

**No.N/75/10**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 6<sup>th</sup> January 2011**

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

**Case No. OP 46/2010**

**Between**

M/s Coromandel Sugars Ltd.,  
No.827, Dhun Building  
Annasalai  
C H E N N A I – 600 002  
(Represented by its Advocate Sri Prabhuling Navadgi) ... Petitioner

**And**

Chamundeshwari Electricity Supply Corporation Ltd.,  
No.927, LJ Avenue Complex  
New Kantharaja Urs Road, Saraswathipuram  
M Y S O R E – 570 009  
(Represented by its Advocate Sri Sriranga) ... Respondent

1. This petition is filed by the petitioner claiming a sum of Rs.12,99,14,183/- along with interest and a sum of Rs.38,51,472/- along with interest from the Respondent, and to declare the Office Memorandum, CESC dated 13.10.2010 as illegal.
2. The matter has been heard finally with the consent of both the parties.
3. The question that arises in this petition is related to the true meaning of Clause 5.1 of the PPA dated 23.12.1998.
4. It is contended by the petitioner's counsel that while arriving at the rate payable to the petitioner after the expiry of ten (10) years period, CESC has

taken the date of execution of the PPA, i.e., 23.12.1998 as the base date for arriving at the rate payable for the next ten (10) years. This is erroneous, as Clause 5.1 has to be understood in the light of the other terms of the PPA. According to him, though the PPA was executed on 23.12.1998, the period of ten (10) years for the purpose of tariff payable is to be reckoned not from the date of execution of the PPA but from the scheduled date of completion and the rate has to be arrived at by taking the commercial operation date as the basis.

5. Per contra it is contended by the counsel for respondents Sri Sriranga that the calculation made by CESC in the impugned Official Memorandum dated 13.10.2010 is correct as Clause 5.1 merely indicates that the agreement is for a period of ten (10) years from the date of signing of the PPA and not from the date of commercial operation. Accordingly for determining the rate, the date of execution of the agreement is the relevant date.

6. We have considered the submissions made on behalf of both the parties and also the terms of the PPA dated 23.12.1998, in particular, Clauses 5.1 and 9.1 of the PPA.

7. As the entire case revolves around Clause 5.1 of the PPA, it is necessary to quote the same.

“Clause 5.1 Tariff: Board shall in all events for the Delivered Energy pay, for the first 10 years from the date of signing of the Agreement, to the Company every month during the period commencing from the Commercial Operation Date through the Term of this Agreement on the basis of the base price applicable for the year 1994-95 at the rate of Rs.2.25 per kilowatthour with an escalation at a rate of 5% per annum over the tariff applicable for the previous year. From the 11<sup>th</sup> year onwards and for the remaining period of the Agreement if extended, the tariff shall be reviewed and finalized after mutual negotiations, which however, will not in any case be less than the prevailing lowest slab tariff for

energy applicable to H.T. Industrial consumers in the State. However, no demand charges shall be payable by the Board to the Company.

8. In our considered opinion, the stand taken by CESC is correct if we closely examine the wordings of Clause 5.1. According to this clause, the agreement is for ten (10) years from the date of signing of the agreement and the company has to be paid from COD on the basis of the base price applicable for the year 1994-95 at Rs.2.25/kWh with an escalation of 5 % per annum over the tariff applicable for the previous years. In other words, the rate has to be fixed taking Rs.2.25 as base price from the date of agreement and payment has to be made based on such price escalated at 5 % from the date of COD. After the initial ten (10) years, the rate prevailing at the end of the first ten (10) years has to be the basis. If we accept the argument of the petitioner, the respondent has to pay a higher price than what is contemplated by the parties while signing the PPA. In our view, Clause 9.1 cannot be looked into for the purpose of interpreting Clause 5.1 as the language of Clause 5.1 is amply clear and does not admit of any doubt.

9. Consequently we hold that the Office Memorandum issued by the respondent CESC dated 13.10.2010 is as per the PPA and does not call for any interference from the Commission.

10. This petition accordingly stands rejected.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER