

No. N/16/2018

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 26.11.2021

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

OP No.06/2018

BETWEEN:

BMM ISPAT Limited,
A Company registered under
the Companies Act, 1956,
Corporate Office at 101,
1st Floor, Pride Elite,
No.10, Museum Road,
Bengaluru-560 001.
(Represented by its General Manager-PR
Silas Nerella)

....PETITIONER.

(Represented by Mr.Alka Tripathi &
Ms. Manasa, Advocates
for M/s Pragathi Law Chambers)

AND:

Gulbarga Electricity Supply
Company Limited (GESCOM),
Corporate Office: Station Raod,
Kalaburgi-585 101.
(Represented by its Managing Director)

....RESPONDENT

(Represented by Sri S. Sriranga, Advocate,
& Ms. Sumana Naganand, Advocate
for M/s Just Law, Advocates)

ORDERS

1. In the present petition filed under Section 86 (1) (f) of the Electricity Act, 2003,

the petitioner has in substance, prayed for the following reliefs to:

- a) Direct the Respondent to pay a sum of Rs.92,42,527 (Rupees Ninety two lakhs forty two thousand five hundred twenty seven only) towards surcharge for the delayed payment of tariff invoices and Rs.30,28,807 (Rupees Thirty lakhs twenty eight thousand eight hundred seven only) towards illegal deduction of rebate totally amounting to Rs.1,22,71,334 (Rupees One crore twenty two lakhs seventy one thousand three hundred thirty four only) as claimed in letter dated 23.11.2017 (Annexure-D).
- b) Direct the respondent (GESCOM) to pay carrying cost at the rate of 15% per annum for the delay in paying the surcharge amount.
- c) Direct the respondent to pay the cost incurred by the petitioner on the present petition.
- d) Grant any other relief/s as this Commission deems fit to grant in the circumstances of the case, in the interest of justice and equity.

2. The facts relevant for the disposal of the present case as made out by the petitioner may be stated as follow:

- a) The petitioner is a coal-based thermal Generating Company having installed capacity of 235 MW situated at Danapur village, Hospet taluk, Ballary district, used to sell energy through IEX or under open access.
- b) The Power Company of Karnataka Limited (PCKL) on behalf of ESCOMs, issued Notification dated 23.06.2015 for procurement of 500 MW RTC firm power for the period between 15.09.2015 and 31.05.2016. The petitioner being one of the participants was awarded Letter of Intent (LoI) dated

21.08.2015 (Annexure-A) for supply of contracted quantum of 50 MW energy from 15.09.2015 to 30.09.2015 and of 100 MW energy from 01.10.2015 to 31.05.2016, with the terms and conditions stated in the said Lol dated 21.08.2015. In terms of Lol, the petitioner and the respondent (GESCOM) and other ESCOMs in the State have entered into the PPA dated 31.08.2015 (Annexure-B). In terms of PPA dated 31.08.2015, different ESCOMs were allocated different percentage of energy and they were required to pay the charges for the energy allocated to their respective shares at the agreed tariff of Rs.5.08 per unit. The PPA dated 31.08.2015 contains other terms & conditions specified therein.

c) Article 6.3 of the PPA provides for the terms regarding payment, rebate and surcharge. This Article reads as follows:

"6.3 - Payment & Rebate:

6.3.1 Payment: Procurer(s) shall make the payment to Seller on 7th day from the date of (receipt of) bill excluding the date of receipt of the energy bills in Procurer(s) office. In the event if the receipt of the energy bills in Procurer(s) office being holiday, the next working day shall be reckoned as the date of receipt of Bills. If the due date of payment happens to be a holiday the immediate next working day shall be considered as the due date for payment. In case of timely payment by Procurer(s), adjustment for the admissible rebate as per Clause No.6.3.2 hereinafter shall be made while making the payment against the bill.

6.3.2 Rebate: Bidders shall allow 2% rebate only on bill amount, if Procurer(s) make full payment to Bidders on or by 7th day from the date of (receipt of) bill excluding the date of receipt in Procurer(s) office. If payments are made by Procurer(s) after 7 days within a period of one month from the date of receipt of bill in Procurer(s) office, a rebate of 1% shall be allowed.

6.3.3 Surcharge: The payment made after 30 days from the date of receipt of invoice the surcharge shall be payable at 15% per annum for the outstanding amount."

d) In the present petition, the petitioner has urged that in respect of the energy supplied and allocated to the respondent (GESCOM), though the invoices were raised, the payments were received subsequent to due dates for which the petitioner was entitled to surcharge, but surcharge was not paid as agreed and further the respondent (GESCOM) deducted rebate contrary to the terms of the PPA. The details are stated by the petitioner in para 10 of the petition in the tabular column as noted below:

(In Rupees)

Invoice period	Invoice raised @ Rs.5.08 per kWh as per PPA (Rs.)	Payment Due Date	Payment Received Date	No. of days delay from the due date to receipt of payment	Actual amount received from (GESCOM) (Rs.)	Rebate taken without following PPA (Rs.)	Surcharge @ 15% per annum as per PPA for delayed payment (Rs.)
1	2	3	4	5	6	7	8
01.10.2015	1,31,86,867	31.10.2015	19.12.2015	49	1,31,86,867		2,65,544
02.11.2015	5,10,99,110	02.12.2015	23.12.2015	21	5,10,99,110		4,40,992
01.12.2015	4,94,50,752	31.12.2015	18.02.2016	49	4,94,50,752		9,95,789
02.01.2016	5,10,99,110	01.02.2016	31.03.2016	59	5,05,88,119	5,10,991	12,38,978
01.02.2016	5,10,99,110	02.03.2016	02.05.2016	61	5,05,88,119	5,10,991	12,80,978
01.03.2016	4,78,02,394	31.03.2016	02.05.2016	32	4,73,24,370	4,78,024	6,28,634
01.04.2016	5,10,99,110	01.05.2016	25.07.2016	85	5,05,88,056	5,11,054	17,84,969
02.05.2016	5,00,46,941	01.06.2016	30.07.2016	59	4,95,46,409	5,00,532	12,13,467
01.06.2016	5,17,15,172	01.07.2016	26.08.2016	56	10,00,00,000	5,17,215	2,30,137
			31.08.2016	61	10,00,00,000		2,50,685
			09.09.2016	70	3,11,97,957		9,12,354
	41,65,98,566				41,35,69,760	30,28,807	92,42,527

e) The petitioner stated that in spite of the repeated requests and also issue of the letter dated 23.11.2017 (Annexure-D) requesting the respondent (GESCOM) to pay the arrears of surcharge as well as the amount illegally deducted towards rebate, the respondent (GESCOM) did not pay the same. Therefore, the petitioner has filed the present petition on 29.01.2018.

3. The respondent (GESCOM) appeared through their counsel. The learned counsel submitted that there was likely-hood of settlement of the matter.

a) Thereafter, on 28.05.2019 the respondent (GESCOM) has filed the statement showing the details of the particulars of the invoices and the due date as per PCKL Bill and the date of receiving of such bills in the office of the respondent (GESCOM) and showing the date of payments, etc., and that a sum of Rs.30,28,618 has been deducted towards rebate. In the Memo dated 28.05.2019 filed on behalf of respondent (GESCOM), it is also stated that the rebate so deducted was agreed to be reimbursed to the petitioner as per the Reconciliation Process meeting held between parties on 29.04.2019. However, nothing is stated about the claim made by the petitioner towards arrears of surcharge.

b) The petitioner filed Memo dated 27.08.2019 stating that it has received the amount of Rs.30,28,618 from the respondent (GESCOM) which was deducted towards rebate. However, it is urged that the amount of Rs.92,42,527 towards the surcharge payable remains unpaid. The petitioner has filed its calculation showing the different particulars as to how the surcharge of Rs.92,42,527 has been arrived.

c) Subsequently, the respondent (GESCOM) filed the statement of objections dated 17.10.2019 urging the following grounds:

(i) That the petitioner is not entitled late payment surcharge as per Article 6.3 of the PPA. That the statement produced by the petitioner indicating the date of receipt of payment is incorrect and that there

are discrepancies in the calculation of number of days delayed in making payments by the respondent (GESCOM). The respondent (GESCOM) has stated its version of number of days delayed as per its records in making payments towards tariff invoices.

(ii) That the rate of interest has been steadily declining and the consumers would be affected by payment of interest at high rate as stated in PPA. Therefore, it is requested that the rate of interest agreed in the PPA may be ordered to be reduced.

d) However, this Commission notes that the respondent (GESCOM) though has admitted that there were delays in payment of energy bills from the due dates as stated in Annexure-R1, it had not computed surcharge payable in terms of PPA dated 31.08.2015 (Annexure-B).

4. The petitioner filed its rejoinder dated 27.11.2019 stating that the number of days delayed in payment of tariff invoices, as calculated by it is correct and denying the version of respondent (GESCOM) in respect of the number of days delayed in paying the amount due towards tariff invoices. The petitioner has filed the comparative statement showing the surcharge that would become due, considering the number of days delayed as per petitioner and number of days delayed as per respondent (GESCOM) in paying the tariff invoices beyond the due dates. The same may be noted as follows:

Billing Period	Date on which the amount received from GESCOM		No. of days delayed in paying tariff invoices from due dates		Surcharge @ 15% per annum as per PPA for the delayed payment	
	As per petitioner	As per respondent	As per petitioner	As per respondent	As per petitioner	As per respondent
1	2	3	4	5	6	7
Sept 2015	19.12.2015	18.12.2015	49	48	2,65,544	2,31,154
Oct 2015	23.12.2015	23.12.2015	21	21	4,40,992	4,40,992
Nov 2015	18.02.2016	16.02.2016	49	47	9,95,789	9,55,145
Dec 2015	31.03.2016	30.03.2016	59	58	12,38,978	12,05,799
Jan 2016	02.05.2016	30.04.2016	61	59	12,80,978	12,26,589
Feb 2016	02.05.2016	30.04.2016	32	30	6,28,634	5,83,451
Mar 2016	25.07.2016	22.07.2016	85	82	17,84,969	17,04,748
Apr 2016	30.07.2016*	30.07.2016*	59	58	12,13,467	11,80,969
May 2016	26.08.2016**	26.08.2016**	56	55	2,30,137	2,26,027
	31.08.2016**	31.08.2016**	61	60	2,50,685	2,46,575
	09.09.2016**	08.09.2016**	70	68	9,12,354	8,71,833
			Total Surcharge Due		92,42,527	88,73,282

The statement further shows that there is no dispute regarding billing dates, units supplied in different months, the amount claimed in the invoices and the due dates for payment in different months except for the months of April* & May** 2016. According to the petitioner, the due dates for payments had fallen on 01.06.2016 & 01.07.2016 for the energy supplied for the months of April & May 2016 respectively. On the other hand, according to respondent (GESCOM) for these months the due dates were on 02.06.2016 & 02.07.2016 respectively.

From the above, it can be seen that the difference in the claim of surcharge is limited to Rs.3,69,245 between parties. It is also clear that such differences have arisen due to the differences regarding the due date for payment for the months of April & May 2016, as well as the date on which the amount was received by the petitioner from respondent (GESCOM) while calculating the number of days delayed in paying tariff invoices as claimed between them.

5. In the fag-end of the hearing on 26.08.2021, the learned counsel for the respondent (GESCOM) submitted that the difference would be sorted out within three weeks, if not the case would be argued on merit. It appears

thereafter on 04.10.2021 there was a Reconciliation Process meeting conducted, but the difference could not be resolved.

6. We have heard the learned counsel for the parties on 28.10.2021 and the case was reserved for orders. It may be recalled that the disputed rebate amount of Rs.30,28,618 has been received by the petitioner on 26.07.2019. Therefore, the dispute remained only as to the claim towards surcharge.
7. The following points arise for our consideration, on the basis of pleadings and the submission of the parties.

Point No.1: Whether the respondent (GESCOM) is entitled to reduction in the rate of surcharge than the rate agreed in PPA at 15% per annum?

Point No.2: Whether the petitioner is entitled to interest on the arrears of surcharge from the due date till the date of payment?

Point No.3: Whether the respondent (GESCOM) has furnished sufficient material to find out the due dates falling in the months of April & May 2016?

Point No.4: Whether the petitioner has furnished sufficient material to find out the dates on which the payments were received by it from the respondent (GESCOM) in different months?

Point No.5: What Order?

8. After considering the submissions of the learned counsel for the parties and the records, our findings on the above points are as follows:

9. Point No.1: Whether the respondent (GESCOM) is entitled to reduction in the rate of surcharge than the rate agreed in PPA at 15% per annum?

- a) The reasons stated by the respondent (GESCOM) for claiming reduction in the rate of surcharge than the rate agreed in PPA at 15% per annum, are not well-founded.
 - b) The parties are bound by the terms of the PPA including the rate at which surcharge is to be levied.
 - c) We find no reason to reduce the rate of surcharge.
 - d) For the above reasons, Point No.1 is held in negative.
10. Point No.2: Whether the petitioner is entitled to interest on the arrears of surcharge from the due date till the date of payment?
- a) Interest on interest (surcharge) cannot be granted unless there is a specific term in the PPA.
 - b) Admittedly, there is no term in the PPA for payment of interest on surcharge.
 - c) The petitioner has not made out any other ground for claiming interest on arrears of surcharge.
 - d) For the above reasons, Point No.2 is held in negative.
11. Point No.3: Whether the respondent (GESCOM) has furnished sufficient material to find out the due dates falling in the months of April & May 2016?
- a) Article 6.3.1 of the PPA provides that procurer shall make the payment to the seller on 7th day from the date of receipt of bill excluding the day on which the bill is received. Further it provides that in the event, if the receipt of the bill is on a holiday, the next working day will be reckoned

as the date of receipt of the bill. Further, it also provides that if the due date of payment happens to be a holiday, the immediate next working day shall be considered as the due date for payment.

b) The surcharge would apply for the payment made after 30 days from the date of receipt of the bill.

c) Therefore, the date of receipt of the bill excluding such date of receipt is a material fact to determine as to when the payment falls due as well as the date from which surcharge would apply.

d) In the present case, the respondent (GESCOM) has not stated as to whether the bills for supply of energy for the months of April & May 2016 were received on a holiday or not and as to whether the due dates for these months had fallen on any holiday.

e) In the absence of these particulars, it is not possible to find out which of the versions stated by the parties is correct or not. The petitioner has also not specifically placed any material in respect of the above facts.

f) For the above reasons, Point No.3 is held in negative.

12. Point No.4: Whether the petitioner has furnished sufficient material to find out the dates on which the payments were received by it from the respondent (GESCOM) in different months?

a) The petitioner has not stated the mode in which it had received the payments i.e., NEFT/RTGS, cheque or cash etc.,

b) In the absence of these facts it cannot be ascertained as to whether the date on which the payment was received by the petitioner.

c) Article 6.3.3 of the PPA provides "The payment made after 30 days from the date of receipt of invoice the surcharge shall be payable at 15% per annum for the outstanding amount." The phrase 'the payment made' in Article 6.3.3 of the PPA, can be interpreted in two ways. One is that the date on which the RTGS/NEFT was done and the cheque was issued and the cash was delivered to the messenger/agent of the petitioner. The other one is that the actual date on which the amount was credited to the petitioner which was sent by different modes. These particulars are also not available.

d) For the above reasons, we hold Point No.4 in negative.

13. Point No.5: What Order?

a) From the above discussions, we think the respondent (GESCOM) may be directed to pay the sum of Rs.88,73,282 which would fall due even as per the number of days delayed in paying the bill amounts from due date. The petitioner may be allowed liberty to claim the difference of Rs.3,69,245 in a separate proceeding to be filed with all required particulars as noted above.

b) For the above reasons, we pass the following:

ORDER

a) The respondent (GESCOM) is directed to pay a sum of Rs.88,73,282 (Rupees Eighty eight lakhs seventy three thousand two hundred eight two only) towards the arrears of late payment surcharges to the petitioner

within two months from the date of this Order, if not already paid.

- b) The petitioner is at liberty to file a separate proceeding for the balance claim of Rs.3,69,245 (Rupees three lakhs sixty nine thousand two hundred forty five only) as noted above.

sd/-

(SHAMBHU DAYAL MEENA)
Chairman

sd/-

(H.M. MANJUNATHA)
Member

sd/-

(M.D. RAVI)
Member