

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

DFR No : 498 of 2025 & IA No. 235 OF 2026 & IA No. 1960 OF 2025 &
IA No. 1961 OF 2025

Dated: 16th February, 2026

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

In the matter of:

Sri Balasimha Rao & Anr. Appellant(s)

Versus

The Karnataka Renewable Energy Development Ltd. & Respondent(s)
Ors.

Counsel on record for the Appellant(s) : Ujjal Banerjee
Anmol Sehgal
Shrikant Ramteke
for App. 1

Anmol Sehgal
Shrikant Ramteke
for App. 2

Counsel on record for the Respondent(s) : —

ORDER

IA-235/2026
(For leave to file Appeal)

The Applicant-Appellant is a solar power developer, and claims to be aggrieved by the impugned order passed by the KERC denying them tariff of Rs. 8.40/unit and in holding that they were only entitled to the PPA tariff of Rs. 6.51/unit. We are satisfied, therefore, that the Applicant-Appellant is a “person aggrieved”, and is entitled to file the present appeal

under Section 111(1) of the Electricity Act, 2003. Leave, as sought for, is granted and the IA is, accordingly, disposed of.

IA-1960/2025

(For condonation of delay in filing the Appeal) (3389 days)

This application is filed with a delay of 3389 days in filing the present appeal ie a delay of around nine and half years. In examining whether or not this inordinate delay in invoking the appellate jurisdiction of this Tribunal should be condoned, it is necessary to take note of certain facts.

The PPA was executed by the Appellant with the BESCOM on 26.09.2015, in terms of which they were entitled for a tariff of Rs. 6.51/unit. They approached the Karnataka Electricity Regulatory Commission ("KERC" for short) by filing a petition in November, 2015, seeking a tariff of Rs. 8.40/unit. The said petition was dismissed by the KERC by order dated 28.07.2016.

The limitation stipulated in Section 111(2) of the Electricity Act, for filing an appeal before this Tribunal, is 45 days and, consequently, the Appellant ought to have filed the appeal, against the order of the Commission dated 28.07.2016, by September, 2016. The fact, however, remains that the Appellant chose not to avail the appellate remedy till 22.12.2025 when the present Appeal was filed.

The Appellant's plant was commissioned on 07.08.2017 and, in view of the delay in commissioning the plant, BESCOM reduced the tariff payable to them, from Rs. 6.51/unit in terms of the PPA tariff, to Rs. 4.36/unit. The Appellant filed a petition before the KERC on 06.09.2017 challenging the reduction in tariff, and contended before the KERC that they were entitled to the PPA tariff of Rs. 6.51/unit as the delay in commissioning was because of force majeure events. The said petition

was dismissed by the Commission by order dated 29.05.2018, aggrieved by which the Appellant herein approached the Karnataka High Court by filing a Writ Petition on 17.12.2019. By order dated 20.09.2021, the Karnataka High Court remanded the matter to the KERC on the ground of violation of the rules of natural justice. The KERC thereafter, by order dated 18.03.2022, allowed the petition filed by the Appellant herein, and granted them the benefit of tariff of Rs. 6.51/unit in terms of the PPA.

It is only thereafter, that too one year after the petition filed by them was allowed by KERC on 18.03.2022, that the Appellant herein again approached the Karnataka High Court on 28.03.2023 challenging the order passed by the KERC on 28.07.2016. The Karnataka High Court, by order dated 16.10.2025, dismissed the Writ Petition both on grounds of delay and for the Appellant's failure to avail the alternative appellate remedy available to them. It is only thereafter that the present appeal came to be filed on 22.12.2025, albeit with a delay of 3389 days ie of around nine and half years.

Mr. Ujjal Bannerjee, Learned Counsel for the Applicant-Appellant, would submit that the Applicant-Appellant has an excellent case on merits since relief, more or less identical to that which is sought in the present appeal, was granted to several others by this Tribunal. What the Applicant-Appellant has however chosen not to state is that the others, who were granted benefit, had approached this Tribunal on time. It is impermissible for a party to sit on the fence, and await orders being passed in other cases, before approaching this Tribunal seeking such a relief for, in the interregnum, third party right may arise. This is apart from the fact that the Appellant has, in this process, unduly delayed invoking its appellate remedy under Section 111(1) of the Electricity Act, and has filed the present appeal with a delay of around nine and half years.

Yet another reason why the present appeal cannot be entertained, on the delay being condoned, is that there is no explanation as to why, despite the petition filed by them being dismissed by the KERC on 28.07.2016, the Appellant chose to wait till 06.09.2017 and, even on that date, chose to approach the KERC confining their challenge only to the reduced tariff of Rs. 4.36/unit, and claiming that they were entitled to the PPA tariff of Rs. 6.51/unit. Since the petition filed by them was dismissed on 28.07.2016, and the period of limitation would begin 45 days thereafter, the Appellant ought to have challenged the order dated 28.07.2016 by way of an appeal some time in September, 2016. Even worse is that, even in the petition filed by them on 06.09.2017, the Appellant herein confined the challenge only to the reduced tariff of Rs. 4.36/unit, and merely sought the PPA tariff of Rs. 6.51/unit. In effect, the Appellant has acquiesced to the order passed by the KERC on 28.07.2016 rejecting their claim for enhanced tariff of Rs. 8.40/unit.

It is also relevant, in this context, to take note of the contents of Paras 15 and 16 of the order passed by the Karnataka High Court in WP No. 7473 of 2023 dated 16.10.2025, which read as under: -

“15. Hon'ble Supreme Court in Punjab Small-Scale Industries & Export Corpn. Ltd. v. Jhujhar Singh, reported in (2008) 17 SCC 668, has held, when respondents urge contention of delay and laches against a writ petition, High Court was bound to consider same. Admittedly, petitioner has approached this Court 6-1/2 years after passage of impugned order, with sole explanation about prevalence of Covid-19 Pande, 2020 till February 2022. Cause of action for petitioner accrued on 28.07.2016 with passing of impugned order by KERC. But, writ petition was filed only on 28.03.2023. Explanation offered would not cover entire period of delay.

16. Further, in case of Jaipur Vidyut Vitran Nigam Ltd. v. MB Power (M.P.) Ltd., reported in (2024) 8 SCC 513, Hon'ble Supreme Court has held writ petition suffering from delay and laches as well as filed without exhausting alternative remedy ought not to be entertained. For above twin reasons, this Court declines to entertain this writ petition.”

It is evident, from the aforesaid extracted portion of the order, that Karnataka High Court has rejected, the challenge to the order of the KERC dated 28.07.2016, both on grounds of delay and as the Appellant had approached the High Court without exhausting its alternative remedy of an appeal to this Tribunal. No liberty was granted by the Karnataka High Court to now approach this Tribunal by way of an appeal. In as much as liberty was not granted by the Karnataka High Court to approach this Tribunal by way of an appeal, and the Writ Petition filed by the Appellant was dismissed, the remedy, if any, which the Appellant has is to challenge the order of the Karnataka High Court by way of an intra-court appeal, and not to approach this Tribunal by way of the present appeal, that too with a delay of nine and half years.

Viewed from any angle, we see no reason to condone the inordinate and unexplained delay of nine and half years in filing the present appeal against the order passed by the KERC on 28.07.2016. The application to condone the delay in filling the appeal is dismissed, and the appeal stands automatically rejected. All pending IAs also stand dismissed.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

mk/mkj