

N/194/2018 & N/205/2018

OP No.70/2018 & OP No.79/2018

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,**

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

**Dated : 26.12.2019**

**Present:**

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

**O.P.No.70 of 2018**

**BETWEEN**

M/s Soham Mannapitlu Power Private Limited,  
No.37, 7<sup>th</sup> Cross, RMJ Mandoth Towers,  
Vasanthanagar,  
Bengaluru-560 052.

– PETITIONER

[Represented by Pragati Law Chambers, Bengaluru-1]

**AND**

1) Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan, K.G. Road,  
Bangalore-560 009.  
Represented by its Managing Director.

2) Mangalore Electricity Supply Company Limited,  
MESCOM Bhavan,  
Bijai, Kavour ross Road,  
Mangaluru-575 004.  
Represented by its Managing Director.

- RESPONDENTS

[R1 & R2 are represented by Sri Shahbaaz Hussain,  
Advocate, Bengaluru.]

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**O.P.No.79 of 2018**

**BETWEEN**

M/s Soham Phalguni Renewable Energy Private Limited,  
No.37, 7<sup>th</sup> Cross, RMJ Mandoth Towers,  
Vasanthanagar,  
Bengaluru-560 052.

– PETITIONER

[Represented by Pragati Law Chambers, Bengaluru-1]

**AND**

1) Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan, K.G. Road,  
Bangalore-560 009.  
Represented by its Managing Director.

2) Mangalore Electricity Supply Company Limited,  
MESCOM Bhavan,  
Bijai, Kavour ross Road,  
Mangaluru-575 004.  
Represented by its Managing Director.

- RESPONDENTS

[R1 & R2 are represented by Sri Shahbaaz Hussain,  
Advocate, Bengaluru.]

**COMMON ORDERS**

In the above cases filed under Section 86 (i) (f) of The Electricity Act, 2003, common questions of law and facts arise for consideration. Therefore, this common order is being passed:

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2) The **O.P. 70 of 2018** is filed praying for the following reliefs:

- a) To direct the respondents to stop with immediate effect of any transmission losses assumed to be incurred from the metring step-up sub-station end to the main station;
- b) To direct the respondents to refund the entire amount already deducted on the ground of transmission loss since July 2017 to the petitioners; and
- c) To Pass such other and incidental orders, including an order as to costs, as may be deemed fit/appropriate in the facts and circumstances of the case.

3) The **O.P. 79 of 2018** is filed praying for the following reliefs:

- a) To direct the respondents to stop with immediate effect of any transmission losses assumed to be incurred from the metring step-up substation end to the main station;
- b) To direct the respondents to refund the entire amount already deducted on the ground of transmission loss since July 2017 to the petitioners; and
- c) To Pass such other and incidental orders, including an order as to costs, as may be deemed fit/appropriate in the facts and circumstances of the case.

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4) The relevant facts required for deciding the controversies involved in both the cases may be stated as follows:

a) That a river by name Puchamogaru flows in the Western Ghats in Mangaluru taluk, Dakshina Kannada district. Across the said river at a place called Mannapitlu village, 15 MW capacity Mini-hydel project has been established and it achieved commercial operation on 07.09.2009 (hereinafter called as the 1<sup>st</sup> project). Across the same river at downstream at some distance, another Mini-hydel project of 10.5 MW capacity has been established and it achieved commercial operation on 27.06.2015 (hereinafter called as the 2<sup>nd</sup> project).

b) Originally the Government of Karnataka (GoK) accorded its sanction on 08.10.2002 for establishing the 1<sup>st</sup> project in favour of one M/s Bobba Power Projects and permitted the Karnataka Power Transmission Corporation Limited (KPTCL) to enter into a Power Purchase Agreement (PPA). Accordingly, the PPA dated 26.11.2004 (Annexure A in OP No.70/2018) was entered into between KPTCL and M/s Bobba Power Projects. Subsequently, the petitioner in OP No.70/2018 (hereinafter called as Soham Mannapitlu) acquired the right of earlier owner M/s Bobba

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Power Projects over this project and on de-bundling of KPTCL, the PPA was assigned to Mangalore Electricity Supply Company Limited (MESCOM).

c) Similarly, the GoK accorded its sanction on 10.10.2002 for establishing the second project in favour of one M/s Mount Kailash Power Project Private Limited and permitted KPTCL to enter into a PPA. Accordingly, the PPA dated 26.11.2004 (Annexure A in OP No.79/2018) was entered into between KPTCL and M/s Mount Kailash. Subsequently, the petitioner in OP No.79/2018 (hereinafter called as Soham Phalguni) acquired the rights of earlier owner M/s Mount Kailash Power Projects Private Limited, over this project and on de-bundling of KPTCL, the PPA was assigned to MESCOM.

d) M/s Bobba Power Projects had undertaken to construct a pooling station with step up sub-station near the second power project and to construct inter-connection facility including transmission line from pooling station to Moodabidre Sub-station for evacuation of power from both the projects and also from an another proposed mini-hydel project of M/s Phalguni Power Projects. The material part of the evacuation scheme dated 30.04.2004 (Annexure R-3) addressed to M/s Bobba Power Projects, is as follows:

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“Pooling of the generations from the 3 Nos. of IPPs (M/s Bobba Power Projects, M/s Phalguni Power Projects I & II) through 110 kV SC lines with Lynx conductor to the 110 kV bus at Mount Kailash from where a 110 kV DC line with Lynx conductor for a distance of 12.2 km is to be constructed to the existing 110 kV station at Moodabidre with Terminal Bays for each circuit at both ends and with metering at the 110 kV bus of Mount Kailash.”

- e) It appears Soham Mannapitlu has developed the first project, and constructed the required inter-connection facility and the pooling station and also the transmission line up to Moodabidre Sub-station and the first project was commissioned on 07.09.2009. The Metering Point for measuring the Delivered Energy was on the 110 kV side of the step up sub-station constructed at pooling-station. The definitions of 'Delivery Point', 'Delivered Energy' and 'Metering Point' defined in the PPA, are as follows:-

*“**Delivery Point** shall be the point or points at which interconnection is made between the Interconnection*

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*Facilities of the Company and the Grid System of the Corporation i.e., after the high voltage side of the step up transformer.*

**Delivered Energy** means the kilowatt hours of Electricity actually fed and measured by the energy meters at the Delivery Point in a Billing Period after deducting therefrom, the energy supplied by Corporation to the Project, as similarly measured during such Billing Period.

**Metering Point** for purposes of recording of Delivered Energy will be the Delivery Point and shall include two separate sets of electronic tri-vector meters, main meter installed by the Company and check meter installed by the Corporation, having facilities to record both export and import of electricity to / from the grid and sealed by Corporation."

- f) The second project was developed by Soham Phalguni and was commissioned on 27.06.2015. The material terms of the tentative revised evacuation scheme dated 31.05.2014 (Annexure R-4) issued to enable synchronization of the second project, are as follows:-

*"Existing 110 kV DC line with Lynx conductor from project pooling station near Putige village to 110 kV bus of 110/11 kV Moodabidre Sub-station for a distance of about 12.0 kms constructed by M/s Soham Mannapitlu Power Private*

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*Limited for evacuating 15 MWs MHS power is adequate to evacuate additional 10.5 MWs MHS power of M/s Soham Phalaguni Renewable Energy Private Limited.*

*M/s Soham Mannapitlu Power Private Limited being the owner for the infrastructure creation has to provide ABT featured SCADA operational Tariff metering arrangements for recording and billing of 25.5 MWs for both the 110 kV lines a 110/11 kV Moodabidre Sub-station end and in addition metering arrangement for measuring energy (Reference meters) from individual projects shall be installed at HV side of step up transformer at Generation end.*

*M/s Soham Mannapitlu Power Private Limited has to carry out necessary modification works if any required at 110/11 kV Moodabidre Sub-station at their cost."*

- g) Soham Mannapitlu, intimated its acceptance vide letter dated 03.06.2014 (Annexure R-5) to execute the work as per the terms and conditions of the tentative revised evacuation scheme dated 31.05.2014 (Annexure R-4).
- h) Subsequent to the receipt of acceptance letter dated 03.06.2014 (Annexure R-5), the KPTCL issued the final revised evacuation scheme dated 07.06.2014 (Annexure R-6). The



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effect of revised evacuation scheme is that Metering Point which existed at pooling-station, is to be shifted to high voltage-side of Moodabidre Sub-station. In other words, the transmission losses from pooling-station to Moodabidre Sub-station shall be borne by both generators.

- i) On the request of Soham Phalguni, vide letter dated 03.12.2014 (Annexure C) for withdrawal of the conditions imposed to shift the Metering Point at 110 kV DC line Moodabidre Sub-station end and to pay maintenance charges as stipulated in Annexure R-6 dated 07.06.2014, the KPTCL accepted to withdraw the said conditions vide letter dated 16.06.2015 (Annexure D). Thereafter, while extending time for inter-connection of the project of Soham Phalguni with the Moodabidre Sub-station vide letter dated 26.06.2015 (Annexure R-7), the KPTCL imposed the condition to bear the transmission line losses applicable from pooling-station to Moodabidre Sub-station. As already noted, thereafter on 27.06.2015, the second project was commissioned.
- j) When the matter stood like this, the 2<sup>nd</sup> respondent MESCOM, deducted a sum of Rs.8,13,629.50 towards transmission losses from the tariff invoice for the month of July, 2017, submitted by

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Soham Mannapitlu. This deduction towards transmission losses was questioned as per letter dated 22.08.2017 addressed to 2<sup>nd</sup> respondent (Annexure E-1). The 2<sup>nd</sup> respondent replied as per letter dated 20.09.2017 (Annexure E-2) narrating the reasons for deduction of transmission losses and how that quantum of losses was arrived at.

- k) Thereafter, again Soham Mannapitlu, wrote another letter dated 24.01.2018 (Annexure F) addressed to 2<sup>nd</sup> respondent mainly contending that:

*“there has never been a condition imposed on M/s Soham Mannapitlu Power Private Limited, for bearing transmission losses. The Chief Engineer’s (Ele) (Planning & Coordination), KPTCL, Kaveri Bhavan, Bengaluru-560 009, letter cited by his under ref. (1) is the inter-connection approval accorded for the 10.5 MWs power of M/s Soham Palaguni Renewable Energy Private Limited, wherein there is a condition imposed for bearing transmission losses. M/s Soham Phalguni Renewable Energy Private Limited, has accepted to the condition and the deductions made towards transmission losses in their invoices is not questioned. M/s Soham Mannapitlu Power Private Limited and M/s Soham Palaguni Renewable Energy Private Limited, are two different entities having their own power plants. This condition imposed on M/s Soham Phalguni Renewable Energy Private Limited, in the inter-connection approval is*

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*in no way connected to M/s Soham Mannapitlu Power Private Limited and hence, the deductions made by you towards transmission losses in the invoices raised by M/s Soham Mannapitlu Power Private Limited for power sale is without basis, illegal and unacceptable”.*

Therefore, Soham Mannapitlu demanded refund of Rs.8,13,629.50 deducted from the tariff invoice of July 2017 and of Rs.2,47,320.00 deducted towards transmission losses in the monthly tariff invoices from August to December 2017 totally amounting to Rs.10,60,949.50.

- l) Subsequent to letter Annexure F dated 24.01.2018, the 2<sup>nd</sup> respondent wrote letter dated 11.04.2018 (Annexure G) to the Chief Engineer (Ele), Planning & Coordination, KPTCL, Kaveri Bhavan, Bengaluru-560 009, for his clarification on the claim made by Soham Mannapitlu. The Chief Engineer (Ele) (P&C), wrote letter dated 21.05.2018 (Annexure E-4) to the 2<sup>nd</sup> respondent clarifying that transmission line losses have to be borne by the petitioners. Thereafter, the 2<sup>nd</sup> respondent intimated vide letter dated 07.06.2018 (Annexure E-3) stating that the deduction towards transmission losses was valid. Again Soham Mannapitlu, wrote letter dated 25.06.2018 (Annexure H)

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to the 2<sup>nd</sup> respondent, re-affirming that the deduction of transmission losses was not warranted under the terms of the PPA. The 2<sup>nd</sup> respondent again replied vide letter dated 20.07.2018 (Annexure J) to Soham Mannapitlu stating that the deduction of transmission losses was valid and to treat the issue as closed. Thereafter, Soham Mannapitlu, has filed OP No.70/2018 before this Commission on 16.08.2018. Subsequently, Soham Phalguni has filed OP No.79/2018 on 31.08.2018.

m) The respondents contended that as per the revised evacuation approvals issued to the petitioners, they were required to bear the transmission losses and they had not challenged such condition imposed in the revised evacuation approvals, therefore, they cannot be allowed to contend that they were not liable to account for the transmission losses. The 1<sup>st</sup> respondent is free to impose conditions on the generators availing its services for transmission of energy subject to conformity with the prevailing practice and guidelines. The petitioners should have raised a protest and resorted to take appropriate action against the revised evacuation scheme imposing the condition to shift the energy meter towards high

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voltage side of the Moodabidre Sub-station. Therefore, it is contended that the definition of "Delivery Point" stated in the PPA stands amended. It is also contended that the petitioner in OP No.79/2018 Soham Phalguni, has not disputed the deduction towards transmission losses. Therefore, the respondents prayed for the dismissal of the petitions.

5) We have heard the learned counsel for the parties.

6) From the pleadings and the submissions of the parties, the following issues arise for our consideration:

i) Whether the 2<sup>nd</sup> respondent is entitled to deduct the transmission losses, while accounting for the "Delivered Energy" from the projects of Soham Mannapitlu and of Soham Phalguni?

ii) To which reliefs, the petitioners are entitled to?

iii) What Order?

7) After considering the submissions of the parties and the records and documents, our findings on the above issues are as follows:-

8) Issue No.(1): Whether the 2<sup>nd</sup> respondent is entitled to deduct the transmission losses, while accounting for the "Delivered Energy" from the projects of Soham Mannapitlu and of Soham Phalguni?

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a) At the outset, it may be noted that Somham Phalguni, the petitioner in OP No.79/2018, has not produced any documents for having opposed or objected, the deduction towards transmission losses out of the monthly tariff invoices, subsequent to the commissioning of its project. The documents produced in OP No.79/2018 relate to the objection raised by Soham Mannapitlu, the petitioner in OP No.70/2018 regarding deduction of transmission of losses. Soham Mannapitlu, itself has stated in its letter dated 24.01.2018 (Annexure F) that Soham Phalguni, had not objected the deduction of transmission losses as the said Soham Phalguni, had accepted the condition imposed for deduction of transmission losses, while extending the time for inter-connection. Therefore, the objection raised for deduction of transmission losses by Soham Phalguni, is only by way of filing the OP No.79/2018. Certain averments made in the petition in OP No.79/2018, stating that the petitioner in this case (Soham Phalguni) had objected the deduction of transmission losses and had written letters to 2<sup>nd</sup> respondent, etc., are incorrect. It may also be noted that some of the Annexure Nos. of the documents produced along with the original set of petition do not tally with the copies of the Annexure Nos. of the

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documents produced in the two sets of copies of the petition furnished for the use of Members of the Commission. In the present order, we have referred the Annexure Nos. of the documents as produced in the original set of the petition furnished for use of the Chairman.

- b) The petitioner in OP No.70/2018 (Soham Mannapitlu) had also accepted the condition imposed in the tentative revised evacuation scheme dated 31.05.2014 (Annexure R-4), to shift the Metering Point from pooling-station to high voltage side of the Moodabidre Sub-station. This tentative revised evacuation scheme was addressed to both the petitioners. It was specifically stated that Soham Mannapitlu, had to carry out the necessary modification works, if any, required at 110 kV Moodabidre Sub-station at its cost. It was also further stated that soon after hearing the acceptance from Soham Mannapitlu, the tentative revised evacuation scheme would be regularised. Thereafter, Soham Mannapitlu, gave its consent as per letter dated 03.06.2014 addressed to 1<sup>st</sup> respondent (Annexure R-5) and requested to regularise the tentative revised evacuation scheme and to intimate the detailed approved evacuation scheme and further requested for grant of sufficient time for

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providing tariff metering arrangement at Moodabidre Sub-station. Therefore, one can say that even Soham Mannapitlu had agreed for shifting of the Metering Point as instructed by 1<sup>st</sup> respondent KPTCL.

- c) Article 5.1 of the PPA provides that the purchaser shall pay for the Delivered Energy at the rate agreed between the parties. Originally, the purchaser was KPTCL. At the time of entering into PPA, the KPTCL was engaged in the purchase, transmission and bulk supply of electricity to distribution licensees. Admittedly, the rights and liabilities of the KPTCL under the PPAs were assigned to 2<sup>nd</sup> respondent MESCOM. Therefore, the 2<sup>nd</sup> respondent has become the purchaser of the energy from both the petitioners. The definitions of Metering Point, Delivery Point and Delivered Energy would clearly establish that the Delivered Energy is to be measured at the high voltage side of the step up transformer of the sub-station at the pooling station. This has also made clear from the Article 7.1 of the PPA which states that the Delivered Energy shall be metered by the parties on the 110 kV side of the step up sub-station. It is not the contention of the respondents that the Delivery Point provided under the PPA is on the high voltage-side of the Moodabidre Sub-station. Therefore, as per



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the PPA, the petitioners are to be paid for the Delivered Energy at the agreed rate and such Delivered Energy is to be measured on the 110 kV side of the step up sub-station of the petitioners.

- d) As already noted both the petitioners had agreed to shift the Metering Point from the high voltage side of the step up sub-station of the petitioners to the high voltage-side of the Moodabidre Sub-station maintained by the 1<sup>st</sup> respondent KPTCL, while finalizing the revised evacuation scheme.
- e) It is contended on behalf of the 2<sup>nd</sup> respondent MESCOM that the consent given by the petitioners for shifting the Metering Point, amounted to acquiescence on the part of the petitioners, that the Delivered Energy would be measured at the high voltage side of the Moodabidre Sub-station. Further, it is contended that the KPTCL has every right to negotiate and impose the terms in the evacuation scheme and such terms are binding on the petitioners. Further, it is contended that as the petitioners had not objected at appropriate time, the direction for shifting the Metering Point as proposed by the KPTCL, the petitioners are estopped from contending that the KPTCL had no right to insist for change of Metering Point. The learned

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counsel for the petitioners refuted these contentions of the respondents.

- f) The PPAs are between the petitioners and the 2<sup>nd</sup> respondent MESCOM. The KPTCL is not the representative of the 2<sup>nd</sup> respondent MESCOM. The 1<sup>st</sup> respondent KPTCL is not claiming any benefit under the PPAs. The principles of Acquiescence or the Estoppel could have been made applicable had the 1<sup>st</sup> respondent made any claim against the petitioners. The 1<sup>st</sup> respondent is a stranger to the PPAs. While granting evacuation approval, the 1<sup>st</sup> respondent KPTCL had not acted as an agent of the 2<sup>nd</sup> respondent MESCOM. The 1<sup>st</sup> respondent was the transmission licensee and it was required to facilitate the transmission of energy from generating point to the State grid. While approving such evacuation facility it had to honour the terms of the PPA regarding the point at which the Delivered Energy is to be metered. It could not have imposed a different term for measuring the Delivered Energy than the one agreed in the PPA. The 2<sup>nd</sup> respondent MESCOM cannot rely on the representation, act or omission made by the petitioners to the 1<sup>st</sup> respondent KPTCL. It is an accepted principle that Estoppels are binding upon the parties or the privies, but strangers cannot take advantage of them nor can they be bound by them. The 2<sup>nd</sup>

respondent MESOM is not a party to the Estoppels that might be arising between petitioners and the 1<sup>st</sup> respondent KPTCL. Therefore, we are of the view that the 2<sup>nd</sup> respondent MESCOM is bound by the terms of the PPA regarding measurement of Delivered Energy, but it cannot rely on the changes suggested by the KPTCL. Therefore, we hold Issue No.1 in negative.

9. Issue No.(2): To which reliefs, the petitioners are entitled to?

The petitioners are entitled to get refund of the amount deducted by MESCOM towards transmission losses from out of the tariff invoices. It is made clear that the petitioners are not entitled to any interest on the amount to be refunded, as such deduction had taken place because of the consent given by the petitioners for shifting the Metering Point. Therefore, Issue No.2 is held accordingly.

10. Issue No.(3): What Order?

For the foregoing reasons, we pass the following order:

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**ORDER**

- a) The petitions (OP No.70/2018 and OP No.79/2018) are allowed, holding that the 2<sup>nd</sup> respondent MESCOM is not entitled to deduct transmission losses as is being done;
- b) The 2<sup>nd</sup> respondent is directed to refund the entire amount deducted towards transmission losses from out of the tariff invoices of the petitioners.
- c) The original order be kept in OP No.70/2018 and the copy of it in OP No.79/2018.

Sd/-  
(SHAMBHU DAYAL MEENA)  
CHAIRMAN

Sd/-  
(H.M. MANJUNATHA)  
MEMBER

Sd/-  
(M.D. RAVI)  
MEMBER

