

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 179 of 2020

Case of WinIndia Ventures Private Limited against Maharashtra State Electricity Distribution Company Limited for non-compliance of the Order dated 3 July 2020 in Case No. 24 of 2020.

Coram

**I.M. Bohari, Member
Mukesh Khullar, Member**

WinIndia Ventures Private LimitedPetitioner

V/s

Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For the Petitioner :Shri Harsh Gokhale (Adv.)
For the Respondent :Shri Harinder Toor (Adv)

ORDER

Date: 25 January 2021

1. M/s WinIndia Ventures Private Limited (**WIVPL**) has filed this Case dated 31 August 2020 against Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) for non-compliance of the Order dated 3 July 2020 in Case No. 24 of 2020.
2. **WIVPL's main prayers are as follows:**
 - a) *Hold and declare that MSEDCL has not complied with the directions contained in Order dated 03.07.2020 passed in Case No. 24 of 2020 passed by this Commission;*
 - b) *Direct the Respondent to pay the amounts for FY 2014-2017 immediately, as per the Order dated 03.07.2020 passed in Case No. 24 of 2020 by this Commission alongwith interest @ 18% for each day of delay in compliance of the Order dated 03.07.2020 passed in Case No. 24 of 2020;*

c) *Initiate appropriate action against the Respondent under Section 142, 146 and 149 of the Electricity Act, 2003 for deliberate and willful non-compliance of Order dated 03.07.2020 passed in Case No. 24 of 2020;*

3. This Petition has been filed seeking compliance of following direction in Order dated 3 July 2020 in Case No. 24 of 2020:

“21.4 Therefore, in view of above quoted ruling in BWDPL’s matter, MSEDCL shall compensate WIVPL for energy injected from its 1.5 MW WTG in the year FY 2014-15 to FY 2016-17 at the rate of APPC (excluding RE) plus floor price of non-solar REC applicable for respective year. However, such compensation would be without any carrying cost as MSEDCL was not responsible for delay in raising bills for FY 2014-15 to FY 2016- 17.”

WIVPL has contended that even after repeated follow up, MSEDCL has not paid compensation amount as directed by the Commission in above quoted order.

4. The Commission had initially heard the matter on 22 October 2020 and held that since both parties have filed cross-appeals before the Hon’ble Tribunal challenging the Order of which compliance is being sought and also WIVPL did not raise the invoice on MSEDCL, balance of convenience requires parties to wait till APTEL decides the matter. Accordingly, vide Order dated 17 November 2020, the Commission ruled that, relief sought by WIVPL cannot be granted. Relevant part of the Order is reproduced below:

“11.10 In view of the above facts of the present matter and that the petitioner has challenged the impugned order including the methodology based on which the compensation was awarded and that the payments go back to 2014 which were never pressed before commission until the recent petition, the Commission is of the opinion that balance of convenience in the present case requires the parties to wait till Hon’ble APTEL decides the appeals filed against order dated 3 July 2020.

11.11 Hence, at this point of time, the Commission is not inclined to grant any relief as prayed for in this matter.”

5. Aggrieved by the above Order of the Commission, WIVPL filed appeal before the APTEL in DFR No. 421 of 2020. The APTEL vide its judgment dated 1 December 2020 set aside and vacated the Commission’s Order dated 17 November 2020 and remanded the matter to the Commission. Relevant part of APTEL Judgment is reproduced below:

“8. It has to be borne in mind by all concerned that an order passed by a statutory authority remains binding and continues to be operative and enforceable so long as it is not set aside, vacated, modified or stayed by superior authority in the hierarchy of the institutions established by the law. The Commission has failed to bear in mind that there is no stay against the operation of the impugned order. Mere challenge by appeal could not be construed as an automatic stay of operation of the order. If that were to be accepted as a practice it would result in chaos.

.....
14. We, thus, set aside and vacate the order dated 17.11.2020 in Case No. 179 of 2020 giving liberty to the Appellant to raise the invoice in terms of observations recorded above within one week hereof. After having raised the invoice, the Appellant will approach the Commission whereupon it would take up the Case no. 179 of 2020 further and take appropriate decision in accordance with law. Given the nature of the reliefs sought by the Appellant in the matter which has been revived before the State Commission by us by this order, it will be desirable that the Commission take a final view in the matter within four weeks of the Appellant approaching with the invoice.”

Thus, while remanding matter to the Commission, the APTEL has directed WIVPL to raise invoice on MSEDCL to claim compensation as allowed by the Commission in Order dated 3 July 2020.

6. Accordingly, WIVPL raised invoice dated 2 December 2020 for an amount of Rs. 3,68,80,388/- on MSEDCL claiming compensation which as per its understanding was as per compensation allowed by the Commission in Order dated 3 July 2020.
7. Subsequently, hearing in the matter was held on 28 December 2020. During the hearing MSEDCL stated that APTEL while remanding matter has directed the Commission to take appropriate decision in the matter as per law and contended that WIVPL by challenging order before the APTEL and also seeking implementation of same before the Commission is approbating and reprobating on same issue which is not permissible under the Law. He further contended that the APTEL in its judgment has not addressed this issue and also requested that WIVPL be directed to submit bank guarantee against the payment to be released by MSEDCL. In response to MSEDCL's argument, WIVPL stated that contentions raised by MSEDCL are no more valid subsequent to APTEL judgment which clearly stated the order which is in force needs to be implemented. WIVPL further stated that due to precarious financial situation it is not in a position to offer bank guarantee and such issue cannot be raised as a fresh request in compliance proceeding.
8. After hearing the parties and considering APTEL judgment dated 1 December 2020, the Commission issued following Daily Order:

7. Having heard the parties, the Commission notes that Hon'ble APTEL in its Order dated 1 December 2020 has amply clarified that the Commission's Order dated 3 July 2020 is not stayed and needs to be enforced. Accordingly, the Commission directs as follows:

- a. *MSEDCL shall comply with Commission's Order dated 3 July 2020 in Case No. 24 of 2020.*
- b. *In an event that MSEDCL does not agree with the calculations of Invoice raised by WIPL, they shall release the amount they are agreeable with or 75% of the amount claimed by WIPL in invoice dated 2 December 2020, whichever is higher, by 31 December 2020.*

c. If necessary, MSEDCL and WIPL to reconcile the balance invoice amount within 5 days of date of this Daily Order and pay/adjust the residual amount by 5 January 2021.

d. MSEDCL to file its written submission by 1 January 2021. Thereafter, WIPL to submit its rejoinder, if any, by 6 January 2021.

Subsequent to receipt of above submissions, hearing in this matter will be held on Friday, 8 January 2021.”

9. On 1 January 2021, MSEDCL submitted its written arguments along with the copy of letter dated 31 December 2020 addressed to WIVPL highlighting that in compliance with the Commission Daily Order dated 28 December 2020, it has released the 75% of the invoice amount i.e. Rs. 2,78,66,454/-. Further, MSEDCL contended that WIVPL has challenged the Commission's entire Order 3 July 2020 in Case No. 24 of 2020 before the APTEL vide DFR No. 230 of 2020 and not partially as claimed by WIVPL during the proceedings on 28 December 2020. It is a trite law that somebody having accepted a benefit given to him under a judgment cannot allege the invalidity of the very same judgment which conferred the said benefit. In the present case as well, WIVPL is challenging the very basis of monetary relief given by the impugned Order and at the same time is also praying for the execution of the said relief. MSEDCL highlighted various Orders of Supreme Court wherein the doctrine of approbate and reprobate on the same facts and taking inconsistent and shifting stand have been accordingly dealt with.
10. Further, in compliance of the above Daily Order dated 28 December 2020, MSEDCL, on 5 January 2021, released Rs. 88,78,986/- to WIVPL.
11. At the subsequent e-hearing through video conferencing held on 8 January 2021, the Advocate of WIVPL confirmed the receipt of amount from MSEDCL. However, he highlighted that amount of Rs. 1,34,948/- was still pending with MSEDCL. Representative of MSEDCL conveyed that because of some technical issues they were unable to pay the said amount and the same would be paid shortly. The Commission granted time till 11 January 2021 to pay the balance amount.
12. Subsequently, through its letter dated 8 January 2021, MSEDCL submitted that the balance payment has been made to WIVPL on 8 January 2021 and it has completely complied with the Commission's Daily Order dated 28 December 2020.

Commission's Analysis and Ruling:

13. The Commission notes that the present Petition has been filed seeking compliance of Commission's Order dated 3 July 2020 wherein the Commission directed MSEDCL to compensate WIVPL for energy injected from 1.5 MW WTG in the year FY 2014-15 to FY 2016-17 at the rate of APPC (excluding RE) plus floor price of non-solar REC applicable for the respective years.

14. The Commission vide its Order dated 17 November 2020 has restrained itself from allowing relief as sought for in the Petition as both parties were in appeal before the APTEL challenging relief granted in the Order dated 3 July 2020. However, Hon'ble APTEL vide judgment dated 1 December 2020, has vacated commission's Order dated 17 November 2020 and remanded the matter stating that order which is in force needs to be implemented. During remand proceeding before this Commission, MSEDCL contended that the APTEL in its judgment has not dealt with its contention that WIVPL is approbating and reprobating on the same issue. In this regard, the Commission notes that APTEL in its Judgment dated 17 November 2020 has remanded matter with following clear directions:

“8. It has to be borne in mind by all concerned that an order passed by a statutory authority remains binding and continues to be operative and enforceable so long as it is not set aside, vacated, modified or stayed by superior authority in the hierarchy of the institutions established by the law. The Commission has failed to bear in mind that there is no stay against the operation of the impugned order. Mere challenge by appeal could not be construed as an automatic stay of operation of the order. If that were to be accepted as a practice it would result in chaos.

.....

14. We, thus, set aside and vacate the order dated 17.11.2020 in Case No. 179 of 2020 giving liberty to the Appellant to raise the invoice in terms of observations recorded above within one week hereof. After having raised the invoice, the Appellant will approach the Commission whereupon it would take up the Case no. 179 of 2020 further and take appropriate decision in accordance with law. Given the nature of the reliefs sought by the Appellant in the matter which has been revived before the State Commission by us by this order, it will be desirable that the Commission take a final view in the matter within four weeks of the Appellant approaching with the invoice.” [emphasis added]

Thus, Hon'ble APTEL has clearly ruled that order which has not be stayed or set aside by superior authority needs to be implemented. As Order dated 3 July 2020 has not been stayed, the Commission vide daily Order dated 28 December 2020 has directed MSEDCL to comply with its Order dated 3 July 2020. Earlier order of Commission has been appealed against by both the parties. Merits of their respective arguments including the one raised by respondent relating to approbation and reprobation, have not been examined by Hon'ble APTEL. Since the matter is sub judice, Commission is not inclined to look into this issue in essentially a compliance order resulting from Hon'ble APTEL order.

15. As summarized in earlier part of the Order, when WIVPL filed this Petition on 31 August 2020, it had not raised invoice seeking compensation as per the above referred Order dated 3 July 2020. Subsequent to APTEL Judgement, WIVPL has raised invoice dated 2 December 2020 amounting to Rs. 3,68,80,388/-. Thereafter, as directed by this Commission, MSEDCL has paid Rs 2,78,66,454/- on 31 December 2020, Rs 88,78,986/- on 5 January 2021 and balance of Rs 1,34,948/- on 8 January 2021. Accordingly, MSEDCL has paid full amount towards the invoice dated 2 December 2020 raised by WIVPL. Hence, Order dated 3 July 2020 has been complied by the MSEDCL.
16. As far as prayer seeking interest for delay in payment of compensation amount is considered, the Commission notes that WIVPL's invoice dated 2 December 2020 does not

mention any due date for payment. In normal circumstances, invoice for Wind energy has payment period of 30 to 45 days from date of invoice. MSEDCL has paid all the amount within such period which is applicable for wind energy related invoices. Hence, question of paying interest on delayed payment does not arise. Hence, the Commission cannot consider WIVPL's prayer seeking interest on alleged delayed payment.

17. As Order dated 3 July 2020 has been complied by MSEDCL, the Commission is not inclined to invoke any action against MSEDCL under Section 142, 146 and 149 of the EA 2003.
18. Hence, the following Order:

ORDER

1. Accordingly, Case No. 179 of 2020 is disposed off.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

