

**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. 126/MP/2012 with I. A. No. 17/2012**

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

Petitioner : Vishwanath Sugar and Steel Industries Limited,  
Bagewadi

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  
Tata Power Trading Company Ltd., Mumbai  
Indian Energy Exchange Ltd.Mumbai  
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 Vishwanath Sugar and Steel Industries Limited has filed this petition for setting aside the letter No. CEE/SLDC/EE/AEE3/27-18 dated 5th March, 2012 issued by the State Load Dispatch Centre, Karnataka refusing to grant No Objection Certificate for Inter-State Open Access to the petitioner and the letter No. CEE/SLDC/EE/AEE/1418 dated 28.1.2012 cancelling the NOC w.e.f. the midnight of 31st January, 2012, among the other prayers.

2. The learned counsel for the petitioner submitted that the petitioner was granted open access by SLDC, Karnataka vide its letter dated 16.1.2012 to sell power upto 14 MW for the months of February and March, 2012 in accordance with the provisions of the Regulation 8 (3) of Central Electricity Regulation Commission (Open Access Inter-State Transmission) Regulations, 2008 (Open Access Regulation). However, the SLDC, Karnataka vide its letter dated 28.1.2012 withdrew the NOC from the midnight of 31.1.2012 as per the directives

of the Government of Karnataka issued under Section 11 of the Electricity Act, 2003 (the Act). The learned counsel submitted that once SLDC, Karnataka has granted Standing clearance / NOC for availing open access, it has become functus officio and withdrawing the NOC is without any authority of law and is illegal. The learned counsel further submitted that the process for issuance of the directives under Section 11 of the Act by the Government of Karnataka was ostensibly based on the letters of the Power of Company of Karnataka Limited which is neither a statutory body nor a licensee. He further submitted that the directives issued under Section 11 of the Act is a conditional one and cannot take effect unless all conditions precedent imposed in the GO are complied with by respondent No. 5 to 9. He submitted that one of the conditions of the GO regarding opening of the LC has not been fulfilled and therefore the GO has not taken effect.

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 said 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 a 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)**