

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 47 of 2009

Dated: 19th April 2010

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

In the matter of:

**Velagapudi Power Generation Limited
Cold Complex Building, Bundur Road,
Ashok Nagar, Vijayawada 520 007**

... Appellant

Versus

- 1. Southern Power Distribution Co. of A.P.
19-13-65/AA Kesvayana Guna,
Tirupati-517 501** **... Respondent-1**
- 2. Transmission Corporation of A.P. Ltd.
Vidyut Soudha,
Hyderabad** **... Respondent-2**
- 3. A.P. Electricity Regulatory Commission
4th & 5th Floors Singareni Bhavan
Red Hills
Hyderabad-50 004** **...Respondent-3**

Counsel for the Appellant(s) Mr. K. Gopal Choudhary

Counsel for the Respondent(s) Ms. Surbhi Sharma
Mr. Rana S. Biswas,
Mr. A. Dwivedi &
Ms. Shikha Ohri for for R-1&2
Mr. K.V. Mohan for APERC

JUDGMENT

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

1. Velagapudi Power Generation Ltd is the Appellant herein.

2. The Appellant is the generator of electricity out of non-conventional energy source. The sanction was accorded to the Appellant in respect of 3 MW bio-mass power plant at Doppalapudi Village, Guntur District. Accordingly, the Appellant entered into a Power Purchase Agreement (PPA) with Transmission Corporation of Andhra Pradesh Limited (R-2) for the purchase of electric energy generated by the Appellant. By revised proceedings, the Non-Conventional Energy Development Corporation of Andhra Pradesh (NEDCAD) or the Corporation in short), the nodal agency, enhanced the capacity from 3 MW to 4 MW. Consequently another PPA was entered into. Since various disputes arose between Southern Power Distribution Company of Andhra Pradesh (R-1) and AP. Transco (R-2), the Appellant filed a

petition in OP No. 7 of 2007 before the State Commission seeking for various reliefs in respect of the grievances arising out of the disputes relating to the conduct of the licensee (R-1) and for modification of the terms of the PPA and for the implementation of the tariff as paid for other bio-mass power plants and for compensation for loss and injury caused to the Appellant. However, the State Commission passed the impugned order dated 03.12.2008 rejecting all the prayers made by the Appellant and dismissing the petition. Feeling aggrieved over this, Velagapudi Power Generation Limited (Appellant) has filed this Appeal. The short facts of the case are as under.

3. M/s Velagapudi Power Generation Limited, the Appellant herein applied for the sanction from the nodal agency, the Corporation to set up 3 MW capacity bio-mass power project at Doppalapudi Village, Guntur District in Andhra Pradesh. Accordingly, the sanction was granted on 28.04.2001. Pursuant to the said sanction, the Appellant

entered into a PPA on 25.02.2002 with the Andhra Pradesh Transmission Company (R-2) in respect of the said power plant. The PPA provided for the tariff and for the facilities for generation of power and for the supply of power for any purpose prior to the commercial operation date and the PPA was made subject to the consent of the State Commission.

4. On 05.07.2002, the PPA was amended in view of the change of the Appellant's company from private limited to public limited. Thereafter by the proceedings dated 03.08.2002, the Corporation, the nodal agency enhanced the capacity of the project from 3 MW to 4 MW. Consequently an amendment to the PPA dated 05.07.2002 with the revised terms was sent to the State Commission for consent. The State Commission by its order dated 08.08.2002 gave its consent to the Amended PPA. Thereupon, Andhra Pradesh Transmission Company Limited (R-2) entered into an amended PPA with the Appellant incorporating the

enhanced capacity of the project in the PPA. Then the Corporation, the nodal agency, approved change of location of the project to Nandimpalem.

5. Meanwhile, the State Commission initiated proceedings by the order dated 23.10.2003 and determined the tariff at which the distribution licensees are required to purchase electricity from bio-mass sources from 01.04.2004.

6. Consequent to the transfer scheme notified by the State Commission effective from 09.06.2005, the PPA of the Appellant with R-2 and the obligations thereunder to purchase the energy stood transferred and vested to the Southern Power Distribution Company of Andhra Pradesh (R-1). Accordingly, on 06.10.2006, the Appellant entered into a fresh draft PPA with R-1 on the mutually agreed tariff. Then the State Commission granted its consent by letter dated 07.11.2006 and directed for submission of the concluded PPA, duly signed by the parties, to the State Commission. Thereupon the Andhra Pradesh Government

directed the authorities namely the R-2 to take steps for inspection of the power plant. On 22.11.2006 the Appellant's power plant was inspected and the statutory clearance was given. In the meantime, the Appellant filed a Writ Petition before the High Court questioning the letter dated 18.05.2006 of R-2 addressed to the Appellant. However, ultimately on 26.07.2006 the Appellant withdrew the Writ Petition and the same was dismissed as withdrawn.

7. Then the State Commission took up the concluded PPA dated 12.11.2006 and in this regard R-1 sought permission of the R-2 by letter dated 09.12.2006 to allow declaration of commercial operation date for their project for purchase of the delivered energy from the Appellant. Accordingly, permission was granted and R-1 issued a Memo dated 12.12.2006 to permit the Appellant for commercial operation of the plant. The commercial operation date was subsequently declared as 13.12.2006.

8. On 19.12.2006, the Government of Andhra Pradesh, through G.O. No. 346 dated 19.12.2006 rescinded the statutory sanctioned power delegated to the R-2. At that stage on 21.05.2007, the Appellant filed O.P. No. 7 of 2007 before the State Commission for various reliefs in respect of the grievances arising out of this dispute relating to the conduct of the licensee and for the compensation of Rs. 1.395 crores apart from tariff payment at par with other bio-mass power plants. After hearing the parties, the State Commission by its order dated 03.12.2008 dismissed the said petition by accepting the contention of R-1 and R-2. On being aggrieved the Appellant has filed this appeal.

9. While assailing the impugned order the Learned Counsel for the Appellant would make the following contentions:

- (i) The State Commission has failed to exercise powers to grant the relief sought for by the**

Appellant before the State Commission by merely stating that the State Commission has no powers to grant those reliefs. The reliefs sought by the Appellant before the State Commission are within the powers of the State Commission in the adjudication of a dispute between a generating company and the licensee if a wide interpretation is given to the scope of section 86(1)(f) of the Act, the State Commission in the exercise of its functions could grant the relief and remedy to redress grievances Further, the terms of the contract are contrary to law and the same was obtained under coercion or economic duress or undue influence.

- (ii) The consent from the State Commission for a PPA and for amendment thereto has to be obtained only by the licensee and this obligation is**

on the licensee alone and not on the generating company.

- (iii) The PPA having been made subject to the consent of the State Commission is not valid since the licensee alone is obliged to approach the State Commission for consent. The generating company, the Appellant, had a legitimate expectation that this would be duly done. It is not the case that the State Commission has refused to consent which rendered the PPA void.**
- (iv) The letter dated 18.05.2006 written by the R-1 was clearly intended as a coercive measure to obtain a lower tariff than that being paid to other bio-mass power projects pursuant to tariff determination by the State Commission. The chain of events subsequent thereto and the conduct of the R-1 and R-2 on various occasions would indicate that the Appellant was put under pressure and severe economic duress for securing**

a lower tariff. The State Commission did not properly appreciate the sequence of events and draw proper legal inferences therefrom.

- (v) The Appellant had approached the State Commission for implementing the common tariff being paid to other bio-mass power plants pursuant to its tariff determination and not for any new or separate determination of tariff. The Appellant was entitled to be paid the same tariff as was being paid to other biomass power plants. It could not be discriminated against by a lower tariff secured through coercive negotiations and economic duress. The draft PPA dated 25.09.2006 and 06.10.2006 and the PPA dated 12.11.2006 were always expressly on an ad hoc basis without prejudice to the grievances and contentions with regard to tariff and its rights under the PPA dated 25.02.2006. The consent of the State Commission dated 07.11.2006 had necessarily to**

be construed as having taken note of the ad hoc nature and the reservations subject to which the draft PPA was signed.

- (vi) The involvement of the R-2 in withholding and delaying inspection, seeking withdrawl of the Writ Petition by the Appellant and controlling and directing the release of back power by the R-1 and permitting declaration of commercial operation date and purchase of energy is clearly evident from the records produced by the Appellant. There is clearly abuse of dominant position by the R-1 and R-2 acting in concert and in combination. The delay in release of back power was not due to any lack of statutory inspection. It was only intended to mount pressure and economic duress upon the Appellant to agree to a fresh PPA with a lower tariff.**
- (vii) The R-1 being an instrumentality of the State has the responsibility of acting fairly and equitably**

without discrimination and it must also promote generation from renewable sources of energy. Its conduct has got to be tested and judged accordingly. This has not been done by the State Commission. Due to this conduct, the R-1 is liable to pay for the loss incurred by the Appellant by its conduct of delaying the release of back power and the commissioning of the plant from May 2006 to December 2006 and therefore, the Appellant is entitled to compensation for the same.

10. The Learned Counsel for the Respondents including the Learned Counsel for the State Commission have pointed out various reasonings given in the impugned order to justify its conclusions for rejecting the prayers made by the Appellant before the State Commission.

11. The question that arises for consideration in this case is this:

Whether, in the facts and circumstances of the case, the 1st and 2nd Respondents were acting in concert and in combination to coerce the Appellant to accept a power price for the energy generated by it and whether the same was not an unlawful combination and whether the Commission was not required to pass the appropriate orders in terms of Section 60 of the Electricity Act and whether in such circumstances the Appellant is not entitled to the reliefs prayed for ?

12. At the outset it shall be stated that the prayer made by the Appellant petitioner before the State Commission is so comprehensive seeking for the roving enquiry to give omnibus directions claiming strange reliefs which the State Commission is not empowered to grant under the provisions of the Electricity Act.

13. Let us now refer to the prayer made by the Appellant before the State Commission. They are as follows:

- (a) To declare that the conduct of 1st and 2nd respondents in combination and/or severally in the facts and circumstances of the case, and in coercing the Petitioner into re-negotiation of the tariff and terms thereof contrary to the provisions of the Electricity Act 2003 and in withholding the release of temporary supply for start-up and testing of the power plant contrary to the promise held out to the Petitioner and the petitioner's legitimate expectation and contrary to the statutory obligation to supply and in coercing the Petitioner to sign a draft PPA recognizing and preserving the Petitioner's right to legal remedy and thereafter coercing the Petitioner to sign a PPA without the agreed clause preserving rights of legal remedy, precondition to release start-up power and to permit commissioning and synchronizing of the power plant and in adopting and pursuing the coercive illegal, arbitrary**

capricious measures therein, thereby and otherwise as improper arbitrary, unconscionable, capricious and illegal and gross abuse of monopoly, power and dominant position and consequently to restrain them from so combining and/or acting; and

- (b) To declare that the 2nd Respondent or any of its officers had no right to deal in or with, meddle, interfere and/or dictate in matters concerning purchase of energy, and that the 2nd Respondent is prohibited from doing so and to restrain the 2nd Respondent and all its officers and servants from dealing, meddling, interfering and or dictating in any matters of power purchase by distribution licensees; and**
- (c) To direct the 1st Respondent to amend Clause 2.2 of the Power Purchase Agreement dated 12.11.2006 by deleting therefrom the words “Schedule-1A or”, and deleting the words “or**

negotiated tariff mutually agreed by both the parties, whichever is less shall be applicable”, and deleting the last sentence beginning with “Notwithstanding.....” And ending with “.....Variable Cost”, and also by deleting the Schedule 1-A to the said Power Purchase Agreement; and

- (d) To direct 1st Respondent to allow and implement with effect from 13.12.2006, the tariff for the supply of energy generated by the Petitioner at the same rate as for other biomass plants who were also parties to the proceedings and Hon’ble Commission’s order dated 20.03.2004 in accordance with the judgment and order dated 02.06.2006 of the Hon’ble Appellate Tribunal in the appeal against the Hon’ble Commission’s order dated 20.03.2004 in R.P. No. 84/2003 in O.P. No. 1075/2000 subject to the orders in, and the outcome of, the appeals pending before the**

Hon'ble Supreme Court and all or any proceedings consequent thereto; and

- (e) To direct the 1st Respondent to make payments for the energy supplied by the Petitioner at the same rates as contemporaneously being paid to the other biomass plants who were also parties in the proceedings and Hon'ble Commission's order dated 20.03.2004 in accordance with the interim orders and/or arrangements pending disposal of the appeals arising out of the Hon'ble Commission's order dated 20.03.2004 in R.P. No. 84/2003 in R.P. No. 84/2003 in O.P. 1075/2000 pending before the Hon'ble Supreme Court, and consequently to forthwith make payment of the balance amounts thereby becoming payable; and**
- (f) To award and direct the 1st Respondent or both Respondents to pay compensation to the Petitioner for the loss and injury caused to and suffered by the Petitioner by reason of the acts**

and omissions of the Respondents of the aggregate amount of Rs. 1,39,42,246/- or such other amounts in respect thereto as the Hon'ble Commission considers fit in the facts and circumstances of the case, on account and comprised of losses of interest amounts for May 2006 to November 2006 of Rs. 41,84,299/- and Rs. 38,04,541/-, and losses of salaries and wages for the period from May to November 2006 of Rs. 13,86,406/-, and compensation for loss of five months' warranty period for the plant and equipment at Rs. 18,67,000/-and losses of damage, deterioration and degradation of raw material at Rs. 25,00,000/- and loss of Rs. 2,00,000/- in hiring and utilizing a DG set instead of availing temporary supply.

14. In addition to these prayers which have been sought for before the State Commission, the Appellant has made further prayers in this Appeal before this Tribunal, which

are also equally strange. These additional prayers are as follows:

- (i) To award exemplary damages and compensation in the aggravated circumstances of the conduct of the respondents comprising coercion, malice in fact and law, abuse of monopoly power and dominant position, and**
- (ii) To award costs of the petition by way of reimbursement of fees, legal costs and expenses and other costs, and**
- (iii) To direct initiation of such proceedings and/or measures under section 142 of the Act for willful contravention of the Act, rules and regulations, orders and willful abuse of monopoly power and dominant position by the 1st and/or 2nd Respondents acting in combination and concert to the detriment and injury of the Appellant.**

15. While referring to the various prayers and reliefs sought for before the State Commission as well as before this Tribunal, it is noticed that the Appellant has merely contended that the Appellant was compelled by R-1 and R-2 to enter into a PPA dated 06.10.2006 by using its dominant position and the said agreements have been signed by the Appellant under economic duress and therefore, the PPA is void. At the same time, the Appellant is also claiming that the PPA should be amended only to the extent of clause 2.2 of the PPA dated 12.11.2006 by deleting therefrom the words “Schedule-1A” and deleting the words “or negotiated tariff mutually agreed by both the parties, whichever is less shall be applicable”, and deleting the last sentence beginning with “Notwithstanding.....” And ending with “.....Variable Cost”.

16. On going through the various prayers it is clear that the Appellant has through the prayers sought various reliefs

which are mutually contradictory. In short, the Appellant on one hand claims for declaration from the State Commission that he was coerced into signing of the PPA dated 12.11.2006 and as such, such coercion makes the PPA voidable and on the other hand it has merely sought for rectification of the PPA only in respect of some clauses.

17. The rectification of the PPA can be sought under section 26 of the Specific Relief Act, which reads as follows:

“26. When instrument may be rectified – (1) When through fraud or a mutual mistake of the parties, a contract or other instrument in writing and being the articles 628 of association of a company to which the Companies Act, 1956 (1 of 1956) applies) does not express their real intention, then –

- (a) either party or his representative in interest may institute a suit to have the instrument rectified; or*
- (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or*

(c) a defendant in any such suit as is referred to in clause

(d) may, in addition to any other defender open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under subsection (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleadings and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed.

Provided that where a party has not claimed any such relief in the pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.”

18. The reading of the above provision makes it clear that the Appellant has not sought for rectification after satisfying the requirement of section 26. As a matter of fact, the Appellant has failed to disclose that the clause 2.2 of the PPA dated 12.11.2006 is the same as PPA dated 25.09.2006. That apart, the Appellant has never claimed that the PPA dated 25.09.2006 has been signed under duress or coercion.

19. The proper forum for rectification instrument is a civil court exercising ordinary civil jurisdiction. Section 26 of the

Specific Relief Act refers to suit only. Thus for adjudication of rectification, the party has to render extensive evidence in the suit before the civil court. This cannot be dealt with in a summary proceeding before the State Commission. As pointed out by the Learned Counsel for the Respondent, both the State Commission as well this Tribunal cannot declare that the actions of R-1 and R-2 would amount to coercion without holding detailed enquiry and examining the facts. Further, the Appellant is seeking rectification of the PPA which cannot be adjudicated by the State Commission under section 86(1)(f). In fact, section 86(1) refers to the word “disputes”. “Disputes” as used in the said section refers to a dispute arising under the executed contract. Therefore, only with regard to adjudication of the dispute post contract? The State Commission can be approached. Admittedly the prayer sought for in these proceedings would relate not to the post contract but for the execution of the contract. Therefore, the finding rendered by the State Commission with reference to the law of

jurisdiction to go into this sort of dispute, in our view, is perfectly valid.

20. The Appellant has relied on section 21(4) of the Reforms Act to infer that the licensee is under obligation to pay compensation for the losses suffered by the Appellant. This contention in the facts and circumstances of the case does not merit consideration. Even assuming that there was no obligation on the part of the generating company to obtain the consent, there is no reason given by the Appellant as to why no attempt at any stage was made to verify the status of the amended PPA executed on 23.08.2002. Admittedly, even at that stage when the third transfer scheme was published no effort was made by the Appellant to verify the status of the amended PPA.

21. According to the Appellant, the PPA dated 25.02.2002 as amended on 23.08.2002 is not void. This contention also is not correct because the PPAs which received the consent of

the State Commission under section 21.4 of the A.P. Electricity Reform Act, 1998 alone are valid and binding. In other words, the PPAs with the corresponding rights and obligations shall be vested with the distribution licensee. Admittedly, there was no consent of the State Commission in this regard as per clause 21.4 of the A.P. Electricity Reform Act, 1998.

22. As per section 86(1)(f), the State Commission is under obligation to regulate electricity purchase and procurement process of the distribution licensee by approving the PPA entered into between the generating company and the distribution licensee. The sale and purchase of electricity including the price is recommended by the State Commission. Therefore, the approval of the State Commission is necessitated to ensure that transparent and fair procedure is adopted.

23. The PPA dated 25.02.2002 was made subject to obtaining the consent of the State Commission as per section 21 of the Andhra Pradesh Electricity Reforms Act, 1998. Clause 9.2 of the agreement is quite relevant, which is reproduced below:

“No oral or written modification of the Agreement either before or after its execution shall be of any force or effect unless such modification is in writing and signed by the duly authorized representative of the Company and the APTRANSCO, subject to the condition that any further modification the Agreement shall be done only with the prior approval of the Andhra Pradesh Electricity Regulatory Commission. However, the amendments to the Agreement as per the respective orders of APERC from time to time shall be carried out. All the conditions mentioned in the Agreement are with the consent of APERC.”

24. On going through this clause, it is clear that subsequent to the amendment to the PPA dated 25.2.2002 it had not obtained the sanction from the State Commission and as such the PPA dated 25.02.2002 became unenforceable.

25. As pointed out by the Learned Counsel for the Respondents, the State Commission correctly held that section 21 of the A.P. Electricity Act, 1998 deals with the restrictions on licensees and generating companies. From the reading of the different sub-sections, it is clear that obtaining consent from the State Commission is mandatory and grant of such consent by the State Commission is not an empty formality.

26. Section 62 of the Electricity Act empowers the Appropriate Commission to determine tariff for supply of electricity by a generating company to a distribution licensee. In the present case, the Appellant never followed procedure prescribed under section 64 of the Act, including

filing of an application under sub-section (1) and the publication of the application under sub-section (2), etc. Therefore, the Appellant cannot seek for its tariff to be determined by the State Commission under section 62 of the Electricity Act.

27. As indicated earlier, the main contention of the Appellant is that the intention of respondent's letter dated 18.05.2006 was coercive and an act of economic duress and the approved PPA dated 25.09.2006 and dated 06.10.2006 and the PPA dated 12.11.2006 were admittedly mere ad-hoc arrangements. It is also the contention by the Learned Counsel for the Appellant that delays and obstructions caused by R-1 and R-2 subsequent to the PPA dated 12.11.2006 were calculated to further subject to coercion and economic duress and this is so on the part of respondents since the respondent licensee are instrumentalities of the State Government who are bound to act fairly and without discrimination. These contentions have no basis. As pointed

out by the Learned Counsel for the respondents, the draft PPA executed on 25.09.2006 is voluntary and without any alleged coercion. The appellant in his pleadings has categorically stated that it had continuously followed up with the respondents to give finality to the draft PPA. Article 2.2 of this draft PPA is ad-verbatim same as the concluded PPA dated 12.11.2006.

28. It is quite strange that the Appellant prays for the rectification of the PPA in respect of article 2.2 only on the point of alleged coercion. The reading of the letter dated 18.05.2006 would not show that it has to be construed as a coercive or an act of economic duress. On the other hand, the words contained in the letter issued by R-1 would show that it confers freedom and choice to the Appellant to deal with the generated energy as per its own decision. According to the letter it is open to the Appellant to have access and sell the generated energy to third party if a better price was available to him. There was no restriction upon the

Appellant to sell the electricity to the respondent alone or to a particular person.

29. It is contended by the Appellant that the respondents refused to supply back-up power till the fresh agreement is signed. Admittedly, the Appellant filed a Writ Petition praying for several reliefs. Strangely, the Appellant abandoned the same and withdrew the Writ Petition. Had there been any truth in their allegations, the Appellant would have pursued the remedy before the High Court where the Appellant was able to get some interim relief. Therefore, this contention also urged by the Learned Counsel for the Appellant cannot be accepted.

30. It is again contended by the Learned Counsel for the Appellant that the delays and obstructions subsequent to PPA dated 12.11.2006 were calculated to subject to further coercion and economic duress to withdraw the petition. The Appellant has stated that the delay caused by the respondents to provide back-up power was solely

responsible for pushing the Appellant to a corner which subsequently forced the Appellant to enter into a PPA dated 12.11.2006. The Appellant has never mentioned in his pleadings that it has time and again failed to abide by the terms of the PPA dated 25.02.2002. As per the MOU dated 09.06.2003, the Appellant had to commission the project within 24 months from the date of signing of the MOU. The Appellant had not only failed to commission the project as per MOU dated 09.06.2003 but also not finalized the site for construction of the power plant. On the other hand the Appellant had requested for a change of location from Doppalapudi to Nadipalem in Guntur District. As a matter of fact, this request of the Appellant was considered by the Corporation, Nodal Agency and consent to the change of location was given on 07.06.2004.

31. As indicated above, the Appellant obtained an interim order from the High Court on 06.07.2006 which clearly directed the respondents to provide back-up for testing the

power plant and also directed the respondents to purchase power at Rs. 3.01 from the Appellants. It is quite strange on the part of the Appellant that despite having the orders of the High Court in its favour, it had not chosen to get the order enforced despite the allegation that the respondents failed to abide by the interim order. On the contrary immediately after the interim order, the respondents filed a counter in the Writ Petition and the matter was argued at length and actually both parties expressed their readiness for final disposal of the matter the High Court which heard the matter at length on different dates but ultimately the Appellant had to withdraw the petition.

32. The Appellant had stated that it had procured raw materials for testing and commissioning the power plant and that due to the delay caused by the respondents, the said raw materials were deteriorating which was causing financial loss to the Appellant and this was another reason which compelled the Appellant to sign the PPA dated 12.11.2006

which was approved by the State Commission on 07.11.2006. Thereupon the Appellant entered into PPA dated 12.11.2006 based on the draft PPA dated 06.10.2006. At that stage the Appellant withdrew the Writ Petition on 27.11.2006 and the plant commenced commercial operation on 13.12.2006. Despite the commencement of the operation of the power plant in December 2006, acting upon the PPA the Appellant for the reasons best known to it choose to file the present petition before the State Commission alleging coercion and financial duress etc only on 22.05.2007, i.e. after more than 7 months. There was no reason as to why the allegations of coercion have not been agitated before the same forum prior to its withdrawl.

33. As mentioned earlier, clause 2.2 of the PPA dated 12.11.2006 is the same as the draft PPA dated 25.09.2006. The Appellant has never claimed that the PPA dated 25.09.2006 has been signed under duress or coercion.

34. In spite of the claim for compensation for damages, the Appellant has failed to make out any case for damages. Nothing has been indicated to establish that there is a default on the part of the respondents which makes them liable for payment of any compensation. No material has been shown that there is breach of agreement. As such the Appellant has miserably failed to make any case for any loss and as such relief sought cannot be granted by the State Commission. As correctly pointed out by the Learned Counsel for the respondents, the Appellant failed to file along with the petition before the State Commission any bill or copy of its accounts or any substance supporting its claim for damages. Of course, at the end the Appellant filed a certificate which only shows interest paid from May to December 2006, salary and wages from May to December 2006. Therefore, the documents filed by the Appellant to prove the losses have not been filed at the appropriate stage and therefore it cannot form the basis for creating any liability upon the respondents.

35. On going through the impugned order, it is evident that the State Commission has taken into consideration all facts and circumstances alleged by the Appellant and has come to the correct conclusion after assigning elaborate and correct reasons.

36. In such situation we do not find any ground to interfere with the findings of the facts and conclusions arrived at by the State Commission. Therefore, there is no merit in this Appeal. Accordingly, the Appeal is dismissed. No cost.

**(H.L. Bajaj)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

Dated: 19th April, 2010.

Reportable/Non-Reportable.