

No.N/172/16, N/205/16, N/203/16, N/80/17 and N/262/17

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

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

Dated: 26th September, 2019

Present:

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

OP No.90/2016

Between:

Bangalore Electricity Supply Company Ltd.,
Corporate Office, K R Road
Bengaluru – 560 001
(Represented by Sri. Shahbaaz Husain, Advocate)

... PETITIONER

And:

NIL

... RESPONDENT

OP No.100/2016

Between:

Hubli Electricity Supply Company Ltd.,
Corporate Office, Navanagar, P.B.Road
Hubballi – 580 025
(Represented by Sri. Shahbaaz Husain, Advocate)

... PETITIONER

And:

NIL

... RESPONDENT

OP No.104/2016

Between:

Mangalore Electricity Supply Company Ltd.,
MESCOM Bhavan, Kavour Cross Road, Bejai,
Mangaluru – 575 004
(Represented by Sri. Shahbaaz Husain, Advocate)

... PETITIONER

And:

NIL

... RESPONDENT

OP No.47/2017

Between:

Gulbarga Electricity Supply Company Limited
Station Road
Kalaburagi – 585 102
(Represented by Sri. Shahbaaz Husain, Advocate)

... PETITIONER

And:

NIL

... RESPONDENT

OP No.130/2017

Between:

Chamundeshwari Electricity Supply Corporation Ltd
Corporate Office, CESC No.29
Vijayanagar 2nd State, Hinkal
Mysuru – 570 017
(Represented by Sri. Shahbaaz Husain, Advocate)

... PETITIONER

And:

NIL

... RESPONDENT

ORDERS

1. These petitions were filed by ESCOMs seeking modification of period of banking in respect of RE generators. The petitions were disposed off by the Commission vide Order dated 09.01.2018.
2. Against this Order of the Commission some of the generators filed Appeals before Hon'ble Appellate Tribunal of Electricity (ATE) which were disposed off vide judgement dated 29.03.2019 (Appeal No. 42/2018 and Connected matters). The Hon'ble ATE remitted the matter to the Commission for passing appropriate order in the light of the observations made in the judgment dated 29.03.2019. The generators filed IA No. 962/2019 before Hon'ble ATE with the following prayer:

“Clarify the operative portion of the Judgment dated 29.03.2019, to the extent of the submission made hereinabove, with specific reference to the scope and need for remand to KERC being

restricted to new Wind Energy Projects now being set up in the State of Karnataka”.

3. The Hon'ble ATE disposed off the said IA on 05.08.2019 as follows:

“If the Bench did not render its opinion on first and third issues on merits and if it was only with reference to issue of violation of principles of natural justice, then the matter definitely needs to be remanded to the 1st Respondent-Commission for fresh consideration. Since the first and third issues were decided on merits, which ultimately resulted in the Judgment opining that modification of terms and conditions of banking arrangements in the concluded contracts is not sustainable in the eyes of law, the direction remanding the matter for fresh consideration would not arise. If the parties are aggrieved by the Judgment on merits pertaining to issue Nos. 1 and 3, they are at liberty to approach the higher forum seeking appropriate remedy. Since the Judgment clearly indicated that modification to the terms and conditions of banking arrangement in concluded contracts is bad in law and further opined that such modifications could be applied to future contracts, nothing remains for fresh consideration of the matter by the 1st Respondent-Commission. Therefore, the paragraph in the order portion which directs remand of the matter to the Commission for fresh consideration is hereby deleted.

With the above observations, the IA is disposed of”.

4. The proceedings were initiated by the Commission pursuant to the remand order dated 29.03.2019. When the petitions came up for hearing on 17.09.2019, the Counsel for petitioners submitted that the judgement of Hon'ble ATE dated 29.03.2019 is challenged by the BESCO before the Hon'ble Supreme Court in DFR No. 26531/2019.

5. Based on the above, the following Order is passed:

a) The remand proceedings initiated pursuant to Judgement of the Hon'ble Appellate Tribunal for Electricity dated 29.03.2019 are heard and closed for the present in view of the clarificatory order dated 05.08.2019 of Hon'ble ATE in Appeal No. 42/2018 and connected cases, subject to the

outcome of the decision of the Hon'ble Supreme Court in the Civil Appeal filed by BESCO.

b) The original of this Order shall be kept in OP No. 90/2016 and copies thereof in other cases.

Sd/-
(SHAMBHU DAYAL MEENA)
Chairman

Sd/-
(H.M. MANJUNATHA)
Member

Sd/-
(M.D. RAVI)
Member