

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 207 OF 2017

Dated: 03.07.2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

SRI MURRALI M. BAALADEV

Age about 39 years,
No.2, 1st Floor, B.V.K. Iyenagar Road,
Chikpet Circle,
Bangaluru – 560053

... Appellant

Versus

**1. THE KARNATAKA RENEWABLE ENERGY
DEVELOPMENT LIMITED**

Represented by its Managing Director
No.39, “Shanthi Gruha”,
Bharath Scouts & Guides Building,
Opp.: The Chief Post Master General Office,
Palace Road, Bengaluru-560001

**2. BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED,**

Rep. by its Chairperson
K.R. Circle, Bengaluru-560001

**3. KARNATAKA ELECTRICITY REGULATORY
COMMISSION**

Represented by its Chairperson
9/2, 06th & 07th floor, Mahalaxmi Chambers,
M.G. Road, Karnataka,
Bangalore-560001

... Respondent(s)

Counsel on record for the Appellant(s) : Ujjal Banerjee
Counsel on record for the Respondent(s) : Prashant Kumar
Ray Vikram Nath
Sweta Ranjan for Res.1
Sumana Naganad
Garima Jain
Tushar Kanti Mahindroo
Arnav Khanna for Res.2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant, a farmer in city of Bangalore, State of Karnataka, is aggrieved by the order dated 28.07.2016 of the 3rd respondent Karnataka Electricity Regulatory Commission ("KEREC" in short) whereby appellant's prayer to determine tariff for his Solar Photo Voltaic Power Plant @ Rs.8.40 per unit as per the generic tariff order dated 10.10.2013 has been denied and he has been held entitled to lower tariff @Rs.6.51 per unit as per the subsequent solar tariff order dated 30.07.2015.

2. The 1st respondent is Karnataka Renewable Energy Development Limited ("KREDL" in short) which is the nodal agency for facilitating the implementation of guidelines issued by Government of Karnataka under the Solar Policy 2014-21. The 2nd respondent is the distribution licensee operating in the concerned area.

3. A generic tariff order dated 10.10.2013 was issued by 3rd respondent Commission for Solar Photo Voltaic MW Scale Power Plants wherein the

tariff was fixed at Rs.8.40 per unit with effect from 01.04.2013 applicable to all grid connected Solar PV Generators, Solar Thermal Power Generators, Rooftop Solar PV Generators entering into Power Purchase Agreements (PPAs) on or after 01.04.2013 and during the control period of the tariff order i.e. till 31.03.2018.

4. Under the Solar Policy 2014-21 of the Government of Karnataka, guidelines were issued vide notification No. EN VSC 2014 on 25.08.2014 inviting applications from eligible landowners for awarding establishment of 143MW capacity Solar PV Power MW Scale Plants and to enter into PPAs with the concerned electricity supply company (ESCOM). The 1st respondent KREDL was the nodal agency for facilitating the implementation of these guidelines.

5. Accordingly, as per these guidelines KREDL issued newspaper publications on 19.09.2014 inviting applications from the eligible landowners to be submitted online on 09.10.2014 at 11AM. The allotments were to be done on the basis of seniority with regards to date and time of receipt of applications i.e. on first come first serve basis.

6. The appellant also submitted online application on the said date for setting up of a solar power plant of 3 MW capacity on land bearing survey No.350/2, Village Venkatapura, Taluk Pavagada, District Tumkur, Karnataka.

7. A Committee was formed for evaluation of online applications under the Chairmanship of the Managing Director of 1st respondent KREDL. The Committee evaluated the applications and issued Letters of Award (LoA) to

the qualified applicants on 17.03.2015 with the request to enter into PPAs with the concerned ESCOMs within 60 days from the date of LoAs. The concerned ESCOMs were also requested to enter into the PPAs with the awardees.

8. The appellant and four other applicants were found to have uploaded wrong details of the Demand Draft in their respective applications. They made a representation to KREDL stating that the Demand Drafts were drawn on the correct name but while uploading, wrong details were entered by them due to oversight and therefore their case should also be considered.

9. These representations were referred by KREDL to Additional Chief Secretary, Energy Department, Government of Karnataka on 25.08.2015. A clarification was issued by the Government of Karnataka on 28.08.2015 stating that in case these applicants including the appellant had furnished the documents as well as the Demand Drafts to their respective ESCOMs within eight days from the date of submission of online applications, their applications should be considered. Accordingly, the LoAs were issued to the appellant and those four other applicants on 28.08.2015 itself.

10. Meanwhile, the 3rd respondent Commission had issued another generic tariff order dated 30.07.2015 revising the tariff for Solar Photo Voltaic MW Scale Power Plants to Rs.6.51 per unit.

11. It is the case of the appellant that he received the Letter of Award dated 28.08.2015 on 31.08.2015 and immediately approached the 2nd respondent BESCOM on 02.09.2015 with a request to execute the PPA at the previous generic tariff of Rs.8.40 per unit but the BESCOM refused to mention the

tariff @ Rs.8.40 per unit in the PPA and informed the appellant that he was entitled to tariff @ Rs.6.51 per unit as per the generic tariff order dated 30.07.2015. The appellant approached the 1st respondent KREDL with a representation in this regard requesting for a direction to 2nd respondent BESCOM to execute the PPA @ Rs.8.40 per unit but KREDL said that it has no authority to pass any such directions.

12. On these facts and circumstances, the appellant approached the 3rd respondent Commission by way of petition bearing O.P. No.25/2016 which has been dismissed vide the impugned order.

13. We have heard the learned counsel for the appellant. Pertinent to note here that none appeared on behalf of the respondent to present arguments on their behalf. We have also considered the entire material on record including the written note filed on behalf of the appellant.

14. In order to analyze the case of the appellant, we feel it pertinent to quote Paragraph 3 of the generic tariff order dated 30.07.2015, which specifies its applicability, hereunder:-

“In view of the above, the Commission, in modification of its Order dated 10th October, 2013, decided that the norms and tariff determined in this Order shall be applicable to new grid connected MW scale Solar PV and Solar Thermal Power Plants, entering into Power Purchase Agreement (PPA) on or after 1st September, 2015 and getting commissioned during the period from 1st September, 2015 to 31st March,

2018 for which PPAs have not been entered into, prior to 1st September, 2015.

In respect of projects that are commissioned during the period from 1st September, 2015 to 31st March, 2018 for which PPAs have been entered into and submitted to the Commission prior to 1st September, 2015 for approval, the tariff as per the said agreement shall be applicable.

The tariff determined in this Order shall be applicable for the term of the PPAs entered into in respect of projects covered by this Order. ...”

15. This order has fixed a deadline of 01.09.2015 specifying that the solar power projects which entered into the PPAs on or after the said date and are commissioned during the period 01.09.2015 to 31.03.2018 would be entitled to tariff at the reduced rate of Rs.6.51 per unit. It further provides that the projects that are commissioned during the period from 01.09.2015 to 31.03.2018 but for which PPAs have been entered into and submitted to the Commission prior to 01.09.2015 for approval, the tariff as per the said PPA i.e. higher tariff of Rs.8.40 per unit shall be applicable.

16. It is not in dispute that in the instant case, the appellant did not enter into a PPA with the 2nd respondent BESCO prior to 01.09.2015.

17. In the impugned order, the Commission has held that the time frame specified in the generic tariff order dated 30.07.2015 for executing the PPA

is mandatory for attracting the higher tariff of Rs.8.40 per unit and it has no discretion to relax the said time limit. Accordingly, the Commission did not find it necessary to delve upon the reasons for delay in issuance of LoA to the appellant. It would be useful to reproduce the relevant Paragraph of the impugned order hereunder: -

“(g) We are of the considered opinion that the above principle applies to the present case and it should be held that the execution of the PPA within a specified time-frame, for getting a specified tariff, is mandatory and this Commission has no discretion to relax the time limit to enable the Petitioner to seek the tariff of Rs.8.40 per unit, for a PPA to be executed on or after 1.9.2015, for any reason whatsoever.

(h) In view of the above principles of law, it is not necessary for this Commission to decide as to who was at fault for the delay in issuing the letter of Award to the Petitioner. For the above reasons, we answer Issue No.(1) in the negative.”

18. It is vehemently argued on behalf of the appellant that the law cannot compel a person to do the impossible. It is pointed out that in pursuance to clarification issued by the Government of Karnataka, LoA was issued to petitioner on 28.08.2015 which he received on 31.08.2015, and therefore, it was absolutely impossible for him to execute PPA with 2nd respondent on that very day and to submit it to the Commission for approval. It is submitted that in case, the clarification had been issued at some early date thereby

giving a reasonable time for the appellant to enter into the PPA with the BESCOM, the situation in which the appellant is placed, would not have arisen. It is the submission of the learned counsel that the 1st respondent KREDL committed inordinate delay in referring the representation of the appellant to the Government of Karnataka as a result of which the clarification was issued as late as on 28.08.2015, for which the appellant cannot be blamed and penalized. He argued that the Commission has committed a grave error in refusing to exercise its “power to relax” in the given circumstances and in refusing to look into the actual reasons for delay in execution of PPA between the appellant and 2nd respondent BESCOM.

19. We may note that the tariff orders are issued by the Electricity Regulatory Commissions in discharge of their regulatory functions. These are distinct from Tariff regulations framed in pursuance to legislative powers conferred under sections 178 and 181 of Electricity Act, 2003.

20. Therefore, the Commission has erred in holding that it has no discretion in relaxing the time period specified in the Generic Tariff Order dated 30.07.2015. On one hand the Government of Karnataka waived off the error committed by appellant in uploading the particulars in the online application dated 09.10.2014 pursuant to which LoA was issued to him on 25.08.2015 but on the other hand the reprieve granted to him has been snatched by holding him not entitled to Tariff as per the Generic Tariff Order dated 10.10.2013.

21. It is not in dispute that when the appellant did not find his name in the list of successful applicants on 17.03.2015, he immediately made a

representation to KREDL in this regard. Evidently, the KREDL sat on appellant's representation and did not take any action on it till 25.08.2015 when it was referred to Additional Chief Secretary, Energy Department, Government of Karnataka. KREDL was aware about the dead line of 01.09.2015 specified in Generic Tariff Order dated 30.07.2015 and therefore, should have acted on appellant's representation expeditiously. It has contumaciously delayed action upon the appellant's representation till 25.08.2015. Had it considered the representation and acted upon it with reasonable promptness, there would have been ample time for the appellant to execute PPA well before 01.09.2015.

22. In pursuance to the clarification issued by the Government of Karnataka on 28.08.2015, LoA was issued in the name of appellant on the same day which was received by him on 31.08.2015 thereby providing no time at all to him to execute PPA with 2nd respondent before 01.09.2015. It is the KREDL which is responsible for the unreasonable and unexplained delay in consideration of Appellant's representation for which he can not be blamed and penalized.

23. By communicating LoA to appellant on 31.08.2015 and requiring him to execute PPA with BESCO on same day, he was called upon to do what was clearly impossible. State or an instrumentality of State like KREDL are not expected to compel a person to do what is impossible.

24. In view of these facts and circumstances of the case, we are unable to sustain the impugned order of the Commission as the same is absolutely erroneous. The appeal succeeds. The impugned order is hereby set aside.

The appellant is held entitled to Tariff @ Rs.8.40 per unit in terms of Generic Tariff Order dated 10.10.2013 with the condition that he executes PPA in this regard with 2nd respondent within two weeks from the date of this Order.

Pronounced in the open court on this the 3rd day of July, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / ~~NON-REPORTABLE~~

tp

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA No. 618 OF 2024 IN APPEAL No. 207 OF 2017

Dated: 03.07.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Sri Murralli M. Baaladev

.... Appellant(s)

Versus

Karnataka Renewable Energy Development Ltd. &
Ors.

.... Respondent(s)

Counsel on record for the Appellant(s) : Ujjal Banerjee for App. 1

Counsel on record for the Respondent(s) : Prashant Kumar
Ray Vikram Nath
Sweta Ranjan for Res. 1

Sumana Naganand
Garima Jain
Tushar Kanti Mohindroo
Arnav Khanna for Res. 2

ORDER

IA No.618 OF 2024
(Application for Recall) (R-1)

1. By way of this application, the 1st respondent Karnataka Renewable Energy Development Limited (KREDL) has sought an opportunity to present its arguments in this appeal.

2. We have heard the learned counsel for the applicant and have perused the application.

3. This appeal was in the 'List of Finals' and was taken up from there in its turn on 06.02.2024 for hearing. None appeared on behalf of the respondent/applicant on that date and we directed issuance of fresh notice to them returnable on 20.02.2024. Again, nobody appeared on behalf of the respondent/applicant on 20.02.2024 and in the interest of justice we deferred the hearing of appeal to 04.03.2024. When none appeared for the respondent/applicant on 04.03.2024 also, we heard the appellant's counsel and reserved the judgment.

4. The instant application has been filed on 08.04.2024.

5. It is submitted on behalf of the applicant / 1st respondent that its previous counsel had been designated as Senior Advocate much before 04.03.2024 for which reason he could not appear in this appeal before this Tribunal on the said date. It is further submitted that when the applicant contacted its previous counsel in third week of March, 2024 it was informed that the appeal has been heard ex-parte on 04.03.2024 and judgment has been reserved. New counsel is stated to have been engaged who has filed the present application seeking an opportunity to be heard.

6. Having heard the respondent/applicant's counsel and upon perusal of the contents of the application, we feel that not only has the applicant been negligent and erratic in defending the appeal but even the application has been filed in most casual and half-hearted manner. The name of applicant's previous counsel who is stated to have been designated as a

Senior Advocate prior to 04.03.2024 has nowhere been mentioned in the entire application. Even the specific date on which he was designated as Senior Advocate is nowhere stated.

7. Further, the application nowhere mentions the date when the applicant received the fresh notice of the appeal issued by the Tribunal on 06.02.2024. The learned counsel for the applicant has utterly failed to explain as to why the applicant did not contact its counsel immediately upon receipt of fresh notice from this Tribunal and why it waited till third week of March for making enquiries from its counsel about the appeal.

8. We may also note that as per established practice, whenever an advocate is designated as Senior Advocate he informs his clients about the same so as to enable them to engage a new counsel. It appears that the applicant had received information from its previous counsel about his having been designated as a Senior Advocate but even then, remained in deep slumber and did not engage a fresh counsel. It is not the case of the applicant that no such information had been received by it from its previous counsel.

9. More importantly, the applicant has nowhere stated in entire application as to what prevented it or its counsel in appearing in this appeal on 20.02.2024.

10. Hence, we find the application absolutely vague, bereft of material particulars and sans any merit. It does not disclose any plausible ground for invoking indulgence from this Tribunal. Allowing an application like the instant one would tantamount to rewarding the applicant for its utmost

negligent, causal and lackadaisical approach towards the proceedings of this appeal and also would be a mockery of the judicial system.

11. Therefore, the application is hereby dismissed.

Pronounced in the open court on this the 3rd day of July, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA No. 646 OF 2024 IN APPEAL No. 207 OF 2017

Dated: 03.07.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Sri Murralli M. Baaladev Appellant(s)

Versus

Karnataka Renewable Energy Development Ltd. & Respondent(s)
Ors.

Counsel on record for the Appellant(s) : Ujjal Banerjee for App. 1

Counsel on record for the Respondent(s) : Prashant Kumar
Ray Vikram Nath
Sweta Ranjan for Res. 1

Sumana Naganand
Garima Jain
Tushar Kanti Mohindroo
Arnav Khanna for Res. 2

ORDER

IA No.646 OF 2024
(Application for Recall) (R-2)

1. This application has been filed by the 2nd respondent Bangalore Electricity Supply Company Limited (BESCOM) seeking an opportunity to present its arguments in the appeal.

2. We have heard the learned counsel for the applicant and have perused the application.

3. This appeal was in the 'List of Finals' and was taken up from there in its turn on 06.02.2024 for hearing. None appeared on behalf of the respondent/applicant on that date and we directed issuance of fresh notice to them returnable on 20.02.2024. Again, nobody appeared on behalf of the respondent/applicant on 20.02.2024 and in the interest of justice we deferred the hearing of appeal to 04.03.2024. When none appeared for the respondent on 04.03.2024 also we heard the appellant's counsel and reserved the judgment.

4. The instant application has been filed on 15.04.2024.

5. Learned counsel for the applicant / 2nd respondent submitted that previous counsel engaged by applicant was unable to appear before this Tribunal as he had been designated as Senior Advocate. It is conceded that fresh notice of appeal issued by this Tribunal on 06.02.2024 was received by the applicant on 15.02.2024 and immediately thereafter steps were taken to engage a new counsel. It is submitted that due to inadvertence nobody appeared on behalf of the applicant / 2nd respondent before this Tribunal on 20.02.2024 and 04.03.2024.

6. The fact that the applicant had admittedly received the fresh notice of this appeal on 15.02.2024 indicates that it was aware about the next date of hearing in the appeal i.e. 20.02.2024. Even then none appeared on its behalf on that date as well as on the subsequent date i.e. 04.03.2024.

7. It is nowhere stated in the application as to when did the applicant engage the new counsel. If it was done before 20.02.2024, he should have appeared before this Tribunal on that date or at least on the subsequent date i.e. 04.03.2024. What the application merely states is that due to

inadvertence nobody appeared on behalf of the applicant on 20.02.2024 and 04.03.2024. Was it the inadvertence / oversight of applicant or its counsel? Nothing is stated in this regard in the entire application.

8. What appears from the conduct of the applicant is that it remained in deep slumber even after the receipt of fresh notice of appeal from this Tribunal on 15.02.2024. It did not engage any new counsel despite receipt of such notice and simply avoided to appear before this Tribunal on 20.02.2024 and 04.03.2024. The negligent and callous attitude of the applicant is also manifest from the fact that the instant application has been filed more than one month after 04.03.2024 when the appeal was heard ex-parte and judgment was reserved. Thus, the application, apart from not disclosing any plausible ground for absence of applicant or its counsel before this Tribunal on 20.02.2024 and 04.03.2024, is also highly belated.

9. We do not feel inclined to show any indulgence towards the applicant who has shown such negligent, casual and lackadaisical approach towards the proceedings of this appeal. Doing so would be a mockery of judicial system.

10. Hence, the application is hereby dismissed.

Pronounced in the open court on this the 3rd day of July, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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