

No.: N/27/14

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 28th January, 2016

Present:

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

OP No.11 / 2014

BETWEEN:

Shahi Exports Private Limited,
Registered Office:
F-88, Okhla industrial Area, Phase-I,
NEW DELHI – 110 020
Having one of its Offices at:
Nos.13, 14 and 15, Belandur Gate,
Sarjapur Main Road,
BENGALURU -0560 012

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PETITIONER

[Petitioner represented by Navayana Law Offices, Advocates]

AND:

- 1) The Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
K.G. Road,
Bengaluru – 560 009
- 2) Mangalore Electricity Supply Company Limited,
Paradigm Plaza,
A.R. Shetty Circle,
Mangaluru – 575 001

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RESPONDENTS

[Respondents represented by Just Law, Advocates]

ORDERS

- 1) The gist of the Petitioner's prayers in this Petition is as follows :
- (a) To declare that the Agreement dated 1st February, 2012, executed between the Petitioner and the first Respondent (produced at ANNEXURE - P10), is *ab initio* void, illegal and *ultra vires* of the Electricity Act, 2003;
 - (b) To quash the 1st Respondent's letter bearing number CEE (P&C) SEE (Plg)/EEE (Plg)/KCO-92/F-55061/13-4, dated 28th February, 2014 (produced at ANNEXURE – P1);
 - (c) To direct the 1st Respondent to refund a sum of Rs6,56,93,478/- (Rupees Six Crores Fifty Six lakhs Ninety Three Thousand Four Hundred and Seventy Eight only) along with interest at the rate of two percent per month, from the date of collection, upto the date of full refund to the Petitioner, which was spent by the Petitioner as per the directions of the 1st Respondent;
 - (d) To direct the 1st Respondent to refund a sum of Rs.16,54,500/- (Rupees Sixteen lakhs Fifty Four Thousand Five Hundred only) collected as supervision charges from the Petitioner, along with interest at the rate of two percent per month, from the date of collection, upto the date of full refund;
 - (e) To initiate appropriate action against the 1st Respondent for revocation of the 1st Respondent's license for its action leading to abusing and exploiting its dominant position and or violating the provisions of the Electricity Act, 2003, and specifically Regulation 15.2 of KERC (Licensing) Regulations, 2004; and,
 - (f) To grant the cost of the Petition and pass such other and incidental orders / directions, as are just and equitable under the facts and circumstances of the case.

2) The material facts required for the disposal of the Petition may be stated as follows :

(a) The Petitioner is a Company registered under the provisions of the Companies Act, 1956, having its registered Office in New Delhi and having one of its offices at Belandur Gate, Sarjapur Main Road, Bengaluru, as described in the Cause Title above. The Petitioner had been allotted 221 acres of Karnataka industrial Area Development Board (KIADB) land in Survey No.156 of Nidige Village in the KIADB area, near Shivamogga Town, for construction of an Integrated Textile Park. By its application dated 6.9.2010 (ANNEXURE – P2), the Petitioner approached the Executive Engineer (Elec.), MESCOM O&M Division, Shivamogga, requesting for power supply, in a phased manner as detailed below, to its Integrated Textile Park (Project), stating that its total requirement was 15,000 KVA power on completion of its Project:

- (a) I Phase – 2 Mega Watts (MWs) power by May, 2011;
- (b) II Phase – 5 MW power by August, 2011;
- (c) III Phase – 10 MW power by December, 2011; and
- (d) Last Phase – 15 MW power by March, 2012.

It was specifically requested by the Petitioner to provide with an uninterrupted power supply with a separate line to its Project. The Petitioner requested the said authority to intimate the amount to be deposited and the fees and charges to be paid by it for arranging the

- power supply. The necessary particulars in the prescribed form were enclosed along with ANNEXURE – P2.
- (b) Before adverting to the facts of the case, we may note the locations of the Petitioner's Project and the Main Receiving Station at Shivamogga (MRS, Shivamogga), from where power supply to the Petitioner's Project is intended to be supplied. Out of 110 kV and 220 kV lines drawn from the MRS, Shivamogga, two 110 kV lines are running almost parallel to each other, towards South-East direction of the MRS, Shivamogga. Out of these two lines, one line terminates at Mysore Paper Mills, Bhadravathi (MPM line) and another line. Viz., Shivamogga-Mysuru Transmission line (SMT line) passes through Tarikere Sub-Station and beyond. The Petitioner's Project is about 7 Kilometres (KMs) away from the MRS, Shivamogga, along the SMT line and is situated about half a Kilometre away on the North-East direction of the SMT line. As a temporary measure, power supply to the Project of the Petitioner is allowed by tapping the SMT line upto the Load Centre of the Petitioner's Project.
- (c) A Distribution Licensee is entitled to charge from person requiring supply of electricity, any expenses reasonably incurred in providing any electric line or electrical Plant used for the purpose of giving that supply, as per the Karnataka Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 (hereinafter referred to as the 'Recovery of Expenditure Regulations, 2004'). In this

regard, the relevant portion of Regulation 3.6 of the said Regulations may be noted:

“3.6 Provision for HT / EHT Supply :

3.6.1 *In case of Applications where there is a need to erect a new HT line / EHT line from the sub-station or extend the existing HT/EHT line in order to extend supply to the Applicant, the Distribution Licensee in case of HT, and Distribution Licensee in co-ordination with Transmission Licensee in case of EHT shall prepare an estimate for arranging such power supply corresponding to the Applicant's actual requirement and provide the estimate to the Applicant for arranging payment to the Licensee. However, estimate shall not include the improvement / augmentation works in the station or works of strengthening the line. However, it includes transformer, HT/EHT line drawn exclusively for the Applicant/s.*

3.6.2 *The estimate shall be prepared by the Licensee based on Schedule of Rates in force.”*

Regulation 3.6.3 of the said Regulations provides for carrying out of the work by the Licensee after collecting the estimated amount plus tender premium not exceeding 10% from the applicant. It also provides that, if the applicant opts for executing the work on his own as per the estimate, standard drawings, etc., the same shall be granted, and in such cases, the applicant should pay the supervision charges at 10% of the estimated cost of the work.

- (d) The Petitioner was to be provided EHT supply as per its requirement. Therefore, the estimation for arranging power supply was to be done by the Distribution Licensee, in coordination with the Transmission Licensee, as specified in Regulation 3.6.1 of the Recovery of Expenditure Regulations, 2004.
- (e) During the course of processing of the application of the Petitioner for power supply, the office of the Chief Engineer (Elec.) (Planning and Co-ordination), of the first Respondent-Karnataka Power Transmission Corporation Limited (KPTCL) intimated the General Manager (Technical) of the second Respondent-Mangalore Electricity Supply Company Limited (MESCOM) the approval for arranging of power supply to the extent of 15 MVA in favour of the Petitioner, as per the terms and conditions stated in its letter dated 14.1.2011 (ANNEXURE – P5), stating the details of the work to be carried out by the Petitioner. Subsequently, the local Office of the first Respondent (KPTCL) intimated the same, as per letter dated 8.3.2011 (produced at Page-43 of the Petition), to the Petitioner, giving the details of the works to be carried out by the Petitioner on 'self-execution' basis. Under this approval, power supply was to be arranged only after the execution of the works stated in the said approval and there was no provision for supply of power to the Petitioner on 'temporary basis', before completion of the approved

work. Subsequently, this approval, as per ANNEXURE – P5, has been revised at the instance of the Petitioner.

- (f) As made out in the recital of the revised approval, the Petitioner made a representation dated 6.6.2011 to the Chief Engineer (Electy.)(P&C), KPTCL, Bengaluru, representing that, as per the earlier approval dated 14.1.2011 (ANNEXURE – P5), removing of Single Circuit (SC) line and erection of Multi-Circuit (MC) line from the MRS, Shivamogga, upto its Project premises, would take quite some time and therefore, requested to utilize the SC line on Double Circuit (DC) towers feeding to MPM, by drawing one more Circuit upto its Project premises, as a temporary measure, to avail power supply. This proposal was got examined and a revised approval was issued by the Chief Engineer (Elec.)(P&C) of the first Respondent (KPTCL) to the second Respondent (MESCOM), vide letter dated 19.7.2011 (produced at Page-48 of the Petition), intimating the terms and conditions as stated below :

“Under the circumstances, I am directed to communicate following approval:

- (1) *The multi-circuit scheme approval conveyed as per the letter cited under reference (1) is hereby withdrawn and modified as below.*
- (2) *M/s. Shahi Exports have to convert existing 110 kV MPM SC line on DC towers between MRS Shimoga to Nidigi limits (app 7 Kms) by dismantling existing line & towers and constructing new DC towers with DC line using LYNX conductor up to tapping point of*

M/s. Shahi Exports and further extending one-circuit up to their premises under self-execution basis.

- (3) *M/s. Shahi Exports has to provide terminal bay with necessary equipment at MRS Shimoga with matching materials, C&R panel, etc., under self-execution.*
- (4) *During execution of above work by Shahi Exports, power supply to both MPM and Shahi be arranged from existing 110 kV SMT line as a temporary measure for a period of one year from date of switching over on to this line and within which period the firm has to complete the work as mentioned in (2) and (3) above as a permanent measure."*

This revised approval, which was received by the Corporate Office of the second Respondent (MESCOM), was sent to the concerned Officers for further action.

- (g) On 17.1.2012, the second Respondent (MESCOM) issued a revised intimation, sanctioning power supply to the Petitioner's Project to an extent of 15 MVA, subject to fulfillment of certain conditions mentioned therein.
- (h) Pursuant to the revised approval dated 19.7.2011 referred to earlier, the measures for temporary supply of power were taken at the first instance by the concerned officials of the Respondents. In this regard, the Chief Engineer (Elec.), Transmission Zone, KPTCL, Hassan, sent a letter dated 25.1.2012 (ANNEXURE – P9) to the Petitioner for construction of a 110 kV Tapping Line from the 110 kV SMT line to the Load Centre of the

Petitioner's Project, giving the details of the expenditure of Rs.1,52,65,078/- required to be incurred for constructing this Tapping Line and Supervision Charges of Rs.16,54,500/-, including Service Tax. The Petitioner was also intimated to construct a 110 / 11 kV Sub-Station within its premises for drawing power through the Tapping Line. The other required terms and conditions were also mentioned in the said letter.

- (j) Pursuant to the letter dated 25.1.2012 (ANNEXURE – P9), the Petitioner executed an Agreement dated 1.2.2012 (ANNEXURE – P10) with KPTCL, Shivamogga, containing the terms and conditions for executions of construction of a Tapping Line and 110 / 11 kV Sub-Station. This part of the work to be carried out is stated as "I Phase Work" in the subsequent communications between the parties.
- (k) The I Phase Work was completed and charged on 12.4.2012. On the same day, the second Respondent (MESCOM) gave supply of 2 MVA power to the Petitioner, after complying with the required formalities of receiving deposits and executing a formal Power Supply Agreement (PSA), etc. As per the requirement of the Petitioner, 5 MVA power was supplied with effect from 3.12.2012 and 10 MVA power was supplied with effect from 6.4.2013.
- (l) After completion of the I Phase Work and getting supply of power upto 10 MVA as noted above, the Petitioner did not commence the II Phase

Work as per the revised approval dated 19.7.2011 referred to above. Under the II Phase Work, the Petitioner had to convert the existing 110 kV SC MPM line into DC line, using Lynx Conductor upto the tapping point of the Petitioner and also had to provide a Terminal Bay with necessary equipment at MRS, Shivamogga, with matching material, C&R panels, etc. The Respondents kept on reminding the Petitioner for taking up the II Phase Work. One such letter dated 20.5.2013 (ANNEXURE – P26), written by the Office of the Executive Engineer, KPTCL, Shivamogga, shows that, earlier to it, four more reminders had been issued and inspite of those reminders, the Petitioner had not furnished the details of the plan of action to the Office of Executive Engineer, KPTCL Shivamogga and also had not started the work. Therefore, in this letter, it was once again insisted to take up the II Phase Work as per the KPTCL's norms and complete it immediately, under intimation. The letter dated 5.6.2013 (ANNEXURE – P27), again written by the Office of the Executive Engineer, KPTCL, Shivamogga, to the Petitioner, narrates the earlier events and points out that, inspite of repeated reminders and even after the expiry of the period of one year granted for execution of the II Phase Work, the Petitioner had not taken up the II Phase Work, which clearly amounted to violation of the conditions of the Agreement dated 1.2.2012 entered into by the Petitioner with the Chief Engineer (Electy.), Transmission Zone, KPTCL, Hassan. The said letter further states that, because of the violation of the conditions of the Agreement dated 1.2.2012, in not completing the II Phase Work, thirty days' Notice to disconnect the

power supply to the Petitioner's EHT installation had been issued. (It is found from the records that both the parties have not produced a copy of the above-referred Agreement dated 1.2.2012 executed in respect of the II Phase Work.) ANNEXURES – P29 and P30 consist of totally five reminders issued by the Officers at different levels of the first Respondent-KPTCL, reminding the Petitioner to take up the II Phase Work. In the letter dated 15.6.2013 (ANNEXURE – P29) issued by the Chief Engineer (Electy.), KPTCL, Hassan, the request of the Petitioner to exempt it from carrying out the II Phase Work was rejected and the Petitioner was instructed to take up the II Phase Work. The second Respondent (MESCOM), as per its letter dated 19.12.2013 (ANNEXURE – P31) addressed to the Petitioner, also intimated that the II Phase Work had not been taken up by the Petitioner and requested the Petitioner to complete it immediately, and in default, the power connection to the Petitioner's EHT installation would be disconnected,

- (m) The Petitioner, on completion of the I Phase Work and after getting the power supply on temporary basis, made a representation dated 8.8.2012 (ANNEXURE – P28), to the Managing Director, KPTCL, Bengaluru, requesting to exempt it from taking up the II Phase Work, on the grounds that the existing tapping from the 110 kV SC SMT line had been catering to only its needs and it was an idle line, and that the proposed corridor, where the II Phase Work was to be taken up, is a cultivated land hub and farmers would not allow to execute any work in this area. It is also

stated therein by the Petitioner that, it intended to set up a Captive Power Plant for its own use, which would reduce the load burden drastically on this SMT line. The Petitioner wrote a similar letter dated 10.6.2013 to the Chief Engineer, KPTCL, Hassan, expressing its difficulty in taking up the II Phase Work and to exempt it from carrying out the same. The Petitioner has also produced letters dated 1.7.2013, 26.9.2013 and 22.10.2013, all addressed to the Managing Director, KPTCL, Bengaluru, letter dated 22.11.2013 addressed to the Chief Engineer (P&C), KPTCL, Bengaluru, letters dated 28.11.2013 and 23.12.2013 addressed to the Director (Transmission), KPTCL, Bengaluru, requesting them to exempt it from carrying out the II Phase Work and to withdraw the communication regarding disconnection of the EHT supply granted to the Petitioner.

- (n) It appears, after considering the difficulties expressed by the Petitioner in taking up the II Phase Work in the MPM Line corridor, the I Respondent (KPTCL) issued the latest approval dated 28.2.2014 (ANNEURE – P1) modifying the earlier revised approval dated 19.7.2011. The present approval describes the work to be taken up by the Petitioner as follows :

“1. M/s. Shahi Exports shall construct 110 kV DC line from 220 kV MRS Shimoga up to their tapping point in the existing corridor of 110 kV SMT line (instead of 110 kV MPM line corridor as approved earlier) for a distance of 7 KMs at their cost under self-execution duly stringing both circuits with Lynx ACSR Conductor and utilizing one of the circuit for their installation and leaving the other circuit connected to the existing

line, within a period of 6 months from the date of this letter.

2. *M/s. Shahi Exports shall provide 110 kV Terminal Bay with necessary equipments at 220/110 kV MRS Shimoga with matching materials, C&R panels, etc., under self-execution by acquiring suitable adjacent land and carry out all modification works at their cost under self-execution.*
3. *During the execution of above work by M/s. Shahi Exports, Power supply to both MPM and M/s. Shahi Exports shall be arranged from existing 110 kV MPM line as a temporary measure for a period of six months from the date of this letter.*
4. *The consumer shall furnish Bank Guarantee for Rs.30.5 Lakhs to the Chief Engineer Electy., Transmission Zone, KPTCL, Hassan as a guarantee towards commitment to construct the line within stipulated period. The validity of the BG shall be one year from March-2014."*

The present approval shows that the Petitioner has to construct a 110 kV DC line from MRS, Shivamogga upto the Tapping Point in the existing corridor of the 110 kV SMT line, instead of 110 kV MPM line, as approved earlier, and further that the Petitioner has to construct a 110 kV Terminal Bay with necessary equipment at MRS, Shivamogga , as indicated in the present approval.

- (p) The Petitioner has filed the present Petition before this Commission on 16.4.2014, claiming the reliefs as noted earlier. During the pendency of the proceedings, upon the request of the Petitioner, the Commission

issued an Interim Order directing the Respondents not to discontinue the EHT supply to the Petitioner's Project, till the disposal of the Petition.

- 3) The gist of the contentions of the Petitioner is as follows :
- (a) The proposed corridor, where the II Phase Work was to be taken up, is a cultivated land hub and farmers would not allow execution of any work in this area.
 - (b) The Petitioner is not liable under the provisions of the Act or the relevant Regulations to construct the line from MRS, Shivamogga till the Tapping Point to a distance of 7 KMs, either on the MPM line corridor or the SMT line corridor, as the line between these two points is to be constructed at the cost of the second Respondent (MESCOM). According to the Petitioner, it amounts to improvement / augmentation and strengthening of the existing line.
 - (c) The temporary arrangement already made for supply of power may be treated as 'permanent supply', on the ground that the present SMT line is capable of catering to its needs and it is an idle line, therefore, the demolition of the existing SMT SC line and drawing a new DC line is not called for.

- (d) The first Respondent (KPTCL) has no role in the process of giving supply of power to the Petitioner. The duty to supply power on request is on the second Respondent (MESCOM) and thus, the issues, if any, in creating the infrastructure and recovery of any amounts relating to it should be within the sole domain of the second Respondent (MESCOM). The first Respondent (KPTCL) should not have asked the Petitioner to construct the MPM line or the SMT line, and it could not have issued different approvals communicating construction of the MPM line or the SMT line, at different points of time.
- (e) The Agreement (ANNEURE – P10) for carrying out the I Phase Work, entered into with the first Respondent (KPTCL), is illegal and void, as the first Respondent (KPTCL) had no authority to enter into such Agreement, while processing an application for supply of power to a consumer. Therefore, the amount spent by the Petitioner towards construction of the tapping line to a distance of 0.475 KM and also construction of the Sub-Station in its premises, along with interest at the rate of 2% per month, should be returned by the first Respondent (KPTCL). Further, that because of the misconducts of the first Respondent (KPTCL) in interfering with the process of supplying power to it and also in issuing a Notice for disconnection of power, the Licence of the first Respondent (KPTCL) should be revoked.

- 4) The first Respondent (KPTCL) appeared through its learned counsel and filed the Statement of Objections. The learned counsel, who appeared for the first Respondent (KPTCL), had undertaken to appear for the second Respondent (MESCOM) also. However, the Vakalath for the second Respondent (MESCOM) was not filed and that was not noticed during the subsequent hearings of the case. The learned counsel for the first Respondent (KPTCL) had also pleaded for the second Respondent (MESCOM) during the pendency of the proceedings. It can also be noted that the Petitioner has not claimed any relief against the second Respondent (MESCOM). The first Respondent (KPTCL) contended that the controversy raised by the Petitioner in the present proceedings is a dispute between the Consumer and the Distribution Licensee, therefore, the Petitioner should have approached the concerned Consumer Grievances Redressal Forum (CGRS), for redressal of its grievances and that the Commission had no jurisdiction to entertain the present proceedings. The first Respondent (KPTCL) further contended that it had not committed any illegality and none of the reliefs claimed by the Petitioner was maintainable. Further, it contended that in the present case, as the 66 / 110 kV lines are maintained by the first Respondent (KPTCL), all sanctions have been granted by the second Respondent (MESCOM) in concurrence with the first Respondent (KPTCL). Therefore, the first Respondent (KPTCL) has prayed for dismissal of the Petition.

- 5) We have heard the oral submissions made by the parties and have also perused the respective pleadings and documents on record.
- 6) Before proceeding to consider the merits of the reliefs sought for in the Petition against the first Respondent (KPTCL), the question of jurisdiction of this Commission to entertain the present Petition, raised by the first Respondent (KPTCL), is to be considered.
- 7) The Petitioner had applied for power supply to its Project. The supply of power was arranged temporarily, with a condition that the Petitioner should execute certain works of laying an electric line and constructing certain electrical Plants, as noted above. The Petitioner contended that the temporary arrangement of power supply may be made permanent and that it was not liable to construct any electric line or electrical Plant, as intimated by the first Respondent (KPTCL). Therefore, in essence, the grievance of the Petitioner is that, its request for supply of power to its Project was not considered as per the relevant provisions of the Act, particularly Section 43 which prescribes a duty to supply power on request by the Distribution Licensee. Therefore, the Petitioner should have prayed for suitable directions against the Respondents for securing compliance of the relevant provisions concerning the supply of power to a Consumer by a Distribution Licensee. Though the Petitioner has not made a proper prayer, but has pleaded the relevant facts, the Commission is of the view that it can grant appropriate reliefs based on

- the pleadings of the Petitioner. Hence, the present Petition is to be treated as a Complaint under Section 43 of the Act, by a prospective Consumer against a Distribution Licensee, alleging non-compliance of the duty to supply power on request by such prospective Consumer.
- 8) The Hon'ble Appellate Tribunal for Electricity (ATE), in the case of *Brihanmumbai Electricity Supply and Transport Undertaking, Mumbai –Vs- Maharashtra Electricity Regulatory Commission, Mumbai and others*, cited in **2012 ELR (APTEL) 0881**, has dealt with a similar question as in this case, and has held that, the State Commission has got jurisdiction to deal with a Complaint under Section 43 of the Act, read with Section 129 of the Act, to issue proper directions to the Distribution Licensee for ensuring compliance of the provisions of the Act as well as the Regulations, in view of the fact that the State Commission alone is competent to issue such directions and such a dispute does not fall under the 'Dispute to be resolved by CGRF' constituted under Section 42(5) of the Act. The said decision of the Hon'ble ATE in the above case has been upheld by the Hon'ble Supreme Court of India in Civil Appeal No.4223 of 2012, decided on 8.5.2014. Therefore, we are of the considered view that this Commission has jurisdiction to deal with the present Petition.
- 9) The fate of all the prayers made in the Petition depends upon the merit of the contention of the Petitioner that the first Respondent (KPTCL)

being a Transmission Licensee, it had no authority to deal with the application of the Petitioner for supply of power pending before the second Respondent (MESCOM), but it had illegally and unnecessarily interfered in the matter by issuing different approvals to carry out certain works for supply of power, and in default, by issuing the Notice for disconnection of temporary supply of power.

- 10) One can notice that the Petitioner has applied for an EHT power supply before the second Respondent (MESCOM). Therefore, as per Regulation 3.6.1 of the Recovery of Expenditure Regulations, 2004, the second Respondent (MESCOM)-Distribution Licensee should, in co-ordination with the first Respondent (KPTCL)-Transmission Licensee, prepare an estimate for arranging power supply and furnish the estimate to the Petitioner / Applicant for making payment of the estimated amount. Regulation 3.6.3 of the said Regulations also provides that the estimated work can be carried out by the Applicant himself, on 'self-execution' basis, under the supervision of the Licensee. After receipt of the application for supply of power (ANNXEURE – P2), the second Respondent (MESCOM) requested the concerned Office of the first Respondent (KPTCL) to prepare the estimate of expenditure for arranging power supply and accordingly, as per the internal guidelines and procedures, the first Respondent (KPTCL) communicated the approval to the second Respondent (MESCOM), with a copy marked to the Petitioner, for arranging power supply to the Petitioner. In certain

instances, the first Respondent (KPTCL) has directly communicated with the Petitioner. These communications mainly relate to the issuance of the reminders to insist on the Petitioner to carry out the II Phase Work, as agreed. In the circumstances, one can hold that the first Respondent (KPTCL) acted only as an agent / representative of the second Respondent (MESCOM). The various communications addressed to the first Respondent (KPTCL) by the Petitioner would clearly establish that the Petitioner was well aware that the first Respondent (KPTCL) was acting on behalf of the second Respondent (MESCOM) while processing the application for supply of power to the Petitioner. Therefore, the Commission is of the view that the first Respondent (KPTCL) preparing the estimate and proposing the manner in which power supply is to be arranged from its Sub-Station, and proposing certain works to be carried out by the Petitioner on 'self-execution' basis and issuing certain reminders and even issuing the Notices for cutting off the power supply arranged on temporary basis, have been done on behalf of the second Respondent (MESCOM).

- 11) The Petitioner, at no point of time during the processing of its application for power supply, had objected to the actions taken by the first Respondent (KPTCL), on the ground that the first Respondent (KPTCL) had no jurisdiction to take such actions. Therefore, one can say that the Petitioner was well aware that any action by the first Respondent (KPTCL) was taken only on behalf of the second Respondent (MESCOM),

- pursuant to Regulation 3.6.1 of the Recovery of Expenditure Regulations, 2004. For the above reasons, the Prayer (a), viz., to declare that the Agreement dated 1.2.2012 (ANNEXURE – P10) is illegal and void; and Prayer (b), viz., to quash the letter dated 28.2.2014 (ANNEXURE – P1) of the first Respondent (KPTCL), are not maintainable, without any further discussion.
- 12) The Prayer (c) noted earlier relates to refund of Rs.6,56,93,478/- along with interest, etc., from the first Respondent (KPTCL). The Petitioner claims that it has spent the above-said amount for construction of a Tapping Line to a distance of 0.475 km and for construction of a 110 kV Terminal Bay and also a Sub-Station in its premises. According to the Petitioner, these works were done as intimated by the first Respondent (KPTCL) and the first Respondent (KPTCL) had no such authority to ask the Petitioner to do so, therefore the first Respondent (KPTCL) was liable to refund the said amount with interest, etc. In Prayer (d) noted earlier, the Petitioner has requested for refund of Rs.16,54,500/- paid towards supervision charges to the first Respondent (KPTCL), for supervising the construction of the Tapping Line and the Terminal Bay, for the same reasons.
- 13) Section 46 of the Act, read with Regulation 3.6 of the Recovery of Expenditure Regulations, 2004, relating to the provision of HT / EHT supply noted above, would clearly indicate that this part of the electric line and the Terminal Bay should be constructed at the expenditure of the

Petitioner. The construction of a 110 / 11 kV Sub-Station in the premises of the Petitioner is also a technical pre-condition for utilization of electricity at the required voltage in the premises of the Petitioner. Hence, the Prayers (c) and (d) noted above do not merit any consideration.

- 14) The Prayer (e) noted earlier relates to the request of the Petitioner for revocation of the License of the first Respondent (KPTCL) for the alleged violation of the Licence Conditions. We have already observed that the Petitioner was under a misconception in contending that the first Respondent (KPTCL) had acted illegally, in violation of its Licence Conditions. Therefore, this Prayer also does not survive.
- 15) From the above discussions, it is found that the Petitioner is not entitled to any of the reliefs claimed in this Petition. That would, therefore, lead to dismissal of the Petition. If the Petition is dismissed without investigating the other issues raised by the Petitioner, it would not meet the ends of justice. Therefore, we would like to delve upon those issues.
- 16) The Petitioner has contended that the proposed corridor, where the II Phase Work was to be taken up, is a cultivated land hub and farmers would not allow execution of any work in this area and therefore the execution of the II Phase Work may be exempted. This contention of the Petitioner is not sustainable. The law provides that, in case of EHT supply,

the Distribution Licensee in co-ordination with the Transmission Licensee, shall prepare an estimate for arranging such power supply and provide the same to the applicant for arranging payment, and on making such payment, it shall carry out the works. If the applicant opts for executing the works on his own as per the estimate, standard drawings, etc., the same shall be granted. Therefore, if for any practical difficulties, the Petitioner cannot carry out the II Phase Work on 'self-execution' basis, it can request the Licensee to carry out the work and make the required payments to Licensee, as per law. The Licensees are in a better position to deal with such practical difficulties.

17) The Petitioner's contention that it is not liable under the provisions of the Act or the relevant Regulations to construct the line from MRS, Shivamogga till the Tapping Point to a distance of 7 KMs, either on the MPM line corridor or the SMT line corridor, as the line between these two points is to be constructed at the cost of the second Respondent (MESCOM), as it amounts to improvement / augmentation and strengthening of the existing line, is not sustainable for the following reasons :

(a) The Act or any of the Regulations do not provide for temporary supply of electricity, as in the present case, pending execution of works for the purpose of giving supply to the premises of a consumer. The learned counsel for the Respondents submitted during the arguments that,

power was supplied as a temporary measure, pending execution of the II Phase Work, at the request of the Petitioner, in order to mitigate the losses on the investments made by the Petitioner in its Project, as the commercial production was about to be commenced. The earliest approval for supply of power, as per letter dated 14.1.2011 (ANNEXURE – P5), did not provide for supply of power on 'temporary basis'. After receipt of the said approval, the Petitioner itself made a representation dated 6.6.2011 to the Chief Engineer (Electy.) (P&C), KPTCL, Bengaluru, requesting him to arrange for supply of power on a temporary basis, pending execution of the work as per the said approval. This request of the Petitioner was got examined and a revised approval was issued, vide letter dated 19.7.2011, as already noted. As per this revised approval, the supply of power on temporary basis was allowed, pending execution of the work for supply of power on regular basis. The Petitioner completed the I Phase Work by 12.4.2012 and thereafter obtained supply of power on temporary basis upto 10 MVA as per its requirement. The Petitioner was also allowed to draw the lines along with the existing corridor of the first Respondent (KPTCL), without charging anything for usage of the said corridor. Soon after completion of the I Phase Work and getting supply of power on temporary basis, the Petitioner made a representation dated 8.8.2012 (ANNEXURE – P28) and several other representations, requesting to exempt it from taking up the II Phase Work on one pretext or the other. The Petitioner having opted for receiving the supply of power on temporary basis, cannot be allowed

- to say that, it was not liable to execute the II Phase Work as it amounts to improvement / augmentation and strengthening of the existing line. The Petitioner should have either accepted the proposal as a whole or it should have rejected it at the initial stage itself. The Petitioner cannot be allowed to approbate and reprobate the revised approval to its convenience.
- (b) As per the revised approval, the Petitioner has to convert existing 110 kV MPM SC line on DC towers between MRS Shimoga to Nidige limits (approximately 7 Kms) by dismantling existing line and towers, and constructing new DC towers with DC line using LYNX conductor upto tapping point of the Petitioner and further extending one circuit upto its premises under self-execution basis. Further, the Petitioner has to provide terminal bay with necessary equipment at MRS, Shivamogga, with matching materials, C&R panel, etc., under self-execution. The conversion of the SC line into the DC line after reconstruction of the towers had arisen only in order to supply power to the Petitioner's Project. The conversion of 110 kV SC line to DC line for a distance of 7 KMs., was not at all required by the first Respondent (KPTCL) for catering to the existing loads. It is a fact that the Petitioner could not have arranged for drawing the line through some other corridor from MRS, Shivamogga, upto its Tapping Point. A huge expense would have been necessitated to have such separate corridor. As already noted, the first Respondent (KPTCL) has allowed the Petitioner to use its corridor

to a distance of 7 KMs, free of cost. It is informed that the expenditure for construction of a 110 kV DC line per Kilometre would be about Rs.30 Lakhs to Rs.35 Lakhs, and the expenditure for construction of a 110 kV SC line per Kilometre would be about Rs.25 Lakhs to Rs.30 Lakhs. Therefore, the difference in expenditure per Kilometre between construction of a 110 kV DC line and construction of a 110 kV SC line would be Rs.5 Lakhs only. Therefore, the Commission is of the considered view that, the execution of the II Phase Work by the Petitioner cannot be treated as improvement / augmentation and strengthening of the existing 110 kV SC SMT line.

- 18) The Petitioner has further contended that the temporary arrangement already made for supply of power may be treated as 'permanent supply', on the ground that the present SMT line is capable of catering to its needs and it is an idle line, therefore, the demolition of the existing SMT SC line and drawing a new DC line is not called for. This contention of the Petitioner is not acceptable for the following reasons :
- (a) The MPM line corridor and the SMT line corridor are the exclusive properties of the first Respondent (KPTCL). If any of these lines is kept idle and not used, a consumer cannot claim for its usage. The Petitioner cannot, as of right, claim for providing any electric line through these corridors for availing power supply to its Project. The Respondents could have simply stated that it was upto the Petitioner to draw an electric line from MRS, Shivamogga, upto its Load Centre, without bothering for the

difficulties of the Petitioner in laying the electric line. As it was not possible to draw the line through some other corridor, the first Respondent (KPTCL), as a measure of concession, allowed the Petitioner to draw the electric line through its corridor. The Petitioner cannot escape from laying an electric line from the MRS, Shivamogga, upto the present Tapping Point.

- (b) The tapping of any transmission line is not permissible for giving supply of power to HT / EHT consumers, as the tap connection would pose problems in ensuring the safe operation, integrity and reliability of the Grid, and such new connection would cause adverse effect on the Grid. Regulation 44(6) of the Central Electricity Authority (Matters Relating to Safety in Electric Supply) Regulations, 2010, relating to use of electricity at voltage exceeding 650 Volts, reads thus:

“There shall not be tapping of another transmission line from the main line for 66 kV and above class of lines.”

A person, who is seeking connection of his new or expanded electrical Plant to the Grid at voltage level of 33 kV and above, has to follow the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007. Under these Regulations, the “Interconnection Point” is defined as follows :

“‘Interconnection Point’ means a Sub-Station or Switchyard at which point the interconnection is established between the Requestor and the Grid.”

Further, a person who is seeking connection of a new or expanded electrical Plant to the Grid at voltage level of 33 kV and above, and others such as, a Generating Company or Transmission Licensee or Distribution Licensee are included in the definition of “Requestor”. Therefore, it is clear that supply of power is not allowed by tapping the transmission line and the interconnection should be at the Sub-Station or the Switchyard. For this reason, in the present case, the Petitioner could not have claimed tapping of the SMT line or the MPM line, though such lines are capable of supplying its power requirement. Therefore, for providing supply of power to the Petitioner's Project, an exclusive 110 kV supply line should be drawn from the MRS, Shivamogga and the Petitioner cannot claim tapping of the KPTCL line for supply of power to its Project.

- (c) The Petitioner has relied upon the definition of “Distribution System”, as stated in Section 2(19) of the Act, to contend that the portion of the SMT line between the MRS, Shivamogga and the Tapping Point of the Petitioner on the SMT line is part of the Distribution System. The Petitioner has also relied upon the definition of “Transmission Line”, as stated in Section 2(72) of the Act, to contend that the line extending from the MRS, Shivamogga, upto the Petitioner's Tapping Point, is part of the

Distribution System. These statements are made in Paragraphs-13, 14, 17 and 18 of the Rejoinder filed by the Petitioner. The definition of "Transmission Lines" shows that, all high pressure cables and overhead lines (not being an essential part of the Distribution System of a Licensee) transmitting electricity from one Generating Station to another Generating Station or a Sub-Station is "Transmission Lines". The Petitioner contends that the high pressure cables and overhead lines from the Sharavathi Generating Station upto MRS, Shivamogga, are "Transmission Lines" and any electric line from MRS, Shivamogga, to other places are within the definition of "Distribution System". The high pressure cables and overhead lines transmitting electricity at 66 kV and above from one Sub-Station to another Sub-Station, are also "Transmission Lines", within the said definition. As already noted, the Interconnection Point for supply of power to bulk consumers at a voltage of 33 kV and above, should be at the Sub-Station or the Switchyard, at which point the interconnection is established between the Grid and the Load Centre of the Requestor. Therefore, 'Delivery Points' on the "Transmission Lines" stated in the definition of the "Distribution System" should be understood in this sense. The contention of the Petitioner that, the Transmission Lines from MRS, Shivamogga, upto the Petitioner's Tapping Point is part of the Distribution System, is misconceived and not acceptable.

- 19) From the above discussions, we hold that the Petitioner is liable to construct the 110 kV electric line for transmitting electricity from the MRS,

Shivamogga, upto its Load Centre, at its expense. The Petitioner has already constructed a part of the said line from the Tapping Point upto its Load Centre, and therefore it has to construct the remaining part of the 110 kV electric line from the MRS, Shivamogga, upto its Tapping Point.

- 20) The first Respondent (KPTCL) has issued the latest approval dated 28.2.2014 (NENXURE – P1), modifying the earlier revised approval dated 19.7.2011. The Commission is of the opinion that the Petitioner may choose any of these approvals to carry out the II Phase Work, at its discretion.
- 21) For the foregoing reasons, we pass the following :

ORDER

- (a) None of the Prayers made by the Petitioner in the Petition is maintainable and accordingly, they are hereby rejected;
- (b) The Petitioner shall construct, at its cost under the 'self-execution' basis, a 110 kV Double Circuit line from the 220 kV MRS, Shivamogga, upto its Tapping Point, for a distance of 07 (seven) Kilometres in the existing corridor of either the 110 kV SMT Single Circuit line, as detailed in the letter dated 28.2.2014, enclosed as ANNEXURE-P1 to the Petition, or the 110 kV MPM Single Circuit line,

as detailed in the letter dated 19.7.2011, produced at Page-48 of the Petition;

OR

The Petitioner shall deposit the amount as may be estimated by the first Respondent (KPTCL) for the construction of 110 kV DC line in any corridor, along with establishing 110kV Terminal Bay at Main Receiving Station, Shivamogga, as already approved, under the Deposit Contribution Works Scheme, within 30 (thirty) days from the date of receipt of intimation from the first Respondent (KPTCL);

- (c) The Petitioner shall file an undertaking before this Commission, within three weeks from the date of this Order, that it would go ahead with the construction of a 110 kV Double Circuit line from the 220 kV MRS, Shivamogga, upto its Tapping Point, for a distance of 07 (seven) Kilometres in the existing corridor of either the 110 kV SMT Single Circuit line, as detailed in the letter dated 28.2.2014, enclosed as ANNEXURE-P1 to the Petition, or the 110 kV MPM Single Circuit line, as detailed in the letter dated 19.7.2011, produced at Page-48 of the Petition, as may be chosen by the Petitioner, or in the alternative, that it opts for construction of the line under the Deposit Contribution Works Scheme;

- (d) The Petitioner shall furnish a Bank Guarantee, within one month from the date of filing the above-said undertaking before this Commission, in a sum of Rs.30,50,000/- (Rupees Thirty Lakhs Fifty thousand only) to the Chief Engineer (Electy.), Transmission Zone, KPTCL, Hassan, as a guarantee towards the construction of the 110 kV DC line, as stated above, within a period of one year from the date of furnishing of the said Bank Guarantee or for deposit of the estimated amount, as required, within the time specified by the first Respondent (KPTCL) on opting the Deposit Contribution Works Scheme; and,
- (e) The Interim Order granted by this Commission, directing the Respondents not to discontinue the supply of power to the Petitioner's Project, shall continue to be operative till the expiry of the time granted to the Petitioner to comply with the above directions and if the Petitioner fails to file the undertaking before this Commission and fails to furnish the Bank Guarantee, as stated above, the said Interim Order shall stand vacated forthwith.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER