

**Kerala State Electricity Regulatory Commission**  
**Thiruvananthapuram**

Present : Shri Preman Dinaraj, Chairman  
Shri K.Vikraman Nair, Member  
Shri S.Venugopal, Member

**OP 34/ 2015**

**In the matter of application filed by M/s BSES Kerala Power Limited (BKPL) for implementing the final order dated 31.10.2017 of the Hon'ble High Court of Kerala in Writ Petitions WP(C) No 40257 of 2016, WP(C) No. 540/2017 & WP(C) No22464 of 2017**

Petitioner - BSES Kerala Power Ltd  
Udyogamandal P.O,  
Kochi 683 501

Respondent - Kerala State Electricity Board Limited  
Vydyuthi Bhavanam, Pattom

Petitioner represented by - Adv. Joseph Kodianthara  
Adv P G Jayasankar  
Sri. Robin Sebastian, M/s BKPL

Respondent represented by - Adv. Raju Joseph  
Adv. K Bhuvanachandran  
Sri B Pradeep, KSEB Ltd  
Sri Bipin Sankar, KSEB Ltd.  
Smt. Latha S.V, KSEB Ltd

**Daily Order dated 8.2.2018**

1. M/s BSES Kerala Power Limited (herein after referred to as the petitioner or BKPL), on 20.11.2017, placed a copy of the judgment of the Hon'ble High Court of Kerala, dated 31.10.2017 in Writ Petition WP(C) No. 540/2017 for compliance and to issue subsequent orders. The relevant portion of the judgment of the Hon'ble High Court dated 31.10.2017 is extracted below.

*“ I, therefore, quash Ext.P18 order of the KSERC, as also Ext.P51 consequential order passed by the KSEBL, which is based entirely on Ext.P18 order. The KSERC shall consider and pass orders on merits, in respect of the issues raised in Ext.P8 petition filed under Section 86(1)(b) of the Electricity Act, 2003, within a period of three months from the date of receipt of a copy of this judgment. Both the parties before the KSERC shall be at liberty to produce additional material before the said Forum, to substantiate their contentions on merits. The KSERC shall take note that this Court has not pronounced on the merits of any of the issues in the petition before it, and all issues are left open to be decided by the Commission. The only other point on which the Commission would have to take a decision, while passing orders as directed above, is the rate/tariff that would govern the quantum of electricity supplied by the petitioner company to KSEBL, pursuant to the interim order dated 04.04.2017 of this court. While this issue is not raised in the petition before the Commission, being a subsequent event, the petitioner does have a case that, inasmuch as the Naphtha, that was used for the generation of the said electricity, was part of the consignment that was stored to meet the requirements of KSEBL under the PPA that held the field till 31.10.2015, the rates under the said PPA should govern the supply. The Commission shall therefore adjudicate on the said issue, as regards the rate applicable in respect of the above supply of electricity, also, untrammelled by any of the findings in its order dated 27.04.2017 (produced as Ext.P46 in W.P.(C).No.540/2017 and as Ext.P27 in W.P.(C).No.22464/2017) granting approval to the KSEBL to purchase the electricity on unscheduled interchange basis.”*

2. M/s BKPL, vide the letter dated 18.12.2017 has raised the following additional issues before the Commission to consider along with the matters remanded before the Commission by the Hon'ble High Court.
  - (i) A claim for tariff amounting to Rs 60.90 crore, for the 61.9 MU of electricity scheduled from 25.05.2017 to 24.06.2017 by utilizing the Naphtha stocked at the premises of BKPL and nearby premises of the fuel supplier IOCL, as per the direction of the Hon. High Court.
  - (ii) A claim for annual fixed charges for the first tariff period from 01.11.2015 to 31.10.2016 amounting to Rs 37.67 Cr and second tariff period from 01.11.2016 to 31.10.2017, amounting to Rs 39.07 Cr.
  - (iii) Claim for reimbursement of land lease charges of 5.42 Cr and tax of RoE @ 2.79 Cr for first and second tariff period

3. The Commission scheduled the hearing on the petition on 23.1.2018. The persons / associations impleaded in the original petition were given opportunity for attending hearing of the petition.
4. Adv Joseph Kodianthara presented the matter on behalf of the petitioner M/s BKPL and the main issues raised by him is given below:

- (i) Extension of the PPA between the BKPL and KSEB Ltd dated 03.05.1999 beyond 30.10.2015.

As per the clause 7.4 of the original PPA dated 3.5.1999, KSEB Ltd on 14.7.2015, has communicated in principle approval to extend the original PPA for 2 more years from date of expiry on 31.10.2015. The only difference of opinion at that point of time was regarding fixed charges applicable during the extended periods. The fixed charges proposed by KSEB Ltd was Rs 0.29/unit whereas BKPL proposed Rs 0.35/unit. There is no dispute on variable charge payable for scheduling energy from the plant. BKPL filed the petition for approval of extension of PPA before the Commission based on the direction of KSEB Ltd. There is a case of promissory estoppels and BKPL is fully eligible for the fixed charges for the extended period of two years.

- (ii) Variable charge payable for the energy scheduled from BKPL during the period from 25.05.2017 to 24.06.2017

The schedule of power from BKPL during the period from 25.05.2017 to 24.06.2017 is for exhausting the fuel stocked at the premise of BKPL and nearby premises of IOCL, which was stocked during the PPA period for the intended use of KSEB Ltd. There is no dispute on variable charges payable for the energy scheduled from the plant using Naphtha. Hence KSEB Ltd is liable to pay the variable charges based on the actual cost of the Naphtha stocked.

5. Adv. Raju Joseph, representing KSEB Ltd admitted that negotiations started for extending the term of PPA before expiry of PPA. However, no consensus was reached and no formal agreement was signed. A contract will be valid only if parties to the contract make an unconditional acceptance of the contract. But, no agreement could be reached on the terms of PPA and hence there was no concluded PPA. There is also no question of any promissory estoppels in the

present case. Further, the draft PPA is to be approved by the Commission. Therefore, KSEB Ltd. is not liable to pay any fixed charges.

As per the PPA dated 3.5.1999, there was no provision to deal with the balance stock of Naphtha if any, available with the generator BKPL at the end of the period of the PPA. However, as per the provisions of the PPA, BKPL is bound to stock sufficient quantity of Naphtha to schedule power from the plant as and when KSEB Ltd issues despatch instructions. KSEB Ltd has no liability on the stock of Naphtha available with BKPL after the period of the PPA, with effect from 01.11.2015.

However, there was threat on safety to the public at large regarding the Naphtha stocked at the premises of the BKPL without necessary security staff and safety arrangements. Based on the report of the District Collector Ernakulam, Hon'ble High Court of Kerala vide the interim order dated 04.04.2017 ordered to exhaust the balance stock of Naphtha available at the premises of BKPL. Hon'ble High Court recommended three options to BKPL for the disposal of balance stock of Naphtha. The third option was to schedule power under UI basis. The other two options were either to generate power utilizing Naphtha and sell through open access to third party or to transfer Naphtha to other Naphtha consuming industries. BKPL has not explored the possibility of other options to dispose the Naphtha available with them. Hence, KSEB Ltd scheduled power from BKPL during the period from 25.05.2017 to 24.06.2017, as per the third options based on the interim order of the Hon'ble High Court, i.e., to schedule power from BKPL to exhaust the Naphtha on UI basis, and subsequent order of this Commission dated 27.4.2017.

6. Sri. Ratheesh, representing HT & EHT association stated that there was no requirement of power from BKPL considering availability of power from other cheaper sources. He requested the Commission to reject the proposal to extend the PPA and thus relieve the consumers of Kerala from this additional burden.
7. Sri. Jayathilakan, representing Kerala State Productivity Counsel stated that the scheduling of BKPL was done for exhausting Naphtha due to safety reasons and not as per requirement of KSEB Ltd, and therefore cannot attract variable charges. He prayed that tariff of common people may not be affected due to the scheduling of Naphtha stored at BKPL. He expressed concern on the employees of the plant and stated that the plant should be taken over by Government and kept as a stand by for emergency operation. He had also mentioned that public

did not participate in the earlier hearing since it was mentioned in the order of High Court that it should be scheduled at UI rates.

8. Sri Jacob Laser, representing Kerala Electricity Workers Federation (AITUC) stated that Sri A N Rajan was party to the original petition filed by BKPL at the Hon'ble High Court. The present order dated 31.10.2017 was issued by the Hon. High Court without hearing him. Hence, he filed a petition before the Hon. Court and the Court admitted the same. He requested that the issue may be settled such a way that the consumers of the State may not be adversely affected by the generation of power from BKPL.
9. Sri Dijo Kappen stated that at the time of establishing the project there was power deficit and now India is having surplus power. Since there was no valid agreement, Commission shall not approve the claim of the BKPL.
10. Sri B Pradeep, representing KSEB Ltd, asserted the arguments submitted by their Counsel. He added that KSEB Ltd, has honoured all the legitimate claims of BKPL during the period of PPA, including the fixed cost for the deemed generation.
11. Based on the deliberations of the subject matter, the Commission here by issues following directions to the petitioner M/s BKPL, the respondent KSEB Ltd and other stake holders and interested parties:
  - (i) BKPL shall submit the following documents before the Commission latest by 19<sup>th</sup> February 2018;
    - (a) The audited accounts for the year 2015-16, 2016-17 and provisional accounts for the FY 2017-18.
    - (b) Month wise details of the average stock of Naphtha stocked by BKPL for the past 15 years.
    - (c) A copy of the PPA between BKPL and KSEB Ltd with amendments, if any.
    - (d) The original fuel supply agreement between BKPL and IOC. Also copy of the approval of the same given by erstwhile KSEB as per the provisions of the PPA.
    - (e) Documentary evidence on BKPL's efforts to materialize the alternate options suggested in the Court order dated 4.4.2017, i.e.,
      - (i) third party sale of power
      - (ii) transfer of Naphtha to other Naphtha consuming industries

- (f) Month wise employee strength retained with BKPL from 01.11.2015 to till 31.10.2017, with supporting documents.
- (g) Argument note and additional information, if any

A copy of the above details may be provided to KSEB Ltd also for their comments

- (iii) The respondent KSEB Ltd, may also submit argument note and any additional details, if required, on or before 19<sup>th</sup> of February 2018 with copy to BKPL
- (iv) All the stakeholders are also free to submit their views on before 19<sup>th</sup> of February 2018.
- (v) BKPL and KSEB Ltd, may submit further comments if any, on or before 26<sup>th</sup> of February 2018.

Reserved for orders.

Sd/-  
**K.Vikraman Nair**  
**Member**

Sd/-  
**S.Venugopal**  
**Member**

Sd/-  
**Preman Dinaraj**  
**Chairman**

Approved for issue  
Sd/-  
K B Santhosh Kumar  
Secretary