

No.N/25/07

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 9th September 2009

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| 1. Sri K.P. Pandey | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 15/2007

Between

M/s International Power Corporation Ltd.
No.38, 'Radhakrishna'
2nd Main, Defence Colony
Indiranagar, II Stage
BANGALORE – 560 038
(Represented by its Advocate Sri Prabhuling Navadgi)

... Petitioner

And

1. The Managing Director
Karnataka Power Transmission Corpn. Ltd.
Kaveri Bhawan, Kempegowda Road
Bangalore – 560 009
2. The Chief Electrical Inspectorate to Govt. of Karnataka
'Mysugar Building', Ground Floor
J.C. Road, P.B.No.5145
Bangalore – 560 001
3. M/s Paschim Hydro Energy Pvt. Ltd.,
No.25, 1st Floor, II Cross,
CSI Compound, Mission Road
Bangalore – 560 027
(Represented by its Advocate Sri Sriranga)

...Respondents

1. The petitioner M/s International Power Corporation Limited (hereinafter referred to as Petitioner) has filed this petition praying for the following :
 - (a) Issue a direction to Respondents to strictly comply and adhere to clause 4 of the Power Purchase Agreement entered into between petitioner and respondent company dated 10.10.2003.
 - (b) Issue direction to the respondent to pay the compensation for the loss suffered by the petitioner due to the tapping of the transmission line by M/s Paschim Hydro Energy Pvt. Ltd.
 - (c) Issue such other directions to the respondent company for taking steps as are necessary and required or ensuring the M/s Paschim Hydro Energy Pvt. Ltd. withdraws forthwith from tapping the dedicated 66 KV transmission lines constructed by petitioner company from Kemphole Mini Hydel Scheme to sub station at Sakleshpur.
2. As the allegations of the petitioner are specifically against M/s Paschim Hydro Energy Pvt. Ltd., an another generating company, petitioner was directed to implead the said company also as one of the respondents so that all concerned parties are heard. Accordingly petitioner impleaded M/s Paschim Hydro Energy Pvt. Ltd. as the third Respondent.
3. The Respondents (1) & (3) have appeared through their counsels and have filed their statement of objections refuting the allegations made in the petition and have sought for rejection of the petition. The 2nd Respondent Chief Electrical Inspector to Government of Karnataka has filed a written submission stating that it has no role in the issues involved in the petition.
4. The facts of the case are as follows :

The petitioner company has set up 18 MW generating plant on the river Kemphole near Marnhalli village, Sakleshpur taluk, Hassan district. It has also entered into a Power Purchase Agreement (PPA) with the 1st respondent on 10.10.2003 to sell the electricity generated.

5. It is the case of the petitioner that Respondent No.1, contrary to Clause 4.1 (vii) of the PPA has tapped the line constructed by it by way of LILO to provide connectivity to the 3rd respondent M/s Paschim Hydro Energy Pvt. Ltd. and on account of this, it is not able to generate and evacuate the power to the full capacity of the plant. Therefore it has sought a direction not to tap the line constructed by it for the benefit of Respondent No.3.
6. The 1st respondent has in reply contended that the condition referred to by the petitioner applies only to the petitioner company as an obligation and not to the 1st Respondent. He further contends that as per the provisions of Electricity Act, 2003, Respondent No.1 is entitled to use the transmission line even though it is constructed at the cost of the petitioner since after commercial operation date as per Clause 4.2 (iv) of the PPA, the line has to be maintained by it at its cost. He also submits that evacuation of power generated by another mini hydel project namely M/s Paschim Hydro Energy Pvt. Ltd. has been arranged in such a way so as not to affect the evacuation of power by the petitioner. He also refers to the discussions held with both the companies which is minuted as per Annexure-R1 wherein the problems posed by the petitioner have been addressed and there is no cause for petitioner's grievance.
7. The counsel appearing for Respondent No.3 supporting the arguments made by the 1st respondent's counsel contends that as per Clause 4.2(4) of the PPA and Sections 30 & 40 of Electricity Act, 2003 read with grid code, the respondent has right to tap the line even if it is constructed at the cost of the petitioner for evacuation of the power generated by his client and there is nothing illegal in the arrangement made.
8. We have considered the arguments of all the parties and also the pleadings and the supporting documents.
9. The main question arises for consideration is whether the 1st respondent has a right to tap the transmission line constructed by the petitioner

despite the fact that the petitioner has borne the cost of its construction to evacuate the power generated by the 3rd Respondent.

10. In our considered view, in law the 1st Respondent is entitled to tap the line for its efficient and economical use even though constructed at the cost of the petitioner as per Section 40 of the Electricity Act, 2003. Section 40 of the Electricity Act, 2003 reads as follows :

Section 40 : Duties of the Transmission Licensees – It shall be the duty of a transmission licensee –

- (a) to build, maintain and operate an efficient, co-ordinated and economical Inter-State transmission system or Intra-State transmission system, as the case may be;*
- (b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the case may be;*
- (c) to provide non-discriminatory open access to its transmission system for use by –*
 - (i) any licensee or generating company on payment of the transmission charges;*
 - (j) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission;*

Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Appropriate Commission:

Provided also that such surcharge may be levied till such time cross subsidies are not eliminated:

Provided also that the manner of payment and utilization of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

In our view, the words 'efficient', 'coordinated' and 'economical' used in the above provision takes into their sweep optimally using the existing transmission lines. Further, Clause 4.2(iv) of the PPA imposes an obligation on the respondent to undertake maintenance of transmission lines used for petitioner's power evacuation at its own costs. This, in other words means, once the line is constructed by the petitioner it gets handed over to the respondent for operation and maintenance at its cost. Otherwise respondent need not maintain the line and incur cost for the same. Therefore we hold that the contention put forward by the petitioner that the tapping of the line constructed by it is contrary to PPA does not merit acceptance. Reference to Clause 4.1(vii) also does not help the petitioner as it imposes an obligation only on the petitioner and not on the 1st respondent. If the intention of the parties to the PPA was otherwise, a similar clause as the one contained in Clause 4.1(vii) would have been added in Clause 4.2 also.

11. Though the petitioner has contended that tapping of evacuation line constructed by it for evacuating the power of Respondent No.3 is causing loss, no material in support of the same has been produced. To award damages mere statement that it has suffered loss will not be enough. At any rate in the present case question of awarding damages does not arise as we have held that tapping of the line by Respondent No.1 as legal.
12. Though we have held that the Respondent No.1 is entitled to tap the line constructed by the petitioner, it shall not mean that respondent can use

the line in such a way so as to cause problems to the petitioner as admittedly petitioner has borne the cost of construction of the concerned transmission line. The respondent shall always ensure that there will be no difficulty for the petitioner in evacuating the power generated by it at any time. If there are any problems, respondents shall address the same expeditiously.

13. In the light of the foregoing discussion, the petition is liable to be rejected and accordingly the same stands rejected.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER