



CNR: KAHC010322322015

NC: 2026:KHC:54557
WP No. 29613 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 29613 OF 2015 (GM-RES)

BETWEEN:

1. M/S SOHAM PHALGUNI
RENEWABLE ENERGY PVT. LTD.
HMG AMBASSADOR BUILDING,
7TH FLOOR, 137, RESIDENCY ROAD,
BANGALORE-560 025
REPRESENTED BY ITS DIRECTOR
MR. SUCHINDRA S SHETTY.

...PETITIONER

(BY SRI. P. CHINNAPPA, ADVOCATE)

AND:

1. THE GOVERNMENT OF KARNATAKA
ENERGY DEPARTMENT,
VIKASA SOUDHA, BANGALORE-560 001
REPRESENTED BY ITS PRINCIPAL SECRETARY

2. KARNATAKA RENEWABLE
ENERGY DEVELOPMENT LTD
NO.39, SHANTHIGRUHA,
BHARAT GUIDES AND SCOUTS BUILDING,
OPPOSTIE THE CHEIF POST MASTER
GENERAL OFFICE, PALACE ROAD,
BANGALORE-560 001.
REPRESENTED BY ITS MANAGING DIRECTOR.

...RESPONDENTS

(BY SRI. MAHANTESH SHETTAR, AGA FOR R1;
SRI. SAMARTH KASHYAP, ADVOCATE FOR R2)

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THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THAT PART OF THE ORDER DATED 17.06.2015 PASSED BY THE R-1 WHEREIN IT HAS ERRONEOUSLY OBSERVED THAT THE PETITIONER IS DUE A SUM OF RS.66,32,627/-(RUPEES SIXTY SIX LAKHS THIRTY TWO THOUSAND SIX HUNDRED AND TEWNTY SEVEN ONLY) TO THE R-2 AND FURTHER DIRECTED KARNATAKA POWER TRANSMISSION CORPORATION LTD AND MANGALORE ELECTRICITY SUPPLY COMPANY LTD TO MAKE PAYMENT TO THE R-2 INSTEAD OF THE PETITIONER FOR THE POWER PURCHASED BY THEM FROM THE PETITIONER ANNEXURE-A; AND ETC.

THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned petition is filed seeking following reliefs:

"a. Pass a Writ, Order or direction in the nature of Certiorari or the like and thereby quash that part of the Order dated 17/06/2015 and bearing number EN 150 NCE 2015 passed by the 1ST Respondent wherein it has erroneously observed that the Petitioner is due a sum of Rs. 66, 32, 627/- (Rupees Sixty Six Lakhs Thirty Two Thousand Six Hundred and Twenty Seven Only) to the 2nd Respondent and further directed Karnataka Power Transmission Corporation Ltd and Mangalore Electricity Supply Company Ltd to make payment to the 2nd Respondent instead of the Petitioner for the power

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*purchased by them from the Petitioner (Annexure A);
and*

(aa) Pass a writ, order or direction in nature of certiorari or the like and hereby quash & set aside the corrigendum dated 21/12/2015 bearing number EN 113 NCE 2015 passed by 1st Respondent (Annexure-R); and

b. Pass a Writ, Order or direction in the nature of mandamus and direct the Respondents to return the sum of Rs. 35, 39, 340/- illegally collected by them from the Petitioner as Extension Fee for extending the time period for setting up and commissioning the Mini Hydel Power Plant in Mullibettu Hydel Scheme on Puchamogaru River, Mulibettu Village, Moodabidri Taluk, Dakshina Kannada District; and

c. Grant costs; and

d. Pass such other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of developing, implementing, owning and operating Mini Hydel Projects in the State of Karnataka. The petitioner-company, formerly known as "Mount Kailash Power



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Projects Private Limited”, was accorded sanction by the State Government on 10.10.2002 for establishing a Mini Hydel Project of 6 MW capacity across the Punchamoguru River at Mulibettu Village, Mangaluru. Pursuant thereto, the petitioner entered into the requisite agreement with the Government of Karnataka and was permitted to establish the power project subject to the terms and conditions stipulated therein. The petitioner subsequently entered into a Power Purchase Agreement dated 26.11.2004 with the concerned authority for sale of the power to be generated from the said project.

3. The petitioner-company contends that, on account of circumstances beyond its control, the project could not be completed within the stipulated period. The State Government, by order dated 19.06.2010, initially cancelled the allotment. However, the said cancellation was subsequently recalled and the project was restored by order dated 29.10.2010, whereby time was extended for

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commissioning the project up to August 2012. The petitioner thereafter sought further extension of time, inter alia, on account of the onset of monsoon. While considering the request for extension, the State Government imposed certain conditions, including furnishing of a performance guarantee and payment of the prescribed extension fee.

4. The principal grievance of the petitioner is with regard to the levy of extension fee. According to the petitioner, the State Government had issued an order dated 26.06.2009, which was subsequently modified by Government Order dated 13.10.2009, specifically stipulating that extension fee in respect of delayed projects would be leviable with effect from 01.10.2009 and would apply only to allotments made on or after 01.10.2009. Since the allotment in favour of the petitioner was admittedly made much prior to the said cut-off date, it is contended that the subsequent demand for extension

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fee is without authority of law. It is further contended that the corrigendum relied upon by the State, which seeks to make the levy applicable to all projects seeking extension of time irrespective of the date of allotment, cannot retrospectively alter the terms governing an allotment and contractual arrangement already concluded with the petitioner.

5. The State Government has contested the writ petition by filing its statement of objections. Reliance is placed upon the corrigendum dated 21.12.2015 produced as Annexure-R1, whereby the State Government clarified that the extension fee was applicable to all projects seeking extension of time, irrespective of the date on which the project was originally allotted. It is contended that the petitioner had accepted the levy without protest and had, in fact, paid a sum of Rs.35.39 lakhs towards extension fee. According to the State, the corrigendum was intended to clarify the scope of the earlier

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Government Order dated 13.10.2009 and, consequently, the petitioner cannot now question the levy after having accepted and acted upon the same. The State, therefore, contends that the writ petition is liable to be dismissed both on merits and in view of the subsequent conduct of the petitioner.

6. Respondent No.2 has also filed its statement of objections and has sought dismissal of the writ petition. Reliance is placed upon the communication addressed by the petitioner-company, wherein the petitioner is stated to have acknowledged its liability to pay the extension fee and sought permission to discharge the same in instalments. According to respondent No.2, the said communication constitutes a clear acknowledgment and acceptance of the levy, and the petitioner, having acted upon such representation and assurance, cannot subsequently resile from the same and challenge the levy

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in proceedings under Article 226 of the Constitution of India.

7. Learned Senior Counsel appearing for the petitioner, Sri Srinivas Raghavan, reiterating the grounds urged in the writ petition, has taken this Court through the orders and communications produced as Annexures-G, J and L, as also the proceedings of the Government of Karnataka produced at Annexure-N. He would contend that the Government orders governing the field expressly excluded ongoing projects from the levy of extension fee. By inviting the attention of the Court to the proceedings at Annexure-P, learned Senior Counsel would contend that the Government itself prescribed 01.10.2009 as the cut-off date and specifically stipulated that the extension fee would be applicable only to allotments made on or after the said date. Since the petitioner's project was allotted much prior to 01.10.2009, it is argued that the subsequent

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levy of extension fee is contrary to the very terms of the Government orders governing the petitioner's project.

8. Learned Senior Counsel would further contend that even when the petitioner sought extension of time for the first time, the proceedings of the State Government initially contemplated imposition of extension fee; however, in the final order dated 10.12.2012 produced at Annexure-K, the State Government merely insisted upon furnishing of a performance guarantee and did not impose any extension fee. According to him, the subsequent attempt to impose extension fee is therefore inconsistent with the earlier decision of the State Government and cannot be sustained. It is his submission that the subsequent corrigendum cannot be employed to retrospectively alter the rights and obligations arising out of an allotment made and contractual arrangement entered into much prior to the prescribed cut-off date.

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9. In support of his submissions, learned Senior Counsel has placed reliance upon the following decisions:

- (i) *Kusumam Hotels (P) Ltd. v. Kerala State Electricity Board*, (2008) 13 SCC 213;
- (ii) *Bharat Sanchar Nigam Limited v. Tata Communications Limited*, 2022 SCC OnLine SC 1280;
- (iii) *Income Tax Officer, Alleppey v. M.C. Ponnose*, (1969) 2 SCC 352;
- (iv) *Sree Sankaracharya University of Sanskrit v. Dr. Manu*, 2023 SCC OnLine SC 640;
- (v) *Associated Cement Companies Limited v. State of Karnataka*, ILR 2006 Kar 1446 (DB);
- (vi) *Jayaswal Neco Limited v. Commissioner of Central Excise, Raipur*, (2015) 10 SCC 651;
- (vii) *Krishna Rai (Dead) through LRs v. Banaras Hindu University through Registrar*, (2022) 5 SCC 713;
- (viii) *M/s. Techno Electric and Engineering Company Limited v. Karnataka Renewable Energy Limited and Others*;
- (ix) *Sharada Achar v. State of Karnataka*, 2025 SCC OnLine Kar 19323.

10. Per contra, learned Additional Government Advocate appearing for respondent No.1-State has sought



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to justify the impugned action. Drawing the attention of the Court to paragraphs 3 to 7 of the statement of objections, learned AGA would contend that the petitioner has not challenged the proceedings at Annexure-P at the relevant point of time and, more importantly, has subsequently accepted the levy of extension fee and acted upon the same. It is submitted that the petitioner has not only acknowledged its liability but has also paid a substantial amount towards extension fee. Having accepted the levy and secured extension of time, the petitioner cannot now turn around and question the very levy by invoking the writ jurisdiction of this Court.

11. Learned AGA would further contend that the corrigendum issued by the State Government makes the position explicit by extending the applicability of the extension fee to all projects seeking extension of time, irrespective of the date of original allotment. It is therefore submitted that the petitioner's challenge, particularly after

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the project has been commissioned and the extension fee has already been paid, does not warrant interference under Article 226 of the Constitution of India.

12. Learned counsel appearing for respondent No.2 has adopted the submissions of learned AGA and would contend that the subsequent communication addressed by the petitioner-company, produced along with the statement of objections as Annexure-R1, constitutes an unequivocal acknowledgment of its liability towards extension fee. According to respondent No.2, the petitioner had sought permission to pay the admitted liability in instalments and, having made such a representation, is estopped from subsequently disputing the levy. It is therefore contended that the writ petition is liable to be dismissed on the ground of the petitioner's subsequent conduct and acceptance of the levy.

13. I have heard the learned Senior Counsel appearing for the petitioner, learned Additional

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Government Advocate appearing for respondent No.1-
State and learned counsel appearing for respondent No.2.
I have also perused the pleadings, the documents
produced by the respective parties and the material placed
before this Court.

14. In the light of the rival submissions, the
following points arise for consideration:

*(i) Whether the levy of extension fee upon the petitioner-
company in respect of its Mini Hydel Project, the
allotment whereof was made prior to 01.10.2009, is
contrary to the Government Orders dated 26.06.2009
and 13.10.2009, which stipulated that the extension fee
would apply only to allotments made on or after
01.10.2009?*

*(ii) Whether the subsequent corrigendum dated
21.12.2015 could validly extend the applicability of the
extension fee to projects allotted prior to 01.10.2009 and*

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thereby alter the terms governing the petitioner's project?

(iii) Whether the final order dated 10.12.2012 granting extension of time subject, inter alia, to furnishing of performance guarantee, without stipulating payment of extension fee, has any bearing on the subsequent levy sought to be imposed upon the petitioner?

(iv) Whether the subsequent conduct of the petitioner in acknowledging the liability towards extension fee and seeking permission to pay the same in instalments, followed by payment of Rs.35.39 lakhs, precludes the petitioner from challenging the levy in the present writ petition?

(v) Whether, in the facts and circumstances of the case, the impugned demand towards extension fee warrants interference in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India?

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FINDINGS ON POINT Nos. (i) TO (v):

15. Before proceeding further, it would be apposite to extract the relevant portion of the proceedings of respondent No.1-State, produced as Annexure-"J", whereby the earlier order cancelling the allotment of the project under Annexure-"H" came to be recalled. The relevant portion of the said proceedings, which has a bearing on the controversy involved in the present petition, is extracted hereunder:

"ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಯೋಜನಾ ಅನುಷ್ಠಾನದ ನಿಟ್ಟಿನಲ್ಲಿ ಅಭಿವೃದ್ಧಿದಾರರು ಸಾಧಿಸಿರುವ ಪ್ರಗತಿಯನ್ನು ಪರಿಗಣಿಸಿ ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ: ಇಎನ್ 147 ಎನ್‌ಸಿಇ 2010 ದಿನಾಂಕ: 19.06.2010ರಲ್ಲಿ ಮೆ// ಮೌಂಟ್ ಕೈಲಾಸ್ ಪವರ್ ಪ್ರಾಜೆಕ್ಟ್ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ ಇವರ ಉಡುಪಿ ಜಿಲ್ಲೆಯ ಕಾರ್ಕಳ ತಾಲ್ಲೂಕಿನ ಪುಚ್ಚಮೊಗರು ಹೊಳೆಗೆ (ಮಲ್ಲಿಬೆಟ್ಟ ಗ್ರಾಮ) ಅಡ್ಡಲಾಗಿ 10.5 ಮೆಗಾ ವ್ಯಾಟ್ ಸಾಮರ್ಥ್ಯದ ಕಿರು ಜಲ ವಿದ್ಯುತ್ ಯೋಜನೆಯ ರದ್ದತಿ ಆದೇಶವನ್ನು ಹಿಂಪಡೆದು ಯೋಜನೆಯನ್ನು ಪೂರ್ವಸ್ಥಿತಿಗೆ ತರಲಾಗಿದೆ. ಈ ಯೋಜನೆಯ ಅನುಷ್ಠಾನಕ್ಕಾಗಿ ಕಾಲಾವಕಾಶವನ್ನು ಆಗಸ್ಟ್ 2012ರವರೆಗೆ ವಿಸ್ತರಿಸಲಾಗಿದೆ.

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ಈ ಆದೇಶವನ್ನು ರದ್ದು ಪಡಿಸುವುದು/ಮಾರ್ಪಾಡು ಮಾಡುವ
ಅಧಿಕಾರವನ್ನು ಸರ್ಕಾರವು ಹೊಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ (1)ರ ಆದೇಶದಲ್ಲಿನ ಇತರೆ
ನಿಬಂಧನೆಗಳು ಯಥಾವತ್ತಾಗಿ ಮುಂದುವರೆಯುತ್ತವೆ.”

A perusal of the aforesaid proceedings would indicate that, while recalling the order cancelling the allotment of the Mini Hydel Project, respondent No.1-State did not impose any fresh condition upon the petitioner-company, except stipulating a revised time schedule for completion and commissioning of the project by the year 2012. Significantly, no liability towards payment of extension fee was stipulated as a condition for restoration of the allotment.

16. It would also be apposite, at this stage, to refer to the subsequent proceedings of respondent No.1-State at Annexure-“K”, issued in response to the request made by the petitioner-company seeking further extension of time for completion of the project. The relevant portion of



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the said proceedings, which has a direct bearing on the controversy involved in the present petition, is extracted hereunder:

"XXXX

ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ (4)ರ ಆದೇಶದಲ್ಲಿ ಮೆ|| ಮೌಂಟ್ ಕೈಲಾಷ್ ಪವರ್ ಪ್ರಾಜೆಕ್ಟ್ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ ಇವರಿಗೆ ಉಡುಪಿ ಜಿಲ್ಲೆಯ ಕಾರ್ಕಳ ತಾಲ್ಲೂಕಿನ ಪುಚ್ಚಮೊಗರು ಹೊಳೆಗೆ (ಮಲ್ಲಿಬೆಟ್ಟು ಗ್ರಾಮ) ಅಡ್ಡಲಾಗಿ ಹಂಚಿಕೆಯಾಗಿದ್ದ 10.5 ಮೆಗಾ ವ್ಯಾಟ್ ಸಾಮರ್ಥ್ಯದ ಕಿರು ಜಲ ವಿದ್ಯುತ್ ಯೋಜನೆಯ ಹಂಚಿಕೆ ಆದೇಶವನ್ನು ರದ್ದು ಪಡಿಸಲಾಗಿತ್ತು. ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ (5)ರ ಆದೇಶದಲ್ಲಿ ಈ ರದ್ದತಿ ಆದೇಶವನ್ನು ಹಿಂಪಡೆದು ಯೋಜನೆಯನ್ನು ಪೂರ್ವಸ್ಥಿತಿಗೆ ತರಲಾಗಿತ್ತು ಹಾಗೂ ಯೋಜನೆಯ ಅನುಷ್ಠಾನಕ್ಕಾಗಿ ಕಾಲಾವಕಾಶವನ್ನು ಆಗಸ್ಟ್ 2012ರವರೆಗೆ ವಿಸ್ತರಿಸಲಾಗಿತ್ತು.

ಭಾರತ ಸರ್ಕಾರದ ಕಾರ್ಪೊರೇಟ್ ಅಫೈರ್ಸ್ ಮಂತ್ರಾಲಯ, ರಿಜಿಸ್ಟ್ರಾರ್ ಆಫ್ ಕಂಪನೀಸ್, ಕರ್ನಾಟಕ ಇವರ CI No : U40101KA2002PTC031173 ದಿನಾಂಕ 31.7.2010ರಲ್ಲಿ ಮೆ|| ಮೌಂಟ್ ಕೈಲಾಷ್ ಪವರ್ ಪ್ರಾಜೆಕ್ಟ್ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ ಕಂಪನಿಯ ಹೆಸರನ್ನು ಮೆ : ಸೋಹಮ್ ಫಾಲ್ಗುಣಿ ರಿನ್ಯೂವೆಬಲ್ ಎನರ್ಜಿ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್ ಎಂದು ಬದಲಾಯಿಸಿ ಪ್ರಮಾಣ ಪತ್ರ ನೀಡಿರುವುದರಿಂದ, ಕಂಪನಿಯ ಹೆಸರು ಬದಲಾವಣೆ ಹಾಗೂ ಪ್ರತಿ ಮೆ.ವ್ಯಾ.ಗೆ ರೂ 3.00 ಲಕ್ಷಗಳ ನೆರವೇರಿಕೆ ಖಾತರಿ (Performance guarantee) ಮತ್ತು ಕಾಲಾವಕಾಶ ವಿಸ್ತರಣಾ ಶುಲ್ಕ ಪಾವತಿಸುವ ಷರತ್ತಿಗೊಳಪಟ್ಟು ಯೋಜನೆಯ ಅನುಷ್ಠಾನಕ್ಕೆ ಆಗಸ್ಟ್ 2014 ರವರೆಗೆ ಕಾಲಾವಕಾಶವನ್ನು ವಿಸ್ತರಿಸಲು ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ (6)ರ ಪತ್ರಗಳಲ್ಲಿ ಕರ್ನಾಟಕ ನವೀಕರಿಸಬಹುದಾದ ಇಂಧನ ಅಭಿವೃದ್ಧಿ ನಿಯಮಿತದ ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು ಶಿಫಾರಸ್ಸು ಮಾಡಿ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

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ಸದರಿ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಕೂಲಂಕಷವಾಗಿ ಪರಿಶೀಲಿಸಿ. ಈ ಕೆಳಗಿನಂತೆ
ಆದೇಶಿಸಲಾಗಿದೆ:-

ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ: ಇಎನ್ 254 ಎನ್‌ಸಿಇ 2012,

ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 10.12.2012.

ಮೆ|| ಮೌಂಟ್ ಕೈಲಾಷ್ ಪವರ್ ಪ್ರಾಜೆಕ್ಟ್ ಪ್ರೈವೇಟ್ ಲಿಮಿಟೆಡ್
ಕಂಪನಿಯ ಹೆಸರನ್ನು ಮೆ : ಸೋಹಮ್ ಫಾಲ್ಗುಣಿ ರಿನ್ಯೂವೆಬಲ್ ಎನರ್ಜಿ ಪ್ರೈವೇಟ್
ಲಿಮಿಟೆಡ್ ಎಂದು ಬದಲಾಯಿಸಿ ಆದೇಶಿಸಿದೆ ಹಾಗೂ ಸದರಿ ಕಂಪನಿಗೆ ದಕ್ಷಿಣ ಕನ್ನಡ
ಜಿಲ್ಲೆಯ ಮಂಗಳೂರು ತಾಲ್ಲೂಕಿನ ಪುಚ್ಚಮೊಗರು ಹೊಳೆಗೆ (ಮಲ್ಲಿಬೆಟ್ಟು ಗ್ರಾಮ)
ಅಡ್ಡಲಾಗಿ ಮಂಜೂರಾಗಿರುವ 10.5 ಮೆಗಾ ವ್ಯಾಟ್ ಸಾಮರ್ಥ್ಯದ ಕಿರು ಜಲ
ವಿದ್ಯುತ್ ಯೋಜನೆಯ ಅನುಷ್ಠಾನಕ್ಕೆ ಅಂತಿಮವಾಗಿ ಮತ್ತು ಯಾವುದೇ ಕಾಲಾವಕಾಶ
ವಿಸ್ತರಿಸುವುದಿಲ್ಲ ಹಾಗೂ ಈ ಕೆಳಕಂಡ ಷರತ್ತಿಗೊಳಪಟ್ಟು ಕಾಲಾವಕಾಶವನ್ನು
ಸೆಪ್ಟೆಂಬರ್ 2012 ರಿಂದ ಆಗಸ್ಟ್ 2014 ರವರೆಗೆ ವಿಸ್ತರಿಸಲಾಗಿದೆ :-

1) ಅಭಿವೃದ್ಧಿದಾರರು ಮಾಹೆಯಾನ ಶೆಡ್ಯೂಲ್ ಆಫ್ ವರ್ಕ್‌ನ್ನು
ಕೆ.ಆರ್.ಇ.ಡಿ.ಎಲ್.ಗೆ ನೀಡತಕ್ಕದ್ದು, ಕ್ರೆಡೆಟ್ ಪ್ರತಿ 3 ತಿಂಗಳಿಗೊಮ್ಮೆ ಯೋಜನಾ
ಪ್ರಗತಿಯನ್ನು ಪರಿಶೀಲಿಸಿ ಸರ್ಕಾರಕ್ಕೆ ವರದಿ ನೀಡತಕ್ಕದ್ದು.

2) ಮೆಗಾ ವ್ಯಾಟ್ ಒಂದಕ್ಕೆ ರೂ 3.00 ಲಕ್ಷಗಳ ನೆರವೇರಿಕೆ ಖಾತರಿ
(Performance guarantee) ಮತ್ತು ನಿಗದಿತ ಕಾಲಾವಕಾಶ ವಿಸ್ತರಣಾ
ಶುಲ್ಕವನ್ನು ಪಾವತಿಸತಕ್ಕದ್ದು.

3). ಈ ಆದೇಶವನ್ನು ರದ್ದು ಪಡಿಸುವುದು/ಮಾರ್ಪಾಡು ಮಾಡುವ
ಅಧಿಕಾರವನ್ನು ಸರ್ಕಾರವು ಹೊಂದಿರುತ್ತದೆ."

(Emphasis Supplied)

On reading the aforesaid proceedings as per Annexure-K,
though respondent No. 1/State in its subject contemplated
imposition of extension fees along with performance

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guarantee, however, vide order dated 10.12.2012 only resolved to insist a performance guarantee and further extended the timeline to accomplish the project by August 2012. Therefore, the core question and controversy revolves around imposition of extension fees to the ongoing projects in the proceedings held by respondent No.1/State as per Annexure-"N". The imposition of extension fees to the contracts already allotted were excluded. The relevant table which is part of the proceedings held as per Amendment-"N" is relevant and the same is extracted, which reads as under:

Sl. No	Source	Application fee Rs/MW		Transfer fee Rs per Mw		DPR Processing fee Rs. per MW	
		Existing	Proposed	Existing	Proposed	Existing	Proposed
1	Wind	5000	10000	75000	1% of the project cost	25000	500000
2	Small Hydro	5000	10000	0.75% of the project cost	1% of the project cost	25000 subject to a minimum of one lakh	500000
3	Biomass	5000 (lump sum)	10000	--	1% of the project cost	25000	500000

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4	Cogeneration	5000 (lump sum)	10000	--	1% of the project cost	25000	500000
5	Solar	5000	10000	--	0.1% of the project cost	25000	500000
6	Pico Hydro	--	1000	--	---	--	--
7	Waste to Energy (MSW)	--	10000	--	--	--	100000
8	Hybrid Systems	--	1000	--	--	--	--
Fees are non refundable							

Sources	Existing Extension fee in Rs/MW	Proposed time extension fee in Rs per MW
All NCE sources	Nil	a) Rs.100000/MW for one year extension b) Rs.200000/MW for two year extension c) Rs.300000/MW for three year extension d) Rs.500000/MW for four year extension After fourth year if the project is not completed and commissioned, the Government has discretion to forfeit the project.
Fee is not refundable		

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17. At this juncture, it would be apposite to refer to the proceedings of respondent No.1-State at Annexure-"P", whereby the application fee, processing fee, transfer fee and time-extension fee came to be revised. The said proceedings assume considerable significance, as the applicability of the revised time-extension fee to ongoing projects is at the heart of the controversy involved in the present petition. Therefore, before examining the rival contentions, it would be appropriate to extract the relevant portion of the proceedings at Annexure-"P", which reads as under:

"This Order comes into effect from 01.10.2009 and will be applicable to allotments made on or after 01.10.2009."

The difference amount of fees for the NCE Power Projects paid as per Government Order No: EN 392 NCE 2008 dated: 26.6.2009 shall be refunded to the applicants/developers."

(Emphasis Supplied)



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A plain reading of the aforesaid proceedings makes it abundantly clear that respondent No.1-State had consciously stipulated that the levy of extension fee would be applicable only to projects allotted with effect from 01.10.2009. Consequently, projects which had already been allotted prior to the said cut-off date, including ongoing projects, stood outside the ambit of such levy. The petitioner's project, having admittedly been allotted much prior to 01.10.2009, would therefore fall within the category of projects excluded from the levy under the said proceedings.

18. In the backdrop of the aforesaid categorical stipulation contained in the proceedings of respondent No.1-State, the principal issue that arises for consideration is whether respondent No.1-State could, subsequently, by issuing the Corrigendum dated 21.12.2015, produced as Annexure-R1 along with its statement of objections, alter the scope and applicability of the earlier proceedings so as

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to bring within its ambit projects which had been allotted prior to 01.10.2009. In order to appreciate the controversy in its proper perspective, it would be apposite to extract the relevant portion of the said Corrigendum, which reads as under:

"CORRIGENDUM

In the order portion of the Government Order No: EN 392 NCE 2008 dated: 13.10.2009 relating to revision of application fee, processing fee, transfer fee and time extension fees for NCE power projects, it was stated that, "This order comes into effect from 01.10.2009 and will be applicable to all allotments made on or after 01.10.2009"

shall be read as

"As time extension and allotment are two different activities happening at different time intervals the effective date is independent of allotment date. Hence, time extension fees is applicable to all projects seeking time extension irrespective of date of allotment"

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***The other contents of the Government Order
remain unaltered.”***

(Emphasis Supplied)

Having extracted the relevant portion of the proceedings at Annexure-P as well as the subsequent Corrigendum dated 21.12.2015, this Court is required to examine the effect of the latter in the light of the specific stipulation contained in the original Government Order dated 13.10.2009.

19. A plain reading of the proceedings at Annexure-P leaves little scope for ambiguity. The State Government, while revising the application fee, processing fee, transfer fee and time-extension fee, specifically stipulated that the order would come into effect from 01.10.2009 and would be applicable to allotments made on or after 01.10.2009. The date of allotment was, therefore, consciously made the determining criterion for applicability of the extension fee. Consequently, projects which had already been

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allotted prior to 01.10.2009 were outside the ambit of the revised levy.

20. The petitioner's project was allotted much prior to the aforesaid cut-off date. Therefore, on the date on which the Government Order dated 13.10.2009 came into force, the petitioner's project was an existing/ongoing project and did not fall within the class of projects to which the revised extension fee was made applicable. The exclusion was not a consequence of any interpretative exercise but flowed directly from the express language employed by the State Government in its own proceedings. The question, therefore, is whether the Corrigendum dated 21.12.2015 could retrospectively alter this position by providing that the time-extension fee would be applicable to all projects seeking extension of time, irrespective of the date of allotment.

21. In the considered opinion of this Court, the answer has to be in the negative. The 2015 Corrigendum



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cannot be regarded as a mere clarification of an ambiguity in the earlier Government Order. The original Government Order was explicit both as to its date of commencement and as to the category of allotments to which it would apply. There was no ambiguity requiring a subsequent clarification. The Corrigendum, by deleting the significance of the date of allotment and making the levy applicable to all projects seeking extension of time, has materially enlarged the class of projects subjected to the levy.

22. The distinction between a clarification and a substantive alteration is well settled. A subsequent instrument may operate retrospectively where it merely explains or clarifies an ambiguity in the earlier provision. However, where the subsequent instrument changes the scope of the earlier provision, enlarges the class of persons subjected to an obligation, withdraws an existing benefit or imposes a new financial burden, it cannot be treated as merely clarificatory merely because it is styled

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as a “corrigendum” or “clarification”. The Hon’ble Supreme Court in ***Sree Sankaracharya University of Sanskrit v. Dr. Manu¹***, has reiterated that for a subsequent provision to be regarded as clarificatory, the earlier provision must suffer from ambiguity and the subsequent provision cannot expand or alter its scope.

23. The principle laid down by the Constitution Bench in ***CIT v. Vatika Township (P) Ltd.²***, also assumes significance. The general rule is that, in the absence of a clear indication to the contrary, a provision imposing a new burden or affecting substantive rights is presumed to operate prospectively. The underlying principle is one of fairness, namely, that a person is entitled to arrange his affairs on the basis of the law governing him at the relevant point of time and should not ordinarily be subjected to a subsequent burden by retrospective operation.

¹ 2023 SCC OnLine SC 640,

² (2015) 1 SCC 1



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24. The present case is a stronger case than one involving mere retrospective alteration of an administrative procedure. The 2009 Government Order had expressly excluded pre-01.10.2009 allotments from the revised extension-fee regime. The 2015 Corrigendum seeks to bring those very projects within the levy. Thus, the Corrigendum does not merely explain what was already contained in the 2009 Government Order; it changes the basis upon which chargeability is determined. The distinction between the two instruments is therefore substantive and not semantic.

25. The decision of the Hon'ble Supreme Court in ***Kusumam Hotels (P) Ltd. v. Kerala State Electricity Board³***, also lends support to the principle that an executive decision cannot ordinarily be given retrospective operation so as to withdraw a benefit or impose an additional burden for a period during which the earlier regime governed the parties. The petitioner, on the

³ (2008) 13 SCC 213,



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strength of the 2009 Government Order, was entitled to proceed on the basis that the revised extension fee did not govern an allotment made prior to 01.10.2009.

26. The State's contention that the 2015 Corrigendum merely clarified the earlier Government Order therefore cannot be accepted. If the original Government Order was intended from inception to cover every project seeking extension of time, irrespective of its date of allotment, there was no necessity to specifically state that the order would be applicable to "all allotments made on or after 01.10.2009". The express reference to the date of allotment cannot be rendered otiose by describing the subsequent alteration as a corrigendum.

27. This Court is also unable to accept the contention that the subsequent Corrigendum could retrospectively govern the petitioner merely because the petitioner sought extension of time after the issuance of the original Government Order. The relevant consideration



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is not merely the date on which extension was sought but whether the project fell within the class of projects to which the extension-fee regime was made applicable. The Government itself had chosen the date of allotment as the criterion. The petitioner's allotment being anterior to 01.10.2009, the subsequent request for extension could not, by itself, bring the project within a levy from which it had expressly been excluded.

28. The proceedings dated 10.12.2012 at Annexure-K assume significance in the context of the petitioner's subsequent request for extension of time. Though the proceedings contain a reference to the issue of imposition of extension fee, the final decision taken by respondent No.1-State was to grant the extension subject to furnishing of a bank guarantee. Significantly, the operative decision did not impose extension fee as a condition for grant of further time or fasten any such liability upon the petitioner on account of the delay in

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completion of the project. Thus, the ultimate decision reflected in Annexure-K was confined to securing the performance of the petitioner by insisting upon a bank guarantee and did not contemplate levy or recovery of extension fee for the delayed implementation of the project.

29. This contemporaneous conduct of the State Government is consistent with the petitioner's contention that its project was not then treated as falling within the extension-fee regime. The subsequent attempt to recover extension fee, therefore, requires to be examined in the context of the State's own earlier proceedings.

30. However, the respondents have placed considerable reliance upon the subsequent conduct of the petitioner-company. It is contended that the petitioner, by its communication dated 09.06.2015, acknowledged its liability towards extension fee and sought permission to discharge the same in instalments and thereafter paid a



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sum of Rs.35.39 lakhs. It is, therefore, urged that the petitioner cannot approbate and reprobate by accepting the levy and subsequently challenging the same.

31. The said contention, however, cannot by itself confer legal validity upon a levy which is otherwise without authority under the governing Government Order. The doctrine of estoppel cannot ordinarily be invoked to compel a person to accept an obligation which the State had no authority to impose in the manner in which it was sought to be imposed. Equally, an erroneous or mistaken acceptance by a party cannot enlarge the substantive power of the State or validate an executive action which is otherwise contrary to the governing instrument.

32. At the same time, the petitioner's subsequent conduct cannot be completely disregarded. The communication dated 09.06.2015 and the payment made pursuant thereto are relevant circumstances while examining the factual conduct of the parties. However,

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they cannot alter the interpretation of the Government Order dated 13.10.2009 or convert the 2015 Corrigendum into a mere clarification. The legality of the levy has to be determined with reference to the source and scope of the power under which the levy was imposed.

33. It is also material that the petitioner is not challenging a mere demand calculated in accordance with an otherwise applicable regime. The very applicability of the extension fee to the petitioner's project is under challenge. Once the original Government Order expressly confined the levy to allotments made on or after 01.10.2009, the burden lies upon the State to demonstrate the legal authority by which a project allotted prior to that date could subsequently be brought within the levy. The Corrigendum dated 21.12.2015, by itself, cannot supply such authority if, in substance, it creates or enlarges the liability.

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34. In that view of the matter, this Court holds that the Corrigendum dated 21.12.2015, insofar as it seeks to make the extension fee applicable to projects allotted prior to 01.10.2009, cannot be treated as a mere clarification of the Government Order dated 13.10.2009. It substantially alters the criterion of applicability and thereby seeks to impose a financial burden upon a class of projects which stood excluded under the original proceedings. Such alteration cannot be retrospectively applied to the petitioner's project.

35. The payment of Rs.35.39 lakhs by the petitioner and its communication seeking permission to pay the extension fee in instalments do not, in the facts of the present case, validate the levy or operate as a bar against examination of its legality. The petitioner's subsequent conduct may have evidentiary relevance, but it cannot confer jurisdiction or statutory authority upon the State where none existed under the governing regime.

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36. Accordingly, Point No.(i) is answered in the ***affirmative*** and in favour of the petitioner by holding that the extension-fee regime under the Government Order dated 13.10.2009 was expressly confined to allotments made on or after 01.10.2009 and that the petitioner's project, having been allotted prior thereto, was outside its ambit.

37. Point No.(ii) is answered in the ***negative*** and in favour of the petitioner. The Corrigendum dated 21.12.2015, insofar as it purports to extend the levy to projects allotted prior to 01.10.2009, is substantive in nature and cannot be retrospectively applied to the petitioner's project merely by describing it as a corrigendum or clarification.

38. As regards Point No.(iii), the proceedings dated 10.12.2012 are significant inasmuch as the State, while granting extension, imposed the condition of furnishing performance guarantee and did not stipulate payment of



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extension fee. Those proceedings reinforce the conclusion that the petitioner's project was not, at that stage, subjected to the extension-fee regime. The subsequent levy cannot be sustained merely by relying upon the later Corrigendum.

39. As regards Point No.(iv), the subsequent acknowledgment and payment by the petitioner do not, by themselves, preclude the petitioner from questioning the legality of the levy. There can be no estoppel against a challenge to an action which is alleged to be without authority of law. The respondents, therefore, cannot sustain the levy solely on the ground that the petitioner subsequently accepted the demand or paid the amount.

40. Consequently, Point No.(v) is answered in the ***affirmative***. The demand for extension fee, insofar as it is founded upon the Corrigendum dated 21.12.2015 and is sought to be applied to the petitioner's project

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notwithstanding its allotment prior to 01.10.2009, cannot be sustained.

41. For the foregoing reasons, the writ petition deserves to be allowed to the aforesaid extent. Accordingly, this Court proceeds to pass the following;

ORDER

(i) The writ petition is allowed in part.

(ii) The Corrigendum dated 21.12.2015 bearing No. EN 113 NCE 2015 issued by respondent No.1-State, insofar as it seeks to make the extension fee applicable to projects allotted prior to 01.10.2009, is held to be inapplicable to the petitioner's project and is accordingly quashed to that extent.

(iii) Consequently, the demand and collection of extension fee of Rs.35,39,340/- from the petitioner, insofar as the same is founded solely upon the aforesaid Corrigendum and relates to the extension of time granted in respect of the petitioner's pre-01.10.2009 allotment, cannot be sustained.

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(iv) Respondents 1 and 2 are directed to refund Rs.35,39,340/- to the petitioner. The refund shall be effected within a period of three months from the date of receipt of a certified copy of this order.

(v) Insofar as the challenge to the order dated 17.06.2015 bearing No. EN 150 NCE 2015 and the direction relating to payment of the amount of Rs.66,32,627/- to respondent No.2 instead of the petitioner is concerned, the same shall stand governed by the findings recorded in this order and the consequential directions issued herein.

(vi) The prayer for costs is rejected.

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**(SACHIN SHANKAR MAGADUM)
JUDGE**

ALB

List No.: 1 Sl No.: 31