

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

Dated : 17th October, 2013

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

RP No.04/2013

BETWEEN :

VRL Logistics Limited
Giriraj Annexe
Circuit House Road
Hubli-580 029

[Represented by Shri Vishwanath, R. Hegde, Advocate]

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PETITIONER

AND:

Hubli Electricity Supply Company Limited
P.B. Road, Navanagar
Hubli-580 029

[Represented by M/s.Justlaw, Advocates]

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RESPONDENT

1) The above Review Petition has been filed by M/s.VRL Logistics Limited, for reviewing the Order dated 29.4.2010 passed in OP No.11/2009, on the ground that the Respondent did not present the correct facts regarding payments its Memo dated 28.4.2010.

2) The present Review Petitioner had filed OP No.11/2009 to recover a sum of Rs.91,68,198/- towards interest on delayed payments made between September,

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2006 and January, 2009. In the course of hearing of the Original Petition, the Respondent therein filed a Memo dated 29.4.2010 stating that the amount claimed by the Petitioner therein has been paid. Based on the said Memo, the case was disposed of by this Commission as 'does not survive', by its Order dated 29.4.2010.

3) The Review Petitioner thereafter, challenging the above Order, filed Miscellaneous First Appeal No.5773/2010 before the Hon'ble High Court of Karnataka under the provisions of the Karnataka Electricity Reforms Act, 1999. The Hon'ble High Court dismissed the Appeal as 'not maintainable' and also granted liberty to the Petitioner to file an Appeal before the Hon'ble Appellate Tribunal for Electricity (ATE) within a period of 4 (four weeks) from 13.2.2012.

4) The Review Petitioner thereafter filed Review Petition No.757/2012 before the Hon'ble High court of Karnataka, contending that under Section 41 of the Karnataka Electricity Reforms act, 1999, the Appeal by it is maintainable in the Hon'ble High Court. This Review Petition came to be dismissed by the Hon'ble High Court on 5.2.2013. However, further 30 (thirty) days' time was granted by the Hon'ble High Court for filing an Appeal before the Hon'ble ATE.

5) Accordingly, the Review Petitioner filed Appeal No.94/2013 before the Hon'ble ATE. The Hon'ble ATE, by its Order dated 20.5.2013, dismissed the Appeal, duly observing as follows :

"The learned counsel for the Applicant/Appellant submits that the impugned Order is apparently wrong since the Memo, which had been filed before the Commission, did not show that the interest amount, which has been claimed in the Petition, had been paid.

A perusal of the impugned Order dated 29.04.2010 would show that both the counsel were present and in their presence only this Order was passed. If the Applicant/Appellant felt that the Memo did not contain the correct particulars, the remedy before the Appellant is to file a Review against the said Order before the Commission itself, immediately thereafter. Without doing so, this Appeal had been filed firstly before the High Court and then before this Tribunal.

The impugned Order is passed with the consent of both the parties. Therefore, we do not find any ground to admit this Appeal as the remedy for the Applicant is not before the Tribunal but it lies elsewhere."

6) The Review Petitioner has now come up with present Review Petition after the disposal of its Appeal by the Hon'ble ATE. Since there is a delay in filing the Review Petition after dismissal of the Appeal before the Hon'ble ATE, the Review Petitioner has also filed an Application for condonation of the delay in filing the Review Petition after the disposal of the Appeal by the Hon'ble ATE.

7) The Respondent, on Notice, has appeared and filed the Statement of Objections dated 5.9.2013, and has sought for dismissal of the Review Petition based on the contentions raised in the Statement of Objections.

8) We have heard Shri Vishwanath, R. Hegde, learned counsel appearing for the Review Petitioner, and Shri Sriranga, learned counsel appearing for the

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Respondent, we have also considered the Order dated 29.4.2010 of this Commission, Orders of the Hon'ble High Court of Karnataka in M.F.A.No.5773/2010, dated 13.2.2012 and R.P.No.757/2012, dated 5.2.2013, and the Order dated 20.5.2013 of the Hon'ble ATE in Appeal No.94/2013.

9) It is the contention of the Review Petitioner that the Order passed by this Commission on 29.4.2010, based on the Memo filed by the Respondent, requires to be reconsidered as the same was passed without affording an opportunity to it to verify the correctness of the statement made in the Memo filed by the Respondent, as the statements made in the Memo were false and without reference to the claim made in OP No.11/2009 by the Petitioner.

10) In our view, the submissions made on behalf of the Petitioner are liable to be rejected, as when the Order was passed by this Commission on 29.4.2010, the learned counsel for the Review Petitioner was very much present and the matter was disposed of in his presence and he did not ask for time to verify the statement made in the Memo. If the Review Petitioner was of the view that the facts contained in the Memo filed by the Respondent therein were not correct, nothing prevented the Review Petitioner from immediately filing an Application before this Commission to that effect for recalling the Order or for reviewing the Order. The Hon'ble ATE has precisely observed the above in its Order dated 20.5.2013 in the following words:

'A perusal of the impugned Order dated 29.04.2010 would show that both the counsel were present and in their presence only this Order was passed. If the Applicant/Appellant felt that the Memo did not contain the correct particulars, the remedy before the Appellant is to file a Review against the said Order before the Commission itself, immediately thereafter. Without doing so, this Appeal had been filed firstly before the High Court and then before this Tribunal.

11) Since no Review Petition was filed against the Order passed by this Commission within the time prescribed under Clause 8(1) of the KERC (G&C) Regulations, 2000, the said Order of this Commission has become final in view of the dismissal of the Appeal before the Hon'ble ATE. Under Order XLVII of the Code of Civil Procedure, read with Regulation No.8 of the KERC (G&C) Regulations, 2000, a Review Petition has to be filed within 90 (ninety) days of the issuing of the Order. Admittedly, the present Review Petition is filed after a period of three years. Therefore, the Review Petition is barred by time and is liable to be rejected.

12) The Review Petitioner has filed an Application for condonation of delay in filing the Review Petition. The reasons stated in the Application that the delay that has occurred is on account of seeking redressal in wrong Forum and the Review Petition has been filed as per the observations of the Hon'ble ATE.

13) In our view, the explanation offered by the Review Petitioner is not valid and acceptable. In the first place, the Hon'ble ATE has not directed the Review Petitioner to file a Review Petition. This is clear from the Order extracted above.

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Secondly, as contended by the Respondent, this Commission cannot entertain an Application for condonation of delay, as per the orders of the Hon'ble ATE in the case of *GERC –Vs- Century Rayon*, Appeal No.57/2009 (IA No.262/2012) and the law laid down by the Hon'ble Supreme Court in the cases referred to by the Hon'ble ATE.

14) In view of the above discussion the Review Petition is liable to be dismissed and accordingly dismissed.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K.SRINIVASA RAO)
MEMBER