

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.10/RC/2013

Coram:

**Shri Gireesh B.Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A.S.Bakshi, Member**

**Date of Hearing: 06.8.2015
Date of Order : 28.8.2015**

In the matter of

Petition under Section 142 of the Electricity Act, 2003.

And

In the matter of

Shamanur Sugars Limited
374, 4th Main, P.J. Extension,
Davangere-577 002, Karnataka

.....Petitioner

Vs

1. Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

2. State Load Despatch Centre
KPTCL, No. 28,
Race Course Road,
Ananda Rao Circle
Bangalore-560 001

3. Chairperson
Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

4. Managing Director
Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,



Bangalore-560 009

5. Shri Narasimha Raju.D.N.
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

6. Shri L.V. Nagarajan
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

7. Shri H.Basker
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

8. Shri I.S.N.Prasad
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

9. Shri Kamble.M.R.
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

10. Shri P.Manivannan
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

11. Dr. Aditi Raja
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

12. Shri S.Pratap Kumar
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

13. Dr. Muddu Mohan
Director, Karnataka Power Transmission Corporation



Kaveri Bhawan, K.G.Road,
Bangalore-560 009

14. Shri V.Venkatasiva Reddy
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

15. Shri M.Nagaraju
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

16. Shri S.Shivamallu
Director, Karnataka Power Transmission Corporation
Kaveri Bhawan, K.G.Road,
Bangalore-560 009

.....**Respondents**

Following was present:

Shri Anantha Narayana, Advocate, SSL

ORDER

The present petition has been filed by Shamanur Sugars Limited for initiating appropriate action against respondents under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's directions dated 9.10.2012 in Petition No. 124/MP/2011.

2. Shamanur Sugars Limited had filed Petition No. 124/MP/2011 under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act) read with Regulation 26 of Central Electricity Regulatory Commission (Short Term Open Access in Inter-State Transmission) Regulations, 2008 seeking direction that clause (m) introduced as the additional condition in the Standing Clearance/No-Objection Certificate issued by



the Respondent No. 2, State Load Despatch central (SLDC) Karnataka was contrary to the Central Electricity Regulatory Commission (Short Term Open Access in Inter-State Transmission) Regulations, 2008 (hereinafter called the Open Access Regulations) and Central Electricity Regulatory Commission (Unscheduled Interchange and related matters) Regulations, 2009 (hereinafter called the UI Regulations). The petitioner had made the following prayers:

“(a) declare that clause (m) introduced as the additional condition in the Standing Clearance issued by the Respondent No. 2 to the Petitioner from 1st April, 2010 are contrary to the CERC (Open Access in inter-State Transmission) Regulations, 2008 and the CERC (Unscheduled Interchange Charges and related matters) Regulations, 2009 and

(b) direct the Respondent to compute the UI charges for the transactions made by the Petitioner from January, 2010 till date and settle the same in terms of the CERC (Unscheduled Interchange charges and related matters) Regulations, 2009, as amended from time to time.

(c) direct the Respondent to give detailed energy accounts and necessary supporting documents towards UI settlements to the Petitioner for each settlement period.

(d) pass such other or further orders as the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.”

3. While disposing the said petition, the Commission vide order dated 9.10.2012 directed the respondents (i.e. KPTCL and SLDC Karnataka) to align the Standing Clearance/NOC for open access to inter-State transmission with the provisions of the Open Access Regulations and UI Regulations framed by the Commission. The respondents were further directed to settle the dues of the petitioner from January 2010 onward in accordance with clause (5) of Regulation 20 of Open Access Regulations after sharing the relevant injection and drawal data with the petitioner.



4. The petitioner has submitted that being aggrieved by the Commission`s order dated 9.10.2012, KPTCL filed Writ Petition No. 46495/2012 before the High Court of Karnataka. The Hon`ble High Court vide its order dated 28.11.2014 specifically rejected the application for stay and directed the respondents (KPTCL and SLDC, Karnataka) to file their replies. According to the petitioner, SLDC Karnataka has issued a No Objection Certificate dated 5.12.2012 in which the same condition has been imposed. Further, SLDC Karnataka has raised the provisional bill towards UI charges on 14.12.2012 in which backup power supply charges have been claimed. According to the petitioner, NoC dated 5.12.2012 and the provisional bill dated 14.12.2012 are not in compliance with the order of the Commission dated 9.10.2012 and therefore, attract action under Section 142 of the Act against the respondents. The petitioner has prayed for the following:

- “(a) Initiate appropriate action against each of the Respondents, jointly and severally, under Section 142 of the Electricity Act, 2003 and/or any other appropriate provision/s of the Electricity Act, 2003, for their willful disobedience and defiance of this Hon`ble Commission`s order dated 9th October, 2012;
- (b) grant the cost of this complaint; and
- (c) Pass any other order/s in the interest of justice and equity.”

5. KPTCL, SLDC Karnataka, Respondent Nos. 4,6,9 to 16 in their joint reply dated 30.3.2013 have submitted that the imposition of condition in the NoC was to regulate injection and drawal of power by the generating station in order to ensure grid safety and security. In the interest of grid, SLDC Karnataka is empowered to issue such directions. The respondents have further submitted that the Hon`ble High Court of Karnataka has not rejected the application for stay as submitted by the petitioner but



has only issued notice to the respondents on 28.11.2012. They have further submitted that the Respondents No. 3 to 16 are not proper and necessary parties to the petition and are not directly responsible for implementation of the order of the Commission.

6. The petition was listed for admission before the Commission on 19.2.2013. After hearing the learned counsel for the petitioner, the Commission issued notice to the respondents. During the next hearing of the petition on 9.4.2013, learned counsel for the petitioner submitted that the order of the Commission and Open Access Regulations of the Commission have been challenged by KPTCL before the Hon`ble High Court of Karnataka. The Commission directed the petitioner to file outcome of the final decision of the Hon`ble High Court of Karnataka. On the next date hearing on 11.6.2013, the learned counsel for the petitioner submitted that the Hon`ble High Court vide its order dated 25.4.2013 directed the petitioner to pay the UI charges as per the Commission`s order dated 9.10.2012 for future transactions. During the course of hearing on 8.8.2013, learned counsel for the petitioner requested to adjourn the matter *sine die* as the matter before the Hon`ble High Court is still pending. Accordingly, the Commission adjourned the matter *sine die*.

7. The staff of the Commission vide letter dated 4.6.2015 requested the petitioner to appraise the present status of the matter before the Hon`ble High Court of Karnataka. In response, the petitioner vide letter dated 18.6.2015 informed that the matter is still pending before the Hon`ble High Court and the petitioner is moving a memo for early hearing and will inform about the future development.



8. The petition was listed for hearing on 6.8.2015. During the hearing, the Commission desired to know from the learned counsel for the petitioner whether any grievance of the petitioner survives in the present petition in the light of the interim order of the Hon`ble High court dated 25.4.2013. In response, learned counsel for the petitioner requested for two weeks time to file written submission in the matter. None appeared on behalf of the respondents. No written submission has been filed by the learned counsel for the petitioner so far. Therefore, the Commission proceeds to dispose of the matter in the light of the material on record.

Analysis:

9. The petitioner has submitted that the NOC dated 5.12.2012 issued by SLDC Karnataka and the provisional bill dated 14.12.20112 are in violation of the order of the Commission dated 9.10.2012 and therefore, action should be initiated against the respondents for non-compliance of the said order. The Commission in its order dated 9.10.2012 has held that the condition in Para (m) of the No Objection Certificate issued by SLDC is not in conformity with the Open Access Regulations and UI Regulations and accordingly, set aside the same. The relevant portion of the said order dated 9.10.2012 is extracted as under:

"18. It is a settled principle of law that Statutory Regulations cannot be changed though administrative instructions and in case of conflict between Statutory Regulations and administrative instructions, the former shall prevail. The action of the respondents by inserting the amended clause (m) in the Standing Clearance/NOC has virtually changed the provisions of the Open Access Regulations. Therefore the clause (m) of the Standing Clearance/NOC being in violation of the Open Access Regulations cannot be sustained and is accordingly set aside. The respondent is directed to align its Standing Clearance /NOC for open access to inter-State transmission with the provisions of the Open Access Regulations and UI Regulations framed by the Commission. The respondent is further directed to settle the dues of the petitioner from January 2010 onward in accordance



with clause (5) of Regulation 20 of Open Access Regulations after sharing the relevant injection and drawal data with the petitioner."

10. Aggrieved by the Commission's order dated 9.10.2012, KPTCL filed a W.P. No. 46495/2012. On 28.11.2012, the matter was listed for admission before the Hon'ble High Court of Karnataka. The Hon'ble High Court after hearing the petitioner (KPTCL) issued the notice to the respondents.

11. The Standing Clearance/NOC dated 5.12.2012 has been issued after the Hon'ble High Court directed to issue of notice on the writ petition. The earlier condition in the NoC dated 1.4.2010 is as under:

"(m) For any excess generation, the rates fixed by KPTCL for old plants only will be paid and not as per UI rates. However, for shortfall in generation as compared to the scheduled generation, the firm will pay UI rates."

The above condition was replaced by the following in the NoC dated 5.12.2012:

"For any excess generation by the firm with respect to schedule, payment will be made as per the outcome of decision of the W.P. No. 46495/2012 in the High Court of Karnataka. However, for shortfall in generation as compared to scheduled generation, the firm will have to pay UI rates."

Perusal of the above conditions reveals that in the NOC dated 5.12.2012, payment for excess generation has been made subject to the "outcome of the decision in the Writ Petition filed before the High Court" in place of "rates fixed by KPTCL".

12. It is pertinent to mention that the Hon'ble High Court in its order dated 25.4.2013 has directed as under:

"The first respondent generator and the petitioner No. 2 shall pay/receive the unscheduled interchange charges as per the second respondent's impugned order, dated 9.10.2012 (Annexure-E) in respect of future transaction that is from today till the next date of hearing. However, the recovery of the differential amount on account of switching over from one regime to another regime, that is from the operation of clause (m) of No Objection Certificate to the operation of Regulation 20 (5) of the Central



Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 is stayed, insofar as it pertains to the first respondent generator. List the matter on 29.5.2013.”

In view of the above, the order of the Commission, in so far as it pertains to the transactions prior to the date of the order of the Hon`ble High Court, has been stayed. All future transactions have been directed to be made in accordance with the order of the Commission dated 9.10.2012. Since the effect of the Commission`s order dated 9.10.2012 with reference to past transactions till 25.4.2013 has been stayed, it cannot be said that the NOC dated 10.12.2012 which is covered under the period of stay is in violation of the order of the Commission.

13. The petitioner has submitted that the bill dated 14.12.2012 contains back-up supply charges in contravention of the order of the Commission dated 9.10.2012. We have gone through the pleadings and order in Petition No. 124/MP/2011. This issue was neither considered by the Commission in Petition No. 124/MP/2011 nor was any direction issued in this regard. Therefore, the provisional bill dated 14.12.2012 cannot be said to be in non-compliance of the order of the Commission dated 9.10.2012 in Petition No. 124/MP/2014.

14. In view of the above, no case has been made by the petitioner under Section 142 of the Act and accordingly, the petition is dismissed.

SD/-
(A.S.Bakshi)
Member

SD/-
(A.K.Singhal)
Member

SD/-
(Gireesh B.Pradhan)
Chairperson

