

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

Dated : 24th October, 2017

Present:

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

RP No.9/2017

BETWEEN :

Bangalore Electricity Supply Company Limited and 4 others	..	PETITIONERS
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AND :

NSL Sugars (Tungabhadra) Limited & 28 others	..	RESPONDENTS
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**ORDERS ON THE PRELIMINARY OBJECTIONS
RAISED BY THE RESPONDENTS**

- 1) The Respondents have contended that the present Review Petition is barred by time and therefore should be rejected. It is contended by the respondents that the limitation for filing the review petition is 90 days from the date of the order to be reviewed and that in the present case though the review petition was filed within time, none of the Respondents was added in the review petition as originally filed and these Respondents were added subsequently on 2.8.2017 after lapse of 90 days from 11.4.2017 – the date on which the order under review was passed. The other ground urged is that separate Court fee should have

been paid instead of single set of Court fee as the review petition amounts to multiple Review Petitions in different original petitions.

- 2) The learned Counsel for the Review Petitioners submitted that, both the contentions are not maintainable.
- 3) The Order under review is dated 11.4.2017. The present Respondents had individually filed different Original Petitions numbered as OP No.38/2016 to OP No.68/2016 praying for determination of tariff for their Bagasse based co-generation Power Plants and for a direction to the Electricity Supply Companies (ESCOMs) for executing individual Power Purchase Agreements (PPAs) in their favour. The present Review Petitioners, who are the Distribution Licensees in the State, had also filed OP No.85/2016 on a subsequent date, with a request to approve the proposal of the Review Petitioners for procurement of electricity on medium term basis from the Bagasse based co-generation plants and also to determine the tariff for such supply, without specifically adding any Bagasse based co-generation Plants as Respondents in the said Petition.
- 4) After hearing the parties, all the cases filed by Bagasse based co-generation Plants as well as Distribution Licensees were clubbed and a Common Order dated 11.4.2017 was passed. The ESCOMs, who had not arraigned any of the Bagasse based co-gen plants as respondents in OP No.85/2016 have filed the present Petition, with a request to determine the tariff payable on a different principle than the principle now adopted which would have the effect of reduction in tariff than the tariff now fixed.

- 5) The Review Petition is filed on 10.7.2017, within 90 days from the date of passing the Order dated 11.4.2017. On presentation of the Review Petition, the Commission directed the Review Petitioners to implead Bagasse based co-generation plants, which would be the affected parties. Thereafter, the Review Petitioners have filed the amended Review Petition on 2.8.2017, impleading all the present Respondents who had filed different Original Petitions as noted above.
- 6) We have heard the learned Counsel for the parties.
- 7) After considering the rival contentions and the material on record, we found that the preliminary objections raised have no merit for the following reasons:
 - (a) It is found that, the Review Petitioners have paid consolidated fee of `75,000/-, which they were liable to pay even in the event of filing separate Review Petitions, as against each Respondent. Therefore, this submission cannot be accepted. The learned Counsel for the Review Petitioners has submitted that the Review Petitioners would pay the deficit Court fee, if any, on this account. Further, it may be noted that this Commission has got a discretion to waive off the payment of fee for filing the Petitions, etc., in an appropriate case;
 - (b) The contention of the Respondents herein is that, as against them, the Review Petition should be taken as filed as on the date of filing the amended Review Petition, i.e., 2.8.2017. If this date is taken as the date for counting the limitation,

it may be noted that the filing of the Review Petition would be on 112th day from the date of the Order under review;

- (c) The learned Counsel for the Respondents herein relied upon Section 21 of the Limitation Act, which states regarding the effect of substituting or adding a new Plaintiff / Defendant. The relevant portion of the said provision reads thus :

*“S.21. Effect of substituting or adding new plaintiff or defendant,-
(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:*

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date”.

The proviso provides that, where the Court is satisfied that the omission to include a new Plaintiff or Defendant was due to a mistake made in good faith, it may direct that the Suit as regards such Plaintiff or Defendant shall be deemed to have been instituted on any earlier date. Assuming that the said provision would apply even to the Review Petition, it is quite possible to take a view that, a mistake made by the Review Petitioners in not impleading the Respondents as parties, can be considered to be in good faith. Such an inference can be drawn, as in the OP No.85/2016 filed by the Review Petitioners, none of the present Respondents was made as party. Therefore, in the Review Petition originally filed by them, they have not impleaded the present Respondents as parties. Considering the facts, the Commission has to hold that, as against the

impleaded Respondents, the Review Petition should be deemed to have been filed on the date of filing the Review Petition itself.

- 8) There was an argument and counter argument on the point 'whether the Limitation Act would apply in a proceeding before the Commission'. Even assuming that the Limitation Act would apply to the proceedings before this Commission, it can be said that the proceedings by way of Review Petition cannot be treated as a Suit, as understood in the Code of Civil Procedure. In that event, Section 21(1) of the Limitation Act cannot be made applicable to a Review Petition.
- 9) If the Limitation Act applies, Section 5 of the said Act would apply, which enables a party to file an application for condonation of delay in a proceeding relating to an Appeal or an Application. The present Review Petition has to be treated as an Application, for the purposes of Section 5 of the Limitation Act. Therefore, the delay, if any, can be condoned under Section 5 of the Limitation Act and in certain circumstances even on an oral application. Therefore, we hold this is a fit case to condone the delay, if any, in filing the Review Petition.
- 10) For the foregoing reasons. We pass the following:

ORDER

The preliminary objections are rejected. The Review Petition is admitted. The Respondents are hereby directed to file objections to the main Petition by 9.11.2017.

List the case on 9.11.2017.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER