

COURT-I

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

DFR NO. 3355 OF 2017 & IA NO. 843 OF 2017
IA No. 983 OF 2017 IN DFR NO. 3862 OF 2017
DFR NO. 4260 OF 2017 & IA NO. 42 OF 2018

Dated: 16th March, 2018

**Present: Hon'ble Mr. I.J. Kapoor, Technical Member
Hon'ble Mr. Justice N. K. Patil, Judicial Member**

DFR NO. 3355 OF 2017 & IA NO. 843 OF 2017

In the matter of:

Azure Photovoltaic Private Limited

.... Appellant(s)

Vs.

Gulbarga Electricity Supply Corporation Limited & Anr.

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Anuradha Mukherjee
Ms. Shikha Tandon
Ms. Pallavi Rao
Mr. Robin Grover

Counsel for the Respondent(s) : Mr. Sandeep Grover
Ms. Pankhuri Bhardwaj for R-1

IA NO. 983 OF 2017 IN DFR NO. 3862 OF 2017

In the matter of:

Photon Suryakiran Private Limited

.... Appellant(s)

Vs.

Gulbarga Electricity Supply Company Limited & Anr.

.... Respondent(s)

Counsel for the Appellant(s) : Mr. C.S. Vaidyanathan, Sr. Adv.
Ms. Anuradha Mukherjee
Ms. Shikha Tandon
Ms. Pallavi Rao
Mr. Robin Grover

Counsel for the Respondent(s) : -

DFR NO. 4260 OF 2017 & IA NO. 42 OF 2018

In the matter of:

Photon Suryakiran Private Limited

.... Appellant(s)

Vs.

Mangalore Electricity Supply Company Limited & Anr.

.... Respondent(s)

Counsel for the Appellant(s) : Mr. C.S. Vaidyanathan, Sr. Adv.
Ms. Anuradha Mukherjee
Ms. Shikha Tandon
Ms. Pallavi Rao
Mr. Robin Grover

Counsel for the Respondent(s) : Respondent served unrepresented

ORDER

In appeal under DFR No. 3355 of 2017, the Appellant has challenged the order/letter dated 24.08.2017 issued by the State Commission and the letter dated 22.09.2017 issued by the Gulbarga Electricity Supply Company Limited to the Appellant with certain directions.

In appeal under DFR No. 3862 of 2017, the Appellant has challenged the order/letter dated 24.08.2017 issued by the State Commission and the letter dated 22.09.2017 issued by the Gulbarga Electricity Supply Company Limited to the Appellant with certain directions.

In appeal under DFR No. 4260 of 2017, the Appellant has challenged the order/letter dated 24.08.2017 issued by the State Commission and the letter dated 31.08.2017 issued by the Mangalore Electricity Supply Company to the Appellant with certain directions.

Learned senior counsel for the Appellants submit that the order/letter dated 24.08.2017 issued by the State Commission and the

letter dated 22.09.2017 issued by the Gulbarga Electricity Supply Corporation Limited and the order/letter dated 24.08.2017 issued by the State Commission and the letter dated 31.08.2017 issued by the Mangalore Electricity Supply Company are in fact orders. Based on the instructions issued by the State Commission, the Discoms vide letters dated 22.09.2017 and 31.08.2017 have given effect to the order/letter of the State Commission, which according to the Appellants are decision of the State Commission and the same can be appealed before this Tribunal under Section 111 of the Electricity Act, 2003. Learned senior counsel have drawn our attention to the order dated 17.04.2017 passed by the Full Bench of this Tribunal in DFR No. 721 of 2017 and batch in support of his contention.

On the other hand, learned counsel for the Respondent strenuously contended that these appeals are not maintainable inasmuch as the challenge is only to the letters issued by the State Commission/Discoms and they cannot be described as orders. He submitted that even the letters are issued by the State Commission's officers. Hence, they cannot be called orders.

The submission of learned counsel for the Respondent deserves to be rejected. The letters are sent on behalf of the State Commission obviously on the instructions of the State Commission touching upon the provisions of the PPA and its interpretation. In the facts of this case, therefore, they are in the nature of orders issued by the State Commission.

Having heard learned counsel for the Appellant and having read carefully the order/letter dated 24.08.2017 passed by the State Commission and the letter dated 22.09.2017 issued by the Gulbarga Electricity Supply Corporation Limited and the order/letter dated

24.08.2017 passed by the State Commission and the letter dated 31.08.2017 issued by the Mangalore Electricity Supply Company, we are of the opinion that the orders/letters are in the nature of decisions and they can be characterised as orders and should be treated as such. In the peculiar facts and circumstances of the case, we hold that the instant appeals are maintainable.

Registry is directed is list the applications/appeals on 05.04.2018.

Pronounced in the open court on this the 16th day of March, 2018.

(Justice N. K. Patil)
Judicial Member

(I. J. Kapoor)
Technical Member