

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 12th June, 2018

Present:

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

OP No.69/2016

BETWEEN:

Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019. ..

PETITIONER

[Represented by Induslaw, Advocates]

AND:

South India Paper Mills Ltd.,
Chikkayana Chatra,
Nanjangud – 571 301.

Also at:

1205,1206, Prestige Plaza,
11, M.G. Road,
Bengaluru – 560 001 ..

RESPONDENT

[Represented by Shri C.K. Nandakumar, Advocate]

ORDERS

- 1) In the present Petition, the main issue for consideration is:

Whether the Respondent-Captive Biomass based Power Generating Plant, which has entered into a Power Purchase Agreement (PPA) dated 30.03.2001 with the Distribution Licensee, for sale of the exportable capacity of about 4 MW of power, could enhance its captive consumption, so as to reduce the exportable capacity, agreed to be sold under the PPA?

- 2) The relevant facts, required for considering the above issue, may be stated as follows:

- (a) The Respondent has been running a Paper Manufacturing Company since more than 50 years, having its Unit located in Nanjangud, with a capacity of 200 MTs per day. The Respondent has also set up a Captive Biomass based Power Generating Plant of 7.8 MW capacity, situated at Chikkayana Chatra, Nanjangud, i.e., at the same site where the Paper Mill is situated, as per the Order dated 07/11.04.2000 of the Government of Karnataka. The Respondent has entered into the PPA dated 30.03.2001 with the Karnataka Power Transmission Corporation Limited (KPTCL), the predecessor of the Petitioner-Chamundeshwari Electricity Supply

Corporation Limited (CESC), with an exportable capacity of 4 MW, on the terms and conditions stated in the said PPA.

- (b) The Respondent has newly started a Printing and Packaging Unit, located at a distance of about 1.5 KM from the Captive Power Plant, in the year 2008. The Respondent has constructed a dedicated transmission line from its Captive Power Plant to its Printing and Packaging Unit in the year 2009, and thereafter, started utilizing the power generated from the Captive Power Plant to its Printing and Packaging Unit. Earlier to it, the Printing and Packaging Unit was supplied with electricity by the Petitioner, with R.R.No.HTR-47, to the extent of 500 kVA on HT(2a) tariff, in May, 2008. As the power from the Captive Power Plant was being used for meeting with the requirements of the Printing and Packaging Unit, the exportable capacity was reduced, thereby the energy being delivered to the Petitioner was reduced, considerably.
- (c) The Petitioner has contended that, in breach of the term for supply of 4 MW capacity of power, as agreed in the PPA, the Respondent has been utilizing the power for its Printing and Packaging Unit, thereby, the Respondent was liable to pay compensation for failure to supply the agreed exportable capacity of 4 MW of power. The Petitioner has quantified the said compensation at ₹37,75,72,966/-. The Petitioner has

contended that, the laying of a dedicated transmission line from the Captive Power Plant to the Printing and Packaging Unit of the Petitioner is illegal and has requested for a direction against the Respondent to remove the said line. Further, the Petitioner has requested for a direction against the Respondent to fulfil its obligation and to specifically perform the term of the PPA, for supply of the exportable capacity of 4 MW of power for the remaining period of the PPA.

- (d) The Respondent, in its Statement of Objections, has contended that, it is entitled to utilize the power generated for its own use at the Printing and Packaging Unit and the terms of the PPA for supply of the exportable capacity of power does not come in its way and that laying of the dedicated transmission line is valid and that the quantum of compensation claimed by the Petitioner is too excessive and that it was not liable to pay any compensation. Therefore, the Respondent has prayed for dismissal of the Petition.
- (e) Subsequently, the Petitioner has filed a Rejoinder and the Respondent has filed its Sur-Rejoinder, reiterating their respective earlier contentions.

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- 3) We have heard the learned counsel for the parties and perused the material placed on record. Our findings on the issue noted above are as follows:
- 4) **ISSUE** : *Whether the Respondent-Captive Biomass based Power Generating Plant, which has entered into a Power Purchase Agreement (PPA) dated 30.03.2001 with the Distribution Licensee, for sale of the exportable capacity of about 4 MW of power, could enhance its captive consumption, so as to reduce the exportable capacity, agreed to be sold under the PPA?*
- (a) The Respondent's Paper Manufacturing Unit has been in existence for more than 50 years. The Respondent has installed a Biomass based Captive Power Plant (Project) of about 7.8 MW capacity. Subsequent to the PPA dated 30.03.2001, the commercial operation of the Project appears to have taken place, within the usual period of two years from the date of the PPA. The Printing and Packaging Unit of the Respondent appears to have come into existence in and around 2008. The Respondent obtained a 500 kVA power connection for this Unit from the Petitioner at HT(2a) tariff in and around May, 2008. The said Printing and Packaging Unit is situated at a distance of about 1.5 KM, from the Paper Manufacturing Unit of the Respondent. After completion of laying of the dedicated transmission line, the flow of energy from the Captive Power Plant to the Printing and Packaging Unit of the Respondent appears to

have commenced from the end of 2009. It appears, before installation of the biomass based Captive Power Plant, the Paper Manufacturing Unit of the Respondent was having the power supply from the local Distribution Licensee, through the Grid.

- (b) The concept of 'Captive Power Generation' was also recognized during the regime of the Electricity (Supply) Act, 1948. There were different Policies and Orders issued by the authorities concerned, in this regard. The Captive Power Policy (circulated in July, 2001), issued by the Ministry of Power, Government of India, contains the need for encouraging the Captive Power Plants and utilizing their surplus output by the State Grid and recommends to the States the general Guidelines, to enable a more liberal framework for setting up the Captive Power Plants. The present Electricity Act, 2003 has adopted a still more liberal approach for setting up of the Captive Power Plants, where obtaining licence is dispensed with.
- (c) The energy generated from the Captive Power Plants could be used by the owner of the Captive Power Plant and the balance power, after meeting its requirements, could be sold to the Distribution Licensee or to a consumer availing the Open Access. In the present case, the Respondent has executed the PPA dated 30.03.2001, agreeing to sell the surplus energy of 4 MW to the Petitioner. Subsequent to the execution of the PPA,

the Respondent has established its Printing and Packaging Unit, thereby increasing its captive usage. The question for our consideration would be: *'Whether the terms and conditions agreed to between the parties in the PPA disentitles or prohibits the Respondent to utilize the captive power to meet its subsequently added requirement?'* The answer to this question depends upon the terms of the PPA, regarding the commitment of the Respondent to supply a particular quantity of power in terms of units on an annual basis or during a particular interval.

- (d) The consideration of the various terms contained in the PPA, in question, does not establish that the Respondent has committed to supply a fixed quantity of power in terms of units, to the Petitioner. The relevant definitions stated in the PPA in this regard are as follows:

"Article 1.1:

'Exportable Capacity' means surplus available Electricity generated by the Project, after providing for captive Electricity consumed by the Company which shall be normally 4.0 MW."

'Delivered Energy' means the kilowatt hours of Electricity actually fed and measured by the energy meters at the Delivery Point in a Billing Period after deducting therefrom, the energy supplied by Corporation to the Project, as similarly measured during such Billing Period."

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- (e) Article 4 of the PPA states the obligations of the Respondent and the Petitioner. The relevant obligation, imposed on the Respondent, states that, it shall operate and maintain the Project in accordance with the Prudent Utility Practices. So far as the obligation imposed on the Petitioner is concerned, it states that, subject to system constraints to off-take and purchase all the Electricity made available by the Company at the Delivery Point. The term regarding supply of 4 MW surplus available energy, generated by the Project to the Petitioner, would not assure the Purchaser the supply of any particular quantity of energy, without there being any further term, fixing the Plant Load Factor (PLF), and the Plant Availability Factor (PAF). No other Article in the PPA obliges the Respondent to supply a particular quantity of energy in terms of units, during any interval.
- (f) The definition of 'Exportable Capacity' in the PPA makes it clear that, the surplus available electricity generated by the Project, after providing for captive electricity consumed by the Respondent, would normally be 4.0 MW. This was the estimate made as on the date of the PPA in regard to the 'Exportable Capacity'. In the case of the Captive Power Plant, the sale of energy to the Distribution Licensee, or to a consumer, would be only the surplus energy available, after providing for the captive consumption. There is no provision restricting the Respondent from

supplementing its requirement of power, subsequent to the execution of the PPA. The Electricity Act, 2003, as well as the Electricity (Supply) Act, 1948, recognize the right of the owner of the Captive Power Plant to use the power generated for self-consumption. When there is such recognition of the right of the Respondent for self-consumption, there should be a specific term in the PPA, to restrict such right of self-consumption. As already noted, the PPA in question does not, in any manner, restrict the quantum of self-consumption of the Respondent, prohibiting to supplement the self-consumption. The Respondent's obligation to supply the exportable capacity under the PPA, at best, prohibits it from selling the power to a third party, during the term of the PPA. For the above reasons, we are of the considered view that, in the present case, the Respondent is at liberty to supplement its quantum of self-consumption, subsequent to the execution of the PPA, which does not amount to contravening any of the terms mentioned in the PPA. Therefore, we answer this issue in the affirmative.

- 5) The Commission is required to answer all the issues arising in a case. Therefore, in the present case, we are answering the issue regarding the quantum of damages to be awarded to the Petitioner, if it were to be held that, there was breach of the supply obligation by the Petitioner, by

increasing its captive consumption subsequent to the execution of the PPA, as follows:

- (a) The Petitioner has claimed a sum of ₹37,75,72,966/-, as damages, claiming it to be the losses incurred by the Petitioner for the period between April, 2009 to March, 2016 for failure to supply the agreed quantum of electricity, including interest at 18% per annum, on the said losses. The details of the above-said damages are given in ANNEXURE-D to the Petition. The Petitioner has calculated the short-supply of energy in a month, taking into account the difference between the proportionate energy to be exported as per the PPA, out of the actual energy generated, and the actual energy exported to the Grid. The Petitioner has also calculated the difference between the short-term power purchase cost per unit computed at the highest approved tariff for the respective Financial Year and the tariff per unit paid to the Respondent in a Financial Year. The financial loss has been calculated, for a month, by multiplying the short-supply of energy in a month and the highest approved tariff in a Financial Year. The financial loss, so arrived at, from April, 2009 to March, 2016 was worked out to ₹18,87,86,483/-. It appears, the interest claimed on the said financial loss from April, 2009 to March, 2016 was also considered at ₹18,87,86,483/- and therefore, the Petitioner has claimed a compensation of ₹37,75,72,966/-.

- (b) It appears, the above method, adopted by the Petitioner for computation of the damages, is incorrect. It is so, because, out of the actual energy generated in a month, even when there is no additional increase of load subsequent to the PPA, the Respondent is obliged to export only the surplus available energy, after meeting with its requirement for captive consumption. Therefore, the exportable capacity may vary depending on the surplus energy available. There is no obligation on the Respondent to restrict its consumption only to 3.8 MW of energy in a month. Therefore, the Petitioner cannot claim the proportionate energy, as agreed in the PPA, out of the actual energy generated. There is no evidence that, the so called short supply of energy in a month was only due to the additional load of the Printing and Packaging Unit of the Respondent. One cannot rule out the possibility of more consumption in the existing load of the Paper Manufacturing Unit.
- (c) The Petitioner should have ascertained the quantum of energy consumed at the Printing and Packaging Unit of the Respondent, from out of the captive generation. This quantum of energy could be treated as the quantum of short-supply to the Petitioner, due to the additional load of the Printing and Packaging Unit. We are of the view that, the energy consumed by the Printing and Packaging Unit could be ascertained in

one or the other way. This quantum of energy could be multiplied by either the PPA rate or by the Average Power Purchase Cost (APPC), prevalent during the relevant year, in order to arrive at the compensation payable.

- (d) The present Petition is filed on 29.07.2016, before this Commission. We are of the considered view that, any claim for compensation, for breach of any term of the contract should be within three years, from the date of filing of the Petition, and any claim earlier to that period would be barred by limitation. The cause of action for claiming compensation or damages for breach of contract arises from the date of such breach, but not from the date of knowledge. In the present case, the contention of the Respondent that, the laying of the dedicated transmission line was known to the Petitioner at the beginning itself, appears to be acceptable from the material on record. There is no reason to doubt the genuineness of the said material produced. Therefore, the claim for compensation that could be awarded to the Petitioner should be within three years from the date of filing of this Petition. The Petitioner has claimed compensation from April, 2009 to March, 2016. The claim falling due prior to 28.07.2013 would be barred by limitation.

- 6) The other issue for consideration is, whether the Respondent could lay the dedicated transmission line without obtaining the licence. In this regard, the Petitioner has contended that, laying of the dedicated transmission line, from the Captive Power Plant to the Printing and Packaging Unit of the Respondent, is unauthorized, as the required licence was not obtained. This contention appears to be not correct. The Captive Power Generator is at liberty to construct the dedicated transmission line without obtaining any licence for the purpose. Therefore, we answer this issue, accordingly.
- 7) For the foregoing reasons, we pass the following:

ORDER

The Petition is dismissed, holding that, there is no breach of the term of the PPA dated 30.03.2001 by the Respondent.

Sd/- (M.K. SHANKARALINGE GOWDA) CHAIRMAN	Sd/- (H.D. ARUN KUMAR) MEMBER	Sd/- (D.B. MANIVAL RAJU) MEMBER
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