

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

Dated : 11th September, 2018

Present:

Shri M.K. Shankaralinge Gowda .. Chairman
Shri H.D. Arun Kumar .. Member
Shri D.B. Manival Raju .. Member

O P No. 223/2017

BETWEEN:

Indian Sugar Manufacturing Co. Ltd.,
Havinal, Indi Taluk,
Vijayapura District – 586 205.

.. **PETITIONER**

[Represented by Smt. Poonam Patil, Advocate]

AND:

- 1) The Managing Director,
Bangalore Electricity Supply Company Limited,
Corporate Office, K.R. Circle,
Bengaluru – 560 001.
- 2) The Managing Director,
Mangalore Electricity Supply Company Limited,
MESCOM Bhavana, Kavour Cross Road, Bejai,
Mangaluru - 575 004.
- 3) The Managing Director,
Chamundeshwari Electricity Supply Corporation Limited,
Corporate Office, Kaveri Grameena Bank Road,
Vijayanagar 2nd Stage, Hinkal,
Mysuru – 570 017.
- 4) The Managing Director,
Hubli Electricity Supply Company Limited,
Corporate Office, P.B.Road, Navanagara,
Hubballi – 580 025.

- 5) The Managing Director,
Gulbarga Electricity Supply Company Limited,
Station Main Road,
Kalaburagi – 585 102.
- 6) The Managing Director,
Power Company of Karnataka Limited,
Room No. 15, Kaveri Bhvan, KPTCL Building,
Bengaluru – 560 009.

.. **RESPONDENTS**

[Respondents represented by Justlaw, Advocates]

ORDERS

- 1) The Petitioner has filed this petition under Sections 61, 62, 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 (Act). The Petitioner has prayed to:
 - (i) direct the Respondents, to execute a PPA with the Petitioner-Company, for purchase of 15 MW capacity power, from its Cogen Plant, in accordance with Order dated 11.04.2017, passed by the Commission; and,
 - (ii) pass any such other directions, as the Commission deems fit, in the circumstances of the case and in the interest of justice.
- 2) The facts of the case, may be stated, as follows:
 - (a) The Petitioner is a Company registered under the Companies Act, 1956 and has established a 19.5 MW capacity bagasse based Co-gen Power Plant, with 15 MW exportable capacity, at Havinal Village in Indi Taluk of Vijayapura District.

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- (b) The Petitioner established the Sugar factory in the year 2010 and commenced power generation from the year 2012-13 and has been in the open access regime, from then onwards. The Petitioner does not have a Power Purchase Agreement (PPA) with any of the Electricity Supply Companies (ESCOMs) in the State.
- (c) The Government of Karnataka (GoK) passed an Order dated 11.11.2016, according approval to purchase power by the ESCOMs from the Co-gen Plants in the State, at the tariff determined by the Commission, pursuant to a proposal of the South India Sugar Mills Association (SISMA). The said proposal was accompanied with a list of 28 sugar factories, with an exportable capacity of 501 MW of power, which were willing to enter into PPAs with the ESCOMs. Pursuant to the Petitions filed by several Co-gen Plants, the Commission passed an Order dated 11.04.2017 fixing the tariff for supply of power for five years.
- (d) The Petitioner is willing to supply power to the extent of 15 MW to the Respondents, by entering into a PPA and has, therefore, approached the Commission, seeking directions to the Respondents to enter into a PPA.
- 3) The grounds urged in the Petition, in support of the Petitioner's prayers, may be summed up, as follows:
- (a) The case of the Petitioner is covered by the Order dated 11.04.2017, passed by the Commission in OP No.38/2016 and connected matters and,

therefore, the present Petition ought to be allowed, in terms of the said Order.

- (b) The Government Order dated 11.11.2016 according approval for the purchase of power by the ESCOMs, from bagasse-based Co-gen units of the Sugar factories, extends the benefit of the said Order to all the bagasse based Co-gen units of the Sugar factories in the State, without making any distinction.
- (c) The Commission, whilst addressing the issues covered under the Government Order dated 11.11.2016, has held. in OP No.38/2016 and connected matters. that the benefit should be extended to all the CoPgen plants in the State, which are willing to sell power, at the tariff determined by the Commission.
- (d) The Petitioner is facing severe financial crisis. The sugarcane yield and the consequent supply, is on the lower side this year and the Petitioner is finding it very difficult to make payments to the farmers. Failure to pay the cane price, within fourteen days of the supply, would amount to gross violation of the Sugarcane (Control) Order, 1966.
- (e) The Electricity Act, 2003 mandates, promotion of electricity from the Co-gen sources and the Petitioner, which has a Co-gen unit and does not have a PPA with the Respondents, ought to be promoted and permitted to enter into a PPA.

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- 4) Upon issuance of the Notice, the Respondents entered appearance through their counsel and the 1st, 2nd & 6th Respondents have filed their objections, as follows:
- (a) The Commission, after considering all aspects, determined the tariff for the 28 Plants, that were specifically referred to in the Government Order and clarified that, those generators entering into PPAs with the ESCOMs, for sale of power as per the order dated 11.4.2017, ought to do so, within a period of thirty days from the date of the Order. Based on the same, several generators, who do not form a part of the 28 Generators, specifically mentioned in the Government Order, approached the Respondents, for execution of PPAs.
- (b) The Order of the Commission does not make procurement of power from all the Co-gen Plants, compulsory. The Order clearly states that, the generators can avail the benefit of the Order, if they approach the concerned ESCOM, within thirty days of the said Order. The Petitioner has not approached the Respondents within the said thirty days' period, to execute the PPA. Therefore, the Petitioner is not eligible to seek for execution of the PPA with the Respondents, as per the Order of the Commission dated 11.04.2017.
- (c) The Petition is not maintainable and is liable to be dismissed.

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- 5) During arguments, the learned counsel for the both parties submitted that the Government has not indicated its willingness to buy power from the Petitioner-Company.
- 6) We have heard the learned counsel for both parties and perused the material placed on record.
- 7) The following Issues would arise for our consideration:
- (1) Whether the Petitioner's unit is entitled to seek the benefit of the Order dated 11.04.2017, passed by the Commission, in OP No.38/2016 and connected matters?
- (2) What Order?
- 8) After considering the submissions made by the learned counsel for the parties and the pleadings and other material placed on record, our findings on the above issues are, as follows:
- 9) **ISSUE No.(1)**: *Whether the Petitioner's unit is entitled to seek the benefit of the Order dated 11.04.2017, passed by the Commission, in OP No.38/2016 and connected matters?*
- (a) The Commission had passed an Order dated 11.04.2017 in OP No.38/2016 and connected matters, in the matter of granting approval for the procurement of electricity, on medium term basis, from the bagasse based Co-gen Plants and determining the tariff payable by the ESCOMs.

While doing so, the Commission has also dealt with the issue of the Co-gen Plants that would be entitled to supply power to the ESCOMs, at the tariff determined. The relevant extract of the said Order is, as follows:

“14) **ISSUE No.(4):** Whether the purchase of power should be restricted to 501 MW from the Cogen Plants, who approached the Government of Karnataka for a direction to the ESCOMs for purchase of power from the Cogen Plants?

(a) The Government Order dated 11.11.2016 according approval to purchase power from the Cogen Plants in the State of Karnataka, at the tariff determined by this Commission, was passed as per the proposal given by the South India Sugar Mills Association (SISMA). The said proposal was accompanied by a list of 28 Sugar Factories with an exportable capacity of 501 MWs of power, which were willing to enter into PPAs with the ESCOMs. On consideration of the said proposal and in the background of other facts and circumstances narrated in the Preamble of the said Government Order, the Government of Karnataka accorded its approval to purchase power from the Cogen Plants in the State, at the tariff determined by this Commission. While passing the Order dated 1.12.2016 fixing the interim tariff for supply of power from the Cogen Plants, this Commission restricted the quantum of power to 501 MW.

(b) The said Government Order does not say that, the purchase of power should be restricted to only 501 MW from the 28 Sugar Factories, which have expressed willingness to enter into PPAs with the ESCOMs. From the background and the reasons stated in the Preamble stated in the said Government Order, it can clearly be inferred that, the benefit should extend to all the Cogen Plants in the State, which are willing to sell power at the tariff determined by this Commission.

(c) The difficulties being faced by the Sugar Factories in the State of Karnataka are common to all the Sugar Factories and are not restricted to 28 Sugar Factories alone. The Government of Karnataka has accorded approval for

purchase of power from the Cogen Plants with a view to mitigating the difficulties and in the overall interest of the Sugarcane Farmers of the State. Therefore, we are of the considered view that, the purchase of power need not be restricted to 501 MW only. It can be seen that, the total exportable capacity of power offered by the different Cogen Plants, who are before this Commission, may just exceed 501 MW. Therefore, we answer Issue No.(4) in the negative.

15) **ISSUE No.(5)** : What Order?

For the foregoing reasons, we pass the following :

ORDER

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(f) The owners of the Cogen Plants, who are entering into PPAs with the ESCOMs for sale of energy, as per the tariff determined in this Order, shall do so within one month from the date of this Order, failing which, they shall not have any claim for entering into a PPA with any ESCOM; and

XXX

XXX

XXX".

- (b) We note that, the Petition is filed, before the Commission, on 30.11.2017, after a lapse of more than 7 months, from the date of the above Order. The Petitioner has sought directions to the Respondents, to execute the PPA in terms of the Order. The Respondents have contended that, the Petitioner has not acted, in accordance with the directions in the Order, extracted above, inasmuch as, it had not approached the ESCOMs to enter into a PPA, within one month from the date of the Order, and hence, cannot seek such a direction from the Commission. We also note that, it is not the case of the Petitioner that it had, at least, expressed its

willingness/ consent to sell power to the Respondents, within one month of the Order and approached the Respondents with such a request, even if it had not entered into a PPA. Therefore, the Petitioner cannot be extended the benefit, under the Order dated 11.4.2017 although, it was clarified that there was no cap on the quantum for the procurement of power from the Co-generation Plants. The provisions of Section 86(1)(e) of the Act, cannot be invoked, as sought by the Petitioner, in the circumstances and on the facts of the case.

- (c) During the arguments, it was submitted that, the Government had not expressed willingness to buy power from the Petitioner and consequently, the Respondents cannot agree to do so. In the absence of willingness by the buyer (Distribution licensee) to purchase power from the Petitioner, the Commission cannot issue a direction, compelling the buyer to purchase power from a Generating Company. Under Section 86(1)(b) of the Act, the Commission can regulate the power procurement of the Distribution Licensees, pursuant to agreements with the Generating Companies or other sources. Thus, such regulatory power can be exercised, only if both the parties agree to buy/purchase power and not otherwise.

- (d) Therefore, we answer Issue No.(1), in the negative.

10) **ISSUE No.(2):** *What Order?*

For the foregoing reasons, we pass the following:

ORDER

It is declared that the Petitioner is not entitled to the reliefs claimed.

The Petition is dismissed.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER