

ITEM NO.124

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 SCivil Appeal No.1855/2023

SRC COMPANY INFRA PVT. LTD.

Appellant(s)

VERSUS

GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED & ANR. Respondent(s)

(IA No. 58626/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 20-11-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s) :

Mr. Dama Sesdhadri Naidu, Sr. Adv.
Mr. Raghavendra S. Srivatsa, Sr. Adv.
Mr. Amit Pai, AOR
Ms. Bhavana Duhoon, Adv.
Ms. Pankhuri Bardwaj, Adv.

For Respondent(s) :

Mr. Arunav Patnaik, Adv.
Ms. Bhabna Das, AOR
Mr. Nirbhay Nitya Nanda, Adv.
Mr. Vishnu Kanth Mundada, Adv.UPON hearing the counsel the Court made the following
O R D E R

1. This appeal arises out of the order passed by the Appellate Tribunal for Electricity dated 10.01.2023 in IA-1418/2020 & IA-1943/2019 in DFR-2359/2019 respectively, by which the Interlocutory Application No.1943/2022 seeking condonation of delay of 418 days in preferring the appeal and IA-1418/2022 seeking condonation of delay of 341 days in refiling the appeal filed by the appellant - herein came to be rejected. Thus, the Tribunal declined to condone the delay as prayed for by the appellant - herein in preferring the appeal against the order passed by the Karnataka Electricity Regulatory Commission (for short, "the Commission) dated 19.07.2018 in OP No.93/2017.

2. We need to record few facts.

3. It appears that the appellant - herein preferred a petition before the Commission under Section 86(1)(f) of the Electricity Act, 2003 (for short, "the Act") and prayed for the following reliefs:-

"a) Direction, declaring that the Petitioner is entitled to the tariff, as per the PPA at the rate of Rs.9.56 per unit, for the term of the PPA;

b) Direction to the Respondent, to make payment for the invoices raised by the Petitioner at the rate of Rs.9.56 per unit, along with interest at the rate of 1%, as agreed under the PPA; and,

c) Pass such other Orders, including an Order as to costs, in the interest of justice."

4. The Commission framed three issues for its consideration:-

"ISSUE No.(1): Whether in the absence of a clause in the PPA specifying the time available for commissioning of the Petitioner's Project, the time specified in the Respondent's Guidelines relating to the SRTPV scheme, is binding on the Petitioner?

ISSUE No.(2): Whether the Respondent is correct in granting 180 days' time to Petitioner, for commissioning in Format-6 [6(i)] dated 2.2.2016 after execution of the PPA?

ISSUE No.(3): Whether the Petitioner, has made out a case for its plant being eligible for the tariff agreed to in the PPA?"

5. The Commission ultimately vide its order dated 19.07.2018 declined to grant the reliefs prayed for by the appellant - herein and dismissed the petition. The operative part of the order passed by the Commission reads thus:-

"a) It is declared that the Petitioner is not entitled for any of the reliefs, sought for in this petition;

b) The Petitioner is entitled to a tariff of Rs.5.67 (Rupees Five and Paise Sixty-Seven) only per unit, for the term of the PPA; and,

c)The Petitioner is also entitled for payment of interest, as per the terms of the PPA."

6. Thus, the Commission held that the appellant herein is entitled to a tariff of Rs.5.67 only per unit for the terms of the

Power Purchase Agreement (PPA) and not Rs.9.56 per unit as demanded by the appellant.

7. The appellant herein, being dissatisfied with the order passed by the Commission, preferred appeal before the Appellate Tribunal for Electricity. However, there was a delay in preferring the appeal, as noted above, the Tribunal declined to condone the delay saying that the appellant had failed to make out any sufficient cause for condoning the delay.

8. In such circumstances, referred to above, the appellant is here before us with the present appeal.

9. Mr. Dama Seshadri Naidu, the learned Senior Counsel appearing for the appellant would submit that this Court may consider condoning the delay taking into consideration the fact that a similarly situated Generating Company had gone before the Commission with the very same reliefs.

10. The Commission declined to grant such reliefs, in the same way as the Commission declined in the present case. However, in the said case, the Generating Company went in appeal before the Tribunal and they succeeded before the Tribunal. Against that order passed by the Tribunal, the Bangalore Electricity Supply Company is here before us by way of their appeal. He would submit that the issues involved in the said appeal are almost identical.

11. The proceedings which Mr. Seshadri is talking about are titled "Bangalore Electricity Supply Company Versus Tata Parsanna Kumar" (Civil Appeal No.5699/2021).

12. We are informed that this appeal preferred by Bangalore Electricity Supply Company is yet to be admitted and is being heard by a Co-ordinate Bench.

13. On the other hand Ms. Bhawna Das, the learned counsel appearing for the respondent No.1 - Gulbarga Electricity Supply Company Limited submits that irrespective of the issues involved in the appeal which we have referred to above, there is no merit in the present appeal.

14. According to her, no error not to speak any error of law could be said to have been committed by the Tribunal in declining to

condone the gross delay in preferring the appeal as well as gross delay in refiling of the appeal. Although, the learned counsel appearing for the Respondent No.1 may be justified in submitting that this Court may not interfere with the impugned order passed by the Tribunal which is absolutely discretionary in nature, yet having regard to the peculiar facts and circumstances of this case, more particularly, the issues involved in the appeal which we have referred to above, we are of the view, let this appeal be kept with Civil Appeal No.5699/2021, In the course of the hearing of Civil Appeal No.5699/2021 if the Bench finds that the facts are almost identical and the issues involved are the same, it may take an appropriate call as regards condoning the delay and proceeding further with the matter.

15. In view of the aforesaid, the Registry is directed to take appropriate steps in this regard.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)