

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 61 of 2011

Dated: 18th July, 2011

**Present: Hon'ble Mr. Justice M. Karpaga
Vinayagam, Chairperson
Hon'ble Mr. V J Talwar, Technical Member,**

IN THE MATTER OF

**M/s Coromandel Sugars Limited
Having its Registered officer at
No.827, Dhun Building,
Annsasai,
Chennai-600002
And Factory at Makavalli,
K R Pet Taluk, Mandya District
571426 Represented by its Vice President
.... Appellant**

Versus

**1. Chamundeshwari Electricity Supply
Company Limited,
A Company Incorporated under the Companies
Act,1956, Having its Registered Office
At : No.927, L.J. Avenue, Ground Floor,
New Kantharaj Urs Road,
Saraswathipuram
Mysore-9, Represented by its
Managing Director.**

**2. The Karnataka Electricity Regulatory
Commission,
Commission Established Under the Electricity
Act,2003 Having its Office at
6th & 7th Floor
No.9/2 Mahalakshmi Chambers
M.G. Road
Bangalore
Represented by its**

....Respondent(s)

Counsel for Appellant(s):Mr.Nishanth Patil

**Counsel for Respondent(s):Mr.M.G. Ramachandran,
Ms. Sneha
Venkataramani
Ms. Ranjitha
Ramachandran**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

M/s Coromandel Sugars Ltd. is the Appellant
herein.

2. Challenging the impugned order dated 6.1.2011 passed by the Karnataka State Commission holding that the Office Memorandum issued by the Chamundeshwari Electricity Supply Corporation Limited (CESC), the 1st Respondent is legal, the Appellant has filed the present Appeal.

3. The matter in issue in the present Appeal relates to the interpretation of the provision of the Power Purchase Agreement(PPA) dated 23.12.1998 entered into between the Appellant M/s Coromandel Sugars Ltd., and the 1st Respondent, Chamundeshwari Electricity Supply Corporation Ltd.

4. The Appellant and the 1st Respondent entered into Power Purchase Agreement dated 23.12.1998. The period of agreement is for 10 years. According to the

Appellant, the period of 10 years commences from the date of the commercial operation of the Unit.

5. On the other hand, it is a case of Respondent that the period of 10 years commences from the date of signing of Power Purchase Agreement.

6. When the Appellant applied for renewal, the Respondent issued an official memorandum mentioning the date of the agreement namely 23.12.1998 as the base date for calculation of the 10 year period. Challenging the same the appellant filed a petition before the State Commission contending that date of commercial operation ie. 6.2.2000 should be the base date but not the date of agreement i.e. 23.12.98.

7. The State Commission after hearing the parties passed the impugned order dated 6.1.2011 holding that the date has to be reckoned from the date of signing of the agreement and not the date of commercial operation. Hence, this Appeal.

8. The Appellant has raised the following question:-

“Whether the State Commission was right in holding that the reckoning of date for first 10 years was the date of signing of the Power Purchase Agreement instead of the date of commercial operation of the generating Station?”

9. The learned Counsel appearing for the Appellant submitted that the decision arrived at, by the Station Commission accepting the contention of the Respondent to the effect that the date of execution of

PPA dated 23.12.98 is to be taken as a base date is patently wrong in the light of wordings contained in Clause No.5.1 and 9.1. of the PPA.

10. In reply to this contention, the learned Counsel for the Respondent in defending the impugned order submitted that interpretation given by the State Commission with regard to the base date on the basis of the Clause 5.1. of the PPA is perfectly justified and therefore, impugned order does not call for any interference.

11. We have carefully considered the submissions of both the learned Counsel.

12. There is no dispute in the fact that the PPA was entered into between the parties on 23.12.1998 and the plant was commissioned only on 6.2.2000. The

question is to be considered as to when the period of 10 years of the term of PPA, commences for the purpose of tariff.

13. As indicated above, according to the Appellant, it commenced from the date of commercial operation as referred to in Clause 9.1. According to the Respondent, it commenced from the date of signing of the Agreement as per both Clause 5.1 and 9.1 of PPA. In the light of the rival contention urged by the counsel for the parties, it would be appropriate to consider the relevant clauses contained in the PPA. Clause 5.1. provides as under:-

5.1. TARRIF: “Board shall in all events for the Delivered Energy pay, for the first 10 years from the date of signing of the Agreement, to

the Company every month during the period commencing from the Commercial Operation date through the term of this Agreement on the basis of the base price applicable for the year 1994-95 at the rate of Rs.2.25 per kilowatthour with an escalation at a rate of 5% per annum over the tariff applicable for the previous year. From the 11th year onwards and for the remaining period of the Agreement if extended, the tariff shall be reviewed and finalised after mutual negotiations, which however, will not in any case be less than the prevailing lowest slab tariff for energy applicable to H.T. Industrial consumers in the State. However, no demand charges shall be payable by the Board to the Company.”

14. This clause deals with the Tariff. It begins with the wordings **“for first 10 years from the date of the signing of the Agreement.”**

Therefore, the term 10 years for the purpose of tariff has to be calculated only from the signing of the Agreement i.e. 23.12.98. In other words, Clause 5.1. provides that Tariff would be calculated on the basis of the base price applicable for the year 1994-95 and would escalate at 5% per annum over Tariff applicable for previous year. Escalation of tariff would continue for first 10 years from date of signing of agreement. Of course, Clause 5.1. refers to the term **“commercial operation”**. But this is only for making payment. This would mean the tariff will be payable for the generation and supply from

the date of commercial operation. This is made further clear in the later part of Clause 5.1. The wordings “ ***From the 11th year onwards and for the remaining period of the Agreement***” would refer to the remaining period of initial term.

15. Let us now see Clause 9.1, which is as follows:-

9.1. Term of the Agreement: “*This agreement shall become effective upon the execution and delivery day of by the parties here to and unless terminated pursuant to other provisions of the agreement shall continue to be in force initially for such time until the completion of a period of 10 years from the schedule date of completion and will be*

renewed for further period of 20 years and on such terms and condition as may be mutually agreed upon between the parties, 90 days prior to the expiry of the said period of 10 years. However the Board may review and revise/modify the terms and conditions of the agreement once in 10 years.”

16. The perusal of 9.1 also would make it clear that the period of 10 years has to be reckoned from the date of agreement. Even the first sentence in the said Clause ***“This agreement shall be effective upon the execution and delivery day”*** would make it evident that the period of PPA of 10 years has to be reckoned from the date of the signing of the agreement and not from the date of commercial operation.

17. Thus, the conjoint reading of Clause 5.1. and 9.1 of the PPA would clearly provide that the period of 10 years has to be reckoned from the date of the signing of PPA i.e. 23.12.1998 and not from the date of commercial operation as claimed by the Appellant. As such, there is no infirmity in the interpretation and finding of the State Commission.

18. Therefore, we conclude that there is no merit in the Appeal. Consequently, the Appeal is dismissed. No order as to costs.

(V.J. Talwar)

Technical Member

(Justice M. Karpaga Vinayagam)

Chairperson

Dated: 18th July, 2011

REPORTABLE/NON-REPORTABLE

