

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 7th day of April 2005

Present

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|-------------------------|-----|----------|
| 1. Shri K.P. Pandey | ... | Chairman |
| 2. Shri H.S. Subramanya | ... | Member |
| 3. Shri S.D. Ukkali | ... | Member |

Case No.RP.01/2005

Between

M/s. Jindal Thermal Power Company Limited
P.O.Box No.9,
Village & P.O. Toranagallu Dist.
Bellary 583 123 ... Petitioner
(by Shri Amarchand & Mangaldas & Suresh A, Advocates)

And

1. M//s. Bhulwarka Pipes Ltd.,
P.O. Vidyanagar 583 275
Village Torangallu
Bellary District
2. M/s. Karignur Iron & Steel (P) Ltd.,
Embitee Complex, Bellary Road
Hospet
Bellary District
3. M/s. Jindal Vijayanagar Steel Ltd.,
P.O. Vidyanagar 583 275, Village Torangallu
Bellary District
4. Karnataka Power Transmission Corporation Ltd.,
Cauvery Bhavan, K.G. Road
Bangalore
5. Gulbarga Electricity Supply Co. Ltd.,
Gulbarga Main Road
Gulbarga 585 102

6. M/s. Wind Power Association
C/o Mr. Shridhar Prabhu
Executive – Regulatory Affairs
M/s. Enercon (India) Ltd.,
208, Prestige Centre Point
Cunningham Road
Bangalore 560 052

7. Shri Y.G. Muralidharan
Consultant, Consumer Advocacy
C/o Karnataka Electricity Regulatory Commission
6th Floor, Mahalaxmi Chambers
M.G. Road, Bangalore 560 001 ... Respondents

1. The petitioner company has sought review of the Commission's order dated 10.12.2004 in the matter of issue of supply license to the petitioner for a "Limited area" in Toranagallu, Bellary District.. Notices were issued to the petitioner as well as the Respondents for hearing on admissibility of the petition. The petitioner's counsel as well as the counsel for KPTCL and GESCOM were heard. Both the counsels have filed written arguments in support of their contentions.

2. The petitioner has pleaded that the following findings of the Commission illustrate the errors apparent on record of the said order:

- a) The Commission has considered oral objections from the parties despite provisions of Section 15 (5) of the Act, Regulation 26 of KERC Regulations and the public notices;
- b) There is no concept of supply license in the Electricity Act;
- c) Request for a supply license for a limited area has no relevance as there is no mention of such "limited area" in the Act; and
- d) A generating company can supply electricity to consumers only under Open Access Regulations and by no other means. In the present application, the applicant's proposal is not to supply electricity under the Open Access scheme. Hence, the applicant's request for grant

of supply license to a few industries, is not in accordance with the provisions of the Act.

- e) In case distribution license is granted to a generating company, such company will engage in generation, transmission and distribution functions and also engage in trading activity. Such license would be contrary to the basic objective of reforms.

3. It is also argued that principles of natural justice and KERC Regulations have been violated by the Hon'ble Commission as the Commission has held that supply of power to Bhuwarka Pipes Ltd., is devoid of legal sanction (para 12 of the Order).

4. The Respondent's counsel has objected to the admission of the petition for review on the following grounds:

- a) the petition is wholly misconceived and liable to be rejected as the Commission has formulated the question of determination and has come to the conclusion having regard to the provisions of Electricity Act 2003.
- b) The Commission has held that a generating company can supply electricity to consumers only through Open Access Regulations provided for under Section 42 of Electricity Act 2003 and in view of the same, request for grant of supply license is rejected. While deciding the petitioner's request, the Commission has come to the conclusion that the request for supply license is not in tune with the objectives of the reforms process. The Commission has further held that under the reforms process there has been introduction of measures for unbundling of electricity industry and grant of supply license to a generating company would result in reverse process of bundling where a generating company will also engage in transmission, distribution and trading of electricity.

5. The petitioner's contention that principles of natural justice have been violated in view of the observations of the Commission made at para 12 of the

impugned order, is also devoid of merits as such findings of the Commission are based on the submissions made by the counsel for the petitioner and even at this juncture the facts on which the observations in para 12 have been made are not in dispute.

6. On the basis of the above, the Respondent has argued that the impugned order does not suffer from any infirmity or error, much less any error apparent on the face of the records. The present petition is in fact in the form of an appeal against the impugned order and the petitioner is seeking re-hearing of the entire matter in the garb of review petition.

7. The Commission has carefully considered all the above points.

At the outset, the Commission has to decide on whether the various points urged by the review petitioner constitute adequate grounds for the exercise by the Commission of its power of review.

Clause (f) of sub-section (1) of Section 94 of the Electricity Act 2003 provides that the Commission shall, for the purpose of any enquiry or proceedings under the Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of, inter-alia, review of its decisions, directions, and orders.

Section 114 of the Code of Civil Procedure, 1908, provides for the powers of Civil Courts to review their decisions. Order 47 Rule 1 dealing with application for review of judgement reads as follows:

“Applications for review of judgement.-(1) Any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who from the discovery of new and important matter or evidence which alter the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.”

8. In this case the petitioner had come before the Commission for issue of supply license for limited area under Sections 14 & 15 of the Electricity Act 2003. After following due procedure as laid down in Electricity Act 2003 and relevant regulations issued in this regard and having regard to facts and circumstances of the case the Commission had passed a speaking Order dated 10.12.2004 and held that this was not a fit case to grant “limited area” supply license. The various arguments advanced by the petitioner for review of the order have already been discussed in detail in the impugned order dated 10.12.2004. The Commission notes that the review petition does not contain any new and important matter or evidence which was not within the knowledge of the petitioner or could not be placed earlier before the Commission when the order that has now been sought to be reviewed was made. The petitioner has not made out a case for review of the impugned order. Thus, as there is no mistake/error apparent from the record or any fresh evidence or any other sufficient reason warranting review of the impugned order, the petition filed by the petitioner is held as inadmissible.

The petition is accordingly dismissed.

Sd/-
(K.P. PANDEY)
Chairman

Sd/-
(H.S. SUBRAMANYA)
Member

Sd/-
(S.D. UKKALI)
Member