

In the Appellate Tribunal for Electricity
New Delhi
(Appellate Jurisdiction)

APPEAL NO. 90 OF 2018 &
IA NO. 364 OF 2018 & IA NO. 1726 OF 2018

Dated: 10th January, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata – 700 054

... Appellant

Versus

1. Central Electricity Regulatory
Commission
Through the Secretary
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001

... Respondent No.1

2. Power Grid Corporation of India Ltd.
Through the General Manager
(Commercial)
Soudamini, Plot No.2, Sector 29,
Gurgaon – 122 001

... Respondent No.2

3. BSES Yamuna Power Ltd.
Through the Chief Executive Officer
BSES Bhawan, Nehru Place, New Delhi.
Presently, Shaktikiran Building,
Karkardooma, New Delhi - 110092

... Respondent No.3

4 Power System Operation Corporation Ltd.

**Through the Chief Executive Officer
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-110 016**

... Respondent No.4

**Counsel for the Appellant(s) : Mr. Vikas Singh, Sr. Adv.
Mr. Shri Ventakesh
Mr. Sandeep Rajpurohit
Ms. Deepika Kalia
Ms. Shrishti Banerjee
Ms. Nishtha Kumar
Mr. Samarth Khashyap**

**Counsel for the Respondent(s) : Mr. Sajan Poovayya, Sr. Adv.
Mr. Sitesh Mukherjee
Mr. Deep Rao
Mr. Divyanshu Bhatt for R-2

Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza
Mr. Divya Anand
Ms. Stuti Krishan for R-3**

JUDGMENT

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. The present Appeal is being filed by Damodar Valley Corporation (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “**Act**”) being aggrieved by the order dated 18.12.2017 (hereinafter referred to as the “**Impugned Order**”) passed by Central Electricity Regulatory Commission (hereinafter referred to as the “**the Central Commission**”). The Appellant has sought the following reliefs in the instant Appeal being Appeal No. 90 of 2018:

- a) That this Tribunal may be pleased to allow the present appeal and set aside the Order dated 18.12.2017 passed by Central Electricity Regulatory Commission, New Delhi in Petition No. 85/MP/2014;
- b) Direct the Respondent No.2, PGCIL to stop raising the bill on the Appellant on this account.
- c) Direct the Respondent no. 2, PGCIL not to take any coercive action upon the Appellant, DVC for non-payment in the matter of claimed transmission charges of 119.19 MW
- d) Grant the cost of the Appeal;
- e) Pass any other or further order which this Tribunal deems fit and proper in the interest of justice.

Brief Facts of the case are as follows:

2. The Appellant have filed the instant Appeal under Section 111 of the Electricity Act, 2003 questioning the legality and validity of the Impugned Order dated 18.12.2017 passed in Petition No.85/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi. The 2nd Respondent, Power Grid Corporation of India Limited filed this petition under clause (c) and (f) sub section (1) of Section 79 of the Electricity Act, 2003 read with appropriate provisions of the

Central Electricity Regulatory Commission etc. seeking direction to the Appellant/DVC to make payment of transmission charges for a long term access corresponding to 119.19 MW for the transmission assets created for transfer of power from Mejia TPS unit 8 from October, 2012 along with surcharge for a delay payment and held that if the power is surrendered by the beneficiaries, then the generator shall be treated as generating company without identified beneficiaries and shall be liable to pay the charges for the corresponding capacity in terms of Regulation 11(9) of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2011 vide no. No.L-1/44/2010-CERC dated the 24th November, 2011.

The 1st Respondent/the Central Commission held that the Appellant shall be liable to pay LTA charges not only for 119.19 MW of Mejia Unit 8 which has been surrendered by BYPL but also for surrendered capacities by other beneficiaries.

3. The main grievance of the Appellant herein is that the Impugned Order dated 18.12.2017 was reserved for judgment by the 1st Respondent/the Central Commission way back on 14.10.2014 and the same was communicated to the Appellant through posting in the Central Electricity

Regulatory Commission website on 20.12.2017 after a long gap of 3 years and 2 months.

4. Further it is a specific case of the Appellant that the matter has been heard by a bench consisting of four Members but out of four Members one Member retired and order has been signed only by three Members and passed the Impugned Order. Such order cannot be sustainable at any stretch of imagination under law on the ground that, the order impugned passed contrary to the Regulation 62 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 published in the Gazette of India on Monday, the 23rd April, 1999 vide notification bearing No. 8/1/99-CERC. It is mandatory on the part of the 1st Respondent/the Central Commission, the Chairperson and the Members of the Commission who hear the matter and vote on the decision shall sign the orders. In the instant case the matter was heard by four Members of the Central Electricity Regulatory Commission and signed by only three Members. The another Member has retired. Therefore, such order impugned passed is a nullity in the eye of law and cannot be sustainable and hence is liable to be set aside at threshold on this ground alone.

Not being satisfied with the order impugned passed by the 1st Respondent/the Central Commission, the Appellant has presented the instant Appeal.

5. The learned senior counsel Mr. Vikas Singh appearing for the Appellant at the outset raised preliminary objection regarding sustainability of the Impugned Order passed by the 1st Respondent/the Central Commission on the ground that the matter has been heard by four Members of the Central Electricity Regulatory Commission but order signed only by three Members. Therefore, such order is contrary to Regulation 62 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 published in the Gazette of India on Monday, the 23rd April, 1999 vide notification bearing No. 8/1/99-CERC.

6. The learned senior counsel Mr. Vikas Singh appearing for the Appellant at the outset submitted that the order impugned passed by the Central Commission is liable to be set aside at threshold on the ground that order impugned was a nullity in the eye of law on the ground that the matter has been presided over by four Members of the Central Electricity Regulatory Commission and the matter has been reserved for orders as early as on 14.10.2014 and

after a lapse of three years and two months the order impugned has been passed on 18.12.2017 and the same was communicated to the Appellant through posting in the Central Electricity Regulatory Commission website on 20.12.2017. Such order passed cannot be sustainable. To substantiate his submissions he was quick to point out and taken us through the relevant Regulation 62 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 published in the Gazette of India on Monday, the 23rd April, 1999.

7. In the instant case it is manifest on the face of the Impugned Order passed by the 1st Respondent/the Central Commission dated 18.12.2013 only three Members name has been notified. In fact the matter has been heard by four Members of the Central Commission. Out of four Members, one Member has retired. As per the relevant Regulation as stated above it is mandatory that all the Members shall sign the orders only then it be called an order in the eye of law otherwise such order if it has been signed by all the four Members then only the order will be sustainable. Therefore, he submitted that the order impugned passed by the 1st Respondent/the Central Commission is liable to be set aside at threshold without going into merit/demerits of the case.

8. Further, the learned senior counsel appearing for the Appellant to substantiate his submissions placed the reliance on the judgments of the Apex Court in catena of decisions. Even when the Courts have pronounced the judgment after reserving them for more than six months the same has been set aside by the Hon'ble Supreme Court holding that the matter to be heard afresh and re-decided. He placed the reliance of the judgments of the Apex Court in Anil Rai v. State of Bihar [(2001) 7 SCC 318], Kanhaiyalal v. Anupkumar (2003) 1 SCC 430, Bhagwandas Fatechand Daswani v. H.P.A. International & Ors reported (2000) 2 SCC 13 and Harji Engineering Works Pvt. Ltd. v M/s. Bharat Heavy Electricals Ltd 153 (2008) DLT 489 wherein division bench of the Hon'ble High Court of New Delhi has said an award which is passed after a period of three years from the date of last effective hearing, without satisfactory explanation for the delay, will be contrary to justice and would defeat justice.

Further, he specifically placed the reliance of the another judgment of this Tribunal dated 04.10.2016 in Appeal No. 233 of 2016 and IA Nos. 497, 498 and 07 of 2016 in paragraphs 10, 11 and 18 of the said judgment. In identical matter the Regulation 31 of the Regulation of the State of Karnataka sub clause 2 stated that the

Commission shall pass orders on the petition in writing of the Members of the Commission who heard the matter and voted on the decision will sign the orders. This Tribunal by assigning valid and cogent reasons in paragraph 10, 11 and 18 of the judgment in Appeal No. 233 of 2016 and IA Nos. 497, 498 and 07 of 2016 categorically held that the requirement is that all the Members who heard the matter have to sign the order. The conclusion is that an order which is not signed by all the Members who have heard the matter will be non est. Wherein this Tribunal opined that the judgments of the Hon'ble Supreme Court referred by this Tribunal in the preceding paragraphs make it clear that the work of the Commission which is of a quasi-judicial nature is one of the joint responsibility of all its Members. The Commission as a body should sit together and the order of the Commission has to be result of the joint deliberations if all Members of the Commission acting in a capacity and all the Members of Commission who heard the matter should sign the order. If the order is not signed by all the Members who heard the matter it will be invalid as it will not be order of the Commission. This is in line with the fundamental propositions that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing.

9. He placed reliance of the another judgment of the High Court of Punjab and Haryana in Excel Crop Care Ltd. v. The State of Haryana VAT Appeal No. 16 of 2017 (O&M) decided on 23.03.2018. The Division Bench of the High Court has held in paragraphs 5, 7, 8, 12, and 13. In view of well settled law laid down by the Apex Court and this Tribunal and the High Court of Punjab and Haryana and also the Delhi High Court as stated supra, the order impugned by the 1st Respondent/the Central Commission is liable to be set aside and matter may be remitted back for re-consideration afresh in accordance with law and all the contentions of both the parties may be left open.
10. **Per contra**, the learned senior counsel appearing for the 2nd Respondent Shri Sajan Poovayya and the learned counsel on record at the outset submitted that the preliminary objection raised by the learned senior counsel appearing for the Appellant cannot be justifiable and matter may be heard along with preliminary objections on merits of the case and decided in accordance with law on the ground that the Appellant has not taken such preliminary objection in the Appeal grounds, that the order impugned passed by the Central Commission, New Delhi is liable to be set aside at threshold on preliminary objections on the ground that the

matter has been heard by the four Members of the Central Commission and the matter has been disposed of after several years order has been passed and signed by only three Members. The another Member is retired cannot be the ground for entertaining the preliminary objections as per the relevant Regulation. Quorum of two Members is suffice to sign and pass the Impugned Order and in this case the Impugned Order has been signed by three Members. The said order is in accordance with law. Therefore, preliminary objections raised by the learned senior counsel appearing for the Appellant cannot be sustainable and is liable to be rejected. To substantiate his submissions he was quick to point out and placed reliance of the judgment of this Tribunal dated 11.08.2011 passed in Appeal No. 204 of 2010 as held in paragraphs 11 to 11.3. Further, he taken through Section 93 of the Electricity Act, 2003 and further contended that “no act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.” Wherein this Tribunal has also considered the judgment of Apex Court in *Iswar Chandra v. S. Sinha* (1972) 3 SCC 383 and secondly the judgment order dated 28.11.2013 passed in Appeal No. 239 of 2013 and connected cases in the matter of Amausi Industries Association

and Ors v. UPERC and Ors. The relevant paragraphs of judgment dated 28.11.2013 are as follows:-

“42. The similar issue relating to signing of the Tariff order only by two members came-up before this Tribunal in Appeal No.240/10 in Faridabad Industry Association Vs Haryana Commission. In this case, the public hearing was held in the presence of all the three members of the State Commission. However, one of the Members of the State Commission demitted the office during the period and the final orders were issued by the remaining two Members. This was questioned. This Tribunal has given the findings on this issue which are as follows:

“11. The sixth issue is regarding validity of the impugned order as it is not signed by the third Member who had heard the petition along with other Members when the representations of the objectors were considered by the State Commission on 18.2.2010.

11.1. According to the learned counsel for the appellant, the general principle of natural justice requires that all the

persons who heard the matter are required to decide the matter. One of the Members who have heard the petition retired on 24.2.2010. According to Section 93 of the Act, no act or proceeding of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the Commission.

43. *As pointed out by this Tribunal, in the above judgment, the impugned order in that Appeal was upheld. Section 93 of the Act would not allow the Act or proceedings of the Commission invalidated merely because there is a ground of existence of any vacancy or defect in the constitution of the appropriate Commission. The ratio of this case would squarely apply to the present case also.*

44. *Consequently, we have to hold that there is no irregularity in the procedure adopted by the surviving two members in signing the tariff order that too after the Chairman's appointment was set aside by the Hon'ble Supreme Court. Accordingly, this issue is decided."*

This Tribunal has held that there is no irregularity in the procedure adopted by the surviving two members in signing the tariff order that too after the Chairman's appointment was set aside by the Hon'ble Supreme Court. Accordingly, the issue is decided.

11. Further, regarding delay in passing the order, the learned senior counsel appearing for the Respondent No. 2 placed reliance on the judgment of the Apex Court in *Telestar Travels Pvt. Ltd. & Ors. v. Special Director of Enforcement* [(2012) 9 SCC 549]. The learned senior counsel appearing for the 2nd Respondent was quick to point out and vehemently submitted in case of *Ram Bali v. State of UP* [(2004) 10 SCC 598] in paragraph 18 of the said judgment considered that the plea of delayed delivery of judgment and the same rendering it vulnerable is without any substance. In *Anil Rai* case this Court has only stressed upon the desirability of early delivery of judgments. In fact, the judgment impugned before this Court in the said case was not set aside on the ground of delayed delivery of judgment and was dealt on merits. In paras 10 and 45 of the judgment this Court had indicated options to a party in case judgment is not delivered for a considerably long time. We are unable to appreciate that any detriment as such was caused to the

appellant on that account alone, on the peculiar facts of the case, as well.

12. Therefore, he submitted that in view of the well settled law laid down by this Tribunal and the Apex Court the order passed by the Central Commission is in accordance with law. Interference by this Tribunal at preliminary objection is not justifiable and matter should be heard on merit and the preliminary objections raised by the learned senior counsel for the Appellant may be rejected.

13. The learned counsel appearing for the 3rd Respondent, Mr. Buddy A. Ranganadhan adopted the submissions made by the learned senior counsel appearing for the 2nd Respondent. In addition, he specifically submitted that the Appellant nowhere stated in their grounds or the written submissions regarding preliminary objections be considered that order impugned passed by the Central Commission be set aside on this ground without going into merit/demerits of the case. Therefore when taking a specific ground in the Memorandum of Appeal or in the written submissions it is not open to the learned counsel appearing for the Appellant that the matter may be taken as a preliminary objection regarding sustainable of the Impugned Order without going into merit of the

case has got no substance. Therefore, he submitted that the instant case may be heard on merits of the case along with preliminary objection in view of the well settled law by this Tribunal and the Apex Court.

14. After marathon hearing of the learned senior counsel for the Appellant and the learned senior counsel appearing the 2nd Respondent and the learned counsel appearing for the 3rd Respondent and after critical evaluation of the entire material available on record and after careful consideration of the submissions made by the learned senior counsel appearing the Appellant and the Respondents and after careful critical analysis of the judgments of the Apex Court, this Tribunal in catena of judgments the only question arises for our consideration:-

“Whether the Impugned Order passed by the 1st Respondent/the Central Commission is sustainable in law.”

15. It is the specific case of the learned senior counsel appearing for the Appellant at the outset that the instant case has been heard by the four Members of the 1st Respondent / the Central Commission as early as 14.10.2014 and the matter has been

reserved for orders. It is admitted fact that order has been passed on 18.12.2017 only, is also not in dispute. Further it is not in dispute that the matter has been heard by four Members of the Central Commission. It is significant to note that out of four Members when one Member has retired is also not in dispute. It is manifest on the face of the cause title of the order it emerge that the only three Members have signed the Impugned Order and passed on 18.12.2017 and the same was communicated to the Appellant through posting in the 1st Respondent/the Central Commission website on 20.12.2017 after gap of three years and two months. It is astonishing to note that the said order impugned passed contrary to the relevant Regulation as per the notification bearing No. 8/1/99-CERC published in official gazette on Monday, the 23rd April, 1999. It is worthwhile to extract the relevant clause 62 which reads as under:-

“62. The Commission shall pass the orders on the Petition and the Chairperson and the Members of the Commission who hear the matter and vote on the decision shall sign the orders.”

16. After careful reading of the Regulation 62 as stated supra it is mandatory on the part of the Chairperson and Members of the

Commission to hear the matter and vote on the decision shall sign the order which is mandatory in nature. There is no saving clause as such to the fact that what is sufficed to sign the Impugned Orders. Therefore we are of the considered view that there is substance in the submissions made by the learned senior counsel appearing for the Appellant and we do not find substance in the submissions made by the learned senior counsel for the Respondents.

17. As rightly pointed out by the learned senior counsel appearing for the appellant in his rejoinder submissions that reliance placed by the learned senior counsel appearing for the Respondent No.2 cannot be made applicable to the facts and circumstances of the case. To substantiate his submissions he was quick to point out and vehemently submitted two judgments of this Tribunal and two judgments of the Hon'ble Supreme Court are well settled law is not in dispute or quarrel but they are not applicable for the reasons stated therein. In the instant case what is to be considered regarding the preliminary objection for sustainability of the Impugned Order passed by the 1st Respondent/the Central Commission contrary to the existing relevant Regulation. Therefore, ratio of the judgments by this Tribunal and Hon'ble Supreme Court

cannot be applicable in the facts of the circumstances of the case. Further as rightly pointed out by the learned senior counsel appearing for the Appellant that there is an occasion for this Tribunal to consider the similar matters in the case of Global Energy Private Limited dated 04.10.2016 in Appeal No. 233 of 2016 and IA Nos. 497, 498 and 07 of 2016 wherein it has specifically referred a similar Regulation 31 (2). The relevant portion of the Regulation 31 (2) reads thus:-

“that the Commission shall pass orders on the petition in writing and the Members of the Commission who heard the matter and voted on the decision will sign the orders.”

18. In pari materia the same Regulation find place in the 1st Respondent/the Central Commission, New Delhi notification bearing No. 8/1/99-CERC published in official gazette on Monday, the 23rd April, 1999. The relevant extract of the Regulation reads as under:-

“62. The Commission shall pass orders on the Petition and the Chairperson and the Members of the Commission who hear the matter and vote on the decision shall sign the orders.”

19. This fact has been categorically considered by this Tribunal in the judgment dated 04.10.2016 in Appeal No. 233 of 2016 and IA Nos. 497, 498 and 07 of 2016 that the requirement is that all the Members who heard the matter have to sign the order. The conclusion is that an order which is not signed by all the Members who heard the matter will be non est. It is worthwhile to extract paragraphs 10, 11 of the the judgments reads hereunder:-

“10. We must now analyse Section 92 and Regulation 31 because they are central to the issue involved in this case. Section 92(1) states that the Appropriate Commission shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify. Rules of procedure specified by the State Commission in this regard are found in the said Regulations which is evident from their title. They are called KERC (General and Conduct of Proceedings) Regulations 2000. Regulation 31 to which we shall soon advert requires the Members who heard the matter and voted on the decision to sign the orders. Section 92 (3) states that all questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of

an equality of votes, the Chairperson or in his absence the person presiding shall have a second or casting vote. Thus the decision has to be by majority of the Members present and voting. Section 92 (4) states that save as otherwise expressly provided in subsection (3) every Member shall have one vote. It is urged that Regulation 31 does not state that all the three Members of the State Commission who heard the matter should remain present for taking a decision on the matter and sign the order and in case the order is signed only by two Members it is non est. Therefore, impugned order signed by only two Members is valid. We are not in agreement with the learned counsel. Such a view, in our opinion would be against the basic principle of judicial decision making that those who hear must decide the matter. Section 92 and Regulation 31 will have to be construed in a manner which will not obviate the above mentioned fundamental principle. We shall now turn to Regulation 31.

11. *Regulation 31 speaks about orders of the Commission. It lays down a strict procedure. It is clear and unambiguous and puts certain restraint on the Members obviously to secure that all orders of the Commission meet with the accepted principles*

underlying judicial decision-making. Regulation 31 (1) states that no Member shall exercise his vote on a decision unless he was present during all substantial hearings of the Commission on the matter. This provision forbids a Member who has not participated in hearings and not applied his mind to the issue involved from voting. Regulation 31 (2) is more explicit. It states that the Commission shall pass orders on the petition in writing and the Members of the Commission who heard the matter and voted on the decision will sign the orders. Regulation 31 (3) states that the reasons given by the Commission in support of the orders, including those by a dissenting Member shall form part of the order and shall be available for inspection and supply of copies in accordance with these Regulations. Thus those who hear the matter have a joint responsibility to conclude it. Only they can vote on the decision as having participated in the substantial hearings, it is obvious that they have applied their mind to the matter. The Commission has to pass orders in writing and those who heard the matter and voted on the decision will sign the orders. Thus the responsibility to sign the orders is fixed. As per Regulation 31 (3), the orders have to be reasoned orders. The reasons form part of the order. Regulation 31 (3) takes care of a situation

where a Member dissents. In that event the dissenting Member has to give reasons for his dissent and these reasons shall form part of the order. Section 31(3) requires that the reasons given by the Members shall be available for inspection and supply of copies in accordance with the said regulations. It is clear from Regulation 31 that signing of order by those who heard the matter and voted on the decision is a must. Even a dissenting Member must give reasons for his dissent and sign the reasons for the dissent. They form part of the order. No Member can avoid the responsibility of signing the order. It is implicit in Regulation 31 that all those who heard the matter must be present in the meeting. This is in tune with the principle that all those who heard the matter must sign the order. The order may be unanimous or there may be a dissenting voice. But the requirement is that all the Members who heard the matter have to sign the order. The conclusion is that an order which is not signed by all the Members who heard the matter will be non est.”

(emphasis supplied)

20. Further this Tribunal in the same judgment in paragraph 17 stating that the reliance placed by the learned counsel appearing for the State Commission on the judgment of the Hon'ble Supreme in

Iswar Chandra v. S. Sinha (1972) 3 SCC 383 is misplaced and the said judgment have no application to the instant case. Further it opined and held in paragraph 18 of the said judgment which reads as under:-

“In our opinion the judgment of the Supreme Court referred to by us, make it clear that the work of the Commission which is of a quasi-judicial nature is one of joint responsibility of all Members. The Commission as a body should sit together and the order of the Commission has to be the result of the joint deliberations of all Members of the Commission acting in a joint capacity. All Members of the Commission who heard the matter should sign the order. If the order is not signed by all Members who heard the matter it will be invalid as it will not be order of the Commission. This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order.”

(emphasis supplied)

21. Further, there is an occasion for considering the similar issue before the High Court of Punjab and Haryana in Excel Crop Care Ltd. v. The State of Haryana VAT Appeal No. 16 of 2017 (O&M)

decided on 23.03.2018. The Division Bench of the said High Court has considered this matter in paragraph 7, 8 and 12 of the said judgment and also Division Bench of the Delhi High Court in case of Harji Engineering Works Pvt. Ltd. v M/s. Bharat Heavy Electricals Ltd 153 (2008) DLT 489 wherein division bench of the Hon'ble High Court of New Delhi has held that an award which is passed after a period of three years from the date of last effective hearing would be against public policy wherein there is a delay of 3 years of the last hearing and it held that such an award cannot be sustainable and the same has been set aside specifically observing it against the public policy. Therefore, we find there is a substance in the submissions of the learned senior counsel appearing for the Appellant and what emerged consistently from the judgments of this Tribunal and the Apex Court and the Division Bench of two High Courts as referred above have held that what is prevalent is the relevant Regulation. In the instant case Regulation 62 of the Central Commission as stated supra is mandatory in nature. This aspect of the matter has not been considered. We find there is no application of mind by the Members of the Central Commission who passed the Impugned Order contrary to their own Regulation. Therefore, we are of the considered view that such orders cannot be sustainable in any stretch of imagination in

the eye of law. Therefore, we request the Chairperson and Members of the Central Electricity Regulatory Commission to dispose of the reserved matter within a reasonable time.

22. The learned senior counsel appearing for the Respondent No.2 placed the reliance on Section 93 of the Electricity Act, 2003 and specifically contended that the quorum of the Members to sign and pronounce the order as per relevant Regulation is two and the instant order has been passed duly signed by three Members. Therefore non-signing by fourth Member will not invalidate the Impugned Order. For this ground also the Impugned Order passed by the 1st Respondent/the Central Commission is sustainable in law.

23. The learned senior counsel appearing for the Appellant vehemently submitted that Section 93 of the Electricity Act, 2003 is not applicable to the facts and circumstances of the case on the ground that no act or proceeding of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission. In the instant case the question is not for consideration on the ground of existing of any vacancy or defect in the constitution of Appropriate Commission what is emerged in the

instant facts of the circumstances is that the matter has been heard by the bench consisting of four Members and out of which one Member has retired and the order has been passed after lapse of more than three years two months signed by only three Members. Such order cannot be sustainable in the eye of law. Therefore, we find there is no force in the submissions of the learned counsel appearing for the Respondent No. 2 that Section 93 will be applicable to the facts and circumstances of the case. It is well settled law laid down by the Hon'ble Supreme Court and this Tribunal in catena of decisions that any order or judgment after hearing reserved have to be pronounced within reasonable time will be justifiable but in the instant case the order has been passed after lapse of more than three years and two months that too contrary to their own Regulation 62 and is signed only by three Members whereas the matter has been heard by the bench of four Members. The Central Commission ought to have heard the matter afresh and passed the appropriate order in letter and spirit in accordance with law after giving reasonable opportunity of hearing to the parties to the proceedings. But in the instant case no opportunity as such has been offered to the parties to the proceedings. Further, the 1st Respondent/the Central Commission ought to have taken judicial note about the consistent views taken

by the Apex Court that once the matter has been reserved it should be pronounced as expeditiously as possible not later six months. Wherever there is a delay in passing the judgment such judgments/orders has been set aside and directed to hear the matter afresh. Taking into consideration of the above facts we hereby set aside the Impugned Order dated 18.12.2017 passed in Petition No. 85/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi. We remit the matter to the 1st Respondent/the Central Commission for re-hearing afresh and decide the same in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondents and pass the order independently without being influenced of the observations made by this Tribunal in the Impugned Order.

24. Regarding submissions made by the learned counsel appearing for the Respondent No. 3 that the Appellant have not taken any ground in the Memorandum of Appeal nor in the written submissions regarding preliminary objections may be taken up for consideration and pass the appropriate order whether the Impugned Order passed by the Central Commission is sustainable in law will not take away raising the question of law at any stage of the proceedings by the aggrieved party as contended by the learned senior counsel appearing for the Appellant. Therefore,

there is no force in the submissions of learned counsel appearing for the 3rd Respondent.

25. We make it clear that we have only heard the preliminary objections raised by the Appellant. The matter was heard by the bench consisting of four Members and the order was signed only by three Members. We further make it clear that the Impugned Order is set aside only on this ground alone. The Appeal is disposed of in the above terms.

ORDER

For the foregoing reasons as stated above the instant Appeal filed by the Appellant is allowed Impugned Order passed by the 1st Respondent/the Central Commission dated 18.12.2017 passed in Petition No. 85/MP/2014 on the file of the Central Electricity Regulatory Commission, New Delhi is hereby set aside.

The matter stand remitted back to the 1st Respondent/the Central Commission with a direction to dispose of the matter as expeditiously as possible at any rate within a period of three months from the date of appearance of the parties.

The Appellant and Respondents are directed to appear before the 1st Respondent/the Central Electricity Regulatory Commission

either personally or through their counsel on 28.01.2019 at 11.00 a.m. without notice to collect necessary date of hearing.

All the contentions of both the parties are left open.

In view of the disposal of the Appeal No. 90 of 2018, the reliefs sought in the IA No. 364 of 2018 and IA No. 1726 of 2018 do not survive. Hence, the IAs stand disposed of.

Parties to bear their own costs.

Pronounced in the Open Court on this **10th day of January, 2019.**

(Ravindra Kumar Verma)
Technical Member

√

REPORTABLE/NON-REPORTABLE

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(Justice N. K. Patil)
Judicial Member