

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MARCH, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 1969 OF 2025 (GM-KEB)

BETWEEN:

1. POWER COMPANY OF KARNATAKA LIMITED
INDHANA BHAVAN, 4TH FLOOR
ANAND RAO CIRCLE
BANGALORE - 560 009
(REPRESENTED BY ITS ADDITIONAL
DIRECTOR PROJECTS)

...APPELLANT

(BY SRI SHASHIKIRAN SHETTY K., ADVOCATE GENERAL/
SENIOR ADVOCATE A/W
SMT. SUMANA NAGANAND, ADVOCATE)

AND:

1. M/S HASSAN THERMAL POWER PRIVATE LIMITED
PREVIOUSLY KNOWN AS EURO INDIA POWER
CANARA PRIVATE LIMITED
A COMPANY REGISTERED UNDER SECTION 21
OF THE COMPANIES ACT, 1956
HAVING ITS ADMINISTRATIVE OFFICE AT S-327
GREAT KAILASH-II, NEW DELHI -110 048
REPRESENTED BY ITS DIRECTOR
SMT. NALINI VIJAYKUMAR
W/O VIJAY KUMAR
AGED ABOUT 68 YEARS
2. STATE OF KARNATAKA
DEPARTMENT OF ENERGY
VIDHANA SOUDA,
BANGALORE - 560 001

Digitally
signed by
AMBIKA H B
Location:
High Court
of Karnataka

REPRESENTED BY ITS ADDITIONAL
CHIEF SECRETARY

...RESPONDENTS

(SRI R.K. NAROOOLA, ADVOCATE;
MS. PRATIBHA SHARMA, ADVOCATE;
MS. DEEPA V., ADVOCATE FOR C/R-1 &
SRI K.S. HARISH, GOVERNMENT ADVOCATE FOR R-2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 06.11.2025 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. No.19513/2025 (GM-KEB) AND CONSEQUENTLY DISMISS THE WRIT PETITION.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

Introduction

1. The appellant, Power Company of Karnataka Limited [PCKL], is a nodal agency for all the electricity distribution companies in the State of Karnataka for the procurement of power. It has filed the present appeal impugning an order dated 06.11.2025 [**the impugned order**] passed by the learned Single Judge in Writ Petition No.19513/2025 (GM-KEB).

2. Respondent No.1, M/s Hassan Thermal Power Private Limited [HTPPL], is in the business of generating electricity. It had

filed the said petition seeking refund of the deposit [**EMD**] of ₹1,00,00,000/- (Rupees one crore only) along with interest at the rate of 12% per annum from 12.04.2016 till the date of refund. In addition, HTPPL claims that it is entitled to exemplary costs from PCKL/State for causing hardship and mental harassment by their unjustified acts of withholding the refund of the deposit due to the HTPPL on 12.04.2016 and for unlawfully utilising the same.

3. PCKL had contested the said petition on several grounds, including that HTPPL had an alternate remedy under Section 86(1)(f) of the Electricity Act, 2003 [**the Electricity Act**] before the Karnataka Electricity Regulatory Commission [**KERC**]. PCKL contends that HTPPL is not entitled to a refund of the EMD, which was deposited on 28.11.1998. It also contested the writ petition on the ground that HTPPL's claim is barred by delay and laches.

Impugned Order

4. The learned Single Judge held that the HTPPL's claim involved the State's constitutional and fiduciary obligation under Articles 14 and 300A of the Constitution of India and therefore, fell within the domain of public law. The learned Single Judge further found that PCKL's retention of the deposit constituted unjust enrichment and deprivation of property, which would contravene

Article 300A of the Constitution of India. The learned Single Judge also held that wrongful retention of the EMD constituted a continuing wrong of Section 22 of the Limitation Act, 1963 [**the Limitation Act**], giving rise to a fresh cause of action each day until it is refunded.

5. PCKL assails the impugned order on several grounds. Before addressing the rival contentions, it is apposite to set out the factual matrix in which the present dispute arises.

Factual Context

6. By an order dated 05.03.1996, the Government of Karnataka [**Government**] through the then Karnataka Electricity Board [**KEB**] accorded its approval for M/s. Euro Kapital A.G [**Euro AG**] to set up a Low Sulphur Heavy Stock [**LSHS**] based barge-mounted power plant of 1x150 MW capacity on the Mulki river near Mangaluru in Dakshina Kannada District, subject to several conditions. However, Euro AG was declared bankrupt.

7. Two companies, namely, M/s.Euro India Power Canara Private Limited (now HTPPL) and M/s.Euro India Energy Limited raised rival claims to take up the project, which was previously allotted to Euro AG. However before considering their request, the

Government by letter dated 19.09.1998 called upon them to deposit ₹10 crore each, by way of a demand draft as Guarantee Money.

8. Whilst HTPPL by its letter dated 26.09.1998 furnished a Bank Guarantee for USD 2.38 million (approximately ₹10.11 crore), Euro India Energy Limited did not furnish the requisite amount.

9. In view of the above, on 31.10.1998, the Government accorded approval to HTPPL (then known as Euro India Power Canara Private Limited) to set up the aforesaid project. In terms of the said order, the Government accepted the Bank Guarantee furnished but, also demanded Guarantee Money of ₹1 crore in cash/demand draft in addition to the Bank Guarantee, to be deposited within a period of thirty days from the date of the order. The Government Order stipulated that the allotment would be subject to HTPPL commencing generation of power from the plants within six months of signing the Power Purchase Agreement [**PPA**] with KEB, which would be initially valid for a period of seven years. HTPPL was also required to obtain all statutory clearances under the relevant enactments.

10. In compliance with the condition of furnishing additional "Guarantee Money", HTPPL deposited a sum of ₹1 crore, which was acknowledged by KEB vide receipt dated 28.11.1998.

11. Apparently, HTPPL sought revision in the project. The Government Order dated 31.03.1999, which has been placed on record, indicates that, by letter dated 09.02.1999, HTPPL requested the Government to revise the capacity of the power plant in question from 150 MW to 195 MW. It also requested permission to include other companies as sponsors of the project by replacing Euro AG. By a separate letter dated 06.03.1999 addressed to Karnataka Electricity Board [**KEB**], HTPPL also sought permission to change the use of fuel from LSHS to Naphtha and an eighteen-month construction period. In the aforesaid context, the Government passed an order dated 31.03.1999, the operative part of which reads as under:

"In the circumstances explained in the preamble and after careful consideration Government are pleased to permit M/s. Euro India Power Canara (Pvt.) Ltd., (E.I.P.C.L) to -

- (a) enhance the capacity of the Barge mounted power project at Mulki near Mangalore to 195 MW on combined cycle mode.
- (b) incorporate new sponsors in the agreement i.e., to in- corporate (i) M/s. Engineering Power Systems, Canada, (ii) M/s.Atlantic Sea Board Industries

Ltd., Canada and (iii) Sea King Engineers Ltd., Mumbai.

(c) Change the use of fuel from LSHS to Naphtha.

(2) Further, 11/s. Euro India Power Canara (Pvt.) Ltd., B'lore is directed to sign immediately the Power Purchase Agreement with Karnataka Electricity Board and achieve financial closure within six months from the date of order, failing which the project will be cancelled, the security deposit forfeited and the Bank Guarantee encashed, without any further notice to that effect."

12. Thereafter, on 22.04.1999, HTPPL entered into a PPA with the erstwhile KEB.

13. The record indicates that the project underwent several changes after the initial order, granting approval for setting up a 150 MW plant. These changes were approved by the Government. The structure of the project was changed to a coal-based thermal power plant.

14. In February 2001, the Government granted in principle approval for the enhancement of the thermal plant's capacity to 220 MW (net 200 MW) to be located in the adjoining districts of Bengaluru. Thereafter, in May 2001 the location of the plant was changed to Mandya District. However, the PPA was not amended.

15. In the year 2006, HTPPL again requested for change of the location of the plant from Mandya District to Hassan and further enhancement of capacity to 300 MW using imported coal. Thereafter, in April 2007, the Government accorded its approval for further enhancement of the capacity from 300 MW to 500 MW, subject to certain conditions. On 30.07.2007, the Government of Karnataka accorded its approval for the execution of the restated PPA.

16. On 25.06.2007, the revised and restated PPA was executed between HTPPL and the distribution companies of the State of Karnataka.

17. PCKL also acknowledged the EMD of ₹1 crore. The PCKL placed a letter dated 05/07.05.2015, acknowledging the deposit and requesting HTPPL to confirm the same and return a copy duly stamped and signed.

18. On 11.04.2016, the Government of Karnataka passed an order for the withdrawal of the approval granted to HTPPL for the implementation of a coal-based thermal plant at Hassan. The relevant extracts of the said order which indicate the reasoning for withdrawal of the approval, are reproduced below:

"14. The project though conceived in 1995 through competitive bidding route, has undergone several changes, over the period of time. All parameters of the projects like location is changed from Mangalore to adjoining district of Bangalore to Mandya and then to Hassan, capacity is revised from 150MW to 195MW to 220 MW to 300MW to 500MW (subsequently changed to 660 MW) and fuel is changed from LSHS to Naptha and then to coal. Since 1995, as is evident from the following:

Govt.Order/ Letter date	Name of the Firm	Capacity	Fuel	Location	Remarks
DE 284 PPC 95(3) dtd 05-03-1996	M/s Euro Kapital	150 MW	LSHS	Barge mounted Project at Mangalore	Initial Bid
DE 98 PPC 96 dtd 31-10-1998	Euro India Power Canara (P) Ltd., (EIPCL)	150 MW	LSHS	Barge mounted. Project at Mangalore.	Change of Name
DE 98 PPC 96 dtd 31-03-1999	Euro India Power Canara (P) Ltd., (EIPCL)	195 MW	Naptha	Barge mounted. Project at Mangalore.	Change of Fuel and enhancem ent of Capacity. PPA was signed on 22-04- 1999 with KEB
DE 98 PPC 96 dtd 19-02-2001	Euro India Power Canara (P) Ltd., (EIPCL)	220 MW	Coal	Land based. Adjoining districts of Bangalore	Change of Location, Fuel, capacity. Treating the proposal as an extended bid route project.
DE 98 PPC 96 dtd 22-05-2001	Euro India Power Canara (P) Ltd., (EIPCL)	220 MW	Coal	Mandya Dist.	Change of Location

DE 98 PPC 96 dtd 23-09-2006	Euro India Power Canara (P) Ltd., (EIPCL)	500 MW	Importe d Coal	Hassan	Change of Location, Capacity
DE 98 PPC 96 dtd 19-04-2007	Euro India Power Canara (P) Ltd., (EIPCL)	500 MW	Importe d Coal	Hassan	Enhanceme nt of Capacity.
DE 98 PPC 96 dtd 18-05-2007	Approval was accorded for changing the name from EIPCL to M/s Hassan Thermal Power (P) Limited (HTPPL)	500 MW	Importe d Coal	Hassan	PPA was initiated on 25-06-2007 between ESCOMs and http: & Governmen t. accorded approval on 30.07.2007.
In November 2011 it is proposed to enhance the capacity of the project from 500 MW to 660 MW in view of advantages of supercritical project (660MW and above) over subcritical projects (below 600MW)					

Therefore the project has lost the character of the bid route project.

15. Further, as per the provisions of Electricity Act 2003, National Electricity policy, National Tariff Policy and KERC regulations Power has to be procured by transparent bidding process.

16. Therefore procurement of power from this project is not in the interest of Public."

19. HTPPL filed writ petitions including W.P.Nos.30954-55/2016 (GM-KEB) challenging the order withdrawing the approval, and connected matters (W.P.Nos.30351-352/2015 and W.P.No. 41677/2017) which were subsequently withdrawn on 07.01.2020.

20. HTPPL is aggrieved by the withdrawal of the approval. In light of the disputes, it moved before the Permanent Court of Arbitration [**PCA**] and filed its statement of claims. Claim No.4 is set out below:

"Claim of refund of security deposit of the amount deposited with R-2 with pre- litigation pendent-lite and future interest @18%"

21. Karnataka Power Transmission Corporation Limited [**KPTCL**] filed a petition (O.P No.91/2018) before KERC, *inter alia*, praying as under:

"WHEREFORE it is prayed that this may be Hon'ble Commission pleased to:

a) Declare that in keeping with the provisions of the Electricity Act 2003, this Hon'ble Commission alone is empowered to adjudicate upon disputes between Generating Companies and licensees:

b) Declare that the provisions of the Arbitration and Conciliation Act 1996 or any other provision would not be applicable in matters pertaining to appointment of Arbitrators, in view of the pronouncements of the Hon'ble Supreme Court of India:

c) Declare that communications dated 29.6.2018 (Annexure- C), 11.9.2018 (Annexure-K), and 26.9.2018 (Annexure-M) appointing Respondent No 4 to 6 as Arbitrators is illegal and opposed to the mandate of the Electricity Act 2003:

d) Punish Respondent No 1 to 3 for contravening the provisions of the Electricity Act 2003.

e) Pass necessary orders as deemed fit by the Hon'ble Commission".

22. KERC allowed the KPTCL's petition by order dated 17.12.2018 and held that HTPPL's invocation of arbitration was illegal. The operative part of the said order is set out below:

"a. It is declared that, the dispute, said to have been involved in PCA Case No.AA716, between the Hassan Thermal Power Private Limited (formerly known as 'Euro India Power Canara Private Limited') -Vs- The Government of Karnataka and the Karnataka Transmission Power Corporation Limited, is exclusively triable by this Commission, under Section 86(1)(f) of the Electricity Act, 2003, and not before any other Forum;

b. Consequently, it is declared that, the communications dated 29.06.2018 (ANNEXURE-C), 11.09.2018 (ANNEXURE-K) and 26.09.2018 (ANNEXURE-M), appointing the Respondents 4 to 6 as Arbitrators, are illegal and opposed to the mandate of the Electricity Act, 2003; and,

c. The Respondents 1 and 2 are restrained from proceeding with the above-mentioned arbitral case."

23. HTPPL challenged the aforementioned KERC's order dated 17.12.2018 in a writ petition, being W.P.No.1633/2019. This Court allowed the said petition by an order dated 27.09.2019 and held that KERC lacked jurisdiction to interfere with the arbitral proceedings, which were then pending before the PCA.

24. KPTCL appealed the said decision by filing a writ appeal (Writ Appeal No.3893/2019) and prevailed. This Court, by an order dated 12.03.2021, allowed the appeal and upheld the KERC's order dated 17.12.2018. HTPPL filed a review petition, being R.P

No.147/2021, seeking review of the said order dated 12.03.2021 passed in W.A No.3893/2019. However, this Court dismissed the said review petition by an order dated 13.08.2021.

25. HTPPL filed a special leave petition (SLP No.17062-63/2021) before the Supreme Court. However, the Supreme Court dismissed the same by an order dated 04.08.2022, which reads as under:

"We have heard learned counsel for the parties for quite some time and find no reason to interfere with the judgment impugned passed by the Division Bench of the High Court of Karnataka. Consequently, the special leave petitions stand dismissed.

Learned counsel for the petitioner at this stage submits that the issue/legal question which has been raised by him be permitted to be raised before the Appellate Tribunal. It is open to the petitioner to raise all the contentions available under law before the Appellate Tribunal and if raised, may be examined on its own merits in accordance with law.

If the appeal is preferred before the Appellate Tribunal within four weeks from today, this Court hopes and trusts that it will be decided expeditiously in accordance with law."

However, limited liberty was reserved to approach APTEL and raise any contentions available under law to be examined on their merits.

26. In view of the liberty granted by the Supreme Court, HTPPL filed an appeal against the order dated 17.12.2018 before the Appellate Tribunal for Electricity [**APTEL**], Appeal No.42/2023. The same was rejected by an order dated 13.09.2024. HTPPL

appealed the said decision in the Supreme Court, Civil Appeal No.305/2025. However, the Supreme Court dismissed the said appeal by an order dated 09.01.2025, holding that the issue was covered by its earlier order dated 04.08.2022.

27. HTPPL has since filed a petition (O.P No.12/2025) before KERC under Section 86(1)(f) of the Electricity Act, *inter alia*, praying that the disputes between the parties be referred to arbitration.

28. Section 86(1)(f) of the Electricity Act is set out below:

" (1) _ _ _

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;"

29. In terms of the said provision, the HTPPL requested KERC to refer the disputes to arbitration. However, by an order dated 16.12.2025, KERC dismissed the said petition with liberty to the HTPPL to file a fresh petition with all particulars of the disputes. KERC also clarified that all contentions urged by the parties were kept open to be decided on the merits, in the event of HTPPL filing afresh.

30. HTPPL has challenged the KERC's order dated 16.12.2025 before the APTEL (Appeal No.49/2026), which is pending.

Submissions of counsel

31. We may now note the contentions advanced on behalf of the learned counsel for the parties.

32. The learned Advocate General appearing on behalf of PCKL and the State contended that several disputed questions of fact were involved that were not considered by the learned Single Judge. He submitted that Article 2.3 of the PPA dated 22.04.1999 expressly provided for the forfeiture of the Bank Guarantee and the security deposit if the financial closure was not achieved within a period of six months. He contended that the amount deposited was a performance guarantee and was liable to be forfeited as HTPPL had not performed its obligations to set up a power plant.

33. Next, he submitted that the HTPPL had an efficacious remedy of raising the disputes before KERC under Section 86(1)(f) of the Electricity Act. He submitted that in the initial round, HTPPL had raised a claim in arbitration. But, for some reason did not raise the same in its petition filed in KERC for reference of the disputes to arbitration.

34. Mr. R.K. Naroola, learned counsel appearing for HTPPL, contended that only disputes relating to tariffs can be referred under Section 86(1)(f) of the Electricity Act. Thus, the said remedy is not available to HTPPL for seeking recovery of the EMD. He contended that the withdrawal of the project in question was the unilateral decision of the Government and its agencies. And, HTPPL cannot be penalised for it. He submitted that the HTPPL was prevented from acting upon the PPA of 1999 for several reasons, including the non-provision of the Government of Karnataka guarantee, as required under Article 9.5 of the PPA. Further, no steps were taken for setting up the escrow account as required under Article 9.4 of the PPA. He submitted that the HTPPL was vexed by repeated changes of policy by the Government of Karnataka.

35. He stated that the contention that PCKL had forfeited the EMD is erroneous, as neither any decision nor any communication to that effect has been placed on record.

Reasons and Conclusion

36. It is apparent from the above that the disputes between the parties concern the parties' contractual rights and obligations.

37. As noted above, it is contended on behalf of HTPPL that "appellant is in fundamental breach of the contractual framework". This is stoutly disputed by the PCKL and the Government. Given the nature of disputes, it was not apposite for the learned Single Judge to entertain the same under Article 226 of the Constitution of India.

38. *Prima facie*, we are also unable to concur that the HTPPL lacks an efficacious alternative remedy under Section 86(1)(f) of the Electricity Act, which it has already invoked. It is relevant to note that the HTPPL had raised a claim for recovery of EMD in arbitration before PCA. The KERC as well as the APTEL had accepted that KERC alone would have the jurisdiction to adjudicate the disputes between the generating companies and the licensees. The Supreme Court had found no ground to interfere with the said decision and the HTPPL's special leave petitions (SLP Nos.17062-63/2021) were dismissed. The Supreme Court reiterated the said view in Civil Appeal No.305/2025 preferred by HTPPL against the order passed by APTEL. PCKL's stand that all disputes under Section 86(1)(f) of the Electricity Act could be raised before the KERC, and not in arbitration, was upheld by KERC, APTEL and the Supreme Court. Thus, it is difficult to accept that the HTPPL does

not have an alternate remedy before KERC. Concededly, HTPPL had canvassed its contention that the disputes were required to be decided in arbitration before the PCA, before KERC, and before APTEL, and that view was rejected. Since HTPPL had raised a claim regarding recovery of EMD before PCA, it would follow that, according to KERC and APTEL, the said claim could also be raised before KERC. As noted above, those decisions of KERC and APTEL have attained finality.

39. Having stated the above, we must also add that even if it is accepted (which we do not) that KERC or APTEL does not have the jurisdiction to decide the disputes regarding return of the EMD, it was not apposite that the said claim be adjudicated in a writ petition under Article 226 of the Constitution of India. We say so because the adjudication clearly involves disputed questions of fact, and such disputes are not entertained under Article 226 of the Constitution of India.

40. We may also note that although several disputed questions have been raised regarding the refund of the EMD, the same have not been addressed by the learned Single Judge. First of all there is no finding as to the nature of the deposit. Whilst PCKL claims that the deposit is a performance guarantee, HTPPL refers to it as

an EMD. It is pointed out by the learned counsel appearing for the HTPPL that the said deposit has been mentioned in some documents as security deposit and in another document as EMD. It was initially deposited as "Guarantee Money". This brings us to the question as to what contingency was contemplated against which the deposit was required; or what was HTPPL's obligation, the performance of which was intended to be secured by the deposit. Once this question is addressed, the question that would follow is whether HTPPL had performed its obligations, which were secured by the security deposit or whether the contingency against which the deposit is made had occurred.

41. HTPPL paid the amount in November 1998 to secure the right to implement the project for setting up a 150 MW plant at Mulki. The project had undergone several changes. However, the project was not implemented. Whilst HTPPL states that the same was for reasons attributable to the Government and the distributing companies, the Government and the PCKL stoutly dispute the same. These questions require adjudication and have not been considered by the learned Single Judge.

42. The next question is whether the HTPPL's claim is barred by the limitation period. The learned Single Judge held that it is a

continuing cause of action. Additionally, the learned Single Judge also held that time spent by HTPPL in pursuing the remedies before the competent forum – High Court, Arbitral Tribunal, KERC – would be liable to be excluded under Section 14 of the Limitation Act. Section 14 of the Limitation Act is applicable where the plaintiff has pursued the matter in good faith in a court which, from the defect of jurisdiction or other cause of a like nature, is unable to entertain it. In order to consider whether any period of time is required to be excluded, it would be necessary for the Court to examine each of the said factors.

43. To determine whether a claim is barred by limitation, it is necessary to determine when the period of limitation begins. *Prima facie*, Article 113 of the Schedule to the Limitation Act is applicable and the period of limitation shall begin when the right to sue arises.

44. If HTPPL's argument is accepted that the amount was paid as guarantee money merely to assure its commitment to execute the project, the right to receive it would arise from the date of the Government's decision to withdraw the approval for the project/PPA. The same was withdrawn on 11.04.2016. Therefore, if HTPPL's argument is accepted, the right to claim a refund arose on that date.

45. We are unable to accept that the HTPPL's cause of action is continuing. HTPPL seeks recovery of the amount, which, according to it, was due to it on 11.04.2016. The fact that PCKL has declined to refund the same or fails to do so does not render the cause of action a continuing one.

46. HTPPL moved the PCA and filed a statement, *inter alia*, claiming refund of the EMD, along with pre-litigation, *pendente lite*, and future interest at the rate of 18% per annum.

47. KERC held that HTPPL's invocation of arbitration was illegal. KERC's order dated 17.12.2018 was set aside by this Court by an order dated 27.09.2019 in W.P.No.1633/2019. But the appeal (W.A.No.3893/2019) against the said order was allowed by an order dated 12.03.2021. HTPPL's special leave petitions (SLP Nos.17062-63/2021) were dismissed by the Supreme Court by an order dated 04.08.2022, and HTPPL was relegated to avail its remedies before APTEL. HTPPL appealed the KERC's order dated 17.12.2018 before APTEL but, was unsuccessful. APTEL rejected HTPPL's appeal (Appeal No.42/2023) by an order dated 13.09.2024. Further, the Supreme Court dismissed the appeal by an order dated 09.01.2025. Thus, until 09.01.2025, HTPPL was pursuing its remedies to pursue its claim in arbitration.

48. Thereafter, HTPPL on 21.06.2025, filed a petition before KERC under Section 86(1)(f) of the Electricity Act. But, no specific claim for refund was made in that application. However, HTPPL filed a writ petition claiming the refund of the EMD, the order in which is the subject matter of the present appeal.

49. In our view, HTPPL is entitled to exclusion of the time that it had spent in pursuing its claim before the APTEL. HTPPL had sought to pursue its claim before the PCA diligently and we are unable to accept that its endeavours to be permitted to pursue its remedy, were not *bona fide*. Thus, the period from the date on which HTPPL had sought for the invocation of arbitration proceedings by its letter dated 25.06.2018 to PCA seeking the appointment of an arbitral tribunal, till the date of dismissal of its appeal (CA.No.305/2025) by the Supreme Court, may be liable to be excluded.

50. The question whether HTPPL's claim is barred by limitation would thus have to be determined by excluding the aforementioned period. The principal question whether the appellant was responsible for the delay in executing the project is also a contentious one.

51. Before concluding, we may also mention that the learned counsel appearing for the HTPPL had also contended that although the claim for refund was not specifically mentioned in HTPPL's petition filed under Section 86(1)(f) of the Electricity Act, it does not mean that HTPPL is not pursuing its remedy for refund before the KERC. He contended that the said petition was filed praying that KERC to refer the disputes to arbitration. He submitted that the disputes mentioned there merely indicated the disputes between the concerned parties and did not foreclose HTPPL's right to raise specific claims arising from those disputes, if KERC referred the same to arbitration.

52. *Prima facie*, we are inclined to accept this contention, considering that the HTPPL's prayer before KERC was to refer the disputes to arbitration. As noted above, KERC has dismissed the said petition by an order dated 16.12.2025. However, granted liberty to HTPPL to file a fresh petition setting out all particulars regarding the disputes.

53. Considering that refund of the amount also arises from the decision of the State Government to withdraw its consent to the PPA and the project, HTPPL would not be precluded from raising a specific claim for refund pursuant to the liberty granted by KERC.

54. In view of the above, we allow the present appeal and set aside the impugned order. We, however, clarify that all rights and contentions of the parties in regard to HTPPL's claim for refund of the EMD, along with interest, are reserved.

55. The pending interlocutory applications also stand disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

AHB/KPS