

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

**IA NOS.964 & 53 OF 2022 IN
DFR NO. 11 OF 2022 &
IA NOS.1702, 1419, 54, 1054, 55, 1156, 1368, 1369, 1370 & 183 OF 2022
AND
APPEAL NO.390 OF 2022 &
IA NO.1547 Of 2022**

Dated: 14.10.2022

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

DFR NO. 11 OF 2022

In the matter of:

**KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED**

A Company registered under the provisions of
The Companies Act 1956 and having
Registered office at
Kaveri Bhawan, Bangalore -560009
Represented herein by its
Financial Advisor (Regulatory Affairs)

... Appellant(s)

VERSUS

**1. KARNATAKA ELECTRICITY REGULATORY
COMMISSION**

Rep. by its Secretary,
No.16, C-1, Miler Tank Bed Area,
Vasanth Nagar, Bengaluru – 560052

2. SOLITAIRE POWERTECH PRIVATE LIMITED

A Company registered under the provisions of
The Companies Act 1956 and having
Registered office at
616A, 16A, Sixth Floor,
Devika Tower, Nehru Place,
New Delhi – 110019
Rep. by its Director

**3. SOLAR ENERGY CORPORATION
OF INDIA LIMITED**

Rep. by its Managing Director,
1st Floor, D-3, A-Wing, District Centre,
Religare Building,
Saket, New Delhi - 110017

... Respondent(s)

Counsel for the Appellant (s) : Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. S.Sriranga, Sr. Adv.
Mr. Sumana Naganand
Ms. Samiksha Jain

Counsel for the Respondent (s) : Mr. Parag P. Tripathi, Sr. Adv.
Mr. Hemant Sahai
Ms. Molshree
Mr. Nishant Talwar for R-2

APPEAL NO.390 OF 2022

In the matter of:

M/S SOLITAIRE POWERTECH PRIVATE LIMITED

Rep. by Director
A616A, 16A, Sixth Floor,
Devika Tower, Nehru Place,
New Delhi – 110019

... Appellant(s)

VERSUS

**1. KARNATAKA ELECTRICITY REGULATORY
COMMISSION**

Rep. by The Secretary,
No.16, C-1, Milers Tank Bed Area,
Vasanth Nagar, Bengaluru-560052.

**2. KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED**

Rep. by its Chairperson
2nd Floor, KPTCL, Kaveri Bhavan,
Bengaluru - 560009

**3. SOLAR ENERGY CORPORATION
OF INDIA LIMITED**

Rep. by Chairman
1st Floor, D-3, A-Wing, District Centre,
Religare Building,
Saket, New Delhi - 110017

New Address:

**SOLAR ENERGY CORPORATION
OF INDIA LIMITED**

Rep. by Chairman

06th Floor, Plate B, NBCC Office,
Block Tower-2, East Kidwai Nagar,
New Delhi 110 023

... Respondent(s)

Counsel for the Appellant (s) : Mr. Parag P. Tripathi, Sr. Adv.
Mr. Hemant Sahai
Ms. Molshree
Mr. Nishant Talwar

Counsel for the Respondent (s) : Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. S.Sriranga, Sr. Adv.
Mr. Sumana Naganand
Ms. Samiksha Jain for R-2

J U D G M E N T (Oral)

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

1. Both the captioned appeals arise out of same proceedings before the respondent *Karnataka Electricity Regulatory Commission* (for short "KERC", or "the State Commission"), the starting point of the controversy being filing of OP no.20/2019 by *Solitaire Power Tech Private Limited* (hereinafter referred to as "Solitaire"), appellant in the second captioned appeal, the prime relief thereby sought against *Karnataka Power Transmission Corporation Limited* ("KPTCL"), the appellant in first captioned appeal, being compensation for non-completion of evacuation facilities in time. The State Commission, by its order dated 14.09.2021, upheld the grievances of Solitaire as to its claim for compensation and directed as under:

"The petition is partly allowed holding that:

- (i) *the petitioner is entitled to compensation/damages at the rate of agreed tariff of Rs.4.43 per unit for the generation loss to the extent for which the generation from the Power Project of the petitioner could not be evacuated between 01.08.2020 till the transmission congestion/constraint subsists;*
- (ii) *the petitioner shall submit to the Commission, the calculation showing compensation/damages becoming due based on the monthly*

- generation losses from 01.08.2020 to the date of this Order within eight weeks from the date of this order, marking a copy of the same to the 1st respondent (KPTCL);*
- (iii) *the amount so claimed in sub-para (ii) of this Order would be verified and determined by the Commission after hearing the 1st respondent (KPTCL) and the petitioner, and the amount so determined and found due shall be paid in lump-sum by the 1st respondent (KPTCL) to the petitioner within 8 (eight) weeks from the date of order verifying and determining the calculations submitted by the petitioner. In default of payment of compensation by the 1st respondent (KPTCL), it shall pay interest at 6% per annum on the said amount so found due from the date of default till the date of payment;*
- (iv) *the petitioner shall submit its claims for compensation/ damages at the rate of agreed tariff of Rs.4.43 per unit for the generation loss to the extent for which the generation from the Power Project of the petitioner could not be evacuated between the date of this Order and the dates up to which the transmission congestion/constraint subsists on monthly basis to the 1st respondent (KPTCL), and the compensation/damages so claimed shall be paid within one week from the date of receipt of such monthly claims, in default the 1st respondent (KPTCL) shall pay interest at 6% per annum on the monthly amount claimed from the date of default till the date of payment; and*
- (v) *except to the extent stated above, the petitioner is not entitled to any other reliefs as prayed for in the petition.”*

2. We are informed that pursuant to directions as aforesaid in the order dated 14.09.2021, Solitaire submitted, particularly with reference to sub-para (ii) of the operative part (supra), an affidavit sworn on 06.11.2021 for presenting calculation of monthly generation losses from August 2020 till September 2021, the transmission congestion / constraints having, however, continued (till date), the calculation thus being for a limited period, the request being for verification and appropriate directions for payment.

3. It appears that in the proceedings that were taken out in the wake of order dated 14.09.2021, the Commission heard the parties on 22.03.2022 when it was pointed out on behalf of KPTCL that appeal (the first captioned matter) had been filed before this tribunal challenging order dated 14.09.2021 passed in OP no.20/2019. The matter was thereafter again heard on 21.06.2022 when the Commission recorded the following daily order:

“Case is called for hearing on 21.06.2022. Counsel for petitioner Sri. Hemanth Sahai for HAS Advocates present and prays for release of pending payments. Counsel for Respondent Smt. Sumana Naganand for Just Law present, submits that in view of pending Appeal before the Hon’ble APTEL as also to verify the methodology of calculations arrived at by the petitioner and hence no payment could be paid. Petitioner counsel submitted that there is no bar in releasing payments though Appeal is filed in APTEL and prays for release of at least 75% of the dues. Commission heard both counsels and directed Respondent counsel to release 50% of pending dues within four weeks’ time, balance is subject to outcome of the pending Appeal before the Hon’ble APTEL and to file compliance affidavit on or before 20.07.2022. Further directed both counsels to file memo of calculation. Call on 20.07.2022.”

4. The above order was followed by yet another order of similar nature recorded on 20.07.2022:

“Case is called for hearing on 20.07.2022. Counsel for Petitioner Sri. Hemanth Sahai for HAS Advocates present, submits that the respondent has failed to comply the orders of the Commission dated 21.06.2022 for release of 50% of dues and prays for directions for immediate payment, Senior Counsel Sri S. Sriranga for Just Law appeared for Respondent, ,prays another four weeks’ time for compliance for which counsel for petitioner objected. Commission directed the Senior Counsel for Respondent to release 50% of the dues (Rs.6.25.55.734/-) before 23.08.2022 and to file compliance affidavit, call on 23.08.2022.”

5. It is pointed out that during the proceedings in above nature before the Commission, KPTCL moved an application on 15.07.2022 seeking period of four weeks from 20.07.2022 *“to make payment as directed in the order dated 21.06.2022”*.

6. The KPTCL, however, subsequently moved an application (IA no.3/2022) on 23.08.2022 praying to the Commission for recall of orders dated 21.06.2022 and 20.07.2022. The said application resulted in order dated 14.09.2022, the observations and directions recorded by the Commission being as under:

“2. We have heard the learned counsel for the parties. On consideration of the material on record and submissions made, the Commission is of the considered view that the order dated 21.06.2022 and 20.07.2022, are to be recalled for the following reasons:

a) It is not disputed by the learned counsel for the petitioner that there is no enforceable dues or debt, until the Commission determines the compensation/damages after considering the rival claims of the parties.

b) It is contended by the learned counsel for the petitioner that the 1st respondent KPTCL, has not filed any statement of calculation to estimate the generation loss as against the statement of calculation filed by the petitioner and that the objection filed by the 1st respondent KPTCL is vague and requires to be rejected and that the amount claimed by petitioner being a huge amount, the impugned order dated 21.06.2022 is justified and valid. That contention of the petitioner cannot be accepted unless there is an enforceable liability against the 1st respondent. A claim by a party, though appears to be prima facie acceptable, there cannot be a direction against the rival party for payment of whole or any portion of such claim if disputed, without there being an adjudication of the same.

c) The final order dated 14.09.2021 passed in OP No 20/2019, is in the nature of a preliminary decree directing the parties to produce further material to ascertain the quantum of generation loss for certain period. The compensation/damages payable is to be determined by the Commission on consideration of the material placed by the parties. The present case is at the stage of enquiry of the rival claims of the parties.

3. For the above reasons the order dated 21.06.2022 directing the respondent to pay 50% of the claim made by the petitioner and the order dated 20.07.2022 extending time for payment, are hereby recalled.”

7. The first captioned appeal of KPTCL challenges the original decision dated 14.09.2021 whereby the Commission had upheld the claim of Solitaire for compensation on above-mentioned grounds, determining the rate at which the damages are to be paid and the period from which such right would

inure (i.e. 01.08.2020). The said very order is also under challenge by appeal no.338/2021, filed by Solitaire, claiming right to compensation from an earlier date (the date of commissioning of the project). The pleadings in appeal no.338/2021 have since been completed and the said matter is now in the *List of Finals* expected to come up for hearing in due course in its turn.

8. We have heard learned counsel on both sides. We are of the view that the proceedings before the State Commission in the matter of determination of the compensation on the basis of principles decided by order dated 14.09.2021 of the Commission are yet inchoate. There is no exercise undertaken till date by the State Commission for *verification* of the calculation submitted by Solitaire for compensation to be directed to be paid nor any determination made as was assured by the order dated 14.09.2021. In these circumstances, the directions for certain payments to be made may have been premature, more in the nature of enforcement of the order even before it was finally passed. The Commission, in these circumstances, appears to have been within its rights and jurisdiction to recall the said order. At the same time, we must also observe that the Commission has failed to properly carry the responsibility arising particularly out of its own order dated 14.09.2021 to a logical end. The Commission sits in the proceedings from which the present matter arises as a substitute for the civil court. It could not have proceeded to execute the order without passing the final order of determination of the amount payable by the KPTCL. Because of the misdirected approach more than a year has elapsed without any relief coming the way of the claimant, this being unfair if it is rightfully entitled thereto.

9. At this stage, the learned senior counsel for each of the appellants before us, having taken instructions, submit that they may be permitted to withdraw the present appeals reserving their respective contentions agitated

here to be pressed for decision if the need survives in future, though agreeing that the Commission must proceed to determine the amount payable in terms of the order dated 14.09.2021 expeditiously so that the proceedings before the Commission stand concluded at an early date.

10. We dispose of the appeals as withdrawn. We reserve the contentions of both sides on the objections that are taken by KPTCL to the order dated 14.09.2021 to be pressed in due course in future proceedings. Subject to the decision on appeal no.338/2021, which continues to remain pending on the board of this tribunal, it having a bearing on the issue as to from which date Solitaire is entitled to received compensation, we direct the State Commission to verify the calculation already submitted by Solitaire after hearing the parties, and return clear findings as to the amount that is to be directed to be paid by KPTCL unto Solitaire, giving clear directions as to the timelines for such purposes so that the order becomes enforceable subject, of course, to such remedies as may be available to both the parties under the law. Given the time which has been frittered away on account of misdirected approach adopted by it thus far, we would expect the Commission to take up the matter on priority and pass the necessary orders in above light expeditiously at an early date preferably within two months. Needless to add, the Commission will not indulge the parties in any unnecessary adjournments.

11. The appeals and applications filed therewith are disposed of in above terms.

Pronounced in open court on this 14th Day of October, 2022

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson