

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 368 OF 2017 &
IA NO. 746 OF 2017

Dated: 14th November, 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of:

State Load Despatch Centre, Karnataka
Karnataka Power Transmission Corporation Limited,
Ananda Rao Circle,
Race Course Cross Road,
Bangalore – 560 009

... **Appellant(s)**

Versus

1. Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building,
Janpath
New Delhi-110 001

2. Dalmia Cements (Bharat) Limited
Dalmiapuram, District Tiruchirapalli,
Tamil Nadu

3. Karnataka Electricity Regulatory Commission
6th and 7th Floors, Mahalakshmi Chambers,
9/2, M.G. Road,
Bangalore – 560 001

... **Respondent(s)**

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

Counsel for the Respondent(s) : Mr. Shridhar Prabhu
Mr. Anantha Narayan M.G.
Mr. Tarun Gulia for R-2

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. With the consent of the learned counsel appearing for the Appellant and learned counsel appearing for the second Respondent, the matter was taken up for final disposal.
2. The learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant submitted that, the Appellant assailing the correctness of the impugned Order dated 24.03.2017 passed in Petition No. 224/MP/2016 on the file of the Central Electricity Regulatory Commission, New Delhi in so far it relates to Backup Power Supply (BPS) charges only has presented this appeal, being Appeal No. 368 of 2017.
3. The submission made by the learned counsel appearing for the Appellant, as stated supra, is placed on record.
4. We have heard the learned counsel appearing for the Appellant and learned counsel appearing for the second Respondent. The Respondent Nos. 1 and 3 served unrepresented.
5. The learned counsel, Mr. Shridhar Prabhu, appearing for the second Respondent, at the outset, submitted that, in the light of the facts stated in para 2 and findings recorded by the first Respondent/Central Regulatory Commission in paragraph 11 of its impugned Order dated 24.03.2017 passed in Petition No. 224/MP/2016, the prayer sought by the Appellant against the second Respondent cannot be sustainable for consideration in view of the fact stated in para 2 and finding recorded in paragraph 11 of the impugned Order. Therefore, he prayed that the instant appeal may kindly be disposed of accordingly.

6. **Per-contra**, the learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant, at the outset, fairly submitted that, in case the registered consumer has an electricity connection for drawal of power including start-up power and is paying charges under such agreement to the jurisdictional distribution company, the Back-up Power Supply (BPS) charges on the same, levy would not arise in the light of the fact stated in para 2 and finding recorded in para 11 of the impugned order. Further, he submitted that, the second Respondent may kindly be directed to produce a copy of the agreement to the Appellant executed between the second Respondent and the jurisdictional distribution company within a period of two weeks to enable them to verify whether the fact stated in para 2 and finding recorded in paragraph 11 of the impugned order are correct.

7. Submissions made by the learned counsel appearing for the second Respondent and the learned counsel appearing for the Appellant, as stated supra, are placed on record.

8. In view of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the second Respondent, as stated supra, and in the light of the facts stated in para 2 and the findings recorded in paragraph 11 of the impugned Order dated 24.03.2017 passed in Petition No. 224/MP/2016 on the file of the Central Electricity Regulatory Commission, New Delhi, which read thus:

“2. The petitioner owns and operates a thermal power plant in the State of Karnataka and supplies power under inter-State open access. The petitioner is a registered consumer of the distribution company of Karnataka, namely Hubli Electricity Supply Company Limited (HESCOM). Since June 2016, the power generated is being exported to the State of Andhra Pradesh by availing inter-State open access under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (2008 Open Access Regulations) on payment of fees specified thereunder. The petitioner sources its entire power at all time from HESCOM under a Power Supply Agreement entered into between the petitioner and HESCOM.

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11. *The BPS Charges billed by the respondent can be related to the first part of clause (viii) of Regulation 11 as the second part applies in case where the generating company supplies power to a consumer under the open access, which is not the present case. The first part of clause (viii) lays down that the charges for arranging backup supply from the grid are payable by the open access customer in the event of failure of contracted supply. In our opinion, this provision covers the cases where a person, whether a consumer or a generating company or a licensee (the open access customer), is being supplied power under a contract but is unable to get the contracted supply. In such an event, the arrangement is to be made for backup supply from the Grid to meet the demand and under these circumstances the person concerned becomes liable to pay the charges for making arrangement for backup supply. The charges payable under clause (viii) of Regulation 11 of the Karnataka Open Access Regulations do not apply to a generating company exporting power by availing the inter-State open access. Further, the first part can be invoked when there is failure of contracted supply. In the present case, there is no allegation that the petitioner failed to meet the contracted supply. Therefore, levy of the BPS Charges on the petitioner in terms of clause (viii) of Regulation 11 of the Karnataka Open Access Regulations read with clause (3) of Regulation 16 of the Central Open Access Regulations cannot be justified. Therefore, the billing of the BPS Charges as per the impugned bill cannot be upheld”,*

the instant appeal, being Appeal No. 368 of 2017, stands disposed of in view of the facts stated in paragraph 2 and the findings recorded in paragraph 11 of the impugned Order with the direction to the second Respondent to produce a copy of the agreement executed between the second Respondent and the jurisdictional distribution licensee before the Appellant within a period of two weeks from the date of receipt of this Order.

9. Further, the Appellant shall reconcile and pay the necessary amount collected towards Back-up Power Supply charges to the second Respondent expeditiously.

10. With these observations, the instant appeal stands disposed of.

11. In view of the instant Appeal on the file of the Appellate Tribunal for Electricity, New Delhi has been disposed of, on account of which, relief sought in IA No. 746 of 2017 of 2018 does not survive for considerations and, hence, stands disposed of.

(S.D. Dubey)
Technical Member
vt/pk

(Justice N.K. Patil)
Judicial Member