

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 26th day of August 2004

Present

- | | | |
|----------------------------------|----------|-----------------|
| 1. Sri. Philipose Matthai | - | Chairman |
| 2. Sri. H.S. Subramanya | - | Member |
| 3. Sri. S.D.Ukkali | - | Member |

Case Nos: OP - 14/2004

Between

M/s. Koppal Green Power Ltd.,
No.7, Walton Road,
Bangalore -560 001

Petitioner

(By Sri Y.H.Vijay Kumar, Adv.)

and

1. Managing Director,
KPTCL,
Kaveri Bhavan,
Bangalore - 560 009

2. Principal Secretary,
Energy Department,
Government of Karnataka,
Multistoried Building,
Bangalore - 560 001.

3. Managing Director,
Karnataka Renewable Energy Dev. Ltd.,
19, Maj. Gen. Loganathan,
INA Cross, Queens Road,
Bangalore - 560 062

Respondents

(By Sri S. Sriranga, Adv for R -1, Sri P.S.Rajgopal Adv.for R - 3)

The Petitioner is a Biomass based Power Generating Company with a capacity of 6 MW. It has entered into a Power Purchase Agreement (PPA for short) with Respondent No.1 to sell the power generated by the company. The PPA was entered into on 30.3.2001. The Respondent No.1 issued notice dated

5.7.2003 to the Petitioner terminating this PPA and called upon him to enter into a fresh PPA upon such tariff and as per the terms and conditions stipulated by the KPTCL. The Petitioner challenged the said notice before the Hon. High Court of Karnataka, in Writ Petition No 47240/2003 seeking restoration of the PPA. The Hon. High Court in its order-dated 18.11.2003 has stayed the notice-dated 5.7.2003 issued by the Respondent No.1.

2. The Petitioner has approached the Commission with the following prayer. -

"a. Fix the tariff for purchase of power from the petitioner;

(i) Giving Special consideration to the fact that investments were already made from promoter and contracted Loan funds, placing reliance on the contracted rate of Rs. 2.25 per unit with base year as 1994-95 with 5% escalation, prior to the enactment of the Electricity Act, 2003.

(ii) Giving special consideration to the fact that the petitioner was denied the ability to take decision of whether to continue with the project in view of the investments already made and contracts entered into by the petitioner with third parties.

(iii) Keeping in view the other facts and circumstances narrated above and the MNES guidelines."

3. The Respondent 1 & 3 have put in appearance. Respondent No.1 has filed detailed statement of objections. When the case came up for hearing the learned Counsel for the Respondent No.1 pointed out that the Petitioner has already approached the Hon High Court of Karnataka and has obtained stay orders against the notice issued by the Respondent No.1 and therefore he cannot agitate the matter before the Commission. The learned Counsel for the Petitioner accepted that there is a stay order against the notice, but he has approached the Commission to fix up the tariff.

4. The prayer of the Petitioner, as stated in Para 2 above, prejudices the outcome of the case before the Hon High Court and presupposes that the notice issued by the Respondent No.1 will be upheld and there would be a need to fix the tariff. Thus the prayer of the Petitioner is hinged to the notice of the Respondent No.1, terminating the PPA, and also to the case before the Hon High

Court. Since the Hon High Court has stayed the impugned notice of the Respondent No.1, the petition before us is premature and does not survive for consideration, at this point of time.

5. The petition is **dismissed**. It is ordered accordingly.

Sd/
(Philipose Matthai)

Sd/
(H.S.Subramanya)

Sd/
(S.D.Ukkali)