

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

**Dated : 29<sup>th</sup> June, 2015**

**Present:**

- |                                 |          |
|---------------------------------|----------|
| 1. Sri M.K. Shankaralinge Gowda | Chairman |
| 2. Sri H.D. Arun Kumar          | Member   |
| 3. Sri D.B. Manival Raju        | Member   |

**Complaint No.2 / 2013**

**BETWEEN:**

Sri Indra Power Energies Limited,  
Chikkajanthkal Village,  
Gangavathi Taluk,  
Koppal District – 583 227

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**COMPLAINANT**

*[Complainant represented by Link Legal India Law Services, Advocates]*

**AND:**

The Managing Director,  
Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi – 585 101

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**RESPONDENT-1**

*[Respondent represented by Just Law, Advocates]*

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**ORDER**

- 1) This Complaint Petition is filed under Section 142 read with Section 146 of the Electricity Act, 2003 (hereinafter referred to as the Act), praying for the following reliefs:

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- (a) To initiate appropriate enquiry and proceedings against the Respondents under Sections 142 and 146 of the Act for their willful disobedience of the Order of this Commission dated 29<sup>th</sup> March, 2012 in OP No.1 of 2012 (produced at ANNEXURE – C-1 to the Complaint);
  - (b) To issue a direction under Section 129 of the Act to secure compliance directing the Respondents to honour the orders of this Commission at ANENXURE - C-1 and to make payment along with a penal interest from the date on which the amount fell due until the date the amounts are paid in full;
  - (c) to impose penalty on the Respondents, jointly and severally, for a sum of Rs.1,00,000/- (Rupees One Lakh only) for having contravened the order at ANNEXURE – C-1 of this Commission and also levy a penalty of Rs.6,000/- (Rupees Six Thousand only) for every day of default in payment of interest from the date of the order., viz., 29<sup>th</sup> March, 2012, till the payment is made in full, for denigrating the direction issued by this Commission; and
  - (d) to grant other reliefs.
- 2) The case of the Complainant is that Respondent-1 has not complied with the Order dated 29.3.2012 in OP No.1/2012, inasmuch as, the interest for delayed payments has not been paid and the Letter of Credit (LC) has not been opened, despite making several correspondences. In the Complaint Petition, the Complainant has stated that the Respondent-1 has paid Rs.5,10,88,506/- on 12.6.2012 and

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on 13.6.2012, but has failed to pay the remaining amount, including interest, towards energy delivered during the tenure of the PPA.

- 3) The Commission issued Notice to Respondent-1, who has entered appearance through the counsel. The Commission felt it was not necessary to issue notice to the other Respondents.
- 4) The point which arises for consideration is, whether the Respondent-1 is liable for penal action under Sections 142 & 146 of the Electricity Act, 2003, for non-compliance of the Order dated 29.3.2012 in OP No. 1/2012.
- 5) We have perused the pleadings and heard the counsel for both parties.
- 6) In OP No.1/2012, the Petitioner had claimed Rs.1,71,06,098/- as interest and Rs.4,41,83,601/- as bill amount due as on 30.11.2011 for the period from 5.8.2004 to 5.12.2011 (Totaling to Rs.6,12,89,699/-). OP No. 1/2012 was disposed of by the Commission on 29.3.2012. The order dated 29.3.2012 reads thus:

*"Case called. Counsel for both parties present and heard. Petition disposed of with direction to make pending payments and open LC as per PPA."*

- 7) The Complainant contends that the above Order has not been complied with by the Respondent-1.

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- 8) Penal proceedings can be initiated against the Respondent-1 under Section 142 of the Electricity Act, 2003, only if the Order of this Commission is violated. In the order dated 29.3.2012, the Commission had issued a direction to the Respondent to make pending payments as per the PPA and open LC. An action under Section 142 would lie, if the Respondent-1 has deliberately not complied with the direction given in the Order dated 29.3.2012. In the Memo dated 8.8.2013, the Respondent-1 has stated that LC is opened on 18.9.2012 and sent to the Complainant on 22.9.2012. This is not denied by the Complainant. Hence, we take that there is compliance to our Order to this extent.
- 9) The other issue is the pending payments as per PPA, which is the interest for belated payments. Both parties have filed memos mentioning their calculation of interest. In the Memo filed by the Complainant on 3.2.2015, it has stated that the outstanding amount is Rs.2,67,89,223/- for the period from 5.8.2004 to 5.3.2013. However, in the Memo dated 13.11.2014 filed by Respondent-1, enclosing a statement therewith, it has stated that the interest amount has been fully paid for the period from June, 2005 to February, 2013, and that an excess amount of Rs. 11,85,970 /- is paid to the Complainant, which would be recovered. It has stated that this excess amount needs to be recovered as the Complainant is not liable to claim interest for the period from June, 2005 to March, 2007, in view of the Joint Memo and the Order of this

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Commission in OP No. 36/2006 dated 27.9.2007. The Respondent-1 has mentioned that it has paid interest of Rs.1,58,48,893/- for the period from June, 2005 to February, 2013, after deducting TDS at 10% and that the difference in interest amount claimed by the complainant and paid by the respondent is due to the following reasons:

*“i) The firm has considered the bill date as date of issue of bill but GESCOM has taken the date of receipt of bill for calculation of number of days delayed for interest.*

*ii) GESCOM has considered the payment on the issue of date of cheque but the firm has considered the payment on the date of receipt of bill amount in their account ( i.e., firms account) for calculation of number days delayed and interest.*

*iii) The firm has claimed the interest on interest paid by GESCOM as per Hon’ble KERC Order Dtd.29.03.2012.*

*iv) Interest on Delayed Payment of arrears of Rs.9,21,36,374/- has been included in the total interest already paid by GESCOM. Therefore, there is no due towards interest on arrears as per Joint Memo signed by both the parties*

*v) GESCOM has paid excess interest of Rs.11,85,970/- and same will be recovered from firm.”*

10) From the pleadings, it is seen that the Respondent-1 has paid a certain sum as interest and has justified its method of calculation. The counsel for the Respondent-1 submitted that all the dues have been paid as per the Supplemental PPA dated 17.10.2007. The counsel for the Complainant submitted that the calculation of interest is not made as per the PPA

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and hence it amounted to non-compliance of the order dated 29.3.2012.

- 11) We need to examine whether under these circumstances and facts of the case, penal proceedings can be initiated against the Respondent-1, as sought by the Complainant. In this regard, we feel it appropriate to quote the decision of the Hon'ble Supreme Court of India reported in **1969 (2) SCC 627** (*M/s Hindustan Steel Ltd -Vs- State of Orissa*), dealing with such an issue, relevant portion of which reads thus :

*"8.....An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. ...."*

- 12) We note that the Respondent-1 would have been guilty, had it not paid any amount as interest, and such action would have amounted to a deliberate act of non-compliance of the direction of this Commission. It is not the case of the Complainant that no interest is paid at all. It is apparent that there is some disagreement with regard to the mode of calculation of interest, resulting in mismatch in the calculations of both parties. We consider that we cannot get down to the process of examining the correctness or otherwise of the calculation of interest in

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penal proceedings of this nature, as it may require interpretation of the clauses of the PPA, which is not within the scope of Section 142 of the Act. We, therefore, hold that there is no violation of the direction of the Commission by the Respondent, in order to invoke the provisions of Sections 142 and 146 of the Act. We also note that section 129 of the Act is not applicable to the case.

- 12) For the foregoing, we pass the following:

**ORDER**

The Complaint Petition is dismissed.

Sd/-

(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER