



7th November, 2012

Honorable Justice Iftikhar Muhammad Chaudhry,
Chief Justice of Pakistan,
Supreme Court of Pakistan,
Constitutional Avenue, Islamabad.

Attn: Human Rights Cell

Sub: HUMAN RIGHTS CASE NO.7734-G/2009 & 1003-G/2010

May it please your Lordship,

My Lord, the Transparency International Pakistan would like to point out to the honorable court that according to the PPRA Rules and Regulations, all Contracts Agreements shall be governed under Pakistan Law, and also the Arbitration has to be conducted according to Pakistan Arbitration Act, 1940 (Act No. X of 1940)

Cabinet Division Government of Pakistan vise **S. R. O. 805(I)/2008** dated 11th July 2008 issued "**Public Procurement Regulations 2008**", (**Annex-A**) regulations number **3. Bidding documents**.- A Procuring agency when engaged in procurement of works, shall use the standard form of bidding documents prescribed by the Pakistan Engineering Council constituted under the Pakistan Engineering Council Act, 1975 (V of 1976).

Sub-Clause 50 Disputes & Arbitration (Electrical & Mechanical) (Annex-B)

50.4 Any dispute in respect of which:

- (a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 50.1 and*
- (b) amicable settlement has not been started/reached within the period stated in Sub-Clause 50.3*

shall be finally settled, unless otherwise specified in the Contract, under the Pakistan Arbitration Act, 1940 (Act No. X of 1940) and Rules made thereunder as amended, by one or more arbitrators appointed under such Rules.



As most of the Contracts of RPPs awarded in 2006 & 2008 were already rescinded being declared on 30th March 2012 as non-transparent, illegal and void ab initio, they also violated the provisions of arbitration, and did not state that any **dispute under the contract** shall be finally settled, unless otherwise specified in the Contract, under the Pakistan Arbitration Act, 1940 (Act No. X of 1940), all such contracts are also deemed to be mis-procurement under Rule 50.

The stand of M.s Karkey that they will move International Court of Arbitration as reported in press is therefore not legal.

*Express Tribune May 27, 2012. **Rejecting the Supreme Court's ruling on rental power plants (RPPs)**, Turkey-based power firm Karkey Karadeniz Elektrik Uretim (KKEU) has instead moved the International Court of Arbitration – seeking compensation from the Government of Pakistan for losses that it says have arisen out of the latter's alleged breach of contract. The company has sent a legal notice to the Government of Pakistan seeking remuneration for losses arising out of – what it says – is a violation of the Rental Service Contract (RSC).*

The following statement of settlement of dispute between NAB with Karkey if any as reported in press is also against the 30 March 2012 Judgment;

ISLAMABAD: In the multi-billion scam of rental power plants, the National Accountability Bureau (NAB) and Turkish company Karkey has entered into an agreement under which Turkish company agreed to pay approximately \$20 million to the government of Pakistan and gave an assurance that it would not approach any international court for arbitration

TI Pakistan is striving to have Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

Regards,

With Regards,

Syed Adil Gilani
Advisor

Encl: Annex A, B and News paper cuttings

Ruling on rental power plants: Turkish firm takes dispute to international court

By Zafar Bhutta

Published: May 27, 2012

Islamabad Rejecting the Supreme Court's ruling on rental power plants (RPPs), Turkey-based power firm Karkey Karadeniz Elektrik Uretim (KKEU) has instead moved the International Court of Arbitration – seeking compensation from the Government of Pakistan for losses that it says have arisen out of the latter's alleged breach of contract. The company has sent a legal notice to the Government of Pakistan seeking remuneration for losses arising out of – what it says – is a violation of the Rental Service Contract (RSC).

The firm says that Pakistan has violated the obligations of an investment treaty between Pakistan and Turkey, and that the breach of contracts pertaining to rental power plants is also in violation of international law.

In a legal notice served to the Government of Pakistan on May 19, 2012, KKEU has demanded that the former halt inquiries initiated by the National Accountability Bureau (NAB).

Previously, NAB had sought payment of over \$180 million from KKEU during an inquiry initiated after the Supreme Court's verdict calling for the dissolution of all rental power projects. The company summarily refused to deposit the amount. NAB had also obtained and issued a freezing order against Karkey's banks accounts in Pakistan.

The Port Qasim Authority had taken action against the firm on April 5, 2012, after the Supreme Court's verdict calling for the dissolution of all rental power projects. The authority acted by issuing a notification which said that 'caution' had been placed on Karkey's vessels under Section 23 of the Pakistan National Ordinance. The notification further directed that vessels were not to move from their moored position until completion of the NAB inquiry, or before clearance from NAB. Pakistan has refused to lift that caution to date.

The firm has also demanded that the government withdraw a freeze in place on KKEU's bank accounts in Pakistan. The latter should also ensure the release – and allow unhindered removal – of all vessels and equipment currently located in Pakistani territory without delays, the notice said.

Karkey said that it had suffered – and continued to suffer – substantial losses arising out of the inquiry, for which the Government of Pakistan should reimburse the firm.

The Pakistan government has also been warned to desist from making any demands or taking any action for sums to be paid by Karkey. Pakistan has been urged, instead, to compensate Karkey for losses suffered by the company to date. Pakistan is to remain liable for any further loss suffered by Karkey, the notice said.

“For the avoidance of doubt, Karkey does not accept that the Supreme Court had jurisdiction in relation to this matter,” the firm’s legal council has said; adding that NAB wrongly commenced an inquiry against Karkey.

“In the event that disputes cannot be settled within six months of the date of this written notification, Karkey will commence arbitration proceedings in accordance with the Article V11 of the Treaty,” the firm has said. In the event of Pakistan’s failure to respond promptly to this notification, or to engage in meaningful consultations and negotiations, KKEU reserves the right to commence arbitration proceedings forthwith, the company clarified.

A senior official of the Ministry of Water and Power confirmed that the ministry had received a legal notice from the Turkish firm, and added that negotiations were being held with the Turkish government to resolve the issue.

Published in The Express Tribune, May 27th, 2012

INTERNATIONAL THE NEWS

NAB, Turkish company reach settlement in RPPs scam

Asim Yasin

Sunday, September 30, 2012

From Print Edition

ISLAMABAD: In the multi-billion scam of rental power plants, the National Accountability Bureau (NAB) and Turkish company Karkey has entered into an agreement under which Turkish company agreed to pay approximately \$20 million to the government of Pakistan and gave an assurance that it would not approach any international court for arbitration.

According to sources in the NAB, with the signing of the agreement with Karkey after several months of negotiations, the company agreed to pay back \$20 million and with the amount total recovery from the RPPs crosses Rs5 billion.

The sources said with the agreement with Turkish company, the NAB would now initiate the criminal proceedings against the local players that included senior officials of the Water and Power Ministry who were involved in the scam.

So far the NAB had only arrested general manager Wapda Private Power Organisation (WPPO), Rana Muhammad Amjad, allegedly for his role in the signing of the agreements while no other criminal proceedings against any other officials were yet made.

The sources said the negotiations with Karkey lasted for several months and during negotiations there were ups and down came as even Karkey threatened to opt the international arbitration as the company claimed that the government owed the money rather than company had to pay any amount.

A NAB official said once the company would deposit the agreed money, the ship would be released. The Private Power and Infrastructure Board (PPIB) issued advertisement on May 17, 2008 for setting up rental power project for generating electricity of 200MW near Karachi and two bidders Karkey Karadeniz Electric Uretim and AS & Walters Power International fulfilled the requirement.

Tariff determination was finalised on October 21, 2008 whereas Rental Service Contract was signed on December 5, 2009. The Original Commercial Operation Date (COD) was fixed on August 14, 2009 which was revised on December 8, 2009 and April 7, 2010, and amended rental service contract was signed on April 23, 2010 for a period of five years.

Tariff of the Karkey Karadeniz Electric Uretim was fixed as US Cent 5.98/unit. The company achieved COD in 11 months and produce only 60MW electricity instead of 200MW as per agreement.

The Supreme Court took notice of the matter and declared the contract of non-transparent with dull irregularities and ordered to rescind the contract of Karkey Karadeniz Electric Uretim forthwith. It directed the NAB to recover the money back from the company