

**No.N/03/09**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 7<sup>th</sup> April 2011**

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

**Case No. OP 04/2009**

**Between**

M/s. Jamakhandi Sugars Ltd.  
Hirepadasali Post  
Naganur – 587 301  
Jamakhandi Taluk  
Bagalkot District  
(Represented by its Advocate Sri Prabhuling Navadgi)

.... **Petitioner**

**And**

1. Karnataka Power Transmission Corporation Limited  
Kaveri Bhavan, Kempegowda Road  
BANGALORE – 560 009
2. Hubli Electricity Supply Company Limited  
Navanagar, P.B. Road  
HUBLI – 580 025  
(Represented by its Advocate Sri Sriranga)

.... **Respondents**

1. In this petition the petitioner has sought payment of interest of Rs.24,40,732/- and Rs.33,80,572/- as per the terms of the PPA dated 14.5.2009.

2. The respondents have appeared through their counsel M/s. Just Law Associates and have filed statement of objections on 4.2.2010.

3. We have heard counsels of both the parties and also perused the petition, objection statement and the judgments cited by both the parties.

4. It is the case of the petitioner that it had entered into a PPA with Karnataka Power Transmission Corporation Limited (KPTCL) on 14.5.1999 for supply of electricity generated by its cogen power plant of 10.5 MW established at Naganur village of Jamkhandi taluk. This PPA was amended by a Supplementary Power Purchase Agreement dated 21.8.2007. Pursuant to the provisions of the Karnataka Electricity Reforms Act, 1999 and the Electricity Act, 2003, the PPA as amended came to be assigned to the 2<sup>nd</sup> Respondent Hubli Electricity Supply Company Limited (HESCOM) and accordingly electricity is being supplied to HESCOM.

5. As per Article 5 of the original PPA dated 14.5.1999, the petitioner had to be paid for the electricity supplied at the rate of Rs.2.25 per kwh with an escalation of 5 % per annum for the first ten years.

6. This clause was modified by Supplemental Agreement dated 21.8.2007 and as per the amended clause, the respondent has to pay the petitioner from 1.4.2003 at the rate of Rs.3.32 per kwh with simple escalation of 2 % per annum.

7. There is no dispute between the parties on the existence of the PPA and the supplementary PPA, as also the supply of electricity made under the said PPA and payment of the principal amounts for the power supplied.

8. The only dispute that has arisen is regarding the liability to pay interest by the respondent HESCOM to the petitioner for the delayed payments as per the terms of PPA.

9. The petitioner has claimed an interest of Rs.58,21,304/- for the delayed payments (as per the details given in Annexure-D). This amount relates to two periods – one prior to the signing of Supplemental Agreement on 21.8.2007 and the other after the said date.

10. According to the petitioner, the respondents are liable to pay interest for both the periods, as there were delays in making payments for the electricity supplied.

11. The respondents contest their liability to pay interest for the first period firstly on the ground that there was a dispute between the parties on the rate and it came to be resolved by the Supplemental Agreement only on 21.8.2007 and once the dispute was settled the amount payable was worked out and paid. Secondly, on the ground that the interest claimed is time barred as per the Law of Limitation.

12. As regards the second period (after 21.8.2007), respondents have denied that there was delay in making the payments.

13. In reply, it is contended by the petitioner's counsel that the Limitation Act has no application to the dues under the provisions of the Electricity Act, 2003 as it neither prescribes any limitation nor does it make any reference to the Limitation Act. The respondents having not paid the charges as per the terms of the then prevailing PPA, are liable to pay interest even on the amount worked out and paid after signing of Supplemental Agreement.

14. The issues that arise for consideration are –

- i) Whether the petitioner is entitled to interest on the payments worked out and paid after signing the Supplemental Agreement dated 21.8.2007 for the prior period; and
- ii) Whether the petitioner is entitled to the interest for the delayed payments made after 21.8.2007 as per the terms of the PPA.

15. Dealing with the first claim of interest for the period prior to 21.8.2007, we are of the considered view that no interest was payable on the amounts not paid during the pendency of the dispute between the parties but paid thereafter. As per the PPA, interest is payable only if any amount is due and payable. Admittedly, as stated in the preamble of the Supplemental Agreement the rate payable was renegotiated with effect from 1.4.2003 to arrive at a mutually acceptable tariff only on 21.8.2007 and therefore, the difference between the amounts already paid and what was negotiated became due and payable only thereafter. Accordingly Issue No.(i) is answered against the petitioner.

16. As regards the interest claimed for the period subsequent to signing of the Supplemental Agreement, we have no hesitation in holding that interest is payable on all the payments not made within the due date including any amount due for the past supplies for which the rate was renegotiated as per Clause 6.3 of the PPA. This clause specifically states that "If any payment from the Board is not paid when due, there shall be due and payable to the Company simple penal interest at the rate of 2 % over and above the SBI prime lending rate for such payment from the date payment was due until it is paid in

full". The respondents though have generally denied delay in making payment, have not produced any details of the payments made to show that the amounts were paid in time. Therefore we hold that the respondents are liable to pay interest on the amounts not paid within the due date. The parties may between themselves workout the actual amounts of interest to be paid with reference to the date on which each payment became due and was actually paid.

17. Accordingly Issue No.(ii) is answered in favour of the petitioner.

18. Since the issues in this case as analysed above do not call for a decision on the question of limitation, we do not think it is necessary to go into the larger question of whether the Limitation Act has application to the amounts payable under the Electricity Act, 2003.

19. Accordingly this petition stands disposed of. The respondents shall calculate the interest payable in the light of the observations made as above and pay the same within a period of one month from today.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER