

No.: N/109/16

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

Dated : 11th May, 2017

Present:

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

OP No.74 / 2016

BETWEEN:

Global Energy Pvt. Ltd.,
207, Gera Imperium II, SF,
Patto Plaza,
Panjim,
North Goa,
Goa – 403 001

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PETITIONER

[Represented by Adlaw Partners, Advocates]

AND:

1) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001

2) Power Company of Karnataka Limited,
Cauvery Bhavan,
Bengaluru – 560 009

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RESPONDENTS

*[Respondent-1 represented by Just Law, Advocates,
Respondent-2 represented by Shri D.L. Chidananda, Advocate]*

ORDERS

- 1) The Petitioner had filed the above Petition for the following reliefs :
 - (a) To pass appropriate directions for implementation of the decision of this Commission, approving purchase of power by PCKL/ BESCO from GEPL in terms of the BESCO's Tariff Order dated 30.3.2016; and
 - (b) To quash the notice inviting tender dated 05.08.2016 (as amended on 11.08.2016), and further quash any steps taken towards procurement of 200 MW power on the existing radial lines where the present transaction between BESCO and GEPL is subsisting.
- 2) After contest, the above Petition was dismissed by this Commission by Order dated 1.9.2016, rejecting both the prayers,
- 3) In Appeal No.233/2016 preferred by the Petitioner against the said Order, the Hon'ble Appellate Tribunal for Electricity (ATE), by its Order dated 4.10.2016, remanded the matter for fresh consideration by setting aside this Commission's Order dated 1.9.2016. The relevant paragraph-22 of the Order of the Hon'ble ATE reads thus :

"In the circumstances, we set aside the impugned order. We remit the matter to the State Commission for a de novo hearing. The State Commission shall hear the parties afresh and deliver its judgment independently and in accordance

with law. We make it clear that we have upheld the preliminary objection raised by the appellant that the matter was heard by three members and the order was signed only by two members. We further make it clear that the impugned order is set aside only on that ground. The appeal is disposed of in the afore-stated terms."

After remand, the case was posted for further hearing. The parties have filed further pleadings and documents.

- 4) The Petitioner was supplying power to the 1st Respondent (BESCOM) from 3.7.2014 to 31.12.2014 at the rate of ₹4.85 per unit, in accordance with the bilateral Agreement between the parties for supply of power, duly approved by this Commission and the same was extended for a period of six months from 1.1.2015 and again it was extended for a further period of eleven months from 1.7.2015. Subsequently, on a request made by the Petitioner and the 2nd Respondent (PCKL) to procure power for a further period of eleven months from 1.6.2016 for a quantum of 235-270 MW, this Commission after considering the relevant facts, accorded approval for supply of only 165-200 MW of power for the period from 1.6.2016 to 31.8.2016. While approving the power procurement for only three months from 1.6.2016, this Commission had directed the 2nd Respondent (PCKL) to initiate the tender proceedings for procuring short-term power for any further period, instead of going on extending the bilateral Agreement between the Petitioner and the 2nd Respondent (PCKL) for supply of power. The Petitioner being

- aggrieved by the decision of this Commission in according approval for supply of power only for three months at the reduced quantum, had filed OP No.74/2016 with the prayers mentioned above, urging several grounds.
- 5) As per the directions of this Commission, the 2nd Respondent (PCKL) floated the tender and again that was a subject-matter of litigations before the Hon'ble High Court of Karnataka. As per the directions of the Hon'ble High Court in the said Writ Petitions, this Commission initiated *Suo Motu* Case No.1/2016 and issued Notices to all the parties involved. Ultimately on contest, this Commission by its Order dated 21.3.2017, disposed of the Petition, permitting the Petitioner (which was the 2nd Petitioner in the *Suo Motu* case) to supply power to the ESCOMs in Karnataka at the reduced rate of ₹3.60 per unit for the remaining period, i.e., upto the end of May, 2017, subject to certain terms and conditions, by discontinuing the supply of power by the Maharashtra State Electricity Distribution Company Limited (MSEDCL) (8th Respondent in the *Suo Motu* case), which was supplying power at the rate of ₹3.62 per unit as per the Letter of Award (LoA) dated 21.11.2016.
- 6) The Petitioner, after fulfilling the terms and conditions, started supplying power from the first week of April, 2017. As already noted, the subject-matter in OP No.74/2016 was for supply of power for a period of eleven months from 1.6.2016, i.e., upto the end of April, 2017. In *Suo Motu* Case

No.1/2016, this Commission has allowed the Petitioner to supply power at a reduced rate of ₹3.60 per unit upto the end of May, 2017.

- 7) In view of the approval accorded by this Commission in the *Suo Motu* Case No.1/2016 for supply of power upto the end of May, 2017, it is obvious that the subject-matter of OP No.74/2016 has become infructuous. The learned counsel for the Petitioner has not disputed this fact. However, the Petitioner has filed an Application dated 13.4.2017 in OP No.74/2016, requesting to accord the 'in principle' approval for extension of power supply arrangement in terms of the Order dated 21.3.2017 passed in the *Suo Motu* Case No.1/2016, for a further period of eight months with effect from 1.6.2017 and to direct the Respondents for taking the necessary steps in this regard. The gist of the grounds in support of the said Application is mentioned at paragraphs 21 and 22 of the Affidavit filed in support of the Application, which reads thus:

"21. That, as stated above, the Petitioner was entitled for contract (extension of contract) for supply of power through Chikkodi – Talangade and Chikkodi – Mudasangli lines for 11 months from 01.06.2016. However, said valid right got frustrated due to the non-approval of the extension by this Hon'ble Commission which gravely prejudiced the interest of the consumers of the State of Karnataka on the other hand. Thus, as per the principles of justice, equity and fairness, the Petitioner's plea for an extension of the power supply arrangement arrived at now may be considered by this Hon'ble Commission in a sympathetic and merciful manner."

"22. Further, the monsoon in the current year is reported to be inadequate and the same coupled with the draught which has already affected the State would lead to acute shortage of power in the State in the coming months."

- 8) We have heard the learned counsel for the parties on the Application filed by the Petitioner.
- 9) After considering the facts of the case and the submissions of the parties, we hold that the said Application is liable to be rejected for the following reasons :
- (a) The Petitioner has stated in support of its Application that, the grounds urged in OP No.74/2016 should have been accepted and the Petitioner should have been allowed to supply power for the entire period from 1.6.2016 to 30.4.2017, instead of allowing only for three months, as directed by this Commission. Therefore, the Petitioner has contended that, it may be allowed to supply power for the further period of eleven months from 1.6.2017, at the rate of ₹3.60 per unit.
- (b) Upon re-consideration of the rival claims of the parties in OP No.74/2016 as made out earlier and in the subsequent hearings, we are of the considered opinion that, there are no reasons to differ from the conclusions reached earlier by us for dismissing the OP No.74/2016. Therefore, we hold that, on merits, the claim of the Petitioner does not survive.

- (c) Upon consideration of the power situation in the State, the request made by the PCKL / ESCOMs for the present, is for purchase of short-term power, only upto the end of May, 2017. If there is a request by them for purchase of power for any further period to meet any contingency, then only the question of consideration of that request would arise. Even in that event, it is to be seen as to who would supply the power at the lowest competitive rate. According of the 'in principle' approval to Petitioner at this stage, as prayed for, would not arise. It cannot be presumed that, the rate now offered by the Petitioner alone would be lowest competitive rate for the supply of power. If the situation so warrants, the Petitioner may be asked to supply power at the rate at which the Petitioner is now supplying power.

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

ORDER

- (a) The Petition is dismissed on merits; and
- (b) The Application dated 13.4.2017 filed by the Petitioner also stands rejected.

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