

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO.128 OF 2018, APPEAL NO.255 OF 2018
APPEAL NO.276 OF 2018, APPEAL NO.294 OF 2018
APPEAL NO.62 OF 2019, APPEAL NO.243 OF 2019
APPEAL NO.85 OF 2020, APPEAL NO. 164 OF 2021
APPEAL NO. 180 OF 2021, APPEAL NO. 181 OF 2021
APPEAL NO. 182 OF 2021, APPEAL NO. 183 OF 2021
APPEAL NO. 184 OF 2021, APPEAL NO. 185 OF 2021
APPEAL NO. 250 OF 2021, APPEAL NO.298 OF 2021
APPEAL NO.82 OF 2022, APPEAL NO. 167 OF 2022
APPEAL NO. 230 OF 2022, APPEAL NO.359 OF 2022
AND
APPEAL NO. 244 OF 2021

Dated: 24.11.2022

Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

APPEAL NO.128 OF 2018

In the matter of:

Vcarve Solar LLP
A LLP Registered Under The
Provisions Of The Limited Liability Partnership Act, 2008
Having Its Registered Office At
H.No.2-8, Rajadhani Gardens, New Maruthi Nagar,
Kothapet, Hyderabad,
Telangana 500 66032

... Appellant(s)

VERSUS

1. Karnataka Electricity Regulatory Commission
Having Its Office At No. 16, C-1,
Millers Bed Area,
Vasant Nagar,
Bengaluru – 560 052
(Represented By Its Chairperson)
2. Bangalore Electricity Supply Company Limited,
A Company Registered Under The Provisions Of
Companies Act, 1956
Having Its Registered Office At K.R. Road,
Bengaluru 560 001
(Represented By Its Managing Director)

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Anantha Narayana M.G.
Ms. Geet Rajan Ahuja
Mr. Samarth Kashyap

Counsel for the Respondent (s) : Mr. Shahabaaz Husain for R-2

APPEAL NO.255 OF 2018

In the matter of:

Sri. Murralli M Baaladev,
S/o Late Shri. Baaladev,
Aged about 40 years,
No. 2, First Floor, B.V.K. Iyengar Road,
Chikpet Circle, Bengaluru – 560053

... Appellant(s)

VERSUS

1. The Karnataka Renewable Energy Department Ltd.
Through its Managing Director,
No. 39, Shanthi Gruha,
Bharat Scouts and Guides Building,
Opp. Chief Post Master General Office,
Palace Road, Bengaluru – 560001

2. Bengaluru Electricity Supply Company Ltd.
Through its Managing Director,
A Company incorporated under Companies Act, 1956,
K.R. Circle, Bengaluru – 560001

3. The General Manager (Ele),
Power Purchase, BESCO
K.R. Circle, Bengaluru – 560001

4. The Chief Engineer Electricity,
Transmission Zone, KPTCL,
Siddaganga Complex, BH Road,
Tumakuru

5. Karnataka Electricity Regulatory Commission
Through its Chairman,
9/2, 06th & 07th Floor,
Mahalaxmi Chambers,
M.G. Road,
Bangaluru - 560001

... Respondent(s)

Counsel for the Appellant (s) : Mr. Ujjal Banerjee
Mr. Akash Khurana

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Pandey for R-2 & 4

APPEAL NO.276 OF 2018

In the matter of:

M/s. Alles Solar Private Limited
Registered Office At No.549 12th Cross,
Ideal Homes, Raja Rajeswari Nagar,
Bengaluru-560098,
Represented By Its Director
Dr. Rajkumar S. Alle

... Appellant(s)

VERSUS

1. Bangalore Electric Supply Company Limited
BESCOM, Corporate Office,
K.R. Circle, Bengaluru-560001,
Represented By Its Managing Director

2. Chief Electrical Inspector To Government
Nirmana Bhavana, 2nd Floor,
P.B. No.5148, Dr. Rajkumar Road,
Rajajinagar, Bengaluru-560010,
Karnataka

3. Karnataka Power Transmission
Corporation
Cauvery Bhavan, K.G. Road,
Bengaluru-560009,
Represented By Its Managing Director

4. Karnataka Electricity Regulatory Commission
No.16, C-1, Millers Bed Area,
Vasanthnagar,
Bengaluru-560052,
Represented By Its Secretary

... Respondent(s)

Counsel for the Appellant (s) : Mr. Anand Sanjay M Nulli,
Mr.Suraj Kaushik

Counsel for the Respondent (s) : Mr. Shahabaaz Husain for R-1

APPEAL NO.294 OF 2018

In the matter of:

Raygen Power Private Limited,
2112, 9th Main, D Block,
Sahakar Nagar,
Bengaluru-560092.

... Appellant(s)

VERSUS

1. Karnataka Electricity Regulatory Commission
Through The Secretary,
No. 16 C-1, Miller Tank Bed Area,
Vasanth Nagar, Bengaluru-560052.
2. Chamundeshwari Electricity Supply
Corporation Ltd.,
Through Chairman,
No. 29, Kaveri Grameena Bank Road,
Hinkal, Vijayanagar, 2nd Stage,
Mysuru-570019.
3. The Karnataka Renewable Energy Development Ltd.,
Through the General Manager,
39, Shanthi Gruha,
Bharat Scouts and Guides Building,
Palace Road, Bengaluru-560001.
4. The Additional Chief Secretary,
Government of Karnataka,
Department of Energy,
Vikasa Soudha, Bengaluru-560001.
5. Karnataka Power Transmission Corporation Ltd.,
Through Chairman and Managing Director,
Cauvery Bhavan, Bengaluru-560009. ... Respondent(s)

Counsel for the Appellant (s) : Mr. Busava Prabhu Patil, Sr. Adv.
Mr. Sakie Jakaharia

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Pandey for R-2 & 5

APPEAL NO.62 OF 2019

In the matter of:

Shri. T. Gowranna

Appeal no. 128 of 2018 & batch

Kondalahalli Village,
KasabaHobli, MolakalmurTaluk,
Chitradurga District
Karnataka

... Appellant(s)

VERSUS

1. Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052
2. Bangalore Electricity Supply Company Limited
Through its Managing Director,
Corporate Office, K.R. Circle,
Bengaluru – 560 001
3. The Government of Karnataka,
Department of Energy,
Through the Additional Chief Secretary to Govt.
Vikasa Soudha
Bengaluru- 560 001

... Respondent(s)

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Ritu Apurva

Counsel for the Respondent (s) : Mr. Shahbaaz Hussain for R-2

APPEAL NO.243 OF 2019

In the matter of:

1. Globalexotium Renewable Solutions Private Limited,
Plot No. 50, Shiva Nagar,
Aland Road, Near Adarsh ITI,
Kalaburagi-585103
2. Sri Mallikarjun Gundappa Hanamshetty,
Plot No. 50, Shiva Nagar,
Aland Road, Near Adarsh ITI,
Kalaburagi-585103

... Appellant(s)

VERSUS

1. Karnataka Renewable Energy Development Limited,
Represented by its Managing Director,

No.39, Shantigruha,
Bharat Scouts and Guides Building,
Palace Road,
Bengaluru - 560 001.

2. The Managing Director
Gulbarga Electricity Supply Company Limited
Station main road,
Kalaburagi – 585 102

3. The Executive Engineer (EI),
C&M Division, GESCOM,
Kalaburagi– 585 102

4. Karnataka Electricity Regulatory Commission
Through its Chairman,
9/2, 06th & 07th Floor,
Mahalaxmi Chambers,
M.G. Road, Bangaluru - 560001

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja
Mr. Ujjal Banerjee,
Mr. Akash Khurana

Counsel for the Respondent (s) : -- --

APPEAL NO.85 of 2020

In the matter of:

Koppal Solar Power Projects Private Limited
A company registered under the
Provision of the Companies Act, 1956,
Having its Registered Office at
B-20, Rolling Hills, Gachibowli, Hyderabad,
Telangana-500032
Represented by its Director

... Appellant(s)

VERSUS

1. Karnataka Electricity Regulatory Commission
Through its Chairman,
9/2, 06th & 07th Floor,
Mahalaxmi Chambers,
M.G. Road, Bangaluru – 560001

2. Karnataka Power Transmission Corporation Limited,
Through Chief Engineer, Electricity
Transmission Zone,
Sedam Road, Kalaburgai - 585102.
 3. The Managing Director
Gulbarga Electricity Supply Company
Limited,
Station Main Road,
Kalaburagi – 585 102
 4. Government of Karnataka,
Through Additional Chief Secretary
to the Government
Energy Department, Vikasa Soudha,
Dr. Ambedkar Veedhi,
Bangaluru-560001. ... Respondent(s)
- Counsel for the Appellant (s) : Mr. Buddy Ranganadhan
Mr. Ujjal Benerjee
Mr. Akash Khurana
- Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-2 & 3

APPEAL NO. 164 OF 2021

In the matter of:

Avid Green Energy Private Limited,
A company incorporated under the Companies Act, 1956,
Having its registered office at No. 35/2,
Park Manor Building, Park Road,
Tasker Tower, Bengaluru – 560051. ... Appellant(s)

VERSUS

1. Chamundeshwari Electricity Supply Company Limited,
(Government of Karnataka undertaking)
A company incorporated,
Under the companies Act, 1956, having its
registered office at No. 29,
Kaveri Grameena Bank Road,
Vijayanagar 2nd Stage,
Mysore, Karnataka – 570019.
2. Karnataka Electricity Regulatory Commission
Through its Secretary

No. 16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru – 560052.

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1

APPEAL NO. 180 OF 2021

In the matter of:

Sourashakthi Energy Private Limited

A Company incorporated under the Companies Act, 1956,
having its registered Office at Ranganatha Puram,
Kamakshipalya, Bengaluru-560079

Represented by Authorised signatory

... Appellant(s)

VERSUS

1. Chamundeshwari Electricity Supply Company Limited,
(Government of Karnataka undertaking)

A Company incorporated

under the Companies Act, 1956,

having its registered Office

at No.29, Kaveri Grameena Bank Road,

Vijayanagar 2nd stage,

Mysore – 570019, Karnataka.

Represented by its Managing Director

2. Karnataka Electricity Regulatory Commission

Through its Secretary

No.16, C-1, Millers Tank Bed Area,

Vasant Nagar,

Bengaluru- 560 052

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1

Mr. Darpan K.M.
Mr. Amrita Sharma
Mr. Rajat Janathan Sha for R-2

APPEAL NO. 181 OF 2021

In the matter of:

Blister Energy Private Limited,
No. 35/2, Park Manor Building,
Park Road, Tasker Town,
Bengaluru – 560051.

... Appellant(s)

VERSUS

1. The Bangalore Electricity Supply Company Limited,
Corporate Office, K.R. Circle,
Bengaluru, Karnataka – 560001.

2. Karnataka Electricity Regulatory Commission,
Through its Secretary,
No. 16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru – 560052.

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1

APPEAL NO. 182 OF 2021

In the matter of:

Athense Energy Pvt. Ltd.,
No.35/2, Park Manor,
Park Road, Tasker Town,
Bengaluru-560051.

... Appellant(s)

VERSUS

1. Mangalore Electricity Supply Company Ltd.,
(Government of Karnataka undertaking)
A Company incorporated
under the Companies Act, 1956,
having its registered Office
MESCOM Bhavana,
Kavoor Cross Road,
Bejai Mangaluru – 575004.
Karnataka.

2. The Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru- 560 052

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Ms. Stephinie Pinto for R-1

APPEAL NO. 183 OF 2021

In the matter of:

Flaunt Solar Energy Private Limited,
No.35/2, Park Manor Building,
Park Road, Tasker Town,
Bengaluru – 560 051.

... Appellant(s)

VERSUS

1. The Bangalore Electricity Supply Company
Limited,
Corporate Office, K.R. Circle,
Bengaluru – 560 001
Karnataka.

2. Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru- 560 052

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1

APPEAL NO. 184 OF 2021

In the matter of:

Scorch Solar Energy Private Limited,
No.35/2, Park Manor Building,
Park Road, Tasker Town,

Bengaluru – 560 051.

... Appellant(s)

VERSUS

1. The Bangalore Electricity Supply Company Limited,
Corporate Office, K.R. Circle,
Bengaluru – 560 001
Karnataka.

2. Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1

Mr. Darpan K.M.
Mr. Amrita Sharma
Mr. Rajat Janathan Sha for R-2

APPEAL NO. 185 OF 2021

In the matter of:

Spangle Energy Private Limited,
No. 35/2, Park Manor Building,
Park Road, Tasker Town,
Bengaluru – 560 051.

... Appellant(s)

VERSUS

1. The Bangalore Electricity Supply Company Limited,
Corporate Office, K.R. Circle,
Bengaluru – 560 001
Karnataka.

2. Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru- 560 052

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap

Mr. Geet Ahuja

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1

Mr. Darpan K.M.
Mr. Amrita Sharma
Mr. Rajat Janathan Sha for R-2

APPEAL NO. 250 OF 2021

In the matter of:

Smt. Anjinamma,
W/o Late Thimmanna,
No.100, Surnahalli,
Challakere Taluk,
Chitradurga - 577 522

... Appellant(s)

VERSUS

1. Bangalore Electricity Supply Company Ltd.,
(Government of Karnataka undertaking)
A Company incorporated
under the Companies Act, 1956,
having its registered Office
K.R. Circle, Bengaluru - 560 001
Karnataka.
2. The Karnataka Electricity Regulatory Commission
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru- 560 052.

... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Samarth Kashyap
Mr. Geet Ahuja

Counsel for the Respondent (s) : Ms. Stepynie Pinto for R-1

APPEAL NO.298 OF 2021 &
IA NO. 1214 OF 2022

In the matter of:

Red Earth Green Energy Private Limited
Kalpatharu Complex, Palya Gate
NH-17 Devanahalli

VERSUS

1. The Karnataka Power Transmission Corporation Limited
Cauvery Bhawan
Bengaluru - 560001
Represented by its Managing Director
2. Hubli Electricity Supply Company Limited
Navanagar, P.B. Road Hubballi – 580029
Represented by its Managing Director
3. Karnataka Electricity Regulatory Commission
No. 16 C-1, Miller Tank Bed Area,
Vasanth Nagar,
Bengaluru – 560052.

... Respondent(s)

Counsel for the Appellant (s) : Ms. Aparna Bhat
Ms. Karishma Maria

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-2

APPEAL NO.82 OF 2022 &
IA NO. 1811 OF 2022

In the matter of:

Tanivi Solar Private Limited
302, 3rd floor, Orion Building,
Koregaon Road, Pune 411 001

... Appellant(s)

VERSUS

1. Karnataka Electricity Regulatory Commission,
No.16, C-1, Millers Bed Area,
Vasanth Nagar
Bengaluru 560 052
2. Chamundeshwari Electricity Supply Corporation Limited
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage
Mysuru 570 019

3. State Of Karnataka
Department Of Energy
Vikas Soudha, Dr.Ambedkarveedhi,
Bengaluru 560 001 ... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Anantha Narayana M.G.
Ms. Geet Rajan Ahuja
Mr. Samarth Kashyap
Counsel for the Respondent (s) : -- --

APPEAL NO. 167 OF 2022

In the matter of:

Venkat Energy and Power Private Limited,
A company registered under the provisions of the
Companies Act, 2013,
Having its registered office at No. 145, 4th Floor,
150ft Hosur Sarjapur Ring Road,
Sector 5, HSR layout, Bangalore – 560034. ... Appellant(s)

VERSUS

1. Bangalore Electricity Supply Company Ltd.
Rep. by its Managing Director,
BESCOM Corporate Office,
KR circle,
Bangalore – 560001.
2. Chief Electrical Inspector to Government
Nirmana Bhavana, 2nd Floor,
P.B. No. 5148, Dr. Rajkumar road,
Rajajinagar, Bangalore – 560010.
3. Karnataka Power Transmission Corporation Ltd.
Rep. by its Managing Director,
Cauvery Bhavan, K.G. Road,
Bangalore – 560009.
4. Karnataka Electricity Regulatory Commission,
Rep. by its Assistant Secretary,
No. 9/2, 6th & 7th Floor, Mahalakshmi Chambers
M.G. Road, Bangalore, Karnataka – 560001.

... Respondent(s)

Counsel for the Appellant (s) : Mrs. Kiran Suri, Sr. Adv.
Ms. Aishwariya Kumar
Ms. Vidushi Garg
Mr. Purvesh B.

Counsel for the Respondent (s) : Mr. S. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhishek Kr. Dubey for R-1 & 3

Mr. Shubhranshu Padhi
Mohd. Ovais for R-2

APPEAL NO. 230 OF 2022

In the matter of:

Mr. Basavarajaiah
S/O Late Choodaiah,
#336, 1-D Cross, 6th Block,
2nd Phase, Banashankari 3rd Stage,
Bengaluru-560085, Karnataka ... Appellant(s)

VERSUS

1. Bangalore Electric Supply Company Limited
Corporate Office,
K.R. Circle, Bengaluru-560001,
Karnataka
Represented By Its Managing Director
 2. Karnataka Power Transmission Corporation Limited
Cauvery Bhavan, Bengaluru-560009,
Represented By Its Managing Director
 3. Karnataka Electricity Regulatory Commission
No.16, C-1, Millers Bed Area,
Vasanth Nagar,
Bengaluru-560052,
Karnataka, Rep. By Its Secretary ... Respondent(s)
- Counsel for the Appellant (s) : Mr. Anand Sanjay M Nulli
Mr. Suraj Kaushik
- Counsel for the Respondent (s) : Mr. S. Sriranga Subanna, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Dubey for R-1 & R-2

APPEAL NO.359 OF 2022

In the matter of:

1. Shivapur Solar Power Project LLP,

Appeal no. 128 of 2018 & batch

Through its Designated Partner
Mr. Sidram M. Kaluti
BC 109, Davidson road,
Camp: Belagavi, Karnataka – 590001.

2. Shri Siddappa F. Tagadi
Navalgatti, Taluka : Bailhongal,
Belagavi, Karnataka – 590001. ... Appellant(s)

VERSUS

1. Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580025.
2. Karnataka Electricity Regulatory Commission,
Through its Secretary ,
No. 16, C-1, Millers Tank Bed Area,
Vasant Nagar, Bengaluru – 560052. ... Respondent(s)

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Geet Ahuja
Mr. Samarth Kashyap

Counsel for the Respondent (s) : Ms. Stephenia Pinto for R-1

APPEAL NO. 244 OF 2021

In the matter of:

MEPGEN Solar Private Limited.
Through Director,
No.356, 395, II E Main, 11th Block,
Nagarabhavi, 2nd Stage,
Bengaluru -560072 ... Appellant(s)

VERSUS

1. Bangalore Electricity Supply Company Limited.
Through the Managing Director,
K.R Circle,
Bengaluru - 560001
2. Karnataka Electricity Regulatory Commission
Through The Secretary,
No. 16, C-1, Miller Tank Bed Area,
Vasanth Nagar, Bengalauru-560052 ... Respondents

Counsel for the Appellant (s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Geet Ahuja
Mr. Samarth Kashyap

Counsel for the Respondent (s) : Mr. S. Sriranga, Sr. Adv.
Ms. Sumana Naganand
Mr. Abhijeet Kr. Pandey for R-1

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON.

1. The appellants in the captioned appeals are *Solar Power Project Developers* ("SPPDs") who have come up by their respective appeals challenging various but similar orders passed by the respondent *Karnataka Electricity Regulatory Commission* ("KEREC" or "the State Commission") in a scenario covered by the guidelines of what is known as "*farmers scheme*" for developing of infrastructure for Solar Energy. These appeals have been resisted by the distribution licensees operating in the State of Karnataka, they having been impleaded as respondents in each case.

2. These appeals were taken up as a batch because common questions of law arise, the prime ones being as to whether these SPPDs are entitled to extension of time for commissioning of their respective generating plants and, connected thereto, the question as to whether the adverse consequences of delay with which they have been visited by virtue of the impugned decisions of the State Commission are fair dispensation, against the backdrop of the distribution licensees having agreed to, or consented for, extension of time as was sought.

3. The impugned decisions were rendered at a point of time when the law was yet to be settled. Over the period, a number of decisions have been given by this tribunal, covering the issues raised here, some of which travelled up to Hon'ble Supreme Court where they were upheld. We may briefly refer to them hereinafter.

