

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

ORDER IN APPEAL NO. 388 OF 2017 &

IA NO. 1103 OF 2017 FILED BEFORE

THE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 2nd January, 2018

**Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF

Venkat Energy and Power Private Limited

A Company registered under the provisions
Of the Companies Act, 2013

Having its registered office at:

No. 40, 14-A, Main, 15-A, Cross, Sector-4,
HSR Layout, Bangalore-560102

..... Appellant

VERSUS

1. Bangalore Electricity Supply Corporation Limited

Rep. By its Managing Director
BESCOM Corporate Office, KR Circle,
Bangalore-560001

2. Chief Electrical Inspector to Government

Nirman Bhavan, 2nd Floor,
P.B. No. 5148, Dr. Rajkumar Road,
Rajajinagar, Bangalore-560010

3. Karnataka Power Transmission Corporation Ltd.

Rep. by its Managing Director
Cauvery Bhavan, KG Road,
Bangalore-560009

4. Karnataka Electricity Regulatory Commission

Rep. by its Assistant Secretary,
No. 9/2, 6th & 7th Floor, Mahalakshmi Chambers,
M.G. Road, Bengaluru,
Karnataka-560001

..... Respondents

Counsel for the Appellant ... Ms. Kiran Suri, Sr. Adv.
Ms. Apurva Upmanyu

Counsel for the Respondent(s)... ---

**(I) The Appellant has sought the following reliefs in
Appeal No. 388 of 2017:**

- (a) Allow the appeal and set aside Order dated 14.11.2017 passed by the Karnataka Electricity Regulatory Commission, Bengaluru in O.P. No. 82/2017;
- (b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

**(II) Following prayer sought in the IA No. 1103 of 2017 in
Appeal No. 388 of 2017:**

(Application for Stay)

- (a) Grant an ex parte ad-interim stay of the order dated 14.11.2017 in O.P. No. 82/2017 passed by the Karnataka Electricity Regulatory Commission, Bengaluru;
- (b) Grant an ex parte ad interim direction to the respondent No.1 to pay at the agreed tariff of Rs.8.40 per unit for energy generated and supplied from the appellant's 3 MW Solar Plant to the respondent No.1;
- (c) Grant ex-parte ad interim direction for recovery of Rs. 6,00,000/- deducted towards liquidated damages;
- (d) Grant ex-parte ad interim direction for recovery of Rs. 10,55,000/- deducted towards tariff difference charges;
- (e) Grant ex-parte ad interim direction for recovery of Rs. 3,18,000/- deducted towards penalty for delay in financial closure;
- (f) Confirm the ex parte order after notice of motion;
- (g) Pass such order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

**(III) Presented this Appeal for consideration under following Question
of Law:**

- A. Whether the State Commission has committed a serious error in holding that Commission has got jurisdiction to scrutinize the validity of the extension of time granted by BESCO on the ground that the event affects the quantum of tariff applicable for supply of energy?
- B. Whether the State Commission, the Hon'ble State Commission has misread the Power Purchase Agreement and has come to erroneous finding that the case is not covered under clause 2.5 read with clause 8.3 of PPA?
- C. Whether the Hon'ble State Commission has committed a serious error in not appreciating that BESCO has found that the delay is not due to default on the part of the appellant and therefore, the appellant is entitled for the reasonable extension of time and the State Commission has completely misread the terms of the contract and has exercised the power which it does not have?
- D. Whether the State Commission has failed to consider that necessary fee for inspection was paid on 12.12.2016 in pursuance of the approval granted on 09.12.2016 and the fee for scrutiny was already paid on 04.11.2016 and therefore the fee paid on 12.12.2016 towards inspection fee is not the ground for delay?
- E. Whether the State Commission has committed a serious error in not appreciating that clause 2.5.1 provides for extension of time and taking into consideration the time taken by the CEIG, the extension of time was reasonable and therefore it cannot be said that there is no reasonable ground to extend the time?
- F. Whether the Hon'ble State Commission has committed a serious error in not appreciating that Clause 4.2 (d) provides that BESCO is required to act reasonably while exercising its discretionary power under the agreement?
- G. Whether the Hon'ble State Commission has committed a serious error in not appreciating that the occurrences provided in clause 8.3 are inclusive and therefore they are not the only ones and the Force Majeure Event under clause 8.3 covers the situation where the delay or failure in performance has occurred due to any event or circumstance beyond the reasonable control of the party affected by such delay or failure?

- H. Whether the Hon'ble' State Commission has committed a serious error in not appreciating that clause 1.1 (xiv) defines emergency and when the BESCO noticed that 11 KV breaker was faulty, which is an emergency situation and the emergency clause read with clause 8.3 would cover the present situation as the same is beyond the control of either of the parties?
- I. Whether the Hon'ble State Commission has committed a serious error in not appreciating that the inspection was done on 23.12.2016 by Deputy Chief Electrical Inspector, who found that the installation is in conformity with the CEA Regulations 2010?
- J. Whether the Impugned order passed by the Hon'ble State Commission is perverse as the same is contrary to the terms of the contract and records of the case?

ORDER

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. Venkat Energy and Power Private Limited, the Appellant herein, assailing the correctness of the Impugned Order dated 14.11.2017 passed in O.P. No. 82 of 2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru, presented this Appeal.

2. We have heard the learned senior counsel, Smt. Kiran Suri, appearing for the Appellant, for quite some time. During the course of the submission, she submitted that the instant appeal, being Appeal No. 388 of 2017, filed by the Appellant, may kindly be dismissed as withdrawn reserving liberty to the Appellant to file review petition to review the Impugned Order dated 14.11.2017 passed in O.P. No. 82 of 2017, on the file of the Karnataka Electricity Regulatory Commission, Bengaluru within a period of two weeks from the receipt of the copy of this order.

3. She further submitted that all the contentions and grounds urged by the Appellant in the memo of appeal and also in the IA No. 1103 of 2017, may kindly be left open.

4. The submissions made by the learned senior counsel appearing for the Appellant, as stated above, are placed on record.

5. The instant Appeal No. 388 of 2017 and IA No. 1103 of 2017, on the file of this Appellate Tribunal for Electricity, New Delhi are dismissed as withdrawn reserving liberty to the Appellant to file review petition before the Karnataka Electricity Regulatory Commission, Bengaluru to review the Impugned Order dated 14.11.2017 passed in O.P. No. 82 of 2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru within a period of two weeks from the receipt of the copy of this Order. All the contentions and grounds urged by the Appellant in the main Appeal, being Appeal No. 388 of 2017 as well as in IA No. 1103 of 2017, are left open.

6. With these observations, the instant Appeal No. 388 of 2017 on the file of the Appellate Tribunal for Electricity, New Delhi has been dismissed as withdrawn, on account of which, the relief sought in IA No. 1103 of 2017 does not survive for considerations and, hence, stand disposed of in the interest of justice and equity

PRONOUNCED IN THE OPEN COURT ON THIS 2nd DAY OF JANUARY, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

js/vt