

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

ORDER IN APPEAL NO. 170 OF 2018 &
IA NO. 469 OF 2018
ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

Dated: 26th March, 2019

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

In the matter of:

Bhagyodya Motors Private Ltd.

A company registered under the provisions of the
Companies Act, 1956

Having its registered office at No. 1, 74/1,
Ballari Road, Hospet – 583 20

Represented by its Chairperson Appellant

VERSUS

1. Gulbarga Electricity Supply Company Limited

A company registered under the Provisions of the
Companies Act, 1956, having its registered office at:

Station Road, Kalaburagi – 585 102

Represented by its Managing Director

2. Karnataka Electricity Regulatory Commission

No. 16, C-1, Millers Bed Area, Vasanth Nagar,
Bengaluru – 560 052, Karnataka

Represented by its Chairperson Respondents

Counsel for the Appellant (s) : Mr. Shailesh Madiyal
Mr. Sudhanshu Prakash

Counsel for the Respondent(s): Mr. G.S. Kannur
Mr. Nithin Sarvanan
Ms. Arunima Singh
Ms. Priyadarshini for R-1

Respondent No. 2, though served, is unrepresented.

The Appellant has presented the instant Appeal seeking the following reliefs::

- (a) Upon perusal of records, be pleased to set aside the impugned Order dated 12.12.2017 passed by the Karnataka Electricity Regulatory Commission, Bengaluru in OP No. 28/2017;
- (b) Grant the cost of this Appeal; and
- (c) Pass such other order or orders as this Hon'ble Tribunal may deem fit in the interest of justice and equity.

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

- A. Whether the Hon'ble KERC has committed an error in holding that the Respondent was entitled to unilaterally modify the tariff and conditions specifically agreed upon in the PPA, on the basis of a Scheme/Guidelines, in spite of there being no delay on the part of the Appellant in completing the plant – since the same was completed within the control period prescribed at the time of entering into the PPA?
- B. Whether the Hon'ble KERC has not appreciated that the unilateral modification of the PPA is contrary to the judgment

of the Supreme court of India in Gujarat Urja Vikas Nigam Ltd.
Vs. EMCO Ltd. and Anr, reported in (2016)11 SCC 182?

ORDER

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

1. In the instant Appeal, the Appellant, Bhagyodya Motors Private Ltd, is questioning the legality, validity and propriety of the impugned Order dated 12.12.2017 passed in OP No. 28/2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru in the case of Bhagyodaya Motors Pvt Ltd v Gulbarga Electricity Supply Company Limited.

2. Heard the learned counsel, Mr. Shailesh Madiyal, appearing for the Appellant for quite some time. During the course of his submissions, the counsel for the Appellant submitted that, the instant appeal, being Appeal No. 170 of 2018, may kindly be disposed of reserving liberty to the Appellant to file a review petition for reviewing the impugned Order dated 12.12.2017 passed in OP No. 28/2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru (second Respondent herein) within a period of two weeks from the date of the receipt of the copy of this Order.

All the contentions and grounds urged by the Appellant in the instant appeal may kindly be left open.

3. The learned counsel, Ms. Priyadarshini, appearing on behalf of the learned counsel, Mr. G.S. Kannur, for the first Respondent, submitted that, in the light of the submissions of the counsel for the Appellant, as stated supra, an appropriate order may kindly be passed.

Submissions of the learned counsel appearing for the Appellant and the first Respondent, as stated supra, are placed on record.

Respondent No. 2, though served, is unrepresented.

4. In the light of the submissions of the learned counsel for the Appellant and the learned counsel for the first Respondent, as stated supra, the instant appeal, being Appeal No. 170 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file a review petition for reviewing the impugned Order dated 12.12.2017 passed in OP No. 28/2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru (second Respondent herein) within a period of two weeks from the date of the receipt of the copy of this Order.

5. It is needless to clarify that, in the event, the Appellant could not get any relief in the review petition filed before the second Respondent/Karnataka Electricity Regulatory Commission, it is open to the

Appellant to question the correctness of the impugned Order dated 12.12.2017 before this Tribunal if they so advised or need arises.

All the contentions and grounds urged by the Appellant in the instant appeal are left open.

With these observations the instant appeal, being Appeal No. 170 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

IA NO. 469 of 2018

In view of the Appeal No. 170 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA No. 469 of 2018 does not survive for consideration and, hence, stands disposed of.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member

bn/vt

(Justice N.K. Patil)
Judicial Member