

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 3/RP/2016

Subject : Review of Commission's order dated 12.11.2015 in Petition No. 77/GT/2013 regarding approval of generation tariff of Kamalanga Power Plant (262.6 MW) for the period from the date of COD of Unit-I (30.4.2013) to 31.3.2014.

Date of hearing : **4.8.2016**

Coram : Shri Gireesh. B. Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : GMR Kamalanga Energy Ltd. (GKEL)

Respondents : GRIDCO & 4 Others

Parties present : Shri Amit Kapur, Advocate, GKEL
Shri Vishrov Mukherjee, Advocate, GKEL
Shri Rohit Venkat, Advocate, GKEL
Shri Rajkumar Mehta, Advocate, GRIDCO
Ms Himanshi Andley, Advocate, GRIDCO

Record of Proceedings

During the hearing, the learned counsel for the respondent, GRIDCO argued on the issue of maintainability of the review petition and mainly submitted as under:

- (i) Review petition is not maintainable since the appeal has been filed before the Tribunal prior to the filing of review petition, against the same order.
- (ii) The crucial date for determining the maintainability of the review application is the date of filing the review petition (*Kunhayammed vs. State of Kerala [(2000) 6 SCC 359] referred to*). Since the appeal was pending as on date of filing of the review application, the same is not maintainable.
- (iii) That there was no appeal pending as on the date of filing the review petition. However, in the present case, as to the appeal was pending at the time of filing the review application, the same is not maintainable (*Steel Authority of India vs. CERC referred to*).

2. In response, the learned counsel for the petitioner argued that the review petition is maintainable and mainly submitted as under:

- (i) Though the appeal refers to the review application, there is no mention of the appeal in the review petition. Since there was no appeal pending at the time of filing the review application, preliminary objections raised by respondent, GRIDCO is without merit.
- (ii) The intent behind Order 47 Rule 1 (a) is that same issue is not being agitated before the subordinate and appellate court simultaneously. In the present case, the issues raised in the review petition are distinct and independent of the issues raised in appeal. Even though the review petition is allowed, it will have no bearing on any of the claims raised in the Appeal.



- (iii) There is no bar on filing an appeal before filing an appeal before the appellate Tribunal and a review petition before the Commission contemporaneously, provided that the subject matter of the two proceedings are different (*Steel Authority of India vs. CERC, BCCI vs. Netaji Cricket Club and Others referred to.*)
 - (iv) In the present case, the doctrine of merger will not be applicable since the issues are different. It is settled law that a judgment is an authority on the point of law involved. Neither judgment deals with a situation where the appeal and review have been filed on different dates (*Kunhayammed vs. State of Kerala 2000 (6) SCC 359 referred to.*)
 - (v) The respondent has nowhere produced any documentary evidence as to the appeal was pending at the time of filing the review application.
3. The learned counsel for the respondent, GRIDCO prayed for time to file its written submissions.
4. The Commission after hearing the parties accepted the prayer of the respondent, GRIDCO and granted time till 20.8.2016 to file written submissions.
5. Subject to above, the order was reserved on the question of maintainability.

By Order of the Commission

-Sd/-
(T. Rout)
Chief (Legal)

