

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 13th June, 2013

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member (will pronounce
Separate order) |

RP No.2 / 2013

BETWEEN :

Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
HUBLI – 580 029
[Represented by M/s. Justlaw, Advocates]

.. **PETITIONER**

AND

Parrys Sugars Limited
1/2, Kalyanamantapa Road
Jakkasandra
Koramangala
BANGALORE – 560 034

.. **RESPONDENT**

1) This Review Petition is filed on 8.4.2013 by the Review Petitioner, viz., Hubli Electricity Supply Company Limited (HESCOM), praying for review / modification of the majority Order dated 7.2.2013 passed by this Commission in OP No.46/2012, on the following grounds :

- (a) The Commission in its majority Order dated 7.2.2013 passed in OP 46/2012 (which is the binding Order of the Commission), while allowing the revision of tariff, has overlooked its own decision of making the Order dated 29.3.2012 prospective in effect and hence the impugned Order dated 7.2.2013 needs to be modified;
- (b) In allowing retrospective operation of the Order dated 29.3.2012, the Commission has acted in contradiction with its Order dated 29.3.2012. The impugned Order dated 7.2.2013 amounts revision of the Order dated 29.3.2012, after expiry of 10 months from the date of the Order and the Order dated 29.3.2012 having attained finality, any modification of the said Order at this juncture is impermissible and hence the impugned Order dated 7.2.2.103 ought to be reviewed;
- (c) The Commission has not distinguished the merits of case No.S/09/1 with the merits of the case OP No.46/2012. In the former case, based on the cost data for cogeneration projects, furnished in the DPRs of seven projects for the period 11.12.2009 to 21.3.2011 by the Commissioner for Cane Development and Director of Sugar, the Commission had arrived at the conclusion that Rs.4.30 Crores/MW ought to be the benchmark Capital Cost for the purpose of determining the tariff per unit. As the cost data was with respect to the period 11.12.2009 to 21.3.2011, it is wholly untenable to allow the Respondent in the present case (OP

No.46/2012), who has signed a PPA as early as on 8.10.2010, to reap the benefits of the escalated prices which persisted during the above period. Though the Respondent was called upon by the Commission to furnish the cost data pertaining to the Respondent's project, the Respondent has failed to do so and the same has not been taken into account by the Commission while passing its Order. There is no nexus between the Respondent in this case and the Order dated 29.3.2012. Hence, the Order dated 7.2.2013 passed by the Commission in the present case needs to be reviewed.

2) The Commission has heard the counsel for the Review Petitioner on the maintainability of the Review Petition itself before proceeding further, as the same goes to the root of the matter.

3) Under Section 94 of the Electricity Act, 2003, this Commission has powers as are vested in a Civil Court under the Code of Civil Procedure for reviewing its decisions, directions and orders.

4) A Civil Court may exercise its power of review under Order 47 Rule 1 of the Code of Civil Procedure, which is reproduced below :

"1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

(d) and who, from the 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.” [Emphasis supplied]

5) The learned counsel for the Review Petitioner submitted that the Commission in its majority Order dated 7.2.2013 passed in OP 46/2012, while allowing the revision of tariff, had overlooked its own decision of making the Order dated 29.3.2012 prospective and hence the impugned Order dated 7.2.2013 needs to be modified; that the cost data was with respect to the period 11.12.2009 to 21.3.2011 and it is wholly untenable to allow the Respondent in the present case (OP No.46/2012), who has signed a PPA as early as on 8.10.2010, to reap the benefits of the escalated prices which persisted during the above period; and that the Commission had acted in contradiction with its Order dated 29.3.2012, as the impugned Order dated 7.2.2013 amounts to revision of the Order dated 29.3.2012, after expiry of 10 months from the date of the Order. The Order dated 29.3.2012 having attained finality, any modification of the said Order at this juncture is impermissible and hence the impugned Order dated 7.2.2.103 ought to be reviewed.

6) We have considered the submissions made by the learned counsel for the Review Petitioner in the light of the parameters on which a Review Petition is maintainable, as discussed above.

7) This Commission in its Order dated 7.2.2013 in OP No.46/2012, has held as follows :

"10) We may observe that till this Commission's Order dated 29.3.2012, the Petitioner and the Respondent had no option, except to incorporate the Tariff specified in the said Order, i.e., Rs.3.59 per Unit. Once this rate gets re-fixed to Rs.3.90 per Unit, it shall accrue to the benefit of the Petitioner and others, who had signed the PPAs as per the earlier Order dated 11.12.2009 of this Commission.

11) In our view, therefore, the prayer of the Petitioner deserves to be accepted and Article 5.1 of the PPA needs to be modified to incorporate the re-fixed Tariff of Rs.3.90 per Unit ordered by this Commission, since the very Order of the Commission fixing the Tariff at Rs.3.59 per Unit has been modified by this Commission pursuant to the remand Order dated 8.4.2011 of the Hon'ble ATE.

12) As regards the contention of the learned Counsel for the Respondent that as the Order dated 29.3.2012 of this Commission was made applicable prospectively, it will not apply to the Petitioner's case, we are of the view that when this Commission passed the general Order, the only issue before this Commission was re-fixation of the Capital Cost pursuant to the directions of the Hon'ble ATE. None of the parties appearing before this Commission had, at any time, brought out as to what would happen to the PPAs signed prior to the re-fixation of the generic

Tariff. Therefore, this Commission had directed, in its Order dated 29.3.2012, to include the re-fixed rate in the PPAs to be executed thereafter. Further, in our view, the Order of this Commission dated 29.3.2012 does not bar any of the parties, who had signed PPAs pursuant to the earlier Order of this Commission, to get the Tariff re-fixed based on the modified Order of this Commission.

13) *It was stated during the course of the hearing that the Petitioner is also a member of the South India Sugar Mills Association (SISMA) and the grievance made by the Association was also on its behalf that the Capital Cost adopted by the Commission in the impugned Order was not proper, considering the actual cost incurred by the Generating Companies. It is submitted that as a member of the Association, it is also entitled to get the modified Tariff based on the Capital Cost re-determined by the Commission. In view of this submission, we have looked into the two Orders of this Commission dated 11.12.2009 and 29.3.2012 – one which was impugned before the Hon'ble ATE and the other passed after the remand of the Order by the Hon'ble ATE. While passing the impugned Order, SISMA had produced the cost of the generators including for one of the Plants taken over by the Petitioner. However, the same was not considered, as the Commission was in the process of determining the generic Tariff, and not specific Tariff to any particular generator. When the second Order came to be passed by this Commission on remand, SISMA again produced the data of cost incurred by several other generators, including that of the Petitioner. This Commission, not satisfied with the material produced by SISMA, called upon SISMA to produce Balance Sheets for a minimum of three Projects, which they relied upon – one of them was belonging to the Petitioner. SISMA, in response, had produced the Balance Sheets of three Generating Plants, including that of the Petitioner. Only after*

consideration of all the material data produced by SISMA and also the data produced by KERDL and the Commissioner Cane Development and Director (Sugar), the Commission decided to re-fix the Capital Cost adopted by it while fixing the generic Tariff in its earlier Order to Rs.430 Lakhs per MW, which translated into the revised Tariff of Rs.3.90 per Unit. When SISMA made a grievance on behalf of its members, including the Petitioner, and the Hon'ble ATE accepted the plea of SISMA and directed this Commission to re-determine the Capital Cost including that of the Petitioner, it is natural for the Petitioner to seek the benefit of the re-determined Tariff. Therefore, in our opinion, the Petitioner is also entitled to get its Tariff re-fixed in line with the Order of this Commission dated 29.3.2012, even though it had signed the PPA at the pre-revised Tariff of Rs.3.59 per Unit, from the date the revised rate is available for others, i.e., from 29.3.2012.

14) Therefore, considering the facts and circumstances of the case, we allow this Petition. We direct the parties to amend Article 5.1 of the PPA dated 8.10.2010 by signing a Supplemental Agreement and incorporate 'Rs.3.90' in place of 'Rs.3.59', to bring it in conformity with the Tariff determined by this Commission, vide Order dated 29.3.2012, and submit the same for approval of this Commission.

15) In all other respects, the PPA dated 8.10.2010 signed by the parties shall continue as it is."

8) From the above, it may be observed that the points urged in support of the prayer for review of the Order dated 7.2.2013 have been adequately considered. It is well-settled law that in a Review Petition, the parties cannot be allowed to re-argue their case, however meritorious the same may be.

Therefore, in our view, the Review Petitioner does not satisfy any of the grounds on which a review can be sought.

9) Consequently, we do not find any merit in the present Review Petition and hence it stands rejected.

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

Sd/-
(VISHVANATH HIREMATH)
MEMBER

No.: N/41/13

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BANGALORE – 560 034

.. **RESPONDENT**

1) In this Review Petition, the Review Petitioner, M/s. Hubli Electricity Supply Company Limited (HESCOM), has specifically prayed that this Commission may be pleased to review / modify the majority Order dated 7.2.2013 and dismiss OP No.46/2012.

2) In OP No.46/2012, I had given a separate Order dated 7.2.2013, wherein my findings have been brought out in detail and I had rejected the Petition filed by M/s. Parry's Sugar Industries Limited against HESCOM.

3) In the present Review Petition, the Petitioner-HESCOM has only sought review / modification of the majority Order dated 7.2.2013 and dismiss OP No.46/2012.

4) I have nothing more to add to my Order dated 7.2.2013 in OP No.46/2012 and the Review Petition is disposed of accordingly.

Sd/-
(K.SRINIVASA RAO)
MEMBER