

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.107 OF 2020

Dated: 28.07.2025

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

In the matter of:

M/s Rosa Power Supply Co. Ltd.

South Block, Third Floor, Reliance Centre,
Santacruz, Near Prabhat Colony,
Off. Western Express Highway
Santa Cruz (East)
Mumbai – 400 055

... Appellant

Versus

1. Uttar Pradesh Power Corporation Limited (UPPCL)

Through its Chief Engineer (PPA).
Shakti Bhawan, 14, Ashok Marg
Lucknow – 226 001.

2. Uttar Pradesh Electricity Regulatory Commission (UPERC)

Through its Secretary
Vidyut Niyamak Bhawan,
Vibhuti Khand, Gomti Nagar,
Lucknow – 226010.

... Respondent (s)

Counsel for the Appellant(s)

: Sajan Poovayya, Sr. Adv.
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Shankh Sengupta
Abhishek Kumar
Nived Veerapaneni
Karan Arora
Shubham Mudgil
Kartikeya Yadav
Sujoy Sur
Vedant Kumar for Res. 1

C.K. Rai
Sumit Panwar for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant M/s Rosa Power Supply Co. Ltd. is aggrieved by the order dated 04.05.2020 passed by 2nd respondent Uttar Pradesh Electricity Regulatory Commission (hereinafter referred to as the Commission) in petition no.1437/2019 filed by 1st respondent Uttar Pradesh Power Corporation Limited (in short UPPCL) seeking setting aside of invoice dated 04.01.2019 raised by appellant in respect of Late Payment Surcharge (LPSC) for the period April, 2015 to January, 2018.

2. Vide the said invoice dated 04.01.2019 the appellant had sought to levy LPSC from the 1st respondent for non-payment of electricity dues within the period of 30 days from the date of bills / invoices raised by the appellant,

as provided in the Power Purchase Agreement dated 12.11.2006 executed between it and UPPCL and under UPERC (Terms and Conditions of Generation Tariff) Regulations, 2004. However, the Commission has opined that the invoice has been raised by the appellant in contravention of UPERC Generation Tariff Regulations, 2014 which prescribes 60-day trigger period for levy of LPSC and while observing that the 2014 Regulations override pre-existing contractual relationship also between the parties, it has set aside the said invoice.

3. A brief conspectus of the facts of the case giving rise to the instant appeal is as under.

4. The appellant owns and operates a 1200MW coal based thermal power plant at Rosa in the State of Uttar Pradesh which comprises of two stages of 2x300MW each. The appellant has executed a Power Purchase Agreement (PPA) dated 12.11.2006 with the 1st respondent for supply of 100% power generated by the said power project. This Power Purchase Agreement was with regards to Stage-1 (2x300MW) of the power project which had achieved commercial operation on 30.06.2010. The Power Purchase Agreement was duly approved by the Commission vide order dated 08.11.2006 in petition no.306/2006.

5. With regards to the Stage-2 (2x300MW) of the power project, which achieved commercial operation on 01.04.2012, Supplementary PPA dated 11.09.2009 had been executed between the parties. It was later on amended on 19.11.2011. The PPA was duly approved by the Commission vide order dated 10.06.2009 in petition no.610/2009.

6. The Power Purchase Agreement dated 12.11.2006 was executed during the period when UPERC Tariff Regulations, 2004 were in force. Regulation 26 of these regulations is with regards to the LPSC and provided as under: -

*“26. **Late Payment Surcharge**: In case the payment of bills of capacity charges and energy charges by the beneficiary (ies) is delayed beyond a period of 1 month from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company.”*

7. As per Article 1 of the PPA, due date shall mean the 30th day after the receipt of invoice in relation to any amount payable by UPPCL. Section 12.17 under Article 12 of the PPA is in respect of the rebates and late payment charges. The same is extracted hereinbelow: -

“Section 12.17 Rebates, Late Charges

(a) For payment of bills of Fixed Charges and Variable Charges through a Letter of Credit on presentation, a rebate of 2% shall be allowed. If the payments are made by a mode other than through the Letter of Credit, but within a period of one month of presentation of bills by ROSA, the rebate of 1% shall be allowed.

(b) In case the payment of bills of Fixed Charges and Variable Charges by UPPCL is delayed beyond a period of 1 month from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by ROSA on the outstanding amount of the bills and payable by UPPCL.”

8. Thus, in terms of Section 12.17 of the PPA, which is in tune with Regulation 26 of UPERC Tariff Regulations, 2004, period of one month was available to UPPCL for making payment of bills to the appellant and in case of failure to do so, LPSC was leviable by the appellant @ 1.25% per month on the outstanding amount of the bills.

9. The Supplementary PPA dated 11.09.2009 as well as amended Supplementary PPA dated 19.11.2011 were executed between the parties during the period of applicability of UPERC Tariff Regulations, 2009. Article 9.1 of the Supplementary PPA dated 11.09.2009 provides that the terms and conditions of tariff approved by the Commission for Stage-1 shall also apply to Stage-2. Similarly, the amended Supplementary PPA dated 19.11.2011 mentioned that all the terms and conditions of Supplementary PPA dated 11.09.2009 shall remain unaltered.

10. We may note that the UPERC Tariff Regulations, 2009 came into force on 01.04.2009 and remained in force for five years i.e. up to 31.03.2014. Thereafter, fresh tariff regulations were issued in the year 2014 which came into force with effect from 01.04.2014 and remained in force for five years i.e. till 31.03.2019.

11. Invoice dated 04.01.2019 was raised by appellant in the name of 1st respondent UPPCL for an amount of Rs.129,77,97,102/-(Rupees one hundred and twenty-nine crores seventy-seven lakhs ninety-seven thousand one hundred and two only) claiming Late Payment Surcharge for the period between April, 2015 and December, 2018 in respect of the bills which had not been paid by the 1st respondent within a period of 30 days of the date of the bills. This invoice was assailed by the 1st respondent UPPCL before the

Commission by way of petition no.1437/2019 claiming it to be in contravention of Regulation 30 of UPERC Tariff Regulations, 2014 which provide a trigger period of 60 days after which LPSC was leviable.

12. The said petition has been disposed off by the Commission vide the impugned order dated 04.05.2020 thereby setting aside the said invoice.

13. Accordingly, the appellant has approached this Tribunal by way of the instant appeal.

14. Following grounds have been agitated by the appellant in assailing the said order of the Commission: -

(a) The petition had been filed by the 1st respondent without following the dispute resolution mechanism provided in the PPA and therefore ought not to have been entertained.

(b) The petition filed by 1st respondent before the Commission was barred by the limitation.

(c) The petition filed by 1st respondent was also hit by the doctrine of acquiescence.

(d) The Commission has erred in holding that the tariff regulations override the terms of PPA and in setting aside the LPSC invoice dated

04.01.2019 as being in contravention to UPERC Tariff Regulations, 2014.

15. We have heard learned counsel for the appellant as well as learned counsels for the respondents. We have also perused the written submissions filed by the learned counsels.

Our Analysis: -

(a)The petition had been filed by the 1st respondent without following the dispute resolution mechanism provided in the PPA and therefore ought not to have been entertained.

16. It is argued on behalf of the appellant that the 1st respondent UPPCL was required to follow the dispute resolution process contained in the PPA before approaching the Commission by way of the instant petition for adjudication of the disputes with regards to payment of LPSC. In this regard, we may refer to Section 12.14 of the PPA dated 12.11.2006 and the same is extracted hereinbelow: -

“Section 12.14 Billing Disputes

- (a) *If either party disputes the accuracy of a bill for any amount specified in this Article 12, the parties shall use their best efforts to resolve the dispute in accordance with Article 17.*
- (b) *In case of any dispute in the bill amount the undisputed amount will be paid by UPPCL as per the agreed payment schedule. If the dispute is not resolved within five (5) working days of the receipt of the monthly bill, then the disputed amount shall be deposited in an Escrow Account. The dispute will be resolved by a Committee comprising the Chairman, UPPCL, the designated Director, ROSA and the Chairman UPERC (in the chair) within 25 days. The disputed amount shall be paid to ROSA on the 30th day irrespective of the decision and subsequently shall be adjusted in accordance with the decision of the committee.*
- (c) *Upon the resolution of the disputed amount in favour of UPPCL, such shall be due and payable to UPPCL with interest thereon, calculated at Default Rate, from the*

date on which such amount was paid by UPPCL to ROSA till the date of payment of amount due to UPPCL.

(d) The existence of the dispute as to any bill shall not relieve either Party from compliance with other provisions of this Agreement.”

17. This provision of the PPA enjoins upon UPPCL to pay the undisputed amount in the bill to the appellant as per the agreed payment schedule and provides a window of five working days for resolution of the dispute. It further specifies that in case the dispute is not resolved, disputed amount shall be deposited by the UPPCL in an Escrow account and the dispute shall be referred to a committee comprising of the Chairman UPPCL, the designated Director of Rosa and the Chairman UPERC for resolution within 25 days.

18. It is submitted on behalf of the 1st respondent UPPCL that attempts were made by it for amicable resolution of the dispute by way of letters dated 28.03.2018, 07.06.2018 and 02.02.2019 addressed by it to the appellant and since the appellant did not come forward for amicable resolution of the dispute, it had no option but to file the petition before the Commission.

19. We are unable to accept the submissions of the 1st respondent UPPCL. Perusal of these three letters, which it has addressed to the appellant, would show that in none of these letters had UPPCL expressed its willingness for amicable resolution of the dispute as provided under Section 12.14 of the PPA. Vide these letters, the UPPCL has returned the late payment surcharge bills of the appellant with the observation that these are not as per UPERC Regulations, 2014. Concededly, the 1st respondent UPPCL has neither approached the appellant nor the Commission for constitution of committee as per Section 12.14 of the PPA for resolution of the disputes with regards to levy of LPSC.

20. Therefore, the Commission has manifestly erred in holding that the UPPCL had attempted to resolve the dispute by following procedure laid down under the PPA. The Commission ought not to have entertained the petition at all and ought to have directed the parties to adhere to the dispute resolution process envisaged under the PPA before approaching it for adjudication of the dispute. The impugned order of the Commission is liable to be set aside on this score alone.

(b)The petition filed by 1st respondent before the Commission was barred by the limitation.

21. It is argued on behalf of the appellant that Tariff Regulations, 2009 as well as Tariff Regulations, 2014 which extended the trigger period for levy of LPSC from 30 days to 60 days, came into effect on 01.04.2009 and 01.04.2014 respectively but UPPCL continued to honor the LPSC invoices of the appellant without any demur till the month of March, 2015. It is argued that the UPPCL should have approached the Commission with its grievance immediately upon notification of 2009 Tariff Regulations as well as 2014 Tariff Regulations and since it did not do so, the instant petition having been filed in the year 2019 is patently barred by the limitation. It is submitted that the petition is also vitiated by the inordinate delay and laches. Reliance is placed upon the judgment of Hon'ble Supreme Court in Andhra Pradesh Power Coordination Committee and Ors. v. Lanco Kondapalli Power Limited and Ors. (2016) 3 SCC 468 to assert that the provisions of the Limitation Act, 1963, apply to disputes before the electricity regulatory commissions also.

22. On behalf of UPPCL, it is argued that cause of action arose in its favor upon receipt of the LPSC invoice dated 04.01.2019 from the appellant and mere notification of the tariff regulations in the year 2009 and 2014 did not give rise to any dispute between the parties. It is argued that petition of UPPCL before the Commission was related to the rectification of an ongoing illegality, and therefore, was not barred by limitation.

23. On this aspect, we feel in agreement with the arguments advanced on behalf of UPPCL. Mere notification of fresh tariff regulations by the Commission in the year 2009 and 2014 did not give rise to any cause of action in favor of the UPPCL. It is only the LPSC bills raised by the appellant in the name of UPPCL which gave rise to cause of action in favor of UPPCL. It is also to be noted that each and every such bill raised by appellant gave rise to a fresh cause of action in favor of UPPCL. Therefore, even if the UPPCL chose not to challenge such bills till the year 2015, it does not create any estoppel for UPPCL from challenging such bills thereafter. Levy of LPSC in the monthly power bills by the appellant gave rise to a continuing cause of action in favor of UPPCL to challenge those bills. Hence, the LPSC invoice dated 04.01.2019 provided a fresh cause of action to UPPCL. Therefore, the petition having been filed in the year 2019 itself is clearly within the period of limitation. No error or infirmity can be found in the impugned order of the Commission on this aspect.

(c)The petition filed by 1st respondent was also hit by the doctrine of acquiescence.

24. Since we have held hereinabove that each and every LPSC bill issued by the appellant to UPPCL created a fresh cause of action in favor of UPPCL

to challenge the same, the fact that UPPCL has been paying LPSC bills raised by the appellant in accordance with the terms of the PPA for a period of nearly ten years cannot be taken to mean that UPPCL acquiesced to the 30 days period specified in the PPA. The doctrine of acquiescence is based on the consent of the parties towards a certain act or omission and therefore, is not applicable to the instant case where, according to UPPCL, the LPSC invoice raised by the appellant is in contravention of 2014 Tariff Regulations. It is true that the respondent chose not to object to the LPSC bills issued by the appellant for some period of time. However, that cannot be taken to mean that UPPCL is barred from objecting to any such LPSC bill of the appellant at any point of time thereafter.

25. Hence, the ground of acquiescence raised by the appellant has no force and is hereby rejected.

(d)The Commission has erred in holding that the tariff regulations override the terms of PPA and in setting aside the LPSC invoice dated 04.01.2019 as being in contravention to UPERC Tariff Regulations, 2014.

26. It is argued on behalf of the appellant that provisions of PPA executed between the parties continued to bind them with regards to the due date for

payment of bills as well as levy of LPSC even after the notification of Tariff Regulations of 2009 and 2014. It is submitted that the tariff regulations cannot be applied retrospectively to the PPAs executed prior to their coming into effect, and therefore, the Commission has grossly erred in applying 2014 Tariff Regulations to the instant case even though the PPA was executed in the year 2006 during the control period of 2004 Tariff Regulations.

27. On behalf of the respondent, reliance is placed upon the judgment of the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 to argue that even the existing contracts including PPAs must be aligned with the tariff regulations and the tariff regulations notified by a State Electricity Commission override a preceding private contract between the generator and a licensee. It is argued that in view of such settled legal position, the Commission has rightly held that 2014 Tariff Regulations will override the Power Purchase Agreement executed between the parties and the 60-day trigger period for levy of LPSC provided under those regulations will govern the bill payment between the parties. The learned counsels for the respondents have also referred to previous decisions of this Tribunal in Kishangarh Hi-tech Textile Park Ltd. v. Rajasthan Electricity Regularity Commission and Ors. Appeal No.2/2016 decided on 19.12.2023 and Mangalam Cement Limited v. Jaipur

to say that this Tribunal has also reaffirmed the established principle of regulatory framework i.e. tariff regulations taking precedence over contractual agreements.

28. It is further argued that LPSC forms part of tariff and the tariff making being a continuous process, the regulator i.e. the Commission is empowered to make amendments / alterations in this regard whenever and in whatever mode found necessary. It is further submitted that any contract or a provision thereof cannot be allowed to subsist when the same is in contravention of any existing legal provision. It is submitted that Section 12.17 of the PPA dated 12.11.2006 lost its applicability upon notification of Tariff Regulations 2009 and 2014 which extended the trigger period for levy of LPSC from 30 days to 60 days. Thus, according to the respondent, the impugned order of the Commission on this aspect does not call for any interference from this Tribunal.

29. The issue for consideration before us is whether the LPSC can be levied by the appellant in terms of Section 12.17 of the Power Purchase Agreement executed between the parties which is in conformity with the Tariff Regulations, 2004 in force at that time (as contended on behalf of the

appellant) or in terms of 2014 Tariff Regulations (as contended on behalf of the respondents)?

30. We have already noted that as per Power Purchase Agreement dated 12.11.2006 executed between the parties, due date for payment means 30th day after the receipt of invoice by UPPCL. As per Section 12.17 of the Power Purchase Agreement, in case UPPCL delays payment of bills beyond a period of one month from the date of billing, appellant shall levy LPSC @1.25% per month on the outstanding amount of the bills.

31. Thus, as per these provisions of the PPA, trigger period for levy of LPSC is one month from the date of bill. For clarity, we extract the said provision of the PPA hereunder: -

“Section 12.17 Rebates, Late Charges...

(b) In case the payment of bills of Fixed Charges and Variable Charges by UPPCL is delayed beyond a period of 1 month from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by ROSA on the outstanding amount of the bills and payable by UPPCL”

32. Regulation 26 of 2009 Tariff Regulations notified by the Commission, which came into effect from 01.04.2009, provides as under: -

“26. Late Payment & Default in Payment:

- (a) In case the payment of bills of capacity charges and energy charges by the beneficiary (ies) is delayed beyond a period of 2 months from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company.*
- (b) The generating company may approach the Commission, for default in payments for necessary relief including proposal for regulation of supply to the concerned beneficiary, associated with alternative sale potential of such regulated power.”*

33. These regulations stipulate a two-month time period before LPSC becomes leviable by the appellant. Same 60-day time period is specified in Regulation 30 of 2014 Tariff Regulations, which came into effect on 01.04.2014. The said regulation is extracted hereunder: -

“30. Late Payment & Default in Payment:

(1) In case the payment of bills of capacity charges and energy charges by the beneficiary (ies) is delayed beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company.

(2) The generating company may approach the Commission, for default in payments for necessary relief including proposal for regulation of supply to the concerned beneficiary, associated with alternative sale potential of such regulated power.”

34. In view of such change in trigger period for levy of LPSC in these subsequent regulations, it needs to be seen as to whether and in what manner would these impact the existing PPAs.

35. A PPA is a contract executed between a power generator and a Distribution Licensee whereby the former agrees to sell the power generated in its generating stations and the later agrees to purchase the same on the terms and conditions as stated in the agreement. The tariff at which such power is to be sold/purchased is an essential term of a PPA. In our view,

upon execution of the PPA it becomes a binding contract between the power generator and the Distribution Licensees and both are bound by its terms and conditions as well as the obligations cast upon them under the agreement. A PPA is a creation of both the parties and, therefore, their rights/obligations flow from the terms and conditions contained therein.

36. The sanctity of the power purchase agreement had come up for consideration before the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. vs. Solar Semi-Conductors Power Company (Pvt.) Ltd., (2017) 16 SCC 498 in which, Hon'ble Justice Kurian Joseph, speaking for the Bench, held as under: -

“37. This Court should be specially careful in dealing with matters of exercise of inherent powers when the interest of consumers is at stake. The interest of consumers, as an objective, can be clearly ascertained from the Act. The Preamble of the Act mentions “protecting interest of consumers” and Section 61 (d) requires that the interests of the consumers are to be safeguarded when the appropriate Commission specifies the terms and conditions for determination of tariff. Under Section 64 read with Section 62, determination of tariff is to be made

only after considering all suggestions and objections received from the public. Hence, the generic tariff once determined under the statute with notice to the public can be amended only by following the same procedure.

Therefore, the approach of this Court ought to be cautious and guarded when the decision has its bearing on the consumers.

38. Regulation 85 provides for extension of time. It may be seen that the same is available only in two specified situations – (i) for extension of time prescribed by the Regulations, and (ii) extension of time prescribed by the Commission in its order for doing any act. The control period is not something prescribed by the Commission under the Conduct of Business Regulations. The control period is also not an order by the Commission for doing any act. Commissioning of a project is the act to be performed in terms of the obligation under the PPA and that is between the producer and the purchaser viz. Respondent 1 and appellant. Hence, the Commission cannot extend the time stipulated under the PPA for doing

any act contemplated under the agreement in exercise of its exercise of its powers under Regulation 85. Therefore, there cannot be an extension of the control period under the inherent powers of the Commission.

39. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.

40. Extension of control period has been specifically held to be outside the purview of the power of the Commission as per EMCO. This appeal is hence, allowed. The impugned orders are set aside. However, we make it clear that this judgment or orders of the Appellate Tribunal or Commission shall not stand in the way of Respondent 1 taking recourse to the liberty available to them for redetermining of tariff if otherwise permissible under law

and in which case it will be open to the parties to take all available contentions before the Commission.”

(Emphasis supplied)

37. Hon'ble Justice R. Banumathi, in a separate but concurrent note has observed of this aspect as under: -

“65. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to be inviolable. Merely because in PPA, tariff rate as per Tariff Order (2010) is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the generating company-respondent No. 1 and disadvantage of the

appellant. Terms of PPA are binding on both the parties equally.

66. In *Gujarat Urja Vikas Nigam Limited v. EMCO Limited and Another* (2016) 11 SCC 182, facts were similar and the question of law raised was whether by passing the terms and conditions of PPA, the respondent can assail the sanctity of PPA. This Court held that Power Producer cannot go against the terms of the PPA and that as per the terms of the PPA, in case, the first respondent is not able to commence the generation of electricity within the 'control period' the first respondent will be entitled only for lower of the tariffs.

67. The first respondent placed reliance upon *Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and Others* (2016) 8 SCC 743. In the said case, this Court was faced with the substantial question of law viz. whether the tariff fixed under a PPA (Power Purchase Agreement) is sacrosanct and inviolable and beyond review and correction by the State Electricity Regulatory

Commission. In that case, respondent No.1 thereon-power producer had entered into a PPA with the appellant therein-distribution licensee for sale of electricity from the generating stations to the extent of the contracted quantity for a period of 35 years at Rs. 3.29 per KWH subject to escalation of 3% per annum till date of commercial operation. However, later the power producer found that the place from where the power was to be evacuated was at a distance of 23 kms. as opposed to a distance of 4 kms, envisaged in the concession agreement entered into between the Respondent-power producer and Narmada Water Resources Department (Respondent No.2 therein). On this ground the respondent had sought revision of tariff by the State Electricity Commission. This Court held that Section 86(1)(b) of the Act empowers State Commission to regulate price of sale and purchase of electricity between generating companies and distribution licensees through agreements for power, produced for distribution and supply and that the state commission has power to re-determine the tariff rate when the tariff rate mentioned in the PPA between generating company and distribution

licensee was fixed by State Regulatory Commission in exercise of its statutory powers. Relevant portion of the paras (17) and (18) of the judgment, read as under: (SCC pp.756 & 758)

“17. As already noticed, Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees through agreements for power produced for distribution and supply. As held by this Court in V.S. Rice & Oil Mills v. State of A.P. AIR 1964 SC 1781, K. Ramanathan v. State of T.N. (1985) 2 SCC 116 and D.K. Trivedi & Sons v. State of Gujarat 1986 Supp. SCC 20 the power of regulation is indeed of wide import. ...

18. All the above would suggest that in view of Section 86(1)(b) the Court must lean in favour of flexibility and not read inviolability in terms of PPA insofar as the tariff stipulated therein as approved by the Commission is concerned. It would be a sound

principle of interpretation to confer such a power if public interest dictated by the surrounding events and circumstances require a review of the tariff.

The facts of the present case, as elaborately noted at the threshold of the present opinion, would suggest that the Court must lean in favour of such a view also having due regard to the provisions of Section 41 and 21 of the General Clauses Act, 1898. ..."

In the facts and circumstances of that case and that the tariff rate of Rs.3.29/- per KWH was subject to escalation and subject to periodic review. Evacuation was changed from a distance of 4 kms. to 23 kms. from its switch yard. On account of the same, respondent No.1 therein had incurred an additional cost of about Rs.10 crores which was not envisaged in the Concession Agreement. In such facts and changed circumstances, this Court thought it apposite to take a lenient view and allow the State Commission to re-determine the tariff rate.

68. In exercise of its statutory power, under Section 62 of the Electricity Act, the Commission has fixed the tariff rate.

The word ‘tariff’ has not been defined in the Act. Tariff means a schedule of standard/prices or charges provided to the category or categories for procurement by licensee from generating company, wholesale or bulk or retail/various categories of consumers. After taking into consideration the factors in Section 61(1)(a) to (i), the State Commission determined the tariff rate for various categories including Solar Power PV project and the same is applied uniformly throughout the State. When the said tariff rate as determined by the Tariff Order (2010) is incorporated in the PPA between the parties, it is a matter of contract between the parties. In my view, respondent No.1 is bound by the terms and conditions of PPA entered into between respondent No.1 and the appellant by mutual consent and that the State Commission was not right in exercising its inherent jurisdiction by extending the first control period beyond its due date and thereby substituting its view in the PPA, which is essentially a matter of contract between the parties.”

(Emphasis supplied)

38. What is easily deduced from these judgments of the Apex Court is that the terms of PPA are binding upon the parties and neither the power generator nor the procurer / licensee can be permitted to go against the same. When the tariff determined by Commission in a tariff order or adopted by the Commission after having been discovered through bidding process, is incorporated in the PPA, it becomes matter of contract between the parties and thus, binding upon them throughout the tenure of the PPA. LPSC is an incidence arising in case of non-payment of tariff bills by the procurer within due period as agreed in the PPA and therefore, LPSC rate as well as the trigger period after which it becomes leviable also is binding upon the parties throughout the subsistence of the PPA.

39. The scope and applicability of regulations issued by a State Electricity Commission had come-up for discussion before the Hon'ble Supreme Court in PTC India Limited case (supra) and it was held as under: -

“56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factor specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the

regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.

...

71. This judgment in *Jagdamba Paper Industries Ltd.* ((1983) 4 SCC 508 : AIR 1983 SC 1296) is important from another angle also. It indicates that regulations under Section 79 of the 1948 Act were to be in the nature of subordinate legislation, therefore, all contracts had to be in terms of such regulations. In the present case also, if one examines the terms and conditions of the licences, power to fix trading margin in expressly contemplated by such terms. The said judgment further held that the Board is a statutory authority and has to act within the framework of the 1948 Act. If the act of the Board is not in consonance or in breach of some statutory provisions of law, rule or regulation, it is always open to challenge in a petition under Article 26 of the Constitution.

...

79. *Applying the above judgments to the present case, it is clear that fixation of the trading margin in the inter-State trading of electricity can be done by making of regulations under Section 178 of the 2003 Act. Power to fix the trading margin under Section 178 is, therefore, a legislative power and the notification issued under that section amounts to a piece of subordinate legislation, which has a general application in the sense that even existing contracts are required to be modified in terms of the impugned Regulations. These Regulations make an inroad into contractual relationships between the parties. Such is the scope and effect of the impugned Regulations which could not have taken place by an order fixing the trading margin under Section 79(1)(j). Consequently, the impugned Regulations cannot fall within the ambit of the word “order” in Section 111 of the 2003 Act.”*

40. Clearly, the Hon’ble Supreme Court has held in the said judgment that the regulations, being in the nature of subordinate legislation, make an inroad into contractual relationship between the parties also and even the existing contracts are required to be modified in terms of the regulations. However,

these general observations of the Apex Court were watered down in the subsequent as well as the latest judgment in Gujarat Urja Vikas Nigam Limited v. Renew Wind Energy (Rajkot) (P) Ltd. 2023 SCC OnLine SC 411 decided on 13.04.2023 in which it has been held as under: -

“62. Power Purchase Agreements are essentially not statutory contracts; however, certain terms contained in those contracts, are regulated by law, i.e. applicable regulations, under the Act. The PPA between a generating company or, as in this case, a wind generator, and a distribution licensee, such as Gujarat Urja, is the outcome of a carefully considered decision, whereby the parties, after due deliberations and negotiations, agree on terms, which are based on existing law and regulations. Aside from contending that the PPA had to be approved, (which this court has rejected in a previous part of this judgment) but was not, the respondents also urge, independently, that the Second Amendment had necessitated re-visiting of the terms of the PPA, relating to the payment of average pooled power purchase cost, given that the amendment

mandated that the power would be at the pooled power purchase cost, as opposed to the previous provision, which stated that the cost would not exceed the pooled power purchase cost.

...

*65. Whilst there cannot be any doubt that regulations framed under the Act can be made applicable to existing contracts, what is discernible from PTC India (supra) is that in that case, the applicability of the Trading Margin Regulations which for the first time, compelled persons engaged in trading of electricity, in terms of Section 2 (17) of the Act, to register, obtain licenses, and operate within the margin limits indicated in the regulations. These provisions introduced a new regime, regulating an area, or activity which had hitherto been unregulated. The entire edifice of prescribing general standards for application to all those operating within its sweep, is to ensure that they are universal and constitute a code. The observations in PTC India (supra), therefore, are to be seen in this context. **Being regulations of general application, dealing with a range of commercial activity, there***

could have been no question of existing contracts, operating in isolation, through separate silos, outside of their framework. In the present case, however, the PPAs were entered into in the exercise of equal bargaining power, after due negotiation by the parties and within the framework of existing regulations: both central and state. Therefore, unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties.”

41. Thus, it has been clarified by the Hon'ble Supreme Court in this judgment that where there exist PPAs entered into between the parties in exercise of equal bargaining power as well as after due negotiation and within the framework of existing regulations, unless the subsequent regulations expressly override the existing contracts, the terms of agreements continue to bind the parties. The necessary and logical fallout of the said judgment is that any regulations issued by an Electricity Commission in exercise of its delegated legislative power, are applicable to the PPA executed after the date when those regulations come into force and can not be applied to the PPAs already executed prior to that date, unless the regulations expressly specify so.

42. In the instant case also, the parties had entered into PPA dated 12.11.2006 after due negotiations and in conformity with the 2004 Tariff Regulations applicable during that period. It was a commercial arrangement between the parties having equal bargaining power. Even otherwise also, it is not the case of UPPCL that it had been forced or coerced to enter into the PPA. It follows that the provision relating to levy of LPSC contained in Section 12.17 of the PPA providing 30-day trigger period for such levy was also agreed upon by the parties consciously and after deliberations. There is no express provision in the Tariff Regulations, 2014 to the effect that these would override the existing PPAs. Therefore, in view of the legal position enunciated by the Supreme Court in Gujarat Urja Vikas Nigam Limited case (supra), said provision of the Power Purchase Agreement would continue to remain applicable and binding between the parties throughout the life of the PPA dehors the subsequent tariff regulations issued by the Commission in the year 2009 and 2014.

43. Further, we may note that the Supplemental PPA dated 11.09.2009 was approved by the Commission vide order dated 10.06.2009 in petition no.610/2009 during the subsistence of 2009 tariff regulations which came into effect on 01.04.2009. Clause 9 of the said Supplemental PPA provided that the terms and conditions of tariff approved by the Commission for Stage-

1 shall also apply to Stage-2 implying thereby that the 30-day trigger period for levy of LPSC provided under Section 12.17 of PPA dated 12.11.2006 would apply for Stage-2 of the power project also. The said Supplemental PPA was approved by the Commission despite the fact that 2009 Tariff Regulations had come into effect by then which had extended the trigger period for levy of LPSC to 60 days. Therefore, as contended on behalf of the appellant, the Commission itself had given explicit approval to one-month trigger period for LPSC in the year 2009 also.

44. The amended Supplemental PPA was executed between the parties on 19.11.2011, which was approved by the Commission vide order dated 22.12.2011 passed in petition no.763/2011. This also happened during the control period of 2009 Tariff Regulations. This amended Supplemental Power Purchase Agreement specifically provided that all the terms and conditions of Supplemental PPA dated 11.09.2009 shall remain unaltered and despite the same was approved by the Commission. Manifestly, while approving the Supplemental PPA as well as amended Supplemental Power Purchase Agreement, the Commission was conscious of the 60-day trigger period for levy of LPSC provided under existing 2009 Tariff Regulations and still approved these PPAs. This indicates that the Commission was of the opinion that the subsequent regulations cannot be taken to alter the terms of binding Power Purchase Agreement executed between the parties.

45. The previous judgments of this Tribunal in Kishangarh case (supra) and Mangalam Cement case (supra), upon which much reliance was placed by the learned counsels for the respondents, cannot be made applicable to the instant case for the reason that these were passed by this Tribunal in ignorance of the legal principle enunciated by the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam case (supra).

46. On behalf of respondent, reference was made to Regulation 2(4) of Tariff Regulations, 2014 to argue that in view of the same, in case of inconsistency between the terms of the PPA and those regulations, the provisions of those regulations would prevail and hence the trigger period of 60 days for levy of LPSC as provided in these regulations is applicable with effect from 01.04.2014.

47. Regulation 2(4) of Tariff Regulations, 2014 is as under:-

“(4) In case of any conflict between provisions of these regulations and a power purchase agreement signed between a generating company and distribution licensee(s)/beneficiary (ies), the provisions of these regulations shall prevail.

Provided that in case of projects where parameters have been agreed to in the Power Purchase Agreement or determined through an earlier Regulation prior to 1.4.2014, for any hardship due to discrepancy/inconsistency with parameters given in these Regulations, the Commission may be approached and parameters in such cases may be determined by the Commission at the time of tariff determination of respective generating station.”

48. A bare perusal of the said regulation reveals that the same applies to the Power Purchase Agreements executed after coming to effect of these regulations. It is nowhere mentioned in these regulations that in case of any conflict between the terms of an existing PPA and these regulations, the regulations would prevail. Further, the proviso attached to the said provision makes it clear that in case any of the parties to an existing Power Purchase Agreement experiences any hardship due to inconsistency/conflict between the terms of the existing PPA and parameters given in these regulations, the said party may approach the Commission by way of a hardship petition and parameters in such cases would be determined by the Commission at the time of determination of tariff for the concerned generating station.

Concededly, the 1st respondent UPPCL has neither approached the Commission with a hardship petition to highlight the conflict between the Tariff Regulations, 2014 and the provisions of the PPA dated 12.11.2006 nor did it highlight such inconsistency before the Commission at the time of determination of tariff for the generating station of the appellant.

49. Hence, we do not find any force in these submissions on behalf of the respondent UPPCL.

50. We may also note that a meeting was held between the representatives of appellant and UPPCL on 22.08.2013 to discuss and resolve various issues that had arisen between them including the claim of appellant for LPSC. The minutes of this meeting have been filed on record along with the memorandum of appeal, which are not disputed on behalf of the respondent UPPCL. Agenda no.4 of this meeting relates to claim of appellant for LPSC and it has been resolved in the said meeting as under: -

“4. Claim of Rosa on account of Late Payment Surcharge

In light of provision related to late payment surcharge mentioned at section 12.17 (b) of signed PPA, UPPCL agreed to recognize and settle late payment surcharge of RPSCCL submitted till date, as a matter of this settlement,

on quarterly basis at actual working capital interest rates charged by Lenders to RPSCL or as provided in the PPA, whichever is lower. It was resolved that this settled late payment surcharge accumulated will be recognized and settled by UPPCL on receipt of interest rates certificates from RPSCL.”

51. It is, therefore, manifest that the respondent UPPCL had in this meeting held in the year 2013 agreed to settle the LPSC claim of appellant in terms of the provisions of the PPA executed between the parties. It appears that thereafter there has been a change in the mind of the officials of UPPCL who took a U-turn and refused to pay LPSC to the appellant as per the provisions of the PPA. The said turnaround on the part of the officials of UPPCL is inexplicable.

52. It is also argued on behalf of UPPCL that the argument raised on behalf of the appellant that LPSC is a commercial term and not a component of tariff is baseless and devoid of merits. It is submitted that the provision for LPSC is part of regulatory regime and thus, is a regulatory charge separate from any contractual element. It is argued that LPSC is a part of tariff and therefore, regulatory in nature – not a matter of agreement between the parties. It is submitted that Section 61 of the Electricity Act, 2003 not only

deals with tariff but also with the terms and conditions of tariff which necessarily include all terms related to tariff including LPSC. Thus, it is canvassed that any provision regarding LPSC in the PPA must yield to the subsequent regulations framed in this regard by the Commission. Reliance is placed upon judgment of this Tribunal in appeal no.95/2012 BSES Rajdhani Power Limited v. DERC decided on 04.09.2012, judgment of Bombay High Court in Dabhol Power Company v. Maharashtra Electricity Board and Ors. decided on 05.03.2002 and another judgment of this Tribunal in Power Company of Karnataka Ltd and Anr. v. Udupi Power Corporation Ltd and Ors. decided on 02.11.2020.

53. We may note that the term “tariff” has not been defined anywhere in the Electricity Act, 2003. However, as commonly understood in power sector, “tariff” means a schedule of prices/charges payable by a procurer/distribution licensee for the power procured from a generating company or payable by wholesale/bulk/retail/other categories of consumers for the power consumed by them respectively. Generally, components of tariff are energy charges, capacity charges well as other charges such as transmission/distribution charges. Typically, late payment surcharge does not form part of tariff or cost of electricity. It is not a part of the base tariff structure itself. The incidence of LPSC arises in case of nonpayment of tariff bills by a procurer or a consumer before the due date. It is a penalty levied

for delayed payments of electricity bills and thus, separate from the standard charges for consumption. There won't arise occasion for charging LPSC in case the procurer pays the tariff bills of the generating company on or before the due date. Therefore, LPSC is a separate charge applied only when the procurer fails to pay tariff bills by the due date. It is designed to compensate the generating company for the cost of delayed payment and the risks associated with it.

54. The term "tariff" has been defined by the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 as under: -

"26. The term "tariff" is not defined in the 2003 Act. The term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it.

If one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the appropriate Commission

under Section 61 of the said Act. Under the 2003 Act, if one reads Section 62 with Section 64, it becomes clear that although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide Section 111. These provisions, namely, Sections 61, 62 and 64 indicate the dual nature of functions performed by the Regulatory Commissions viz. decision-making and specifying terms and conditions for tariff determination."

55. On this aspect, the Hon'ble Supreme Court has observed in the latest judgment in case of State of Himachal Pradesh & Anr. v. JSW Hydro Energy Limited & Anr 2025 SCC OnLine SC 1460 as below: -

"29. "Tariff" has not been defined under the Electricity Act, but it has been interpreted by this Court on several occasions. This Court in PTC held that "tariff" does not only mean fixation of rates but also the rules and regulations relating to it. Further, in Transmission Corporation of Andhra Pradesh Ltd. v. Sai Renewable (supra), this Court relied on the meaning of the term in

general law or common parlance, and held its meaning to be as follows:

"62. Therefore, in the absence of any specific definition in any of these Acts we will have to depend upon the meaning attached to these expressions under the general law or in common parlance. The expression "tariff" has been explained in Law Lexicon With Legal Maxims, Latin Terms And Words & Phrases (2nd Edn., 1997) as "determination, ascertainment, a table of rates of export and import duties, in which sense the word has been adopted in English and other European languages and as defined by the law dictionaries the word 'tariff' is a cartel of commerce; a book of rates; a table or catalogue, drawn usually in alphabetical order, containing the names of several kind of merchandise, with the duties or customs to be paid for the same as settled by the authority or agreed between the several princes and States that hold commerce together."

It has also been explained as a schedule, system, or scheme of duties imposed by the Government of a country upon goods imported or exported; published volume of rate schedules and general terms and conditions under which a product or service will be supplied; a document approved by the responsible regulatory agency listing the terms and conditions including a schedule of prices, under which utility services will be provided."

30. Determination of tariff must be in accordance with Section 61 of the Electricity Act, which requires the CERC to specify the terms and conditions for the determination of tariff and stipulates the principles that shall guide the CERC. These include commercial principles, competition, efficiency, economical use of resources, consumer interest, and cost-reflective tariffs."

56. In Maharashtra State Electricity Distribution Company v. Maharashtra Electricity Regulatory Commission & Ors. (2022) 4 SCC 657, the Apex Court has upheld the conclusion of this Tribunal that LPSC is not tariff. The relevant observations of the Supreme Court in this regard are quoted hereinbelow: -

"173. This Court is unable to accept Mr. Singh's submission that the conclusion of APTEL that LPS is not tariff is erroneous. The meaning of the expression tariff has to be considered, and has rightly been considered by APTEL in the context of the relevant provision of the Power Purchase Agreements. **The dictionary meaning of tariff may be charge.** However, in Article 13 of the Stage 1 and Article 10 of the Stage 2 Power Purchase Agreements, tariff means monthly tariff and tariff adjustment consequential to change in law, is of monthly tariff in respect of supply of electricity.

174. As argued by the Respondent- Power Generating Companies appearing through Mr. Rohatagi, Mr. Singhvi, Mr. Mukherjee and Ms. Anand respectively, LPS is only payable when payment against monthly bills is delayed and not otherwise.

175. The object of LPS is to enforce and/or encourage timely payment of charges by the procurer, i.e. the Appellant. In other words, LPS dissuades the

procurer from delaying payment of charges. The rate of LPS has no bearing or impact on tariff. Changes in the basis of the rates of LPS do not affect the rate at which power was agreed to be sold and purchased under the Power Purchase Agreements. The principle of restitution under the Change in Law provisions of the Power Purchase Agreements are attracted in respect of tariff."

57. The Supreme Court again in a recent judgment in case of Jaipur Vidyut Vitran Nigam Limited v. Adani Power (Rajasthan) Ltd. & Anr. 2025 SCC OnLine Supreme Court 1211 has quoted with approval the earlier judgment in MSEDCL case (Supra) and has held as under: -

*"123. This Court has clearly held in Maharashtra State Electricity Distribution Co. [Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission, (2022) 4 SCC 657] **that the DISCOMS have a contractual obligation to make timely payment of the invoices raised by the power generating companies, subject to scrutiny and verification of the same.** This Court has rejected the contention that the funding cost was much lesser than the rate of LPS. This*

Court has reiterated the proposition that the courts cannot rewrite a contract which is executed between the parties. This Court has emphasised that it cannot substitute its own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. It has been held that the explicit terms of a contract are always the final word with regard to the intention of the parties."

58. Thus, in view of these recent decisions of the Hon'ble Supreme Court also, LPSC does not form a component of "tariff" and therefore is outside the powers/jurisdiction of electricity regulatory commissions. It is a commercial term to be decided/negotiated between the parties and thus a contractual element which binds the parties throughout the tenure of the agreement i.e. PPA.

59. Hence, we are of the considered opinion that the trigger period of 30 days agreed upon between the parties i.e. the appellant and 1st respondent UPPCL and embodied in Section 12.17 of the PPA dated 12.11.2006, which is in consonance with the Regulation 26 of Tariff Regulations, 2004 applicable at that time, holds good and binds the parties throughout the

tenure of the PPA and does not get impacted by any change in the trigger period effected by way of subsequent tariff regulations issued by the Commission. The Commission has, therefore, grossly erred in holding that the tariff regulations override the terms of PPA and in setting aside the LPSC invoice dated 04.01.2019 as being in contravention of UPERC Tariff Regulations, 2014.

60. Here it is to be noted that the claim for LPSC of the appellant in this case relates to the period from April, 2015 to January, 2018. More than seven years have elapsed since then. Therefore, we are of the view that considering the principle of time value of money, the appellant is entitled to carrying cost also on the amount of LPSC which has remained unpaid by the respondent UPPCL throughout this period.

61. We may note that payment of “interest” cannot be equated to payment of penalty or fine. “Interest” is normal accretion to money when invested lawfully by the person in whose hands it is. When a person is deprived of the use his money to which he is lawfully entitled, he would have a legitimate claim for interest upon such amount of money for the period during which he was deprived of its use. In other words, any person who has enriched himself by use of the money belonging to some other person, is legally duty bound to compensate the latter by payment of interest on the said money, from the use

of which he had been deprived. Payment of interest is a necessary corollary to the return on money retained by a person unjustly or unlawfully. This has been explained by the Supreme Court succinctly in Alok Shanker Pandey v. Union of India & Ors. (2007) 3 SCC 545 by way of the following illustrations:-

“For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. With these observations the impugned judgment is modified and the appeal is disposed of accordingly.”

62. It is true that the appellant has not made any specific prayer for grant of carrying cost in this appeal. However, we feel that the grant of

interest/carrying cost would definitely come in the ambit of “any other order” mentioned in prayer (c) of the appeal.

63. The Supreme Court, in latest judgment dated 27.08.2024 in Bangalore Electricity Supply Company Limited v. Hirehalli Solar Power Project LLP & Ors. Civil Appeal nos.7608 of 2021 and 6386 of 2021 has directed payment of Late Payment Surcharge even though the same had not been pleaded by the claimants in that case. The relevant portion of the judgment is quoted hereinbelow: -

“14. Lastly, we also reject the appellant’s contention that the APTEL’s direction to pay late payment surcharge to the respondents is unjustified since the same was not pleaded. As we have already held, the APTEL rightly restored the tariff of Rs. 8.4 per unit and directed the appellant to pay the difference amount. The direction to pay the late payment surcharge on this amount is explicitly rooted in the PPA, and hence, is in furtherance of the intention of the parties. There is no reason to set aside the same.”

(Emphasis supplied)

64. In this context, we also find the following observations of the Hon'ble Supreme Court in a recent judgment dated 18.02.2025 in Dr. Purnima Advani and Anr. v. Government of NCT and Anr. Civil Appeal No.2643 of 2025, very material:-

“25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term “restitution” is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

26. In Hari Chand v. State of U.P., 2012 (1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the

payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so retained i.e. from the date of deposit till the date of actual repayment/refund.

27. In the case of O.N.G.C. Ltd. v. Commissioner of Customs Mumbai, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs.54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in the case of South Eastern Coal Field Ltd. v. State of M.P., (2003) 8 SCC 648.

This Court explained the principles of restitution in the case of O.N.G.C. Ltd. (supra) as under:-

“Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium Indian (P) Ltd. v. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and Mcdermott International Inc. v. Burn Standard Co. Ltd. JT 2006 (11) SC 376.”

65. Thus, where there is an order for restitution by way of return or restoration of some specific money or thing to its rightful owner or for

payment of any amount, the direction to pay interest must follow. It is noteworthy that in the case of O.N.G.C. Ltd. v. Commissioner of Customs Mumbai, JT 2007 (10) SC 76 (referred by the Supreme Court in the above noted judgment), the application for payment of interest was filed for the first time before the Supreme Court during the pendency of the appeal, which was entertained and allowed by the Supreme Court.

66. We, thus, find the appellant entitled to carrying cost also on the LPSC amount reflected in the invoice dated 04.01.2019 at the same rate at which LPSC is payable by the 1st respondent UPPCL as per the provision of the PPA.

Conclusion: -

67. In the light of the above discussion, we find that the Commission has grossly erred in holding that the tariff regulations override the terms of PPA as well as in setting aside the LPSC invoice dated 04.01.2019 as being in contravention of UPERC Tariff Regulations, 2014. Hence, the impugned order of the Commission cannot be sustained and is hereby set aside. The appeal stands allowed.

68. We hold that the tariff regulations issued by an electricity regulatory commission, in exercise of its delegated legislative power, are applicable to the PPAs executed after the date when those regulations come into force and are not applicable to the PPAs already executed prior to that date, unless the regulation expressly specifies so. Since, in this case, the Tariff Regulations, 2014 nowhere specify that these are applicable to the existing PPAs also, the trigger period of 30 days for levy of LPSC as agreed upon between the parties and embodied in Section 12.17 of the PPA dated 12.11.2006, which is in consonance with Section 26 of Tariff Regulations, 2004 applicable at that time, holds good and binds the parties throughout the tenure of the PPA and does not get impacted by any change in the trigger period effected by way of subsequent tariff regulations issued by the Commission.

69. Consequently, the LPSC invoice dated 04.01.2019 raised by the appellant in respect of the Late Payment Surcharge for the period April, 2015 to January, 2018 is legally valid and payable by the 1st respondent UPPCL along with carrying cost at the same rate at which LPSC is payable by UPPCL as per the provisions of the PPA. The petition filed by the 1st respondent UPPCL before the Commission stands dismissed.

70. We direct the 1st respondent UPPCL to pay the amount reflected in the LPSC invoice dated 04.01.2019 along with carrying cost to the appellant within one month from the date of this judgment positively.

Pronounced in the open court on this the 28th day of July, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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