

No. N/117/19

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION**

**No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052**

**Dated: 11.10.2021**

**Present:**

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

**IA-1 of 2020 in O.P. No. 40/2019**

**BETWEEN**

Golden Hatcheries,  
A Sole Proprietorship concern  
having its Principal place of business  
At No.3, Queens Road Cross,  
Bengaluru-560 052.

**.... APPLICANT**

(Represented by Sri Paras Pandey, Advocate)

**AND**

Gulbarga Electricity Supply Company Limited,  
Station Main Road,  
Kalaburagi-585 101.  
(Represented by its Managing Director)

**... RESPONDENT**

[Respondent represented by  
by Sri Shahbaaz Husain, Advocate of  
M/s Precinct Legal)

**Orders on IA-1 of 2020 in OP No.40/2019**

1. The Applicant, Golden Hatcheries has filed IA-1 under Section 144 of The Code of Civil Procedure, 1908 (CPC) read with Regulation 11 of the KERC (General and Conduct of Business Proceedings) Regulation, 2000, before this Commission on 03.09.2020 praying for the following reliefs:

*“ a) Pass any appropriate order directing the Respondent GESCOM to immediately refund to the Applicant the sum of Rs.23,29,248 (Rupees Twenty-three lakh twenty-nine thousand two hundred and Forty-eight only) along with interest at the rate of 12% per annum from the date of the final order dated 29<sup>th</sup> May, 2020 in OP No.40 of 2019 (Annexure-P1).*

*b) Pass any such other further order(s) as this Commission deems fit in order to secure the ends of justice.”*

2. The material facts required for the disposal of the application may be stated as follows:

- a) The Applicant herein was the petitioner and the respondent (GESCOM) was the 4<sup>th</sup> respondent in OP No.40/2019 before this Commission. The SLDC, KPTCL & BESCO were respondents 1 to 3 respectively in OP No.40/2019.
- b) The Applicant had constructed wind power plant of 3.2 MW (4 Nos. x 0.8 MW) capacity in Kudligi taluk of Ballari district and the said power plant was commissioned on 31.03.2018.
- c) The Applicant had applied for grant of Wheeling & Banking of energy to its Open Access consumers (OA consumers), a few days earlier to commissioning of the power plant, but the W&BA was executed on 07.07.2018. The applicant has stated in OP No.40/2019 that the power injected from the date of commissioning of the power plant till 06.07.2018, was not taken to the credit of the applicant. The energy injected on or after 07.07.2018 has been accounted and it was wheeled to different OA consumers of the Applicant. The Applicant

had filed OP No.40/2019 requesting to direct the respondents to account for the energy injected from 31.03.2018 to the date of execution for the W&BA dated 07.07.2018. The Applicant had also challenged a Demand Notice dated 16.05.2019 which was marked as Annexure-P1 in the original proceedings issued by the Respondent (GESCOM), claiming Rs.93,16,990 being arrears in respect of wheeling transactions for the period from the date of WBA to the end of March 2019. At the request of the petitioner, any coercive steps for recovery of the said demand was stayed on 30.07.2019 subject to payment of 25% of that demand. Accordingly, the applicant had deposited Rs.23,29,248 with the Respondent (GESCOM).

d) After contest, the following final Order dated 29.05.2020 was passed in OP No.40/2019 as follows:

**“ORDER**

- (a) The petition is allowed. The impugned demand dated 16.05.2019 (Annexure P1) issued by the 4<sup>th</sup> Respondent is hereby set-aside.*
- (b) The petitioner shall be granted credit of energy injected from its wind power plant into the grid during the period from 12.06.2018 to 06.07.2018;*
- (c) The calculation of the quantum of energy injected into the grid by the Petitioner from 12.06.2018 to 30.06.2018, shall be on pro-rata basis, taking into account the net energy injected into the grid (i.e., energy available for wheeling);*
- (d) The 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall redo the energy bills from June 2018 to March 2019 and issue fresh bills to the Petitioner's Open Access consumer(s) taking into*

*account the quantum of net energy injected by the Petitioner (i.e., energy available for wheeling) and the quantum of energy drawn by the open access consumer(s), during the said months, as explained in paragraph 9 (d) and 9 (e) of this Order;*

*(e) The rights and liabilities of the parties shall be adjusted as per the directions mentioned above, taking into account the amount already paid, if any, by the petitioner or the open access consumer(s)."*

- e) The Applicant has contended that the impugned demand was set aside, therefore, the Applicant immediately became entitled to refund of Rs.23,29,248 being 25% of the demand made earlier on setting aside the impugned demand by order dated 29.05.2020 in OP No.40/2019, as per Section 144 of the CPC with interest at the rate of 12% per annum from the date of final order passed in OP No.40/2019 dated 29.05.2020 till the date of payment.
- f) That it is an admitted fact that Open Access Consumers (OA Consumers) of the Applicant, were Non-Exclusive Consumers. In the final Order dated 29.05.2020 in OP No.40/2019 [(at paragraph 9 (d) (vi)] it is made clear that the excess energy consumed by a non-exclusive consumer is deemed to be supplied by the consumption point of ESCOM and the excess energy consumed is to be billed as per the tariff applicable to such non-exclusive consumer. Therefore, according to the Applicant, the OA Consumers of the Applicant being non-exclusive OA consumers should be directly liable for payment of energy charges for the excess consumption but not the Applicant. Therefore, it is contended that the deduction effected by the

respondent, out of the amount of Rs.23,29,248 deposited by Applicant earlier is not sustainable.

3. The Respondent (GESCOM) appeared and objected the claim of the Applicant. It is contended that the Respondent (GESCOM) in compliance with the Order dated 29.05.2020 in OP No.40/2019 on re-doing the accounting of energy injected, to the credit of Applicant and re-doing the consumer bills relating to open access consumers had accounted the deposit of Rs.23,29,248 and balance amount found refundable to the extent of Rs.7,64,703 was paid to the Applicant on 05.02.2021 through NEFT. The details of the compliance stated by the Respondent (GESCOM) are as follows:

*1. ORDER: "The Petitioner shall be granted credit of energy injected from its wind power plant into the grid during the period from 12.06.2018 to 06.07.2018."*

*COMPLIANCE: The Respondent has credited the energy injected by the Petitioner into the grid during the period from 12.06.2018 to 06.07.2018 while calculating the monthly energy statement.*

*2. ORDER: "The calculation of the quantum of energy injected into the grid by the Petitioner from 12.06.2018 to 30.06.2018, shall be on a pro-rata basis, taking into account the net energy injected into the grid (i.e., energy available for wheeling)"*

*COMPLIANCE: The Respondent has calculated the quantum of energy injected into the grid by the Petitioner from 12.06.2018 to 30.06.2018 on a pro rata basis, taking into account the total energy injected into the grid.*

*3. ORDER: The 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall redo the energy bills from June 2018 to March 2019 and issue fresh*

bills to the Petitioner's Open Access consumer(s) taking into account the quantum of net energy injected by the Petitioner (i.e., energy available for wheeling) and the quantum of energy drawn by the open access consumer(s), during the said months, as explained in paragraph 9 (d) and 9 (e) of this Order;"

COMPLIANCE: The Respondent in consultation with BESCO has revised the energy statements/bills from June 2018 to March 2019. Fresh bills have been raised upon the Petitioner vide letter No.50984-97 dated 04.03.2021 by taking into account the quantum of energy drawn by the open access consumer during the said months. This has been carried out in accordance with Paragraph 9 (d) and 9 (e) of the Order dated 29.05.2020.

4. ORDER: "The rights and liabilities of the parties shall be adjusted as per the directions mentioned above, taking into account the amount already paid, if any, by the petitioner or the open access consumer(s)".

COMPLIANCE: The rights and liabilities as elaborated in Para 1 to 3 of this Memo have been adjusted and the same is reflected below:

The revised monthly energy transaction statement from 12.06.2018 to March 2019 as per the KERC Order dated 29.05.2020, is as below:		
A	Open Access consumers have drawn excess energy during the month:	
	a. February 2019	1,90,971 units
	b. March 2019	19,282 units
	Total excess energy drawn by the open access consumers	2,10,253 units

<i>The excess energy drawn is billed at the applicable tariff (Rs.6.75 up to 1 lakh unit and Rs.7.00 for above 1 lakh units)</i>		
<i>B</i>	<i>For February 2019 (Excess energy drawn is 1,90,971 units)</i>	<i>Rs.13,90,505.00</i>
	<i>For March 2019 (Excess energy drawn is 19,282 units)</i>	<i>Rs.1,37,963.00</i>
	<i>Total excess energy drawn charges to be paid by M/s Golden Hatcheries for February 2019 and March 2019.</i>	<i>Rs.15,28,468.00</i>

<i>Monthly Meter Reading and SLDC Charges to be paid by the Petitioner</i>		
<i>C</i>	<i>Monthly meter reading from April 2018 to March 2019</i>	<i>Rs. 6,720.00</i>
	<i>SLD Charges from July 2018 to March 2019</i>	<i>Rs. 29,357.00</i>
	<i>Total monthly charge to be paid by the Petitioner</i>	<i>Rs. 36,077.00</i>
<i>D</i>	<i>Total Amount to be paid by the Petitioner</i>	<i>Rs.15,64,545.00</i>
<i>E</i>	<i>As per KERC Interim Order the Petitioner has deposited 25% of the demand notice issued by the Respondent</i>	<i>Rs.23,29,248.00</i>
<i>F</i>	<i>The balance amount refunded to the Firm by the Respondent F=E-D)</i>	<i>Rs. 7,64,703.00</i>

*The energy statement from June 2018 to March 2019, produced as Annexure-R1 to the instant Memo reflects the compliance of the Order dated 29.05.2020. The amount refunded to the Petitioner is reflected in the letter of the Respondent dated 03.02.2021. The said letter proving payment of balance amount is produced as Annexure-R2. Wherefore, it is the humble submission of this Respondent that the Order is wholly complied with and the instant memo indicating compliance of the Order may be taken on record in the interest of justice”.*

4. We have heard the learned counsel for the Applicant and the Respondent (GESCOM).

5. The following Points arise for our consideration:

Point No.1: Whether the Applicant is entitled to restitution u/s 144 of CPC, of the entire amount of Rs.23,29,248 as a consequence of final Order dated 29.05.2020 passed in OP No.40/2019?

Point No.2: Whether the revised monthly energy bills prepared by the Respondent (GESCOM) in respect of the Open Access Consumers (OA Consumers) of the Applicant, who are within the jurisdiction of BESCO, can be acted upon?

Point No.3: What Order?

6. After considering the submissions of the parties and the records our findings on the above points are as follows:

7. Point No.1: Whether the Applicant is entitled to restitution u/s 144 of CPC, of the entire amount of Rs.23,29,248 as a consequence of final Order dated 29.05.2020 passed in OP No.40/2019?

a) The relevant portion of Section 144 of CPC reads as follows:

*“S. 144. Application for restitution – (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, such decree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential order and on such variation, reversal, setting aside or modification of the decree or order.*

*Explanation: xxxxxx*

(2) xxxxxxxxxxxxxxxxxxxxxxx

b) The learned counsel for the Applicant relied upon several precedents to enlighten the principles stated in Section 144 of CPC, 1908. It is sufficient to note para 17 of the judgment delivered by the Hon'ble



Supreme Court of India in Civil Appeal No.8400 of 2019 [Arising out of SLP (Civil) No.23679 of 2019] titled as Bansidhar Sharma (Since Deceased) represented by his Legal Representative Vs. The State of Rajasthan & Others. The said para 17 reads thus:

*“17. It clearly transpires that Section 144 applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. The principle of doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position as they were in at the time when the Court by its action had displaced them.”*

c) We have already extracted the operative portion of the Order dated 29.05.2020 passed in in OP No.40/2019. Sub-paras (a) to (e) of the said Order, are to be read together. The petitioner relied upon only on sub-para (a) of the said Order, which reads as: *“The petition is allowed. The impugned demand dated 16.05.2019 (Annexure P1) issued by the 4<sup>th</sup> Respondent is hereby set-aside.”* and contended that the amount of Rs.23,29,248 deposited earlier is to be re-paid to it by the respondent (GESCOM) immediately on passing the final Order setting aside the said impugned demand. On the other hand, the learned counsel for the

respondent (GESCOM) contended that the rights and liabilities of the parties are to be adjusted as per the directions given in the final order, taking into account the amount already paid if any, by the Applicant or the OA consumers. Therefore, according to the learned counsel for the respondent (GESCOM) till the rights and liabilities of the parties are adjusted, there is no question of repaying the said deposit.

- d) The directions given in sub-paras (b) to (e) would show that re-doing of the credit of energy injected from 12.06.2018 to 06.07.2018 is to be done, thereafter, the re-doing of the energy bills from June 2018 to March 2019 is to be carried out. Thereafter, the rights and liabilities of the parties are to be adjusted taking into account the amount already paid by the petitioner or the OA consumers. The impugned demand dated 16.05.2019 (Annexure-P1 in OP No.40/2019) for Rs.93,16,990 was claimed against the Applicant (petitioner in OP No.40/2019) in respect of the transactions relating to W&BA dated 07.07.2018 from the months of August 2018 to March 2019. On filing of OP No.40/2019 this Commission had issued stay order dated 30.07.2019 against respondent (GESCOM) from recovering the alleged demand raised by it. In respect of the same demand, the final Order dated 29.05.2020 is passed setting aside the said demand and directing to, re-doing of the credit of energy as well as of the energy bills of OA consumers.
- e) As per Article 5.1 of the W&BA executed between the parties in the present case, the Applicant-Generator would be liable to pay all charges including

back-up supply charges payable by the OA consumers of the Applicant in the event such OA consumer fails to pay the charges within 15 days from the date of raising the bills for such charges. Therefore, in this case the Applicant cannot claim absolute right for refund of the deposit of Rs.23,29,248. The said deposit is liable for adjustment in the event the OA consumers fail to pay the dues raised against them. Such terms are incorporated in W&BA as the OA consumers are not parties to the W&BA. Therefore, the Generator who seeks Open Access has to take such responsibility of discharging all the dues payable towards Open Access transactions. Article 5.1 of the W&BA reads as follows:

*“5.1 The Company shall pay all the charges to the Corporation/ESCOMs for using their network as per the applicable KERC Regulations/Orders issued from time to time. Such charges shall include transmission charges for the use of the transmission network, wheeling charges for the use of the distribution networks, cross subsidy surcharge, additional surcharge, charges for backup supply, scheduling and system operation charges, grid support charges, reactive power charges, UI charges under intra-state ABT, transaction charges and charges for the power drawn by the Company from the grid. The Company shall also be liable to pay, in case of default by exclusive or non-exclusive or captive consumers to pay, partly or fully, any open access charges, cross subsidy surcharge or additional surcharge or any back up supply charge within 15 days of the Corporation or ESCOMs raising the bills for the said charges.”*

- f) Therefore, we are of the considered opinion that whatever was found due after re-doing the energy bills of the OA consumers on taking into account the credit of energy injected by the Applicant, could be adjusted towards

the deposit of Rs.23,29,248 made by the petitioner pursuant to the interim order dated 30.07.2019, in the event the OA consumers fail to pay the dues within the stipulated date.

g) Therefore, the petitioner cannot claim the entire amount of Rs.23,29,248 deposited by it, immediately on passing of the final Order. Accordingly, Point No.1 is held in the negative.

8. Point No.2: Whether the revised monthly energy bills prepared by the Respondent (GESCOM) in respect of the OA consumers of the Applicant, who are within the jurisdiction of BESCOM, can be acted upon?

a) So far as the direction regarding re-doing of the energy bills of the OA consumers, contained in sub-para (d) of the operative portion of the Order may be again noted which reads as follows:

"(d) The 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall redo the energy bills from June 2018 to March 2019 and issue fresh bills to the Petitioner's Open Access consumer(s) taking into account the quantum of net energy injected by the Petitioner (i.e., energy available for wheeling) and the quantum of energy drawn by the open access consumer(s), during the said months, as explained in paragraph 9 (d) and 9 (e) of this Order;"

b) The substance of paragraphs 9 (d) and 9 (e) of the final Orders in OP No.40/2019 so far as required for disposal of the present Interim application may be stated thus: That if the net energy injected by the Generator plus the banked energy, if any, is less than the total consumption of energy of the OA consumer, the excess energy consumed is to be billed as per the tariff applicable to the said 'Non-Exclusive Consumer' or the 'Exclusive Consumer', as the case may be, and such excess energy consumed is deemed to be supplied by the 'Consumption Point' ESCOM.

- c) From the records, it is clear that the OA consumers for the relevant period were within the area of the BESCO. Therefore, the BESCO was required to re-do the monthly energy bills and had to demand the charges for the energy consumed in excess of the net energy wheeled from the OA consumers. However, the respondent (GESCOM) has stated in its compliance report that it had revised the energy statements/bills from June 2018 to March 2019 in consultation with the BESCO. The respondent (GESCOM) has not stated as to whether it had demanded the amounts found due under the revised energy bills from the concerned OA consumers, but they failed to pay it within the due date, thereby it was entitled to recover it from the Applicant or adjust it from the amount deposited by the Applicant.
- d) The Respondent (GESCOM) is at liberty to issue for the relevant period, bills for OA charges becoming due from the Applicant Generator. According to the Respondent (GESCOM), the total meter reading charges comes to Rs.6,720 and the total SLDC charges comes to Rs.29,357. Therefore, the 1<sup>st</sup> Respondent (GESCOM) is entitled to deduct Rs.36,077, from the Applicant out of the amount deposited by the it pursuant to the interim order dated 30.07.2019.
- e) However, the respondent (GESCOM) has raised the consumption bills of the OA consumer(s) in consultation with the BESCO and has stated that for February 2019, the excess energy drawn is 1,90,971 units and for the month of March 2019, the excess energy drawn is 19,282 units

and amounts payable at the applicable tariff were Rs.13,90,505 and Rs.1,37,963 respectively for the said months.

- f) The Applicant has not disputed the quantum of excess energy said to have been consumed for the months of February 2019 and March 2019 by its OA consumers. It appears the respondent (GESCOM) might have followed the earlier procedure of getting 'C' Form from the Generator and charging the generator for the excess energy consumed by OA consumers than the energy shown to have been wheeled in the 'C' Form, etc.,
- g) In the above facts and circumstances, we are of the considered opinion that setting aside the energy bills prepared by the respondent (GESCOM) for the excess energy consumed by OA consumers and directing BESCO to redo the said energy bills and to claim the amounts found due under these bills from the OA consumers, is an unnecessary, futile and time consuming process. However, respondent (GESCOM) should make a claim towards the revised energy bills from the concerned OA consumers, and in the event they failed to pay the dues within the stipulated time, a right for adjustment of the dues under revised energy bills could be effected out of the amount deposited by the petitioner. It is made clear that the OA consumers would be at liberty to point out any errors or omissions in preparing the revised energy bills for the excess consumption of energy and in that event the respondent (GESCOM) shall consider the same.

h) For the above reasons, we hold Point No.2 in affirmative subject to the observations made above.

9. Point No.3: What Order?

a) The Applicant has claimed repayment of the amount deposited with interest. As discussed above, the Applicant is liable for payment of OA charges as per Article 5.1 of the W&BA and also the charges under revised energy bills, in the event the OA consumers failed to pay the dues within the stipulated time. It can be seen that out of the amount of Rs.23,29,248 deposited on 03.07.2019, a sum of Rs.7,64,703.00 is already refunded to the Applicant on 05.02.2021. The balance amount is equal to liability towards OA charges and towards charges for revised energy bills. However, the liability to pay the revised energy bills is conditional as noted above. These arrears became payable in March 2019 itself. The Applicant has deposited the amount of Rs.23,29,248, immediately after passing of interim order dated 30.07.2019 in OP No.40/2019. For these reasons, we think the Applicant need not be awarded any interest on the balance amount that may become payable. It can also be seen that the revised energy bills for excess energy for the months of February 2019 and March 2019 also do not include the interest from the respective due dates of the bills till it is prepared on 04.03.2021.

b) In view of the findings on Point No.1 & 2, we pass the following:

**ORDER**

- (a)The respondent (GESCOM) shall serve the revised energy bills dated 04.03.2021 for the months of February 2019 and March 2019 on the concerned OA consumer(s) intimating to pay the amount towards excess energy consumption charges within fifteen days from the date of the receipt of the revised energy bills.
- (b)In the event, the OA consumer(s) pay the dues claimed in the revised energy bills within the stipulated time, the respondent (GESCOM) shall immediately refund the said amount to the Applicant.
- (c)In case the OA consumer(s) fail to pay the said amount within the stipulated time, the deduction effected by the respondent (GESCOM) shall become final.
- (d)The IA-1of 2020 filed on 13.10.2021 by the Applicant is disposed of accordingly.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member