IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.235 OF 2022

Dated: 29.05.2025

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

In the matter of:

Guttaseema Wind Energy Company Private Limited
Through its Authorized Signatory,
Plot No. 1366,
Road No. 45, Jubilee Hills,
Hyderabad – 500 033
Email id- rakesh.s@greenkogroup.com … Appellant

Versus

1. **A.P. State Electricity Regulatory Commission**
Through its Registrar,
11-4-660, 4th Floor, Singareni Bhavan
Red Hills, Hyderabad – 500 004
Email id- dd.law@aperc.in; anjani@aperc.in

2. **Southern Power Distribution Company of Andhra Pradesh Limited**
Through its Chairman & Managing Director
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati – 517 503
Email id- gmipcspdcl@gmail.com … Respondent (s)

Counsel for the Appellant(s) : Mannat Waraich
Mridul Gupta
Ashabari Basu Thakur
Ananya Goswami
Purushottam Choppakatia

Counsel for the Respondent(s) : Gaichangpou Gangmei
Arjun D Singh
Nisha Pandey
Ankita Sharma
Yashvir Kumar
Rajat Srivastava
Lothungbeni T. Lotha
Maitreya Mahaley
Yimyanger Longkumer for Res.1

Sidhant Kumar
Manyaa Chandok for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, a generating company owning 80MW wind power project in the State of Andhra Pradesh, is in appeal before us against the order dated 25.04.2022 passed by the 1st respondent Andhra Pradesh State Electricity Regulatory Commission (hereinafter referred to as "the Commission") in the appellant's petition no.48 of 2020, thereby upholding the termination of the Power Purchase Agreement (PPA) dated 09.05.2016 executed between the appellant and 2nd respondent to the extent of 60 MW of power in view of Article 9 read with Article 1.4 of the PPA.

2. The 2nd respondent Southern Power Distribution Company of Andhra Pradesh Limited is a distribution licensee in terms of Section 2(17) of the

Electricity Act, 2003, and is engaged in the distribution and retail supply of power within the southern region in the State of Andhra Pradesh.

3. The narration of facts and circumstances in which the instant appeal has arisen goes as under.

4. As per the new Wind Power Policy of Government of Andhra Pradesh notified through GoM No.48, Energy (RES) Department dated 11.04.2008, the approval for wind energy projects above 20 MW capacity was granted by the Government of Andhra Pradesh with the approval of nodal agency i.e. New and Renewable Energy Development Corporation of Andhra Pradesh Limited (in short “NREDCAP”).

5. The appellant, vide application dated 08.04.2011 submitted its request to NREDCAP for allotment for wind power project with capacity of 80MW. NREDCAP accorded its sanction for setting up and operation of the wind power project with capacity of 80MW to the appellant vide letter dated 07.05.2013. Accordingly, the appellant entered into an Implementation Agreement dated 07.05.2013 with NREDCAP.

6. As per Article 6 of the Implementation Agreement, the appellant was required to enter into a PPA or open access agreement with the Discoms in

terms of the policy and the order/guidelines of the Government of Andhra Pradesh. The appellant was also required to complete the project within a period of 24 months from the date of the agreement. However, the said time period mentioned in the agreement for completion of the project was extended by NREDCAP from time to time. The project completion date was lastly extended by NREDCAP to 06.05.2020 vide letter dated 11.03.2019 for the balance capacity of 60MW as the first unit with capacity of 20MW had already been completed and commissioned by that time.

7. In terms of the Implementation Agreement, the appellant entered into a PPA with 2nd respondent on 09.05.2016 whereby the 2nd respondent agreed to purchase the power generated from the appellant's wind power project at the rate of Rs.4.84 per unit for a period of 25 years from the Commercial Operation Date (COD) of the project. The PPA as well as the tariff agreed therein was duly approved by the Commission vide order dated 25.05.2016.

8. Thereafter, the appellant proceeded to obtained the necessary approvals and permissions including approval for power evacuation i.e. interconnection facility up to the pooling sub-station for setting up of the 80MW capacity wind power project at Bormapalli, Rudrampalli, Egalavanka & Basavapuram in Ananthapuram District of Andhra Pradesh. The appellant also requested the

Transmission Corporation of Andhra Pradesh Limited (in short “AP Transco”) for approval of evacuation of power from Bormapalli to 220 KV Sub-station for the wind power project. The approval was accorded by the AP Transco vide letter dated 12.03.2018.

9. The 2nd respondent also, vide letter dated 21.03.2018 granted approval for synchronization of 10MW out of 80 MW wind power project. Subsequently, vide letter dated 03.04.2018, the 2nd respondent permitted the appellant to declare commercial operation of said 10MW out of 80MW wind power project which had been commissioned on 22.03.2018, with effect from the date of synchronization of the unit to the grid i.e. 22.03.2018.

10. An amended PPA was executed between the appellant and 2nd respondent on 13.08.2018 in order to incorporate the change of location of the wind project from Palakonda Hills in Anantapur and YSR Kadapa District to Borampalli, Rudrampalli, Elagalavanka and Basavapuram in Anantapur District. The amendment to the PPA was approved by the Commission on 20.09.2018.

11. Vide letter dated 01.02.2019, the 2nd respondent approved synchronization of further 10MW (5 Wind Turbine Generators x 2 MW) and

permitted recording of the energy meter reading and carrying out of synchronization in coordination with the AP Transco. The said 10MW unit of the power project was commissioned on 07.02.2019 thereby taking the cumulative capacity commissioned till that date to 20MW. The 2nd respondent also certified the synchronization and commissioning of this 10MW unit of the project vide letter dated 23.02.2019.

12. Thereafter, a show cause notice dated 22.04.2019 was issued by NREDCAP to the appellant seeking reasons for non-implementation of the remaining 60MW of the wind power project within 24 months from the date of signing of the Implementation Agreement. It was further brought to the notice of the appellant that as per Wind Power Policy 2018 of the Government of Andhra Pradesh, wind power projects which have completed more than 60 months period from the date of sanction of the Implementation Agreement and have not entered into PPAs within 60 months from the date of allotment will stand automatically cancelled as per the guidelines of the Ministry of New and Renewable Energy vide circular no.51/9/2007-WE dated 20.06.2008 and the bank guarantees submitted by these projects shall be invoked. Vide the said show cause notice dated 22.04.2019, the appellant was called upon to show

cause as to why its allotment should not be cancelled and the bank guarantee submitted by it should not be invoked.

13. The said show cause notice was challenged by the appellant before the Hon'ble High Court of Andhra Pradesh by way of a writ petition. Vide order dated 08.05.2019, the High Court restrained NREDCAP from taking any coercive step including invoking the bank guarantee against the appellant. At the same time, the appellant vide letter dated 29.05.2019, informed the 2nd respondent that the installation and construction work in respect of further 20MW capacity was complete in all respects and requested the 2nd respondent to issue the work completion report for processing of synchronization approval for the same.

14. The Chief Electrical Inspector to Government (CEIG) certified the readiness of the electrical installations and accorded approval for energizing the said 20MW Wind Turbine Generator on 04.06.2019. Accordingly, the appellant requested the 2nd respondent for synchronization of the said unit on 11.06.2019. The Superintending Engineer – Operation, Anantapuram Circle also inform the Chief General Manager (Projects & IPC) of the 2nd respondent that CEIG approval has been received by the appellant in respect of the said 20MW WTG and hence arrangements may be made for synchronization

approval. However, it appears that despite receipt of communication from Superintending Engineer, the 2nd respondent did not take steps for synchronizing of said 20MW unit which was ready for commissioning and was waiting clearance for synchronizing since May, 2019.

15. The appellant, again vide its reminder dated 30.11.2019, informed 2nd respondent that it has completed the project work in respect of the 2nd 20MW capacity WTG and requested for synchronization of the same. The 2nd respondent appears to have chosen not to respond to the said reminder also.

16. Thereafter, the appellant received a notice dated 01.07.2020 from the 2nd respondent whereby the 2nd respondent had proceeded to unilaterally amend the PPA by restricting the capacity of the wind power project of the appellant to already commissioned 20MW and thereby terminating the PPA to the extent of balance 60MW.

17. It is upon receipt of the said notice dated 01.07.2020 from the 2nd respondent that the appellant had approached the Commission by way of petition no.48/2020 assailing its legality and validity. The petition has been dismissed by the Commission vide impugned order dated 25.04.2022 thereby upholding the termination of PPA by the 2nd respondent to the extent of

balance 60MW of the wind power project of the appellant which had remained to be completed and commissioned by that time.

18. Hence, the instant appeal.

19. We have heard learned counsel of the appellant and the learned counsels appearing for the respondents. We have also perused the impugned order as well as the written submissions filed on behalf of the appellant and the judgments cited at bar.

20. We may note that the Commission had formulated following two points for its consideration and adjudication: -

> *"1) Whether the petitioner is entitled for synchronisation of the third unit of 20 MW Wind Power capacity as required by it, vide its letter dated 29-5-2019?*
> *2) Whether the petitioner is entitled to approval and commissioning of the balance 40 MW Wind Power capacity out of the 80 MW, of which PPA dated 9-5-2016 was entered?"*

21. Both the points have been decided against the appellant vide the impugned order holding that the appellant has failed to achieve the commercial operation for the third unit of 20MW capacity within the stipulated

period and therefore not entitled to synchronize the same with the network of 2nd respondent and that the appellant is not entitled to the relief in respect of balance capacity of 40MW also.

22. The submissions of learned counsels before us mainly revolve around the interpretation of Articles 1.4 and 9.1 of the PPA which are extracted hereinbelow for the purpose of convenience: -

> *"1.4* ***Commercial Operation Date (COD):*** *means, with respect to each Generating unit, the date on which such Generating unit is declared by the Wind Power Producer to be operational, provided that the Wind Power Producer shall not declare a Generating unit to be operational until such Generating unit has completed its performance acceptance test as per standards prescribed.*
>
> ***Explanation:*** *In respect of non-conventional based power projects the date of synchronization of the first unit of the project will be treated as the Commercial Operation Date of the project.*
>
> *…*
>
> *9.1 The Wind Power Producer shall achieve Commercial Operation Date within two years from the date of signing*

of the Agreement, default of which, the Agreement is liable for termination and the same can be done at the option of DISCOM with due notice."

23. There is no gainsaying that Article 9.1 of the PPA dated 09.05.2016 executed between the appellant and the 2nd respondent empowers the 2nd respondent to terminate the PPA with due notice to the wind power producer i.e. the appellant herein, in case, the wind power producer fails to achieve commercial operation of the project within two years from the date of signing of the agreement. However, the parties are at variance on the aspect as to when the wind power project shall be taken to have achieved commercial operation in terms of article 1.4 of the PPA.

24. Noting that there is direct conflict between the leading term of the contract and explanation attached to it and upon referring to the judgments of the Supreme Court in as S. Sundaram Pillai etc. Vs. V. R. Pattabhiraman etc, 1985 SCC(1)591 and Union of India and Ors Vs. Dileep Kumar Singh, Civil Appeal Nos. 2466-2467 of 2015 decided on 26.02.2015, the Commission held as under :-

"In our opinion, when there is a direct conflict between the leading term of the Contract and the Explanation,

the leading term will gain precedence over the Explanation in order to preserve and protect the intendment of the leading term. When the leading term specifically refers to the COD of the Wind Power Units, the Explanation, which in generic sense refers to the non-conventional projects, lays down a directly contradictory condition, the Explanation is liable to be ignored as it defeats the purpose of the leading term.

Interestingly, neither in the main O.P, nor in the rejoinder, the petitioner has raised a specific plea relying upon the Explanation to Article 1.4. It is only at the hearing that Mr. Sanjay Sen has placed reliance on the Explanation.

There is another reason to ignore the Explanation to Clause 1.4. The technology of Wind Power Projects undergoes rapid changes. With improvement of technology and reduction in cost of the plants, the power cost of Power Projects is coming down rapidly. The Tariff which was Rs.6.29 ps per unit in 2013-14, has gradually come down to Rs.3.46 ps per unit in 2017-18. In such a scenario, if the Project Developer, who quotes the tariff prevailing at the time of entering into the agreement is allowed unlimited time for achieving CODs at different times for different units, it will amount to depriving the Licensee of the opportunity of securing power at more competitive

tariffs as the Developer will block the capacity for unlimited future periods and complete the project at his leisure. This not only affects the interest of the Licensees, but also allows undue advantage to the Developer, who may procure plants with better technology at cheaper rate at a later stage at higher tariff already fixed under the PPA. Such a situation adversely affects consumers' interests. Therefore, in our opinion, the leading term of the PPA i.e., Clause 9.1 stipulating the time for completion of the project must be strictly construed and adhered to.

As regards the submission of the learned Senior Counsel that as the COD of the second unit was allowed after expiry of the two years and the amended PPA for the entire capacity of 80 MW was entered after expiry of the two years period entered into by the respondent, the respondent is estopped from raising the objection for the COD of the third unit, in our opinion, the doctrine of estoppel has no application on the facts of the present case.

Section 115 of the Indian Evidence Act, 1872 posits the Principle of Estoppel. It postulates that when one person by his act or by declaration, has made another person believe something to be true and persuaded that person to act upon it, then in no case can he or his representative deny the truth of that thing. The

mere fact that the respondent allowed the second unit to be synchronized beyond the period of two years, which the respondent has termed as a mistake, the same will not constitute estoppel for the third unit as the action of the respondent in allowing synch ronisation was in respect of the second unit, which has nothing to do with the third unit. Moreover, one wrong will not make another right. Therefore, we do not find any merit in the submission of the learned Senior Counsel that the respondent's action constitutes estoppel."

25. We are unable to countenance the views and reasoning of the Commission contained in the impugned order in rejecting the petitioner's case as well as the manner in which the Commission has proceeded to interpret Article 1.4 of the PPA.

26. Before proceeding to analyze and interpret Article 1.4 of the PPA as well as the explanation attached to it, we may note that the explanation attached to a statutory provision or a contractual provision needs to be read so as to harmonize with and clear up any ambiguity in the main provision. It is elementary that an explanation is attached to a provision only to explain and not to add or extend the scope of main provision. The object of the explanation

also cannot be to limit the scope of the main provision. The nature and object of an explanation to a statutory provision had come up before the Hon'ble Supreme Court in S. Sundar Pillai case (Supra) which has been quoted and relied upon by the Commission in the impugned order. Upon examining the previous judgments on this aspect, the Supreme Court has held as under: -

> ***"53**. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is –*
>
> *(a) to explain the meaning and intendment of the Act itself,*
>
> *(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*
>
> *(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
>
> *(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress*

the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

27. We may also note that a commercial document cannot be interpreted in a manner to arrive at complete variance with what may originally had been intendment of the parties. The issue with regards to interpretation of commercial contract had come up before the Hon'ble Supreme Court in Transmission Corporation of Andhra Pradesh Ltd. and Ors. Vs. GMR Vemagiri Power Generation Ltd. and Anr. (2018) 3 SCC 716 wherein it has been held :-

"*26. A commercial document cannot be interpreted in a manner to arrive at a complete variance with what may originally have been the intendment of the parties. Such a situation can only be contemplated when the implied term can be considered necessary to tend efficacy to the terms of the contract. If the contract is capable of interpretation on its plain meaning with regard to the true intention of the parties it will not be*

prudent to read implied terms on the understanding of a party, or by the court, with regard to business efficacy as observed in Satya Jain v. Anis Ahmed Rushdie, as follows: (SCC pp.143-44, paras 33-35)

"33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Bowen, L.J. in Moorcock. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied – the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of Bowen, L.J. In the Moorcock sums up the position: (PD p.68)

'… In business transactions such as this, what the law desires to effect by the implications is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen; not to impost on one side all the perils

of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances.' "

(Emphasis supplied)

28. Now coming to Article 1.4 of the PPA, which we have already reproduced hereinabove and is again extracted hereinbelow at the cost of repetition: -

"1.4 ***Commercial Operation Date (COD):*** *means, with respect to each Generating unit, the date on which such Generating unit is declared by the Wind Power Producer to be operational, provided that the Wind Power Producer shall not declare a Generating unit to be operational until such Generating unit has completed its performance acceptance test as per standards prescribed.*

Explanation: *In respect of non-conventional based power projects the date of synchronization of the first unit of the project will be treated as the Commercial Operation Date of the project."*

29. We do not see any conflict between the main provision of Article 1.4 and the explanation attached to it, as noted by the Commission in the impugned order. The main provision specifies the COD of a generating unit of the power project. Since it does not say anything about the COD of the whole power project, the parties thought it necessary to attach the explanation which specifies when the power project as a whole can be said to have achieved COD. The explanation clearly states that the date of synchronization of a non-conventional based power project (like the wind power project of the appellant) shall be taken to have achieved COD on the date of synchronization of its first unit.

30. In view of the plain and simple language used in article 1.4 of the PPA, we are unable to discern as to what led the Commission to note that there is dichotomy between the main provision of the article and the explanation attached to it. One would not require Soloman's wisdom to note that the explanation attached to article 1.4 merely explains the main provision and clears the ambiguity without adding anything to it or limiting its scope. The explanation supplements the main provision and makes it meaningful by removing the obscurity in it.

31. Further, it is to be noted, the PPA has been executed between the two business persons. The 2nd respondent, which is one of the parties/signatories to the PPA is managed by expert professionals in the requisite field. They must have gone through and vetted each clause of the PPA before signing it. Moreover, we have been informed that similar clause relating to COD appears in the PPAs executed by the Central Power Distribution Company of Andhra Pradesh also with the wind power generators. Copies of two such PPAs have been produced by the appellant's counsel during the course of hearing of the appeal.

32. Therefore, there remains no doubt about the fact that the intendment of the parties was to incorporate article 1.4 in the PPA including the explanation in the language in which it appears. As held by the apex court in GMR Vemagiri Case (Supra), when PPA is capable to interpretation on its plain reading with regards to the true intention of the parties, it is not prudent to read any implied term in it or to read it in a different way on the understanding of a party or the court with regards to its business efficacy.

33. Probably, having business efficacy in mind, the Commission has given one more reason to ignore the explanation to article 1.4, in the impugned order as: -

"There is another reason to ignore the Explanation to Clause 1.4. The technology of Wind Power Projects undergoes rapid changes. With improvement of technology and reduction in cost of the plants, the power cost of Power Projects is coming down rapidly. The Tariff which was Rs.6.29 ps per unit in 2013-14, has gradually come down to Rs.3.46 ps per unit in 2017-18. In such a scenario, if the Project Developer, who quotes the tariff prevailing at the time of entering into the agreement is allowed unlimited time for achieving CODs at different times for different units, it will amount to depriving the Licensee of the opportunity of securing power at more competitive tariffs as the Developer will block the capacity for unlimited future periods and complete the project at his leisure. This not only affects the interest of the Licensees, but also allows undue advantage to the Developer, who may procure plants with better technology at cheaper rate at a later stage at higher tariff already fixed under the PPA. Such a situation adversely affects consumers' interests. Therefore, in our opinion, the leading term of the PPA i.e., Clause 9.1 stipulating the time for completion of the project must be strictly construed and adhered to."

34. Heavy reliance was placed upon these observations of the Commission by the learned counsel for 2nd respondent also during the course of arguments to support the impugned order. We are unable to agree with these observations of the Commission. It is to be kept in mind that the duration of the PPA in 25 years. Thereafter it may or may not be extended and if extended, the terms may not remain the same. So, it would be in the interests of the power generator to commission various units of the power project as early as possible in order to get sufficient time period to recover the project costs fully. Delay in commissioning any unit of the power project would only be to the peril of the power generator as it may not be able to recover the project cost within short time duration that might be available to it under the PPA. Delay in commissioning any unit of the project would, thus, not cause any undue advantage to the power developer as noted by the Commission.

35. In case, we take these observations of the Commission on their face value and assume these to be correct, we wonder what the Commission was doing at the time of approval of the PPA. Why did not the Commission object to the PPA or particularly article 1.4 at that time. Once it is clear that parties executed the PPA with open eyes and the same was duly approved by the Commission, it gave rise to a belief in the mind of the appellant that date of

commissioning of the first unit of his power project would be treated as COD of the entire project. Hence, it was not permissible for the Commission to ignore the explanation to article 1.4 of the PPA at a later stage while passing the impugned order. The approach of the Commission and the 2nd respondent in denying the benefit of the explanation to the appellant is contrary to the principle of *estopple* enshrined in Section 115 of The Evidence Act, 1872 which postulates that when one person by his act or declaration makes another to believe in something and later acts on such belief, then in no case can be he (former) or his representative be permitted to deny the correctness of that act or declaration.

36. So, by intentionally attaching the explanation to article 1.4 of the PPA thereby explaining the COD of the entire project and making the appellant to act on such declaration contained in the explanation, the 2nd respondent or the Commission can not be heard to say that explanation is liable to be ignored. The explanation can not be ignored merely on some erroneous understanding of the 2nd respondent or the Commission with regard to business efficacy.

37. Hence, in view of the above discussion we find the impugned order of the Commission absolutely perverse which can not be sustained. Same is hereby set aside. We direct that in view of the article 1.4 of the PPA, the date

of commissioning of the first unit of the appellant's wind power project i.e. 22.03.2018 shall be treated as COD of the entire project.

38. Since the first unit of appellant's wind power project has been commissioned well within two years from the date of execution of PPA, the entire project shall be taken to have achieved COD within the period stipulated under the PPA. Thus, the 2nd respondent had no reason or occasion to terminate the PPA dated 09.05.2016 executed between the parties. Accordingly, the notice dated 01.07.2016 issued by the 2nd respondent is hereby quashed. The 2nd respondent is directed to forthwith synchronize the 2nd 20MW capacity WTG of the appellant, which has been ready for commissioning since the month of May, 2019. We also hold the appellant entitled to the benefit of deemed generation for the said 20MW WTG from the month of May, 2019. The appellant shall also be entitled to synchronization of balance capacity of 40MW in terms of the PPA dated 01.07.2020.

39. Accordingly, appeal stands allowed.

Pronounced in the open court on this the 29th day of May, 2025.

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

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