



## ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

WEDNESDAY, THE TWENTY FOURTH DAY OF JULY  
TWO THOUSAND NINETEEN

:Present:

**Justice G. Bhavani Prasad, Chairman**  
**Dr. P. Raghu, Member**

O.P.No.11 of 2018 & O.P.No.12 of 2018

### O.P.No.11 of 2018

#### Between:

ITC Limited

... **Petitioner**

#### **A N D**

1. Southern Power Distribution Company of Andhra Pradesh Ltd.
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
3. Andhra Pradesh Power Co-ordination Committee
4. Transmission Corporation of Andhra Pradesh Ltd.

... **Respondents**

### O.P.No.12 of 2018

#### Between:

ITC Limited

... **Petitioner**

#### **A N D**

1. Southern Power Distribution Company of Andhra Pradesh Ltd.
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
3. Andhra Pradesh Power Co-ordination Committee

... **Respondents**

These Original Petitions have come up for hearing finally on 06-07-2019 in the presence of Sri K. Gopal Choudary, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

## COMMON ORDER

The petition in **O.P.No.11 of 2018** is under Sections 86 (1) (f) and 62 (6) of the Electricity Act, 2003 to hold that the respondents 1 to 3 are jointly and severally liable to pay Rs.1,09,48,824/- to the petitioner towards delayed payment surcharge for the delay in payment of energy bills against the order dated 04-12-2014 and Rs.7,83,749/- towards delayed payment surcharge on delayed reimbursement of transmission charges and Rs.26,751/- towards delayed reimbursement of annual fee and operating charges **or** in the alternative hold the 4<sup>th</sup> respondent to be liable to pay Rs.6,66,740/- towards interest on transmission charges from the date of payment by the petitioner till the date of reimbursement by the respondents 1 to 3 to the petitioner, hold that the 4<sup>th</sup> respondent is liable to pay Rs.7,41,834/- on the security deposit collected and retained for transmission charges and Rs.22,947/- on the security deposit collected and retained for SLDC operating charges, hold that respondents 1 to 3 are liable to reimburse the petitioner Rs.4,11,400/- paid by the petitioner towards surcharge on alleged delayed payment of transmission and SLDC operating charges together with surcharge on delayed payment of Rs.1,75,840/- with further surcharge at 1.25% per month till the date of payment **or** alternatively hold that the 4<sup>th</sup> respondent is liable to pay Rs.4,11,400/- paid by the petitioner towards surcharge on the alleged delayed payment of transmission and SLDC operating charges together with interest of Rs.86,821/-, hold that the respondents 1 to 3 are liable to reimburse Rs.2,12,097/- towards the double billed SLDC operating charges with interest of Rs.76,800/- with further surcharge at 1.25% per month till the date of payment **or** alternatively hold that the 4<sup>th</sup> respondent is liable to pay Rs.2,12,097/- towards double billed SLDC operating charges together with interest of Rs.38,028/-, with further interest at the bank rate till the date of payment and award further

interest on the amounts payable from the date of petition till the date of payment, grant all consequential reliefs and costs and such other orders as considered fit in the facts and circumstances of the case.

2. The case of the petitioner is that it commissioned a 46 MW wind power plant as a captive generating plant in Anantapur District for captive consumption by its plants at Sarapaka, Bollaram, Anaparthi and Chirala and other industrial units and establishments of the petitioner. The plant was synchronized with the Andhra Pradesh Grid with 25-07-2014 as the declared Commercial Operation Date. As the State was bifurcated into Andhra Pradesh and Telangana by then, the wind power generated within the residual State of Andhra Pradesh was fed into Andhra Pradesh Grid upto 17-10-2014 for which, no payment was made. The intra-State Open Access was allowed to the petitioner from 18-10-2014. The petitioner was granted inter-State Open Access only after the final orders of the Central Electricity Regulatory Commission dated 13-06-2016 and the stranded energy in the meanwhile was offered for sale to respondents 1 and 2 through the 3<sup>rd</sup> respondent under compulsion and the Andhra Pradesh Power Coordination Committee, the 3<sup>rd</sup> respondent was prepared to pay only Rs.2.44 per kWh alleging the same to be short term purchase. The petitioner had no alternative except to agree by its letter dated 01-12-2014 upon which the 3<sup>rd</sup> respondent on behalf of respondents 1 and 2 issued an order on 04-12-2014 for purchase of power on as and when available basis from 06-12-2014 to 28-05-2015 at Rs.2.44 ps per unit for delivery at Kalyandurg substation on account of Andhra Pradesh Distribution Companies. Purchase Orders provided for a delayed payment surcharge of 1.25% per month on unpaid dues for more than 30 days from the date of receipt of the bill and for intra-State generators connected with the State Transmission Utility, applicable Open Access charges are

to the account of the trader / generator. As the petitioner never agreed for the same, the petitioner sent letters requesting that the transmission charges and Open Access charges be waived and the order be amended. The petitioner was never required to obtain transmission Open Access. In the meantime, the 4<sup>th</sup> respondent sent a bill dated 03-01-2015 towards transmission charges of Rs.17,52,568/- from 6<sup>th</sup> to 31<sup>st</sup> December, 2014 and also demanded a security deposit of Rs.41,79,200/-. The 4<sup>th</sup> respondent and the SLDC were sending the bills for the transmission charges and annual fee and operating charges and the 3<sup>rd</sup> respondent amended the order dated 04-12-2014 by an amendment dated 09-03-2015 about the Open Access charges. The petitioner then paid transmission charges and operating charges as billed by the 4<sup>th</sup> respondent and claimed reimbursement from the respondents 1 and 2. The energy generated after the bifurcation from 28-05-2015 was also stranded for want of inter-State Open Access and the 3<sup>rd</sup> respondent extended the order at the asking of the petitioner by letters dated 28-05-2015, 25-08-2015, 28-11-2015 and 31-12-2015 till 31-05-2016. The 3<sup>rd</sup> respondent issued a letter dated 22-02-2016 stating that the 4<sup>th</sup> respondent decided to stop raising transmission charges for wind generators with effect from 01-12-2015 and to refund the charges collected from 17-05-2014 without interest. The petitioner did not receive any refund of such charges from the 4<sup>th</sup> respondent and hence the question of any refund by the petitioner to respondents 1 to 3 does not arise. However, the 3<sup>rd</sup> respondent further amended the order dated 04-12-2014 excluding the transmission charges on 25-02-2016.

**3.** Thus, respondents 1 to 3 never paid the energy bills for the supply against the Purchase Order within the stipulated period on which the petitioner issued a letter dated 30-03-2017 claiming delayed payment surcharge for which there was no reply.

The petitioner sent a further letter dated 04-12-2017 correcting the calculations for which also there was no reply. The respondents 1 to 3 are also liable to pay the delayed payment surcharge beyond 30 days from the date of receipt of the bill and as the Tariff Order of the Commission dated 19-05-2014 did not impose any transmission charges for wind energy, the 4<sup>th</sup> respondent becomes liable to pay interest at the bank rate under Section 62 (6) of the Electricity Act, 2003 on the transmission charges demanded and collected from the petitioner or respondents 1 to 3 had to pay interest for delayed reimbursement of such charges. The 4<sup>th</sup> respondent collected security deposit from the petitioner which was refunded on 12-04-2017 and as the 4<sup>th</sup> respondent had no right to demand any such deposit, the 4<sup>th</sup> respondent is liable to pay interest on the security deposit collected and retained. If any such security deposit was necessary, it ought to have demanded from the respondents 1 and 2. The 4<sup>th</sup> respondent collected delayed payment surcharge on transmission charges and SLDC charges from the petitioner, which delay was due to erroneous order passed by the 3<sup>rd</sup> respondent, who amended the order on 09-03-2015 only providing for reimbursement of Open Access charges. Similarly there was double billing by the 4<sup>th</sup> respondent for operating charges and those amounts have to be reimbursed with interest or delayed payment surcharge. Hence, the petitioner desired the reliefs claimed to be awarded.

**4.** The respondents 1 and 2 in their counter admitted the existence of clause in the Short Term Purchase Order about the delayed payment surcharge charged at 1.25% per month. When the Distribution Companies paid the bills with delay due to poor financial condition, the petitioner received the same without any demur and hence, it is precluded from raising any belated claim. The petitioner has to compute the liability from the vendor registration date. The surcharge worked out only to

Rs.99,55,358/- for the period from 06-12-2014 to 31-05-2016. As the delay was not deliberate, there is no liability to pay interest and the respondents 1 and 2 are not in a position to pay surcharge or any part thereof. The claim under the Purchase Order of 2014 is barred by Law of Limitation. There was no agreement between the parties to pay interest on refund of transmission charges or reimbursement of annual fee etc., and Section 62 (6) of the Electricity Act, 2003 or the Interest Act have no application. The calculation of interest was not correct and there was misjoinder of several causes of action against the respondents 1, 2 and 4. Separate cases ought to be directed to be filed in respect of separate claims raising separate issues for separate periods. Fee paid for the petition was insufficient and hence respondents 1 and 2 desired that the petition be dismissed with costs.

5. The 4<sup>th</sup> respondent filed a counter contending that the petitioner agreed to supply power at Rs.2.44 / kWh considering the market price only and its request for waiver of Open Access charges was not accepted. The bills were sent by the 4<sup>th</sup> respondent to the petitioner in compliance with the Purchase Order dated 04-12-2014 and the 4<sup>th</sup> respondent sought for review of the order in R.P.No.1 of 2015 dated 17-10-2015. There was no such exemption in the Government Policy and the transmission charges were collected prior to 17-10-2015, the date of the Commission's order. The petitioner is not entitled for any interest on the amount refunded or on the security deposit refunded and the calculation of interest was incorrect. Security Deposit for SLDC charges was demanded as per the Multi-Year Tariff Order and the security deposit was refunded to the petitioner on expiry of the period of the order on its claim for refund on 06-10-2016. No interest can be claimed on the same. The petitioner paid the delayed payment surcharge on transmission and SLDC charges without demur and it cannot claim any interest. The petition is

bad for misjoinder of causes of action and parties. The duplication of billing by the 4<sup>th</sup> respondent was due to the periods of order and extension, overlapping and Section 62 (6) of the Electricity Act, 2003 has no application. Hence, the 4<sup>th</sup> respondent desired that the petition be dismissed with costs.

6. The petitioner filed rejoinder to the counters of respondents 1, 2 and 4 (3<sup>rd</sup> respondent having not filed any counter) contending that it is irrelevant as to whether the delay in payment was intentional or otherwise and the question of any receipt without demur does not arise as the payment was made electronically to the account of the petitioner. The petitioner is not precluded from claiming surcharge on account of any delay or otherwise and the precarious financial condition of the respondents is no ground for waiver or excuse from the liability. The respondents did not furnish any calculation of their computation and the renewal of the vendor registration is not an essential criterion. A renewal application was submitted on 08-02-2016 and the 3<sup>rd</sup> respondent granted it with much delay of four months on 07-06-2016. The liability for the delayed payment surcharge arises on the amounts remaining unpaid after submission of the bills and not on the date of the Purchase Order. The surcharge for late payment is clearly on all dues remaining unpaid for more than 30 days including the transmission, SLDC annual fee and operating charges. The claims under the same contract are inter connected as between the parties and there was no misjoinder. There is no insufficiency of fee. Applicable Tariff Order exempts the wind generators from the transmission charges and any contrary demand was in contravention of the Tariff Order. The 4<sup>th</sup> respondent was liable for interest and no security deposit can be demanded or collected without any liability for transmission charges due to which the 4<sup>th</sup> respondent is liable for interest on the security deposit also. The 4<sup>th</sup> respondent appears to have refunded the transmission charges to

respondents 1 and 2, which shows the interconnected nature of the transactions and the parties. The claimed amounts have to be refunded with interest. Section 62 (6) of the Electricity Act, 2003 applies to the amounts collected contrary to the Tariff Orders. Hence, the petitioner sought for allowing the petition with costs.

**7.** The petition in O.P.No.12 of 2018 is for holding the respondents 1 to 3 to be jointly and severally liable to pay Rs.66,71,586/- towards the delayed payment surcharge for the delay in payment of the energy bills against the order dated 30-05-2015 and Rs.1,938/- towards delayed payment surcharge on delayed reimbursement of transmission charges and annual fee and operating charges with further interest from the date of the petition till the date of payment, consequential reliefs, costs and other appropriate orders.

**8.** The petitioner's case is that at the request of the petitioner, the 3<sup>rd</sup> respondent on behalf of respondents 1 and 2 issued a Purchase Order on 30-05-2016 for purchase of power on the same terms and conditions, while clearly stating that all Open Access charges excluding the transmission charges shall be to the account of respondents 1 to 3, have to be paid by the seller and reimbursed on submission of bills towards proof of payment. The petitioner issued a letter dated 30-03-2017 about the invariably delayed payment of energy bills for the supply made and the liability to pay the delayed payment surcharge for which there was no reply. Another letter with correct calculations was sent on 04-12-2017 for which also there was no reply. Respondents 1 to 3 are also jointly and severally liable to pay Rs.1,938/- towards delayed payment surcharge on delayed reimbursement of SLDC annual fee and operating charges. Hence, the petition.

**9.** The respondents 1 and 2 in their counter contended that due to precarious financial position of the Andhra Pradesh Distribution Companies, the payment could



not be made within the due date and the unintentional delay will not make the Distribution Companies liable for the delayed payment surcharge. The liability has to be ultimately borne by the end consumers and hence it may be waived. There is no liability for payment of interest on the delayed reimbursement of SLDC annual fee and operating charges. The petition has no cause of action and is barred by Law of Limitation, Interest Act or Section 62 (6) of the Electricity Act, 2003 do not apply and the respondents 1 and 2 desired the petition be dismissed with costs.

**10.** The 3<sup>rd</sup> respondent did not file any counter and the petitioner filed a rejoinder to the counter of respondents 1 and 2 contending that the delayed payment was admitted and whether the delay was intentional or otherwise is irrelevant. Whether the liability passes on to the consumers will depend on the regulatory orders passed by the Commission in a separate proceeding and no waiver or excuse can be granted herein on the ground of precarious financial condition. Surcharge on delayed payment is on all the dues remaining unpaid for more than 30 days and the petition is not barred by Law of Limitation. Hence, the petitioner sought for allowing the petition with costs.

**11.** The point for consideration is as to what reliefs the petitioner in both the Original Petitions is entitled to.

**12.** The respondents 1 to 3 in both the petitions are common and identical, while the 4<sup>th</sup> respondent is a party only to O.P.No.11 of 2018. Hence, the references hereunder to respondents may be understood as references to respondents 1 to 3 in both the petitions and the 4<sup>th</sup> respondent in O.P.No.11 of 2018.

**13.** The 3<sup>rd</sup> respondent on behalf of respondents 1 and 2, with reference to the offer from the petitioner for supply of wind power, on as and when available basis, placed an order dated 04-12-2014 for supply of 32 MW from 06-12-2014 to

28-05-2015, which was extended from time to time till 28-08-2015 on 28-05-2015, 28-11-2015 on 25-08-2015, 31-12-2015 on 28-11-2015, 31-05-2016 on 31-12-2015 and 31-08-2016 on 30-05-2016. Except the last order, the rate, terms and conditions are common in respect of the orders for the period from 06-12-2014 to 31-05-2016 and the order dated 30-05-2016 specified the rate, terms and conditions independently. The due date for payment of bills was specified to be the tenth day after receipt of the fax/e-mail bill subject to receipt of original invoice within the due date and the surcharge for the late payment was specified to be 1.25% per month on all dues remaining unpaid for more than 30 days from the date of receipt of the bill and the delayed payment surcharge was stated to be liable for payment for the period beyond 30 days till the date of payment. The conditions relating to billing cycle and billing procedure referring to joint meter readings etc., make it clear that the bills relate to the quantum of energy delivered. The conditions relating to Open Access charges in the last order refer to submission of Open Access 'bill' with proof of payment and energy bills separately. The terms and conditions of the earlier orders do not refer to any Open Access 'bill'.

**14.** The condition relating to Open Access charges stating that for intra-State generators connected with the State Transmission Utility, all the applicable Open Access charges will be to the account of the trader/generator stated in the order dated 04-12-2014 was amended on 09-03-2015 stating that reimbursement of Open Access charges beyond delivery point will be made on submission of Open Access bill with proof of payment and that Open Access charges received back from SLDC are to be returned to respondents 1 and 2 within one week. It was again amended on 25-02-2016 excluding the transmission charges from the Open Access charges beyond the delivery point.

**15.** The petitioner addressed the 3<sup>rd</sup> respondent on 05-12-2014, the very next day after the first order claiming that the condition that inter-State Open Access charges payable to the State Transmission Utility, Distribution Companies and SLDC shall be to the account of the petitioner was never discussed and that the rate offered shall be net of all costs. Again the petitioner addressed letters on 10-12-2014, 24-12-2014 and 04-02-2015 to waive the Open Access charges and it is in consequence that the 3<sup>rd</sup> respondent issued the amendments dated 09-03-2015 and 25-02-2016 already referred to.

**16.** The petitioner also filed the provisional monthly bills issued by the 4<sup>th</sup> respondent for short term Open Access, Transmission Charges including annual fee and SLDC Operating Charges dated 03-01-2015. On 22-02-2016, the petitioner addressed the 3<sup>rd</sup> respondent not to raise bills for transmission charges and refund the already reimbursed amount of Rs.2,00,49,569/- on which amendment dated 25-02-2016 was issued by the 3<sup>rd</sup> respondent.

**17.** The letter from the petitioner dated 04-12-2017 sought for payment of the delayed payment surcharge towards bills not paid within 30 days and the claim for Rs.1,75,15,423/- was towards such surcharge under the delayed payment of energy bills only now claimed and the letters dated 03-04-2017, 24-05-2017 and 27-07-2017 were for payment or refund of amount of short payment and reimbursement of SLDC charges. The letter dated 04-12-2017 from the petitioner is demanding payment of delayed payment surcharge along with statement of calculations in Annexure-I thereof which are confined only to energy bills and no other charges or fees or bills.

**18.** In so far as the claims in O.P.No.11 of 2018 for Rs.1,09,48,824/- and Rs.66,71,586/- in O.P.No.12 of 2018 are concerned, they are towards the delayed payment surcharge for delay in payment of energy bills and the claim of the

petitioner in O.P.No.11 of 2018 in this regard was corroborated by various letters and statements appended thereto referred to above, while the claims of the respondents 1 and 2 that as per their calculation, the said surcharge works out to Rs.99,55,358/- only is not corroborated by any documentary evidence placed before the Commission on their behalf. Their claim that for computation of such surcharge renewed vendor registration date has to be taken into account but not the date of submission of the bill is not corroborated by the orders placed by the 3<sup>rd</sup> respondent on behalf of respondents 1 and 2 with the petitioner from 04-12-2014. The orders specifically refer in the condition for surcharge for late payment to the period from the date of receipt of the bill alone and no other date. The 4<sup>th</sup> respondent in its counter threw no light on this aspect and the petitioner countered the claims of the respondents 1 and 2 in its rejoinder. Similar are the pleadings in O.P.No.12 of 2018 relating to this aspect wherein the counter of respondents 1 and 2 did not even raise the question of any dispute about the due date or the calculation of the period for commencement of the liability for payment of the delayed payment surcharge. While the delayed payment surcharge clause is admitted, the poor financial condition of the Distribution Companies being an acceptable ground for denying the delayed payment surcharge is not shown to be based on any provision or principle of law or any legal precedent. The petitioner is receiving such payment without any protest resulting in any *estoppel* against the petitioner is not shown to be having any basis and the claim that the payments were electronically made to the account of the petitioner is not denied and if so, there is no scope for the petitioner to protest before the payment was credited to its account. When it came to the counter in O.P.No.12 of 2018, the delay being unintentional apart from the precarious financial condition of the Distribution Companies is sought to be made a ground for denying such

surcharge but none of these circumstances are shown to be capable of erasing the liability arising out of the own purchase order from the 3<sup>rd</sup> respondent specifying about the liability to pay such surcharge. As such the claims of the petitioner in both the petitions about the delayed payment surcharge due in respect of energy bills appear to be unassailable.

**19.** The order dated 04-12-2014 contained no reference to any exception or exemption from or towards Open Access charges and for intra-State generators connected with the State transmission utility, all applicable Open Access charges to be levied by the State transmission utility, Distribution Companies and State Load Despatch Centre were specified to be to the account of the trader/generator. It was only by the letter dated 09-03-2015 that all the Open Access charges beyond delivery point are to be to the account of respondents 1 to 3 and reimbursement of the same will be made on submission of Open Access bill with proof of payment. Exclusion of transmission charges from the Open Access charges beyond delivery point was only by the letter dated 25-02-2016 and if respondents 1 to 4 acted upon the purchase order as it existed between 04-12-2014 and 08-03-2015 or between 09-03-2015 to 25-02-2016, they cannot be said to be acting beyond the terms and conditions of the purchase order. The surcharge on transmission and SLDC charges relates to a period prior to 25-02-2016 and even the orders of the Commission relating to non-liability of Non-Conventional Energy generators for transmission charges were referred to be on 17-10-2015. Therefore, the demand and collection of transmission charges, annual fees and operating charges, security deposits, surcharge on delayed payment of transmission and SLDC operating charges, when such amounts were demanded and collected, cannot be straightaway be construed as being in violation of the purchase orders in force from time to time and the letters

dated 09-03-2015 and 25-02-2015 are as though the existing order dated 04-12-2014 and the letter dated 09-03-2015 shall be respectively read as amended prospectively and not retrospectively. When the demand and collection of such charges was thus not wrongful or unlawful, grant of any surcharge or interest on such amounts can have no basis in law or equity. Merely because the petitioner was corresponding with the respondents requesting for waiver of Open Access charges, the same makes no difference, when the petitioner was acting upon the purchase orders from 04-12-2014 as they were. The charges collected were admittedly refunded and the surcharge towards transmission and SLDC operating charges was collected much prior to 25-02-2016 only since when the transmission charges were excluded from the Open Access charges beyond delivery point

**20.** It is true that the terms and conditions of the orders dated 04-12-2014 and 30-05-2016 refer to the delayed payment surcharge being leviable on all dues remaining unpaid for more than 30 days from the date of receipt of the bill. But the original order dated 04-12-2014 attributed the Open Access charges to the account of the trader/generator and the petitioner was in fact asked to arrange to pay transmission and SLDC charges etc. Even the amendment dated 09-03-2015 referring to reimbursement / return did not refer to any billing procedure and similar was the amendment dated 25-02-2016. The order dated 30-05-2016 alone referred to the Open Access bill but a reading together of the contents of all the orders is suggestive of the delayed payment surcharge being probably with reference to the delayed payment of the energy bills and may not be the Open Access or other bills. Billing cycle, billing procedure and payment terms including the specification of the due date for payment under all the orders are with reference to monthly bills raised as per joint meter readings or the contracted quantum of energy only. In contrast, no

due date for payment was specified in any of the orders with reference to Open Access charges and bills or transmission and SLDC charges or any other fees or charges. The orders, in relation to surcharge for late payment, specifically refer to the due date for payment, which as already stated was prescribed only in respect of energy bills and no other. Hence the condition relating to surcharge for late payment in the various orders for supply applies to energy charges/dues only. At any rate the 4<sup>th</sup> respondent was not a party to any of the supply orders by the 3<sup>rd</sup> respondent on behalf of respondents 1 and 2 nor was SLDC a party to any of the orders. Thus, the 4<sup>th</sup> respondent or the SLDC cannot be contended to be bound by the condition about delayed payment surcharge on any bills and any legal liability cannot be imposed on the comparability of the claims or circumstances. The claims about delayed payment surcharge on delayed reimbursement or transmission charges or annual fee and operating charges etc., are not thus covered specifically by the purchase orders and there is no contractual liability on any of the respondents 1 to 4 to pay any delayed payment surcharge or interest on such amounts. Similar is the situation with reference to the security deposit or SLDC operating charges etc. The principal amounts collected towards transmission charges, Open Access charges, SLDC charges, security deposits etc., were admittedly refunded and Section 62 (6) of the Electricity Act, 2003 refers to any excess recovery of the price or charges which is recoverable with bank rate of interest but SLDC is neither a licensee nor a generating company covered by that provision and the collection of Open Access charges or transmission charges arose due to the lack of clarity in the original purchase order specifically made clear by amendments later. Collection of price or charges exceeding any tariff determined by the Commission did not, hence, arise. When the principal amounts were refunded within a reasonable time, the imposition

of any interest, more so, in the absence of any contract for payment of interest may not be justifiable and the Interest Act also may not be applicable in this regard, when the transactions between the parties are under written contracts embodying all the terms including about the liability for any delayed payment surcharge.

**21.** In so far as double billing is concerned, the same is not seriously in dispute in respect of the period for which the double billing was claimed to have been made and the 4<sup>th</sup> respondent who received the same has to re-pay the same, as double billing was not justified, even by the allegations in the counter made by the 4<sup>th</sup> respondent and as such SLDC operating charges could not have been collected with reference to the purchase orders but should have been done with reference to the Tariff Orders. The double billing is totally unjustifiable and the same can be ordered to be refunded with a reasonable rate of interest like bank rate of interest referred to in Section 62 (6) of the Electricity Act, 2003 till the date of the petition.

**22.** The claim for Rs.66,71,586/- in O.P.No.12 of 2018 relates to energy supplied and billed for the period from 01-06-2016 to 31-08-2016 and the petition was filed before the Commission on 24-05-2018, well within the period of limitation. Similar is the claim for Rs.1,938/-. The petition in O.P.No.11 of 2018 was filed before the Commission on 19-05-2018. The letter from the petitioner dated 04-12-2017 to the respondents 1 to 3 shows clearly that the energy bills for December, 2014 to March, 2015 became due for delayed payment surcharge only on 19-05-2015 and for all the subsequent periods, the due dates are very much later. In so far as the energy bills are concerned, the question of any limitation, hence, does not arise. Double billing was relating to May, 2015, August, 2015 and November, 2016 and hence the petition filed on 19-05-2018 is well within time in respect of the said claim also. The



other claims were disallowed for other reasons and hence the Law of Limitation does not stand in the way of granting reliefs to the extent the petitioner is found entitled to.

**23.** Order I Rule 6 of the Code of Civil Procedure, 1908 gives the option to the plaintiff to join as parties to the same suit, all or any of the persons severally, or jointly and severally, liable on any one contract. Where the plaintiff is in doubt from whom redress is to be sought, he may join two or more persons as defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties, under Order I Rule 7 of the Code of Civil Procedure, 1908. Order I Rule 9 of the Code of Civil Procedure, 1908 makes it clear that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. There is no allegation of any non-joinder or misjoinder of necessary party herein and under the circumstances, the principles of the Code of Civil Procedure, 1908 which reflect principles of justice, equity and good conscience, apply. Both these Original Petitions cannot be defeated on the ground of misjoinder of parties. The frame of the petition was opposed as resulting in misjoinder of causes of action but a reading together of the whole of the Original Petitions makes it clear that the multiple reliefs sought for arose out of the liability claimed under the same contract against the respondents severally or jointly and severally within the scope of Order I Rule 6 of the Code of Civil Procedure, 1908 and cannot be considered impermissible.

**24.** The respondents raised the question of insufficiency of fees paid in both the petitions but did not show how such fees paid were insufficient.

**25.** Future interest from the date of the petition and costs are within the judicial discretion of the adjudicating forum on the principles of the Code of Civil Procedure,

1908 or the well settled principles under judicial precedents. On the peculiar facts and circumstances of this case, it will be equitable and just not to further burden the public utilities with any further interest or surcharge or costs. The delayed payment surcharge awarded itself is substantial, sufficiently and adequately compensating the petitioner of any inconvenience or loss, more so, in the absence of any specific evidence for quantification of any loss or damage sustained at any higher level and there need not be any further damages or interest on quantified damages or interest called herein as delayed payment surcharge. Hence, while there shall be no grant of interest since the date of the petitions, the parties shall have to bear their respective costs.

**26.** Both the Original Petitions have to be ordered accordingly. Accordingly, **O.P.No.11 of 2018** is allowed in part, directing the respondents 1 to 3 to jointly and severally pay Rs.1,09,48,824/- (Rupees one crore nine lakhs forty eight thousand eight hundred and twenty four only) to the petitioner towards the delayed payment surcharge for the delay in payment of energy bills and the 4<sup>th</sup> respondent is directed to pay Rs.2,12,097/- (Rupees two lakhs twelve thousand ninety seven only) with interest of Rs.38,028/- (Rupees thirty eight thousand twenty eight only) towards the double billed SLDC operating charges. **O.P.No.12 of 2018** is allowed in part, directing the respondents 1 to 3 to jointly and severally pay Rs.66,71,586/- (Rupees sixty six lakhs seventy one thousand five hundred and eighty six only) towards delayed payment surcharge for the delay in payment of energy bills. The rest of the claims in both the Original Petitions are disallowed and the parties shall bear their own costs in both the Original Petitions.

This order is corrected and signed on this the **24<sup>th</sup> day of July, 2019.**

Sd/-  
**Dr. P. Raghu**  
Member

Sd/-  
**Justice G. Bhavani Prasad**  
Chairman