IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 186 OF 2023

Dated: 27.05.2025

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

In the matter of:

M/s Sukhbir Agro Energy Ltd.
(Now known as SAEL Ltd.)
Through its Managing Director,
having its Registered Office at
Faridkot Road, Guruharsahai,
District Firozpur, Punjab – 152023,
and Corporate office at:
A-4, Second Floor, Green Park Main,
New Delhi – 110016.
Also at:
Fatehullahpur, District Gazipur,
Uttar Pradesh – 233302.
E-mail: legal@sael.co … Appellant

Versus

1. **Uttar Pradesh Electricity Regulatory Commission**
Through its Secretary,
II Floor, Kisan Mandi Bhawan,
Gomti Nagar, Vibhuti Khand,
Lucknow, Uttar Pradesh - 226010
E-mail: secretary@uperc.org

2. **U.P. Power Corporation Ltd.**
Through its Managing Director
Shakti Bhawan, 14- Ashok Marg,
Lucknow, Uttar Pradesh – 226001

E-mail: md@uppcl.org

3. **The Superintending Engineer**
Electricity Import Export and Payment Circle,
Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan Extension,
Lucknow, Uttar Pradesh – 226001
E-mail: seipccklo@uppcl.org

4. **The Director,**
State Load Dispatch Centre,
Phase-II, Vibhuti Khand,
Lucknow, Uttar Pradesh – 226001
E-mail: directorsldc@upsldc.org

5. **The Chief Engineer**
Power Purchase Agreement Directorate,
Shakti Bhawan, 14, Ashok Marg,
Lucknow, Uttar Pradesh – 226001
E-mail: ppareuppcl2@gmail.com … Respondent (s)

Counsel for the Appellant(s) : Suparna Srivastava

Counsel for the Respondent(s) : Nalin Kohli, Sr. Adv.
Shankh Sengupta
Abhishek Kumar
Nived Veerapaneni
Karan Arora
Harneet Kaur
Arjun Agarwal for Res. 2

Divyanshu Bhatt for Res. 4

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal is directed against the order dated 11.11.2021 passed by 1st respondent Uttar Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission") in petition no.1669 of 2021 of the appellant, whereby the Commission, while dismissing the petition, has disallowed the request of the appellant to rectify an inadvertent error committed by it in feeding data into portal of the 4th respondent State Load Dispatch Centre (in sort "SLDC") with regards to declaration of its declared capacity, available capacity and banking of power for the period from May, 2020 to December, 2020. The refusal of the appellant's request has resulted in denial of the payment of appellant's tariff bills from October, 2020 to December, 2020 by 2nd respondent Uttar Pradesh Power Corporation Limited (in short "UPPCL") to the tune of Rs.9,26,46,791/- which have been prepared on the basis of actual data on declared capacity, available capacity and power banking of the appellant's generating station as per the joint meter reading of the energy meter installed at the generating station.

2. A brief conspectus of the facts giving rise to the instant appeal is given below.

3. The appellant is engaged in the business*, inter alia,* of providing renewable energy solutions and setting up of solar power projects in various states of the country. The instant appeal concerns the renewable power generating plant with an installed capacity of 15 MW set up by the appellant in Fateh-Ullapur, District Ghazipur in the State of Uttar Pradesh.

4. The 2nd respondent UPPCL is responsible for electricity distribution within the State of Uttar Pradesh and for that purpose, procures power from various sources including State/Central Government owned power generators as well as independent power producers to ensure power supply to its consumers within the State. Respondent no.3, Electricity Import Export and Payment Circle is a Department of 2nd respondent and is responsible for processing and approval of bills raised by the generating companies having Power Purchase Agreements (PPAs) with the discom for onward payment by the Finance Department of 2nd respondent.

5. Respondent no.4 SLDC has been constituted under the provisions of Section 31 of the Electricity Act, 2003, and is responsible for monitoring grid operation including optimum scheduling and dispatch of electricity within the State. In accordance with the contracts entered into with the licensees or the generating companies operating within the State. The 5th respondent is the

Chief Engineer in Power Purchase Agreement Directorate of 2nd respondent and is responsible for executing agreements with the generators to procure electricity for the discom through the 2nd respondent.

