

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 80/MP/2019

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 25.11.2022

In the matter of:

Petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read with applicable provisions of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008.

And in the matter of:

Chettinad Cement Corporation Private Limited,
Kallur Works, Sangam K.,
Garagapalli Post, Chandapur (SO),
Chincholi (TK), Kalaburagi (Gulbarga) (DT),
Karnataka-585305.

....Petitioner

Vs.

State Load Despatch Centre,
Karnataka Power Transmission Corporation Limited,
Race Course Cross Road, A.R. Circle,
Bangalore-560001.

...Respondent(s)

For Petitioner : Shri Arjun Syal, Advocate, CCCL
Shri Ashwin Ramanathan, Advocate, CCCL
Shri Rushil Anand, Advocate, CCCL

For Respondents : Ms. Sumana Naganand, Advocate, SLDC Karnataka
Ms. Medha M. Puranik, Advocate, SLDC Karnataka
Ms. Gayathri Sriram, Advocate, SLDC Karnataka

ORDER

The Petitioner, Chettinad Cement Corporation Private Limited, has filed the present petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 read



with applicable provisions of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (2008 Open Access Regulations).

2. The Petitioner has made the following prayers in the instant petition:

- “(a) Admit the petition;*
- (b) Pass an order declaring that the Respondent has no authority under law to collect Back-up Power Supply charges from the Petitioner in an Inter State Open Access Transaction being governed by the provisions of the CERC inter-state OA Regulations, 2008 framed by this Hon’ble Commission;*
- (c) Pass an order directing the Respondent to withdraw the demand notice No: OA/Deviation/SLDC/15786-94 dated 07.02.2019 to the extent of illegal levy of back up supply charges amounting to Rs. 17,53,042 as the same is illegal, untenable and opposed to Electricity Act, 2003 CERC (Open Access in Inter State Transmission) Regulation, 2008 and CERC Regulation, 2009 and set aside the same;*
- (d) Pass an order directing the Respondent to issue the NOC to the Petitioner for export of power to IEX from March 2019 onwards,*
- (e) Pass an order directing refund the amount of Rs. 19,010/- paid by the Petitioner under protest towards back supply charges for the month of July 2018 along with 18% interest from the date of payment till the date of refund and the amount of Rs. 82, 453/- adjusted in the UI Charges Bills for the month of July, Oct.& Nov 2018 and the NOC Fees of Rs. 23,600/- for the month of Nov , Dec , Jan & Feb 2018 @ Rs 5900/- per month .*
- (f) Pass an interim order staying the demand notice dated 07.02.2019 or any other notices issued during the pendency of the present Petition;*
- (g) Pass an interim order directing the Respondent to issue the NOC to the Petitioner for March 2018 onwards and for each subsequent month during the pendency of the present petition without claiming any alleged back up supply charges;*
- (h) Direct the Respondent to not withhold the payment of UI charges to the Petitioner in lieu of the alleged back-up supply charges;*
- (i) Direct the Respondent to pay all the costs towards the present Petition including but not limited to the Court Fee paid in this regard;*
- (j) Pass such other further order(s) as the Hon'ble Commission may deem just and proper;”*

3. The Petitioner owns and operates a 30 MW captive power plant in Karnataka and is a captive generating plant under section 2(8) of the Electricity Act, 2003 (2003 Act). From 2003 the Petitioner has been exporting power to Indian Energy Exchange through a trader under the 2008 Open Access Regulations.



4. The Petitioner is a registered consumer of Gulbarga Electricity Supply Company Limited (GESCOM) and has entered into a Power Supply Agreement (PSA) dated 15.3.2012 with GESCOM. The Petitioner has been drawing 10 MVA power from GESCOM and has been paying all the monthly bills at specified rates without any default.

5. The Respondent, State Load Despatch Centre, Karnataka, vide demand notice dated 22.10.2018 claimed the backup supply charges of ₹17,53,042/- (Rupees seventeen lakh fifty three thousand forty two only) from the Petitioner as the import energy charges.

6. The Petitioner has contended that the backup supply charges levied by the Respondent are illegal and unjustified when inter-State open access is availed by the Petitioner under the 2008 Open Access Regulations as held by the Commission in order dated 19.11.2012 in Petition No.1/MP/2012 and reiterated in order dated 24.3.2017 in Petition No.224/MP/2016. The Petitioner has submitted that the Respondent has no authority under law to collect the backup power supply charges from the Petitioner in an inter-State open access transaction governed by the provisions of the 2008 Open Access Regulations. Therefore, the Petitioner has sought directions to the Respondent to withdraw the demand notice No: OA/Deviation/SLDC/15786-94 dated 7.2.2019 demanding backup supply charges amounting to ₹17,53,042 as the same is illegal, untenable and opposed to the 2003 Act and 2008 Open Access Regulations. The Petitioner has also prayed for consequential prayers like directions to the Respondent to issue the NOC to the Petitioner for export of power to IEX from March 2019 onwards, refund the amount of ₹19,010/- paid by the Petitioner under protest towards back supply charges for



the month of July, 2018 along with 18% interest from the date of payment till the date of refund and the amount of ₹82,453/- adjusted in the UI Charges Bills for the month of July, October and November, 2018 and the NOC Fees of ₹23,600/- for the month of November, December, January and February, 2018 @ ₹5900/- per month.

7. The matter was heard on 20.2.2022 through video conference. The learned counsel for the Respondent submitted that the Respondent is reconciling the demand made to the Petitioner and accordingly sought permission to place on record the outcome of its reconciliation process.

8. During the virtual hearing on 23.6.2022, the learned counsel for the Respondent submitted that on verification of records, it has been observed that the Petitioner as a consumer of GESCOM is already paying the backup supply charges to GESCOM as per the PSA. Accordingly, the demand notices raised by the Respondent for the backup supply charges from the Petitioner is incorrect and unjustified. It was further submitted that the Respondent will withdraw the impugned demand notices issued to the Petitioner and affidavit to that effect will also be placed on record.

9. After hearing the Parties, the Commission directed the Respondent to withdraw the demand notices as submitted and also to file an affidavit stating that the impugned demand notices issued to the Petitioner levying the backup supply charges have been withdrawn and order was reserved in the matter.

10. As per the submissions made on 23.6.2022 and the directions of the Commission, the Respondent on affidavit has stated that the impugned demand



Notice No. OA/Deviation/SLDC/15786-94 dated 7.2.2019 amounting to ₹17,44,228 will be withdrawn and requested to dismiss the present petition as it has become infructuous. The relevant portion of the affidavit dated 13.6.2022 filed by the Respondent is as follows:

“3. I state that the Respondent has raised impugned demand letters demanding back up supply charges for the energy imported by the Petitioner. However, it has come to notice of the Respondent that GESCO has raised bill of energy imported for period in question in the impugned demand letter dated 07.02.2019 and for the month of July 2018 and the same is paid by the Petitioner. In view of the same, the Respondent will withdraw the impugned demand of Rs.17,44,228.00. In these circumstances, this Hon’ble Commission may be pleased to dismiss the present petition as infructuous.”

11. As the Respondent has undertaken on affidavit to withdraw the impugned demand notice for ₹17,44,228, the Petitioner’s prayer for withdrawal of the said notice has become infructuous. As regards the prayers (d) and (e), quoted in paragraph no.2 above, which are of consequential nature may also be amicably settled by the Petitioner and the Respondent. The other prayers made by the Petitioner, prayers (f), (g) and (h) have also become infructuous. The Petitioner’s prayer for reimbursement of the cost of filing of the petition is disallowed.

12. In view of the above discussion, Petition No. 80/MP/2019 is disposed of.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

