

No.N/45/12

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

Dated 15th 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.24/2012

BETWEEN

Brindavan Hydropower Private Limited
No.7, N.S. Iyengar Street
Seshadripuram

BANGALORE-560 025

[Represented by M/s.Shridhar Prabhu Associates, Advocates]

Petitioner

AND

1) Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
MANGALORE-575 001

2) Karnataka Power Transmission Corporation Limited
Cauvery Bhavan
BANGALORE-560 009

3) State Load Despatch Centre – Karnataka
Ananda Rao Circle
BANGALORE-560 009

[Represented by M/s. Justlaw, Advocates]

Respondents

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1) This Petition is filed by the Petitioner, who has a Hydro Power Generating Plant of 1.5 MW at Anveri Mini Hydrel Scheme in Agardhahalli Village of Bhadravathi Taluk in Shimoga District, praying for a direction to the 1st Respondent to strictly adhere to the terms and conditions of the Wheeling and

Banking Agreement signed by it on 5.6.2010, by setting aside the letters of the 1st Respondent dated 5.3.2012 and 15.5.2012 (Annexures-P-3 and P-5).

2) It is the case of the Petitioner that this Commission, while passing its Order dated 13.1.2012 in OP No.27/2011, had issued 'Water Year' definition contained in the Wheeling and Banking Agreement (hereinafter referred to as the 'WBA') as from 1st June to 31st May of the following year in all cases of Mini Hydel Generating Plants. Consequent to this direction, the Respondents have directed the Petitioner to adhere to the 'Water Year' as per the as per the orders of this Commission. The Petitioner submits that the order of this Commission dated 13.1.2012 passed in OP NO.27/2011 will not be applicable to it, as its Plant is not dependent on the monsoon, being a canal-based Mini Hydel Scheme, wherein the release of water is regulated by the Irrigation Department. In support of its contention, the Petitioner has produced its Agreement with the Government and other departments. Further, it is submitted that the Order dated 13.1.2012 passed by this Commission in OP No.27/2011 will not bind the Petitioner, as the said Order has not been passed after hearing the Petitioner and the Order in question is an order *in personem*.

3) The Petitioner, in the Interlocutory Application (IA) filed on 9.8.2012, has pleaded for permitting it to utilize the energy which could not be wheeled, to the extent of 4,98,253 Units, on the ground that this Commission's Interim Order came to be passed on 21.6.2012, and one of its Customers could not, on account of technical reasons, source power from its Captive Power Plant.

4) The Respondents, who have appeared through their Counsel, have contended that the direction issued by the Respondents was only as a consequence of the Order dated 13.1.2012 of this Commission passed in OP No.27/2011 and the Order of this Commission is general in nature and binds the Petitioner also, and therefore, the Petition is liable to be rejected. It is further contended by the Respondents that the present Petition is in the nature of a Review Petition, which cannot be entertained, as the Order dated 13.1.2012 of this Commission in OP No.27/2011 has attained finality and has not been questioned by the Petitioner, and that the letters impugned in the Petition are only action taken consequent to the said Order of the Commission. Therefore, the question of setting aside the impugned communications will not arise. As regards the IA filed by the Petitioner on 9.8.2012, it is submitted that the prayer made in the IA has to be rejected, as it is for the Petitioner to identify the consumer for the wheeled energy and failure to do so cannot be taken advantage of by the Petitioner.

5) We have considered the submissions made on behalf of the Petitioner as well as the Respondents, and the documents submitted in support of their case.

6) The only question that arises for consideration is "Whether the Petitioner can be allowed to retain the 'Water Year' contained in the Wheeling and Banking Agreement dated 5.6.2010, though this Commission, by its Order dated 13.1.2012 in OP No.27/2011, had directed the Electricity Supply Companies

(ESCOMs) to amend the definition of 'Water Year' contained in the WBAs from 1st June to 31st May of the following year?"

7) We find force in the argument of the Petitioner's Counsel that it shall be allowed to continue with the definition of 'Water Year' as contained in the WBA executed by it on 5.6.2010. The Respondents have also not disputed the fact that the Petitioner's Mini Hydel Plant is dependent on the Canal water and not on the monsoon. What is contended by the Respondents is that the Order dated 13.1.2012 of this Commission passed in OP No.27/2011 has attained finality and the Respondents have only taken action to implement the said Order, and therefore, the Petitioner cannot dispute the validity of the Respondents' action.

8) We agree that the Order passed in OP No.27/2011 cannot be applied to the case of the Petitioner, as the said Order came to be passed in the context of the run-of-the-river Mini Hydel Power Plants depending on the monsoon and not based on the water flows from Canals, wherein the release of water is regulated by the irrigation Department. Further, in our view, if the definition of 'Water Year' as contained in the WBA dated 5.6.2010 is not continued, it will prejudicially affect the interest of the Petitioner for no fault of it. This Commission, while exercising its powers conferred under the Electricity Act, 2003, has to take care of the genuine interest of the Generating Companies also, as they also subserve the interest of the Consumers. Therefore, we hold that the Order passed by this Commission on 13.1.2010 in OP No.27/2011 shall not be made applicable to the Petitioner and the WBA dated 5.6.2010 entered into by the Petitioner shall be

allowed to be continued, to operate as executed by the parties and approved by this Commission.

9) As regards the prayer made by the Petitioner in the IA filed by it on 9.8.2012, for directing the Respondent to permit the Petitioner to utilize / wheel the electricity generated by it up to May, 2010, during the month of August, 2012, we are of the view that the said prayer cannot be accepted. It is noticed that this Commission, after hearing the Petitioner, granted an Interim Order on 21.6.2012, i.e., the day on which the matter came up for admission. On the date of passing of this Interim Order, the issue raised by the Petitioner in IA was not brought to the notice of the Commission. It has been raised only in August, 2012, after obtaining the Interim Order. If we grant the prayer made by the Petitioner in the IA, it would be opposed to the prayer made in the main Petition, to the effect that the WBA dated 5.6.2010 should be continued in its original terms. Therefore, the prayer made in the IA by the Petitioner has to be rejected and accordingly it stands rejected.

10) For the foregoing reasons, the Petition is allowed. Both the parties shall continue to implement the Wheeling and Banking Agreement signed on 5.6.2010, without any modification to the definition of 'Water Year' contained in the said Agreement.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER