

**N/32/06**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 3<sup>RD</sup> day of May 2007**

1. Shri K.P.Pandey	..	Chairman
2. Shri H.S.Subramanya	..	Member
3. Shri S.D.Ukkali	..	Member

**Case No.OP 32 / 06**

**Between**

M/s.Poweronics Ltd., Siruguppa, Adjacent to 110 KV KB Sub Station Adoni Road, Bellary District	..	Petitioner
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**And**

1. State of Karnataka  
Represented by its Secretary,  
Department of Energy,  
M.S.Buildings,  
Dr.B.R.Ambedkar Veedhi,  
**Bangalore-560001**
2. The Karnataka Power Transmission  
Corporation Limited (KPTCL)  
A Comp[any registered under the  
Provisions of the Companies Act, 1956  
Cauvery Bhavan  
Bangalore.
3. The General Manager(Technical)  
Karnataka Power Transmission Corporation  
Limited, Cauvery Bhavan  
Bangalore

4. The Superintendent Engineer(Electrical)  
Karnataka Power Transmission Corporation  
Limited, 4<sup>th</sup> Floor, A Block  
Cauvery Bhavan, Bangalore

5. Gulbarga Electricity Supply  
Company Limited  
Gulbarga

Represented by its Managing Director

..

Respondents

.....

The Petitioner is a Power Generating Company and is represented through its Managing Director. It has filed a Petition before the Commission seeking the following relief:

- a) *To set aside the action of the 2<sup>nd</sup> Respondent in terminating the agreement (approved by the Hon.Commission ) vide Annexure "A" dated 05.07.2003 in KPTCL/B35/SEE(P&M)/AEEE 4/4407.*
- b) *To declare that the Power Purchase Agreement (PPA) entered into between the Petitioner and the 2<sup>nd</sup> Respondent dated 12.4.2001 vide Annexure "C" valid and substantive.*

Notices were issued to the Petitioner as well as the Respondents. Counsels for both the parties were heard. The Petitioner has stated its case in the Petition and the Respondents have filed written objections to the claims made by the Petitioner.

The Petitioner has stated that it had set up a Bio-Mass based power generating unit at Siruguppa, Bellary District and the KPTCL had granted No Objection. It had also obtained all necessary clearances and permissions from various statutory authorities/departments. A PPA was entered into with the KPTCL in respect 6 MW capacity plant on 12.4.2001. The PPA was approved by the Commission. Pursuant to the execution of the PPA, the Company had

invested huge funds for setting up the project. The KPTCL had also given clearance for construction of a 110 KV sub station and during construction of the project, the Company had forwarded the plans, statements and progress reports to the 2<sup>nd</sup> Respondent and no objection whatsoever had been raised by the KPTCL. It had borrowed Rs.16.65 crores as term loan from IREDA and finally the project was commissioned on 30.09.2004. However, to the shock and surprise of the Petitioner, the Respondent by its letter dated 05.07.2003 intimated the Petitioner that the PPA has been terminated with immediate effect. The intimation did not state any reason for termination. On the other hand, it stated that in case the Petitioner is interested in continuing to develop the project and sell power to KPTCL, it may enter into a fresh agreement as per revised tariff and terms and conditions. It is pleaded that the termination of the validly-approved PPA without any reason is bad in law and, therefore, requires to be quashed. There was absolutely no ground for termination of the PPA since the Petitioner had complied with all the necessary provisions and completed the financial closure and also the commissioning of the project within time. In any case no opportunity had been given before terminating the PPA and, therefore, the principles of natural justice have been violated. The Petitioner has also placed reliance on the decision of the Commission in the case of M/s.R.K.Powergen Pvt.Ltd.

The Company had filed a Writ Petition before the Hon. High Court of Karnataka in WP No.46808/2003 challenging the said termination and the Hon. High Court has disposed the same with a direction to approach the Commission. Hence, this petition has been filed seeking relief. The Petitioner has filed copies of PPA and letter dated 05.07.2003 issued by the Respondent.

The Respondents have argued that the termination of PPA dated 12.4.2001 was rightly done as the Petitioner had not fulfilled the conditions precedent as stated in the PPA. It is further argued that a supplemental PPA had been signed on 29.11.2005 which had been initialled by the Petitioner and, therefore, the original PPA does not survive. However, the Commission is yet to

approve the supplemental agreement. The Respondent has further stated that "it is not true that no reasons were stated for termination in as much as the same were clearly enumerated in the terms and conditions of the said agreement. The Petitioner has all along been aware of this." Regarding reliance placed by the Petitioner on the decision of the Commission in OP No.09/2006 and OP No.26/2005 in the case of M/s.R.K.Powergen Vs KPTCL, the Respondent has argued that the said decision has no effect on the present Petition as the facts of the case are different.

We have heard the Counsels for both the parties and perused the statements made by them. The only issue to be decided in this case is whether the termination of the PPA by issue of letter dated 05.07.2003 entered into between the Petitioner by the Respondent is justified. The PPA entered into on 12.4.2001 had been approved by the Commission and, therefore, it had become legally effective. The Petitioner had taken necessary steps for setting up the project and had taken a huge loan of Rs.16.65 crores from IREDA for construction of the project and the project had been commissioned on 30.09.2004 which is well within the time. The Petitioner had also kept the Respondents duly informed about the progress of the project from time to time and no dissatisfaction or case of any violation of the terms of the PPA had been voiced by the Respondents. It is clear from the termination letter dated 05.07.2003 that no reason has been stated in the said letter for termination of the PPA and in fact there was no reason for termination. No Show Cause Notice had been issued to the Petitioner for any alleged non-compliance of the conditions as set out in the PPA. The termination letter reads as:

**"This is to inform that the PPA entered into with your Company on 12.4.2001 in respect of purchase of power from your proposed 6 MW capacity Biomass based Power project at Siruguppa, Bellary District has been terminated with immediate effect."**

This letter does not make any reference to any Show Cause Notice issued to the Petitioner regarding alleged non-compliance of the terms of the PPA. It is evident from the above that the decision to terminate the PPA has been taken in a casual and arbitrary manner without absolutely any reason for the said termination. The action of the Respondent amounts to violation of the principles of natural justice and, therefore, bad in law. The alternative argument put forth by the Respondent that since the supplemental PPA signed on 29.11.2005 had been initialled by the Petitioner also and, therefore, the original PPA no longer survives is a hollow argument. Admittedly, the supplemental agreement has not been approved by the Commission and, therefore, it has no legal effect. Moreover, the Respondent contradicts itself by proposing to the Petitioner in its letter dated 05.07,2003 that it could discuss fresh terms of tariff with the Respondent. This means that except for the tariff, all other terms and conditions would remain the same as per the original PPA. The contention of the Respondent that no reasons were stated in the termination letter in as much as the same were clearly enumerated in the terms and conditions of the agreement is meaningless. We find that the facts of the case are identical to the facts in the case of M/s.R.K.Powergen Pvt Ltd. relied upon by the Petitioner. The order of the Commission in the case of M/s.R.K.Powergen Pvt Ltd. in OP No.09/2006 and OP No.26/2005 has been confirmed in toto by the Hon. Appellate Tribunal for Electricity in its Order No.80 of 2006 dated 29.08.2006. As mentioned above, the project had been commissioned on 30.09.2004. The Hon. ATE has observed in the case referred to above that, "we agree with the above findings of the Commission and no exception could be taken to the said findings. That apart, the 3 documents placed before us also very much substantiate the 1<sup>st</sup> Respondent's case and on facts even the alleged failure to achieve financial closure is not sustainable. **At any rate before the date stipulated, the entire project has been accomplished, generator achieved commercial operation and commenced supply to the very appellant.**" In para 27 of the said Orsder, the Hon.ATE has held that "on facts, we hold that justice has been rendered by the Commission. Prima facie, also on facts **we hold equity that treats the importance of such time limits as being subordinate to the main purpose of the PPA, viz.**

**generation of power before the stipulated date has been admittedly accomplished and power supply commenced even prior to the stipulated date.**

In our considered view in this appeal, no interference is called for nor it is justified as we do not find errors of logic and law nor there is miscarriage of justice."

Based on the above facts of the case and applying the ratio of the decision of the Hon. ATE in the case of M/s.R.K.Powergen, we hold that the termination Order dated 05.07.2003 issued by the Respondent is unsustainable as it is illegal and arbitrary and deserves to be quashed. Consequently the second prayer of the Petitioner to declare that the Power Purchase Agreement (PPA) entered into between the Petitioner and the 2<sup>nd</sup> Respondent dated 12.4.2001 vide Annexure "C" valid and substantive is also granted.

We do so and the Petition succeeds.

Sd/-  
(K.P.Pandey)  
Chairman

Sd/-  
(H.S.Subramanya)  
Member

Sd/-  
(S.D.Ukkali)  
Member

