

Complaint No. 04/2019

No.: N/127/19

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

Dated: 06.04.2022

Present:

Shri H.M. Manjunatha .. Officiating Chairman
Shri M.D. Ravi .. Member

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BETWEEN:

M/s. Shree Cement Ltd.,
A Company incorporated under the Companies Act, 1956
Having its office at:
SB-187, 4th Floor
Bapu Nagar, Opp. Rajasthan University
J L N Marg,
Jaipur – 302 015
[Represented by Party in Person Sri. Amarjit Singh]

.. **PETITIONER**

AND:

The Managing Director,
Gulbarga Electricity Supply Company Ltd.,
Corporate Office, GESCOM, Station Road,
Kalaburagi – 585 102
[Respondent represented by Senior Advocate
Sri. Sriranga S for Just Law, Advocates]

.. **RESPONDENT**

ORDERS

1. This petition is filed under Section 142 of Electricity Act, 2003, praying for
the following reliefs:

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- a. To set aside the unlawful recovery of fixed charges against deemed RR Number, in contravention to the provision of Electricity Act, 2003 and, pass such appropriate order under section 142 of the Electricity Act, 2003 for violation the provisions of law.
 - b. Pass such other order/s as this Hon'ble Commission deems fit in the circumstances of the case.
2. Brief facts of the Complaint are;
 3. The Petitioner is a Company incorporated under the Companies Act, 1956 and it has set up a 4 MTPA capacity integrated cement plant at Kodla village, Sedam Taluka in Kalaburgi District, Karnataka. The cement plant is connected through a 220 KV dedicated feeder to the 220/110/33-11 KV Sedam Sub-station of
 4. KPTCL and has a Contract Demand of 30 MVA. The connection was sanctioned by GESCOM vide its letter GESCOM/ CEE(CP)/SE(Coml)/EE/AEE/2017-18/4172-83 dated 02.06.2017 which is produced as Annexure-2. As per this letter, the petitioner was required to construct a 220 KV single circuit line on DC towers from 220/110/33-11 KV Sedam Sub-station up to the Cement Plant for a distance of 13.62 KMs under self-execution as per KPTCL specification/design and the RoW issues were also required to be solved by the petitioner himself. The work of erection and commissioning of the 220 KV dedicated transmission link was planned to complete by March 2018.

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5. The petitioner commenced the work for setting up of a 21 MW Wind power plant at a site in village Kushtagi in Koppal District. The plant was being built as a Captive power plant (CPP) for supplying power to the Cement Plant under a Wheeling and Banking arrangement with GESCOM/KPTCL, the wind plant was scheduled to commission by 31.03.2018. To ensure that WBA is executed before commissioning of wind power plant before March 2018, the petitioner filed an application with SLDC (Nodal Agency) for execution of WBA vide its letter Shree/21MW/WBA/SLDC/022 dated 09.12.2018, the copy of the letter is produced as Annexure-3.
6. SLDC vide its letter SEE/TBC/EEE-2/AEE-2/11140 dated 16.02.18 informed the petitioner to submit the RR No. for drawl point (i.e., Cement Plant), the letter is produced as Annexure-4. The petitioner vide letter No. SCL/WIND/FY-18/0307-01 dated 07.03.2018 approached the office of EE(O&M), Sedam Division of Respondent for issuance of RR No. for the Cement Plant, the copy of the letter produced as Annexure-5. The petitioner was informed that RR number can only be allotted once the connection is released and serviced which was possible only after transmission link between 220 KV Sedam GSS and the Cement Plant is completed and charged.
7. The petitioner discussed the possibility of signing of WBA with concerned authorities and the same was not accepted. The letter produced as Annexure-6. Thereafter, left with no other alternative, the petitioner

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requested the Respondent to issue a RR No. with a condition that work on transmission line would be completed by March 2018. The petitioner agreed to submit an undertaking for payment of fixed charges for the duration of issuance of RR No. till the release of connection. The deemed RR No. (HTP-22) was finally issued by the Respondent to the petitioner vide letter AEE(Ele)/SD/SDM/AE(T)/17-18/1233-38 dated 13.03.2018. The consent was issued by SLDC for execution of WBA on 31.03.2018, the copy of the letter dated 13.03.2018 is produced as Annexure-8

8. The petitioner submitted the WBA with necessary documents in the office of CE(Operations) at corporate office of Respondent for execution on the same day i.e., on 31.03.2018, the copy of the letter is produced as Annexure-9. The Respondent did not sign the WBA presumably because the aforesaid 220 KV transmission link connecting 220/110/22-11 KV Sedam Sub-station with Cement Plant ('Drawl Point') was not ready, with regards to the Wind Power Plant ('Injection Point') out of 21 MW (10 machines of 2.1 MW each), 7 machines with a capacity of 14.70 MW were commissioned by 31.03.2018. The balance 3 machines with a capacity of 6.3 MW were commissioned by 28.06.2018. The Commissioning Certificate letter dated 30.06.2018 is produced as Annexure-10 and 11.
9. The work of transmission line between Sedam Sub-station and the Cement Plant could not be completed as per the scheduled

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completion date of March-2018. The 220 KV transmission link was finally completed on 15.06.2018. The line was charged, commissioned and connection for Cement Plant was also released on the same day. A new RR No. (HTP 23) was also assigned on the same date. The Wheeling and Banking agreement was thereafter executed on 05.07.2018. The old (deemed) RR No. (HTP-22) allotted to the petitioner was cancelled vide Respondent's letter EEE/SDM/AO/AO/SA-1/2018-19/764-765 dated 01.06.2018 citing failure to complete the transmission infrastructure work by March/April 2018 as the prime reason, the copy of the letter is produced as Annexure-12.

10. The petitioner requested the respondent that the power generated from its Wind Power Plant from 01.04.2018 till 05.07.2018 (the date of signing of WBA) should be treated as banked and drawl of this power should be allowed as per the provisions of Wheeling and Banking of Wind Power as per the prevailing orders / directions of the Commission. But the same was not accepted by the respondent, the copy of the statement is produced as Annexure-13.

11. The Executive Engineer (Ele) O&M Division, Sedam vide its memo dated 12.12.2018 proposed a claim of R. 77,12,903 towards payment of fixed charges for period 13.03.2018 to 30.04.2018 pertaining to the Deemed RR No. (HTP-22) to be recovered from the PEC amount (Security Deposit) deposited by the petitioner against Temporary HT Supply (RR No. THT01) for construction of the Cement Plant, the copy of the letter/memo is

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produced as Annexure-14. The petitioner represented the matter to EE(O&M) Sedam of Rs. 77,12,903/- towards fixed charges for HTP-22 or as an alternate allow the petitioner credit of the energy injected by the wind plant during 31.03.18 till 04.07.2018, the copy of the letter is produced as Annexure-15. However, the EE (O&M), Sedam went ahead with the recovery and debited the said amount from the petitioner's monthly HT Bill of January, 2019 without allowing benefit of the energy injected during March-18 to July-18.

12. The recovery made by the Respondent is not in line with the principles of Electricity Act, 2003 and the Supply Code Regulations framed by Hon'ble KERC. Section 45(Power to recover charges) read together with Section 50 (The Electricity Supply Code) of the Electricity Act, 2003 provides that a distribution licensee can levy and recover only those charges from a consumer which are fixed by the State Commission and provided in the Electricity Supply Code framed by the State Commission. Hence this petition.
13. Upon issuance of summons, the petitioner has approached through their advocate and filed a detailed statement of objection and are as follows;
14. The complaint filed by complainant under section 142 of the Electricity Act, 2003 is wholly untenable and deserves for rejection.
15. The Complainant owns a 21 MW wind power plant at Koppal District and is wheeling the energy to its Cement factory at Kodla Village,

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Kalburgi District. This Respondent vide letter dated 02.06.2017 accorded approval to arrange power supply to an extent of 30 MVA on 220 KV voltage class to the Complainant's Cement factory subject to constructing a 220 KV SC line from Sedam station to its premises under self-execution basis.

16. The complainant intended to wheel the energy from its Wind Power Plant Koppal District to its cement factory at Kodla village, Kalburgi District, made an application with the SLDC for execution of Wheeling and Banking Agreement. In response, SLDC directed the Complainant to furnish RR Number of drawl point. The complainant vide letter dated 07.03.2018 requested the Respondent to issue RR Number and agreed to pay the necessary charges.
17. On the request of the Complainant, on 13.03.2018, the Respondent assigned deemed RR No. HTP-22 to the Complainant's drawl point subject to following conditions;
 - a) Payment of monthly charges
 - b) Complainant completing entire infrastructure work in respect of 220 KV bay and associated line by March/April 2018
 - c) Evacuation Approval
 - d) Work completion certification approval from KPTCL authorities
 - e) Chief Electrical Inspector Approval for energization.
18. The complainant has agreed to the conditions regarding assignment of deemed RR No. HTP-22 by an undertaking dated 13.03.2018, the copy of the undertaking is produced as Annexure R-1 In spite of

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agreeing to all the terms, the Respondent failed to complete the infrastructure works pertaining to the 220 KV bay and associated line by March/April 2018, failed to obtain evacuation approval, failed to furnish work completion report and also failed to obtain approval of the Chief Electrical Inspectorate. Therefore, the Respondent vide letter dated 01.06.2018 has cancelled the deemed RR No. HTP-22, in view of the failure of the Complainant to fulfill conditions as in assignment letter dated 13.03.2018.

19. On 12.12.2018, the Respondent directed the Complainant to pay fixed charges for the month of March 2018 and April 2018 against the RR No. HTP-22. In response, the complainant addressed a letter dated 02.07.2019 to the Respondent denying its liability to pay fixed charges and contended that levy of fixed charges is not in accordance with Electricity Act, 2003 and Regulations framed by this Hon'ble Commission.
20. The respondent further stated that the levy of fixed charges is strictly as per the Electricity Act, 2003 and there is no infirmity. Section 45 of the Electricity Act, 2003, empowers the Respondent to recover the fixed charges in accordance with the tariff fixed by the Commission from time to time. The demand raised by the Respondent is strictly in accordance with the same. There is no infirmity in the demand raised by the Respondent.

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21. As per the request of the Complainant, the Respondent had assigned deemed RR No. (HTP-22) subject to the condition that the complainant pays monthly minimum charges on contract demand. The complainant vide undertaking dated 13.03.2018 has agreed to pay fixed charges to the Respondent. Therefore, the complainant is estopped from denying its liability to pay fixed charges. The Complainant has suppressed the fact that such an undertaking was given. The complainant has not approached this Commission with clean hands.
22. The tariff charged to a consumer consists of two components, i.e., Demand charges and energy charges. The term 'Demand Charge' refers to the amount chargeable per month in respect of the Distribution Licensee's readiness to serve the consumer irrespective of whether he consumes any energy or not and is based upon certain factors. 'Demand Charge' refers to a charge levied to a consumer, which is based on the Contracted Demand or Maximum Demand recorded. The other component of tariff charged to a consumer is 'Energy Charge' which refers to the charge for energy actually consumed by the consumer and is applicable to the units consumed by such consumer in any month.
23. The right of the distribution licensee to levy fixed charges, irrespective of consumption of energy by a consumer, has been upheld by the Hon'ble Supreme Court in catena of judgments. Therefore, contention

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of the complainant that it is not liable to pay fixed charges is wholly untenable and bereft of merits. It is the specific case of the Complainant that the Respondent has acted in violation of Section 45 and 50 of the Electricity Act 2003, and Regulation 3 & 4 of the Recovery of Charges for Supply Regulation.

24. The said provisions of Electricity Act, 2003 and Regulations allow the respondent to levy fixed charges as determined by the Commission from time to time. The Respondent has levied fixed charges in accordance with law and orders passed by this Commission from time to time.
25. We have heard both the parties on merits of the case and citation filed by parties and also regarding maintainability of the complaint.
26. From the pleadings and documents filed by the parties and the rival contentions advanced by them, the following issues arise for our consideration.

Issue No.1: Whether the complaint filed by the complainant is maintainable for adjudication under the provision 142 of Electricity Act, 2003?

Issue No. 2: What order?

26. Issue No. 1: Whether the complaint filed by the complainant is maintainable for adjudication under the provision 142 of Electricity Act, 2003?

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27. In order to proceed for taking action against a person under section 142 of the Electricity Act, 2003 the complainant has to prove that the respondent has contravened any of the provisions of Electricity Act, 2003 or Regulations made thereunder or any direction issued by the Commission.
28. In the present complaint, it is contended that the respondent has without supplying any energy, has raised electricity bills for payment of Rs. 77,12,903.00 towards fixed charges pertaining to RR No. HTP – 22. Therefore, according to complainant the demand raised for payment of fixed charges is in contravention of the relevant provisions in the Electricity Act 2003 and the Regulations framed thereunder
29. The objection filed by the respondent discloses the circumstances on which the RR No. HTP -22 was issued at the request of the complainant and that the bill for payment of fixed charges was raised as per the terms agreed by the complainant itself.
30. The above facts disclose that the petitioner/ complainant made a request for assigning an RR No. to the load point of the cement factory which was under construction. The supply line which was required to be constructed for supply of energy from the substation to the load point was also under construction. The complainant was informed to furnish a RR number of the load point by SLDC for processing the open access application of the petitioner. The petitioner intended to wheel the energy from its 21 MW Wind Power Project situated at Kushtagi

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Village, Koppal District to the load point of cement factory which was under construction situated at Kodla Village, Sedam Taluk, Kalaburagi at a distance of 13.62 KMs.

31. The respondent has assigned the RR No., at the request of complainant, to facilitate the processing of open access request of the complainant. The complainant intended to wheel contracted capacity of 30 MVA. The respondent intended to charge fixed charge on this quantum. The complainant had undertaken to pay the fixed cost in its Bond dated 13.03.2018 (Annexure R-1). As per the undertaking given by the petitioner the bills were raised for payment of fixed charges.
32. In order to initiate action/proceedings against a person under Sec. 142 of Electricity Act, 2003 there should be an intentional contravention of the provisions of the said Act or Rules / Regulations made thereunder. In the facts and circumstances of this case narrated above, it is not at all possible to hold that the respondent has intentionally contravened the provisions of the Act or Rules or Regulations made thereunder. The respondent issued RR No. HTP-22 at the request of the complainant with the bonafide intention and the same cannot be considered as intentional contravention or even the contravention of the Act/Rule /regulations. We are not supposed to decide the merit of the monetary claim raised by the respondent against the complainant towards fixed costs etc., in the present proceedings under sec 142 of

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Electricity Act, 2003 as the Commission is deciding the present petition on maintainability. The Commission has not passed any order earlier, against which a complaint under Section 142 of Electricity Act, 2003 can be filed as in the case of present complaint. In view of the same, the complaint under Sec 142 of Electricity Act, 2003 is not maintainable.

33. For the above reasons the complaint is not maintainable, accordingly Issue No. 1 is held in negative.
34. Issue No 2. what order?
35. For the above reasons the following order.

ORDER

The Complaint is dismissed as not maintainable under section 142 of the Electricity Act, 2003.

sd/-

(H.M. MANJUNATHA)
Officiating Chairperson

sd/-

(M.D. RAVI)
Member