

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT APPEAL NO.412 OF 2024 (GM-KEB)

BETWEEN:

BANGALORE ELECTRICITY SUPPLY COMPANY LTD.
A COMPANY REGISTERED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
CORPORATE OFFICE
BESCOM
K.R.CIRCLE
BENGALURU - 560 001
REP. BY ITS MANAGING DIRECTOR

...APPELLANT

(BY SMT. SWAMINI GANESH MOHANAMBAL, ADVOCATE)

AND:

1. M/S ADYAH SOLAR ENERGY PVT. LTD.
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT S 2904
29TH FLOOR
WORLD TRADE CENTRE
BRIGADE GATEWAY CAMPUS
26/1, DR. RAJKUMAR ROAD
MALLESHWARAM

Digitally
signed by
RAKSHA
Legal
High Court
of Karnataka

RAJAJINAGAR
BENGALURU - 560 055
REPRESENTED BY ITS CONSTITUTED ATTORNEY
MR. ARULKUMAR PUDUR SHANMUGASUNDARAM

2. THE STATE OF KARNATAKA
DEPARTMENT OF ENERGY
VIKASA SOUDHA
DR. B.R. AMBEDKAR VEEDHI
BENGALURU - 560 001
REPRESENTED BY THE ADDITIONAL CHIEF
SECRETARY TO GOVERNMENT

...RESPONDENTS

(BY SRI. ABHINAY S., ADVOCATE FOR CR/R1;
SRI. N. SPOORTHY HEGDE, HCGP FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THIS WRIT APPEAL, SET ASIDE THE JUDGEMENT PASSED IN WRIT PETITION NO.12857/2022 DATED 24/11/2023, AND CONSEQUENTLY DISMISS THE WRIT PETITION FILED BY THE RESPONDENT NO.1.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This writ appeal is preferred against the Order of the learned Single Judge dated 24.11.2023 passed in W.P.No.12857/2022 (GM-KEB).

2. We have heard Smt. Swamini Ganesh Mohanambal, learned counsel appearing for the appellant, Shri. Abhinay S, learned counsel appearing for the caveator/respondent No.1 and Shri. N. Spoorthy Hegde learned High Court Government Pleader appearing for respondent No.2.

3. The appellant who was respondent No.2 in the writ petition, has filed the current appeal. The writ petition was filed seeking payment of Rs.39,86,93,281/- towards invoices raised by the writ petitioner for supply of power under Annexure 'B' - Power Purchase Agreements dated 20.04.2018. The appellant contended before the learned Single Judge that payments had been made as per the invoices and only late payment surcharge is payable. It was

contended that the same would be paid subject to reconciliation. However, it was specifically contended by the appellant before the learned Single Judge that the appellant would not insist upon the payment under the Late Payment Surcharge Rules and would consider discharging the liability under Article 13 of the Power Purchase Agreement subject to reconciliation of the account.

4. The learned Single Judge considered the issue and held as follows:

"8. Firstly, the petitioner and the second respondent differ on the date from which Late Payment Surcharge is to be computed with the petitioner insisting that the date of receipt of E-mail with the enclosed Invoices will be the effective date and the second respondent asserting that the date of receipt of the physical copy of the bill should be relevant. This Court, in the absence of a categorical contractual term in that regard, is of the considered view that the second respondent cannot unilaterally decide that the computation of the amount to be paid for the delay must be computed from the date of receipt of the E-mail copy of the Invoices. If there is a delay and if bills are sent by E-mails as allowed by the contractual terms, the date of receipt of such bills by E-mail must be the effective date from which the cost of delay must be borne. Secondly, the petitioner

and the second respondent, in view of this Court's view as aforesaid, must reconcile the accounts."

5. It was further found that the PPA provides that interest payable on delayed amount is to be calculated on day to day basis, but is silent about the number of installments. The Late Payment Surcharge Rules provides the yardstick for the number of installments. It was found that the order of this Court in Writ Petition No.5703/2020 and Connected Matters which requires payment without delay has not been called in question. In the circumstances it was found that the amount is to be paid in twelve equal monthly installments.

6. The writ petition was therefore disposed of initially directing payment in twenty instalments. However, the judgment was reviewed and the payment was to be made in twelve equal monthly instalments.

7. The learned counsel for the appellant contended that the payment in instalments was directed subject to reconciliation and that no reconciliation of the accounts had been made by the respondent till date. It is further

contended that since the amount payable by respondent No.2 to the various suppliers including the petitioner would amount to more than Rs.7,526 Crores, the number of instalments going by the Late Payment Surcharge Rules would extend to 34 instalments and that the payment subject to reconciliation can be made only in 34 instalments.

8. Having considered the contentions advanced, we notice that clause 13.4 in the Power Purchase Agreement reads as follows:

"13.4 Late Payment Surcharge

In the event of delay in payment of a monthly bill by BESCO within 30 (thirty) days beyond its Due Date, a late payment surcharge shall be payable to the Solar Power Developer of the rate of 1.25% per month on the outstanding amount calculated on a day to day basis ("Late Payment Surcharge"). The Late Payment Surcharge shall be claimed by the Solar Power Developer through the Supplementary Bill."

9. The learned counsel for the appellant has also placed a memo dated 23.09.2026 and contends that the total late payment surcharge payable by the appellant to the respondent as on 04.06.2026 would amount to

Rs.10,58,13,337/-. The learned counsel would also place on record the proceedings of the Government of Karnataka dated 22.08.2022 to contend that the security in the form of Government Guarantee has been provided to the ESCOMs for availing loan of Rs.13,708.32 Crores to clear outstanding power purchases dues under the Late Payment Surcharge Rules, 2022. It is stated that the total dues of the appellant amount to Rs.7,526 Crores.

10. We notice that, the Electricity (Late Payment Surcharge and Related Matters) Rules 2022 defines 'late payment surcharge' as follows:

"2(g) "Late Payment Surcharge" means the charges payable by a distribution licensee to a generating company or electricity trading licensee for power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date."

11. The learned Single Judge has clearly recorded the submission of the learned counsel for the appellant that the Late Payment Surcharge Rules would not be made applicable to the amount in question and that the appellant would

consider paying the amount in terms of clause 13 of the Power Purchase Agreement. It was after considering all the factual aspects of the matter that the learned Single Judge came to the conclusion that 12 installments and would be reasonable for the payment of the Late Payment Surcharge due to the writ petitioner. Further, we notice that the reconciliation contemplated is not on account of any dispute with regard to the amount payable as Late Payment Surcharge, but only on the question as to the date from which the Late Payment Surcharge would be payable. The said issue has been clearly answered by the learned Single Judge in paragraph No.8 of the impugned Judgment by holding that if there is a delay in payment and the bills are sent by emails as allowed by the contractual terms, the date of receipt of such bills by e-mail must be the effective date from which the cost of delay must be borne.

12. Rule 5(1) of the Late Payment Surcharge Rules, reads as follows:-

"5. Liquidation of arrears.- (1) The total outstanding dues including Late Payment Surcharge upto the date of the notification of these rules shall be rescheduled and the due

dates re-determined for payment by a distribution licensee in the following maximum number of equated monthly installments:-

Outstanding dues amount (in Rs. Crore)	Maximum no. of equated monthly installments (months)
Up to 500	12
501-1,000	20
1,001 - 2,00	28
2,001 - 4,000	34
4,001 - 10,000	40
>10,000	48

13. Therefore, it is clear that Late Payment Surcharge is the charge payable by the distribution licensee to a particular generating company or electricity trading licensee for power procured from it. If that be so, the contention that the total amount payable by the appellant as a distribution licensee is to be calculated for deciding the maximum number of monthly installments as per the Late Payment Surcharge Rules, 2022 is not a tenable contention at all. Further, the delay in making the payment and the eligibility of the respondent to the Late Payment Surcharges has been specifically considered by the learned Single Judge.

14. Further, a reading of paragraphs No.8 and 9 of the judgment of the learned Single Judge would make it clear that there was no dispute that the amount payable and the reconciliation was only with regard to the date and such reconciliation has already been effected by the respondent.

15. Having considered the contentions advanced, we are of the opinion that there is no merit in the contentions raised in the appeal. Therefore, the appeal fails and the same is accordingly ***dismissed.***

All pending Interlocutory Applications shall stand *disposed of.*

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

cp*