

OP 15/2010

No.N/26/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 6th January 2011

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

Case No. OP 15/2010

Between

M/s Renewable Energy Developers
Association of Karnataka (REDAK)
No.48, Lavelle Road
BANGALORE – 560 001
(Represented by its Advocate Sri Shridhar Prabhu)

... Petitioner

And

1. Chief Secretary
Government of Karnataka
Vidhana Soudha, Dr. Ambedkar Veedhi
BANGALORE – 560 001
2. The Managing Director
Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 009
3. The Managing Director
Karnataka Renewable Energy Development Limited
No.19, Maj. Gen. A.D. Loghanathan INA Cross, Queen's Road
BANGALORE – 560 052
4. The Managing Director
Bangalore Electricity Supply Company Limited
Corporate Office, K.R. Circle
BANGALORE - 560 001
5. The Managing Director
Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
Mangalore – 575 001

6. The Managing Director
Gulbarga Electricity Supply Company Limited
Station Road
Gulbarga – 585 101
7. The Managing Director
Hubli Electricity Supply Company Limited
Navanagar, P.B. Road
HUBLI – 580 029
8. The Managing Director
Chamundeshwai Electricity Supply Corporation Limited
L.J.Avenue Commr. Complex, New Kantharaja Urs Road
Saraswathipuram
MYSORE – 570 009 ... Respondent
- (Represented by Advocate Sri Sriranga for Respondents
2,4,5,6,7&8 and Sri G.S. Kannur, Advocate for 3rd Respondent)

1. This petition is filed by M/s Renewable Energy Developers Association of Karnataka (REDAK) in a representative capacity seeking a declaration that the Government Order No. EN 39 92 NCE 2008, dated 13.10.2009, produced as Annexure-P3, is non-est in law and not binding on the members of the petitioner and also seeking a direction to the second respondent to grant all permissions, etc., without insisting upon the remittance of the charges as prescribed in Annexure-P3, etc.

2. All the respondents have appeared through their counsels and have raised a preliminary objection on the very maintainability of the petition before the Commission.

3. We have heard the counsel appearing for the petitioner and the counsels appearing for the respondents only on the preliminary issue of maintainability of the petition as that issue has to be decided at the threshold.

4. The counsel for the petitioner Sri Shridhar Prabhu has contended that the petition is maintainable before the Commission as this Commission can give a declaration as sought since the Government Order is not in accordance with the provisions of the Electricity Act, 2003. Elaborating on this, he submitted that under the Electricity Act, 2003, a generating company does not require a

licence for establishing, operating and maintaining a generating station. Once no license is required for setting up of a generating plant, no fee can be prescribed for this purpose by any one including the Government. The prescription of certain fees by the Government in its order in effect amounts to prescribing a license fee and therefore the same is contrary to and ultra vires the provisions of the Electricity Act, 2003. He further contends that this Commission has very wide powers in matters relating to electricity sector and the jurisdiction of this Commission extends to examining the legality, propriety or correctness of the direction / order / decision of any authority in the electricity sector. He relied upon the decision of the Hon'ble Supreme Court in Cellular Operators Association of India and others Vs. Union of India (2003 3 SCC 186) in support of his contention that this Commission has wide ranging powers and can grant a declaration as sought by the petitioner.

5. Per contra the counsels appearing for the respondents have contended that this Commission has no jurisdiction, under the provisions of the Electricity Act, 2003, to decide on the validity of an order issued by the Government. They also contended that since the petitioner is only an association of generating companies and not a generating company per se, it cannot raise a dispute under Section 86(1)(f) of the Electricity Act, 2003.

6. In the light of the above submissions, the preliminary issue which needs to be decided is whether this Commission has jurisdiction to decide the legal validity of the Government Order dated 13.10.2009, under the provisions of the Electricity Act, 2003.

7. The Karnataka Electricity Regulatory Commission is set up under the provisions of the Electricity Act, 2003 and has to perform the functions assigned to it in accordance with the provisions of the Electricity Act, 2003. The Electricity Act, 2003 does not confer any general power on the Commission to examine every action of the Government / Licensees / Generator Companies. The Commission has to exercise its jurisdiction on the specific issues which fall within the scope of its powers and not beyond.

8. Undisputedly the order impugned in the petition is not a statutory order issued under any of the provisions of the Electricity Act, 2003. It is an executive order issued by the Government to its subordinate Agency, KREDL, in exercise of the administrative control to set a procedure to be followed by the said agency while dealing with the requests of entrepreneurs seeking to establish plants for generation of electricity from non-conventional sources.

9. On consideration of the provisions of the Electricity Act, 2003 and Rules made there under, we are of the view that under the provisions of the Electricity Act, 2003, this Commission has no power to judicially review an order issued by the Government to its agency. The power of the Judicial Review of an administrative action lies only with the Hon'ble High Courts under Article 226 of the Constitution of India and not with the Commission which has to function only within the four corners of the statute which has created it. Though the counsel for the petitioner has vehemently argued against the validity of the Government Order, he was also not able to point out the provision of the Electricity Act under which this Commission can examine the vires of the impugned Government Order and give a declaration as sought by the petitioner.

10. The judgment of the Hon'ble Supreme Court in the case of Cellular Operators Association of India no way supports the contention raised on behalf of the petitioner. In the said judgment the Hon'ble Supreme Court was examining the jurisdiction of the Telecom Appellate Tribunal. Admittedly the present proceedings are before the Commission and the Commission has to act within the powers expressly conferred on it under the statute which has created it. Another judgment cited by the counsel for the petitioner in the case of M/s PTC India Ltd., Vs. CERC also does not supports the petitioner's contention. Again in the said case the powers of the Appellate Tribunal for Electricity were in issue and not that of the Commission.

11. During the course of hearing, the counsel appearing for KREDL made a categorical statement that the fee stipulated in the impugned Government

Order is collected only from those persons who avail of the services of KREDL and not from every one. Thus, it is only a service charge to be collected by KREDL for the service rendered by it as a Nodal Agency for NCE projects which facilitates grant of land, forest permission, etc. However, since we are not deciding the validity of the Government Order on merits, we need not go further in this regard.

12. As we have held that the this Commission has no power to judicially review the impugned Government Order and adjudicate the dispute raised, we are not deciding the question whether the petitioner association can maintain the petition before the Commission under Section 86(1)(f) of the Electricity Act, 2003. We leave the said question open to be decided in an appropriate case.

13. Accordingly we hold that the petition questioning the Government Order dated 13.10.2009 is not maintainable before this Commission and therefore is hereby rejected in limine.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER