IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 211 OF 2021

Dated: 19.12.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:
AMR POWER PRIVATE LIMITED
Suit No. 701-702
Prestige Meridian – 2, No. 30
M.G. Road, Bangalore – 560 001 **… Appellant**

VERSUS

1. **Mangalore Electricity Supply Company**
   1st Floor, Paradigm Plaza,
   A.B. Shetty Circle,
   Mangalore- 575 001

2. **Karnataka Electricity Regulatory Commission**
   No.16, C-1 Millers Tank Bed Area,
   Vasanth Nagar,
   Bangaluru – 560 052 **…Respondents**

Counsel for the Appellant(s) : Mr. Basava P. Patil, Sr. Adv.
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Ms. Stephania Pinto
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Mr. K. Sumanth Gowda
Mr. Dalima Gupta
Mr. Shahbaz Hussain
Ms. Sanjana Reddy
Mr. Yashwanth for R-1

Ms. Shwetha Ravishankar
Mr. Manjunatha S.
Ms. Jyothi Lakshmi for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The instant Appeal has been filed by the Appellant i.e., AMR Power Private Limited (in short "Appellant") against the order dated 23.03.2021 (in short "Impugned Order") passed by the Karnataka Electricity Regulatory Commission (in short "State Commission" or "KERC") in Petition OP No.192/2017 passed under Section 86 (1) (f) read with Section 129 of the Electricity Act, 2003.

Description of the parties

2. The Appellant/ AMR Power Private Limited is a Generating Company with a Mini Hydel Power Project of 24.75 MW capacity built across the Netravathi River, Perla Village, Bantwal Taluk, Kashina Kannada District.

3. Respondent No. 1, Mangalore Electricity Supply Company (in short "MESCOM" or "R1"), is the designated electricity distribution company with jurisdiction over the Dakshina Kannada district.

4. Respondent No. 2 is the Karnataka Electricity Regulatory Commission, which was constituted under the Karnataka Electricity Reforms Act of 1999. Following the enactment of the Electricity Act of 2003, KERC was recognized as the State Commission for the purposes of the Act.

Factual Matrix of the Case

5. The Appellant and the Respondent No. 1, Mangalore Electricity Supply Company, entered into a Power Purchase Agreement (in short "PPA") dated 02.08.2006 for the sale and purchase of the energy at the tariff of INR 2.80 per unit as per the Generic Tariff Order dated 18.01.2005.

6. The Appellant initiated proceedings under OP No. 28/2009 before the KERC, seeking a declaration that the PPA dated 02.08.2006 had become void due to circumstances beyond the Appellant's control. The Appellant also requested the Commission to direct the State Load Dispatch Centre (in short SLDC") to grant Open Access or to order MESCOM to compensate at a rate of INR 5.00 per unit for the energy supplied to Respondent No. 1 during the case's pendency.

7. The State Commission dismissed the Petition through an order dated 23.12.2011. The Appellant subsequently filed a review petition challenging this order. During the review petition's pendency, on 22.07.2011, the Appellant

terminated the PPA due to defaults committed by Respondent No. 1, after adhering to the termination procedures outlined in the PPA.

8. Subsequently, the Commission upheld this termination by its order dated 14.08.2013 in OP No.37/2012, thereafter, this Tribunal vide judgment dated 17.10.2014 in Appeal No. 275/2013 upheld the said order.

9. The judgment of this Tribunal was ultimately affirmed by the Hon'ble Supreme Court in its judgment dated 15.09.2016 in CA No. 1665/2015. As a result, the termination of the PPA effective from 22.07.2011 became final and binding on all parties involved.

10. Consequently, the Appellant became entitled to damages for the period from 22.07.2011 to 16.10.2014 from the R1 at the prevalent market price for energy supplied to the R1 during that period under the orders of the KERC and the R1 became liable to pay the aforesaid damages/ compensation to the Appellant.

11. Accordingly, the Appellant requested R1 to pay damages /compensation based on prevalent market rates of the power supply during the period from 22.7.2011 to 16.10.2014.

12. R1 rejected the Appellant's request for compensation, leading the Appellant to file Petition OP No. 192/2017 before the KERC to enforce its claim. The Appellant sought compensation totaling INR 1,90,70,41,093 (Rupees 190.7 Crores), after deducting payments already made by R1 up to June 2014, as directed by KERC and this Tribunal. This petition resulted in the order now being challenged.

13. The Commission provided only partial relief to the Appellant by awarding compensation for the energy supplied from 16.10.2011 to 16.10.2014, instead of the correct period from 22.07.2011 to 16.10.2014. The compensation was based on the month-wise price of short-term bilateral electricity transactions, minus a trading margin of seven paise per unit, rather than the rate claimed by the Appellant.

14. Aggrieved by this order of the Commission dated 23.03.2021 in O.P No. 192 of 2017, the Appellant has preferred the present Appeal.

Submissions of the Appellant

15. Before the commissioning of the Project on 12.02.2009, disputes arose due to MESCOM's failure to meet conditions precedent, leading to the filing of OP No.28/2009, where the Appellant sought to declare the PPA void, but KERC rejected the claim. Post-commissioning, the Appellant terminated the PPA on 22.07.2011 for payment defaults and requested approval for a Wheeling and Banking Agreement (WBA), but MESCOM refused, claiming the PPA remained valid.

16. The Appellant filed OP No. 48/2011 before KERC to declare the PPA terminated and sought open access, receiving interim orders for payments at PPA rates, this petition was withdrawn on 22.03.2012, with liberty to seek relief. Subsequently, the Appellant approached CERC for inter-state open access via Petition No. 141/MP/2012, based on an agreement with PTC India. These proceedings were closed due to MESCOM's filing of OP No. 37/2012, challenging

the termination. In OP No. 37/2012, MESCOM sought interim relief to stay the termination notice, and KERC ordered both parties to maintain the status quo on 23.08.2012.

17. The Appellant filed Appeal No. 223/2012 before this Tribunal against the interim order of 23.08.2012, seeking a revised price for the energy supplied. The Tribunal directed payments at the PPA rate in its order dated 22.11.2012, and later on 04.01.2013, it clarified that the status quo did not amount to a stay on the termination of the PPA. OP No. 37/2012 was ultimately dismissed by KERC on 14.08.2023, upholding the termination of the PPA. MESCOM then appealed the decision through Appeal No. 275/2013, seeking a stay of KERC's ruling.

18. During the pendency of Appeal No. 275/2013, the Appellant sought open access through I.A. No. 49/2014, asking MESCOM to either execute the Wheeling and Banking Agreement (WBA) or pay for the energy supplied at a higher rate. The Tribunal allowed the application, directing MESCOM to execute the WBA by 31.03.2014. The appeal was dismissed on 17.10.2014, affirming KERC's order upholding the PPA termination. MESCOM granted open access the same day but executed the WBA belatedly on 06.05.2014.

19. MESCOM appealed the 17.10.2014 order from this Tribunal to the Hon'ble Supreme Court through CA No. 1665/2015. However, the Hon'ble Supreme Court dismissed the appeal on 15.09.2016, affirming the termination of the PPA. Consequently, the termination was upheld by all three legal forums: KERC (14.08.2013), APTEL (17.10.2014), and the Hon'ble Supreme Court (15.09.2016).

20. In OP No.192/2017, the Appellant sought compensation from MESCOM for electricity supplied between 22.07.2011 and 16.10.2014 after the termination of the PPA. The Appellant argued that despite the PPA's valid termination (upheld by courts), it was forced to continue supplying electricity due to court orders and MESCOM's refusal to acknowledge the termination. The Appellant requested KERC to determine the market price for the electricity supplied during this period and direct MESCOM to pay the difference, including interest. The total claimed amount, after adjustments, was INR 190.70 crore. KERC disposed of the proceedings through the impugned order which is under challenge here under this present appeal.

21. In the Impugned Order, the KERC partially allowed OP No.192/2017, finding that the Appellant was entitled to compensation due to MESCOM's tortious act of "conversion." However, KERC rejected the Appellant's claim for restitution, ruling that the interim arrangements were made by the Appellant itself and not by MESCOM. The quantum of energy injected was admitted, but the Appellant failed to provide sufficient evidence to establish the market value of the energy. KERC used the price of short-term bilateral transactions as a measure for compensation, rejecting the claim for the rate of INR 5.5 per kWh and Renewable Energy Certificates (RECs). KERC awarded compensation only from 16.10.2011 onwards, as the Appellant first requested open access on 16.09.2011, allowing one month for processing. The claim for interest at 14.5% per annum was also denied.

22. In the present appeal, the Appellant is challenging the judgment to the extent that KERC:

a. Denied the claim for restitution;

b. Refused the rate of INR 5.5 per kWh and REC compensation;

c. Denied compensation for the period from 22.07.2011 to 16.10.2011; and

d. Rejected the claim for 14.5% interest.

23. The Appellant argued that the Appellant sought restitution before the Commission on two grounds:

a) Its right to trade power in the open market was restricted due to MESCOM's refusal to accept the termination of the PPA and subsequent legal proceedings. As a result, the Appellant was compelled to sell power to MESCOM at a lower rate.

b) The courts eventually upheld the termination of the PPA, rejecting MESCOM's claim that the PPA was still valid, which should entitle the Appellant to restitution.

24. However, KERC rejected the Restitution Claim of the Appellant based on the following:

a) No Application for Energy Supply by MESCOM: KERC noted that MESCOM did not file an application seeking energy supply during the pendency of the dispute.

b) Interim Order Requested by Appellant: The interim direction to pay at the PPA rate of INR 2.80/unit was sought by the Appellant, not MESCOM.

c) No Open Access Application by Appellant: At no point did the Appellant attempt to file for open access to trade energy independently.

d) Doctrine of Restitution Inapplicable: KERC held that restitution applies when one party persuades the court to pass an unsustainable order, causing benefit to one party and loss to another. In this case, KERC found that MESCOM did not persuade the court for any relief, and it was the Appellant who requested payment at the PPA rate.

e) No Advantage Gained by MESCOM: According to KERC, MESCOM did not gain any advantage from the interim order, as the Appellant would have continued supplying power regardless of the order since it was financially beneficial.

25. The Appellant further argued that the right to restitution does not depend on which party initiated the interim arrangement, as wrongly concluded by the KERC. The KERC's finding that MESCOM did not seek interim relief is factually incorrect. MESCOM filed an application seeking a stay on the termination of the Power Purchase Agreement (PPA), leading to a status quo order on 23.08.2012. This status quo was continued by the Tribunal in its order dated 04.01.2013.

26. Per contra to KERC's finding, the Appellant did attempt to seek open access on two occasions:

I. First, before the CERC in Petition No. 141/MP/2012, which was dismissed due to the pending dispute over the PPA termination.

II. Second, before the Tribunal in I.A. No. 49/2014, which allowed the Appellant’s request for open access but deferred the execution until the final disposal of the appeal.

27. Thus, the KERC’s conclusion that the Appellant never sought open access is erroneous.

28. The finding that the Appellant requested interim payments at the PPA rate of INR 2.80/unit is incorrect. The Appellant sought payment at an “appropriate price” or a higher tariff of INR 5.50/unit for the energy supplied. The KERC’s statement that the Appellant would have continued supplying power even without the interim order is speculative and unsupported by records. The Appellant's actions in seeking open access from the CERC demonstrate its clear intent to cease supplying MESCOM under the PPA.

29. The Appellant further argued that MESCOM’s request for a stay of the PPA termination and the resulting status quo order shows that MESCOM understood that the Appellant did not wish to continue supplying power after the termination of the PPA. The KERC’s finding that MESCOM did not gain any advantage is contradicted by records showing that MESCOM purchased power from other generators at higher rates during the disputed period.

30. The Appellant thereafter, contended that it was prevented from selling power at market rates due to the interim court orders, which forced it to continue supplying MESCOM at a lower PPA rate during the pendency of the legal proceedings initiated by MESCOM. The Appellant further asserted its right to restitution for the financial losses incurred due to the interim orders, claiming that

it should be compensated for the difference between the PPA rate and the market price of power.

31. It is the settled law that restitution is not confined to Section 144 of the Civil Procedure Code (CPC) but is a fundamental principle of justice, equity, and fair play. The courts have inherent jurisdiction to order restitution beyond Section 144, as affirmed in the case of South Eastern Coalfields Ltd. v. State of Madhya Pradesh (2003) 8 SCC 648.

32. The Hon'ble Supreme Court in *Southeastern Coalfields Limited v. State of Madhya Pradesh and Others (2003) 8 SCC 648* has held:

> *"25. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution or decree or order or the court or in direct consequence of a decree or order (See : Zafar Khan and Ors. v. Board of Revenue, U.P., and Ors., MANU/SC/0251/1984: [1985]1SCR287. In law, the term 'restitution' is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edition, p.1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done. "Often, the result in either meaning of the*

term would be the same. ..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a nontortuous misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. *Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it.* ***The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost****; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of*

restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

26. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties."

33. Consequently, the principle of restitution applies to this case, regardless of whether Section 144 of the Civil Procedure Code is found applicable. Restitution is a broader legal principle rooted in justice and equity.

34. The entitlement to compensation under Section 70 of the Indian Contract Act, 1872 is well-established, requiring the fulfillment of three conditions:

(a) an individual must lawfully perform a service or deliver something to another,

(b) the action must not be intended as gratuitous, and

(c) the recipient must derive benefit from the service or delivery

35. The case of State of W.B. v. B.K. Mondal and Sons (AIR 1962 SC 779) serve as a precedent. In the present case, it is clear that these conditions are satisfied,

justifying the claim for compensation. Section 70 of the Indian Contract Act is as follows:

> *“Where a person lawfully does anything for another person, or delivers anything or pays any money to him, not intending to do so gratuitously, and such other person accepts and enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered or the money so paid.”*

36. The Appellant delivered electricity to MESCOM, a fact acknowledged and unchallenged by MESCOM. MESCOM benefited from this electricity, as it sold the power supplied. Throughout the transaction, the Appellant made it clear that the supply was made on a "without prejudice" basis, with the intention that the rates would be finalized later by the relevant authority. This indicates that the Appellant never intended to supply the electricity gratuitously, thus fulfilling the conditions for compensation under Section 70.

37. Further argued that Section 70 applies here in this case, entitling them to compensation, and referenced previous rulings by this Tribunal supporting this position. Reliance was placed on this Tribunal’s judgments in ***TGV Sraac Limited v. Andhra Pradesh Electricity Regulatory Commission, 2024 SCC OnLine APTEL 11***, (paras 15-20) and ***Vibrant Greentech India Private Limited v. Andhra Pradesh Electricity Regulatory Commission, 2023 SCC OnLine APTEL 1***, (para 15-28).

38. The Appellant argued that KERC's rejection of their compensation claim for the period from July 22.07.2011 to 15.10.2011, based on the 30-day processing

period for open access applications, is flawed. The claim is not due to a delay in processing open access but stems from MESCOM's unlawful refusal to terminate the PPA and its continued use of electricity. Since MESCOM explicitly rejected the open access request on 22.09.2011, KERC's extension of the 30-day period beyond this refusal is unjustified. The Appellant is entitled to compensation for all electricity used by MESCOM after the PPA termination.

39. The KERC has acknowledged the Appellant's right to compensation based on the market value of the goods, and this finding is final. However, despite this, KERC has erred by not granting full relief, instead adopting a different rate specified in the Petition which is as follows:

	Sl No.	Year	Energy Pumped (Kwh)	Energy Price (A)	REC Market Rate (B)	Realisable Rate (A) + (B)	Amount in Rs.	Total Amount in INR
A	1.	2011-2012	3,78,82,000	5.50	2.31	7.81	29,58,58,420	
	2.	2012-2013	4,88,42,000	5.50	1.75	7.25	35,41,04,500	
	3.	2013-2014	6,82,48,000	5.50	1.50	7.00	47,77,36,000	
	4.	2014-2015(Up to June 2014)	53,74,967	5.50	1.50	7.00	3,76,24,769	
	5.	2014-2015 July to 16th Oct 2014)	4,98,40,129	5.50	1.50	7.00	34,88,80,903	1,51,42,04,592
	Add: Interest (detailed calculations annexed to the invoices)							
B	1.	2011-2012					23,30,86,260	83,44,85,494
	2.	2012- 2013					21,19,44,817	
	3.	2013- 2014					22,29,81,870	
	4.	2014-2015					16,64,72,546	
C		Amount received from MESCOM						44,16,48,992
	Total Amount payable (including Interest calculated till 30th April 2017 (A+B+C)							**1,90,70,41,093**

40. The KERC failed to consider substantial evidence supporting the Appellant's claim, including MESCOM's procurement prices for power during the relevant period (ranging from INR 5.17 to INR 16 per unit), the government's acknowledgment of a short-term rate of INR 5.50, and DISCOM tariff rates for similar customers (INR 6.80 to INR 7.65). Additionally, the Appellant has presented a new agreement with PTC, showing entitlement to exchange-based prices, with an average of INR 5.61 per unit during the period in question, which further supports their compensation claim.

41. The Appellant further stated that the prices MESCOM paid for power during the relevant period were higher than the rates adopted by KERC for short-term bilateral transactions. MESCOM did not dispute the Appellant's data in its objections or written submissions. Despite this, KERC ignored the Appellant's evidence on market prices and instead applied the lower rates from short-term bilateral transactions.

42. The KERC rejected the Appellant's proposed rate for compensation, instead opting for the short-term bilateral market rate based on several reasons stating that:

a. the Appellant did not present evidence of comparable open-access energy sales or its Agreement with PTC India Limited,
b. the short-term bilateral and power exchange rates were deemed relevant; and
c. in prior cases, KERC had used these rates as benchmarks.

43. The KERC concluded that the bilateral short-term transaction rate was a more reliable indicator of market price.

44. The Appellant argued that KERC's reliance on short-term bilateral transaction rates for RTC power, without sufficient justification, is unsustainable. KERC, as a regulator, wrongly applied civil law principles by requiring the Appellant to provide comparable open-access sale data. Instead, KERC should have independently verified the evidence presented by the Appellant to determine the market price.

45. In the current case, the reliance placed on O.P 23/11 titled ***Nandi Sahakari Sakkare Karkhane Niyamita v. HESCOM, KERC*** is misplaced by KERC, as in that case no evidence was presented to justify a rate higher than the Power Purchase Agreement (PPA) rate. However, in this instance, the Appellant has provided sufficient data to support a higher market rate. Additionally, the Section 11 Order dated 26.03.2014, submitted by the Appellant, is relevant because the government recognized a short-term market price of INR 5.50 per unit based on previous orders, procurement data, and energy exchange rates during the relevant period. Therefore, the Appellant has demonstrated its applicability to the present case.

46. The KERC's decision in OP 15 of 2014, confirming a rate of INR 5.50 per unit based on national market prices, should have been considered relevant. The Appellant is not claiming entitlement under the Government Order dated 26.03.2014 but is using it as evidence of market rates during the relevant period. Additionally, the reliance on OP 16/2011 is misplaced as it involved different facts, and neither party in that case provided evidence of market rates. The Appellant

contended that KERC erred in exclusively adopting short-term power market rates without properly considering the broader evidence presented regarding market prices.

47. The KERC wrongly concluded that the Appellant's claim for REC (Renewable Energy Certificates) is unsustainable, reasoning that REC is only granted when power is sold at the APPC rate. However, this finding is flawed, as the KERC's regulations (Power Procurement from Renewable Sources by Distribution Licensee and REC Framework) Regulations, 2011 do not apply to inter-state sales made through power exchanges, which would be relevant in the Appellant's case.

48. The CERC regulations of 2010, governing Renewable Energy Certificates (RECs), do not require generators to sell power solely to DISCOMs at the APPC rate. Despite this, KERC wrongly denied the Appellant the benefit of REC pricing without first determining whether the rate the Appellant was entitled to was lower than the APPC rate.

49. The Appellant has sought interest at 14.5% on payments due from MESCOM. The Power Purchase Agreement (PPA) specified interest at the SBI Medium Term Lending Rate for delayed payments, and the Appellant explicitly claimed 14.5% interest before KERC. MESCOM did not dispute this claim. The Appellant has also provided SBI's historical data, showing the applicable interest rate during the relevant period was 14.5%.

50. KERC denied the Appellant's pre-litigation interest, reasoning that it cannot be awarded on unascertained damages. Additionally, it granted pendente lite and

post lite interest at only 6% under Section 34 of the CPC. The Appellant argued that this refusal is erroneous because the claim pertains to a price, not damages, and thus they are entitled to interest for the entire period. Furthermore, the 6% interest rate is arbitrary, as discretion under Section 34 should not be exercised capriciously.

51. Given that the PPA explicitly provided for interest at the SBI rate, the KERC should have considered this rate when determining discretionary interest, in accordance with the proviso to Section 34 of the CPC.

52. The Appellant also argued that KERC's reliance on the bilateral RTC rate is unjustified, as no rationale was provided for its adoption. The Appellant presented sufficient evidence supporting entitlement to higher market rates, including a power exchange rate of INR 5.61, which was more favorable than bilateral transactions. The Appellant intended to sell power via inter-state open access, as shown in its agreement with PTC. Additionally, the Appellant was entitled to REC benefits, further supporting that it would not have opted for bilateral transactions.

53. MESCOM's argument that Section 144 of the CPC does not apply to the case and denies the Appellant's entitlement to restitution is flawed. Section 144 does not create the right to restitution but acknowledges the broader principle of justice, equity, and fairness. Courts have inherent jurisdiction to order restitution, independent of Section 144, to ensure complete justice. This principle was confirmed in South Eastern Coalfields Ltd. v. State of Madhya Pradesh and Ors. (2003) 8 SCC 648 (supra).

54. On the contrary, MESCOM argued that the Appellant failed to provide the best evidence, specifically comparable sales in open access, to support its claim, and cited Sections 101-104 of the Indian Evidence Act, 1872, to assert that the burden of proof rested on the Appellant.

55. However, the Appellant contended that strict application of evidence law is not required in proceedings before the KERC and that it had submitted sufficient evidence, including MESCOM's power purchase rates, which the KERC disregarded.

56. The Appellant further argued that having met its burden to show the applicable price, MESCOM should have provided evidence of a lower market price but failed to do so. MESCOM's claim that the Appellant did not present comparable price data after executing the WBA on 06.05.2014 is irrelevant, as prices for subsequent periods do not affect compensation for prior supplies.

57. MESCOM argued that the PPA, governed by the Tariff Order of 18.01.2005, set a tariff of INR 2.80 per unit, which the Appellant has been paid. However, the Appellant contended that after the termination of the PPA, this rate no longer applies, and it should instead be entitled to the market rate that would have been applicable if the energy had been sold through open access.

58. Further, MESCOM's claim that upholding the Appellant's demand would harm customers is unfounded, as evidence shows MESCOM's comparable power purchase costs exceeded INR 5.50 per unit, matching the Appellant's claim. Additionally, MESCOM's reliance on the Nandi Sahakari case is misplaced, as

that case lacked evidence of higher rates, while the Appellant in this case has provided sufficient data showing higher market rates.

59. MESCOM argued that the Appellant did not generate power during the period under the Government Order of 26.03.2014 or during peak season. The Appellant, however, is not claiming under the Government Order but using it to show the market rate during that period. Furthermore, MESCOM cannot raise the issue of seasonality at this stage, as the Impugned Order already concluded that mini-hydel generation is lower between December and June, and MESCOM did not appeal these findings.

60. The award of 6 percent interest is unjustified, as the PPA was a commercial agreement that specified the SBI Medium Term Lending Rate as the applicable interest rate. The Appellant argued that even after termination, this rate should apply. MESCOM's claim that 6% is reasonable is flawed, as it selectively applies the PPA tariff while disregarding the interest provisions due to termination, which is inconsistent.

61. Thereafter, the Appellant argued that even if the PPA's interest rate cannot be applied post-termination, it is still entitled to interest on equitable grounds, as already cited in South Eastern Coalfields Ltd. v. State of M.P. (2003) 8 SCC 648 for the principle that interest is payable even without an agreement. Additionally, the ***Lanco Amarkantak Power Limited vs. Haryana Electricity Regulatory Commission, 2019 SCC OnLine APTEL 37*** also supports that delayed payments should include interest to compensate for the loss of time value of money. Thus, the Appellant is entitled to receive the interest it has claimed. The relevant paragraph is reproduced below:

“97. Our findings and analysis

…….

iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.”

Submissions of the Respondent No. 1

62. Respondent No. 1 submitted that the Appellant, in seeking a higher tariff, bears the burden of proof to provide sufficient evidence, which they have failed to do. Neither the State Commission nor the Tribunal has been presented with data to support the Appellant's claims. Section 101 of the Evidence Act, 1872 introduces two propositions:

(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

63. The R1 further added that the Appellant bears the burden of proof to justify its demand for an enhanced payment rate, as per Section 102 of the Evidence Act. Failure to present evidence, despite multiple opportunities, warrants an adverse inference against the Appellant.

64. The MESCOM cited the Hon'ble Supreme Court's ruling in Anil Rishi v. Gurbaksh Singh (2006) 5 SCC 558 to argue that the Appellant's claim for a higher tariff is unsustainable without sufficient supporting evidence. The relevant portion is reproduced herein:

> *"In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it.*
>
> *….*
>
> *There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."*
>
> *Pleading is not evidence, far less proof. Issues are raised on the basis of the pleadings. The defendant-appellant having not admitted or*

acknowledged the fiduciary relationship between the parties, indisputably, the relationship between the parties itself would be an issue. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side."

65. The Appellant has provided no data to support its request for market-rate payments, which warrants outright rejection of the claim. Additionally, the Appellant admits in its appeal that it lacks definitive third-party agreements to justify the sought tariff, acknowledging the lack of basis for the higher payment demand.

66. In its order dated 18.02.2013, this Tribunal reiterated that the burden of proof lies with the generator seeking a compensatory tariff, as established in Appeal 142/2012 (Nandi Sahakkari Sakkare v. HESCOM). This Tribunal dismissed the Appellant's claim for a higher tariff due to lack of evidence of losses and clarified that Section 11 rates do not apply. Additionally, the Tribunal denied interest, citing no delay in payment of invoices.

67. The appeal stems from the Order dated 13.01.2022 in OP 26/2010, where key facts are as follows:

- The Generator terminated the PPA on 03.05.2010, which was upheld by the Commission with effect from that date.

- The Generator then filed OP 23/2011, claiming a tariff of Rs. 5.50/- based on a Section 11 Order, but the State Commission dismissed this claim on 24.05.2012 due to lack of supporting data.
- The dismissal was upheld by the Tribunal in APL 142/2012 and later challenged in the Supreme Court, which remanded the matter back to the State Commission on 19.10.2016 to allow the Generator another opportunity to present evidence.
- The KERC reheard the case and, on 21.06.2018, again denied the higher tariff due to insufficient new evidence.

68. The above Orders collectively require the Appellant to prove losses compared to the PPA's realization rate. The Appellant must provide evidence for the opportunity cost, including proof of potential buyers and power generation capacity during high-cost periods. Additionally, the Appellant must demonstrate losses through capital cost data, explain any inflated costs, and provide financial details on energy supply. For the Respondent, data on average power purchase costs and KERC tariffs during the relevant periods must be presented. The impact of various charges on realization rates, such as wheeling, transmission, and banking charges, must also be analyzed.

69. The MESCOM further submitted that the Appellant disputes the Respondent's interpretation of the best evidence rule, arguing that the KERC did not apply it in this case but instead assessed the evidence provided to determine the appropriate rate. Sections 91 to 100 of the Indian Evidence Act pertain to this rule, which requires original evidence unless a valid reason prevents its use. The KERC noted that evidence of comparable energy sales under Open Access during the relevant period would have been ideal for establishing market value. The

Commission ultimately found the Appellant's evidence insufficient and unreliable in determining the applicable rate.

70. The R1 submitted that the Appellant bears the burden of proving its claim for a higher tariff but failed to do so before the KERC. In an attempt to correct this, the Appellant has submitted an additional PTC Agreement at the appeal stage, which is legally impermissible without sufficient justification. The Hon'ble Supreme Court's ruling in State of Gujarat & Anr. vs. Mahendrakumar Parshottambhai Desai, (2006) 9 SCC 772, supports the rejection of additional evidence at the appeal stage. Therefore, the Appellant should not be allowed to rely on new documents in this appeal.

71. The Appellant, while seeking market rates, has failed to present comparable rates, including those from other generators or their own post-open access rates. They have also referenced the Respondent's high power purchase costs without providing full data. A review of the data as shown in the Appeal paper-book shows that the Respondent purchased power at significantly lower rates, including Rs. 0.28 and Rs. 0.35 per kWh in FY 2011-12 and FY 2012-13, and an average of around Rs. 3.23 and Rs. 3.21 per kWh for mini-hydel, the same source used by the Appellant.

72. The R1 provided data in Annexure R1 (Statement of Objections) showing that its average power purchase cost from mini-hydel sources ranged from Rs. 3.17 to Rs. 3.14 between 22.07.2011 and 16.10.2014.

Annexure R-1

Mangalore Electricity Supply Company Limited

Energy Details with Respect to M/s. AMR (Export & Import) for the period from 22.07.2011 to 16.10.2014

		PP Cost	Rs.2.80 / - Per Unit As Per PPA	
FY	**Month**	**Total Export**	**Import**	**Net energy**
2011-12	22.07.2011 to 31.07.2011 (Total Export for the Month-12776000	4121290	0	4121290
2011-12	11-Aug	13412000	0	13412000
2011-12	11-Sep	12002000	0	12002000
2011-12	11-Oct	5630000		5630000
2011-12	11-Nov	4488000	0	4488000
2011-12	11-Dec	1734000	18400	1715600
2011-12	12-Jan	562000	27600	534400
2011-12	12-Feb	138000	50600	87400
2011-12	12-Mar	2000	82800	-80800
Total 2011-12		**42089290**	**179400**	**41909890**
2012-13	12-Apr	0	71300	-71300

		PP Cost	Rs.2.80 / - Per Unit As Per PPA	
FY	**Month**	**Total Export**	**Import**	**Net energy**
2012-13	12-May	0	103500	-103500
2012-13	12-Jun	2446000	39100	2406900
2012-13	12-Jul	12070000	0	12070000
2012-13	12-Aug	13370000	2300	13367700
2012-13	12-Sep	12292000	0	12292000
2012-13	12-Oct	4904000	0	4904000
2012-13	12-Nov	3520000	6900	3513100
2012-13	12-Dec	248000	36800	211200
2012-13	13-Jan	68000	32200	35800
2012-13	13-Feb	74000	55200	18800
2012-13	13-Mar	0	140300	-140300
Total 2012-13		**48992000**	**487600**	**48504400**

		PP Cost	Rs.2.80 / - Per Unit As Per PPA	
FY	Month	Total Export	Import	Net energy
2013-14	13-Apr	0	105800	-105800
2013-14	13-May	0	131100	-131100
2013-14	13-Jun	9390000	27600	9362400
2013-14	13-Jul	14978000	2300	14975700
2013-14	13-Aug	15608000	0	15608000
2013-14	13-Sep	11684000	0	11684000
2013-14	13-Oct	9298000	0	9298000
2013-14	13-Nov	3654000	0	3654000
2013-14	13-Dec	2862000	2300	2859700
2013-14	14-Jan	672000	29900	642100
2013-14	14-Feb	206000	57500	148500
2013-14	14-Mar	4000	170200	-166200
Total 2013-14		**68356000**	**526700**	**67829300**
2014-15	14-Apr	0	108100	-108100

		PP Cost	Rs.2.80 / - Per Unit As Per PPA	
FY	Month	Total Export	Import	Net energy
2014-15	14-May	0	140300	-140300
2014-15	14-Jun	5413104	43858	5369246
2014-15	14-Jul	13244000	0	13244000
2014-15	14-Aug	15940000	0	15940000
2014-15	14-Sep	14924000	0	14924000
2014-15	16.10.2014	5732129	0	5732129
Total 2014-15		**55253233**	**292258**	**54960975**
	Total	**214,690,523**	**1,485,958**	**213,204,565**

Details are obtained from Form 'B' (Meter Reading details data)

Superintending Engineer
MESCOM, Mangaluru

73. In Annexure R2 (Statement of Objections), the R1 also submitted short-term power purchase costs for various quarters from FY 2011-12 to FY 2014-15,

indicating that the highest costs occurred in the last quarter and April, during which the Appellant supplied little to no power.

Annexure R2

MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Statement of Month & Year wise Power Purchase from Sec-11/Medium / Short Term (22.07.2011 to 16.10.2014)

Month / Year	2011-12			2012-13			2013-14			2014-15		
	Energy	Amount	Avg Cost	Energy	Amount	Avg Cost	Energy	Amount	Avg Cost	Energy	Amount	Avg Cost
	(Units)	(Rs.)	(Rs.)	(Units)	(Rs.)	(Rs.)	(Units)	(Rs.)	(Rs.)	(Units)	(Rs.)	(Rs.)
April				60655696	299,220,615	4.93	Not Purchased			76377373	405,797,290	5.31
May				63133864	311,510,338	4.93				35356794	186,303,737	5.27
June				54373749	228,810,464	4.21				31390949	172,063,732	5.48
July	8007600	30,972,394	3.87	52104153	214,307,554	4.11				17367645	88,968,484	5.12
August	42880825	193,764,855	3.60	53847391	225,119,979	4.18				15796763	81,580,301	5.16
September	156746	823,502	5.25	47843395	196,757,916	4.11				16072769	84,622,234	5.26
October	2676782	16,271,274	6.08	51619025	212,252,917	4.11				24841169	129,310,941	5.21
November	2419518	12,823,446	5.30	47585881	203,897,727	4.28						
December	8778773	46,527,495	5.30	49810162	204,525,331	4.11	60975761	320711302	5.26			
January	15112685	68,409,698	4.53	52461418	230,429,358	4.39	49753664	268379134	5.39			
February	44511181	228,778,509	5.14	46734773	210,232,271	4.50	52275157	276563875	5.29			
March	45039446	244,779,514	5.43	52080984	254,337,852	4.88	50138041	266173459	5.31			
Total	**169,583,556**	**843,150,687**	**4.97**	**632,250,490**	**2,791,402,322**	**4.42**	**213,142,623**	**1,131,827,770**	**5.31**	**217,203,462**	**1,148,646,719**	**5.29**

Superintending Engineer (Ele)(Coml)
MESCOM, Mangaluru

74. Further argued that Annexure R3 (Statement of Objections) shows that the R1 incurred high power purchase costs during periods when the Appellant's generation was minimal. Between 2012 and 2015, especially from February to May, R1 imported 10,37,300 units of energy, while the Appellant exported only 4,24,000 units. Despite importing more energy, the R1 paid a higher rate for energy provided to the Appellant, while the Appellant imported cheaper energy at Rs. 2.80/- PPA rate and did not compensate the R1 for its higher costs.

Annexure R3

MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Statement Showing the Compliance to Non Solar RPO

Year	Electricity purchased by MESCOM (*In MU*)	Non Solar RPO Targets @ 10% (MU)	Non Solar RPO achieved (Including AMR)					Non Solar RPO achieved (Excluding AMR)		
			Through REC (MU)	Through RE generation/ purchase (MU)	Green Energy Sold (MU) (Grossed up by Trans. Loss)	Net Energy in MU (Including AMR)	in % Including AMR	Energy Recived From AMR (MU)	Net Energy in MU (Excluding AMR)	in % Excluding AMR
2011-12	4193.89	419.39	0	634.40	12.49	621.91	14.83	41.90	580.01	13.83
2012-13	4451.18	445.12	0	652.52	14.16	638.36	14.34	48.50	589.86	13.03
2013-14	4744.24	474.42	0	803.64	13.08	790.56	16.66	67.83	722.73	12.23
2014-15	4836.982	483.70	0	713.97	0	713.97	14.76	54.96	659.01	11.99

True

Superintending Engineer (Ele)(Coml)
MESCOM, Mangaluru

75. R1 further argued that it was not obligated to purchase high-cost energy due to the Appellant's supply. The Appellant's claim that the MESCOM would have entered into a similar PPA with another generator is countered by the assertion that the Government would have allocated a generator at a comparable rate. Additionally, the Appellant's reliance on REC rates to show the Respondent MESCOM met its Renewable Purchase Obligation (RPO) through the Appellant's supply is irrelevant, as the Respondent MESCOM met its RPO independently without needing to purchase RECs. Therefore, the REC rate argument is misleading.

76. The MESCOM argued that the Appellant's reliance on HT-2b rates to claim it would have earned over Rs. 7 per unit is to be dismissed, as HT-2b consumers require a consistent power supply, unlike the Appellant's seasonal hydel-based supply. HT-2b consumers would only choose open access if prices were much lower than MESCOM rates. Additionally, the Appellant's reliance on the Government's Section 11 order, which mandated power supply at Rs. 5.50 per unit, is irrelevant because the order was withdrawn on 28.04.2014, and no power

was supplied by the Appellant during the applicable period (26.03.2014 to 28.04.2014).

77. The KERC had set a tariff of Rs. 2.80 per unit for mini-hydel projects in 2005, which was later revised to Rs. 3.40 per unit in 2009. This revised tariff applied to PPAs from 01.01.2010, covering the period in dispute (22.07.2011 to 16.10.2014). The tariff, which includes a 16% Return on Equity (RoE) for mini-hydel generators like the Appellant, accounts for all project costs. Therefore, the Appellant cannot claim financial loss, as they were paid Rs. 2.80 per unit, covering their costs excluding RoE.

78. The Appellant has not provided data on its generation costs or addressed the KERC's generic tariff for mini-hydel projects. There is no justification for the Appellant to incur costs higher than Rs. 2.80 per unit, as all cost factors were considered by KERC. Additionally, Annexure 24 (Appeal paper-book) shows that other mini-hydel generators supplied power at an average tariff of Rs. 3.23 per unit, indicating that the Appellant's demand of Rs. 7 to Rs. 7.80 per kWh is excessive and unnecessary for profitability.

79. The R1 further argued that the Appellant has demanded a differential tariff for all power supplied but failed to account for Open Access charges like wheeling, banking, transmission, and cross-subsidy surcharges, which would reduce the realized net rate. Specifically, 7% of the power would be ineligible for a differential tariff due to wheeling and banking deductions. Additionally, transmission losses would further lower the rate. Any unused power at the end of the water year would be purchased by the Respondent at 85% of the generic tariff (Rs. 2.89 per unit), a factor the Appellant did not address in its tariff claim.

80. In its interim application in Appeal No. 223/2012 before this Tribunal, the Appellant sought a tariff determination and cited a CERC order to claim a rate of Rs. 7 to Rs. 7.80 per unit. However, a bare examination of the CERC order shows that it never set such a tariff. Therefore, the Appellant has misrepresented the applicable rates for the energy sold during the relevant periods.

81. The R1 further submitted that the Appellant had argued that KERC should have granted market rates for open access instead of RTC rates, claiming KERC, as a regulator, had market price data. However, this argument is flawed because the Appellant approached KERC under Section 86(1) (f) for dispute adjudication, not regulation. KERC acted in its judicial, not regulatory, capacity in resolving the dispute between the Appellant and the licensee, and thus was not obligated to use its regulatory powers to determine market rates.

82. The Hon'ble Supreme Court in ***State of Gujarat v. Utility Users Association (2018) (6) SCC 21***, mandates that State Electricity Regulatory Commissions (SERCs) must have a legal member when performing adjudicatory functions. KERC, having dual roles, only requires a legal member when adjudicating disputes, not for regulatory tasks. Since the Appellant approached KERC for adjudication, they cannot later argue that KERC should have exercised regulatory powers. KERC granted RTC rates due to the Appellant's failure to provide supporting documents, as the burden of proof rested on the Appellant.

83. The Appellant had argued that the Respondents cannot contest or support the findings in the impugned order since they did not challenge it. However, under Order XLI Rule 22 of the CPC, Respondents in an appeal can contest unfavorable

findings without filing a separate appeal or cross-objection. The relevant provision is extracted hereunder:

> *"Order 41 Rule 22. Upon hearing respondent may object to decree as if he had preferred a separate appeal-*
>
> *(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [2][**but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour**; and may also take any cross- objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow".*

84. The first part of the above-referenced provision discusses the rights of a Respondent in a legal case who has not filed an appeal against a decree. It highlights that such a Respondent can still argue that findings against them should have been in their favor. Additionally, the Respondent is not barred from raising all arguments necessary to sustain the Impugned Order, even if some findings are against them. The Respondent can also argue that the Appellant is not entitled to the reliefs claimed in the appeal, relying on a precedent from the Hon'ble Supreme Court case ***Banarasi Das v. Seth Kanshi Ram & Ors. (AIR 1963 SC 1165).***

85. Order 41 Rule 33 of the CPC empowers the Appellate Court to pass appropriate orders in a case, even if the appeal pertains only to part of the decree or is filed by only some of the parties. The court has the discretion to issue orders

beyond the specific scope of the appeal. The R1 supported this position by citing the Hon'ble Supreme Court judgment in ***Eastern Coalfields Limited & Ors v. Rabindra Kumar Bharti (Civil Appeal No. 2794 of 2022).***

86. The R1 further argued that the Appellant is not entitled to any differential tariff, and thus, the issue of paying interest does not arise. Additionally, despite the Appellant's claim that the Power Purchase Agreement (PPA) was terminated, they still seek interest at the PPA rate. The Respondent No. 1 MESCOM further contended that interest on any differential tariff determined by the Karnataka Electricity Regulatory Commission (KERC) only accrues if it is not paid within the timeframe set by the KERC.

87. The Appellant also sought the determination of the appropriate tariff in previous litigation rounds, not open access as an interim measure. The Appellant accepted the Rs. 2.80/- tariff set by KERC and Hon'ble APTEL by not appealing to the Hon'ble Supreme Court and is now barred from claiming a higher tariff. The R1 has promptly paid all invoices during the disputed period according to these orders, so no interest is owed. The R1 also cited a 2013 APTEL judgment (***M/s. Nandi Sahakari Sakkare Karkhane Niyamita vs. KERC and Ors., APL No. 142/2012***) to support the argument that the Appellant cannot claim interest.

> *"15. One other claim of the Appellant is for the interest for the tariff claim for the said period. The above claim for the interest is also misconceived. Interest is payable only when the amounts are due and payable to the Appellant. The amount can be said to be due and payable only after the invoices are raised by the Appellant on the 2nd Respondent when the 2nd Respondent had failed to pay*

the amount within the stipulated time. In this case, no amount can be said to be due as no invoices have been raised by the Appellant on the 2nd Respondent. Therefore, there is no merit in this contention also."

88. The R1 further submitted that the Appellant claims damages for unjust enrichment, alleging that the R1 benefited from power supplied after the termination of the PPA without paying the market price. However, KERC ruled that the Appellant's claim is based on the tort of conversion, not restitution. The right of restitution under Section 144 applies only when an order has been reversed, set aside, or modified, as supported by the Hon'ble Supreme Court's decision in ***Kartar Singh v. State of Punjab (1995) 4 SCC 101***.

89. The Appellant cannot claim restitution under Section 144 since the R1 did not benefit from any erroneous decree or order. The principle of restitution, as clarified in ***Union Carbide Corporation v. Union of India (AIR 1992 SC 248)***, does not apply here. The Respondent did not unjustly enrich itself, as it had a legitimate reason to withhold payments due to the Appellant's failure to secure the necessary interconnection from KPTCL, which led to the Appellant's improper termination of the PPA. The Appellant's conduct indicates a lack of intent to adhere to the PPA terms, as evidenced by their initial petition to void the agreement.

90. The R1 asserted that their approach to KERC was based on genuine and reasonable grounds, not frivolous litigation. The Appellant's request for restitution was denied by KERC because the Appellant did not seek Open Access during the proceedings and continued to supply energy to the grid. As a result, the Appellant is barred from making a new claim for a higher rate under Open Access.

91. The Appellant first sought Open Access after the PPA was terminated by KERC, only raising this issue before this Tribunal in Appeal No. 275/2013 in IA No.49/2014. The R1 executed the WBA as directed by this Tribunal. The Appellant now claims they should have been allowed to sell energy under Open Access, despite not making any efforts to secure it, such as applying to the Nodal Agency. The R1 further argued that KERC incorrectly applied the tort of conversion to the Appellant's claim. Conversion involves willful interference with another's property, depriving them of its use. The R1 contended that no such deprivation occurred and that the Appellant's claims are unfounded based on the highlighted facts.

92. The R1 further argued that the Appellant's claims for restitution and unjust enrichment lack merit and should be dismissed. Even if the Appellant were entitled to restitution, they have failed to provide any evidence of the Open Access Tariff they would have received, undermining their compensation claim.

93. Further, the Appellant's claim of benefiting from a tariff of Rs. 2.80 per KWH is incorrect. The cost of energy procurement, whether high or low, is factored into the tariff orders, and the Respondent's return on equity is fixed. Any increase in tariff paid by the Respondent would ultimately burden the public, as these costs are passed on to consumers. Therefore, the R1 contended that the Appellant's unsubstantiated claim should not be allowed to harm the broader public interest.

Analysis and Conclusion

94. After hearing all the parties at length, we find that the following question need to be answered through this appeal:

i. *Whether* the *legal principles of restitution and unjust enrichment apply to the Appellant's claim, potentially entitling the Appellant to compensation along with interest of 14.5% per annum on the claimed amount?*

95. Looking at the several rounds of litigation that have happened between the parties contesting this case, the set of previous litigations are as mentioned below in a tabular form:

Dates	**Events**
02.08.2006	PPA signed between Appellant and Respondent No. 1
2009	**Appellant filed OP No. 28/2009 before KERC to declare the PPA void, seek open access, and request interim payment of ₹5/unit from Respondent No. 1**
12.09.2009	Plant commissioned
23.12.2010	OP No. 28/2009 dismissed by KERC
2011	**Appellant filed RP No. 2/2011 against the Order dated 23.12.2010**
26.05.2011	Appellant issued default notice to the Respondent No. 1, as the Respondent No.1 had failed to fulfill payment obligations under the PPA
04.07.2011	The Respondent No. 1 denied that it had defaulted in honoring its payment obligations
22.07.2011	Appellant issued the Notice of Termination and terminated the PPA

16.09.2011	Appellant issued a letter to the Respondent No. 1 requesting for its consent to enter into a Wheeling and Banking Agreement
22.09.2011	Respondent No. 1 replied to the Appellant's letter stating that the PPA was still subsisting and denied consent to sign WBA
18.10.2011	**The Appellant filed OP No. 48/2011 seeking a declaration that PPA was terminated and was not subsisting**
23.12.2011	RP No. 2/2011 dismissed
22.02.2012	KERC passed interim orders in OP No. 48/2011 to pay INR 2.80 per unit
22.03.2012	OP No. 48/2011 withdrawn by the Appellant
30.04.2012	The Appellant and PTC India Private Limited entered into an agreement to sell the Hydel power generated from the Appellant's power plant to PTC at a tariff which would be based on the Bids that PTC would call for at the Power Exchange
12.06.2012	**Appellant filed Petition No. 141/MP/2012 before CERC seeking open access**
July 2012	**Respondent No. 1 filed Petition No. OP No. 37/2012 before KERC seeking quashing of termination notice dated 22.07.2011**
23.08.2012	Interim order to maintain status quo passed by KERC in OP No. 37/2012
13.12.2012	CERC dismissed OP No.141/MP/2012 and directed the Appellant to put forth its pleas before the KERC in the proceedings in OP No. 37/2012
22.12.2012	**The Appellant preferred Appeal No. 223/2012 against the Interim Order dated 23.08.2012 in OP No. 37/2012. This**

	Tribunal passed an Interim Order directing Respondent No. 1 to pay INR 2.80 per unit without prejudice to the rights of the parties and subject to the outcome of the appeal
04.01.2013	This Tribunal while disposing of the Appeal and IA therein held that the interim order of status quo issued by KERC did not amount stay of termination of the PPA vide notice dated 22.07.2011 and further directed KERC to dispose of OP 37/2012 expeditiously
24.01.2013	KERC issued an order in OP No. 16/2011 holding that the tariff applicable for the period from April 2010 to June 2010 was INR 5 per unit
14.08.2013	KERC passed an Order in OP No. 37/2012 affirming the termination of the PPA vide notice dated 22.07.2011 as valid
-	**Respondent No. 1 filed Appeal No. 275/2013 against the order dated 14.08.2013**
26.03.2014	The Government of Karnataka issued a Government Order bearing No. G.O. No. EN 26 PPC / 2015 fixing the tariff at INR 5.50 per kWh in respect of electricity procured from Generators between 30.03.2014 to 30.06.2014
27.03.2014	This Tribunal disposed of I.A. No.49/2014 in Appeal No. 275/2013 directing Respondent No. 1 to execute a WBA with the Appellant
06.05.2014	The Respondent No. 1 executed the WBA with the Appellant
17.10.2014	This Tribunal passed a final Order in Appeal No. 275/2013 affirming the decision of KERC in OP No. 37/2012
20.10.2014 and 29.12.2014	The Appellant issued a communication requesting Respondent No.1 to give effect to the WBA and permit the sale of the electricity to third-party consumers

19.01.2015 and 20.01.2015	The Appellant issued a communication to Respondent No. 1 informing Respondent No. 1 that not giving effect to the WBA was contrary to the Order of this Tribunal dated 27.03.2014
21.01.2015 and 23.01.2015	The Appellant issued a communication requesting Respondent No.1 to give effect to the WBA and permit the sale of the electricity to third-party consumers
04.02.2015	The Appellant issued communication to the Respondent No. 1 informing Respondent No. 1 that not giving effect to the WBA was contrary to the Order of APTEL dated 27.03.2014
-	**Respondent No.1 filed an Appeal bearing CA No. 1665/2015 before Hon'ble Supreme Court against order dated 17.10.2014**
15.09.2016	The Hon'ble Supreme Court passed an Order in Civil Appeal No. 1665/2015 affirming the termination of the PPA vide notice of termination as valid
28.09.2016	The Appellant issued representation to Respondent No. 1 for payment of compensation pursuant to the Judgment dated 15.09.2016 issued by the Hon'ble Supreme Court
22.3.2017	Respondent No. 1 issued a letter offering to pay INR 13,70,41,421 in total by accounting for the price of electricity injected into the grid at INR 2.80 per unit
08.05.2017	The Appellant declined the above offer made by Respondent No. 1
19.05.2017	Respondent No. 1 issued a letter to the Appellant in response to the above
05.06.2017	The Appellant issued a letter to the Respondent No. 2 indicating willingness to resolve the matter through discussion

30.06.2017	Respondent No.1 issued a letter to the Appellant indicating that it would be open to negotiation
04.07.2017	The Appellant issued a letter to Respondent No. 1 indicating its willingness to receive an amount of INR13,70,41,421, without prejudice to its right to compensation at the prevalent market rates for energy supplied to Respondent No. 1 during the period from 22.7.2011 to 16.10.14 and such receipt will be subject to the final outcome of amicable settlement through discussions or through legal process
06.07.2017	Respondent No. 1, MESCOM, reissued a cheque dated 07.07.2017 for INR 13,70,41,421
11.10.2017	**The Appellant filed OP No. 192/2017 seeking that compensation be granted for the power injected into the Respondent No. 1's grid for the period between 22.07.2011 and 16.10.2014**
12.06.2018	Respondent No. 1 filed its Statement of Objections to OP No. 192/2017 before the Respondent No. 2
2017-2021	The parties made several attempts to settle the matter amicably, but the negotiations failed
12.11.2019	Respondent No. 1 filed its Written Submissions before Respondent No.2 in OP No. 192/2017
14.05.2020	The Appellant filed its Written Submissions-cum-Rebuttal Submissions to the Written Submissions filed by the Respondent No. 1
23.03.2021	KERC issued the impugned Order in OP No. 192/2017
04.06.2021	**Hence, this Appeal**

96. The Appellant in this appeal has prayed for the setting aside of the order of the KERC dated 23.03.2021 in OP No.192/2017 and a direction to the Respondent No. 1 to pay a sum of Rs. 190,70,41,093/- along with interest at the rate of 14.5% from 22.07.2011 until the date of payment of the entire amount.

Restitution

97. The MESCOM argued that the right of restitution provided under Section 144 is applicable only in a case where there has been an Order that has been reversed, set aside, or modified, and reliance is placed on the judgment of the Hon'ble Apex Court in ***Kartar Singh and Ors. V. State of Punjab***, (1995) 4 SCC 101).

98. Also argued that the Appellant cannot be permitted to rely on Section 144 to enforce the right of restitution since at no point has Respondent No.1 benefitted from an erroneous decree or order, relying upon **Union Carbide Corporation and Ors. v. Union of India, AIR 1992 SC 248**.

99. It is the argument of Respondent No.1 that it has not made any unjust enrichment as during the claim period, Respondent No.1 had a legitimate claim that the PPA could not be terminated. The Appellant had sought to terminate the PPA for the non-payment of invoices; however, Respondent No.1 was constrained to withhold payments as the Appellant had failed to obtain the interconnection from KPTCL.

100. On the contrary, the Appellant argued that the Respondent's argument that Section 144 of the CPC is inapplicable because no order was reversed, set aside, or modified is flawed and misdirected. It is a settled principle that Section 144 is not the exclusive source of the doctrine of restitution. The Hon'ble Supreme Court in **South**

Eastern Coalfields Ltd. v. State of Madhya Pradesh (2003) 8 SCC 648 explicitly held that restitution is a broader principle of justice, equity, and fair play, and that Section 144 is merely a statutory embodiment of this pre-existing equitable rule. Therefore, even if the technical requirements of Section 144 are not met, the court can invoke its inherent powers to order restitution to prevent unjust enrichment and unjust impoverishment. In the present case, the unjust impoverishment of the Appellant and the unjust enrichment of the Respondent are evident.

101. It cannot be denied that the Appellant could not sell power at market rates because of the arbitrary and unlawful action of MESCOM to refuse to accept the termination of the PPA and the interim orders compelling the Appellant to sell power at a much lower rate, a decision of MESCOM was rejected by the Apex Court also upholding the validity of the Appellant's termination of the PPA, thereby invalidating the premise of these interim orders. The outcome of the litigation clearly establishes that the Appellant was wrongfully deprived of its right to sell power at higher market rates, which satisfies the conditions for restitution under equitable principles, as also held by KERC vide its Impugned Order.

102. We decline to accept the submission of the Appellant that the Respondent has not benefited from his act of refusal, it is his own submission as part of its 'Written Submissions' that the average cost of procurement by it was much higher as compared to the PPA rate of Rs. 2.80 per kWh at which the Appellant was directed to supply the electricity to him. The following table confirms the same:

MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Statement of Month & Year wise Power Purchase from Sec-11/Medium / Short Term (22.07.2011 to 16.10.2014)

Month / Year	2011-12			2012-13			2013-14			2014-15		
	Energy	Amount	Avg Cost	Energy	Amount	Avg Cost	Energy	Amount	Avg Cost	Energy	Amount	Avg Cost
	(Units)	(Rs.)	(Rs.)	(Units)	(Rs.)	(Rs.)	(Units)	(Rs.)	(Rs.)	(Units)	(Rs.)	(Rs.)
April				60655696	299,220,615	4.93	Not Purchased			76377373	405,797,290	5.31
May				63133864	311,510,338	4.93				35356794	186,303,737	5.27
June				54373749	228,810,464	4.21				31390949	172,063,732	5.48
July	8007600	30,972,394	3.87	52104153	214,307,554	4.11				17367645	88,968,484	5.12
August	42880825	193,764,855	3.60	53847391	225,119,979	4.18				15796763	81,580,301	5.16
September	156746	823,502	5.25	47843395	196,757,916	4.11				16072769	84,622,234	5.26
October	2676782	16,271,274	6.08	51619025	212,252,917	4.11				24841169	129,310,941	5.21
November	2419518	12,823,446	5.30	47585881	203,897,727	4.28						
December	8778773	46,527,495	5.30	49810162	204,525,331	4.11	60975761	320711302	5.26			
January	15112685	68,409,698	4.53	52461418	230,429,358	4.39	49753664	268379134	5.39			
February	44511181	228,778,509	5.14	46734773	210,232,271	4.50	52275157	276563875	5.29			
March	45039446	244,779,514	5.43	52080984	254,337,852	4.88	50138041	266173459	5.31			
Total	**169,583,556**	**843,150,687**	**4.97**	**632,250,490**	**2,791,402,322**	**4.42**	**213,142,623**	**1,131,827,770**	**5.31**	**217,203,462**	**1,148,646,719**	**5.29**

Superintending Engineer (Ele)(Coml)
MESCOM, Mangaluru

103. It can be seen that the Respondent was purchasing power at an average rate of Rs. 4.97, Rs. 4.42, Rs. 5.31, and Rs. 5.29 per kWh as against the terminated PPA rate of Rs. 2.80 per kWh for the years 2011-12, 2012-13, 2013-14 and 2014-15, respectively, thus, benefited by obtaining power at a lower rate under the interim orders. As held in ***South Eastern Coalfields Ltd***., if a party benefits from an interim order that is later rendered unsustainable, it is obligated to restore the benefit it gained or compensate the other party for its loss. The court in this case observed that *"the successful party can demand... (b) to make restitution for what it has lost."*

104. Thus, by compelling the Appellant to sell power to MESCOM at lower rates due to the interim orders, the Respondent was unjustly enriched at the expense of the Appellant.

105. Additionally, the Respondent's reliance on Union Carbide Corporation v. Union of India, AIR 1992 SC 248 was neither argued nor supported by the case details including the judgment.

106. MESCOM's argument that Section 144 of the CPC does not apply to the case and denies the Appellant's entitlement to restitution is flawed. Section 144 does not create the right to restitution but acknowledges the broader principles of justice, equity, and fairness. Courts have inherent jurisdiction to order restitution, independent of Section 144, to ensure complete justice.

107. Reliance is placed on the Hon'ble Supreme Court's judgment in ***South Eastern Coalfields Ltd. v. State of Madhya Pradesh and Ors. (2003) 8 SCC 648***.

108. The Hon'ble Supreme Court in para 25 and 26 has held as under:

> ***(South Eastern Coalfields Ltd. v. State of Madhya Pradesh and Ors. (2003) 8 SCC 648)***
>
> ***"25.-----***
>
> ***The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. --------***
>
> ***The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost;***

> ***26. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties.”***

109. In the light of above the contention of the Respondent stands to be rejected.

110. The Appellant sought restitution before the KERC, arguing that it was forced to sell power to MESCOM at a lower rate during ongoing disputes over the termination of a Power Purchase Agreement (PPA). The Hon’ble Supreme Court ultimately upheld the termination, rejecting MESCOM's claims that the PPA was still valid. However, KERC denied restitution, reasoning that MESCOM had not sought any interim relief for power supply during the dispute, and it was the Appellant who requested the interim order for payment at the PPA rate. The Appellant challenged these findings, asserting that MESCOM had sought a stay on the termination notice, leading to interim orders maintaining the status quo. The Appellant claimed KERC’s findings were erroneous, as MESCOM had benefited from the lower-priced supply during the dispute.

111. It cannot be denied that the termination of PPA was challenged by the Respondent only before KERC, further, MESCOM's denial to grant open access to the Appellant forced the Appellant to supply its power to the MESCOM at PPA rates only.

112. We find the decision of the KERC that MESCOM has not sought any interim relief is contrary to the facts of the case and stands rejected.

113. The KERC's findings, particularly regarding the Appellant's attempts to seek open access and the claim that interim payments at the PPA rate were made at its instance, were factually incorrect. This is because the Appellant demonstrated that it sought open access on multiple occasions, and had actually requested payments at a higher rate, not the PPA rate. Additionally, MESCOM gained an advantage by purchasing power at lower rates during the interim period, while the Appellant was prevented from selling at market prices.

114. Section 144 of the Civil Procedure Code (CPC) is not the origin of the restitution principle but a statutory recognition of the pre-existing principle of justice, equity, and fairness. Courts have inherent powers, beyond Section 144, to order restitution to ensure complete justice between the parties, as confirmed in South Eastern Coalfields Limited v. State of Madhya Pradesh (2003) 8 SCC 648. Restitution aims to restore parties to the position they would have been in, had the interim orders not been passed. Even outside Section 144 of the Civil Procedure Code, the Court has inherent jurisdiction to order restitution to ensure justice is done.

115. The Appellant’s claim of entitlement to compensation under Section 70 of the Indian Contract Act,1872 is based on the doctrine of quasi-contract and unjust enrichment.

116. The Quasi-contracts under the Indian Contract Act, of 1872, governs situations where there is no express or implied contract between parties but still imposes an obligation on one party to pay the other party. It is also known as a “constructive contract” or “implied-in-law contract.” This type of contract arises to

prevent unjust enrichment of one party at the expense of the other party. Quasi-contracts are based on the principle of equity and justice, rather than a mutual agreement between the parties.

117. Further, unjust enrichment is a concept when a person has been unfairly benefitted at the expense of the other person. The doctrine of unjust enrichment was based on English Law, and in the cases related to unjust enrichment, the court directs the unfairly benefitted person to give back all the benefits that the person acquired unfairly or to compensate the other person.

118. The Appellant lawfully supplied electricity to MESCOM, which MESCOM accepted and benefited from by selling the power. Since the Appellant did not intend to provide this supply gratuitously, Section 70 applies, entitling the Appellant to compensation for the supply.

119. KERC's rejection of the Appellant's claim for compensation for the period from 22.07.2011 to 15.10.2011 based on a 30-day open access processing period is untenable as the compensation claim is rooted in MESCOM's unlawful refusal to terminate the PPA and the resulting appropriation of electricity by MESCOM, not due to failure in processing open access. Therefore, the Appellant should be entitled to compensation for the power MESCOM received post-termination. Furthermore, since MESCOM denied open access on 22.09.2011, KERC's reliance on the 30-day period is irrelevant.

120. The Respondent opposed the Appellant's claim for restitution and unjust enrichment and argued that during the period in question, the Respondent had a legitimate basis for believing the PPA could not be terminated, as the Appellant

had failed to meet conditions under the PPA. The Respondent contended that the right to restitution under Section 144 CPC does not apply because the Respondent did not benefit from any erroneous order or decree. The Respondent also claimed it did not engage in unjust enrichment, as it was legally justified in withholding payments due to the Appellant's failure to secure necessary interconnections. Moreover, the Respondent argued that the tort of conversion does not apply, as there was no willful interference with the Appellant's property or power.

121. The MESCOM, further, argued that even if restitution is granted, the Appellant has not provided evidence of the Open Access Tariff it could have earned.

122. Respondent No. 1 also cited the Hon'ble Supreme Court's ruling in ***Anil Rishi v. Gurbaksh Singh (2006) 5 SCC 558*** to contend that the Appellant's claim for a higher tariff is unsustainable without sufficient supporting evidence, it further argued that the Appellant has provided no data to support its request for market-rate payments, which warrants outright rejection of the claim. Additionally, the Appellant admits in its own appeal that it lacks definitive third-party agreements to justify the sought tariff, acknowledging the lack of basis for the higher payment demand.

123. Undisputedly, section 101 of the Indian Evidence Act places the initial burden on the party asserting an affirmative fact, however, it is observed from the documents placed before us that the Appellant in the present case has fully discharged this burden, enough evidence was placed before the State Commission including the Government of Karnataka Order dated 26.03.2014 and the rates at which MESCOM procured power during the relevant period, to establish the applicable market rate, however, such, pieces of evidence were unjustifiably disregarded by the State Commission.

124. The Appellant submitted that the said Government Order has not been relied upon as the basis for the claim but as persuasive evidence to demonstrate the prevailing market rate during the period of supply. This approach is legally sound as it establishes the context for assessing market prices.

125. Once sufficient evidence is placed that it satisfies the condition of discharging its initial burden, the responsibility shifts to the Respondent to rebut the claim by producing counter-evidence, however, MESCOM failed to present any evidence of a lower market rate, thereby failing to discharge its shifted responsibility. Hence, the Appellant has not only met its evidentiary burden but has also demonstrated the absence of contrary evidence from MESCOM.

126. We also agree with the contention of the Appellant that the principles of evidence law, as strictly applied in judicial proceedings, do not rigidly apply to proceedings before the KERC. Regulatory bodies are required to adopt a flexible approach in assessing evidence, considering the nature of the dispute and the objective of securing just and equitable outcomes. As such, even if strict principles of evidence were applied, the Appellant's claim would still succeed, as it has provided sufficient evidence to substantiate the market rate.

127. The MESCOM placed reliance on the Nandi Sahakari case wherein this Tribunal dismissed the claim for a higher tariff as the claimant failed to provide any evidence beyond the PPA rate to substantiate its claim. However, in the present case, the Appellant has submitted substantial and specific data to demonstrate the higher prevailing market rate, as referenced in the Appeal.

128. Moreover, unlike Nandi Sahakari, the present case relies on the Government Order dated 26.03.2014, which establishes that the short-term market price of power during the relevant period was INR 5.50 per unit. This Government Order, along with the KERC's own decision in OP 15 of 2014, confirms that the market rate for power during the relevant period was well above the PPA rate.

129. Thus, the factual matrix of the present case, coupled with the evidentiary support provided by the Government Order dated 26.03.2014, renders the reliance on Nandi Sahakari legally untenable.

130. The Appellant entered into an agreement with PTC India Limited on 30.04.2012, to sell electricity from its hydro plant through a power exchange to secure the best market rates for one year. This was followed by a petition (No. 141/MP/2012) to the Central Electricity Regulatory Commission (CERC) for Inter-State Open Access, allowing the Appellant to sell power outside Karnataka. Meanwhile, Respondent No. 1 contested this move by filing OP No. 37/2012 with the Karnataka Electricity Regulatory Commission (KERC), asserting the validity and continuation of the original Power Purchase Agreement (PPA) dated 02.08.2006, thus challenging the Notice of Termination issued on 22.07.2011.

131. However, the Respondents quoted the Hon'ble Supreme Court's judgment titled ***State of Gujarat & Anr. V. Mahendrakumar Parshottambhai Desai, (2006) 9 SCC 772*** in support of their argument that the Appellant has filed additional document in the form of the PTC Agreement, before this Tribunal to rectify its procedural lapses before the KERC, the same is impermissible in law and the Appellant cannot be permitted to rely on any additional documents at the stage of appeal without providing adequate reasons for the same.

132. The objection to the production of the PTC Agreement at the appellate stage has to be ignored as is legally untenable and factually distinguishable from the precedent cited in ***State of Gujarat & Anr. v. Mahendrakumar Parshottambhai Desai (2006) 9 SCC 772***, where the claimant failed to provide adequate justification for the belated submission of evidence, the Appellant in the present case has provided sufficient reasons and context for producing the PTC Agreement.

133. It cannot be disputed that the PTC Agreement is crucial evidence to support the Appellant’s intention to sell power through inter-state open access, a fact that directly impacts the applicability of KERC's regulatory framework, the State Commission erred in applying the KERC (Power Procurement from Renewable Sources by Distribution Licensee and REC Framework) Regulations, 2011, ignoring the fact that the said inter-state transaction is governed by the Central Electricity Regulatory Commission (CERC) Regulations, which do not impose the same conditions. This makes the PTC Agreement essential to rectify the misapplication of regulatory principles.

134. Moreover, regulatory tribunals, unlike civil courts, have broader powers to permit additional evidence at the appellate stage to ensure the ends of justice are met. The PTC Agreement was placed before us to substantiate the Appellant’s legitimate claim for the price realized from sales under the power exchange, as evidenced by the average realized price of INR 5.61. This evidence was essential to prevent a miscarriage of justice.

135. Therefore, the production of the PTC Agreement at the appellate stage is legally permissible as it addresses a fundamental issue related to the applicability of regulatory provisions and corrects an oversight by KERC.

136. From the details placed before us, we observed that the Appellant has placed on record the applicable price prevailing at that time including the exchange prices, it is MESCOM's failure to provide evidence of a lower market price, further, MESCOM's claim that the Appellant did not present comparable price data after executing the WBA on 06.05.2014 is irrelevant, as prices for subsequent periods do not affect compensation for prior supplies.

137. Even MESCOM's argument that the PPA, governed by the Tariff Order of 18.01.2005, set a tariff of INR 2.80 per unit, which the Appellant has been paid is unacceptable as after the termination of the PPA, this tariff is not applicable, and the Appellant is entitled to the market rate that would have been applicable if the energy had been sold through open access.

138. Further, MESCOM's claim that upholding the Appellant's demand would harm customers is unfounded, as evidence shows MESCOM's comparable power purchase costs exceeded INR 5.50 per unit, matching the Appellant's claim.

139. MESCOM also argued that the Appellant did not generate power during the period under the Government Order of 26.03.2014 or during peak season, however, such an argument is baseless as the Appellant, however, has not claimed compensation under the Government Order but using it to show the market rate during that period. Also, MESCOM raised the issue of seasonality at this stage, as the Impugned Order already concluded that mini-hydel generation is lower between December and June, and MESCOM did not appeal these findings.

140. Further, the Appellant tried to sell power through inter-state open access but could not do so as Respondent No. 1 contested the validity of the PPA. Ultimately, the termination of the PPA had been held as valid by the Hon'ble Supreme Court vide order dated 17.10.2014 in CA No. 1665/2015.

141. The claim of the Appellant for restitution is therefore to be held valid and the compensation is granted to the Appellant for it had lost the fair opportunity to sell the power at a fair price in the market because of the conduct of the Respondent No. 1.

142. The Appellant also claimed interest for any delayed payment, it is settled principle of law that the entitlement to interest depends on whether payments were made timely or not and in accordance with the applicable tariff, since the Appellant has substantiated its claim for a higher market rate, any delay in payment of the revised amount would rightfully attract interest.

143. The Appellant has fulfilled its burden of proof, and the higher tariff claim is supported by established market rates and prior rulings of KERC.

Compensation

144. Respondent No. 2, KERC upheld the Appellant's right to compensation based on the market value of the energy supplied. However, KERC calculated the compensation using rates from short-term bilateral transactions, which were lower than the market rates demonstrated by the Appellant.

145. The Appellant provided evidence showing that during the relevant period, the market rates were significantly higher. The Appellant presented higher market rates, like ₹7.25 per kWh in 2012-2013 and ₹7.00 per kWh in 2013-2014. Despite this, KERC chose to use a lower rate, ignoring key evidence such as the price paid by MESCOM (₹5.17 to ₹5.9 per unit) and a government order from 2014 recognizing ₹5.50 as the current short-term procurement rate. KERC's reliance on rates from unrelated cases and short-term RTC rates did not reflect the actual market conditions.

146. Furthermore, KERC's dismissal of the Section 11 Order from 2014, which established a rate of ₹5.50 per unit is unjustified. The evidence clearly shows higher market rates and that KERC's decision to use lower rates is legally unsound.

147. Respondent No. 1 procured electricity from various sources at prices exceeding INR 16 per kW and this information was obtained under the Right to Information Act by the Appellant. After the termination of the Power Purchase Agreement (PPA) between the Appellant and Respondent No. 1 (effective between 22.07.2011 to 16.10.2014), the Appellant claimed it could have sold electricity at high market rates. However, Respondent No. 1's refusal to grant open access to the Appellant hindered this opportunity, causing losses.

148. During this period, Respondent No. 1 also had a legal obligation to purchase RECs as part of its Renewable Purchase Obligation (RPO).

149. The prices of RECs during this period were as follows: -

2014-15: INR 1.50 (high) to INR 1.50 (low)
2013-14: INR 1.50 (high) to INR 1.50 (low)
2012-13: INR 2.40 (high) to INR 1.50 (low)
2011-12: INR 3.07 (high) to INR 1.50 (low)

150. Respondent No. 1 benefited financially, paying only INR 2.80 per kWh while gaining nearly INR 20 per kWh due to the RECs and power procurement. This resulted in Respondent No. 1 effectively enriching itself by INR 17.20 per kWh. Had the Appellant been granted open access, it could have sold the green power generated from its plant at market prices, which averaged more than INR 7.00 per kWh.

151. The tariff rates for BESCOM consumers (commercial category HT-2b(i)) were: - 2014-15: INR 7.65 per kWh

2013-14: INR 7.25 per kWh
2012-13: INR 7.00 per kWh
2011-12: INR 6.80 per kWh

152. By a Government Order dated 26.03.2014, the tariff for electricity procured from generators was fixed at INR 5.50 per kWh for the period from 30.03.2014 to 30.06.2014 under Section 11 of the Electricity Act, 2003. This reflects the minimum tariff generators were entitled to during this period.

153. The Appellant estimated its total claim at INR 1,514,204,592. This included interest at a rate of 14.5% per annum due to the delayed payments, which brought

the total claim to INR 1,907,041,093 after adjusting INR 441,648,992 received from Respondent No. 1.

154. The Appellant is, therefore, entitled to the compensation along with interest. The rate of interest at which the compensation is to be granted is determined below.

Rate of Interest

155. The Appellant claimed interest at the rate of 14.5%, referencing the Power Purchase Agreement (PPA) which stipulated that interest should be calculated at the State Bank of India's (SBI) Medium-Term Lending Rate for delayed payments (as per Clause 6.3 of the PPA):

> *"6.3 Late Payment: If any payment from MESCOM is not paid when due, there shall be due and payable to the company Penal interest at the rate of SBI medium term lending rate per minimum for such payment from the date such payment was due until such payment is made in full."*

156. The Appellant also raised this claim before the Karnataka Electricity Regulatory Commission (KERC), and MESCOM did not dispute the claim for interest.

157. The Appellant presented historical data from the SBI website, showing that the applicable interest rate during the relevant period was 14.5%.

158. The KERC denied the Appellant's claim for pre-litigation interest because the damages were unascertained and therefore could not attract interest. Instead, the KERC awarded interest during the litigation (pendente lite) and after litigation (post lite) at a reduced rate of 6%, based on its discretion under Section 34 of the Civil Procedure Code (CPC). However, the denial of pre-litigation interest was incorrect, as the claim was for a specified price and not damages as claimed by the Appellant. Therefore, interest should have been granted for the entire period.

159. The award of 6 percent interest is unjustified, as the PPA was a commercial agreement that specified the SBI Medium Term Lending Rate as the applicable interest rate. The Appellant argued that even after termination, this rate should apply. MESCOM's claim that 6% is reasonable is flawed, as it selectively applies the PPA tariff while disregarding the interest provisions due to termination, which is inconsistent.

160. The Appellant's argument that even if the PPA's interest rate cannot be applied post-termination, it is still entitled to interest on equitable grounds, has merit.

161. In South Eastern Coalfields Ltd. v. State of M.P. (2003) 8 SCC 648, it has been held that interest is payable on the principle even without an agreement.

162. Additionally, the ***Lanco Amarkantak Power Limited vs. Haryana Electricity Regulatory Commission, 2019 SCC OnLine APTEL 37*** also supports that delayed payments should include interest to compensate for the loss of time value of money. Thus, the Appellant is entitled to receive the interest it has claimed. The relevant paragraph is reproduced below:

“97. Our findings and analysis

…….

iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.”

163. Given that the PPA explicitly stipulated that interest should be calculated at the SBI rate, the Appellant also asserted that the KERC should have considered this rate when determining the discretionary interest under Section 34 CPC, rather than setting it at 6%. Therefore, the Appellant was entitled to 14.5% interest under the PPA, and KERC's award of 6% interest and refusal to grant pre-litigation interest were unjustified.

164. In light of the above, the interest of 14.5% is ought to be granted to the Appellant.

Compensation Amount

165. It is important to note again the extracts from ***Southeastern Coalfields Limited v. State of Madhya Pradesh and Others (2003) 8 SCC 648*** as under:

"The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost*;*

Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. ***That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties****."*

166. The courts can invoke their inherent powers to order restitution to prevent unjust enrichment and unjust impoverishment. In the present case, the unjust impoverishment of the Appellant and the unjust enrichment of the Respondent are evident.

167. From the records, it can be seen that Respondent No. 1 has enriched itself by ensuring supply from the Appellant during the period of dispute, even to the fact that the termination of the PPA by the Appellant was held to be valid and legally tenable.

168. During this period, MESCOM procured power at an average rate of more than Rs. 4.00 per kWh, thus enriching itself by a differential amount between the average cost of procurement versus the PPA rate.

169. The Appellant claimed a market rate of Rs. 5.50 per kWh which is the same as the rate decided by the aforesaid Government Order during the period,

however, we are not satisfied as the claim has not been made under the said Government Order.

170. Considering the ***Southeastern Coalfields Limited v. State of Madhya Pradesh and Others (2003) 8 SCC 648***, we find it reasonable and justifiable to accept the average procurement price by MESCOM during the period of dispute along with interest of 14.5%.

171. We are also not inclined to agree to the claim of the Appellant regarding the additional compensation on account of RECs, as the MESCOM has procured the power including the required percentage of RE Power at the rate as submitted by the MESCOM in its Written Submissions.

172. As such the Appellant is entitled to the following rates which are the average annual procurement rates by the MESCOM during the disputed period:

a) Price of
   i. Rs. 4.97 per kWh for the energy supplied during 2011-12,
   ii. Rs. 4.42 per kWh for the energy supplied during 2012-13,
   iii. Rs. 5.31 per kWh for the energy supplied during 2013-14, and
   iv. Rs. 5.29 per kWh for the energy supplied during 2014-15
b) Interest corresponding to the year 2011-12 to 2014-15, and
c) An interest @14.5 % on the consolidated amount arrived at after a) and b) above.

173. The Respondent No. 1 shall make the payment within three months from the date of receipt of the consolidated bill by the Appellant in compliance with above.

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No.211 of 2021 has merit and is allowed. Respondent No. 1 is ordered to pay the Appellant in accordance with above.

The Impugned Order dated 23.03.2021 passed by the Karnataka Electricity Regulatory Commission in Petition OP No.192/2017 is set aside.

The pending IAs, if any are also disposed of accordingly.

PRONOUNCED IN THE OPEN COURT ON THIS 19th DAY OF DECEMBER, 2024.

(Virender Bhat) **Judicial Member**	**(Sandesh Kumar Sharma)** **Technical Member**

pr/mkj