

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

Dated : 21st July, 2016

Present:

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

RP No.2 / 2015

BETWEEN:

GEM Sugars Limited
Hoodi Apartments, III Floor,
120, Cunningham Road,
Bengaluru- 560 025

..

PETITIONER

[Petitioner represented by Smt. Poonam Patil, Advocate]

AND:

- 1) The Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bengaluru - 560 009
- 2) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi - 580 029

..

RESPONDENTS

[Respondents represented by M/s. Induslaw, Advocates]

ORDERS

- 1) In this Review Petition, the Petitioner has prayed for allowing the claims made by it in OP No25/2013, even as against the 1st Respondent- Karnataka Power Transmission Corporation Limited (KPTCL).

- 2) In OP No.25/2013, the Petitioner had prayed for directions against the 1st Respondent-KPTCL and the 2nd Respondent-Hubli Electricity Supply Company Limited (HESCOM) for payment of Rs.19.82 Lakhs and Rs.84.53 Lakhs, respectively.
- 3) In OP No.25/2013, during the course of hearings, on 13.11.2014 the Commission noted the submission made by the learned counsel for the Petitioner that, "the claims against the 1st Respondent was settled." In view of the said submission, the Commission did not pass any direction, in its final Order dated 26.2.2015, as against the 1st Respondent for payment of the amount claimed, but had given a direction only against the 2nd Respondent for payment of the amount due to the Petitioner.
- 4) Now, in the present Review Petition, the Petitioner has contended that no submission was made on its behalf, on 13.11.2014, to the effect that the claims against the 1st Respondent had been settled, and has further contended that the same might have been recorded erroneously in the Order Sheet of the proceedings dated 13.11.2014.
- 5) After filing the present Review Petition, the learned counsel for the Petitioner was asked to file an Affidavit in support of the contentions raised in the Review Petition. The learned counsel for the Petitioner has

filed her own Affidavit dated 23.7.2015. In paragraph-10 of the said Affidavit, it is stated thus :

"It is respectfully submitted that a submission was made that as regards payment of non-grant of escalation price coupled with interest on delayed payment of non-grant of escalation price, Respondent No.1, KPTCL owed nothing to the Petitioner-Company and that the claim against Respondent No.1, KPTCL was only with respect to interest on delayed payment of regular bills (Rs.19,82,703.00). It appears that the said submission has been recorded to mean that the Petitioners have no claim against Respondent No.1."

6) The Respondents have opposed the Review Petition. The gist of the Respondents' contentions may be stated as follows :

(a) Paragraph-4 of the Statement of Objections of the Respondents reads thus:

"It is submitted that on 13.02.2014, the Respondents filed a Memo stating that a sum of INR 27,02,853 was paid by the 1st Respondent and a sum of INR 1,51,20,098 was paid by the 2nd Respondent and that there were no amounts that were due to the Petitioner by the Respondents. The Petitioner responded to this Memo dated 13.02.2014 vide a Reply dated 10.04.2014. In this Reply, the Petitioner acknowledged that the payments made by the Respondents were in accordance with the Order passed by this Hon'ble Commission in OP No.18/2008 and that for the said reason the Petitioner had no claims against the 1st Respondent."

(b) Further, it is contended that, on 13.11.2014, the learned counsel for the Petitioner submitted that the claims against the 1st Respondent have been

settled, and pursuant to this submission, the Commission proceeded to record the same in the Order Sheet. Further, it is also pointed out that, in the reply dated 10.4.2014 filed by the Petitioner in OP No.25/2013, it is categorically stated that, "*the 1st Respondent has made all payments as ordered by this Commission in OP No.18/2008.*" Therefore, the Respondents have prayed for dismissal of the Review Petition.

- 7) We have heard the learned counsel for the parties. We have gone through the files in OP No.18/2008 and OP No.25/2013 available with the Commission.
- 8) The following issues would arise for our consideration:
 - (1) Whether, the claim made against the 1st Respondent by the Petitioner in OP No.25/2013 has been settled, as noted in the Order Sheet of the proceedings dated 13.11.2014 in the said case?
 - (2) If Issue No.(1) is answered in the negative, is it necessary to set aside the Order dated 26.2.2015 passed in OP No.25/2013, even as against the 2nd Respondent?
 - (3) What Order?
- 9) After considering the pleadings and the submissions made by the parties, our findings on the above issues are as follows :

10) **ISSUE No.(1)**: *Whether, the claim made against the 1st Respondent by the Petitioner in OP No.25/2013 has been settled, as noted in the Order Sheet of the proceedings dated 13.11.2014 in the said case?*

(a) The proceedings dated 13.11.2014 in OP No.25/2013, as noted in the Order Sheet, reads thus :

“Case called. Counsel for both parties present. Counsel for Respondent 2 files objections. Counsel for Petitioner submits that the claims against Respondent 1 is settled. Call on 27.11.2014.

(b) The above admission of the learned counsel for the Petitioner should relate to the claim made by the Petitioner in OP No.25/2013 against the 1st Respondent,

(c) The claims in OP No.25/2013 against both the Respondents relate to the interest due at the rate of 6.5% per annum on the delayed payments of monthly tariff invoices, raised by the Petitioner towards the supply of energy from its Co-gen Plant from April, 2003 to March, 2010. The Petitioner had sought for a direction against the 1st Respondent for payment of Rs.19.82 Lakhs and a direction against the 2nd Respondent for payment of Rs.84.53 lakhs.

(d) The Petitioner had filed OP No.18/2008 before this Commission seeking for a direction against the first respondent herein to pay a sum of Rs.1,90,06,094/- towards arrears, along with interest at 18% per annum, till

the date of realization, and for a direction against the second Respondent herein to pay a sum of Rs.15,68,01,662 towards arrears, along with interest at 18% per annum, till the date of realization.

- (e) The averments made in OP No.18/2008 would disclose that, the Respondents had frozen the tariff at Rs.3.32 per KWhr with effect from 1.4.2003 and that the yearly escalation agreed in the Power Purchase Agreement (PPA) was not granted and that the payments of bills at the frozen rate were not made within the due dates, and therefore in the said Petition, the Petitioner had claimed: (i) interest on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr; (ii) the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate; and (iii) the interest accrued on the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate.
- (f) The above said OP No.18 of 2008 was disposed of on 16.4.2009 in terms of the settlement arrived at between the parties. The relevant portion of the said Order reads thus :

“2. On 2.4.2009 the counsel appearing for both the parties submitted that they have come to a settlement in the following terms and the petition may be disposed of in these terms:

- (i) *The Respondents will abide by the PPA in force and will pay for the electricity supplied at the rate fixed in Clause 5.1 of the PPA which reads as under :*

'Monthly Energy Charges :

Corporation shall for the Delivered Energy pay, for the first ten years from the date of signing of Agreement, to the Company every month during the period commencing from the Commercial Operation Date on the basis of the Base Price applicable for the year 1994-95 at the rate of Rs.2.25 (Rupees Two and Twenty Five Paise) per KWhr (the tariff) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 5% per annum over the tariff applicable for the previous year as per guidelines issued by the Ministry of Non-Conventional energy Sources of the Gol.'

- (ii) *For the amounts not paid on account non-grant of escalation as provided in Clause 5.1, the respondents will pay an interest of 6.5% per annum.*
3. *Recording the above submissions this petition is disposed of."*

- (g) The Order dated 16.4.2009 in OP No.18/2008 does not in clear terms state, whether the claim in respect of 'interest on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr' was granted or not. However, there can be no dispute that, in OP No.18/2008, the other two reliefs sought for by the Petitioner, viz.: the amount due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate; and the interest accrued on the amount due towards the difference between the escalated rate as

per the terms of the PPA and the frozen rate, were granted, while reducing the rate of interest from 18% per annum to 6.5% per annum.

(h) The Respondents have interpreted the Order in OP No.18/2008 to the effect that, the first relief stated above, sought for by the Petitioner, was not granted by the Commission, but only the other two reliefs were granted. Therefore, according to the Respondents, they were liable to pay the dues only in respect of the second and third reliefs mentioned above, sought for by the Petitioner. With such an assumption, the Respondents have contended that they have paid the entire dues to the Petitioner on these two counts, as per their calculations. It is not in dispute that the Respondents had paid the amounts to the Petitioner in respect of these two claims. The Petitioner admits that the 1st Respondent-KPTCL has paid the entire dues towards these two heads. However, as against the 2nd Respondent, the Petitioner has contended that a portion of interest accrued on the amounts due towards the difference between the escalated rate as per the terms of the PPA and the frozen rate was not paid. The Petitioner has contended that, for the recovery of the balance interest, it has filed OP No.38/2015, which is still pending.

(j) On a perusal of the pleadings of the Petitioner in OP No.25/2013 and the documents produced therein, we believe that the Petitioner has

interpreted the Order in OP No.18/2008 as having granted all the reliefs sought for by it, with the reduced rate of interest at 6.5% per annum.

- (k) Subsequent to passing of the consent Order dated 16.4.2009 in OP No.18/2008, as against the 1st Respondent, the Petitioner had issued a letter dated 28.4.2009 (ANNEXURE-E in OP No.25/2013) claiming the following amounts:

(1)	Differential price amount	..	Rs. 88,25,382
(2)	Interest upto 31.3.2009	..	<u>Rs. 47,64,320</u>
	Total	..	<u>Rs.1,35,89,702</u>

Out of the above amounts, on 14.8.2009, the 1st Respondent-KPTCL paid Rs.85,67,894 towards the differential price amount and Rs.27,02,853 towards the interest. After receiving the above payments, the Petitioner went on claiming Rs.28.92 Lakhs as the amount still due, in its subsequent letters addressed to the 1st Respondent. Finally, the 1st Respondent replied, by letter dated 30.5.2013 (ANNEXURE-P in OP No.25/2013), that the balance amount that was being claimed by the Petitioner was towards the interest on delayed payments in respect of the regular tariff bills, paid at the rate of Rs.3.32 per KWhr, and the same was not allowed in OP No.18/2008, and thereby the 1st Respondent refused to pay the same.

- (l) Apart from the above amounts, the 1st Respondent has not paid any other amounts to the Petitioner. Therefore, if the Petitioner was entitled to any interest on delayed payments in respect of the regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr, the same was still outstanding from the 1st Respondent. As already noted, the 1st Respondent assumed that the Order in OP No.18/2008 did not contain any direction for payment of interest on delayed payments in respect of regular tariff bills, paid at the frozen rate of Rs.3.32 per KWhr.
- (m) From the analysis of the above facts, the question that would arise for our determination is, which of the claims made in OP No.18/2008 had been allowed in the Order dated 6.4.2009 passed in that case. Had this question been properly analyzed, there would have been no difficulty in arriving at a settlement between the parties with respect to the amounts payable under the Order passed in OP No.18/2008.
- (n) The Petitioner could not have filed fresh Original Petitions for recovery of the amounts already granted in OP No.18/2008. If any amount covered in OP No.18/2008 was not paid, the proper course for the Petitioner was to file a Complaint before this Commission for non-compliance of the Order in OP No.18/2008. However, the Petitioner went on filing OP No.25/2013 and OP No.38/2015 against the Respondents, including the major portion of the claims already granted in OP No.18/2008. In the subsequent Original Petitions, the Petitioner could not have included the

claims which were covered under the Order in OP No.18/2008. Therefore, there is a lot of confusion between the parties in settling the differences between them. The provisions of the limitation applicable for recovery of any amount covered under the Order of a Commission and for recovery of any fresh claims not covered under the orders of a Commission, are different.

- (p) In OP No.25/2013, the claim made was for recovery of the interest on the delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr. If that claim is acceptable, the 1st Respondent has not admittedly paid the said amount. During the proceedings in OP No.25/2013, the Petitioner filed its reply dated 10.4.2014 to the Memo dated 13.2.2014 of the Respondents, stating that OP No.18/2008 was filed with respect to the arrears due to non-grant of escalation of rate as provided in the PPA and the interest on the said differential amount and that the entire amount as against the 1st Respondent in this regard has been paid and settled. But, subsequently, the Petitioner has retracted from the said statement and contended in the Rejoinder filed on 22.1.2015 that the interest payable on the delayed payments on regular tariff bills at the frozen rate was also included in OP No.18/2008. Therefore, it appears, the learned counsel for the Petitioner herself must have made the statement on 13.11.2014 in OP No.25/2013 that, the claims have been settled as against the 1st Respondent. However, this admission is to be treated as incorrect, if the reliefs granted in

OP No.18/2008 included the claim regarding the interest on delayed payments in respect of regular tariff bills paid at the frozen rate of Rs.3.32 per KWhr.

(r) If an admission made by a party is duly explained or it is shown that it was wrong, the same cannot be relied upon. In the present case, it is shown that the admission made by the learned counsel for the Petitioner was incorrect. Therefore, we answer Issue No.(1) in the negative,

11) **ISSUE No.(2)** : *If Issue No.(1) is answered in the negative, is it necessary to set aside the Order dated 26.2.2015 passed in OP No.25/2013, even as against the 2nd Respondent?*

(a) The 1st Respondent has not filed its objections in OP No.25/2013, in view of the admission made by the Petitioner on 13.11.2014 that the claim made against it was settled. Now, it is found that the said admission was incorrect for one or the other reason. Therefore, the proceedings as against the 1st Respondent have to be continued in OP No.25/2013 to decide the respective contentions raised by the parties.

(b) As already discussed in paragraphs-10(m) & 10(n) above, the questions that would arise for our consideration are :

(i) Which of the claims made in OP No.18/2008 had been allowed in the Order dated 16.4.2009?

- (ii) For which of the claims, the Petitioner could have filed a fresh Original Petition against the Respondents?

These questions would arise for our decision against both the Respondents on similar set of facts. On the basis of the pleadings and the submission made on behalf of the 2nd Respondent, certain findings have been given on the above questions while passing the Order dated 26.2.2015 in OP No.25/2013. If this Commission, after hearing the Petitioner and the 1st Respondent on the very same questions, have to come to a different conclusion, that would result in inconsistent orders or unequal reliefs being granted to the similarly placed parties in the same case. Under the above circumstances, we are of the considered view that this Commission has the powers to recall the Order dated 26.2.2015 passed in OP No.25/2013 as against the 2nd Respondent, under Regulation 8 of the Karnataka Electricity Regulations (General and Conduct of Proceedings) Regulations, 2000. Therefore, we answer Issue No.(2) in the affirmative.

12) **ISSUE No.(3)** : *What Order?*

For the foregoing reasons, we pass the following :

ORDER

- (1) The Commission holds that the submission made by the learned counsel for the Petitioner in OP No.25/2013, to the effect that the claims as against the 1st Respondent-KPTCL have been settled, as

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recorded in the Order Sheet dated 13.11.2014 of that case, is incorrect;

- (2) Further, the Commission holds that it is necessary to set aside the Order dated 26.2.2015 passed in OP No.25/2013, even as against the 2nd Respondent-HESCOM. Accordingly, the said Order dated 26.2.2015 is hereby set aside;
- (3) The proceedings in OP No.25/2013 shall continue as against both the Respondents in that case; and,
- (4) The Office is hereby directed to re-file OP No.25/2013 and list the case for further hearing on 28.7.2016.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER