

No.N/20/10

**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 09/2010

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 Vishwanath Sugars Limited
Bellada Bagewadi – 591 305
Belgaum District ... Respondent
(Represented by its Advocate Sri Prabhuling Navadgi)

1. This Review Petition seek review of the orders of this Commission dated 11.12.2009 in OP 30/2009 in so far as it directs opening of Letter of Credit.
2. On notice the respondents have appeared and have also filed the statement of objections on 24.6.2010.
3. We have heard the counsels appearing for both the parties and also considered the averments made in the review petition as well as in the objection statement.
4. It is contended on behalf of the review petitioner that this Commission while passing the order dated 11.12.2009 has erred in interpreting Clause 4.2 of

the PPA and erroneously concluded that opening of Letter of Credit is one of the obligations though Clause 4.2 of the PPA does not impose an obligation on the review petitioner to open Letter of Credit. It is further contended that the respondent has not enforced his right under Clause 6.6 of the PPA for opening a Letter of Credit within three (3) years from the date of PPA and therefore shall be deemed that the respondent has waived his right for Letter of Credit as per Clause 12.4 of the PPA.

5. Per contra it is contended on behalf of the respondent that Clause 4.2 of the PPA has to be read along with Clause 5 and 6 of the PPA. According to the learned counsel for the respondent, Clause 6 is an integral part of PPA and hence imposes an obligation on the petitioner to open Letter of Credit and confers an enforceable right on the respondent. As regards waiver of the right to seek a Letter of Credit by the respondent, he submits that the petitioner cannot be considered to have waived this right for ever and on the contrary, it can be enforced at any time during the subsistence of PPA.

6. 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.

7. In our considered opinion the orders passed by the Commission on 11.12.2009 do not require any review and modification. OP No. 30/2009 filed by the review petitioner was for the enforcement of the PPA and not only for getting power under PPA. While interpreting a PPA it has to be read as a whole and every clause of it has to be given meaning thereto. Accordingly this Commission had directed the respondent to supply the power undertaken to be supplied and the petitioner to pay for the same, and also provide Letter of Credit as per the terms of PPA. The contention of the petitioner that there was no obligation on the petitioner's part to open a Letter of Credit under Clause 4.2 and therefore petitioner need not open a Letter of Credit is not correct. As contended by the respondent, Clause 6 of the PPA clearly imposes an obligation to open a Letter of Credit on the petitioner and this has to be read along with Clause 4.2. Further

the contention of the petitioner that the right to seek a Letter of Credit by the respondent cannot be exercised after three (3) years from the date of PPA has no merit as the obligation to provide a Letter of Credit is a continuous one during the entire period of PPA and not one time. Clause 12.4, which deals with waiver, has no application to the obligation of opening of Letter of Credit by the petitioner, as the obligation to open a Letter of Credit is a continuous obligation, as mentioned herein.

8. For the reasons stated above, this review petition is liable to be rejected. Accordingly the Review Petition stands rejected.

9. The Review Petitioner is granted one (1) month time from today to provide Letter of Credit as ordered in the impugned order and respondent shall continue to supply power during the subsistence of PPA.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K. SRINIVASA RAO)
MEMBER