

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 197 OF 2015**

Dated: **05.07.2022**

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

**In the matter of:**

**TGV SRAAC Limited**

*Formerly known as Sree Rayalseema Alkalies &  
Allied Chemicals Limited*

Gondiparla

Kurnool 518 004

And

No. 25, Shankara Park Road

Bangalore 560 004

*[Through its Authorized Representative]*

.... Appellant(s)

Versus

**1. Karnataka Electricity Regulatory Commission**

No. 16, C-1, Miller Tank Area

Vasanth Nagar

Bengaluru 560 052

*[Represented by its Chairperson]*

**2. Karnataka Power Transmission Corporation Limited**

KPTCL Building, Cauvery Bhavan

K.G. Road

Bangalore 560 009

*[Represented by its Managing Director]*

**3. Power Company of Karnataka Limited**

KPTCL Building, Cauvery Bhavan

K.G. Road

Bangalore 560 009

*[Represented by its Managing Director]*

**4. Bangalore Electricity Supply Company Limited**

Corporate Office, K.R. Circle

Bangalore 560 001

*[Through its Managing Director]*

**5. Mangalore Electricity Supply Company Limited**

5<sup>th</sup> Floor, Paradigm Plaza

A.B. Shetty Circle

Mangalore 575 001

*[Represented by its Managing Director]*

**6. Chamundeshwari Electricity Supply Corporation Limited**

No. 927, LJ Avenue

New Kantharaj Urs Road

Saraswathipuram

Mysore 570 009

*[Represented by its Managing Director]*

**7. Hubli Electricity Supply Company Limited**

Navanagar, P B Road

Hubli 580 029

**8. Gulbarga Electricity Supply Company Limited**

Navanagar P B Road

Bubli 580 029

*[Represented by its Managing Director]*

.... Respondents

Counsel for the Appellant (s) : Mr. V.C. Shukla  
Mr. Ajay Awasthi

Counsel for the Respondent (s) : Mr. Balaji Srinivasan  
Ms. Sumana Nagananda  
Ms. Samiksha Jain  
Ms. Medha Puranik  
Ms. Gayathri Sriram for R-2, 4 & 6  
  
Mr. Suresh Prasad  
Mr. Deepak Kumar for R-5

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

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

1. The appellant, a generator of electricity, is aggrieved by certain conclusions reached by Order dated 16.01.2015 passed by the first respondent, Karnataka Electricity Regulatory Commission (hereinafter referred to as, 'KERC' or 'State Commission') in Original Petition no.

10/2012 and is in appeal there against. The said original petition had been filed by the appellant before the State Commission on 22.03.2012 seeking various reliefs, the relevant ones to be noticed in due course, invoking its jurisdiction under Section 86(1)(f) of the Electricity Act, 2003 but without success

2. The appellant had established a power generation project in the State of Karnataka pursuant to a notification dated 25.11.1995 issued by the Government of Karnataka (State Government) inviting bids for such purposes. Its bid having been accepted, the appellant (the Generator) entered into a Power Purchase Agreement (PPA) on 15.12.1997 with erstwhile Karnataka Electricity Board (KEB) from whom the responsibility was later taken over by Power Company of Karnataka Limited (third respondent), the distribution business having been taken over by the various distribution licensees operating in the State of Karnataka who are in the fray as fourth to eighth respondents respectively. In terms of the PPA, the power project to be established by the appellant was to attain Commercial Operation on 31.10.2000(COD). It appears that, under the contractual arrangement, certain obligations had been taken over by the procurer (the Board), now the respondent procurer, for establishing a transmission line for evacuation of the electricity generated by the project. Article 3.3 (a) of the PPA is relevant and therefore extracted as under:

**“3.3 Obligations of the board:**

**(A) The board shall be responsible for the design, engineering and construction of the transmission facilities. The board shall make financing arrangements for the construction of the transmission facilities up to project site from the nearest substation. If the project site is situated at a distance beyond 5 kilometres from the nearest substation, the company shall pay the board for construction of transmission facilities for such additional substance beyond 5 kilometres. The amount shall be paid to the board within 30 days of effective date. The construction of the transmission facilities shall be completed 60 days prior to the scheduled commercial operations date.”**

**3.** It is not in dispute that the total length of the new line envisaged under the contract for purposes of the project of the appellant was 14.4 KMs. Thus, in terms of the above clause in the contract, the cost of the new line to the extent of 5 KMs was to be borne by the procurer and the cost for the rest 9.4 KMs was to be borne by the appellant (project developer). It is not in dispute that over the period the second respondent i.e. Karnataka Power Transmission Corporation Limited (KPTCL) had recovered a total amount of Rs. 1,36,21,992/- by periodic bills during the period from 04.09.2000 to 31.05.2001 on above account. Concededly, the new line could not come up there being certain issues faced by KPTCL on account of misdemeanors and defaults on the part of the agency to which the contract was awarded.

**4.** Against the above backdrop, the appellant had approached the first respondent (State Commission) by Original Petition no. 10 of 2012 seeking various reliefs including a direction for payment of refund of the amount

paid (mentioned as Rs.1,10,53,000/-) towards construction of separate line along with interest accrued thereupon up to February 2012. By the said petition, the appellant had also claimed certain other reliefs, the said petition having resulted in Order dated 16.01.2015 whereby the claims relevant for the present purposes were rejected, the appeal at hand being restricted to the claim for the aforesaid refund on account of construction of separate line as indeed on two other issues viz. claim of Rs.1,83,27,836/- on account of deemed generation charges, variable charges, fixed charges and rebate on rebate along with interest claimed accrued thereupon and non-payment against tariff invoice dated 01.03.2012 in the sum of Rs.1,65,65,345/- raised by the appellant for the month of February 2012.

5. We have heard the learned counsel for the appellant, and the respondents, on the above three broad issues at length. We have also gone through the record, including written submissions which have been presented, with their assistance.

6. The claim for refund of principal amount of Rs.1,10,53,000/- (along with accrued interest) towards construction of a separate line was considered by the State Commission against Issue No. 2, the relevant part of the impugned decision thereupon reading thus:

*“8) ISSUE No.(2) :*

*(a) The second prayer in the Petition is to direct the Respondent-2 (KPTCL) to refund a sum of Rs.1,10,53,000/-, along with interest of Rs.2,12,36,295/- thereon up to February, 2012 (totalling Rs.3,22,89,295/-), paid by the*

*Petitioner towards construction of a separate line, as per Article 3.3 of the PPA.*

*(b) The Petitioner has pleaded that the total length of the new line was 14.4 KMs from the Petitioner's project to the injection point and as per Article- 3.3 of the PPA, the Respondent-2 (the then KEB and now the KPTCL) had to bear the cost of the new line from the Project up to 5 KMs., and the cost of the new line from 5 KMs onwards up to the nearest substation had to be borne by the Petitioner. As per the letter dated 14.3.2002, the Respondent-2 had recovered Rs.1,36,21,992/- from the tariff bills during the period from 4.9.2000 to 31.5.2001 (Annexure P-41 filed with I.A.No.1/2012). Further, the Petitioner has filed a copy of the letter dated 19.4.2011 addressed by the Respondent-2 (Annexure P-42 filed with I.A.No.1/2012), informing the Petitioner that no further progress had been made in the construction of the new 110 kV Single Circuit line during the past four years, as the contractor, who was awarded the contract on 10.7.2003, was black-listed, and tendering for completion of the remaining work was in progress. The Petitioner, in the Rejoinder dated 26.6.2013, has stated that as per the PPA, the new line had to be ready before sixty days prior to the COD, and as the new line was not ready, the Petitioner was made to evacuate the Power generated through the existing feeder line, by the Respondent-2.*

*(c) The learned counsel for the Respondent-2, in his Objections dated 13.6.2013, submitted that the cost of new transmission line was in-built in the tariff under the PPA and had already been recovered by the Petitioner, and that refunding of the money to the Petitioner would mean double recovery of the costs incurred. In the Statement of Objections filed by the 2nd Respondent, it is contended that the construction of the transmission line was assigned to one M/s. Samala Mareppa & Sons, Ballari, through tender process, on 10.7.2003 and that the value of the contract was Rs.1,35,57,876/-, but the said Contractor did not complete the above work and had furnished a fake Bank Guarantee, and that the said Contractor was black-listed and its services were terminated. Further, it is contended that the payment made to the Contractor was to the tune of Rs.1,19,77,003/-, and that 75% of the work was completed. In the document (ANNEXURE - P-76) furnished on 2.11.2010 to the Petitioner by the Accounts Department of the 2nd Respondent, it is stated that the total expenditure up to 30.9.2010 was*

Rs.131.54 Lakhs. However, the learned counsel for the Respondent-2, in the Memo dated 29.8.2013, has stated that the total length of the line to be constructed was 14.4 KMs and that 75% of the work had been completed at a cost of Rs.94,51,818/-.

(d) The Petitioner, in the Rejoinder dated 26.6.2013, has refuted the statement of the Respondent-2, that the cost of construction of new transmission line was built into the tariff, and has submitted that, due to technical faults in the existing line, it had to change the fuel of its plant from furnace oil to diesel and incur huge cost for this purpose; however, it did not intend to claim this difference in fuel cost from the Respondent-2. The petitioner has also stated that there existed a line, which could evacuate the power and if according to the Respondent-2, it was not suitable for evacuation, the new line had to be constructed within the period prescribed in the PPA, i.e., sixty days prior to COD. As this has not been complied with, the Petitioner is entitled to refund of the amount.

(e) We have heard the learned counsel for the Petitioner and the Respondent-2, and perused the material on record. The Respondent-2, in its letters dated 20.12.2001, 19-9-2006, 17.5.2007 (Annexures P-68, P-70 and P-71 filed by the petitioner with memo dated 23.7.2013) had intimated the Petitioner about the progress achieved in construction of the new line and resistance by farmers for stringing work of the said line due to standing paddy-crop. In lieu of the new line, the Respondent-2 (KPTCL) had evacuated the power through an alternate existing 110 kV line between Ballari North Sub-station and Old Panyam Group Calcium Carbide Plant.

(f) It is relevant to quote Article 3.3(a) of the PPA, which reads thus : “(a) The Board shall be responsible for the design, engineering and construction of the Transmission Facilities. The Board shall make financing arrangements for the construction of the Transmission Facilities upto Project Site from the nearest substation. If the Project site is situated at distance beyond 5 kilometre from the nearest sub-station the Company shall pay the Board for construction of Transmission Facilities for such additional distance beyond 5 kilometre. The amount shall be paid to the Board within 30 Days of Effective Date. The construction of the Transmission Facilities shall be completed 60 Days prior to the Scheduled Commercial Operation Date.”

(g) We would like to observe that in this case, the cost of construction of a new line is built into the tariff discovered through the competitive bid process, as contended by the 2nd Respondent. This fact is clear from the contents of the Notification dated 25.11.1995 issued by the KEB, inviting proposals for setting up of Multi-fuel Power Plants in the Private / Public Sector in Karnataka. This Notification proposed the various locations where Power Projects should be established, and further stated that the KEB should make all necessary arrangements, at its cost, for the design, engineering, financing and construction of the interconnection facilities up to a 5 KM distance from the nearest Sub-Station or transmission line. The Petitioner had chosen a particular location for establishing his Project, as described in Schedule-10 of the PPA, and the Petitioner must have known the distance between its Project Site and the nearest Sub-Station or the transmission line, and the amount to be incurred by it for the construction of transmission line for evacuation of power, after a 5 KM distance from the nearest Sub-Station or transmission line. Therefore, we hold that the cost of construction of a new line was built into the Petitioner's Tariff discovered through a competitive bid process.

(h) However, the Petitioner, having accepted the alternative arrangement for evacuation of power generated by it all through the term of the PPA, cannot now plead that the new line was not completed by the Respondent-2, as agreed, and the usage of the alternative line had resulted in losses due to improper evacuation. The Petitioner has not contended in his Petition that the alternative line had resulted in losses due to improper evacuation and the said contention has been pleaded only at the fag end of the proceedings. If the Petitioner had any grievances on this count, the same should have been raised when the PPA was valid and within a reasonable period from the COD. But no such grievance was made by the Petitioner. The explanation given by the Petitioner is that it was always assured by the Respondents that the line would be completed. As can be seen from the records, the Respondent2 could not complete the work of construction of the line due to unforeseen circumstances, but has spent a substantial portion of the amount on the construction of the line. It seems, it had no intention to cause difficulty to the Petitioner and had immediately provided an alternative means of evacuation. The amount was collected from the Petitioner for construction of the transmission line for



*evacuation of power from the Project, as agreed in Article 3.3(a) of the PPA, and substantial portion of the amount was spent for construction of the transmission line, and alternative means of evacuation was arranged by the 2nd Respondent and the Petitioner availed of that alternative means throughout the PPA period. Therefore, we hold that the Petitioner is not entitled to refund of the amount. For the above reasons, we answer this issue in the negative and against the Petitioner.”*

7. What is vivid from the above observations of the State Commission is that though a new line was envisaged and provision made in the PPA for it to be developed by sharing of cost, the appellant never suffered any difficulties on account of failure of the transmission utility to take fruitful steps in such regard. An alternative line was available and provided for purposes of the appellant and in fact utilized by the appellant for evacuation of the electricity generated by it. The reasons for non-development of the new line have been properly explained, they being beyond the control of the respondent transmission utility or licensees. What is crucial is that the tariff enjoyed by the appellant was discovered by bid process under Section 63 of the Electricity Act, 2003. The appellant was aware that the location of the project to be then developed by it would need to have a transmission line of the length of 14.4 KMs out of which its liability was to take care of the expenditure to the tune of 9.4 KMs. In these circumstances, it was bound and would have factored in the estimated cost of such transmission line in the tariff which was submitted in the bid presented by it and accepted by the respondents. In these circumstances, the cost for

development of the transmission line, to the extent it fell to share of the appellant, would have been recovered by the appellant as part of the tariff which was discovered by the bid process. In these circumstances, it would be unconscionable for it to be allowed to claim its refund additionally from the respondent, particularly since, as said before, it has not suffered any loss on account of non-development of the transmission line.

**8.** As is noted in the impugned order by the State Commission, the appellant had argued at the fag end of the proceedings that the existing line had faulty systems and on that account it (the appellant) had had to suffer certain losses on account of change of fuel. No such case was made out in the Original Petition in the first instance nor, what is even more crucial, was any such issue or dispute raised when such difficulties were being faced.

**9.** In the above circumstances, we do not find any error in the view taken by the State Commission against the claim for refund of money paid towards the new transmission line.

**10.** The subject matter of the claim of the appellant towards deemed generation charges, variable charges, fixed charges and rebate on rebate to the extent of principal amount of Rs.1,83,27,836/- (along with accrued interest) was dealt with by the State Commission in the impugned order against Issue No. 4, the relevant part of the discussion thereon reading thus:

*“10) ISSUE No.(4) :*

*(a) The fourth prayer is to direct the Respondents-3 and 4 to pay the deemed generation charges, variable charges, fixed charges and rebate on rebate, amounting to Rs.1,83,27,836/- , along with the interest of Rs.2,39,85,637/- @ 18% per annum (totaling Rs.4,23,13,473/-), up to February, 2012.*

*(b) Article 7 of the PPA relates to Tariff. The Monthly Fixed Charges (Article 7.2), Variable Charges (Article 7.3) and Incentive Payments (Article 7.8) are the components of the Tariff. In addition, the Tariff includes payments pursuant to Supplementary Invoices relating to ‘Deemed Generation’ (Article 7.6) and recovery of Fixed Charges as per Article 7.10 of the PPA. Article 9 of the PPA provides for Billing and Payment. The procedure specified states that the Company shall present Tariff invoice or Supplementary Invoice and the Board (KEB) shall give acknowledgment of receipt of such Invoices, with date, and the payment should be made within the ‘Due Date’, unless the Board (KEB) disputes not exceeding 50% of the amount attributable to ‘Deemed Generation’. Further, it states that in respect of any other portion of the amount claimed under the Tariff Invoice or Supplementary Invoice, the Board (KEB) has to make the payment first and thereafter it can raise a dispute, and the parties have to adjust their claims subject to results of the final adjudication of the dispute. Further, it also provides that in case of non-payment within the ‘Due Date’, the Company can invoke the ‘Letter of Credit’.*

*(c) The provisions regarding ‘Billing and Payment’ contained in Article-9 of the PPA indicate that only in respect of a claim regarding ‘Deemed Generation’, the Board (KEB) can raise a dispute, not exceeding 50% of the amount claimed, and in respect of the other claims, the Board (KEB) has to make the payment first and then raise dispute.*

*(d) The claim of the Petitioner in the present case, pertaining to ‘Deemed Generation’, should have been the claim disallowed by the 2nd Respondent (KPTCL) previously.*

*(e) The Petitioner has not stated any facts in its Petition in support of this prayer. However, the Petitioner has produced certain documents along with I.A.No.1/2012 on 18.12.2012. ANNEXURES – P-57, P-58 and P-59 relate to ‘Deemed Generation’. These documents do not make out the grounds on which the claim of the Petitioner is based towards ‘Deemed Generation’. These claims relate to the years 2001,*

2002 and 2006, as shown in ANNEXURE – P-85. The Petitioner should have pleaded the material facts in the Petition itself towards this claim. Then only, the Respondents could have had the opportunity to respond on this claim. The document, ANNEXURE – P-57, shows that a portion of the ‘Deemed Generation’ charges for different periods was disallowed. The Respondents have not admitted, at any time, the claim of the Petitioner pertaining to ‘Deemed Generation’. In the above circumstances, we hold that the claim of the Petitioner pertaining to ‘Deemed Generation’ suffers from delay and laches and hence the same cannot be allowed.

(f) ANNEXURES – P-52 and P-54, viz., the letters written by the Petitioner to the 2nd Respondent, would show that the claim regarding the Variable Charges relates to the year 2001. There is no pleading in the Petition to support this claim. The Respondents have not admitted any portion of this claim, at any time. Therefore we reject the claim of the Petitioner pertaining to the Variable Charges for inadequate pleadings and also for delay and laches.

(g) In respect of ‘Fixed Charges’, we note again that there is no pleading in the Petition supporting this claim, nor could the learned counsel for the Petitioner draw our attention to any document on record in support of this claim.

(h) As regards ‘Rebate on Rebate’, the assertion of the Petitioner is that the Respondents could not claim Rebate on the amount of Rebate, but the Respondents have claimed the ‘Rebate on Rebate’. The letter dated 26.11.2008 (ANNEXURE – P-60), written by the Petitioner to the 1st Respondent (PCKL), contains the particulars of the alleged wrong claim regarding ‘Rebate on Rebate’. Upon verification, we note that the Respondent has adjusted the ‘Rebate’ due in a month as a part-payment for the subsequent month, and has claimed ‘Rebate’ on such part payment (Rebate). The Rebate found due in a month was not claimed in that month. This procedure was carried on during every successive month. Therefore, this does not amount to claiming ‘Rebate on Rebate’. Therefore, Issue No.(4) is answered in the negative.”

**11.** What stands out from the above quoted paragraphs of the impugned order is the fact that no proper case towards deemed generation charges,

variable charges, fixed charges, or rebate on rebate was even articulated by appropriate pleadings in the petition. In these circumstances, the view taken by the State Commission cannot be faulted. We also reject the contentions of the appellant on this score.

**12.** The last issue pertains to the claim of the appellant for direction to the third and fourth respondents to pay Rs.1,65,65,345/- against tariff invoice dated 01.03.2012 for the month of February, 2012. This is what the Commission had to say on this issue by the Impugned Order:-

*“11) ISSUE No.(5) :*

*(a) The fifth prayer is to direct to the Respondents-3 and 4 to pay Rs.1,65,65,345/-, as per the tariff invoice dated 01.3.2012 raised for the month of February, 2012.*

*(b) The Petitioner has contended in its Petition that Respondents- 3 and 4 had not paid the amount due under the Tariff Invoice dated 1.3.2012, for the month of February, 2012. In reply, the Respondents- 3 and 4 have contended that out of the amount to be paid towards energy bills for the months from February, 2012 to August, 2012, the arrears of tax benefit to be returned by the Petitioner had been adjusted, as ordered in OP No.24/2011. Further, it is contended that the arrears of tax benefit to be refunded had been calculated at Rs.5 Crores. According to Respondents- 3 and 4, no dues are payable by them towards the energy supplied for the months of February, 2012 to August, 2012. Here, we are not concerned with the correctness of the calculation of the amount of tax benefit to be refunded by the Petitioner, as ordered in OP No.24/2011. Hence, the Petitioner is not entitled to the relief sought for under this issue.”*

**13.** It is not denied by the appellant that there was a direction of the State Commission by its Order in OP No. 24 of 2011, in terms of which certain money was due from the appellant unto the respondents.

**14.** We assume, as is argued, that Civil Appeal no. 1955 of 2013 pending before Hon'ble Supreme Court of India would have a bearing on the liability of the appellant arising out of the direction of the State Commission in OP No. 24 of 2011. But then, on being asked, the learned counsel for the appellant fairly conceded that there is no stay granted by the Hon'ble Supreme Court in the said proceedings. If so, we find no impropriety in the adjustment claimed by the respondents against tariff invoice dated 01.03.2012. Should the appellant succeed in the Civil Appeal no. 1955 of 2013 pending before Hon'ble Supreme Court, and if such decision were to have the effect of rendering adjustment made against the tariff invoice dated 01.3.2012 raised for the month of February, 2012, the appellant would be entitled to claim corresponding refund, in accordance with law.

**15.** Thus, we find no merit in present appeal. It is accordingly dismissed.

**(Sandesh Kumar Sharma)**

Technical Member

*vt/mkj*

**(Justice R.K. Gauba)**

Officiating Chairperson