

No.N/44/08/

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 30th July 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 24/2008

Between

M/s. BMM Ispat Limited
No.114, Dhanapur Village
Hospet Taluk
Bellary District
(Represented by its Advocate Sri H. Srinivas Rao)

.... Petitioner

Vs.

1. The Managing Director
Karnataka Power Transmission Corporation Ltd.,
Kaveri Bhawan, Kempegowda Road
BANGALORE – 560 009
2. The Managing Director
GESCOM, Station Road
GULBARGA – 585 102
3. The Chief Engineer (Elec.)
State Load Despatch Centre (SLDC), KPTCL
No.28, Race Course Road
BANGALORE – 560 009
4. The Principal Secretary to Govt.
Department of Energy, Govt. of Karnataka
Vikasa Soudha
BANGALORE – 560 001
(Represented by its Advocate Sri Sriranga)

... Respondents

1. The petitioner – M/s BMM Ispat Limited has presented this petition seeking direction to the Respondents 1 to 3 to grant No Objection or Standing Clearance for trading of power through power exchange which was sought vide their letter dated 14.10.2008 under Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 and to pay the arrears of Rs.2.33 crores along with interest as per SBI medium term lending rate per annum.

2. The petitioner on 15.01.2009 filed an application for impleading Government of Karnataka as 4th respondent and IA 2 for issuing direction to the respondents to pay for the power supplied at Rs.8/- per unit with effect from 10.01.2009 as the supply to the state grid has been made compulsory by the State Government vide its Order dated 17.12.2008 issued in exercise of the powers conferred under Section 11(1) of Electricity Act, 2003.

3. The Commission vide its Order dated 22.01.2009 allowed IA 1 to implead the State Government as 4th respondent and also passed an Interim Order directing 2nd respondent to pay to the petitioner at Rs.4/- per unit for the power supplied pending consideration of the main petition.

4. We have heard the counsel representing the petitioner as well as the respondents.

5. It is an admitted fact that the petitioner has set up 25 MW coal based thermal power plant at the Dhanapura village of Hospet taluk in Bellary district to meet its captive load of the steel plant. Since petitioner had surplus power after meeting its captive requirements, it entered into a Power Purchase Agreement dated 10.07.2008 with 2nd respondent to sell electricity for the period starting from 11.07.2008 to 10.01.2009. Before the

expiry of this period, petitioner made an application on 14.10.2008 to the 3rd respondent – the Chief Engineer, State Load Despatch Centre, informing that after 10.01.2009 they want to trade the excess power through energy exchange and therefore to grant it Standing Clearance/No Objection for trading of the power through power exchange. The 3rd respondent did not grant the permission sought by the petitioner. Aggrieved by the non-grant of permission, petitioner has presented the present petition. In the meanwhile the Government of Karnataka vide its Order dated 30.12.2008 passed an Order in exercise of the powers conferred under Section 11 of the Electricity Act, 2003 directing all the generators of the State to generate electricity to their maximum exportable capacity and PLF and feed the same to the grid keeping in view the acute power situation in the State.

6. Pursuant to the issue of the Government Order, the counsel for the petitioner did not press for the relief relating to grant of open access and confined his arguments for payment of charges for the electricity supplied during the currency of the Government Order passed under Section 11(1) of the Electricity Act, 2003. His contention is that under Section 11(2) of the Electricity Act, 2003 his client is entitled to the price for the electricity at the rate prevailing in the power exchange as otherwise he would have sold through power exchange and realised that charge. Per contra the counsel appearing for the respondents submitted that the petitioner is not entitled to get Rs.8/- per unit, based on power exchange rates and the petitioner himself was selling the power at Rs.2.75 per unit prior to issuance of the Government Order. According to him, it is entitled to charges at the same rates as was agreed in the PPA as while agreeing to this price the petitioner must have taken all relevant factors into consideration.

7. In view of the giving up of the prayer for permission for open access, only question remains to be considered by the Commission is at what rate the petitioner has to be paid by the respondents for the power sold to them pursuant to the Government Order issued under Section 11(1) of the Electricity Act, 2003.

8. Section 11 of the Electricity Act, 2003 reads as under :

11. Directions to generating companies. – (1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of the Government.

Explanation. – For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of this State, public order or a natural calamity or such other circumstances arising in the public interest.

(2) The appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.

9. The Commission is not concerned with the validity of the direction issued by the Government. However this Commission under Sub section (2) of Section (11) has power to offset, the adverse financial impact arising out of the direction issued by the Government under sub-section (1) of section 11. in such manner as it considers appropriate.

10. The word 'offset' according to Oxford Dictionary means "a consideration or amount that diminishes or balances the effect of contrary one or counter balance or compensate for". The word 'adverse' according to Oxford Dictionary means "harmful or unfavourable". The word impact according to Oxford Dictionary means "a marked effect or influence". According to Law Lexicon authored by Ramnath Iyer, the word offset account means "produce a net balance". The word offset according to Black Law Dictionary means "to balance or to adulate against, to compensate for, gains off set the losses".

11. Considering the meaning of the words used in Section 11(2) in the light of the above it appears to us that the words 'may offset the adverse financial impact' mean to compensate the petitioner for unfavourable financial impact. In other words the generator shall be entitled to get compensated for the energy he has supplied without suffering a loss.

12. The next question that arises is what is the compensation the generator shall be entitled to in the present case ? In our considered opinion, the compensation to which the generator is entitled to shall be as the one given to similarly placed generators whom the Government has fixed the price.

13. The learned counsel for the petitioner has placed before the Commission the Government Order wherein a rate for cogeneration plants was fixed, at Rs.6.50 per unit in support of his case and based on it he contends that his client is entitled to more than Rs.6.50 per unit as the rate of Rs.6.50 to cogeneration plants has been fixed taking into account bagasse and coal used in the proportion of 1:2 while petitioner's plant used imported coal which was costlier.

14. According to us the claim of the petitioner for rate higher than Rs.6.50 per unit cannot be accepted as no material has been placed in support of the claim except basing his arguments on the rates prevailing in Power Exchange. Admittedly the petitioner was supplying power at Rs.2.75 per unit prior to January 2009. Petitioner merely on the ground that it has become member of Power Exchange cannot demand the rate prevailing in the Exchange as rates in Power Exchange keep varying everyday depending on several factors. Since the Government had fixed price for cogeneration plants at Rs.6.50 per unit taking into account bagasse and coal in the ratio of 1:2 and Rs.6.50 to JSW Energy (which is also coal based plant), we deem it fit and proper to order for payment for the electricity supplied at Rs.6.50 per unit. This in our opinion will adequately compensate the petitioner for the adverse financial impact it has faced on account of the Government Order issued under Section 11 of the Electricity Act, 2003 and also fair and reasonable.

15. This Commission had passed an Interim Order on 22.01.2009 to pay the petitioner at Rs.4/- per unit pending consideration of the matter on merit and Respondent No.2 has paid accordingly. The petitioner shall be paid the difference of the rate between Rs.6.50 and Rs.4.00, i.e., Rs.2.50 in addition to what is already paid.

16. Petition is allowed in part. Direction is issued to the respondents to pay the petitioner at Rs.6.50 per unit for the electricity supplied pursuant to the Government Order dated 30.12.2008, after adjusting the amount already paid, within a period of eight (8) weeks from the date of receipt of the copy of this Order.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K.SRINIVASA RAO)
MEMBER