

COURT-II

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

R.P. No. 22 of 2015 in Appeal No. 108 of 2014

Dated: 12th October, 2015

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:

**Udupi Power Corporation Ltd. ...Review Petitioner(s)
Versus
Power Company of Karnataka & Ors. ...Respondent(s)**

Counsel for the Review Petitioner(s) : Mr. C.S. Vaidyanathanan,
Sr. Adv.
Ms. Kanika Chugh &
Mr. Sakya Singh Chaudhuri

Counsel for the Respondent (s) :

ORDER

Heard Shri C.S. Vaidyanathan, learned Senior Advocate appearing for the Review Petitioner/Appellant at length on the merits of the Review Petition. Only the following three grounds have been raised in the Review Petition:

Firstly, that the learned Central Commission has not relied upon the report of the CPRI but this Tribunal has, by going against the record of the matter, considered and relied upon the report of the CPRI which requires review of the impugned judgment.

Secondly, that the learned Central Commission has decided the gross SHR at 2340.59 kCal/kWh as against 2425 kCal/kWh as specified in the Regulations. The Central Commission has also found deviation in the formula for variable charges in the PPA. PCKL has contended that Udupi itself had in 2005 agreed to reduce the gross SHR by 50 kCal/kWh, then for 2009-14 they should have allowed reduction of 50 kCal/kWh over 2333.41 kCal/kWh (performance test gross SHR of 2193 kCal/kWhx 1.065) i.e. 2283.41 kCal/kWh. This Appellate Tribunal relying on the said fact, in the impugned judgment, has observed that the same formula is applied to parameters guaranteed by OEM (2233 kCal/kWh as referred to by PCKL), the gross SHR with opening margin of 6.5% as per the

Regulation less 50 kCal/kWh would work out to 2328 kCal/kWh. This Tribunal has wrongly allowed gross kCal/kWh.

Thirdly, that this Tribunal in cross Appeal No. 119 of 2014, which was filed by the Appellant/Review Petitioner, while making discussion in the impugned judgment has failed to appreciate the merits of this cross Appeal being Appeal No. 119 of 2014. Thus, dismissed the same.

Considering the above three grounds, we admit the Review Petition.

Issue notices to the respondents returnable within three weeks from today.

Dasti service permitted.

Objections, if any, may be filed within four weeks from today.

It has been pointed out on behalf of the Review Petitioner/appellant that another Review Petition emanating out of the same judgment of this Tribunal, filed by the opposite party is already listed for hearing on 8th December, 2015. List this Review Petition also on **8th December, 2015** for hearing.

(T. Munikrishnaiah)
Technical Member
rkt/vg

(Justice Surendra Kumar)
Judicial Member