

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

**JUDGMENT IN
DFR NO. 4310 OF 2018 &
IA NOS. 405 OF 2019 & 406 OF 2019
ON THE FILE OF
THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI**

Dated: 3rd April, 2019

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

In the matter of:

Belgaum Renewable Energy Private Limited

Having its Correspondence and Corporate Office at:

E-5, Defence Colony

New Delhi – 110 024

(Represented through its Authorised Signatory

Aditya Agarwal)

having its registered office at:

D-43, Janpath, Shyam Nagar,

Jaipur, Rajasthan – 302 019

..... Appellant

VERSUS

1. Karnataka Electricity Regulatory Commission

Through its Secretary

912, 6 & 7th Floor, Mahalakshmi Chambers,

Mahatma Gandhi Road,

Bengaluru, Karnataka – 560 001

2. Hubli Electricity Supply Company Limited,

Through its Managing Director,

P. B. Road, Navanagar,

Hubli – 580 025

3. Bengaluru Electricity Supply Company Limited

Through its Managing Director,
K.R. Circle,
Bengaluru – 560 001

4. Mangalore Electricity Supply Company Limited

Through its Managing Director
MESCOM Bhavana,
Kavoor Cross Road, Bejai,
Mangaluru-575004

5. Chamundeshwari Electricity Supply Company Limited,

Through its Managing Director,
No. 29, Kaveri Grameena Bank Road,
Hinkal, Vijayanagar, 2nd Stage,
Mysuru – 570 019

6. Karnataka Power Transmission Corporation Limited

Through its Managing Director,
28, Race Course Road,
Bengaluru – 560 009

..... Respondents

Counsel for the Appellant(s) : Mr. Deepak Khurana

Counsel for the Respondent(s): ---

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

- I. Whether the Impugned Order is in the teeth of the express mandate of Article 51 A (g) of the Constitution and Section 86(1)(e) of the Act?
- II. Whether the Respondent Commission, a statutory body, can read down the specific mandate of the Act under which it has been created?
- III. Whether the Respondent Commission while passing the Impugned Order has failed to appreciate that the ESCOMS were estopped by

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- the Doctrine of Promissory Estoppels to seek modification in the express terms agreed under the WBAs?
- IV. Whether in terms of the scheme of the Act can the Respondent Commission through an Order meddle with an existing Order and Agreement to frustrate renewable generation?
- V. Whether the Appellant is protected by the doctrine of Legitimate Expectation?
- VI. Whether the Respondent Commission by restricting the banking facility to a meager of six months and ToD based banking facility has in effect defeated the purpose and the concept of banking?
- VII. Whether the Respondent Commission while passing the Impugned Order has failed to appreciate that ESCOMs have not provided any data to substantiate its claim that there is monetary impact on the ESCOMs due to annual banking facility?
- VIII. Whether the Respondent Commission has passed the impugned order in the absence of any substantial evidence?
- IX. Whether the Respondent Commission while passing the Impugned Order has failed to appreciate that the ESCOMs have failed to provide any new development, which was not present earlier, which had now warranted the curtailment of banking period?
- X. Whether the Respondent Commission while passing the impugned Order has exceeded the limit of its jurisdiction?
- XI. Whether Impugned Order can have retrospective effect?

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, Belgaum Renewable Energy Private Limited, Jaipur, Rajasthan, is questioning the legality, validity and propriety of the common order passed by Karnataka Electricity Regulatory Commission, Bengaluru (1st Respondent herein) dated 09.01.2018 in OP Nos. 90/2016, 100 of 2016, 104 of 2016 and 130 of 2017.

2. The Appellant has sought the following reliefs in DFR No. 4310 of 2018:
- (i) That this Hon'ble Tribunal may be pleased to allow the present Appeal and set aside the Impugned order dated 09.01.2018 in OP Nos. 90/2016, 100/2016, 104/2016 and 130/2017 in terms of the grounds raised in Para 9 of the paper-book;
 - (ii) For such further or other relief as circumstances and nature of the case may require.

3. The learned counsel appearing for the Appellant, Shri Deepak Khurana, at the outset, 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.

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

5. In the light of the submissions of the counsel appearing for the Appellant 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 the Appellants in the interest of justice and equity.

6. Registry is directed to number the appeal.

ORDER

Having regard to the facts and circumstances of the case, as stated above, the instant appeal, being DFR No. 4310 of 2018, filed by the Appellant stands disposed of.

The common impugned Order dated 09.01.2018 in Original Petition Nos. 90/2016, 100/2016, 104/2016 and 130 of 2017 on the file of the Karnataka Electricity Regulatory Commission (1st 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 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.), in accordance with law, as expeditiously as possible, at any rate within a period of six months.

The Appellant and the Respondents Nos. 2 to 6 herein are directed to appear before the first Respondent/KERC personally or through their counsel without notice on 29.04.2019.

IA NOs. 405 & 406 of 2019

In view of the Appeal, being DFR No. 4310 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA Nos. 405 & 406 of 2019 do not survive for consideration and, hence, stand disposed of as having become infructuous.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member
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(Justice N.K. Patil)
Judicial Member