

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 122 OF 2018 &**  
**IA NO. 403 OF 2018**  
**ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

**Dated:** 26<sup>th</sup> March, 2019

**Present:** Hon'ble Mr. Justice N.K. Patil, Judicial Member  
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

**In the matter of:**

**Mahur Foods and Beverges**

A partnership firm registered under the provisions of the Partnership Act, having its office at:

889/12A, L.B. Shastrinagar, Jewargi Road,  
Kalaburagi – 585 104

Represented by its Managing Director  
Raviraj Mahur

..... Appellant

**VERSUS**

**1. Gulbarga Electricity Supply Company Limited**

A company registered under the Provisions of the Companies Act, 1956, having its registered office at:

Station Road, Kalaburagi – 585 102

Represented by its Managing Director

**2. Karnataka Electricity Regulatory Commission**

No. 16, C-1, Millers Bed Area, Vasanth Nagar,

Bengaluru – 560 052, Karnataka

Represented by its Chairperson

..... Respondents

Counsel for the Appellant (s) : Mr. Shailesh Madiyal  
Mr. Sudhanshu Prakash

Counsel for the Respondent(s): Mr. Nithin Sarvanan  
Ms. Arunima Singh  
Ms. Priyadarshini for R-1

***Respondent No. 2, though served, is unrepresented.***

**The Appellant has presented the instant Appeal seeking the following reliefs::**

- (a) Upon perusal of records, be pleased to set aside the impugned Order dated 05.12.2017 passed by the Karnataka Electricity Regulatory Commission, Bengaluru in OP No. 45/2017;
- (b) Grant the cost of this Appeal; and
- (c) Pass such other order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

**The Appellant has presented this Appeal for considering the following Questions of Law:**

- A. Whether the Hon'ble KERC has committed an error in holding that the Respondent was entitled to unilaterally modify the tariff and conditions specifically agreed upon in the PPA, on the basis of a Scheme/Guidelines, that came into existence much after the execution of the PPA, in spite of there being no delay on the part of the Appellant in completing the plant?
- B. Whether the Hon'ble KERC erred in coming to the conclusion that the extension of time by the Respondent vide its letter dated 19.2.2016 was to be set aside when the said letter dated

19.2.2016 as also the extension was not challenged by anyone?

- C. Whether the Hon'ble KERC has not appreciated that the unilateral modification of the PPA is contrary to the judgment of the Supreme court of India in Gujarat Urja Vikas Nigam Ltd. Vs. EMCO Ltd. and Anr, reported in (2016)11 SCC 182?

## **ORDER**

### **PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER**

1. In the instant Appeal, the Appellant, Mahur Foods and Beverages, is questioning the legality, validity and propriety of the impugned Order dated 05.12.2017 passed in OP No. 45/2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru in the case of Mahur Foods and Beverages v Gulbarga Electricity Supply Company Limited.

2. Heard the learned counsel, Mr. Shailesh Madiyal, appearing for the Appellant for quite some time. During the course of his submissions, the counsel for the Appellant submitted that, the instant appeal, being Appeal No. 122 of 2018, may kindly be disposed of reserving liberty to the Appellant to file a review petition for reviewing the impugned Order dated 05.12.2017 passed in OP No. 45/2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru (second Respondent herein)

within a period of two weeks from the date of the receipt of the copy of this Order.

All the contentions and grounds urged by the Appellant in the instant appeal may kindly be left open.

3. The learned counsel, Ms. Priyadarshini, appearing for the first Respondent, submitted that, in the light of the submissions of the counsel for the Appellant, as stated supra, an appropriate order may kindly be passed.

Submissions of the learned counsel appearing for the Appellant and the first Respondent, as stated supra, are placed on record.

Respondent No. 2, though served, is unrepresented.

4. In the light of the submissions of the learned counsel for the Appellant and the learned counsel for the first Respondent, as stated supra, the instant appeal, being Appeal No. 122 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file a review petition for reviewing the impugned Order dated 05.12.2017 passed in OP No. 45/2017 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru (second

Respondent herein) within a period of two weeks from the date of the receipt of the copy of this Order.

5. It is needless to clarify that, in the event, the Appellant could not get any relief in the review petition filed before the second Respondent/Karnataka Electricity Regulatory Commission, it is open to the Appellant to question the correctness of the impugned Order dated 05.12.2017 before this Tribunal if they so advised or need arises.

All the contentions and grounds urged by the Appellant in the instant appeal are left open.

With these observations the instant appeal, being Appeal No. 122 of 2018, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

**IA NO. 403 of 2018**

In view of the Appeal No. 122 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA No. 403 of 2018 does not survive for consideration and, hence, stands disposed of.

Order accordingly.

**(Ravindra Kumar Verma)**  
**Technical Member**

*bn/vt*

**(Justice N.K. Patil)**  
**Judicial Member**