

No.N/24/08

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 16th April 2009

1. Sri K.P. Pandey	Chairman
2. Sri Vishvanath Hiremath	Member
3. Sri K. Srinivasa Rao	Member

Case No. OP 21/2008

Between

M/s Vijayalakshmi Hydro Power Pvt. Ltd.
No.209, Swiss Complex
33, Race Course Road
BANGALORE – 560 001
(Represented by its Advocate Sri Sridhar Prabhu)

Petitioner

And

1. The Managing Director
Karnataka Power Transmission Corporation Limited
Kaveri Bhawan, Kempegowda Road
BANGALORE – 560 009

2. The Managing Director
Chamundeshwari Electricity Supply Corporation
No.927, L.J. Avenue, New Kantharaja Urs Road
MYSORE – 570 009
(Represented by its Advocate Sri Sriranga)

Respondents

1. The petitioner in this petition has sought for the following reliefs :
 - (1) Pass order/s reaffirming the validity and subsistence of **Annexure P-1**, the PPA executed by the Petitioner with the First Respondent in 2001 and which now stands assigned to the Second Respondent.
 - (2) Direct the First and Second Respondents to pay all the amounts by honouring the terms of the PPA and make all the payments together with the applicable interest charges.
 - (3) Direct the Respondents to pay the cost of the Petition.
 - (4) Pass any other order/s to meet the ends of justice and equity.

2. In support of the above reliefs the petitioner has contended that it has entered into a PPA with the respondents on 1.3.2001 which is produced along with the petition as Annexure P-1 and was getting the payment as per the PPA till 1.4.2003 and with effect from 1.4.2003, the tariff was freezed at Rs.3.32 unilaterally by the 1st respondent. The issue of freezing was discussed with State Power Procurement Coordination Centre (SPPCC) which was dealing with the PPAs on behalf of the 2nd respondent and ultimately an agreement was reached between the parties which is reflected in Annexure P-7 which reads as under :

“In continuation of all our earlier representations in this matter and in view of continued heavy blockage of our limited resources, because of short payment of our bills, at the unilaterally reduced frozen rates, we now hereby convey our concurrence to your revised tariff with regular 2 % annual escalation on the basic rate of Rs.3.32 per unit applicable from year 2003-2004.

It is requested that urgent instruction, be sent to all concerned to release the balance difference amount due to us, in view of the above and oblige.”

3. The above agreement was incorporated in a supplemental agreement and was sent for consent of the petitioner vide Annexure P-8. It was stated in Annexure P-8 that the supplemental agreement will be effective only on approval of the Commission and subsequent signing of the PPA by the parties. Thereafter no further action was taken by the respondents and on the contrary the petitioner vide its letter dated 14.7.2008 wrote to the Managing Director of the 2nd respondent that it is revoking its consent to the revised tariff which was accepted by them vide their letter dated 10.1.2007 as no payments were released as agreed to during negotiations. It is also contended by the petitioner that as of now the PPA dated 1.3.2001 only subsists and the respondents are bound by the terms of the said PPA and have to make payments in accordance with the same along with the interest for the delayed payments.

4. In reply it is contended on behalf of the respondents that the petitioner now cannot go back on the consent given by it for the revised tariff vide its letter dated 10.1.2007 as the acceptance of the revised tariff by the petitioner gets

concluded on acceptance of the proposal for revised tariff and non-signing of the supplemental PPA or non-approval of the Commission does not alter this position.

5. The point arises for consideration and decision of the Commission is whether the PPA dated 1.3.2001 still subsists or is modified by the subsequent agreement between the parties as entered by the respondents and to what relief the petitioner is entitled to?

6. It is undisputed that the petitioner and the respondents had entered into a PPA on 1.3.2001. In the said PPA, the 1st respondent had agreed to pay the petitioner at the rate Rs.2.25 per KWH for the energy delivered at the metering points with an escalation at the rate of 5 % per annum over the tariff applicable for the previous year as per the guidelines issued by the Ministry of Non-Conventional Energy Sources of Government of India. It is also undisputed that the 1st respondent froze the tariff at the rate Rs.3.32 with effect from 1.4.2003 and did not grant escalation in tariff as provided in the PPA and started paying only at the rate fixed rate of Rs.3.32 with effect from 1.4.2003. It is also undisputed that there were negotiations between the parties and a supplemental agreement was about to be signed modifying the tariff clause of the PPA. The only dispute is whether the consent given by the petitioner for modifying the PPA has resulted in a supplemental agreement and binding on the petitioner. From Annexure P-7 it is observed that the petitioner agreed for the revised rates from the year 2003-04 with a request that urgent instructions be sent to all concerned to release balance difference amount due to them in view of their consent for revised tariff terms. Further, no supplemental agreement was signed between the parties and no approval of the Commission was obtained as required to bring in the modification in the PPA dated 1.3.2001. In view of the fact that the consent given by the petitioner was not acted upon by the parties, we are of the opinion that no concluded supplementary agreement was arrived at between the parties so as to treat it as a modification of the original PPA. Had the respondents accepted the consent given by the petitioner for modification

and had released the payments accordingly and had signed the supplemental agreement along with the petitioner and sent for approval of the Commission the position would have been different. Admittedly the respondents have not acted upon the consent given by the petitioner for modification of the PPA signed on 1.3.2001. Therefore the contention put forward by the counsel for the respondents that there is a concluded supplemental agreement between the parties for modification of the PPA cannot be accepted. Consequently, in our considered view, the PPA dated 1.3.2001 still stands and parties are bound by the same for the period for which it is in force.

7. In the light of the above findings, the respondents are directed to pay the petitioner the tariff as provided in the PPA along with the escalation. As a consequence of this, the respondents shall also pay the difference of the amounts not paid w.e.f. 1.4.2003 within a period of four (4) months from today. In case the respondents fail to make the payment within the period as prescribed, the amount shall carry interest as agreed to in the PPA.

8. Parties shall bear their own costs.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER