

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

EP NO. 6 of 2021

Date : 07.10.2022

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

In the matter of:

1. **Chennamangathihalli Solar Power Project LLP,**
Through its Designated Partner
Sri Sidram Kaluti,
BC 109, Davidson Road,
Camp : Belagavi, Karnataka – 590001.

2. **Sri G. Mahesha,**
No. 83/A, 5th main,
1st Cross, Pramod Layout,
Pantharapalya, Bengaluru,
Karnataka – 560039.

.... Petitioner(s)

Versus

1. **Bangalore Electricity Supply Company Ltd.**
Through its Managing Director
KR Circle, Bengaluru – 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 Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Purna Priyadarshini
Ms. Priyashree Sharma PH,
Mr. Geet Ahuja

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

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

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

1. The claim of the petitioner for direction to the respondent Distribution Licensee to pay *Late Payment Surcharge* (LPS) on the differential amount of tariff, with particular reliance on Article 6.4 of the PPA, as pressed through the execution petition at hand, is founded essentially on the consequences statedly flowing from Judgment dated 14.09.2020 of this tribunal in Appeal No. 351 of 2018, which was upheld, by order dated 18.12.2020, by Hon'ble Supreme Court in Civil Appeal No. 3958 of 2020.

2. The petitioner had earlier approached this tribunal by a Contempt Petition alleging non-compliance particularly on account of non-payment of differential tariff. But after issuance of notice on the said petition, by order dated 13.01.2021, the licensee paid the differential tariff, though declining to pay the LPS component as is being claimed. The Contempt Petition was disposed of by this tribunal by Order dated 09.04.2021, the relevant part thereof reading thus:

“22. At no point of time, the dispute pertaining to late payment surcharge/interest was raised, considered and decided before the Commission or this Tribunal or the Hon'ble Supreme Court. Therefore, in the absence of clear cut order/direction to the Respondent BESCO to pay late payment surcharge/interest on differential amount of tariff which was paid beyond the time limit

in terms of PPA, we cannot opine that there exists a wilful disobedience of the directions of this Tribunal. Hence, the very contempt proceedings cannot be entertained. Accordingly, the proceedings in the instant petition being Contempt Petition No. 1 of 2021 are closed.

However, the Petitioner/complainant is at liberty to approach the appropriate forum seeking the relief in question and the same shall be considered strictly in accordance with law and procedure.”

3. It is against the above backdrop that the present execution petition was filed on the contention that liability to pay LPS is a logical and naturally corollary in view of restoration of tariff from Rs. 4.36 to Rs. 8.40, reference being made, *inter alia*, to Article 6.4 of the PPA, which reads as under:

“6.4 Late Payment Surcharge: In the event of delay in payment of a monthly bill being made by BESCO after the due date, a late payment surcharge shall be payable to the SPD at the rate of 1.0% per month on the bill amount (being “Late Payment Surcharge”), computed on a pro rata basis on the number of days of the delay in payment. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.”

4. The respondent Distribution Licensee resists the execution proceedings on the ground that the claim of LPS was neither pressed before the commission or in appeal before this tribunal nor in Civil Appeal before Hon’ble Supreme Court. It was also submitted that the LPS not

having been earlier claimed, the petitioner is now precluded from claiming it at this late a stage.

5. The learned senior counsel for the petitioner, however, submitted that the Original Petition filed before the State Commission which led eventually to challenge by appeal No. 351/2018, decided by this tribunal on 04.09.2018, was submitted at a stage anterior to the commissioning of the project and, therefore, the claim of LPS could not have been raised at such earlier point of time. He, at the same time, sought liberty to withdraw the present execution petition and instead approach the State Commission by an appropriate petition invoking its jurisdiction to adjudicate upon the claim of LPS as is claimed against the backdrop noted above.

6. While we allow the petition at hand to be withdrawn and grant liberty as is prayed, we do not wish to express any opinion on the objection raised by the Distribution Licensee, leaving the same to be considered (if so pressed) first by the State Commission as and when the matter comes up before that forum. Needless to add, since a lot of time has elapsed while the petitioner has been agitating the claim for LPS by the execution proceedings at hand before this tribunal, the time spent there will have to be discounted and cannot come in the way of such petition being filed or entertained. We, thus, give liberty to the petitioner to approach the State

Commission by a petition in the above mentioned nature within four (04) weeks from today.

7. The petition is disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 07TH

DAY OF OCTOBER 2022

(Sandesh Kumar Sharma)
Technical Member

tpd/mkj

(Justice R.K. Gauba)
Officiating Chairperson