

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

**APPEAL NO. 184 OF 2019 &
IA NOS. 769 OF 2019, 1951 OF 2021 &
IA NO. 164 OF 2022 & IA 166 OF 2022**

Dated: **04.02.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

CLP Wind Farms (India) Pvt. Limited

.... Appellant (s)

Vs.

M.P. Power Management Company Limited & Anr.

.... Respondent(s)

Counsel for the Appellant (s) : Mr. Jafar Alam
Mr. Saahil Kaul

Counsel for the Respondent (s) : Mr. Ashish Anand Bernard
Mr. Paramhans Sahani for R-1

Mr. S. Venkatesh
Mr. Suhael Buttan
Mr. Rishub Kapoor for R-2

J U D G M E N T (ORAL)

Per Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

IA No. 166 of 2022

[Application to place on record change in the name of the appellant]

2. The learned counsel for the appellant clarified that the name of the appellant company has undergone a change, it now being known as "Apraava Renewable Energy Private Limited", application in which regard has moved, being IA no. 166 of 2022. The prayer for change of the memo of parties is allowed. Application is disposed of accordingly.

**APPEAL NO. 184 OF 2019 &
IA NOS. 769 OF 2019, 1951 OF 2021 &
IA NO. 164 OF 2022**

3. This matter pertains to Court-I which is presently dysfunctional on account of vacancies in the offices of Hon'ble Chairperson and Technical Member. The appellant before us is a small wind energy generator which has a long terms arrangement in the shape of Power Purchase Agreement (PPA) with the first respondent – M.P. Power Management Company Limited (MPPMCL), which procures power from the appellant on behalf of the distribution licensee operating in the state of Madhya Pradesh, the second respondent being the Madhya Pradesh Electricity Regulatory Commission (“State Commission”, for short).

4. The grievances of the appellant relate to non-payment of energy bills by the first respondent in time, despite there being repetitive orders to that effect by the State Commission. Having regard to the financial distress in which the appellant has been consequently placed, as explained by the learned counsel, we find the matter meriting urgent hearing. Therefore, in exercise of the power vested on him by virtue of Section 118 read with Section 122 of the Electricity Act, 2003, the first of us (Justice R.K. Gauba) has directed the matter to be transferred from the file of Court-I to this court for consideration.

5. We have heard the learned counsel for the parties.

6. There is no dispute as to the fact that the first respondent has been in default almost consistently in timely or full payments of the energy bills raised by the appellant in terms of the Power Purchase Agreement (PPA). There is also no dispute as to the fact that this dispute arising from such conduct of the first respondent had been taken before the State Commission which, by its Orders dated 02.09.2016 in Petition no. 33 of 2016 and 26.04.2017 in

Petition no. 60 of 2016, had issued the requisite directions to the first respondent to pay the energy charges in terms of the PPA and the invoices raised in its terms. It appears the said orders were not complied with. This compelled the appellant to approach the State Commission again by Petition registered as Case no. 25 of 2018 invoking its jurisdiction, *inter-alia*, in terms of Section 142 of the Electricity Act, 2003 seeking punishment to be meted out to the first respondent for non-compliance with the directions of the Commission. The prayer clauses in the petition read thus:

- (a) *Direct the Respondent to clear all outstanding dues including the payment for DPS of the Petitioner forthwith in terms of the Hon'ble Commission's Orders dated 02.09.2016 and 26.04.2017, the PPAs/tariff order within a specified period of time.*
- (b) *Direct the Respondent to open letters of credit in favor of the Petitioner to secure the bills issued (i.e. outstanding) and the future bills to be issued by the Petitioner in terms of the Tariff Order dated 02.09.2016;*
- (c) *Issue show cause notice to the Respondent and initiate penalty proceedings for non-compliance of the order dated 02.09.2016 in Petition no. 33 of 2016 under Section 142 of the EA 2003 and dispose of the same in an expeditious and time bound manner;*
- (d) *Direct the Respondent to not discriminate against the Petitioner on account of non-waiver of DPS;*
- (e) *Direct Respondent to pay the cost of litigation and*
- (f) *Pass any other order/directions that the Hon'ble Commission may deem fit and appropriate under the circumstances*

7. The Commission disposed of the petition by its Order dated 25.01.2019, the relevant part whereof read thus:

"15. ... The Commission is not agreed with this argument of the respondent because with the delay in the payment of the regular bills, the finances of any company would affect negatively. It is the responsibility of the procurer to ensure timely payment of the bills of the electricity procured as per the provisions of the PPA executed between both the parties. The respondent is not denying or disputing the energy charge bills but they are showing difficulties in timely payment of the bills due to adverse financial situation. Under these circumstances the petitioner may initiate action according to the provisions in the PPA for the event of default by the procurer. Alternatively, both the parties should sit together and mutually come

out with a way as per the provisions of the PPA executed between them so that in future the issue of timely payment of the energy bills as well as outstanding bills may be resolved amicably. It is a responsibility of the respondent to make best efforts and clear all the outstanding bills as per provisions of the PPA/tariff order in minimum possible time.

16. Both the parties are directed to comply the aforesaid directives and accordingly, the Petition No. 25/2018 stands disposed of.

Ordered accordingly”

8. Feeling aggrieved by the above disposition of the prayer, there being no effective relief gained by such proceedings, the appellant has come up before this tribunal for redressal of his grievances.

9. We must also note that by Interlocutory Order passed on 02.03.2020, this tribunal directed as under:

“List the matter for further hearing on 17.03.2020. Meanwhile, we direct the Respondent Holding Company to pay the actual substantial amount from the invoiced bill till date (at least 75%) to the Appellant.”

10. We are informed that even the letter & spirit of the above direction by interlocutory Order of this tribunal in appeal has not resulted in requisite payments being made, as stated by the learned counsel for the appellant, not even to the extent permitted by us.

11. In our view, the approach of the regulator has been hesitant. A State Commission is empowered under the Electricity Act not only to adjudicate upon such disputes but also to enforce its decision to maintain judicial discipline amongst entities within its State. It has, however, been noticed by this tribunal, almost as a pattern, that in most of such claims arising out of default in payments, effective adjudication of dispute is missing. There is a perceptible reluctance on the part of Commissions to prescribe a definite timeline for payment or to take recourse to jurisdiction under Section 142 read with Section 146 of Electricity Act. This invariably has the fall out of

compelling the parties seeking enforcement to approach this tribunal by appeals or applications for execution unnecessarily adding to the work at this level. It is not that this tribunal is loath to exercise its powers under the law to execute and enforce binding orders. We would not have, and have never shown, any hesitation in intervening by deploying all possible measures in law to enforce discipline wherever we come across disobedience. But such involvement of this tribunal would not be required if the Commissions were to start showing better control.

12. Albeit in slightly different context, in the matter of Maharashtra State Electricity Distribution Co. Ltd v Maharashtra Electricity Regulatory Commission & Ors. (Appeal No. 77/2018) decided by judgment passed on 27.04.2021, this tribunal had the occasion to dwell on deficiency in the powers of the State Commission or failure to enforce discipline and it was observed thus:

“30. It is the submission of the respondents that since the regulatory commissions under the Electricity Act are forums having “trappings of a civil court” while discharging the function and role of adjudication [Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. (2008) 4 SCC 755; Tamil Nadu Generation & Distribution Corporation Ltd. vs. PPN Power Generating Co. (P) Ltd., (2014) 11 SCC 53; Andhra Pradesh Power Coordination Committee & Drs. v. Lanco Kondapalli Power Ltd & Ors.,(2016) 3 SCC 468] and since Courts have always been considered possessing the power to execute their own orders [State of Karnataka vs. Vishwabharathi House Building Cooperative Society, (2003) 2 SCC 412], the Electricity Act, 2003 may be interpreted to include and incorporate the power vesting in the regulatory authorities to execute by steps such as attachment of accounts, suspension/revocation of license, particularly because the Regulatory Commissions have an overarching regulatory power over licensees, such role impelling them to exercise continuous regulatory supervision over the parties (licensees) especially over tariff. Reliance is also placed on ruling in All India Power Engineering Federation & Ors. vs. Sasan Power Limited & Ors. (2017) 1 SCC 487.

32. We agree that the extant practice of decision-making primarily on principles of law concerning claims is not helping in securing timely relief for the parties. It unnecessarily drags them into fresh round of proceedings before the Commission where, as experience shows – ready illustration would be Appeal no. 97 of 2020 decided by us on 05.10.2020 (supra), the party resisting the claim (unjustly) puts forward new arguments so as to distract and dilate, taking it forward by another

round of appeal making it a never-ending process. This - and there can be no dispute in such regard - is neither conducive for the financial health of the sector nor in public interest in as much as the burden when it comes will, more often than not, bring along baggage in the form of carrying cost, an element that will unfortunately be met by the consumer at the end of the supply chain.

33. But, if reforms in such regard as above are to be attempted, they have to be comprehensive and must also cover the adjudicatory process from the level of forum of first instance. If the orders of this tribunal (dealing with appeals) are “executable ... as a decree of civil court” [Section 120(3)], there is no reason why similar provision ought not exist on the statute book vis-à-vis the orders passed by the regulatory commission in exercise of its adjudicatory power under the same enactment. It is, however, for the legislature to consider if the regulatory commissions, having “trappings of court”, in exercising the adjudicatory process can be expressly conferred with the powers of execution of their own adjudicatory orders, beyond the power to punish for non-compliance under Section 142.

34. There is a need for all concerned to do a re-think on the propriety of the procedure adopted under the existing legal framework. Speaking only of a dispute involving claim for recovery of money, there is nothing stopping the party approaching the regulatory commission to not only quantify its claim but also support it not only by the principle on which it is founded but also by furnishing all necessary details and evidence so that the correctness is tested in the same adjudicatory process. If detailed averments are made in the petition, the law on pleadings would compel the opposite party to respond not only on justification but also, should the claim be found justified, on the arithmetic involved. It is natural that from such pleadings issues of fact would arise for determination. The Regulatory Commissions would be obliged in law, in such a scenario, to answer all issues, not only on principle of law but also the claim on facts which are established. An effective assistance from the learned counsel for the parties would keep the Commission informed of its duty (reference to the spirit of Rule 2 of Order XIV of Code of Civil Procedure, 1908) to adjudicate on all issues in one go, rather than only on questions of law. Insistence on a comprehensive adjudicatory process before the Commissions will ensure its views on the quantification of the claim (which was rejected on principle of law) are available when denial of relief is challenged by appeal before this tribunal.”

(Emphasis supplied)

13. We understand that the above decision of this Tribunal has been affirmed by the Hon'ble Supreme Court *vide* its judgment dated 08.10.2021 passed in Civil Appeal No. 1843 of 2021 titled as *Maharashtra State Electricity Distribution Co. Ltd v. MERC.*

14. In our considered view, it is incumbent upon the State Commission to also adjudicate, upon such situation being brought to it, whether its order or direction has been complied with or not and if it is established that a case of deliberate or unjustified non-compliance is made out, then consequences *inter alia* as provided under Sections 142 and 146 of the Electricity Act must follow. The credibility of judicial hierarchical system is founded on the expectation that the respective forum at each level would perform its duties as prescribed in law. Non-exercise of jurisdiction makes the institution suffer and the hallowed objective of expeditious and effective dispute resolution is defeated. There is no reason why the Commissions should shy away from deciding the underlying issues of willful non-compliance reflecting anarchy.

15. We see no justification as to why the Commission's order is silent on the prayer under the provision contained in Section 142 of the Electricity Act, 2003. It appears that in the PPA there is possibility of the generator to invoke the relevant clause on account of event of default of this kind by denying the supply of electricity to the procurer. But then, given the small level at which it operates, such recourse would undoubtedly be counter-productive for the appellant since there is strong probability of it being stranded.

16. The fact remains that the State agency which is procuring supply cannot make the source from which it procures the electricity for distribution through the licensees operating in the State run dry or be in indefinite wait for the reasonable returns under the contract to be paid to it. The fact that the State Commission had issued directions to the first respondent to make the payments itself creates an onus on the Commission to ensure due compliance therewith. Such directions by a statutory authority cannot be handed out as mere *paper decrees*, if that expression could be employed here. The adjudicatory forum must be in a position to take the matter to the logical end and with that objective in mind it ought not ignore that it is

equipped with the requisite teeth in the form of provision contained not only in Section 142, but also a penal clause in Section 146 of the Electricity act, 2003. The Commission has failed to live up to the expectations of the parties that appear before it by not exercising the jurisdiction which is vested in it by the law. We cannot approve of such evasive disposition as has been rendered in the matter at hand. Mere lip service will not produce results in disputes of this kind, it being the obligation of the Commission to adopt further measures to ensure due compliance.

17. With the above observations, we set aside the impugned order and remit the matter to the State Commission directing further consideration for fresh and all necessary orders to be passed, after hearing the parties, dealing with each prayer in the petition that was laid before it by the appellant. Given the delay which has occurred over the period, we would expect the Commission to pass the necessary orders requiring due compliance with its directives on the subject of payment of energy charges within a period of four weeks hereof.

18. We make it clear that given the track record of the parties before us, the Commission will put in position requisite mechanism not only for the past dues but also for the future responsibility for the procurer for the remainder of the duration of the PPA.

19. The appeal and the pending applications are disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson