

No.N/58/12

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION, BANGALORE

Dated 17th October, 2013

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

R.P. No. 6 of 2012

in

O.P.No. 14 of 2011

Between :

Bangalore Electricity Supply Company Ltd.,
A Company registered under the
Companies Act,1956
Having its registered office at
K.R.Circle, Bangalore -1,
Represented by its Managing Director

... Petitioner

(Represented by Just Law)

And :

1. M/s. Srinivasa Gayathri Resource
Recovery Ltd.,
A Company registered under the
Companies Act,1956
Having its registered office at
No.303, Shrestha Bhoomi Complex,
No.87, K.R.Road,
Bangalore – 560 004.
Represented herein by its Chairman
(Represented by Sri Prabhuling Navadgi, Advocate)

RP No.6 of 2012

2. Government of Karnataka,
Department of Urban Development,
Karnataka Government Secretariat,
Vidhana Soudha, Bangalore – 560 001

3. Karnataka Power Transmission
Corporation Ltd.,
A Company registered under the
Companies Act,1956
Having its registered office at
Kaveri Bhavan, Bangalore – 560 009.

... Respondents

1. The review petition No. RP 6/2012 of M/s BESCO seeking review of order passed in OP 14/2011 dated 28th Feb. 2012 in so far as it directs the respondent no.2(R2) to reimburse the petitioner herein to the extent of difference between the tariff determined by this Commission and the average cost of power purchase from NCE sources of BESCO and praying for issue of order in the background of the amended PPA, was taken up for consideration.
2. The petitioner BESCO have cited this Commission's order dated 21.7.2006 stating that the extra cost of power purchase by the ESCOM on account of purchase of power from WtE project (over and above the average power purchase cost of ESCOM) shall be passed on to the concerned ULB only by proposing appropriate tariff for the ULB. Further, BESCO has stated that an error has crept in the order of the Commission dated 28.2.2012 in OP 14/2011 in so far as the respondent No.2 (Government of Karnataka) was to reimburse to the extent of difference between tariff determined by the Commission and the average cost of power purchase from NCE sources of BESCO. The 1st respondent had initially not placed the amended PPA for consideration and the same was placed before the Commission subsequently. The correct and final PPA clearly elucidates the terms agreed to by the

parties stating that average power purchase cost of the petitioner ought to be taken into reckoning. This error is apparent on the face of record.

3. The petitioner, vide its memo dated 22.8.2012 has submitted a copy of the PPA reportedly amended in pursuance of GoK order dated 17th March 2011. Clause 5.1 therein reads as under:

The extra cost of power purchase by BESCO on account of purchase from the company beyond average power purchase cost of BESCO, which shall be determined every three years from the date of COD and for subsequent years from date of COD shall be the average power purchase cost as on the first day of April of the year, shall be reimbursed to BESCO by the Urban Development department, GoK.

4. We have perused the records of OP 14 of 2011 filed by M/s SGRRL. The original petition dated 30.3.2011 was filed enclosing a true copy of the tripartite PPA amongst BESCO, SGRRL and the Urban Development Department of Government of Karnataka. During the course of hearing, on 25.7.2011 the Counsel for the respondent BESCO, Sri Sriranga, submitted that the amended Clause 5.1(b) of PPA dated 4.1.2011- amendment duly authorized by the signatories to the tripartite agreement - reads as follows :

"Extra cost of power purchase by BESCO on account of purchase from the Company beyond average power purchase cost of BESCO, which shall be determined every three years from the date of COD, and for subsequent years from the date of COD shall be the average power purchase cost as on the first day of April of the year, shall be reimbursed to BESCO by UDD, GoK."

5. The Commission directed the parties that the freshly signed PPA shall be submitted through an affidavit to this Commission. A copy of the corrected PPA was submitted to this Commission vide memo for production of additional documents dated 11.8.2011, during the course of hearing in OP 14/2011, by the petitioner SGRRL.
6. In the order of this Commission in OP 14/2011 dated 28.2.2012 the following was noted:

"in the context of the Commission's order dated 21.7.2006, cited at para 4, the Urban Development Department, Government of Karnataka (GoK) vide tripartite agreement dated 4.1.2011 with BESCO and M/s SGRRL has agreed that `in order to neutralize the high cost of power, Urban Development Department GoK to reimburse the cost of power, Urban Development Department to reimburse the cost of difference , if any on behalf of BBMP to BESCO beyond average Power Purchase cost of NCE projects of BESCO which shall be determined every three years from the date of this Agreement in the over all interest of BESCO and the Project Developer' "

7. In the same order, it was further observed that SGRRL have submitted the tripartite PPA dated 4.1.2011 entered by them with BESCO and Urban Development Department, GoK for approval of the Commission. At paragraph 11. of the order it is observed thus :

"Sri Sridhar Prabhu, legal counsel for M/s. SGRRL informed that the project was awarded by BBMP on BOOT basis and the issue of evacuation of power of 66 KV instead of 11 KV has been agreed by KPTCL. Further it was informed

that in view of these changes revised copies of tripartite agreement and PPA would be submitted to the Commission for approval. It was observed that the PPA had certain changes incorporated in it without indicating the date of corrections and the circumstances under which such corrections were incorporated. As such the Commission directs M/s.SGRRL to submit the amended PPA for approval of the Commission. The Commission decides to take up the issue of approval of the PPA separately after the receipt of the amended PPA duly signed by the parties concerned"

8. It was under these circumstance stated above, the Commission passed the order as follows :

"The Urban Development Department, Government of Karnataka shall reimburse to BESCO the difference between the tariff determined by the Commission and the average cost of power from NCE sources to BESCO as detailed in the order".

9. Thus, in the context of the above, it is clear that the Commission has duly noted the PPA with corrections submitted by M/s. SGRRL. Thus, there is no error apparent on the face of record, as contended.
10. Under the circumstances, the review petition of the BESCO lacks merit and is liable to be dismissed. Accordingly it is dismissed.

Sd/-

Sd/-

Sd/-

(M.R.SREENIVASA MURTHY) (VISHVANATH HIREMATH) (K.SRINIVASA RAO)
CHAIRMAN MEMBER MEMBER