

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Dated:30<sup>th</sup> May, 2014**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON**  
**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**Appeal No. 29 of 2014**

**M/s. GOKAK Power and Energy Limited**  
**No.24, 29<sup>th</sup> Main,**  
**BTM Layout, 2<sup>nd</sup> Stage,**  
**Bangalore-560 076**

**... Appellant**

**Versus**

- 1. Karnataka Electricity Regulatory Commission,  
6<sup>th</sup> & 7<sup>th</sup> Floor, Mahalaxmi Chambers,  
No.9/2, M.G. Road,  
Bangalore-560 001**
- 2. Karnataka Power Transmission Corporation Limited  
Cauvery Bhawan,  
Bangalore-560 009**
- 3. Hubli Electricity Supply Company Limited  
Nava Nagar, P.B. Road,  
Hubli-580 025**

**Respondent(s)**

**Counsel for the Appellant : Mr. Shridhar Prabhu**  
**Mr. Anantha Narayana**

**Counsel for the Respondent (s): Mr.Anand K Ganesan**  
**Ms. Swapna Seshadri**

## J U D G M E N T

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON

1. GOKAK Power and Energy Limited is the Appellant herein.
2. The Appellant has filed this Appeal challenging the Impugned Order passed by the Karnataka State Commission dated 9.10.2013 in the matter of Wheeling and Banking Charges for Renewable Energy Generators.
3. The short facts are as follows:
  - (a) The Appellant is a Company which is in the process of sourcing power under captive basis and it has opted for Renewable Energy Certificate (REC).
  - (b) The Hubli Electricity Supply Company Limited, (HESCOM) the 3<sup>rd</sup> Respondent, is a Distribution Licensee.
  - (c) The State Commission by the Order dated 9.6.2005 had determined the Wheeling and Banking Charges at 5% and 2% respectively of the energy injected into the Grid for Mini-Hydel and Wind Generators. Further to avail the banking facility, the Generator had to pay the difference of UI charges

prevailing at the time of injection and drawal of electricity.

(d) The Central Electricity Regulatory Commission (Central Commission) notified the REC Regulations, 2010. Under these Regulations, the eligibility for receiving Renewable Energy Certificate is that the developers should not take any other benefits being concessional Wheeling and Banking Charges available to a Renewable Energy Generator.

(e) The Central Commission on 29.9.2010 notified the Amendment Regulations with regard to the Banking facility benefits.

(f) The Karnataka State Commission on 6.5.2013 passed the tariff order for HESCOM (R-3) dealing with the Approval of MYT for FY 2014- FY 2016 and fixing the Retail Supply Tariff for FY 2014. With regard to the Banking and Wheeling Charges, the State Commission determined the Wheeling Charges for the Respondent No.3 namely HESCOM.

(g) Within a few months, the Distribution Licensees of the State of Karnataka including the R-3 approached the State Commission seeking for revision in the concessional Wheeling and Banking Charges determined earlier by the State Commission.

During the course of the said proceedings, some of the Renewable Energy Generators requested the State Commission for introducing the regime for non-concessional Wheeling and Banking Charges as they intended to take the benefit of the Renewable Energy Certificate.

(h) Based on the above prayers, the State Commission circulated a Discussion Paper with a proposal to discontinue the earlier banking facilities.

(i) On the basis of this Discussion Paper, the suggestions and comments were received and the parties were heard.

(j) Ultimately, the State Commission passed the Impugned Order dated 9.10.2013. In the Impugned Order, the State Commission held that the Wheeling and Banking Charges fixed in the earlier tariff Order dated 6.5.2013 cannot be revised as requested by the Distribution Licensees and however, the captive generators who desire to avail the Renewable Energy Certificate Mechanism, shall be entitled to exercise an option to the effect and on exercise of such an option, they shall be liable to pay the normal transmission, wheeling and other charges as determined in the earlier tariff order and they shall be allowed banking

facilities which shall be on the monthly basis instead of annual basis.

(k) Aggrieved by the second portion of the Impugned Order, the Appellant has filed this Appeal with respect to the findings of the State Commission by which the annual banking facility in entirety was reviewed.

4. The learned Counsel for the Appellant has urged the following grounds to assail the Impugned Order:

“(a) This Tribunal in the judgment dated 31.1.2013 in the case of Beta Wind Farms in Appeal No.45 & 91 of 2012 has held that the Annual banking facility should be provided to the generators under the REC Scheme. In violation of the principles laid down in the judgment of this Tribunal, the State Commission has completely removed the Annual Banking Facility.

(a) There is no factual or legal justification for cancelling the Annual Banking Facility in the Impugned Order. There are no proper reasonings given in the Impugned Order as to why the captive power plant with REC frame work alone should be denied Annual Banking Facility.

(b) The Annual banking facility has been in vogue in Karnataka for over two decades. The State Commission all of a sudden, has altered and radically

changed such an established practice without any reasons whatsoever.”

5. In refuting these grounds urged by the Appellant, the learned Counsel for the Respondent-3, the Distribution Licensee, submitted that there can be no grievance of banking facility being allowed only on monthly basis when the Appellant itself has voluntarily chosen to take the benefit of the REC and as such, the State Commission has correctly followed the REC Regulations, 2010 and allowed the banking facility on monthly basis without any restriction.
6. The learned Counsel for R-3, the Distribution Licensee, further submitted that the Beta Wind Farm judgment rendered in Appeal No.45 of 2012 would not apply to the present case as in that case, this Tribunal had not given any finding to the effect that banking facility is to be allowed only for one year period or for more and therefore, the Impugned Order is well justified.
7. In the light of the above rival contentions, the following question would arise for consideration:

**Whether the Banking Facility can be stipulated with Monthly Adjustments instead of earlier regime on Annual Adjustments?**

8. It is an admitted fact that the State Commission earlier passed the Tariff Orders on 9.6.2005 and 6.5.2013

determining the Wheeling and Banking Charges @ of Rs.5% and 2% respectively of the energy injected into the Grid for Mini Hydel and Wind Generators.

9. After few months, the Distribution Licensees approached the State Commission and contended that the system of concessional Wheeling and Banking Charges fixed by the State Commission is resulting in a strain on their finances and that therefore, the same needs to be revised. Similarly, there were also requests from some of the Renewable Energy Generators for introduction of a regime of non-concessional Wheeling and Banking Charges as the present system rendered them ineligible for participation in the Renewable Energy Certificate Market as per Central Commission (REC Regulations, 2010).
10. In view of the above, the State Commission issued a Discussion Paper on 20.6.2013 proposing (a) to levy Wheeling and Banking Charges for all the renewable energy sources of the State on par with the charges applicable to the non-renewable energy generating companies and (b) to discontinue the Annual Banking Facility now provided and in its place to introduce monthly banking facility.
11. After receipt of the suggestions and comments, two questions have been framed and considered by the State Commission.

12. The First Question relates to whether there were any circumstances warranting for the revision in the Tariff Order dated 6.5.2013. After analyzing this question, the State Commission concluded that there were no circumstances to modify the Wheeling and Banking Charges fixed in the Tariff Order dated 6.5.2013 for the Renewable Energy Generators and rejected the prayer of the Distribution Licensees.
13. In regard to the 2<sup>nd</sup> Question relating to the submissions made by some of the other Generators who desire to avail the REC benefits, the State Commission held that the Captive Power Plants which were eligible for accreditation under the Regulations, 2011, cannot have both the concessional Wheeling and Banking Charges and the REC benefit.
14. The exact conclusion on these questions arrived at by the State Commission is as under:

“16.

*(i) The Wheeling and Banking Charges fixed in the Commission’s order dated 9.6.2005 and continued thereafter including in the Commission’s Tariff Order dated 6.5.2013 shall continue till 31.3.2014 in respect of RE generators, except captive generators opting for participation in the REC mechanism.*

*(ii) Captive Generators, who desire to avail of the benefit of Renewable Energy Certificate Mechanism, shall be entitled to exercise an option to that effect.*

*On exercise of such an option, they shall be liable to pay the normal transmission, wheeling and other charges as determined in the Tariff Orders in force. They shall be allowed banking facility, which shall be on a monthly basis instead of annual basis, as set out in the Commission's Discussion paper referred to above. The excess energy injected at the end of each calendar month shall be deemed to have been purchased by the Distribution Licensee of the areas where the Generator is situated and shall be paid for at the APPC rate determined by the Commission from time to time".*

15. As indicated above, though the State Commission did not incline to revise the charges fixed earlier, held that the captive generators who desired to avail the benefits of Renewable Energy Certificate shall be allowed banking facilities which shall be on monthly basis instead of annual basis. As against this conclusion on the second question, the Appellant has filed this Appeal.
16. We have carefully considered the submissions made by the parties. We have directed both the parties to file written submissions. Accordingly, the learned Counsel for the Respondent has filed their written submissions and the Appellant did not chose to file the written submissions. We have pursued the records filed in the Appeal.
17. On a careful perusal of the Impugned Order we are unable to accept any of the ground s raised by the Appellant as we do not find any infirmity in the finding rendered by the State

Commission in respect of the issue in question. Our reasons are as follows:

(a) There is no stipulation either in the Regulations of the Central Commission or in the Regulations of the State Commission for allowing banking facility for a particular period i.e. annual basis as a non concessional measure. Hence, there cannot be any grievance of banking being allowed only on monthly basis when the Appellant has voluntarily chosen to take the benefit of Renewable Energy Certificate Mechanism.

(b) The contention of the Appellant that the State Commission has acted contrary to the applicable Regulations is untenable. The banking facility was allowed on annual basis as promotional measures to the Renewable Energy Generators which has been discontinued. The banking as a facility is not allowed to conventional energy generators. If the Renewable Energy Generator s taking the benefit of RECs is to be treated equivalent to the conventional energy generators, the provision for banking facility is provided to the Renewable Energy Generators. However, there cannot be any vested right claiming for banking facility for one year and not for one month. It is for each

generator to take a decision whether to take the REC or not which is a commercial charge.

(c) It is always open to the Appellant to take a concessional and promotional measure as is available to the Renewable Energy Generators in the State of Karnataka. In the present case, the Appellant has chosen to take the REC benefits under the REC Regulations, 2010 for which the Appellant is required to be treated at par with the conventional energy generators and it cannot be allowed to avail any promotional or concessional measures available.

(d) The REC Regulations of the Central Commission only provide for banking from peak to peak and off-peak to off-peak hours. In fact, there is no provision in the Regulation for allowing banking facility for the period of one year.

(e) The main contention of the Appellant is that the principles laid down by this Tribunal in the judgment in Appeal No.45 of 2012 in the case of Beta Wind Farms have not been followed by the State Commission. As pointed out the by learned Counsel for the Respondent, the said judgment is of no help to the Appellant in the present case in as much as there is no finding of this Tribunal in the judgment that banking is to be allowed

for one year period or for more. This Tribunal only held that explanation to the REC Amendment Regulations clarify that banking from peak to peak and off peak to off peak hours is allowed.

(f) In the Impugned Order the State Commission has specifically provided that Banking shall be for a period of one month and for the excess electricity injected, charges are to be paid for by the distribution licensees at the APPC price.

(g) The contention of the Appellant that the annual banking has been the long prevalent practice in the State of Karnataka and hence the same has to be continued is misplaced. The Appellant while availing the benefit of REC cannot claim the benefits which were available to Wind Energy Generators who were not availing REC benefits.

## 18. **To Sum-UP**

**The State Commission is perfectly justified in changing the annual facility by stipulating that the monthly adjustments instead of earlier regime of annual adjustments for Generators awaiting the benefit of Renewable Energy Certificate.**

19. In view of the above conclusion, there is no merit in the Appeal.

20. Consequently, the Appeal is dismissed. However, there is no order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated:30th May, 2014

√REPORTABLE/~~NON-REPORTABLE~~