

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BANGALORE**

**Dated : 28<sup>th</sup> November, 2014**

- |                               |          |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar        | Member   |
| 3. Sri D.B. Manival Raju      | Member   |

**OP No.17/2013**

**BETWEEN:**

Yuken India Limited,  
Whitefield Road,  
Whitefield,  
Bangalore – 560 066

*(Represented by M/s. Link Legal India Law Services, Advocates]*

**PETITIONER**

**AND**

- 1) Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
Bangalore – 560 009.
- 2) State Load Desptch Centre,  
KPTCL,  
Cauvery Bhavan, K.G. Road,  
Bangalore – 560 009
- 3) Chamundeshwari Electricity Supply Corporation Limited,  
No.927, L.J. Avenue,  
New Kantharaj Urs Road,  
Sarswathipuram,  
Mysore – 570 009
- 4) Bangalore Electricity Supply Company Limited,  
K.R. Circle,  
Bangalore – 560 009

*[Respondents represented by M/s. Induslaw, Advocates]*

**RESPONDENTS**

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**OP No.17/2013**

1) M/s.Yuken India Limited, Bangalore, the Petitioner has filed this 'Petition' under Section 86(1)(f) of the Electricity Act, 2003, praying for the following reliefs, in substance:

(i) Direct the Respondent-3 to construct a dedicated transmission line from its Project to 66/11 kV Garudana Ukkada MUSS to facilitate evacuation of power from the Project, as per the letter dated 30.4.2013;

OR

Direct the Respondents to sign Wheeling & Banking Agreement (W&BA) with it in respect of its Project;

(ii) Direct the Respondents to wheel 84,72,240 units of Energy which could have been generated from its Project till 31.3.2013;

OR

Direct the Respondent-1 (KPTCL) and Respondent-3 (CESC) to jointly and severally pay a sum of Rs.3.75 crores as compensation for the loss incurred due to failure of the Respondent-3 to properly maintain the dedicated transmission line.

2) The brief facts of the Petitioner's case are as follows:

- (a) The Government of Karnataka (GoK) had accorded sanction to the Petitioner on 20.7.1992 to set-up a Captive Mini Hydrel Station with installed capacity of 0.35 MW at Attihalla, near Chandragirikoppal Village, Srirangapatna, Mandya District (ANNEXURE-P1). Further, as per the agreement dated 22.5.1993 (ANNEXURE-P2) between GoK and the Petitioner, the transmission line from the Petitioner's power-house to the Karnataka Electricity Board (KEB) grid point shall be constructed by the KEB at petitioner's cost and maintained by the KEB. The Petitioner had paid Rs.10,81,466/- on 9.9.1997 to the KEB for construction of the 11 kV single-circuit transmission line from Attihalla Mini-Hydrel Scheme (AMHS) to Pandavapura Sub-Station, located at a distance of 6.5 Kms., on Deposit Contribution basis (ANNEXURE-P5). The Petitioner had entered into a W&BA on 6.2.1998 (ANNEXURE-P6) with the KEB, for wheeling the surplus energy and supplying to industries. The term of the W&BA was ten years from the date of synchronization with the grid and was extendable for a further period after examining the operational and other issues and by mutual consent. According to this W&BA, the Petitioner states that the KEB had constructed a new 11 kV line for about half the distance and the remaining stretch of the line was connected to an old, unused existing line. The Petitioner's Project was commissioned on 16.5.1998, as per the letter dated 3.2.1999 (ANNEXURE-P8).
- (b) There was a theft of the transmission line during February, 2003 and the line was restored in August, 2003. On 3.2.2005 the underground (UG)

- cable, forming part of the transmission line, had burst. The transmission line was then connected to the existing 11 kV rural feeder from Srirangapatna-MUSS on 19.2.2005. The Petitioner states that it had suffered from load-shedding, unscheduled outages, etc., consequent to this arrangement. There was theft of this transmission line also and the Petitioner states that it had once again suffered loss. The Petitioner contends that, despite the problems, it generated 9,43,404 units till January, 2009, but could not generate a single unit from February, 2009 to January, 2011.
- (c) The Petitioner had addressed the letters dated 25.6.2008 and 15.9.2008 (ANNEXURE-P18) to the Respondents requesting them to extend the term of the W&BA for a further period of ten years. Meanwhile, this Commission had passed an Order on 11.7.2008, standardizing the terms of the W & BA. The petitioner states that, the Respondents neither restored the transmission line, nor extended the W&BA.
- (d) After some correspondence, the Respondent-3 (CESC) informed the Petitioner, vide its letter dated 13.7.2010 (ANNEXURE-P26), that it should construct another line from its Project to the 11 kV feeder passing through Chandragirikoppal, through an alternative route. The Petitioner executed the construction of the new line on self-execution basis, by paying the supervision charges of Rs.15,930/- and spent more than Rs.2,50,000/- for this interim arrangement till the repair of the transmission line.

- (e) The Petitioner states that on 21.11.2011 the Respondent-1 (KPTCL) granted temporary evacuation approval for a period of six months or till repair of the original transmission line, whichever was earlier (ANNEURE-P31). Pursuant to this, by letter dated 14.12.2011 (ANNEXURE-P32), the Respondent-3 accorded the evacuation approval up to 20.5.2012. On 20.5.2012, the temporary evacuation approval had expired and the line was disconnected without taking steps to interconnect 11kV transmission line. The Respondents conducted a series of tests and imposed several conditions on the Petitioner, but did not grant interconnection inspite of the Petitioner complying with all the conditions.
- (f) The Petitioner, on 27.4.2013, issued a Legal Notice to the Respondents, calling upon them to provide evacuation, interconnection, synchronization and W & B facility (ANNEURE-P54). Pursuant to this, the Respondent-1 requested the Petitioner, by letter dated 30.4.2013 (ANNEXURE-P55), to draw a separate line from 66/11 kV Garudana Ukkada-MUSS for evacuation of power from the Plant, as per Article 2 of the Standard W&BA and execute a fresh W&BA. Being aggrieved by the action of the Respondents, this Petition is filed by the Petitioner.
- (g) The Petitioner has contended that the delay caused by the Respondents in granting Wheeling & Banking facility is contrary to the provisions of the Electricity Act, 2003, and hence the said delay amounts to denial of the statutory rights to it, inasmuch as, its right to consume the power

- generated (Captive consumption), for which it is liable to be compensated.
- 3) On issuance of Notice, the Respondents entered appearance through their counsel and filed objections to the contents of the petition, which are in brief, as follows:
- (a) The Petitioner had contributed Rs.10,81,466 towards the cost of construction of the transmission line from its Project to Pandavapura MUSS at a distance of 6.5 Kms. As there was severe agitation by the farmers of the area to erect poles and draw lines in their fields, a part of the existing line was used to link the Project to Pandavapura-MUSS. The entire amount deposited by the Petitioner was used to restore this unused line and to construct the extra length of the line. This was within the knowledge of the Petitioner, hence it never sought refund any amount, and agreed for the amount to be used by the KEB. The current claim of the Petitioner for refund of the amount is deemed to have been waived and is barred by limitation.
- (b) The allegation that the transmission line was under ownership, supervision and control of the then KEB, and now under the KPTCL, is not correct. As per the Agreement dated 22.5.1993 and the W&BA dated 06.2.1998, the transmission line was to be constructed by KEB at Petitioner's cost and it

was to be maintained by the KEB. Article 2.07 of the W&BA dated 06.2.1998 with the KEB provides thus:

*"The dedicated 11 kV single circuit line from AMHS will be maintained by the KEB. If there is any outage of the line due to faults, consequent to which power cannot be pumped into the Board's Grid, the Board shall not pay any compensation to the Company".*

Thus, there was no obligation on the KEB to maintain the line, nor was it responsible for any consequence thereof and the agreement was more in the nature of KEB offering to provide maintenance of the line, without being legally bound by any consequences of any duty to maintain it. As there was no consideration to be paid to the KEB by the Petitioner for maintaining the transmission line, the Petitioner is not entitled to claim any losses on account of non-maintenance of transmission line as it was fully aware of this aspect while executing the Agreement. KEB has taken measures to maintain the transmission line and it cannot be held responsible, if the transmission line was not available for reasons beyond its control. Article-9 of the W&BA excluded any responsibility in the event of any *force majeure* and theft would fall under such conditions. In spite of the efforts made to restore the transmission line, there were recurrent thefts and farmers' protests against entry into their fields to draw the lines. The Petitioner was well aware of the reasons for the delay in restoration of transmission line. The Respondents had also reported the thefts to the Police. The UG cable, forming part of the transmission line got burst in

February, 2005, due to a technical problem and ageing of the cable. The Respondent-3 (CESC) had acted expeditiously and prepared an estimate for repair of the same and the Petitioner was informed that sanction of funds will take some time to lay and draw the new UG cable, as necessary approval had to be obtained from 'Railways'. The Petitioner, within a short time was provided with an alternative connection to the 11 kV rural feeder line. The Respondents had provided an alternative facility to aid the Petitioner, even though they were not obliged to do so, as there would have been considerable delay in sanction of funds for replacement of the UG-cable and obtaining the approval from the 'Railways'. The allegation that instead of restoring the transmission line, the Respondents had changed the transmission scheme of the Petitioner, is denied by the Respondents, as the W&BA vested the KEB with the discretion of construction of lines for evacuation, ownership, etc., as per the general practices of the KEB.

- (c) Further, the Respondents have contended that the Petitioner's Project is located in a remote irrigated area. Therefore, the Petitioner's allegation that, all the problems associated with the rural feeders were experienced by it is denied by the Respondents. The Petitioner had suppressed the fact that its machines and generating stations were damaged due to floods and the Power Station was shut down, as it was submerged for a considerable period of time. Repair and overhaul of the generating station had taken some time, after which the water flow had reduced,



- affecting generation of power, as evident from ANNEXURES-P22 & P30 and ANNEXURE R-5. The Petitioner, in its letter dated 1.8.2003 (ANNEXURE-P11), had stated that there was no water for generation of energy till July, 2003, and therefore, the Petitioner had suffered no loss.
- (d) The Respondents admit that one more theft of the transmission line had occurred, but contend that it was beyond the control of KEB and therefore it should be considered as a *force majeure* event. The Respondents submit that the correspondence at ANNEXURES-P14 to P16 cannot be interpreted to mean that KEB had taken the responsibility for theft, restoration, etc.
- (e) The other contention of the Respondents is that, as the W&BA had expired on 02.7.2008, the onus on the KEB / KPTCL or the CESC in maintaining the transmission line does not survive.
- (f) Further, the Respondents contend that, if the Petitioner had any claims for restoration of the transmission line or losses caused on account of fault in the transmission line, the same should have been taken up as legal proceedings at the appropriate time. The Petition filed, after several years, is barred by limitation and it indicates that the Petitioner had no intention of instituting any legal claim for restoration of the transmission line or for claiming any losses incurred by it. As the petitioner had waived such claims earlier it is estopped from claiming the same now. After the expiry

of the W&BA, it is the responsibility of the Petitioner to restore the 11kV line, operate it and maintain, if it still wants to evacuate power through the said transmission line. A fresh W&BA is to be entered into as per the standardized format approved by this Commission on 11.7.2008. As per the said format, the Petitioner itself has to undertake construction or upgradation or maintenance of the transmission line up to the Sub-Station, and if the power cannot be evacuated under *force majeure* conditions, the Respondents cannot be held responsible. Upon request by the Petitioner to provide the W&B facility, the SLDC had written on 02.8.2008 to the CESC, which in turn has written to the Petitioner on 01.10.2008 requesting for documents to execute the new W&BA (ANNEXURE R-2). As there was no generation in the Petitioner's Plant since August, 2007, as per the data of SLDC, the KPTCL, in its letter dated 27.6.2008 (ANNEXURE R-3), had informed the Petitioner that they may not require the Wheeling and Banking facility.

- (g) The Respondents have denied that the Petitioner could generate 9,43,404 units up to January, 2009, for the reason that in 2005 its generating-station was submerged in floods and the generators were under repair coupled with lack of water, non-upgradation of machines and such other causes not attributable to the Respondents. They have stated that it was impossible to restore the transmission line in view of agitation by the farmers. If the Petitioner had any generation problem, on account of the

reasons not attributable to Respondents, the Respondents cannot be held responsible for the loss in generation.

4) We have heard the counsel for both the parties and perused the materials on record. The following issues come to the fore for our consideration:

- (1) Whether, the Petitioner has proved that the Respondent-3 had to restore the transmission line from the Petitioner's Plant to the Sub-Station, when the line was stolen or damaged ?
- (2) Whether, the Petitioner is entitled to the credit of energy of 84,72,240 units till 31.3.2013, which would have been generated from its Project with PLF of 30% and wheeled to the petitioner's consumers?
- (3) Whether, the Petitioner is entitled to compensation of Rs.3.75 Crores from the Respondents for the loss claimed to have been incurred due to non-grant of proper evacuation, synchronization and interconnection, and also towards cost of administration, operation and maintenance, interest on investment for non-grant of W&B facility with 2% of interest?
- (4) Whether, the Petitioner is required to construct the new dedicated line from its Project to the sub-station, if a fresh W&BA is to be executed, in terms of the letter of the Respondent-1 (KPTCL) dated 30.04.2013?
- (5) What order?

- 5) Each of the issues raised above is discussed, as under:
- 6) **ISSUE No.(1) :**
- (a) The Electricity (Supply) Act, 1948, was applicable when the Petitioner's Plant was accorded sanction by the State Government to generate electricity in the year 1992. Section 18-A of the said Act deals with the duties of a generating company. Under this provision, the generating company was required to establish, operate and maintain the tie-lines, sub-stations and main transmission lines assigned to it by the Government. While dealing with the issue of construction of dedicated Transmission Line, the Hon'ble Appellate Tribunal for Electricity (ATE), in its Judgment dated 23.5.2012 in Appeal No.145/2011, in the case of *The Chairman, TNEB and others -Vs- Ind Barath Thermal Power Ltd. and another*, has observed in paragraphs 12, 13 and 14, thus:

*"12. Further, it is to be noted that while the provision of Section 10 which refers to the dedicated transmission line is a new provision under 2003 Act is mandatory in nature, the corresponding provision in Section 18A of Electricity (supply) Act, 1948 was not mandatory.*

*13. Let us now refer to the corresponding provision contained in the Section 18 A of 1948 Act which dealt with*

the duties of the generating company and the same is reproduced below:-

**'18 A Duties of Generating Company – (1)** Subject to the provisions of this Act, a Generating Company shall be charged with the following duties, namely:-

(a) to establish, operate and maintain such generating stations and tie-lines, sub-stations and **main transmission lines connected therewith, as may be required to be established by the competent government or governments in relation to the Generating Company.**

(b) to operate and maintain in the most efficient and economical manner the generating stations, tie-lines, sub-stations and main transmission lines, assigned to it by the competent government or governments in co-ordination with the Board or Boards, as the case may be, and the Government or agency having control over the power system, if any, connected therewith; and

(c) to carry out, subject to the provisions of Section 21, detailed investigations and prepare schemes, in co-ordination with the Board or Boards, as the case may be, for establishing generating stations and tie-lines, sub-stations and transmission lines connected therewith, in such manner as may be specified by the Authority.'

14. The perusal of the above provision in the repealed 1948 Act would make it clear that under that Act, the generating

*company was merely required to establish main transmission lines as may be required to be established by the competent Government. In other words, the Government may require or may not require the generating company to establish main transmission line. On the contrary, Section 10 of the 2003 Act mandates that generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant."*

- (b) The Petitioner had entered into an Agreement with the Government of Karnataka on 22.5.1993 and paid Rs.10,81,466/- to the KEB on 8.9.1997 for construction of the transmission line from the Petitioner's Plant to Pandavapura MUSS located at a distance of 6.5 KMs. This was done on Deposit Contribution basis. It was also agreed in the Agreement dated 22.5.1993 between the Government of Karnataka and the Petitioner that the line would be maintained by the KEB. In view of the above, we hold that the Petitioner was required to establish the transmission line from its generating point to the grid point, without, however, having to maintain it. The KEB had taken the responsibility of maintaining the transmission line, under the Agreement dated 22.5.1993, and was bound to maintain it. On unbundling of KEB, the assets of KEB were transferred to KPTCL and then to ESCOMs, in this case to MESCOM and later on to CESC. Therefore, we

hold that the Petitioner was the 'Owner' of the line, but KEB was responsible for the maintenance of the line.

- (c) The Petitioner has contended that having taken the responsibility of 'maintaining' the line, CESC failed to prevent the thefts of the line, which resulted in loss of generation. We note that 'maintenance' of the line includes clearing vegetation along the line on a regular basis, straightening slanted poles, replacing chipped out / failed insulators, stringing loose spans (sagging wires) and other related works, to ensure safe and reliable operation of the system. For this, we need to see if 'reasonable' care was taken by CESC in maintaining the line and whether it was required to restore the line when the line was stolen / burst and whether it was prevented, for sufficient reasons, from restoring the line when it was stolen / burst. There was theft of the line in February, 2003. The line was immediately restored. In February, 2005, the underground cable burst due to ageing of cable and an estimate was prepared for repairs and approval was sought from the Railways. Alternative arrangements were made by the Respondents on 19.2.2005 for evacuation of power from the Petitioner's Plant by connecting it to 11 kV Rural Dasaraguppe Feeder from Srirangapatna MUSS. In July, 2006, the line was stolen once again. There were agitations by farmers for laying the lines and the Respondents were prevented from restoring the line. However, the Respondents had taken action to file a complaint with the police and prepared an estimate for restoration of the transmission line.

Later, action was taken to connect to 11 kV at Chandragirikoppal, which was not connected to the Dasaraguppe Feeder in Srirangapatna. For reasons beyond their control, the line was stolen or burst, and they cannot be made liable for such events. We, therefore, feel that the Respondents had no intention to cause trouble to the Petitioner. We hold that for reasons / acts beyond their control, the Respondents cannot be held liable for disruption in the transmission line. Prevention of theft of the line is the responsibility of the 'Owner' and not the person who maintains it.

(d) We, therefore, answer Issue No.(1) in the negative.

7) **ISSUE Nos.(2) & (3) :**

(a) In the letter dated 1.8.2003 of the Petitioner (ANNEXUR-P11), it has stated that till that date there was no water and only 1800-2000 KW/day of energy could be generated and the quantity of water had increased since 15.7.2003 and that it would be able to generate 80-100 KW/hour after increase in the water flow. Thus, by its own admission, the Petitioner has revealed that it could generate limited power up to 1.8.2003. Further, in 2005, the power plant was submerged in floods and the equipment was damaged considerably. In the letter dated 11.7.2008 (ANNEXURE-R4 of the Statement of Objections), the Petitioner has mentioned that generation of electricity was not possible due to reduced water flow and that the equipment was under maintenance. Even in the letter dated



19.12.2009 (ANNEXURE-P22), the Petitioner has stated that generation was not possible due to technical problems in its Plant. In the letter dated 22.9.2011 (ANNEXURE-R5 of the Statement of Objections), the Petitioner has stated that its Plant was ready for commissioning and that generation was not possible, as the Plant was submerged in floods and inflow of water was less than expected. The said letter dated 22.9.2011 reads thus:

*“Re: Connection to our mini Hydel station in Attihalla near Srirangapatna for evacuation of the power generated.*

*We thank your Mr. B. Naik, Director-Technical, for having met our consultant Mr. Ramesh Harve and Mr. M A Acharya on the 21<sup>st</sup> instant and for having heard our problem and predicament.*

*We set up the mini Hydel project at Attihalla based on the studies of water flow and Head availability done by the then KPTCL. Although the studies indicated the possibility of generating 1 MW, on the basis of advice of experts we set up a 500 KW station. We invested nearly Rs.2.5 Crores for the project.*

*When the project was commissioned in 1998, we observed to our horror that the water flow was less than 2 Cumecs during the lean months and around 8 Cumecs during the peak season. Although this was uneconomical to us, we continued our power generation and the power was being evacuated through a dedicated 6.2 km long 11 kV line connected to your 665 kV pandavapura substation at our own cost of INR 12 Lakhs and signed a wheeling and banking arrangement with KPC. During 2005 there were*

*unprecedented floods in the area with the result the entire power station was submerged for a considerable period of time.*

*The repair and overhaul of the generating and substation equipment cost us another Rs.50 Lakhs. By then the water flow from the stream had gone down to less than 2 Cumec. The turbine that was installed was of Kaplan design for an average flow of 6 Cumecs. And so it never could enable the generator to reach the rated speed at the low flows.*

*It was a herculean task for us to study the whole system again, convince the manufacturer of the system to redesign the system, with a semi Kaplan turbine with the latest technology to ensure that some power is at least generated from the station to at least partly compensate for the huge amount of money that we had sunk for the project.*

*We have now installed the new equipment albeit of a much lower capacity and also the substation and are ready to commission the plant.*

*In the meanwhile, during May 2010, we had approached your executive engineer in Pandavapura and the AEE at Srirangapatna, Mr. Keshava Murthy for the connection of the power station to the 11 kV line for evacuation of the generated power. He reported that the conductors as well as several poles of the 11 kV line laid earlier to the Pandavapura 66/11KV substation had been stolen and vandalized by the farmers. He also advised us that relaying the line would not only be expensive but will also result in vandalism, and theft again. In view of this he suggested that we connect our switchyard to an 11 kV distribution line that*

*was existing at Chandagiri Koppal which was in turn connected to the F4-Dasaguppe Feeder / Lokapavani substation in Srirangapatna. We incurred an additional cost of around INR 5 Lakhs for laying a 0.44 km line for this purpose.*

*We are enclosing the instruction issued by your engineer to the above effect as also the sketch prepared by him. We are also attaching a letter issued by your AEE in this regards and the okay certificate issued by the electrical inspectorate certifying the installation.*

*We now request you to issue orders to the EE at Pandavapura to effect the synchronization of our generating station to the above referred 11 kV line. We do understand that this is a temporary solution and eventually a permanent line of 11 kV should be laid to the evacuating point at the nearest 66 kV substation. We may point out here that according to our agreement with KPTCL/CESC, the maintenance of the line laid earlier and which has got stolen and vandalized was supposed to be with CESC. However, pending a final settlement of this issue, we will ensure that a dedicated line is organized soon but not later than 12 months for the start of the generation.*

*We request your immediate action so that the power can be generated and utilized soon. which is for the benefit of the whole state."*

This clearly shows that the Petitioner had over-estimated the generation in the Plant and spent more amount than required for the equipment. The

Petitioner has also admitted that a dedicated line would be made ready within twelve months from the date of commencement of generation.

- (b) Further, the bills containing the joint meter reading (produced at ANNEXURE-P20) for the period from October, 1998 to January, 2009 would reveal that the generation in the Petitioner's plant was considerably lower throughout the period than assumed by the Petitioner for computation of its losses. We have perused ANNEXURES – P-50 and P-51, the statements showing the computation of loss of generation and the computation of the Petitioner's loss at Rs.3.75 Crores. We are unable to accept these computations, as the Petitioner has admitted that the loss of generation was due to floods, repair of the Plant, low inflow of water, etc., which cannot be attributable to the Respondents. Therefore, there is no basis either for quantification of loss of generation of 84,72,240 units of energy or the compensation of Rs.3.75 Crores, for which the Respondents could be held liable, as the Respondents had, throughout the term of the Agreement, made alternative arrangement for evacuation of power. Accordingly, we answer Issue Nos.(2) and (3) in the negative.

8) **ISSUE No.(4) :**

- (a) Admittedly, the term of the W&BA was for a period of ten years and was extendable by mutual consent. The Petitioner had made requests on 25.6.2008, 15.9.2008 (ANNEXURE-P18), 28.4.2009 (ANNEXURE-P23) and

1.9.2012 (ANNEXURE-P43) to extend the W&BA for a further period of ten years, but there was no extension by mutual consent. In the meanwhile, the Commission passed an Order dated 11.7.2008 (ANNEXURE-P17) standardizing the W&BA. This Order was made applicable to the existing Projects, which had signed the W&BAs, after the expiry of the term specified in such W&BAs. We deem it appropriate to quote the relevant Articles in the standardized W&BA below :

*"2.1 The power from the Generating Plant of the Company is evacuated through the ...kV line constructed and maintained by the Company up to the ..... kV ..... Substation (Injection Point). Evacuation of power shall be limited to the capacity of transmission/ distribution system as approved by KPTCL in the Evacuation approval."*

*"2.6 The Company shall maintain the lines from the generating station up to the point of injection at its own cost."*

*"3.1 Obligations of the Company:*

*(i) XXX XXXX XXX XXX*

*(ii) The Company shall undertake at its own cost construction / upgradation / maintenance of*

*(a) the Interconnection Facilities and*

*(b) the transmission lines up to the injection point (Sub-station)."*

- (b) Under the above Articles of the standardized W&BA, the generating company is required to construct, upgrade and maintain the line at its cost. Section 10 of the Electricity Act, 2003 also provides that a generating company is duty-bound to establish, operate and maintain the tie-lines and the dedicated transmission lines up to the Sub-Station.
- (c) The requests made by the Petitioner to the Respondents for providing the Wheeling & Banking facility, vide letters dated 11.9.2011, 22.10.011 and 10.11.2011, are produced at ANNEXURE-P30. Pursuant to this, the Respondent-1 granted a temporary evacuation approval, by its letter dated 21.11.2011, for six months or till rectification of the original 11 kV line, whichever is earlier (ANNEURE-P31). Thereafter, the Respondent-3 addressed a letter dated 14.12.2011 (ANNEURE-P32), informing the Petitioner that the temporary evacuation approval was extended up to 20.5.2012, subject to the condition that the Petitioner should rectify the original 11 kV evacuation line within six months and that no further extension of time would be granted.
- (d) Thereafter, the Respondent-3 addressed the letters dated 26.7.2012 (ANNEURE-P54) and 5.10.2012 (ANNEXURES-P40 and P43), stating that pumping of energy on temporary evacuation cannot be continued and that the Petitioner has to enter into a W&BA afresh as per the standardized format issued by the Commission on 11.7.2008, in place of the W&BA dated 6.2.1998. Some communications have been exchanged

between the parties in the matter. The Petitioner made a request on 7.11.2012 (ANNEURE-P44) for expediting the W&BA. On 17.4.2013, the Respondent-3 addressed a letter informing that the Petitioner was required to draw a separate 11 kV line for 5.5 KMs upto 66/11 kV Garudana Ukkada MUSS, to facilitate Wheeling & Banking (ANNEXURE-P53) and the Respondent-1 issued a letter 30.4.2013 (ANNEXURE-P55) reiterating the said requirement of construction of the dedicated transmission line upto Garuda Ukkada MUSS.

- (e) It is the contention of the Petitioner that it had spent certain sums of money in constructing the transmission line from its Plant to the Pandavapura MUSS as per the earlier W&BA and that it is not proper on the part of the Respondents to insist on the Petitioner to building another line to Garudana Ukkada MUSS at a distance of 5.5 KMs (as per the Sketch at ANNEXURE-R1) for entering into a fresh W&BA.
- (f) It is the contention of the Respondents that the obligation to maintain the transmission line ended with the expiry of the term of the W&BA, and if the Petitioner intends to enter into a new W&BA, it has to be as per the standardized format of the W&BA approved by the Commission, which requires fulfillment of certain conditions, one of which is construction and maintenance of a dedicated transmission line upto the injection point (Sub-station).

(g) We note that the Petitioner had constructed the transmission line as per the Agreement entered into under the Electricity Supply Act, 1948. When the 10-year term of the Agreement ended, the Electricity Act, 2003, had come into force. In the meanwhile, the Commission had passed the Order standardizing the format of the W&BA. As mentioned earlier, this Order applies to the Petitioner also. We have held that the Petitioner was the 'Owner' of the transmission line constructed under the earlier W&BA and that the Respondents, who were entrusted with the maintenance work, were not responsible for the theft of the line or other aspects, which were beyond their control. The Petitioner is, therefore, required to construct a transmission line from its Plant to the Sub-Station as required. However, the Petitioner can make use of the material in the line constructed by it, on Deposit Contribution basis, from its Plant to the Pandavapura MUSS, as per the Agreement dated 22.5.1993. Issue No.(4) is answered accordingly.

9) **ISSUE No.(5) :**

(a) Considering the interim prayer in the Petition, the Commission had passed an Interim Order on 11.7.2013, directing the Respondent-3 (CESC) to temporarily evacuate power using the Srirangapatna - Dasaraguppe Feeder (F-4). This interim arrangement has continued till date. Considering that the Petitioner had borne the cost of the transmission line



earlier, which has now become unavailable, we deem it appropriate to direct the Respondent-3 (CESC) to continue evacuation of power from the Petitioner's Plant as per the interim arrangement stated above, for a period of one year or till construction of the transmission line, whichever is earlier.

(b) For the foregoing reasons, we pass the following:

**ORDER**

- (1) The Petitioner is not entitled in law to any of the reliefs sought for;
- (2) The Petitioner is required to construct a dedicated transmission line from its Plant up to the nearest Sub-station to avail the facility of Wheeling & Banking, as per the standardized format of the W&BA applicable; and
- (3) The Petitioner shall be permitted to evacuate power from its Project through the Srirangapatna – Dasaraguppe Feeder (F-4), for a period of one year from the date of this Order or till the construction of a dedicated transmission line by the Petitioner, whichever is earlier.

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

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER