

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

I.A. No. 199 of 2014 in Appeal No. 108 of 2014
&
I.A. No. 219 of 2014 in Appeal No. 122 of 2014

Dated: 3rd June, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

I.A. No. 199 of 2014 in Appeal No. 108 of 2014

In the matter of:

1. **Power Company of Karnataka Ltd.,
KPTCL Building, Kaveri Bhavan,
K.G. Road,
Bangalore- 560 009**
 2. **Bangalore Electricity Supply Co. Ltd.,
KR Circle, Bangalore- 560 001**
 3. **Mangalore Electricity Supply Co. Ltd.,
Paradigm Plaza, AB Shetty Circle,
Mangalore-575 001**
 4. **Gulbarga Electricity Supply Co. Ltd.,
Station Main Road,
Gulbarga-585 102**
 5. **Hubli Electricity Supply Co. Ltd.,
Corporate Office,
Navanagar, PB Road,
Hubli-580 025**
 6. **Chamundeshwari Electricity Supply Corporation Ltd.,
Corporate Office, No. 927, LJ Avenue,
New KantarajaUrs Road,
Saraswathipuram,
Mysore-570 009**
-Applicants/Appellants**

Vs.

1. **Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
NEW DELHI-110 001**
2. **Udupi Power Corporation Limited, Bangalore,
2nd Floor, Le Parc Richmonde,
51, Richmond Road,
Bangalore-560 025**
3. **Punjab State Power Corporation Ltd., Patiala
The Mall,
Patiala-147 001
Punjab**
4. **M/s. Janajagrithi Samithi, Karnataka,
Executive President, Nandikur, Udupi District,
Karnataka-574 138** **.... Respondents**

**Counsel for the Applicants/
Appellant (s):**

**Mr. M.G. Ramachandran
Mr. Anand K. Ganesan**

Counsel for the Respondent(s) :

**Mr. J.J. Bhatt, Sr. Adv
Mr. L.Vishwananthan
Mr. Anuj Berry
Mr. Abihimanu Ghosh for R2**

I.A. No. 219 of 2014 in Appeal No. 122 of 2014

In the matter of:

**M/s. Janajagrithi Samithi Karnataka,
Executive President, Mr. Balakrishna Shetty,
Nandikur, Udupi District,
Karnataka-574 138**

....Applicants/Appellants

Vs.

1. **Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
NEW DELHI-110 001**

2. **Udupi Power Corporation Limited, Bangalore,
2nd Floor, Le Parc Richmonde,
51, Richmond Road,
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 3. **Power Company of Karnataka Ltd.,
KPTCL Building, Kaveri Bhavan,
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 8. **Chamundeshwari Electricity Supply Corporation Ltd.,
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New Kantaraja Urs Road,
Saraswathipuram,
Mysore-570 009**
 9. **Punjab State Power Corporation Ltd., Patiala
The Mall,
Patiala-147 001
Punjab**
- Respondents**

**Counsel for the Applicants/
Appellant (s):**

**Mr. Sanjay Parikh
Ms. Mamta Saxena
Ms. N. Vidya,
Mr. Pukhrambam R. Kumar,
Mr. Ritwik Parikh**

Counsel for the Respondent(s): :

**Mr. J.J.Bhatt, Sr. Adv.
Mr. L.Vishwanathan
Mr. Anuj Berry
Mr. Abhimanu Ghosh for R.2
Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
for PCKL**

ORDER

Rakesh Nath, Technical Member

The Applicants/Appellants have filed this Appeal no. 108 of 2014 against the impugned order dated 20.02.2014 passed by the Central Commission.

2. They are Power Company of Karnataka Ltd. and the Distribution Licensees of Karnataka.

3. During the pendency of this Appeal, they have filed the present Application in IA no. 199 of 2014 for interim order seeking for stay of operation of the

impugned order dated 20.02.2014 determining the tariff for 2x600 MW Thermal Power Project of Udupi Power Corporation Ltd., the Respondent no. 2 herein for the period 11.11.2010 to 31.3.2014 in respect of Unit no. 1 and from 19.8.2012 to 31.3.2014 in respect of Unit no. 2.

4. The other Application in IA no. 219 of 2014 has been filed against the same impugned order in Appeal no. 122 of 2014 filed by Janajagriti Samithi Karnataka, a NGO representing the consumers, praying for similar interim relief.

5. The Applicants/Appellants have submitted that the capital cost has been allowed at Rs. 5607.50 crores as against the Appellants' contention that it should be restricted to Rs. 4299.12 crores, the ceiling cost decided by the Central Commission in In-principle

approval of the capital cost of the project vide order dated 25.10.2005. The ceiling capital cost was with respect to project capacity of $2 \times 507.5 \text{ MW} = 1015 \text{ MW}$. Subsequently, at the instance of the Udupi Power Corporation Ltd. the capacity was increased to $2 \times 600 \text{ MW} = 1200 \text{ MW}$. But even the increase in capacity would not result in increase in cost as the contract had been entered into with the equipment supplier for main equipment for $2 \times 600 \text{ MW}$ by the EPC contractor even before change in capacity of the plant was proposed by Udupi Power Corporation.

6. Opposing these Applications, it has been contended by Respondent no. 2, that the Central Commission has given a reasoned and detailed impugned order after considering detailed oral submissions and voluminous written submissions

made by the parties. Unit no. 1 of the Power Project has achieved Commercial Operation on 11.11.2010 and Unit no. 2 achieved CoD on 19.8.2012. Prejudice and hardship would be caused to them if the stay is granted by the Tribunal on the impugned order in favour of the Applicants. The Respondent no. 2 is currently receiving a provisional tariff of Rs. 4.11/kWh as against the final tariff of about Rs. 4.47 decided in the impugned order. Already, outstanding payment has accumulated to the extent of Rs. 1800 crores. Further, they would be constrained to shut down the power plant in near future if timely payment of tariff and liquidation of pending arrears has not been made pending these Appeals.

7. We have heard Shri M.G. Ramachandran, learned counsel for the Applicants/Appellants and

Shri J.J. Bhatt, learned Sr. Advocate for the Respondent no. 2. We have also heard learned counsel for the consumer's representative.

8. On a careful consideration of the submissions made by the parties, we feel that it would be desirable to pass interim orders in the matter keeping in view the interests of both the parties, to be operative till the final disposal of those main Appeals.

9. This Tribunal earlier in Appeal no. 18 of 2013 filed by PCKL/distribution licensees as against the provisional tariff order passed by the Central Commission for the Udupi Power Project had passed an interim order on 8.2.2013 as under:

“Having regard to the peculiar facts and circumstances of the case, we deem it appropriate to modify the Order to the effect that the Appellant will pay the provisional tariff as decided by the Central

Commission in the impugned order with effect from 01.09.2012 to the Respondent no.2 in respect of Unit nos.1 and 2 till the final determination of tariff by the Central Commission for these Units.

*The amount of arrears, which are to be paid from 01.09.2012, as directed, is to be paid by the Appellant **in four equal installments** by the end of every month. The first installment would be paid **on or before 28.02.2013**.*

With these directions, the I.A. is disposed of ”.

We have been informed by the parties that the above interim order dated 8.2.2013 has been fully complied with and the Appellants have paid the provisional tariff of about Rs. 4.11 per unit w.e.f. 1.9.2012.

10. The Udupi Power Corporation is now asking for implementation of the final tariff order dated 20.2.2014 i.e. recovery of dues at the final tariff from

the CoD of the Unit no. 1 i.e. 11.11.2010. According to them the arrears of Rs. 1800 crores are outstanding on account of difference in final tariff of about Rs. 4.47 per unit and Rs. 3.127 per unit paid upto 31.8.2012 and about Rs. 4.11 per unit paid from 1.9.2012 as per the interim order of the Tribunal. After adjusting the advance given by the distribution licensee the remaining outstanding dues are of the order of Rs. 1540 crores.

11. Keeping in view of the balance of interests of both the generator and the distribution licensees, we pass the following interim order subject to outcome of final disposal of the Appeals:

(i) The Appellants, PCKL/Distribution Licensees will pay the charges at the final tariff determined by the Central Commission vide impugned order dated

20.2.2014 from 1.4.2014 i.e. bill for energy supplied during the month of April 2014.

(ii) The Appellants will also pay the arrears due from 1.2.2013 on account of difference between the final tariff decided by the Central Commission and the amount already paid at provisional tariff as per the interim order dated 8.2.2013 in eight equal instalments by the end of every month. The first instalment will be paid by 30.6.2014.

(iii) Payment of arrears claimed for the period from 11.11.2010 to 31.1.2013 will be subject to the outcome of these Appeals.

This order will be in supercession to our earlier interim order dated 8.2.2013 passed in Appeal No. 18 of 2013.

We are not passing any order with regard to the other issues raised regarding impugned order dated 21.2.2014 as the same have not been raised during arguments in the IAs.

12. With the above directions, the IA no. 199 of 2014 and 219 of 2014 are disposed of.

13. Post the main Appeals for hearing on **09.07.2014**. In the meantime, pleadings be completed.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~

Vs