4. In the matter of *M/s Panchakshari Power Projects LLP V. Karnataka Electricity Regulatory Commission & Ors.* (Appeal no. 279 of 2018) decided on 12.08.2021, this tribunal has held, *inter alia*, that it is the bounden duty of all stakeholders to promote the growth and sustenance of renewable energy:

“... 35. We tend to add that it is the policy of Government of India that as much as possible, renewable energy sources must be tapped and must be encouraged since the usage of coal in thermal plants in the long run would leave an impact on the environment which would not be congenial atmosphere for the future generation. Therefore, though the cost of energy from renewable sources is much higher than thermal plants, the policy of the Government in the larger interest of health of the public is to safeguard the environment and create a proper environment. Hence, renewable energy sources as much as possible must be encouraged. In fact, the promotion of renewable energy very much indicated in the Statute itself i.e., Section 86(1)(e) where the obligation is placed on the concerned authorities that is the Commission and all the stakeholders to promote renewable energy sources.

5. In *Bangalore Electricity Supply Company Limited v. M/s Panchakshari Power Projects LLP* (Civil Appeal no. 897 of 2022), the Hon'ble Supreme Court was, *inter alia*, pleased to uphold the aforesaid Judgment of this Tribunal.

6. In *Chennamangathihalli Solar Power Project LL.P. v. Bangalore Electricity Supply Company Limited* (Appeal no. 351 of 2018) decided on 14.09.2020, this Tribunal took the view, inter alia, that (i) delays due to the approval process on account of the Government or Governmental departments would constitute *force majeure* under the PPA's; (ii) the Discoms had agreed to and/or granted extension of time and (iii) there could not have been any reduction in the bid tariff, *inter alia*, in the following words:

“..7.10 ...However, what thus transpires that there has been considerable delays on the part of the Respondents/Govt. agencies in processing of applications and granting the respective approvals. Thus, Respondents cannot absolve itself from the burden of such delays in execution/completion of the solar projects of the Appellants. In fact, it is pertinent to note that the Govt. as well as State/Discom considering above eventualities granted an extension of six months in COD. Contrary to this, the State Commission rejected the extension with imposition of liquidated damages to corresponding period only on the premise that it is a matter of dispute between the Appellants and the first Respondent. (Pg 69-70)

...

8.9 In view of these facts and anticipated slippage in the COD, the Appellants apprised the first Respondent of the same and requested for extension of COD by six months as admissible under the PPA. It is not in dispute that the total completion period of 18 months from the effective date was provided considering all the activities including various approvals, procurement of equipment, installation and commissioning and final safety clearance from Chief Electrical Inspector for charging the line etc. However, in receiving approvals from Govt. instrumentalities for land conversion, evacuation arrangement, safety clearances etc., the Appellants not only faced severe difficulties but also considerable delay of 7-8 months. The Appellants accordingly put forward the case to Govt. of Karnataka as well as first Respondent for COD extension by six months which after due diligence and prudence, the Govt./first Respondent acceded to. Before further evaluation of the rival contentions of the parties regarding the extension of time, we take note of various clauses of PPA specially Clause 2.5 which is reproduced below:—

“2.5 Extensions of Time

2.5.1 In the event that the SPD is prevented from performing obligations under Clause 4.1 by the Scheduled Commissioning Date due to:

- (a) Any BESCO Event of Default; or
- (b) Force Majeure Events affecting BESCO; or
- (c) Force Majeure Events affecting the SPD.

2.5.3 In case of extension occurring due to reasons specified in clause 2.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6 (six) months.

2.5.6 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.”

It is evident from the above that due to reasons specified in Clause 2.5.1(a), Scheduled Commissioning Date could be extended up to six months and as a result of such extension, the newly determined COD and expiry date shall be deemed to be the scheduled COD and the expiry date for the purpose of this agreement. (78-80)

8.10 Regarding force majeure events, Clause 8.3 of PPA, it is noted that under sub-clause (vi), it is provided that “inability despite complying with all legal requirements to obtain, renew or maintain required licenses or legal approvals” will also attribute to force majeure. In view of these provisions under the PPA, we are of the opinion that the delay in receiving various approvals/clearances by the Govt. and its instrumentalities which were beyond the control of the Appellants should also be treated as an event of force majeure under sub-clause (vi) of clause 8.3 which has directly and severely affected the execution of the solar projects. To be more specific, if the approval for land conversion is received on last day of September, 2016, it becomes extremely difficult to achieve COD on 03.01.2017 as envisaged under the PPA. Moreover, the grant of extension of the Scheduled COD was accorded by Govt. of Karnataka and in turn, by first Respondent after complying with due procedures and applying its diligence and prudence under the four corners of the PPA and not beyond. (Pg 80)

8.11 We have also taken note of various judgments of Hon'ble Supreme Court relied upon by the Appellants as well as Respondents and opine that these judgments have been passed considering the matters on case to case basis and may not be quite relevant in the facts and circumstances of case in hand. For example, in the case of All India Power Engineers Federation vs. Sasan Power Ltd., the Apex Court does not lay down any proposition that even in cases wherein there is no enhancement of tariff and the parties exercise powers under the PPA,

even then the Commission had any inherent power. In the present case, neither has there been any increase in the tariff nor was there any exercise of power outside the PPA and hence the said judgment relied upon by the Respondents is clearly distinguishable. (Pg 81)

...

8.14 We, now consider the other issue viz. of reduced tariff as now granted by the State Commission based on Article 5 of the PPA of which sub-clause 5.1 stipulates that the SPD shall be entitled to receive the tariff of Rs. 8.40 per unit based on KERC tariff order dated 10.10.2013. However, if there is a delay in scheduled commissioning and during such period, there is a variation in the KERC tariff then the applicable tariff shall be lower of the following:—

- i) Rs. 8.40 per unit;
- ii) Varied tariff applicable as on the date of commissioning tariff.

While referring the above Article of the PPA, it is significant to note that the applicability of the varied tariff is subject to the Clause 2.5 of the PPA which provides for extension up to six months in case of various events of default affecting SPD in completion of the project. (Pg 82-83)

...

9.1 ... However, as the COD extension was granted under the signed PPA between the parties and after applying, due diligence in the matter considering all prevailing facts and matrix of events, the State Commission ought to have considered the same and approved so as to meet the ends of justice. Needless to mention that the PPA' Terms & Conditions were duly approved by the State Commission which crystallised the rights of the parties. (Pg 84-85)

9.2 The findings of the State Commission in the impugned order clearly reflect that it has ignored the vital material placed before it such as statement of objections filed by first Respondent, recommendations of State Govt. dated 23.06.2017 and communication of MNRE, Govt. of India dated 28.07.2017 regarding grant of COD extension to the solar power developers. Further, it is mandate upon the State Commission to promote co-generation and generation of power from renewable sources of energy, however, in the present case, the State Commission has suo motto interfered for the ultimate loss to RE developers who are land owning farmers and had participated in the programme of the Govt. for solar power development. In fact, the entire solar project is structured on the basis of assured tariff as per Article 5.1 of the PPA being an incentivised tariff and financial institutions have advanced loans on the basis of the assured tariff as per PPA....”

7. It is not disputed that the provisions of the *Power Purchase Agreement* (PPA) in *Chenamangathihalli* (supra) and the PPA's in the present cases are *in pari materia*. The judgment of this tribunal in *Chenamangathihalli* (supra) was also upheld in appeal In *Bangalore Electricity Supply Company Limited v. Chennamangathihalli Solar Power Project LL.P.* (Civil Appeal no(s). 3958/2020) by Hon'ble Supreme Court by Order dated 18.12.2020.

8. The rule in *Chenamangathihalli* (supra) was reiterated by this tribunal in *Yarganavi Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors.* (Appeal no. 10 of 2019) by judgment dated 12.08.2021 holding as under:

115. We are aware that number of appeals are filed pertaining to solar projects in Karnataka under Farmers Scheme. We also note that in some cases, the Application for conversion of agriculture land was submitted two or three months or may be six months after approval of PPA. We take judicial notice as discussed in Appeal No 160 of 2020 (Clearsky matter) that having regard to the nature of the solar plants to be developed by the farmers between 1 MW to 3 MWs, which required land conversion orders from revenue authorities, which has elaborate process consuming lot of time, the State Government in fact opined that there would be deemed conversion for such solar projects. However, in spite of such expression, the guidelines to be followed by the revenue authorities for granting deemed conversion orders in favour of the solar plant developers were not clear and though the farmers approached revenue department, the concerned officers seem to have replied that they have not received guidelines in that regard. We also notice that even the guidelines came to be issued much later. Though this fact was not pleaded in all the appeals, but the guidelines in this regard issued by the State Government is common which was delayed and not intimated to the concerned authorities, we are of the opinion that such confusion pertaining to deemed conversion procedure has also led to delay in either approaching the concerned revenue authority for conversion of agriculture

land or even if they had approached, the conversion order was granted with much delay.

116. According to us, the scheme which was meant to assist and benefit farmers seems to be otherwise. After borrowing huge amounts, the Appellants have invested in the solar projects. Instead of getting benefit from the solar power plants, they should not be burdened with the liability of discharging the loan and the interest accrued on that

117. According to us, the State Commission has not acted in a judicious manner and has failed to take note the efforts put in by the Appellants to secure approvals within the reasonable time, so as to commission the project with the timelines.

118. Apparently, the scheme was meant to benefit small land holding farmers, who could establish solar plants between 1 MW to 3 MWs. This also definitely requires business prudence apart from minimum knowledge in the field concerned. As per the policy, the establishment of solar plant was to be in the agricultural land. On account of restrictions to use agricultural land for non-agricultural purpose, conversion of agricultural land use is a must. In terms of Karnataka Revenue Act, it has laborious process to get conversion of agricultural land into non-agricultural one. To establish solar power plant, it is not just conversion of agricultural land permission, but several other approvals/consent/permissions were required.

119. Till SPV was established, it was the individual Appellant i.e., SPD who had to run from office to office to secure required approvals/consents. Having regard to laborious process to secure these permissions from various Government instrumentalities, it would have been a wise decision to have infrastructure under one roof (like single window agency) to get all these clearances which would have saved lot of time for the establishment of these small solar power plants in question. Since either the SPD or SPV had to run from office to office situated at different places to secure approval and permission which would not have been possible to secure on any one particular day also seems to have caused hardship and delay in procuring the approvals, be it land conversion or power evacuation and grid connectivity or safety certificate from CEIG etc. To apply for conversion of land to non-agriculture purpose itself, more than 13 documents are required, which have to be secured not from single place but various departments of Government. The scheme which was expected to be a boon to the farmers seems to have become a bane.

120. In terms of the Articles and various Clauses especially Clause 6.4 of the PPA, if the amounts are due, not paid in time, the Solar Developer is entitled for late payment surcharge. Since the delay was not on account of the Appellants and they did commission the solar plant within the extended SCOD, we are of the opinion that they are entitled for late

payment surcharge. Similarly, since there was no deficit or delay on the part of the Appellants in any manner to commission the power plant, they are not liable to pay Liquidated Damages or any other damages...

9. Similarly, in the matter of *Kurugunda Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors.* (Appeal no. 12 of 2019) it was held by judgment dated 12.08.2021 as under:

“...109. We also note that it is not a simple application for land conversion. This requires several other documents to be collected before applying for land conversion. The set of documents that are required had to be obtained from different departments. All this would take some times, therefore, one cannot expect the SPD straight away to apply for conversion of land the moment the PPA was approved by the Commission. Similarly, to get CEIG safety approval, several safety steps have to be completed like submission of drawings, approval of the drawings, intimation for payment of processing fee and final approval followed by safety certificate has to be issued. This safety certificate could be granted only if there is permission for Grid connectivity and final approval for evacuation obtained. In most of the cases, the Developers have sought lease of the land for setting up bay terminal. The land on lease basis also consumer time to secure the final approval of evacuation with so many formalities that have to be complied with by the Solar Developers. It is not just one single window agency where they could secure all these approvals. They had to approach office to office to secure different certificates, documents to secure the approvals that are required. 110. Therefore, the Association of farmers meant for Farmers’ Scheme made representation to the HESCOM who in turn brought to the notice of the Energy Department of the State explaining the difficulties faced by the Solar Plant Developers in getting the approvals/sanctions to set up the solar plants. A special Committee was formed to look in to the reasons for the delay being caused. On appraisal of the difficulties faced by the farmers, the three member Committee recommended for acceptance of the reasons explained as force majeure event. Based on that the State Government through the Secretary requested KERC to consider the same and grant PPA tariff to the Solar Developers. In this regard, even MNRE also addressed a letter to encourage the Solar Developers.

...

112. According to us, the considerable lapse of time to secure these certificates necessary was not on account of negligence on the part of the Appellants, but on account of the concerned officers who took time to issue these certificates. Therefore, we are of the opinion that none of the

delay in securing the approvals was on account of Appellants and in fact they approached and started the process with utmost care and diligence.

113. We are aware that number of appeals are filed pertaining to solar projects in Karnataka under Farmers Scheme. We also note that in some cases, the Application for conversion of agriculture land was submitted two or three months or may be six months after approval of PPA. We take judicial notice as discussed in Appeal No 160 of 2020 (Clearsky matter) that having regard to the nature of the solar plants to be developed by the farmers between 1 MW to 3 MWs, which required land conversion orders from revenue authorities, which has elaborate process consuming lot of time, the State Government in fact opined that there would be deemed conversion for such solar projects. However, in spite of such expression, the guidelines to be followed by the revenue authorities for granting deemed conversion orders in favour of the solar plant developers were not clear and though the farmers approached revenue department, the concerned officers seem to have replied that they have not received guidelines in that regard. We also notice that even the guidelines came to be issued much later. Though this fact was not pleaded in all the appeals, but the guidelines in this regard issued by the State Government is common which was delayed and not intimated to the concerned authorities, we are of the opinion that such confusion pertaining to deemed conversion procedure has also led to delay in either approaching the concerned revenue authority for conversion of agriculture land or even if they had approached, the conversion order was granted with much delay.

114. Apparently, the scheme was meant to benefit small land holding farmers, who could establish solar plants between 1 MW to 3 MWs. This also definitely requires business prudence apart from minimum knowledge in the field concerned. As per the policy, the establishment of solar plant was to be in the agricultural land. On account of restrictions to use agricultural land for non-agricultural purpose, conversion of agricultural land use is a must. In terms of Karnataka Revenue Act, it has laborious process to get conversion of agricultural land into non-agricultural one. To establish solar power plant, it is not just conversion of agricultural land permission, but several other approvals/consent/permissions were required.

115. Till SPV was established, it was the individual Appellant i.e., SPD who had to run from office to office to secure required approvals/consents. Having regard to laborious process to secure these permissions from various Government instrumentalities, it would have been a wise decision to have infrastructure under one roof (like single window agency) to get all these clearances which would have saved lot of time for the establishment of these small solar power plants in question. Since either the SPD or SPV had to run from office to office situated at different places to secure approval and permission which would not have

been possible to secure on any one particular day also seems to have caused hardship and delay in procuring the approvals, be it land conversion or power evacuation and grid connectivity or safety certificate from CEIG etc. To apply for conversion of land to non-agriculture purpose itself, more than 13 documents are required, which have to be secured not from single place but various departments of Government. The scheme which was expected to be a boon to the farmers seems to have become a bane.

116. In terms of the Articles and various Clauses especially Clause 6.4 of the PPA, if the amounts are due, not paid in time, the Solar Developer is entitled for late payment surcharge. Since the delay was not on account of the Appellants and they did commission the solar plant within the extended SCOD, we are of the opinion that they are entitled for late payment surcharge. Similarly, since there was no deficit on the part of the Appellants in any manner, they are not liable to pay Liquidated Damages or any other damages...”

10. Another proposition that has repeatedly found acceptance by this Tribunal is that the effective date of the PPA is not when it is executed but when it is approved by the Commission. Therefore, it cannot be said that the contractual obligations would kick-in, till such approval. This has been so held in several decisions of this tribunal including in *Sirwar Renewable Energy Private Limited V. Karnataka Electricity Regulatory Commission & Ors.* (Appeal no. 245 of 2019) decided on 12.08.2021 holding, *inter alia*, thus:

“... 80. It is well settled now in the light of the opinion expressed by this Tribunal in the Judgments of Azure Sunrise Private Limited in Appeal No. 340 of 2016 dated 28.02.2020, SEI Aditi Power Private Limited in Appeal No. 360 of 2019 dated 14.07.2021, SEI Diamond Private Limited in Appeal No. 374 of 2019 dated 14.07.2021, and so also Chennamangathihalli Solar Power Projects LLP. Vs. Bangalore Electricity Supply Company Limited in Appeal No. 351 of 2018 dated 14.09.2020 that it is the date of approval of the PPA which becomes effective date and not the date on which parties put their signatures to the PPA. The PPA becomes implementable only when it is approved by the appropriate Commission. Even the Appellants for that matter any generator cannot approach any authority for sanction, approval, permissions, grants, loans

without the PPA being approved by the concerned Commission. Therefore, date of the approval of the PPA becomes a relevant fact. (Pg 44)

...

92. It is noticed that the 3rd Respondent GESCO itself wrote a letter to the Additional Chief Secretary in Agriculture Department on 16.05.2017 explaining the entire facts and reasons for which farmers were not in a position to commission the project within the scheduled commissioning date as per PPA and therefore, at the end of the letter, they stressed upon the fact that it was justified and incumbent to accord an approval of extension by six months for commissioning the project. In this regard, there was communication between the GESCO and Energy Department and Energy Department also wrote to KERC in June 2017 wherein they opined that in terms of Clause 8.3, there seems to be genuine grounds for delay; therefore, KERC was requested to consider the approval of extension of COD. In this regard, MNRE also wrote a letter on 09.04.2018 to KERC to consider the request of Association of farmers i.e., Solar Plant Developers between 1 MW to 3 MW that these farmers require adequate confidence to maximize development of solar power capacity in the State. Therefore, there cannot be uncertainty for the investors to invest in solar projects, otherwise it may de-motivate the investors from investing in solar sector.

93. What we note from the above dates is that the delay in obtaining evacuation approval, delay in obtaining the equipment from MEIL, the sole approved seller of the equipment by KPTCL, delay in approval of the diagrams have caused delay to commission the project. None of these delays are attributable to the negligence of the Appellant. On the other hand, the list of dates mentioned above clearly indicates that the Appellants were exercising due care and diligence to pursue various authorities to secure the approvals/sanctions in time. For no fault of the Appellants, the approvals by one authority or the other got delayed, which is beyond the control of the Appellants. The scheme which was envisaged to benefit the farmers turned out to be a curse, since the Appellants were compelled to run from pillar to post to obtain these approvals apart from entering in to several litigations to get their rights resolved.

94. We are of the opinion that none of the delays was at the instance of Appellants and it was only on account of delay in securing these approvals from Governmental Instrumentalities. Therefore, in accordance with PPA terms and conditions, the Appellants are entitled for extension of time for commissioning of the project and since the commissioning of the project is extended, they are entitled for tariff at agreed rate i.e., Rs. 8.40 per unit, so also they are not liable to pay any damages. They are not liable to pay other liquidated Damages. Over and above this, they were constrained to commission the project and receive reduced tariff.

The Appellants are also entitled for late payment surcharge in terms of PPA.

95. In terms of the Articles and various Clauses especially Clause 6.4 of the PPA, if the amounts are due, not paid in time, the Solar Developer is entitled for late payment surcharge. Since the delay was not on account of the Appellants and they did commission the solar plant within the extended SCOD, we are of the opinion that they are entitled for late payment surcharge. Similarly, since there was no deficit on the part of the Appellants in any manner, they are not liable to pay Liquidated Damages or any other damages. (Pg 50-53)..."

11. The heart of the matter as has been explained by this Tribunal is that once the Discom's have agreed to and/or consented to the extension of time, it does not lie in their mouth thereafter to turn their back on such agreement or consent. Having once agreed and acted upon the grant of such extension of time, the Discoms cannot approbate and reprobate to the prejudice of the generators. This has been held, inter alia, in *Madamageri Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors.* (Appeal no. 322 of 2018) decided on 12.08.2021 as under:

"..126. The 1st Respondent based on the various problems faced by the solar developers granted extension of COD by six months. Within the said six months' extended period, the grid connectivity was obtained after safety approval certificate issued by CEIG. The Petition came to be filed by the Appellant only on account of direction of the Commission to approach the Commission seeking approval of extension of time. Having approved the clause in the PPA that HESCOM could extend COD by six months period, in the facts and circumstances discussed above, we are of the opinion that the Respondent Commission was not justified in opining that extension of six months' time for COD was not on account of force majeure event as pleaded by the Appellant.

127. It is relevant to point out the conduct of the HESCOM. During the entire process of securing these approvals by the Appellant, the Solar Developer has brought to the notice of the HESCOM the obstacles faced and at no point of time, there was any note of caution or objection finding fault with the pace at which the Solar Developer was pursuing the execution of the solar plant. In fact, after accepting the reasons for the delay being force majeure event in terms of PPA, the

HESCOM did extend time for commissioning of the plant by six months. Subsequently, the conduct of the HESCOM is very surprising. It started finding fault with the Appellant contesting the matter seriously questioning the reasons for delay as force majeure event. We are of the opinion that the Respondent HESCOM cannot approbate and reprobate..."

12. In similar vein, in *Basaragi KM Solar Power Project LLP v. Hubli Electricity Supply Company Limited & Ors.* (Appeal no. 328 of 2018) by judgment dated 12.08.2021, it was ruled thus:

84. The very scheme is framed as Farmers' Scheme. The policy was meant to create opportunities to land owning farmers. Project instead of benefitting them should not cause damage to them. We have seen that though a deemed land conversion was envisaged in the scheme, there was lot confusion so far as deemed conversion. One cannot ignore the fact that approaching these different institutions/Instrumentalities of Government with applications and obtaining approvals in time take considerable time.

...

86. As stated above, the evacuation of power could be achieved only in the month of March, 2017 after obtaining safety approval certificate from CEIG. Having invested huge amounts taking loans from banks/financial institutions, one cannot even imagine that the Developer will be negligent in pursuing his project.

87. Having regard to all these facts, both the State Government and MNRE recommended that so far as Farmers' Scheme, there has to be extension of time on account of force majeure event.

...

91. The very same set of facts so far as force majeure convinced HESCOM and three member Committee constituted by the State Government and MNRE. However, the same set of Force Majeure Events could not convince the Respondent Commission. The Respondent Commission being a neutral body is expected to discharge its functions in a judicious manner. If delay has occurred on account of reasons beyond the control of the Appellant, the Appellant cannot be punished. The intention of the Government to assist the farmers should not become otherwise a weapon to punish them.

92. We notice that HESCOM at no point of time expressed its doubt with regard to genuineness of the Appellant pursuing various departments to issue the approval/sanction concerned. After accepting the reasons for the delay, they extended time for commissioning of the project. Now it is not open to HESCOM to totally take a u-turn and question the Appellants in

this regard. Having extended the time for commissioning the project, it is not fair on the part of the Respondent HESCOM to take a different stand now.

13. The case of *Solar Power Project LLP V. Hubli Electricity Supply Company Limited & Ors.* (Appeal no. 342 of 2018) decided on 12.08.2020 was concluded on the basis of following observations:

107. In turn, the HESCOM had placed all the facts before the three member Committee constituted by the State Government as noticed in several other Appeals on the representation of the Solar Plant Developers. The three member Committee after taking into consideration, recommended for extension of time for commissioning of the solar projects of the farmers under the Farmers' Scheme. This cannot be ignored totally. That is where the judicious mind of the Commission has to come into play. It was required to consider the very same set of facts upon which the HESCOM granted extension of time so also the Government of Karnataka recommended for extension of time, cannot be considered likely.

108. It is seen that the Government of Karnataka brought in its special scheme for promoting renewable energy generation to harness the solar sources available in the State. This was meant to create opportunities to land owning farmers. In response to the promotion of the solar development by Government of Karnataka, several farmers including the Appellant came forward to set up solar plants. We judiciously take notice of the facts which were discussed/considered in other Appeals that in terms of guidelines issued by the State Government for developing solar project, there was a mention that the land used for setting up of the solar plant requires land conversion permission, however, the land pertaining to solar development under Farmers' Scheme will have deemed conversion. However, there was lot of confusion in issuance of executive direction/orders to implement the guidelines for deemed conversion which compelled many farmers to approach the revenue authorities for regular land conversion route. This regular land conversion route involves hercules task which required several documents from several Departments to submit the application for conversion of the land. Most of the cases, the delay seems to be with regard to conversion of the land.

109. Apart from conversion of land, there seems to be delay in obtaining evacuation either provisional or final approval, so also in approving the drawings and intimating the estimation of the charges to be paid. Similarly, once application is submitted to CEIG to certify safety of the plant in order to start commissioning of the solar plant, in many cases time is taken to

come and inspect the site. Even in this Appeal, we note that the drawings required for the bay terminal and other requirements for connectivity at the bay of the substation of the transmission/distribution system, the authorities took some time. All this could happen only in October 2016. Only after approval of the grid connectivity finally granted, the Appellant could approach the Chief Electrical Inspector with drawings pertaining to the electrical installation of the solar power plant.

...

114. We are of the opinion that the Farmers' Scheme which was advanced for creating opportunities for farmers should not become a curse to the farmers. The Appellant was running from office to office to secure the required approvals and sanctions. The project was commissioned somewhere in the month of May i.e., on 08.05.2017 when the proceedings in the Petition was pending before the State Commission. The HESCOM in terms of requirement of PPA issued commissioning certificate and the power started flowing in to the Grid from 08.05.2017. The original SCOD in terms of PPA was 18 months' from effective date. As stated above, PPA becomes effective only on the date of the approval of the PPA. As already state above, by virtue of extension of time by the HESCOM to commission the solar plant, the SCOD automatically gets postponed i.e., 30.08.2017. But the Appellant commissioned the solar plant much prior to the extended SCOD.

115. It is relevant to point out the conduct of the HESCOM. During the entire process of securing these approvals by the Appellant, the Solar Developer has brought to the notice of the HESCOM the obstacles faced and pertinently at no point of time, there was any note of caution or objection finding fault with the pace at which the Solar Developer was pursuing the execution of the solar plant. In fact, after accepting the reasons for the delay being force majeure event in terms of PPA, the HESCOM did extend time for commissioning of the plant by six months. Subsequently, the conduct of the HESCOM is bit surprising. It started finding fault with the Appellant contesting the matter seriously questioning the reasons for delay as force majeure event. We are of the opinion that the Respondent HESCOM cannot approbate and reprobate.

14. In *Solantra Pvt. Ltd. V. Karnataka Electricity Regulatory Commission & Ors.* (and connected matters) (Appeal no. 29 of 2021 & batch) decided by judgment dated 31.03.2022, it was observed as under:

16. During the course of arguments, it was fairly conceded by the learned counsel for the respondent Discoms, except Gulbarga Electricity Supply Corporation Limited (GESCOM) in appeal nos. 8 of 2019, 39 of 2019 and

53 of 2019, that the cases of the Appellants herein are duly covered by the previous decisions and since the Tribunal has already ruled in favor of the appellants on the question of delay finding it within the scheme and provisions of the contracts, having granted extension of SCOD in each case bearing in mind the principles already settled, the reduction in the rate at which the electricity is to be purchased by the ESCOMs is unjustified. The learned counsel for GESCO, however, insisted that there was no delay on the part of the ESCOMs in any matter connected with the approvers which caused the delay in project to be developed, the concerned SPDs being responsible on that account, the PPAs having saved the contractual terms on payable tariff (Article 5.1), the prayer for relief in that regard is not properly made out.

17. We found the above-noted opposition highly unjust and unfair particularly in the face of principles which have already been settled by a series of decisions of this Tribunal as quoted above. The delays on the part of the government agencies in granting the approvals including conversion of land are duly covered by the force majeure clauses in the respective PPAs. The respondent KERC has already accepted the prayer for the condonation of the delay and extension of SCOD by a general communication dated 07.07.2017 as quoted earlier. The said decision of the State Commission was never brought to challenge by any of the Discoms and, therefore, has become final and binding. In these circumstances, we reject the contest to the prayer for setting aside of the order of reduction of rate finding it inappropriate.

18. For the foregoing reasons, the appeals at hand deserve to be allowed. The Impugned Orders are set aside. The respondent ESCOMs are held bound to honor their obligations as to the agreed financial terms of PPA. In this view, they are directed to make good the deficiency in payment for the period up to date of this Judgment and hereafter without any delay or demur.

15. The case of *Azure Sunrise Private Limited v. Chamundeshwari Electricity Supply Corporation Limited & Anr.* (Appeal no. 340 of 2016) decided on 28.02.2020 was similar and it was ruled thus:

11.1 We have carefully gone through the submission of the parties and also taken note of various judgements relied upon by the Appellant as well as the Respondent Discom. The main dispute between the generating company and the distribution company (CESCOM) revolves around the decision of the State Commission to review the extension of time already given by the Discom and reduced the same to 25 days against the agreed extension of 137 days.

11.2 *It is the contention of the Appellant that Despite signing the PPA on 02.01.2015 the Appellant was provided the valid and approved PPA only on May 21, 2015, i.e. after the delay of about 137 days. It is relevant to note that CESC in view of such a delay in handing over the executable and enforceable PPA to the Appellant, granted an extension of 137 days under Article 5.7 of PPA. In this regard, we also note that in view of the prevailing situation, the State Commission itself vide its letter dated 13.04.2015 in response to the Appellant's letter dated 06.04.2015 stated that the delay in the approval of the PPA was solely attributable to CESC since the required documents and details were not received by it from CESC for further action.*

11.3 *While going through the Impugned Order of the State Commission, it is noticed that the Commission itself has held that its decision conveyed vide letter dated 01.12.2015 addressed to the CESC, "intimating to incorporate the reduced tariff of Rs. 6.51 per unit in the Supplemental Agreement dated 4.11.2015 was erroneous and not valid in law. However, the Commission intervened in the extension of time and reduced the same to 25 days from the granted extension of 137 days".*

11.4 *The facts and circumstances of the case placed before the State Commission and the adjudication done by the Commission are in contravention to each other and there is a reason to emerge that neither reduction in extension of time nor the reduction in tariff was justified.*

11.5 *To strengthen his arguments, learned counsel for the Answering Respondent has placed reliance on the judgement of the Hon'ble Supreme Court in All India Power Engineers Federation & Ors. v. Sasan Power Limited & Ors., to state that any change/ modification/ alteration of the terms and conditions of the contract becomes part of the original contract and therefore requires an approval of the State Commission and the Commission in its regulatory role has to review the matter which has been rightly done by the State Commission by reducing the extension of time from 137 days to 25 days.*

11.6 *We have perused the relevant portion of the above judgement relied upon by the learned counsel for the Answering Respondent and note that the said judgement is distinguishable to the facts of the case in hand due to the fact that the said case was pertaining to a deviation in carrying out the commissioning test at MCR as defined in the PPA whereas in the instant case the extension of time has been granted by CESC under the relevant clause of the PPA approved by the State Commission. In the case of All India Power Engineers Federation &*

11.7 *In view of the above facts, we are of the opinion that the decision of State Commission to reduce the extended time and tariff along with imposition of liquidated damages is not sustainable in the eyes of law and hence the Impugned Order deserves to be set aside..."*

16. On almost identical lines, this tribunal decided appeal no. 66 of 2020 presented by similarly placed SPPD in the matter of *Vatsala Ballary Solar Projects Private Limited v. Karnataka Electricity Regulatory Commission & Anr.* by judgment dated 06.01.2022 wherein certain further objections were taken seeking to distinguish the said case from that of *Chennamangathihalli*. This tribunal, in the case of *Vatsala Ballary* (supra) ruled thus:

“13. *In the above facts and circumstances, we agree that the case is duly covered by the ruling in the case of Chennamangathihalli (supra). The learned counsel for BESCO, however, submitted that the case of Chennamangathihalli is distinguishable because in the present case there are clear findings returned by KERC about seven months’ delay on the part of the appellant in approaching the Government department for land conversion, which delay has not been explained. In our view, the broad principle followed in Chennamangathihalli (supra) applies.*

14. *The relevant clauses of PPA conferred discretion on the parties to amicably resolve such issues as of delay in achieving CoD. In case of delay, the parties were expected by the contractual terms to sit across and agree to an extension if justifiable reasons were offered and if the same were covered by the clauses such as force majeure. That is precisely what happened in the present case. BESCO had the discretion to agree or not to agree to the request for extension. It proceeded to agree and communicated the said consent by the letter dated 02.03.2017. Assumably, the decision communicated by letter dated 02.03.2017 would be with the approvals accorded at the level where such decision-making authority lay. The subsequent decision, promulgated by a general Order dated 16.03.2017 passed by the State Commission cannot take away the effect and import of the agreement that had already been achieved on 02.03.2017 when BESCO communicated its consent for extension by six months. At the cost of repetition, it may be added that such agreement, by the contractual clauses read as on the date of communication dated 02.03.2017, was not subject to prior approval of KERC. In this view, the condition added by the Board of Directors of BESCO on 16.05.2017 also is incorrect*

15. *In the above facts and circumstances, we find merit in the appeal. The State Commission has fallen into error by embarking on an inquiry into the reasons for delay so as to deny the benefit of extension agreed upon by*

the parties in accordance with contractual provisions and also the contractual rate of purchase of electricity by BESCO. The decision rendered by the Commission is neither just nor fair and, therefore, set aside. For clarity, we add that the delay stands condoned post the communication of the decision by the BESCO by letter dated 02.03.2017, and in that view, BESCO is bound to honour its obligation as to the agreed financial terms under the PPA.

17. Against the above backdrop, the learned counsel on all sides, and that includes the respondent distribution licensees, jointly submitted that it would be appropriate that the impugned orders are set aside and claims of the appellants seeking extension of time and consequential relief be remitted to the State Commission for revisit, in light of the settled law on the subject. We order accordingly.

18. The issues have persisted for too long, the appellants being small entrepreneurs whose economic interest has seemingly suffered adversely over the period. In these circumstances, we would request the State Commission to give priority to the reconsideration of the matters hereby remanded and decide each of them expeditiously, preferably within a period of three months of this judgment.

19. The appeals and pending applications are disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 24TH DAY OF NOVEMBER, 2022.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson