

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**I.A. Nos. 71 and 72 of 2007 in  
AFR No.424 of 2007**

**Dated: October 5, 2007**

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

M/s. Vemagiri Power Generation Limited,  
Skip House, 25/1, Museum Road,  
Bangalore-500 025,  
Karnataka

.... Appellant

Vs.

1. Transmission Corporation of A.P. Ltd.  
Represented by Chairman & Managing Director,  
Vidyut Soudha, Khairatabad, Hyderabad-82  
Andhra Pradesh.
2. Eastern Power Distribution Co. of A.P. Ltd.,  
Represented by Chairman & Managing Director,  
P&T Colony, Seethammadhara, Visakhapatnam,  
Andhra Pradesh.
3. Southern Power Distribution Co. of A.P. Ltd.,  
Represented by Chairman & Managing Director,  
19-3-13 (M), Upstairs, Renigunta Road, Titupati-517501  
Andhra Pradesh.
4. Central Power Distribution Co. of A.P. Ltd.,  
Represented by Chairman & Managing Director,  
3<sup>rd</sup> Floor, Singareni Bhawan, Red Hills, Hyderabad-500004  
Andhra Pradesh.
5. Northern Power Distribution Co. of A.P. Ltd.,  
Represented by Chairman & Managing Director,  
1-1-503, Nit Main Road, Chaitanyapuri, Khajipet,  
Warangal, Andhra Pradesh.

6. Andhra Pradesh Electricity Regulatory Commission  
Through its Secretary, 11-4-660, 4<sup>th</sup> & 5<sup>th</sup> Floors,  
Singareni Bhavan, Red Hills, Lakdikapool,  
Hyderabad-500 004  
Andhra Pradesh ..... Respondents

Counsel for the Applicant : Mr. Gopal Jain, Mr. Sameen Vyas,  
Mr. Ritesh Kumar and Mr. Shashank  
Krishana

Counsel for the Respondents : Mr. Sanjay Sen, Ms. Ruchika Rathi and  
Mr. Deepak Biswas for Respondent Nos.  
1 to 5

### **JUDGMENT**

#### **Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

The technical delay in filing the appeal is condoned.

2. This appeal is directed against the orders of the Andhra Pradesh Electricity Regulatory Commission (for short 'APERC') dated December 30, 2006 and March 22, 2007 in O.P. No. 19 of 2006 and Review Petition (SR) No. 9 of 2007 respectively. The facts necessary for the disposal of the appeal are as follows:-
3. The Government of Andhra Pradesh announced a policy for attracting private sector investments in the power sector. The Electricity Board in consonance with the policy of the Government of Andhra Pradesh invited bids

for short gestation power projects. Pursuant thereto M/s. Nippon Denro Ispat Limited (subsequently known as Ispat Industries Ltd. and now known as M/s. Vemagiri Power Generation Limited) submitted its bid to design, finance, construct, complete, own and operate a liquid fuel based power station of 468 MW capacity at Vemagiri, East Godavari District in Andhra Pradesh. The bid was accepted by the Board and the same was also approved by the Government of Andhra Pradesh. The Central Electricity Authority accorded Techno Economic Clearance to the Project on January 14, 1999.

4. The Ministry of Petroleum and Natural Gas, Government of India vide its letter dated June 5, 2000 allocated 1.64 MMSCMD of Natural Gas from Krishna Godavari Basin on firm basis to the appellant. Since the allocation of gas was not adequate, the appellant in consonance with the advice of the Government of Andhra Pradesh proposed to complete the project in two stages as per the following details:-

Stage I - 370 MW with allocated 1.64 MCMD of

natural gas

Stage II - 150 MW after obtaining fresh allocation of gas

5. On December 15, 2000, the Government of Andhra Pradesh permitted the appellant to complete the project in two stages of 370 MW (stage-I) and 150 MW (stage-II). However, the Government of Andhra Pradesh granted permission for implementation of Stage-II of the project subject to the appellant securing 100% allocation of gas.
6. The appellant by its letter dated October 3, 2001 informed the entry of GMR Group and its Associates as strategic investors and developers in the project. The appellant and the APTRANSCO submitted a draft of the amended Power Purchase Agreement (for short 'PPA') to the APERC for its approval. On April 12, 2003, the APERC granted its approval. Accordingly, the appellant and the APTRANSCO entered into an agreement on June 18, 2003 by virtue of which the original PPA was amended. The amendment *inter alia* related to fuel,

station heat rate, incentives, inter-connection facilities, PLF etc.

7. Sometime in the year, 2004 APTRANSCO filed a petition before the APERC for deletion of the alternate fuel clause from the definition of the fuel in the PPA with the appellant on account of shortage of natural gas. During the pendency of the petition for deletion of the alternate fuel clause, the Government of Andhra Pradesh held negotiations with the appellant and other developers of gas based power projects for amendment of the PPA to mitigate the fixed cost payment risk arising out of non-availability of Natural gas. The appellant and other developers agreed to the non-usage of alternate fuel till January 1, 2007. The parties proposed amendments to the PPA in accordance with the above agreement and submitted the same before the APERC for its approval. On December 14, 2004, the APERC approved the proposed amendments.

8. On March 2, 2006, the appellant gave a proposal to the Government of Andhra Pradesh for an amicable solution of the issue pertaining to deletion of alternate fuel clause from the PPA. The proposal was referred by the Government of Andhra Pradesh to a Committee. The Committee examined the matter and made certain recommendations. On the basis of the recommendations the APDISCOMs/Transmission Corporation of Andhra Pradesh & Ors. submitted proposed amendments to the PPA with the consent of the appellant to the Government of Andhra Pradesh. The Government of Andhra Pradesh accepted the proposal. The matter of proposed amendment was brought before the APERC for its approval. On July 1, 2006, the APERC by a public notice invited objections to the proposed amendments. On July 17, 2006, public hearing was also held by the APERC with respect to the proposed amendments. It appears that during the public hearing issue relating to buy out provision contained in clause 6.2 of the PPA was raised.

9. On October 4, 2006 Andhra Pradesh Power Coordination Committee (for short 'APPCC'), a committee co-ordinating the action of the respondent nos. 1 to 5, which is headed by the Chairman and Managing Director of Transmission Corpn. Of Andhra Pradesh Ltd., respondent no. 1, informed the appellant that during the public hearing some of the objectors and the APERC had raised the issue relating to buy out provision. The appellant was *inter-alia* requested to furnish its acceptance to the proposed amendment of clause 6.2 of the PPA.
10. In response, the appellant by its letter dated October 24, 2006 did not agree to the proposed modification of clause 6.2 of the PPA. On November 6, 2006, the CGM (Comml. & RAC) on behalf of Central Power Distribution Company of A.P. and the other three APDISCOMs filed an affidavit before the APERC stating that:-  
  
“(a) By letter dated 04.10.2006, the APDISCOMs proposed additional amendments to the PPA and requested VPGL to furnish its acceptance.

(b)By its letter dated 24.10.2006, VPGL responded as follows:-

Proposed modification to Para 1 of Article 2.1:

The existing language (as per the Amendment Agreement, to the Power Purchase Agreement, dated 5<sup>th</sup> June, 2006 initialed by the Company and APDISCOMs) is totally unambiguous and warrants no further clarification. As per the existing language, the company agrees to sell and APDISCOMs agree to buy, for the consideration of Capacity Charge, the installed Capacity of the Project. Installed Capacity is a defined term in the PPA, which, inter-alia, mentions the limit of 370 MW. No further modification to the wordings as already agreed and initialed between the parties, is necessary.

Proposed modifications to Para 1 and Para 3 of Article 3.2:

The modifications proposed are agreed.

Proposed modification to Clause 6.2 of the PPA:



- i. The Subject clause 6.2 deals with the option of APDISCOMs to buy out the project and the mechanism thereof. This clause has remained unchanged since 31<sup>st</sup> March, 1997, when the initial PPA was executed. Further, this cannot be constructed as a consequential change related to deletion of alternate fuel clause etc.
- ii. We believe that no change to the clause is therefore required.

(c) The Commission may therefore include the proposed modifications in the amendments while issuing consent to the amendments”.

11. After receipt of the above affidavit, the APERC by its order dated December 30, 2006, *inter alia*, approved the proposed amendment of clause 6.2 of the PPA.
12. The appellant aggrieved by the approval of the proposed amendment to clause 6.2 of the PPA by APERC vide its order dated December 30, 2006, filed a review petition, being SR No. 9 of 2007. The APERC however, did not find any error apparent on the face of record in the

principal order passed by it and accordingly review petition was rejected by its order dated March 22, 2007.

13. Not satisfied with the orders dated December 30, 2006 and March 22, 2007 of the APERC, the appellant has filed the instant appeal.

14. It was canvassed by the learned counsel for the appellant that the APERC passed the principal order dated December 30, 2006 without providing the appellant an opportunity of being heard on the question relating to the amendment of clause 6.2 of the PPA. According to him, the order passed by the APERC was violative of the principles of natural justice. It was also urged that the defect in the principal order was not cured by the order passed in the review petition as the same was not decided on merits of the contentions of the appellant relating to the amendment of clause 6.2 of the PPA. On the other hand, the learned counsel for the respondents submitted that the appellant was apprised of the proposed amendment by the APPCC and despite having knowledge of the proposal for amendment of clause 6.2 of

the PPA, the appellant did not appear before the APERC and this being the position, the appellant cannot claim violation of the principle of natural justice.

15. We have considered the submissions of the learned counsel for the parties.
16. At this stage, it will be necessary to set out the original clause 6.2 of the PPA and the amendment approved by the APERC.

**Original clause 6.2 of the PPA**

“6.2. This Article shall survive any Termination of this Agreement. If the parties do not mutually agree to renew this Agreement or otherwise upon the expiry of the initial term of this Agreement, the Board shall have the first option to purchase the Project at the Terminal Value plus any Transfer Costs and Transfer Taxes (as defined in Schedule G) and as determined by the Independent Appraiser defined in Schedule C.

Such option shall be exercisable during the sixty (60) day period immediately preceding the expiration of the initial term of this Agreement and the Company shall notify the

Board of its acceptance or rejection of the option within such sixty (60) day period or fifteen (15) days after the date of Board's offer whichever is later. If the Board's offer is not accepted by the Company within such period, the Company may solicit offers of purchase from third parties or sell power from the Project to third parties as per applicable Law; provided that the Board shall have the first right of refusal with respect to any bonafide offer received by the Company which the Company wishes to accept, exercisable within thirty (30) days of receipt by the Company of such offer (which shall within five days of such receipt be provided to the Board by the Company) upon mutually satisfactory terms of payment. If the Board does not exercise such right or the Parties cannot agree to the terms of payment, the Company may dispose of the Project as it thinks fit subject to prevailing Law”.

**Amended clause 6.2 of the PPA**

“ 6.2. This Article shall survive any Termination of this Agreement. If the parties do not mutually agree to renew this Agreement or otherwise upon the expiry of the

initial term of this Agreement, the **APDISCOMS** shall have the ~~first~~ option to purchase the Project at the Terminal Value plus any Transfer Costs and Transfer Taxes (as defined in Schedule G) and as determined by the Independent Appraiser defined in Schedule C.

Such option shall be exercisable by the **APDISCOMS** at **least** during the sixty (60) day period immediately preceding **prior to** the expiration of the initial term of this Agreement **in writing as per Article 13. In the event the APDISCOMS exercises the option in writing, the company shall be obliged to sell the project at Terminal Value plus Transfer Costs & Transfer Taxes (as defined in Schedule G) and as determined by the Independent Appraiser defined in Schedule C.** and the Company shall notify the Board of its acceptance or rejection of the option within such sixty (60) day period or fifteen (15) days after the date of Board's offer whichever is later. If the Board's offer is not accepted by the Company within such period, the Company may solicit offers of purchase from third parties

~~or sell power from the Project to third parties as per applicable Law; provided that the Board shall have the first right of refusal with respect to any bonafide offer received by the Company which the Company wishes to accept, exercisable within thirty (30) days of receipt by the Company of such offer (which shall within five days of such receipt be provided to the Board by the Company) upon mutually satisfactory terms of payment. If the Board does not exercise such right or the Parties cannot agree to the terms of payment, **If the APDISCOMS elects not to exercise the option by not providing written notice,** the Company may dispose of the Project as it thinks fit subject to prevailing Law”.~~

**(Additions highlighted and deletions indicated by cuttings)**

17. As is apparent, the amendment is not innocuous in nature. It is a drastic change affecting the rights of the appellant. It is not in dispute that in OP No. 19/2006, originally there was no proposal for amendment of clause 6.2 of the PPA. The original proposed amendments

submitted by the APERC were agreed to by the appellant and the same were filed by the APDISCOMs/Transmission Corpn. Of A.P. Ltd., respondent no.1. In the circumstances, the appellant had no reason to appear before the APERC as it was not aggrieved of the proposed amendments. It, therefore, did not appear before the APERC at the public hearing. The proposal for amendment of clause 6.2 of the PPA was communicated to the appellant on October 4, 2006. This was after the public hearing. The proposal was categorically rejected by the appellant in its communication dated October 24, 2006 to the APPCC. It needs to be noted that proposal was neither communicated by the APERC nor any notice was given by the APERC to the appellant. It was also not asked to appear before the Commission for a personal hearing. The communication was sent by the APPCC for seeking its consent to the proposal for amendment. In response the appellant did not agree to the proposed modification of clause 6.2 of the PPA. Thereafter, without informing the

appellant, the APDISCOMs filed the above mentioned affidavit dated November 6, 2006 in regard to the proposed amendment. Again no opportunity was given by the APERC to the appellant to raise objections to the proposed amendment of clause 6.2.

18. The appellant is adversely affected by the principal order of the APERC dated December 30, 2006, whereby the Commission approved the proposed amendment to clause 6.2 of the PPA behind the back of the appellant, without affording it any opportunity of personal hearing.
19. While dealing with the question whether computation of O&M expenses to be incurred over the extended period of the PPA, the Commission recorded the following submission of the APDISCOMs:

*“ It was pointed out that an amount of Rs. 710 crores is to be expended from the 17<sup>th</sup> year to 23<sup>rd</sup> year towards O&M and major maintenance of the plant, working out to about Rs. 1.92 crores per MW in sharp*



*contrast to its capital cost of Rs. 2.82 crores per MW based on the capital cost of Rs.1043 crores, which is on the high side when compared to renovation and modernization(R&M)of some of the units of APGENCO at only half the above cost while achieving substantial improvements in PLFs, capacity and increase in useful span of the plants by 15 to 20 years. Attention of the Commission was specifically drawn to the magnitude of such expenses in the 22<sup>nd</sup> year (Rs. 180 Crores) in the year immediately preceding the end of the PPA term as against only Rs. 65 crores per annum in the preceding as well as the succeeding year. It was also contended that if the above expenditure is estimated realistically, the supposed loss of Rs. 54 crores to the company after the 23<sup>rd</sup> year may not be there..... , the company would incur loss of Rs. 14 crores on NPV basis, as opposed to Rs. 54 crores computed by the company. Having stated thus, the Applicants have requested the Commission to include an amendment to clause 6.2 of PPA originally proposed by them but not accepted by VPGL”.*

20. The Commission accepted the submission of the APDISCOMs. In this respect, it observed as follows:-

*“The Commission takes the computations of VPGL as to mean that it was willing to make a sacrifice of Rs. 54 crores (on NPV basis) whereas the computations on the basis of CERC norm bring this figure down to only Rs. 14 crores. Taking these facts into account and in all fairness to APDISCOMs and their consumers, the Commission is accordingly inclined to accept the plea of APDISCOMs for the amendment to Article 6.2 of the PPA as sought for by them. Considering the high O&M costs taken into account by VPGL, such an amendment would also not be unfair to it. The Commission also notes that if the buy-back option is not available to the Applicants as*

*a matter of right under the terms and conditions specified in Schedule G to the PPA, the very existence of the Schedule is meaningless and a nullity. In conclusion, the Commission is of the considered view that it would be just and proper, and fair to all the parties if the proposed amendment is carried out”.*

21. Thus, without issuing a notice to the appellant, the Commission came to the conclusion that the appellant was willing to make a sacrifice of Rs. 54 crores on NPV basis and the computations on the basis of CERC norm will bring down the figure to only Rs. 14 crores.
22. The Commission approved the amendment to Article 6.2 of the PPA without granting any opportunity to the appellant to explain its point of view. In *Nava Bharat Ferro Alloys Ltd. vs. A.P. Electricity Regulatory Commission*, 2007 APTEL 622, it was held that an adverse decision against a person, who has not been provided a hearing, would be violative of the principle of natural justice. In this regard, it was observed as follows:-

*“ It is well-settled that an affected party must have its say before an adverse order is passed against it. Every order or decision affecting the interests of a party should be taken only after providing him with*

*an opportunity of hearing. A person must know what case he has to meet and he must have an effective opportunity of meeting the same. Principles of natural justice are implicit in the statute even when they are not incorporated specifically therein. In case, no hearing is given to a person by a judicial, quasi-judicial or an Administrative Authority before making an adverse decision against his rights/interests, it would be violative of the principles of natural justice”.*

23. The principles of natural justice are fundamental in the constitutional set up and no person should be condemned un-heard. The rights of the party should not be affected without an opportunity to ventilate his views. It is well settled that a judicial or quasi-judicial body cannot adversely affect the rights of a party without providing him an adequate opportunity to represent his case.
24. Clause 6.2 of the PPA, which has been approved by the APERC by its principal order dated December 30, 2006, takes away the right of the appellant to decline offer of the APDISCOMs to purchase the Project. The question is whether the new clause can be imposed on the appellant. The learned counsel for the APDISCOMs submitted that

the APERC in giving approval to the amendment of clause 6.2 of the PPA acted according to the provisions of Section 11(1) (i) of the Andhra Pradesh Electricity Reform Act, 1998. In order to appreciate the submission of the learned counsel for the appellant, it will be useful to set out the aforesaid relevant provisions for answer to the question:-

“Sec II

(1) Subject to the provisions of this Act, the Commission shall be responsible to discharge amongst others, the following functions namely:-

(i) to regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State”.

25. Thus, according to the aforesaid provision, the Commission is empowered to regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State.

26. The learned counsel for the APDISCOMs would contend that the term ‘regulate’ is comprehensive enough to

include power to direct a party to sell its assets, properties and interest in properties related to electricity industry to a particular person and to give him exclusive option to buy the same. In case the argument is taken to its logical conclusion, the power to regulate the assets, properties and interest in the properties concerning or related to electricity industry could stretch to divesting the owner from the ownership of the property. In case such an interpretation is placed on the word 'regulate', it will hamper and arrest the growth of the Electricity sector. In that event the whole object of the Electricity Act, 2003 will be defeated, which, *inter alia*, mandates taking of measures conducive to the development of electricity sector. The said provision cannot be construed to mean that where the parties have entered into a PPA, the Commission could permit an amendment without the consent of the party owning the generating station to compulsorily sell the station to a DISCOM. Virtually the approved amendment arms the APDISCOMs to buy the generating station and the appellant is bound to sell the

same to them. It has no right of refusal or rejection of the option exercised by the APDISCOMs to buy the generating station. Such an amendment could not be permitted by the APERC without the consent of the appellant. In case such a drastic power to alter the PPA is conceded to the Commission, no one would be willing to make investment in setting up the generating stations. The setting up of a plant requires heavy investment. In case the generator does not have a right to refuse sale of its plant to the DISCOMs, as a prudent businessman, it will not make the requisite investment in a losing proposition where, he has little or no control over the sale of his assets. This will shackle generation. In case stipulations entered in the PPA regarding the sale of the project are altered by the Commission without the consent of the generator, the action of the Regulatory Commission would *per se* be illegal and without any authority of law.

27. The words 'to regulate the assets properties and interest in properties' occurring in Sec 11(1)i of the Andhra

Pradesh Electricity Reforms Act, 1998 do not confer power on the Commission to extinguish the ownership of a generator over a generating station by forcing it to enter upon such an agreement.

28. In Small Hydro Power Developers Association & Ors. vs. Andhra Pradesh Electricity Regulatory Commission, Appeal Nos.1,2,5 to 10, 12, 15 to 22 of 2005, decided on June 2, 2006, it was held as follows:-

*“62. As set out above the Commission has no authority to reopen the concluded contract or PPA nor it could try to over reach the policy directions already issued by state and binding on both sides. It is well settled law that where there is no clear provision in the new Act which can be pressed into service to take away the vested rights of the parties. It is not the case of Commission that it has power to set at naught or reopen or divest the rights vested on the parties.”*

29. While coming to the aforesaid conclusion, this Tribunal referred to various decisions of the Supreme Court in paras 64 to 66 of the Judgment. These paras are set out below for depiction of the law as to reopening of the concluded contracts or divesting of the vested rights by the authorities.

*“64. While following the ratio laid by the Supreme Court in India Thermal Power Limited vs. State of MP, MIR 2000 SC 1005, we have no doubt in holding that the agreements entered into by the Electricity Board and the generators are statutory and binding on the successor APTRANSCO, the DISCOM as well as the Commission. The Commission cannot either nullify or modify the concluded contracts in purported exercise of its alleged regulatory powers vested in it.*

*65. In Mst Rafiquennessa vs. Lal Bahadur Chetri, AIR 1964 SC 1511, the Hon’ble Supreme Court held that “where vested rights are affected by any statutory provisions, the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. It is not disputed by him that the Legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the Legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the Legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them.”*

*66. In Mahanagar Telephone Nigam Ltd. v. Telecom Regulatory Authority of Delhi, AIR 2000 Del. 208, Telecommunication Interconnection (Charges and Revenue Sharing First Amendment) Regulation, 1999. While considering the effect of non-obstante*



*clause, Mr. Justice S.N. Variava as he then was speaking for the Bench observed thus:*

*“In this behalf, it is very pertinent to note that even though Section 11 starts with a non-obstante clause which provides that the functions are to be exercised “Notwithstanding anything contained in the Indian Telegraph Act, 1885” the section nowhere provides that the functions are to be exercised notwithstanding “any contract or any decrees or orders of Courts.” It is well settled now that when the Legislature intends to confer on a body the power to vary contracts of existing private rights, it has to do so specifically. In the absence of any provision authorizing the Authority to vary private rights under existing contracts or licences, no such power can be presumed or assumed. This is the law as laid down by the Supreme Court in the case of Indian Aluminium Company c. Kerala State Electricity Board, reported in AIR 1975 SC 1967.*

**XX XX XX**

*In Indian Aluminium Co. vs. Kerala State Electricity board reported in AIR 1975 SC 1967, the Supreme Court held thus:-*

*“The principle that when a public authority is entrusted by statute with a discretionary power to be exercised for the public good, it cannot, when making a private contract in general terms, fetter itself in the use of that power or in the exercise of such discretion is not applicable on the facts of the present case. This is because the principle is limited in its application to those cases where the attempt to do so is*

*otherwise than by the valid exercise of the statutory power. The position is different where a statutory power is exercised to enter into a stipulation with a third party which fetters the future exercise of other statutory powers. In such case even future exercise of another statutory power, it would be valid and the exercise of such statutory power would pro tanto stand restricted. That would follow on the principle of harmonious construction. The public authority would not, in such a case, be free to denounce the stipulation as a nullity and claim to exercise its statutory power in disregard of it.”*

**XXX XXX XXX**

*“Neither S.49 nor S.59 of the Electricity Supply Act confers any authority on the Board to override a contractual stipulation as to rates in derogation of such contractual stipulation, even if it finds that the rates stipulated in the contract are not sufficient to meet the cost of production and supply of electricity and it is incurring operational loss.”*

**XXX XXX XXX**

*We need not labour any further as in the present case neither there is a non-obstante clause nor any provision is made for repudiating the earlier agreements or divesting the vested rights. Unfortunately the Commission had dwelled on a misdirection and proceeded as if it has the power to reopen or invalidate a contract or part of it validly entered long before it came to be constituted. This*

*fallacy in its approach is fatal to the entire order appealed against.”*

30. In *Rithwik Energy Systems Ltd. vs. Transmission Corpn. Of Andhra Pradesh Ltd.*, while noticing the full bench decision, it was observed as under:-

*“In a Full Bench decision dated June 2, 2006 rendered in Appeal Nos. 1,2,5 etc. of 2005- Small Hydro Power Developers Associations & Ors. etc. vs. Andhra Pradesh Electricity Regulatory Commission & Ors. etc., it has been held that the Commission has no jurisdiction to re-open the PPAs, once they were approved by it. This decision was rendered in a case where PPAs were re-opened by the Commission and modified to the detriment of the NCE generators”.*

31. Therefore, we hold that APERC is not empowered to amend clause 6.2 of the PPA without the unqualified consent of all the parties to the agreement.
32. The impugned orders of the Andhra Pradesh Electricity Regulatory Commission are set aside to the extent of the grant of approval to the proposed amendment of clause 6.2 of the PPA.

33. The appeal is allowed to the extent indicated above.

**( Anil Dev Singh)**  
**Chairperson**

**(A.A. Khan)**  
**Technical Member**

**Dated: October 5, 2007**