

**No.N/36/08**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 14<sup>th</sup> May 2009**

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

**Case No. RP 05/2008**

**Between**

Sri S. Govindappa  
603, 21<sup>st</sup> Main, 4<sup>th</sup> T Block, Jayanagar  
BANGALORE – 560 001  
(Represented by its Advocate Sri Sridhar Prabhu) Petitioner

**And**

1. The Managing Director, BESCO, K.R. Circle,  
BANGALORE – 560 001
  2. The Managing Director, MESCOM, Paradigm Plaza,  
A.B.Shetty Circle, MANGALORE – 575 001
  3. The Managing Director, GESCOM, Main Road,  
GULBARGA
  4. The Managing Director, HESCO, Navanagar,  
P.B. Road, Hubli- 29
  5. The Managing Director, CESC, LJ Commercial Complex,  
New Kantharaja Urs Road, Saraswathipuram  
MYSORE – 570 009
  6. The Managing Director, KPTCL, Kaveri Bhawan,  
Kempegowda Road, BANGALORE – 560 009
  7. The Chief Engineer, State Load Despatch  
Centre – Karnataka, Ananda Rao Circle,  
BANGALORE – 560 001 Respondents
- (Represented by its Advocate Sri Sriranga)

1. This Review Petition has been filed under section 94(1)(f) of the Electricity Act 2003 read with Sub Regulation 1 of Regulation 8 of The KERC (General and Conduct of Proceedings) Regulations, 2000 seeking review of the order of the Commission dated 11.7.2008 by issuing suitable order or direction as follows :

- a) Substituting the earlier formula herein produced at paragraph 15.7 above in substitution of the formula laid in at clause 6.2.4 of the Agreement.
- b) Directing that when the Actual energy wheeled to the consumers is greater than the sum total of the banked energy and energy available for wheeling then instead of billing the company in each towards the excess energy drawn during the month at one and a half times of the HY 21 tariff, one and half times the quantum of energy be deducted (in kind) from the generator company from next months' generation, to avoid any monetary transactions.
- c) Start-up energy to be obtained after adding 5 % to the energy drawn from the grid by the Company to compensate the transmission losses instead of adding 15% as per the Agreement.
- d) The definition of the Injected Energy should be reviewed to mean 'Electricity actually injected and measured by the energy metered at the Injection Point in a Billing Period after deducting there from 105% of the energy supplied by ESCOM to the Project as similarly measured during such Billing Period and shall be computed in accordance with Article 6" in tune with the Clause 5.5 of the Standard Draft of the Power Purchase Agreement approved by this Hon'ble Commission.
- e) Clarifying the role of the Nodal Agency by making provision in the Order empowering the Nodal Agency to act as single window agency for the Wheeling and Banking transactions.

2. Before going into merits, the petitioner's counsel was asked to satisfy the Commission on the maintainability of the review petition by the petitioner – as the same goes to the very root of the matter. Accordingly the learned counsel Sri Prabhu addressed arguments on maintainability of the petition and prayed for entertaining the petition and decision on merits.

3. The Commission in its the Order dated 11.7.2008 had approved a standard Wheeling and Banking Agreement as per Annexure-1. While passing this Order, the Commission took note of its earlier orders dated 9.6.2005 wherein

banking and wheeling charges on the banked energy was determined which will be valid for a period of five years.

4. The review petitioner has mainly sought a review of the formula provided at clause 6.2.4 prescribed for calculation of banked energy and sought for modification of the definition injected energy and also to clarify the role of nodal agency in the Banking and Wheeling Agreement.

5. Section 94 of the Electricity Act 2003, under which the review application is filed read as under :

**Powers of Appropriate Commission:** (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely : -

(a) ....

(b) ...

...

(f) reviewing the decisions, directions and orders.

...

6. The above provision since refers to CPC it has to be read along with Order XLVII of Civil Procedure Code. Clause 1 of order XLVII Rule (1) read as under :

A person considering himself aggrieved (emphasis supplied) can seek review of an order on three grounds, namely : -

(1) On account of discovery of new and important matter or 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 order was made;

(2) On account of some mistake or error appeared on the face of the records; or

(3) For any other sufficient reasons.

7. Therefore before invoking the grounds on which review petition can be maintained the petitioner who seeks the review of the Order has to be first an aggrieved person.

8. We are afraid whether we can accept contention of the petitioner that he is an aggrieved person. The word 'aggrieved' used under Order XLVII Rule(1) read with Section 94 of CPC is well interpreted in law. The person to claim himself as an aggrieved has to establish that the Order by which he is aggrieved makes a difference for him or affects any of his legal rights or on account of the order he has suffered a legal injury or he has been unjustly deprived or denied of something which he would have otherwise entitled to obtain.

9. The order which has been sought to be reviewed is one which has approved the standard Banking and Wheeling Agreement. The order was passed on 11.7.2008. Till today, no generating company or a consumer who are availing open access have made out any grievance in respect of the said order and has been implemented without any problems. Admittedly the petitioner is neither a generator of electricity nor is availing open access nor has signed any Wheeling and Banking Agreement with the licensee companies. Petitioner is trying to maintain his case entirely on the fact that he was one of the persons who submitted his suggestions and also participated in the public hearing held by the Commission in this regard. There cannot be any dispute that the order in issue no way affects any of the rights of the petitioner. Further admittedly the petitioner has not suffered on account of the order any legal grievance or injury or has not been deprived of anything which he would have otherwise entitled to obtain.

10. The Hon'ble Appellate Tribunal in its latest order passed on 17.4.2009 in Appeal No.40/2009 at Para (17) after considering the judgements of the Hon'ble Supreme Court has summarized the law as follows :

*“Before dealing with this question, it would be appropriate to refer to the ratio decided by the Supreme Court in various authorities cited by both the Counsel, in regard to the locus standi of the party to file an Appeal as an aggrieved person. Those propositions are as follows :*

- i. A person who was not made a party to the original proceedings may still file an Appeal with leave of the Appellate Court, provided that the*

*person claiming himself to be the aggrieved party shall make out a prima-facie case as to how he is prejudiced.*

- ii. *A person can be said to be aggrieved by an Order only when it causes him some prejudice in some form or another. Unless the person is prejudicially or adversely affected by the Order, he cannot be entitled to file an Appeal as an aggrieved person.*
- iii. *The words 'person aggrieved' did not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed; the person aggrieved must be a person who has suffered a legal grievance; a person against whom a decision has been pronounced, which has wrongfully deprived him of something; or wrongfully refused him of something; or wrongfully affected his title to something.*
- iv. *When a person had not been deprived of a legal right; when he has not been subjected to a legal wrong; when he has not suffered any legal grievance; when he has no legal peg for a justifiable claim to hand on; he cannot claim that he is a person aggrieved."*

11. The Hon'ble Supreme Court in case of Grid Corporation of Orissa V/s. Sri Gajendra Haldia and others (reported in AIR 2009 SC 304) has categorically held that a consumer cannot maintain a petition against the action of Gridco of selling electricity to a trader at a rate which will give them a huge profit under sections 111, 121 & 142 of Electricity Act 2003 as he cannot be treated as an aggrieved person.

12. Respectfully following the above decisions and considering the facts of this case, it has to be held that the petitioner cannot be treated as an aggrieved person. Merely because petitioner participated in the public hearing or he had filed his suggestions on the draft agreement circulated cannot make him as an aggrieved person of the Order.

13. For the foregoing, we are of the clear view that the petition filed by the petitioner is not maintainable and is liable to be rejected on the said preliminary ground only. Accordingly petition stands rejected as not maintainable.

Sd/-  
(K.P. PANDEY)  
CHAIRMAN

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K. SRINIVASA RAO)  
MEMBER