IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 240 of 2020

Dated : 28th July, 2025

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

In the matter of:

Jindal Aluminium Limited
Jindal Nagar, Tumkur Road,
Bangalore – 560073, Karnataka …Appellant

Versus

1. **Karnataka Electricity Regulatory Commission**
Through its Secretary,
No. 16, C-1, Millers Bed Area,
Vasanth Nagar, Bengaluru - 560052

2. **Gulbarga Electricity Supply Company Limited**
Through its Chief Engineer Electricity (Corp. Planning),
Station Road, Kalaburagi – 585101

3. **Karnataka Power Transmission Corporation Ltd.**
Through its Deputy General Manager, Technical
Cauvery Bhavan, K.G. Road,
Bengaluru – 560009

4. **Bangalore Electricity Supply Company Limited**
Through its Managing Director
Corporate Office, K.R. Circle,
Bengaluru – 560001

5. **Chamundeshwari Electricity Supply Corporation Limited**
Through its Superintending Engineer, Electrical/Commercial,
No. 29, kaveri Grameena Bank Road, Vijaynagar,
2nd Stage, Hinkal, Mysuru – 570019 …Respondents

Counsel for the Appellant(s)	:	Parinay Deep Shah Kartik Sharma Ritika Singhal Surabhi Pandey for App. 1
Counsel for the Respondent(s)	:	S. Sriranga Subanna Sr. Adv. Sumana Naganand Garima Jain Nidhi Gupta Tushar Kanti Mohindroo Arnav Sharma for Res. 2 S. Sriranga Subanna Sr. Adv. Sumana Naganand Garima Jain Nidhi Gupta Tushar Kanti Mohindroo Arnav Khanna for Res. 3 S. Sriranga Subanna Sr. Adv. Sumana Naganand Tushar Kanti Mohindroo Arnav Sharma for Res. 4 S. Sriranga Subanna Sr. Adv. Sumana Naganand Garima Jain Nidhi Gupta Tushar Kanti Mohindroo Arnav khanna for Res. 5

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal, the Appellant M/s Jindal Aluminium Limited has impugned the order dated 18th July, 2019 passed by 1st Respondent – Karnataka Electricity Regulatory Commission (hereinafter referred to as "the Commission") in O.P. No. 17 of 2016 thereby holding the Appellant not entitled to be paid/compensated for the energy injected by it from its

wind power project into the grid between 4th October, 2015 and 17th November, 2015.

2. The Appellant is a company formed and registered under the Indian Companies Act, 1956. Vide order dated 27th February, 2015, the Government of Karnataka transferred 24.08 MW of wind power capacity to the Appellant out of total 300 MW allotted to M/s Vish Wind Infrastructure LLP. Out of the said 24.08 capacity, the Appellant commissioned 12 MW on 3rd October, 2015 for wheeling the electricity for its captive consumption and also to its non-captive consumers.

3. Respondent Nos. 2, 4 & 5 are the Distribution Company in the State of Karnataka and engaged in distribution of electricity to various Districts in the State.

4. Respondent No. 3 is the Electricity Transmission Company in the State of Karnataka and also the State Load Despatch Centre.

5. The Appellant executed Wheeling and Banking Agreement (WBA) dated 18th November, 2015 with Respondent Nos. 2, 3, 4 & 5 for wheeling and banking of power generated from its wind power project. However, the Appellant has been exporting energy generated in its wind power project into the grid since the date of its commissioning i.e. 4th October, 2015. According to the Appellant, it injected 8,97,303 units of

energy into the grid from its wind power project between 4th October, 2015 and 17th November, 2015.

6. Accordingly, the Appellant raised two invoices separately for the said period both dated 19th September, 2015 for Rs.12,84,464/- and Rs,27,50,400/- respectively. Since the Respondents did not pay the invoices amount to the Appellant, it approached the Commission by way Petition bearing O.P. No. 17 of 2016 claiming the entitlement to the payment of amount reflected in these two invoices from Respondent Nos. 2 to 5.

7. The case of the Appellant before the Commission was that subsequent to the commissioning of wind power project till the execution of WBA, 8,97,303 units of energy were injected into the grid from its power project for which the 2nd Respondent had issued “B” forms also evidencing the injection of power into the grid during the said period. It was further pleaded by the Appellant that the energy so injected into the grid was received by the 2nd Respondent without any demur and, therefore, 2nd Respondent was liable to pay for the same or to return the said quantity of energy for use of the Appellant.

8. These contentions of the Appellant did not find favour with the Commission. The Commission rejected the claim of the Appellant vide

the impugned order dated 18.07.2019 on the ground that a person injecting power into the grid prior to the date of execution of WBA was not entitled to any compensation on the principles stated in the Section 70 of the Indian Contract Act, 1872. In doing so, the Commission relied upon its previous decision in O.P. No. 32 of 2014, Lalpur Wind Energy Private Limited Vs. KPTCL & Ors. decided on 26th November, 2015, which was upheld by this Tribunal in Appeal No. 37 of 2016 decided on 8th February, 2019.

9. Hence, the Appellant has come in appeal before this Tribunal assailing the said order dated 18th July, 2019 of the Commission.

10. We have heard the Learned Counsel for the Appellant as well as Learned Counsels for Respondent Nos. 2 to 5. We have also perused the written submission filed by the Learned Counsels.

11. We may note that vide order dated 4th March, 2025, this Tribunal had directed the Respondent Nos. 2 to 5 to file affidavit stating that they have not used the power injected into the grid by the Appellant during the period under dispute for their commercial benefit including RPO requirement. In compliance with the said direction, affidavits dated 3rd May, 2025, 28th April, 2025 and 29th April, 2025 have been filed on behalf of Respondent Nos. 2, 4 & 5 respectively which also have been perused.

12. The only argument advanced on behalf of the Appellant is that the instant case is covered by two previous judgements of this Tribunal in Green Energy Association vs. Maharashtra Electricity Regulatory Commission & Ors., Appeal No. 187 of 2017 decided on 28th August, 2024 and Greenko Maha Wind Energy Pvt. Ltd. vs. Maharashtra Electricity Regulatory Commission and Ors., Appeal No. 103 of 221 decided on 26th October, 2024. It is argued that the test applied by this Tribunal in these judgements to determine if any compensation is payable to the generator in lieu of the power injected into the grid in the absence of power purchase agreement or wheeling and banking agreement, was derived from Section 70 of the Contract Act as it was interpreted and explained by the Hon'ble Supreme Court in State of West Bengal vs. M/s. B.K. Mondol and Sons, AIR 1962 SCC 779. It is submitted that all the three conditions laid down by the apex court in the said judgement are fulfilled in the present case also and, therefore, the impugned order of the Commission refusing compensation to the Appellant for the energy injected into the grid prior to the execution of WBA cannot be sustained.

13. Per contra, it is argued on behalf of the Respondents that the facts for instant case are totally distinct from the facts of the cases before this

Tribunal in Green Energy Association Vs. MERC and Ors. and Greenko Maha Wind Energy Pvt. Ltd. Vs. MERC and Ors. and therefore, the decision of this Tribunal in those two appeals cannot be applied to the instant case. It is submitted that the impugned order of the Commisison is a well reasoned order and does not suffer from any error or infirmity.

Our Analysis

14. Facts of this case giving rise to the instant appeal have already been recorded herein above.

15. In Green Energy Association case (Appeal No. 187 of 2017), the members of the Appellant Association had applied to MSEDCL for Open Access Permission for Financial Year 2014-15 for captive use but MSEDCL did not process these applications promptly and took about 5 to 10 months in processing the same. Ultimately, MSEDCL intimated the applicants that open access would be effective from date of installation of Special Electricity Meters (SEM). Meanwhile, the members of the Appellant association had started injecting energy into the grid and had claimed entitlement to the charges for such energy. It was argued on behalf of the MSEDCL since installation of SEM is mandatory precondition for consumers/generators availing open access, open access was not

granted to the members of the Appellant association and in the absence of such open access permission or a power purchase agreement with the Distribution Licensees, the solar power developers were not authorized to inject energy into the grid. Accordingly, it was contended that the members of the Appellant association are not entitled to any payment from MSEDCL and the power injected into the grid is unauthorized.

16. Repelling these contentions on behalf of the MSEDCL, this Tribunal has observed in the said judgement as under :-

> *"23. It is evident from the rival contentions of the parties that the members of the appellant association had been injecting power from their solar power projects into the grid even though they had not been granted open access and had not installed SEMs. It also appears that no objection was raised by MSEDCL to such injection of power into the grid by the members of appellant association from their solar power projects at any point of time. In fact MSEDCL appears to have provided connectivity to their power projects with the grid as the injection of power could not have been possible without such connectivity. Concededly, MSEDCL utilized such power by selling it to the consumers and realizing tariff from them and thereby causing financial gain to itself. We wonder as to why such conduct of parties i.e. supply of power by the members of appellant association from their solar power*

generators (even though without any open access permission or a EPA) on the one hand and receipt as well as utilization of such power by MSEDCL without any objection or demur on the other hand, cannot be construed to constitute a contractual relationship between the parties. Such kind of contracts are known as "quasi contracts" which have given legal recognition in India also by way of Section 70 of the Indian Contract Act, 1872."

(Emphasis supplied)

17. Thereafter, this Tribunal explained the concept of "Quasi Contract" and also referred to the contours of Section 70 of Contract Act, 1972 explained by Hon'ble Supreme Court in West Bengal Vs. B.K. Mondol & Sons, AIR 1962 SCC 779. This Tribunal also referred to its previous decision in Appeal No. 119 of 2020 (Bothe's case) and it was held:-

"29. We may further note that the above noted order of the Commission in Bothe's case was assailed before this Tribunal by way of appeal No.119/2020 which was decided along with the batch of identical appeals vide judgment dated 18.08.2022 setting aside the Commission's order and holding the appellants entitled to tariff for the electricity generated and supplied from the respective dates. It has been further held that the conduct of the parties leaves no room for doubt that the contracts had come into being with the MSEDCL

permitting not only commissioning but also connectivity as well as enjoying the electricity injected into the system without demur, accounting it towards its RPO obligations and indisputably reaping financial gains by receiving corresponding tariffs from its consumers. It has further been held that signing of an EPA, model of which had already been approved by MERC, was only a matter of formality and the MEDA registration would relate to the respective dates with the application for registration by appellants."

(Emphasis supplied)

18. In Greenko Maha Wind Energy case, Appeal No. 103 of 2021, the Appellant had in the year 2015 set up 17 wind turbine generators having installed capacity of 2 MW each at different places in District Sangli in the State of Maharashtra. 16 out of these 17 WTGs were duly covered by energy purchase agreements. The last i.e. 17th WTG was commissioned on 31st October, 2015 but EPA with regards to the same was not executed as Maharashtra Electricity Development Agency (MEDA) had not issued certificate of registration in respect of the same on the ground that upon inspection carried out at the site, it was found that the said WTG has been erected near the road contrary to the micro sitting guidelines dated 16th December, 2008. However, the said WTG had been generating power from the date of its

commissioning i.e. 31st October, 2015 till date of its disconnection on 11th June, 2020 in pursuance to communication/email dated 5th June, 2020 issued by Maharashtra State Load Despatch Centre.

19. Upon consideration of the rival contention of the parties, this Tribunal in judgement dated 22nd October, 2024, came to the conclusion that the PPA between the Appellant and MSEDCL with regards to the said 17th WTG remained to be executed only due to the casual and unwarranted approach of MEDA, for which Appellant cannot be blamed. Accordingly, it was directed that the said WTG shall be deemed to have been registered with MEDA on 23rd November, 2015 i.e. the day when Appellant applied for such registration. In so far as the power injected by the Appellant from the said WTG into the grid since the date of its commissioning i.e. 31st October, 2015 till its disconnection on 11th June, 2020, the same was held by the Commission to be infirm power on the ground that it was done in the absence of valid PPA between the Appellant and MSEDCL. Setting aside these findings of the Commission, this Tribunal observed and held as under :-

> *"28. We are unable to affirm these findings of the Commission in the impugned order. We have held*

hereinabove that in this case, EPA remained to be executed between appellant and the MSEDCL not due to any fault / inaction on the part of appellant but on account of arbitrary as well as unjust approach of the MEDA. Further, in paragraph 19 of the impugned order, already reproduced hereinabove, the Commission has observed that in absence of a valid EPA or agreement, even though generator provides forecast / schedule asper RE F&S Regulations, such schedule cannot be accepted as there is no identified counter party to use such energy injected into the grid. However, in the instant case, the injection of power into the grid from subject WTG by the appellant and its scheduling has been duly accepted by MSEDCL without any demur for 5 years till the WTG was disconnected on 11.06.2020. Admittedly, MSEDCL did not intimate the appellant at any point of time that the energy pumped from the subject WTG into the grid cannot be accepted as the same is being done without a valid EPA. Moreover, the WTG was formally commissioned on 31.10.2015 in pursuance to the PTC issued by MSEDCL itself on the recommendation of MEDA and connected to the MSEDCL Grid at common metering point at 220/33 KV Khanapur Sub-Station. Since then, MSEDCL continued to receive energy from the WTG uninterruptedly, without asking the appellant to produce registration certificate from MEDA and to execute EPA. It is not the case of MSEDCL that it has not supplied the power received from subject WTG to its consumers for gain. In fact, for some period of time, it has

also issued credit notes to appellant for such power. Therefore, in such a scenario MSEDCL cannot be permitted to evade payment to the appellant for the power received in its grid from the WTG in question."

(Emphasis supplied)

20. In holding so, this Tribunal placed reliance upon earlier decision dated 28th August, 2024 in Appeal No. 187 of 2017, Green Energy Association case.

21. Thus, in both these judgements, this Tribunal held the power generator entitled to tariff/compensation for the power injected into the grid in the absence of open access permission (in case of Appeal No. 187 of 2017) and in the absence of EPA (in case of Appeal No. 103 of 2021) on finding that the Distribution Licensee/procurer i.e. MSEDCL had utilized such power by selling it to its consumers and realizing tariff from them for the same thereby causing financial gain to itself.

22. That is not the situation in the instant case. As already noted herein above, affidavits have been filed on behalf of the procurers/distribution licensees i.e. Respondent Nos. 2, 4 & 5 in pursuance to the order dated 4th March, 2025 of this Tribunal. In these

affidavits, it has been very clearly and specifically stated that the respondents neither utilized the power injected into the grid by the Appellant for supply to their consumers nor for requirement of RPO obligations. Therefore, there appears to be a fundamental distinction between the facts of the instant case and the facts involved in the above noted two judgements of this Tribunal relied upon by the Appellant. The very premise upon which this Tribunal had held the Appellants in both the judgements entitled to compensation in lieu of power injected into the grid in the absence of Open Access Permission/PPA i.e. admission on the part of the procurer/Distribution Licensees that the said power was utilized by it for financial gain, is completely missing in this case.

23. We may also note that the Hon'ble Supreme Court in B.K. Mondol case (supra) has explained the contours of Section 70 of the Contract Act, 1872 as under :-

> *"Three conditions must be satisfied before S. 70, Contract Act can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom*

something is delivered must enjoy the benefit thereof. When these conditions are satisfied S. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered."

24. One of the conditions laid down by the Apex Court in the said judgement is that the person for whom something is done or to whom something is delivered must enjoy the benefit thereof and only thereafter can he be directed to compensate the person doing that thing or delivering that thing for such service/thing. Even though, in the present case, it is not disputed that the Appellant had injected energy into the grid from its wind power project between 4th October, 2015 and 17th November, 2015 i.e. prior to execution of WBA, yet the material on record no where shows that such energy was utilized/enjoyed by the Respondents. Therefore, manifestly the conditions laid down by the apex court in the said judgement for applicability of Section 70 of the Contract Act are also not fulfilled in the instant case.

25. We also find it pertinent to refer to the communication dated 1st October, 2015 addressed by Respondent No. 3 to the Appellant whereby provisional inter-connection approval for 12 MW wind power

(transferred to Appellant from M/s Vish Wind Infrastructure LLP) was accorded. It is specifically mentioned in condition No. 08 on page 4 of the said communication that KPTCL (Respondent No. 3) is not responsible for payments and consequences in case of pumping the power in the absence of any contractual agreement such as PPA/WBA/third party sale. It further states that provisional inter-connection approval will only provide technical connectivity of the project with the grid, however, the SLDC approval shall be obtained before pumping of power into the grid.

26. The receipt of this communication is not denied on behalf of the Appellant. Thus the Appellant was conscious that the inter-connection approval was granted vide the said letter only for technical connectivity of the wind power project with the grid and it was required to execute WBA as well as to obtain approval of SLDC before injecting power into the grid. Evidently, the Appellant did not seek the approval of SLDC prior to commencing injecting power into the grid and also did not wait till execution of WBA with the Distribution Licensees. Having injected power into the grid despite the specific conditions put forth for the same in the above noted communication

dated 1st October, 2015, the Appellant cannot claim compensation for such energy from the respondents.

Conclusion

27. In view of the above discussion, we do not find any error or infirmity in the impugned order of the Commission. The appeal is devoid of any merit and is hereby dismissed.

Pronounced in the open court on this 28th day of July, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON REPORTABLE~~

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