Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 19/09

Dated: 26th May, 2009

Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

Bangalore Electricity Supply Co. Ltd. ... Appellant (s)

Versus

NSL Sugar Ltd. ... Respondent (s)

Counsel for the Appellant/ (s) : Shri Venkat Subramaniam T.R., Adv.
Shri Raghavendra S. Srivatsa, Adv.

Counsel for the Respondent (s) : Shri Prabhuling K. Navadgi, Adv.

ORDER

Being aggrieved by the Order dated 10/7/08 of the Karnataka State Commission passed in O.P. No. 12/07 allowing the petition filed by M/s. NSL Sugars Ltd., the Bangalore Electricity Supply Co. Ltd.(BESCO) have filed this present Appeal. M/s. NSL Sugars Ltd. the Respondent herein is the owner of a cogeneration plant. The State Government, through a notification dated 26/2/2000 sanctioned an aggregate capacity of 15 MW power with the exportable capacity of 8.9 MW to the State grid. The Respondent entered into a power purchase agreement with the Karnataka Power Transmission Corporation Ltd. However, the Respondent sought further enhancement of capacity of the power plant and accordingly, the said PPA was modified.

The amended agreement clearly defined the term 'surplus exportable capacity' as the surplus energy generated by the Respondent provided for the captive electricity consumed by the company. As per the relevant Clause, the obligation to pay the tariff is restricted only to the exportable capacity. The Appellant, in keeping with the agreed conditions, ensured the prompt payments for the supply of 13 MW. As the Respondent supplied power in excess of 13 MW during the Season, they began demanding payment for excess of 13 MW power supplied at the same rates specified in the supplementary agreement.

As per the agreement the Appellant is bound to pay the rates for its exportable capacity amounting to 13 MW only. The Appellant did not pay the said amount contending that the same rate would not be applicable to any power supplied in excess of the exportable capacity.

Hence, the Respondent filed a petition before the Karnataka State Commission, seeking for a direction to the Appellant for releasing the due payments along with interest. On receipt of the notice issued by the Commission in the said Petition, the Appellant appeared and opposed the claim of the Respondent, stating that in the absence of a mutually negotiated price for the supply in excess of the exportable capacity, the question of making payments at the rates mentioned in the PPA would not arise.

At this stage, the State Commission directed both the parties to arrive at a settlement among themselves with regard to the rate. Though the Appellant and the Respondent negotiated for an amicable settlement of the dispute, they

could not agree among themselves regarding the rate, and so, they decided to file a Joint Memorandum (JM) requesting the State Commission to fix the suitable tariff for the excess supply. On the basis of the said Memo, the State Commission has passed the impugned Order directing the Appellant to pay for the excess supply at the rates specified in the PPA. This is under challenge by the Appellant on the ground that the decision of the State Commission is unfair.

According to the Ld. Counsel for the Respondent, the JM was signed on behalf of the Appellant BESCO by the GM(Corporate) and also by its Counsel. The JM has clearly indicated that both the parties have agreed to have the rates to be fixed by the State Commission in respect of the energy supplied in excess by considering all the relevant factors including he rate fixed for similar power. Since the Appellant accepted that they would pay to the Respondent herein for the energy received by it in excess of 13 MW at the rate fixed by the State Commission, it has passed the impugned Order on 10th July 2008. It is pointed out that acting upon the JM and the order, payments have been made by the Appellant up to 10/6/05 and even thereafter, some payments have been made up to 10/3/07.

Though the Ld.Counsel for the Appellant also fairly admitted that the said amount had been paid, the said payments have been made under protest. The Ld.Counsel for the Appellant would mainly contend that the State Commission instead of taking into consideration the relevant factors and the JM, has simply accepted the Staff Report and passed the impugned order.

The Ld. Counsel for the Respondent submitted that having filed the JM agreeing to pay the suitable rate that may be fixed by the State Commission and having chosen to implement the Order by making part payment towards the same, it is not proper on the part of the Appellant to file an Appeal before the Tribunal, challenging the same.

On going through the JM and also the Order passed by the State Commission, we are fully satisfied that the State Commission has graciously given adequate opportunity to both the parties for settlement regarding the rate and finally allowed them to file the JM on the basis of which the Order has been passed, which has also been implemented partly by the Appellant.

Under these circumstances, we are constrained to feel that the Appellant ought not to have filed this Appeal, as in our view the Appeal is not maintainable. Accordingly, the same is dismissed.

Since we are of the opinion that the Appellant has filed this Appeal without any valid ground whatsoever, we think it fit to impose costs on the Appellant. Hence, we direct that Rs. 20,000/- (Rupees twenty thousand only) as costs should be paid by the Appellant to the voluntary organization, Child Relief and You (CRY), Bangalore Center, within two weeks. A copy of this Order shall be sent by the Registry to the said voluntary organization.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson