

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram: Shri S. Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

DATE OF HEARING: 24.5.2012

Petition No. 132/MP/2012 with I. A. No. 23/2012

Sub: Petition for grant of open access for inter-State transmission of electricity.

Petitioner : BMM Ispat Limited, Bellary

Respondents : State Load Despatch Centre , Karnataka, Bangalore
Department of Energy, State of Karnataka, Bangalore
Power Company of Karnataka Limited, Bangalore
Karnataka Power Transmission Corporation
Ltd., Bangalore
Bangalore Electricity Supply Company Ltd., Bangalore
Hubli Electricity Supply Company Limited, Hubli
Mangalore Electricity Supply Company Ltd.,Mangalore
Chamundeshwari Electricity Supply Corp. Ltd.,Mysore
Gulbarga Electricity Supply Company Ltd., Gulbarga
Southern Regional Load Despatch Centre, Bangalore

Parties present : Shri Shridhar Prabhu, Advocate for the petitioners
Shri Ananathanrayana, Advocate for the petitioners

Record of Proceedings

The petitioner BMM Ispat Limited has filed this petition for setting aside the letter No. CEE/SLDC/EE/AEE3/37 dated 9th April, 2012 issued by the State Load Dispatch Centre, Karnataka refusing to grant No Objection Certificate for Inter-State Open Access to the petitioner and direct the SLDC, Karnataka to issue NOC for the period from 5.4.2012 to 4.5.2012 in terms of application dated 5.4.2012, among the other prayers.

2. The learned counsel for the petitioner submitted that petitioner vide its letter dated 25.1.2012 applied for NOC for grant of Short Term Open Access to sell up to 45 MW power for the period from 26.1.2012 to 25.2.2012. In response, SLDC, Karnataka vide its letter dated 28.1.2012 had communicated that the said application dated 25.1.2012 is not being considered as per the directives of the Government of Karnataka issued under Section 11 of the Electricity Act, 2003 (the Act) and directed to inject all the power to Karnataka State grid from 1.2.2012 to 31.5.2012 or until further orders.

3. The Commission observed that powers of the State Government under Section 11 of the Act have been upheld by the Hon'ble High Court of Karnataka and presently the matter is under consideration of the Hon'ble Supreme Court of India. Even though the petition is admitted, final order cannot be issued by the Commission till the appeal is finally decided by the Supreme Court.

4. The learned counsel for the petitioner submitted that the Hon'ble Supreme Court of India is seized with the question where the validity of the Section 11 of the Act and powers of the State Government thereunder has been challenged, that too, in respect of the Section 11 order then issued. The present application is a separate cause of action based on a conditional Section 11 order. Even presuming that Section 11 is valid and the State Government has the power to issue order under the provision, learned counsel submitted that the Section 11 order dated 27.1.2012 has not taken effect. SLDC, Karnataka has written the letter dated 28.1.2012 to the petitioner which states that Government of Karnataka has issued the Section 11 order which takes effect from 1.2.2012 and has accordingly withdrawn the NOC. The learned counsel referred to the order dated 27.1.2012 issued under Section 11 of the Act and submitted that the said order provides that all the generators in the State of Karnataka shall operate and maintain their generating stations with the maximum exportable capacity and shall supply of exportable electricity into the grid subject to fulfillment of certain conditions. Therefore, the said order is a conditional order. Condition 3 provides that LC shall be provided by the ESCOMs to the extent of cost of power allocated. Since LCs have not been issued, the Section 11 order has not taken effect.

5. The learned counsel further submitted that though the Section 11 order is dated 27.1.2012, it has been published in Karnataka Gazette on 15th March, 2012. The learned counsel relying on the judgement of Supreme Court in HARLA V/s the State of Rajasthan { 1951 AIR 467, 1952, SCR 110}, ITC Bhadrachalam Paperborads V/s Mandal Revenue Officer { JT 1996 (8) 67} and B.K. Srinivasan V/s State of Karnataka reported in {1987 (1) SCC 658}, submitted that the Section 11 order would take effect from its publication in the Official Gazette on 15th March, 2012. SLDC, Karnataka has not verified whether the Section 11 order has been officially published in the manner known to law or whether the conditions precedent have been fulfilled. Therefore, the action of the SLDC, Karnataka is bad in law.

6. The learned counsel further submitted that other generators like JSW and Godavari etc. are still permitted by SLDC, Karnataka to inject power into the grid. In support of this, the petitioner has placed on record the injection schedule from the web site of SRLDC. The learned counsel further submitted that Section 11 directive is bogey to deprive petitioner to avail open access.

7. Learned Counsel sought an interim direction to the SLDC, Karnataka to grant NOC / Standing clearance for the inter-State open Access transaction at this stage. The Commission declined to grant any ad-interim directions in the matter. Based on the submission of the learned counsel for the petitioner, the Commission directed to admit the petition and issue notice to the respondents.

8. Accordingly, the petitioner was directed to serve the copy of the petition on the respondents by 31st May, 2012 who may file their response by 8.6.2012 and the petitioner may file its rejoinder, if any, by 15.6.2012.

9. The petition shall be listed for hearing on 19.6.2012

By order of the Commission

**Sd/-
(T. Rout)
Joint Chief (Law)**

