

No.N/21/09/

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 13th August 2009

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|----------------------------|----------|
| 1. Sri K.P. Pandey | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. RP 01/2009

Between

M/s Vijayalakshmi Hydro Power Pvt. Ltd.
No.209, Swiss Complex
33, Race Course Road
BANGALORE – 560 001
(Represented by its Advocate Sri Sridhar Prabhu)

... Petitioner

And

1. The Managing Director
Karnataka Power Transmission Corporation Limited
Kaveri Bhawan, Kempegowda Road
BANGALORE – 560 009
2. The Managing Director
Chamundeshwari Electricity Supply Corporation
No.927, L.J. Avenue, New Kantharaja Urs Road
MYSORE – 570 009
(Represented by its Advocates Just Law)

... Respondents

1. This review petition is filed by the petitioner under Section 94(1)(f) of Electricity Act, 2003 read with Regulation 8(1) of KERC (General and Conduct of Proceedings) Regulations, 2000 seeking review of the order passed by the Commission on 16.04.2009.

2. It is submitted by the review petitioner that as per the order, the 2nd respondent become liable to pay interest only if the payment of arrears is not made within four months from the date of the order. Therefore the Commission shall correct the order and direct the respondents to pay the difference of amount along with interest from the date the same was payable in view of the finding of the Commission that the PPA dated 01.03.2001 subsist.

3. We have carefully examined the review petition and grounds urged in support of the same.

4. Section 94 of Electricity Act, 2003 empowers the Commission to review its own decisions, directions or orders and confers upon it the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908.

5. Under Section 114 of CPC read with Order XLVII a review is maintainable by a person who considers himself aggrieved on account of the discovery of new and important matter for evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error on the face of the record or any other sufficient reason.

6. Perusal of the review petition reveals no grounds as required for maintaining a review petition under the Civil Procedure Code have been made out by the review petitioner. The prayers made in the review petition are virtually the same as were made out in the original petition which have already been considered by the Commission on merit.

7. Review petitioner has prayed as follows :

- A. The respondents, individually and severally, are liable to make the payments as per clauses 6.2, 6.4 and 6.5 in particular and Article 6 in general, under the PPA dated 01.03.2003, from the date on which such payments are due until such payments are made in full to the complete satisfaction of the petitioner;
 - B. If such payment is not made within 4 (four) months, the respondents shall pay interest charges as per the equivalent to SBI PLR plus 2 %, as agreed under the PPA, which liability shall be in addition to the liability of the respondents to make the payments as per Article 6 of the PPA;
 - C. Cost of the OP No.21 of 2008 be paid by the respondents jointly and severally;
 - D. Cost of this petition may be paid and such other order/s may be passed to meet the ends of justice.
8. Review petitioner had made the following prayer in his original petition No. 21/08:
- A. Pass order/s reaffirming the validity and subsistence of Annexure P-1, the PPA executed by the Petitioner with the First Respondent in 2001 and which now stands assigned to the Second respondent.
 - B. Direct the First and Second Respondents to pay all the amounts by honouring the terms of the PPA and make all the payments together with the applicable interest charges.
 - C. Direct the Respondents to pay the cost of the petition.

D. Pass any other order/s to meet the ends of justice and equity.

9. This Commission on 16.04.2009 has passed the order duly considering the entire petition and the prayers made therein which specifically included payment of interest and costs. The Commission considering entire facts and circumstances of the case has affirmed (as sought by the petitioner) that the PPA dated 1.3.2001 continues and accordingly ordered the respondents to pay the petitioner the tariff as provided in the PPA along with escalation and also the difference amount now to be calculated within four (4) months and failure to pay to additionally pay interest as per the rate fixed in the PPA.

10. While passing the order sought to be reviewed the Commission has considered the entire facts and circumstances of the case, particularly the negotiations held between the parties for modifying the contract and the express consent given by the petitioner for such modification and the fact that the petitioner did not initiate any action till filing the petition on 24.07.2008.

11. In view of the above, we find no grounds to review the Commission's Order dated 16.4.2009 and grant any prayer made in the review petition. Consequently the review petition is liable to be rejected and accordingly the same is hereby rejected.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K.SRINIVASA RAO)
MEMBER