

**No.N/01/11**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 21<sup>st</sup> April 2011**

- |                               |          |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath    | Member   |
| 3. Sri K. Srinivasa Rao       | Member   |

**Case No. OP 01/2011**

**Between**

M/s Nectar Beverages Private Limited  
ADJ GTC, Belgaum Road  
P.B. No.205, K.C. Road  
D H A R W A D – 580 008  
(Represented by Sri Shridhar Prabhu, Advocate)

... Petitioner

**And**

1. Hubli Electricity Supply Company Limited  
Navanagar, P.B. Road  
HUBLI – 580 029
2. Karnataka Power Transmission Corporation Limited  
Kaveri Bhavan  
BANGALORE – 560 009
3. State Load Dispatch Centre – Karnataka  
Ananda Rao Circle  
BANGALORE – 560 009
4. Karnataka Renewable Energy Development Limited  
19, Major General A.D. Loganadhan INA Cross, Queens Road  
BANGALORE – 560 052
5. Government of Karnataka  
Vidhana Soudha  
Dr. Ambedkar Veedhi  
BANGALORE – 560 001  
(Represented by M/s. Just Law Advocates)

... Respondents

1. The petitioner has prayed for issuance of –
  - (i) a direction to the respondent to pay damages equivalent to the energy charges paid by the petitioner to the 1<sup>st</sup> Respondent for the billing month of January 2010 to the billing month of August 2010 together with interest of 2 % per annum;
  - (ii) to deem the energy generated from the date of commissioning of the project up to the date of signing of the wheeling and banking agreement and allow captive consumption by treating it as banked energy.
  
2. On notice the Respondents have put in appearance through their counsel M/s. Just Law Advocates and have filed the statement of objection on 8.2.2011.
  
3. We have heard counsel appearing for both the parties and also considered the petition averments and the objections filed by the Respondents.
  
4. It is submitted by the petitioner that it has installed a windmill of 1 MW capacity at Gadag. Immediately after the installation of the windmill, the petitioner wanted to enter into a wheeling and banking agreement to effect 3<sup>rd</sup> party sale. However, there was delay on the part of the Respondents in executing the same. Consequently the power generated by it could not be sold or utilized by it. Therefore, it has sought for payment of damages equivalent to the energy charges paid by the petitioner to HESCOM or to allow the power generated to be utilized in future by treating the same as banked energy.

5. It is submitted by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents that the delay in signing the wheeling and banking agreement was to the account of the petitioner. It is submitted that it is the petitioner who did not take steps to get the GO which contemplated supply of power to the Respondents through a PPA modified in time. Till the GO was modified, the Respondents were under no obligation to sign the wheeling and banking agreement and therefore no fault can be found with them and consequently the Respondents are not liable either to pay any damages to the petitioner or to treat the energy generated as banked and allowed to be utilized by the generating company.

6. The question that arises for consideration is whether the Respondents have caused delay in signing the wheeling and banking agreement and if so what is the consequence of the same.

7. From the averments made in the petition and the documents produced by the petitioner it is observed that the petitioner was not the original allottee of the windmill but got it transferred from one M/s. S.B.Odunavar and Brothers vide GO dated 28.10.2009 (Annexure P-4) and established the same. It is noticed from the application dated 15.09.2009 for transfer that the petitioner at Para 16 stated that the power generated from the project would be sold to KEB. The petitioner commissioned the plant on 9.2.2010. The petitioner thereafter on 18.3.2010 made a request to the Additional Chief Secretary, Energy Department, Government of Karnataka for modification of the GO to allow it to adjust the power generated towards their own consumption. In this letter, petitioner stated that the original sanction contemplated sale of power to HESCOM. The

Government after consulting HESCOM and KPTCL on 21.6.2010 approved the modification sought and permitted the parties to enter into a Wheeling and Banking Agreement.

8. On 1.7.2010, the petitioner approached the Chief Engineer, Load Dispatch Centre, KPTCL to allow it to enter into a Wheeling and Banking Agreement. On 3.7.2010, the Chief Engineer, Load Dispatch Centre, KPTCL sought the views of HESCOM and conveyed the approval for entering into wheeling and banking agreement to be signed with HESCOM on 5.8.2010. On 25.8.2010, the Wheeling and Banking Agreement was executed and thereafter there is no dispute.

9. The above narration of facts establishes that there was no deliberate delay on the part of the Respondents in signing the wheeling and banking agreement. For the delay if at all anybody is responsible, it is the petitioner who changed its earlier purpose of selling power to HESCOM and decided to go for a Wheeling and Banking arrangement. This was sought to be done only after commissioning the project on 9.2.2010 even though it had made an application for setting up the project on 15.9.2009, i.e., almost one year before. The Government had to consult KPTCL and HESCOM whose network had to be made available to the petitioner before allowing the change sought. Significantly, the petitioner at no point of time raised the issue of delay before signing the Wheeling and Banking Agreement obviously in view of the fact that its earlier application was for selling power to HESCOM. It is only through this petition that the question of delay in executing the Wheeling and Banking

Agreement is being raised. In our view, there is no undue delay caused by the Respondents in signing the Wheeling and Banking Agreement. The time taken by the Respondents is in the natural course of business, as being Government instrumentalities the Respondents are required to follow the set procedure before taking a decision in one way or the other.

10. We observe from the petition that the petitioner has made a prayer for both damages as well as for treating the energy as banked. Both cannot be granted even if we agree with the petitioner that there was undue delay in executing the Wheeling and Banking Agreement. As we have held that there was no delay on the part of the Respondents, the petitioner is not entitled to either of the reliefs.

11. However, the fact remains that the petitioner had generated and fed electricity from the date of commissioning of the project to the date of signing of the Wheeling and Banking Agreement and the 1<sup>st</sup> Respondent HESCOM has utilized it. Therefore, in our view, HESCOM shall pay for the energy pumped into the grid at the rate of Rs.3.40 (which is the rate for wind energy fixed by the Commission during the relevant time). This will be equitable to both the parties.

12. Accordingly we order that the 1<sup>st</sup> Respondent shall take a decision on the above options within a period of two months and inform the petitioner in writing.

Sd/-  
(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER