 70 of the Contract Act reads as follows:

'70. Obligation of person enjoying benefit of non-gratuitous act.

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.'

b) As already noted the second proviso to clause 7 Regulation 9 of amended Regulations, 2015 prohibits injection of energy to the state network prior to the date of open access approval. It is an established principle that a claim on the basis of something done against the express provisions of statute or a term of the contract cannot be claimed under this section. It may also be noted that the KPTCL had specifically instructed not to inject energy without there being an agreement for sale either with licensee or with O.A. consumer. The electrical energy cannot be stored and the moment it is injected, somewhere it is consumed at the load centres of the distribution network. Therefore, it cannot be said that there is voluntary acceptance of the energy delivered by the BESCOM. Further it may be noted that the energy was injected without Schedule and without intimation to SLDC. In that event it is not possible to assumed that the energy was consumed only within the jurisdiction of the BESCOM network.

c) In the recent past this Commission has not allowed any relief for the energy injected unauthorizedly.

d) For the above reasons we hold Issue No.2 in negative.

10. Issue No.3: Whether the petitioner proves that insistence for compliance of untenable grounds by the respondents, for processing the

request for grant of open access has led to inordinate delay in approving the open access?

- a) The petitioner contended that the respondents should not have insisted for installation of 'check meter' in the premises of the OA consumer, as there is no provision for insisting the installation of check meter. He also submitted that Article 8 of the WBA is misinterpreted by the respondents while insisting for installation of check meter.
- b) The respondents relied upon Article 8 of the WBA and also submitted that they have to comply with Grid Code and other relevant Regulations in this regard.
- c) We have gone through the Article 8 of the WBA. The reading of Article 8.2 relating to Metering equipment specifying the installation of main and check meters would apply only to the Project which is nothing but the generating project premises but not to the premises of the OA consumer.
- d) The respondents have not pointedly shown any provision in any of the Code or Regulations specifying the installation of check meter in the premises of OA consumer. The respondents have relied upon clause 25 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, 2006 (CoS 2006) and clause 15 of KERC (Terms & Conditions for Open Access) Regulations, 2004 (OA Regulations 2004). Clause 25.01 (a) of CoS 2006, provides that consumer may at his discretion install his own check meter, and the readings in the check meter can be made use of for billing purpose in the event the main

meter found to be not working. Clause 15(7) of the O.A. Regulation 2004 provides that the metering code prevailing in the state shall be applicable to the open access customers also. The above provisions themselves are not sufficient to infer that in the case of O.A. consumer check meter should be installed apart from the main meter.

- e) The 1st respondent (BESCOM) issued letter dated 26.07.2018 (Annexure-H) to SLDC intimating that the O.A. consumer requires to install the check meter as per the Article 8 of the WBA. In respect of other matters, the 1st respondent (BESCOM) intimated that there was no objection on its part to grant open access as per the request of the petitioner. Thereafter, vide letter dated 06.08.2018 (Annexure-J) the 2nd respondent (KPTCL) intimated the petitioner *“that the check meter is not installed for the above plant. As you aware that installation of both Main & Check meters is mandatory for Wheeling & Banking of energy. Hence, your application cannot be processed until installation of check meter.”* Further, this letter also requires the petitioner to produce commissioning certificate and other related approvals.
- f) The copy of the letter dated 26.07.2018 (Annexure-H) addressed to SLDC by the 1st respondent (BESCOM), was also marked to petitioner. Therefore, the combined reading of Annexures-H and J leads to the inference that the check meter to be installed was only in the premises of the O.A. consumer.
- g) The petitioner has not objected to install the check meter in the premises of the O.A. consumer. Therefore, it can be inferred that

petitioner also thought that installation of check meter was necessary before processing its application for grant of open access. Subsequently the petitioner vide letter dated 18.01.2019 (Annexure-P) addressed to the 2nd respondent inform that the installation of check meter as well as the production of other necessary documents as intimated in the letter dated 06.08.2018 (Annexure-J) have been complied with and requested to proceed with the application for grant of open access. Therefore, one can say that the effective date of filing application for grant of open access was made only on 18.01.2019.

- h) It is told that the distribution companies in the State generally insist for installation of check meter apart from the main meter installed by the O.A. consumer. The object of installing the check meter is for accounting and billing of electricity in the case of failure of main meter. Therefore, it appears that in the case of transactions relating to wheeling & banking of energy the utility is insisting for installation of check meter apart from the main meter in the premises of a OA consumer. In view of the above facts, the petitioner cannot now contend that the respondents could not have insisted for installation of the check meter at the premises of the O.A. consumer.
- i) The petitioner has further contended that insistence for extensions of provisional interconnection approval from time to time, without grant of open access during the currency of the provisional interconnection approval was improper. The respondents have denied any improper conduct on their part.

- j) As noted above, the petitioner reported the installation of check meter in the premises of a OA consumer on 18.01.2019. The 2nd respondent (KPTCL) wrote letter dated 23.01.2019 (Annexure-Q) to the petitioner intimating that the provisional interconnection approval expired on 22.01.2019 and asked the petitioner to submit valid interconnection approval. Thereafter, the petitioner produces extended provisional interconnection approval dated 26.02.2019 (Annexure-R), under which the said approval was extended up to 24.03.2019. Thereafter, the 2nd respondent (KPTCL) again wrote letter dated 27.03.2019 (Annexure-S) intimating that provisional interconnection approval extended up to 24.03.2019, had expired and intimated to submit valid interconnection approval to process the application for grant of open access. As per the request dated 23.03.2019 (Annexure-T) made to 2nd respondent (KPTCL) by the petitioner, the provisional interconnection approval was extended up to 23.05.2019 vide letter dated 01.04.2109 (Annexure-U). Subsequently, on 12.04.2019 (Annexure-V), the open access approval was accorded and the petitioner was asked to produce the draft WBA to the concerned licensees.
- k) From the above facts we can say that the open access could have been granted, soon after the receipt of extension of provisional interconnection approval dated 26.02.2019 (Annexure-R).The petitioner had not objected for the delay in granting open access in between 26.02.2019 and 12.04.2019. Such objection is taken only while filing the petition.

l) The earliest provisional inter connection approval dated 24.07.2018(Annexure-G) was issued for a period of two months from 24.07.2018 on the condition that the petitioner should comply with the terms and conditions stated therein with in the period of said two months. (Annexure-G dated 27.04.2018 produced by the petitioner does not contain the 2nd page of that document wherein two months' validity period for inter connection approval is stated). The petitioner had taken on rent a spare bay of the Substation on rent from the 2nd respondent KPTCL assuring that it would construct its own bay as per the terms contained in the regular evacuation approval dated 26.03.2018 (Annexure-B). For this reason provisional inter connection approval was granted for a limited period and it was extended from time to time at the request of petitioner as it could not complete the construction of its own bay at Dasudi Sub-station. The extension was granted more than 4-5 times, and in spite of it the petitioner could not complete the work of its own bay in the Substation.

m) For the above reasons, we hold issue No.3 in negative.

11. Issue No.4: To which reliefs the petitioner is entitled to?

As noted on Issue No.1, the petitioner is entitled to APPC rate for the quantum of energy injected into the grid from 12.4.2019 to 14.04.2019 (b.d.i.), in addition to the credit of the energy injected into the grid from 15.04.2019 to 16.06.2019, towards wheeling & banking transactions. The quantum of energy injected during the above period may be calculated

on pro-rata basis taking into consideration the total number of days in a month.

12. Issue No.5: What Order?

For the above reasons, we pass the following:

ORDER

The petitioner is partly allowed as below:

- a) The 1st respondent (BESCOM) shall pay to the petitioner at APPC rate for the quantum of energy injected into the grid from 12.4.2019 to 14.04.2019 (b.d.i.).
- b) The 1st respondent (BESCOM) shall credit the quantum of energy injected into the grid from 15.04.2019 to 16.06.2019, towards wheeling & banking account and shall treat the said quantum of energy as unutilised banked energy and pay for the same to the petitioner as per Article 5.7 of the WBA dated 17.06.2019 (Annexure-X).
- c) The ascertainment of energy injected during the above period may be calculated on pro-rata basis taking into consideration the total number of days of the month during which the energy is injected.
- d) The remaining claim made by the petitioner is rejected.

sd/-

(H.M. MANJUNATHA)
Officiating Chairperson

sd/-

(M.D. RAVI)
Member