

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APL-175/2020 &
IA-1426/2020**

Dated: 12th November, 2021

**Present: Hon'ble Mr. Ravindra Kumar Verma, Officiating Chairperson
Hon'ble Mr. Justice R.K. Gauba, Judicial Member**

In the matter of:

- 1. Amreli Power Projects Ltd.,
Represented by Authorised Signatory
10th Floor, Sangeeta Complex, Near Parima
Crossing, Ellisbridge, Ahmedabad - 380006
Gujarat** **Appellant No.1**
- 2. Bhavnagar Biomass Power Projects Pvt. Ltd.
Represented by Authorised Signatory
10th Floor, Sangeeta Complex,
Nr. Parimal Crossing, Ellisbridge,
Ahmedabad - 380006, Gujarat** **Appellant No.2**
- 3. Junagadh Power Projects Pvt. Ltd.
Represented by Authorised Signatory
10th Floor, Sangeeta Complex,
Near Parimal Crossing, Ellisbridge,
Ahmedabad - 380006, Gujarat** **Appellant No.3**

Versus

- 1. Gujarat Electricity Regulatory Commission,
Shri Roopwant Singh (Secretary)
6th GIFT ONE, Road 5C, Zone 5,
GIFT City, Gandhinagar – 382355
Gujarat, India** **Respondent No.1**
- 2. Gujarat Urja Vikas Nigam Limited,
Shri K.P. Jangid, General Manager (Comm.)
Sardar Patel Vidyut Bhavan, Racecourse,
Vadodara-390 007, Gujarat** **Respondent No.2**

3. **State Load Despatch Centre**
Shri A.B. Rathod, Additional Chief Engineer
GUJARAT ENERGY TRANSMISSION
CORPORATION LIMITED
132kV Gotri Sub Station Compound,
Near T.B. Hospital, Gotri Road,
Vadodara 390021, Gujarat, India

.... Respondent No.3

Counsel on record for the Appellant(s): **Mr. Sajan Poovayya, Sr. Adv.**
Mr. Amit Kapur
Ms. Poonam Verma
Mr. Saunak Kumar Rajguru
Ms. Aparajita Upadhyay
Ms. Adishree Chakraborty
Ms. Sakshi Kapoor

Counsel on record for the Respondent(s): **Ms. Suparna Srivastava for R-1**

Mr. M G Ramachandran, Sr. Adv.
Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Ms. Ranjitha Ramachandran
Mr. Shubham Arya
Ms. Anushree Bardhan
Mr. Ashwin Ramanathan
Mr. Arvind Kumar Dubey
Mr. Aditya H. Dubey
Ms. Srishti Khindaria for R-2 &
R-3

JUDGMENT (ORAL)

Per Hon'ble Mr. Justice R.K. Gauba, Judicial Member:

1. The matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The appeal at hand assails order dated 09.10.2020 of Gujarat Electricity Regulatory Commission (GERC) in Petition No. 1888 of 2020 whereby the following directions have been issued:

“17.54. If the Article 10 be given effect only then in that case Article 9.3.1 and Article 9.3.2 become redundant, which is not the intent of the parties. Therefore, it is incorrect to say that the default notices issued by the Respondents is not valid and legal. However, we are of the view that the Applicant/Petitioners plants are biomass based power plants and generate the renewable energy from the agricultural waste helpful to the licensees to meet their RPO. Further, the plant capacity is small and supporting distributed generation through the power supply to the licensees. Hence, any eventuality affecting to the termination of the PPAs without going into merits of the case with respect to legal issues and issues of complete fact will affect the power projects of the Applicants/Petitioners. Therefore, we are of the view that the default notices dated 05.08.2020 given by the Respondent GUVNL shall not be implemented till the outcome of the main petition is decided by the Commission. We are also of the view that the Applicants/Petitioners who have recovered huge amount from the Respondent by giving mis-declaration of capacity / Scheduled Energy and under-injection at lower UI rates while recovering preferential tariff for Scheduled Energy through UI Mechanism will be ultimately part of relevant ARR / Tariff Petition filings and accordingly, the aforesaid amount to be recovered from the consumers by the licensees. We, therefore, decide that the Applicants/Petitioners shall refund 75% of the said amount to the Respondent GUVNL as per their claims within

15 days from the date of this Order. However, the said amount refunded is subject to adjustment at the time of the final outcome of the present Petition. It does not qualify as refund granted by the Commission on merits. Once the Applicants/Petitioners pays the said amount to the Respondent GUVNL, the Respondents are directed to start buying the power from the Applicants/Petitioners biomass based power plants and pay the amount for the same including past dues if any subject to outcome of the present petition. So far as the claim of 'interest' on the amounts paid and recovered by Applicants/Petitioners by way of mis-declaration claimed by the Respondent GUVNL is concerned, we are of the view that the said matter be decided while deciding the main matter by the Commission."

3. Given the fact that we are passing this order, primarily on consensus emerging during the hearing, we do not intend capturing the detailed facts herein. Suffice it to say that the second Respondent (*Procurer*) had alleged that the Appellant (*Generator*) had indulged in certain acts of omission and commission which constitute, per the case of the second Respondent, *gaming*. It is on that allegation that the Procurer had proceeded to issue notice for termination (of the *PPA*), such notice having been challenged by the afore-mentioned petition pending before the Commission.

4. When the appeal at hand had come up before this tribunal, interim protection had been granted, modified by order dated 20.01.2021 which reads thus:-

“Heard Mr. Sajjan Poovayya, learned senior counsel for the Appellant and Mr. M.G. Ramachandran, learned senior counsel for the Respondent No.2 at some length.

We have gone through the order dated 19.10.2020. On perusal of record and considering the submissions, we are of the opinion that the last sentence of the said order has to be reframed as under:-

“We direct Respondents not to take any coercive action like termination of PPA till we dispose of the Appeal on merits”.

We stay the direction of refund of amount as stated in the impugned order. We further direct not to take any coercive action till disposal of the appeal on merits.

The Appellant shall supply power and Respondents shall pay for the actual power injected.”

5. The above order passed by this Tribunal at an interim stage of consideration of appeal at hand was challenged before Hon'ble Supreme Court by Civil Appeal No. 705/2021 which was disposed of by order dated 21.09.2021, reading thus: -

“The instant appeal is directed against an interim order dated 20.01.2021 passed by the Appellate Tribunal for Electricity at New Delhi in I.A. No. 1426 of 2020 in Appeal No. 175 of 2020

whereby the Tribunal granted on unconditional stay of the interim order passed by the Gujarat Electricity Regulatory Commission.

Heard Mr. C.A. Sundaram, learned senior counsel appearing on behalf of the appellant as also Dr. A.M. Singhvi, learned senior counsel appearing on behalf of respondent Nos. 1 to 3.

Taking into consideration the fact that the instant appeal has been filed against an interim order passed by the Appellate Tribunal for Electricity and the main appeal is still pending adjudication before it, without expressing any opinion on the merits of the case, we direct the appellant not to take any coercive action like termination of PPA till the disposal of the appeal. We also permit the respondents to supply the power to the appellant, which may be accepted by the appellant, during the interregnum without paying any amount to the respondents till the disposal of the appeal. The amount payable will be settled and adjusted subject to the determination of the issue(s) raised in the pending appeal, by the Appellate Tribunal for Electricity.

The appeal stands disposed in the above terms.

As a sequel to the above, pending interlocutory application also stands disposed of.”

6. After some hearing, the learned counsel on both sides agreed that the main matter wherein the validity of notice of termination issued by the Procurer is yet to be decided and adjudicated upon by the Commission, the order under challenge before us being only interlocutory, it does appear that while issuing the interim directions,

the Commission has employed certain expressions which seem to unfairly indicate finality to the inferences drawn or the conclusions reached.

7. It is fairly conceded by the learned counsel on both sides that the conclusions in an order of such nature cannot be construed as final or binding, it being still open to the Commission, rather it being the duty of the Commission, to visit the issues on merits based on further submissions that are expected to be made *inter alia* in the light of the report of SLDC (in terms of the grid code) which also has been insisted upon by the Commission itself to be submitted (see paras 17.57 & 17.58 of the impugned order).
8. The learned counsel on both sides, having taken instructions, submitted that the order dated 21.09.2021 passed by the Hon'ble Supreme Court in Civil No. 705/2021 may be adopted as interim arrangement, in substitution of the impugned directions of the Commission, for the pendency of the above said main matter, such arrangements to inure till a final decision on merits is taken thereupon by the Commission. We order accordingly.
9. In above view of the matter, nothing further survives for further consideration by this Tribunal in the present appeal. In fact, any expression of opinion on merits of the allegations of *gaming* might prejudice the case of either side which is inadvisable. However, conscious as we are of the onerous nature of the conditions that would be faced by the Appellant under the interim arrangement, it being obliged on one hand to generate and supply electricity and on the other not receiving any consideration there against, we would

expect the State Commission to conclude the hearing on the main matter and take a decision expeditiously, at an early date, preferably within six weeks from the date of appearance fixed by us.

10. We are informed that the SLDC has already complied with the above-mentioned directions and has submitted the report which is awaiting consideration of the Commission.
11. The parties are directed to appear before the State Commission on 24.11.2021. Needless to add, while deciding the pending matter on merits, the Commission shall not feel bound by the conclusions set out in the impugned order and shall take the final decision, in accordance with law, after hearing the parties, with an open mind. We may also add that nothing in this order shall be construed as an expression of opinion on the issues involved either way.
12. The appeal and pending application are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 12th DAY OF NOVEMBER, 2021.**

(Justice R.K. Gauba)
Judicial Member

√

REPORTABLE/NON-REPORTABLE

mk/tpd

(Ravindra Kumar Verma)
Officiating Chairperson