

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

Dated : 18th September, 2013

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

I.A.Nos.1 and 2/2013

IN

RP No.3/2013

BETWEEN :

1) Power Company of Karnataka Ltd.
KPTCL Building
Cauvery Bhavan
BANGALORE – 560 009

2) Bangalore Electricity Supply Co.Ltd.
K. R. Circle
BANGALORE – 560 009

[Represented by M/s. Justlaw, Advocates]

.. **PETITIONERS**

AND:

1) M/s. Himatsingka Seide Ltd.
10/24, Kumara Krupa Road
High Grounds
Near Sindhi High School
Bangalore-560 001

.. **RESPONDENT-1**

2) M/s. J.K. Cement Works
Muddapur
BAGALKOT – 587 122

.. **RESPONDENT-2**

3) The Government of Karnataka
Energy Department
Vikasa Soudha
BANGALORE – 560 001

.. **RESPONDENT-3**

- | | | | |
|----|---|----|-------------------------------------|
| 4) | Karnataka Power Transmission Corporation Ltd.
Cauvery Bhavan,
BANGALKORE – 560 009 | .. | APPLICANT /
RESPONDENT-4 |
| 5) | State Load Despatch Centre
Ananda Rao Circle
BANGALORE – 560 009 | .. | APPLICANT /
RESPONDENT-5 |
| 6) | Chamundeshwari Electricity Supply Corporation Ltd.
No.927, L.J. Avenue
New Kantharaj Urs Road
Saraswathipuram
BANGALORE – 570 009 | .. | APPLICANT /
RESPONDENT-6 |
| 7) | Hubli Electricity Supply Co.Ltd.
P.B.Road
Navanagar
HUBLI – 580 029 | .. | APPLICANT /
RESPONDENT-7 |
| 8) | Mangalore Electricity Supply Company Limited,
Paradigm Plaza, A.B. Shetty Circle
MANGALORE-575 001 | .. | APPLICANT /
RESPONDENT-8 |
| 9) | Gulbarga Electricity Supply Co.Ltd.
Main Road, Opposite Parivar Hotel
GULBARGA – 585 101 | .. | APPLICANT /
RESPONDENT-9 |

[R1 represented by its Representative

R2 represented by M/s. Shridhar Prabhu Associates and

R4 to R9 represented by M/s. Justlaw, Advocates]

ORDER ON I.A.Nos.1 AND 2 / 2013

1) The Power Company of Karnataka Ltd. (PCKL) and the Bangalore Electricity Supply Co.Ltd. (BESCOM) have filed a Review Petition praying for review / modification of the Commission's Order dated 14.02.2013 passed in OP Nos.40 and 41 of 2010 pursuant to the Order dated 3.10.2012 of the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal Nos.141 and 142/2011 and

10/2012, on the ground that there is an error apparent on the face of record in the Order.

2) After Notice, the Respondents/Applicants have filed two Interlocutory Applications (IAs), viz., I.A.No.1/2013, dated 24.06.2013, and I.A.No.2/2013, dated 06.08.2013, under Section 94 of the Electricity Act, R/W Regulation 11 of the KERC (General and Conduct of Proceedings) Regulations, 2000 and Order I Rule 10 of the Code of Civil Procedure.

3) In I.A.No.1/2013, dated 24.06.2013, Applicants/Respondent Nos.6 to 9 have sought for transposing them as Petitioner Nos.3 to 6, and in I.A.No.2/2013, dated 06.08.2013, Applicants/Respondent Nos.4 and 5 have prayed for transposing them as Petitioner Nos.7 to 8 in the above Review Petition.

4) It is submitted by the Applicants that they are required to be transposed as Review Petitioners along with the original Review Petitioners, as the Order dated 14.02.2013 of this Commission binds them also and needs to be reviewed or modified on the grounds pointed out by the original Review Petitioners. It is further submitted that if they are not transposed as Review Petitioners, they will suffer irreparable injury, as there may be two different orders – one in the case of the original Review Petitioners and another in their case.

5) We have heard the learned counsel appearing for the Applicants in I.A.Nos.1 and 2/2013 and also the counsel / representative for the Respondent-Generating Companies.

6) It is argued by the learned counsel for the Review Petitioners that the Order dated 14.02.2013 passed by this Commission is a general Order and not confined to the Review Petitioners only and it equally applies to all the Distribution Companies of the State who were supplied electricity by private Generators under the orders of the Government of Karnataka under Section 11(1) of the Electricity Act, 2003. Therefore, the grounds urged in support of the review apply to the other Distribution Companies who have not filed a Review Petition, and hence they shall be necessary parties as Petitioners in the Review Petition. According to the learned counsel for the Review Petitioners, under Order I Rule 10 of the Code of Civil Procedure, if a person is required to be a Plaintiff or Defendant in a case, but by a *bonafide* mistake he is not made a Plaintiff or Defendant, and the presence of that person is necessary for the disposal of the pending issues, the Court may allow such person to be transposed as a Plaintiff or Defendant in the case.

7) Opposing the Applications and the arguments made in support of the Applications by the Review Petitioners, Shri Shridhar Prabhu, learned counsel for Respondent No.2, contended that the very Applications are not maintainable, because the period allowed for filing a Review Petition by the Distribution Companies has expired and the present Applications are made in order to avoid

bar on limitation and therefore they shall not be entertained. He further submitted that the Order dated 14.02.2013 sought to be reviewed has been confirmed by this Commission, by its Order dated 08.08.2013 in another Review Petition, RP No.1/2013, filed by the very same Review Petitioners.

8) Respondent No.1 has filed written submissions on 30.8.2013. In the written submissions, the objections raised on behalf of Respondent No.2 have been reiterated.

9) As regards the prayer made by the original Respondent Nos.4 and 5 in I.A.No.2/2013, we are of the view that the same cannot be accepted, as they cannot be considered to have been affected by the Order dated 14.02.2013. As regards the prayer made on behalf of original Respondent Nos.6 to 9 in I.A.No.1/2013, they shall be permitted to be transposed as Review Petitioner, as they are necessary parties in view of the common Order passed by the Commission in OP Nos.40 and 41 of 2010, applicable to all the Distribution Companies, which has been affirmed by the Hon'ble ATE except to the extent on which this Commission passed a fresh Order on 14.02.2013. The contention of the learned Counsel appearing for the Applicants/Respondents on the question of limitation cannot be accepted, as the original Review Petition filed is in time, and the same applies to the Applicants in I.A.Nos.1/2013, since they are being transposed as Review Petitioners. As regards his contention that this Commission has already dismissed the Review Petition, RP No.1/2013, in the case of *BESCOM and others -Vs- GMR Energy Limited and others*, wherein similar contentions as

those in the present Review Petition were raised, we are of the view that the same has to be considered only when we hear the main Review Petition, RP No.3/2013, on merits, and not at this stage.

10) Accordingly, we allow I.A.No.1/2013 and reject I.A.No.2/2013. In view of allowing of I.A.No.1/2013, the counsel appearing for the Applicants / transposing Respondents therein shall amend the Review Petition accordingly within 10 (ten days) from the date of this Order and the Review Petition RP No.3/2013, after it is amended by the counsel, shall be posted for hearing on merits.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER