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

APPEAL NO. 52 OF 2020

Dated: 05.05.2022

Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

M/s GEM Sugars Limited
Incorporated under Companies Act 1956
Having its registered office at
'Hoodi Apartment', III floor 120,
Cunningham Road,
Bangalore-560025.
Represented by its Managing Director … Appellant

VERSUS

1. **Hubli Electricity Supply Company Limited,**
(wholly owned Government of Karnataka undertaking),
A company incorporated under the Companies act, 1956,
Having Corporate Office at P.B. Road Navanagar, Hubli-580029, Karnataka
Represented by its Managing Director

2. **The Karnataka Electricity Regulatory Commission,**
Through its Secretary,
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru – 560052. ..... Respondents

Counsel for the Appellant (s) : Ms. Prerna Priyadarshini
Ms. Priyashree Sharma

Counsel for the Respondent (s) : Ms. Vaishnavi Rao
Ms. Prerna Sharma for R-1 & 2

J U D G M E N T *(Oral)*

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The appellant is a co-generator of electricity, its power project being located in State of Karnataka. It had entered into a Power Purchase Agreement (PPA) on 30.03.2001 with the Karnataka Power Transmission Corporation Limited (KPTCL) from whom the said arrangement would be eventually taken over (in 2005) by Respondent / Hubli Electricity Supply Company Ltd. (HESCOM). In terms of the PPA, there was a provision for delayed payment charge to be levied. It also appears that under the financial terms set out in the PPA, the parties had agreed for escalation of tariff @ 5% on annual basis. It is stated that KPTCL had chosen to unilaterally freeze the tariff at Rs.3.32 per unit some time in 2003. Besides this, there were delays committed in timely payments. The freezing of the tariff and the delay in payments gave rise to dispute between the parties which were eventually resolved by a settlement agreement which was adopted by the State Commission as its determination by order dated 06.04.2009. Certain invoices were raised in its terms by the appellant. Its case has been that payments were not made timely even pursuant to the said invoices issued in terms of the decision of the Commission founded on the settlement agreement. On basis of these facts and against such background, the appellant had approached the State Commission by Original Petition registered no. 38 of 2015. The said petition was disposed of by the Commission by order dated 04.07.2019, declining to proceed in the matter, the relevant reasons for such result having been set out as under:

> *"It is not in dispute that OP No.18/2008 was filed by the Petitioner, seeking payments in respect of: (i) Non-grant of escalation price; (ii) Interest on delayed payments of regular bills; and (iii) Interest in respect of delay in payment of escalation price. In the present case, the 2nd Respondent (HESCOM) has not denied that the above reliefs were granted while reducing the rate of interest to 6.5% per annum from 18% per annum, as claimed by the Petitioner. It is not the case of the Petitioner that, subsequent to the disposal of OP No.18/2008, the 2nd Respondent (HESCOM) refused to pay the tariff at the escalated rate. Therefore, the interest that would become payable on the amount due towards the*

difference between the escalated rate as per the terms of the PPA and the frozen rate, could be calculated, as per the reliefs granted in OP No.18/2008. It is also not the case of the Petitioner that, this Commission has not granted any relief in OP No.18/2008 and has simply recorded the terms of the settlement. In respect of the same cause of action, there cannot be successive litigations. If a party has not complied with an Order passed by this Commission, the proper recourse available to the aggrieved party would be, to file a Complaint before this Commission, for taking appropriate action in the matter, but not to file a fresh Petition for the relief already granted. The Petitioner has not claimed, at any stage of the proceedings in this case, to convert this proceeding and treat it as a Complaint. In the absence of such a request by the Petitioner, this Commission, on its own, cannot treat the present Petition as a Complaint. For the above reasons, we are of the considered view that, the present Petition is not maintainable. Therefore, we answer Issue No.(1) in the affirmative."

3. The appellant feeling aggrieved by short-shrifting of its claim by above decision has approached this Tribunal by the appeal at hand.

4. Having heard the learned counsel for the parties, we agree that the above approach adopted by the Commission is not only most inappropriate but wholly unfair and unjust. The provision contained in Section 142 of the Electricity Act, 2003 only needs to be quoted here:

"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction".

5. The statute confers requisite power on the Commission to ensure due compliance with its orders by taking recourse to punitive measures *inter alia* under Section 142 of the Electricity Act, quoted above. It is a hyper-technical stand taken by the Commission that the appellant could not have come with

another petition and rather should have approached it by way of a complaint under Section 142. Nothing stopped the Commission from treating the petition as complaint under Section 142 of the Electricity Act.

6. For the foregoing reasons, we set aside the impugned order dated 04.07.2019. We direct that the petition of the appellant shall be treated as a petition/complaint under Section 142 of the Electricity Act. The Commission is directed to take it up for necessary action in accordance with law on 23.05.2022. The parties shall appear before the Commission on the said date and will be entitled to be heard before the Commission passes any effective order. The issue of liability arising out of delayed payments has simmered for too long to be approved of. In these circumstances, it shall be bounden duty of the State Commission to deal with the matter expeditiously. For removal of doubts, if any, we clarify that we have not expressed any opinion on the claim of the appellant in the petition (which has been directed to be treated under Section 142 of the Act) or the contentions to the contrary that may be urged by the distribution licensee in response.

7. The appeal is disposed in of above terms.

PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING ON THIS 05th DAY OF MAY, 2022.

(Sandesh Kumar Sharma)	**(Justice R.K. Gauba)**
Technical Member	Officiating Chairperson

pr/tp