

No.N/19,23/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 17th March 2011

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

In RP 07/2010

Between

M/s NSL Sugars Limited
60/1, Residency Road, II Cross
B A N G A L O R E – 560 025
(Represented by its Advocate Sri Prabhuling Navadgi)

... Petitioner

And

1. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 009

2. Electricity Supply Company Ltd.
Corporate Office, K.R. Circle
Bangalore – 560 001

... Respondents

(Represented by its Advocate Sri Sriranga)

In RP 08/2010

Between

Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 009
(Represented by its Advocate Sri Sriranga)

... Petitioner

And

M/s NSL Sugars Limited
60/1, Residency Road, II Cross
B A N G A L O R E – 560 025
(Represented by its Advocate Sri Prabhuling Navadgi)

... Respondent

1. In both these Review Petitions, the petitioner and the respondents in OP 23/2009 have sought modification of the order passed by this Commission on 11.12.2009 albeit on different counts.
2. The petitioner in RP 07/2010 has sought the review of this Commission's Order dated 11.12.2009 passed in OP 23/2009 on the ground that the Commission while passing the order has not considered the delays caused by the respondents in making the payments from time to time including the one ordered to be paid in OP 12/2007.
3. The petitioner in RP 08/2010 has sought modification of the Commission's Order dated 11.12.2009 on the ground that the said order directs respondent to pay interest even though in its earlier orders the Commission had awarded only 6.5 % in OP 38/2006 and OP 11/2007 decided on 17.1.2008 and 6.3.2008 respectively.
4. We have heard both these review petitions together with the consent of the parties as they arise out of the same order of this Commission dated 11.12.2009 in OP 23/2009.
5. We have considered the averments made in both the review petitions and also the statement of objections filed and various statements on the amounts due filed by both the parties in support of their respective claims and modification of the order.

6. In the light of rival submissions, the question that arises for consideration is whether the order of this Commission in OP 23/2009 dated 11.12.2009 suffer from any apparent error which needs to be corrected.

7. In OP 23/2009, the petitioner had sought the following directions :

(a) direct the first respondent Corporation to pay Rs.9,06,42,009/- being the interest for the delayed payment as contemplated under Clauses 6.1 and 6.2 of the Power Purchase Agreement dated 30.03.2001 and;

(b) direct the second respondent to pay Rs.5,21,97,317/- to the petitioner being the interest for the delayed payment,

(c) Pass such orders, issue such directions as this Hon'ble Commission deem fit, in the facts and circumstance of the case, in the ends of justice.

8. In support of the above prayers, the petitioner had submitted that though the dispute relating to termination of PPA came to be settled before this Commission in OP 25/2006 and the principle amounts payable consequent to settlement were paid by the respondents, the interest thereon for the delayed period as per the PPA has not been worked out and paid. It was also contended by the petitioner that even though the Hon'ble High Court in WP 550/2004 had passed an order to pay to the petitioner for the electricity supplied by way of Interim Order at the rate of Rs.2.80 per unit, the same was also not paid in time for which the respondents are liable to pay interest. It was also submitted that though this Commission had granted thirty days time to make the payment, the payments were not made within that time and therefore the respondents shall pay interest for the delay caused.

9. In OP 23/2009, there were three interest claims made by the review petitioner. The first one was for payment of interest on the amount not paid pursuant to the orders of this Commission in OP 12/2007. The second claim of interest was for the delays that have been caused while making payment as per the Interim Order of the Hon'ble High Court in WP 550/2004 in the proceedings relating to the validity of the termination of the PPA passed by the respondents. The third claim of interest pertained to the amounts that became payable pursuant to the settlement reached between the petitioner and respondents on the tariff payable in OP 25/2006 wherein the dispute relating to termination of PPA was pending in the High Court and in this Commission thereafter.

10. We have perused the order passed by this Commission on 11.12.2009 in OP 23/2009. In the said order, the Commission has inadvertently dealt only with the question whether interest is payable on the amount which became payable pursuant to orders of this Commission in OP 12/2007 dated 10.7.2008. The other two claims of interest were left undecided even though the same were raised by the petitioner. Therefore in our opinion there is an error apparent on the record in the Commission's Order dated 11.12.2009 which needs to be corrected in the interest of justice.

11. So far as the liability to pay interest on the amounts ordered to be paid pursuant to the orders of this Commission in OP 12/2007 dated 10.7.2008, the order is very clear and needs no clarification. According to the said order, if the respondents have made the payments within the prescribed thirty days the respondents are not liable to pay any interest. Otherwise they are liable to pay

the interest at the rate prescribed in the PPA to the extent of delay caused. The contention of the respondents that they are not liable to pay interest for the delay that occurred due to filing of an appeal to Hon'ble ATE against the Commission's Order cannot be accepted as admittedly there were no further orders from the Hon'ble ATE excusing the respondents from making payments as ordered by the Commission.

12. As regards claim for interest on the payments which became payable after the settlement was arrived at in OP 25/2006 for the period prior earlier to the settlement, the same is not admissible as per this Commission's Order in OP 25/2009 M/s Koppal Green Power Limited Vs. Government of Karnataka and others. In the said judgment this Commission has held that no interest will be payable on the amounts that became due after settlement as PPA was not in force on account of termination and pendency of proceedings before the Hon'ble High Court and this Commission.

13. As regards claim for interest for the delayed payments made during the pendency of the writ petition, we hold that the same is also not admissible as during the said period PPA was not in force as the interim orders of the Hon'ble High Court ultimately gets merged in the final order of this Commission. Further in the final order passed by this Commission on 30.11.2006 no direction to pay interest as per the terms of the PPA was made by this Commission and this Order has become final.

14. As regards the RP 08/2010 filed by the respondents for reducing the interest rate to 6.5 %, we are of the opinion that the same cannot be accepted

in view of the specific provision of the PPA on the rate of interest. In our view the respondents cannot take support of the orders of this Commission passed on OP 38/2006 and OP 11/2007 for getting the interest rate reduced as no general law has been laid down in those cases and they were decided on the facts and circumstances of those cases.

15. Accordingly we partly allow RP 07/2010 in terms of the above and dismiss RP 08/2010.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER