

COURT-I**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)****IA NO. 31 OF 2015 IN
DFR NO. 3122 OF 2014****Dated: 19th March, 2015****Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member****In the matter of:-****Hubli Electricity Supply Co. Ltd. & Anr.Appellant (s)
Versus
Fortune Five Hydel Porject Pvt. Ltd. & Anr. ...Respondent (s)****Counsel for the Appellant(s) : Mr. Khalid Arshad****Counsel for the Respondent(s) : Mr. Basava Prabhu S. Patil Sr. Adv.
Mr. Chinmaay Deshpandey
Mr. Sridhar Prabhu
Mr. Ananthanarayan M.G.****ORDER**

The Appellants have challenged the order dated 15.10.2014 passed by the Karnataka State Electricity Regulatory Commission, Bangalore (KERC for short). By the impugned order, the Appellant has been directed to pay for the energy injected into the grid by the first Respondent for the period from 09.11.2013 to 20.02.2014 at the rate of generic tariff applicable to the Wind Power Projects within thirty days from the date of the Order. There is 15 days delay in filing the appeal. The instant application is filed praying for condonation of delay.

We have heard learned counsel for the parties. We notice that at the hearing before the KERC, the Appellant had indicated that they were not averse to making payment for the energy injected into the grid and had suggested that the KERC may direct payments to be made to the first Respondent at 85% of the generic tariff in terms of the order of the KERC dated 08.07.2014. We may quote the relevant paragraph, it reads as under :-

“Admittedly, the petitioner has been allowed to inject energy into the grid and the energy injected by the Petitioner has been utilized by the Respondents. In the Statement of Objections, the Respondents have indicated that they are not averse to making payment for the energy injected into the grid and have suggested that the Commission may direct payments to be made to the Petitioner at 85% of the generic tariff, in terms of the Order of the Commission dated 08.07.2014. This submission of the Respondents cannot be accepted, as the said Order dated 08.07.2014 is applicable from the current Wind Year onwards, and not for the period in question at present case.”

Our attention is also drawn to ground 9.14 of the appeal memo where while stating that the judgment of KERC in Renew Power on which first Respondent had placed reliance has no precedential value, it is stated

that the Appellants considered the 1st Respondent's request and responded that they would make payment in consonance with the order passed by the KERC in the pending review petition which was filed by the Appellants, seeking review of the order passed in Renew Power. It may be stated here that the Appellant's review petition was rejected. We may quote 9.14 paragraph. It reads as under: -

"9.14 That the 1st Respondent's request for payment at generic tariff, though misplaced, is based on the order passed by KERC in Renew Power's case. It is submitted that the Renew Power case has no precedent value, in spite of which the Appellants fairly considered the 1st Respondent's request and responded that they would make payments in consonance with the order passed by the KERC in the pending review petition which has been filed by the Appellants herein. Thereafter the 1st Respondent filed the petition before KERC contending that Renew Power is not applicable to it and sought credit of energy. It is submitted that the 1st Respondent cannot be permitted to approbate and reprobate."

Counsel for the Appellants has drawn our attention to paragraph 9.15 and contended that the judgement in Renew Power is distinguished in the appeal memo.

Having regard to the peculiar facts and circumstances of the case and also taking note of the grievance of the learned Counsel for the first Respondent that the impugned order dated 15.10.2014 directs the Appellant to pay for the energy injected into the grid for the period from 02.11.2013 to 20.02.2014 and having regard to statement made on behalf of the Appellant before the KERC and the averment made in the appeal memo which we have quoted hereinabove. We deem it appropriate to direct the Appellant to deposit 85% of the generic tariff applicable during the relevant period with the first Respondent within a period of 6 weeks from today. This deposit shall be condition precedent for condonation of delay. Needless to say that in case the Appellant succeeds in the appeal, the first Respondent will have to refund the said amount with interest. Needless to say that if the amount is not deposited, as directed, the appeal shall stand dismissed.

The application is disposed of.

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

Ts/vg