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

Dated : 12th September, 2017

Present:

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

OP No.31/ 2016

BETWEEN:

Vijayalakshmi Hydro Power Private Limited,
No.105, 'R.R. Takt',
37, Bhoopasandra Main Road,
Sanjaynagar,
Bengaluru – 560 094 .

..

PETITIONER

[Petitioner is represented by Shri M.S. Raghavendra Prasad, Advocate]

AND:

- 1) Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
K.G. Road,
Bengaluru – 560 009.
- 2) Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 017.

[Respondents 1 & 2 are represented by Just Law, Advocates]

ORDERS

- 1)(a) In the above Petition, the Petitioner has prayed for the following reliefs:

- “(i) To pass an Order directing the Respondent to pay an amount of Rs.58,02,545/- (Rupees Fifty Eight Lakhs Two Thousand Five Hundred and Forty Five Only) as on 31.03.2016 along with future interest as per the terms of PPA till realization;
- (ii) To award costs of this Petition;
- (iii) To pass such other order / directions / guidelines in the circumstances of the case.”

1)(b) The break-up of the claim of ₹58,02,545/-, is given at DOCUMENT No.10 annexed to the Petition, which is extracted below :

[Figures in ₹]

Total Due as on 31.03.2011		77,30,915
Delay interest		2,32,550
	Total Due	79,63,465
Payment received on 20.04.2012 in settlement		54,63,465
	Balance Due Amount	25,00,000
Interest on Due Amount from 01.05.2012 to 01.09.2013 @ 15%		5,00,000
	Total Due Amount	30,00,000
Add: Deduction against Bill No.05 dtd.01.09.2013 for August 2013 supply interest on surcharge excess paid recovery.		12,20,251
	Total Due Amount as on 31.08.2013	42,20,251
Add: Interest from 01.09.2013 to 31.03.2016		15.82,294
	Total Due Amount after adding interest	58,02,545

- 2) The material facts placed on record by the Petitioner, required for the disposal of the above Petition, are as follows :
- (a) The Petitioner runs a Mini Hydro Power Generating Station of 3 Mega Watts (MW) and had entered into a Power Purchase Agreement (PPA) dated 30.3.2001 with the 1st Respondent – Karnataka Power Transmission Corporation Limited (KPTCL) for sale of energy, for 35 years. After unbundling of the KPTCL, the said PPA was assigned to the 2nd Respondent – Chamundeshwari Electricity Supply Corporation Limited (CESC), with effect from 10.6.2006.
- (b) As per Article 5.1 of the PPA, the tariff agreed for the supply of energy from the Commercial Operation Date (COD) was on the basis of the Base Price applicable for the year 1994-95 at the rate of ₹2.25 per unit, with an escalation at the rate of 5% per annum over the tariff applicable for the previous year, as per the Guidelines issued by the Ministry of Non-Conventional Energy Sources of the Government of India. However, contrary to the terms of the PPA, the 1st Respondent (KPTCL) unilaterally froze the tariff at ₹3.32 per unit with effect from 1.4.2003. This led the Petitioner to file OP No.21/2008, in which this Commission held that, the tariff payable should be as provided in the PPA along with escalation and directed the Respondents therein to pay the difference of the amount not paid towards the escalation in the tariff allowed, with effect from 1.4.2003, within a period of four

months from the date of the Commission's Order, i.e., from 16.4.2009, and in case of failure to make payment within four months as ordered, the Respondents should pay interest as agreed in the PPA.

- (c) Being aggrieved, the Petitioner preferred Appeal No.47/2010 before the Hon'ble Appellate Tribunal for Electricity (ATE), claiming interest as per the terms of the PPA on the amount payable by the Respondents towards escalation of tariff. In the said Appeal, the request of the Appellant (Petitioner herein) was allowed by the Hon'ble ATE, by its Order dated 16.12.2010, setting aside the direction of this Commission that, the liability to pay interest would arise only in case the Respondents fail to pay the amount due, by virtue of escalation in tariff, within four months from the date of the Commission's Order.
- (d) Article 6.1 of the PPA provides for raising tariff invoices for the energy supplied in a month; Article 6.2 provides that, the payment should be made within fifteen days from the date of receipt of the tariff invoice; Article 6.3 provides for payment of penal interest in case of non-payment of the monthly tariff invoices within the due date; Article 6.4 provides resolution of any dispute pertaining to the amount in any tariff invoice; and Article 6.5 provides for payment of penal interest for overdue amounts. The relevant Articles 6.3 and 6.5 of the PPA read thus :

“6.3 Late Payment: *If any payment from Corporation is not paid when due, there shall be due and payable to the Company penal interest at the rate of SBI prime*

Lending rate plus 2% per annum for such payment from the date such payment was due until such payment is made in full."

"6.5 Overdue Accounts: *If either Party fail to make any payment within 60 days after the due date under this Agreement, then such overdue amount shall attract interest for such period at the rate of SBI Prime Lending rate plus 2% per annum. While making such payment, the Party which is making payment shall specify the bill reference (month and date) against which the payment is made, failing which such payment shall be appropriated by the other Party against the oldest outstanding bill."*

- (e) It appears, the Respondents had paid the principal amount due to the Petitioner towards the tariff escalation. Subsequent to the Order dated 16.12.2010 of the Hon'ble ATE , there was a dispute regarding the quantum of interest payable by the 2nd Respondent (CESC) to the Petitioner. The Petitioner was claiming additional 2% penal interest and also 'compound interest' on the amount due. There was a Settlement dated 21.2.2012 of the disputed claim between the parties, with interest upto 31.3.2011. During the negotiations, the Petitioner was claiming a sum of ₹77,30,915/- as the amount due from the 2nd Respondent (CESC) as on 31.3.2011 and requested for immediate payment, pending decision of the Hon'ble ATE in the Review Petition filed by the 2nd Respondent (CESC) against the Order dated 16.12.2010 of the Hon'ble ATE, undertaking to pay back the interest portion, in case the Review Petition was allowed, The 2nd Respondent (CESC) offered to pay a sum of ₹29,19,775/- towards the 'simple interest' on the tariff escalation arrears and also offered to

admit a sum of ₹25,00,000/- as a one-time settlement as against the other claims, totaling ₹33,05,089/-, upto 31.3.2012. The break of the said amount was as follows :

- (i) ₹10,80,012/- being the interest on the delayed payment of the regular bills;
 - (ii) ₹1,99,737/- being the HT bill amount for import energy; and,
 - (iii) ₹20,25,340/- towards the 'interest on interest' pertaining to the tariff escalation arrears.
- (f) The 2nd Respondent (CESC) also offered to make an advance payment of the above amounts of ₹25,00,000/- and ₹29,19,775/-, subject to results of the Review Petition pending before the Hon'ble ATE and also subject to approval of the Audit Team of the 2nd Respondent (CESC). The Petitioner accepted the counter-offers made by the 2nd Respondent (CESC) and requested for an early settlement of the amounts offered by the 2nd Respondent (CESC). These offers and counter-offers, and the acceptance of the counter-offers, can be ascertained from DOCUMENT Nos.4 and 5 annexed to the Petition. These documents would show that, in accordance with the above-said Settlement, the 2nd Respondent (CESC) made payment of a sum of ₹54,63,465/- (viz., ₹25,00,000/- + ₹29,19,775/-) to the Petitioner on 20.4.2012, including the further interest till the date of payment. The Review Petition filed by the 2nd Respondent (CESC) was dismissed by the Hon'ble ATE on 11.10.2013.

- (g) The 2nd Respondent (CESC) has claimed that, as per the opinion of its Audit Team, the amount of ₹20,25,340/-, which was considered towards the 'interest on interest', was not admissible as per the terms of the PPA, therefore there was an excess payment of ₹12,20,251/- made to the Petitioner and the same had been deducted in the power purchase bill amount for the month of August, 2013 (as per DOCUMENT Nos.5 and 9 annexed to the Petition). This was opposed by the Petitioner, by its letters dated 7.10.2013 (DOCUMENT No.6) and dated 7.11.2013 (DOCUMENT No.8), stating that, it was against the terms agreed in the Settlement arrived at on 27.3.2012 and further stating that, it would revoke its acceptance of the Settlement arrived at on 27.3.2012.
- (h) The Petitioner has contended that, under the terms of the PPA, the Respondents were liable to pay 'interest on interest' for the belated payments and also additional 2% penal interest, in case the amount due was not paid even after 60 (sixty) days from the date on which it fell due, besides the penal interest for late payment. Therefore, the Petitioner has filed the present Petition.
- 3) Upon Notice, the Respondents have appeared through their counsel and the 2nd Respondent (CESC) has filed its Statement of Objections. Many of the facts, narrated above, are not in dispute. It is contended by the 2nd Respondent (CESC) that, during the Audit of Accounts of the 2nd Respondent (CESC), an objection was raised by the Audit

Team that, the payment of ₹12,20,251/-, made to the Petitioner towards the 'interest on interest', was not admissible as per the terms of the PPA and therefore, the same was deducted by the 2nd Respondent (CESC) out of the amounts payable to the Petitioner towards the power purchase bills for the month of August, 2013. It is further contended by the 2nd Respondent (CESC) that, the Petitioner could not have withdrawn the consent once given for the Settlement arrived at on 27.3.2012. Therefore, the 2nd Respondent (CESC) has prayed for dismissal of the Petition.

- 4) We have heard the submissions made by the learned counsel for the parties.
- 5) The following issues would arise for our consideration :
 - (1) Whether the PPA dated 30.3.2001 provides for:
 - (a) payment of compound interest ('interest on interest') on the belated payments?
 - (b) payment of additional 2% penal interest, in case of non-payment of the amount even after 60 (sixty) days from the date when it actually became due?
 - (2) Whether the Petitioner is entitled to the reliefs sought by it, either wholly or in part?
 - (3) What Order?

6) After hearing the submissions of the parties and considering the pleadings and records, our findings on the above issues are as follows :

7) **ISSUE No.(1)(a)** : *Whether the PPA dated 30.3.2001 provides for payment of compound interest ('interest on interest') on the belated payments?*

(a) The learned counsel for the Petitioner has contended that, a reading of Articles 6.3 and 6.5 of the PPA would lead to an inference that the 2nd Respondent (CESC) was liable to pay 'compound interest' or the 'interest on interest', if the amount is not paid within the due date. As already noted, Articles 6.3 and 6.5 of the PPA read thus :

“6.3 Late Payment: *If any payment from Corporation is not paid when due, there shall be due and payable to the Company penal interest at the rate of SBI prime Lending rate plus 2% per annum for such payment from the date such payment was due until such payment is made in full.”*

“6.5 Overdue Accounts: *If either Party fail to make any payment within 60 days after the due date under this Agreement, then such overdue amount shall attract interest for such period at the rate of SBI Prime Lending rate plus 2% per annum. While making such payment, the Party which is making payment shall specify the bill reference (month and date) against which the payment is made, failing which such payment shall be appropriated by the other Party against the oldest outstanding bill.”*

(b) The 'compound interest' is the addition of interest to the principal sum of a loan on periodical rests. In other words, the 'compound interest' refers to a method of charging interest, where interest is computed not

only on the principal amount, but also on the accrued interest. It is an established principle that, the 'compound interest' would be awarded only if there is a special term in a Contract. Interest, unless otherwise specified refers to 'simple interest', i.e., interest paid only on the principal, but not on any accrued interest.

- (c) If one reads either Article 6.3 or Article 6.5 of the PPA, it cannot be made out that, the interest accrued due shall be capitalized for charging the interest for the next period and, there is no provision for adding interest accrued due to the principal amount. Therefore, one can say that, there is no specific term in the Contract to pay the 'compound interest' or 'interest on interest'. These Articles provide for payment of penal interest at the rate of 2% per annum above the SBI Prime Lending rate. Except specifying such penal interest, the terms in the PPA do not provide for payment of 'compound interest'. Therefore, the contention of the Petitioner to this extent is to be rejected. Therefore, we answer Issue No.(1)(a) in the negative.

- 8) **ISSUE No.(1)(b)** : *Whether the PPA dated 30.3.2001 provides for payment of additional 2% penal interest, in case of non-payment of the amount even after 60 (sixty) days from the date when it actually became due?*

- (a) The Commission is of the opinion that Articles 6.3 and 6.5 of the PPA would apply in different situations. We are of the considered view that, Article 6.3 of the PPA would apply, when there is a default in payment of the monthly tariff invoice by the Procurer of energy within

15 (fifteen) days from the date of their receipt and Article 6.5 of the PPA would apply, when either party fails to make any payment within 60 (sixty) days after the due date under the PPA, when the liability arises on any ground other than for payment of the monthly tariff invoices. The payment towards the monthly tariff invoices should be made within 15 (fifteen) days and in case of default, the interest becomes payable under Article 6.3 of the PPA. The reason is obvious that, the payment towards the monthly tariff invoices should be done as early as possible. The PPA provides for a period of 60 (sixty) days for payment of other sums due under the PPA.

- (b) Therefore, the contention of the leaned counsel for the Petitioner that, if any payment towards the monthly tariff invoice is not made within 60 (sixty) days after it became due, additional penal interest of 2% is attracted, is not correct. A reading of Articles 6.3 and 6.5 of the PPA does not lead to a meaning that, any default in payment of the monthly tariff invoice within 60 (sixty) days after the due date, would attract a total penal interest of 4% over and above the SBI Prime Lending rate. Had it been intended to impose a penalty of 4% per annum over and above the SBI Prime Lending rate for payment of monthly tariff invoices after 60 (sixty) days from the due date, it should have been specifically mentioned under Article 6.5 of the PPA, to that effect. As it is, Article 6.5 of the PPA does not convey the meaning that, payment delay of more than 60 (sixty) days from the due date

would attract a penal interest of 4% per annum. Therefore, we answer Issue No.1(b) in the negative.

9) **ISSUE No.(2)** : *Whether the Petitioner is entitled to the reliefs sought by it, either wholly or in part?*

(a) As could be seen from the facts of the case, the Procurer of energy had denied the escalation of the tariff as agreed, but ultimately the claim for escalation was upheld, directing that, the amount due towards the escalation should be paid along with interest as per the terms of the PPA. The Order of the Hon'ble ATE in Appeal No.47/2010 only directs that, the interest is payable in terms of the PPA, but it does not say that, the PPA provided for levy of 'compound interest' or 'interest on interest' or a penal interest at the rate of 4% per annum over and above the SBI Prime Lending rate for payments made beyond 60 (sixty) days from the due date. Whereas, the claim of the Petitioner is that, it is entitled to 'compound interest', on the amount due, as a result of allowing the claim for escalation of the tariff. On the other hand, the Procurer of energy has paid the 'simple interest', at rate agreed under the terms of the PPA, on the principal amount due, as a result of granting the escalation of the tariff. Therefore, the Petitioner cannot be granted the reliefs sought, either wholly or in part, which is based on 'compound interest', apart from the claim for penal interest at the rate of 4% per annum.

(b) It appears, the 2nd Respondent (CESC) does not seem to have been stuck to the terms of the Settlement arrived at on 27.3.2012 by the parties. As per the said Settlement, as against the total claim of ₹33,05,089/- [i.e., ₹10,80,012/- + ₹1,99,737/- + ₹20,25,340/-], the amount agreed to be paid to the Petitioner was ₹25,00,000/-. Apart from this, it was agreed that, the same should be approved by the Audit Team of the 2nd Respondent (CESC). It is found that, the Audit Team objected to the payment of the sum of ₹20,25,340/- towards the 'interest on interest', as there was no provision in the PPA. Thereafter, the 2nd Respondent (CESC) has paid the entire claim of ₹10,80,012/- towards interest on the delayed payment of the regular bills and also the entire amount of ₹1,99,737/- towards the HT bill amount for import energy, without claiming any deduction, as a consequence of the Settlement dated 27.3.2012. In terms of the Settlement, the 2nd Respondent (CESC) has paid a sum of ₹25,00,000/- towards these heads, out of which a sum of ₹20,25,340/- was found to be not payable as per the Audit Team. Therefore, the 2nd Respondent (CESC) should have recovered the said amount of ₹20,25,340/-, had it stuck to the terms of the Settlement dated 27.3.2012. Therefore, we hold that, the 2nd Respondent (CESC) has paid the actual amount due to the Petitioner, though there was a Settlement for payment of the reduced amount. Therefore, the Petitioner wrongfully revoking the Settlement dated 27.3.2012 does not have any consequence. Therefore, we answer Issue No.(2) in the negative.

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

For the foregoing reasons, we pass the following :

ORDER

The Petitioner is not entitled for any of the reliefs sought for in the Petition. Therefore, the Petition is dismissed.

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