

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL No. 192 OF 2020

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APPEAL No. 623 OF 2023

Dated: 04.07.2025

Present : **Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson**
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

APL No. 192 OF 2020

In the matter of:

- 1. POWER COMPANY OF KARNATAKA LIMITED**
Through its Additional Director (Projects),
KPTCL Building Kaveri Bhawan,
K.G. Road, Bangalore – 560 009 ... **Appellant No.1**
- 2. GULBARGA ELETRICITY SUPPLY COMPANY LIMITED**
Through its Executive Engineer (Regulatory Affairs),
Main Road, Gulbarga – 585 101 ... **Appellant No.2**
- 3. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED**
Through its General Manager (A & HRD),
Navanagar, Hubli – 580 025 ... **Appellant No.3**
- 4. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Through its General Manager (Ele),
Krishna Rajendra Circle,
Bangalore – 560 009 ... **Appellant No.4**
- 5. CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LIMITED**
Through its General Manager (Commercial),
No.29, Kaveri Grameena Bank Road,
Vijayanagara 2nd stage, Hinkal,
Mysore – 570 017 ... **Appellant No.5**

6. MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

Through its Superintending Engineer (Ele) (C&RP),
Corporate Office, MESCOM Bhavan, First Floor,
Kavoor Cross Road, Bijai,
Mangalore – 575 004

... **Appellant No.6**

VERSUS

1. ATHANI SUGARS LIMITED,
Through its Managing Director
'Shiv Pavallion', 2nd Floor,
Near Ram Mandir,
Sangli-Miraj Road,
Sangli- 416 416

... **Respondent No.1**

2. KARNATAKA ELECTRICITY REGULATORY COMMISSION,
Through its Secretary,
No.16, C-I, Milleers Tank Bed Area,
Vasanth Nagar,
Bengaluru – 560 052

... **Respondent No.2**

Counsel on record for the Appellant(s) : Arunav Patnaik
Bhabna Das for App.1 to 6

Counsel on record for the Respondent(s) : Matrugupta Mishra
Shikha Ohri
Swagatika Sahoo
Samyak Mishra
Pratiksha Chaturvedi
Mohd Aman Sheikh
for Res. 1

APL No. 623 OF 2023

ATHANI SUGARS LIMITED,
Through its Executive Director & CFO,
Shiv Pavallion, 2nd Floor,
Near Ram Mandir, Sangli – Miraj Road,
Sangli – 416 416, Maharashtra.

... **Appellant(s)**

VERSUS

- 1. KERNATAKA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
No.16, C-I, Miller Tank Bed Area,
Vasanth Nagar,
Bengaluru – 560 052 ... **Respondent No.1**
- 2. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
K.R. Circle,
Bengaluru – 560 001 ... **Respondent No.2**
- 3. CHAMUNDERSHWARI ELECTRICITY SUPPLY CORPORATION LTD.**
Through its Managing Director,
No.29, Kaveri Grameena Bank Road,
Vijayanagar, 2nd Stage, Hinkal,
Mysuru – 570 019 ... **Respondent No.3**
- 4. GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
Station Main Road,
Kalaburagi – 585 101 ... **Respondent No.4**
- 5. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
P.B. Road, Navanagar,
Hubballi – 580 025 ... **Respondent No.5**
- 6. MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED**
Through its Managing Director,
MESCOM Bhavana, 4th Floor,
Kavoor Cross Road,
Bejai, Mangaluru – 575 004 ... **Respondent No.6**
- 7. POWER COMPANY OF KARNATAKA LIMITED**
Through its Chairman,
Room No.501, 5th Floor,
KPTCL Building,
Cauvery Bhavan,
Bengaluru – 560 009 ... **Respondent No.7**

Counsel on record for the Appellant(s) : Matrugupta Mishra
Swagatika Sahoo
Ritika Singhal
Vignesh Srinivsan
Nipun Dave
Ishita Thakur
Sonakshi for App. 1

Counsel on record for the Respondent(s) : Arunav Patnaik
Bhabna Das for Res.2 to 7

JUDGMENT

(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER)

1. Appeal No. 192 of 2020 and Appeal No. 623 of 2023 have been filed against the order dated 20.08.2019 passed by the **Karnataka Electricity Regulatory Commission** (hereinafter referred to as “**State Commission/KERC**”) in OP No. 92 of 2018. Power Company of Karnataka Limited and ESCOMs have preferred Appeal No. 192 of 2020 aggrieved by the direction in the Impugned Order to make payments to the Athani Sugars Limited for power injected from 02.01.2017 till the execution of the PPA dated 18.01.2018; and Appeal No. 623 of 2023 has been preferred by Athani Sugars Limited challenging the disallowance of the prayer for accounting of energy injected into the grid prior to 02.01.2017.

2. Since these two appeals arise out of the same Impugned order involving the similar issues and are the cross appeals, they are being disposed of with this common judgment.

3. For the sake of convenience, the description of the parties is given hereunder as per the appeal initially filed i.e., Appeal No. 192 of 2020.

Description of the parties (as per Appeal No. 192 of 2020)

4. Appellant No.1-**Power Company of Karnataka Limited (“PCKL”)**, is the nodal agency for the ESCOMs in the State of Karnataka and is responsible for coordinating procurement of power from various sources on behalf of the Karnataka ESCOMs. Appellants Nos. 2 to 6 - **Gulbarga Electricity Supply Company Ltd., Hubli Electricity Supply Company Ltd., Bangalore Electricity Supply Company Ltd., Chamundeshwari Electricity Supply Corporation Ltd., and Mangalore Electricity Supply Company Ltd.** respectively, (“hereinafter referred to as **“Karnataka ESCOMs”**”) are the distribution licensees and are engaged in the business of distribution and supply of electricity within the State of Karnataka.

5. Respondent No. 1-**Athani Sugars Limited** (“hereinafter referred to as **“Athani Sugars”**”) and Appellant in Appeal No 623 of 2023, runs a sugar factory/plant which commissioned a 24 MW Bagasse based co-generation plant in October 2012 with 16.67 MW exportable capacity. Respondent No. 2 is the Karnataka Electricity Regulatory Commission (**“State Commission / KERC”**).

Facts of the cases:

6. The State Commission vide its order dated 01.01.2015, determined the tariff in respect of Mini-Hydel, Bagasse based Co-Generation and Rankine cycle-based Bio-mass Renewable Energy Projects; and it further decided that the norms and tariff determined in the said order shall be applicable to Mini-hydel Power Plants, Bagasse based Cogeneration Power Plants and Rankine cycle-based biomass projects with water

cooled condensers, that get commissioned during the period 01.01.2015 to 31.03.2018 for which PPAs have not been executed prior to the date of this order. The Athani Sugars Limited vide its letter dated 10.05.2016 to the Karnataka ESCOMs requested for in-principle approval for procurement of power and execution of PPA, and informed that given their unique position they would approach the KERC for tariff determination for their project.

7. On 08.06.2016, ESCOM-Hubli Electricity Supply Company Limited ('HESCOM') asked Athani Sugars to approach Karnataka Renewable Energy Development Limited ("KREDL") for taking up of necessary Government order, based on which Athani Sugar may execute the PPA with HESCOM .

8. In June 2016, various bagasse-based co-generation plant owners had filed OP No. 38/2016 before the State Commission seeking a direction to the Karnataka ESCOMs to execute PPAs with their respective Bagasse based co-generation plants, at a tariff to be determined by the State Commission. Athani Sugars also filed OP No. 45/2016 before the State Commission on 14.06.2016, which was tagged with O.P. No. 38 of 2016. A total of 29 such petitions were tagged together; on a query from State Commission only three Karnataka ESCOMs expressed their willingness to purchase power from the Sugar Plants. Athani Sugars vide its letter dated 23.09.2016 to the Karnataka ESCOMs once again offered power from its plant and requested them to execute PPA in accordance with the Tariff Order dated 01.01.2015.

9. South India Sugar Mills Association (hereinafter referred to as "**SISMA**"), on 22.10.2016 made a representation to the Government of Karnataka (hereinafter referred to as "**GoK**") on behalf of 28 Sugar Plants

with an exportable capacity of 501 MW stating that the bagasse based co-generation plants were willing to sell the energy to the ESCOMs and sought for a direction to be issued to the ESCOMs to procure the power; approval of which was accorded by GoK on 11.11.2016, to purchase power from the Co-generation Plants in the State, at the tariff determined by the KERC.

10. Karnataka ESCOMs then filed Petition (No. 85/2016) on 18.11.2016 before the KERC requesting to approve the proposal of the ESCOMs to purchase power from the 28 Sugar Plants in terms of GoK order dated 11.11.2016. GoK vide letter dated 18.11.2016 communicated its concurrence for the purchase of power from the 28 Sugar Plants for a total capacity of 501 MW. On 01.12.2016, the KERC passed separate interim orders in OP No. 85/2016 (filed by Karnataka ESCOMs), O.P. No. 38/2016 along with connected matters (filed by the Sugar Plants) determining the interim tariff as Rs 3.47 per unit and restricting the quantum of power to be purchased to 501 MW.

11. On 14.12.2016, Power Company of Karnataka sought approval of State Commission as regards the PPA Format for entering into PPAs pursuant to the interim orders, and State Commission while approving the PPA format vide its letter dated 23.12.2016, also conveyed its approval for procurement of power of 501 MW exportable capacity from 28 co-generation units in the State.

12. On 02.01.2017, Athani Sugars also approached the Karnataka ESCOMs for entering into a PPA; however, vide letter dated 30.01.2017, Athani Sugar was informed that it had to approach Power Company of

Karnataka Limited for execution of the PPA, and no individual ESCOMs could enter into a PPA with the Athani Sugar.

13. On 11.04.2017, KERC passed final order in O.P No. 38 of 2016 and other connected matters and OP 85 of 2016 determining the tariffs to be applicable for energy supplied from the bagasse based co-generation plants based on their year of commissioning with a direction that owners of bagasse based co-generation plants, entering into PPA with the ESCOMs for the sale of energy as per tariff determined in the order may do so within a period of one month from the date of the said order, failing which they shall not have a claim for entering into the PPA with any ESCOM. In the said order, it was also clarified that purchase of power may not be restricted to 501 MW (as specified in Interim Order), in line with GoK order dated 11.11.2016.

14. Athani Sugar also raised invoice on the Karnataka ESCOMs dated 13.04.2017 seeking payment for the energy injected during the period 01.11.2016 to 28.02.2017 as per the rate determined by the Commission in its order dated 11.04.2017.

15. Athani Sugars, vide its several letters dated 13.04.2017, 03.05.2017, 19.05.2017 and 13.06.2017, approached the Karnataka ESCOMs for execution of the PPA, however with no success. On 08.11.2017, Athani Sugars approached the GoK for permission to enter into a PPA with the Karnataka ESCOMs. Pursuant to the approval of GoK on 01.01.2018, the Karnataka ESCOM entered into a PPA with the Athani Sugars on 18.01.2018 which provided that payment shall be made for the energy supplied after signing of the PPA.

16. In the meantime, on 14.11.2017, Athani Sugars requested SLDC to grant NoC to sell power on open access for the period from 15.11.2017 to 30.11.2017 and for the month of December 2017 and January 2018 from their co-generation plant; however, vide letter dated 30.1.2018, Athani Sugars requested SLDC to cancel the NoC since PPA was executed with ESCOMs on 18.01.2018.

17. Upon execution of the aforesaid PPA, Athani Sugars vide its letter dated 12.03.2018 requested Karnataka ESCOMS for payments to be made for the energy that it had injected into the grid during the cane crushing season 2016-17, which was refused by PCKL vide its letter dated 30.05.2018, citing terms and conditions of the PPA signed with Karnataka ESCOMs that there was no obligation to pay any amounts for power supplied prior to the execution of the PPA. Thereafter, Athani Sugars filed OP No. 92 of 2018 on 25.10.2018 before the State Commission seeking a direction to the Karnataka ESCOMS to make payments (sum of Rs 21,20,42,205/-) for the energy that had been injected into the grid by it from the time of filing of Petition No. 45 of 2016 (14.06.2016) up to the date of execution of PPA i.e 18.01.2018. As per Athani Sugar, they have started injecting power into the Grid since 01.11.2016.

18. The State Commission, vide its order dated 20.08.2019, impugned in the Appeal, partly allowed the claim of Athani Sugars and directed the Karnataka ESCOMS to make payments (a sum of Rs. 9,93,67,062/-) for power injected by Athani Sugars from 02.01.2017 till execution of the PPA i.e 18.01.2018. Aggrieved by the directions of the State Commission, Power Company of Karnataka and ESCOMS have preferred Appeal No. 192 of 2020 before this Tribunal stating that they are not liable to make

any payment for the energy injected into the Grid by Athani Sugar prior to execution of the PPA.

19. The State Commission, though partly allowed the Athani Sugars claim, it didn't direct the Respondent ESCOMs to pay Athani Sugars for the energy injected into the grid for the period from November 2016 to 01.12.2017 and aggrieved thereby, Athani Sugars filed a review petition being Review Petition No. 08/2019 before the State Commission seeking partial review of the impugned order. However, by its order dated 07.03.2023, the State Commission rejected the said review petition. Aggrieved thereby, Athani Sugars has preferred Appeal No. 623 of 2023 before this Tribunal.

SUBMISSIONS OF PCKL & KARNATAKA ESCOMS; Appellants in Appeal 192 of 2020

20. Mr B.P.Patil, learned Senior Counsel representing PCKL and Karnataka ESCOMs submitted that Article 4.1 of the PPA clearly provides that *"the Procurer(s) shall pay for the Delivered Energy for the term of the PPA from the date of supply of power after execution of the PPA..."*. Since Athani Sugar executed the PPA willingly, without protest or allegation of duress, is therefore strictly bound by Article 4.1 and can only claim payment for power supplied after execution of the PPA i.e. from 18.01.2018. Nevertheless, ten months later, by initiating O.P. No. 92 of 2018 dated 24.10.2018, Athani Sugars belatedly sought payment for supplies allegedly made since 2016 onwards, which has been rightly denied by PCKL vide its letter dated 30.05.2018 by virtue of Article 4.1.

21. Learned Senior counsel contended that the Athani Sugars generating plant was commissioned in October 2012 and till 31.05. 2016,

it supplied electricity to third-party consumers under open-access at higher rates and thereafter, Athani Sugar neither notified the Appellants or SLDC of any continued power injection into the grid, nor requested for scheduling of power by the SLDC. In their objections to O.P. No. 92 of 2018, the PCKL and Karnataka ESCOMs averred that *“the ESCOMs as well as SLDC had no knowledge of injection of power”* by Athani Sugars. The Impugned Order also holds that O.P No. 38/ 2016 and batch *“did not disclose the consent given by the ESCOMs for purchase of energy”*, and that Athani Sugars injected power without obtaining consent of the Discoms.

22. Learned Senior counsel further submitted that no compensation is payable for unauthorized injection of power without any schedule, contract or knowledge of the SLDC/ Discom; if generating companies are allowed to unilaterally inject expensive power into the grid *de hors* any agreement, even when power is not needed, and subsequently claim payment, it would create chaos and jeopardize the secure and economic operation of the grid, as referenced in this Tribunal Judgement in ***“Indo Rama Synthetics (I) Ltd. v. MERC & Ors.,”*** (“Indo Rama”) dated 16.05.2011 in Appeal No. 123/ 2010 ; ***“Kamachi Sponge & Power Corporation Ltd. v. TNGDCL & Anr.,”*** (“Kamachi Sponge”) Judgment dated 08.05.2017 in Appeal No. 120/ 2016 ***“Cauvery Power Generation Chennai Pvt. Ltd. v. TNERC & Ors.”***, Judgment dated 15.04.2015 in Appeal No. 267/2014 ; and ***“OPG Power Generation Pvt. Ltd. v. TNEB”***, Judgment dt. 30.05.2016 in Appeal No. 68/ 2014. Learned senior counsel further stated that the contention of Athani Sugars that it is entitled to receive payments on the basis of unjust enrichment or quasi-contractual principles under Section 70 of the Indian Contract Act, 1872, has been categorically

rejected by this Tribunal in above referred judgement in **Indo Rama** and **Kamachi Sponge**.

23. Regarding the reliance placed by Athani Sugars on this Tribunal judgment in “**TGV SRAAC Ltd. v. APERC & Ors.**” (A.No.213 of 2023, dated 26.02.2024), Learned Senior Counsel submitted that the operative part of the said judgement has been stayed by the Supreme Court vide order dated 05.08.2024 in CA Dy. No. 19543 of 2024 and in any event, the said judgment is distinguishable because paragraph 21 of the judgment observes that “*the power units involved herein are wind power generating units which are considered as ‘Must Run Unit’; as these units are connected to the grid, power must be injected into the grid unless stopped at the point of connection to the grid by the respondents, which they did not do*”. In contrast, Athani Sugars does not have “must run” status, as it operates a controllable generation facility and is therefore obligated to obtain prior consent and schedule injection of power. Moreover, the respondents therein were aware that the agreements with TGV had expired and it continued to inject power. The Tribunal in that case specifically distinguished the judgments in Kamachi Sponge and Indo Rama on the ground that, in those matters, the injection of power occurred without the knowledge or consent of the Discoms or the SLDC. Accordingly, the present matter is squarely governed by the principles laid down in *Indo Rama* and *Kamachi Sponge* judgements. Further the judgment in “**Greenko Maha Wind Energy Pvt. Ltd. v. MERC & Ors.**”, referred by Athani Sugars, involved a wind turbine generator whose energy injection and scheduling were accepted by MSEDCL without objection for a period of five years, during which credit notes were also issued, is also distinguishable for the same reasons as above.

24. Learned Senior counsel further submitted that annexure to the invoices raised by Athani Sugars makes reference to a “Reading as per ‘B’ Form”. However, no such Form B or joint meter reading has been placed on record by Athani Sugars. In any case, given that Athani Sugars was effecting third-party sale of power through open access, and was injecting power without the requisite approvals from the Discoms or the SLDC, it was not possible to determine the identity of the supplier or recipient of such power whether it was an open access consumer, a third-party purchaser, or a consumer outside the State. Accordingly, the Discoms could not, based on a mere meter reading, ascertain whether they had in fact received and in turn supplied the said power in question. The judgment in “**UP Ceramics & Potteries Ltd. v. RERC Vidhyut Vinnyamak Bhawan**”, referred by Athani Sugars, is clearly distinguishable as the claim was supported by “irrefutable documents” evidencing the joint meter readings; moreover, PPA in that matter had expired on 31.03.2015 and was subsequently renewed on 25.06.2015. On the basis of the parties’ conduct, including continuation of taking joint meter readings during the intervening period, it was held that the PPA stood extended from 01.04.2015.

25. In the present case, Athani Sugars claimed to have started injecting power on 01.11.2016, at which time neither the GoK order dated 11.11.2016 nor interim order dated 01.12.2016 passed by KERC were in force. KERC granted approval only on 23.12.2016, and PPAs with 28 generating plants were executed on 02/03.01.2017, with payments commencing thereafter and no payment is due to Athani Sugars for the period 01.11.2016 to 01.01.2017, and that Appeal No. 623/2023 filed by Athani Sugars is liable to be dismissed. Furthermore, during the period from 02.01.2017 to 11.04.2017, the Discoms were constrained from

procuring more than 501 MW of power due to the limitation in the interim order of KERC dated 01.12.2016. This restriction was reiterated in the KERC approval letter dated 23.12.2016 and Gok, letter dated 05.01.2017, however, the KERC has thereafter contradicted itself by directing payments to be made from 02.01.2017 to Athani Sugars.

26. Learned Senior Counsel pointed out that the KERC Order dated 11.04.2017 merely directed the owners of Co-Generation plants to approach the Discoms within a period of one month, *“failing which, they shall not have any claim for entering into a PPA...”*. The said Order did not impose any obligation or direction upon the Discoms to sign the PPAs. The tariff payable to Athani Sugars under the said order was Rs. 4.85 and Rs. 5.03 per unit, which was significantly higher than the interim tariff of Rs. 3.47 per unit as well as the prevailing market rates.

27. Learned Senior Counsel asserted that the State Commission under Section 86(1)(b) of the Electricity Act, 2003, has the power to determine tariff and approve PPAs, however, it does not have the authority or jurisdiction to compel a Discom to enter into a contract solely on the basis of the tariff so determined (Judgement in **“Gujarat Urja Vikas Nigam Ltd. v. Solar Semi-Conductor Power Company (India) Pvt. Ltd.”**, (2017) 16 SCC 498 , and this Tribunal judgement in **“Team Ferro Alloys Pvt. Ltd. v. MSEDCL & Ors.”**, dated 30.05.2024 in Appeal No. 443 of 2019 ; the Discoms, therefore, cannot be held liable for their decision not to enter into a PPA with Athani Sugars pursuant to the KERC Order dated 11.04.2017.

28. Learned Senior Counsel also submitted that the Impugned Order itself holds that *“The Interim Order or the final Order does not authorize*

injection of power into the Grid from the dates of these Orders, without there being an agreement with the ESCOMs”; in the proceedings in O.P. No.45/2016, Athani Sugars neither sought clarification from KERC regarding its right to inject power into the grid nor apprised the State Commission that the DISCOMs had declined to execute PPAs. In the circumstances, KERC, therefore, correctly held that Athani Sugars could have injected energy only with the consent of the Discoms, accordingly, Athani Sugars is not entitled to remuneration for the energy injected before execution of the PPA.

SUBMISSIONS OF ATHANI SUGARS; Appellants in Appeal 693 of 2023

29. Mr. Matrugupta Mishra, learned counsel for the Athani Sugars, submitted that GoK Order dated 11.11.2016, and the subsequent letter addressed to KERC dated 18.11.2016, had granted approval to the Respondent ESCOMs’ proposal for procurement of power from co-generation plants situated within the State of Karnataka; the said Order does not impose any restriction or limitation confining such procurement to only 28 co-generation units of SISMA. The PCKL, Respondent No. 7 (A.NO.623/2023) in its letter dated 14.12.2016 addressed to KERC, erroneously stated that GoK had approved procurement from 28 co-generation power plants; the KERC, in its Order dated 23.12.2016, approved procurement of 501 MW of power from co-generation units and did not confine the said approval for only 28 co-generation plants whose names were sponsored by SISMA.

30. Learned counsel contended that the final order of the State Commission dated 11.04.2017, which remained unchallenged, has therefore attained finality, wherein it has been held that the benefit of the GoK Order dated 11.11.2016 should extend to all Co-generation plants in

the State, which are willing to sell power at the tariff determined by KERC, without restriction to SISMA's 28 sugar factories or the 501 MW exportable capacity. The final order also specified the tariff payable per unit for energy supplied by Co-generation plants commissioned in various years from 2005 or earlier up to 2014; the Clause (a) of the said Order in conjunction with Clause (f) mandates that the owners of eligible Co-generation plants shall enter into PPA with ESCOMs for sale of energy at the tariff determined under the said Order.

31. Learned counsel contended that the intent of State Commission can be discerned from two separate interim Orders passed on 01.12.2016 in the batch of petitions filed by various generators (**OP No. 38/2016, OP No. 45/2016**); and the other passed in the petition filed by the Respondent ESCOMs (**OP No. 85/2016**) wherein the KERC while directing payment of an interim tariff at the rate of Rs. 3.47 per unit to the Respondent ESCOMs, does not impose any limitation on the exportable capacity to 501 MW; accordingly, Athani Sugars entitlement to receive the amount for the power supplied prior to the execution of the PPA arises from these interim and final Orders of KERC, which the Respondent ESCOMs failed to consider.

32. Learned counsel pointed out that the issue of execution of PPA with the Respondent ESCOMs has been started with representation dated 10.05.2016, even prior to filing of OP No. 45/2016, and continued through multiple communications to the Respondent ESCOMs viz letters dated 23.09.2016, 02.01.2017, 03.05.2017, 19.05.2017 and 13.06.2017. KERC, vide its order dated 01.01.2015, determined the tariff for procurement of power from bagasse-based co-generating plants and approved the proposal of the Respondent ESCOMs for procurement of power from such

co-generating units. The Athani Sugars also filed OP No. 45/2016 before KERC seeking a direction for execution of the PPA. However, when the Respondents ESCOMs denied to execute the said PPA, Athani Sugars approached the GoK.

33. Learned counsel submitted that there is no dispute regarding Athani Sugar's injection of power into the grid from 01.11.2016, which was also fully utilized by the Respondent ESCOMs, that is evident from the Joint Meter Readings (Form B), showing receipt of power and its onward supply to consumers and realization of commercial value. Referring to the judgement of this Tribunal in "***U.P.Ceramics & Potteries Ltd. vs. Rajasthan Electricity Regulatory Commission and Ors.***", in Appeal No. 83 of 2017, dated 26.02.2020, learned counsel submitted that the Respondent ESCOMs having benefitted and utilized the power injected by Athani Sugar without any objection, cannot refuse to compensate them later on. In this context, reliance is placed on the ***Karnataka Electricity Grid Code, 2015 ("KEGC")*** which casts an obligation on SLDC to provide daily schedules to generators for power generation/injection, *inter alia*, and further provides provisions for its non-compliance; SLDC never objected to such alleged unilateral injection of power by Athani Sugar into the grid (Ref. judgment in "***M/s TGV SRAAC Limited vs. Andhra Pradesh Electricity Regulatory Commission and Ors.***", ***Appeal No. 213 of 2023, order dated 26.02.2024***)

34. Learned counsel, alleging that there was a tacit consent on the part of the Respondent ESCOMs in favour of Athani Sugars to inject power into the grid; and when the invoices were raised for the energy supplied that the Respondent ESCOMs chose to raise objections to such injection of power; and that such non-gratuitous delivery of energy by Athani Sugar

into the grid and subsequent utilization of such energy by the ESCOMs amounts to 'unjust enrichment'. The principle of restitution in cases of unjust enrichment is a well-established tenet of law and is enshrined under Section 70 of the Indian Contract Act, 1872. Learned counsel further stated that the issue pertaining to the entitlement of power generator to receive compensation for power injected into the grid in the absence of a valid agreement has been conclusively settled by this Tribunal in "**Greenko Maha Wind Energy Pvt. Ltd. vs. MERC and Ors**", Appeal No. 103 of 2021; order dated 22.10.2024 and has been affirmed by the Hon'ble Supreme Court in "**Maharashtra Energy Development Agency vs. Greenko Maha Wind Energy Pvt. Ltd. and Ors.**", Civil Appeal No. 920 of 2025; order dated 31.01.2025.

35. Learned counsel asserted that despite the direction for payment of interim tariff as contained in the interim Order dated 01.12.2016 passed in OP No. 45/2016, the Respondent ESCOMs failed to execute PPA with Athani Sugars, citing untenable reasons, while concurrently executing PPAs with several other similarly situated co-generation power projects. Even subsequent to the final order dated 11.04.2017, the Respondent ESCOMs refrained from executing a firm PPA with Athani Sugars and caused undue and unexplained delay; the Athani Sugar was grossly discriminated and no PPA was executed with Athani Sugars despite repeated requests.

36. Learned counsel submitted that the Respondent ESCOMs themselves have acknowledged that, while the standard PPAs executed by the other similarly placed sugar-based co-generation units contained provisions for interim payments at the tariff determined by the KERC in its Order dated 01.12.2016, and there was no such stipulation in Athani

Sugar's PPA dated 18.01.2018, hence, difference in the provisions of the PPA executed by the Respondent ESCOMs with other generators and with Athani Sugars further proves the discrimination that Athani Sugars has been subjected to. Learned counsel prayed that contentions of Respondent ESCOMs to be rejected as without merit and Respondent ESCOMs may be directed to make payment to Athani Sugars for delivered energy from 01.11.2016 to 01.01.2017.

DISCUSSION AND ANALYSIS

37. Heard Mr. B.P. Patil, learned Senior Counsel representing PCKL and Respondent-ESCOMs and Mr. Matrugupta Mishra, learned counsel for Athani Sugars. The State Commission in the Impugned order has directed the Respondent ESCOMs to make payment of energy charges to Athani Sugars for the energy injected into the grid during the period from 02.01.2017 till signing of the PPA i.e. 18.01.2018. The Respondent DISCOMs are aggrieved by such direction and contended that any energy injected into the Grid without any commercial agreement for sale of such energy to Respondent Discom is an unauthorized injection of energy into the Grid and cannot be compensated in any manner. On the other hand, Athani Sugars have contended that since they have been injecting energy into the grid since 01.11.2016 and in petition filed by them along with others, an interim as well as final tariff had been determined, and they have also continuously been pursuing for signing of EPA, they should be compensated for the energy injected during the period from 01.11.2016 to 01.01.2017 as well. In support of their contentions, both DISCOMs and Athani sugars have relied on various judgements of this Tribunal and the Supreme Court, as deliberated below:

Judgements referred by Respondent ESCOMs and Athani Sugars

38. Judgement of this Tribunal in “***Indo Rama Synthetics (I) Ltd. v. MERC & Ors.,***” dated 16.05.2011 in Appeal No. 123 of 2010 (Reliance Placed by Respondent ESCOMs)

In the said case, the captive generator (82.5 MW consisting of 52.5 Diesel generating sets and 30 MW coal fired) having surplus power has injected about 1.607 million of electricity into the network, for which no schedule was provided by SLDC and there was no agreement with the Distribution licensee to receive the power and generator sought compensation for the energy so injected into the grid, which was allowed by the State Commission at the lowest cost of power station of the state owned generating stations. However, in the said judgment, this Tribunal held that under the provisions of the Electricity Act 2003, SLDC is responsible for scheduling and dispatch of electricity within the State as well as to monitor grid operations, and generators have to schedule power as per schedules given by SLDC and grid code in the interest of secured and economic operation of the Grid; unwarranted generation can jeopardize the security of the Grid and moreover, the injection in the present case was effected without the prior knowledge or consent of the concerned Distribution Licensee. This Tribunal opined that the provisions of Section 70 and 72 of the Indian Contract Act, 1872 were not applicable, since it is governed by the Electricity Act 2003, which constitutes a self-contained and comprehensive code. Based on these considerations, this Tribunal did not find any substance in the claim of generator for compensation for the power injected into the Grid without a valid schedule and contractual agreement.

39. Judgement of this Tribunal in “*Cauvery Power Generation Chennai Pvt. Ltd. v. TNERC & Ors.*”, dated 15.04.2015 in Appeal No. 267/2014 (Reliance Placed by Respondent ESCOMs)

In this case, the issue related to the claim for payment in respect of infirm power injected into the grid by the generator and there was also no express consent from the Distribution licensee to purchase the power for certain period. This Tribunal, agreed with the observation of the State Commission and held that the generator is not entitled to claim payment for Infirm Power injected into the grid for the period, for which no express approval was there from the Distribution Licensee.

40. Judgement of this Tribunal in “*OPG Power Generation Pvt. Ltd. v. TNEB*”, dated 30.05.2016 in Appeal No. 68 of 2014 (Reliance Placed by Respondent ESCOMs)

In this case, the issue was with regard to payment for the electricity (firm power) injected into the Grid by the generator from their 77 MW generating plant, in the absence of any agreement executed for sale of power by Distribution licensee and in the absence of scheduling of energy for injection into the grid from 22.04.2010 to 28.04.2010. This Tribunal, while adjudicating the matter, referred to its earlier judgement dated 16.05.2011 in “*Indo Rama Synthesis (India) Ltd vs. MERC*” and concurred with the views of the State Commission, holding that Distribution licensee is not entitled to make any payment for the units of firm power injected into the grid by the generator during the said period.

41. Judgement of this Tribunal in “*Kamachi Sponge & Power Corporation Ltd. vs. TNGDCL & Anr.,*” dated 08.05.2017 in Appeal No. 120 of 2016 (Reliance Placed by Respondent ESCOMs)

In this case, the captive generator (2x35 MW) injected electricity (infirm power) into the grid for which it has not sought approval /schedule from SLDC and there was no agreement with the Distribution licensee. This Tribunal held that it is the duty of everyone connected to the Grid to comply with the direction of concerned SLDC and onus of wrongdoing by the Generator cannot be shifted to the Distribution licensee. This Tribunal referred to its earlier decisions in Appeal No. 267 of 2014 dated 15.04.2015 and Appeal No. 68 of 2014 dated 30.05.2016, wherein it was held that generator cannot pump electricity into the grid without the consent/contractual agreement with the distribution licensee, and without the approval/scheduling of the power by the SLDC; accordingly, held that the generator is not entitled for the payment for such energy injected into the grid.

42. Judgement of this Tribunal in “*M/s TGV SRAAC Limited vs. Andhra Pradesh Electricity Regulatory Commission and Ors.*”, dated 26.02.2024 in Appeal No. 213 of 2023 (Reliance Placed by Athani Sugars)

In this case, the wind generator (2 MW + 1 MW) had entered into an agreement with the distribution licensee for supply of power commencing from 27.03.1996 for a period of 20 years, which expired on 26.03.2016. The generator has entered into another agreement with other wind generator units (aggregating to 1.89 MW) for a period of 20 years, which expired on 27.03.2017. The generator continued to supply the power from

its generator units after expiry of the agreement. This Tribunal after referring to the judgment of the Supreme Court in “**State of west Bengal Vs B.K.Mondol & Sons**”, AIR 1962 SCC 779, which elucidated the scope and applicability of Section 70 of the Indian Contract Act, 1872, held that the generator is entitled to the payment of power injected into the grid from its wind generation project after the expiry of its earlier agreement and signing of new agreement since the Appellant was hoping to get the agreement renewed inasmuch as the discussions were under progress. The fresh short-term agreement was executed on 07.06.2019. This Tribunal, in the judgement, also considered that the wind generation projects are treated as ‘Must Run’ Units and as these units are connected to the grid and shall inject power into the grid unless stopped by the Distribution licensee, which did not do so. The Tribunal distinguished the facts of the case from those in “**Kamachi Sponge & Power Corporation Ltd Vs Tamil Nadu Generation and Distribution Corporation Ltd**” (order dated 08.05.2017) and “**M/s Indo Rama Synthsis (I) Ltd vs Maharashtra Electricity Regulatory Commission**” (order dated 16.05.2011) as in the *Kamachi sponge*, energy was injected into the grid even before synchronisation and without approval/schedule from SLDC and in *Indo Rama* case expensive power was injected into the grid; and in another judgement of this Tribunal dated 24.01.2013 in “**M/s. BESCO Vs Reliance Infrastructure Ltd & Anr.**,” Appeal No 170 of 2012, where it was held that the generator was entitled to compensation for energy injected into the grid from the wind power plant for the period between expiry of the PPA and the date of execution of wheeling and Banking Agreement, being identical to the case, and held that generator is entitled to receive the payment for the power injected into the grid from the date of expiry of wheeling agreement up to grant of Open Access i.e. from April 2016 to May 2019. **It has been informed that operative part of the**

aforesaid judgement has been stayed by the Supreme Court vide order dated 05.08.2024 in CA Diary No. 19543 of 2024.

43. Judgement of this Tribunal in “**Greenko Maha Wind Energy Pvt. Ltd. vs. MERC and Ors**”, **Appeal No. 103 of 2021, dated 22.10.2024 (Reliance Placed by Athani Sugars).**

Greenko Maha Wind Energy Pvt Limited has set up 17 WTGs at different places contiguous to each other in a specified area in the State of Maharashtra. 16 out of these 17 WTGs were covered under Energy Purchase Agreement (EPA) signed by the Distribution companies in 2017. The 17 WTG (2 MW), commissioned in 2015 was not covered by the EPA, as registration certificate was not issued by MEDA (Maharashtra Electricity Development Agency). This WTG has been continuously generating and injecting power since its commissioning on 31.10.2015, till its disconnection from the grid on 11.06.2020, pursuant to the communication dated 05.06.2020 by Distribution Licensee. This Tribunal having found the withholding of registration of 17th WTG by MEDA leading to non-signing of EPA for the same was not right, and held that 17th WTG may be deemed to be registered with MEDA with effect from 23.11.2015, when it had applied for registration and also directed distribution licensee that the subject WTG may be reconnected to the Grid forthwith.

This Tribunal observed that the injection of power into the grid by subject WTG, which has been accepted by MSEDCL (distribution licensee) without demur for 5 years, and for some period Distribution licensee has also issued Credit notes for such power, and held that MSEDCL cannot be permitted to evade payment to the generator for the power received in its grid from subject WTG. Referring to the judgment of this Tribunal dated 28.08.2024 in “**Green Energy Association vs MERC**” in Appeal No. 197

of 2017, wherein the principle of quasi – contracts as well as doctrine of unjust enrichment were applied, this Tribunal held that the generator is entitled to receive compensation for the power injected from the subject WTG into the grid from the date of its commissioning till its disconnection on 11.06.2020.

The Supreme Court, in its order dated 31.01.2025 in Civil Appeal No. 920 of 2025 has not interfered with the above judgement of this Tribunal noting that Generator has incurred capital cost after the grant of permission to commission by MEDA and also noted that energy supplied by the generator has been consumed and used by Discom.

44. Judgement of this Tribunal in “*U.P.Ceramics & Potteries Ltd. vs. Rajasthan Electricity Regulatory Commission and Ors.*”, dated 26.02.2020 in Appeal No. 83 of 2017 (Reliance Placed by Athani Sugars).

The generator had belatedly made request for revalidation of the PPA, which had expired on 31.03.2015 for supply of power from its renewable project to Discom on 16.06.2015, however both the parties have continued with the practice of joint reading of meter for logging the quantity of electricity injected into the Grid. At the behest of Discom, an undertaking was furnished by generator against every claim for the supply of power made after expiry of PPA albeit reserving its right to approach higher authorities and supplementary PPA was signed on 25.06.2015, revalidating the period up to 31.03.2016. Payment for the energy injected for the period after expiry of earlier PPA on 31.03.2015 and signing of supplementary PPA on 25.06.2015 was denied by Discom and also not allowed by the State Commission. However, this Tribunal observed that PPA stood extended upon execution of Supplementary PPA for one more year in continuation and

thus extended period would commence from 01.04.2015 and allowed payment of requisite charges for the energy injected during the months of April to June 2015.

45. Judgement dated 25.10.2017 in “**Gujarat Urja Vikas Nigam Ltd. v. Solar Semi-Conductor Power Company (India) Pvt. Ltd.**” (2017) 16 SCC 498 (Reliance Placed by DISCOMs).

The generator and Distribution licensee executed a power Purchase agreement for sale and purchase of electricity and in terms of PPA, in case of delay in commissioning of Solar project beyond 30.12.2011, the distribution licensee shall be liable to pay tariff as determined by the Commission for solar projects effective as on the actual date of commissioning of solar power project or the tariff specified in PPA, whichever is lower. There was delay in commissioning of the solar project and generator prayed for extension of Control period, which was allowed by the State Commission. The Supreme Court held that the State Commission in exercise of its power under Section 62 of the Electricity Act, 2003, may conceivably predetermine the tariff, and it cannot force either the generating company or the licensee to enter into a contract based on such predetermined tariff nor can it vary terms of the contract invoking inherent jurisdiction.

46. Judgement of this Tribunal in “**Team Ferro Alloys Pvt. Ltd. v. MSEDCL & Ors.**” dated 30.05.2024 in Appeal No. 443 of 2019 (Reliance Placed by DISCOMs)

8 MW Biomass based power plant was set up in the State of Maharashtra and in terms of Energy Purchase Agreement (“EPA”) signed on 22.12.2005, entire energy was to be supplied to Distribution licensee for a

period of 13 years and PPA expired on 30.12.2018, for which generator company requested Distribution licensee for renewal of EPA; distribution licensee asked them to go for redetermination of tariff post expiry of 13 years of EPA. The State Commission accordingly redetermined the tariff at lower rate and did not issue any direction to the Distribution Licensee to sign EPA with the generator, aggrieved thereby, the Generator approached this Tribunal. This tribunal held that neither the State Commission nor this Tribunal can direct distribution licensee to procure power from any particular power project. The execution of power purchase agreement between a generator and Discom has to be a mutual decision and none of them can be compelled to enter into such an agreement. The Tribunal relying upon the judgment of the the Supreme Court dated 25.10.2017 in “**Gujarat Urja Vikar Nigam Ltd vs Solar Semiconductor Power Company Ltd**”, upheld the decision of the State Commission.

47. Athani Sugars, through its petition in O.P. No. 92 of 2018 had approached the State Commission for payment of charges for the energy injected by them into the grid since 01.11.2016 till signing of PPA by Respondent Discoms, which culminated into the Impugned Order. It would be important to go through the specific reliefs prayed for by Athani Sugars in the petition, as well as the issues framed and adjudicated upon by the State Commission in the Impugned Order.

Content of the Impugned Order:

Athani Sugars vide O.P. No. 92 of 2018 before the State Commission has prayed for:

“(a) Direct the Respondents to make payment for the delivered energy from the date of filing of the Petition in OP No.45 of 2016 up

to the date of execution of Power Purchase Agreement dated 18th January, 2018 as detailed at Annexure P17 and P18;

(b) Set aside the 6th Respondent-PCKL's letter dated 03rd May, 2018.

48. The State Commission in the Impugned order has framed four issues:

ISSUE No. (1): *Whether the filing of the Petition in OP No.45/2016 would authorize the Petitioner to inject energy, from the date of filing of the said Petition?*

ISSUE No. (2): *Whether the Order dated 01.12.2016 passed in OP No.38/2016 and the other connected cases, fixing the interim tariff, would authorize the Petitioner to inject energy from the date of the said Order?*

The State commission in the Impugned order observed as under and answered both the issues (No.1 & 2) as negative.

“46 (e) The question for determination in these two issues is, whether the owners of the Co-gen Plants could inject the power into the Grid, merely on the basis of filing the Petitions or passing of the Interim Orders, without entering into PPAs or without obtaining the consent of the ESCOMs. The learned counsel for the Respondents-ESCOMs contended that inspite of these Orders, the Petitioner and the other Co-gen Plant owners were required to enter into PPAs or obtain the consent of the ESCOMS, prior to injecting energy into the Grid. The contention of the learned counsel for the Respondents appears to be correct. The Interim Order or the final Order does not authorize injection of power into the Grid, by the Petitioner, from the dates of these Orders, without there

being an agreement with the ESCOMs. There is no basis for the Petitioner to contend that, it is entitled to inject energy into the Grid, from the date of filing of the Petition. It is an established principle that, without there being a commercial Agreement, either with the ESCOMs or with a third party under open access, a Generator is not entitled to inject energy into the Grid”

ISSUE No.(3): *Whether the refusal by the Respondents to execute the PPA, even after passing of the Order dated 11.04.2017 in OP No.38/2016 and the other connected cases, is valid?*

The State Commission held that immediately after passing of the order, Athani Sugars approached ESCOMs on 13.04.2017 for signing of the PPA, however it was only after GoK letter dated 01.01.2018, addressed to PCKL for execution of the PPA, Karnataka ESCOM signed the PPA with Athani Sugars, while it was clarified by the State Commission in the order dated 11.04.2017 that procurement of power is not restricted to 501 MW. Nevertheless, this issue was answered in negative.

ISSUE No.(4): *Whether the Petitioner can be granted any payment for the energy injected into the Grid, prior to the execution of the PPA dated 18.01.2018? If so, from which date and at what rate?*

The State Commission reiterated its observation as stated in Issue No. 1 and Issue No. 2 that Athani sugars could have injected energy into the Grid only with the consent of ESCOMs. As the State Commission has approved the standard PPA format and communicated the same to the concerned parties on 23.12.2016, ESCOM could have entered into PPA

with Co-gen Plant owners; Athani Sugars vide its letter dated 02.01.2017 sought permission to execute the PPA pursuant to interim order, therefore energy injected into the Grid from 02.01.2017 is to be taken into account for payment in terms of the tariff determined in the order dated 11.04.2017.

49. We take note that when Athani Sugars vide its letter dated 10.05.2016, has approached Karnataka ESCOMs for in-principle approval for procurement of power and execution of PPA, it was informed to take up the matter with KREDL for necessary Govt. order. In June 2016, various other bagasse-based co-generation plant owners filed O.P. No. 38 of 2016 and Athani Sugars filed O.P. No. 45 of 2016 before the State Commission requesting for a direction to the Karnataka ESCOMs to execute PPAs with their respective Bagasse based co-generation power plants.

50. On 11.11.2016, GoK accorded its approval to purchase power from the Co-generation Plants within the State, at the tariff to be determined by the KERC; though such an order made reference to the representation made by South India Sugar Mills Association ("**SISMA**") on behalf of 28 Sugar Plants with an exportable capacity of 501 MW, which did not include Athani Sugar, however the order did not place any restriction with regard to purchase of power only from the 28 generating plants mentioned in SISMA letter dated 22.10.2016. The State Commission vide its order dated 05.12.2016, approved interim tariff, in the Petitions filed by 29 bagasse-based co-generation plants including O.P. No. 45 of 2016 filed by Athani Sugars. The State Commission in response to Karnataka ESCOMs (Petition No. 85 of 2016) passed an Interim Order dated 01.12.2016, allowing them to procure power from Sugar factories (co-gen

plants set up by Sugar factories) limiting to 501 MW. Further, State Commission vide its order dated 23.12.2016, communicated the approval for the PPA format to Karnataka ESCOMs for procurement of power of 501 MW exportable capacity from 28 co-generation units in the State, and it has been informed by Karnataka ESCOMs that PPAs with 28 generating plants with exportable capacity of 501 MW were executed by Karnataka ESCOMs on 02/03.01.2017.

51. The State Commission, in its final order dated 11.04.2017 in Petition O.P No 45 of 2016 (filed by Athani Sugars) and others observed that GoK order dated 11.11.2016 did not put any restriction regarding purchase of power from 28 co-generation projects with 501 MW exportable capacity and therefore purchase of power need not be restricted to 501 MW only and also determined the tariff to be applicable to purchase power from Cogen plants based on the year of commissioning of respective generation projects. The said order also directed Cogen plants, that are willing to enter into PPA with distribution licensee to do so within a period of one month from the date of the order, failing which they shall not have any claim for entering into the PPA with ESCOMs.

52. Moreover, the State Commission, in its interim order dated 05.12.2016 as well as subsequent Order dated 23.12.2016 approved the PPA format to be signed with biogas Cogen plants by Karnataka ESCOMs and has restricted it to 501 MW capacity, which coincided with the exportable capacity of 28 Cogen plants listed in SISMA letter; and PPA with all these 28 biogas cogen plants with exportable capacity of 501 MW was signed by Karnataka ESCOMs on 02/03.01.2017. GoK in its letter dated 05.01.2017, also conveyed its approval for purchase of power from 28 Cogen plants with 501 MW exportable capacity. Thus, Karnataka

ESCOMs cannot not be faulted for violating the directions contained in KERC interim Order dated 05.12.2016 and PPA approval order dated 23.12.2016. It was only on 11.04.2017, that State Commission in its final order has clarified that procurement of power from Cogen plants is not restricted to 501 MW. In our view, procurement of power by Karnataka ESCOMs was restricted to 501 MW in terms of the State Commission orders dated 05.12.2016 & 23.12.2016 and they could not have signed PPA with Athani Sugars prior to 11.04.2017. We shall deliberate the payment liability of Karnataka ESCOM for period beyond 11.04.2017 till 18.01.2018 for non-signing of PPA by Karnataka ESCOMs with Athani Sugars in subsequent paragraphs.

53. We are in agreement with the observation of the State Commission under Issue No. 1 and Issue No. 2 of the Impugned order, that Athani Sugars could not have injected power into the Grid without any commercial agreement, and mere filing of Petition in O.P. No. 45 of 2016 and order of State Commission dated 01.12.2016 fixing interim tariff, does not entitle Athani Sugars to inject energy into the Grid for Karnataka ESCOMs. However, we are surprised to note that the State Commission, having made such observation under Issue No 1 & Issue No 2, directed Karnataka ESCOMs to make payment for the energy injected from 01.01.2017, even prior to passing of final order dated 11.04.2017 by State Commission, which removed the restriction of procurement of power from only 501 MW capacity.

54. Under Issue No 3, the State Commission has held that non signing of PPA by Karnataka Discom with Athani Sugar after passing of final order dated 11.04.2017 in O.P No. 38 of 2016 and other Petitions is not valid. The State Commission in the final order dated 11.04.2017 has determined the tariff payable per unit of energy for the energy supplied from the Cogen

plants based on their year of commissioning prior to 2005 and up to year 2014. In point (f), as reproduced below, it directed the willing Cogen plants to enter into PPA within one month from the date of order.

“ (f) The owners of the Cogen Plants, who are entering into PPAs with the ESCOMs for sale of energy, as per the tariff determined in this Order, shall do so within one month from the date of this Order, failing which, they shall not have any claim for entering into a PPA with any ESCOM”

55. We observe, as also pointed out by Respondent - ESCOMs, that there is no specific direction in the State Commission Order dated 11.04.2017 to ESCOMs to enter into the PPA with Cogen plants. We agree that for signing of PPA, both ESCOM and Generator have to agree, and as such in terms of the State Commission Order dated 11.04.2017, onus has been put on the Cogen plants to sign the PPA with ESCOMs within one month, otherwise their right to sign PPA would get forfeited. It has been held by the Supreme Court (Judgement dated 25.10.2017 in “**Gujarat Urja Vikas Nigam Ltd. v. Solar Semi-Conductor Power Company (India) Pvt. Ltd.**”, (2017) 16 SCC 498, that State Commission in exercise of its power under Section 62 of Electricity Act 2003 may conceivably predetermine the tariff, and it cannot force either the generating company or the licensee to enter into a contract based on such tariff. Karnataka ESCOMs have signed the PPA with Athani Sugars only on 18.01.2018, pursuant to the letter from GoK dated 01.01.2018 to PCKL for execution of PPA.

56. Based on the above deliberation, we are not in Agreement with the view taken by the State Commission in Issue No. 3 of Impugned order that after passing of the order dated 11.04.2017, refusal by Karnataka ESCOMs for signing of PPA with Athani Sugars is not valid.

57. In the previous paras it has already been held that Karnataka ESCOMs are not liable to make any payment for the energy injected by Athani Sugars prior to Order of State Commission dated 11.04.2017, which clarified that procurement of power is not restricted to 501 MW capacity. Issue of the entitlement of payment for the energy injected into the Grid by Athani Sugars subsequent to passing of Order dated 11.04.2017 by the State Commission and prior to signing of the PPA dated 18.01.2018 is deliberated in ensuing paragraphs.

58. While dealing with Issue No. 4, the State Commission, although observed that Petitioner could have injected energy into the Grid only with the Consent of ESCOMs, however held that since the State Commission has approved PPA format on 23.12.2016, ESCOMs could have entered into PPAs with Cogen Plant owners; and since Athani Sugars vide letter dated 02.01.2017 sought permission to execute PPA, Athani Sugars is entitled for the payment of energy injected post 02.01.2017. We find that there is contradiction in the observation made by the State Commission. On the one hand, State Commission held that Athani Sugar could have injected into the grid only with the consent of ESCOMs and on the other hand directed Karnataka ESCOMs to make payment for the energy injected from the date it made request for signing of PPA i.e. 02.01.2017, up to the date of signing of PPA, without Athani Sugars establishing that such an injection was with the consent of ESCOMs.

59. The learned counsel for Athani Sugars has placed reliance on the judgement of this Tribunal in “**Greenko Maha Wind Energy Pvt. Ltd. vs. MERC and Ors**”, **Appeal No. 103 of 2021; order dated 22.10.2024** , which has been affirmed by the Supreme Court, vide its order dated 31.01.2025 in

Civil Appeal No. 920 of 2025 “Maharashtra Energy Development Agency vs. Greenko Maha Wind Energy Pvt. Ltd. and Ors.” and Judgement of this Tribunal in “U.P.Ceramics & Potteries Ltd. vs. Rajasthan Electricity Regulatory Commission and Ors”., dated 26.02.2020 in Appeal No. 83 of 2017, and contended that they are entitled to receive payment for the energy injected into the grid since 01.11.2016. We, however, observe that the facts in the referred cases are different from the facts in the present case, as in *Greenko judgement*, wind power had ‘Must Run’ status and energy was supposed to be injected with the consent of distribution company since credit notes were issued by the Distribution Company. The case in *UP Ceramics* was also with regard to renewable energy and payment was for the energy injected in the intervening period between expiry of one PPA and signing of subsequent PPA, which included this intervening period and during which period joint meter reading as per earlier PPA continued. Hence, both the referred judgements are not applicable to the facts of the present case.

60. Regarding the contention of Athani sugars with regard to joint meter reading establishing the consumption of energy by ESCOMs, as pointed out by learned Senior Counsel for Karnataka ESCOMs that annexures to the invoices raised by Athani Sugars make reference to a “Reading as per ‘B’ Form”, however no such Form ‘B’ or joint meter reading was placed on record by Athani Sugars. We find merit in the submissions of learned Senior counsel for Karnataka ESCOMs that when Athani Sugars was effecting third-party sales of power through open access, and was injecting power without obtaining the requisite approvals from the Discoms, it was not possible to establish whether injection of such power, for which joint meter reading has been referred to, is indeed for the Karnataka ESCOMs, or somebody else like open access consumer, a

third-party purchaser, or an interstate consumer. As such, Karnataka ESCOMs have denied providing any consent to Athani Sugars for injecting power into the Grid for consumption by them and Athani Sugar has not placed any documentary evidence showing the consent of ESCOMs for injecting energy into the Grid and joint meter reading is in connection with that consent. We, in fact, note that Athani Sugars have requested SLDC to grant NoC to sell power on open access for the period from 15.11.2017 to 30.11.2017 and for the month of December 2017 and January 2018 from their co-generation plant; however, vide letter dated 30.1.2018, Athani Sugars requested SLDC to cancel the NoC since PPA was executed with ESCOMs on 18.01.2018, which indicates their intention to sell power in open Access to third party till PPA is signed with Karnataka ESCOMs.

61. We note that Athani Sugar vide its letter dated 13.04.2017 has raised an invoice on Karnataka ESCOMs for payment of energy injected by them for the period from 01.11.2016 to 28.02.2017, post passing of final Order dated 11.04.2017 by State Commission, it does not have any reference to any PPA or consent of Karnataka ESCOM for receiving this power. Moreover, in subsequent letters dated 03.05.2017, 19.05.2017 and 13.06.2017 addressed to Karnataka ESCOMs, though Athani Sugar referenced its letter dated 13.04.2017, but only requested to sign the PPA without mentioning about clearing of their dues or informing that they have been injecting power in the Grid. Athani Sugar has been approaching the State Commission for determination of Tariff for their project and for signing of PPA since 2016, but has failed to demonstrate before this Tribunal, that they had informed the State Commission even once regarding their injecting power into the grid since 01.11.2016 for the

Karnataka ESCOMs without the PPA, for which they are entitled to receive the payment .

62. We also take note that terms of the PPA dated 18.01.2018, executed between Athani Sugar and Karnataka ESCOMs, provides that any payments would be made only for energy delivered after the execution of the said PPA, as extracted below:

“4.1 Monthly Energy Charges:

Procurer(s) shall pay for the Delivered Energy for the term of the PPA from the date of supply of power after signing of the PPA, to the Seller at a tariff to be determined by Commission.”

63. The Karnataka ESCOMs have submitted that the PPA has been signed willingly, without protest or allegation of coercion or duress, and as such no evidence to the contrary has been provided by the Athani Sugar with regard to signing of PPA . The issue of entitlement of payment for the energy injected into the grid in the absence of consent by the Distribution licensee has been dealt with in the Judgements of this Tribunal in **“Indo Rama Synthetics (I) Ltd. v. MERC & Ors.,”** dated 16.05.2011 in Appeal No. 123 of 2010 , **“Cauvery Power Generation Chennai Pvt. Ltd. v. TNERC & Ors.”**, dated 15.04.2015 in Appeal No. 267 of 2014, **“OPG Power Generation Pvt. Ltd. v. TNEB”**, dated 30.05.2016 in Appeal No. 68 of 2014 and **“Kamachi Sponge & Power Corporation Ltd. v. TNGDCL & Anr.,”** dated 08.05.2017 in Appeal No. 120 of 2016; and as such Athani Sugar has agreed in the terms of the PPA dated 18.01.2018, that Karnataka ESCOMs shall pay for the delivered energy after the execution of the said PPA. We accordingly hold that Athani Sugars are not entitled to receive payment for the energy

injected into the Grid since 01.11.2016 without the consent of Respondent ESCOMs.

64. In view of above deliberations, Appeal No. 623 of 2023 instituted by Athani Sugars for payment for the energy injected into the Grid, since 01.11.2016 till 02.01.2017, is dismissed as being devoid of merit and the Impugned Order dated 20.08.2019 of the State Commission is upheld to that extent. The Impugned Order directing payment for the energy injected into the grid by Athani Sugars from 02.01.2017 till signing of PPA by Karnataka ESCOMs is hereby set aside. Appeal No. 192 of 2020, filed by Karnataka ESCOMs is hereby allowed. Associated IAs, if any, in both the Appeals, shall also stand disposed of.

Pronounced in open court on this 4th Day of July, 2025

**Seema Gupta
Technical Member (Electricity)**

**Justice Ramesh Ranganathan
Chairperson**

Reportable / ~~Non-Reportable~~

ts/dk/sg