

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 104 of 2019

Dated : 22nd August, 2025

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

In the matter of:

M/s. Swasti Power Engineering Ltd.
Presently known as "Swasti Power Private Limited"
Road No. 36, Jubilee Hills, Hyderabad-500033.

Versus

1. Punjab State Electricity Regulatory Commission
SCO No. 220-221, Sector 34-A,
Chandigarh, Punjab – 160022.
2. PTC India Limited
2nd Floor, NBCC Tower 15
Bhikaji Cama Place
New Delhi-110066.
3. Punjab State Power Corporation Ltd.
(Formerly Punjab State Electricity Board)
The Mall, OLD PSEB Building,
Patiala-147001.

Counsel on record for the Appellant(s) : Sanjay Sen, Sr. Adv.

B.P. Patil, Sr. Adv.

Parinay Deep Shah
Shikha Ohri
Alisha Gaba
for App. 1

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

Amit Kapur
Akshat Jain
Avdesh Mandloi
Abhimanyu Maheshwari
Shikhar Verma
Rishabh Bhardwaj
Sayam Ghosh
for Res. 2

Swapna Seshadri
Anand K. Ganesan

Amal Nair
for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant – M/s Swasti Power Engineering Ltd. is aggrieved by the order dated 15th January, 2019 passed by 1st Respondent Punjab State Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in Petition N. 55 of 2017 filed by 2nd Respondent – PTC India Limited (in short “PTC”) thereby:-

- (a) Declaring the letter dated 9th March, 2011 issued by Appellant for termination of power purchase agreement (PPA) dated 24th August, 2005 executed between the Appellant and PTC as invalid;

- (b) Declaring the PPA dated 3rd July, 2009 executed between the Appellant and Uttarakhand Power Corporation Limited (UPCL) as vide ab initio;
- (c) Directing Appellant to specifically perform its obligations under the PPA dated 24th August, 2005 executed with PTC.
2. The Appellant has assailed these declarations/directions of the Commission in this appeal.
3. The Appellant, a company incorporated under the provisions of Companies Act, 1956 is a power generator and has developed, implemented and commissioned 3x7.5 MW (22.5 MW) Bhilangana Hydro Project in the State of Uttarakhand.
4. The 2nd Respondent – PTC is a licensed entity to undertake inter-state trading of electricity. The 3rd Respondent – Punjab State Power Corporation Limited (in short PSPCL) is a deemed licensee operating in the State of Punjab.
5. The facts and circumstances in which this appeal has arisen would be limpid in the below given list of relevant date and events;

Date	Particulars
16.01.2003	Appellant entered into an Implementation Agreement with Govt of Uttarakhand for setting up Bhilangana Hydro Electric Project having installed capacity of 22.5 MW (3 x 7.5 MW) proposed to

Date	Particulars
	be established on Bhilangana River, Tehri Garhwal District, Uttarakhand ('Project'). In terms of Article 4.1.1. Appellant had an option to sell the power to consumers outside the State of Uttarakhand. Extracts of Article 4.1.1 are set forth below:
23.12.2003	PTC India Ltd. entered into a Memorandum of Understanding (' MoU ') with Appellant to purchase entire saleable power from the Project.
24.08.2005	PTC entered into a Power Purchase Agreement (' PPA ') with Appellant to purchase entire saleable power from the Project subject to the approval of the Appropriate Commission at the nearest point of interconnection of the State Grid System with the transmission system of Powergrid Corporation of India Ltd. (' PGCIL ')/Central Transmission Utility of India Ltd. (' CTUIL ') (' Delivery Point ') for a period of 35 years.
30.09.2005	Appellant executed Power Wheeling Agreement (' Wheeling Agreement ') with Power Transmission Corporation of Uttarakhand Ltd. (' PTCUL ') for wheeling of power from the Project to the Delivery Point at CTU Grid. In terms of the Article 2.6(c) of the Wheeling Agreement, PTCUL undertook to evacuate power through 220 KV substation at Chamba.
23.03.2006	PTC entered into a Power Sale Agreement (' PSA ') with Punjab State Electricity Board (now PSPCL) for sale of power supplied by Appellant for a period of 35 years.
03.05.2007	PTC filed an application before PGCIL for grant of Long Term Open Access on Central Transmission Utility transmission system for supply of power to PSPCL/PSEB.
12.06.2007	Appellant entered into a MoU with PTCUL (' PTCUL MoU ') for evacuation and wheeling of the electricity generated from the Project.

Date	Particulars
25.07.2007	Appellant filed an application before PTCUL for grant of Long Term Open Access indicating that power from the Project would be evacuated through 33/220 KV Ghansali substation.
31.07.2007	The Commission by its Order in Petition No. 13 of 2007, granted approval to the PSA executed between PTC & PSPCL.
16.04.2008	Appellant by its letter paid Open Access application fees of Rs. 1,00,000 to PTCUL.
03.12.2008	PGCIL wrote to PTC stating that PTC is granted Long Term Open Access subject to signing of Bulk Power Transmission Agreement for payment of PGCIL transmission charges.
27.01.2009	PTCUL wrote to Appellant stating that:- (a) In order to sign Transmission Service Agreement with PTCUL, following action/points will be required: (i) Standing Committee clearance; (ii) Bulk Power Transmission (tariff) Agreement with PGCIL; (iii) Permission from UPCL to use their network as desired by GoU, MoM dated 26.12.2006. (iv) PPA with UPCL to be executed (b) As per Regulation 39(2), 39(3) & 43 of the UERC (Tariff and Other Terms for Supply of Electricity from Non-Conventional and Renewal Energy Sources) Regulations, 2008 ('UERC Tariff Regulations 2008'), Transmission Charges, Wheeling charges, losses and O&M Charges will be applicable for using transmission system of PTCUL.
10.06.2009	Uttarakhand Electricity Regulatory Commission (UERC) passed Order w.r.t. open access to another generating station (15 MW Vanala Small Hydro Project of Him Urja Pvt. Ltd.) therein raising issues w.r.t. the permissibility and validity of sale of power to

Date	Particulars
	<p>entities other than consumers/users outside the State of Uttarakhand. Extracts of the Order are set forth below:</p> <p><i>“...The Commission was apprised that in terms of clause 4.1 of supplementary implementation agreement dated 15.04.2006 dealing with disposal of power generated at Vanala SHP, the power can be disposed off only in one or more of the five modes listed therein. Relevant portion of clause 4.1 of this implementation agreement is reproduced below:</i></p> <p>“ARTICLE IV</p> <p>SALE OF POWER AND ROYALTY ENERGY</p> <p><i>4.1 Disposal of Power</i></p> <p><i>4.1.1 The Company may utilize the option to dispose off power from the project, after allowing for Royalty Energy, in any one or more of the following modes:</i></p> <p><i>i) Sell power to the UPCL, and such sales shall be mutually negotiated between the UPCL and the Company; and/or</i></p> <p><i>ii) Sell power to any High Tension (HT) consumer within the State of Uttaranchal; and/or</i></p> <p><i>iii) Sell power to local rural grids within the State of Uttaranchal, which are not connected to the UPCL’s main grid; and/or</i></p> <p><i>iv) Sell power to rural power distribution entities (i.e. those which sell power to predominantly rural areas); and/or</i></p> <p><i>v) Sell power to any consumer outside the State of Uttaranchal”</i></p> <p><i>It is clear from the above clause that the first four modes are for sale within the State and only fifth one is for sale outside the State. However, such sale is permitted only to a consumer situated outside the State. The word</i></p>

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	<p><i>“Consumer” has been defined clearly in the sub-section (15) of section 2 of Electricity Act, 2003 as follows:</i></p> <p><i>(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;</i></p> <p><i>In view of the above provisions, it is necessary to know the status of the proposed buyer before proceeding further in the matter. M/s. Him Urja Pvt. Ltd. is therefore, required to inform the Commission the details of the proposed purchaser with whom the PPA has been/or is proposed to be signed alongwith copies of PPA and other relevant documents and also to confirm that the proposed sale is permissible under clause 4.1 quoted above read with the abovesaid definition of consumer.”</i></p>
03.07.2009	Appellant executed PPA with Uttarakhand Power Corporation Ltd. (‘UPCL’) for sale of entire power generated from the Project to UPCL through 33KV network. Only after signing of this PPA, UPCL permitted Bhilangana connectivity to its 33KV system.
08.07.2009	<p>Appellant wrote to PTC stating that it is unable to obtain open access in view of Order dated 10.06.2009 passed by UERC, the relevant part of which is extracted hereunder :-</p> <p><i>“As you are aware, UERC interim order dated 10.06.2009 has raised the questions on the permissibility and validity</i></p>

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	<p><i>of sale of power to persons other than end user/consumers outside the state of Uttarakhand and Swasti had already represented to UERC on the issues raised by the Commission on the various grounds including the fact that Swasti has binding legal agreement with PTC. However, in the light of this interim order, UPCL & PTCUL have not been permitting interconnection facility to BHPP to Uttarakhand grid and had indicated that <u>the connectivity will be provided only if a PPA is signed with them.</u> As already explained, Swasti is incurring loss of revenue (about Rs.2 crore till date) on account of prolonged delay in connectivity to Uttarakhand grid and this is leading to dire situation of default in meeting our loan repayment obligations. Keeping in view the overall situation and obligations to sell power to PTC India Limited (PTC) as per the existing PPA with PTC, Swasti ensured that suitable clauses are incorporated in the standard PPA provided by UPCL (copy enclosed). In this context we invite your attention to provisions contained at points 1 and 2 on page 2 and Para 19.1 on page of the PPA.”</i></p>
10.08.2009	<p>Appellant filed an application before Ld. UERC seeking grant of open access for supply of power to PTC in terms of the PPA dated 24.08.2005 and for issuance of necessary directions to UPCL and PTCUL to give connectivity to their system for evacuation of power upto CTUIL grid.</p>
12.08.2009	Unit I of the plant achieved commissioning.
24.09.2009	Unit II of the plant achieved commissioning.
11.10.2009	Unit III of the plant achieved commissioning.

Date	Particulars
30.12.2009	<p>UERC passed Order in Appellant's Application seeking grant of open access and held that:-</p> <p>(a) In Order dated 30.12.2009, based on clarification given by the Govt. of Uttarakhand on 10.09.2009 UERC has concluded that as per clause 4 of Implementation Agreement the sale of electricity outside the State is not permissible to a licensee. Such clarification given by the Govt. of Uttarakhand is applicable to all similarly placed generators including Swasti Power.</p> <p>(b) Therefore, Swasti Power's Application is dismissed.</p>
16.03.2010	<p>PTC filed Appeal No. 88 of 2010 before this Tribunal challenging the Order dated 30.12.2009 passed by UERC in Appellant's application seeking open access for supply of power.</p> <p>Appellant Swasti Power also assailed the said order dated 30th December, 2009 of the Uttarakhand Commission before this Tribunal by way of Appeal No. 93 of 2010.</p>
11.01.2011	<p>This Tribunal passed Judgment in both these appeals thereby setting aside UERC's Order dated 30.12.2009 by observing that:-</p> <p><i>"10. Shri R.K. Mehta, the learned counsel for Swasti Power Engineering Limited, Respondent No.2 in Appeal No. 88 of 2010 submitted that they stand committed to the agreement signed with the Appellant, Power Trading Corporation, but were not in a position to supply power to the Appellant PTC in view of the order of the State Commission. In the meantime, their power station has been commissioned and they are selling power to the UPCL, the distribution company of Uttarakhand.</i></p> <p>.....</p>

Date	Particulars
	<p><i>59. In view of the above findings, we set aside the order dated 30.12.2009 of the State Commission. The State Commission is directed to grant open access to the generating companies, Respondent No. 2 in Appeal No. 88 of 2010 and Appellant in Appeal No. 93 of 2010 after they file application for granting open access on the distribution/transmission system of UPCL/Power Transmission Corporation of Uttarakhand Ltd. before the State Commission.</i></p>
28.01.2011	PTC requested Appellant to file application for open access before UERC in compliance of the Judgment dated 11.01.2011.
07.02.2011	PGCIL wrote to PTC informing closure of Long Term Open Access application of PTC and also indicated that a fresh application, if required later, can be made as per CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009.
09.03.2011	<p>Appellant issued notice of termination of PPA to PTC stating that:-</p> <p>(a) Appellant in its letter dated 08.07.2009 had informed PTC of an event of force majeure on account of which Appellant was unable to gain interconnection and open access from PTCUL which prevented Appellant from supplying power to PTC and from performing its obligations under the PPA.</p> <p>(b) Appellant was given no choice by UPCL but to enter into a PPA with UPCL in order to sale the power generated from the Project.</p> <p>(c) Immediately upon learning of the event of force majeure, Appellant entered into a PPA with UPCL on 03.07.2009</p>

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	<p>and vide notice dated 08.07.2009, notified PTC of the event of force majeure.</p> <p>(d) PTC is also aware that the event of force majeure continued for more than 12 months, therefore, extended force majeure as defined in Article 11.7 and 15.3 of the PPA had occurred.</p>
15.03.2011	<p>PTC wrote to Appellant stating that:-</p> <p>(a) PTC disputes that PPA can be terminated by Appellant due to an occurrence of the force majeure or extended force majeure event.</p> <p>(b) PTC has challenged Ld. UERC's Order 30.12.2009 in Appeal No. 88 of 2010 before the Appellate Tribunal in which Appellant was impleaded as Respondent No. 2.</p> <p>(c) Counsel for Appellant had submitted before the Tribunal in Appeal No. 88 of 2010 that Appellant stands committed to the PPA with PTC but it is not able to supply power to PTC in view of the Order dated 30.12.2009 passed by UERC wherein open access has been denied to Appellant. Further, the counsel for Appellant also submitted that Swasti Power commissioned its plant and is supplying the power to UPCL in the meantime. This submission is recorded in Para 10 of the Judgment dated 11.01.2011 in Appeal No. 88 of 2010.</p> <p>(d) PTC in its letter dated 28.01.2011 informed Appellant about the directions given by the Appellate Tribunal in Judgment dated 11.01.2011 and had requested Appellant to apply for open access at the earliest so that the supply of power to PTC could be commenced.</p> <p>(e) In light of the above, Appellant cannot claim that it is an affected party under the force majeure or extended force</p>

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	<p>majeure event and is unable to supply power to PTC and accordingly competent to terminate the PPA in terms of Article 15.3 & 15.6.3 of the PPA.</p>
17.12.2012	<p>UERC passed Order in a Petition dated 06.12.2012 filed by Appellant seeking tariff of Rs. 3.30 per unit payable by UPCL under the PPA executed with UPCL. Extracts of the Order are set forth below:</p> <p><i>"12.The Petitioner further submitted that under these circumstances where a generating plant is connected to 33 kV network system, the Commission would appreciate that availing Open Access for transmitting power outside the State would be highly uneconomical considering the incidence of significant amount of wheeling/distribution charges and the associated distribution losses in addition to levy of transmission charges and losses for both Intra-State and Inter-State transmission network systems. Moreover, the 33 kV network being highly unreliable and prone to frequent outages would make the scheduling of power by the Petitioner and its obligations, under the Grid Code, for adhering to the day ahead schedule meaningless. The Petitioner stated that as a result of the above it did not find exercising the option of taking power outside the State under Open Access feasible and consequently had to sign a conditional PPA with the Respondent/or sale of power within the State.</i></p> <p>...</p> <p><i>18. The Commission on examination of the past events in the matter is of the view that the Petitioner was keeping all</i></p>

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	<p><i>the options open for selling its generation from its hydro project, namely, selling outside the State to a trader under Open Access for which it has entered into a PPA on 24.08.2005 with M/s PTC India Limited, entered into a conditional PPA on 03.07.2009 with UPCL for selling its power till the decision on the Appeal filed by the Petitioner in the Hon'ble APTEL is taken. Notwithstanding the circumstances, the Commission feels that there was no regulatory vacuum on Tariff and other terms & conditions on RE generation regulations and the Petitioner cannot indefinitely keep things uncertain.</i></p> <p>...</p> <p><i>21. Based on the above, the Commission holds that the Petitioner's plea for making payment at the preferential tariff prescribed in the RE Regulations, 2010 is not sustainable as they, as of now, do not have a valid long term PPA with Respondent which is a pre-requisite according to that regulation. However, considering the submissions made by the Petitioner during the proceedings and taking a holistic view in the matter, the Commission decides to give the Petitioner an option to either enter into a fresh long term PPA or execute a supplementary agreement to the existing PPA with the Respondent consistent with the provisions of the RE Regulations, 2010, for sale of power for the entire useful life of the plant. The Commission further allows a period of 30 days from the date of this Order to exercise the option of executing fresh/ supplementary PPA. The Respondent shall execute PPA within three days of receipt of option of the Petitioner."</i></p>

Date	Particulars
10.01.2013	<p>Appellant and UPCL executed the supplementary PPA wherein it was recorded that Appellant would not claim any benefit out of this Tribunal's Judgment dated 11.01.2011. Extracts of the supplementary PPA are set forth below:</p> <p><i>"C. Whereas Swasti has filed an Appeal before Hon'ble ATE for Open Access. The said Appeal was allowed by Hon'ble ATE vide its Order dated 11/01/2011 enabling to apply for Open Access and directing the Hon'ble Commission to grant the same.</i></p> <p><i>However, Now Swasti of its own free will and in compliance with Order dated 17.12.2012 of Hon'ble UERC in the matter of Petition dated 06/12/2012 filed by Swasti, wants to enter into this Supplementary Agreement to Power Purchase Agreement dated 03/07/2009 with UPCL without claiming any benefit out of the said Order dated 11/01/2011 of Hon'ble ATE unconditionally and without any cost to any party.</i></p> <p><i>D. That the following additional clause shall become part of the power purchase agreement dated 03.07.2009:</i></p> <p><i>...</i></p> <p><i>(ii) The Generating Company agrees that it shall be responsible and shall inter-alia bear all financial and legal implications if the execution of any other agreement signed earlier between the Generating Company and other party is affected because of signing of this Power Purchase Agreement."</i></p>
02.09.2013	<p>The Commission by its Order dismissed Petition No. 30 of 2013 filed by PTC (seeking declaration that termination notice dated 09.03.2011 is illegal) and held that it cannot direct UPCL</p>

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	<p>or Swasti Power to not enter into PPA as both are located in different state and PTC ought to approach the right forum.</p> <p><i>i) This Commission cannot issue any direction with regard to inaction on part of SPEL to implement the directions of Hon'ble APTEL in its Order dated 11.01.2011, which were issued against the decision of UERC.</i></p> <p><i>ii) This Commission cannot direct the distribution licensee of the State of Uttarakhand i.e. UPCL, not to insist with the generating company i.e. SPEL, to enter into a PPA with UPCL for supply of power from its said project, which is also located in that State.</i></p> <p><i>iii) The aforementioned PPA dated 03.07.2009 entered into between SPEL and UPCL is under the regulatory control of UERC.</i></p> <p><i>6. The Commission is of the considered opinion that the petitioner needs to approach the appropriate authority/forum for redressal of its grievance(s).</i></p> <p><i>Accordingly, the petition is not maintainable in view of above and therefore, not admitted. The petition is dismissed, as such."</i></p>
October 2013	Subsequent to Commission's Order dated 02.09.2013, PTC filed Petition before UERC seeking the same relief as sought in Petition No. 30 of 2013 i.e., termination letter dated 09.03.2011 issued by Appellant be declared as illegal among other reliefs.
26.03.2014	Ld. UERC by its Order dismissed the petition filed by PTC (seeking declaration that termination notice dated 09.03.2011 is illegal) on the ground that PPA and PSA were back to back agreements and Uttarakhand Commission does have the

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	<p>jurisdiction to decide the matter. Extracts of the Order dated 26.03.2014 are set forth below:</p> <p><i>“37. The Petitioner has brought to the notice of the Commission, the Order passed by PSERC on the Petition filed by the Petitioner in that Commission. The Commission does not find it pertinent to offer any view on the Orders passed by another State Commission under the Electricity Act. Notwithstanding, this Commission has enquired in to the matter that is brought before it on the basis of the pleadings made before it.</i></p> <p><i>38. On the aforesaid premise, the Commission holds that it does not have the jurisdiction to entertain the present dispute raised by the Petitioner. We however, make it clear that we have not rendered any opinion on the merits of the case and that this decision does not inhibits the Petitioner from taking such steps or proceedings as may be available to it in accordance with law.</i></p> <p><u><i>Accordingly, the Petition, being not maintainable for want of jurisdiction, is not admitted and stands disposed off.</i></u></p> <p><i>Ordered accordingly.”</i></p>
27.06.2014	<p>PTC filed the following appeals before this Tribunal:-</p> <p>(a) Appeal No. 168 of 2014 challenging Ld. UERC’s Order dated 26.03.2014.</p> <p>(b) Appeal No. 214 of 2014 challenging Ld. PSERC’s Order dated 02.09.2013.</p>
31.08.2016	<p>This Hon’ble Tribunal passed Judgment in these two Appeals wherein it held that Punjab Commission has jurisdiction to adjudicate upon the disputes between Swasti Power, PTC and PSPCL. Extracts of the Judgment are set forth below:</p>

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	<p><i>“21. The PPA and the PSA involved in this case are back to back arrangements. There can be no debate over this. It follows therefore that the Punjab Commission in whose jurisdiction PSPCL, successor of PSEB, the distribution licensee is situated will have jurisdiction to deal with the present dispute.</i></p> <p><i>...</i></p> <p><i>24. In the circumstances we hold that the Punjab Electricity Regulatory Commission has jurisdiction to decide the present dispute. In view of this conclusion we allow Appeal No. 214 of 2014 by setting aside impugned order dated 02/09/2013 passed by the Punjab Electricity Regulatory Commission. We dismiss Appeal No. 168 of 2014 as the Uttarakhand Commission has taken a correct view in the impugned order dated 26/03/2014 that it has no jurisdiction. Needless to say that in view of the above the IAs do not survive and are dismissed as such.”</i></p>
March 2017	<p>PTC filed Petition No. 55 of 2017 before the Commission seeking following reliefs :-</p> <p><i>“(a) That the termination letter dated 09.03.2011 issued by Swasti Power Limited be declared as illegal, arbitrary, unsustainable and bad in law;</i></p> <p><i>(b) To direct Swasti to specifically perform its obligations under the PPA dated 24.08.2005 as signed by and between Swasti and PTC;</i></p> <p><i>(c) To direct Swasti to cancel the PPA dated 03.07.2009 entered into with UPCL and also any other agreement that it may have entered into with my other utilities for supply of power generated</i></p>

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	<p><i>from the project in derogation of the terms of the PPA dated 24.08.2005;</i></p> <p>(d) <i>To direct Swasti to pay/reimburse PTC for any charge/claim which PSEB may claim from PTC;</i></p> <p>(e) <i>To direct Swasti to pay to PTC damages for the loss of business due to illegal termination of the PPA by Swasti;..”</i></p>

6. The above noted petition No. 55 of 2017 filed by the 2nd Respondent – PTC has been disposed off by the Commission vide the impugned order dated 15th January, 2019. Thus, the power generator M/s Swasti Power Engineering Limited is in appeal before us against the said order.

7. We have heard Learned Senior Counsel appearing on behalf of the Appellant and Learned Counsels for Respondents. We have also gone through the Written Submissions filed by the Learned Counsels. From perusal of the written submissions of the parties and upon hearing the Learned Counsels, following issues arise for our determination in this appeal :-

- a) Whether the Commission i.e. Punjab Electricity Regulatory Commission had jurisdiction to entertain the petition filed by PTC;

- b) Whether the letter dated 9th March, issued by the Appellant for termination of PPA dated 24th August, 2005 executed by it with PTC is legally valid;
- c) Whether the Commission was competent to declare the PPA dated 3rd July, 2009 executed between the Appellant and UPCL as vide ab initio;
- d) Whether the Commission's direction to Appellant to specifically perform its obligations under the PPA dated 24th August, 2005 executed with PTC is legally tenable.

Our Analysis

a) Whether the Commission i.e. Punjab Electricity Regulatory Commission had jurisdiction to entertain the petition filed by PTC;

8. We may note that PTC had initially approached the Commission i.e. Punjab Electricity Regulatory Commission by way of Petition No. 30 of 2013 seeking declaration that termination notice dated 9th March, 2011 issued by Appellant is illegal. The said petition was dismissed by the Commission vide order dated 2nd September, 2013 holding that the Commission does not have jurisdiction over the disputes and cannot direct Appellant to implement the directions issued by this Tribunal in judgement dated 11th January, 2011 passed in Appeal Nos. 88 of 2010

and 93 of 2010 and that it cannot direct the Distribution Licensee of the State of Uttarakhand i.e. UPCL not to insist upon the Appellant to entire into a PPA for supply of power from its power project. Accordingly, the Commission held the petition to be not maintainable and directing the PTC to approach the right forum.

9. Subsequently, the PTC approached Uttarakhand Commission by way of a fresh petition seeking same relief as had been sought in Petition No. 30 of 2013 filed before the Punjab Commission i.e. termination letter dated 9th March, 2011 issued by the Appellant be declared as illegal along with other reliefs. The said petition was dismissed by Uttarakhand Commission vide order dated 26th March, 2014 on the ground that PPA dated 24th August, 2005 executed between PTC and Appellant as well as the PSA dated 23rd March, 2006 executed between PTC and PSPCL are back to back agreements and, therefore, Uttarakhand Commission does not have jurisdiction to decide the matter. The Uttarakhand Commission also held the said petition as not maintainable.

10. PTC approached this Tribunal by way of Appeal No. 168 of 2014 assailing the order dated 26th March, 2014 passed by Uttarakhand Commission and Appeal No. 214 of 2014 impugning the order dated 2nd September, 2013 passed by Punjab Commission. Both these appeals were disposed off by this Tribunal vide order dated 31st August, 2016

holding the Punjab Commission has jurisdiction to adjudicate upon the disputes between the Appellant, PTC and PSPCL. The relevant part of the said judgement of this Tribunal is extracted herein below :-

“21. The PPA and the PSA involved in this case are back to back arrangements. There can be no debate over this. It follows therefore that the Punjab Commission in whose jurisdiction PSPCL, successor of PSEB, the distribution licensee is situated will have jurisdiction to deal with the present dispute.

...

*24. In the circumstances we hold **that the Punjab Electricity Regulatory Commission has jurisdiction to decide the present dispute.** In view of this conclusion we allow Appeal No. 214 of 2014 by setting aside impugned order dated 02/09/2013 passed by the Punjab Electricity Regulatory Commission. We dismiss Appeal No. 168 of 2014 as the Uttarakhand Commission has taken a correct view in the impugned order dated 26/03/2014 that it has no jurisdiction. Needless to say that in view of the above the IAs do not survive and are dismissed as such.”*

11. It is in pursuance to the said judgement dated 31st August, 2016 of this Tribunal that PTC filed a fresh petition No. 55 of 2017 before the Commission i.e. Punjab Electricity Regulatory Commission which has been disposed off vide impugned order dated 15th January, 2019.

12. It would be material to note here that the Appellant also accepted the judgement dated 31st August, 2016 as did not assail the same before

the Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003.

13. Learned Senior Counsel appearing on behalf of the Appellant would argue that even though judgement dated 31st August, 2016 of this Tribunal has attained finality, it has lost its credibility in view of the judgement passed by Hon'ble Supreme Court in Energy Watchdog vs. CERC & ors. (2017) 14 SCC 80, wherein it has been held that in cases where more than one State is involved i.e. where generation is in one State and supply of power is to another State, the appropriate Commission is the Central Commission. The reference is also made by the Learned Senior Counsel to the judgment dated 15th December, 2024 of this Tribunal in Appeal No. 267 of 2019 to canvass that a Court or Tribunal cannot confer jurisdiction on itself which is otherwise not provided in law and it is only when the Electricity Act specifically provides that the State Electricity Regulatory Commission would get jurisdiction to entertain a petition. It is argued that in Appeal Nos. 168 of 2014 and 214 of 2014 decided vide judgement dated 31st August, 2016, this Tribunal was only called upon to decide whether the State Electricity Regulatory Commission located in Uttarakhand or Punjab would have jurisdiction to decide the matter. On the basis of these submissions, the Learned Counsel argued that the petition filed by PTC

before the Commission i.e. Punjab Commission was not maintainable and the petition out to have been filed before the Central Electricity Regulatory Commission.

14. We do not find any force in the submission of the Learned Senior Counsel. Even though this Tribunal was in Appeal No. 168 of 2014 and 214 of 2014, dealing with the issue as to whether the Uttarakhand Commission or Punjab Commission was having jurisdiction over the disputes raised by PTC in its petition, yet nothing precluded the Appellant to contend before this Tribunal during the hearing of these two appeals that neither Uttarakhand Commission nor Punjab Commission had the jurisdiction to entertain the disputes and it is only the Central Commission before whom the petition would be maintainable. We have gone through the entire judgement dated 31st August, 2016 passed by this Tribunal in these two appeals. No such submission was made on behalf of the Appellant in these two appeals.

15. The Appellant did not even state in its reply to the petition No. 55 of 2017 filed by PTC before the Commission that the Punjab Commission does not have jurisdiction to entertain the petition and the petition ought to have been filed before the Central Commission. Even no such argument was raised before the Commission at the time of hearing of the petition. It is to be noted that the petition was filed before the Commission

in the month of March, 2017. The judgement in Energy Watch Dog case (supra) was delivered by the Hon'ble Supreme Court in the same year. Therefore, it was incumbent upon the Appellant to bring the said judgement to the notice of the Commission to contend that only the Central Commission is competent to entertain the petition. The Appellant has maintained eerie silence on the aspect right throughout the pendency of the petition before the Commission till the same was decided on 15th January, 2019 vide the impugned order.

16. As per Section 21 of the Code of Civil Procedure, 1908, the objection as to the territorial jurisdiction of a Court/Forum i.e. with regards to the place of suing has to be taken in the court of first instance at the earliest possible opportunity and such objection cannot be allowed to be taken for the first time in an appeal or revision. In view of the such specific legal provision, the Appellant was required to take objection with regards to the jurisdiction of the Punjab Commission before the Commission itself at the earliest opportunity i.e. in its reply to the petition filed by PTC. That having not been done by the Appellant, such objection cannot be permitted now to be taken for the first time in this appeal before this Tribunal.

17. Further, the Appellant ought to have assailed the judgement dated 31st August, 2016 of this Tribunal before the Hon'ble Supreme Court on

the basis of the Energy Watchdog judgement but ironically the Appellant chose not to take such recourse and accepted the findings/decision of this Tribunal in the said judgement. In view of the same, the Appellant cannot be heard in this appeal to say that the Punjab Commission lacked territorial jurisdiction to entertain the petition filed by PTC and the same ought to have been filed before the Central Commission.

18. Hence, we do not find any merit in the submissions on behalf of the Appellant on this issue. The issue is decided against the Appellant.

(b) Whether the letter dated 9th March, 2011 issued by the Appellant for termination of PPA dated 24th August, 2005 executed by it with PTC is legally valid;

19. The power project of the Appellant is located in the State of Uttarakhand. The Appellant had entered into the PPA dated 24th August, 2005 with PTC wherein PTC had undertaken to purchase entire saleable power from the project for a period of 35 years. The Appellant also executed power wheeling agreement with PTCUL for wheeling of power from the project to the delivery point at CTU grid. Subsequently, PTC entered into as a power sale agreement dated 23rd March, 2006 with Punjab State Electricity Board (now PSPCL) for sale of power sourced by it by from the Appellant for a period of 35 years.

20. On 12th June, 2007, Appellant entered into an MOU with PTCUL for evacuation and wheeling of electricity generated from the project. The Appellant filed an application before PTCUL on 25th July, 2007 for grant of long term open access indicating that power from the project would be evacuated through 33 by 220 kv Ghansali sub-station. Requisite application fee of Rs.1,00,000/- was also paid by the Appellant to PTCUL on 16th April, 2008. While the application of Appellant for grant of long-term open access was pending consideration before the PTCUL, Uttarakhand Commission passed an order dated 10th June, 2009 in a petition between UPCL and M/s HIM Urja Private Limited holding that Clause 4.1 of the Implementation Agreement permits sale of electricity outside the State of Uttarakhand to a consumer only and not to a trader or a Distribution Licensee. In view of the said order passed by Uttarakhand Commission, the Appellant realized that open access would not be granted to it for sale of power to PTC outside Uttarakhand as PTC was not a consumer. Accordingly, in order to avoid further losses and the default in loan repayment obligations, Appellant entered into a PPA that UPCL on 3rd July, 2009 for sale of entire power generated from the project to UPCL through 33 kv network. Upon signing of the said PPA, UPCL permitted connectivity to its power project through 33 kv system.

21. At the same time, the Appellant sent a letter dated 8th July, 2009 to PTC, expressed its inability to obtain Open Access in view of order dated 10th June, 2009 passed by Uttarakhand Commission and informing the PTC that Appellant has executed a PPA with UPCL while reiterating its application to sale power to PTC as per the existing PPA executed with PTC.

22. Appellant filed an application before Uttarakhand Commission on 10th August, 2009 seeking grant of open access for supply of power to PTC in terms of the PPA dated 24th August, 2005 and for issuance of necessary directions to UPCL and PTCUL to giving connectivity to their system for evacuation of power up to CTUIL grid. However, the application was dismissed by the Uttarakhand Commission vide order dated 30th December, 2009 holding that clause 4 of the Implementation Agreement does not permit sale of electricity outside the State of Uttarakhand. Both PTC as well as the Appellant assailed the said order of Uttarakhand Commission before this Tribunal by way of Appeal No. 88 of 2010 and 93 of 2010 respectively which were disposed off by this Tribunal vide common judgement dated 11th January, 2011 thereby setting aside the order dated 30th December, 2009 of the Uttarakhand Commission. This Tribunal directed the Uttarakhand Commission to grant open access to the generating companies (i.e. the Appellant

herein) after it files fresh application for grant of Open Access on the Distribution/Transmission system of UPCL/PTCUL before the Commission.

23. In pursuance to the said judgement of this Tribunal, PTC sent a letter dated 28th January, 2011 to Appellant with a request to file an application for Open Access before the Uttarakhand Commission. However, instead of filing application before the Uttarakhand Commission for grant of Open Access in terms of judgement dated 11th January, 2011 of this Tribunal, the Appellant issued notice dated 9th March, 2011 thereby terminating the PPA dated 24th August, 2005 executed by it with PTC.

24. The contention of the Appellant before the Commission was that order dated 10th June, 2009 passed by Uttarakhand Commission holding that sale of electricity outside the State of Uttarakhand to a trader or a Distribution Licensee is not permissible, constituted a Force Majeure event preventing the Appellant from supplying power to PTC for onward sale to PSPCL under PSA/PPA. It was claimed by the Appellant that the Force Majeure event continued for more than 12 months thereby becoming an Extended Force Majeure event as defined in Article 11.7 and 15.3 of the PPA entitling the Appellant to terminate the PPA. The Appellant further contended that vide notice dated 8th July, 2009, it had

informed PTC about the said Force Majeure event. Thus, according to the Appellant, it was unable to perform its obligation only on account of this Extended Force Majeure event and, therefore, notice of termination dated 9th March, 2011 was in consonance with the Article 15.6.3 of the PPA. Accordingly, it had stated that Respondent PTC is not entitled to any relief in the petition.

25. The Commission, while referring to the Articles 11 & 15 of the PPA as also to the contents of termination notice dated 9th March, 2011, refuted the contentions of the Appellant in the impugned order and held as under :-

“Swasti signed a PPA with UPCL on 03.07.2009 reneging on its earlier PPA with PTC without informing PTC. It was only vide letter dated 08.07.2009 that Swasti informed PTC regarding the same. The said letter dated 08.07.2009 neither mentioned force majeure nor complied with the other requirements essential for a force majeure notice in terms of the above provisions in the PPA. Thereafter, in defiance of Hon’ble Appellate Tribunal’s directions in its Order dated 11.01.2011 in Appeal No. 88 of 2010, Swasti did not file application before UERC for grant of open access on the distribution/transmission system of UPCL/PTCUL. Instead,

Swasti vide letter dated 09.03.2011 issued Notice of Termination to PTC stating as under:

“

PTC is also aware that the event of force majeure continued for more than 12 months, and, therefore, extended force majeure, as defined in Article 11.7 and 15.3 had occurred. Swasti is, therefore, sending you this written notice of termination of the PPA, under Article 15.3 of the PPA, read with Article 15.6.3.

.....”

The Commission notes that Swasti entered into a PPA with UPCL on 03.07.2009 without informing PTC of the facts. As such, the communication dated 08.07.2009 of Swasti, which was sent after the signing of the PPA with UPCL due to force majeure conditions as claimed by Swasti, cannot be said to be a notice in compliance of the provisions of Article 11 of the PPA. In this regard, the Commission is relying upon Hon'ble Appellate Tribunal's judgment dated 30.04.2015 in Appeal No. 54 of 2014 – Himachal Sorang Power Limited Vs. CERC and Ors. wherein it has been held that compliance with notice requirements under force majeure provisions is mandatory.

In view of the above, the Commission holds that as the requirement of issue of notice under Article 11 has not been complied with by Swasti for claiming relief under the Force Majeure clause. Further, the Commission notes that at the time of giving termination notice on 09.03.2011 by Swasti to PTC, the alleged extended force majeure did not exist as Hon'ble APTEL in its Order dated 11.01.2011 had already directed UERC to grant open access on the distribution/transmission system of UPCL/PTCUL on filing of an application by Swasti. As such, the plea of Force Majeure/Extended Force Majeure raised by Swasti is devoid of merit."

26. The Commission, thus, rejected the plea of Force Majeure/Extended Force Majeure agitated by the Appellant.

27. It was argued by the Learned Senior Counsel appearing on behalf of the Appellant that the Commission has erred in deciding the issue of existence of Extended Force Majeure, which gave a contractual right to the Appellant to terminate the PPA. It is submitted that the judgment of this Tribunal dated 11th January, 2011 did not affect the rights and obligations under the PPA and once the Extended Force Majeure event has occurred, consequences provided in the PPA must follow. He would

argue that the subsequent judgement that puts an end to the Force Majeure event will not set the clock back and take away the effect of Extended Force Majeure event. Learned Senior Counsel further submitted that PTC itself accepted the sale of power by Appellant to UPCL and never objected to such interim arrangements for a period of 4 years. He argued that once the said arrangement was accepted by PTC without any demur, it cannot be permitted to turn around and say that the Appellant cannot proceed with termination of the PPA in terms of Article 11.7 read with Article 15.6.3 of the PPA.

28. On behalf of the Respondent, it has been argued that the Commission has rightly rejected the plea of Extended Force Majeure event agitated by the Appellant on the ground that no proper notice as required under Article 11 was issued by the Appellant. Reference is made to the judgement of this Tribunal dated 3rd June, 2016 in Appeal No. 97 of 2016 Talwandi Sabo Power Limited vs. PSPCL in which it has been held that when a contract expressly provides that a particular thing relating to furtherance of contract has to be done in a particular manner, then it has to be done in that manner alone and in no other manner. It is stated that this principle was reiterated by this Tribunal in recent judgement dated 30th May, 2024 in Appeal No. 161 of 2018 MSEDCL vs. MERC & Anr. 2024 SCC online Aptel 37. It is argued that the notice dated

8th July, 2009 issued by the Appellant neither satisfies the requirement of notice for Force Majeure as provided under Article 11 of the PPA nor contains any submission with respect to the stated Force Majeure event.

Our Analysis

29. Article 11 of the PPA dated 24th August, 2005 executed between the Appellant and PTC defines Force Majeure as under:-

“11.1.2 Force Majeure

means any event or circumstance of combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

(i) any act of God, Including lightning, drought, fire, explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, thunderstorm or exceptionally heavy rains which are in excess of the statistical measures for the last hundred (100) years, or

- (ii) any explosion, accident, breakage of facilities, plant or equipment, structural collapse or a chemical contamination caused by a person not being the Affected Party (or an Affiliate, associate, contractor or any other person acting under the direction or control of such Affected Party) and not being due to inherent defects in the Project, or*
- (iii) any epidemic, plague or quarantine, or*
- (iv) meteorite crash, air crash, objects falling from aircraft, or other flying devices or vehicles, pressure waves caused by aircraft or aerial devices travelling at supersonic speed, shipwreck, train wrecks, or*
- (v) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo (including, causing unavailability or shortage of fuel or materials), revolution, riot, insurrection, civil commotion, religious strife, communal violence, act of terrorism, extremist action or politically motivated sabotage or abduction, or*
- (vi) radioactive contamination or ionizing radiation, or*
- (vii) strikes, sabotage, go-slows or similar Industrial disputes at the Project or at the plant manufacture works, or*

the Grid excluding such events which are site specific and/or attributable to the Company, or

(viii) expropriation, requisition, confiscation, nationalization, export or import restrictions, requirements, action or omissions to act on the part of any Government Instrumentality or any person controlled by a Government Instrumentality, provided such adverse action or inaction did not result from the Company or any of its contractor's non-compliance with any applicable Law, or

(ix) archaeological findings that were not reasonably foreseeable; or

(x) the revocation or cancellation or delay in renewing (other than for a cause attributable to the Affected Party) of any Consent; or

(xi) any act of Government Instrumentality; or

(xii) operation of the Grid beyond the Technical Limits; or

(xiii) any event or circumstance of a nature analogous to any of the foregoing.”

30. Article 11.7 provides that continuance of event of Force Majeure for a period of 12 consecutive months shall constitute Extended Force

Majeure and in that event either party may terminate the agreement pursuant to Article 15.6.3.

31. Article 11.3 of the PPA relates to notification of Force Majeure event and is extracted hereunder :-

“11.3 Notification of Force Majeure Event

11.3.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it not reasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the situation.

11.3.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure

on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”

32. As per the said Article 11.3 of the PPA, any party affected by a Force Majeure event is required to issue notice of the same to the other party within seven days from the date when the affected party knows or should know have known about the commencement of the Force Majeure event. Article 11.3.2 enjoins upon the affected party to notify the other party about the cessation of the Force Majeure event and the effects of such cessation upon its rights and obligations under the PPA. Such notice is required to be issued by the affected party immediately after becoming aware about the cessation of Force Majeure event.

33. In the instant case, as per the submissions of the Appellant, Force Majeure event is the order dated 10th June, 2009 passed by Uttarakhand Commission thereby holding that sale of electricity from power projects in Uttarakhand to any trader or Distribution Licensee outside the State is not permissible. It is nowhere stated by the Appellant either in the pleadings before the Commission or in its pleadings /written submissions filed before this Tribunal in this appeal as to when did it get knowledge about the said order of the Uttarakhand Commission. Nothing in this regard has even been mentioned by the Appellant in its notice dated 8th

July, 2009 issued in this regard to PTC. Having regard to such situation, it has to be assumed that Appellant become aware about the said order of the Uttarakhand Commission on 10th June, 2009 itself. The notice dated 8th July, 2009 purportedly under Article 11.3 of the PPA has been issued by the Appellant after about 27 days from the commencement of Force Majeure event. Therefore, the notice is patently not within the time period described under Article 11.3 and does not merit any consideration. The plea of Force Majeure/Extended Force Majeure set up by the Appellant must fail on this score alone.

34. Even otherwise also, we feel in agreement with the submissions on behalf of the Respondents that the said notice of the Appellant neither satisfies the requirements of a valid Force Majeure notice nor contains any statement with respect to Force Majeure. We find it necessary to extract the contents of the said notice hereunder :-

“Dear Sir,

Greetings to you. As you are aware, UERC interim order dated 10.06.2009 has raised questions on the permissibility and validity of sale of power to persons other than end users/consumers outside the state of Uttarakhand and Swasti had already represented to UERC on the issues raised by the Commission on the various grounds including

the fact that Swasti has a binding legal agreement with PTC. However, in the light of this interim order, UPCL and PTCUL have not been permitting interconnection facility to BHPP to Uttarakhand grid and had indicated that the connectivity will be provided only if a PPA is signed with them. As already explained, Swasti is incurring loss of revenue (about Rs 2 Crore till date) on account of prolonged delay in connectivity to Uttarakhand grid and this is leading to a dire situation of default in meeting our loan repayment obligations. Keeping in view the overall situation and the obligations to sell power to PTC India Ltd (PTC) as per the existing PPA with PTC, Swasti ensured that suitable clauses are incorporated in the standard PPA provided by UPCL (copy enclosed). In this context we invite your attention to provisions contained at points 1 and 2 on page 2 and Para 19.1 on page 15 of the PPA.”

35. Perusal of the notice would reveal that the Appellant has merely indicated that it is unable to obtain inter-connection facility from UPCL & PTCUL in view of the order dated 10th June, 2009 passed by Uttarakhand Commission and, therefore, in order to mitigate the loss of revenue, it has entered into a PPA with UPCL. At the same time, the Appellant has

reiterated its obligation to sell power to PTC at under the existing PPA dated 24th August, 2005. The notice nowhere mentions that Force Majeure event has occurred which is preventing the Appellant to sale of power to PTC.

36. Further, it is to be noted that the Appellant had entered into PPA with UPCL for sale of entire power generated in its power project on 3rd July, 2009 prior to the issuance of notice dated 8th July, 2009 to PTC. Therefore, the Commission has rightly held that the notice dated 8th July, 2009 having been sent after signing of the PPA with UPCL cannot be said to be a notice in compliance with the provisions of Article 11 of the PPA.

37. Even if it is assumed that the said notice dated 8th July, 2009 is a valid Force Majeure notice as per Article 11.3 of the PPA, then also the Appellant ought to have issued the notice of termination of PPA on the ground of Extended Force Majeure under Article 11.7 during the subsistence of the Extended Force Majeure event. As per the contentions of the Appellant itself, its inability to supply power to PSPCL as per PPA dated 24th August, 2005 commenced on 10th June, 2009 with the passing of the order by Uttarakhand Commission prohibiting sale of electricity to traders/Distribution Licensees outside the State and since continued for more than 12 consecutive months, it became an Extended

Force Majeure event. There is no gainsaying that the said Extended Force Majeure event came to an end on 11th January, 2011 when the judgement was passed by this Tribunal in Appeal Nos. 88 of 2019 and 93 of 2010 thereby setting aside the order dated 10th June, 2009 of the Uttarakhand Commission and directing the Uttarakhand Commission to grant open access to the generating companies including the Appellant for sale of electricity outside the State. As per the said order of this Tribunal, the Appellant was required to file application before the Commission for grant of open access on the distribution/transmission system of UPCL/PTCUL. Upon passing of the said judgement by this Tribunal, the Appellant was required to issue notice to PTC in terms of Article 11.3.2 of the PPA apprising it about the cessation of Extended Force Majeure event.

38. However, the Appellant neither issued notice of cessation of Extended Force Majeure event to PTC nor approached the Commission afresh by way of an application for grant of open access as directed by this Tribunal in judgement dated 11th January, 2011. Instead, the Appellant issued notice dated 9th March, 2011 thereby terminating the PPA. Such conduct of Appellant is inexplicable.

39. Once the Extended Force Majeure event ceased to exist, Appellant ought to have notified PTC about the same and ought to have

approached the Commission for grant of open access. On cessation of the Extended Force Majeure event, there was no reason or occasion for the Appellant to issue notice of termination of PPA dated 9th March, 2011.

40. We are unable to countenance the submissions on behalf of the Appellant that judgement dated 11th January, 2011 of this Tribunal did not affect the rights and obligations of the parties under the PPA. Said judgement certainly had the effect of putting an end to the extended Force Majeure event agitated by the Appellant, and, therefore, Article 11.3.2 of the PPA came into play. Appellant was not competent to terminate the PPA on the basis of the Extended Force Majeure event which had already ceased to exist before the issuance of notice dated 9th March, 2011.

41. Hence, the Commission has rightly rejected the plea of Force Majeure/Extended Force Majeure put forth by the Appellant.

(c) Whether the Commission was competent to declare the PPA dated 3rd July, 2009 executed between the Appellant and UPCL as void ab initio; and

(d) Whether the Commission's direction to Appellant to specifically perform its obligations under the PPA dated 24th August, 2005 executed with PTC is legally tenable.

42. On these two issues, the Commission has held as under :-

“As regards the prayer of PTC to direct Swasti to cancel the PPA dated 03.07.2009 entered into with UPCL, the Commission observes that Swasti signed the PPA with UPCL on 03.07.2009 without informing and/or seeking approval of PTC when a valid and subsisting PPA dated 24.08.2005 existed between them. Considering the same, so far as this Commission is concerned, the PPA dated 03.07.2009 entered into by Swasti with UPCL is void ab initio. Swasti is directed to specifically perform its obligations under the PPA dated 24.08.2005 signed with PTC. Swasti is further directed to apply for open access for transmitting the power on UPCL/PTCUL distribution/ transmission system to CTU grid for onward transmission to the State of Punjab and report to this Commission within 7 days.”

43. These observations/directions of the Commission in the impugned order patently appear to be far affected and not in consonance with the settled legal principles.

44. The PPA dated 3rd July, 2009 executed between the Appellant and UPCL involved various rights and obligations of UPCL also which have been adversely affected by declaring the same as void ab-initio by the Commission. We are unable to understand as to under which legal provision has the Commission assumed power & jurisdiction to declare the said PPA void ab-initio. The said PPA was with regard to sale of power from the power project of Appellant located in Uttarakhand to

UPCL, a distribution company in Uttarakhand. It was approved by the Uttarakhand Commission. We wonder how the Punjab Commission could declare said PPA void.

45. Further more, such a direction could not have been issued by the Commission without impleading UPCL as party to the petition and without hearing it for the reason that substantial rights of UPCL were involved in the PPA which have been adversely affected by declaring it vide ab-initio. The basic rule of natural justice i.e. "Audi alteram partem" (no one shall be condemned unheard) has been conveniently ignored by the Commission in passing a direction against UPCL at its back.

46. The Commission has also faltered in directing the Appellant to specifically perform its obligations under the PPA dated 24th August, 2005 with PTC knowing fully well that Appellant has been supplying power from its power project to UPCL under PPA dated 3rd July, 2009. Relief of specific performance of an agreement, being a discretionary one cannot be granted in each and every case of breach of contract. Specific performance of contract should be directed only when the affected party cannot be compensated suitably by monetary compensation. The instant case does not fall in that category where no amount of money would be sufficient to compensate the PTC for losses suffered by it on account of breach of terms of PPA by Appellant. At best, the conduct of Appellant in

failing to deliver power to PTC under the PPA dated 24th August, 2005 could be treated as an event of default on the part of Appellant as per Article 15.1(iv). In these circumstances, the PTC is required to follow the procedure described under Article 15.4 of the PPA and the PTC would be entitled to compensation as provided under Article 15.6.1 of the PPA.

Conclusion

47. Hence, we affirm the findings of the Commission that notice dated 9th March, 2011 issued by the Appellant for termination of PPA dated 24th August, 2005 is not legally valid. However, we set aside the impugned order of the Commission in so far as it declares the PPA dated 03.07.2009 between Appellant and UPCL as void ab-initio. We also set aside the direction of the Commission to the Appellant to perform its obligations towards PTC under the PPA dated 24th August, 2005.

48. The Appeal stands partly allowed and disposed off in these terms.

Pronounced in the open court on this 22nd day of August, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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