

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 302 OF 2013 &
IA NO. 361 OF 2018

Dated: 14th November, 2018

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

In the matter of:

State Load Despatch Centre, Karnataka

Karnataka Power Transmission Corporation Limited,
Transmission Billing Centre,
Race Course Cross Road,
Bangalore – 560 001

... **Appellant(s)**

Versus

1. Central Electricity Regulatory Commission

3rd and 4th Floor, Chanderlok Building,
Janpath
New Delhi-110 001

2. BMM Ispat Limited

Dhanapur Village,
Hospet Taluq,
Bellary District 583222
Karnataka

3. Karnataka Electricity Regulatory Commission

6th and 7th Floors, Mahalakshmi Chambers,
9/2, M.G. Road,
Bangalore – 560 001

... **Respondent(s)**

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Abhishek Kaushik
Mr. Kumar Mihir for R-2

ORDER

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

1. With the consent of the learned counsel appearing for the Appellant and learned counsel appearing for the second Respondent, the matter was taken up for final disposal. The Respondent Nos. 1 and 3 served unrepresented.
2. The learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant submitted that, the Appellant assailing the correctness of the impugned Order dated 01.05.2013 passed in Petition No. 165/MP/2012 on the file of the Central Electricity Regulatory Commission, New Delhi in so far it relates to Backup Power Supply (BPS) charges only has presented this appeal, being Appeal No. 302 of 2013.
3. The submission made by the learned counsel appearing for the Appellant, as stated supra, is placed on record.
4. We have heard the learned counsel appearing for the Appellant and learned counsel appearing for the second Respondent. The Respondent Nos. 1 and 3 served unrepresented.
5. The learned counsel, Mr. Abhishek Kaushik, appearing for the second Respondent, at the outset, on instruction, submitted that, in the light of the findings recorded by the first Respondent/Central Regulatory Commission in paragraph 9 of its impugned Order dated 01.05.2013 passed in Petition No. 165/MP/2012, the prayer sought by the Appellant against the second Respondent cannot be sustainable for consideration in view of the finding of fact recorded in paragraph 9 of the impugned Order. Therefore, he prayed that the instant appeal may kindly be disposed of accordingly.

6. ***Per-contra***, the learned counsel, Mr. Anand K. Ganesan, appearing for the Appellant, at the outset, fairly submitted that, in case the registered consumer has an electricity connection for drawal of power including start-up power and is paying charges under such agreement to the jurisdictional distribution company, the Back-up Power Supply (BPS) charges on the same, levy would not arise in the light of the finding of fact recorded in paragraph 9 of the impugned Order. Further, he submitted that, the second Respondent may kindly be directed to produce a copy of the agreement to the Appellant executed between the second Respondent and the jurisdictional distribution company within a period of two weeks to enable them to verify whether the finding of fact recorded in paragraph 9 of the impugned order is correct.

7. Submissions made by the learned counsel appearing for the second Respondent and the learned counsel appearing for the Appellant, as stated supra, are placed on record.

8. In view of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the second Respondent, as stated supra, and in the light of the findings recorded in paragraph 9 of the impugned Order dated 01.05.2013 passed in Petition No. 165/MP/2012 on the file of the Central Electricity Regulatory Commission, New Delhi, which read thus:

“9. In the present case, it is an undisputed fact that the petitioner is a consumer of GESCO and is connected to its distribution network for drawal of power for all purposes, which should include startup power as well. The petitioner has averred that it has been paying the Demand Charges to GESCO as and when billed. Therefore, there is no justification for the respondent to bill the BPS Charges as it would amount to double recovery for the same quantum of power consumed by the petitioner for startup and other purposes.”

the instant appeal, being Appeal No. 302 of 2013, stands disposed of in view of the finding of fact recorded in paragraph 9 of the impugned Order with the direction to the second Respondent to produce a copy of the agreement executed

between the second Respondent and the jurisdictional distribution licensee before the Appellant within a period of two weeks from the date of receipt of this Order.

9. Further, the Appellant shall reconcile and pay the necessary amount collected towards Back-up Power Supply charges to the second Respondent expeditiously.

10. With these observations, the instant appeal stands disposed of.

11. In view of the instant Appeal on the file of the Appellate Tribunal for Electricity, New Delhi has been disposed of, on account of which, relief sought in IA No. 361 of 2018 of 2018 does not survive for considerations and, hence, stands disposed of.

(S.D. Dubey)
Technical Member
vt/pk

(Justice N.K. Patil)
Judicial Member