

No.N/20/09/1834

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION, BANGALORE

Dated 2nd November, 2012

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

OP No.14/2009

BETWEEN

Shamanur Sugars Ltd.,
No.374,
4th Main, P.J. Extension,
DAVANAGERE – 577 002

(Represented by Shri Prabhuling Navadgi, Advocate)

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Petitioner

AND

1. Karnataka Power Transmission Corporation Ltd.,
Kaveri Bhavan,
BANGALORE-560 009

2. Bangalore Electricity Supply Company Limited
K.R. Circle,
Bangalore-560 001

(Represented by M/s. Justlaw, Advocates)

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Respondents

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1. This Petition is filed by the Petitioner, which has a Co-generation Plant, for payment of interest of Rs.1,89,01,695/- for belated payments for electricity supplied, along with future interest at the rate of 18% per annum.

2. On Notice, the Respondents have appeared through their Advocates, M/s.Justlaw.

3. We have heard Shri Prabhuling Navadgi, learned Counsel for the Petitioner and Shri Sriranga, learned Counsel for the Respondents, and also considered the averments made in the Petition and the Statement of Objections.

4. It is the case of the Petitioner that it had entered into a Power Purchase Agreement (PPA) dated 7.3.1998 for supply of electricity at the rate of Rs.2.60 per KWH for the year 1997-98, to be escalated at the rate of 5% every year, up to the year 2004-05 with the 1st Respondent-Karnataka Power Transmission Corporation Limited (KPTCL). This PPA came to be modified by a Supplemental Agreement dated 5.5.2006 and the rates were re-fixed with effect from 1.4.2003 to 20.9.2009, as stated in the Supplementary PPA.

5. It is submitted by the Petitioner that the Respondents did not make the payments within the due dates provided in the PPA from April, 2002 to March, 2005, and therefore, they are liable to pay interest for the delay, as per Article 6.01 of the PPA, and has requested this Commission to issue a direction to the Respondents to pay a sum of Rs.1,89,01,695/- due towards interest, along with future interest.

6. In reply, the Respondents have raised preliminary objection on the ground of limitation. It is submitted by the Respondents that the claims are of the year 2002 to 2005 and therefore are barred by time. Further, it is submitted that once a Supplemental Agreement is signed modifying the original PPA from a

retrospective date, the claims raised based on the replaced PPA rates do not survive and cannot be pressed. Therefore, the Petition is liable to be rejected.

7. In the Petition at Paragraphs 6 and 7, it is stated that the Petitioner had filed a Petition before this Commission for recovery of a sum of Rs.4,66,25,951/- towards principal and Rs.1,98,73,214/- towards interest, for the period 1.4.2003 to 31.3.2005 and during the pendency of the said Petition, the matter was settled and the Respondent paid the principal but did not release the interest.

8. In view of the above pleadings, we have looked into the records maintained in the Commission for OP No.10/2006. As per the averments made at Paragraph-7 of the said Petition, the Petitioner had made a claim for Rs.4,66,25,951/- towards principal and Rs.1,89,01,695/- towards interest for the period 1st April, 2003 to 31st March, 2005. This Petition came to be withdrawn by the Petitioner on the ground that the matter is settled. This Commission permitted the said withdrawal on 18.5.2006.

9. Annexure-G of the present Petition, which contains the Statement of calculations of interest, also discloses that the claim for interest is Rs.1,89,01,695.29, which is the same as claimed in OP No.10/2006. However, the period for which interest is claimed is 1st April, 2002 to 31st March, 2005. These contradictions exhibit lack of clarity on the Petitioner's part regarding its interest claim.

10. In our view, the present Petition is liable to be rejected, as the earlier Petition, filed for the same amount of interest, was withdrawn by the Petitioner.

This Commission, on 18.5.2006, has recorded in OP No.10/2006 that:

“Counsel for the Petitioner submits that the parties have negotiated the tariff and a separate proposal is sent by KPTCL to the Commission and in view of this he seeks permission to withdraw the Appeal. The Counsel is permitted to withdraw the Appeal in the circumstances mentioned by him.”

11. Pursuant to this submission, the Petitioner has signed a Supplemental Agreement dated 5.5.2006, duly modifying the rates contained in the original PPA. Once the Petitioner has settled the matter with the Respondents and withdrawn the Petition filed for claim of interest, it cannot again initiate a fresh Petition for the very same amount, on the very same cause of action.

12. In our view, the present Petition cannot be maintained by the Petitioner and therefore the Petition is liable to be rejected.

13. In view of the above findings, we do not consider it necessary to go into the other questions raised in this Petition, including that of limitation.

14. Accordingly this Petition is liable to be dismissed and therefore stands dismissed.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K.SRINIVASA RAO)
MEMBER