

No. N/147/2019

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560052.

Dated: 29.05.2020

Present

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

Complaint No.05/2019

BETWEEN:

MessrsWalwhan Renewable Energy Limited,
(Previously known as Welspun
Renewables Energy Private Limited)
Having its Office at:
C/o Tata Power Company Limited Cor,
Center, B, 344, Sant Tukaram Road,
Carnac Bunder,
Mumbai- 400 009.

(Represented by its Authorized Signatory
Sri R. AnanthaPadmanabha Rao)

[Represented by Sri P.N. Rajeswara, Advocate)

... **Complainant**

AND:

Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru-560 001.

Through its Managing Director,

(Represented by Just Law, Advocates)

...**Respondent**

ORDER S

1. This is a complaint petition filed under section 142 of the Electricity Act, 2003 seeking the following reliefs:

(a) To initiate appropriate proceeding against the Respondent under Section 142 of the Electricity Act, 2003 and/or any other appropriate provision/s of the Electricity Act, 2003, for contravention and willful disobedience of the directions issued by the Hon'ble Commission in Order dated 02.02.2017 passed in OP No.78/2016;

(b) To Direct the Respondent to comply with the Order dated 02.02.2017 passed by this Hon'ble Commission in OP No. 78/2016 and execute Supplemental Power Purchase Agreements(SPPAs) with the Petitioner for purchase of additional energy as directed by the said Order;

(c) Pass such other order/s as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case, in the interest of justice.

2. The facts of the case are:

a) The Complainant is a company incorporated under the Companies Act, 1956. The name of the Complainant has been changed from 'Welspun Renewables Energy Private Limited' to 'Walwhan Renewable Energy Limited'.

- b) The Respondent is a distribution licensee operating in the State of Karnataka and is a Government of Karnataka undertaking.
- c) The Complainant had entered into two Power Purchase Agreements (PPAs), dated 14.01.2015, with the Respondent for sale of Solar energy from its two Solar Photo Voltaic (PV) Plants of 50 Mega Watt (MW) each as described in the respective PPAs.
- d) While implementing the Projects, the Complainant had installed additional advanced Solar PV modules over and above the contracted capacity of 50 MW under each PPA and was expecting additional energy generation over and above the contracted energy of 91.980 MUs from the Projects. Therefore, the Complainant requested the Respondent to make suitable provision in the PPAs for purchase of the additional energy generated by its Solar Plants beyond the contracted energy, as per Article 5.6 of the PPAs.
- e) The Respondent took a stand that purchase of additional energy at a higher rate would be a financial burden on it and therefore, replied to the Complainant expressing its unwillingness to purchase the additional energy from the Complainant.
- f) The Complainant filed O.P No.78/2016 before the Commission mainly seeking the following reliefs:-

- (i) To issue directions to the Respondent to purchase additional energy produced in the initial years of the PPAs at the rate of Rs.6.51 per unit in accordance with the Generic Tariff Order passed by the Commission dated 30.07.2015;
- (ii) To issue directions to the Respondent to procure the additional power generated by the Petitioner's Projects for the initial years beyond 91.980 MUs per annum, while operating at more than 21% CUF and to enter into a suitable arrangement with the Petitioner in the form of SPPA to formalize such procurement.
- g) In its Statement of Objections filed to the said Petition, the Respondent offered as a last resort, to purchase the additional energy from the projects at the Average Power Purchase Cost of Rs.4.11 per unit, as approved by the Commission in its Tariff Order of 2016.
- h) Upon consideration of the entire matter, the Commission vide Order dated 02.02.2017 partly allowed the said Petition and passed the following Order:-

“ORDER

- (1) The above Petition is partly allowed;*
- (2) The 1st Respondent (BESCOM) is directed to purchase the additional energy, if any, injected from the Petitioner's Projects at Rs.4.11 (Rupees Four and Paise Eleven) only per unit during the term of the PPAs; and*

(3) Accordingly, Supplemental Agreements incorporating the additional term in the two Power Purchase Agreements dated 14.01.2015, regarding the purchase of additional energy, be entered into by the parties."

i) The Complainant has been regularly following up with the officials of the Respondent for execution of the SPPAs for purchase of additional energy in terms of the above directions issued by the Commission. However, the Respondent is delaying execution of the SPPAs on one pretext or the other. Therefore, the Complainant addressed a letter dated 06.08.2019 (Annexure P3) to the Respondent calling upon to execute the said SPPAs, however, no response was received. Hence, this petition is filed, alleging that the action of the Respondent in not executing the SPPAs amounts to willful defiance of the Order of the Commission.

3. Upon issuance of Notice, the Respondent appeared through its Counsel and filed Statement of objections as follows:

i) The prayers sought for in the Complaint are untenable and the Complaint deserves rejection.

ii) The Complainant has filed this Complaint seeking enforcement of the order dated 02.02.2017 in OP No.78/2016, contending that the Respondent has disobeyed the order by not purchasing the additional energy supplied by the Complainant at the tariff of Rs.4.11 per unit.

- iii) The Complainant has not approached the Commission with clean hands. The Commission has categorically stated that the Respondent is to purchase the additional energy, only on execution of a SPPAs. The Complainant has not come forward or approached the Respondent for execution of the SPPAs with respect to purchase of additional energy, even after a lapse of two years from the date of passing the order in OP. 78/ 2016. The Complainant has suppressed this vital fact and is attempting to hold the Respondent liable for its inaction. For this reason alone, the Complainant is not entitled to any reliefs.
- iv) After inordinate delay, on 06.08.2019, the Complainant requested the Respondent to execute SPPAs as per the order in OP No. 78/ 2016 (Annexure P-3).
- v) In terms of the order of the Commission, SPPAs have to be executed between Respondent and Complainant for the additional energy at the tariff of Rs.4.11 per unit. But, the developer had not come forward for execution of the SPPAs. Hence, for the period prior to the execution of the SPPAs, the Respondent is barred from purchasing the power, as the statute prohibits purchase of power in the absence of a valid and subsisting Contract.
- vi) The Complainant being well aware of the procedure to be followed for execution of a SPPAs, has not approached the Respondent with a request for executing the said document. Hence, the allegation that

the Respondent is disobeying the order of the Commission by refusing to execute SPPAs is mis-founded and deserves rejection. As there was a delay of nearly 2 years, from the date of order dated 02.2.2017, the Respondent addressed letter dated 19.01.2019 to the Commission stating that as BESCO has surplus power, and BESCO had executed PPAs for solar power at a cheaper tariff of Rs.2.94 per kWh, it was not willing to purchase additional solar power at the rate of Rs.4.11 per kWh (Annexure R-1).

vii) The respondent, while denying all the allegations made against it has sought for dismissal of the petition.

4. In response to the statement of objections filed by the Respondent, the complainant has filed rejoinder as follows:

a) The complainant had been requesting the respondent to sign the SPPAs in terms of the Order dated 02.02.2017, during numerous visits and meetings in the respondent's office. A copy of the representation dated 10.09.2018 received under RTI Act and another representation dated 15.12.2017 given to the respondent requesting to sign the SPPAs is produced as Annexure-A (Copy).

b) Even after filing the present complaint petition, the complainant has requested the respondent to execute the SPPAs vide letters dated 20.11.2019 (Annexure-B&C).

c) It is the obligation of the respondent to purchase additional energy generated by the projects and to execute the SPPAs irrespective of the time lapse. However, the respondent has failed to do so. Hence, it is prayed to take action against the Respondent.

5. We have heard the learned Counsel for both parties and perused the records.

6. The following points arise for consideration:

i) Whether the Complainant has proved that there is willful disobedience by the respondent in complying with the order of the Commission dated 02.02.2017 in OP No. 78/2016, making it liable for penal action under section 142 of the Electricity Act, 2003?

ii) To what reliefs the complainant is entitled to?

7. After perusing the records and hearing the Counsel for both sides, we give our findings on the above points as below:

8. Whether the Complainant has proved that there is willful disobedience by the respondent in complying with the order of the Commission dated 02.02.2017 in OP No.78/2016, making it liable for penal action under section 142 of the Electricity Act, 2003.

a) It is the allegation of the complainant that despite the order dated 02.02.2017, and repeated requests of the Complainant, the Respondent has not executed the SPPAs for purchase of additional energy from the

projects, as directed by the Commission. It is the case of the Respondent that the Complainant had not come forward to execute the SPPAs, even after a lapse of two years from the date of the order and it is only vide letter dated 06.08.2019 (Annexure P-3), that the Complainant for the first time requested the Respondent to execute the SPPAs. It is the further contention of the respondent that in the absence of a contract, the Respondent is prohibited from purchasing any power from a Generator or making payment for any energy injected by a generator.

- b) We note that the Complainant has not furnished any documents to show that it had requested the Respondent to execute the SPPAs, at any time soon after passing of the order on 02.02.2017. In the Rejoinder filed by the petitioner on 22.01.2020, the petitioner in paragraph 5, has stated that it had filed two representations before the Respondent dated 10.09.2018 and 15.12.2017, requesting to sign the SPPAs (Annexure A to the rejoinder). We have perused the said documents. On verification of the Annexure-A attached to the Rejoinder, it is seen that neither the representation dated 10.09.2018 nor the representation dated 15.12.2017 of the petitioner addressed to the respondent, requesting to execute the SPPA or to purchase the additional energy are produced. Annexure-A produced with the Rejoinder is a letter dated 22.09.2018 issued by the Under Secretary, Energy Department, Government of Karnataka to the Managing Director, Bangalore Electricity Supply Company Limited (BESCOM), requesting to take action on the request of

the Complainant. The date of the request letter of the Complainant is not mentioned in this letter and the request letter referred therein is not enclosed. Without perusing the request letter of the complainant stated to have been given to the Government, the letter produced as Annexure A cannot be accepted as a request made to the respondent to sign the SPPAs. The respondent being the purchaser of power and the contracting party, the petitioner ought to have addressed the representation to the Respondent and not the Government. The other document produced as Annexure A to the rejoinder, stated to be the representation dated 15.12.2017 is not the representation dated 15.12.2017, as averred. The said unsigned document, which lists out various grievances relating to different projects of the petitioner bears the heading:

"15.12.2017. HANDED OVER TO ACS, ENERGY

Support Requested from Govt. of Karnataka"

It is mentioned in para 2 of this document as: ***"Supplementary PPA incorporating KERC order on PLF is yet to be signed by BESCO, delinking the acceptance of Reduced tariff"***. It cannot be made out which SPPA the complainant is referring to therein. Even if it is accepted that the request relates to the SPPAs of this case, it can be inferred from the contents of the document, that the complainant had approached the Government seeking a higher tariff and was not inclined to sign the SPPA at Rs.4.11 per unit, as directed by the Commission for the

additional energy. It can be further inferred that without making any request to the respondent to execute the SPPAs soon after passing of the Order dated 02.02.2017, the complainant approached the Government on 15.12.2017, after a lapse of 10 months. Without producing complete set of documents to show its bona-fides, the Complainant has made the allegation of willful disobedience against the respondent, seeking penal action, which cannot be accepted. Such act of the complainant needs to be condemned.

c) It is settled law that without a commercial agreement for sale/purchase of power, a generating company cannot inject power into the grid. Being the seller of power, there was a much higher responsibility on the part of the Complainant, in the matter of execution of the SPPAs, immediately after the Order dated 02.02.2017, if it had any serious intention of selling the additional energy to the respondent.

d) The Complainant has not produced any material before us to show that it had approached the respondent for execution of the SPPAs before 06.08.2019. This representation dated 06.08.2019 (Annexure P-3) is received in the respondent's office on 07.08.2019. For any reason, if the respondent was not willing to buy the additional power, it should have taken such a firm stance during the proceedings in OP No. 78/2016, or initiated appropriate legal proceedings soon after passing of the order dated 02.02.2017. Addressing a letter dated 19.01.2019 to the Commission on the administrative side was not the appropriate remedy

under law. There is no material to show that the respondent initiated any action after receipt of the request letter of the petitioner on 07.08.2019. Hence, if the respondent has not taken any action pursuant to the receipt of the complainant's request letter on 07.08.2019, we can consider this date to be the date from which at best, the Complainant would be entitled to inject the additional energy and seek payment for the same. Hence, we can only consider the request for payment for additional energy, if any injected from 07.08.2019.

- e) Therefore, for any additional energy injected from the Complainant's projects from 07.08.2019, payments have to be made by the respondent as directed in the order dated 02.02.2017 in OP No.78/2016, if this order has remained unchallenged.
- f) We note that the Complainant has failed to prove willful disobedience of the order by the respondent, or any mala-fides on the part of the respondent, for the reasons mentioned above. Hence, in the facts and circumstances of this case, the respondent is not liable for any penal action.

9. For the foregoing reasons, we pass the following:

ORDER

- i) For the additional energy, if any, injected from the petitioner's project from 07.08.2019 the Respondent shall make payment at

Rs.4.11 per unit as directed in the Order dated 02.02.2017 in OP No. 78/2016.

ii) The SPPAs shall be executed by the parties within four weeks from the date of this Order, to incorporate a term regarding purchase of additional energy, injected into the grid from 07.08.2019, at Rs.4.11 per unit, for the term of the PPA and sent to the Commission for approval.

iii) The complaint petition is disposed of with the above directions.

sd/-

(SHAMBHU DAYAL MEENA)
Chairman

sd/-

(H.M. MANJUNATHA)
Member

sd/-

(M.D. RAVI)
Member

