

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

Dated : 24th March, 2016

Present:

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

OP No.23 / 2015

BETWEEN:

- 1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru - 560 001.
- 2) State Load Despatch Centre,
No.28, Race Course Cross Road,
Bengaluru - 560 009.

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PETITIONERS

[Represented by Indus Law, Advocates]

AND:

Surana Industries Pvt.Ltd.,
Plot No.231-234,
Raichur Growth Centre,
KIADB
Raichur – 584 102.

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RESPONDENT

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ORDERS ON MAINTAINABILITY OF THE PETITION

- 1) In essence, the Petitioners in the above Petition have prayed for a direction against the Respondent to pay a sum of ₹23,27.03,477/- towards arrears of UI charges and back up charges, with future interest at the rate of 18% per annum on the above-said amount, till the date of actual

payment, and to permit the Petitioners to distribute the said amount recovered from the Respondent, amongst all the Electricity Supply Companies (ESCOMs) in the ratio as prescribed in the Notification bearing No.EN 11 PSR 2-013, dated 12.3.2013 issued by the Government of Karnataka, and to pass such other orders.

- 2) The Petition was admitted and Notice was issued to the Respondent for appearance. However, the Respondent remained absent, throughout.
- 3) In view of the amended Regulation 26 of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (hereinafter referred to as the 'CERC Open Access Regulations, 2008'), the Commission asked the learned counsel for the Petitioners to address his arguments on the issue of maintainability of the Petition before this Commission. Regulation 26 of the CERC Open Access Regulations, 2008, prior to its amendment, reads thus :

"Redressal Mechanism"

26. Unless the dispute involves the State Load Despatch Centre and intra-State entities of the concerned State and falls within the jurisdiction of the State Commission, all disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved."

After amendment, vide Notification dated 20.5.2009, the said Regulation 26 reads thus :

"Redressal Mechanism

26. All disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved."

- 4) The learned counsel for the Petitioners relied upon the decision of the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No.200/2009, in the case of *M/s. Pune Power Development Private Limited –Vs- Karnataka Electricity Regulatory Commission and others*, decided on 23.2.2016, to submit that the Petition is maintainable before this Commission.
- 5) The claim of the Petitioners relates to: (a) arrears of UI charges for the period from 1.2.2013 to 11.7.2013, with interest; and (b) arrears of back-up charges for the energy supplied to the Respondent for the period from February, 2013 to July, 2013, with interest. The arrears of back-up charges and interest on it is not part of any of the inter-State open access charges, therefore the recovery of the arrears of back-up charges and the interest payable on it, can be entertained by this Commission. Therefore, we asked the learned counsel for the Petitioners to submit his views as to whether the present Petition is maintainable for recovery of arrears of the UI charges and the interest payable on it.

- 6) In Appeal No.200/2009, referred to above, the Hon'ble ATE, after considering the scope of Sections 79(1)(f) and 86(1)(f) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') regarding the jurisdiction of the Central Commission and the State Commission to adjudicate upon disputes, has held in paragraph-23 of its Order, thus :

"The clauses (a) to (d) of Sub-Section (1) of Section 79 of the Act refer to the tariff of Central generating Companies and Tariff relating to composite scheme and inter-State transmission. A reading of this Section would make it clear that the jurisdiction conferred on the Central Commission is restricted to the aspects which are specified under clauses (a) to (d) aforesaid. However, if the jurisdiction of the State Commission which conferred under Section 86(1)(f) of the Act is looked into, it would be clear that no such restrictions are placed on its jurisdiction. In other words, all disputes between the licensees which do not fall under Section 79(1)(a) to (d) are within the jurisdiction of the State Commission."

- 7) Sections 79(1)(f) and 86(1)(f) of the Act read thus :

"79. Functions of Central Commission.- (1) The Central Commission shall discharge the following functions, namely:-

(a)	XXX	XXX	XXX
(b)	XXX	XXX	XXX
(c)	XXX	XXX	XXX
(d)	XXX	XXX	XXX
(e)	XXX	XXX	XXX

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration; ..."

“86. Functions of State Commission.-(1) The State Commission shall discharge the following functions, namely: -

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|-----|-----|-----|-----|
| (a) | XXX | XXX | XXX |
| (b) | XXX | XXX | XXX |
| (c) | XXX | XXX | XXX |
| (d) | XXX | XXX | XXX |
| (e) | XXX | XXX | XXX |

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration; ...”

- 8) The UI charges claimed by the Petitioners relates to inter-State open access availed by the Respondent-Generating Company. The Respondent had already obtained the inter-State open access and it had transmitted electricity to the designated destination. Therefore, there is no dispute for adjudication in regard to the inter-State transmission of electricity under the open access granted to the Respondent. As the Respondent has failed to pay the UI charges as required under Regulation 20 of the CERC Open Access Regulations, 2008, the Petitioners have filed the present Petition. This dispute involving the Respondent-Generating Company is not in regard to the inter-State transmission of electricity. Unless the dispute is in regard to the inter-State transmission of electricity, the Central Commission cannot adjudicate the same. Therefore, the present dispute, which does not fall under Section 79(1)(f) of the Act, is to be adjudicated upon by this Commission.

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

ORDER

This Commission has jurisdiction, under Section 86(1)(f) of the Electricity Act, 2003, to adjudicate the dispute involved in the present Petition.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER