

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO.119 OF 2015

Dated : 24th JANUARY, 2017.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri I.J. Kapoor, Technical Member.**

IN THE MATTER OF:

BMM Ispat Limited ... Appellant(s)

Vs.

Karnataka Electricity Regulatory
Commission & Ors. ... Respondents

Counsel for the Appellant(s) Mr. Anantha Narayana M.G.

Counsel for the Respondent(s) Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Sandeep for **R-2**

ORDER

1. The Appellant is a coal based captive electricity generating company situated at Bellary District, Karnataka.

Respondent No.1 is the Karnataka Electricity Regulatory

Commission (**“the State Commission”**). Respondent No.2 is Gulbarga Electricity Supply Corporation Limited with whom the Appellant had entered into Power Purchase Agreement (**“PPA”**) for supply of electricity. Respondent No.3 is the Chief Engineer of Respondent No.2. In this appeal, the Appellant has challenged Order dated 22/01/2015 passed by the State Commission.

2. Gist of the case of the Appellant needs to be stated. The Appellant filed O.P.No.24 of 2008 before the State Commission arraying Respondent No.2 and two others and seeking direction for grant of No Objection or Standing Clearance for trading of power through power exchange. The Government of Karnataka, with effect from 30/12/2008, invoked Section 11 of the Electricity Act, 2003 (**“the said Act”**) and directed all electricity generating companies to supply power to the State Grid in view of the extraordinary situation prevailing in the State. The said order was revoked in May, 2009. In view of this development, the Appellant impleaded the Government of Karnataka in O.P.No.24 of 2008. The said petition was partly

allowed by the State Commission by giving direction to the Respondents to pay to the Appellant the amount calculated at Rs.6.50 per unit for the electricity supplied pursuant to the Government of Karnataka's order under Section 11 of the said Act.

3. It is the case of the Appellant that inspite of the revocation of the order issued under Section 11 of the said Act by the Government of Karnataka, Respondent No.2 continued to accept the energy supplied by the Appellant for the months of June, 2009 to November, 2009. Respondent No.2 has issued acknowledgement in token of having received energy from the Appellant for the said period. There is no dispute about this fact. On 10/12/2009, the Appellant entered into a PPA with Respondent No.2 for supply of power for the period from 01/12/2009 to 31/05/2010. According to the Appellant, inspite of the repeated demands, Respondent No.2 did not make payment for the energy supplied by the Appellant to Respondent No.2 for the period from June, 2009 to November, 2009. The Appellant, therefore, filed O.P.No.29 of 2011 and

O.P.No.31 of 2011 in the State Commission praying that Respondent No.2 be directed to pay the said amount with interest at 18% per annum from the date the amount became due till payment.

4. On 13/01/2012, the State Commission disposed of O.P.No.31 of 2011 because of the statement made by the counsel for Respondent No.2 that the dues claimed by the Appellant will be settled within a week. Respondent No.2, however, did not make the payment. The Appellant then filed a petition before the Karnataka High Court being Co.P.No.160/2012. The Karnataka High Court disposed of the said petition by passing the following order:

“Learned counsel for the respondent has filed a memo which reads to the following effect:

“In accordance with the order of the Karnataka Electricity Regulatory Commission dated 31.01.2012 in OP 29/2011 and OP 31/2011, the Respondent has paid to the Petitioner a sum of Rs.92,99,629/- on 5.3.2013 vide cheque No. “120082”. Further, it is submitted that a sum of Rs.2,25,28774/- has also been paid through RTGS

to the Petitioner on 03.05.2013 as full and final settlement of all dues.”

2. Learned counsel for the petitioner submits that the interest agreed to be paid was as per power purchase agreement and in view of the fact that respondent has belatedly paid the amounts due to the petitioner they are also liable to pay the interest.

3. Memo is placed on record, as also the submission made by learned counsel for petitioner and in view of the fact that principal amount claimed in statutory notice having been paid by the respondent, petitioner would be at liberty to initiate appropriate proceedings against respondent for recovery of interest or any other amounts due to it from respondent if entitled to under law. Accordingly, petition stands disposed of.”

5. It is clear from the Karnataka High Court’s order that the Appellant had submitted that interest was to be paid as per the PPA and since Respondent No.2 had belatedly paid the amounts due to the Appellant, they are also liable to pay the interest. The Karnataka High Court noted that the principal amount was paid and it gave liberty to the Appellant to initiate appropriate proceedings against Respondent No.2 for recovery of interest or any other amounts due to it from Respondent No.2 if entitled to under law.

6. Since Respondent No.2 did not make interest payment, the Appellant filed a complaint before the State Commission. The State Commission by the impugned order dismissed the said complaint observing that Respondent No.2 had made payments for the energy injected into the grid without having an agreement or contract with the Appellant and, therefore, that would be sufficient compensation for the Appellant. Thus, the claim for interest was rejected.

7. We have heard learned counsel for the parties at some length. We notice that on 13/01/2012 on a statement made by the counsel for Respondent No.2 the State Commission disposed of O.P.No.31 of 2011 filed by the Appellant. The order of the State Commission reads thus:

“Case called. Counsel for both parties present. Counsel for Respondents submits that the dues claimed by Petitioner will be settled within a week. Counsel for Petitioner prays that the Respondents submission be recorded and the matter disposed of.

Disposed of as above.”

8. The above order clearly indicates that the State Commission relied on the undertaking given by counsel for Respondent No.2 and disposed of the petition. It is not possible to hold that the said statement is not an undertaking. The principal amount having been paid the said statement obviously will have to be treated as related to the claim of interest. It is obvious that no steps were taken to settle the claim of interest. There is, therefore to that extent, a breach of the undertaking given to the State Commission. Therefore, in the peculiar circumstances of the case, we are of the opinion that following order will serve the ends of justice.

- (a) Impugned Order dated 22/01/2015 passed by the State Commission is set aside.
- (b) Respondent No.2 is directed to pay interest at the rate of 8% per annum from 20/01/2012 (which is the date on which Respondent No.2 was supposed to settle the dues as per the undertaking given to the State Commission to settle the amount) to 03/05/2013 on which

date the principal amount of Rs.2,25,26,377/- was actually paid to the Appellant.

(c) The exact amount to be paid by Respondent No.2 to the Appellant be calculated by both sides by mutual discussion.

(d) The entire exercise as per clauses (b) and (c) above shall be carried out within a period of four weeks from today.

(e) We make it clear that we have not examined the various legal issues raised by the parties and decided by the State Commission except the issue regarding default in payment in terms of the undertaking given by Respondent No.2. We have not expressed any opinion on the other issues.

9. The appeal is disposed of in the aforesaid terms.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]