

**Court-I**

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

**APPEAL NO. 83 OF 2016 &  
IA NOS. 200 & 201 OF 2016**

**Dated: 16<sup>th</sup> May, 2016**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**In the matter of:-**

**Essar Power M.P.Ltd.**

**...Appellant(s)**

**Versus**

**Madhya Pradesh Electricity Regulatory Commission & Anr.**

**...Respondent(s)**

Counsel for the Appellant(s)

:

Mr. Buddy A. Ranganadhan  
Mr. Sakya Singha Chaudhuri  
Mr. Abhijeet Lala

Counsel for the Respondent(s)

:

Ms. Mandakini Ghosh  
Ms. Ritika Singhal for R-1

**ORDER**

The Appellant is a generating company. Respondent No.1 is the Madhya Pradesh Electricity Regulatory Commission (**State Commission**). Respondent No.2 is the Madhya Pradesh Power Management Company Limited, which is engaged in the bulk purchase of electricity from various power producers like the Appellant and the bulk supply of the same to the three distribution companies in the State.

In this appeal, the Appellant has challenged the Order, dated 14.03.2016 passed by the State Commission. It appears from the impugned order that vide Order dated 09.08.2011 in Petition No. 33 of 2010, the State Commission adopted the levelized tariff for procurement of 150 MW power by M.P. Power Management Company Limited (MPPMCL) from 2x600 MW Thermal Power Station of the Appellant in terms of Section 63 of the Electricity Act, 2003(**“the said Act”**).

Vide letter No F-03-08/2013/13 dated 18.05.2015. Government of Madhya Pradesh (GoMP), Energy Department issued directions to the State Commission under Section 108 of the said Act to review and determine energy charges for supply of electricity by a Generating Company to a Distribution Licensee under already concluded Power Purchase Agreement (PPA) in respect of the following cases where the coal is being sourced from Coal Mines auctioned or allotted under Coal Mines (Special Provisions) Second Ordinance, 2014.

- (i) Generation capacity having cost plus Power Purchase Agreements under Section 62 of the Electricity Act, 2003.
- (ii) Generation capacity contracted through tariff bid based Power Purchase Agreement under Case-1/Design Build Finance Own and Operate (DBFOO) bids invited under Section 63 of the Act.

Pursuant to the said directions the State Commission registered SMP No.50 of 2015 to review and determine the energy charges for the Appellant's Power Plant.

It is the contention of learned counsel for the Appellant that the Appellant has filed Petition No. 12 of 2016 before the State Commission on 05.03.2016 praying for the following reliefs:

- (a) "Declare the Power Purchase Agreement dated 29.10.2010 for supply of 150 MW power ("PPA") executed between the petitioner and respondent to have become null and void;***
- (b) Declare that the obligations of the petitioner under PPA stand discharged on account of frustration of the PPA and consequently release both parties from their obligations under the PPA;***
- (c) Direct the respondent to return the performance bank guarantee and all other benefits received from the petitioner in terms of the Power Purchase Agreement dated 29.10.2010;***
- (d) Pass any other appropriate order/directions as the Hon'ble Commission may deem fit in the facts and circumstances of the present case."***

It is, inter alia, the contention of the learned counsel for the Appellant that since it is the case of the Appellant that the PPA dated 29.10.2010 executed between the Appellant and Respondent No.2 is null and void, the State Commission could not have undertaken the suo-moto proceedings to determine the tariff. Learned counsel for the Appellant submitted that it

was necessary for the State Commission to dispose of the Petition No. 12 of 2016 prior to the exercise of determination of suo-moto tariff.

We make it clear that we have not gone into merits of the rival contentions but we find substance in the contention of learned counsel for the Appellant that in the circumstances of the case the petition filed by the Appellant needs to be decided simultaneously with the suo-moto proceedings. Learned counsel for the State Commission states that she has been instructed to inform this Tribunal that both the petitions i.e. SMP No.50 of 2015 and Petition No.12 of 2016 will be taken up simultaneously for hearing and would be disposed of together. We accept this statement. Both the petitions shall be disposed of simultaneously after hearing all the parties independently and in accordance with law. We make it clear that the Appellant will have to cooperate with the State Commission. The Appellant shall make all possible efforts to furnish information, which the State Commission shall call upon it to furnish.

The appeal is disposed of in the afore-stated terms at the admission stage.

**(I.J. Kapoor)**  
**Technical Member**  
ts/dk

**(Justice Ranjana P. Desai)**  
**Chairperson**