

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

**APPEAL NO.298 OF 2019**

**Dated:** 18.10.2022

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

**In the matter of:**

**KOPPAL GREEN POWER LIMITED**

Represented by its Managing Director,

Registered office at :

H.No.1-88/1/02,

102, Shanti Vanam,

Kaveri Hills Extension

Hyderabad – 500081

... Appellant(s)

**VERSUS**

**1. GULBARGA ELECTRICITY SUPPLY COMPANY  
LIMITED**

*Rep. by its Managing Director,*

Opp : Hotel Parivar,

Railway Station Road,

Kalaburagi – 585101.

**2. KARNATKA ELECTRICITY REGULATORY COMMISSON**

*Through its Secretary,*

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

Bengaluru, 560 052

Karnataka, India

... Respondent(s)

Counsel for the Appellant (s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Mr. Amal Nair  
Mr. Sugandh Khanna  
Ms. Kritika Khanna

Counsel for the Respondent (s) : Ms. Samiksha Jain  
Ms. Garima Jain for R-1

## **J U D G M E N T (Oral)**

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

1. The appeal at hand has brought to us, yet again, a very disturbing trend showing piecemeal adjudication of the disputes brought before the Electricity Regulatory Commissions leading to multiplicity of proceedings forcing the stakeholders into unending spiral of litigation.

2. The appellant is a small generator having established a 6MW biomass based generating station at Koppal in the State of Karnataka having an exportable capacity of 5.4 MW. It had entered into a *Power Purchase Agreement* ("PPA") on 30.03.2001 initially with *Karnataka Power Transmission Corporation Limited* ("KPTCL") for sale of energy to the State Grid for a period of 10 years, the said contract having been renewed with first respondent – *Gulbarga Electricity Supply Company Limited* ("distribution licensee") for additional period of 10 years, the renewal agreement having been executed on 24.03.2011 with tariff of Rs.4.3524 per unit for energy delivered from 30.03.2011. By virtue of order dated 22.01.2015 passed in OP No.08 of 2013, the second respondent – *Karnataka Electricity Regulatory Commission* ("the State Commission") had revised tariff for such projects w.e.f. 01.01.2015 fixing it at Rs.4.63/kv for *Financial Year* ("FY") 2014-15, Rs.4.79/kv for FY 2015-16, Rs.4.97/kv for FY 2016-17 and Rs.5.15/kv for FY 2017-18, the fuel cost for period post FY 2017-18 to be determined by the Commission later, in due course.

3. The differential in the dues were paid by the first respondent ("distribution licensee") after several rounds of litigations in July, 2017, the claim of the appellant for interest on account of delayed payment having been resisted all along and eventually denied by the State Commission, by

its order dated 28.05.2019, on petition registered as OP No.09 of 2018 which is impugned by the appeal at hand.

4. It is not in dispute that the rate of monthly energy charges was reflected in the PPA (Article 5.1). It is also not in dispute that the appellant (“the generator”) is expected by the contractual terms to raise tariff invoices for each billing period in the prescribed format demanding payment of amounts for the delivered energy in accordance with the said contractual rate (Article 6.1), the distribution licensee (procurer) being obliged to make the payment within 15 days from the date of delivery of the tariff invoices.

5. The PPA also contains a specific provision on the subject of late payment, it reading thus:-

*6.3 Late Payment : If any payment from Corporation is not paid when due, there shall be due and payable to the Company penal interest at the rate of SBI Prime Lending Rate plus 2% per annum for such payment from the date such payment was due until such payment is made in full”.*

*(Emphasis supplied)*

6. The process of revision of the energy charge started with OP No.08 of 2013 in which the appellant and another similarly placed generator (*M/s Poweroniks Limited*) had joined in praying before the Commission for revision of the landed cost of the biomass fuel and certain other reliefs. The Commission, as mentioned earlier, upheld the claim and thus revised the tariff applicable to the power project of the appellant (as indeed of the other petitioner before it) revising it from 2014-15 onwards. The first respondent (*the procurer*) was a party to the said proceedings, it being the fourth respondent, the directions in the order dated 22.01.2015 including the following:

*“b) The terms of the PPA between the petitioners and the 4<sup>th</sup> Respondent shall be modified accordingly with effect from 1.1.2005.”*

*(Emphasis supplied)*

7. It is not in dispute that the above quoted directions of the State Commission vis-à-vis modification of the PPA terms so as to align the same with the revised tariff were not immediately abided by and the appellant with the other generator thus were obliged to approach the State Commission by another Petition (O.P. No. 20/2015), the prayers pressed being inclusive of a direction to the licensee to execute the supplementary agreement for modification or amendment of the revised tariff in compliance with the order dated 22.01.2015 and for payment of the differential in the tariff as a result of the tariff revision, as indeed initiation of penal action for non-compliance. The petition was resisted by the licensee on the specious plea that receipt of the payment for energy supplied at the pre-revised rate amounted to “accord and satisfaction” of the claim being agitated. The Commission accordingly rejected this contention and directed the licensee:

*“to execute the Supplemental Agreements with the Petitioners to implement the revised tariff ordered in OP No.08/2013 on 22.01.2015 and to make payment accordingly, within 2(Two) months from the date of this Order”.*

8. Noticeably the Commission failed to take any decision on the other prayers viz. direction for payment of the differential on account of revision of tariff and initiation of penal action for non-compliance with the order for supplementary agreement to be consequently signed.

9. The licensee once again failed to comply. Eventually, the appellant herein was constrained to approach the State Commission yet again, now invoking its jurisdiction under Section 142 of the Electricity Act (Complaint No.06/2016) referring to the directions given by earlier order dated 16.06.2016. It is during the course of hearing on the said complaint that the licensee eventually agreed to comply by executing the Supplementary PPA of 28.10.2016. The Commission declined to take any penal action in the nature envisaged under Section 142 of Electricity Act recording certain views to indicate the disinclination to do so on grounds of expediency,

though observing that there had been delay for certain period on the part of licensee which had not been properly explained. Though we have some reservations as to the manner in which the complaint under Section 142 of the Electricity Act was dealt with by the State Commission, at this distance in time, we do not wish to reopen the said chapter noting that during the course of the proceedings on the said complaint, the licensee had paid the principal amount of the differential, first in the sum of Rs.1,42,00,000/- on 07.07.2017 and then in the sum of Rs.1,00,29,661/- on 13.07.2017.

**10.** The appellant was still aggrieved as the principal amount paid as above did not fully satisfy its claim, the payment being belated, this having given rise to its claim for interest in terms of Article 6.3 of the PPA, quoted earlier.

**11.** Against the above backdrop, the appellant once again approached the State Commission (*by O.P. NO. 09 of 2018*) seeking directions for payment of interest, the same having been resisted by the licensee on the plea that such plea could not have been agitated without the enhanced tariff being incorporated by amendment in the PPA, the claim being also hit by the provision contained in Order II Rule 2 of the Code of Civil Procedure 1908 ("CPC"). Indisputably, the appellant had been raising invoices based on its enhanced rate of tariff immediately after the modification of the tariff by the first order on the subject rendered by the State Commission on 22.01.2015. Such invoices statedly were not honoured on the ground that PPA had not been then amended. The State Commission, by the impugned decision, upheld the objections of the licensee and has declined to grant any relief which result, in our view, is most unfair and unjust.

**12.** The directions in the judgment dated 22.01.2015 on OP NO.08/2013 revising the tariff from FY 2014-15 onwards were crystal clear leaving no

ambiguity. There was a direction for the PPA between the parties to be amended accordingly w.e.f. 01.01.2015, the tariff having been revised “with effect from 1.1.2015”. What was required to be done in the follow-up compliance was only a formality. The PPA had to be amended and aligned with the tariff order. The right of the appellant to receive the modified tariff flows from the decision rendered on 22.01.2015. This cannot, by any stretch of logic or imagination, be contingent upon or mercy of the inclination of procurer of modify, not the least at its whims or convenience. The Commission itself ruled by order dated 16.06.2016 that the non-compliance was not justified. By the said order, it now proceeded to issue time-bound directions for the supplemental agreement to be executed. The prayers made at that stage had also included one for a direction for payment of the differential amount. The Commission glossed over the said prayer through creating an unnecessary confusion, forcing the appellant into another round of litigation. The clear directions for a time-bound amendment of PPA were also ignored by the licensee, there being no justification offered for such continued default, even at this stage. It was only when the appellant sought penal action to be initiated that the licensee fell in line, executed the amended PPA on 28.10.2016 though the formal approval by the Commission, this having come by communication dated 02.05.2017 would take some more time.

**13.** The defaults and delays throughout were on the part of the licensee which were wholly unjustified. The claim for payment of the differential, pressed by the OP No.20/2015, had remained unaddressed till the licensee eventually made the payments in July, 2017. In these circumstances, it is also a case of failure on the part of the State Commission to render a complete and effective adjudication which has resulted in the claim having remained not fully satisfied till date. The appellant had been deprived of the

time value of the money which was due immediately upon the revision of the tariff by Commission's order dated 22.01.2015. In these circumstances, the claim cannot be said to be hit by the provision contained in Order II Rule 2 of CPC and definitely not on the ground that such claim could not have been raised till the revised tariff had been incorporated in the amended PPA.

**14.** On the foregoing facts, and in the circumstances, allowing the distribution licensee to deprive the appellant of the time value of the money due to it would be putting premium on the deliberate defaults committed by it which is neither just nor fair. Thus, the impugned order is set aside. We hold that the appellant is entitled to claim interest on account of late payment in terms of Article 6.3 of the PPA. To leave no scope for doubts and to ensure that the order is properly complied with, we direct that the appellant shall issue a proper invoice in terms of the PPA raising claim of interest properly calculated with reference to the revision of tariff by order of Commission dated 22.01.2015 in OP No.08 of 2013 and serve it on the first respondent (*the licensee*) which, in turn, shall be obliged to make the payment within the prescribed period of time. Given the past conduct of the licensee, we add a note of caution that no default in compliance shall be brooked, any negligence in payment likely to be construed as deliberate, entailing possible penal action.

**15.** The appeal is disposed of in above terms.

**Pronounced in open court on this 18<sup>th</sup> Day of October, 2022.**

**(Sandesh Kumar Sharma)**  
Technical Member

*pr/tp*

**(Justice R.K. Gauba)**  
Officiating Chairperson