

N/51/14

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION AT
BENGALURU**

Review Petition No.03 of 2014

Order dated 24th September 2015

Present:

Sri. M.K.Shankaralinge Gowda	-	Chairman
Sri H.D.Arun Kumar	-	Member
Sri D.B.Manival Raju	-	Member

BETWEEN

HAVERI BIO ENERGY PVT. LTD.,

H-984, 985, Palam Extension

Ramphal Chowk, Sector 7,

Dwaraka

NEW DELHI – 110 075

(By Keystone Partners, Advocates)

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PETITIONER

AND

- 1) State of Karnataka
Represented by its Addl.Chief Secretary to Govt.
Energy Department, Vikasa Soudha
Bangalore – 560 001.
- 2) Karnataka Power Transmission Corporation Ltd.,
Cauveri Bhavan, K.G.Road
Bangalore – 560 001.
- 3) Karnataka Renewable Energy Development Ltd.,
No.39, Shanthi Gruha, Palace Road
Bangalore – 560 001.

- 4) Hubli Electricity Supply Company Ltd.,
Navanagar, P.B.Road
Hubli – 580 025.

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RESPONDENTS

(By Justlaw Advocates for Respondents)

1. The petitioner Haveri Bio energy Pvt. Ltd., has filed this Review Petition under Section 94(1)(f) of the Electricity Act, 2003. Brief facts of the case are as under:
2. The Petitioner is a Special Purpose Vehicle (SPV) formed by M/s Orange Power Gen Pvt. Ltd. to develop a 10 MW Rankine Cycle based Biomass power plant with Air cooled Condenser at Haveri, Karnataka. The Petitioner had filed a petition-OP No.18/2013 for determination of tariff, under Sections 61, 62 and 64 read with Section 86 (1)(a) of the Electricity Act, 2003, Regulation 9(1) of the KERC (Power Procurement from Renewable Sources by Distribution Licensee and Renewable Energy Certificate Framework) Regulations, 2011 and Regulations 11 of the KERC (G & C of Proceedings) Regulations, 2000, before the Commission.
3. After hearing the parties, the Commission has issued an order on 10th July, 2014, fixing the generic tariff to all Rankine Cycle based biomass power plants with air cooled condensers.
4. Aggrieved, the petitioner has filed this Review petition and has requested for review of the Commission's Order dated 10th July, 2014. The petitioner while praying for a review, has contended that, the Commission has omitted to take into account some of the parameters as per the material placed before the Commission while determining the tariff. The averments made by the petitioner on each of the above parameters are as follows:
 - (i) **O & M expenses:** It is submitted that, the petitioner had produced documentary evidence showing the cost of O & M to be as high as Rs.50 lakhs/MW/annum for a similar plant and also in the CERC order dated 14.05.2014, the fixed O&M cost was approved at Rs.40 lakhs/MW/year. The

petitioner has submitted that these documents appear to have not been considered by the Commission while passing the order and therefore has requested to enhance the O & M cost to at least Rs.40 lakhs/MW/year.

- (ii) **Calorific value of the fuel:** The petitioner has stated that, during the proceedings in respect of OP No.18/2013, it had produced several test reports to show that the calorific values in respect of coconut leaves is 3235.33 kcal/kg, Juliflora chips varying between 2346.44 kcal/kg to 2679.94 kcal/kg and submits that these documents appear to have not been considered by the Commission while arriving at the calorific value of fuel. It is also stated that one of the respondents namely, HECSOM had referred to IISC study report indicating a calorific value of 2700 kcal/kg for biomass with 30% moisture content. In the light of the above, the petitioner has requested the Commission to consider the above documentary evidences and keeping in view the fuel mix, fix the calorific value at 3000 kcal/kg.
- (iii) **Station Heat Rate:** It is submitted that, the petitioner had requested to consider station heat rate of 4200 kcal/kwh, as per CERC Regulations, which has not been considered. Also, HESCOM has submitted that the heat rate should be taken at 4100 kcal/kwh. In view of the documentary evidence submitted by the petitioner it is requested to fix the station heat rate at a minimum of 4000 kcal/kwh.
- (iv) **Fuel price:** It is submitted that the actual fuel cost incurred by the petitioner and other Rankine Cycle based biomass plants in Karnataka is in excess of Rs.2500/tonne and that the Commission has not considered the biomass costs (ranging from Rs.2277/- to Rs.2950/tonne) fixed by other ERCs which is much more realistic. Therefore it is submitted that, it would be just and fair to take into consideration the above and fix the biomass fuel price at a minimum of Rs.2500/tonne.

In the light of the above it is contended by the petitioner that that the documentary evidence and the ERCs' orders which form part of the record in OP NO.18/2013 were not properly considered by the Commission which resulted in an inadvertent error on the face of the record and if these

documents were considered and the order were to be reviewed, the errors could be rectified. In addition to the above, the petitioner has sought certain clarifications regarding MAT which was not a part of the original petition OP No.18/2013. Based on the above submissions the following prayer is made to the Commission.

A. Review its order dated 10th July, 2014 and modify the same in so far as the following parameters are concerned:

- a) Operating and Maintenance Expenses: Consider a value of Rs.40 lakhs per MW per annum instead of Rs.23.20 lakhs MW.
- b) Calorific Value of Fuel: Consider the calorific value of fuel at 3000 kcal/kg instead of 3300 kcal/kg.
- c) Station Heat Rate: Consider the station heat rate at 4000 kcal/kwh instead of 3900 kcal/kwh.
- d) Fuel Price: Consider a fuel price of at least Rs.2500 per tonne instead of Rs.2000 per tonne.

B. Clarify whether the tax liability needs to be billed along with the monthly bill in the form of additional charge/unit; and

C. Pass any other orders in the interest of justice and equity.

5. On behalf of Respondents No.2 and 4, Just Law, Advocates have filed their statement of objections. It is submitted that:

(a) The tariff has been fixed by the Commission after duly considering the comments and views received from all the stakeholders in the public hearing and, as such the Order so passed should not be interfered with and the review petition deserves to be rejected.

(b) The tariff orders passed by the CERC in 2014, orders of different States in respect of biomass projects and also the views of the persons from whom fuel was sourced have been considered by the Commission.

- (c) Review of an order can only be sought on discovery of new and important matter of evidence which, after the exercise of the due diligence, was not within the petitioners knowledge or could not be produced at the time when the original order was passed or order made, or on account of some mistake or error apparent on the face of the record for any other sufficient reason. In the present case, the Petitioner has failed to make out any ground for review.
- (d) **O & M expenses:** The petitioner originally had sought Rs.25 lakhs/MW and now, is seeking revision of the same to Rs.40 lakhs/MW stating that the Commission had failed to consider administrative cost, statutory levies, vehicles etc., and also placed reliance on CERC order. According to respondents, this is a new grievance which was not sought in OP No.18/2013. Further it is stated that the O & M expenses depend upon efficient management of the plant and the petitioner has not demonstrated any particular factor or reason that the O & M expenses should be Rs.40 lakhs/MW. It is also stated that the petitioner himself has submitted the contract for the O & M with M/s Thermax at Rs.19 lakhs/month and that the petitioner is also receiving a subsidy from Central Government to the extent of Rs.88 lakhs. Such being the case it is submitted that the O & M expenses ought not to be revised.
- (e) **Calorific value of Fuel:** The petitioner, in the review petition, has sought for allowing calorific value at 3000 kcal/kg, whereas in the original petition he had sought calorific value at 3200 kcal/kg. It is pointed out that the studies conducted by IISC, Bangalore and tariff orders of CERC and SERCs of other States were taken into consideration by the Commission. It is also pointed out that coconut leaves and Juliflora chips have calorific value ranging from 3235.33 kcal/kg for coconut leaves and 2346.44 kcal/kg to 2679.94 kcal/kg for Juliflora chips. Since the petitioner is the only Rankine Cycle based biomass plant in a radius of 50 kms, it enjoys significant latitude in choosing the nature of fuel for efficient and productive use. In view of this, the respondents have contended that the decision already taken by the Commission does not require any interference in the present proceedings.

(f) **Station Heat Rate (SHR):** The respondents have contended that originally, the petitioner had sought for determination of heat rate at 4300 kcal/kwh and the Commission has fixed the same at 3900 kcal/kwh. The petitioner in this review petition has sought for reconsideration of the station heat rate at 4000 kcal/kwh which amounts to putting forth a new case by considering a different parameter which is impermissible. The Hon'ble Commission while approving the SHR, has considered its order dated 11.12.2009 and also the SHR approved by SERCs in other States and revised the same from 3700 kcal/kwh to 3900 kcal/kwh. It is also contended that the Commission has to take a holistic view keeping in mind the interest of the consumers and the distribution companies while setting the tariff. In view of this, the decision need not have to be interfered with.

(g) **Fuel Price:** The Commission has approved a fuel price of Rs.2000 / tonne even though the petitioner had requested for Rs.2500/tonne, based on the comments received in the public hearing in which persons selling biomass stated that they receive a price of Rs.1800 to Rs.2000/tonne including transportation cost. Further, it is submitted that the rates allowed by other SERCs and CERC is not binding on the Commission.

The order of the Commission is well considered and does not deserve any interference.

6. During the course of arguments, the petitioner's counsel submitted the following:

(a) No new material is placed in the review petition.

(b) To substantiate the O & M expenses, the petitioner had produced the details of O & M expenses incurred by a sister concern at Dharwad. Further it is stated that the earlier claim for the O & M expense was made before they had the experience of operation. However, in the public hearing they had requested for Rs.40 Lakhs per MW on the basis of CERC norms. Also, many of the expenses in respect of use of bulldozers, JCBs, ash handling etc., borne by

the petitioner had not been included in the O & M cost which was submitted at Page 9 of the document submitted on 10.06.2014.

(c) The fuel price as may be determined by the Commission, on the basis of the public hearing recently held in the matter for determining of the generic tariff applicable from 1st January, 2015, may be adopted.

(d) The test results for calorific value of fuel submitted by the petitioner has not been considered and calorific value of 4000 kcal/kwh on the basis of technical note and statement of Thermax may be considered.

(e) The claim made in the Original Petition need not be final and the data furnished in the public hearing also needs to be considered. Tariff determination is no adversarial process and hence, the petitioner is not barred from giving material during public hearing.

7. Further during the hearing held on 6th August, 2015, the petitioner reiterated the above submissions and also relied upon the Tariff Orders passed by the CERC on 3rd March, 2015, Haryana Electricity Regulatory Commission on 13th August, 2014, Bihar Electricity Regulatory Commission on 22nd September, 2014, Andhra Pradesh Electricity Regulatory Commission on 19th July, 2014, Rajasthan Electricity Regulatory Commission on 8th July, 2014, Tamilnadu Electricity Regulatory Commission Order on 31st July, 2012, Madhya Pradesh Electricity Regulatory Commission in March 2012 and Odisha Electricity Regulatory Commission on 1st March, 2014. The petitioner highlighted the parameters considered in these Orders to substantiate his claim.

8. The learned counsel for the respondents, countering the above arguments, submitted the following:

(a) To review an order, there should be an error apparent on the face of the record or new material should be produced which could not have been placed earlier before the Commission. Since none of the above conditions is fulfilled, the Review Petition has to be rejected.

- (b) The Commission has duly considered all the material furnished and has allowed the O & M cost in its Order.
 - (c) The Commission has discussed the calorific value as claimed by the petitioner and as adopted elsewhere while passing the Order. Hence, the same cannot be reviewed.
 - (d) The fuel price approved by the Commission is based on the evidence furnished during the public hearing and therefore is not open for revision.
 - (e) The station heat rate adopted by the Commission in its order is based on a detailed consideration of that prevailing in other States and hence need not be reconsidered.
 - (f) Since the Commission was determining a generic tariff, the various parameters suggested by stakeholders have been considered by the Commission and not only on the specific parameters applicable to the petitioner's plant. Since, the Commission has passed orders on merits, there is no need for its review.
9. In the hearing held on 6th August, 2015, the counsel for the Respondents had brought to the notice of the Commission, the decisions of the Hon'ble Supreme Court in Criminal Appeal No. 21 of 2002, Review petition (Crl.) No.453 of 2002 in Writ petition (Crl.) No. 135 of 2008, and the decision of this Commission in RP No. 2 of 2012, No.8 of 2012 and RP No. 2 of 2014 in the matter of admissibility of the Review Petitions.

- (i) In para 17 of the Supreme Court Order in Criminal Appeal No. 21 of 2002 the Hon'ble Supreme Court has held that:

“As noted supra, for the first time in the review applications it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The High Court

also transgressed its jurisdiction in entertaining the review petition with an entirely a new substratum of issues. Considering the limited scope for review the High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition xxxxxxxxxx."

- (ii) In Review petition No.453 of 2002 of Writ petition (Crl.) No. 135 of 2008, in para 8 to 12, the Hon'ble Supreme Court has held that:

"8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. XXXXXXXXX

9) In a criminal proceeding, review is permissible on the ground of an error apparent on the face of the record. A review proceeding cannot be equated with the original hearing of the case XXXXXX.

10) Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face to the order, undermines its soundness or results in miscarriage of justice. This Court, in Col. Avtar Singh Sekhon Vs. Union of India & Ors. 1980 (Supp) SCC 562, held as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante V. Sheikh Habib this Court observed:

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

11) *An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error xxxxxxx.*

12) *Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review xxxxxx.*

13. *In a review petition, it is not open to the court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto xxxx”.*

(iii) In para 6 of in RP No. 2 of 2012, this Commission has held:

“6. In the instant case, we do not notice any new or important matter, or evidence, which the Review Petitioner could not produce, inspite of exercise of due diligence, at the time when its original petition was considered, nor is there any error apparent on the face of the record.

Also there is no other sufficient reason made out to review the Order. What is urged by the Review Petitioner is that, being not a party to the Tariff Petition, it was not aware that the ESCOMs have not shown any dues in their Tariff applications. Further, it is submitted that ESCOMs have interpreted a similar PPA of Tata power in a different way, thereby they have discriminated against the Review Petitioner. These grounds, in our view, do not satisfy the requirements contemplated under Order 47 Rule 1 of the Code of Civil Procedure for review of an Order. The Tariff / ARR Applications filed by the ESCOMs were published before the public hearing and were also available on the Websites of BESCO / ESCOM. Interpretation of a contract by the Respondents in another case cannot have a bearing on the interpretation to be given by this Commission, as the Commission has to go by the terms of the contract and settled principles. Therefore, in our considered opinion, the Review Petition cannot be entertained."

(iv) In para 5 of in RP No. 8 of 2012, this Commission has held that:

"5) We have looked into the grounds urged by the Review Petitioner in support of the review of the Order, in the light of the Order passed by the Commission. In our view, the Order passed by this Commission has taken into account the points now urged before passing the Order. The Commission, while determining the Capital Cost, has, in fact, taken into account the cost and additional cost of RDF Plant as submitted by the Petitioner. This is clear from paragraph-10(v) of the Commission's Order dated 28.2.2012. The Commission has also considered the life of the Plant, as submitted by the Petitioner, at paragraph-10(i) of its Order, duly taking note of the submissions made by the Petitioner and other relevant factors. Similarly, the Commission has arrived at the Plant Load Factor (PLF) at 73.43% annually and the income from sale of Compost on the material produced by the Petitioner. As regards ROE, the Commission has considered the submissions made by the Petitioner for 19%, but has allowed 16% for the reasons stated in its Order. Thus, the

Petitioner has not made out any case that the Commission had failed to consider any relevant material while passing its Order of 28.2.2012."

(v) In paras 8 and 9 of RP No. 2 of 2014, this Commission has held that:

"8) During arguments of the Review Petition, the learned Counsel for the Review Petitioners cited the decision of the Hon'ble Supreme Court reported in (2005) 4 SCC 741 in the case of Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others, and relied upon Paras 89 & 90 of the decision which reads thus :

"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which could include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words sufficient reason in Order 47 Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an advocate..."

9) In view of the averments made in the Review Petition that the learned counsel for the Review Petitioners had only made a submission offering to have payments made for the power injected by the generating company for the period subsequent to the thirty (30) days' time limit within which Wheeling and Banking Agreements are required to be processed by the Nodal Agency, as per Regulation No.9(6) of the KERC (Terms and Conditions for Open Access) Regulations, 2004, the

Commission considers it appropriate to record this submission of the Respondents, invoking the power under Order LXVII Rule 1 of Code of Civil Procedure. Accordingly, we accept this submission of the learned counsel and take it on record. However, we leave it open to the generating company to initiate separate proceedings, if it so desires, in the matter of any claims it may choose to prefer with regard to the power injected during the thirty days period specified in the Regulation No.9(6) of the KERC (Terms and Conditions for Open Access) Regulations, 2004."

Based on the above decisions, the counsel for the Respondents pleaded that the Revision Petition is not maintainable and liable to be dismissed.

10. The Commission has carefully examined the averments made by the petitioner and the respondents. The following issues would arise for consideration of the Commission.

(i) Whether the petitioner has placed before the Commission any new material which he was unable to produce at the time of disposal of the original petition.

(ii) Whether the Order dated 10.07.2014 in OP No.18/2013 suffers from an error apparent on the face of the record necessitating a review.

11. The Commission notes that the review petition has been filed under Section 94(1)(f) of the Electricity Act, 2003, which is reproduced below:

"94. Powers of Appropriate Commission – (1) *The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely - xxxxxxxx*

(f) reviewing its decisions, directions and orders; xxxxxxxxxx"

12. Thus the Commission, for reviewing its orders as per the Electricity Act, 2003, has to follow the Code of Civil Procedure. It would be proper to refer to the grounds of the review as mentioned in Order 47 Rule 1 of the CPC which has been quoted by the Hon'ble Supreme Court in the case of Union of India Vs Sandur Manganese & Iron Ore Limited (2013) (8) SCC 337 and also the references quoted by the Respondent. The following are the grounds:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Petitioner or could not be produced by him.
- (ii) Mistake or error apparent on the face of the record.
- (iii) Any other sufficient reason which is at least analogous to those grounds specified in the rule.

13. Further in the judgment in RP (Crl.) No.453/2012 (Kamlesh Verma v Mayawati and others) some important principles have been laid down by the Hon'ble Supreme Court with reference to the Review, which are as follows:

- (a) *Review of the earlier order cannot be done unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (b) *An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.*
- (c) *It is well settled that the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule-1, CPC.*
- (d) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him.*
- (e) *Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched.*
- (f) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

14. Regarding the issue as framed under 10(i) as to whether the petitioner has placed before the Commission any new material which he was unable to produce at the time of disposal of the original petition, it is worthwhile to note that the petitioner, during the hearing held on 6th November, 2014, has stated that no new material has been produced in the review petition and that he is relying on the materials already placed before the Commission. Since, no new material has been placed before the Commission, as admitted by the petitioner himself, the review petition will not sustain on this ground.
15. As regards the question as to whether the Order dated 10.07.2014 in OP No.18/2013 suffers from an error apparent on the face of the record necessitating a review, it is pertinent to note the decision of the Commission in the matter of O & M expenses, calorific value, station heat rate and fuel price, which is reproduced below:

“vii. Operation and Maintenance Expenses:

Even though one of the Directors of the petitioner has stated that the O & M costs are as high as Rs.50 lakhs per MW/annum, the actual O & M expenses appear to be lower going by the facts disclosed during the public hearing. The Commission notes that, the Petitioner in his petition has sought Rs.25.00 lakhs per MW with escalation of 5.72%/ annum. The O&M expenses allowed in the last Tariff Order dated 11.12.2009 were at 4% of the capital cost including insurance with annual escalation of 5%.

The Commission notes that, the O&M expenses allowed in the other SERCs are in the range of Rs.24.03 Lakhs/MW to Rs.40 Lakhs /MW with an annual escalation of 5.72%. O&M cost at 4% of the Capital cost amounts to Rs.23.20 lakhs / MW. Considering the claims of the petitioner which is Rs.25.00 lakhs / MW, the Commission is of the opinion that 4% of the capital cost is reasonable for O & M expenses. Hence the Commission decides to allow O & M expenses of Rs.23.20 lakhs / MW with an annual escalation of 5%.”

“x. Fuel Price:

The Biomass price allowed by other SERCs is in the range of Rs.2018/ton to Rs.2726/ton. During the Public Hearing, the Commission was informed by the Stakeholders that the Biomass price is in the range of Rs.1800/ton to Rs.2000/ton

including the cost of transportation. The Commission, therefore, decides to allow a Biomass price of Rs.2000/ton with 5% escalation per annum.

xi. Station Heat Rate (SHR)

In the Tariff Order dated 11th December, 2009, the Station Heat Rate of 3700 Kcal/Kwh was fixed for Biomass Projects. The Petitioner has sought revision of Station Heat Rate to 4300 Kcal/Kwh. The station heat rate as considered in other States for Biomass projects with Air Cooled Condensers in in the range of 3800 Kcal/Kwh to 4440 Kcal/Kwh.

Even though the Commission in its earlier Orders had adopted a Station heat rate of 3700 kcal/kwh, keeping in view the variety of fuel used in biomass based plants and the norms adopted in other States, the Commission decides to adopt a station heat rate of 3900 kcal/kwh for biomass based power plants with air cooled condensers.

xii. Calorific Value of Fuel:

The Petitioner has sought assumption of Calorific value of fuel at 3200 Kcal /Kg. The Calorific value of fuel as allowed in the Tariff Order dated 11.12.2009 for Biomass Projects was 3200 Kcal/kg. The calorific value of fuel adopted by other Commissions is in the range of 3100 to 3467 Kcal/kg.

The petitioner has proposed to use biomass fuel in terms of cotton stalks, maize stalks and juliflora. Considering the varying mix of biomass fuel, the Commission decides to adopt calorific value of fuel as 3300 Kcal/Kg.

Considering the Station Heat Rate of 3900 Kcal/Kwh and Calorific value of fuel at 3300 Kcal/kg, the Commission adopts the fuel requirement at 1.18 kg /kWh."

16. From the above it is observed that as far as O & M expenses are concerned the Commission while passing the order has considered the submissions made by the petitioner regarding the cost of Rs.50 lakhs incurred by sister concern as also Rs.40 lakhs considered by CERC. In addition to the above the Commission has looked into the O & M expenses prevailing in the other States

for air cooled condenser based biomass projects. As pointed out by the respondents, the contention of the petitioner that the records placed by them have not been considered is factually incorrect.

17. As regards submissions on calorific value, the Commission notes that in the original petition, the petitioner had sought 3200 kcal/kg. Subsequently during the public hearing held on 15.05.2014, the petitioner had requested for adoption of station heat rate of 4300 kcal/kwh and specific fuel consumption of 1.35 kg/kwh and had also subsequently submitted additional document in support of the same. From the above submission made during the public hearing the gross calorific value works out to 3185 kcal/kg. The test certificates produced by the petitioner earlier could not be relied upon for determining the generic tariff, as the company performing the test has stated that it is not a representative sample. However the Commission, after considering the submissions made by the petitioner and also considering the calorific values adopted in other States (in the range of 3100 to 3467 kcal/kg) has considered adoption of 3300 kcal/kg. Thus the averments of the petitioner that data furnished by him has not been considered are incorrect.
18. Regarding station heat rate, the submission of the petitioner is that the Commission has not considered the SHR of 4200 kcal/kwh as fixed by CERC although one of the respondents had submitted to consider SHR of 4100 kcal/kwh. The Commission's order quoted above clearly indicates that the SHR as adopted by different Commissions has been considered by this Commission before taking a decision to adopt SHR of 3900 kcal/kwh for biomass based power plants with air cooled condensers. Hence, the contention that that the Commission has not considered the SHR of 4200 kcal/kwh as fixed by CERC is not correct.
19. As far as fuel price is concerned, the contention of the petitioner is that the Commission has not considered the biomass cost fixed by other ERCs. The Commission has considered the biomass price allowed by other SERCs (JSERC, GERC & RSERC) as also the submissions made by HESCOM in the

matter. However, as pointed out by the Respondents, based on the inputs received during the public hearing by the suppliers of fuel, the Commission approved a fuel cost of Rs.2000/ton. Thus the contention of the petitioner that the details of fuel cost furnished by them have not been considered is incorrect.

20. Regarding the citation of Orders of the other SERCs by the petitioner in the Review Petition, the Commission notes that most the orders have been issued after the issue of Order by this Commission and hence cannot not be relied upon.
21. From the above facts it is evident that, the Commission has considered the records submitted by the petitioner while passing the order in OP No.18/2013. Hence, it cannot be concluded that the parameters submitted by the petitioners have not been considered merely on the ground that those parameters were not accepted by the Commission.
22. Thus, it is concluded that all the materials placed by the petitioner before the Commission and also inputs furnished by the stakeholders including the respondents have been considered before passing the order dated 10th July, 2014. The reasons that the Commission has not accepted the view points of the petitioner or that the Commission's decision is different than the orders of the CERC/other Commissions, cannot be a ground for review, as decided by the Hon'ble Supreme Court in RP (Crl.) No.453/2002 cited above.

Based on the above discussions, Issues No. (i) and (ii) are answered in the negative.

23. Clarification regarding MAT: The petitioner has prayed to clarify as to whether the tax liability needs to be billed along with the monthly bill in the form of additional charge/unit or not?

As submitted by the respondent the issue relating to MAT is a new point raised in the Review Petition. Hence, the Commission has not considered the same in this review petition.

Accordingly, the review petition is dismissed. No order as to costs.

Sd/-

(M.K.SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D.ARUN KUMAR)
MEMBER

Sd/-

(D.B.MANIVAL RAJU)
MEMBER