6. The appellant has entered into a PPA dated 29.07.2006 with Purvanchal Vidyut Vitran Nigam Limited (hereinafter referred to as the "Purvanchal Discom") which is a wholly owned subsidiary of 2nd respondent, for sale of power generated from its 15 MW Biomass based power project at Fateh-Ullapur, District Ghazipur, Uttar Pradesh. Under the agreement, the appellant is bound to supply 13 MW power to the Purvanchal Discom during peak seasons and 15 MW during off-peak seasons for which it is entitled to receive tariff at the rate specified in Schedule-2 of Uttar Pradesh Electricity Regulatory Commission (Terms and Conditions for Supply of Power and Fixation of Tariff for sale of power from Captive Generating Plants, Co-generation, Renewable Sources of Energy and Other Non-Conventional Sources of Energy based Plants to a Distribution Licensee) Regulations, 2005 (hereinafter referred to as the "UPERC RE Regulations, 2005").

7. UPERC RE Regulations, 2005 have since been replaced by Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy

Generation Plant) Regulations, 2019 (hereinafter referred to as the “CRE Regulations, 2019”).

8. As required under Section 86(1)(h) of the Electricity Act, 2003, the Commission has notified Uttar Pradesh Electricity Grid Code 2007 (hereinafter referred to as “Grid Code 2007” or the “Code”) thereby laying down the rules, procedures and standards to be followed by various users and participants in the system to jointly plan, develop, maintain and operate the power system in the most efficient, reliable, economic and secure manner. Clause 6.4.1 of the Code provides that the 4th respondent SLDC would be responsible for scheduling/dispatching of the power generators of all state sector generating stations connected to the state grid including the appellant. The procedure for such scheduling/dispatch of power is set out in the clause 6.5 of the Code. As per clause 6.5 of the Code, all the generating stations in the State are required to submit their Declared Capacity (DC) to SLDC and similarly, all beneficiaries are required to prepare and submit their drawl schedule to SLDC based on which the SLDC undertakes scheduling/dispatch of power under the Code. For this purpose, the SLDC has developed a web-based scheduling and dispatch software by the name of Energy Accounting and Settlement System (in short “EASS”) where all users of the grid, including the appellant, are required to

submit their respective data regarding Declared Capacity and/or drawing schedule, as the case may be, by logging in the website of the SLDC directly.

9. The declared capacity of the generating station in question of the appellant has been 15 MW and its available capacity as 12 MW approximately but from 16.05.2020 till 03.12.2020, while feeding the data in the portal of UPSLDC viz. eass.upsldc.org, the appellant has entered “actual capacity” under the column “available capacity” and “available capacity” under the column “banking”. Thus, the data had been wrongly fed into the portal of UPSLDC showing available capacity as 15 MW and banking quantum as 12 MW.

10. This incorrect feeding of data by the appellant in portal of UPSLDC continued till December, 2020 and was never pointed out or objected to by either SLDC or UPPCL. The appellant is stated to have realized the mistake only in December, 2020 and immediately approached UPSLDC vide letter dated 05.12.2020 intimating it about the error and requesting it to rectify the same. Vide letter dated 16.12.2020, respondent no.4 expressed its inability to set right the mistake in view of clause 6.5.25 of the Grid Code 2007.

11. The 2nd respondent UPPCL had paid all the bills raised by the appellant for export of power till September, 2020 provisionally but when the appellant submitted bills for the month of October, 2020, same were returned unpaid with the remarks that the bills should be as per SLDC data, for which no format was supplied to the appellant.

12. Accordingly, in these circumstances, the appellant approached the Commission by way of petition no.1669 of 2021 invoking its inherent power to rectify the error which had occurred on the part of the appellant in feeding data in the portal of UPSLDC from 16.05.2020 to 03.12.2020. The appellant had made following prayers in the petition: -

> *"a) while exercising its inherent power, this Learned Commission may be pleased to rectify the mistake committed by the Petitioner in feeding data in Respondent No. 3's portal from May 2020 to December, 2020; or,*
>
> *b) to direct Respondent No. 3 or Respondents, to rectify the mistake committed by the Petitioner in feeding data in its portal and to make payments of the*

bills raised by the Petitioner from October 2020 onwards; and/or,

c)the Hon'ble Commission may issue any other further order or directions in favor of the Petitioner as it may deem fit and proper under the facts and circumstances of the case."

13. The petition has been dismissed by the Commission vide impugned order dated 11.11.2021, thereby expressing its inability to accept the appellant's prayers. The relevant portion of the impugned order is quoted hereinbelow: -

"14.The contracted capacity of the Petitioner is 13 MW during season and 15 MW during off season with the DISCOM. The Petitioner has stated that they have made the mistake in declaring its Availability (MW) and Banking (MW) by specifying Available Capacity (i.e., 15 MW) and Banking (i.e., 12 MW) respectively instead of Available Capacity (i.e., 12 MW) and Banking (i.e., 0 MW).

15.However, the Commission has observed that contracted capacity of SAEL with UPPCL is 15 MW and throughout the disputed period the availability (Schedule Generation) submitted by the Petitioner is 15 MW or below. Further, it is varying from day-to-day and during different time blocks so it cannot be the contracted capacity as contented by the Petitioner which is fixed at 15 MW.

16.The abovementioned mistake has lasted for more than six months, whereas per Clause 6.5.25 of UPEGC, 2007, the final schedules are open to all users for any checking/verification for a period of 5 days. The provision has been kept taking care of any inadvertent error by the users during the whole process of scheduling and dispatch.

Commission's View:

17. We have considered the submissions of the Petitioner, the Respondent, and the documents placed on record. It is observed from the Monthly Energy Account report for the Petitioner that the details at SLDC's portal were submitted admittedly by the Petitioner itself as . The clause 6.5.25 of UPEGC, 2007 clearly specifies that checking or verification up to 5 days can be done, however, in the present case the period of claim is for over 6 months.

18.Petitioner has submitted that regulations are silent for the period beyond 5 days. In this context, it is to clarify that the regulation provides the time period (i.e.,5 days) within which the users can rectify/verify their mistake, and this time period cannot be left open for infinite time period to rectify/verify their mistake as in an integrated system, the correction of one user may have consequent impact on the others users / entities as it would affect the energy accounting, DSM accounts and bills raised, in terms of the UPERC CRE

Regulations 2019 and UPEGC / IEGC as amended from time to time.

19.The onus lies with the Petitioner to furnish/submit the correct data/information without any laxity to the system operator as per applicable UPEGC provisions and Regulations. Further, the Petitioner had been submitting schedules to UPSLDC even earlier to the disputed period. Therefore, this feeding of data in SLDC's portal was not new to the Petitioner but because of its negligence and laxity, so called mistakes happened for over six and half months without any correction.

20. In view of the above, we are not inclined to allow the prayer of the Petitioner to rectify the mistake committed in feeding the data. However, the banking of power is commercial arrangement between the Petitioner and the Respondent/Discom, therefore, UPPCL may settle

the payment for the unutilized banked energy, if any, for the period pertaining to dispute i.e., 16.05.2020 to 03.12.2020 as per UPERC CRE Regulations 2019."

(Emphasis supplied)

14. Thus, the Commission has taken the view that error in feeding the data in the portal of SLDC cannot be permitted to be rectified beyond the period of five days as stipulated under clause 6.5.25 of the Grid Code 2007.

15. Aggrieved by the said view taken by the Commission, the appellant is before us in this appeal.

16. We have heard learned counsel for the appellant, learned senior counsel appearing for the 2nd respondent UPPCL and learned counsel for the 4th respondent SLDC. We have also perused the impugned order as well as the written submissions filed by the learned counsels.

17. Learned Counsel for the appellant would submit that the impugned order has been passed by the Commission without appreciating the submissions made and documents placed on record by the appellant which clearly show

that the present case was fit for exercise of inherent powers vested in the Commission under Regulation 57 of UPERC (Conduct of Business) Regulations, 2019. The learned counsel further argued that:-

(a) Clause 6.5.25 of the Grid Code 2007 was completely silent on the issue of detection of any mistake beyond five days and as such, the present case was a fit case for the Commission to have exercised its inherent powers to direct UPSLDC to make necessary corrections in the data fed by the appellant into the portal of SLDC, in the interest of justice and in view of special circumstances. It is settled law that where an Act/Regulation/Rule is silent on a specific issue or for which no regulations have been framed the Commission must exercise the inherent power vested in it, having due regard to the facts and circumstances of the case. Reliance is placed upon the judgment of the Supreme Court in Gujarat Urja Vikas Nigam Limited V/s Solar Semi Conductor Power Company (India) Private Limited and Another (2017) 16 SCC 498.

(b) The Commission has misconstrued the scope of clause 6.5.25 of the Grid Code 2007 and has failed to note that the said clause does not provide for correction of any mistake detected beyond five days and is

silent on this aspect. The time period of five days applies only qua UPSLDC and not for the Commission. And therefore, prohibition for SLDC could never be a reason for the Commission to refrain from exercising its inherent powers.

(c) The term “users” found in clause 6.5.25 of the Grid Code 2007 is defined in clause 1.9 of the Code as *“a term used in various sections of UPEGC to refer to the persons/agencies using the STS, as more particularly identified in each section of UPEGC”*. Thus, the term “users” not only includes the generators but also the distribution companies. Hence, the duty cast under the said clause was not only on the appellant but also upon UPPCL meaning thereby that UPPCL also was responsible for checking/verification of the mistakes/omissions in the data fed into the portal of SLDC, which it has failed to do.

(d) Since the UPPCL had duly accepted and paid the tariff bills for the period from May, 2020 to September, 2020, it could not have refused payment of the bills for the months of October and November, 2020 on hyper technical objections that the bills are not in accordance with the data submitted on EASS portal.

(e) The Commission has failed to appreciate that during the entire disputed period the inadvertent and bonafide mistake of the appellant went unnoticed not only by UPPCL but also UPSLDC which was duty bound to prepare correct final schedule. And therefore, laxity/negligence can not be solely contributed to the appellant as has been done in the impugned order.

(f) The observation of the Commission in the impugned order that correction of any mistake by one user in an integrated system may be consequent impact on other users is absolutely incorrect for the reason that correction of data fed by appellant in the EASS portal will have no cascading/consequential impact on any other user because the energy schedules are made on the basis of injection and drawl of respective entities and if any rectification is carried out, the only change in will bring about is with respect to the Deviation Settlement Mechanism (DSM) charges of such entity i.e. appellant herein and no one else.

(g) The Commission has misdirected itself by applying the principle of "*Cassius Omissus"* to the present case which is a legal principle envisaging that matter which should have been, but has not been provided for in a statute can not be supplied by courts, as to do so will be

legislation and not construction. Such a strict interpretation of clause is not only contrary to the object of object and intend of Grid Code 2007 but also will cause grave financial injury to the appellant.

(h) The obvious object of chapter 6 of the Grid Code 2007 is to enable UPSLDC to prepare correct energy schedule which would be defeated if the appellant's inadvertent error is not allowed to be rectified due to a hyper technical reading of clause 6.5.25.

18. The respondent nos. 2 and 4 have entirely supported the impugned order of the Commission saying that the Commission could not have traversed beyond what is provided under the regulations which are binding upon the Commission. On behalf of 2nd respondent, it is argued that :-

(a) The facts and circumstances of the instant case do not warrant invocation of inherent powers by the Commission under Regulation 57 of UPERC (Conduct of Business) Regulations 2019 (in short CoB Regulations 2019). Regulation 57 (a) merely states that nothing in the regulations will limit powers available to the Commission otherwise and therefore, is inapplicable to the present case. Similarly, Regulation 57 (b) is also inapplicable as it empowers the Commission

to adopt the procedure which is at variance with CoB Regulation 2019 and not with any other regulations framed by the Commission.

(b) In exercise of powers under Regulation 57 (b), the Commission Can not violate other regulations which are binding on it once framed. To hold that Regulation 57 (b) empowers of the Commission to exercise powers at variance to all other regulations beyond CoB Regulations 2019 would be absolutely incorrect as it would lead to a legal perversity rendering the entire statutory framework otiose.

(c) There can not be any exercise of inherent power by the Electricity Regulatory Commission on a issue which otherwise dealt with or provided for under the Act or rules. Reliance is placed on the judgment of the Supreme Court in Gujarat Urja Vikas Case (Supra) which has been cited on behalf of the appellant also.

(d) Clause 6.5.25 of the Grid Code 2007 specifies the manner/mechanism in which any correction/rectification to the final schedule can be undertaken. The power to rectify any mistake/omission in final schedule has been conferred exclusively upon UPPCL whereas onus to check and verify the final schedule to

UPSLDC has been put on the users. The users are required to carryout such checking/verification in a time bound manner which is evident from the fact that time period provided for the same is only five days. Thus, in a way, said clause 6.5.25 is akin to a complete mechanism in itself for dealing with any correction/rectification of final schedule issued by UPSLDC and in view of the dictum of the Supreme Court in Gujarat Urja Vikas Nigam Case (Supra) and in case of PTC India Limited V/s CERC 2010 4 SCC 603, the Commission could not have adopted any measure or taken a step or exercised any inherent power contrary to the said clause.

(e) The use of would “shall” in clause 6.5.25 of the Grid Code 2007 makes it evident that the intent of the Commission was to make the clause mandatory and binding on all stakeholders to the extent it specifies the procedure for checking/verification and rectification of mistakes in feeding of data in the portal of SLDC. Therefore, the submission advanced on behalf of the appellant that the Grid Code 2007 is silent in catering to a situation whereby mistake in final schedule is detected by users beyond five days which would require the Commission to exercise its inherent powers to permit correction of

mistakes in such situation, is a classic example of applying *Cassius Omissus* to a statute where none exists. In this regard reliance is placed on the judgement of Supreme Court in Kanta Devi v. Union of India (2003) 4 SCC 753.

(f) Directing the 2nd respondent UPPCL to make tariff payments for the months of October, 2020 to December, 2020 in disregard of energy accounting and billing by UPSLDC would be totally illegal as such approach would run contrary to the explicit and mandatory language contained in Regulation 30 of CRE Regulation 2019.

19. Similar arguments/contentions were echoed on behalf of 4th respondent also by its learned counsels.

Our Analysis:

20. The appellant is seeking to rectify the mistake committed in feeding the data with regards to the “actual capacity”, “available capacity” and “banking” of its power plant in the portal of SLDC. Undisputedly, the actual capacity of the appellant’s power plant is 15 MW, its available capacity at the relevant time was 12 MW with zero banking but the data fed in the portal of SLDC from

16.05.2020 till 03.12.2020 shows available capacity as 15MW and banking as 12 MW. The error in feeding such data in the portal of SLDC would be more clearly understood by the following table: -

Data fed in the SLDC portal		Correct data		
Available capacity	Banking	Actual capacity	Available capacity	Banking
15 MW	12 MW	15 MW	12 MW	0

21. Clause 6.5 of the Grid Code 2007 is with regards to scheduling and dispatch procedure to be followed by SLDC. As per clause 6.5.2, the generating stations are required to convey to the SLDC their actual capacity and available capacity by 9:00 AM of everyday for each time block of the subsequent day. Similarly, as per clause 6.5.5 of the Code the beneficiaries are also required to prepare and convey their drawl schedule to the SLDC by 01:00 PM for each generating station either on long-term or short-term basis. Clause 6.5.6 requires the SLDC to compile the drawl schedule received from beneficiaries and convey the same to the generating stations by 03:00 PM. As per clause 6.5.15 of the Code, the SLDC is mandated to review and revise the

dispatch schedule of the generating stations as well as drawl schedule of the beneficiaries and convey to them by 11:30 PM as quoted hereunder: -

> *"i. The final ex-power plant "dispatch schedule" to each SSGS in MW for each 15-minute time block, for the next day.*
>
> *ii. The final "net drawl schedule" from ISGS, SSGS and bilateral trades to each of the beneficiary in MW for each 15-minute time block, for the next day."*

22. Clause 6.5.24 enjoins upon the SLDC to properly document all information i.e. station wise foreseen ex-power plant capabilities advised by the generating stations, the drawl schedules advised by beneficiaries, all schedules issued by the SLDC, and all revisions/updating of the same.

23. Clause 6.5.25 of the Code specifies the time limit for detection and rectification of the final schedules issued by SLDC and the same is quoted hereinbelow: -

> *"6.5.25 The procedure for scheduling and the final schedules issued by SLDC, shall be open to all users for any checking/verification, for a period of 5 days. In*

case any mistake/omission is detected, the SLDC shall forthwith make a complete check and rectify the same."

24. The issue which arises for consideration in this appeal is whether the incorrect data fed by a generating station in the portal of SLDC on the basis on which scheduling is done by SLDC, can be permitted to be rectified after the deadline of five days stipulated in the said clause 6.5.25 of the Grid Code 2007?

25. A bare reading of said clause 6.5.25 reveals that the SLDC shall have to keep open the procedure for scheduling and the final schedules issued by it for a period of five days for checking/verification by all users of its portal. Evidently, the users of the portal of SLDC are not only the generators but also the distribution licensees i.e. beneficiaries which provide their drawl schedule to the SLDC on this portal. It further provides that in case of detection of any mistake/omission in the said final schedule issued by SLDC, SLDC shall forthwith conduct a complete check and rectify the same. It is limpid that the limit of five days prescribed therein relates only to the period for which the SLDC is required to keep open its procedure for schedule as well as the final

schedule for checking/verification by all users. The language used therein does not in any manner convey that the mistake or omission detected in the final schedule issued by SLDC has to be conveyed to the SLDC within the said time period of five days or the SLDC has to check and rectify the said mistake/omission within the said period of five days only.

26. Manifestly, the clause is silent as to what would happen in case the error in feeding the data in portal of SLDC is not detected within the said period of five days and what consequences would entail in that case. It is also not clear from the reading of the said clause whether the period of five days is the upper most limit for detection as well as rectification of mistake in the final schedule issued by SLDC or the same can be extended in a given situation, and if so, in what type of situation can the said time limit be relaxed or extended.

27. We may note here that the Grid Code is specified the State Electricity Commission in exercise of the regulatory powers under section 86(1)(h) of the Electricity Act, 2003. Therefore, it is akin to regulations issued by the Commission in exercise of its regulatory functions.

28. It *ex-facie* appears that clause 6.5.25 of the Code is an inchoate legal provision which does not cater to all the exigencies that may

arise in feeding of incorrect data either by a generating station or by a beneficiary in the portal of SLDC and also does not specify consequences in case such mistake or omission is not detected within the stipulated period of five days. Since the Code is silent on the aspects noted hereinabove, there appears to be a regulatory gap which ought to have been filled up by the Commission in exercise of its regulatory powers by permitting the appellant to rectify the mistake committed by it in feeding data in the portal of SLDC, if it was bonafide as contended by the appellant.

29. The question which would arise in such a situation would be as to whether the Commission would be justified in exercising its regulatory functions while exercising its adjudicatory functions at the time of adjudicating a dispute under section 86(1)(f) of the Electricity Act, 2003. This legal issue has been discussed and answered by the Hon'ble Supreme Court in a recent judgment in the case of Power Grid Corporation of India Limited V/s Madhya Pradesh Power Transmission Company Limited & Ors. Civil Appeal No. 6848 of 2025 decided on 15.05.2025 in the following words:-

> *"46. It is the submission of the respondent no. 1 that the CERC does not possess any regulatory or legislative power while adjudicating a petition and it*

functions as a purely quasi-judicial body, therefore, it does not have the jurisdiction to impose a charge on the respondent no. 1. In our considered view, the said argument must fail for the reason that Section 79 of the Act, 2003 envisages dual function of regulation and adjudication to be performed by the CERC. The expressions "to regulate", "to determine" and "to adjudicate" are used for different purposes in the list of matters enumerated under Section 79(1) and cannot be incorporated within the umbrella term of "adjudication".

*47. The exposition of law in **PTC** (supra) clarifies the scheme of regulatory powers and functions under the Act, 2003. It was held therein that Section 178 that deals with making of regulations by way of subordinate legislation by the CERC, is wider than Section 79(1) which enumerates specified areas where the CERC exercises regulatory functions to be discharged by orders or decisions. Therefore, unlike the regulations*

enacted under Section 178 that have a general application, the CERC, under Section 79, has both regulatory and adjudicatory functions which it exercises in respect of specific issues arising between specific parties. The relevant portion of the judgment reads thus:

"92. (i) In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by orders (decisions)."

(Emphasis supplied)

48. The regulatory powers provided to the CERC under Section 79 are of ad hoc nature and are required to be exercised by the CERC in context of the specific circumstances of the parties before it. The rationale for provision of such ad hoc powers by the Act, 2003 is to ensure that regulatory gaps, if any, that may be discovered on a case-to-case basis, are filled or removed. Therefore, there is no doubt in our mind

that the CERC is enabled to exercise its regulatory powers by way of orders under Section 79 and the purview of Section 79 is not limited to only adjudicatory orders but includes within its scope administrative functions as well."

30. In this judgment, the Hon'ble Supreme Court has also held that there is no blanket ban on the Central Commission to exercise its regulatory functions by way of orders under section 79(1) of the Electricity Act, 2003. The relevant portion of the judgment in this regard is extracted hereinbelow: -

"57. The respondent no. 1 has averred that the CERC cannot conflate its powers of regulation with its adjudicatory functions and a regulation cannot be brought into force by way of a judicial order. In the specific case of ***Nuclear Power Corporation*** *(supra), we are inclined to agree with the submission of the respondent no. 1 to the extent that a regulation cannot be done through the process of adjudication. However, could it be said that there is a blanket ban on the CERC*

to exercise its regulatory functions by way of orders under Section 79(1)? In light of this Court's dictum in ***AERA*** *(supra), our answer to this question must be an emphatic 'No'.*

58. We are of the view that even though the orders under Section 79 may not always be limpid as regards the matters where CERC is exercising its regulatory functions yet this cannot be the reason to conclude that the CERC passes all orders in its capacity as an adjudicator. The nomenclature "judicial order(s)" as used in ***Nuclear Power Corporation*** *(supra) does not change the nature of a specific order that the CERC gives in its capacity as a regulator and the courts must understand the true import of an order to determine the nature thereof.*

59. The CERC granted liberty to the appellant herein to claim compensation from the respondent no. 1 to deal with a situation caused due to an unprecedented event not covered by any guidelines, regulations or

contractual provisions between the parties. The dictum of this Court in paragraph 20 of ***Energy Watchdog*** *(supra), indicates that in such a situation where there is an absence of regulations and guidelines, the Act, 2003 mandates the CERC to strike a judicious balance between the parties keeping in mind commercial principles and consumers' interest, in exercise of its general regulatory powers under Section 79(1).*

60. The aforesaid leaves no manner of doubt in our mind that though the CERC's orders dated 21.01.2020 and 27.01.2020 respectively were for determination of tariff, yet the order granting liberty to the aggrieved appellant to claim compensation from the defaulting party is a consequence of a regulatory lacuna in the 2014 Tariff Regulations and therefore, is an instance of regulation of tariff between the parties."

31. We are conscious of the fact that the Hon'ble Supreme Court in the above noted case was dealing with the powers and functions of the Central Commission under section 79 of the Electricity Act, 2003. However, the

observation of the court in that case are squarely applicable to the powers and functions of the State Electricity Commissions under section 86 of the Act also for the reason that both the legal provisions are *Pari Materia* in so far as the power to regulate the tariff and adjudication of dispute is concerned. Section 79 empowers the Central Commission to regulate tariff of the generating companies, to adjudicate upon the disputes involving generating companies or transmission licensees and to render advice to the Central Government whereas section 86 empowers the State Electricity Commissions to regulate the purchase price and procurement process of the electricity by the distribution licensees, to adjudicate upon the disputes between the distribution licensees and the generating companies as well as to render advice to the State Government. Thus, both the Central Commission as well as State Commissions exercise regulatory as well as advisory function also apart from the adjudicatory functions.

32. Therefore, considering the dictum of the Supreme Court in above noted judgment in Power Grid case it is manifest that there is no bar on the State Electricity Commissions also in exercising the regulatory functions by way of orders passed under section 86 of the Act while adjudicating on the disputes brought before it.

33. In the instant case, there cannot be any doubt with regards to the fact that there had been bonafide mistake on the part of the appellant in feeding data in the portal of SLDC from 16.05.2020 till 03.12.2020. The wrong feeding of the data appears to have been on account of some typographical mistake for the reason that the banking has been shown as 12 MW whereas there was no banking provision available for the appellant. Similarly, 15 MW which was the actual capacity of the appellant's power plant has been fed as available capacity. The fact that the appellant had been raising tariff bills not as per the data fed incorrectly in the portal of SLDC but as per the actual injection and drawl data derived out of the joint meter reading at the sub-station of the appellant, reinforces the conclusion that the error in feeding the data was only a bonafide. Further, it is also admitted position that UPPCL had duly accepted and paid the tariff bills raised by the appellant as per actual data for the said period from May, 2020 till September, 2020. It is also admitted position that neither UPPCL nor SLDC pointed out or objected to the incorrect data fed by the appellant in the portal of the SLDC during the said period. It appears that when the UPPCL received the bills from the appellant for the months of October and November, 2020, it found that the same are not in accordance with the data fed by the appellant in the portal of SLDC and accordingly

refused their payment. It is the refusal of UPPCL to pay these bills in the months of October and November, 2020 which made the appellant to detect the error in feeding the data in the portal of SLDC. The appellant acted swiftly and addressed letter dated 05.12.2020 to UPSLDC intimating it about the error and requesting it to rectify the same. However, both the SLDC as well as the Commission rejected the request of the appellant to rectify the data.

34. We are of the firm opinion that the Commission has fallen into error in refusing the request of the appellant to rectify the data in question. SLDC might have a reason for refusing request of the appellant in view of clause 6.5.25 of the Grid Code, 2007 but the Commission ought to have realized the regulatory gap as well as the shortcomings in the clause 6.5.25 in as much as it does not cater to all the exigencies and ought to have exercised its regulatory jurisdiction to plug the gap and provide the relief sought by the appellant.

35. We may also note that it is a well settled judicial principle that where a bonafide and honest mistake has occurred with no intention to cause any harm/loss by the party committing such mistake to any other person then that person must be permitted to rectify the mistake. While dealing with the issue of bonafide mistake committed by a person, the Supreme Court in the case of

Price Waterhouse Coopers Private Limited V/s CIT, (2012) 348 ITR 306 (SC) held that no penalty can be imposed in respect of inadvertent and bonafide mistake committed by an assessee. The relevant portion of the judgment is extracted hereinbelow: -

> *"15. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present one, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.*

16. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

36. Similar view has been expressed by the Delhi Hight Court in Charu Kain V/s High Court of Delhi, 2022 LiveLaw (Del) 551. In that case the petitioner before the court had appeared for Delhi Judicial Service Preliminary Examination, 2022 as a General Category candidate whereas she belonged to a reserve category (SC). The petitioner had secured 119.5 marks which was admittedly above the cut-off marks i.e. 115.5 specified for reserve category candidates. Therefore, in the event she was considered as a reserve category candidate, she would have made it for appearing in the mains examination. In such a situation, the court observed and held as under: -

"13. In the given facts, the limited question that falls for consideration before this Court is whether the petitioner should suffer the consequence of her

mistake, which she has admittedly committed, or ought to be given a chance to rectify the same.

14. The petitioner has relied upon the decision of the Division Bench of the High Court of Rajasthan in the case of Kavita Choudhary v. Registrar (Examination): 2017 SCC OnLine Raj 3612, wherein the court had taken a liberal view that the mistakes which do not prejudice any other person, should be permitted to be rectified. The perusal of the said decision indicates that the court had also followed several decisions passed by this Court to the aforesaid effect.

15. This Court concurs with the aforesaid view. Clearly, a person committing a bona fide mistake, which does not cause prejudice to any person, should be given an opportunity to rectify the same.

16. In the present case, it is clear that the petitioner's mistake is a bona fide one; she derived no benefit from submitting an incorrect application disclosing her category as the general category. She had further

compounded the mistake by not seeking immediate rectification as soon as she became aware of the same.

17. Notwithstanding the same, this Court finds that there is no prejudice caused to any person and the matter regarding the examination has not proceeded to a stage, which renders it inapposite to correct this mistake."

37. In the case before Bombay High Court in Commissioner of Income-Tax V/s Somany Evergree Knits Limited 2013 SCC Online Bom 1798, the respondent an income-tax assessee had, in its return of income claimed depreciation of Rs.1.70 crores. During the assessment proceedings, he realized that it had wrongly claimed Rs.1.70 crores of depreciation instead of Rs.1.05 crores and explained that this had happened due to mistake a calculation. The Assessing Officer did not accept that it was a mistake and levied penalty under section 271(1)(c) of the Income Tax Act, 1961. The Commissioner of Income Tax (Appeals) upheld the order of Assessing Officer. The Appellate Tribunal held the mistake to be bonafide and inadvertent an accordingly reversed the decision of Commissioner of Income Tax as well as

the Assessing Officer. The decision of the Income Tax Tribunal was upheld by the Bombay High Court saying that there is no reason to interfere in the same.

38. In view of the above, we are unable to sustain the impugned order of the Commission. The same is hereby set aside. We direct the SLDC to permit the appellant to rectify the bonafide mistake committed by appellant in feeding the data in its portal from 16.05.2020 till 03.12.2020 by substituting the same with actual/correct data within one month from the date of this judgment and upon such rectification, the tariff bills of the appellant with effect from October, 2020 shall be paid by the 2nd respondent UPPCL within two months along with carrying cost as provided under the PPA dated 29.07.2006.

39. Accordingly, the appeal stands allowed.

Pronounced in the open court on this 27th day of May, 2025.

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

✓

REPORTABLE / ~~NON REPORTABLE~~

tp