

COURT-II

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

**IA No. 806 of 2020 in APL No. 232 OF 2016 &
IA No. 496 of 2016 & IA No. 530 of 2016**

Dated: 17th July, 2020

**Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member
Hon'ble Mr. Justice R.K. Guaba, Judicial Member**

In the matter of:

**Jaiprakash Power Ventures Ltd. Appellant(s)
Versus
Madhya Pradesh Power Management Company Ltd. & Ors. Respondent(s)**

**Counsel for the Appellant (s) : Mr. Sakya Singha Chaudhuri
Mr. Avijeet Lala
Ms. Astha Sharma
Ms. Nameeta Singh**

**Counsel for the Respondent (s) : Mr. Alok Shankar For R1 to R-4

Mr. Aashish Anand Bernard
Mr. Paramhans Sahani For R-5

Ms. Mandakini Ghosh
Mr. Parinay Deep Shah for Res.6,**

ORDER

This matter is taken up on application for urgent hearing by video conference, physical presence being not possible due to National Lockdown imposed for containing spread of coronavirus (Covid-19).

IA No. 806 of 2020 – For early hearing
In
APL No. 232 OF 2016 &
IA No. 496 of 2016 & IA No. 530 of 2016

The appeal in context of which this application has been moved was presented in 2016 and remained pending before Court -1 as part heard matter till January, 2020 when it was transferred to this Bench. Since this Bench has a new combination, the matter has to be heard afresh.

A large number of appeals are pending on the file of this Tribunal which matters have been distributed amongst the two functional Benches dealing with cases under Electricity Act, 2003. On account of pandemic situation created by the spread of COVID-19, this Tribunal remained dysfunctional for quite some time from sometime in March, 2020. We started functioning through video conferencing (VC) mode after some period of total lockdown. Given the constraints, limitation of resources including of time and technical support, the hearings through video conferencing mode, however, have been undertaken only for half a day, one half being taken by the first Court and the other by second Court. On Wednesdays, we sit in different composition and combination, some of us also dealing with the matters relating to Petroleum and Natural Gas case jurisdictions. This Bench, in the result, sits for dealing with cases under the Electricity Act, 2003 on Mondays, Tuesdays, Thursdays and Fridays, invariably in the second half.

Initially, the tribunal started taking up only urgent matters wherein interim relief was being pressed. Such matters have mostly been fresh appeals wherein requests for interim directions or interim relief are made. After some period of such limited working, it was resolved on the administrative side that even part-heard matters would be taken up through

the VC mode. Over the period thereafter, however, we have been flooded with requests for urgent hearing even in the old pending appeals.

The legitimate expectations of the litigants before us for early hearing and adjudication is well understood and appreciated. At the same time, we cannot ignore the fact that in these times we are working within the constraints of very limited resources particularly on the front of technical support and in absence of effective secretarial assistance. Generally speaking, the learned counsel for the parties have not been strictly following the protocol for submission of digital copies of necessary records / documents for hearing to be meaningful. Gaining access to digital records submitted by parties through cloud-sharing at times is cumbersome and on this the registry is yet to find satisfactory solutions.

Be that as it may, given the fact that a large number of requests for urgent listing for consideration of applications for interim relief are coming up and must be heard, we have decided to devote Friday as the day exclusive for miscellaneous matters i.e. IAs for urgent hearing or interim relief in fresh or old matters. This should free up the other working days of the week keeping us away from any distraction such that we are able to devote full attention to the hearing on the main appeals which we have been taking up almost on regular basis. The norm where under such applications for urgent hearing or interim relief would come up only on Fridays, however, would be with an exception in case there is extreme urgency pleaded, shown and demonstrated to us for such prayer to be considered on any other day as well.

Having earmarked Friday for the miscellaneous work, we are left with Mondays, Tuesdays and Thursdays for hearing on the main appeals. Given the fact that most of the appeals take up long time to conclude, they

involving multifarious issues, counsel on each side naturally expecting to be given sufficient time to make her/his case good, the system of adjourning the matter fixed on a particular date to another date for continued hearing is not working well. Given the large pendency and the existing practice, appeals are listed on daily basis. If a matter is adjourned for continued hearing the next date found in calendar is invariably a distant one. The long gap between the two dates generally leaves the arguing counsel feeling dissatisfied, this resulting in s/he taking the liberty of beginning on the adjourned date by recapitulating which naturally means lot of repetition and duplication.

We feel, and the learned counsel of long standing and members of the Energy Bar Association with whom we have had some consultation do agree, that it would be appropriate that once an appeal is taken up, the hearing must continue from day-to-day till it is concluded. This is the practice and procedure followed in various High Courts and also, we are given to understand, in the Supreme Court of India. The learned counsel with whom we conferred fairly agreed that in case a matter is not concluded on a particular date and is to be taken up for continued hearing on the next day, it being an overnight part-heard matter it shall be the responsibility of the parties and the counsel to ensure their due presence in time, there being no occasion or permissibility for any adjournment to be taken or sought for on any ground whatsoever.

As the period of restricted working through VC passes by, the challenges of optimum utilisation of resources and productivity are bound to compound and, in view of the above, we have decided to adopt and enforce the following procedure for ourselves (Court – 2) which we intend to put to experiment beginning from Monday, the 20th July, 2020:

- 1) All appeals which have been or are entertained for being taken up for final hearing through video conferencing mode during the current pandemic situation will be put in a list to be called “Final VC Hearing Matters” of Court - 2.
- 2) The appeals included in the list of “Final VC Hearing Matters” shall be shown in the chronological order in which they presently stand, those substantially heard to be put ahead of others where hearing has just begun. For clarity we add that such appeals where the appellant has concluded its arguments are more substantially heard than where the appellant is still arguing or where not sufficient time has been devoted so far. Since the number of such appeals presently is limited, it should not be difficult for the registry to prepare the list properly.
- 3) The matters which are entertained hereinafter by us for being heard finally through VC shall be included by the registry in the above list at the bottom i.e. at the next serial number immediately below the item last included prior to it.
- 4) We shall, hereinafter, take up the appeals for hearing through VC from the above said list in the order they appear therein.
- 5) The hearing on an appeal, once it commences, shall continue on day-to-day basis till it is concluded, the judgment reserved or pronounced (in case orally passed on date of conclusion).
- 6) If a matter comes up for hearing in its turn from the above list and there is a request for adjournment, such request if made on good grounds would result in the matter getting displaced to the place

immediately below the next item. But, if such request is repeated on the next turn of the appeal, no adjournment will be granted and instead the matter shall be taken up for hearing by calling upon the counsel/parties present to make their submissions.

- 7) We would expect the Registry to keep the counsel whose matter is expected to come up next to be duly informed and notified by appropriate mode.
- 8) Learned Members of the Bar will also be expected to keep a watch over the progress made in the hearing on the matters included in the list by being in touch with Court-Masters or by seeking VC links, waiting in the wings and be ready to appear and assist as and when the turn of the appeal in which they appear comes up.

As said before, the number of matters presently waiting in the above category is not very large. The list of “Final VC Hearing Matters” shall be prepared by the Registry immediately in light of above and put on the website along with a copy of this order for information of all concerned.

We are conscious that the above would be a new practice adopted in this Tribunal and it will take some time for it to settle into a proper practice. We will be sitting with open mind to bring in suitable modifications as may be suggested or required over the period in future, if there are any hiccups.

Ordered accordingly.

Given the status of the present appeal, let it be included in the above list presently at the bottom of the cases already falling in the above-mentioned category, for it to come up in its turn.

The application for early hearing stands disposed of in above terms.

(Justice R.K. Gauba)
Judicial Member
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(Ravindra Kumar Verma)
Technical Member

“FINAL VC HEARING MATTERS LIST” OF COURT-2)

S. No.	Case No.	Parties	Date of Listing	Purpose
Deleted				
1.	108/20	Essar Power Gujarat Limited V/s. Gujarat Electricity Regulatory Commission &Ors.	20.07.20	PNC (Registrar Court)
Reserved				
Pronounced				
Final Hearing				
2.	446/19	Vidarbha Industries Power Limited V/s. Maharashtra Electricity Regulatory Commission &Ors.	21.07.20	FH
3.	97/20	Karnataka Power Transmission Corporation Ltd. V/s. Karnataka Electricity Regulatory Commission	23.07.20 & 24.07.20	FH
4.	377/19	Jsons Foundry Private limited V/s. Maharashtra Electricity Regulatory Commission &Anr.	27.07.20	H
4.1	378/19	Western Precicast Private Limited V/s. Maharashtra Electricity Regulatory Commission &Anr.		
5.	10/20	Power Company of Karnataka Ltd. &Anr. V/s. Udupi Power Corporation Limited &Ors.	04.08.20 & 06.08.20	FH
5.1	11/20	Gulbarga Electricity Supply Company Limited &Anr. V/s. Udupi Power Corporation Limited &Ors.		
5.2	12/20	Power Company of Karnataka Ltd. &Ors. V/s. Udupi Power Corporation Limited &Ors.		
5.3	13/20	Gulbarga Electricity Supply Company Limited &Anr. V/s. Udupi Power Corporation Limited &Ors.		
5.4	80/20	Bangalore Electricity Supply Company Ltd. V/s. Central Electricity Regulatory Commission &Ors.		
6.	264/18	RattanIndia Power Limited V/s. Maharashtra Electricity Regulatory Commission &Anr.	30.07.20 & 31.07.20	FH

7.	180/18	Eswari Green Energy LLPV/s. Karnataka Electricity Regulatory Commission &Ors.	28.07.20	FH
7.1	181/18	The Impetus Associates LLP V /s. Karnataka Electricity Regulatory Commission &Ors.		
7.2	182/18	Ahill Apparel Exports (P) Limited V/s. Karnataka Electricity Regulatory Commission &Ors.		
7.3	183/18	Laruel Apparels V/s. Karnataka Electricity Regulatory Commission &Ors.		
7.4	184/18	Sakthi Masala Private Limited V/s. Karnataka Electricity Regulatory Commission &Ors.		
8.	107/20	Rosa Power Supply Company Limited V/s.Uttar Pradesh Power Corporation Limited &Anr.	13.08.20	H
9.	56/20	D.B. Power Ltd. V/s. Central Electricity Regulatory Commission &Anr.	17.08.20	H
10.	172/17	Coastal Gujarat Power Limited V/S. Central Electricity Regulatory Commission &Ors.	11.08.20	H
10.1	154/18	Coastal Gujarat Power Limited V/S. Central Electricity Regulatory Commission &Ors.		
11.	208/16	M/s Century Textiles & Industries Ltd. V/s. Madhya Pradesh Electricity Regulatory Commission &Anr.	04.08.20	FH
11.1	219/16	M/s Maral Overseas Ltd. V/s. Madhya Pradesh Electricity Regulatory Commission &Anr.		
11.2	295/16	M/s Ultratech Cement Ltd. V/s. Madhya Pradesh Electricity Regulatory Commission &Anr.		
11.3	220/16	HEG Limited. V/s. Madhya Pradesh Electricity Regulatory Commission &Anr.		
11.4	207/16	M/s Hindalco Industries Limited V/s. Madhya Pradesh Electricity Regulatory Commission &Ors.		
11.5	239/17	Jaipraksh Associates Ltd. V/s. Madhya Pradesh Electricity Regulatory Commission &Ors.		

12.	192/18	The Tata Power Company Limited (Distribution) V/s. Maharashtra Electricity Regulatory Commission &Ors.	07.08.20 & 10.08.20	H
13.	232/16	Jaiprakash Power Ventures Ltd. Vs. Madhya Pradesh Power Management Company Ltd. & Ors	17.07.20	H
14.	41/20	GVK Power (Goindwal Sahib) Limited V/s. Punjab State Electricity Regulatory Commission &Anr.	23.09.20	H Subject to completion of pleading
