IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 61 of 2019

Dated: 07.08.2025

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

IN THE MATTER OF:

Matrix Power (Wind) Private Ltd.
8-2-277/12, No. 296, UBI Colony Road No. 3,
Banjara Hill, Hyderabad – 500034, Telangana **…Appellant(s)**

Vs.

(1) Karnataka Electricity Regulatory Commission,
Through its Secretary
No. 16/C-1, Miller Tank Bed Area,
Vasanth Nagar, Bengaluru – 560052.

(2) Hubli Electricity Supply Company Limited,
Through its Authorized Signatory
P.B. Road, Navanagar, Main Bengaluru Road,
Hubbali – 580025.

(3) Karnataka Power Transmission Corporation Ltd.,
Through its Authorized Signatory
No. 3 is Kaveri Bhavan
Bengaluru – 560009. **…Respondent(s)**

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Akshat Jain
Mr. Avdesh Mandloi
Mr. Shikhar Verma
Ms. Surbhi Gupta
Mr. Sayan Ghosh
Ms. Poonam Verma Sengupta
Mr. Vishrov Mukherjee
Ms. Raveen Dhamija
Mr. Yashaswi Kant

Mr. Girik Bhalla
Ms. Catherine Ranji Ayallore

Counselfor the Respondent(s) : Mr. Shahbaaz Husain
Mr. Fahad Khan for R-2

JUDGEMENT

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

1. The present appeal has been filed by M/s. Matrix Power (Wind) Private Limited (in short "MPPL" or "Appellant") impugning the Order dated 26.07.2018 passed by the Karnataka Electricity Regulatory Commission (in short "KERC" or "Commission") in Petition No. 134 of 2017.

Description of the Parties

2. The Appellant, M/s. Matrix Power (Wind) Pvt. Ltd. is a power generation company that has developed a Wind Electric Power generating station with a gross capacity of 15 MW in Ingaleshwar, Rabinal, Ramanahatti, Hanchinal, Salvadagi, and Budilal villages of Basavana Bagewadi Taluk in Vijayapura District.

3. The Respondent No. 1 is Karnataka Electricity Regulatory Commission, established under Section 82 of the Electricity Act, 2003, inter alia, is the appropriate Commission to adjudicate the issue.

4. The Respondent No. 2, M/s. Hubli Electricity Supply Company Limited is a distribution licensee in the State of Karnataka.

5. The Respondent No. 3, M/s. Karnataka Power Transmission Corporation Ltd. is the State Transmission Utility.

Factual Matrix of the Case

6. On 09.06.2005, the Karnataka Commission had allowed banking facilities in respect of Wind and Mini-hydro projects. By way of the Impugned Order the Karnataka Commission had also determined the wheeling charges for renewable energy sources as 5% and Banking charges at 2% of the energy injected.

7. On 16.10.2006, the Government of Karnataka vide Order No. EN 316 NCE 2006 accorded its sanction to the proposal of M/s Fortune Five Hydel Project Pvt. Ltd. for the installation of a renewable energy-based wind energy Electric Power generating Station of 62 MW capacity at Bijapur District, out of which 35 MW wind power capacity is near Ingaleshwar, Rabinal, Ramanahatti, Hanchinal, Salvadagi, and Budilal villages of Basavana Bagewadi Taluk in Vijayapura District.

8. On 11.07.2008, the Karnataka Commission approved the standard wheeling and banking agreements for Renewable Energy projects and also fixed rates for wheeling and banking charges. The said order was valid for a period of 5 years up to 10.07.2013.

9. The Government of Karnataka vide Order No. EN 253 NCE 2011 on 02.01.2012 accorded approval for enhancement of Wind Power project capacity from 32 MW (part capacity of 35 MW) to 128 MW at Ingaleshwar, Rabinal, Ramanahatti, Hanchinal, Salvadagi, and Budilal villages of Basavana Bagewadi Taluk in Vijayapura District in favor of M/s Fortune Five Hydel Project Pvt. Ltd.

10. On 24.01.2013, the Government of Karnataka vide Order No. EN 143 NCE 2012 accorded approval for the commissioning period of the 128 MW Wind power project of M/s Fortune Five Hydel Project Pvt. Ltd. up to 31.07.2015.

11. On 20.06.2013, the Karnataka Commission issued a Discussion Paper proposing to introduce monthly banking with excess energy remaining at the end of the month being purchased by the ESCOMs at 85% of the generic tariff or APPC fixed by the Karnataka Commission.

12. On 10.07.2013, the Karnataka Commission extended the validity of the order dated 11.7.2008 up to 10.10.2013.

13. Since the Karnataka Commission was seized of issues pertaining to wheeling and banking of energy, it extended the validity of the Order No. B/01/1 dated 11.07.2008 from time to time, including vide orders dated 10.07.2013, 10.10.2013, and 24.04.2013.

14. On 13.09.2013, the Government of Karnataka vide Order No. EN 218 NCE 2013 accorded approval for transfer of 15 MW (10 X 1.5 MW) wind power project capacity WTG Nos. 1 to 10 out of the 128 MW capacity allotted to M/s Fortune Five Hydel Projects Pvt. Ltd. in favor of the Appellant.

15. On 21.10.2013, Karnataka Power Transmission Corporation Ltd. (“KPTCL”) accorded approval to the Appellant for wheeling and banking of energy in respect of the Project in accordance with terms and conditions stipulated by the Karnataka Commission. The Appellant was also requested to submit a draft wheeling and

banking agreement as per the standard draft approved by the Karnataka Commission.

16. On 24.10.2013, the Electrical Inspectorate, Government of Karnataka, granted approval to the Appellant for the installation of a 15 MW wind power project comprising 10 x 1.5 MW Wind Turbine Generators. The said approval was subject to certain conditions.

17. On 21.10.2013, KPTCL/SLDC, being the nodal agency, approved wheeling and banking of electricity generated by the Project vide its Letter No. CCE/SLDC/SEE/TVC/EEE-2/AEE-6/3933 and on 23.11.2013, the Appellant signed a wheeling and banking agreement with KPTCL, BESCOM, and HESCOM ("Wheeling and Banking Agreement").

18. On 09.11.2013, the Project was commissioned, and on 27.12.2013, the Project was granted Commissioning Certificate from the Executive Engineer, HESCOM, stating that the Project was commissioned on 09.11.2013.

19. On 12.03.2014, the Karnataka Commission extended validity of its order dated 11.07.2008 up to 31.03.2014. The validity of this order was further extended up to 30.06.2014.

20. On 04.07.2014, the Karnataka Commission passed an order stipulating payment for unutilized banked energy by Discoms at the end of the banking period.

21. Subsequently, on 12.09.2014, the Karnataka Commission issued the following clarification:

> *"The decision of the Commission in the Order dated 04.07.2014 that, the payment by ESCOM's at 85% generic tariff for the banked energy unutilized at the end of the wind year, water year or financial year, as the case may be,* ***shall be applicable henceforth for both existing as well as new projects commissioned on or before 31.03.2018 utilising the banking facility.*** *The standard wheeling and banking agreement formats approved vide Order dated 08.07.2014 shall be applicable to all the agreements to be executed on or after 08.07.2014."*

22. On 03.01.2017, the Appellant requested HESCOM for payment of Rs. 31,25,134/- towards unutilized banked energy during the period November 2013 to March 2014. The said request was made in accordance with the Karnataka Commission's orders dated 04.07.2014 and 12.09.2014.

23. On 25.02.2017, HESCOM responded to the Appellant's letter dated 03.01.2017, stating that the invoices raised by the Appellant were in respect of the banked energy for the period ending March 2014, which banked energy had lapsed in terms of clause 6.2.3 of the Wheeling and Banking Agreement. It was further stated that as per the Karnataka Commission's order dated 12.09.2014, the stipulation for Distribution licensees to pay 85% generic tariff for the banked energy unutilized at the end of the banking period was to be applicable only prospectively.

24. In view of the above, HESCOM rejected the claim of the Appellant and refused payment of Rs. 31,25,134/- towards unutilized banked energy during the period November 2013 to March 2014.

25. On 16.08.2017, the Appellant filed Petition 134 of 2017 before the Karnataka Commission claiming compensation for the unutilized banked energy during the period November 2013 to March 2014.

26. On 26.07.2018, the Karnataka Commission passed the Impugned Order, and aggrieved by the same, the Appellant has preferred the present Appeal.

Our Observations and Analysis

27. The Appellant has assailed the Order dated 26.07.2018 passed by the KERC in Petition No. 134 of 2017 and has claimed the following relief in the Appeal before us:

> *"(a) Allow the present Appeal and set aside the Impugned Order dated 26.07.2018 passed by Ld. Karnataka Commission in OP No. 134 of 2017;*
> *(b) Allow compensation to the Appellant for unutilized banked energy for the period November 2013 to March 2014 from HESCOM amounting to Rs. 31,25,134/- Along with interest;*
> *(c) Pass such other orders as this Hon'ble Tribunal deems fit."*

28. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

(i) Whether the Appellant's claim for compensation is barred by limitation under the Limitation Act, 1963?

(ii) Whether the Appellant is entitled to compensation for unutilized banked energy for the period prior to 01.04.2014 under the applicable Wheeling and Banking Agreement and the KERC orders dated 04.07.2014 and 12.09.2014?

(iii) Whether, in the absence of an express contractual provision, the Appellant is entitled to compensation under Section 70 of the Indian Contract Act or on equitable grounds?

29. This appeal arises out of the order dated 26.07.2018 passed by the Karnataka Commission dismissing the Appellant's petition for compensation with respect to unutilized banked wind energy during November 2013 to March 2014. The claim was found to be time-barred and not supported by the operative contractual and regulatory framework, and the Appellant, Matrix Power (Wind) Pvt. Ltd., now seeks reversal of that order.

Issue (i): *Whether the Appellant's Claim for Compensation is Barred by Limitation under the Limitation Act, 1963?*

30. The Appellant submits that although it is not in dispute that the liability to compensate for unutilized banked energy arose on 31.03.2014 (i.e., the end of the banking period), and the petition was filed before the Commission only on 16.08.2017, technically falling beyond the three-year period prescribed in Article 113 of the Limitation Act, certain unique legal and regulatory uncertainties existed.

31. The Appellant contends that the cause of action may be treated as “continuing”, particularly since relevant regulatory orders post-dated the end of the wind year, and that the Commission ought not to have dismissed the claim on limitation alone, especially given the policy intent of promoting renewables and the absence of clear guidance at that material time.

32. The Appellant further prays for a beneficial interpretation, highlighting the nature of the renewable energy sector.

33. HESCOM maintains that the law of limitation is clear and applies strictly. Since the right to claim compensation accrued at the end of the wind year (31.03.2014), and the Appellant approached the Commission on 16.08.2017 after expiry of three years, the claim must be regarded as time-barred, and the KERC rightly dismissed it on this foundational ground. HESCOM argues that legal uncertainty or the sectoral context cannot justify condonation of delay or create a fiction of continuing cause of action.

34. It is an admitted position that the event giving rise to the claim, the lapse of unutilized banked energy at the close of the wind year, occurred on 31.03.2014. Article 113 of the Limitation Act prescribes a three-year period for instituting such claims, commencing from the date of accrual of the cause of action. The Appellant brought the claim before KERC on 16.08.2017, i.e., well after the expiry of the limitation period.

35. Whether legal or sectoral uncertainty creates a “continuing cause of action”; we are unable to accept the Appellant’s argument that the regulatory regime being unsettled at the relevant time postpones or extends the starting point of limitation.

The uncertainty, even if present, does not suspend or restart the limitation period unless so provided in the law, which is not the case here.

36. Likewise, the plea that the cause is "continuing" has no sustenance. The principle of continuing wrong relates to cases where the wrongful act endures over a period; here, the "loss" crystallized on 31.03.2014, and with that, the limitation clock began to run.

37. Sectoral policies and beneficial construction may, in rare and exceptional cases, inform the approach to condoning delay where explicable circumstances warrant, but no material has been brought to our notice showing any representations, protest, or action taken by the Appellant within the limitation period to preserve its claim or protest its right. There is thus no basis for the exercise of equitable jurisdiction to extend limitation.

38. The Hon'ble Supreme Court in ***CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185: 2020 SCC OnLine SC 445** has observed that even correspondence exchange cannot be a ground for extension of limitation. The relevant extract is quoted as under:

> ***"29.*** *The next question is whether GERC and Aptel fell into error in granting restricted refund calculable for the 3 year period prior to Gujarat Urja's application. The concurred findings on this aspect, in the opinion of this Court, are reasonable. There is merit in CLP's submission that the earliest point in time, when the cause of action arose, was in May 1996, when Gujarat Urja rejected its contention that incentive was payable in terms of the PPA, notwithstanding the Notification of 6-11-1995. Despite this stated position, meetings*

continued to be held and, what is more, incentive amounts, were paid to CLP. No doubt, no document conclusively stated that CLP's claim was accepted. We do not find any merit in the submission of Gujarat Urja that the issue was kept alive, due to a series of communications. In this regard, Aptel's findings about inapplicability of Section 18 of the Limitation Act, are correct. There was no admission on the part of CLP, at least of the kind, that extended the time for preferring an application for recovery of excess payments. It has been consistently ruled by this Court that repeated letters, or exchange of communications, do not extend the period of limitation, provided by law. [S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : 1990 SCC (L&S) 50; Union of India v. Har Dayal, (2010) 1 SCC 394; Schlumberger Asia Services Ltd. v. ONGC, (2013) 7 SCC 562 : (2013) 3 SCC (Civ) 630.]"

39. Thus Respondent's argument on strict application of limitation is correct, and we agree with the reasoning and conclusion of the KERC. The Appellant's claim was demonstrably filed outside the period prescribed by law and is thus barred by limitation.

40. **We therefore reject the Appellant's plea seeking consideration of benefit on account of legal uncertainty or "continuing cause of action" and accept the Respondent's submission that the claim is time-barred.**

Issue (ii): *Whether the Appellant is Entitled to Compensation for Unutilized Banked Energy for the Period prior to 01.04.2014*

under the WBA and KERC Orders dated 04.07.2014 and 12.09.2014?

41. The Appellant contends that the KERC orders dated 04.07.2014 and 12.09.2014, though passed subsequent to the wind year in question, should be applied to their claim, arguing that these orders created a regime recognizing payment at 85% of the generic tariff for unutilized banked energy. It is contended that the clarification vide order 12.09.2014, which applied the benefit to “existing” WBAs for “future” wind years, must be construed liberally in the context of renewable energy promotion and fair compensation principles.

42. The Appellant submits that the WBA, which is deficient in providing specifically for payment, should be read harmoniously with later regulatory orders and not operate as a bar to compensation.

43. HESCOM asserts that the impugned KERC orders were explicit in their prospective application. The order dated 04.07.2014 itself stated that the new compensation regime would operate from the “next wind year”. Subsequently, the clarificatory order dated 12.09.2014 reiterated that compensation would be available only for energy banked after its effective date and not with retrospective effect. The scope of these directions was limited to prospective operation, and any reading to the contrary would both rewrite contractual expectations and disrupt the settled regulatory framework. HESCOM further maintains that the extant WBA at the time did not require it to pay for lapsed energy.

44. We have examined the text and intent of the KERC orders dated 04.07.2014 and 12.09.2014 with utmost care. The operative part of the order dated 04.07.2014, upon which the Appellant relies, introduced the concept of

compensating generators for unutilized banked energy at 85% of the generic tariff, but also clearly specified its applicability from a specified future wind year. It did not revise the legal regime for the completed banking period, nor was there any mandate to pay for energy lapsed prior to 01.04.2014.

45. The Hon'ble Supreme Court of India in ***Kerala State Electricity Board & Ors. vs. Thomas Joseph Alias Thomas M. J. & Ors.***, CIVIL APPEAL NOS. 9252-9253 OF 2022 (arising out of SLP(C) Nos. 7860-7861 of 2018), (dated 16.12.2022), held as under:

> *"64. At this stage, it is apposite to state about the rule making powers of a delegating authority. If a rule goes beyond the rule making power conferred by the statute, the same has to be declared invalid. If a rule supplants any provision for which power has not been conferred, it becomes invalid. The basic test is to determine and consider the source of power, which is relatable to the rule. Similarly, a rule must be in accord with the parent statute, as it cannot travel beyond it.*
>
> 65. *Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised.* ***The doctrine of ultra vires envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such***

power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect. *Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*

74. *In this context, it would be apposite to refer to a passage from State of T.N. and Another v. P. Krishnamurthy and Others reported in (2006) 4 SCC 517 wherein it has been held thus:-*

> *"16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."*

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80. Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of

ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details."

46. Reliance is also placed on the following:

i. ***Panchi Devi v. State of Rajasthan, (2009)* 2 SCC 589 : (2009) 1 SCC (L&S) 408 : 2008 SCC OnLine SC 1924**, dated 18.12.2008,

ii. ***Federation of Indian Mineral Industries v. Union of India, (2017) 16 SCC 186 : 2017 SCC OnLine SC 1237*,** dated 13.10.2017

iii. ***ITO vs. M.C. Ponnoose, AIR 1970 SC385***

47. The subsequent clarificatory order dated 12.09.2014 further removed any shades of ambiguity, categorically stating that compensation would accrue only for energy banked after these orders.

48. We do not accept the Appellant's submission that these orders are clarificatory or curative so as to justify retrospective application. Retrospective operation would disturb legal certainty, violate principles of settled expectations between parties, and run contrary to explicit regulatory text. Reliance on the renewable energy promotion policy, though an important consideration for the sector, cannot justify an interpretation entirely contrary to the plain language of the regulatory text.

49. The Appellant's plea to read the WBA in harmony with subsequent regulatory orders, thereby creating a right not present at the inception of the banking period, cannot be accepted. Regulatory changes that post-date the expiry of a contract period, absent express provision, cannot confer substantive new obligations ex

post facto. The specific contractual regime, as it existed for the relevant wind year (2013-14), provided for the lapse of unutilized banked energy and not for any payment.

50. **Accordingly, we accept the Respondent's submission that the KERC's orders were and remain only prospective, and reject the Appellant's claim that payment for unutilized banked energy for prior periods can be mandated by reading these orders retrospectively. The position adopted by KERC in the impugned order is thus correct.**

> ***Issue (iii):*** *Whether, in Absence of Express Contractual Provision, the Appellant is Entitled to Compensation under Section 70 of the Indian Contract Act or on Equitable Grounds?*

51. The Appellant invokes Section 70 of the Indian Contract Act, 1872, arguing that since unutilized banked energy was in fact supplied, not as a gratuitous act but lawfully and for the benefit of the Respondent, it is only fair and just that compensation ought to be paid even if the WBA does not contain an express stipulation. The Appellant emphasizes that the energy injected into the grid was appropriated and enjoyed by HESCOM, thereby triggering liability under Section 70, and that denial of compensation amounts to unjust enrichment.

52. The Respondent HESCOM counters that the field of energy banking is governed squarely by contract and applicable statute. The WBA expressly provided for the possibility that any banked energy remaining unutilized at the end of the wind year would lapse, with no provision for payment. Both parties entered into the arrangement with full knowledge of its terms.

53. Section 70 embodies the doctrine of quantum meruit; if a person lawfully delivers something to another, not intending it to be gratuitous, and the other enjoys the benefit, the recipient may be required to compensate for that benefit. However, what must be examined closely is whether this principle can apply in the face of an explicit and mutually agreed contractual framework that covers precisely the situation in question.

54. The WBA signed between the parties on 23.11.2013 is clear that the unutilized banked energy at the end of the wind year stands lapsed. There is no clause anywhere in the contract requiring payment for such energy, and indeed, its forfeiture was known and voluntarily accepted by the Appellant at the time of agreement. The act of banking and potential lapse of energy is not an unforeseen event but is an explicit and contemplated term.

55. The relevant extract of the WBA as applicable during the period of dispute is placed as under:

> ***"6.2.3 Banked energy will become ZERO at the commencement of next Water/Wind year and utilities are not liable to pay any amount for the energy lapsed on account of expiry of the year."***

56. When the conduct of the parties is governed by contract, and when that contract specifically provides for the result now complained of, Section 70 does not override the bargain struck. Any reliance on Section 70 is thus misplaced. To hold otherwise would be to read into the agreement a term that was specifically excluded and to create a windfall contrary to the expectations of the parties.

57. As for equity, while courts and Tribunals must strive for fairness, especially in cases involving renewables and statutory objectives, such considerations cannot justify setting aside a valid contract, nor can policy override the express will of the parties unless clearly so mandated by law or otherwise directed by subsequent binding regulatory action. Here, there is neither a statutory command nor a post facto regulatory mandate requiring payment for the period in question.

58. **Thus, we reject the Appellant's reliance on Section 70 and equitable principles, and accept the Respondent's contention that there exists no liability in law, contract, or equity to pay the Appellant for unutilized banked energy relating to the banking period prior to 01.04.2014.**

Conclusion

59. Issue (i): The Appellant's claim is barred by limitation since it was filed after expiry of the prescribed three-year period, and no legal basis exists to treat the cause of action as "continuing" or otherwise suspend limitation.

60. Issue (ii): The KERC orders dated 04.07.2014 and 12.09.2014 are prospective only and do not confer any right to compensation for unutilized banked energy for the wind year ending 31.03.2014. The Appellant's reliance on these orders for retrospective effect is misplaced.

61. Issue (iii): The Appellant is not entitled to compensation under Section 70 of the Indian Contract Act or on equitable or policy grounds, as the express terms of the WBA provide for the lapse of unutilized banked energy without payment, and there is no legal or regulatory override for the period in question.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 61 of 2019 does not have any merit and stands dismissed.

The order of the Karnataka Electricity Regulatory Commission dated 26.07.2018 in Petition No. 134/2017 is affirmed.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 7th DAY OF AUGUST, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks