

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S. Jayaraman, Member**

Petition No. 7/2005

In the matter of

Non-compliance of the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004.

And in the matter of

Subhash Kabini Power Corporation Ltd., Bangalore.

... Respondent

The following were present:

Shri Pradeep Gupta, Advocate, SKPCL

Shri. Yadendra Singh, Advocate, SKPCL

**ORDER
(Date of Hearing 5.11.2009)**

Subhash Kabini Power Corporation Ltd., Bangalore, (hereinafter "the licensee"), was granted Category 'A' licence for inter-State trading in electricity, vide the Commission's order dated 26.5.2005. Issue of the above licence was subject to the licensee, in future complying with the provisions of the Act, the rules framed by the Central Government and the regulation specified by the Commission from time to time in all respects. Clause (a) of regulation 11 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004 (the trading regulations) provided that "the licensee shall supply such information, as may be called for by the Commission from time to time." In exercise of the above powers, the Commission, issued notice vide order dated 13.2.2009 to the licensee to submit by 10.3.2009, the special balance sheet as on 31.12.2008.

2. As the licensee had not complied with the above directions, notice was issued vide order dated 16.6.2009 directing the licensee to show cause as to why penalty under section 142 of the Electricity Act, 2003 (the Act) be not imposed on it for contravention of and non-compliance with the Commission's order dated 13.2.2009. The case was heard on 21.7.2009 when none appeared on behalf of the respondent. Thereupon, the Commission vide its order dated 7.9.2009 imposed penalty of Rs. One lakh on the licensee for contravention of the directions of the Commission contained in order dated 13.2.2009. The penalty was to be deposited by 30.9.2009. By the same order, the licensee was further directed to show cause, by 30.9.2009, as to why the trading licence granted to it be not evoked for non-compliance with the Commission's directions which were part and parcel of the terms and conditions of the trading licence.

3. During the hearing on 14.10.2009, learned counsel for the licensee requested for one week's time for filing reply and the same was allowed. Subsequently, an affidavit dated 9.10.2009 from the licensee was received in the Commission on 20.10.2009. During the subsequent hearing of the case on 5.11.2009, learned counsel for the licensee submitted that he would be filing a more detailed affidavit during the course of the day and pleaded for waiving the penalty imposed vide the Commission's order dated 7.9.2009. The above said affidavit dated 5.11.2009 has since been filed and taken on record.

4. Having heard the learned counsel for the licensee and perused the submissions through the affidavits, we proceed to dispose of the matter.

5. In effect, the licensee seeks review of the Commission's order dated 7.9.2006 imposing penalty of Rs. one lakh for contravention of the directions of the Commission contained in the order dated 13.2.2009 directing the licensee to submit the special balance sheet as on 31.12.2008. By the above order, the licensee was also directed to show cause as to why the trading licence granted to it be not revoked for non-compliance with the Commission's directions which are part and parcel of the terms and

conditions of the trading licence granted. It is not disputed that the licensee has defaulted on both the counts viz. depositing the penalty and also showing cause as to why the trading licence granted to it be not revoked within the time prescribed by the Commission viz. 30.9.2009. At this belated stage, the licensee seeks review of the directions in the Commission's order dated 7.9.2009, without filing an appropriate review application.

6 Gist of the submissions by the licensee is as under:

(a) That the licensee has not received the Commission's earlier communications due to shifting of its office a new location. On receipt of the Commission's order dated 7.9.2009, the licensee had responded vide its letter dated 26.9.2009 and submitted its balance sheet as on 31.3.2009. Subsequently on receipt of letter dated 5.10.2009 directing it to file the reply under affidavit, the respondent had submitted the information under an affidavit vide letter dated 10.10.2009.

(b) The licensee had always been prompt in the matter of submission of the periodic reports and payment of licence fee.

(c) Non-compliance of the orders dated 13.2.2009 and 16.6.2009 was neither willful nor prolonged, but was attributable to bonafide reasons

7. We notice that on the face of it, the request seeking review of the Commission's order dated 7.9.2009 is not covered by the provisions of Order XLVII of the Code of Civil Procedure, 1908. The request is not backed by discovery of new and important matter or evidence which, after the exercise of due diligence was not within the licensee's knowledge or could not be produced by it at the time when the order was made. In fact there is ample evidence to show that the licensee has not acted with the requisite diligence. Learned counsel for the licensee could not answer in the affirmative, the pointed question as to whether the licensee had intimated change of its address.

8. Besides, the licensee has not even attempted to show any error apparent on the face of the Commission's order dated 7.9.2009. Nor do we not find any other sufficient reason for review of the directions in the Commission's order dated 7.9.2009. We also notice that even at this belated stage the licensee has not submitted the special balance sheet as on 31.12.2009 which was called for vide the Commission's order dated 13.2.2009.

9. In view of the above, we do not find any justification for waiving the penalty imposed vide the Commission's order dated 7.9.2009. Accordingly, we reiterate the directions in the Commission's order dated 7.9.2009 and direct the licensee to remit the penalty of Rs. One lakh imposed thereudner. The penalty shall be remitted by 30.11.2009.

10. The licensee was also directed, vide the Commission's order dated 7.9.2009, to show cause as to why the trading licence granted to it be not revoked for non-compliance of the directions contained in the Commission's order dated 13.2.2009. The licensee has not made any submissions in this regard. However, in the interest of justice, we propose to give one more opportunity to the licensee. The licensee may file its reply in this regard latest by 30.11.2009.

11. Let the case be listed on 8.12.2009 for taking a view on the question of revocation of licence granted to the licensee.

Sd/=
(S. JAYARAMAN)
MEMBER

Sd/=
(R. KRISHNAMOORTHY)
MEMBER

Sd/=
(Dr. PRAMOD DEO)
CHAIRPERSON

New Delhi, dated the 16th November 2009.