

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

COURT-II

APPEAL NO. 29 OF 2021

APPEAL NO. 4 OF 2019 & IA NO. 1805 OF 2018, IA NO. 246 OF 2019

APPEAL NO. 8 OF 2019

APPEAL NO. 36 OF 2019

APPEAL NO. 39 OF 2019

APPEAL NO. 52 OF 2019

APPEAL NO. 53 OF 2019

APPEAL NO. 220 OF 2020

AND

APPEAL NO. 23 OF 2021

Dated: **31.03.2022**

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

APPEAL NO. 29 OF 2021

In the matter of:

SOLANTRA PRIVATE LIMITED

A Company registered under the provisions of the
Companies Act, 1956, having its Registered Office at
No 307, Hoysala Sai Shelters,
Rajagopalachari Road, Sanjay Nagar,
Bengaluru - 560 094

Represented by its Authorized Signatory

.... Appellant(s)

VERSUS

1. KARNATAKA ELECTRICITY REGULATORY COMMISSION

Having its Office at No. 16, C-1,
Millers Bed Area, Vasanth Nagar,
BENGALURU – 560 052
(Represented by its Chairperson)

2. KARNATAKA RENEWABLE ENERGY DEVELOPMENT LIMITED

A Company Registered under the Provisions of
Companies Act, 1956 having its Registered
Office at No.39, 'Shanti Gruha'
Bharat Scouts and Guides Building
Palace Road,
BENGALURU - 560 001
(Represented by its Managing Director)

3. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED

A Company Registered under the Provisions of
Companies Act, 1956 having its Registered
Corporate Office, Kaveri Bhavan, K. G. Road,
BENGALURU –560 009
(Represented by its Managing Director)

4. STATE OF KARNATAKA

Department of
Room No.236, 2ndFloor, Vikasa Soudha,
Dr. Ambedkar Veedhi
BENGALURU - 560 001
(Represented by its Additional Chief Secretary)

5. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED

A Company Registered under the Provisions of
Companies Act, 2003, Having its
Registered Office At- P.B. Road, Navanagar,
Hubballi – 580 025

(Represented by its Managing Director) Respondent(s)

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja

Counsel for the Respondent(s) : Mr. Nitin Saravanan
Ms. Arunima Singh
Ms. Ridhima Malhotra
Ms. Priyadarshini
Ms. Latha S
Mr. Murugesh R-2

Ms. Vaishnavi Rao
Ms. Swati Mittal for R-3 & 5

**APPEAL NO. 4 OF 2019 &
IA NO. 1805 OF 2018, IA NO. 246 OF 2019**

In the matter of:

1. CHIKKAHALLI SOLAR POWER PROJECT LL.P,

Through its Designated Partner
Sri. SidramKaluti
BC 109, Davidson Road,
Camp: Tumkuru. 590 001
Karnataka

2. **SHRI H.VENKATESH CHOWDARY,**
Doddahalli Tal: Pavagada
Dist: Tumkuru
Karnataka Appellants

VERSUS

1. **BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
Corporate Office, K.R. Circle,
Bengaluru.

2. **KARNATAKA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052 Respondent(s)

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja

Counsel for the Respondent(s) : Mr. Sriranga Subanna, Sr. Adv.
Ms. Sumana Naganand
Ms. Medha M. Puranik
Mr. Sanjay Reddy
Ms. Gayathri Sriram for R-1

APPEAL NO. 8 OF 2019

In the matter of:

1. **KULAGODA SOLAR POWER PROJECT LL.P,**
Through its Designated Partner
Sri. SidramKaluti
BC 109, DavidsonRoad,
Camp: Belagavi. 590 001
Karnataka

2. **SHRI PANDU R. DASAR,**
Kulagoda Tal: Gokak
Dist: Belagavi
Karnataka Appellant(s)

VERSUS

1. **GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
Corporate Office, Station Road,
Kalaburgi.
2. **KARNATAKA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052
- Respondent(s)
- Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja
- Counsel for the Respondent(s) : Mr. Nitin Saravanan
Ms. Arunima Singh
Ms. Ridhima Malhotra
Ms. Priyadarshini
Ms. Latha S
Mr. Murugesh for R-1

APPEAL NO. 36 OF 2019

In the matter of:

1. **MARAKKA SOLAR POWER PROJECT LL.P,**
Through its Designated Partner
Sri. SidramKaluti
BC 109, DavidsonRoad,
Camp: Belagavi. 590 001
Karnataka
2. **SMT. MARAKKA,**
Chennamangathihallikaval
Tal: Challakere
Dist: Chitradurga
Karnataka
- Appellant(s)

VERSUS

1. **MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
MESCOM Bhavana, Bejai,
Kavor Cross Road,
Mangalore.
2. **KARNATAKA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary

No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052

. Respondent(s)

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja

Counsel for the Respondent(s) : Mr. Shahbaaz Husain
Mr. Fahad Khan for R-1

APPEAL NO. 39 OF 2019

In the matter of:

TAVALGERI SOLAR POWER PROJECT LL.P,

Through its Designated Partner
Sri. SidramKaluti
BC 109, Davidson Road,
Camp: Belagavi. 590 001
Karnataka

SHRI HANUMANT WADDAR @ PATHROT,

Chikkanandi Tal: Gokak
Dist: Belagavi
Karnataka

.... Appellants

VERSUS

1. GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED

Through its Managing Director,
Corporate Office, Station Road,
Kalaburgi.

2. KARNATAKA ELECTRICITY REGULATORY COMMISSION

Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja

Counsel for the Respondent(s) : Mr. Nitin Saravanan
Ms. Arunima Singh
Ms. Ridhima Malhotra

Ms. Priyadarshini
Ms. Latha S
Mr. Murugesh for R-1

APPEAL NO. 52 OF 2019

In the matter of:

1. **BANNURA SOLAR POWER PROJECT LL.P,**

Through its Designated Partner
Sri. SidramKaluti
BC 109, Davidson Road,
Camp: Belagavi. 590 001
Karnataka

2. **SMT. MALATI B. RADDI,**

Plot No.2507, Matru Krupa,
MM Extension, Belagavi,
Dist: Belagavi
Karnataka

.... Appellants

VERSUS

1. **MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**

Through its Managing Director,
MESCOM Bhavana, Bejai,
Kavor Cross Road,
Mangalore.

2. **KARNATAKA ELECTRICITY REGULATORY COMMISSION**

Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052

.... Respondents

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja

Counsel for the Respondent(s) : Mr. Shahbaaz Husain
Mr. Fahad Khan for R-1

APPEAL NO. 53 OF 2019

In the matter of:

1. **CHIKKANANDI SOLAR POWER PROJECT LL.P,**

Through its Designated Partner
Sri. SidramKaluti
BC 109, Davidson Road,

Camp: Belagavi. 590 001
Karnataka

2. **SMT. SHOBHA WADDAR @ PATHROT,**
Chikkanandi Tal: Gokak
Dist: Belagavi
Karnataka Appellants

VERSUS

1. **GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
Corporate Office, Station Road,
Kalaburgi.
2. **KARNATAKA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
No.16, C-1, Millers Tank Bed Area,
Vasant Nagar,
Bengaluru- 560 052 Respondents

Counsel for the Appellant(s) : Mr. Basava Prabhu Patil, Sr. Adv.
Ms. Prerna Priyadarshini
Ms. Priyashree Sharma
Mr. Geet Ahuja

Counsel for the Respondent(s) : Mr. Nitin Saravanan
Ms. Arunima Singh
Ms. Ridhima Malhotra
Ms. Priyadarshini
Ms. Latha S
Mr. Murugesh for R-1

APPEAL NO. 220 OF 2020

In the matter of:

- M/S INSOLEXO PRIVATE LIMITED**
A Company registered under the provisions of the
Companies Act, 1956, having its Registered Office at
No 307, Hoysala Sai Shelters,
Rajagopalachari Road, Sanjay Nagar,
Bengaluru - 560 094
Represented by its Authorised Signatory Appellant

VERSUS

1. **KARNATAKA ELECTRICITY REGULATORY COMMISSION**
Having its Office at No. 16, C-1,
Millers Bed Area, Vasantha Nagar,

BENGALURU – 560 052
(Represented by its Chairperson)

2. KARNATAKA RENEWABLE ENERGY DEVELOPMENT LIMITED

A Company Registered under the Provisions of
Companies Act, 1956 having its Registered
Office at No.39, ‘Shanthi Gruha’
Bharat Scouts and Guides Building
Palace Road, BENGALURU - 560 001
(Represented by its Managing Director)

3. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED

A Company Registered under the Provisions of
Companies Act, 1956 having its Registered
Corporate Office, Kaveri Bhavan, K. G. Road,
BENGALURU –560 009
(Represented by its Managing Director)

4. STATE OF KARNATAKA

Department of Energy
Room No.236, 2ndFloor, VikasaSoudha,
Dr. Ambedkar Veedhi
BENGALURU - 560 001
(Represented by its Additional Chief Secretary)

5. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

A Company Registered under the Provisions of
Companies Act, 2003, Having its Registered
Corporate Office At- K.R. Circle,
BENGALURU-560 001.
(Represented by its Managing Director)

... Respondents

Counsel for the Appellant(s) : Ms. Prerna Priyadarshini
Ms. Priyashree Sharma

Counsel for the Respondent(s) : Mr. Nitin Saravanan
Ms. Arunima Singh
Ms. Ridhima Malhotra
Ms. Priyadarshini
Ms. Latha S
Mr. Murugesh R-2

Mr. Shahbaaz Hussain
Mr. Fahad Khan for R-3 & 5

APPEAL NO. 23 OF 2021

In the matter of:

M/S HELIOCORE PRIVATE LIMITED

A Company registered under the provisions of the
Companies Act, 1956, having its Registered Office at
No 307, Hoysala Sai Shelters,
Rajagopalachari Road, Sanjay Nagar,
Bengaluru - 560 094

Represented by its Authorised Signatory

.... Appellant

VERSUS

1. KARNATAKA ELECTRICITY REGULATORY COMMISSION

Having its Office at No. 16, C-1,
Millers Bed Area, Vasanth Nagar,
BENGALURU – 560 052
(Represented by its Chairperson)

2. KARNATAKA RENEWABLE ENERGY DEVELOPMENT LIMITED

A Company Registered under the Provisions of
Companies Act, 1956 having its Registered
Office at No.39, 'Shanthi Gruha'
Bharat Scouts and Guides Building
Palace Road,
BENGALURU - 560 001
(Represented by its Managing Director)

3. KARNATAKA POWER TRANSMISSION CORPORATION LIMITED

A Company Registered under the Provisions of
Companies Act, 1956 having its Registered
Corporate Office, Kaveri Bhavan, K. G. Road,
BENGALURU –560 009
(Represented by its Managing Director)

4. STATE OF KARNATAKA

Department of Energy
Room No.236, 2ndFloor, VikasaSoudha,
Dr. Ambedkar Veedhi
BENGALURU - 560 001
(Represented by its Additional Chief Secretary)

**5. CHAMUNDESHWARI ELECTRICITY SUPPLY
CORPORATION LIMITED**

A Company Registered under the Provisions of
Companies Act, 2003, Having its
Office At- No. 29, Kaveri Grameena Bank Road ,
Vijaynagar, 2nd Stage,
Mysore – 570 009

(Represented by its Managing Director) ... Respondents

Counsel for the Appellant(s) : Ms. Prerna Priyadarshini

	Ms. Priyashree Sharma
Counsel for the Respondent(s) :	Mr. Nitin Saravanan Ms. Arunima Singh Ms. Ridhima Malhotra Ms. Priyadarshini Ms. Latha S Mr. Murugesh R-2
	Mr. Sriranga Subanna, Sr. Adv. Ms. Sumana Naganand Ms. Medha M. Puranik Mr. Sanjay Reddy Ms. Gayathri Sriram for R-3 & R-5

JUDGMENT (Oral)

PER HON'BLE MR JUSTICE R.K.GAUBA, OFFICIATING CHAIRPERSON

1. These matters have been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The contesting respondents are distribution licensees operating in the respective areas of the State of Karnataka, the appellants being solar power project developers/generators. Appeal No. 21 of 2021 (*M/s Solantra Private Limited v KERC &Ors.*), arises out of an Impugned Order dated 12.06.2018 passed by respondent Karnataka Electricity Regulatory Commission (KERC) in OP No. 194 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-HESCOM to the Appellant. Appeal No. 04 of 2019 (*Chikkahalli Solar Power Project LLP & Anr. v. BESCOM & Anr.*), arises out of an Order dated 18.09.2018 passed by KERC in OP No. 70 of 2017 wherein KERC has rejected the extension

of time granted by the Respondent-BESCOM to the Appellant. Appeal No. 08 of 2019 (*Kulagoda Solar Power Project LLP & Anr. v. GESCOM & Anr.*), arises out of an Order dated 18.09.2018 passed by KERC in OP No. 73 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-GESCOM to the Appellant. Appeal No. 36 of 2019 (*Marakka Solar Power Project LLP & Anr. v. MESCOM & Anr.*), arises out of an Order dated 27.09.2018 passed by KERC in OP No. 114 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-MESCOM to the Appellant. Appeal No. 39 of 2019 (*Tavalgeri Solar Power Project LLP & Anr. v. GESCOM & Anr.*), arises out of an Order dated 11.09.2018 passed by KERC in OP No. 113 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-GESCOM to the Appellant. Appeal No. 52 of 2019 (*Bannura Solar Power Project LLP &Anr. v. MESCOM &Anr.*), arises out of an Order dated 25.09.2018 passed by KERC in OP No. 105 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-MESCOM to the Appellant. Appeal No. 53 of 2019 (*Chikkanandi Solar Power Project LLP & Anr. v GESCOM & Anr.*), arises out of an Order dated 11.09.2018 passed by KERC in OP No. 112 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-HESCOM to the Appellant. Appeal No. 220 of 2020 (*M/s Insolexo Private Limited v KERC &Ors.*), arises out of an Order dated 12.06.2018 passed by KERC in OP No. 195 of 2017 wherein KERC has

rejected the extension of time granted by the Respondent-BESCOM to the Appellant. Appeal No. 23 of 2021 (*M/s Heliocore Private Limited v KERC &Ors.*), arises out of an Order dated 14.06.2018 passed by KERC in OP No. 197 of 2017 wherein KERC has rejected the extension of time granted by the Respondent-CESC to the Appellant.

3. By the Orders impugned in the above referred appeals, KERC has reduced the tariff payable to the Appellants under their respective PPAs, from Rs. 8.40 per KwH to Rs. 4.36 per KwH, that is the varied tariff as applicable on the date of commissioning of the respective solar power plants and held them liable to pay liquidated damages under the PPA.

4. The appellants are land owning farmers who had set up separate Solar Power Projects (SPPs) under a special scheme known as 'Farmers' Scheme' under the 'Karnataka Solar Policy 2014-2021' introduced by the Government of State of Karnataka, it being meant to encourage SPPs of the capacity 1 to 3 MW to be developed to add to the generation capacity in the State. In terms of the said scheme, Power Project Agreements (PPAs) were executed by the investors (farmers) with the respective distribution licensees (ESCOMs) operating in the area, it being a common stipulation in each PPA that the SPP would achieve commercial operation within eighteen months of its execution.

5. Primarily on account of delay in securing approvals from various government agencies, delays in attainment of COD occurred in a large number of such projects. The project developers (SPDs) approached the respective ESCOM seeking extension of time under the PPA terms. It is stated that under directions of the State Government, each ESCOM had set up a three members Committee to examine such representation on case-to-case basis and if reasons for delay were justified to grant extension as was being sought to the extent of six months.

6. It is admitted case in the present matters that the case of each SPD herein was examined by the respective three members Committee of the concerned ESCOM and reasons for delay having been found to be justified under the contract terms, recommendation was made for extension to be granted, letters to that effect having been issued in most of them – barring the four cases of *Kulagoda Solar Power Project LL.P. & Anr; Tavalgiri Solar Power Project LL.P. & Anr; Chikkanandi Solar Power Project LL.P & Anr* and *Bannura Solar Power Project LL.P & Anr*. where the extension was granted during the pendency of the Original Petitions filed by the appellants before the KERC.

7. Around the said period the State Electricity Regulatory Commission (KERC) issued a general direction by its Order dated 05.04.2017 calling upon the SPDs to apply to the Commission for extension of SCODs. It is

pursuant to the said direction that each of the Appellants herein moved their respective petitions seeking extension of SCODs.

8. By a letter dated 07.07.2017 addressed to all the ESCOMs, KERC had approved the action of ESCOMs to permit the developers to commission the projects beyond the original scheduled CODs as per PPA.

Contents of the letter dated 07.07.2017 are quoted below:

"I am directed to inform you that the action of the ESCOMs to permit the developers to commission the projects beyond the original scheduled CoD as per PPA, has been approved by the Commission, which however, has noted that the tariff applicable in each case needs to be examined on merits of each individual case.

I am also directed to inform you that, the ESCOMs may advice the concerned SPD/SPVs under Land Owners/Farmers Scheme to file a petition, each before the Commission with all the relevant grounds/documents for justifying their claims for extension of time under Force-majeure conditions of the PPA.

Further, the ESCOMs are hereby directed not to send any SPPA in respect of these cases for approval of the Commission, till the petition(s) filed by the SPDs/SPVs before the Commission, is/are disposed of."

9. Aggrieved by the reduction in the rate, the Appellants have come up by the appeals at hand. They rely on contractual clauses which are similar in each case, the same having been adopted for purposes of the respective PPAs from the standardized format introduced in the farmer's scheme.

“2.5 Extensions of Time

2.5.1 In the event that the SPD is prevented from performing its obligations under Clause 4.1 by the Scheduled Commissioning Date due to:

- (a) Any HESCOM Event of Default; or*
- (b) Force Majeure Events affecting HESCOM; or*
- (c) Force Majeure Events affecting the SPD.*

2.5.2 The Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the reasons and limits prescribed in Clause 2.5.1 and Clause 2.5.3 for a reasonable period but not less than ‘day to day’ basis, to permit the SPD or HESCOM through use of due diligence to overcome the effects of the Force Majeure Events affecting the SPD or HESCOM, or till such time such Event of Default is rectified by HESCOM.

2.5.3 In case of extension occurring due to reasons specified in clause 2.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 6 (six) months.

2.5.4 In case of extension due to reasons specified in Article 2.5.1 (b) and (c), and if such Force Majeure continues even after a maximum period of 3(three) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 9.

2.5.5 If the Parties have not agreed within 30 (thirty) days after the affected Party’s performance has ceased to be affected by the relevant circumstance on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 10.

2.5.6 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.”

10. The appellants have placed reliance on previous decisions of this Tribunal in similarly placed matters, each having emanated from the same scheme, such decisions beginning with Judgment dated 14.09.2020 in Appeal no. 351 of 2018 titled “*Chennamangathihalli Solar Power Project LLP & Anr. v. Bangalore Electricity Supply Company Limited &Anr.*”, the series of judgments also includingin Appeal No. 328 of 2018 in “*Basaragi KM Solar Power Project LLP & Anr. v. Hubli Electricity Supply Company Limited & Anr.*” and in Appeal No. 66 of 2020 titled *Vatsala Ballary Solar Projects Private limited v. KERC & Anr.*

11. The entire background is noted at length in the decision in the case of *Basaragi KM Solar Power Project*(supra) reading thus:

“80. The project in question was evolved by the State Government for extending benefit to the farmers of the lands under the scheme to establish to 3 MWs units. Since farmers were not aware of the procedure to obtain these approvals, SPVs are permitted to be established. Once SPV is established, again there has to be assignment of rights and liabilities. Again Supplemental PPA has to come in to existence. If all these approvals are in order, then only the financier would finance the project. We cannot expect the farmers to invest huge amounts to establish solar plant by funding themselves. Certainly they need loans from the banks.

81. Having regard to the fact that securing these approvals from various instrumentalities of the Government/ Government offices, 18 months period was envisaged to complete the project. Having regard to the fact that there could be circumstances or events which could delay the happening of COD within the original time slot, six months’

time for extension of commissioning the project at the level of concerned distribution licensee was envisaged. For events beyond that, they had to approach the Respondent Commission.

82. The above procedure was envisaged keeping in mind the possibility of delay happening on account of laches on the part of the offices of Governmental Instrumentalities, though Solar Developer or SPV do not contribute to such delay. Unforeseen happening could possibly delay commissioning of the project, therefore force majeure event clauses were introduced in the terms of PPA as stated above. These force majeure clauses definitely take within its fold, the delay caused by offices of the Government or Governmental Instrumentalities.

83. Arguments of the Respondent HESCOM that KPTCL is not a party to the PPA, therefore, the delay on their part cannot come to the aid of the Appellant cannot be accepted. KPTCL is also a public utility and instrumentality of the Government. Therefore, even if the project is delayed on account of KPTCL in not issuing approval for evacuation of power and Grid connectivity within reasonable time, it amounts to event of force majeure.

84. The very scheme is framed as Farmers' Scheme. The policy was meant to create opportunities to land owning farmers. Project instead of benefitting them should not cause damage to them. We have seen that though a deemed land conversion was envisaged in the scheme, there was lot confusion so far as deemed conversion. One cannot ignore the fact that approaching these different institutions/Instrumentalities of Government with applications and obtaining approvals in time take considerable time.

85. The Respondent HESCOM contends that there was delay in submitting applications to various departments by the Appellant. One has to analyze the circumstances in a holistic approach is whether there was negligence on the part of the Developer to approach and obtain these

approvals? It cannot be said that the considerable time lapsed in obtaining these approvals from various Instrumentalities of the Government was at the instance of the Appellants.

86. As stated above, the evacuation of power could be achieved only in the month of March, 2017 after obtaining safety approval certificate from CEIG. Having invested huge amounts taking loans from banks/ financial institutions, one cannot even imagine that the Developer will be negligent in pursuing his project.

87. Having regard to all these facts, both the State Government and MNRE recommended that so far as Farmers' Scheme, there has to be extension of time on account of force majeure event.

88. We are aware that number of appeals are filed pertaining to solar projects in Karnataka under Farmers Scheme. We also note that in some cases, the Application for conversion of agriculture land was submitted two or three months or may be six months after approval of PPA. We take judicial notice as discussed in Appeal No 160 of 2020 (Clearsky matter) that having regard to the nature of the solar plants to be developed by the farmers between 1 MW to 3 MWs, which required land conversion orders from revenue authorities, which has elaborate process consuming lot of time, the State Government in fact opined that there would be deemed conversion for such solar projects. However, in spite of such expression, the guidelines to be followed by the revenue authorities for granting deemed conversion orders in favour of the solar plant developers were not clear and though the farmers approached revenue department, the concerned officers seem to have replied that they have not received guidelines in that regard. We also notice that even the guidelines came to be issued much later. Though this fact was not pleaded in all the appeals, but the guidelines in this regard issued by the State Government is common which was delayed and not intimated to the concerned

authorities, we are of the opinion that such confusion pertaining to deemed conversion procedure has also led to delay in either approaching the concerned revenue authority for conversion of agriculture land or even if they had approached, the conversion order was granted with much delay.

89. Apparently, the scheme was meant to benefit small land holding farmers, who could establish solar plants between 1 MW to 3 MWs. This also definitely requires business prudence apart from minimum knowledge in the field concerned. As per the policy, the establishment of solar plant was to be in the agricultural land. On account of restrictions to use agricultural land for non-agricultural purpose, conversion of agricultural land use is a must. In terms of Karnataka Revenue Act, it has laborious process to get conversion of agricultural land into non-agricultural one. To establish solar power plant, it is not just conversion of agricultural land permission, but several other approvals/consent/permissions were required.

90. Till SPV was established, it was the individual Appellant i.e., SPD who had to run from office to office to secure required approvals/consents. Having regard to laborious process to secure these permissions from various Government instrumentalities, it would have been a wise decision to have infrastructure under one roof (like single window agency) to get all these clearances which would have saved lot of time for the establishment of these small solar power plants in question. Since either the SPD or SPV had to run from office to office situated at different places to secure approval and permission which would not have been possible to secure on any one particular day also seems to have caused hardship and delay in procuring the approvals, be it land conversion or power evacuation and grid connectivity or safety certificate from CEIG etc. To apply for conversion of land to non-agriculture purpose itself, more than 13 documents are required, which have to be secured not from single place but various departments of Government. The scheme

which was expected to be a boon to the farmers seems to have become a bane.

91. The very same set of facts so far as force majeure convinced HESCOM and three member Committee constituted by the State Government and MNRE. However, the same set of Force Majeure Events could not convince the Respondent Commission. The Respondent Commission being a neutral body is expected to discharge its functions in a judicious manner. If delay has occurred on account of reasons beyond the control of the Appellant, the Appellant cannot be punished. The intention of the Government to assist the farmers should not become otherwise a weapon to punish them.

92. We notice that HESCOM at no point of time expressed its doubt with regard to genuineness of the Appellant pursuing various departments to issue the approval/sanction concerned. After accepting the reasons for the delay, they extended time for commissioning of the project. Now it is not open to HESCOM to totally take a u-turn and question the Appellants in this regard. Having extended the time for commissioning the project, it is not fair on the part of the Respondent HESCOM to take a different stand now.

93. In terms of the Articles and various Clauses especially Clause 6.4 of the PPA, if the amounts are due, not paid in time, the Solar Developer is entitled for late payment surcharge. Since the delay was not on account of the Appellants and they did commission the solar plant within the extended SCOD, we are of the opinion that they are entitled for late payment surcharge. Similarly, since there was no deficit on the part of the Appellants in any manner, they are not liable to pay Liquidated Damages or any other damages.

94. Having regard to the Clause 8.3 of the PPA, we are of the opinion that viewed from any angle, the impugned order cannot be sustained. Hence, we pass the following order:

O R D E R

- (a) *The Appeal is allowed and the impugned order is set aside.*
 - (b) *The Appellant is entitled for Rs.8.40 per unit in terms of PPA from the date of commissioning the solar power plant.*
 - (c) *The 1st Respondent - HESCOM to pay the difference of the tariff paid per unit from the date of commissioning of the plant along with late payment surcharge in terms of PPA within one month from today.*
 - (d) *The Appellants are not liable to pay any damages and so also liquidated damages.*
- ..."

12. Earlier, in the case of *Chennamangathihalli* (supra), this Tribunal had ruled thus:

"9.1. Having regard to the deliberations and our analysis, as stated supra, we are of the opinion that there was nothing wrong on the part of KERC to suo-motto interfere in the matter. As being a State Regulator, it has jurisdiction to look into affairs of ESCOMS in purchase and supply of powers in the larger interest of consumers. However, as the COD extension was granted under the signed PPA between the parties and after applying, due diligence in the matter considering all prevailing facts and matrix of events, the State Commission ought to have considered the same and approved so as to meet the ends of the justice. Needless to mention that the PPA's Terms & Conditions were duly approved by the State Commission which crystallised the rights of the parties."

13. The above decision in *Chennamangathihalli* (supra) was upheld by the Hon'ble Supreme Court by its Order dated 18.12.2020 in Civil Appeal No. 3958 of 2020.

14. In *Vatsala Ballary Solar Projects Private limited* (supra) this Tribunal followed the earlier dicta and held thus:

"15. In the above facts and circumstances, we find no merit in the appeal. The State Commission has fallen into error by embarking on an inquiry into the reasons for delay so as to deny the benefit of extension agreed upon by the parties in accordance with contractual provisions and also the contractual rate of purchase of electricity by BESCOM. The decision rendered by the Commission is neither just nor fair and, therefore, set aside. For clarity, we add that the delay stands condoned post the communication of the decision by the BESCOM by letter dated 02.03.2017, and in that view, BESCOM is bound to honour its obligation as to the agreed financial terms under the PPA.

16. Needless to add that as a sequitur to the above decision, it shall be the contractual obligation of respondent BESCOM to make good the deficiency in payments for the period up to date of this judgment and hereafter without any demur or delay."

15. For completion, we may add that the other similar decisions of this Tribunal were rendered by the Judgments dated 12.08.2021 in Appeal No. 322 of 2018 titled "*Madamageri Solar Power Project LLP & Anr. v. Hubli Electricity Supply Company Limited & Anr.*", Appeal No. 342 of 2018 titled "*Hukkeri Solar Power Project LLP & Anr. v. Hubli Electricity Supply Company Limited & Anr.*", Appeal No. 10 of 2019 titled "*Yarganavi Solar Power Project LLP & Anr. v. Hubli Electricity Supply Company Limited & Anr.*", Appeal No. 12 of 2019 titled "*Kurugunda Solar Power Project LLP & Anr. v. Hubli Electricity Supply Company Limited & Anr.*", Appeal No. 37 of 2019 titled "*Hunsankodilli Solar Power Project LLP & Anr. v. Bangalore Appeal nos. 29 of 2021 & batch*

Electricity Supply Company Limited & Anr.”, Appeal No. 38 of 2019 titled “Hirehalli Solar Power Project LLP & Anr v. Bangalore Electricity Supply Company Limited & Anr.”

16. During the course of arguments, it was fairly conceded by the learned counsel for the respondent Discoms, except Gulbarga Electricity Supply Corporation Limited (GESCOM) in appeal nos. 8 of 2019, 39 of 2019 and 53 of 2019, that the cases of the Appellants herein are duly covered by the previous decisions and since the Tribunal has already ruled in favor of the appellants on the question of delay finding it within the scheme and provisions of the contracts, having granted extension of SCOD in each case bearing in mind the principles already settled, the reduction in the rate at which the electricity is to be purchased by the ESCOMs is unjustified. The learned counsel for GESCOM, however, insisted that there was no delay on the part of the ESCOMs in any matter connected with the approvers which caused the delay in project to be developed, the concerned SPDs being responsible on that account, the PPAs having saved the contractual terms on payable tariff (Article 5.1), the prayer for relief in that regard is not properly made out.

17. We found the above-noted opposition highly unjust and unfair particularly in the face of principles which have already been settled by a series of decisions of this Tribunal as quoted above. The delays on the part

of the government agencies in granting the approvals including conversion of land are duly covered by the *force majeure* clauses in the respective PPAs. The respondent KERC has already accepted the prayer for the condonation of the delay and extension of SCOD by a general communication dated 07.07.2017 as quoted earlier. The said decision of the State Commission was never brought to challenge by any of the Discoms and, therefore, has become final and binding. In these circumstances, we reject the contest to the prayer for setting aside of the order of reduction of rate finding it inappropriate.

18. For the foregoing reasons, the appeals at hand deserve to be allowed. The Impugned Orders are set aside. The respondent ESCOMs are held bound to honor their obligations as to the agreed financial terms of PPA. In this view, they are directed to make good the deficiency in payment for the period up to date of this Judgment and hereafter without any delay or demur.

19. We are informed that liquidated damages on account of delay were also imposed and deductions made on that account in case of appeal no. 29 of 2021, appeal no. 4 of 2019, appeal no. 8 of 2019, appeal no. 36 of 2019, appeal no. 52 of 2019, appeal no. 220 of 2020 and appeal no. 23 of 2021. Such levy of liquidated damages is also held unjustified. The concerned ESCOMs will be obliged to refund the corresponding amount, as

already deducted, forthwith. The appellants shall raise proper invoices in terms of this Judgment which shall be duly honored strictly in terms of the PPA as per the timelines specified therein.

20. The applications which are pending in these appeals are rendered infructuous and stand disposed of.

21. The appeals are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERENCE ON THIS 31st DAY OF MARCH, 2022.**

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson