



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad - 500004

O.P. No.69 of 2012

Dated 24.11.2012

Present

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

Between

M/s. SLT Power & Infrastructure Projects Pvt. Ltd
Bhudhan Pochampally (Village Mandal),
Nalgonda District.

.... Petitioner

And

1. Government of Andhra Pradesh,
Principal Secretary, Department of Power,
Secretariat, Hyderabad.

2. Central Power Distribution Company of A.P. Limited
Mint Compound, Hyderabad - 500 004.

.... Respondent

This petition has come up for hearing on 17.11.2012 in the presence of Sri. Koka. Srinivasa Rao, Advocate for the petitioner and Sri P.Shiva Rao, Advocate for the respondent and having stood over for consideration to this day, the Commission delivered the following:

ORDER

This is a petition filed by the petitioner under Article 11 of the Power Purchase Agreement read with Section 64 of the Electricity Act, 2003 (for short, 'the Act').

2. The case of the petition is briefly as follows:
- i) The petitioner company is a company registered under Companies Act bearing registered No. 42464, dated 20.03.2004 having its corporate office at the addressed mentioned in the cause title and power generating unit at Bhudhan Pochampally Village, Nalgonda Disitrect.
 - ii) The main objectives and activities of the company under the memorandum and articles of the association are to carry on the business of generation of power by establishing plants based on poultry industrial waste etc.
 - iii) On 21.04.2004 an agreement dt. 06.04.2004 was entered between NEDCAP and the petitioner company. The petitioner company envisaged the said project with a prevailing APERC tariff. Thereafter, APERC has envisaged their tariff for purchase of power from NCE projects, as per the Commission's order dt. 20.03.2004 in R.P. No.84 of 2003 in O.P. No.1075 of 2000. As per the said, the industrial waste projects were given tariff price on par with biomass power plants. Since Power Project of 2.0 MW has not economically viable and on account of pressure from the Banker and in view of the Tariff Order dated 20.03.2004 and the capacity of the petitioner company was increased by 1.0 MW. Thus, the project was worked out for 3.0 MW.
 - iv) Power Purchase Agreement dt. 28.07.2004 was entered into between the petitioner company and APTRANSCO for a proposal of 0.2 MW for auxiliary consumption and 1.8 MW for export to grid for sale to APTRANSCO. As per Section 21 of the AP Reforms Act, the petitioner company obtained consent from APERC, for enforcing the agreement. As per Article 2, APTRANSCO undertook to pay the tariff for energy delivered at the inter connection point for sale to APTRANSCO, as applicable as on date of commercial operations, subject to the review of the price by APERC from time to time.
 - v) On receipt of the letter dated 22.10.2005, as an enclosure to the letter dated 06.03.2006 by the Secretary, APERC, the petitioner company have submitted a representation dt. 25.03.2006 to the Chairman, APERC,

requesting to consider the project for consent. It was the main contention of the petitioner company that when the PPA dt. 28.07.2004 was sent back without consent by APERC with a direction to APTRANSCO to amend the article 1.4 on delivered energy clause of the agreement. The amendment was incorporated in Agreement dt. 02.03.2005 and was sent to the APERC for consent. It is pertinent to mention that the specific tariff order R.P. No. 84 / 2004 in O.P. No. 1075 / 2000 exists at the time of the agreement which is delivered by the APERC and Article 2 of the APTRANSCO PPA says that the tariff paid at delivered energy is subjected to the APERC tariff order and this tariff will be revised after 10 years from the day of commissioning of the project. The power purchase agreement executed between APTRANSCO and the petitioner company on 2nd March 2005 is as per the conditions given by APERC. The orders in O.P. No. 9 of 2005 were delivered on 27.09.2005 were delivered on 27.09.2005 by which time, the PPA was executed and sent for consent. Hence, it was represented that the later order in O.P. No. 9 of 2005 is not applicable to the PPA dated 02.03.2005.

vi) Petitioner left with no other alternative, represented to the Hon'ble Chief Minister of AP Late Dr. Y.S. Raja Sekhara Reddy Sir vide letters dated 17.01.2005, 05.02.2006, 18.04.2006 and 15.07.2006 seeking support to their project which is 1st of its KIND INDIA as per APERC tariff.

vii) The petitioners had a discussion with their share holders and directors of the company with regard to the decision that has to be taken by the company. Considering the investment of Rs. 1,100 lakh, besides the pressures from the bankers, machinery suppliers and the mounting interests due to the delay in execution of the project, it was thought over that if they do not accept the proposed price of CMD, APTRANSCO the petitioner company will not be given 33 kV OH line permission and total project will be collapsed. Under these circumstances, left with no other alternative, the petitioner company was made to accept the price that was decided by the CMD of APTRANSCO.

viii) The petitioner requested again for APERC tariff. But the authorities did not head to the requests of the petitioner company and unilaterally made a final decision that the petitioner will be given only 2.99 per unit for the 1st year instead of APERC tariff. This left the petitioner with no option of asking APERC tariff. Then CMD said that the petitioner will be given 0.5 MW more capacity.

ix) The petitioners were compelled to give letter immediately on the same day accepting for entering in to the PPA with APCPDCL as per the draft PPA. The authorities took petitioner company's letter pad, typed the matter and took signature from the Managing Director of petitioner company. It can be seen that the CGM letter and petitioner's letter dt. 30.12.2006 are with same font. Normally the font used by the petitioner company is "times new roman" font, which can see in all the letters given by the petitioner, to CPDCL. Since no option is left, the petitioner gave a letter as per their requirement on the same day 30.12.2006 only.

x) When the petitioner spoke to the officials of the IPC, then they said that as per schedule 1A, SLT is having two tier tariffs which clearly represent that the tariff of Rs. 2.99 per unit is restricted upto F.Y. 2008-09 only. Then the petitioner worked it and found that for the financial year 2007-08 and 2008-09, as per APERC tariff the petitioner have to get Rs.3.08 and Rs.3.11 per unit but the petitioner will be getting only Rs. 2.99 per unit till that years.

xi) The Secretary, APERC communicated the consent of the Commission to the Power Purchase Agreement with the petitioner company and Infrastructure Projects Pvt. Ltd., in respect of 3.5 MW capacity industrial waste (poultry litter) based power project, vide Lr. No. E:901 / DD-PPP / 2007, dt. 19.01.2007. In the said letter, a reference to the CGM, APCPDCL Lr. No. CGM (Comml & RAC) / SE (IPC) / F.SLT / D.No. 03 / 07, dated 03.01.2007 was made. Accordingly, on 2nd February 2007 the petitioner was made to enter into a PPA with APCPDCL for 3.5 MW.

xii) As per the letter dt. 19.01.2007, the PPA dt. 30.12.2006 entered into with the petitioner by APCPDCL had to be executed on Non-judicial stamp paper of worth Rs.100/-. The PPA dated 02.02.2007 which is executed, nowhere makes any reference to the consented PPA dt. 30.12.2006 which is communicated vide letter dt. 19.01.2007 by the Secretary, APERC to the 2nd respondent. Hence, the PPA that is executed is liable to be set aside and the same is not binding on the parties to the Agreement.

xiii) The APCPDCL took 13 months time for sanctioning 33 kV OH line for the petitioner company, which hampered the total project in cost-wise, in erection and commissioning of the plant, engineering wise etc. The above issues clearly show that APCPDCL, APTRANSCO has created intentional pressures on the petitioner and made the agreement in violation of the APERC tariffs.

xiv) It is established that by virtue of above position between the contracting parties, an unequal bargaining power prevailed over the petitioner and the APCPDCL being in a dominate position to control the transaction, obtained an unfair advantage over the petitioner, by the said position and got the contract concluded for a tariff of Rs. 2.99 per unit, thus establishing undue influence and hence, there is no free consent to the contract. Hence, there is no legal force or effect in the contract.

xv) The petitioners have started running the power plant in January, 2008 but they have been facing lot of problems in burning poultry waste. There is a huge quality difference in the each truck of poultry waste from different farms. When the bad quality comes with stones there is clinker formation in the boiler which is making to stop the plant totally. Therefore, the petitioner again they worked out in such a way that the petitioner individually attended each poultry farm and analyzed the ultimate, proximate and ash analysis of the poultry waste.

xvi) The petitioner have generated 3,72,945 units in January, 2008 with a net export to the grid at 3,24,300 units. The petitioner calculated the cost of raw material consumption, operation and maintenance costs,

interests etc., and found that running the plant with Rs. 2.99 / unit is a huge loss for the petitioner.

xvii) The petitioner mix 75% poultry waste and 25% rice husk then the average raw material consumption is 1.80 tons for generating 1 MW power. The average cost of raw material is coming to Rs. 1,375 per ton and the cost of 1.80 ton is Rs. 2,475. That means for generating one unit the raw material cost is Rs. 2.48 only. The operation and maintenance costs are Rs. 0.35 per unit. The other costs like spares, water, chemicals, oils, diesel, bed material etc are of Rs.0.18 per unit. Thus, the total costs are coming to Rs.3.01 / unit on 80% PLF. Apart from that the petitioners have term loan and interest repayments, staff salaries, yearly maintenance etc. The PLF of 80% is also not guaranteed in this new technology.

xviii) Now, the Commission passed the revised order on 31.03.2009 and in which the variable part of tariff for various types of projects covering period from 2009-10 to 2013-14 has been decided. The petitioner understand that the Commission has decided the variable part tariff beyond 31.03.2009 and the fixed part of tariff has been kept as decided in the order dated 20.03.2004.

xix) The fixed cost is Rs. 1.49 per unit and variable cost is Rs. 2.80 per unit thus, the total cost comes to Rs. 4.29 per unit, thus the bill raised by the petitioner is in line with the terms and conditions of PPA and APERC guidelines / order.

xx) Actually if the petitioner consider 80% PLF the total generation should be 1001.56 lakh units in this 4 year 1 months time. Since the plant is not viable running at Rs. 2.99 per unit the petitioner could not run the plant. If the petitioner could not get the present APERC tariff, the petitioner will be totally ruined and the bankers and unsecured loans people are already putting pressure on them which will lead to the collapse of many families and in future no young entrepreneurs will dare to develop UNIQUE and research technologies which will help the environment of Andhra Pradesh, India.)

- xxi) The actions of the respondents are wrong and contrary to the fundamental rights guaranteed under Article 14 read with Article 301 of the Constitution of India, the petitioner agreed to execute the contract under the compelling situations. The Commission has given the guidelines to fix the tariff based on assessing the fixed and variable costs.
- xxii) The petitioner struggled to supply the power at the rates prescribed in the agreement. The petitioner approached the 2nd respondent requesting for revision of tariff as per this Commission orders dated 20.03.2004 and 31.03.2009 and thus treat the petitioner on par with other competitors in the market. But, the petitioner received no response from the respondents. Due to this petitioner could not run the power plant.
3. It is therefore prayed that the Commission may be pleased to:
- i) Direct the respondents to implement the guidelines issued by this Commission to determine the tariff payable to the petitioner.
 - ii) Determine tariff payable to the petitioner for power supplied from the date of commercial operation to till date.
 - iii) Direct the respondents to implement the tariff order determined by this Commission vide order dated 31.03.2009 in O.P. No. 5 of 2009.
 - iv) To pass such other and further order(s) as this Commission may deem fit, just and proper in the interest of justice.

4. A reply was submitted by respondents 1 & 2. The case of the respondents is briefly as follows:

- (i) The petition is not maintainable at law before this Commission.
- (ii) The petitioner got the permission dated 13.03.2006 issued by NEDCAP to establish Industrial Waste (Poultry litter) based power project. Subsequently during the course of progress of the project, the petitioner came forward to supply power to APCPDCL. Therefore, in compliance of the order dated 27.09.2005 in OP No. 9/2005, at para 21, the petitioner negotiated the tariff of the petitioner, within the ceiling limit as per the order dated 20.03.2004 of the Commission. Then both

parties had ad-idem on the quantum of tariff payable to petitioner. Consequently the same was incorporated as part of standard PPA and after duly initiating, by both parties, it was submitted for approval of the Commission. The tariff that is agreed by both parties is with a ceiling limit of Rs.2.99 per unit as per Schedule IA and Clause No. 2.2 of Article 2 of PPA. The said tariff is well within the ceiling limit of; the tariff that works out as per the order dated 20.03.2004. It was specifically stipulated at Schedule - IA of PPA that "In any year, if fixed charges and variable charges exceeds Rs.2.99 per unit, the fixed cost is reduced accordingly such that total cost is limited to Rs.2.99 per unit". As per the said terms of the PPA the respondent has been paying Rs. 2.99 per kWh for the energy supplied to APCPDCL.

- (iii) The only ground that is canvassed by the petitioner is to ignore that part of PPA where under it is agreed to supply energy at a mutually decided price is that the same was executed under compelling circumstances.
- (iv) The said contention is baseless being false. When a similar ground was canvassed in Appeal No. 47 of 2009, by the some other NCE generator namely M/s Velagapudi Power the Hon'ble Appellate Tribunal vide its orders dt.19.04.2010 held that the rectifications of PPA can be sought u/s 26 of specific relief Act and the proper forum for such rectification of PPA is a civil court exercising ordinary civil jurisdiction, and that same cannot be dealt in a summary proceedings by the APERC. It is further held that disputes as said term used in the said section of 86(1) (f) to dispute arising under executed contract i.e, post contract, the state Commission can be approached. It is also held that such claim of compelling circumstances preceding the execution of PPA would not relate to post contract. Therefore based on the said judgment of APTEL, the petition deserves to be dismissed.
- (v) The petitioner's contention that "the APTRANSCO undertook to pay the tariff for energy delivered at the interconnection point for sale to APTRANSCO, as applicable as on date of commercial operations,

subject to the review of price by APERC from time-to-time” is not correct.

- (vi) On behalf of M/s. SLT Power & Infrastructure private Ltd, Sri G.Vijaya Bhaskar Reddy has attended for discussions with APCPDCL on 30.01.2006. During discussions, APCPDCL has offered a price of Rs.2.65 based on the ROE – 14%, fuel escalation at 4%, effective interest rate 7.5% etc and Sri G.Vijaya Bhaskar Reddy was advised to respond to the above offer. But the developer has not responded during discussions on that day.
- (vii) As the APERC has not given consent as on date and directed the APTRANSCO to re-enter the PPAs by DISCOMS, the order in OP No. 9/2005 dated 27.09.2005 is applicable to petitioner.
- (viii) The petitioner vide letter dated 16.12.2006 has informed the CMD/APCPDCL that they are interested to enter PPA with APCPDCL as per APERC guidelines at a rate of Rs.2.99 per unit.
- (ix) It is also not true that petitioner were compelled to give letter immediately on the same day accepting for entering the PPA with APCPDCL and APCPDCL had not forced the petitioner to give the acceptance letter for signing the draft PPA. If this was happened forcefully, why the petitioner had signed the alleged letter dated 30.12.2006 and subsequently signed the draft PPA dated 30.12.2006 and final PPA dated 02.02.2007.
- (x) As per clause no. 6 of preamble of PPA dated 02.02.2007, the Agreement is enforceable. Hence, the contention of the petitioner i.e, “PPA executed is liable to be set aside and same is not binding”, is not tenable at law.
- (xi) After a gap of seven months, petitioner applied for back power on 01.08.2007. The length of 2.2 KM, 33 kV line can be completed in one month’s time. But the petitioner himself has taken more time to complete this line and bay extension work.
- (xii) Once the petitioner agreed to supply power for Rs.2.99 per unit and entered PPA which is calculated based on the prevailing market rates

and other factors, binding the same through PPA, the petitioner is estopped and precluded to make any attempt to fizzle out of the arrangement.

- (xiii) The tariff for petitioner's plant was negotiated as per Commission's order dated 27.09.2005 on the RPPO of Discoms in OP No. 9 of 2005. The order dated 31.03.2009 is directly not applicable to the petitioner.
- (xiv) In these circumstances and for the facts and reasons stated above, it is prayed that the Commission may be pleased to dismiss the petition with costs.

5. The learned advocate for the petitioner argued that the petitioner started power project on Industrial Waste (Poultry litter) and entered into PPA on 28.07.2004 and amended on 02.03.2005 and 02.02.2007 compelled to enter into PPA @ Rs.2.99 per unit and they could not run unless it is more than Rs.4.29 per unit and that the Commission itself passed several orders granting more than Rs.3.50 per unit. It is also further contended that they were addressing letters for revision of tariff of the PPA and the respondent did not adhere to the request and that they were compelled to approach the Commission for revision of the tariff at the rate more than Rs.4.29 per unit by the Commission. Hence, they prayed the Commission to revise the tariff more than Rs.4.29 per unit or as per orders of the Commission dated 31.03.2009 in O.P. No.5 of 2009. It is also pointed out by the counsel for the petitioner that the Commission has got powers to revise the tariff even though, there is mutual consent by looking into other circumstances and the rates prevailed at that time and also in the interest of developers.

6. The learned advocate for the respondent argued that there is no coercion or undue influence as such and the petitioner voluntarily entered into PPA with a ceiling limit of Rs.2.99 per unit and having come to know about the order passed in IA 84/2003 in O.P.1075/2000 passed by the Commission in the year 2004. It is also further contended that the petitioner is estopped from raising such contentions having entered into PPA at Rs.2.99 per unit and that the claim is barred by limitation.

7. Now, the point for consideration is, “whether the petitioner is entitled for revision of tariff as prayed for”?

8. The petitioner filed the above said petition under Article 11 of Power Purchase Agreement read with S.64 of EA 2003. The tariff is already fixed by them by mutual consent and executed the PPA on a stamped paper on 28.07.2004 and amended PPA on 02.03.2005 and 02.02.2007 and obtained consent from the Commission u/s 21(4)(b) of APER Act, 1998.

9. It is also necessary at this juncture to state that after receiving the letter from the Commission, both parties executed final agreement on a non-judicial stamp paper worth Rs.100/- on 02.02.2007 in accordance with the procedure and thereupon concluded PPA duly signing by both parties voluntarily within the stipulated time prescribed by the Commission.

10. The petitioner has addressed letter to the respondent for revision of tariff and they are facing problems in running the plant due to hike in cost of raw material. The petitioner has also addressed letter to the APERC for revision of tariff on the orders passed by the Commission. Hence, there is no other option left open to them, except to file the above said petition to revise the tariff.

11. It is the petitioner, who has addressed letters to the Government to consider the request made by the petitioner for revision of tariff. On the letter addressed by the petitioner several meetings were conducted but they did not agree for the tariff requested and ultimately compelled the petitioner to sign on the Agreement. Hence, the petitioner approached the Commission and requested to revise the tariff but the respondent did not agree for revision of the tariff as it has a ceiling limit fixed at the time of entering into PPA. The respondent has not approached the Commission for consent and they have not accepted the rate as requested by the petitioner and there upon the petitioner approached the Commission for revision of tariff.

Article 2.2 of the PPA reads as follows:

“The Company shall be paid the tariff for the energy delivered at the interconnection point for sale to DISCOM at the rates specified in Schedule –IA or the tariff as determined by the Commission for Industrial Waste based power projects from time to time, whichever is less shall be applicable. Notwithstanding the tariff indicated above, there will be a special review of purchase price on completion of ten years from the date of commissioning of the project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the variable cost.”

Schedule – IA

The variable charges for the period from 2009-10 onwards will be considered as fixed by the Commission for such projects from time to time.

In any year, if total cost exceeds Rs.2.99 per unit, the fixed cost is reduced accordingly such that the total cost is limited to Rs.2.99 per unit.”

Art. 2.2 states that the tariff may be fixed by the Commission from time to time or rate fixed in the Schedule –IA whichever is less. It is nowhere mentioned that the tariff is to be fixed by the Commission alone, it may be negotiated by the parties and obtain consent of the Commission u/s 21(4)(b) of APER Act, 1998. The counsel for the petitioner submitted that it was an enabling provision and the Commission has got absolute power to fix the tariff.

He has also relied upon a ruling reported in 2012 ALR (APTEL) 0429 *Konark Power Projects Ltd., Karnataka v. Bangalore Electric Supply Company Ltd and KERC, Karnataka*. In this it was held that

“The State Commission has power to modify the Tariff for concluded PPA in larger public interest. The guiding principles laid down in Section 61 of 2003 Act would indicate that the Commission has to maintain a balance so that the generators also may not suffer unnecessarily. In the context of prevailing power situation in the country, it would not be desirable to keep any generating unit out of service for want of “just” Tariff. The matter was remanded to the State Commission with the direction to the Appellant to place all the material before the State Commission to enable it to decide the issue in the proper perspective.”

In the above said decision basing on the Regulation permitted by KERC ie., (Power Purchase from Renewable Sources by Distribution Licensee and Renewal Energy Certificate Framework) Regulations, 2011. These Regulations has repealed the 2004 Regulations. Regulation 9 of the new Regulation deals

with determination of tariff for electricity from renewable sources of energy. As per the Regulation 9(1), the Commission has power to determine at any time tariff for purchase of energy from renewable sources of energy by distribution licensee either *suo moto* or on an application by a generator or by distribution licensee. There is no such regulation or provision in APERC enabling the Commission to fix the tariff either *suo moto* or on an application by a generator or by a distribution licensee.

The above said ruling is not applicable to the facts of this case.

12. As per S.86(1)(b) of EA 2003, the State Commission upon an application regulate electricity purchase and procurement process of the distribution licensee by approving the PPA entered into between generating companies and the distribution licensees, the sale and purchase of electricity including price is recommended by the State Commission. Hence, the approval of State Commission is necessary to ensure a transparent and a fair procedure is adopted.

13. The petitioner in the petition mentioned that they were in severe constraint and were suffering loss apart from pressure from the bankers who had funded the project and agreed for the tariff @ Rs2.99 per unit even though it is not viable. It was also contended that the respondent being in a dominant position to control the transactions obtained an unfair practice on the petitioners and the respondent got contract concluded for the tariff of Rs.2.99 per unit, and there is undue influence in obtaining contract and there was no free consent to the said contract.

14. The petitioner is aware and mentioned in the petition about the awards passed by the Commission in RP 84/2003 in 1075/2000 @ Rs.3.37 per unit. So it is not a case that he is not aware of the same. The petitioner is aware about the rate as per the orders of the Commission and entered into PPA @ Rs.2.99 per unit. It is the ceiling limit that they have fixed. S.19 (A) of Indian Contract Act deals with the consent to an agreement caused by coercion, fraud or undue

influence and when the agreement itself is voidable at the option of the party whose consent was so obtained, it can be cancelled or accepted. Art. 59 of the Limitation Act deals with cancellation or setting aside of an instrument or decree or for the rescission of the contract and the limitation fixed is three years. It is neither for cancellation nor for setting aside an instrument executed by the parties whose consent was obtained by using undue influence. The approach made by the petitioners is only to modify the tariff accepted during the negotiations. The other terms and conditions of the document are not disputed. Therefore no such provision is incorporated either in the Contract Act or in the Limitation Act fixing the limitation period for modification of the tariff fixed in the contract.

15. The onus of proving undue influence is on the petitioner. No material is placed before the Commission that coercion or undue influence is exercised by the respondent in obtaining the consent of the petitioner. Except making a bald statement of undue influence exercised by the respondent being in a dominant position, there is no other material placed before the Commission to substantiate the circumstances. What is the loan he has obtained and with whom and what are the circumstances which forced in obtaining consent. Whether the alleged loans are prior to the PPA or after PPA by the petitioner etc., particulars are not placed before the Commission. What are the circumstances which forced them to accept the ceiling limit of tariff of Rs.2.99 per unit, though the prevailing rate even as per the Commission's order is Rs.3.37 per unit.

16. It is not the case that the contract is not concluded in one day. At the first instance they have to submit their draft PPA to the Commission. The Commission after verifying the same will order the parties to prepare a regular PPA on a non-judicial stamp paper worth Rs.100/-. After submitting the stamped PPA, the Commission will pass an order u/s 21(4) of APER Act, 1998. At any stage of the proceedings, the party may decide before order is passed u/s 21(4) of APER Act. In this case, two amended PPAs were entered, one in 2005 and another in 2007. The petitioner has not explained as to why they have not

rescinded the contract. The petitioner has not informed about the prevailing rate and the rate now thrust upon to the Commission before passing the order of consent u/s 21(4) of APER Act, 1998. They ought to have placed the things before the Commission or at least semblance of protest for the rate. The Commission may be in a position to consider that protest and may arrive at a conclusion that the consent might have obtained by using force. The burden cast upon the petitioner is not discharged by establishing the alleged undue influence exercised by the respondent. Therefore, the petitioner is not entitled to the relief as claimed in the petition.

17. Furthermore, the Commission is not competent to fix the tariff when the other party is not agreeable for the same. The party has to take its own steps to rescind the contract by approaching the competent civil court provided the claim is not barred by time.

18. The PPA is a contract between the parties. If there is any dispute in between the parties in connection with terms and conditions of the PPA, then the Commission is competent to enter into and settle the disputes in between the parties u/s 86(1)(f) of EA 2003, but not by fixing the tariff contrary to the terms of the PPA on the request made by one of the parties.

19. In a similar matter in between Velagapudi Power Generation Ltd. Vs M/s. APSPDCL and other in Appeal No. 47 of 2009 dated 19.04.2010, the Hon'ble ATE held that the remedy left open to the parties is to rescind the contract by approaching a Civil Court by filing a suit under S.26 of Specific Relief Act but not through a summary proceeding before Commission for such rectification.

20. The petitioner having failed in establishing undue influence the petition is not sustainable.

21. In the above said circumstances, we are of the considered opinion that the petition is not maintainable on facts and also under law and the same is liable to be dismissed.

22. In the result, the petition is dismissed. No order as to costs.

This order is corrected and signed on this 24th day of November, 2012

Sd/-
(R.ASHOKA CHARI)
MEMBER

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN