

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6507 OF 2010

BANGALORE ELECTRICITY SUPPLY CO.LTD. ...APPELLANT(S)

VERSUS

WIND WORLD WIND FARMS  
(KARNATAKA LTD) & ANR.

...RESPONDENT(S)

ORDER

1. This appeal under Section 125 of the Electricity Act, 2003 (for short, "the Act, 2003") is directed against judgment and order dated 10.11.2009 in Appeal No. 69 of 2009 by the Appellate Tribunal for Electricity (hereinafter referred to as "the Tribunal"). The Tribunal *vide* aforesaid impugned order, partly allowed the appeal preferred by the appellant and set aside the order of the State Commission to the extent mentioned in para 31 of its

order and directed the State Commission to recalculate the refund amount admissible to first respondent regarding the date of commercial operation two phases i.e. 7.2 MW on 14.05.2003 and 13.8 MW on 26.08.2003 and passed appropriate order in accordance with law after hearing the parties.

2. The short facts leading to filing of this appeal are that appellant is engaged in the business of distribution and supply of electricity owned by Government of Karnataka. The respondent No. 1 before us, M/s Enercon Wind Farms Ltd., now known as Wind World Wind Farms (Karnataka) Ltd., is a generating company engaged in the business of power generation. A Power Purchase Agreement (hereinafter referred to as "the PPA") dated 24.09.2002 was executed between the appellant's predecessor i.e. Karnataka Power Transmission Corporation Ltd. (KPTCL) in respect of 21 MW wind power based project in Chitradurga District in the State of Karnataka. KPTCL procured the energy

from the power project of respondent No. 1 from 14.5.2003 i.e. date of commissioning of the project of the respondent No.1.

3. The appellant started managing the affairs of KPTCL and on 10.06.2005 became a contracting party with respondent No.1. The appellant started paying the bills regularly. However, the appellant concluded that on the basis of wrong fixation of commercial operation date as 14.05.2003 instead of 26.08.2003, excess payment was made to respondent No.1. Thereupon, the appellant deducted a sum of Rs.20,29,268/- in so far as escalation charges were concerned, fixing the date of commercial operation as 21.07.2003.
4. The respondent No.1 thereupon approached the State Commission challenging the illegal deduction of the amount by the appellant and sought a direction to refund the amount. The Commission by an order dated 10.07.2008 *inter alia* held that the date of commercial operation was 14.05.2003 and therefore, respondent No.1 is entitled to refund of the amount illegally

deducted by the appellant.

5. The appellant preferred an appeal before the Tribunal. The Tribunal by an order dated 10.11.2009 partly allowed the appeal preferred by the appellant. The Tribunal *inter alia* held that there will be two commercial operation dates as the project was completed in two parts i.e. on 14.05.2003 and on 26.08.2003. It was further held that even if the project is commissioned in the middle of the year, the next year should start from 1<sup>st</sup> of April by the expressions 'Contract Year' as well as the 'Fiscal Year' as used in the PPA. The Tribunal directed Karnataka Electricity Regulatory Commission to calculate the refund to be paid to respondent No.1, by the appellant. In the aforesaid circumstances, the appellant is before this Court with the present appeal.
6. Mr. Dhruv Mehta, learned senior counsel for the appellant invited the attention of this Court to the terms 'Contract Year', 'Fiscal Year' and 'Project' as defined in the PPA. It is submitted

that the Tribunal could not have determined two dates of commercial operation i.e. 14.05.2003 and 26.08.2003 and there can only be one date of commercial operation as defined in the PPA. It is contended that Tribunal Committed an error in applying the definitions of the terms 'Fiscal Year' and 'Contract Year' contained in the PPA, more particularly, when the parties have consciously used a different and distinct term '*per annum*' in clause 4.2 of the PPA.

7. On the other hand, learned counsel for respondent submitted that the order passed by the Tribunal does not suffer from any error. It is further submitted that there being no merit in this appeal, the same is liable to be dismissed.
8. We have heard learned counsel for the parties. The only question which arises for our consideration is whether the Tribunal erred in reckoning the date of commercial operation of the power plant for the purposes of computing the escalation charges under the PPA.

9. Before proceeding further, it is apposite to take note of the relevant clauses of the agreement which define the expressions, 'Contract Year', 'Fiscal Year' and the term 'Project'.
10. Mr. Mehta also invited our attention to the definition of the term "Contract Year" as provided in the PPA. The same reads thus:-

*"Contract Year" shall mean, with respect to the Initial Contract Year, the period beginning on the Commercial Operation Date of the Unit and ending at 12.00 midnight on 31<sup>st</sup> March of that Fiscal Year. Each successive Contract Year shall coincide with the succeeding Fiscal Year, except that the final Contract Year shall end on the date of expiry of the Term or on Termination of this Agreement whichever is earlier.*

11. Thereafter, Mr. Mehta took us through the definition of the term 'Fiscal Year', which reads thus:-

*"Fiscal Year" shall mean, with respect to the Initial Fiscal Year, the period beginning on the Commercial Operation Date and ending at 12.00 midnight on the following March 31. Each successive Fiscal Year shall begin on April 1 and end on the following March 31, except that the final Fiscal Year shall end on the date of expiry of the Term or on termination of this Agreement, whichever is earlier.*

12. Thereafter, Mr. Mehta also took us through the definition of the term "Project", which reads thus:-

*"Project" means a windmill power station established by the Company at Doddapura (Sy.No.10, extent of area 10.37 ha) Yarehalli (Sy.No.15, extent of area 15.97 ha.), Thekalavatti (Sy.No.59, extent of area 36.42 ha., Sy.No.60 extent of area 2.6 ha and Sy.No.80, extent of area 2.1 ha) and Kollhalu (Sy.No.112, extent of area 4 ha.) Jogmatti Wind Zone, Chitradurga District in the State of Karnataka comprising of 35 (Thirty five) Units with an Individual Installed capacity of 600 Kilowatts and a total installed Capacity of 600 Kilowatts and a total Installed Capacity of 21.0 MW and shall include land, buildings, plant, machinery, ancillary equipment, material, switch-gear, transformers, protection equipment and the like necessary to deliver the Electricity generated by the Project to the Corporation at the Delivery Point."*

13. From careful perusal of the terms 'Contract Year' and 'Fiscal Year', it is evident that 'Contract Year' means the period beginning on the commercial operation date of the unit and ends at midnight of the Fiscal Year. The expression 'Fiscal Year' means the period beginning on the commercial operation date and ends at midnight of 31<sup>st</sup> March of that year.

14. Clause 4.2 of the PPA reads as under :

*“Further, in case the Project is commissioned on or before 31<sup>st</sup> August 2003, the Corporation shall for the Delivered Energy pay, for the first 10 years from the Commercial Operation Date, to the Company every month during the period commencing from the Commercial Operation Date at the rate of Rs.3.25 (Rupees three and twenty five paise only) per Kilowatt-hour for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 2% per annum over “the base tariff” as herein indicated in Article 4.1”*

Thus, even if the project is commissioned in the middle of the year, the next year has to commence from 1<sup>st</sup> of April as defined in the Fiscal Year.

15. The only argument of Mr. Mehta before us is that the Tribunal committed an error in applying the definitions of ‘Fiscal Year’ and ‘Contract Year’ contained in the PPA, more particularly, when the parties have consciously used a different and distinct term ‘per annum’ in clause 4.2 of the PPA. It is argued that liability to pay escalation charges would commence from August 2024.

16. The commercial operation date shall be the date of commissioning of the project as certified by the competent authority of the KPTCL by certificate dated 24.06.2003 which has certified that 14.05.2003 is the commercial date of operation and therefore, the commercial date of operation as per terms of PPA has to be reckoned as 14.05.2003. Though, we do not agree with the finding recorded by the Tribunal that there were two commercial operation dates, yet the submission of the appellant that liability to pay escalation charges will commence from August, 2004 cannot be sustained.
17. In overall view of the matter, no case for interference with the impugned order passed by the Tribunal is made out.
18. We are informed that in compliance of the interim order, the appellant had deposited the requisite amount with the Registry of this Court. The Registry is, therefore, directed to disburse the deposited amount by the appellant with interest accrued

thereon, if any, in favour of respondent No.1, after proper verification and identification within a period of four weeks from today.

19. In the result, the appeal is dismissed.
20. Pending application(s), if any stands disposed of.

.....J.  
(J.B.PARDIWALA)

.....J.  
(ALOK ARADHE)

New Delhi  
25<sup>th</sup> September, 2025

**CD**

ITEM NO.123

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 6507/2010

BANGALORE ELECTRICITY SUPPLY CO.LTD.

Appellant(s)

VERSUS

WIND WORLD WIND FARMS (KARNATAKA LTD)  
& ANR.

Respondent(s)

(IA No. 2/2010 - STAY APPLICATION)

Date : 25-09-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE ALOK ARADHE

For Appellant(s) : Mr.Dhruv Mehta, Sr. Adv.  
Ms. Garima Jain , AOR  
Mr. Tushar Kanti Mohindroo, Adv  
Mr. Arnav Khanna, Adv.  
Ms. Sumana Naganand, Adv.  
Mr. Mohit Singh, Adv.

For Respondent(s) :  
Mr. Yaduinder Lal, Adv.  
Mr. Himinder Lal, AOR  
Ms. Rajni Ohri Lal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. The appeal is dismissed, in terms of the signed order.
2. Pending application(s), if any stands disposed of.

(CHANDRESH)  
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)  
COURT MASTER (NSH)  
(Signed order is placed on the file)