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

Dated: 16.08.2021

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

O.P. No.24/2020

BETWEEN:

VRL Logistics Limited,
Corporate office,
Giriraj Annexe,
Circuit House Road,
Hubballi –580 029.

....PETITIONER.

Represented by its Managing Director
Sri. Anand Sankeshwar.

(Represented by Sri Vishwanth. R. Hegde, Advocate)

AND

Hubli Electricity Supply Company Limited,
(Wholly owned Government of Karnataka undertaking)
A Company Registered under the provisions
of the Indian Companies Act,1956 having
its Corporate office
Navanagar, P.B. Road,
Hubli – 580 025.

Represented by its Managing Director.

... RESPONDENT.

(Represented by Sri Shahabaaz Husain, Advocate, for Precinct Legal)

ORDERS

1. This petition has filed under Section 86 (1)(f) of Electricity Act, 2003 R/w Regulation 21(1) of KERC (General and Conduct of Proceedings) Regulations, 2000 and prayed for the following reliefs to;

- i) Call for the entire records from the Respondent;
- ii) Direct the Respondent to pay to the Petitioner a sum of Rs.66,16,673 towards the interest on delayed payments released by the Respondent for the period from January 2018 to December 2018;
- iii) Direct the Respondent to make prompt payments of the future invoices from time to time.
- iv) Direct the Respondent to include the interest on the delayed payments if any, in releasing the payments;
- v) Direct the Respondent to pay a sum of Rs. 5,00,000 as compensation/damages for breach of contract;
- vi) Pass such other orders, as the Commission deems fit to pass in the circumstances of the case, including awarding cost of this petition.

2. The brief facts set out in the petition are as follows:

- a) The Petitioner Company has entered into a PPA with the Respondent and the power generated is being sold by the Petitioner Company to

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the Respondent in terms of PPA dated 15.02.2007. A Copy of PPA is produced as Annexure-A.

- b) The Article 6 of the PPA provides for billing and payment of invoice amount in respect of the energy purchased by the Respondent Company in terms of PPA. As per Clause 6.2 of the PPA, the Respondent has to make payment of the energy bills within 15 days from the date of receipt of Tariff Invoice. Clause 6.3 specify that if the payments is not made within due date, the Respondent Company is liable to pay interest at the rate of State Bank of India Minimum Term Lending Rate per annum for the period of delay in making such payment.
- c) The Petitioner has regularly raised monthly invoices for the energy supplied to the respondent (HESCOM) during January 2018 onwards up to December 2017. The Respondent has continuously defaulted in making the payments within the 15 days' period specified in Article 6.2 and consequently, the Respondent (HESCOM) is liable to pay interest as specified in Article 6.3 of the PPA. The Petitioner has raised a demand towards interest claiming a sum of Rs.66,16,673 vide letter dated 15.03.2019 from January to December 2018, a copy of the letter is produced as Annexure-B. Another remainder letter dated 09.09.2019 was issued and copy of the letter produced as Annexure-C.

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- d) The Petitioner issued a legal notice dated 12.12.2019 demanding a sum of Rs. 66,16,673 due towards interest on delayed payments from January to December 2018. The copy of the legal notice is produced as Annexure-D. As the respondent failed to respond to the legal notice, the petitioner was compelled to file this petition under clause 10.5 of the PPA.
- e) The petitioner has continued to supply the power generated by it to the respondent and the respondent failed to adhere to the relevant condition of the PPA regarding terms of payment. The respondent cannot put the petitioner to the detriment and making unlawful gains and the conduct of the respondent has resulted in clear breach of terms of the contract. Hence this petition.
3. Upon issuance of Notice, the respondent appeared through its counsel and submitted Statement of Objections as follows:
- a) The respondent has been making payment of invoice amount within the due date as can be made out from the financial statement furnished by the petitioner. However, the respondent (HESCOM) took some time in making payment of some invoices of the petitioner as the respondent had to arrange for the requisite funds.
- b) The respondent predominantly supplying electricity to the agriculture sector within its jurisdiction and Agriculture sectors are highly subsidized by the Government of Karnataka (GoK). The cash

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flow of the respondent is highly dependent on the release of subsidy by the Government of Karnataka.

- c) The respondent had to meet the other periodical financial commitments like payment of (a) Transmission charges of KPTCL and PGCIL, (b) pay monthly scheduled prepayments of long term and short term loans and interest thereon; (c) the payment towards establishment expenses, Operation and Maintenance expenses, administrative and general expenses retirement benefits to the retired employees of the Company etc. HESCOM needs to mobilise funds of about Rs.500 to Rs.600 crores monthly to discharge all its monthly periodical commitments.
- d) However, the release of subsidy from Government and collection from other consumers are not evenly spread to ensure timely discharge of its liabilities and, hence, there will be some delay in arranging payments of power purchase cost to the petitioner. The delay in payment was for the said bona-fide reasons and was not deliberate.
- e) The averments of the petitioner on the delay in payment of invoice being intentional and the respondent making profits at the cost of petitioner are denied as false.
- f) The prayer for compensation is denied by the respondent as there is no enabling provision in the PPA for such compensation. The

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invoices of the petitioner had been paid as on the date and interest towards the delay in payment will be paid as per the terms of PPA.

g) The respondent submits that as per the statement of accounts maintained by it, the respondent is due to pay Rs.60,33,200 to petitioner, which has been arrived at as per the provisions of PPA and based on these invoices. The statement of accounts containing the details of interest towards delayed payment of invoices with respect to the petitioner is produced as Annexure R1 and the petitioner's claim of Rs. 66,16,673 is denied.

h) The respondent, subject to the reconciliation of accounts undertakes to pay Rs. 60,33,200 to the petitioner and interest towards the delayed payment as per the provisions of PPA as per Annexure-R1

4. We have heard the learned counsels for the parties. The Petitioner counsel has filed a memo in the Registry on 23.07.2021 along with their legal advisor's letter dated 19.07.2021 wherein legal advisor opined to accept the offer of ESCOM/ Respondent for payment of Rs. 60,33,200. In the aforesaid memo filed by the counsel for petitioner, petitioner has agreed to accept Rs. 60,33,200 in full and final settlement of payment of interest on delayed payments for the period from January 2018 to December 2018. The petitioner has satisfied with the undertaking given by the respondent to pay Rs. 60,33,200 to the petitioner as interest towards the delayed payment of energy supplied by petitioner to respondent as per

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provisions of PPA and petitioner has also agreed to this settlement and prayed that the petition may be disposed of with the direction to the respondent to pay the aforesaid amount within two weeks' time in the interest of justice.

5. Keeping in view of the above facts, reasons mentioned in para 4 above, we proceed to pass the following.

ORDER

The Petition is disposed off accordingly and the respondent is directed to pay of Rs. 60,33,200 to petitioner as interest on delayed payment within one month from the date of this order.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M.MANJUNATHA)
MEMBER

Sd/-
(M.D.RAVI)
MEMBER