

No.N 47/2014

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION, BENGALURU

Dated the 26th March 2015

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| 1. Sri H.D.Arun Kumar | Member |
| 2. Sri D.B.Manival Raju | Member |

O P No. 23 of 2014

Between :

Kodagu Hydel Projects Pvt Ltd,
S-5, II floor, Red Cross Bhavan,
No. 26, Race Course Road,
Bengaluru – 560 021
(By Sri W R Rakesh and N T Premnath, Advocates)

... Petitioner

And :

Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bengaluru – 560 001
(By Just Law, Advocates)

... Respondent

1. This petition is filed under section 86(1)(f) of the Electricity Act, 2003, praying for the following reliefs :

- (a) To direct the Respondent to refund the Network Augmentation Charges of Rs.15 lakhs collected from the petitioner with interest at 12% p.a.;
- (b) To direct the respondent to pay cost of the petition and grant such other reliefs.

2. The brief facts of the case as mentioned in the petition are as follows:

- i. The petitioner has established a mini hydel plant of 3 MW capacity across River Kumaradhara at Bidhalli village, Somwarpet Tq, Kodagu district. The petitioner addressed a letter dated 17.1.2011 to the respondent seeking permission to start the project. The respondent addressed a letter dated

7.3.2011 to the petitioner to pay Rs.15 lakhs as Network augmentation charges (NAC). The said amount was paid on 5.3.2012 by the petitioner.

- ii. The Commission passed an order dated 30.11.2012 in OP No. 32/2011 disapproving collection of NAC from NCE generators. The Commission had, in the order, directed the respondent to include the estimated expenditure for augmentation of network to evacuate renewable energy as part of its capital expenditure while filing the petition for determination of transmission tariff. The Commission therefore, directed the respondent to discontinue collection of NAC separately from NCE generators with immediate effect.
- iii. The petitioner made a request to the respondent vide letter dated 19.6.2013 to refund the NAC paid by it. The respondent in the reply vide letter dated 19.2.2014, referred to the order in OP No. 32/2011 and an internal order dated 25.1.2014 and stated that the amount cannot be refunded.

2. The petitioner has alleged that the collection of NAC is improper as the respondent had overlooked the order of the Commission dated 29.7.2010 wherein a direction was issued by the Commission to submit a proposal in the matter of collection of NAC and in the order dated 30.11.2012, the Commission did not approve the proposal made by the respondent for collection of NAC of Rs. 5 lakh per MW from NCE generators separately. It has also alleged that the respondent has mentioned in the internal order dated 25.1.2014 that it had approved refund of NAC in some cases but has refused to refund the NAC paid by the petitioner. As the Commission has not approved the proposal of the respondent to collect NAC, the respondent ought to have refunded the same to the petitioner.

3. Upon issuance of notice, the respondent entered appearance through the Counsel and filed Statement of objections on 06.11.2014, stating as follows :

The Commission had in the order dated 29.07.2010 in OP No.2/2010 directed the KPTCL to submit a proposal to the Commission for collection of NAC on or before 31.3.2011 duly supported by necessary details and seek approval of the Commission

for collection of NAC, instead of collecting it on an adhoc basis. The Commission had held that till it considers and passes orders on the proposal, the KPTCL / ESCOMs shall continue to collect NAC at Rs. 5 lakh per MW. The internal Order of KPTCL dated 25.1.2014 is in conformity with the subsequent order of the Commission dated 30.11.2012 in OP No. 32/2011, which provided for discontinuation of collection of NAC, with immediate effect. The petitioner had paid NAC on 5.3.2012, and as the collection of NAC was specifically allowed in the order dated 29.7.2010, the question of refund of NAC does not arise.

4. The Counsel for the petitioner argued that collection of NAC after 29.07.2010 was subject to the outcome of OP No.32 of 2011 and the NAC collected from the petitioner on 5.3.2012 had to be refunded by virtue of the order passed in OP No.32 of 2011, disapproving collection of NAC from NCE generators separately. He also contended that the Respondent had in its internal order dated 25.1.2014 admitted refund in some cases. The Counsel for the respondent argued that the Commission's order dated 30.11.2012 clearly directs to discontinue collection of NAC prospectively. He relied on the order of the Commission dated 16.1.2015 in OP No.27/2014 (Brindavan Hydropower Pvt Ltd vs KPTCL & others).

5. We have perused the records and heard both parties. The only point which arises for consideration is "Whether the petitioner is entitled to refund of NAC paid by it to the respondent on 5.3.2012 ?"

6. i) The issue of collection of NAC has been examined by the Commission in OP Nos. 2/2010 and 32/2011. The relevant portion of the order dated 29.7.2010 in OP No. 2/2010 reads as follows:

"14. Considering the provisions of law and facts placed before the Commission, it has to be held that the Network Augmentation Charges levied and collected separately by the respondent KPTCL is in accordance with the provisions of the Electricity Act, 2003, and therefore is valid and legal.

However, we are of the opinion that claiming charges on an adhoc basis as is being done now that too without the express approval of the Commission is not desirable. Therefore we direct that KPTCL/ESCOMs shall submit their proposal to the Commission for collection of `NAC' on or before 31.3.2011 duly supported by necessary details and seek approval of the Commission. Till the Commission considers the proposal and passes its orders, KPTCL/ESCOMs shall continue to collect `NAC' at the rates at which it is being collected now, that is, Rs.5 lakhs per mega watt".

ii) The operative portion of the order dated 30.11.2012 in OP No. 32/2011 reads as follows:

"26) In the light of the above, the proposal of the Petitioner for collection of General Transmission at Rs.5,00,000/- (Rupees five lakhs only) per Mega Watt from NCE Generators separately, is not approved. However, the Petitioner shall be free to include the estimated expenditure for augmentation of its Network to evacuate renewable energy as part of its Capital Expenditure proposals while filing its application for determination of Transmission Tariff by the Commission.

27) In view of our above decision, the Petitioner-KPTCL shall discontinue collection of Network Augmentation Charges separately from NCE Generators with immediate effect".

7. A conjoint reading of the two orders reveal that the Commission had permitted collection of NAC in OP No. 2/2010 till an order is passed on the petition to be filed by KPTCL/ESCOMs seeking approval of the NAC. OP No. 32/2011 is the petition filed by KPTCL seeking approval of the Commission to collect NAC. In OP No. 32/2011, an order was passed on 30.11.2012 directing KPTCL to discontinue collection of NAC from NCE generators **with immediate effect**, implying that the order is prospective in nature. NAC was paid by the petitioner on 5.3.2012, i.e during the intervening period between 29.7.2010 (date of order in OP No. 2/2010) and 30.11.2012 (date of order in OP No. 32/2011). For this period, the order in OP No. 2/2010 applies and the collection of NAC during such period is proper.

8. In the Commission's order dated 16.1.2015 in OP No.27/2014 (Brindavan Hydropower Pvt Ltd vs KPTCL & others) an identical issue raised in the petition has been considered and the prayer for reliefs similar to the reliefs sought in the present petition has been rejected. We feel that the principles as laid down in OP No.

27/2014 are applicable to this case. No other material is produced before us to take a different view. Therefore, applying the principles laid down in OP No. 27/2014, we hold that the petitioner is not entitled to the reliefs sought.

9. Accordingly, we pass the following order:

ORDER

The Petition is dismissed.

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| Sd/- | Sd/- |
| (H.D.ARUN KUMAR) | (D.B.MANIVAL RAJU) |
| Member | Member |