

REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO.5919 OF 2013

WARDHA POWER CO. LTD. ... APPELLANT(S)

VERSUS

MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION CO. LTD. AND ANR. ... RESPONDENT(S)J U D G M E N TKURIAN, 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 'PPP') 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.

.....J.
(KURIAN JOSEPH)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi,
September 7, 2016.

JUDGMENT

ITEM NO.2

COURT NO.10

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5919/2013

WARDHA POWER CO LTD

Appellant(s)

VERSUS

MAHARASHTRA ST.ELECT.DISTRN.CO.LTD.&ANR.

Respondent(s)

(With appl.(s) for directions and permission to file additional documents and permission to place additional documents on record)
(For final disposal)

Date : 07/09/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Jayant Bhushan, Sr.Adv.
Ms. Sangeeta Bharti, Adv.
Mr. Krishanu Adhikary, Adv.
Ms. Richa Kapoor, Adv.

For Respondent(s)

Mrs. Deepa Chawan, Adv.
Mr. Nirav Shah, Adv.
Ms. Ramni Taneja, Adv.
Mr. Anil Shrivastav, Adv.

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

This appeal is dismissed in terms of the signed
judgment.

Pending applications, if any, stand disposed of.

[RENU DIWAN]
ASSISTANT REGISTRAR

[SUKHBIR PAUL KAUR]
A.R.-CUM-P.S.

(Signed reportable judgment is placed on the file)