

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 286 of 2015
APPEAL No. 328 of 2016
APPEAL No. 280 of 2017
APPEAL No. 371 of 2017
APPEAL No. 398 of 2017
APPEAL No. 329 of 2017
APPEAL No. 214 of 2020

Dated: 10th July, 2025

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

In the matter of:

APPEAL No. 286 of 2015

Punjab Energy Development Agency (PEDA)

Having office at Plot No. 1-2,

Sector-33 D, Chandigarh,

Through its Director Sh. Balour Singh - 160034

Email : peda_spa@yahoo.co.in

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission (PSERC)

Through its Secretary,

Having office at SCO No. 220-21,

Sector-34-A, Chandigarh.

(Referred here in as Ld. State Commission)- 160022

Email : secretarypsercchd@gmail.com

registrarpsercchd@gmail.com

2. Punjab State Power Corporation Limited (PSPCL)

Through its Chairman-cum-Managing Director,

Having office at The Mall, Patiala-147001

Email : cmd-pspcl@pspcl.in

3. M/s. Atlantic Power Private Limited (APPL)

Through its Managing Director,

Having office at H. No. 528,

Behind Tagore Theatre, Sector-18B,

Chandigarh – 160018

Email : tlantichydro@yahoo.in, atlantichydro@yahoo.co.in

... Respondent (s)

Counsel for the Appellant(s)

:

Aditya Grover

Arjun Grover for App. 1

Counsel for the Respondent(s)

:

Sakesh Kumar for Res. 1

Suparna Srivastava for Res. 2

Tajender K. Joshi for Res. 3

APPEAL No. 328 of 2016

M/s. Atlantic Power Private Limited

H. No. 131-Amravati Enclave,

P.O. Chandimandir,

District Panchkula – 134102

Through its Managing Director

Avtar Singh Gill

... Appellant

Versus

1. Punjab Energy Development Agency (PEDA)

Through its Chief Executive Officer,

Plot No. 1 & 2, Sector 33,

Chandigarh - 160020

2. Punjab State Power Corporation Limited

Through its Managing Director,
The Mall, Patiala-147001

3. Punjab State Electricity Regulatory Commission

Through its Secretary,
SCO 220-221,
Sector 34-A, Chandigarh - 160022

... Respondent (s)

Counsel for the Appellant(s) : Tajender K. Joshi for App. 1

Counsel for the Respondent(s) : Aditya Grover
Arjun Grover for Res. 1

Suparna Srivastava for Res. 2

Sakesh Kumar for Res. 3

APPEAL No. 280 of 2017

Punjab Energy Development Agency (PEDA)

Having office at Plot No. 1-2,
Sector-33 D, Chandigarh,
Through its Director Sh. Balour Singh
Email : peda_spa@yahoo.co.in

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission (PSERC)

Through its Secretary,
Having office at SCO No. 220-21,
Sector-34-A, Chandigarh.
(Referred here in as Ld. State Commission)- 160022

Email : secretarypsercchd@gmail.com
registrarpsercchd@gmail.com

2. Punjab State Power Corporation Limited (PSPCL)

Through its Chairman-cum-Managing Director,
Having office at The Mall, Patiala-147001
Email : cmd-pspcl@pspcl.in

3. M/s. Mihit Solar Private Limited

Through its Authorised Signatory, Ms. Shafali Pawar,
Having its office at Plot No. 152,
Sector-44, Gurgaon, Haryana-122003
Email : info@Acme.in

... Respondent (s)

Counsel for the Appellant(s) : Aadil Singh Boparai for App. 1

Counsel for the Respondent(s) : Sakesh Kumar for Res. 1

Anand K. Ganesan
Swapna Seshadri for Res. 2

Mannat Waraich
Ananya Goswami
Mridul Gupta for Res. 3

APPEAL No. 371 of 2017

Punjab Energy Development Agency (PEDA)

Having office at Plot No. 1-2,
Sector-33 D, Chandigarh,
Through its Director Sh. Balour Singh
Email : peda_spa@yahoo.co.in

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission (PSERC)

Through its Secretary,

Having office at SCO No. 220-21,
Sector-34-A, Chandigarh.
(Referred here in as Ld. State Commission)- 160022
Email : secretarypsercchd@gmail.com
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2. Punjab State Power Corporation Limited (PSPCL)

Through its Chairman-cum-Managing Director,
Having office at The Mall, Patiala-147001
Email : cmd-pspcl@pspcl.in

3. M/s. Mihit Solar Private Limited

Through its Authorised Signatory, Ms. Shafali Pawar,
Having its office at Plot No. 152,
Sector-44, Gurgaon, Haryana-122003
Email : info@Acme.in

... Respondent (s)

Counsel for the Appellant(s) : Aadil Singh Boparai for App. 1

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Anand K. Ganesan
Swapna Seshadri for Res. 2

Mannat Waraich
Ananya Goswami
Mridul Gupta for Res. 3

Appeal No. 398 of 2017

Punjab Energy Development Agency (PEDA)

Having office at Plot No. 1-2,
Sector-33 D, Chandigarh,
Through its Director Sh. Balour Singh
Email : peda_spa@yahoo.co.in

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission (PSERC)

Through its Secretary,
Having office at SCO No. 220-21,
Sector-34-A, Chandigarh.
(Referred here in as Ld. State Commission)- 160022
Email : secretarypsercchd@gmail.com
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2. Punjab State Power Corporation Limited (PSPCL)

Through its Chairman-cum-Managing Director,
Having office at The Mall, Patiala-147001
Email : cmd-ppcl@ppcl.in

3. M/s. Mihit Solar Private Limited

Through its Authorised Signatory, Ms. Shafali Pawar,
Having its office at Plot No. 152,
Sector-44, Gurgaon, Haryana-122003
Email : info@Acme.in

... Respondent (s)

Counsel for the Appellant(s) : Aadil Singh Boparai for App. 1

Counsel for the Respondent(s) : Sakesh Kumar for Res. 1

Anand K. Ganesan
Swapna Seshadri for Res. 2

Mannat Waraich
Ananya Goswami
Mridul Gupta for Res. 3

APPEAL No. 329 of 2017

M/s Radiant Solar Energies Pvt. Ltd.

Through its Director – Saurabh Singla,
Muktsar-Faridkot Bye pass, Kotkapura,

District Faridkot, Punjab - 151204

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission

Through its Secretary,
SCO 220-221, Sector 34-A,
Chandigarh – 160022.

2. Punjab Energy Development Agency (PEDA)

Through its Chief Executive Officer,
Plot No. 1 & 2, Sector 33,
Chandigarh – 160020.

3. Punjab State Power Corporation Ltd.

Through its Managing Director,
The Mall, Patiala – 147001.

4. Punjab State Transmission Corp. Ltd.

Through its Managing Director,
The Mall, Patiala – 147001.

... Respondent (s)

Counsel for the Appellant(s) : Tajender K. Joshi for App. 1

Counsel for the Respondent(s) : Sakesh Kumar for Res. 1

Aadil Singh Boparai for Res. 2

Anand K. Ganesan
Swapna Seshadri for Res. 3

APPEAL No. 214 of 2020

Punjab Energy Development Agency (PEDA)

Through its Executive Director Sh. Balour Singh
Plot No. 1-2, Sector 33-D, Chandigarh-160034

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission

Through its Secretary,
S.C.O. 220-21, Sector 34-A,
Chandigarh - 160022

2. M/s Hindustan Cleanenergy Limited

Through its Chairman-Cum-Managing Director,
616A (16A, Sixth Floor),
Devika Tower, Nehru Place,
New Delhi – 110019

3. Magent Buildtech Private Limited

(A special purpose vehicle and 100% subsidiary company of
M/s Hindustan Clean Energy Private Limited)
Through its Chairman-Cum-Managing Director,
616A (16A, Sixth Floor),
Devika Tower, Nehru Place,
New Delhi – 110019

4. Punjab State Power Corporation Limited (PSPCL)

Through its Chairman-Cum-Managing Director,
PSEB Head Office,
The Mall, Patiala – 147001

... Respondent (s)

Counsel for the Appellant(s) : Aadil Singh Boparai for App.1

Counsel for the Respondent(s) : Gargi Kumar for Res. 1

Amit Kapur
Akshat Jain
Raghav Malhotra for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. During the course of the hearing of the captioned appeals, following two issues of vital legal importance and ramifications had copped up for our consideration :-

- i. Whether the Punjab Energy Development Agency (in short PEDDA) can be impleaded as a party to disputes under Section 86(1)(f) of the Electricity Act, 2003 and if so, in what circumstances?
- ii. Whether the Electricity Regulatory Commission, while adjudicating the disputes under Section 86(f) of the Electricity Act, 2003, has the power to issue directions to PEDDA and if so, whether PEDDA can maintain appeal against the order of the Commission before this Tribunal under Section 111(1) of the Electricity Act.

2. At first, we find it necessary to narrate the facts of these appeals, shorn of unnecessary details, relevant for the purposes of adjudication of the above stated two issues :-

Appeal Nos. 286 of 2015 & 328 of 2016

3. These two appeals relate to Terkiana Hydro Electric Power Project constructed by M/s Atlantic Power Pvt. Ltd. (Appellant in Appeal No. 328 of 2016) on Western Bein (Holy Bein) at Terkiana District, Hoshiyarpur,

Punjab. These are cross appeals arising out of the order dated 26th May, 2015 passed by Punjab State Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in petition No. 51 of 2014 filed by M/s. Atlantic Power Pvt. Ltd. PEDDA had been arrayed as a respondent in the petition.

4. PEDDA is stated to be State Nodal Agency for promotion and development of NRSE projects including but not limited to hydel projects. It had invited bids on 10th July, 2019 from private developers for setting up a mini hydel power project on Built, Operate and Own (BOO) basis under the State New and Renewable Source of Energy (NRSE) Policy, 2006. M/s. Atlantic Power Pvt. Ltd. also has submitted its bid and after competitive bidding, was selected for the said project. As required, the Company entered into the Memo of Understanding dated 27th August, 2009 with PEDDA for implementation of the power project. Thereafter, an implementation agreement dated 16th October, 2009 was also executed between the Company and PEDDA. The Company M/s Atlantic Power Pvt. Ltd. completed the power project in 10 months and the same was synchronized with the grid on 31st August, 2010.

5. It appears that after about 5 months of the completion of the project, the local population objected to flow water into the Holy Bein. Accordingly, release of assured 350 cusec of water in the Holy Bein was stopped by an order dated 29th January, 2011 passed by Director, Punjab State Power Corporation Limited (in short PSPCL). After some discussion between the parties, it was decided that M/s. Atlantic Power Pvt. Ltd. will construct an escape channel at its own expenditure for which it was to be compensated from the extra energy to be generated from the power plant. Accordingly, a tripartite agreement dated 10th August, 2011 was entered into between M/s. Atlantic Power Pvt. Ltd., PSPCL & PEDDA in this regard. The construction of the escape channel was completed on 30th April, 2012 at a cost of Rs.2.10 crores and thereafter, the power plant started functioning again.

6. In these circumstances, M/s. Atlantic Power Pvt. Ltd. approached the Commission with Petition No. 51 of 2014 seeking re-determination of tariff for the electricity generated in the power plant, recovery of cost of escape channel and a restraint order against PEDDA and PSPCL restraining them from recovering energy share from the company in view of faulty tender conditions. Certain consequential prayers were also made in the petition.

7. The petition has been disposed off by the Commission vide impugned order dated 26th May, 2015, the relevant portion of which is extracted herein below :-

“... In view of the above findings, the decision of the Commission is as under:-

(i) The prayer of the petitioner for determination of tariff is not allowed. The tariff for the project shall remain as per PPA ie. as determined by the Commission in its Order dated 13.12.2007 under NRSE Policy-2006 of the Government of Punjab and agreed to in IA dated 16.10.2009, PPA dated 02.12.2009 and TPA dated 10.08.2011 by the parties.

(ii) The petitioner is entitled to recover cost of Escape Channel (without interest) from the percentage energy share of PEDDA. The petitioner shall satisfy PEDDA about the actual cost incurred by the petitioner on the construction of Escape Channel and associated works. PEDDA shall also not charge interest on the amount in arrears on account of its percentage energy share since the synchronization of the project. After recovery of cost of the Escape Channel and associated works, the petitioner shall be liable to deduction of

percentage energy share from the energy bills of the petitioner and PEDDA / PSPCL, as the case may be, shall be entitled to percentage energy share as agreed to in the IA, PPA and TPA. It is made clear that PSPCL is not liable to compensate the petitioner from its energy share after it Order in Petition No.51 of 2014 51 becomes entitled to the same on the commissioning of its 18 MW MHP-II Project. The petition is disposed of, in terms of above decisions and directions.....".

8. Being aggrieved by the refusal of the Commission for re-determination of tariff, M/s. Atlantic Power Pvt. Ltd. has filed Appeal No. 328 of 2016. At the same time PEDDA, being aggrieved by the directions of the Commission appearing in (ii) herein above, has filed Appeal No. 286 of 2015.

Appeal Nos. 280 of 2017, 371 of 2017 & 398 of 2017

9. These three appeals have been filed by PEDDA against the orders dated 18th August, 2016 passed by the Commission separately in Petition Nos. 6 of 2016, 7 of 2016 and 10 of 2016 filed by M/s Mihit Solar Private Ltd. which is Respondent No. 3 in these three appeals.

10. Facts of these cases reveals that PEDDA being State Nodal Agency for promotion and development of NRSE projects in the State of Punjab, floated a Request for Proposal (RFP) inviting various solar power project developers for setting up an aggregate 250 MW capacity of grid connected solar photovoltaic power projects in the State of Punjab. The RFP provided for three categories of projects i.e. Category-I, having capacity of project ranging from 1 to 4 MW and out of 250 MW of total capacity, 50 MW capacity was allocated under this category, category-II having capacity of projects ranging from 5 to 24 MW and out of 250 MW of total capacity, 100 MW capacity was allocated under this category and Category-III having capacity of projects ranging from 25 to 50 MW and out of 250 MW of total capacity, 100 MW capacity was allocated under this category.

11. Respondent No. 3 – Mihit Solar Power Private Ltd. participated in the bidding process for the projects under Category-II and Category-III. It came out as successful bidder for allocation of 24 MW solar power project under category-II and was issued Letter of Award dated 25th February, 2015 by PEDDA. It also came to be successful bidder for allocation of 50 MW solar power project under category III and was issued a separate Letter of Award dated 25th February, 2015 by PEDDA. In compliance with the terms and

conditions of RFP, Respondent No. 3 deposited the requisite number of performance bank guarantees with PEDDA.

12. An implementation agreement dated 24th March, 2015 was entered into between Respondent No. 3 – Mihit Solar Power Pvt. Ltd. and PEDDA with respect to 24 MW solar power project under category-II.

13. At the request of Respondent No. 3, the allocated capacity of 50 MW under category-III was split into two projects of 25 MW each. Consequently two separate implementation agreements dated 24th March, 2015 were executed between M/s Mihit Solar Power Pvt. Ltd. and PEDDA regarding these two power projects.

14. Three separate power purchase agreements dated 31st March, 2015 were also entered into between Respondent No. 3 and Respondent No. 2 – PSPCL with regards to these three power projects.

15. As per the terms and conditions of RFP/implementation agreements, the Respondent No. 3 was to commission the power plant on or before 31st January, 2016. It appears that due to several factors, the power projects could not be completed and commissioned by the said stipulated date due to which the performance bank guarantees submitted by Respondent No. 3 - M/s Mihit Solar Power Pvt. Ltd. was sought to be invoked by PEDDA.

Accordingly, the power developer M/s Mihit Solar Power Pvt. Ltd. approached the Commission by way of three separate petitions bearing No. 6 of 2016, 7 of 2016 & 10 of 2016 with respect to the three power projects in question. The prayer made in the petitions was for extension of Commercial Operation Date (COD) of the power projects and stay of invocation of Performance Bank Guarantee by PSPCL & PEDDA. All the three petitions have been disposed off by the Commission on 18th August, 2016. A common order has been passed in Petition Nos. 7 & 10 of 2016 whereas a separate order has been passed in Petition No. 6 of 2016. Vide these three orders, which have been impugned in these three appeals, the Commission has extended the COD of the projects in question by 90 days i.e. till 30th April, 2016 and has directed the Appellant – PEDDA to release the Performance Bank Guarantee to M/s Mihit Solar Power Pvt. Ltd. within seven days from the date of the order.

16. PEDDA has questioned the legality and correctness of these impugned orders in these three appeals.

Appeal No. 329 of 2017

17. In this appeal, the Appellant M/s Radiant Solar Energies Pvt. Ltd. has assailed the order dated 9th August, 2017 passed by the Commission in Petition No. 15 of 2016 filed by the Appellant.

18. It appears that PEDDA, being a nodal agency for development of renewable energy projects in the State of Punjab, had invited private developers to set up solar photovoltaic power projects for sale of power to the State utility i.e. PSPCL. The Appellant also had submitted its bid and was allotted 3 MW solar PV power project at a net tariff of Rs.17.58 per kwh. Accordingly, the Letter of Award was issued by PEDDA to the Appellant which was followed by implementation agreement dated 19th March, 2015 executed between the parties. The Appellant also deposited Rs.1.2 crore worth performance bank guarantees with PEDDA. Thereafter, the PPA dated 31st March, 2015 was executed between the Appellant and PSPCL. The date of commencement of supply of power to PSPCL i.e. SCOD was 10 months from the effective date. The PPA was approved by the Commission vide order dated 11th May, 2015 passed in Petition No. 21 of 2015 filed by PSPCL.

19. The Appellant's contention before the Commission was that nothing could be done till 11th May, 2015 as the unapproved PPA was not

acceptable to the financial institutions. As soon as the PPA became effective after its approval by the Commission, the Appellant approached the financial institutions including Small Industries Development Bank of India for grant of loan. The Appellant along with other power developers had submitted a representation to PEDDA for extension of time, but instead of acceding to their request, PEDDA issued letter dated 10th June, 2016 stating that clause 3.2.3 of the RFP shall prevail in case of any delay beyond the scheduled commissioning date. The Appellant received a letter dated 24th February, 2016 from PEDDA stating that penalty would be imposed upon it for non-commissioning/short fall in commissioning of the allocated capacity as per RFP. Vide separate letter dated 11th March, 2016 addressed to PEDDA to State Bank of Patiala, it sought encashment of the Bank Guarantee furnished by the Appellant.

20. In these circumstances, the Appellant had approached the Commission by way of Petition No. 15 of 2016 which has been disposed off vide the impugned order dated 9th August, 2017 thereby reducing the tariff for the power plant of Appellant from Rs.7.58 per kwh to Rs.5.09 per kwh and further holding the Appellant liable to pay liquidated damages to

PSPCL and also liable for forfeiture of performance bank guarantees submitted to PEDDA.

21. The appeal questions the legality and validity of the said impugned order passed by the Commission.

Appeal No. 214 of 2020

22. This appeal is directed against the order dated 22nd March, 2018 passed by the Commission in petition No. 37 of 2017 filed by M/s Hindustan Clean Energy Limited and M/s Magnet Buildtech Pvt. Ltd.

23. The Appellant - PEDDA and M/s Magnet Buildtech Pvt. Ltd. had entered into an implementation agreement for commissioning of two solar photovoltaic power plants of 25 MW capacity each. The agreements stipulated that the plants were to be commissioned within 12 months from the date of signing of PPA and provided for an extension of 90 days subject to fulfilment of certain conditions. PPA was executed between M/s Hindustan Clean Energy Ltd. and PSPCL on 12th January, 2016. Accordingly, power plants were to be commissioned by 11th January, 2017 in terms of the implementation agreement and the PPA. We may note that M/s Magnet Buildtech Pvt. Ltd. was incorporated as a special purpose

vehicle by M/s Hindustan Clean Energy Ltd. as per the terms of Letter of Award.

24. There was delay in commissioning of the power plant by M/s Magnet Buildtech and the plants were actually commissioned on 6th February, 2017 and 14th February, 2017 i.e. with the delay of 26 days and 34 days respectively. On account of said delay, PEDDA invoked the Bank Guarantee deposited by M/s Magnet Buildtech Pvt. Ltd.

25. Accordingly, M/s Magnet Buildtech Pvt. Ltd. approached the Commission with the petition bearing No. 37 of 2017 seeking extension of the SCOD of the power projects to 14th February, 2017 on account of Force Majeure events and direction to PDA to refund the sum of Rs.3.05 crores got by it by encashing the performance bank guarantees of the Appellant. The Commission, vide impugned order dated 22nd March, 2018 granted the extension in commissioning of the solar power plants to M/s Hindustan Clean Energy Ltd. and M/s Magnet Buildtech Pvt. Ltd. to the effect of 11 days in respect of the solar power plant at Village Todarpur and 13 days in respect of the plant in village Shirkawala. The Commission further allowed the invocation of performance bank guarantees by the PEDDA for the

remaining 15 days of delay in respect of the plant in village Todarpur and 13 days of delay in respect of the plant in village Shirkawala.

26. Being aggrieved by the partial extension of delay in commissioning of the power plant by the said power generator and direction to release the amount of performance bank guarantees to the extent of such extension of SCOD of the two power plants of the Appellant, PEDDA has filed the instant appeal.

Genesis of the two issues formulated in paragraph No. 1 of the judgement.

27. In all these cases, PEDDA was impleaded as Respondent before the Commission and certain prayers were directed against PEDDA. The petitions had been filed by the power generators under Section 86(1)(f) of the Electricity Act, 2003 which empowers the commission to adjudicate upon the disputes between the generating companies and the licensees. In the orders passed by the Commission in these petitions which have been impugned in this appeals, the Commission has passed certain directions against PEDDA also which is neither a generating company nor a licensee.

28. It is in such a situation that the two issues formulated in paragraph No. 1 of the judgement cropped up for consideration and adjudication by this Tribunal.

Submission of behalf of the parties.

29. We have heard Learned Counsel appearing for the parties as well as Learned Amici Curiae. We have also perused the written submissions filed on behalf of the parties and the written notes submitted by the learned Amici Curiae Shri Poovayya and Shri Ranganadhan.

30. It is pertinent to note here that vide order dated 14th November, 2024 we requested Mr. M.G. Ramachandran, Learned Senior Counsel, Mr. Sajan Poovayya, Learned Senior Counsel and Mr. Buddy Ranganadhan, Learned Counsel to assist this Court as amici curiae to decide these crucial issues having very wide ramifications. They were magnanimous enough to accept our request.

31. Learned Counsels for PEDDA and PSPCL respectively argued that the Commission lacked inherent jurisdiction to adjudicate upon a dispute involving PEDDA. It is submitted that Section 86(1)(f) of the Electricity Act, 2003 confers power upon the Commission to adjudicate upon the disputes

between the licensees and generating companies but the Commission has traversed beyond the said specific provision and has decided a purely monetary dispute relating to forfeiture of bank guarantee by issuing directions to PEDDA, which is neither a generating company nor a licensee, to return the performance bank guarantees to the generator. Relying upon the judgement of Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited Vs. S.R. Power Limited, 2008 4 SCC 755, it is submitted that the Commission can decide a dispute only between a licensee and the generating company and, therefore, any direction issued by the Commission to PEDDA is *non-est* in Law.

32. It is further argued that the Commission has simply proceeded on the basis that the PPA and the Implementation Agreement are inter-linked and any relief given to the generator under the PPA will also grant relief under the Implementation Agreement but has not explained as to how under the Electricity Act can it issue direction to PEDDA for return of performance bank guarantees. It is submitted that the Commission is a statutory authority and derives its powers from the statute i.e. Electricity Act, 2003, and, therefore it cannot exercise any power which is not specifically conferred upon it under the said Act.

33. Thus, according to the Learned Counsels, the Commission was not competent to entertain a dispute concerning PEDDA and to issue any directions to it.

34. Learned Counsel for the Commission has vigorously defended the impugned orders of the Commission while submitting that no effective order could have been passed in these cases if PEDDA was not arrayed as a party in the petitions and if the Commission had not power to entertain the dispute with PEDDA as one of the parties. It is argued that the term “Dispute” used in Section 86(1)(f) of the Electricity Act, 2003 is of wider connotation and does not refer to a dispute to be decided merely by a judicial authority but by a regulator. It is submitted that the regulator i.e. the Commission is not a formal dispute redressal forum but is there to decide and regulate all the aspects of generation, transmission and distribution of electricity envisaged under the Electricity Act and while deciding or regulating the same, it may touch upon the areas which are co-related to the regime and powers provided to it under the Act and regarding which the Act and Rules are silent. Learned Counsel cited the judgment of this Tribunal in Appeal No. 4 of 2005 SIEL Limited Vs. PSERC and ors. 2007 APTEL 931 in which this Tribunal has held that since the Commission has the power to determine

the tariff and ARR of a utility, it has all the incidental and ancillary powers to effectuate the purpose for which the power is vested in it and consequently the directions or orders of the Commission issued in this regard are binding even on the State as well as the Electricity Board.

35. It is argued that the preamble of the Electricity Act read with Section 61(d) makes it abundantly clear that the Commission while determining the tariff or deciding a dispute has to keep in mind the purpose of the Act i.e. taking measures conducive to development of electricity industry and protecting the interest of consumers, and in doing so, it can exercise its inherent powers where the Act and Rules are silent. In this regard, reliance is placed upon judgement of Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited vs. Solar Semi Conductor Power Company (India) Pvt. Ltd. and Ors., 2017 16 SCC 498 wherein it has been held that the Electricity Regulatory Commission is enjoined with inherent powers though not as pervasive as available to court under Section 151 Code of Civil Procedure but the Commission has all the powers to issue appropriate orders and directions in the interest of justice and consumers to the extent not otherwise provided under the Act and the Rules made therein.

36. Learned Counsel further pointed out that since the Implementation Agreement becomes part of PPA, while interpreting the PPA or applying the same Implementation Agreement also has to be read, interpreted and applied along with the PPA for determination of tariff or to decide any other issue between the parties which makes it clear that there is a direct relationship between PEDDA and the Generator. It is argued that while deciding a dispute, the Commission is not only required to go into the provisions of the PPA but also into the provisions of the Implementation Agreement and to decide the dispute within the framework of both the agreements and, therefore, it would be anomalous to say that the Commission cannot entertain a dispute involving PEDDA as a party or cannot issue any directions to PEDDA in the facts and circumstances of a particular case.

37. Learned Counsel appearing for the power generator M/s Mihit Solar Pvt. Ltd. has also supported the submissions of the Commission's counsel and argued that the Commission has jurisdiction to entertain a petition having PEDDA as a party under the aegis of its wide regulatory powers under Section 86(1)(b) of the Electricity Act. It is argued that the disputes in these cases before the Commission were qua the entire power projects being set

up by the respective power generators and the claim regarding the Force Majeure set up by the power generators is intermingled with the PPA as well as Implementation Agreement to the extent that it is not possible to bifurcate their claims in respect of the two agreements separately. Therefore, it was necessary for the power generators to implead PEDDA as a party to the disputes. It is pointed out that Force Majeure clause of the PPA makes specific reference to the Force Majeure clause of the Implementation Agreement and hence the claim regarding Force Majeure had to be adjudicated upon by Commission on a combined reading of both the Implementation Agreement as well as the PPA and, therefore, PEDDA was a necessary party for proper adjudication of the disputes.

38. It is further, submitted by the Learned Counsel that the adjudication of the claim regarding Force Majeure has direct bearing on the tariff determination done by the Commission, and, therefore, the dispute before the Commission was clearly that of regulation of tariff which is clearly within the competence and powers of the Commission under Section 86(1)(b) of the Electricity Act. Relying upon the judgement of Hon'ble Supreme Court in K. Ramanathan vs. State of Tamil Nadu and Anr. 1985 2 SCC 116 and judgement of this Tribunal in Jan Power Pvt. Ltd. Vs. Kerala State

Electricity Regulatory Commission & batch 2024 SCC online APTEL 120, it is argued that term “Regulate” used in Section 86(1)(b) of the Electricity Act has a very wide connotations and cannot be restricted in a specific mould. Its application has to take colour from the particular set of facts and circumstances in which it is sought to be applied. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation and the court must necessarily keep in view the mischief which the legislature seeks to remedy.

39. Reliance is also placed upon the judgement of Hon’ble Supreme Court in Civil Appeal Nos. 3510-3511 of 2008 Tata Power Company Limited Vs. Reliance Energy Ltd. and Ors. decided on 6th May, 2009 wherein it has been held that as part of the Regulation, the Commission can also adjudicate upon the disputes with regards to the implementation, application or interpretation of the provisions of the agreements between the parties to dispute before it.

40. It is argued that the power to “Regulate” as conferred under Section 86(1)(b) of the Electricity Act has to be accredited widest possible interpretation which is consistent with the view taken by the Hon’ble Supreme Court as well as this Tribunal in the above cited judgements.

According to the Learned Counsel, in the facts and circumstances of these cases before the Commission, the aspect to be regulated consistent with the objectives of the Electricity Act was the inter-connected transactions commencing from generation and ending at consumption. Since the Implementation Agreement was entered into between the PEDDA and the power generators for the purpose of facilitating the generation and distribution of electricity within the State of Punjab, the activities of the PEDDA and the transactions with regards thereto would be wholly within the purview of the regulatory powers vested under Section 86(1)(b) of the Electricity Act.

41. It is also pointed out by the Learned Counsel that this Tribunal had in judgement dated 22nd October, 2024 passed in Appeal No. 103 of 2021 Greenko Maha Wind Energy Pvt. Ltd. Vs. MERC & Ors. issued directions to Maharashtra Energy Development Agency (MEDA) and the said judgement has been upheld by the Hon'ble Supreme Court which clearly establishes the legal position that the Commission is competent to issue directions against PEDDA also.

Submissions of the Learned Amici Curiae

42. The amici curiae Shri Ramachandran and Shri Sajan Poovayya, Learned Senior Counsels favoured the view that the jurisdiction of the State Electricity Commissions under Section 86(1)(f) of the Electricity Act, 2003 is restricted only to adjudication of disputes between licensees and generating companies or to refer such disputes for arbitration and the Commissions are not competent to issue any directions to an agency like PEDDA which is neither a licensee nor a generator. Relying upon the judgement of this Tribunal in PTC India Ltd. vs. PSERC 2024 SCC online APTEL 124 and the judgement of Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. Vs. Solar Semi Conductor Power Company (India) Pvt. Ltd., 2017 16 SCC 498, it is submitted that the Electricity Regulatory Commissions are a creation of the Electricity Act under Section 82(1) and their jurisdiction is limited to those specifically conferred on it under provisions of the Act and not beyond. It is further submitted that being a creature of statute, the Commissions cannot assume upon itself any powers which are not otherwise conferred on them specifically under the Act. According to the Learned amici curiae, it is wrong to contempt that jurisdiction under Section 86(1)(f) covered or extends to entities which are otherwise not or under the jurisdiction of the Commission. It is submitted that jurisdiction can be exercised only when provided for either in the constitution or in the laws made by the legislator. It is submitted that the

Commissions can exercise jurisdiction only when the subject matter falls within their competence and the order that may be passed is within their authority and not otherwise.

42A. We may note that the submissions of Mr. Ramachandran were limited to the interpretation of the provisions of the act only.

43. Thus, it is contended that the Commissions cannot exercise jurisdiction over the dispute involving PEDDA and cannot issue any directions to PEDDA as such power is not specifically conferred upon the Commissions under Section 86(1)(f) of the Electricity Act, 2003.

44. The amicus curiae Mr. Buddy Ranganadhan, Learned Senior Counsel has expressed the contrary view. He would submit that the activities being undertaken by PEDDA i.e. power procurement process for PSPCL squarely falls within the ambit of powers of the Commission under Section 86(1)(b) of the Electricity Act, 2003 and, therefore, amenable to the jurisdiction of the Commission.

45. He echoed the submissions made on behalf of the Commission and power generators that power of regulation conferred on the Commission is very wide and covers entire gamut of activities within the ambit of such regulation, and , therefore, jurisdiction of the regulatory Commissions under the Electricity Act should be interpreted extensively and not in a

restricted manner. According to the Learned Senior Counsel, it is in the interests of the power sector as a whole that the jurisdiction of the Commission be interpreted to include within its fold entities which undertake regulated activities rather than limiting it to name and categories of entities which are the only ones expected to carry out such activities and holding so would not be doing violence to the nature and object of the Act. He submitted that in order to further the intended purpose of the Act, the focus ought to be on the jurisdiction of the Commission over “Activities” rather than “Entities”.

46. Learned Senior Counsel also sought to draw parallel from the judgement of Hon’ble Supreme Court in Cox and Kings Ltd. vs. SAT India Pvt. Ltd. (2024) 4 SCC 1 in which it has been held that 3rd parties who are strangers to arbitration agreement can be impleaded in the arbitration proceedings if the requirements therein are fulfilled. He submitted that vide the said judgement, the Apex Court expressly permitted 3rd parties to be impleaded in the arbitration proceedings having regard to the complex nature of commercial transactions in today’s world and, therefore, in the cases at hand also if either the Commission or this Tribunal were to refer the dispute between the PSPCL and the power generators to arbitration, it

is potentially possible that PEDDA might be impleaded as a party in such arbitration proceedings. Thus, according to the Learned Senior Counsel, it would be incongruous to suggest that the Commission or this Tribunal could refer the disputes to a process which would entail tripartite adjudication but it could itself not adjudicate such a dispute.

Our Analysis

Historical Context of Electricity Act, 2003

47. Prior to the enactment of the Electricity Act, 2003, the Electricity Sector In India was governed by several laws including the Indian Electricity Act, 1910, the Electricity (supply) Act, 1948 and Electricity Regulatory Commission's 1998. These older laws were found inadequate to address the challenges of growing economy, need was felt for increased private sector participation and the goal of ensuring access to Electricity for all. Hence, the Electricity Act 2003 was enacted to reform the power sector by promoting competition, efficiency and transparency. It consolidated all the existing laws related to electricity and focused on rationalizing tariff structures, promoting rural electrification, and establishment of regulatory bodies like Central Electricity Authority and State Electricity Regulatory

Commissions. The Act merged the previous electricity laws into a single comprehensive piece of legislation with following key features :-

- (a) The Act facilitates the entry of private players into the power generation by de-regulating the sector and promoting competition;
- (b) It introduced a concept of open access allowing electricity to be transmitted over existing transmission lines for multiple licensees;
- (c) It established the Central Electricity Authority (CEA) and State Electricity Regulatory Commissions to oversee the power sector, determined tariffs and resolve disputes;
- (d) The Act aims to ensure consumer protections, transparent policy, fair tariffs and the establishment of grievance redressal mechanism.

48. Thus, the Electricity Act, 2003 introduced major reforms in the Indian Power Sector by unbundling generation, transmission and distribution as also promoting competition. It has been a significant step towards modernizing India's power sector. It is to be noted that the Act has been subject to several amendments and judicial interpretations over the years.

The preamble of the Act reads as under:-

“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures

conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

49. The preamble of the Act clearly indicates that the basic aim and objective of enacting it was to consolidate all the existing laws related to generation, transmission, distribution, trading and use of electricity into one single statute. The Act has ushered reforms in the electricity sector by freeing the generation of Electricity from the shackles of licensing regime while placing the activities of transmission, distribution and trading under regulatory control of the Electricity Commissions.

50. Perusal of Statement of objects and reasons of the Act reveals that on account of poor performance of the State Electricity Boards, the Government decided to establish independent authorities to determine tariff in an independent and professional manner. With this intent in mind, provision was made in the Act for establishment of Electricity Regulatory Commissions. The act encourages free generation and fair competition amongst the generating companies as well as the licensees in order to

achieve the customer satisfaction. Activities like transmission, distribution and trading having been placed under the regulatory control of the Electricity Commissions, entities dealing with such activities are required to bear in mind the aims set out in the Statement of Objects & Reasons in the Act, the preamble of the Act, National Electricity Policy, Tariff Policy etc.

Functions of the State Electricity Regulatory Commissions

51. Section 86 of the Electricity Act, 2003 specifies the functions of State Commissions. Clause (a) of sub-section (1) of Section 86 empowers the State Commissions to determine tariff for generation, supply, transmission and wheeling of electricity within the State. Clause (b) of sub-section (1) empowers the State Commissions to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through power purchase agreements for distribution within the State. Clause (f) of sub-section (1) of Section 86 empowers the State Commissions to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration. Besides, other functions mentioned in clause (c), (d), (e), (g), (h), (j) & (k) of sub-

section (1), the State Commissions are duty bound to advise the State Governments on various matters mentioned in sub-section (2) of Section 86.

Interpretation of Section 86(1)(b)

52. One of the important functions entrusted to the State Commissions is regulation of electricity purchase and procurement process of the Distribution Licensees. Even though the term “Regulate” is not defined anywhere in the Act, it has been interpreted by the Courts including the Apex Court in various judgements. The Hon’ble Supreme Court had the occasion to interpret the term “Regulate” in K. Ramanathan vs. State of Tamil Nadu and Anr. (1985) 2 SCC 116 wherein the Court observed as under :-

18. The word “regulate” is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in Corpus Juris Secundum, Vol. 76 at p. 611:

*“Regulate” is variously defined as meaning to adjust; to adjust, order, or **govern by rule, method, or established mode**; to adjust or control by rule, method, or*

*established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; **to govern or direct according to rule; to control, govern, or direct by rule or regulations.***

“Regulate” is also defined as meaning to direct; to direct by rule or restriction; or to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict”.

*See also : Webster's Third New International Dictionary, Vol. II, p.19
and Shorter Oxford Dictionary, Vol. II, 3rd Edn., p. 1784.*

19. It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word “regulate” is not synonymous with the word “prohibit”. This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. **At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated.** The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word “regulation” cannot have any inflexible meaning as to exclude “prohibition”. **It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy.**

53. Relying upon the said judgement of the Hon'ble Supreme Court, this Tribunal in Jhabua Power Private Limited v. Kerala State Electricity

Regulatory Commission & batch, 2024 SCC online APTEL 120, explained the scope of term “Regulate” in the following words “-

“...

225. Let us now examine the submission, urged on behalf of KSERC, that, since the earlier order passed by it on 10.05.2023 **was in the exercise of its regulatory powers under Section 86(1)(b)**, it has the power to amend, vary or modify the said order in terms of Section 21 of the General Clauses Act.

(e). “REGULATE”: ITS SCOPE:

226. **The word “regulate” is difficult to define as having any precise meaning, and cannot have any rigid or inflexible meaning. It is a word of broad import, having a broad meaning, and is comprehensive in its scope.** (K. Ramanathan v. State of T.N., (1985) 2 SCC 116; V.S. Rice and Oil Mills v. State of A.P, AIR 1964 SC 1781). ‘Regulate’ is defined in Corpus Juris Secundum, Vol. 76 at p. 611 as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations. (K. Ramanathan v. State of T.N., (1985) 2 SCC 116). ‘Regulate’ is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict.” (Webster’s Third New International Dictionary, Vol. II, p. 1913 and Shorter Oxford 3rd Dictionary, Vol. II, Edn., p. 1784; K. Ramanathan v. State of T.N., 3rd (1985) 2 SCC 116). The Shorter Oxford English Dictionary, Edn., defines the word “regulate” as meaning “to control, govern, or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings”. (K. Ramanathan v. State of T.N., (1985) 2 SCC

116), and as meaning “the act of regulating, or the state of being regulated”. (D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20).

227. The word “regulation” has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy. (K. Ramanathan v. State of T.N., (1985) 2 SCC 116). **The power to regulate carries with it full power over the thing subject to regulation and, in the absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances.** (K. Ramanathan v. State of T.N., (1985) 2 SCC 116).
...”

54. In D.K. Trivedi & Sons Vs. State of Gujarat, 1986 Supp SCC 20, it was held :-

“30. Bearing this in mind, we now turn to examine the nature of the rule-making power conferred upon the State Governments by Section 15(1). Although under Section 14, Section 13 is one of the sections which does not apply to minor minerals, the language of Section 13(1) is in pari materia with the language of Section 15(1). Each of these provisions confers the power to make rules for “regulating”. The Shorter Oxford English Dictionary, 3rd Edn., defines the word “regulate” as meaning “to control, govern, or direct by rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings”. Thus, the power to regulate by rules given by Sections 13(1)

and 15(1) is a power to control, govern and direct by rules the grant of prospecting licences and mining leases in respect of minerals other than minor minerals and for purposes connected therewith in the case of Section 13(1) and the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and for purposes connected therewith in the case of Section 15(1) and to subject such grant to restrictions and to adapt them to the circumstances of the case and the surroundings with reference to which such power is exercised. It is pertinent to bear in mind that the power to regulate conferred by Sections 13(1) and 15(1) is not only with respect to the grant of licences and leases mentioned in those sub- sections but is also with respect to “purposes connected therewith”, that is, purposes connected with such grant.”

55. In Cellular Operators Association of India and Ors. Vs. Union of India and Ors. (2003) 3 SCC 186, the Apex Court observed :-

“33. The regulatory bodies exercise wide jurisdiction. They lay down the law. They may prosecute. They may punish. Intrinsically, they act like an internal audit. They may fix the price, they may fix the area of operation and so on and so forth. While doing so, they may, as in the present case, interfere with the existing rights of the licensees.

...

34. Statutory recommendations made by it are normally accepted by the Central Government, as a result of which the rights and obligations of the parties may seriously be affected. It was in the aforementioned premise Parliament thought of creating an independent expert tribunal which, if an occasion arises therefor, may interfere with the finding of fact, finding of law or

a mixed question of law and fact of the authority. Succinctly stated, the jurisdiction of the Tribunal is not circumscribed in any manner whatsoever.

...

38. Similarly, the civil court's jurisdiction in service matters is circumscribed by the provisions of the Special Relief Act, 1963.”

56. In Municipal Corporation of Delhi vs. Gagan Narang & Ors. 2025 SCC Online SC 19, the Hon’ble Supreme Court while interpreting Section 63 read with 86(1) (b) of the Electricity 2003, has extended the scope of Section 86(1)(b) to the extent to include even the agency such as Municipal Corporation of Delhi, which does not fall in the category of either Generator or Licensee, within the ambit of power to “Regulate” of the State Commission. The relevant portion of the judgement is extracted herein below :-

“...

37. Apart from that, we are of the view that APTEL could not have read the provisions of Section 63 of the Act in isolation. The provisions of Section 63 will have to be read in harmony with the provisions of Section 86(1)(b) of the Act, which reads thus:

“86. Functions of the State Commission. -(1) The State Commission shall discharge the following functions, namely:—

(a)

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;”

38. A perusal of the provision of Section 86(1)(b) of the Act would reveal that a duty is cast upon the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

39. It could thus be seen that the duty cast upon the State Commission is to regulate:

(i) the electricity purchase and procurement process of distribution licensees;

(ii) the price at which electricity shall be procured from the generating companies or licensees, or;

(iii) from other sources through agreements for purchase of power for distribution and supply within the State.

40. The legislative intent behind Section 86(1)(b) of the Act is to empower the State Commission to regulate all matters regarding the electricity purchase and procurement processes.

41.... If the provisions of Section 63 of the Act are read in harmony with the provisions of Section 86(1)(b) of the Act, the legislative intent that could be gathered is that the State Commission while exercising its powers under Section 63 of the Act shall adopt the tariff when it has been determined in the bidding process. However, while adopting the same it will have to be satisfied that the same is done in a transparent manner. It will also have to be examined as to whether the interests of the generators/Discoms on one hand are balanced with the interests of the consumers.

42. In our view, reading the Section 63 of the Act in the manner in which it has been interpreted by the APTEL, would impose unnecessary restrictions on the powers and duties of the State Commission under Section 86(1)(b) of the Act, which are of a very wide amplitude.”

57. Thus, power to “Regulate” conferred upon the State commissions under Section 86(i)(b) of the Electricity Act, 2003 has a very wide connotation and ought to be accorded widest possible interpretation consistent with the object and purpose of the Act. Its application cannot be restricted to a specific mould and has to take colour from the particular set of facts and circumstances in which it is sought to be applied. Power to Regulate carries with it full power over the things subject to Regulation and in the absence of restrictive words, the power must be regulated as plenary over the entire subject. It implies power to rule and involves adoption of a rule or a principle to be followed as well as making of a rule with respect to the subject to be regulated. It is a term of broad import having broad meaning and comprehensive its scope and thus, cannot be given any rigid and inflexible meaning. In U.P. Power Corporation Ltd. Vs. NTPC Ltd. (2009) 6 SCC 235, the Hon’ble Supreme Court has pointed out :-

“There cannot be any doubt whatsoever that the word “Regulation” in some quarters is considered to be an unruly horse.”

58. Section 86 of the Electricity Act, 2003 reads as under :-

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the *following* functions, namely: -

(a) *determine* the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case maybe, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) *“regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;”*

59. This Section confers power upon the State Electricity Commissions to “regulate” the electricity purchase and procurement undertaken by the distribution licensees for distribution and supply within the State, such regulation covering various aspects including “the price at which electricity shall be procured from the generation companies or the licensees or from other sources”. What the Commission is empowered to regulate in the ‘electricity purchase’ and ‘procurement process’ of a distribution licensee.

The purchase of electricity can be by way of an agreement with regards to the source, quantum and price. However, the procurement process can be either by way of bidding or by negotiations (which may involve an agreement). In this regard, the following observations of the Hon'ble Supreme Court in Tata Power Co. Ltd. Vs. Reliance Energy Ltd. (supra) are apposite :-

"108. A generating company, if the liberalisation and privatisation policy is to be given effect to, must be held to be free to enter into an agreement and in particular long- term agreement with the distribution agency; terms and conditions of such an agreement, however, are not unregulated. Such an agreement is subject to grant of approval by the Commission. The Commission has a duty to check if the allocation of power is reasonable. If the terms and conditions relating to quantity, price, mode of supply, the need of the distributing agency vis-à-vis the consumer, keeping in view its long-term need are not found to be reasonable, approval may not be granted.

109. A generating company has to make a huge investment and assurances given to it that subject to the provisions of the Act it would be free to generate electricity and supply the same to those who intend to enter into an agreement with it. Only in terms of the said statutory policy, it makes huge investment. If all its activities are subject to regulatory regime, it may not be interested in making investment. The business in regard to allocation of electricity at the hands of the generating company was the subject-matter of the licensing regime. While interpreting the statute it must be borne in mind that such a mechanism should not come back.

110. That, however, would not mean that the generating company is absolutely free from all regulations. Such regulations are permissible under the 2003 Act; one of them being fair dealing with the distributor. Thus, other types of regulations

should not be brought in which were not contemplated under the statutory scheme. If it is exercising its dominant position, Section 60 would come into play. It is only in a situation where a generator may abuse or misuse its position the Commission would be entitled to issue a direction. The regulatory regime of the Commission, thus, can be enforced against a generating company if the condition precedent therefor becomes applicable.”

60. Section 86(1)(b), thus, empowers the State Commission to oversee the purchase and procurement of power by the distribution licensees. In other words, the State Commission is entrusted with the power to regulate the prices of sale and purchase of electricity between the generating companies and distribution licensees through agreements known as Power Purchase Agreements (PPAs) in order to ensure that such sale and purchase of electricity is not against the interest of the consumers. The Commission is vested with the jurisdiction to determine tariff at which a distribution licensee should procure/purchase electricity, which it exercises either by determining tariff under Section 62 of the Act or by adopting tariff discovered through a competitive bidding process under Section 63 or by issuing generic tariff orders.

61. Hence, determination of tariff is one of the primary functions of State Electricity Commission. It has been consistently held by the Apex Court that

power of tariff determination/fixation conferred upon the Commission is a statutory one. [see Gujarat Urja Vikas Nigam Ltd. Vs. Tarini Infrastructure Ltd. & Ors. (2016) 8 SCC 743]. Section 61 specifies the principles upon which tariff is to be determined by the Commission. Generation, Transmission, Distribution and supply of electricity is required to be conducted as commercial principles – while consumer interest is to be safeguarded, recovery of cost of electricity in a reasonable manner is also to be ensured.

Interpretation of Section 86(1)(f)

62. Clause (f) of sub-Section (1) of Section 86 of the Electricity Act, 2003 empowers the Commission to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration. The word “Dispute” used in this clause may touch upon all or any of the aspects of generation, transmissions and distribution of electricity envisaged under the Electricity Act. Even though, the clause specifies that the disputes to be brought before the Commission for adjudication should be between a licensee and a generating company yet there may be situations where the disputes would touch upon and involve the rights and

obligations of a person or entity other than a licensee and a generating company. There may also be the situations or circumstances of a case which would necessitate issuing any orders/directions against the State Govts. Or instrumentalities of the State Governments.

63. Further, it needs to note that while determining tariff under Section 86(1)(a) of the Act, the State Commission is required to be guided by the factors and parameters enshrined in Section 61 of the Act. One of those factors, on the basis of which tariff is to be determined by the Commission, is safeguarding of consumer's interest. Sub-clause (b) of Section 61 enjoins upon the Commission to safeguard the interest of the consumers while at the same time, allowing recovery of cost of electricity by the generators in a reasonable manner. Therefore, once the Commission finds that any act of State Government or instrumentality of a State Government related to tariff determination is against the interest of the consumers, the Commission would not be powerless to issue directions/orders to safeguard the interest of the consumers and those directions/orders would be binding upon the Government as well as instrumentalities of the Government. On this aspect, we find it profitable to refer to the following observations of full

bench of this Tribunal in SIL Limited vs. PSERC and others, 2007 Aptel 931

decided on 26th May, 2006 :-

“52. An apprehension was expressed by the counsel for the respondents that even if the Commission determines the legitimate cost of the RSD project which can be allocated to the Board, it will not be binding on the State as no direction can be given to it by the Commission under the Act of 2003. It was submitted that the Board, a statutory authority constituted under the Act of 1948, and the State are two different entities and a direction by the Commission to the Board cannot be treated as a direction to the State. Consequently, it was argued that the State may be ignore the direction and render the same as otiose.

53. The Punjab State Electricity Board undoubtedly is a statutory body but at the same time it is the hand and the voice of the State Government. It is the State Government which has the say in the constitution and the functioning of the Board. In this context, it will be useful to refer to some of the provisions of the Electricity (Supply) Act, 1948, whereunder the Board was constituted and is still operating, as conceded by the learned counsel for the PSEB.

55. These provisions show the pervasive control of the State over the Board. Thus, it is clear that it is the State Government, which is behind the façade of the statutory body. Since almost entire population

of the State of Punjab, as consumers, is being affected by the allocation of capital cost of RSD project, public interest demands, lifting of the veil of the Board to see the real face behind it. Once that is done, the State is seen behind its outward appearance in the shape of the Board.

58. Having held so, we would examine the question whether the State Government independently, directly and by itself, without being reached through the Board, will be bound by the directions of the Commission. The answer lies in Section 61 of the Act of 2003 and Section 28 of the Act of 1998 and other allied provisions. The Appropriate Commission while determining tariff under Section 61 of the Act is required to be guided by the factors and parameters enshrined therein. One of the factors on the basis of which tariff is to be determined is the consumer interest. Sub-clause (d) of Section 61 requires the Commission to safeguard the interest of the consumers and ensure that the recovery of the cost of electricity is effected in a reasonable manner. This was also one of the requirements under Section 28(2)(e) of the Act of 1998. The Commission, therefore, is/was bound to determine fair, prudent and reasonable cost of the RSD project which is to be allocated to the Board, in consonance with the interest of the consumers. At the same time recovery of the cost of electricity is/was to be made in a reasonable manner. The aforesaid provisions of the Act of 2003 and the Act of 1998 are not hedged in with the limitation that in case the State Government or any other

authority has allocated an unwarranted cost to the generator or a licensee, it can not be interfered with, even when such a cost may be imprudent and unjust and not in the interest of the consumers. Otherwise the cost loaded by the State Government on the Board will have to be allowed by the Commission for the purposes of tariff and the ARR of the Board. In case such a limitation is read, into the aforesaid provisions, the purpose of the Act including Section 61 will be frustrated. Since the Commission has the power to determine the tariff and the ARR of a utility, it has all the incidental and ancillary powers to effectuate the purpose for which power is vested in it. Consequently, directions or orders of the Regulatory Commission made for the purpose of determination of tariff and ARR in consonance with the provisions of the Act are binding on all the concerned parties including the State and the Board.

59. Though the Commission was of the confirmed opinion that the State had wrongly allocated 71% cost of the RSD project to the account of the Board, it still felt that it cannot undo the wrong, even when the State of Punjab at one point of time had accepted the position that the allocation of cost of the RSD project does not benefit the consumers and ought not be passed on to them. When the State Government even after realizing the height of injustice meted out to the consumers, did not do what it should have done, the Commission should have

determined the prudent cost of the RSD project which could be fairly allocated to the Board. In such circumstances, the Commission ought to have stepped in and activated itself, as it was not powerless to safeguard the interests of the consumers in a matter which in essence is a tariff issue and falls within its jurisdiction. But it appears that the Commission was labouring under an erroneous belief that it had no jurisdiction to interfere with the allocation of the cost of the RSD project, imposed by the Government on the Board.

63. We are unable to appreciate the stand of the state government. We are anguished to note that the PSERC felt helpless after this reply and was of the view that it was not appropriate for the Commission to say anything more on the subject except to express the hope that the issue will be resolved at an early date, finally and to the satisfaction of all concerned. As already pointed out, the question of subsidy for the year 2002-03 has been raised at this stage only to illustrate that the State Government and the PSERC are under misapprehension that the PSERC is powerless to decide such matters. It appears that the Commission felt that it cannot issue any directions to the Government. One baneful manifestation of this view is that in case it is accepted that the Commission cannot determine the capital cost chargeable to the power component of the RSD project or it cannot deal with the matter relating to RE subsidies of the earlier years, when the Commission had not been constituted, in that event

balance sheet figures of the Board imposed by the State with regard to RSD cost, exorbitant interest levied on Government loans etc. will have to be accepted painfully by the Commission year after year even at the cost of denying fair tariff fixation to consumers. On the same reasoning it may be argued that since no directions can be given to the State Government by the Commission, the question whether or not payments on account of subsidies are outstanding from the Government to the Board, cannot be gone into by the Commission. Consequently, in case the Government claims that the entire amount of subsidy has been paid to the Board, it will have to be taken as the gospel truth and the Commission will be reduced to the status of a mere rubber stamp of the State Government and in that event the entire exercise for formulation of tariff will be rendered farcical. This position is inconsistent with Section 61(d) of the Act of 2003, whereunder the interest of the consumers have to be safeguarded and recovery of cost of electricity is to be effected only in a reasonable manner. This position is also contrary to Section 62 of the Act of 2003, according to which the Appropriate Commission is required to determine the tariff in accordance with the provisions of the Act.

65. In a nutshell, the Commission is empowered to issue orders or directions to the State Government in regard to the matters having a bearing on and nexus with tariff determination. The directions of the

Commission are binding on it not only because it is the owner of the PSEB de jure and de facto but even otherwise as well. Section 146 of the Act of 2003 provides that whoever, fails to comply with any order or direction given under the Act, within such time as may be specified or contravenes or attempts or abets the contravention of any of the provisions of the Act or any rules or Regulations made thereunder, is liable for punishment with rigorous imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees or both. The word 'whoever' is of a very wide connotation. It covers all persons and authorities. Under Section 94 the Appropriate Commission is empowered to summon and enforce the attendance of any person and requisition public record. Therefore, it can summon and enforce the attendance of even the officers of the Government. It can require the production of any document including any public record from the State. Under sub-section (2) of Section 94, it has power to pass interim orders in any proceedings. Power to pass interim orders is not restricted in as much as there is no embargo in passing orders against Government or its functionaries. Therefore, interim orders can even be passed against the Government or its officials. Section 95 provides that all proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the

purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

76. In view of the aforesaid analysis, we hold and direct that:-

(i) Commission is not powerless to issue orders and directions relating to matters having a bearing on and nexus with the determination and fixation of tariff and its directions shall be binding on all persons and authorities including the State Government in this case.

(ii) The accounts of the Board which reflect the cost of the RSD project allocated to the Board are not binding on the Commission even though the allocation may have been done by the State of Punjab as the allocation is a tariff issue.”

64. The regulatory commission, while deciding a dispute under Section 86(1)(f), though discharges its adjudicatory function yet can not be strictly equated to “court” deciding a dispute by adversarial process. The Commission has to keep in mind that interest of the consumers is paramount and needs to be protected even though consumer may not be party to the dispute before it. Thus, it won’t be incongruous to say that while adjudicating a dispute under Section 86(1)(f) the jurisdiction of the commission gets extended to every “activity” which has the potential of affecting the end consumers’ interest.

65. The expression used in Section 86(1)(f) is “disputes between licensees and of generating companies”, which prima facie indicates that the Electricity Commission is empowered to resolve the disputes between these two entities only, as is argued on behalf of PEDDA and PSPCL even though the word ‘only’ is not found either prior to the said expression or after it. Therefore, we are concerned with the exact ambit of “dispute” upon which the Commission has power and jurisdiction to adjudicate.

66. The disputes which can be and are usually brought before the Electricity Commission for adjudication can be broadly classified as :-

- (a) Disputes related to tariff determination/fixation and payment;
- (b) Disputes arising out of non-payment or delayed payment of dues;
- (c) Disputes related to the interpretation of contractual obligations under PPAs; and
- (d) Disputes related to extension of time for completion of a power project due to force majeure conditions or any other reason.

67. As we see, the disputes falling in category (a) are directly related to tariff whereas the disputes falling in category ‘d’ are indirectly related to Tariff to be determined for the generating station and payable by the distribution licensee with whom it has executed a PPA. Generally, the cases

where PPA contains a stipulation that the power project shall be completed and commissioned by a specified date failing which lower tariff shall be applicable, would fall in the later category. In such cases, the Power Generating Company often approaches the Commission for extension of time for completion/commissioning of the project so as to be entitled to higher tariff as fixed in the PPA.

68. There would be no difficulty where the transactions are directly between the generating company and the distribution licensee. Difficulty would arise when the power procurement process is initiated on behalf of the State Govt. or the distribution licensee owned by the State Govt. by a nodal agency (like PEDDA in these appeals) which invites bids, allots the power project on scrutiny of the bids by issuing Letters of Intent (LOI) and obtains bank guarantees from the generating companies for proper implementation of the power projects as per the terms of the implementation agreements executed between them. In such cases, the disputes becomes tripartite involving, apart from the generating company and the distribution licensee, the nodal agency also whose rights and liabilities under the implementation agreement are also involved in the dispute. In cases of such nature, the rights and obligations of the parties

are governed by the two agreements – implementation agreement executed initially between the nodal agency and the power generator and the PPA executed subsequently between the power generator and the distribution licensee. Delay caused by the generating company in implementing/commissioning the power project would constitute breach of terms of implementation agreement making the nodal agency entitled to invocation of the performance bank guarantee submitted by it as well as breach of the terms of PPA making the generating company liable towards the distribution licensee for liquidated damages, lesser tariff etc. as specified in the PPA.

69. In a scenario like this, would it is possible for the Electricity Commission to adjudicate upon the dispute in the absence of the nodal agency which had initiated the power procurement process and allotted the power project to the successful bidder on the terms and conditions as contained in the implementation agreement? And would it be appropriate in such cases for the Commission to entertain the dispute only with regards to the purported breach of terms of the PPA leaving the dispute related to the breach of terms of the implementation agreement to be decided by a regular civil court?

70. The answer to both the questions, in our opinion, is bold “No” for various reasons.

71. Section 86(1)(f) of the Electricity Act cannot be read in isolation. It has to be read along with Section 86(1)(b), preamble of the Act as well as the Statement of Objects & Reasons accompanying it. It is a fundamental rule of interpretation of statutes that a statute must read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make consistent enactment of the whole statute.

72. The basic principles for construing a statute or a provision of the statute have been succinctly culled out by the Hon’ble Supreme Court in Sultana Begum Vs. Prem Chand Jain (1997) 1 SCC 373 which are quoted herein below :-

“15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

- 1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.*
- 2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.*
- 3) It has to be borne in mind by all the courts all the time that when*

there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.

- 4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.*
- 5) To harmonise is not to destroy any statutory provision or to render it otiose.”*

73. In Jagdish Singh Vs. Lt. Governor (1997) 4 SCC 435, the Apex Court has observed :-

“7. ... It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a “dead letter” is not a harmonious

construction as one part is being destroyed and consequently court should avoid such a construction.”

74. Again in CIT vs. Hindustan Bulk Carriers, the Hon'ble Supreme Court has observed with regards to the construction of the statutes as under:-

“16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [Salm on v. Duncombe, (1886) LR 11 AC 627 (PC) : 55 LJPC 69 : 55 LT 446], AC at. 634, Curtis v. Stovin [Curtis v. S tovin, (1889) LR 22 QBD 513 (CA) : 58 LJQB 174 : 60 LT 772] referred to in S. Teja Singh case [CIT v. S. Teja Singh, AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries Ltd. [Nokes v. Doncaster Amalgamated Collieries Ltd., 1940 AC 1014 : (1940) 3 All ER 549 (HL) : 109 LJKB 865 : 163 LT 343] referred to in Pye v. Minister for Lands for New South Wales [Pye v. Minister for Lands for New South Wales, (1954) 1 WLR 1410 : (1954) 3 All ER 514 (PC)] .) The principles indicated in the said cases

were reiterated by this Court in Mohan Kumar Singhania v. Union of India [Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335 : 1992 SCC (L&S) 286] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

75. Section 86(1)(f) specifically empowers the Electricity Commission to decide the disputes between the generating Companies and the distribution licensees. Some categories of the those disputes, as explained hereinabove, are directly or indirectly related to determination/fixation of tariff for the power to be sold by the generating company and to be procured/purchased by the distribution licensee. Sometimes the distribution licensee procures the power itself whereas sometimes the procurement takes place through a nodal agency appointed by the Govt. for this purpose. At the same time, Section 86(1)(b) of the Act enjoins upon the Commission to regulate not only the purchase of Electricity by a distribution licensee but also the procurement process of power. Procurement process can be either by way of bidding by the distribution licensee itself or through a nodal agency or through negotiations. As we have seen in the foregoing paragraphs, power to 'regulate' conferred upon the Electricity Commission

carries with it full power over the things subject to regulation and in the absence of restrictive words, the power must be regulated as plenary over the entire subject. As held by the Apex Court in Gagan Narang Case (supra), the legislative intent behind Section 86(1)(b) of the Act is to empower the State Commission to regulate all matters regarding the electricity purchase and procurement process.

76. In first brush, there appears to be some inconsistency between Section 86(1)(b) and Section 86(1)(f) of the Electricity Act, 2003. In order to resolve the conflict between the two legal provisions, we feel it appropriate to apply the Mimansa Principles of interpretation which have been explained by the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. vs. S.R. Power Limited 2008 4 SCC 755 as under :-

"In the Mimansa system there are three ways of dealing with conflicts:

(1) Where two texts which are apparently conflicting are capable of being reconciled, then by the principle of harmonious construction (which is called the samanjasya principle in Mimansa) they should be reconciled.

(2) The second situation is a conflict where it is impossible to reconcile the two conflicting texts despite all efforts. In this situation the vikalpa principle applies, which says that whichever law is more in consonance with reason and justice should be preferred. However, conflict should

not be readily assumed and every effort should be made to reconcile conflicting texts. It is only when all efforts of reconciliation fail that the vikalpa principle is to be resorted to.

(3) There is a third situation of a conflict and this is where there are two conflicting irreconcilable texts but one overrides the other because of its greater force. This is called a badha in the Mimansa system (similar to the doctrine of c ultra vires).

One of the Mimansa principles is the gunapradhan axiom. "Guna" means subordinate or accessory, while "pradhan" means principal. The gunapradhan axiom states:

"If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether."

This principle is also expressed by the popular maxim known as matsya nyaya i.e. "the bigger fish cats the smaller fish".

77. When we apply the Gunapradhan axiom to the instant case, Section 86(1)(b) appears to be Pradhan whereas Section 86(1)(f) is the Guna (or subordinate). If Section 86(1)(f) is read in isolation and as per literal rule of interpretation, then the argument that the Commission has the power and jurisdiction to entertain the disputes only between generating companies and distribution licensees appears to be correct and acceptable. However,

as we have already noted hereinabove that Section 86(1)(f) cannot be read in isolation and has to be read along with Section 86(1)(b). Thus, reading the two provisos together would make it limpid that all the disputes relating to procurement process would necessarily fall within the domain of Electricity Commissions, irrespective of the fact as to whether the procurement process is initiated and carried out by the Distribution Licensees itself or through a nodal agency.

78. Even though power generation is not a regulated activity under the Electricity Act, 2003 yet the procurement process and purchase of electricity being regulated activities under Section 86(1)(b), the disputes related thereto would definitely fall within the ambit of powers of the Commission and thus, amenable to its jurisdiction. It hardly matters whether the procurement process is carried out by the distribution licensee itself or through a nodal agency. Clearly, the focus of Section 86(1)(b) is on the regulated activities and not on the entities performing those activities. Therefore, it would not be against spirit of the Electricity Act, the purpose and object of enacting it and its preamble to interpret the jurisdiction of the Electricity Commissions in a manner to include within its ambit the entities actually performing regulated activities rather than limiting it to those entities

alone which were/are expected to perform those activities.

79. In case, we read and interpret Section 86(1)(f) in literal sense and without adding or deleting anything from it, it would lead to absurdity and would run contrary to the object and purpose of enacting the statute i.e. Electricity Act, 2003. However, as observed by the Apex Court in the above noted judgement in case of Gujarat Urja Vikas Nigam Limited, in exceptional cases words may be added to or deleted from a statute where not doing so would deprive certain existing words in a statute of all meaning or some part of statute may become absurd. Following paragraph of the judgement is apposite in this context :-

“Sometimes courts can supply words which have been accidentally omitted. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain 9 existing words in a statute of all meaning, or some part of the statute may become absurd.”

80. On this aspect of interpretation of Statutes, we also find the following observations of Lord Denning in Seaford Court Estates Ltd v Asher [1949] 2 KB 481 very pertinent and are quoted hereinbelow :-

“When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the

intention of the Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the legislature. A judge should ask himself the question how if the makers of the Act had themselves come across this ruck in the texture of it, they would have strengthened it out. He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

81. Having regard to the entire scheme of the Electricity Act, 2003, particularly the entire Section 86 which specifies the functions of State Electricity Commissions, we are of the firm view that words "*and any other agency/entity directly engaged in generation and procurement of power on behalf of Government or the Licensees*" shall have to be added after the expression "disputes between licensee and generating companies" in Section 86(1)(f) of the Act.

82. In holding so, we will be giving force and life to the real intention of the legislature enacting the Electricity Act, 2003 and its Section 86 which specifies the powers of the Commission adding the above stated words to Section 86(1)(f) would not do any violence to overall scheme of the Act and in fact would advance the object and purpose of enacting the same by ironing out the creases without altering its material.

83. Further, we find that since the Implementation agreement and PPA are back to back agreements, they need to be read and interpreted together and not in isolation. We also find co-relation between some of the provisions of the two agreements which can not be read de hors each other. To explain these aspects we need to have a look on the precise role and activities of nodal agency i.e. PEDDA in these appeals and the facts of these appeals before us as well as the terms of the agreements executed between the parties which we now do.

Nature and Activities of PEDDA

84. PEDDA has been appointed by the Punjab State Electricity Regulatory Commission as the State Nodal Agency under Punjab State Electricity Regulatory Commission (Renewable Purchase Application and its Compliance) Regulations, 2022. As per Regulation 5 of these Regulations, the State Agency shall function in accordance with the directions issued by the Commission from time to time. Thus, PEDDA is a nodal agency having been given responsibility to facilitate generation of power by wind/solar/small hydel power generators. It invites bids from the public for installation of power generators at the places chosen by it for which purpose it enters into an agreement known as Implementation Agreement with the

power generators and assisting them in designing and implementing the projects. Being a State Nodal Agency of the Government of Punjab under the Department of New and Renewable Energy, its basic function is to promote and develop new and renewable energy projects and initiate measures for energy conservation. It provides financial and physical assistance to such projects under NRI Policy, 2012 to the Government of India.

85. PEDDA issues a Request for Proposal (RFP) inviting bids from the private developers/companies for setting up of mini hydel power projects as well as solar photovoltaic power projects in the State of Punjab. For the purpose of illustration, we take up the RFP issued by PEDDA in Appeal No. 398 of 2017. In the introduction part itself, it is stated that PEDDA is inviting bids from private developers/companies for setting up solar photovoltaic power projects for sale of power to the State Utility (PSPCL). In clause 1.2, it is stated that PSPCL is to purchase power generated from these solar projects at the tariff arrived after competitive bidding. As per clause 3.8 of the RFP, the final selection of bidders shall be based on the net available tariff after providing discount of generic tariff notified by CERC for solar power projects. Clause 3.10 provides that the PPA shall be executed

between PSPCL and the selected bidders within 30 days from the date of signing of the implementation agreement, which shall be valid for 25 years from the date of commissioning of the complete plant or partial capacity.

86. The Implementation Agreement executed between PEDDA and the power generators also postulate that the generating companies shall enter into a Power Purchase Agreement with the Punjab State Electricity Board and PEDDA shall be duty bound to provide all assistance for signing of PPA with PSVB for sale of power.

87. Thus, PEDDA clearly initiates and is engaged the power procurement process on behalf of the Distribution licensee in the State of Punjab and also assists the generating company and distribution licensee in the execution of the power purchase agreement. Thus in view of these activities, it is amenable to the power and jurisdiction of the Electricity Regulatory Commission.

88. On this aspect, we also find support from recent decision of the Hon'ble Supreme Court dated 2nd January, 2025 in Civil Appeal Nos. 7463-7464 of 2023 – Municipal Corporation of Delhi Vs. Gagan Narang & Ors. In that case, the MCD had issued notice inviting tender and RFP whereby tariff based bids for procurement of power under Waste to Energy project for

solid WTE processing facility with a minimum 28 MW capacity in Narela, Bawana, New Delhi were invited. Waste Energy Research and Technology Council filed a petition before Delhi Electricity Regulatory Commission inter alia challenging the authority of MCD for issuing such tariff based bid and the RFP. At the same time, MCD also filed a petition before the Commission for approval of the bidding process of the project. The Commission, vide order dated 6th March, 2023, dismissed the petition filed by WTERT and vide separate order dated 7th March, 2023 approved the bid tariff of Rs.7.38 per kwh for the project with directions to the Distribution Licensee to negotiate terms of PPA with the MCD. Both the orders were appealed against before this Tribunal. The appeals were disposed off by this Tribunal vide judgement dated 31st August, 2023, thereby setting aside both the orders. This Tribunal held that since the MCD was neither a Distribution Licensee nor a generating company, it has no jurisdiction to file application under Section 63 of the Act for adoption of tariff and accordingly the Delhi Commission lacked jurisdiction to entertain and adjudicate upon the petition filed by MCD. The said judgement of this Tribunal was assailed by MCD before the Hon'ble Supreme Court by way of above noted two appeals which were allowed vide judgement dated 2nd January, 2025 holding that

when the provisions of Section 63 of the Act are read in harmony with provisions of Section 86(1)(b) of the Act, the powers of the State commission cannot be curtailed by interpreting that the same can be invoked only by the Discoms or the generating companies.

89. Similarly, when we read Section 86(1)(f) of the Act in harmony with the provisions of Section 86(1)(b) of the Act, it becomes evident that the powers of the Commission in adjudicating upon the disputes are not limited to the disputes between generating company and licensee only but also to the disputes involving nodal agency like PEDDA which are engaged in activities like power procurement process on behalf of either the Government or the Distribution Licensees.

Disputes involved in the Instant Appeals

90. In the present set of appeals, PEDDA had invited bids in the NRSE Policy for setting up of mini Hydel power projects as well as solar power projects. It had entered into implementation agreement with the successful bidders for implementation of the project. Since the projects are time-bound in nature, PEDDA apart from levying fee/service charge as well as percentage of electricity share from the project developer, also obtains a Bank Guarantee from the proposed your owner to ensure timely

completion/commissioning of the power projects.

91. In Appeal Nos. 286 of 2015 and 328 of 2016, M/s Atlantic Power Private Limited had emerged as successful bidder and was selected for the mini hydel power project in Hoshiyarpur, Punjab. About five months after the completion of the project, dispute had arisen regarding the flow of water from the power project into the Holy Bein which was objected to by the local population. Accordingly a tripartite agreement was entered into between the generator, PSPSCL and PEDDA in terms of which, M/s Atlantic Power Private Limited was to construct an escape channel at its own expenditure for which it was to be compensated from the extra energy to be generated from the power plant. After the construction of the escape channel at a cost of Rs.2.10 crores the Company filed petition before the Commission for seeking re-determination of the tariff for the electricity generated in the power plant, recovery of cost of escape channel and restraint order against the PEDDA as well as PSPCL from recovering energy share from the electricity generated in the project in view of faulty tender conditions. The Commission rejected the prayer for re-determination of tariff but allowed the remaining prayers.

92. Hence, PEDDA having initiated the power procurement process on

behalf of PSPCL by inviting bids at tariff specified in the RFP and in view of the tripartite agreement entered between it, PSPCL and the generator, it was a necessary party to the dispute before the Commission and the Commission would not have been in a position to decide the dispute effectively in the absence of PEDDA. In case it is said that the Commission was not competent to issue any directions to PEDDA, the disputes could not have been resolved at all and would have remained half baked.

93. In Appeal Nos. 280 of 2017, 371 of 2017 and 398 of 2017. The 3rd Respondent – Mihit Solar Power Private Limited was the successful bidder for 50 MW solar power project in the State of Punjab and in terms of the implementation agreement executed by it with PEDDA and the PPA executed by it with PSPCL, the power plant was to be commissioned on or before 31st June, 2016. However, the power projects could not be completed /commissioned by the said stipulated date due to which Performance Bank Guarantees submitted by the generating company were sought to be invoked by PEDDA. Accordingly, the Company had approached the Commission by way of the petitions with the prayer for extension of COD of the power projects and stay of invocation of Performance Bank Guarantee by PSPCL & PEDDA. The Commission has allowed the petitions by

extending the COD of the project in question by 90 days with the direction to PEDDA to release the Performance Bank Guarantees to the Appellant.

94. In this case, it would be not only incongruous but also absurd to say that the Commission had the power and jurisdiction to only extend the COD of the project and had no jurisdiction to issue directions to PEDDA to release the Performance Bank Guarantee to the generating company. Once the Commission, rightly or wrongly, extended the COD of the project, its natural consequences would be that PEDDA could not retain the amount of the Bank Guarantee and the same ought to be returned to the generating company. Further, since the power procurement process was initiated by PEDDA and it was supervising the implementation of the power project, it was a necessary party in the dispute before the Commission which could not have been effectively resolved without hearing PEDDA. Therefore, power to issue directions to PEDDA was inherent in the power of the Commission to adjudicate upon the dispute under Section 86(1)(f).

95. In Appeal No. 329 of 2017, the Appellant's bid was accepted and was allotted 3 MW solar power projects as per the implementation agreement executed by the Appellant with PEDDA and PPA executed by it with PSPCL, the power supply was to commence within 10 months from the day to day.

However, since the PPA was approved by the Commission belatedly on 1st May, 2015, the Appellant was unable to commission the power plant by the stipulated date. On account of delay in commissioning the power plant, PEDDA sought encashment of Bank Guarantee submitted by the Appellant and accordingly the Appellant had filed petition before the Commission which has been rejected by the Commission thereby tariff reducing the tariff for the power plant from Rs.7.58 per kwh to Rs. 5.09 per kwh and holding the Appellant liable to pay liquidated damages to PSPCL as well as for forfeiture of Bank Guarantee submitted to PEDDA.

96. In this case also, if the Commission had come to the conclusion that the Appellant is entitled to extension of time for commissioning of the power plant as prayed by it, not only would have the tariff been fixed at higher rate of Rs.7.58 per kwh but also the Appellant would have been held not liable to pay liquidated damages to PSPCL and for forfeiture of its Bank Guarantee by PEDDA. Therefore, in view of the reasons already noted hereinabove, PEDDA was a necessary party to the dispute before the Commission and the Commission was competent to issue directions to it.

97. In Appeal No. 214 of 2020, the Implementation Agreement entered into between the Appellant, PEDDA and Generating Company M/s. Magnet

Buildtech Private Limited stipulated that the power plant were to be commissioned within 12 months from the date for signing of the PPA and provided for an extension of 90 days subject to the implementation of certain conditions. PPA was executed on 12th January, 2016 between the generating company and PSPCL and accordingly power plants were to be commissioned by 11th January, 2017. The power plants were actually commissioned on 6th February, 2017 and 14th February, 2017 and on account of said delay, PEDA invoked the Bank Guarantees. Accordingly, the generator approached the Commission seeking extension of the SCOD of the power projects till 14th February, 2017 on account of Force Majeure events and direction to PEDA to refund the sum of Rs.3.05 crores got it by encashing the Performance Bank Guarantees. The Commission has granted only partial extension of delay in commissioning of the power plant and directed release to the amount of Performance Bank Guarantees to the extent of such extension of the SCOD of the power plants.

98. In this case, also in view of the above discussion, since the Commission had come to the conclusion that the Appellant is entitled to partial extension of delay in commissioning of the power plant, it was competent to issue directions to PEDA for release of Performance Bank

Guarantee to the power generator to the extent of such extension of the SCOD of the power plants.

Co-relation between the Implementation Agreements and the Power Purchase Agreements.

99. To understand the interplay between the Implementation Agreement executed between the PEDDA & generating stations and the Power Purchase Agreements executed between the generating stations & PSPCL, we would refer to the agreements executed between the parties in Appeal No. 398 of 2017.

100. The Implementation agreement states that it is being executed between PEDDA under the department of non-conventional energy sources, Government of Punjab and M/s Mihit Solar Power Limited. Article 4.1(i) provides that the PEDDA grants permission to the company to establish, operate and maintain the solar PV power project on Build, Owned and Operate (BOO) basis and to sell the power from the project to PSPCL as per tariff arrived after competitive bidding process under grid connected solar photovoltaic power project of Phase-II. Article 4.4 provides that company shall enter into a Power Purchase Agreement with PSPCL which shall remain in force for a period of 25 years from the date of commissioning

of the project and the PSPCL shall purchase the power generated from the project as per the terms and conditions of the PPA to be signed by it with the Company. Article 7.0 of the Implementation Agreement is with regards to the consequences of delay in commissioning of the power project by the generating company and is extracted hereinbelow:-

“Article 7.0 : CONSEQUENCES OF DELAY IN COMMISSIONING BY THE COMPANY

A. Encashment of Performance Security:

The Solar PV Project shall be commissioned within 10 (Ten) months from the date of signing of PPA. In case of failure to achieve this time limit, PEDDA shall encash the Performance Guarantee in the following manner.

i) Delay upto one month: PEDDA will encash 30% of the total Performance Bank Guarantee proportionate to the Capacity not commissioned.

ii) Delay of more than one month and upto two months: PEDDA will encash remaining 70% of the total Performance Bank Guarantee proportionate to the Capacity not commissioned.

B. Liquidated Damages:

In case the commissioning of project is delayed beyond 12 months from the date of signing of PPA, the Project Developer shall pay to PSPCL the Liquidated Damages @ Rs. 20,000/- (Rupees Twenty Thousand only) per MW per day for delay in such remaining Capacity which is not commissioned. The maximum time period allowed for commissioning of the full Project Capacity with encashment of

Performance Bank Guarantees and payment of Liquidated Damages shall be limited to 15 months from the date of signing of PPA. The amount of liquidated damages worked out as above shall be recovered by PSPCL from the payments due to the Project Developer on account of sale of solar power to PSPCL.

C. Termination of IA and Revocation of LoA:

In case, the Commissioning of the Project is delayed beyond 15 months from the date of signing of PPA, the PPA capacity shall stand reduced/ amended to the Project Capacity commissioned and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity. The LoA & IA shall also stand terminated for the balance un-commissioned capacity. PEDAGOP shall not be responsible for loss of any kind to the Company due to such revocation/termination of LoA, IA.

In the event of revocation of LoA and Cancellation of IA and / or PPA, the project developer shall not be entitled to avail the fiscal benefits / exemptions granted to it such as, including but not limited, to stamp duty / registration fee for purchase / acquiring leasehold rights of project land, exemption of CLU, EDC charges etc. The project developer shall be liable to return all the benefits to the Government.

D. Part Commissioning:

In the event of delay in successful commissioning of part of the project, the commissioning of remaining Part of the Project with delay shall be accepted by PEDAGOP subject to other terms of RfP and subject to the condition that the minimum capacity for acceptance of part

commissioning shall be 1 MW for Category - I projects, 5 MW for Category - II and 25MW (Part-I) category-III projects.

The PPA will remain in force for a period of 25 years from the date of part commissioning of the Project.

101. Perusal of the above noted Article 7 of the Implementation Agreement reveals that in case of delay in commissioning of the power project, the project developer would be exposed to double jeopardy. He would be liable to forfeiture of Performance Bank Guarantee by PEDDA as well as for liquidated damages towards PSPCL. To say that the Electricity Regulatory Commission would have jurisdiction to decide the issue of delay in commissioning of the project only with regards to the aspect of liquidated damages payable by the project developer to PSPCL and not with regards to the entitlement of PEDDA for encashment of Performance Bank Guarantee, would tantamount to conferring jurisdiction to different forums/courts to resolve the disputes emanating from some set of facts, which ought to be avoided. The Electricity Commission having been set up under the special statute i.e. Electricity Act, 2003 with one of the functions to resolve the disputes, alone ought to be held to have jurisdiction to adjudicate upon such a dispute and to rule upon the entitlement of PSPCL

for liquidated damages along with the entitlement of PEDDA for encashment of the Performance Bank Guarantee of the project developer. The decision of the Commission in condoning or not condoning the delay in the commissioning of the power project shall hold good for both PSPCL as well as PEDDA for the reason that the Commission being a technical body, it alone can effectively adjudicate upon issues related to the development as well as commissioning of the power projects as also the procurement process of the Distribution Licensees. Holding otherwise would be doing violence to the very purpose and object of the Electricity Act, 2003 and would create inroads for the regular civil courts into the disputes arising out of the activities of generation of electricity and its procurement process by the Distribution Licensees, which was not the intention of the Legislature while enacting the Act.

102. Power Purchase Agreement executed between the PSPCL and the generating company M/s. Mihit Solar Power Private Limited specifically mentions in the recitals that the implementation agreement signed by the generating company with PEDDA shall be treated as an integral part of the Power Purchase Agreement and clauses as well as regulatory norms applicable to the Implementation Agreement shall be equivocally applicable

to the Power Purchase Agreement in letter and spirit. Therefore, it is amply evident that the Power Purchase Agreement cannot be read in isolation but has to be read together with terms and conditions contained in the Implementation Agreement. The two agreements are patently inter-connected and have to be construed as essential parts of each other.

103. Article 14.3(v) states that the Power Purchase Agreement shall also stand terminated if the Implementation Agreement signed with PEDDA is terminated by PEDDA.

104. Having regard to such co-relation between the two agreements and their inter-dependence, it would be highly specious to say that PEDDA, which is a signatory to the Implementation Agreement is not a necessary party to the dispute with regards to the terms of PPA before the Commission and that the Commission is not competent to scrutinize the terms of Implementation Agreement and to issue directions to PEDDA in event of any breach of any of those terms.

Arbitration Clause in the Implementation Agreement :-

105. It was argued that in view of the existence of Arbitration Clause in the Implementation Agreement requiring referral of the disputes with regards to the terms of those agreements to arbitrator for adjudication, Electricity

Regulatory Commissions cannot exercise its jurisdiction over such disputes. We do not find such arguments acceptable. This Tribunal had held in judgement dated 28th August, 2024 in Appeal No. 309 of 2019 M.P. Power Management Company Ltd. Vs. Damodar Valley Corporation and Anr. that only non-tariff disputes involving a generating company or Distribution Licensee do not fall within the ambit of the jurisdiction of Electricity Regulatory Commissions and are thus, arbitrable. It is for the reason that the Electricity Regulatory Commissions were set up under the Electricity Act, 2003 specifically to oversee the activities of power sector determine tariffs and to resolve disputes. Therefore, any dispute which relates to the tariff determination or the power procurement process of the Distribution Licensees cannot be referred to arbitration even though their exists an arbitration clause in the agreement.

Conclusion :-

106. In the light of the above discussion, we hold that the words “*and any other agency/entity directly engaged in generation and procurement of power on behalf of Government or the Licensees*” shall be read after the expression “*Disputes between Licensee and Generating Companies*” in Section 86(1)(f) of the Electricity Act, 2003. As a consequence we further

hold that PEDDA can be impleaded as a party to disputes under Section 86(1)(f) of the Electricity Act, 2003 with regards to its activities which are directly related to generation and procurement process of power either for the Government or for the Distribution Licensees. As a sequitur, we further hold that while adjudicating disputes under Section 86(1)(f) of the Electricity Act, 2003, the Electricity Regulatory Commissions are competent to issue directions to PEDDA and in case PEDDA feels aggrieved by any such direction of the Commission, it would be competent to maintain an appeal before this Tribunal under Section 111(1) of the Electricity Act.

107. The issues formulated in paragraph No. 1 of the judgement are answered accordingly.

108. Before parting with, we find it our duty to put on record our gratitude to the Learned amici curiae Mr. M.G. Ramachandran, Mr. Sajan Poovayya and Mr. Buddy Ranganadhan, Learned Senior Counsels for their valuable assistance which has helped us to deal with the issues under consideration properly and effectively.

109. All these appeals would now be heard and decided on their own merits in the light of this judgement.

110. List the Appeal Nos. 280 of 2017, 371 of 2017 and 398 of 2017 on

08.09.2025 for hearing.

111. List the Appeal Nos. 286 of 2015, 328 of 2016 on **09.09.2025** for hearing.

112. List the Appeal Nos. 329 of 2017 and 214 of 2020 for hearing on **10.09.2025**.

Pronounced in the open court on this the 10th day of July, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

✓

REPORTABLE / NON-REPORTABLE

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