

RP 06/2010

No.N/18/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 29th July 2010

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. RP 06/2010

Between

M/s Hubli Electricity Supply Co. Ltd.
P.B. Road, Navanagar
H U B L I – 580 029
(Represented by its Advocate Sri Sriranga) Petitioner

And

M/s Doodhaganga Krishna Sahakari
Sakkare Karkhane Niyamith
Chikkodi
Belgaum District ... Respondent
(Represented by its Advocate Sri Prabhuling Navadgi)

1. This Petition seeks review of the orders of this Commission dated 11.12.2009 in OP 31/2009 in so far as it directs opening of Letter of Credit. The respondent has filed the statement of objections on 29.4.2010.

2. We have heard the counsels appearing for both the parties and perused the averments made in the review petition as well as the objections statement.

3. It is contended by the review petitioner that this Commission while passing the Order dated 11.12.2009 failed to take into consideration the earlier petition OP No. 44/2006 filed by the respondent which came to be withdrawn.

According to the review petitioner, in OP No. 44/2006 the respondent had prayed for a direction to open a Letter of Credit but withdrew the same without getting liberty reserved to file a fresh petition. Therefore the prayer relating to Letter of Credit could not have been granted in OP 30/2009. In support of this contention, he relies upon Order XXIII Rule 1 of CPC. He further contended that the respondent in OP 31/2009 did not seek for relief of opening of Letter of Credit and therefore this Hon'ble Commission suo motu could not have directed the petitioner to open the Letter of Credit.

4. The respondent per contra has contended that this Commission noting down Section (5) of the Indian Contract Act directed the review petitioner to open the Letter of Credit as its reciprocal obligation to the obligation of the respondent to supply electricity. It is further contended by him that the provisions of the Order XXIII Rule 1 of CPC have no application to the prayer made in OP 31/2009. In OP 31/2009 what was sought by the petition was enforcement of the provisions of Power Purchase Agreement (PPA) which included the provision relating to the opening of Open Access.

5. The question that arises for consideration is whether the orders of this Commission dated 11.12.2009 require to be reviewed and modified as sought by the review petitioner.

6. In our considered opinion the orders passed by the Commission on 11.12.2009 do not require any review and modification. OP No.31/2009 filed by the review petitioner was for the enforcement of the PPA. The review petitioner did not say that the enforcement shall be excluding the provision relating to Letter of Credit. In our considered opinion, PPA has to be read as a whole and every clause of it, unless declared as illegal, has to be given effect to and enforced and parties have to carry out their respective obligations. Considering this, this Commission had directed the respondent to supply the power as per the terms of the PPA and the petitioner to make payment as well as open a Letter of Credit. The contention of the petitioner that the respondent had withdrawn its earlier petition filed for payments due and for opening of Letter of Credit and

therefore is barred from again seeking the relief of opening of Letter of Credit cannot be accepted. In our opinion withdrawal of the earlier petition wherein a claim for Letter of Credit was made does not obliterate the obligation of the petitioner to perform its part of the contract for all time to come. Under the terms of the contract the obligation of opening of Letter of Credit is a continuing obligation and not an one time obligation. A reading of Clause 6.6 of the PPA makes this very clear.

For the foregoing reasons this Review Petition is liable to be rejected and accordingly it is hereby rejected. The Review Petitioner is hereby directed again to open a Letter of Credit in favour of the Respondent within one (1) month from today. In that event, the respondent shall continue to supply power as per the terms of PPA.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K. SRINIVASA RAO)
MEMBER