

No.N/11/11

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION BANGALORE

Dated this 11th August 2011

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Application in OP 05/2011

BETWEEN

M/s. Davanagere Sugar Company Limited
No.73/1, P.B.No.312, Shamanur Road,
Davanagere – 577 004

(Represented by Prabhuling Navadgi Associates) ...

Petitioner

AND

1. Bangalore Electricity Supply Company Limited
K.R. Circle
Bangalore – 560 001

2. The State Load Dispatch Centre
28, Race Course Road
Bangalore – 560 009

3. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
Bangalore – 560 009

4. Power Company of Karnataka Limited
Kaveri Bhavan, Kempegowda Road
Bangalore – 560 009

(Represented by Just Law Advocates) ...

Respondents

1. M/s. Bangalore Electricity Supply Company Limited (hereinafter referred to as BESCOM) has filed an application under Section 94 of the Electricity Act, 2003 for extension of time granted by this Commission to make payment to M/s. Davanagere Sugar Company Limited (hereinafter referred to as Petitioner) in our

Order dated 21.4.2011. This application is made on the ground that BESCO has filed an application in OP 16/2011 for determination of tariff payable to the petitioner during the period between the date of termination of the PPA to the date on which open access permission was granted by KPTCL.

2. On notice, the petitioner has put in appearance through its counsel Sri Prabhuling Navadgi Associates and has made its submissions during the hearing.

3. This Commission had in the order referred to above directed the Respondent to pay for the power supplied by the Petitioner after 4.10.2010 and up to 16.12.2010 at the same rate of Rs.5.00 per unit at which it had paid for the power supplied prior to 4.10.2010 as per the orders of the Hon'ble High Court of Karnataka in WP No. 25431/2009. The counsel appearing for BESCO has submitted that the rate of Rs.5/- per unit which had been ordered to be paid by the Hon'ble High Court was only an interim tariff and this Commission has to determine the rate in OP 16/2011 filed by it. Therefore, the Commission may be pleased to defer the payment ordered to be made as per its Order dated 21.4.2011 till OP 16/2011 is decided.

4. In reply, it is submitted by the petitioner's counsel that the application filed by the applicant company is not bona fide and is intended only to delay the payment. It is also submitted that the payment ordered by the Commission is as per the interim order of the Hon'ble High Court, which was in force till the disposal of the writ petition finally and the applicant company has paid as per the Interim Order till the Hon'ble Supreme Court dismissed the C.A. on 4.10.2010 filed by BESCO against the orders of this Commission and the Hon'ble ATE.

5. We have considered the application filed by BESCO and the submissions made in support of the same as also the submissions of the petitioner company.

6. It is observed from the file that BESCO had challenged the Order of the CERC allowing the petitioner the benefit of open access in the WP No. 25431/2009 before the Hon'ble High Court of Karnataka and had obtained stay of the order of CERC. This interim order of stay came to be modified on 7.12.2009 at the instance of the petitioner and the rate of Rs.5/- per kWh was fixed as an interim arrangement. This modified Interim Order continued till 16.12.2010, i.e., the date on which the writ petition came to be finally disposed of. It is also observed that BESCO did pay the petitioner from 7.12.2009 at Rs.5/- till 4.10.2010. As the applicant did not make the payment for October, November and December 2010 and January 2011 as per the Interim Order of the Hon'ble High Court the petitioner moved this Commission seeking a direction to BESCO to make the payment not made for the above months. After hearing the parties this Commission ordered to pay for the power supplied during these months also as per the rate fixed by the Hon'ble High Court in the Interim Order dated 7.12.2009 subject to the observations made by the Hon'ble High Court in its Order dated 16.12.2010.

7. In our view the BESCO prayer for deferment of the payment to be made as per the order of this Commission dated 21.4.2011 cannot be accepted. OP 16/2011 based on which the present prayer of deferment is made has been filed by BESCO after suffering an order of payment. Further the said OP 16/2011 is

yet to be considered and decided on merits and after affording an opportunity of hearing to both the parties. As observed above, BESCO has paid to the petitioner at Rs.5/- per unit till October 2010 i.e., for a period of nine (9) months and did not choose to get the interim order fixing Rs.5/- as tariff modified even though the Division Bench of the Hon'ble High Court at Para (5) of its Order dated 20.10.2010 in WA No. 4527/2009 had given a liberty to BESCO move the Hon'ble Single Judge. Having received electricity from the petitioner under the force of the Interim Order dated 7.12.2009 BESCO now cannot deny the payment as per the very same Interim Order which was in force till 16.12.2010 which at any rate is subject to final accounting based on the order to be passed in OP 16/2011. The excess payment, if any, made by BESCO pursuant to orders of this Commission and the Interim Order of the Hon'ble High Court can be recovered by BESCO from the petitioner by taking appropriate action in accordance with law as law on this is very clear that the act of Court shall not prejudice any one.

8. In view of the above discussion, we find that the prayer of BESCO for deferment of payment till disposal of OP 16/2011 is not acceptable.

9. While we have not accepted the application of BESCO for deferment of payment, we feel that some more time may be allowed in view of the expiry of the time already granted. Hence we order that BESCO shall make the payment as per the Commission's Order dated 21.4.2011 within four weeks from today.

Sd/-

Sd/-

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

(VISHVANATH HIREMATH)
MEMBER

(K.SRINIVASA RAO)
MEMBER