

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

Dated : 19th November, 2015

Present:

- | | |
|---------------------------------|----------|
| 1. Sri M.K. Shankaralinge Gowda | Chairman |
| 2. Sri H.D. Arun Kumar | Member |
| 3. Sri D.B. Manival Raju | Member |

OP No.26 / 2014

BETWEEN:

Devar Power Limited,
"Santhrapathi' VIA : Sastan,
Kodi-Kanyan Village,
Udupi District – 576 226 ..
[Represented by Shetty & Hegde Associates, Advocates]

PETITIONER

AND:

- 1) The Karnataka Power Transmission Corporation Limited,,
Cauvery Bhavan (IV Floor),
K.G. Road,
Bengaluru – 560 009.
- 2) Energy Department,
Government of Karnataka,
Vikas Soudha (III Floor),
Bengaluru – 560 001
[Note : Respondent No.2 deleted, vide Order dated 30.10.2014]
- 3) Mangalore Electricity Supply Company Limited (MESCOM)
Paradigm Plaza,
A.B. Shetty Circle,
Mangaluru – 575 001. ..

RESPONDENTS

[Represented by Induslaw, Advocates]

ORDERS

- 1) The Petitioner in the above Petition has prayed for revision of the tariff from Rs.2.90 per KWh, agreed in the Power Purchase Agreement (PPA) dated 21.10.2004, to Rs.7.00 per KWh, in respect of its Mini Hydel Project, on the ground that there has been an enormous increase in the Project Cost due to the unavoidable delay in constructing and establishing the Project.
- 2) The Respondents have strongly contested the claim of the Petitioner for revision of the tariff.
- 3) After conclusion of the hearings and arguments, the learned counsel for the Petitioner submitted that, she would file an application for amendment of the Petition, for the relief of termination / cancellation of the PPA in question or in the alternative prays for permission for withdrawal of the Petition, with permission to file a fresh Petition on the same cause of action. These submissions were made by the learned counsel for the Petitioner, when the counsel for the Respondents produced a copy of the Judgment of the Hon'ble Court in C.A.No.5612 of 2012, decided on 28.4.2015, between *Bangalore Electricity Supply Company Limited -Vs- Konark Power Projects Limited and another*, in support of his contention that the agreed rate of tariff under PPA cannot be revised.

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- 4) The learned counsel for the Respondents opposed both the requests of the Petitioner, either to amend the Petition or to withdraw the Petition.
- 5) After considering the facts and circumstances of the case, we are of the opinion that allowing the Petitioner to file an amendment application for the relief of termination / cancellation of the PPA amounts to filing of a fresh Petition on an entirely different set of facts. Therefore, the Petitioner may file such Petition, afresh, if so advised.
- 6) The Petitioner is under the apprehension that, unless permission is obtained to file a fresh Petition on the same cause of action, it might have to face technical objections regarding the maintainability of such fresh Petition. We are of the view that the prayer to withdraw the Petition, with liberty to file a fresh Petition on the same cause of action, may be allowed.
- 7) For the foregoing reasons, we pass the following:

ORDER

The Petitioner is permitted to withdraw the present Petition, with liberty to file a fresh Petition on the same cause of action.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER