

**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004**

I. A. No. 8 of 2011

in

R.P. No. 1 of 2011

In

O. P No. 23 of 2005

Dated: 12-07-2011

**Present**

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

**Between**

M/s. Lanco Kondapalli Power Private Ltd.,  
Plot No. 4, Softsol Building,  
Software Units Layout, Hitec City Madhapur,  
Hyderabad – 500 081.

.....Petitioner

**And**

1. Andhra Pradesh Power Co-ordination Committee
2. Transmission Corporation of Andhra Pradesh Limited
3. Central Power Distribution Company of Andhra Pradesh Limited
4. Southern Power Distribution Company of Andhra Pradesh Limited.
5. Northern Power Distribution Company of Andhra Pradesh Limited
6. Eastern Power Distribution Company of Andhra Pradesh Limited

.....Respondents

This petition coming up for hearing on 08.07.2011 in the presence of Sri. C.Kodanda Ram, Sri. C.Guna Ranjan and Advocates for the Petitioners in IA and Sri P.Shiva Rao, Advocate for the Respondents in IA and having stood over for consideration to this day, the Commission delivered the following:

## **ORDER**

This is a petition is filed by the petitioner for interim directions u/s 94 (2) of the Electricity Act, 2003 read with Regulation 55 of APERC (Conduct of Business) Regulations, 1999. The case of the petitioner is briefly as follows:

2. The petitioner is a company incorporated under the Companies Act, 1956 and engaged in the Business of Generation of Electricity.

3. The 1<sup>st</sup> respondent is a coordination Committee constituted by the Government of AP vide G.O.Ms. No. 59 dt. 9<sup>th</sup> June, 2005 as an interim institutional arrangement to advise and coordinate the affairs among the 2<sup>nd</sup> to 5<sup>th</sup>. The 2<sup>nd</sup> to 5<sup>th</sup> respondent are the Government companies incorporated under the Companies Act, 1956 and fully owned by the State of Andhra Pradesh and engaged in the business of Distribution of Electricity in the State of AP.

4. The petitioner had entered into an agreement commonly known as "Power Purchase Agreement (PPA) on 31.03.1997 with the erstwhile Andhra Pradesh State Electricity Board for establishment of a Power Project at Kondapalli Village, Krishna Dist., Andhra Pradesh. Subsequently, the said PPA had been divested in M/s. Transmission Corporation of Andhra Pradesh, a Company incorporated under the Companies Act, in pursuance of 1<sup>st</sup> Transfer Scheme issued by the Government of Andhra Pradesh u/s 23 of the Andhra Pradesh Electricity Reforms Act, 1998. Later, the said PPA has been divested in 2<sup>nd</sup> to 5<sup>th</sup> respondents in pursuance of 3<sup>rd</sup> Transfer Scheme issued by the Government of

Andhra Pradesh u/s 131 of the Electricity Act, 2003 read with Sections 23 of the APER Act, 1998.

5. The petitioner owns and operates a 368.144 MW power project situated at Kondapalli Village, Krishna Dist., A.P.

6. Article 1.1.54 of PPA defines the term "Scheduled Date of Completion" under which this respondent has to complete the project in 16 months time. Similarly, Article 7.2 (g) of PPA states that in the event, the petitioner could not get 100% Fuel Linkage for the project within 60 days from the date of signing of PPA, the schedule date of completion shall get extended from 61<sup>st</sup> day in issuance of 100% fuel linkage by the fuel supplier. By letter dt. 21<sup>st</sup> July, 1997 the Government of India, Ministry of Petroleum and Natural Gas, had allocated fuel linkage to the extend of 80% as against the requirement of 100%. Immediately, the petitioner vide its letters dt. 26<sup>th</sup> July, 1997 & 26<sup>th</sup> September, 1997 intimated the erstwhile APSEB that the fuel linkage granted by the Ministry would enable them to operate the plant only at 80% PLF, unless, 100% fuel linkage is granted, the financial institutions are not in a position to finance the project. In the letters dated 26.07.1997 & 26.09.1997 the petitioner specifically drawn the attention of the then APSEB to Article 7.2 (g) of PPA, which deals with (a) obtaining of 100% Fuel Linkage within 60 days of the agreement and (b) extension of scheduled date of completion beyond 60 days. It is submitted that by a letter dt. 29<sup>th</sup> August, 1998, addressed to HPCL by the Chief Engineer, APSEB, the Chief Engineer while confirming that the fuel linkage granted by the Ministry of Petroleum is sufficient to achieve 80% PLF and recommended for supply of additional fuel to enable the project to achieve 100% PLF. In the letter dt. 17<sup>th</sup> November, 1998, M/s. Hindustan Petroleum Corporation Ltd., (HPCL) confirmed that they would supply fuel to the petitioner's project to enable the project achieve 100% PLF.

7. On 2<sup>nd</sup> June 1999, the barge carrying Gas Turbine and generator, which was being transported by sea from Kakinada port of Machilipatnam, was drowned in the sea on account of capsizing of the barge carrying the turbine.

This fact was informed to the then APTRANSCO by the petitioner vide its letter dt. 5<sup>th</sup> June 1999 and a specific attention was drawn to Non-Political Force Majuere under Article 10.2 of PPA. While adverting to the petitioner's letter dt. 22<sup>nd</sup> / 24<sup>th</sup> July, 2000 addressed by the then APTRANSCO to the petitioner with respect to certain commercial issues including delay in project COD.

8. The applicant has completed and commenced the operation of the project on 25<sup>th</sup> October, 2000 in accordance with the terms of the PPA. However, as the respondent No. 1 failed to purchase the power from the petitioner herein, the Government of Andhra Pradesh has directed the respondent No. 1 to purchase the power from the applicant and accordingly the respondent No. 1 is purchasing power from 02.01.2001.

9. The petitioner claimed damages of Rs. 95.16 crs for the delay of COD and as per Article 14 of the PPA the parties shall resolve their disputes through arbitration. In spite of receipt of the reply, the respondent No. 6 vide its letter dated 15.12.2005 has informed the applicant than an amount of Rs. 46,25,21,319/- is adjusted against the amount payable to the applicant towards the liquidated damages and further asked the applicant to pay an amount of Rs. 48,90,78,681/- immediately else same will be adjusted against future bills.

10. On 09.12.2005 in W.A. No. 82 / 2006 the Hon'ble High Court directed the APTRANSCO & others not to make any further deduction or adjustment from the future bills of the company and further observed that the Commission can proceed with the application filed by the APTRANSCO and others.

11. The respondents herein have approached this Commission by filing the O.P. No. 23 / 2005 seeking orders holding that the applicant herein is liable to pay Rs. 95.16 crs towards liquidated damages and further direction to pay balance liquidated damages of Rs. 48,90,78,681/- after deducting the amount already adjusted. It may be pertinent to mention here that the respondent No. 1 in its letters dated 14.12.2005 and 15.12.2005 unilaterally decided that there is delay in completion of the project and decided that the respondents are entitled

for liquidated damages and also deducted an amount of Rs. 46,25,21,319/- from the amounts payable to the applicant.

12. The Commission by orders dated 13.06.2011 has dismissed the both the claim of the respondents as well as the counter claim made by the petitioner herein. The Commission dismissed the claim of the respondents herein as the same is barred by limitation and the counter claim of the petitioner on the ground of the maintainability.

13. The above said discussion clearly discloses that the respondent is not entitled to the counter claim by filing an I.A and the claim of counter claim is also not sustainable. Even otherwise it is not maintainable as the same has already been adjusted by the petitioners and the I.A is liable to be dismissed.

14. The Commission held that the counter claim filed by the petitioner was not maintainable as no such procedure was contemplated under the Act, 2003 and that the counter claim was therefore liable to be dismissed. The Commission has come to given such findings on an erroneous appreciation of facts and law and ignoring the relevant material placed on record.

15. The respondent No.1 issued a letter dated 23.06.2011 informing the petitioner, that an amount of Rs.28,61,73,681/- towards balance liquidated damages and an interest of Rs. 62,14,04,658/- is payable by the petitioner and they have recovered the same from the monthly bill dated 13.06.2011. The 1<sup>st</sup> respondent vide its letter dated 24.06.2011 has further informed the petitioner that an amount of Rs. 28,06,82,885/- is payable by the petitioner towards balance purportedly due to it on account of liquidated damages and interest thereon. It is submitted that the aforesaid action of the respondent No. 1 is entirely illegal, unlawful and in contravention of the order dated 1306.2011 and in complete disregard of the order of the Hon'ble High Court of Andhra Pradesh in W.P. No. 27101 of 2005 dated 11.04.2011.

16. The respondent No. 1 has illegally and without any contractual basis whatsoever, withheld payment of the entire bill amount as alleged adjustment /

set-off of the amount purportedly due by the appellant on account of liquidated damages in view of a so-called delay in the SCOD of the power project.

17. The contents of the letter dated 23.06.2011 of the respondent No. 1 are entirely denies as erroneous and misconceived. Furthermore, it is submitted that the respondent No. 1 has illegally and without any contractual basis whatsoever, claimed an amount of Rs. 62,14,04,658/- on account of interest on the amount due. No clause in the PPA permits the respondent No. 1 to claim any interest whatsoever on account of any amount due on account of liquidated damages as per Article 1.1.54 of the said PPA.

18. The entire amount of Rs. 64,29,69,697/- of Bill No. 133 dated 13.06.2011 payable to the petitioner has been adjusted by the respondents vide their letter dated 23.06.2011 and further informed vide letter dt. 24.06.2011 that a balance of Rs. 28,06,82,885/- is payable towards liquidated damages. Because of this high handed action of the respondents, the petitioner is facing server financial problem as it has to meet the expenses for the fuel, salaries, etc., without which it cannot continue to operate the plant. This ultimately will lead to shut down of the plant, leading to power shortage, which is not in the interest of the public. That apart the entire business of the petitioner would be in jeopardy. Therefore, the balance of convenience is in favour of the petitioner for granting the interim directions.

19. It is therefore prayed that the Commission may be pleased to suspend the letter No. Dy.CCA/APPCC/SAO/(PP&S-I) / D.No. 456 dt. 23.06.2011 and Lr. No. Dy.CCA/APPCC/SAO (PP&S-I) / D. No. 458 dt. 24.06.2011 issued by the respondent No. 1 and further direct the respondent No. 1 to forthwith make payment to the petitioner of the amount due as per the petitioner's bill No. 133 dated 13.06.2011, and pass such other order or orders as this Commission may deed fit and proper in the circumstances of the case.

20. The case of the respondent as set out in the reply is briefly as follows :-
- a) The interim applications are not contemplated in the review petition, more particularly when the very review itself posted for hearing.
  - b) The petitioner mainly challenging the action of DISCOMs of recovery of money from their monthly bill dt. 13.06.2011. The Hon'ble High Court passed orders on 11.04.2011 in W.P. No. 27101 of 2005 which reads:
    - i) Accordingly the writ petition is disposed of requesting the Commission to expeditiously pronounce orders in O.P. No. 23 of 2005 preferably within a period of four weeks from the date or receipt of a copy of this order by its order dated 11.04.2011 in W.P.No.27101 of 2005. It is needless to state that either party shall be at liberty to pursue appropriate remedies, if aggrieved by any order passed by the Commission in O.P. No. 23 of 2005. In the facts and circumstances of the case, it is however directed that the respondents shall not take steps to recover the balance amount due from the petitioners as liquidated damages determined by the respondents qua its letter dated 14.12.2005 from the future bills payable to the 1<sup>st</sup> petitioner till the disposal of O.P. No. 23 of 2005. Thereafter, the balance amount due from the 1<sup>st</sup> petitioner shall be in accordance with the order passed by the Commission in O.P. No. 23 of 2005.
    - ii) The parties, if aggrieved by the order dt. 13.06.2011 may file an appeal and purpose remedies. It is further directed by High Court that the respondents / Discoms shall not make recoveries till the APERC pass orders in O.P. No. 23 / 2005. Also held that later both parties are at liberty to pursue their rights and remedies. Therefore, though the remedy of Discoms is refused by Commission, as ordered by High Court, the Commission rightly took up the issue of rights of

parties and thus decided the entitlement of liquidated damages by Discoms. Therefore, in pursuance of said orders of High Court and in pursuance of orders of Commission, the Discoms by exercising its right decided to recover the amounts due from M/s. Lanco.

- c) As far as recovery of interest amount is concerned, once the liability of Lanco is decided payable as on 02.01.2001, it is clear that Discoms suffered payment of interest to its creditors in their business, since then. Hence the Discoms have recovered part of interest which is calculated considering the PLR rate of State Bank of India time to time. Thus the recovery of interest is in accordance with law.
- d) The review need to be heard by three member bench. In view of the retirement of one of the members, the GoAP has already constituted a selection committee headed by Hon'ble Justice P. Laxmi Reddy and invited the application from interested persons keeping 26.07.2011 last date for submissions of applications. Thus, since the process of appointment of third member is commenced, shortly the appointment is expected and until then, the two member bench is not permitted in law to hear the merits of the review. Consequently the I.A. also cannot be proceeded.
- e) The action of Discoms of recovery of money from the monthly bill dt. 13.06.2011 is challenged, the same can be done only by way of independent proceedings, but not through ancillary proceedings in O.P. No. 23 / 2005.
- f) Unless and until, the order dt. 13.06.2011 is reversed by competent court of law, the findings of Commission as narrated in the main reply, absolutely in favour of DISCOMs, enabling them to pursue their right of entitlement of liquidated damages of Rs. 74.87 crs as on 02.01.2001. Therefore the recovery of balance amount and interest is in accordance with law.

- g) There is no prima-facie case nor balance of convenience, in favour of petitioner. There is no irreparable loss as the claim is only for payment of money or otherwise of it.

21. Now, the point for consideration is, “whether the petitioner is entitled to suspend the letter dated 23.06.2011 and letter dated 24.06.2011 issued by the respondent No.1 and also direct the respondent No.1 to make the payment to the petitioner of the amount due as per bill No.133 dated 30.06.2011 as prayed for?”

22. The learned advocate for the petitioner argued that the petitioner has filed a petition to review the order in RP No.1 of 2011 and filed this petition for interim relief to suspend the letters dated 23.06.2011 and 24.06.2011 and also for a direction to pay the amount recovered by bill no.133 dated 30.06.2011, on the ground that the Commission dismissed the petition filed by the petitioner claiming liquidated damages and they are precluded from adjusting the amount towards the said claim and the said adjustments would be violating the orders of the Hon'ble High Court as the Hon'ble High Court in WP 27101 of 2005 directed the respondents that the remedy of the respondents, if any, to recover the balance amount due from the petitioner shall be in accordance with the order passed by the Commission in OP No.23/2005. The Commission dismissed the interlocutory application (IA) on technical grounds and ignoring the relevant material placed on record and the respondent No.1 issued a letter on 23.06.2011 informing the petitioner that an amount of Rs.28,61,73,681/- towards balance of liquidated damages and interest of Rs.62,14,04,658/- is payable by the petitioner and they have recovered from the monthly bill dated 13.06.2011 and the said act itself is illegal and in contravention of order dated 13.06.2011 passed by this Commission and order in WP No. 27101 of 2005 dated 11.04.2011.

23. It is also further argued that the impact of 100% fuel linkage on liquidated damages (without considering the force majeure) if COD is 25.10.2000 it is Rs.2,98,19,664/-, if COD is 01.01.2001 it is Rs.9,75,58,160/- but not the amount as assessed by the Commission in its order dated 13.06.2011 and it is an error

apparent on the face of it and he is entitled to file a petition to review the order dated 13.06.2011. The petitioner is entitled to the interest as per Art.5.7 of PPA from the date of presenting the bill till the date of actual payment. The petitioner is sustaining great loss as it has to meet the expenses like salaries of employees, cost of fuel and if the amount is withheld, it cannot continue to operate the plant which ultimately will lead to shut down the plant and it may lead to power shortage and it is against to the interest of public. That apart, the entire business of the petitioner would be in jeopardy and balance of convenience is also in favour of the petitioner in granting interim directions. If the amount is not paid and if the plant is closed, the petitioner is going to sustain great loss. Therefore, the petitioner is entitled to the interim order as prayed for.

24. It is also further argued that the Commission is not precluded from taking note of the subsequent events and that the circumstances placed before the Commission are sufficient to hold that a prima facie case is in favour of the petitioner, apart from balance of convenience and irreparable damage is going to be caused if the impugned letter is not suspended.

25. The learned advocate for the respondent argued that the order dated 13.06.2011 was passed by 3 judges (two members and chairman) in OP No. 23 / 2005 and the review petition cannot be entertained by 2 judges (member and chairman) since one of the members demitted the office on 15.06.2011. The very order passed by the Commission at para 17 is sufficient to hold that there is no prima facie case to the petitioner and balance of convenience is also not in his favour as the Commission has rightly considered about the fuel linkage and the date of COD and the delay caused in achieving the COD.

26. It is also further argued that the interim order in the review petition is normally not entertainable as there is no such procedure and the IA is not sustainable under law and the petitioner instead of filing a petition, ought to have filed a petition for recovery of the amount and without that, no relief is to be granted. Had the petitioner filed the petition for recovery of the amount along

with petition for an interim order, there would be some rationality and the respondent may not be in a position to object the same. Whereas, the petitioner filed review petition which is not maintainable under law, vis-à-vis the IA is also not maintainable under law.

27. In the light of the above said circumstances supra, the petition filed by the petitioner is not sustainable under law and the same is liable to be dismissed.

39. The learned advocate for the petitioner has relied upon a ruling reported in *1993 INSC 357 (State of Rajasthan vs. Gopal singh)*. In this it was held that

*“the delinquent filed a review application which was heard by one of the judges, constituting the Division Bench, presumably because the second learned judge was not available. In such a situation under Rule 64 of the Rules of the High Court of Judicature of Rajasthan, 1952, the proper procedure to be followed was to lay the application before the leaned Chief Justice, who with due regard to the provisions of Rule 5 of Order 47 of the Code will constitute a Bench for hearing and disposal of such application.”*

He has also relied upon another ruling reported in *1999 SCC 786 State of MP vs Ghanshyam*. In this it was held that

*“Order passed by a Division Bench reviewed by a Single Member (Chairman) on the ground that only he was available for review while appointment of the other Member had been quashed – on facts found that there was no urgency to hear the review petition without waiting for another Member to come – The question whether Single Member was competent in law to hear and dispose of review petition not gone into but held, propriety demanded that arrival of another Member should have been awaited.”*

He has also relied upon another ruling reported in *1999 SCC Ajit Kumar Rath vs State of Orissa & ors*. In this it was held that

*“Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”*

He has also relied upon another ruling reported in *1998 3 CALLT 348 HC Ratanlal Nahata vs. Nandita Bose*. In this it was held that

*“As laid down by Order 47 rule 5 CPC as far as possible the same two learned judges or more judges who decided the original proceedings have to hear the review petition arising from their own judgment.”*

29. On the other hand, the learned advocate for respondent relied upon a ruling reported in *2009 14 SCC 90 (676)*. In this it was held that

*“Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on facts and circumstances of the case. The words ‘sufficient reason’ in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine actus curiae meminem gravabit.”*

30. In this case one member of the Commission has demitted the office by 15.06.2011 before that date i.e, on 13.06.2011 both the members and the Chairman have delivered the order in OP 23/2005. Now, the petitioner has approached this Commission for review of the order passed by the two members and the Chairman, now the bench constituting Member and Chairman. It is well law that both the Chairman and Members constitute a quorum and they are competent to hear and dispose of the matters on merits and the orders passed by them are also valid under law. Whether three members are necessary to review the order or not is the matter to be decided in the very review petition itself and not in this interlocutory application. This aspect can be considered elaborately in the main review petition itself.

31. The Commission passed its order on 13.06.2011 restricting the claim to Rs.74,86,95,000/- but not Rs.95.16crs provided the remedy of recovery survives. In this no interest is awarded on the above said amount passed by the Commission in its order dated 13.06.2011 (para 32). Furthermore, the petitioner has not claimed any interest in the main petition (OP No.23/2005) filed on 19.12.2005. When the petitioners themselves have not claimed the interest and

when the same is not ordered by the Commission, how the respondent has calculated the interest of Rs.62,14,04,658/- including the principal amount of Rs.28,61,73,681/-, this itself is sufficient to hold that the respondent has exceeded the limit and made an attempt by issuing a notice dated 23.06.2011 demanding amount of Rs.62,14,04,658/-. Thus, the petitioner has established a prima facie case and if the entire amount is ordered to be paid, no doubt, he has to sustain great and irreparable loss and moreover the balance of convenience is also in favour of the petitioner and the respondent has issued proceedings dated 23.06.2011 beyond the entitlement.

32. The Commission itself has passed its order of adjustment on the ground that the respondent is a corporate body under clause 3 section 2 of EA 2003 and thereby entitled for adjustment under S.171 of Contract Act. The petitioner is a corporate body and in turn a corporate body under Companies Act as in the case of Banking Company thereby the respondent has got a lien to attach the money so long it has remains an earmarked sum of money. When the amount is lying with the respondent treating it as a debt the remedy to recover from the debtor even if it is barred by limitation so considered by the Commission in the impugned order as the right of recovery is not extinguished.

33. If the right to property is extinguished, the petitioner has no subsisting right which can be enforced under Art. 32 of the Constitution. In other cases where the remedy only and not the right is extinguished by limitation, the Court on the ground of public policy, will refuse to enforce stale claims. The Commission has considered the limitation aspect at length with regard to the liability and also with regard to the adjustment by holding that remedy to recover may be barred, but the right to recover still subsists. It is the very entitlement and the adjustment which has to be considered whether it is in the interest of public or otherwise can be considered in the main review petition itself. But this aspect is attacked by the counsel on the ground that the respondent is not entitled to the above said provision and once the right to recovery is barred then the right to claim is also extinguished. This can be considered at the time of hearing of the review petition itself provided the petition is maintainable under law.

34. The other contention raised by the counsel for the respondent is that the very petition is not maintainable under law. The counsel for respondent has argued that the petitioner has to file a separate original petition for recovery of adjusted amounts and only in such an O.P. can he file I.A. for interim directions. He further argued that the interim order can be sought for prohibiting further recoveries but not for refund of already recovered amounts which he argued, can be sought only by way of final orders in a regular O.P. He stated that, had there been an I.A in a separate O.P., he would concede the interim relief to the extent of further recoveries.

35. The filing of review petition instead of regular petition is only a procedural sustainability but not legal maintainability and when the petition itself is legally maintainable, no doubt, the petitioner is also entitled for interim relief.

36. If the amount is recovered or withheld, the petitioner is going to sustain greater loss than the respondents. He has to meet salaries to employees, cost of fuel, transport and other miscellaneous expenditure. If the generating unit is stopped, thereby in turn causing power shortage, the public also will suffer power deficit to some extent. The very amalgamation of interest from the claim amount evidently establishes the unilateral action of respondents in issuing notice dated 23.06.2011. If the recovery of the amounts is not stopped by suspending the letters dated 23.06.2011 and 24.06.2011 the petitioner may be at peril. The very claim made by the respondents in the said letter prima facie establishes the case in favour of the petitioner and against the respondents. The balance of convenience is also in favour of the petitioner and if the order is not granted, the petitioner is likely to sustain great and irreparable loss when compared to respondents who issued the impugned notices unilaterally ignoring their own pleadings and the order passed by the Commission on 13.06.2011.

37. It is apparent from the very letter dated 24.06.2011 that there is a claim by the respondents for balance amount of Rs.28,06,82,855/-. This letter contains two components. One is regarding the amount already adjusted and the other is regarding the amount payable. In this letter, it is categorically mentioned that an

amount of Rs.62,68,65,454/- has already been adjusted against liquidated damages receivable amounting Rs.90,75,78,339/- and the balance amount of Rs.28,06,82,885/- has been demanded. The apprehension of the petitioner is that the said amount is also going to be adjusted in the june monthly bill which is an apprehension that has been projected at the time of addressing arguments by the counsel for the petitioner. Whereas, in the letter dated 23.06.2011, it is mentioned that they have already adjusted the amount, (which is incorrect as per their own letter dated 24.06.2011 which originated on the very next date) in the letter dated 24.06.2011, they have shown an amount of Rs.28,06,82,885/- as balance yet to be recovered. The above discussion clearly shows that the balance of convenience is in favour of the petitioner and it is necessary in the interest of justice to order the suspension of both the letters with a direction not to recover the amount of Rs.28,06,82,885/- in the june bill or in future monthly bills pending disposal of the main review petition. So far as refund is concerned, the same cannot be ordered in this interlocutory application and the same can be considered at the time of hearing of the main review petition.

38. In view of the above said discussion, we are of the considered opinion that the petitioner is entitled to the interim relief by suspending the letters dated 23.06.2011 and 24.06.2011 with a direction not to recover the amount of Rs. 28,06,82,885/- in the june monthly bill or in the future monthly bills payable to the petitioner, pending disposal of the main review petition. Any order for refund of the amount already recovered / adjusted cannot be given in this interlocutory application and the same can be considered in the main review petition itself.

39. In the result, this petition is allowed in part, by suspending the two letters dated 23.06.2011 and 24.06.2011 and also directing the respondents not to recover / adjust the amount of Rs. 28,06,82,885/- in the june monthly bill or future monthly bills, pending disposal of the main review petition. The request for refund of the amount already adjusted will be considered at the time of hearing of main review petition.

R.P.No.1 of 2011 is posted to 19.07.2011.

This order is corrected and signed on this 12<sup>th</sup> day of July, 2011.

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

**Sd/-**  
**(A.RAGHOTHAM RAO)**  
**CHAIRMAN**

**CERTIFIED COPY**