

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

**Dated : 28<sup>th</sup> June, 2018**

**Present:**

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

**OP No.80/2016**

**BETWEEN:**

Coromandel Sugars Limited,  
Makavalli Village,  
K.R. Pet – 571 426.

..

**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

Chamundershwari Electricity Supply Corporation Limited,  
No.29, Kaveri Gramena Bank Road,  
Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru – 570 019.

..

**RESPONDENT**

*[Represented by Induslaw, Advocates]*

-----

**ORDERS**

- 1) The Petitioner has filed the present Petition praying for the following reliefs:

- 
- (a) To declare that the PPA dated 23.12.1998, as it stands renewed by the Supplemental Agreement dated 04.07.2012, stands cancelled with the decommissioning of the 12 MW Power Project of the Petitioner;
  - (b) To apply the tariff determined by this Commission by its Order dated 01.01.2015 to the newly commissioned 30 MW Power Project of the Petitioner;
  - (c) Consequently, to permit the Petitioner to sell and permit the Respondent to offtake the energy delivered by the newly commissioned 30 MW Project as per the Tariff Order dated 01.01.2015; and,
  - (d) To pass such other and incidental Order as may be appropriate in the facts and circumstances of the present case.
- 2) The present Petition was filed before this Commission on 22.09.2016. On 20.10.2016, when the case was taken up for the first hearing, the learned counsel for the Petitioner requested to grant an interim tariff for the energy supplied, for the capacity beyond 6.4 MW, out of the 30 MW installed capacity new Cogen Power Plant, as the crushing season had commenced. The Commission granted the interim tariff of ₹4.44 per unit, until further orders.
  - 3) Upon Notice, the Respondent appeared through its learned counsel and filed its Statement of Objections.

- 4) The material facts, required for the consideration of the prayers made by the Petitioner, may be stated, as follows:
- (a) The Petitioner, a Sugar Manufacturing Factory, formerly named as "ICL Sugars Limited", has established a 12 MW gross capacity Cogen Power Plant, with an exportable surplus of 6.4 MW capacity, at Makkavalli Village, K.R.Pet Taluk, Mandya District and entered into a Power Purchase Agreement (PPA) dated 23.12.1998, with the then Karnataka Electricity Board, the predecessor of the Respondent, for sale of the exportable Surplus energy of 6.4 MW, at the rate and other terms and conditions, as agreed to in the PPA. This Cogen Power Plant was commissioned on 06.02.2000.
- (b) Subsequently, the Petitioner and the Respondent entered into a renewed Agreement [Supplemental PPA (SPPA)] dated 04.07.2012, modifying the existing Article 5 of the original PPA, relating to the tariff. The modified Article 5 stated in the renewed Agreement reads thus:

*"5.0 Tariff: CESC Mysore shall pay for the delivered energy for the renewed agreement period from 23.12.2008, at the rate of **Rs.4.44 per kWh without escalation for the next 10 years**. All the other terms and conditions of the original agreement dated 23.12.1998, remain unaltered."*

The above modification to Article 5 of the PPA has been approved by the Commission.

- 
- (c) The Petitioner has set up a 30 MW capacity new Cogen Power Plant with an exportable capacity of 27.2 MW during the off season and 22.2 MW during the season and the said Cogen Power Plant was about to be commissioned, by the time this Petition was filed. It is told that the said new Cogen Power Plant was commissioned on 19.12.2016. Both the old and new Cogen Power Plants are on the same premises.
- (d) It is clear from the pleadings of the Petitioner that, subsequent to the commissioning of the new Cogen Power Plant, it discontinued the generation of energy from its old Cogen Power Plant and started injecting the energy from its new Cogen Power Plant.
- (f) The Petitioner requested the Respondent to cancel the existing PPA dated 23.12.1998, as modified by the SPPA dated 04.07.2012, and requested to enter into a new PPA for purchase of the energy to the extent of the surplus exportable capacity from the new Cogen Power Plant, at the generic tariff, applicable to the Bagasse based Cogen Power Plant, as per the Generic Tariff Order dated 01.01.2015. The Petitioner had also intimated that the existing 12 MW capacity Cogen Power Plant would be discarded, since it had become obsolete and was incurring a lot of maintenance costs.
- (g) Thereafter, the Petitioner appears to have conceded to supply power at the prevailing tariff, till the end of the term, for the surplus exportable capacity of

6.4 MW, as agreed to in the existing SPPA. Thereafter, the Respondent, by letter dated 30.08.2016 (ANNEXURE - P13), wrote to the Petitioner, which reads thus:

*"To  
Sri C Pavan Kumar  
Sr Vice President  
Coromandel Sugars Limited  
Malavalli-571426, K.R. Pet  
Mandya Dist. (Karnataka)*

*Sir,*

*Sub.: Setting up of 30 MW Cogeneration Plant -  
Request for new PPA – reg.*

*Ref.: 1. Your Ltr. No.CS/F&A/2016/230 Dtd.03.05.16.  
2. T.O. Ltr No.CESC/GM(Com)/RA-2/  
16-17/F/8535 Dt.06.08.2016.  
3. Your Ltr. No.CSI/F&A/2016/1214 Dtd.13.08.16.*

*Inviting kind reference to the above, I am directed to inform you that the subject matter was placed before the Board of Directors of CESC Mysore held on 16.07.2016 and the Board has directed as under:*

*'The Board noted that the firm is agreeable to supply power at the old tariff as per the existing PPA and for the additional power from the new plant as per the tariff to be fixed by KERC subject to approval of the company.*

*The Board has authorized the Managing Director to enter into a PPA with M/s. Coromandel Sugars Ltd. with suitable tariff to be fixed by KERC considering the prevailing situation.'*"

- 
- (h) In spite of the willingness expressed by the Petitioner, prior to filing of this Petition, to charge only the existing tariff for the quantum of exportable surplus capacity of 6.4 MW, as agreed to in the existing PPA, for the energy supplied from out of the new Cogen Power Plant, the Petitioner, in the present Petition, has claimed to abandon the existing SPPA and insisted upon entering into a new PPA, with higher tariff, for the energy supplied from the new Cogen Power Plant, from the date of its commissioning.
- (j) The Respondent, in its Statement of Objections, has contended that there is no ground for the termination of the existing PPA, before the expiry of its term and that the Petitioner cannot discontinue or dismantle the old 12 MW capacity Cogen Power Plant and that the Petitioner is playing fraud and has approached this Commission with unclean hands, merely to avail of the benefit, under the Generic Tariff Order dated 01.01.2015, to cause a wrongful loss to the Respondent. The Respondent has further contended that the claim of the Petitioner that the Respondent had agreed to enter into a new PPA for the upcoming 30 MW capacity Cogen Power Plant, is not correct, inasmuch as, there was only a proposal for discussion and it was only a conditional offer, which was ultimately never agreed upon. The Respondent has further denied the claim of the Petitioner that there was an in-principle approval by the Respondent to purchase power from the newly commissioned 30 MW capacity Cogen Power Plant of the Petitioner. Therefore, the Petitioner has prayed for the dismissal of the Petition.

- 
- 5) We have heard the learned counsel for the parties.
- 6) In view of the above pleadings and submissions of the parties, we have to consider as to, which of the reliefs, prayed for by the Petitioner, could be granted, wholly or partly.
- 7) **Reg.: Relief (a):** *To declare that the PPA dated 23.12.1998, as it stands renewed by the Supplemental Agreement dated 04.07.2012, stands cancelled with the decommissioning of the 12 MW Power Project of the Petitioner.*
- (a) The commissioning of the 30 MW capacity new Cogen Power Plant does not entitle the Petitioner to discard the earlier PPA dated 23.12.1998, as it stood renewed by the SPPA dated 04.07.2012. The rights and liabilities of the parties, under the existing PPA, would continue for the whole of the term of the PPA. Under the existing PPA, the Petitioner is liable to supply energy to the extent of 6.4 MW, at the rate of ₹4.44 per unit, for the next ten years from 23.12.2008.
- (b) The Petitioner has established the 30 MW capacity new Cogen Power Plant, after obtaining the approval of the Government of Karnataka and has also achieved the commercial operation from 19.12.2016. Subsequent to the commissioning of the new Cogen Power Plant, the Petitioner may be at liberty to discontinue the operation of the existing Cogen Power Plant, subject to supply of that quantum of energy, which is agreed in the existing PPA, from its new Cogen Power Plant.

(c) Therefore, in respect of the first relief, prayed for by the Petitioner, we hold that the Petitioner is at liberty not to operate the existing Cogen Power Plant, subject to its liability to supply 6.4 MW of energy from its 30 MW capacity Cogen Power Plant, at the rate of ₹4.44 per unit, during the term of the existing PPA.

8) **Reg.: Relief (b):** *To apply the tariff determined by this Commission, by its Order dated 01.01.2015, to the newly commissioned 30 MW Power Project of the Petitioner;*

*and*

**Reg.: Relief (c):** *Consequently, to permit the Petitioner to sell and permit the Respondent to offtake the energy delivered by the newly commissioned 30 MW Cogen Power Plant, as per the Tariff Order dated 01.01.2015;*

(a) These two reliefs are interlinked, therefore, they are considered together.

(b) Admittedly, there is no PPA, executed between the parties, for purchase of the energy from the 30 MW capacity new Cogen Power Plant. In the absence of any PPA between the parties, there is no question of applying the tariff determined in the Generic Tariff Order dated 01.01.2015, to the newly commissioned 30 MW Cogen Power Plant.

(c) The Petitioner has contended that the Respondent has, in principle, agreed to purchase the energy from the 30 MW capacity new Cogen Power Plant,



---

at the rate determined in the Generic Tariff Order dated 01.01.2015. However, this contention of the Petitioner has been specifically denied by the Respondent. The Respondent has contended that, the negotiations for purchase of the balance energy from the 30 MW capacity new Cogen Power Plant was at the initial stage and there was no concluded contract between the parties. The Petitioner has relied upon the letter dated 30.08.2016 (ANNEXURE – P13), which is extracted above. This letter would show that the Petitioner had made a representation that it was agreeable to supply power at the old tariff, as per the existing PPA and for the additional power from the new Cogen Power Plant, as per the tariff to be fixed by this Commission. Further, it shows that, for that reason, the Board of the Respondent had authorized its Managing Director, to enter into a PPA, with the Petitioner, with the tariff to be fixed by this Commission, subject to the approval of the Respondent, in the prevailing situation. However, it appears, the Petitioner has not kept up its promise and filed the present Petition, contending that the existing PPA stands cancelled and the energy supplied from its newly commissioned 30 MW capacity Cogen Power Plant, is to be purchased, at the tariff as determined in the Generic Tariff Order dated 01.01.2015. Therefore, it is clear that, the offer made by the Respondent, as per its letter dated 30.08.2016 (ANNEXURE – P13), was not accepted by the Petitioner. The averments, made in the Petition, do not show that the Petitioner had accepted the offer of the Respondent, made in its letter dated 30.08.2016 (ANNEXURE – P13). The Petitioner does not say in its Petition

that, though it accepted the said offer of the Respondent, the Respondent refused to act upon it, without any justification. Therefore, we are of the considered view that, there was no concluded contract, between the parties, to purchase the power from the newly commissioned 30 MW capacity Cogen Power Plant of the Petitioner, even as per the offer made by the Respondent, in its letter dated 30.08.2016 (ANNEXURE – P13).

- (d) For the above reasons, the reliefs, sought for, in prayers (b) and (c) of the Petition, cannot be granted.
- 9) Reg.: The Final Order to be passed, in respect of the power supplied, under the Interim Order:
- (a) The Petitioner, in the present Petition, had prayed for an interim relief, to permit the Petitioner to sell and to permit the Respondent to offtake the power generated from the Petitioner's newly commissioned 30 MW capacity Cogen Power Plant at the rate, as determined in the Commission's Generic Tariff Order dated 01.01.2015, pending final adjudication of the present Petition.
- (b) As noted above, on 20.10.2016, this Commission had granted an interim tariff of ₹4.44 per unit until further orders, for the energy supplied beyond 6.4 MW, from out of the installed capacity of 30 MW capacity new Cogen Power Plant. While fixing the rate of the interim tariff, the Commission took note of

the rate of tariff payable under the existing PPA and also the rate of tariff applicable for the energy supplied from a Cogen Power Plant, as per the Generic Tariff Order dated 01.01.2015. The said generic tariff for the years 2016-17 and 2017-18 was above ₹4.44 per unit.

- (c) Usually, an interim relief is granted to a party, when there are fair chances of granting the final relief, prayed for in the proceedings. On the submissions made by the learned counsel for the Petitioner, regarding the merits of the case and regarding the urgency for grant of an interim relief, this Commission had granted the interim relief, as noted above. However, now it is found that, there was no concluded contract between the parties to purchase power from the 30 MW capacity new Cogen Power Plant of the Petitioner. In that event, the power injected into the Grid from the 30 MW capacity new Cogen Power Plant, pursuant to the interim Order, is to be compensated at a rate different from the rate of the interim tariff. Had the Petitioner been successful in establishing a concluded contract, as alleged by it, it would have been entitled to a tariff to be paid under the PPA. However, as the Petitioner has failed to prove a concluded contract, as alleged by it, it has to be awarded compensation only, under Section 70 of the Contract Act. In our considered view, the fair compensation that could be awarded to the Petitioner for the energy injected, should be at the Average Power Purchase Cost (APPC) rate, prevalent during the relevant period. While awarding the compensation, under Section 70 of the Contract Act, the benefit derived by the person, who

enjoyed the benefit of the non-gratuitous act, is to be taken into consideration, rather than the damage or loss suffered by the other person, who lawfully does anything or delivers anything to the former. In the present case, the benefit derived by the Respondent, for the energy supplied by the Petitioner, would be to the extent of the amount payable for such energy at the APPC rate.

- 10) For the foregoing reasons, we pass the following:

**ORDER**

- (1) The Petitioner is liable to supply energy, to the extent of 6.4 MW capacity only, on a monthly basis, from its 30 MW capacity new Cogen Power Plant, at the rate of ₹4.44 (Rupees Four and Paise Forty Four) only per unit, in terms of the existing PPA, from 19.12.2016 (i.e., from the date of commercial operation) to 22.12.2018 (i.e., to the date of expiry of the existing PPA);
- (2) The Petitioner shall be paid, compensation at the APPC rates, prevailing in the respective years, for the energy supplied exceeding 6.4 MW capacity, on a monthly basis, from its 30 MW capacity new Cogen Power Plant, from 19.12.2016 till 30 (thirty) days after the date of this Order;

- (3) The Petitioner shall not be entitled to inject energy into the Grid, exceeding 6.4 MW power, on a monthly basis, from its 30 MW capacity new Cogen Power Plant, after 30 (thirty) days from the date of this Order, in the absence of any PPA, either with any Distribution Licensee or with any other third party, under the Open Access; and,
- (4) The rights and liabilities of the parties shall be adjusted, in pursuance of this final Order, in respect of the energy supplied under the interim Order of the Commission. The Respondent is at liberty to adjust the amount, found due to it, from out of the Monthly Tariff Invoices of the Petitioner towards the supply of 6.4 MW power from its 30 MW capacity new Cogen Power Plant.

Sd-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd-  
(H.D. ARUN KUMAR)  
MEMBER

Sd-  
(D.B. MANIVAL RAJU)  
MEMBER