

**COURT-I**

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

**Appeal No. 296 of 2013**

**Dated : 11<sup>th</sup> May, 2016.**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. T. Munikrishnaiah, Technical Member  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of:-**

**Prayas Energy Group -Appellant(s)  
Vs.  
Maharashtra Electricity Regulatory Commission & Ors. -Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Ms. Ranjitha Ramachandran  
Ms. Anushree Bardhan  
Mr. Shubham Arya  
Mr. Kumar Mihir  
Mr. Avinesh Menon  
Ms. Poorva Saigal

Counsel for the Respondent(s) : Mr. Kiran Gandhi  
Ms. Ramni Taneja  
Mr. Udit Gupta for MSEDCL  
  
Mr. Amit Kapur  
Ms. Poonam Verma  
Mr. Gaurav Dudeja  
Mr. Akshat Jain for Adani  
  
Mr. Buddy A. Ranganadhan  
Mr. Raghu Vamsy for R.1

**ORDER**

The present appeal is filed by Prayas against Order dated 21/8/2013 passed by the Maharashtra Commission in Case No.68 of 2012 whereby the Maharashtra Commission has rejected the plea of Adani Power Maharashtra that

the withdrawal of the Terms of Reference, which led to the inaccessibility of the coal block by Adani Power Maharashtra and the subsequent de-allocation of the said block, is a *Force Majeure* event as per the terms of the PPA. However, by the impugned order, the Maharashtra Commission has constituted a Committee, inter alia, to look into the impact of non-availability of coal from Lohara coal blocks and submit a Report outlining principles and on the precise mechanism for calculation of compensatory charge to mitigate the hardship caused to Adani Power Maharashtra. By the impugned order, the Maharashtra Commission has also, as an interim measure, granted compensatory tariff to Adani Power Maharashtra from the date of CoD.

In our Judgment dated 7/4/2016 in Appeal No.100 of 2013 and batch matters, we have held that the Appropriate Commission has no regulatory power to grant compensatory tariff to the generating companies where the tariff is discovered by a competitive bidding process under Section 63 of the said Act. We have also held that if a case of Force Majeure or Change in Law is made out, relief available under the PPA can be granted under the adjudicatory power of the Appropriate Commission. Since the Maharashtra Commission has come to a conclusion that the case of Force Majeure event is not made out, it could not have granted compensatory tariff to Adani Power Maharashtra.

While Section 79 refers to powers of Central Commission, Section 86 refers to powers of the State Commission. The powers conferred to the Appropriate Commissions under these Sections are almost similar. Therefore, the ratio of our Judgment dated 7/4/2016 in Appeal No.100 of 2013 and batch matters is squarely applicable to this case also.

In the circumstances, the Appeal is partly allowed. Impugned Order dated 21/8/2013 passed by the Maharashtra Commission in Case No.68 of 2012 is set

aside except to the extent it holds that the plea of Adani Power Maharashtra that the withdrawal of the Terms of Reference, which led to the inaccessibility of the coal block by Adani Power Maharashtra and the subsequent de-allocation of the said block was not a *Force Majeure* event as per the terms of the PPA. We make it clear that we have not expressed any opinion on the aspect of Force Majeure. Accordingly, all connected IAs are also disposed of.

**I.J. Kapoor**  
[Technical Member]

**T. Munikrishnaiah**  
[Technical Member]

**Justice Ranjana P. Desai**  
[Chairperson]