

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**JUDGMENT IN APPEAL NO. 29 OF 2019 &**  
**IA NO. 1642 OF 2018 ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

**Dated: 1<sup>st</sup> April, 2019**

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member**  
**Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

**In the matter of:**

**M/s M. Hanumantha Rao**

Represented by its Managing Director  
Sri. Arun Kumar  
s/o Shamsundar  
aged about 50 years,  
resident at No. 38, 15<sup>th</sup> Cross, Nehru Nagar,  
Sheshadripuram  
Bengaluru – 560 020

..... Appellant

***VERSUS***

**1. Karnataka Electricity Regulatory Commission**

Represented by its Chairperson  
No. 16, C-1, Millers Bed Area,  
Vasantha Nagar  
Bengaluru – 560 001

**2. Bengaluru Electricity Supply Entity Limited**

A entity registered under the  
Provisions of the Companies Act, 1956,  
Having its registered office at K.R. Road,  
Bengaluru – 560 001  
Represented by its Managing Director

**3. Hubli Electricity Supply Entity Limited**

A Entity registered under the  
Provisions of the Companies Act, 1956,  
Having its registered office at Navanagar,  
P.B. Road, Hubli – 580 002

Represented by its Managing Director

**4. Karnataka Power Transmission Corporation Limited**

Represented by its Managing Director,  
Kaveri Bhavan, K.G. Road,  
Bengaluru – 560 009

**5. State of Karnataka,**

Represented by the Addl. Chief Secretary  
Department of Energy,  
Vikasa Soudha,  
Dr. Ambedkar Veedhi  
Bengaluru – 560 001

..... Respondents

Counsel for the Appellant(s) : Mr. K. Dhieraj Kumar  
Ms. K. Radha  
Mr. K. Maruthi Rao

Counsel for the Respondent(s): Mr. Siddhanth Kohli  
Mr. Balaji Srinivasan for R-2 & 4

Mr. Joseph Aristotl S  
Mr. Shiva P. for R-5

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

- A. Whether the respondent No.1 is competent to curtail the control period or effect mid course revision admitted in an approved agreement?
- B. Whether the order impugned, reducing the period of banking facility de hors wheeling and banking agreement does not violate the theory of legitimate expectation and promissory estoppels?
- C. Whether an agreement approved by the respondent No.1 could be amended by an order, without either issuing notice to the parties concerned or making them parties to the case.
- D. Whether the impugned order is not in violation of the principles of natural justice, in as much as it effects the rights of the parties, without giving them an opportunity?

- E. Whether the order differentiating the consumers of ESCOMS and the consumers of the appellants, fixing the time for drawing energy is not unconstitutional.
- F. Whether the impugned order is not illegal as the same does not consider the earlier order of this Hon'ble Tribunal holding that banking facility is an essential support for renewable energy generators?

## **J U D G M E N T**

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

1. In the instant Appeal, the Appellant, M/s M. Hanumantha Rao, Bengaluru, is questioning the legality, validity and propriety of the common order passed by Karnataka Electricity Regulatory Commission, Bengaluru (1<sup>st</sup> Respondent herein) dated 09.01.2018 in OP No. 100/2016 reducing the banking period to carry forward un-utilized energy for RE projects from existing upto 1 year to 6 months in respect of wind power projects, which is produced in so far as the Appellant is concerned.

2. The Appellant has sought the following reliefs in Appeal No. 29 of 2019:

- i. To set aside the common order passed by Karnataka Electricity Regulatory Commission, Bengaluru (respondent No.1) dated 09.01.2018 in OP No. 100/2016 reducing the banking period to carry forward un-utilized energy for RE projects from existing upto 1 year to 6 months in respect of

wind power projects, which is produced in so far as the Appellant is concerned.

- ii. To hold that the impugned order is not applicable to the appellant and the appellants Wind Power project implemented based on wheeling and balancing agreements produced at Annexure-A-2 to A-4, shall be governed by the subsisting agreements.

3. We have heard the learned counsel, Ms. Radha, appearing for the Appellant, the learned counsel, Mr. Siddhanth Kohli, appearing for the Respondent Nos. 2 & 4 and the learned counsel, Mr. Joseph Aristotle S, appearing for the Respondent No.5.

4. The learned counsel for the Appellant and the learned counsel for the Respondent Nos. 2 & 4 and 5, at the outset, fairly submitted that, the instant appeal filed by the Appellant may kindly be disposed of following the Judgment and Order dated 29.03.2019 passed in Appeal No. 42 of 2018 & IA No. 214 of 2018 and connected cases (M/s Fortune Five Hydel Projects Pvt. Ltd, vs Karnataka Electricity Regulatory Commission & Ors.) and in terms and for the reasons stated therein in the interest of justice and equity.

5. Submissions of the learned counsel appearing for the Appellant and the Respondent Nos. 2 & 4 and 5, as stated supra, are placed on record.

6. In the light of the submissions of the counsel appearing for the Appellant and the Respondent Nos. 2 & 4 and 5 and having regard to the facts and circumstances of the case in hand, it is just and proper to pass an appropriate order to meet the ends of justice as requested by the learned counsel for both the parties in the interest of justice and equity.

### **ORDER**

Having regard to the facts and circumstances of the case, as stated above, the instant appeal filed by the Appellant is allowed.

The common impugned Order dated 09.01.2018 in Petition No. 100/2016 on the file of the Karnataka Electricity Regulatory Commission (1<sup>st</sup> Respondent herein) is hereby set aside so far it relates the prayers sought by the Appellant in the instant appeal.

The matter stands remitted back to the first Respondent, KERC with the direction to pass the appropriate order in the light of the observations made in the preceding paragraphs of the Judgment dated 29.03.2019 passed in Appeal No. 42 of 2018 & IA No. 214 of 2018 and connected cases (M/s Fortune Five Hydel Projects Pvt. Ltd, vs Karnataka Electricity Regulatory Commission & Ors.), in accordance with law as expeditiously as possible at any rate within six months.

The Appellant and the Respondents Nos. 2 to 5 herein are directed to appear before the first Respondent, KERC personally or through their counsel without notice on 29.04.2019.

**IA NO. 1642 of 2018**

In view of the Appeal No. 29 of 2019 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, on account of which, the reliefs sought in IA No. 1642 of 2018 does not survive for consideration and, hence, stand disposed of.

Order accordingly.

**(Ravindra Kumar Verma)**  
**Technical Member**  
vt/ss

**(Justice N.K. Patil)**  
**Judicial Member**