

COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 270 OF 2015
ON THE FILE OF THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI**

Dated: 18th September, 2018

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

Renewable Energy Developers Association of Karnataka

A Society Registered under the provisions of the Karnataka
Societies Registration Act, 1960, having its Office at
Hintananda II, 48, Lavelle Road,
Bengaluru – 560 001

(Represented by its Authorized Signatory)

..... Appellant

VERSUS

1. Karnataka Electricity Regulatory Commission

6th & 7th Floor, Mahalaxmi Chambers, #9/2, MG Road,
Bangalore – 560 001
(Represented by its Secretary)

2. Bangalore Electricity Supply Company Limited

K.R. Circle
Bangalore – 560 001

(Represented by its Managing Director)

..... Respondents

Counsel for the Appellant(s) : Mr. Anantha Narayan M.G.
Mr. Shridhar Prabhu

Counsel for the Respondent(s) : Ms. Swapna Seshadri
Ms. Parichita Chowdhury for for R-1

Mr. Arvind Kamath
Ms. Chinmayee Chanda for R-2

The Appellant has presented this Appeal, being Appeal No. 270 of 2015, seeking the following reliefs:

- (a) Call for Records;
- (b) Upon perusal of records, be pleased to set aside the order dated 02nd March, 2015, in respect of Annual Performance Review for FY14 and Revised ARR and Retail Supply Tariff for FY 16, produced herein as Annexure-A-1 (the "Impugned Order"), to the limited extent of the determination of the Cross Subsidy Surcharge (CSS) calculated therein.
- (c) Grant the cost of this Appeal and pass such other order or orders as the Hon'ble Tribunal may deem it fit and proper in the circumstances of the case.

The Appellant has presented this Appeal for considering the following Questions of Law:

- A. Whether the computations on consumption, Aggregate Technical and Commercial (ATC) losses and consequent arrival of tariff structure under the Impugned Order are *ultra vires* the Electricity Act, 2003?
- B. Whether it is *ultra vires* the Electricity Act, 2003 to arrive at the Average Realisation Rate as arrived at by the 1st Respondent by adding all charges other than energy charges viz., Demand

Charges, Initial Security Deposit, Additional Security Deposit, Meter Security Deposit, Electricity Tax / Duty, Power Factor Penalties or any other component of tariff that is applicable other than energy charges?

ORDER

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

1. Learned counsel, Mr. Anantha Narayan M.G., appearing for the Appellant, at the outset, submitted that, he will confine his submissions in the instant Appeal in so far as it relates to the issue no. 8.(i)(b) only, which reads thus:

8.(i)(b) Whether the Average Realisation Rate arrived at by the 1st Respondent factually contains the charges other than energy charges viz., Demand Charges, Initial Security Deposit, Additional Security Deposit, Meter Security Deposit, Electricity Tax / Duty, Power Factor Penalties or any other component of tariff that is applicable other than energy charges can be added or factored for arriving at the CSS?

2. Submissions made by the learned counsel appearing for the Appellant, as stated above, are placed on record.

3. We have heard learned counsel, Mr. Anantha Narayan M.G., appearing for the Appellant, learned counsel, Ms. Swapna Seshadri, appearing for the first

Respondent/State Regulatory Commission and learned counsel, Mr. Arvind Kamath, appearing for the second Respondent.

4. Learned counsel appearing for the Appellant, at the outset, submitted that, the instant Appeal arising out of the same impugned Order dated 02.03.2015 in respect of Annual Performance Review for Financial Year 2014 and Revised Annual Revenue Requirement (ARR) and Retail Supply Tariff for Financial Year 2016 and the same subject matter involved in Appeal No. 259 of 2016 & Appeal No. 386 of 2017 [*Fortune Five Hydel Projects Private Limited v Karnataka Electricity Regulatory Commission & Anr*] has been allowed by this Appellate Tribunal vide its Judgment and Order dated 28.08.2018 and the matter stands remitted back to the State Regulatory Commission for consideration afresh. Therefore, he submitted that, following the said Judgment and Order dated 28.08.2018 passed by this Tribunal, as stated supra, and for the reasons stated therein, the instant Appeal filed by the Appellant may kindly be allowed in part and the impugned Order dated 02.03.2015 passed by the first Respondent/State Regulatory Commission may kindly be set aside so far it relates to the issue no. 8(i)(b), as stated supra, and the matter may kindly be remitted back to the first Respondent/State Regulatory Commission for consideration afresh in the interest of justice and equity.

5. **Per-contra**, learned counsel appearing for the Respondent Nos. 1 and 2, at the outset, submitted that, the submissions made by the learned counsel

appearing for the Appellant, as stated supra, may kindly be placed on record and the instant Appeal may kindly be disposed of in pursuance of the Judgment and Order dated 28.08.2018 passed by this Hon'ble Tribunal in Appeal No. 259 of 2016 and Appeal No. 386 of 2017 [*Fortune Five Hydel Projects Private Limited v Karnataka Electricity Regulatory Commission & Anr.*].

6. Submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 1 and 2, as stated supra, are placed on record.

7. In the light of the submissions of the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent Nos. 1 and 2, as stated supra, and having regard to the facts and circumstances of the case in hand, the instant Appeal filed by the Appellant stands disposed of following the Judgment and Order dated 28.08.2018 passed by this Tribunal in Appeal No. 259 of 2016 and Appeal No. 386 of 2017 [*Fortune Five Hydel Projects Private Limited v Karnataka Electricity Regulatory Commission & Anr.*] and for the reasons stated therein, so far it relates to the issue no. 8(i)(b) only and the instant Appeal, being Appeal No. 270 of 2015, filed by the Appellant is allowed in part.

Impugned Order dated 02.03.2015 passed by the State Regulatory Commission, first Respondent herein, is hereby set aside so far it relates to the issue no. 8(i)(b).

The matter stands remitted back to the first Respondent/State Regulatory Commission with the direction to pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the second Respondent and dispose of the matter as expeditiously as possible, at any rate, within a period of six months from the date of appearance of the parties.

The Appellant and the second Respondent herein are directed to appear before the first Respondent/State Regulatory Commission personally or through their counsel, without further notice, on 09.10.2018 for collecting necessary date of hearing.

With these observations, the instant Appeal filed by the Appellant stands disposed of.

Parties to bear their own costs.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

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