

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 3521 of 2020

Bangalore Electricity Supply Company Ltd

... Appellant

Versus

Bhoruka Power Corporation Ltd & Ors

... Respondents

O R D E R

- 1 The appeal arises from an interlocutory order dated 19 December 2019 of the Appellate Tribunal for Electricity in IA No 1974 of 2019 in Appeal No 366 of 2019.

The interim directions of the Tribunal are set out below :

“5.7 In the light of the above, we are of the considered opinion that the Applicant/Appellant is entitled to sell its surplus power to third parties nominated by it which is fully permitted by the erstwhile Electricity (Supply) Act, 1948 and also Electricity Act 2003. Further, National Tariff Policy of Government of India clearly provides for sale of surplus power from captive generators to third parties after payment of requisite CSS.

Accordingly, the IA is allowed and the operation of the impugned order dated 24.10.2019 passed by the Karnataka Electricity Regulatory Commission in OP No. 44 of 2019 is hereby stayed to the extent that Applicant/Appellant be allowed to wheel its surplus power to their party consumers in accordance with law/agreements.”

- 2 While issuing notice in these proceedings on 3 November 2022, this Court had recorded the submissions of the appellant in the following terms :

“1 Mr S S Nagananda, senior counsel appearing on behalf of the appellant submits that :

- (i) The agreement dated 25 November 1992 between the Karnataka Electricity Board and the respondent

stipulated that in case excess energy is generated after meeting the energy requirements, the same would be sold to the Board at the rate fixed by the Government of Karnataka from time to time;

- (ii) This was in accord with the provisions of Section 43-A(1)(c) of the Electricity Supply Act 1948 which then governed the field according to which a generating company would enter into a contract for the sale of electricity generated by it with any other person with consent of the competent Government or Governments;
- (iii) The order passed by the Kerala Electricity Regulatory Commission¹ specifically records that no evidence was produced by the respondent indicating that the Government of Karnataka had permitted the respondent to sell the energy to third parties;
- (iv) In view of the above findings and the above provisions of law and of the agreement, KERC declined to grant permission to the respondent to sell surplus electricity to third parties; and
- (v) Hence, Appellate Tribunal for Electricity² transgressed its jurisdiction by passing an interim order staying the operation of the order of KERC dated 24 October 2019 and permitting the respondent to wheel its surplus power to third party consumers in accordance with law/agreement.”

3 In pursuance of the order issuing notice, the respondents have appeared.

4 We have heard Mr SS Nagananda, senior counsel appearing on behalf of the appellant and Mr Rana Mukherjee, senior counsel appearing on behalf of the respondent.

5 The names of respondent Nos 2 to 4 are deleted at the request of the appellant.

6 The appeal is pending before the Appellate Tribunal for Electricity.

7 Senior counsel appearing on behalf of the first respondent submits that in view of

1 “KERC”

2 “APTEL”

the order of stay granted by this Court, the respondent has been unable to avail of the benefits which were directed by the Appellate Tribunal for Electricity by its interim order. Hence, it has been submitted that for all practical purposes, the matter may be closed at this stage in view of the order which was passed by this Court on 3 November 2022.

8 We accordingly direct that pending the disposal of the appeal before the Appellate Tribunal for Electricity, namely Appeal No 366 of 2019, the order passed by this Court on 3 November 2022 shall continue to operate.

9 The appeal shall be disposed of by the Tribunal uninfluenced by any of the observations contained in the interim order which was impugned before this Court.

10 The appeal is accordingly disposed of.

11 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

New Delhi;
May 02, 2023
GKA

ITEM NO.8

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3521/2020

BANGALORE ELECTRICITY SUPPLY COMPANY LTD.

Appellant(s)

VERSUS

BHORUKA POWER CORPORATION LTD. & ORS.

Respondent(s)

(IA No.51523/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.51522/2020-STAY APPLICATION and IA
No.51529/2020-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL
VAKALATNAMA/OTHER DOCUMENT)

Date : 02-05-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. S.S. Nagananda, Sr. Adv.
Mr. Balaji Srinivasan, AOR

For Respondent(s) Mr. Ananga Bhattacharyya, Adv.
Ms. Devahuti Tamuli, Adv.
Mr. Vatsal Anand, Adv.
Mr. Rohit Rao N, Adv.
Ms. Ekta Pradhan, Adv.
M/S. Veritas Legis, AOR

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

1 The appeal is disposed of in terms of the signed order. Operative part of the signed order reads as under :

“8 We accordingly direct that pending the disposal of the appeal before the Appellate Tribunal for Electricity, namely Appeal No 366 of 2019, the order passed by this Court on 3 November 2022 shall continue to operate.

9 The appeal shall be disposed of by the Tribunal uninfluenced

by any of the observations contained in the interim order which was impugned before this Court.

- 10 The appeal is accordingly disposed of.
- 11 Pending applications, if any, stand disposed of.”

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)