

COURT-I

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

**IA NO.962 of 2019 in APPEAL NO. 42 OF 2018 &
IA No. 1370 of 2019 & IA No. 214 of 2018
APPEAL No. 78 OF 2018 & IA NO. 358 OF 2018
APPEAL NO. 117 OF 2018 & IA NO. 510 OF 2018
APPEAL NO. 118 OF 2018 & IA NO. 475 OF 2018
APPEAL NO. 206 OF 2018 & IA NO. 780 OF 2018
APPEAL NO. 207 OF 2018 & IA NO. 775 OF 2018
APPEAL NO. 227 OF 2018 & IA NO. 910 OF 2018
APPEAL NO. 268 OF 2018 & IA NO. 1178 OF 2018
APPEAL NO. 271 OF 2018 & IA NO. 1065 OF 2018
APPEAL NO. 196 OF 2018 & IA NO. 515 OF 2018
APPEAL NO. 242 OF 2018 & IA NO. 1032 OF 2018
APPEAL NO. 243 OF 2018 & IA NO. 1036 OF 2018
APPEAL NO. 244 OF 2018 & IA NO. 1028 OF 2018
APPEAL NO. 280 OF 2018 & IA NO. 1182 OF 2018
APPEAL NO. 282 OF 2018 & IA NO. 1186 OF 2018
APPEAL NO. 287 OF 2018 & IA NO. 973 OF 2018
APPEAL NO. 288 OF 2018 & IA NO. 1070 OF 2018
APPEAL NO. 357 OF 2018 & IA NO. 1381 OF 2018
AND
APPEAL NO. 254 OF 2018 & IA NO. 1060 OF 2018**

Dated: 5th August, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

**IA NO. 962 of 2019 in APPEAL NO. 42 OF 2018 & IA No. 1370 of 2019
& IA No. 214 of 2018**

In the matter of:

**M/s Fortune Five Hydel Projects Pvt. Ltd. ... Appellant(s)
Vs.
Karnataka Electricity Regulatory Commission & Ors. ... Respondent(s)**

**Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar**

Mr. Krishnesh Bapat

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL No. 78 OF 2018 & IA NO. 358 OF 2018

In the matter of:

M/s Green Infra Wind Power Generation Ltd. ... Appellant(s)
Vs.
Karnataka Electricity Regulatory Commission & Ors. ... Respondent(s)

Counsel for the Appellant(s) : Mr. Vishrov Mukherjee
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 117 OF 2018 & IA NO. 510 OF 2018

In the matter of:

Lalpur Wind Energy Private Limited Appellant(s)
Versus
Karnataka Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Ms. Surabhi Pandey
Mr. Parinay Deep Shah
Ms. Ritika Singhal
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 118 OF 2018 & IA NO. 475 OF 2018

In the matter of:

Renew Power Ventures Private Limited Appellant(s)
Vs.
Karnataka Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Ms. Surabhi Pandey
Mr. Parinay Deep Shah
Ms. Ritika Singhal

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 206 OF 2018 & IA NO. 780 OF 2018

In the matter of:

M/s Golden Hatcheries & Ors. Appellant(s)
Vs.
Karnataka Electricity Regulatory Respondent(s)
Commission & Anr.

Counsel for the Appellant(s) : Ms. Surabhi Pandey
Mr. Parinay Deep Shah
Ms. Ritika Singhal

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 207 OF 2018 & IA NO. 775 OF 2018

In the matter of:

Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. - Appellant(s)
Versus
Karnataka Electricity Regulatory Commission & Ors. - Respondent(s)

Counsel for the Appellant(s) : Ms. Arunima Kedia

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 & 4 to R-5
Mr. Nithin Saravanan
Ms. Arunima Singh
Ms. Priyadarshini for R-3

APPEAL NO. 227 OF 2018 & IA NO. 910 OF 2018

In the matter of:

M/s Bhuruka Gases Limited & Anr. - Appellant(s)
Versus
Karnataka Electricity Regulatory Commission & Ors. - Respondent(s)

Counsel for the Appellant(s) : Ms. Surabhi Pandey
Mr. Parinay Deep Shah

Ms. Ritika Singhal

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 268 OF 2018 & IA NO. 1178 OF 2018

In the matter of:

Jindal Aluminium Limited - Appellant(s)
Versus
Karnataka Electricity Regulatory Commission & Anr.- Respondent(s)

Counsel for the Appellant(s) : Ms. Surabhi Pandey
Mr. Parinay Deep Shah
Ms. Ritika Singhal
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 271 OF 2018 & IA NO. 1065 OF 2018

In the matter of:

**Central Arecanut and Cocoa Marketing & Processing
Co-operative Limited** - Appellant(s)
Versus
Karnataka Electricity Regulatory Commission & Ors. -Respondent(s)

Counsel for the Appellant(s) : Ms. Ritika Singhal
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 196 OF 2018 & IA NO. 515 OF 2018

In the matter of:

Clean Wind Power (Manvi) Private Limited Appellant(s)
Versus
Karnataka Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Ms. Surabhi Pandey
Mr. Parinay Deep Shah
Ms. Ritika Singhal
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

Mr. Balaji Srinivasan for R-2 to R-4

Mr. Nithin Saravanan
Ms. Arunima Singh
Ms. Priyadarshini for R-5

APPEAL NO. 242 OF 2018 & IA NO. 1032 OF 2018

In the matter of:

M/s Mangalore Energies Pvt. Ltd.

.... **Appellant(s)**

Versus

Karnataka Electricity Regulatory Commission & Ors.

.... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar
Mr. Krishnesh Bapat

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 243 OF 2018 & IA NO. 1036 OF 2018

In the matter of:

M/s Vyshali Energy Pvt. Ltd.

.... **Appellant(s)**

Versus

Karnataka Electricity Regulatory Commission & Ors.

.... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar
Mr. Krishnesh Bapat

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 244 OF 2018 & IA NO. 1028 OF 2018

In the matter of:

M/s Greenko Bagewadi Wind Energies Pvt. Ltd.

.... **Appellant(s)**

Versus

Karnataka Electricity Regulatory Commission & Ors.

.... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar

Mr. Krishnesh Bapat

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 280 OF 2018 & IA NO. 1182 OF 2018

In the matter of:

.... Appellant(s)

M/s Matrix Wind Energy Pvt. Ltd.

Vs.

Karnataka Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar
Mr. Krishnesh Bapat

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 282 OF 2018 & IA NO. 1186 OF 2018

In the matter of:

.... Appellant(s)

M/s Matrix Power (Wind) Energy Pvt. Ltd.

Vs.

Karnataka Electricity Regulatory Commission & Ors. Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar
Mr. Krishnesh Bapat

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 287 OF 2018 & IA NO. 973 OF 2018

In the matter of:

.... Appellant(s)

Graphite India Limited

Versus

Karnataka Electricity Regulatory Commission & Ors.

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Anantha Narayana M.G.

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 288 OF 2018 & IA NO. 1070 OF 2018

In the matter of:

Brindavan Hydropower Private Limited ... **Appellant(s)**
Vs.
Karnataka Electricity Regulatory Commission & Ors. ... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Anantha Narayana M.G.
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 357 OF 2018 & IA NO. 1381 OF 2018

In the matter of:

M/s Matrix Green Energy Pvt. Ltd. **Appellant(s)**
Vs.
Karnataka Electricity Regulatory Commission & Ors. **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr.Adv.
Mr. S. Venkatesh
Ms. Nishtha Kumar
Mr. Krishnesh Bapat
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

APPEAL NO. 254 OF 2018 & IA NO. 1060 OF 2018

In the matter of:

Pragathi Group **Appellant(s)**
Versus
Karnataka Electricity Regulatory Commission & Ors. **Respondent(s)**

Counsel for the Appellant(s) : -
Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1
Mr. Balaji Srinivasan for R-2 to R-5

ORDER**(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)****IA NO.962 of 2019**
(Appln. for clarification)

Leading Appeal No. 42 of 2018 and batch of several other appeals came to be disposed of on merits by Order dated 29.03.2019 by Court-II of this Tribunal. According to the Applicant/Appellant the direction for remitting back the matters to the 1st Respondent – Karnataka Electricity Regulatory Commission (“Commission”) with the direction to pass appropriate orders in the light of observations made in the preceding paragraphs of the Judgment in accordance with law as expeditiously as possible within the time frame of six months is causing confusion, since the matters are listed before the 1st Respondent-Commission for further proceedings though the controversy has already been disposed of on merits by this Tribunal in the above said judgment. Therefore, they have sought for clarification of the operative portion of the Judgment dated 29.03.2019 to the extent referred to above with specific reference to scope and need for remand to 1st Respondent-Commission being restricted to new wind energy purchase now being set up in the state of Karnataka.

This matter is taken up by Court – I since the Judicial Member, who was a party to the Judgment, is retired. The matter is heard along with Technical Member, who was a party to the said judgment.

The earlier Bench framed three main issues to answer the controversy based on the pleadings in all the batch of appeals, which read as under:

Issue No.1:- Whether the impugned order passed by Karnataka Electricity Regulatory Commission modifying the terms & conditions of banking arrangements and concluded contracts, retrospectively, is sustainable in law?

Issue No.2:- Whether the impugned order has been passed in violation of principles of natural justice, doctrine of Promissory estoppels, legitimate expectations, etc?

Issue No.3:- Whether the impugned order has been passed without substantial data / analysis / evidence and is a non-reasoned / non-speaking order?

So far as first issue is concerned, the Bench opined that amendment in the terms and conditions on executed WBAs during the currency of its validity is considered as beyond the scope of regulatory

ambit of the State Commission. They further opined that once RE generators have come forward to invest in the sector and have given representations such as flexibility in banking and consumption pattern, the same cannot be taken away by simply passing an order which is not permissible under the settled principles of law. On merits they further opined that small RE plants cannot be compared with major/mega RE plants which are generally supplying power to inter-state and are taken care of, for their balancing on the regional/all India basis. After discussion at Point No. 14.16, they opined that amendment of any nature has to take place for future projects and not for the projects which are already commissioned for which wheeling and banking agreements have been executed and are valid for a period ten years from the date of execution.

So far as second issue of violation of principles of nature justice/promissory estoppels and legitimate expectation, at Point No. 15.13, the Bench opined that amendments proposed to the agreements were effected *suo moto* by the State Commission since none of the parties to the agreements were heard prior to the alleged amendments. Therefore, the Bench opined that the 1st Respondent/Commission passed the impugned order in gross violation of principles of natural

justice etc., since there was no opportunity of being heard to both the parties.

So far as third issue is concerned, the Bench observed that there was no additional data or analysis or ground for modifying the decision on the wheeling and banking arrangement etc., Accordingly, the Bench opined that the 1st Respondent-State Commission was not justified in modifying the terms and conditions of banking arrangements in the concluded contracts, therefore, the impugned order is not sustainable in the eyes of law. Over and above this, they also opined that principles of natural justice were not followed.

If the Bench did not render its opinion on first and third issues on merits and if it was only with reference to issue of violation of principles of natural justice, then the matter definitely needs to be remanded to the 1st Respondent-Commission for fresh consideration. Since the first and third issues were decided on merits, which ultimately resulted in the Judgment opining that modification of terms and conditions of banking arrangements in the concluded contracts is not sustainable in the eyes of law, the direction remanding the matter for fresh consideration would not arise. If the parties are aggrieved by the Judgment on merits

pertaining to issue Nos. 1 and 3, they are at liberty to approach the higher forum seeking appropriate remedy. Since the Judgment clearly indicated that modification to the terms and conditions of banking arrangement in concluded contracts is bad in law and further opined that such modifications could be applied to future contracts, nothing remains for fresh consideration of the matter by the 1st Respondent-Commission. Therefore, the paragraph in the order portion which directs remand of the matter to the Commission for fresh consideration is hereby deleted.

With the above observations, the IA is disposed of. No order as to costs.

Pronounced in the open court on this day the 5th August, 2019.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

Dated: 5th August, 2019

REPORTABLE/~~NON-REPORTABLE~~

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