IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.103 OF 2021

Dated: 22.10.2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

GREENKO MAHA WIND ENERGY PVT. LTD.
F-9, First Floor, Manish Plaza – 1,
Plot No. 7, MLU, Sector 10,
Dwarka, New Delhi – 110075
Through its Authorized Signatory
Mr. Srinivas Cintapenta
Email ID: akshayababu.v@greenkogroup.com … Appellant(s)

Versus

1. **MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
World Trade Centre, Centre No. 1,
13th Floor, Cuffe Parade,
Colaba, Mumbai – 400005
Email ID: mercindia@merc.gov.in

2. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION Company Limited**
Through its Chief Engineer (Renewable Energy)
Prakashgad, Plot No. G-9,
Anant Kanekar Marg Bandra (E),
Mumbai – 400051
Email ID: ceppmesedcl@gmail.com

3. MAHARASHTRA STATE LOAD DESPATCH CENTRE
Through its Chief Engineer
Thane – Belapur RD, MSEB Staff Colony,
TTC Industrial Area, Airoli, Navi Mumbai,
Maharashtra 400708
Email ID: cesldc@mahasldc.in

4. MAHARASHTRA ELECTRICITY DEVELOPMENT AGENCY
Through its General Manager (Co-Ordination)
Anudh Road, Opposite Spicer College Road,
Near Commissionerate of Animal Husbandary,
Aundh, Pune, Maharashtra – 411067
Email ID: dg@mahaurja.com/gmanrd@mahaurja.com/
nodalofficer@mahaurja.com/manrd@mahaurja.com … Respondents

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J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In appellant company is aggrieved by the order dated 11.07.2020 passed by the 1st respondent Maharashtra Electricity Regulatory Commission (hereinafter referred to as "the Commission") in case No.100/2020 in which the appellant had questioned the legality and validity of communication / e-mail dated 05.06.2020 issued by 3rd respondent Maharashtra State Load Despatch Centre (MSLDC) directing disconnection of the 2 MW Wind Turbine Generator (WTG) of the appellant situated at HC09, Gut No.187, Village Kacharewadi, Tal. Tasgaon, Dist. Sangli, Maharashtra, on the ground that the appellant does not have Energy Purchase Agreement (EPA) with the 2nd respondent Maharashtra State Electricity Distribution Company Limited (MSEDCL). On the contentions made by the appellant in the petition, which would be elaborated hereinafter, the appellant had sought reconnection of the said 2MW WTG (which had been disconnected on 11.06.2020 in pursuance to the impugned communication / email dated 05.06.2020 of 3rd respondent) but the Commission rejected the said prayer of the appellant and accordingly dismissed the petition.

2. The appellant had assailed the said order dated 11.07.2020 of the Commission previously also before this Tribunal by way of appeal No.127/2020 which was disposed off vide order dated 14.08.2020 granting liberty to the appellant to withdraw the appeal while reserving its contentions to be agitated again before the Commission invoking its review jurisdiction. Accordingly, the appellant approached the Commission again by way of review petition bearing case No.177/2020 which also came to be dismissed by the Commission vide order dated 05.10.2020.

3. Hence, the appellant is again before us by way of the instant appeal challenging the order dated 11.07.2020 of the Commission.

4. The appellant has in the year 2015 set up 17 WTGs at different places contagious to each other in a specified area in district Sangli in the State of Maharashtra. Each of the WTGs is having installed capacity of 2 MW. 16 out of these 17 WTGs are duly covered by Energy Purchase Agreement (EPA) signed between appellant and the 2nd respondent in the year 2017. Eleven of these WTGs were commissioned on 31.10.2015 but the EPAs were executed in respect of the said WTGs on 22.03.2017. Further 5 of these WTGs were commissioned in March 2017 but the EPAs in their respect were formally executed in the month of August 2017. The last 17th WTG was commissioned on 31.10.2015 but EPA with regard to the same has not been

executed till date. It is this 17th WTG which is the bone of contention between the parties and forms subject matter of the dispute in this appeal before us.

5. As recorded in the impugned order as well as submitted by the learned counsel for the appellant, the reason for non-signing of EPA with respect to the said 17th WTG appears to be that the 4th respondent Maharashtra Electricity Development Agency (MEDA) is yet to issue certificate of registration in its respect which is mandatory under the Maharashtra Government Renewal Policy 2015. MEDA appears to have withheld the registration of said WTG on the ground that upon inspections caried out at the site on 06.02.2016 and 02.12.2016, it was found that WTG has been erected near the road contrary to the Micrositing Guidelines dated 16.12.2008.

6. We may note here that during the proceedings of this appeal, this Tribunal vide order dated 15.03.2021 directed joint inspection of the site of WTG to be caried out in the presence of appellant and the representatives of the MSEDCL and MEDA to measure the distance between the WTG and the village road. Further direction was passed for placing on record the revenue records or reliable documents pertaining to the village road, if available. Accordingly, the joint inspection was caried out on 08.09.2021 in presence of appellant, Collector Revenue (Sangli) / SDM and

representatives of MSEDCL and MEDA, the report of which has been filed on record.

7. The main contention on behalf of the appellant is that there has been no contravention of the Micrositing Guidelines, 2008 and the distance between the WTG and the PWD road existing in the area is 573 meters as per the joint inspection caried out on 08.09.2021 in pursuance to the orders of this Tribunal, whereas the minimum distance required between the WTG and the nearest road as per these Guidelines is 157.57 meters only. It is, thus, argued that the MEDA has been illegally and unreasonably avoiding the registration of appellant's 2 MW WTG in question even though the application in this regard was moved in September 2015. It is pointed out that the subject WTG was duly commissioned after the requisite permissions granted by MEDA and MSEDCL on 31.10.2015 and had been generating power from the said date till date of this disconnection on 11.06.2020 without any objection or demur from either MSEDCL or MEDA or any other authority. It is pointed out that in fact credit notes for supply of power from the WTG have also been issued by MSEDCL from time to time thereby recognizing the acceptance of such power by the Discom. It is submitted that after having injected power for 5 years, the WTG has been disconnected on frivolous and baseless grounds which cannot be sustained.

8. On behalf of 2nd respondent MSEDCL it is contended that the WTG has been disconnected in pursuance to the correspondence dated 02.05.2020 received from MSLDC which is binding upon the Discom in view of Section 33 of the Electricity Act, 2003.

9. According to the 3rd respondent MSLDC, there has been no illegality in directing disconnection of the said WTG as the same was found injecting power into the grid in the absence of a valid EPA with MSEDCL. It is submitted that injection of such power without a valid contract would lead to deviation in injection schedule of other contracted wind and solar generators connected to the grid and would ultimately lead to grid indiscipline. It is stated that injection of power into the grid without any valid contract is illegal and such illegality cannot be perpetuated as has been held by this Tribunal also in several judgments.

10. The stand of the 4th respondent / MEDA is that the appellant has been operating subject WTG in gross violation of Micrositing Guidelines, 2008 which was pointed out to it through various letters and communications but instead of taking any step to rectify the same, the appellant is trying to blame MEDA for its violations. It is contended that after the grant of Permission to Commission (PTC) to appellant in respect of subject WTG, 2nd respondent

MSEDCL conducted inspection of the same to check compliance of Micrositing Guidelines, 2008 and it was found that the WTG was erected near Kacharewadi-Kinderwadi road without maintaining requisite distance as per these guidelines. It is submitted that at the time of submitting application for registration, the appellant has given an undertaking assuring the correctness of the statements made therein which proved to be false. It is further pointed out that the Collector has even in the joint inspection report dated 08.09.2021 recorded that the WTG is only 133 meters away from the village road, which is not in consonance with the Micrositing Guidelines, 2008.

11. We have heard learned counsels appearing for the parties and have gone through the impugned order. We have also perused the written submissions filed by the learned counsels.

12. We note that the subject WTG was set up in terms of Policy for Power Generation from Non-conventional Sources of Energy, 2008 issued by the Industries, Energy and Labour Department, Government of Maharashtra on 14.10.2008 (in Short 2008 RE Policy). The comprehensive policy for Grid-Connected Power Projects Based on New and Renewable (Non-conventional Energy) sources – 2015 was subsequently issued by the State Government on 20.07.2015 (in short 2015 RE Policy). In pursuance to the

said 2015 RE Policy, the State Government also issued methodology for installation of projects on 09.09.2015. In terms of clause 2.9 of the RE Policy 2015 and clause 7 of RE methodology, the wind power projects established were required to be registered with MEDA and then execute Energy Purchase Agreements with MSEDCL.

13. Following undisputed facts emerge out of the rival contentions / submissions made on behalf of the parties in this appeal: -

i. Vide application dated 19.01.2015 filed with MEDA, the Appellant made a request for grant of Infrastructure Clearance for the subject WTG.

ii. Joint Inspection was carried out for the WTG for purposes of infrastructure clearance on 15.10.2015 in the presence of representatives from MEDA, MSETCL and MSEDCL. The Appellant obtained full marks under the head “Project/erection of WTG complete in all respect”.

iii. After obtaining Infrastructure Clearance, vide letter dated 23.09.2015, the Appellant filed a request with MEDA for Registration of the subject WTG

iv. MEDA issued letter of recommendation dated 29.10.2015 to MSEDCL for issuance of Permission to Commission**.**

v. Based on MEDA's recommendation, MSEDCL issued Permission to Commission on 30.10.2015**.**

vi. MEDA issued Clearance for Commissioning on 31.10.2015.

vii. The subject WTG was thus commissioned on 31.10.2015 in the presence of MSEDCL representative, connected to the MSEDCL Grid at common metering point at 220/33 KV Khanaput Sub station, as acknowledged by MSEDCL vide communication dated 07.11.2015.

14. Perusal of the joint inspection report dated 15.10.2015 would reveal that the inspection was caried out in the presence of representatives of MSEDCL and MEDA and the appellant has been awarded full marks on all counts and in pursuance to the same, MEDA recommended issue of Permission to Commission (PTC) for the subject WTG vide communication dated 29.10.2015. Accordingly, MSEDCL issued PTC for the subject WTG vide communication dated 30.10.2015 which was followed by issuance of clearance for commissioning by MEDA on 31.10.2015. The WTC was formally commissioned on 31.10.2015, which is recorded in the communication issued by MSEDCL on 07.11.2015. Meanwhile, the appellant had applied on 23.11.2015 to MEDA for registration of the subject WTG.

15. It appears that at the time of joint inspection dated 15.10.2015, the representatives of MEDA did not find it necessary to ascertain as to whether the requirements as per the Micrositing Guidelines, 2008 as regards distance of the WTG from the road have been complied with or not. From the perusal of written submissions filed by MEDA, it is revealed that after commissioning of the project, the project file was sent for approval to the Chairman of MEDA i.e. Minister, New and Renewable Energy, Government of Maharashtra on 22.01.2016. The file was received back in the office of MEDA on 25.01.2016 without his signature but with the remark "approved as per scrutiny conducted by DG, MEDA". As per the decision taken after return of the file from the office of Minister, Project was again inspected on 06.02.2016 by MEDA when it was found that the project was installed near Kacharewadi-Kindarwadi road in violation of Micrositing Guidelines, 2008. The distance between the subject WTG and the road was found to be 133 meters whereas the required distance as per the Micrositing Guidelines, 2008 is 157.5 meters. It is, for this reason, that MEDA has withheld the registration of the subject WTG on account of which EPA has remained to be executed between the appellant and MSEDCL.

16. The only issue which arises for consideration by us in this appeal is whether the subject WTG has been set up in contravention of Micrositing

Guidelines, 2008 i.e. whether the distance of the WTG from the road is less than the required distance of 157.5 meters.

17. No document pertaining to the inspection carried out on 06.02.2016, as contended on behalf of the MEDA, has been filed on record. Considering the same, this Tribunal had vide order dated 15.03.2021 ordered a fresh joint inspection in the presence of the representatives of the appellant, MSEDCL and MEDA, to measure the distance between the subject WTG and the alleged village road. As already noted hereinabove, joint inspection was carried out on 08.09.2021. Two separate reports have been prepared which are on record. In one of the reports distance between the subject WTG and PWD road has been measured which came out to be 573 meters. The other report is regarding the distance between the subject WTG and the alleged village road, which has been measured as 133 meters. The SDM, who was present at the time of joint inspection, has noted on this report that the village road exists but it is not shown in village map or any other record.

18. It is contended on behalf of the appellant that there is no such village road nearby the subject WTG and the pathway which appears could be only a casual path that may be used by some villagers as a shortcut and the same cannot be treated as a road contemplated under Micrositing Guidelines, 2008. We do not find any reason to reject these submissions made on behalf

of the appellant. Admittedly, no such village road is shown either in the village map or in other revenue record pertaining to the village Kacharewadi. It is not uncommon that people in villages avoid the long recognized roads and take shortcuts through vacant pieces of land turning them into a casual pathway. Those casual pathways cannot be treated as road either for the purpose of Micrositing Guidelines, 2008 or any other legal requirement. In this regard, we may also refer to Section 142 of Maharashtra Land Revenue Coade, which is quoted hereinbelow: -

> *"142. (1) Unless the boundaries of his land are demarcated and fixed under any of the foregoing provisions of this Chapter, every holder of the land adjoining a village road shall, at his own cost and in the manner prescribed, -*
>
> *(a) demarcate the boundary between his land and village road adjoining it by boundary marks; and*
> *(b) repair and renew such boundary marks from time to time.*
>
> *(2) If the holder fails to demarcate the boundary or to repair or renew the boundary marks as required by sub-section (1), the Collector may, after such notice as he deems fit, cause the boundary to be demarcated or the boundary marks to be repaired or renewed and may recover the cost incurred as an arrears of land revenue.*

(3) In the event of any dispute regarding the demarcation of the boundary or the maintenance of the boundary marks in proper state of repair, the matter shall be decided by the Collector whose decision shall be final.

Explanation. – Village road for the purposes of this section means in the districts of Nagpur, Chanda, Wardha and Bhandara and Melghat taluka in the Amravati District a road which bears an indicative Khasra number; and in the rest of the State, a road which has been recorded in the record of rights or village maps."

19. It is clear from the explanation attached to the Section that a village road has to be officially identified and demarcated in the records of rights or village map. Concededly, the pathway which is considered as village road by MEDA is neither shown in the map of village Kacharewadi nor in any other record concerning the said village.

20. Hence, we are of the firm view that the casual pathway seen near the subject WTG at a distance of 133 meters cannot be taken to be a road as envisaged under the Micrositing Guidelines, 2008. There is a PWD road from village Narsewadi to village Kacharewadi at a distance of 573 meters from the subject WTG, which distance is much more than the requisite distance of 157.5 meters as required under the Micrositing Guidelines, 2008.

21. It becomes evident that MEDA has based its decision of withholding the registration of subject WTG on baseless ground in an arbitrary as well as cavalier fashion and it despite being a State instrumentality, has acted in absolutely unfair and unjust manner towards the appellant.

22. The project duly qualified for registration by MEDA but the registration has been held up for the last 5 years on the basis of an imaginary inspection for which there is no record, probably to harass the appellant. This is despite the fact that the project was set up well within the four corners of the Renewable Energy Policy of the State Government and had been granted full marks during the joint inspection carried out on 15.10.2015 pursuant to which it was permitted to commission on 31.10.2015.

23. What can logically be discerned from these factual aspects of the case is that EPA between the appellant and MSEDCL remained to be executed only due to the above noted casual and unwarranted approach of MEDA, for which the appellant cannot be blamed. It also needs note that concededly, the appellant continued to inject wind power from the subject WTG into the grid right since the date of its commissioning i.e. 31.10.2015, uninterruptedly, and without any objection or demur from either MSEDCL or MSLDC or MEDA.

24. Hence, we have no hesitation in directing that the subject WTG of the appellant shall be deemed to have been registered with MEDA on 23.11.2015 i.e. the day when the appellant applied for such registration. We direct MEDA to issue a formal registration certificate to the appellant for the said WTG within two weeks from the date of this judgment.

25. Once we have held that the non-registration of subject WTG with MEDA was not on account of any fault of inaction on the part of the appellant, but due to the arbitrary, unfair and unjust approach of MEDA itself, the appellant cannot be held responsible for non-execution of EPA with MSEDCL. Therefore, the impugned communication dated 05.06.2020 issued by 3rd respondent MSLDC cannot be sustained and is accordingly quashed. The second respondent MSEDCL is hereby directed to reconnect the subject WTG with the grid forthwith and not later than one week from the date of this judgment.

26. In so far as the power injected by the appellant from the subject WTG into the grid since the date of its commissioning i.e. 31.10.2015 till its disconnection on 11.06.2020, is concerned, the same has been held by the Commission to be infirm power in the impugned order on the ground that it was done in the absence of a valid EPA between the appellant and

MSEDCL. We find it pertinent to extract Paragraph No.19 and 20 of the impugned order which contains the discussion of the Commission on this issue and the same are as under:-

> *"19. In absence of any valid EPA or agreement, even though generator provides forecast / schedule as per RE F&S Regulations, said schedule cannot be accepted as there is no identified counter party to use such energy injected into the Grid. Under such circumstances, when SLDC in its role as system operator issues instructions to MSEDCL to disconnect those WTGs from Grid that do not have valid contract, MSEDCL is duty bound to follow such instructions. Hence, the Commission does not find anything wrong in disconnection of OMWEPL's 2 MW WTG which does not have valid EPA. As regards non applicability of F&S regulations for projects having capacity less than 5 MW, Commission notes that the Petitioner has installed total capacity of 34 MW wherein 2 MW disputed WTG is also a part. As per regulations, capacity of the entire project is considered for applicability, and not in parts thereof. Besides, Petitioner has duly appointed under the regulations, a QCA for the entire project including the disputed WTGs of 2 MW capacity for scheduling and forecasting of the electricity generated. Clearly, such arguments of Petitioners on applicability of the regulations are not tenable.*
>
> *(Emphasis supplied)*

20. OMWEPL also contended that it had applied for registration for its WTG on 23 September 2015 and despite complying all technical requirements and formalities prescribed under the GoM RE Policy 2015, its Methodology as well as pre-2013 Micro-sitting Guidelines, registration certificate has not been issued by MEDA till date. However, MEDA in its reply has stated that the registration is kept on hold because OMWEPL's WTG is erected near the village road hence is not complying with the Micro-sitting guidelines dated 16 February 2008. As per Panchayat Samittee, Tasgaon's letter the distance between WTG and village road is 185 meters as against the 330 meters claimed by OMWEPL. According to OMWEPL the registration is pending in view of Order dated 9 July 2014 passed by the Hon'ble Bombay High Court in PIL No. 129 of 2013 for which it has also filed Civil Application CA No. 31880/2017 and has requested for vacation of interim orders/or to clarify that Orders. The Commission notes that Hon'ble Bombay High Court in its Adinterim Order dated 9 July 2014 has directed to restrain from acting upon the modified Micro-sitting guidelines dated 8 March 2013 which was not approved by the Governing Council of MEDA. But in present case, registration is not yet issued by MEDA because OMWEPL's WTG is not complying with the Micro-sitting guidelines dated 16 February 2008. As OMWEPL has not sought any specific relief against MEDA and as matter is pending with Hon'ble Bombay High Court, the

Commission is not dealing with issue of delay in issuing WTG registration."

27. From the perusal of the preceding paragraphs of the impugned order, it appears that the Commission has based its findings on this aspect on the judgments of this Tribunal dated 16.05.2011 in M/s Indo Rama Synthetics v. MERC and dated 08.05.2017 in appeal No.120/2016 wherein it has been held that a generator cannot pump electricity into the grid without having consent / contractual agreement with the distribution licensee and without approvals / scheduling of the power by the SLDC and injection of such energy by generator is not entitled for payment.

28. We are unable to affirm these findings of the Commission in the impugned order. We have held hereinabove that in this case, EPA remained to be executed between appellant and the MSEDCL not due to any fault / inaction on the part of appellant but on account of arbitrary as well as unjust approach of the MEDA. Further, in paragraph 19 of the impugned order, already reproduced hereinabove, the Commission has observed that in absence of a valid EPA or agreement, even though generator provides forecast / schedule asper RE F&S Regulations, such schedule cannot be accepted as there is no identified counter party to use such energy injected into the grid. However, in the instant case, the injection of power into the

grid from subject WTG by the appellant and its scheduling has been duly accepted by MSEDCL without any demur for 5 years till the WTG was disconnected on 11.06.2020. Admittedly, MSEDCL did not intimate the appellant at any point of time that the energy pumped from the subject WTG into the grid cannot be accepted as the same is being done without a valid EPA. Moreover, the WTG was formally commissioned on 31.10.2015 in pursuance to the PTC issued by MSEDCL itself on the recommendation of MEDA and connected to the MSEDCL Grid at common metering point at 220/33 KV Khanapur Sub-Station. Since then, MSEDCL continued to receive energy from the WTG uninterruptedly, without asking the appellant to produce registration certificate from MEDA and to execute EPA. It is not the case of MSEDCL that it has not supplied the power received from subject WTG to its consumers for gain. In fact, for some period of time, it has also issued credit notes to appellant for such power. Therefore, in such a scenario MSEDCL cannot be permitted to evade payment to the appellant for the power received in its grid from the WTG in question. Even otherwise also, we note that the issue with regards to entitlement of power generator for compensation with regards to the power injected into the grid in the absence of a valid EPA had come up for consideration before this Tribunal recently in appeal No.187/2017 titled Green Energy Association v. MERC

and Ors. decided on 28.08.2024. We find it apposite to reproduce the entire discussion on this issue in the said judgment as under: -

> *"**23.** It is evident from the rival contentions of the parties that the members of the appellant association had been injecting power from their solar power projects into the grid even though they had not been granted open access and had not installed SEMs. It also appears that no objection was raised by MSEDCL to such injection of power into the grid by the members of appellant association from their solar power projects at any point of time. In fact MSEDCL appears to have provided connectivity to their power projects with the grid as the injection of power could not have been possible without such connectivity. Concededly, MSEDCL utilized such power by selling it to the consumers and realizing tariff from them and thereby causing financial gain to itself. We wonder as to why such conduct of parties i.e. supply of power by the members of appellant association from their solar power generators (even though without any open access permission or a EPA) on the one hand and receipt as well as utilization of such power by MSEDCL without any objection or demur on the other hand, cannot be construed to constitute a contractual relationship between the parties. Such kind of contracts are known as "quasi contracts" which have given legal recognition in India also by way of Section 70 of the Indian Contract Act, 1872.*

24. *"Quasi Contract" is also known as "implied contract" which acts as a remedy for a dispute between two parties which do not have an express contract between them. A Quasi Contract is a legal obligation, not a traditional contract. Such transactions are also referred as "constructive contract" as these are constructed by the Court when there is no existing contract between the parties. Such arrangements may be inferred or imposed by the Court when goods or services are accepted by a party even though there might not have been any order. The acceptance and utilization of the goods or services by the other party creates an expectation for payment in the mind of the party providing the goods/services.*

25. *The concept of Quasi Contract is basically founded on the doctrine of "unjust enrichment". This doctrine itself is based upon the maxim "Nul ne doit s' enricher aux depens des autres" (No one ought to enrich himself at the expense of others.) The rationale behind the doctrine of unjust enrichment is that in certain situations, it would be unjust to allow the defendant to retain a benefit at the plaintiff's expenses. To apply this doctrine, it must be established that:-*

- *(i) the Defendants/Respondents have been enriched by the receipt of a "benefit";*
- *(ii) this enrichment is "at the expenses of the plaintiff";*
- *(iii) the retention of the enrichment is unjust.*

26. *The Hon'ble Supreme Court had the occasion to deal with and explain the contours of Section 70 of the Contract Act, 1972 in State of West Bengal Vs. B.K. Mondol & Sons, AIR, 1962 SCC 779 and it was held as under:-*

> *"Three conditions must be satisfied before S. 70, Contract Act can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied S. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered.*
>
> *The person said to be made liable under S. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under S. 70 arises. Section 70 occurs in Chap. V which deals with certain relations resembling those created by contract. In other words, this chapter*

does not deal with the rights or liabilities accruing from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by contract.

In cases falling under S. 70 the person doing something for another or delivering something to another cannot sue for he specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that S. 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus where a claim for compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that S. 70 provides is that if the goods delivered are

accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus where a claim for compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party.

The word 'lawfully' in the context indicates that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of S. 70 gives rise to a claim for compensation.

The thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. When a thing is delivered or done by one person it must be

open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation under S. 70 must be voluntary.

What S. 70 prevents is unjust enrichment and it applies as much to individuals as to corporations and Government. On principle S. 70 cannot be invoked against a minor. There is good authority for saying that S. 70 was framed in the form in which it appears with a view to avoid the niceties of English law on quasi-contracts."

(Emphasis supplied)

27. *We may, elucidate the concept of 'Quasi Contract' as well as Doctrine of 'Unjust Enrichment' by way of following illustration: -*

"A person X sends some goods to person Y in the absence of any order from Y. Y is dutybound to either refuse delivery of goods as and when those are tendered to him or immediately after receipt of goods, to return those to X or at least send a communication (oral, telephonic or written) to him informing him that he has sent the goods without any order from Y and hence, should take those back. However, in case Y accepts goods stoically

and also utilizes them, he cannot be heard to say that he shall not pay to X for them as he has not ordered them. In that case, Y shall be required to pay for the goods. This is what the essence of Section 70 of Contract Act also is."

28. *We may further note that in similar facts and circumstances in case No. 28 of 2020 (Bothe's case) where there was no valid EPA between the power generators and the distribution licensee (it was MSEDCL in that case also), the MERC awarded compensation to the power generator i.e. M/s Bothe for the electricity generated and injected into the grid on the following reasoning:-*

"21.8 The Commission however would like to also consider the conduct of MSEDCL and BWDPL. It has been accepted by MSEDCL that it has taken the benefits by considering this power for fulfilling its non- Solar RPO targets for three years i.e. from FY 2014-15 to 2016-17 i.e till such time the procurement methodology had not been changed to Competitive Bidding. The Commission thus feels that MSEDCL should compensate BWDPL for that limited period. As there was no valid EPA between the parties, generic tariff applicable at that point of time cannot be made applicable in the present matter. Only other method that can be considered is sale of power at Average Power Purchase Cost

(APPC) to Distribution Licensee which is akin to REC mechanism. Therefore, the Commission directs MSEDCL to compensate BWDPL for the period of FY 2014-15 to 2016- 17 at rate of approved APPC (excluding renewable sources) for respective year. Further, as MSEDCL has used this energy for meeting its RPO, green attribute of the same also needs to be paid. Hence, in addition to APPC rate, MSEDCL should also compensate BWDPL for such energy at Floor price of non-solar REC prevailing at that point of time. Accordingly, the Commission direct MSEDCL to pay compensation for energy injected by BWDPL from 3 WTGs aggregating 6.3 MW capacity in the year FY 2014-15 to FY 2016-17 at the rate of APPC (excluding RE) plus floor price of non-solar REC applicable for respective year. However, such compensation would be without any carrying cost as MSEDCL was not responsible for delay in raising bills for FY 2014-15 to FY 2016-17.

21.9 Energy injected by BWDPL form FY 2017-18 onwards, which has not been utilized by MSEDCL for its RPO, needs to be treated as energy injection without a valid EPA and hence need not be compensated."

[Emphasis supplied]

29. *We may further note that the above noted order of the Commission in Bothe's case was assailed before this Tribunal by way of appeal No.119/2020 which was decided along with the batch of identical appeals vide judgment dated 18.08.2022 setting aside the Commission's order and holding the appellants entitled to tariff for the electricity generated and supplied from the respective dates. It has been further held that the conduct of the parties leaves no room for doubt that the contracts had come into being with the MSEDCL permitting not only commissioning but also connectivity as well as enjoying the electricity injected into the system without demur, accounting it towards its RPO obligations and indisputably reaping financial gains by receiving corresponding tariffs from its consumers. It has further been held that signing of an EPA, model of which had already been approved by MERC, was only a matter of formality and the MEDA registration would relate to the respective dates with the application for registration by appellants. For clarity, we find it apposite to quote the relevant Paragraphs of the judgment of this tribunal hereunder: -*

> *"56. The process of scrutiny for MEDA registration seems to have been opaque and wholly unguided, seemingly dependent on the discretion as to the order of priority at the hands of the officialdom that*

would have handled it. Since certain rights or disqualifications statedly flow from such registration, this cannot be accepted. MEDA, despite notice, has chosen not to participate by any submissions before us. From the chronology of events concerning the registration of the projects of WPPs in appeal, we notice that it primarily depended on micro-siting inspections and the propriety of location chosen. Such considerations would have been relevant even for purposes of the projects to come up and be commissioned. Since setting up and commissioning of the projects was duly monitored, and under constant gaze of the MSEDCL, the connectivity given being contingent on the inspection and certificate of Electrical Inspector reporting to the said very entity, we fail to understand as to how MEDA registration process could come in the way of securing rights to the WPPs who had otherwise become eligible for execution of the EPAs under the promise held out through the RE Policy- 2015. It bears repetition to say that the delay in MEDA registration in the present cases were not for reasons attributable to these WPPs but beyond their control. At any rate, the registration granted in 2019 would refer back to the dates of their respective application which in

each case here is of January-February 2016 vintage.

57. In the above context, it is advantageous to refer to certain case law. In Joint Chief Controller of Imports and Exports, Madras v. Aminchand Mutha etc. AIR 1966 SC 478, Hon'ble Supreme Court had ruled thus:

> *"11. The fact that in his letter of approval the Chief Controller usually says that the quota rights admissible to the dissolved partnership should in future be divided between the partners would not necessarily mean that the quotas for the partners were to take effect only after the date of approval. If the division of quota has to be recognised by the Chief Controller on production of evidence required by Instruction 72 and this division has to be in accordance with the agreement between the partners of a dissolved firm, the approval must relate back to the date of agreement, for it is the agreement that is being recognised by the Chief Controller. In such a case the fact that the Chief Controller says that in future the quota would be divided, only means that the original quota of the undissolved firm would from the date of the agreement of*

dissolution be divided between partners as provided thereunder.

12. Further we should like to make it clear that quotas should not be confused with licences. Quotas are merely for the purpose of informing the licensing authority that a particular person has been recognised as an established importer for import of certain things. Thereafter it is for the licensing authority to issue a licence to the quota holder in accordance with the licensing policy for the half year with which the licence deals. For example, if in a particular half year there is an order of the Central Government prohibiting the import of certain goods which are within the quota rights, the licensing authority would be entitled to refuse the issue of licence for import of such goods whose import has been banned by the Central Government under the Act by notified order. Thus the approval of the Chief Controller under Instruction 71 is a mere recognition of the division made by the partners of a dissolved firm by agreement between themselves and in that view the recognition must clearly relate back to the date of the agreement. Further when the Chief Controller says in his letter that in future the division would be

recognised in a certain ratio based on the agreement, it only means that the Chief Controller has approved of the division made by the parties and such approval then must relate back to the date of the agreement between the parties. We therefore hold that the view taken by the Madras High Court that the approval by the Chief Controller relates back to the date of agreement is correct."

[Emphasis Supplied]

58. In the case of UP Avas Evam Vikas Parishad & anr. v. Friends Coop. Housing Society Ltd & anr. 1995 Supp (3) SCC 456, it was held as under:

"7. It is seen that the approval envisaged under exception (iii) of s.59(1) (a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval gets validated and the publications made under the Act thereby becomes valid."

[Emphasis Supplied]

59.The above view was reiterated in Graphite India Ltd & anr v. Durgapur Projects Limited & ors. (1999) 7 SCC 645.

60. The fact that MEDA registrations secured in 2017 in at least 32 cases (Sr. no. 292 to 324 in Annexure-A/2) have resulted in the appellant WPPs being kept out of the fray, even though the applications of the latter were submitted earlier in 2016, they being ready in 2014-15, renders the denial of EPAs to these WPPs most unfair and inequitable, the entire process being vitiated by the arbitrary approach of MSEDCL and MEDA.

61. Promises were held out by the State Government through its RE Policy-2015, followed by methodology order, and subsequent notification of the government resolution issued on 21.12.2016 to accommodate and regularize the WPPs which had been commissioned after the targets of RE Policy-2008 had been exhausted for the purposes of new capacity added by RE Policy-2015, particularly in the own interest of MSEDCL for fulfilling its RPO obligations to the extent of 1350 MW. This gave rise to legitimate expectations for all WPPs then in the process of being established and commissioned.

62. In M/s Motilal Padampat Sugar Mills, (1979) 2 SCR 641 the doctrines of legitimate expectation and promissory estoppel were explained as under:

> *"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as*

the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negative in the IndoAfghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his

position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by

the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the IndoAfghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will

have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in

the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable."

[Emphasis Supplied]

63. Expounding the doctrine further, the Hon'ble Court clarified that it was not necessary to show that the party in question had suffered any detriment, it being sufficient that it had relied upon the promise and representation held out and altered its position relying upon such assurance. It was further held thus:

"Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the appellant from

payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant."

[Emphasis Supplied]

64. In Manuelsons Hotels Private Limited v. State of Kerala & Ors (2016) 6 SCC 766, quoting with approval from the above decision in the case of Motilal Padampat Sugar Mills (supra) and following similar discourse in the judgment in the case of State of Punjab v. Nestle India Ltd. (2004) 6 SCC 465, the Supreme Court held thus:

"19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which

would ultimately render justice to the aggrieved party…"

[Emphasis Supplied]

65. From the narrative of the factual background, it is clear that the subject WTGs were set up by the appellant WPPs in terms of RE Policy, the development and commissioning having been monitored by MSEDCL, the intended beneficiary of the entire generation capacity thereby created. There is no denial as to the fact that the appellant WPPs had established, set-up and commissioned their respective projects, particularly the WTGs which are subject matter of the present dispute, on the promises made by RE Policy – 2008 read with RE Policy – 2015, as indeed assurances held out by MSEDCL Circular 2014. Promises were made and commitments taken including in the form of undertakings furnished by the WPPs, and accepted by MSEDCL, that their entire capacity would be sold to, and purchased by the latter (MSEDCL), as per the tariff regime put in position by MERC, MSEDCL having started taking the supply and accounting it towards RPO obligations issuing, at least in the case of WinIndia, even credit notes for such supply. The cases of such WPPs who, by then, had not been covered by formal

EPAs were subjected to scrutiny by the State Government which resolved to have the same regularized and so recommended in December, 2016, the requirement of MEDA registration introduced around that time having deferred immediate action in that light. There is no case made out by MSEDCL of suffering any inequity by being held bound by its promise or the relief claimed being detrimental to public interest. The additional targets of RE Policy – 2015, as already found, are yet not exhausted. All the requisite ingredients for the doctrine of promissory estoppel to come into play are thus shown to exist, the argument of MSEDCL to renege on its promises being arbitrary, unfair and unconscionable.

66. The appellant WPPs contend that implied contracts exist between the parties, execution of EPAs being only a formality required to be completed. Reliance is placed on the decisions of the Supreme Court reported as Haji Mohd. Ishaq v Mohd. Iqbal and Mohd. Ali & Co., (1978) 2 SCC 493 and Bhagwati Prasad Pawan Kumar v Union of India, (2006) 5 SCC 311.

67. In Haji Mohd. Ishaq (supra), the Supreme Court quoted (Para 10) with approval the following

passage from Chitty on Contracts, twenty-third Edn., pp. 9-10, para 12:

"Express and implied contracts.—Contracts may be either express or implied. The difference is not one of legal effect but simply of the way in which the consent of the parties is manifested. Contracts are express when their terms are stated in words by the parties. They are often said to be implied when their terms are not so stated, as, for example, when a passenger is permitted to board a bus: from the conduct of the parties the law implies a promise by the passenger to pay the fare, and a promise by the operator of the bus to carry him safely to his destination. There may also be an implied contract when the parties make an express contract to last for a fixed term, and continue to act as though the contract still bound them after the term has expired. In such a case the court may infer that the parties have agreed to renew the express contract for another term. Express and implied contracts are both contracts in the true sense of the term, for they both arise from the agreement of the parties, though in one case the agreement is manifested in words and in the other case by conduct. Since, as we have seen, agreement is not a mental state but an act, an inference from conduct, it follows that the

distinction between express and implied contracts has very little importance, even if it can be said to exist at all."

…"

[Emphasis Supplied]

68. In Bhagwati Prasad Pawan Kumar (supra), it was held thus:

> *"19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand, if the evidence discloses that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act."*

[Emphasis Supplied]

69. We agree with the submissions of the WPPs herein that the conduct of the parties leaves no room for doubt that contracts had come into being MSEDCL permitted not only commissioning but also connectivity and has been enjoying the electricity injected into its system without demur, accounting it towards its RPO obligations, indisputably reaping financial gains by receiving corresponding tariff from its consumers.

70. The implied contract is in consonance with the principles enshrined under the Indian Contract Act, 1872. Lack of a written contract would not render the implied agreement between the parties illegal. There is merit in the argument of the appellant WPPs that by its ruling through Order dated 24.11.2003 in Case no. 17(3)3-5 of 2002 on the application of erstwhile Maharashtra State Electricity Board on the subject of "procurement of wind energy & wheeling for third party sale and/or self-use", MERC had rendered formal exercise of approval under Section 86 of Electricity Act in cases covered by the RE Policy unnecessary, the relevant observations being as under:

"1.6.1 Energy Purchase Agreement (EPA) & Energy Wheeling Agreement (EWA) It is not the intention of the Commission to approve the EPA/EWA for each wind project individually. The Commission however has formulated the principles of EPA/EWA, which have been elaborated in the Order. The Commission directs the MSEB and other utilities/licensees to modify Draft EPA/EWA to reflect the tariff provisions and principles of EPA/EWA as approved in the Order before executing the EPA/EWA with developers. The Commission further directs the MSEB and other utilities/licensees to make all EPAs/EWAs public."

71. Crucially, the above was reiterated by MERC in its Order dated 26.02.2009 in Case no. 89 of 2008 in the matter of petition of another entity (Reliance Infrastructure Ltd.) seeking approval of EPA for purchasing the entire energy generated from certain WTGs, the relevant para reading thus:

"15. The Commission, in its Order dated December 10, 2008 in Case No. 58 of 2008 has determined the tariff on adinterim basis at Rs. 2.52 per kWh for the wind energy injected into the Grid by wind energy generators belonging to

GroupII category until determination of Final Tariff as may be determined based on further regulatory process to be initiated pursuant to para 44 of the Commission's Order dated October 7, 2008 in Case 89 of 2007. Moreover, the Commission has already spelt out the provisions of the Model EPA in its Order dated 24.11.2003 in Case No. 17(3),3,4,5 of 2002, and the Petitioner should enter into EPAs in accordance with the approved Model EPA, since the Commission does not approve individual EPAs entered into by the distribution licensee with wind developers."

72. All the requisite ingredients are in place, they being valid offer, acceptance, express mutual consents, lawful object and consideration. In fact, the implied contracts (qua subject WTGs) between these WPPs on one hand and the MSEDCL, on the other, had even been acted upon by the latter (MSEDCL) commencing procurement of supply, showing it in its account as part of the fulfillment of RP obligations. Clearly, the WPPs did not intend the supply of electricity to be gratuitous.

73. On the forgoing facts and in the circumstances, we are not impressed with the reasons cited by

MSEDCL for refusal to sign EPAs with the appellant WPPs. The reference to competitive bidding guidelines issued in 2017 is not correct. The contracts had already come into existence and the signing thereof, following the model EPA already approved by MERC, was only a matter of formality. The competitive bidding guidelines could not preclude such contracts to be formalized so as to be given retrospective effect. Such guidelines may have to be followed for future arrangements. The MEDA registrations granted in 2019 would relate back to the respective dates of application for such registration i.e. January-February, 2016. The appellant WPPs had commissioned the WTGs in 2014-15 and had started injecting power thereby generated from the date(s) of commissioning into the system of MSEDCL. It bears repetition to note that the new targets created by RE Policy – 2015, particularly to the extent set apart for RP obligations, have not been yet exhausted, a finding returned by us on the basis of scrutiny of the facts discovered by CMD of MSEDCL. The claims of appellant WPPs herein, upon being allowed, will not result in the said target being exceeded. The WPPs thus are entitled to the execution of the formal EPAs from the date(s) they fulfilled all the eligibility requirements, i.e. date(s) on which they

had applied for such registrations as have been granted later. The denial of a direction for EPAs to be executed thus cannot be upheld.

74. As a sequitur, the appellant WPPs are entitled to the tariff for the electricity generated and supplied from the respective dates on which they are entitled w.e.f. the date(s) from which the EPAs are to become effective. The restriction of compensation only for the period for which MSEDCL has claimed RPO compliances and consequent denial (of compensation) for the remainder is unjust and, therefore, incorrect. For these reasons, the appeals of MSEDCL grudging the restricted grant of compensation cannot be accepted."

30. *When we apply the concept of quasi contract as well as the doctrine of unjust enrichment / legitimate expectation as explained by Hon'ble Supreme Court in the above noted judgements of B K Mondal and M/s Motilal Padampat Sugar Mills to the facts of the instant case, we find that the members of appellant association are entitled to payment of power injected into the grid from their solar power projects during the period already noted hereinabove. We also see no reason for making any departure from the findings of this Tribunal given in*

Bothe's case i.e. Appeal No.119/2020 decided on 18.08.2022."

29. Appling the concept of quasi-contracts as well as the doctrine of unjust enrichment / legitimate expectation, as explained in the above noted judgment by this Tribunal, to the instant case, we see no reason for denying compensation to the appellant for the power injected from the subject WTG into the grid from the date of its commissioning till 11.06.2020 when it was disconnected. Therefore, the appellant is found entitled to the credit notes from MSEDCL for the energy supplied from the subject WTG till its disconnection.

30. Thus, considering the above discussion, we find the impugned order the Commission absolutely erroneous and not sustainable either on facts or on law. The same is hereby set aside. Accordingly, the appeal stands allowed. The impugned communication dated 05.06.2020 issued by 3rd respondent MSLDC is hereby quashed. The subject WTG is deemed to have been registered with MEDA with effect from 23.11.2015. MEDA is directed to issue a formal registration certificate in this regard to the appellant within one week from today. The 2nd respondent MSEDCL is also directed to execute the requisite EPA with the appellant within two weeks from today and reconnect the said WTG to the grid within one week thereafter. Needful

to state here that the terms / conditions of the EPA shall be as were applicable in 2015-16. MSEDCL is also directed to issue credit notes for the energy supplied from the said WTG into the grid with effect from the date of this commissioning i.e. 31.10.2015 till 11.06.2020 when it was disconnected.

Pronounced in the open court on this 22nd day of October, 2024.

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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