

SUPREME COURT OF INDIA

Wardha Power Co. Ltd.

Vs.

Maharashtra State Electricity Distribution Co. Ltd. & Anr.

C.A.No.5919 of 2013

(Kurian Joseph and R.F.Nariman,JJ.,)

07.09.2016

JUDGMENT

Kurian Joseph,J.,

1. The appellant is aggrieved by the concurrent findings recorded by the Maharashtra Electricity Regulatory Commission (in short 'the Commission') and the Appellate Tribunal for Electricity (in short 'the Tribunal').
2. The appellant had entered into an agreement to generate and supply power to Respondent No.1. Since the appellant could not keep up the time schedule, it made an adhoc arrangement for purchase of power from other sources.
3. Whether such adhoc supply should be at the actual cost incurred by the appellant or at the agreed rate for the generated power is the short question.
4. Interpreting the terms of the agreement and the communications in-between, the Commission as well as the Tribunal, after elaborately discussing the entire evidence, have rendered a concurrent finding against the appellant. The specific understanding between the parties was that being a bidder, who has agreed to supply power from the source of generation, can claim the Power Purchase Agreement (in short 'PPA') rates only for the generated power. For the delayed generation, to avoid the penalty, appellant was permitted to make adhoc arrangements by purchase of power from other sources. In case the rates for purchased power is less than the PPA agreement rates, appellant can claim only that. For the delayed supply from the generating sources, while purchasing power from other sources, appellant cannot trade and make any unjust enrichment. Moreover, the communication with the respondent would also indicate that it was the understanding between the parties.
5. Under Section 125 of the Electricity Act, 2003, an appeal to this Court lies only when there is a substantial question of law, as required for a second appeal under Section 100 of Code of Civil Procedure, 1908. Though the appellant has raised 34 questions, they are actually grounds for attacking the appellate order. Grounds for attacking an order are

different from substantial question of law evolved in the appeal. On appreciation of the correspondence between the parties during the subsistence of the agreement, both the Commission and the Appellate Tribunal have held against the appellant.

6. We, thus, do not find any substantial question of law so as to exercise our jurisdiction under Section 125 of the Electricity Act, 2003.

7. The appeal is, accordingly, dismissed.

8. No order as to costs.