

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

**Appeal No.195 of 2010 &
I.A. No. 265 of 2010**

Dated 15th December, 2011

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

In the matter of:

**M/s. Narayanpur Power Company Pvt. Ltd.,
Having its registered Office at Bharat Apartments,
Ground Floor, No. 44,
Race Course Road,
Bangalore-560 001
(Represented by its Managing Director) ... Appellant**

Versus

- 1. Karnataka Electricity Regulatory Commission,
6th & 7th Floor, Mahalaxmi Chambers,
No. 9/2, M.G. Road,
Bangalore-560 001
(Represented by its Chairman)**
- 2. Government of Karnataka,
Department of Energy,
Vikas Soudha, Vidhana Veedhi,
Bangalore-560 001
(Represented by its Principal Secretary)**
- 3. Gulbarga Electricity Supply Co. Ltd.,
Station Road,
Gulbarga-585 102
(Represented by its Managing Director)**

- 4. State Load Dispatch Center,
For Karnataka; Operated by
Karnataka Power Transmission
Corporation Ltd.,
No. 28, Race Course Road,
Bangalore-560 001
(Represented by its Chief Engineer) ...Respondents**

Counsel for the Appellant(s): Mr. G. Joshi
Mr. S. Saxena

Counsel for the Respondent(s): Mr. Venkat Subramanian T.R.
Mr. Raghvendra S. Srivastava
Mr. S. Sriranga for R-2

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This appeal has been filed by M/s. Narayanpura Power Company Private Ltd. against the order of Karnataka Electricity Regulatory Commission dated 19.08.2010 disallowing the claim of the appellant for payment against supply of power from its generating station to the respondent distribution company and holding that the PPA between the appellant and the

distribution company is binding and the parties are bound to perform their respective obligations as per the PPA.

2. The appellant is a generating company which has established Mini hydro electric generating station in Karnataka. The Karnataka Electricity Regulatory Commission ('State Commission') is the first respondent. The Government of Karnataka and Gulbarga Electricity Supply Co. Ltd., a distribution company are the second and third respondents respectively. The State Load Despatch Centre operated by the State Transmission Company is the fourth respondent.

3. The brief facts of the case are as under:

3.1. The appellant has established a 7.2 MW mini hydro electric generating station at Narayanapura

Right Bank Canal in Karnataka. The generating station is a renewable source of energy.

3.2. In the year 2004, Government of Karnataka accorded its sanction to the proposal of the appellant for the installation of the hydro project of 12 MW. It was decided that the project would be developed in two stages, with one Unit of 6 MW set up in the first stage and one more unit of 6 MW in the second stage. Subsequently, in April 2007, the Government of Karnataka accorded its approval for enhancement of capacity of the second stage to 7.2 MW. This case pertains to the sale of power from the second stage of the hydro-electric project of 7.2 MW capacity.

3.3. On 21.01.2004 the State Commission published its Regulation for procurement of power from renewable sources by distribution licensee. One of the

options under the Regulation available to the generating company for renewable sources was to enter a standard PPA with the distribution licensees in Karnataka.

3.4. On 18.08.2005, the State Commission passed an order in the matter of standardization of formats for Power Purchase Agreements in respect of the Non-Conventional Energy Projects and approved the draft Standard PPAs for each category of NCE projects. In the said order, it was stated that the distribution companies should obtain approval of the State Commission for the individual PPAs, even though they are in the approved format.

3.5. On 12.02.2008, the appellant signed a Power Purchase Agreement ('PPA') with the distribution licensee, the respondent no. 3 herein, in respect of the

second stage of the hydro electric project. Subsequently, the PPA was submitted to the State Commission for its approval. The State Commission approved the PPA subject to incorporating certain corrections and communicated the same to the respondent no. 3 on 21.04.2008.

3.6. The third respondent vide its letter dated 14.05.2008 informed the appellant about the observations made by the State Commission and requested the appellant to attend to the same at the earliest.

3.7. Subsequently, on 15.12.2008, the appellant sent an e-mail to the respondent no. 3 expressing that they had certain reservations to conclude the PPA and requested to treat the PPA as cancelled. Subsequently,

the appellant also sent similar e-mail on 23.12.2008 and 25.12.2008 to the respondent no.3.

3.8. Before sending a communication dated 15.12.2008 to cancel the PPA, the appellant wanted to sell power from its hydro-electric power station through power exchange to third parties and requested for 'No Objection Certificate' from the fourth respondent. On 22.09.2008 the appellant filed an application with the fourth respondent to seek its 'No Objection Certificate' for short-term open access for sale of power through the Power Exchange. The fourth respondent sought the comments of the third respondent about granting of open access vide its letter dated 3.12.2008. The third respondent, vide its letter dated 18.12.2008 objected against granting open access facility to the appellant in view of the PPA dated 12.02.2008 between the appellant and the respondent

no.3. Accordingly, the open access was denied to the appellant by the respondent no.4.

3.9. On 17.12.2008 the State Government issued direction dated 17.12.2008 under Section 11 of the Electricity Act to all co-generation projects in Karnataka directing them to maximize their generation and supply of electricity to the State Grid. The State Government also fixed price of purchase of electricity from the co-generation projects.

3.10. Thereafter, the State Government issued another direction dated 30.12.2008 under Section 11 of the Electricity Act directing all power generators to maximize their generation and supply electricity to the State Grid. However, the State Government did not fix any tariff for supply of electricity.

3.11. The appellant started supplying power generated in the Project to the respondent no. 3 and submitted invoices for power supplied based on the daily average rate adopted from Indian Energy Exchange rate, after deducting 10% as wheeling charges and transmission loss and the commission of the power exchange. However, the third respondent did not pay any amount against those invoices till 27.08.2009, after which they started making payment as per the rate agreed in the PPA.

3.12. The direction dated 30.12.2008 issued by the State Government under Section 11 was modified with effect from 1.06.2009 to the effect that all private power generators should supply power generated only to the extent of 50% of the exportable capacity to the State Grid. Consequently, on 6.6.2009 the State Government completely withdrew the directions given

to the private generators under Section 11. It was also clarified by the State Government vide order dated 1.9.2009 that it did not empower the private generators having subsisting Power Purchase Agreements with the Power Utilities in the State to sell power to third parties and the private generators having valid PPA were bound to supply power to the respective Power Utilities in the State in terms of its PPA.

3.13. The appellant filed a petition dated 1.7.2009 under Section 11(2) of the Act for offsetting adverse financial impact of the directions issued by the State Government under Section 11(1) of the Electricity Act, 2003 before the State Commission. After filing of the said petition, the third respondent started making payment to the appellant towards the power supplied at the rate agreed in the PPA.

3.14. The State Commission by its order dated 19.8.2010 rejected the claim of the appellant and held that the PPA dated 12.02.2008 signed between the appellant and the distribution licensee was legal and binding and the parties were bound to perform their respective obligations as per the PPA. The State Commission also held that appellant was not entitled to either open access during the agreement period or payment at rate higher than that provided in the PPA. Aggrieved by the said order, the appellant has filed this appeal.

4. The appellant has made the following submissions:

4.1. The PPA dated 12.02.2008 never got final approval by the State Commission. The approval

granted by the State Commission to the PPA was subject to incorporating corrections suggested by it, which were never carried out by the parties. Subsequently, the appellant had rejected the corrections suggested by the State Commission and cancelled the PPA vide its email dated 15.12.2008, 23.12.2008 and 25.12.2008.

4.2. The State Commission (Power Procurement from Renewable Sources by Distribution Licensees), Regulations, 2004 clearly stipulated that any person generating electricity from renewable sources of energy should have mandatory open access to any licensee's transmission/distribution system. The PPA dated 12.02.2008 was also subject to the said provisions of the open access and an additional avenue to sell power by the appellant, if so chosen by the project

developer, at any point of time during the subsistence of such PPA.

4.3. The PPA did not provide for delivering all the power generated at the power station to the third respondent, at all times during the PPA period, but it only provided for arrangement for the payment to the energy delivered, if any, to the distribution licensee. Hence, the appellant was entitled to open access, during the period of PPA also, other than the period covered under the direction issued by the State Government under Section 11 of the Act.

4.4. The PPA itself provided for termination of the guaranteed power purchase security arrangement mechanism, if the project is not run for a continuous period of 90 days, inspite of availability of water for power generation, as provided under Article 9.2.1 of

the PPA. Thus, the PPA itself limits the guarantee available through the third respondent.

4.5. The PPA does not compel the appellant to supply all power generated by it to the third respondent, but it obligates upon the third respondent to receive power delivered to its Grid by the petitioner and pay for the same at the rate stipulated under the PPA.

5. The respondent no. 3 has submitted as under:

5.1. The State Commission vide its letter dated 21.4.2008 had approved the PPA subject to incorporation of few corrections. Thus the contention of the appellant that the PPA was not valid as it was not approved by the State Commission is untenable. The appellant cannot now wriggle out of its obligations under the PPA. Since the PPA dated 12.2.2008 is valid

and subsisting, the appellant was liable to be paid at the rates stipulated in the PPA and not at rates discovered at IEX, a Power Exchange, as claimed by them.

5.2. The corrections as stipulated by the State Commission could not be carried out as the appellant illegally backed out from the PPA. The State Commission has not suggested any change in Article 5 which deals with the tariff and, therefore, the same would remain unchanged. In view of the approval granted by the State Commission, it cannot be contended that the entire PPA would be rendered invalid because of non-inclusion of clause 4.2. The same cannot result in defeating the approval granted to all other provisions of the PPA.

5.3. The reason for not making payment against the invoices raised by the appellant was that the invoices were raised at rates discovered at IEX, a Power Exchange, and not at the rate stipulated in the PPA. Subsequently, the respondent no. 3 started making payment at the rate specified in the PPA.

5.4. The appellant is bound to supply power to the third respondent upto capacity of 7.2 MW according to the PPA.

5.5. The 2004 Regulations for Power Procurement from Renewable Sources provide for mandatory open access to the generators. However, this regulation is applicable to generators who have not executed PPA with the distribution licensees. When the appellant has signed the PPA with the respondent no. 3, it is bound to supply power to the respondent no. 3.

6. On the above issues the learned counsel for the appellant and respondent no. 3 made their detailed submissions. After hearing the rival submissions of the parties, the following questions would arise for our consideration:

- i) Whether the PPA dated 12.2.2008 signed between the appellant and the third respondent will be considered approved despite the approval of the State Commission being subject to certain changes and such changes being not carried out in the PPA by the appellant?
- ii) Whether the PPA is valid and subsisting despite the communication by the appellant to the respondent no. 3 cancelling the PPA?

- iii) Was the appellant entitled to get compensation for energy charges for the energy supplied to the respondent no. 3 at the rates discovered at the Power Exchange during the period when all the private generators were directed to supply energy to the State Grid by the State Government under Section 11(1)?

- iv) Is the appellant entitled to open access for sale of power from its hydro power station to a third party under the State Commission's Regulation?

All the above issues are inter-connected and interwoven and, therefore, we would be dealing with them together.

7. According to Section 86 of the 2003 Act, the State Commission has to regulate electricity purchase and procurement process of the distribution licensees including the price at which electricity is procured. The State Commission by its order dated 18.8.2005 had directed the distribution licensees to obtain approval of the PPA under which power is procured by them. Accordingly, the respondent no. 3 had filed an application with the State Commission for approval of the PPA dated 12.2.2008. The approval was promptly granted by the State Commission by its letter dated 21.4.2008 subject to certain corrections.

8. Let us first examine letter dated 21.4.2008 from the State Commission addressed to the respondent no. 3 communicating its approval to the PPA. The letter dated 21.4.2008 is reproduced below:

“Karnataka Electricity Regulatory Commission

No. S/03/0/4237

Date: 21.04.2008

*The Managing Director,
GESCOM Corporate Office,
Station Main Road,
Gulbarga-585 102*

Sir,

Sub: Power Purchase Agreement of 7.2 MW Mini Hydel project of M/s. Narayanpur Power Company Private Ltd., in Somanamaradi village, Deodurga Taluk, Raichur Dist.

Ref: GESCOM letter no. GESCOM/CEE(CP)/EE(RA)/T-8/F-2703/07-08/41679 dated 24.03.2008.

I am directed by the Commission to communicate approval to the PPA of 7.2 MW Mini Hydel project of M/s. Narayanpur Power Company Private Ltd., in Somanamaradi village, Deodurga Taluk, Raichur Dist. subject to incorporating corrections mentioned below:

(i) The sentence to the effect that the Commission has conferred its approval to this PPA vide its letter no.Dated..... is to be included at the end of page 2. Page nos. may be marked suitably.

(ii) The seal of the company is not affixed in any of the pages of the PPA and hence, the same to be affixed in all the pages.

(iii) In Article 4, the sub-para stating that Subject to system constraints to off-take and purchase all the Electricity generated by the company at the Delivery Point which should have been incorporated under sub-para 4.2 as per the Standard format of the PPA is omitted and as such, the same needs to be added.

(iv) The names of the signatories in the last page of the PPA to be incorporated. Further, only one witness has signed on behalf of the GESCOM and no witness signature on behalf of the Developer. The signatures with details are to be incorporated.

Yours faithfully

For Karnataka Electricity Regulatory Commission

Secretary

Copy to M/s. Narayanpur Power Company Private Ltd., Bharat Apartments, Ground Floor, No. 44, Race Course Road, Bangalore-560 001”.

9. The above letter clearly indicates the approval of the State Commission subject to incorporating certain corrections. The first correction is with regard to incorporating a sentence in the PPA indicating that the State Commission has conferred its approval to the PPA. The second correction is regarding fixing of seal of the appellant on all the pages of the PPA. The third correction is regarding change in a sub-para in Article-4. The fourth correction is relating to

incorporation of names of signatories and signing by a witness on behalf of the appellant. We find that the corrections at (i), (ii) & (iv) are only formal corrections. The learned counsel for the appellant has also pointed out that the appellant is not aggrieved by any of these corrections. The appellant is, however, aggrieved by the third correction.

10. Let us now go into the details of the third correction. The relevant sub-para in the PPA dated 12.12.2008 is as under:

“4.2. Obligations of GESCOM:

GESCOM agrees

(i) to allow company to operate the Project as a base load generating station subject to system constraints”.

11. The State Commission directed incorporation of the following as per the standard format of Power

Purchase Agreement which had been earlier approved by the State Commission:

“Subject to system constraints to off-take and purchase all the Electricity generated by the company at the Delivery Point.”

12. Let us try to understand the difference between the meanings of the original condition in the PPA and the change directed by the State Commission. Firstly, the article 4.2 (i) relates to the obligation of the respondent no. 3 and does not in any way affect the obligations of the appellant as per the PPA. The appellant's power plant is a canal based hydro station and the generation is dependent on the water releases in the canal which is beyond the control of the appellant. Accordingly, the PPA provided for operation of the power plant in base load, subject to system constraints. The clause directed to be included by the

State Commission also stipulates that the respondent no. 3 will have to off-take and purchase all the electricity generated by the appellant, subject to system constraints. The original clause and the amendment as directed by the State Commission have the same objective of ensuring full utilization of the inflows of water available at the hydro power station for generation of electricity and there is no loss of generation under any circumstances except the system constraints. The correction directed by the State Commission only brings more clarity and emphasis to the objective. In our opinion, if correction directed by the State Commission is incorporated in the PPA it would ensure unhindered operation of the appellant's power plant without any controversy or dispute at a later date. It should not happen that the respondent no. 3 refuses to off-take power from the appellant's

plant during certain periods due to less demand or any other reason which would result in loss of energy generation at the power plant of the appellant as inflow of water at the hydro power station is beyond the control of the appellant. Under such conditions the water at the hydro power station would also go wasted without generation of electricity, which is not desirable.

13. In our opinion, the change in the condition directed by the State Commission relating to obligation of the respondent no. 3 is in no way affecting the interests of the appellant. On the other hand, the change stipulated by the State Commission in clause 4.2 is more favourable to the appellant.

14. We find the contention of the learned counsel for the appellant very strange that the appellant was not

expected to supply all the power generated by its hydro power station to the respondent no. 3. The PPA is clearly for purchase of power sent out by the 7.2 MW hydro station of the appellant and the respondent no. 3 is entitled to purchase the entire energy delivered by the appellant's power station at the delivery point.

15. In view of above, we hold that the State Commission had approved the PPA with some corrections which had no impact on the tariff or operation of the power plant of the appellant and did not alter in any way the terms of the PPA or affect the interests of the appellant. The change directed by the State Commission in clause 4.2 of the PPA is relating to the obligations of the third respondent and is in the interest of unhindered operation of the hydro power station of the appellant.

16. Let us now examine the conduct of the appellant after the respondent no. 3 informed the appellant vide its letter dated 14.5.2008 about the changes stipulated by the State Commission.

17. The appellant did not take any action on the letter dated 14.5.2008 of the respondent no. 3. However, instead of taking action for incorporating the corrections stipulated by the State Commission, the appellant on 22.9.2008 applied for 'No Objection Certificate' to the State Load Dispatch Centre, the 4th respondent herein, for selling power to Power Exchange seeking short term open access to the distribution and intra state transmission system, even though it was having a valid PPA for sale of power to the third respondent.

18. When open access was not granted by the 4th respondent, and instead the matter was referred by the 4th respondent to the third respondent, the appellant sent a letter by e-mail on 15.12.2008 to the first respondent cancelling the PPA. The email dated 15.12.2008 is reproduced below:

“Monday, 15 December, 2008 5:41 PM

PPA for 7.2 MW (STAGE-II) of Somanamaradi Hydro Power Project

From: abishek valluru” npcpl_hydro@yahoo.co.in

To: mdgescom@gmail.com

NPCPI/F.9/351/2008-09 Dated 01-12-2008

Dear Sir,

Sub: Approval for PPA of 7.2 MW Mini Hydel Project of M/s. Narayanpur Power Company Private Ltd.,

Ref: 1. KERC Lr. No. S/03/04237 dated 21.04.2008

2. GESCOM/CEE(CP)/EE(RA)/T-8/F-2733/08-09/4459 dated 4.5.2008.

We invite your kind attention to the ref. (1) cited above wherein you have informed that certain corrections pointed out by KERC in ref.(2) cited have to be incorporated in the Draft PPA signed by us to validate the PPA.

Since we have certain reservations to conclude the PPA, we request you to kindly treat the incomplete PPA signed by us as cancelled.

Thanking you and with regards,

Yours sincerely,

*Y.S.V.K.VasudevaRao
Managing Director
Narayanpur Power Company Private Ltd.,
Bharat Apartments, Ground Floor,
No. 44, Race Course Road,
Bangalore-560 001". India*

*Ph: 91-80-22282664, 41517916
Fax: 91-80-22200400".*

Thus, the appellant unilaterally cancelled the PPA.

19. Let us now examine the termination clauses of the PPA for default of the third respondent. Clause 9.1.1 stipulates that the agreement shall be effective upon the execution for a period of 20 years unless terminated pursuant to other clauses of the PPA. Clause 9.2.2 describes the default of the third respondent which occurs on failure or refusal to perform its financial and other material obligations

under the agreement and in the event of any payment default for a continuous period of three months. Thus, there was no cause for termination of the PPA in the present case.

20. Clause 9.3.2 describes the termination for the default of the third respondent. The clause 9.3.2 is reproduced below:

“9.3.2. Termination for GESCOM’s Default:

Upon the occurrence of an event of default as set out in sub-clause 9.2.2 above, Company may deliver a Default Notice to the GESCOM in writing which shall specify in reasonable detail the Event of Default giving rise to the default notice, and calling upon the GESCOM to remedy the same.

At the expiry of 30 (thirty) days from the delivery of this default notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the Default Notice has been remedied,

Company may deliver a Termination Notice to GESCOM. Company may terminate this Agreement by delivering such a Termination Notice to GESCOM and intimate the same to the Commission. Upon delivery of the Termination Notice this Agreement shall stand terminated and Company shall stand discharged of its obligations.

Where a Default Notice has been issued with respect to an Event of Default, which requires the co-operation of both Company and GESCOM, to remedy, Company shall render all reasonable co-operation to enable the event of Default to be remedied”.

Thus, for termination a default of the respondent no. 3, the appellant has to serve a notice calling upon the respondent no. 3 to remedy the same.

21. In our view, there was no cause to terminate the PPA by the appellant as per the above clauses of the PPA. However, the appellant on its own and

unilaterally sent an e-mail cancelling the PPA, that too without following the procedure stipulated in Clause 9.3.2 of the PPA. The basis for issuing the communication for termination of the PPA by the appellant was that the corrections directed by the State Commission were not acceptable. As held earlier, the corrections were mainly formal and one correction against which the appellant is aggrieved was in fact favourable to the appellant and did not result in any material change in the PPA.

22. In our opinion, the appellant has only tried to find an excuse to wriggle out of the PPA for material gains. We also do not appreciate the conduct of the appellant, after the respondent no. 3 communicated the changes directed by the State Commission. The appellant remained silent for the period from April/May 2008 after communication of approval of the State

Commission to the PPA and then after a lapse of about 4 months when its power plant was about to be commissioned applied for no objection of the State Load Dispatch Centre and open access for third party sale of power from its power plant to Power Exchange. Only when the State Load Despatch Centre did not permit open access for third party sale and referred the matter to the third respondent, who had a valid PPA with the appellant, then the appellant sent an email to the respondent no. 3 cancelling the PPA. The sequence of event point out that appellant wanted the comfort of PPA with the distribution licensee till the commissioning of its power station and thereafter wanted to wriggle out of the agreement on some pretext.

23. Learned counsel for the appellant has referred to the judgment of the Hon'ble Supreme Court in the

matter of M.V. Shankar Bhat and another vs. Claude Pinto since (deceased) by Lrs. And others reported as (2003) 4 Supreme Court Cases 86 relating to ratification and conclusion of the contract. In this case the Hon'ble Supreme Court has held that when an agreement is entered into subject to ratification by others, a concluded contract is not arrived at. Whenever ratification by some other persons, who are parties to the agreement, is required, such a clause must be held to be a condition precedent for coming into force of a concluded contract. In our opinion, this ruling is not relevant to the present case where the agreement was ratified by the State Commission subject to certain corrections which neither altered the terms of the agreement nor took away the effect of the approval.

24. In view of above, we hold that the PPA dated 12.2.2008 is valid and subsisting. The appellant and the third respondent are directed to incorporate the corrections stipulated in the State Commission's letter dated 21.4.2008 in the PPA.

25. In view of our findings about the validity of the PPA, the question of compensating the appellant for loss of business opportunity for sale of power to power exchange under Section 11(2) of the Act for the period when the private generating companies were directed by the State Government under Section 11(1) of the Act to sell power to the State grid would not arise. The learned counsel for the appellant has referred to the judgment of Karnataka High Court in the matter of GMR Energy Ltd. & Anr. Vs. Government of Karnataka & Ors. reported as 2010 (3) AIR Kar R 338. In our

opinion this case is not relevant to the present case as the appellant had a valid and subsisting PPA for sale of power to the distribution licensee of Karnataka, the respondent no. 3 herein. Thus, the directions issued by Government of Karnataka u/s. 11 were of no relevance to the appellant.

26. Learned counsel for the appellant has referred to the 2004 Regulations for Power Procurement from Renewable Sources by Distribution licensees stating that the Regulations provided for mandatory open access to the transmission and distribution system to the generators and sale to the distribution licensee is only one of the options available to the appellant. This argument is without any basis. When the appellant has signed a long term PPA for sale of power with the distribution licensee and opted for sale of power to the

respondent no. 3, it does not have an option for open access for third party sale, till the PPA is valid and subsisting. Thus, the contention of the appellant for open access would also fail.

27. Summary of our findings:

27.1. The PPA between the appellant and the respondent no. 3 was approved by the State Commission by its letter dated 21.04.2004 subject to certain corrections. Some corrections were formal corrections in the nature of putting signatures, seal, etc., and one correction was relating to a Clause of PPA regarding obligations of respondent no. 3 which was infact more favourable to the appellant. The corrections directed by the State Commission neither altered the terms of the agreement nor took away the effect of the

approval. We hold that the PPA dated 12.2.2008 is valid and subsisting. The appellant and the third respondent are directed to incorporate the corrections stipulated in the State Commission's letter dated 21.4.2008 in the PPA.

27.2. In view of our findings about the validity of the PPA, the question of compensating the appellant for loss of business opportunity when the private generating companies were directed by the State Government under Section 11(1) of the Act to sell power to the State grid would not arise.

27.3. The appellant is also not entitled to open access for third party sale till the PPA is valid and subsisting.

28. In view of above, we do not find any substance in the appeal and therefore, the same is dismissed. No order as to cost.

29. Pronounced in the open court on this **15th day of December, 2011.**

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE / NON-REPORTABLE

vs