



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

**O. P. (SR) No. 111 of 2023**

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**I. A. (SR) No. 110 of 2023**

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**I. A. (SR) No. 112 of 2023**

**Dated 16.12.2023**

**Present**

Sri. T. Sriranga Rao, Chairman  
Sri. M. D. Manohar Raju, Member (Technical)  
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s. Kakatiya Cement Sugar & Industries Limited,  
Regd. Office at # 1-10-140/1, "GURUKRUPA",  
Ashok Nagar, Hyderabad 500 020.

... Petitioner

**AND**

Southern Power Distribution Company of Telangana Limited,  
Corporate Office, H.No.6-1-50, Mint Compound,  
Hyderabad 500 063.

... Respondent

The petition came up for hearing on 14.12.2023 in the presence of Sri. Vikram Pooserla, Advocate along with Ms. Achala Siri, counsel for petitioner, having been heard and having stood over for consideration to this day, the Commission passed the following:

**ORDER**

M/s. Kakatiya Cement Sugar & Industries Limited (petitioner) has filed a petition under Section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) r/w TSERC Regulation No. 2 of 2015 questioning the recovery of difference of wheeling charges in kind (losses) and in cash between the tariffs approved by the Commission from time to time and wheeling agreements and consequential reliefs.

2. The petitioner has sought the following prayers in the original petition.
  - “a. To declare that the levy of surcharge/interest by the Southern Power Distribution Company of Telangana Limited (TSSPDCL) on differential wheeling charges allegedly payable by the petitioner for the period from FY 2002-03 till FY 2016-17 is illegal, arbitrary and void.
  - b. To consequently, direct that the petitioner is not liable to pay surcharge/interest on differential wheeling charges deposited by the petitioner, by setting aside the speaking order bearing Lr. SE / OP / SRPT / SAO / JAO / HT / D. No. 140 / 21, dated 12.02.2022 and the demand notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent.”

3. The petitioner has also filed an Interlocutory Application under Section 94(2) of the Act, 2003 r/w TSERC Regulation No.2 of 2015. The petitioner has sought the following prayer in the application.

*“Pending adjudication and disposal of the main O.P. filed by the petitioner, the Commission may be pleased to direct the respondent not to take any coercive steps against the petitioner, including disconnection of HT Service Connection No.SPT 427 belonging to the petitioner in pursuance to the notice bearing Lr.No.SE/OP/SPT/SAO/JAO/HT/D.No.75/23, dated 07.07.2023 issued by the respondent.”*

4. The petitioner has also filed another Interlocutory Application under Section 94(2) of the Act, 2003 r/w TSERC Regulation No.2 of 2015 and sought the following prayer in the application.

*“Pending adjudication and disposal of the main O.P. filed by the petitioner, the Commission may be pleased to direct the respondent not to insist upon payment of the balance differential wheeling charges as demanded against the petitioner vide notice bearing Lr.No.SE/OP/SPT/SAO/JAO/HT/D.No.75/23, dated 07.07.2023 issued by the respondent and consequently not to reflect the demanded amount as arrears in relation to the petitioner.”*

5. The petitioner has filed brief submission on maintainability of the petition, which is extracted below.

- a. It is stated that the present petition is maintainable in law and this Commission has the power to adjudicate upon the petition under Section 86(1)(f) of the Electricity Act. 2003.
- b. It is stated that the reliefs sought by the petitioner in the present matter pertain to the levy of interest on the differential wheeling charges claimed by the respondent. In this regard the following submissions are made:

- i. On 29.11.2019, the Hon'ble Supreme Court vide a final judgment and order in C.A.No.5058 of 2003 and batch petitions, upheld the power of this Commission to determine the wheeling charges, which is undisputed by the petitioner.
  - ii. In the year 2020, the respondent demanded a sum of Rs.42 crore towards differential wheeling charges. As per the minimal break-up provided, it is gathered that the respondent claim includes Rs.12 crore (approx.) towards the principal of sum of differential wheeling charges for the period FY 2002-03 to FY 2016-17, and interest thereon amounting to Rs.31 crores calculated w.e.f. 2002. The levy of such exorbitant rates of interest by the respondent is arbitrary and untenable in law. Thus, the petitioner disputed the claim.
  - iii. Thereafter, pursuant to the order dated 04.10.2021 in W.P.No.24862 of 2021 filed before the Hon'ble Telangana High Court, the respondent had passed a speaking order dated 12.02.2022 reiterating the petitioner's liability to pay the differential wheeling charges with interest. Immediately thereafter, upon discussions with the officials of the respondent, the petitioner, during the period between March-October 2022 had deposited the entire principal sum claimed towards differential wheeling charges with a view to settle the issue wholly. The respondent did not dispute the same.
  - iv. While so, on 07.07.2023, the respondent addressed another notice demanding balance differential wheeling charges of Rs.42 crores. The notice dated 07.07.2023 lacks transparency to the extent that it does not refer to the payments made by the petitioner and does not disclose the break-up and basis of the amount demanded. However, presumably, the claim pertains to interest on the principal sum which is already deposited by the petitioner.
  - v. Thus, the petitioner's grievance lies in the levy of surcharge/interest on the principal sum claimed towards differential wheeling charges, calculated with effect from 2002 as it is wholly arbitrary and without any basis whatsoever, either under law or otherwise. It is pertinent to note that the challenge in the present matter does not pertain to the power of this Commission to determine the wheeling charges, which is upheld by the Hon'ble Apex Court in Civil Appeals No. 5058 of 2003 and batch. Hence, the observations of the Commission on the maintainability of the present petitions would be incorrect. As stated above, the principal sum claimed towards differential wheeling charges had already been deposited by the petitioner as per the discussions with the respondent.
- c. It is stated that under Section 86(1) of the Act, 2003 the Commission has the power to adjudicate upon the disputes between a licensee and generator. Since the respondent, being licensee company is purporting to levy interest at such exorbitant rates without any basis (that is Rs.40 crores of interest on the principal claim of Rs.12 crores (approximately)), this Commission has the power to adjudicate upon the dispute between the parties and grant the reliefs as sought for.

- d. It is stated that thus, the instant petition and applications filed therein are maintainable in law and the Commission has the power to adjudicate upon the same.
- e. Therefore, it is prayed that the Commission may be pleased to number the petition and applications filed therein at the earliest and post the matter for hearing considering the urgency cited in the applications.
6. The Commission has heard the counsel for petitioner and also considered the material available on record. The submissions made on 14.12.2023 are extracted for ready reference.

Record of proceedings dated 14.12.2023:

*“... .. The advocate submitted that the matter is filed with regard to claims made by the respondent towards wheeling charges. It is not known why the matter is put on maintainability. Even otherwise, the petitioner is neither questioning the authority of the Commission nor the authority of the respondent to claim the same. The limited issue that is raised in the petition is with regard to claims made beyond the limitation period for the amounts purportedly due by the petitioner. Further alleging that the amounts are due, the power purchase agreement is not being entered into by the respondent.*

*The petitioner has also filed interlocutory applications more particularly seeking directions that the respondent should proceed to enter into PPA dehorse the dues allegedly claimed by the respondent. In both the I.As. the petitioner is seeking that there should be stay of collection and the same should not be insisted pending disposal of the original petition.*

*The Commission, having heard the submissions of the advocate for the petitioner, has reserved the matter on the maintainability as well as passing of necessary interim orders.”*

7. At the time of hearing, the counsel for petitioner through the senior advocate has contended that the petitioner is not questioning the authority of the Commission as also the authority of the distribution licensee in collecting the amount. This aspect has already been settled by the Hon'ble Supreme Court, as such it has no case insofar as the authority of the Commission or the levy by the licensee. The short point on which the petition is filed is with regard to the limitation aspect that is applicable towards claims made by the distribution licensee. The claims made by the licensee are time-barred.

8. The Commission is of the view that the petitioner has rescinded the aspects of the authority of the Commission as also the authority of the distribution licensee. That leaves the Commission with sole issue of limitation towards claims and demand raised

by the licensee. This aspect is required to be adjudicated. Unless, the petition is admitted and notice is ordered to the distribution licensee, the matter cannot be decided.

9. Therefore, the Commission is inclined to admit the petition and accordingly directs the office to number the same along with interlocutory applications filed by the petitioner. Post the original petition along with interlocutory applications on 18.12.2023 at 3.00 P.M. and to cause notice to be issued to the parties.

**This Order is corrected and signed on this the 16<sup>th</sup> day of December, 2023.**

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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