

Case Commentary

“Parampujya Solar Energy Pvt. Ltd. & Anr. vs. Central Electricity Regulatory Commission & Ors.”

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Abstract:

The "Parampujya Solar Energy Pvt. Ltd. & Anr. Vs. Central Electricity Regulatory Commission & Ors." case, decided in September 2022, is a pivotal moment in renewable energy law. This commentary dissects the case's core theme: the inclusion of 'carrying cost' as part of the 'change in law' (CIL) relief. It delves into the court's reasoning behind this landmark decision, emphasizing how 'carrying cost' aligns with the time value of money and the principle of restitution. The author's perspective likens the court to a conductor orchestrating a harmonious interpretation. This case sets a new precedent, distinct from prior judgments, and carries profound implications for investor confidence and the renewable energy sector.

The ruling, recognizing the economic reality of capital-intensive renewable energy projects, ensures developers are compensated for additional costs incurred due to regulatory changes. It fosters clarity in contractual relationships and encourages further investment in renewable energy projects. The impact extends beyond the courtroom, aligning with India's broader renewable energy objectives. It fortifies India's position as a global leader in sustainable energy, bolstering investments, innovation, and environmental responsibility. This case is a crucial step towards a brighter and more sustainable future, demonstrating the transformative power of law.

Keywords:

Renewable Energy, Change in Law (CIL) Relief, Carrying Cost, APTEL, Legal Interpretation, Restitutionary Ethos, Contractual Clarity, Regulatory Dynamic, Time Value of Money, Solar Power Generation, Renewable Power Purchase Agreements (RE-PPAs), Jurisdictional Boundaries, Contract Law

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Introduction

Parampujya Solar Energy Pvt. Ltd. and another party (the "Anr.") are challenging decisions or actions taken by the Central Electricity Regulatory Commission (CERC) and other related organizations. These decisions likely involve issues such as the pricing of electricity generated from solar sources, regulations governing solar power, or other matters related to the solar energy industry in India.

The case is being brought to court to seek a resolution or clarification on these issues. It's essentially a legal process to determine the rights and responsibilities of the parties involved in the solar energy sector. The outcome of the case can have implications for how solar energy is regulated and used in India.

Brief Facts

On September 15, 2022, the Appellate Tribunal for Electricity ("APTEL") in a first of its kind case of Parampujya Solar Energy Private Ltd. & Anr. vs. Central Electricity Regulatory Commission & Ors. allowed the entitlement of the solar power generators towards 'carrying cost' incurred on account of enactment of Goods and Services Tax ("GST") laws amounting to 'change in law' ("CIL"). By way of this judgment, APTEL as a matter of prudence has given way to the objective of a CIL provision in the concerned renewable power purchase agreements ("RE-PPAs").

Batch appeals were filed by solar power project developers ("SPPDs") who were aggrieved by the orders passed by the Central Electricity Regulatory Commission ("CERC") mainly for the reason that the orders denied the relief of 'carrying cost' after approving CIL events.

A cross appeal to one of the appeals, was also filed by the distribution licensees of State of Chhattisgarh raising the issue of jurisdiction exercised by CERC. The SPPDs in the appeals claimed compensation for CIL with reference to GST regime introduced in July, 2017. By the impugned orders, CERC accepted the enactment of laws bringing in GST albeit with the following restrictions:

1. Compensation allowed only till the date of commissioning;
2. Compensation did not include the element of carrying cost on the reasoning that the RE-PPAs do not have any restitutive provision; and
3. Compensation disallowed on operation and maintenance ("O&M") expenses on the ground that such services have been outsourced.

Issues before APTEL

The Crucible of Contention: Issues Before APTEL :

The fulcrum of the Case pivots on the meticulous interpretation and pragmatic application of the CIL provision enshrined within RE-PPAs. The spotlight, glaring and unrelenting, hones in on the contentious inclusion of 'carrying cost' as an integral facet of CIL relief. The complex issues laid bare before APTEL can be distilled into the following incisive inquiries:

A. Unpacking 'Carrying Cost': The Heart of the Matter

The fulcrum of this legal discourse orbits the intricate categorization of 'carrying cost,' a term that encapsulates the ancillary expenses borne by solar power project developers (SPPDs) as a direct consequence of CIL events. The critical question that looms large is whether the capacious umbrella of CIL relief can, and should, encompass 'carrying cost' within its protective embrace.

B. The Restitutionary Odyssey: Foundation of CIL Provisions

SPPDs, with unwavering conviction, asserted that the rebuttals meted out by the Central Electricity Regulatory Commission (CERC) were out of sync with the foundational ethos of CIL provisions. Their argument rested on the bedrock of restitution, a principle embedded in civil law, which they posited as the cornerstone of CIL provisions. Their contention: 'carrying cost' ought to be an inalienable component of the relief furnished.

C. Unearthing Statutory Compliance: Ignorance or Oversight?

The grievances of SPPDs extended further, encapsulating allegations of CERC's indifference to the salient statutory provisions imbued with the principles of restitution and unjust enrichment. They further contended that CERC had shirked its solemn duty to dispense substantial justice to the aggrieved parties.

D. A Collateral Turbulence: Jurisdictional Vortex

To infuse an additional layer of complexity into the Case, a cross-appeal surfaced, wielded by the distribution licensees of the State of Chhattisgarh. This cross-appeal unearthed concerns shrouding the jurisdictional boundaries charted by CERC, thus unfurling a tapestry of regulatory authority and jurisdictional intricacies.

Decision and Analysis of Judgment:

Embracing the Restitutionary Ethos

APTEL's judicial pronouncement in the Case resonates with the echo of the venerable principle of restitution. The tribunal, with erudition, affirmed that CIL provisions, intrinsic to the RE-PPAs in question, inherently embodied the quintessence of the restitutionary principle. This affirmation served as the cornerstone upon which the edifice of 'carrying cost' entitlement within the confines of CIL relief was meticulously constructed.

The court's view on restitution was clear: when legislative or regulatory changes disrupt the financial foundations of renewable energy projects, equitable compensation should be provided. In the court's view, 'carrying cost' was a legitimate component of this compensation.

Illuminating Contractual Intent and Regulatory Imperative

A critical fulcrum of APTEL's ruling was the illumination of the intrinsic intent that breathes life into contractual agreements, including RE-PPAs. Contracts, the tribunal opined, bear the imprimatur of safeguarding the interests, objectives, values, and policy considerations for which they were meticulously hewn. Fortifying this stance, the tribunal underscored the statutory mantle encircling regulatory commissions, such as CERC, under Section 61 of the Electricity Act, 2003. This assertive assertion emphasized the onus on CERC to wield its authority judiciously when presiding over the adjudication of CIL claims.

The court's perspective was clear: contracts should be interpreted in alignment with their intended purposes, and regulatory bodies like CERC have a duty to ensure fairness and uphold contractual commitments.

'Carrying Cost' as Compensation for the 'Time Value of Money'

APTEL, in unambiguous terms, endorsed the doctrine of awarding 'carrying cost' as bona fide compensation for the "time value of money." This doctrinal embrace resonates with legal precedents, adorning judgments, both from APTEL and the Supreme Court of India. The tribunal meticulously wove parallels between this bedrock doctrine and Section 5(8) of the Insolvency and Bankruptcy Code, 2016. This explicit endorsement fortified the legitimacy of 'carrying cost' as an integral building block of CIL relief.

The court's perspective was grounded in financial logic: 'carrying cost' was seen as compensation for the opportunity cost of the capital tied up during regulatory uncertainties.

The Expansive Aegis of CIL Provisions: A Paradigm Shift

A profound facet of APTEL's adjudication was its expansive interpretation of CIL provisions etched within RE-PPAs. The tribunal passionately professed that contract terms should be deciphered in their ordinary, natural, and grammatical sense. Accordingly, the term 'relief,' as embedded within the CIL provisions, radiated a breadth encompassing any remedy that the adjudicatory forum could muster to address the specter of actual or apprehended wrongs or injuries. This holistic interpretation unequivocally bolstered the claims of solar power generators to 'carrying cost,' resiliently sidestepping the narrow construals that could have stifled their entitlement.

The court's perspective was one of inclusivity: 'relief' should encompass any remedy necessary to address the adverse impacts of legislative or regulatory changes on renewable energy projects.

A Departure from Precedent: Charting a Unique Course

With a discerning eye, APTEL prudently demarcated the Case from its precursors. It adroitly drew attention to the distinctive structural configurations of CIL clauses within thermal power purchase agreements (PPAs) when contrasted with the RE-PPAs under scrutiny. Moreover, it astutely discerned that the phraseology employed, including the expression "provide relief," had not been uniformly hewn in preceding judgments. Consequently, the tribunal cautioned against the overreach of earlier rulings that failed to squarely grapple with the nuanced issues at hand, thereby affirming its allegiance to the unique facets of the Case.

The court's stance was clear: this case was distinct, and its unique features required a fresh interpretation, unencumbered by precedent that did not directly address the issues at hand.

Fortifying CERC's Regulatory Sinews

APTEL imparted an enduring legacy by underscoring the robust regulatory authority wielded by CERC. It eloquently articulated that CERC, as the venerated sector regulator, bore the solemn duty of striking an equitable balance between safeguarding consumer interests and facilitating the recovery of electricity costs in a fair and impartial manner. The tribunal underscored that the CIL clause imprinted within RE-PPAs fundamentally endeavored to liberate SPPDs from the shackles of unforeseen financial burdens stemming from legislative alterations, a mantle that extended to encompass 'carrying cost.' To deny such relief, the tribunal argued, would inevitably sully the pristine waters of justice.

The court's perspective was rooted in the importance of regulatory bodies like CERC in ensuring fairness and stability in the electricity sector, particularly for renewable energy projects.

A Benefit Calculus: Respondents and the Indian Contract Act, 1872

The tribunal, with meticulous precision, scrutinized the benefits reaped by distribution licensees during the interlude when CIL claims lay pending adjudication before CERC. It adroitly invoked Section 70 of the Indian Contract Act, 1872, which crystallizes the doctrine that an obligation arises when one accrues benefits from a non-gratuitous act. Consequently, the tribunal ruled that the procurers, in this instance, could not capitalize on the tax burden borne by SPPDs to extract undue advantages.

The court's view was grounded in contract law principles: when one party benefits from another's actions, an obligation to compensate arises.

Unveiling the Canvas: CIL Compensation beyond COD

APTEL's sagacious judgment transcended the 'carrying cost' conundrum. The tribunal resolutely pronounced that no fetters or restrictions were stipulated in RE-PPAs concerning the application of the CIL clause for the period anterior to the Commercial Operation Date (COD). Furthermore, the tribunal keenly discerned that activities during the Operation and Maintenance (O&M) phase intrinsically enfolded non-recurring expenditures, with operation and maintenance (O&M) expenses constituting a pivotal sphere. This momentous decree was in consonance with APTEL's prior landmark judgment in Coastal Gujarat Power Ltd. v. CERC & Ors.

The court's perspective was one of continuity: CIL provisions should apply both before and after the Commercial Operation Date (COD), recognizing the financial intricacies of renewable energy projects throughout their lifecycle.

Principles Showcasing in the Judgment

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VI. Illuminating the Legal Horizon: Precedent and Progress

APTEL's ruling in the Parampujya Solar Energy case is a beacon illuminating the legal horizon. It not only reaffirms established principles but also propels them into new territory. The recognition of 'carrying cost' within the ambit of CIL relief is a testament to the evolving nature of contract law, reflecting the judiciary's adaptability in addressing emerging challenges.

This precedent-setting decision signals progress, not just for solar power developers but for the entire renewable energy sector. It acknowledges the unique challenges faced by these developers in navigating a complex web of regulations and uncertainties. By granting 'carrying cost,' APTEL recognizes the need to safeguard investments, promote renewable energy adoption, and ultimately contribute to India's ambitious sustainability goals.

VII. The Renewable Energy Revolution: Policy and Paradigm Shift

India's transition towards renewable energy sources is nothing short of a revolution. The Parampujya Solar Energy case aligns seamlessly with the broader policy objectives of the Indian government. By ensuring that developers are compensated for unforeseen regulatory changes, the ruling incentivizes further investments in solar and other renewable projects.

This paradigm shift extends beyond the courtroom. It sends a clear message to stakeholders, both domestic and international, that India is committed to creating a conducive environment for renewable energy growth. It solidifies India's position as a global leader in sustainable energy, fostering collaborations and investments that drive innovation and technological advancements.

VIII. A Tale of Economic Prudence: 'Carrying Cost' and Financial Realities

Delving into the economic aspects of 'carrying cost' reveals a narrative of financial prudence. The solar power industry is capital-intensive, with projects spanning several years. During this time, developers commit significant financial resources. APTEL's recognition of 'carrying cost' as compensation for the "time value of money" is not merely a legal doctrine; it's a reflection of economic realities.

By allowing developers to recover these additional costs incurred due to regulatory changes, the ruling aligns with the fundamental principles of fairness and efficiency. It ensures that capital invested in renewable energy projects remains productive, promoting financial sustainability in an industry crucial to India's energy security.

IX. Clarity in Contractual Relationships: A Catalyst for Growth

Contracts are the lifeblood of business, and in the renewable energy sector, they serve as the very foundation of progress. The Parampujya Solar Energy case emphasizes the importance of clarity in contractual relationships. It underscores that contracts, especially those involving significant investments like solar power projects, should leave no room for ambiguity.

This newfound clarity benefits all parties involved. Developers gain confidence that their investments are protected, enabling them to pursue ambitious projects. Distribution licensees have a stable framework for procurement, fostering a competitive and transparent energy market. Regulatory bodies, like CERC, can fulfill their roles more effectively when contractual terms are unambiguous.

Conclusion:

A Sustainable Tomorrow: The Ripple Effect

The impact of the Parampujya Solar Energy case ripples through various facets of India's energy landscape. It strengthens the resolve of entrepreneurs and innovators, encouraging them to explore renewable energy ventures. It instills confidence in investors, both domestic and foreign, who see India as a destination for sustainable investments. It empowers consumers by promoting cleaner and more affordable energy sources.

Furthermore, this ruling paves the way for a more resilient and responsive energy infrastructure. It encourages the integration of technology and smart grid solutions, making energy distribution more efficient and reliable. It contributes to the reduction of greenhouse gas emissions, aligning India with global efforts to combat climate change.

Author's Comment

As I conclude this extended perspective, I am reminded of the power of law to shape not just legal outcomes but the very trajectory of a nation. The Parampujya Solar Energy case is not an isolated legal decision; it's a crescendo in a symphony of progress.

In this legal opus, APTEL assumes the role of a conductor, guiding India's renewable energy sector towards a brighter and more sustainable future. The harmony it creates resonates far beyond the courtroom, touching the lives of millions who will benefit from cleaner, more accessible, and affordable energy.

As an author, my perspective is one of optimism and hope. The Parampujya Solar Energy case reminds us that the law can be a force for positive change, a catalyst for innovation, and a

guardian of justice. It is a reminder that as we face the complex challenges of our time, we have the tools, the wisdom, and the vision to build a brighter and more sustainable tomorrow.

In the grand symphony of legal interpretation, the Parampujya Solar Energy case is a resounding note of progress, and its echoes will continue to inspire us on our journey towards a sustainable future.