

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

**APPEAL No.107 OF 2022**  
**APPEAL No.312 OF 2022**

Dated: 09.09.2025

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

**In the matter of:**

**APPEAL No. 107 of 2022**

**Vedanta Limited**

*Through its Authorized Representative*

Having its Registered Office at  
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Corporate Avenue, Atul Projects,  
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... Appellant

*Versus*

**1. Odisha Electricity Regulatory Commission**

*Through its Secretary*

Bidyut Niyamak Bhawan,  
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**2. GRIDCO**

*Through its Chairman-cum- Managing Director*

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**3. The Department of Energy**

*Through its Secretary*

Government of Odisha

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**4. The Chairman-cum-Managing Director**

Odisha Power Transmission Corporation Limited

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**5. The Chief Load Despatcher**

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Raj Kumar Mehta for Res. 2  
  
Namit Saxena for Res. 4

## **APPEAL No. 312 of 2022**

### **GRIDCO Limited**

*Through its Managing Director*

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... Appellant

*Versus*

### **1. M/s. Vedanta Limited**

*Through its Managing Director*

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### **2. The Chief Load Dispatcher**

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### **4. The Principal Secretary to Government**

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### **5. The Chairman-cum-Managing Director**

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### **6. Odisha Electricity Regulatory Commission**

*Through its Secretary*

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Namit Saxena for Res. 5

Rutwik Panda for Res. 6

## **J U D G M E N T**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The legality and propriety of order dated 22.06.2020 passed by the Odisha Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in case no.68/2018 is under challenge in this batch of two appeals. Since both these appeals arise out of the same impugned order as well as the same set of facts and circumstances, we propose to dispose off the two appeals vide this common judgment.

2. For the sake of convenience, the parties hereto are referred to by their names instead of appellants or respondents.

3. M/s Vedanta Limited (in short “Vedanta”) owns and operates a 2400MW (1x600MW IPP and 3x600MW Captive/CGP units) thermal power plant at Jharsuguda, Odisha which supplies power to GRIDCO Limited, apart from captively consuming the balance power for its Aluminum smelting units.

4. GRIDCO Limited is engaged in the business of bulk purchase and sale of power to four distribution companies in the State of Odisha.

5. Vedanta executed a Memorandum of Understanding dated 26.09.2006 with the Department of Energy, Govt. of Odisha whereunder the State Government has right to purchase upto 25% of power sent out from the thermal power plant through a nominated agency.

6. On 28.09.2006, Vedanta entered into a long-term Power Purchase Agreement (PPA) with GRIDCO Limited whereunder it was under obligation to supply 25% of energy sent out from its thermal power plant to GRIDCO Limited at full tariff and an additional 7% or 5% (7% in the event coal block is allocated in the State of Odisha, or 5% in the event coal is being sourced from outside the State) at variable tariff. The PPA was submitted to the Commission for approval by way of case no.44/2006. The Commission, vide

order dated 20.08.2009, directed certain modifications in the PPA. The modifications, as directed by the Commission, were carried out in the PPA and an amended PPA was executed between the parties on the same date i.e. 20.08.2009. Subsequently, the amended PPA was submitted to the Commission by way of case no.117/2009 for approval. Vide order dated 30.07.2010 passed in the said petition, the Commission directed further modifications and execution of a consolidated PPA with respect to all the four units of the power plant.

7. In pursuance to the said order dated 30.07.2010 passed by the Commission, a consolidated PPA dated 19.12.2012 was executed between Vedanta and GRIDCO Limited which came to be approved by the Commission vide order dated 12.06.2013 passed in the said case no.117/2009.

8. A modified Fuel Supply Agreement dated 27.08.2013 was executed between Vedanta and Mahanadi Coalfields Limited for unit-II of the power plant.

9. Subsequently, on 01.04.2015, Units-I, III and IV of the power plant were converted to captive generating plant. Accordingly, a petition bearing case no.21/2015 was filed by Vedanta before the Commission on 17.06.2015 seeking conversion of all the four units of the power plant to

captive generating plants for the purpose of meeting the load requirement at its Aluminum smelter plant. Vide order dated 27.01.2016 passed by the Commission in the said petition, conversion of units-I, III and IV of the power plant from IPP to CGP was approved with effect from 01.04.2015 whereas unit-II was directed to remain as IPP and connected to the state grid. The relevant portion of the order is extracted hereinbelow: -

*“35. In conclusion, the Commission issues the following directions:*

- a) Unit – II of the 4 x 600 MW power plant of Vedanta Ltd. will continue to remain as IPP and connected to the State Grid.*
- b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of*

*power supply should not be disturbed at any point of time.*

- c) Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.*
- d) The coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- e) The pricing of power of State entitlement shall be based on IPP pricing Regulation of the Commission.*
- f) The above decisions are made on the basis of assurance of the Petitioner that it shall honour all the conditions as stipulated in the existing PPA in spite of conversion of some IPP units to CGP.*
- g) We direct the Petitioner and GRIDCO to bring about necessary changes in the PPA as per the present*



*order and place the same for the approval of the Commission within 15 days. OPTCL is also directed to bring about necessary changes in the connectivity agreement as stated by them in Para-15.”*

10. Disputes arose between Vedanta and GRIDCO in the aftermath of this order relating to non-payment of outstanding dues of Vedanta for the supply of power, and non-supply or short supply of power by Vedanta under the Consolidated PPA.

11. Thereafter, meeting took place between Vedanta and GRIDCO Limited on 01.11.2016 wherein it was agreed that Vedanta shall compensate GRIDCO for any shortfall in power supply at either the rate of Deviation Settlement Mechanism (DSM) charges under Central Electricity Regulatory Commission Regulations or the highest Inter-State Generating Station (ISGS) rate during such period, whichever is higher. The compensation clause as agreed between the parties in the said meeting and forming part of the minutes of the said meeting is reproduced hereinbelow: -

*“12 (iv) In case of break down/shut down of IPP Unit (#2), M/s Vedanta Ltd shall deliver 30% of power generated from its converted CGP units in operation to GRIDCO towards State Entitlement, failing which, M/s Vedanta Ltd shall pay penalty/compensation for the quantum of power not injected at the rate of DSM Rate/highest ISGS rate (of ISGS stations from whom GRIDCO has certain entitlements) during such period, whichever is higher.”*

12. Since, according to the GRIDCO Limited, there was substantial default in supply of power by Vedanta to it, it raised debit notes on the basis of the compensation clause contained in minutes of meeting dated 01.11.2016 which were disputed by Vedanta.

13. At the same time, the GRIDCO also wrote to Mahanadi Coalfields Limited on 22.03.2018 seeking information regarding final year wise linkage coal supplied to Vedanta as Vedanta did not supply state entitlement of power during the Financial Year 2017-18.

14. On 03.09.2018, a meeting was held between Vedanta and GRIDCO in which issue pertaining to shortfall in power supply by Vedanta was

discussed. It was agreed in this meeting that GRIDCO shall file an application before the Commission regarding execution of revised PPA between the parties. It has been recorded in the minutes of the said meeting as under: -

*“M/s. Vedanta mentioned that when the Minutes of Meeting dated 01.11.2016 was signed, they had not foreseen the fact that they would not be able to supply State entitlement of power to GRIDCO consistently and the shortfall quantum would pile up to such an extent. Further, they have proposed the following rates of penalty on short supply of power instead of highest DSM/ ISGS as per the said matters.*

*i. Actual expenses incurred by GRIDCO less Vedanta Tariff.*

*OR*

*ii. Differential cost of average IEX rate and Vedanta Tariff*

*GRIDCO mentioned that such penalty clause (MoM: 01.11.2016) on non-supply of power was required to be framed in view of Hon'ble OERC's direction regarding ensuring supply of State entitlement of power by M/s. Vedanta Ltd. under any circumstances whatsoever.*

*GRIDCO further mentioned that, an application regarding execution of Revised Power Purchase Agreement shall be filed by GRIDCO before Hon'ble OERC along with the MoM. Thus, M/s Vedanta Ltd. may take this opportunity to put forth their issues before Hon'ble Commission for necessary consideration and direction on above proposal. Penalty for short supply will be claimed based on the decision of Hon'ble Commission on penalty rate."*

15. Accordingly, GRIDCO filed case no.68/2018 before the Commission on 09.11.2018 for execution of revised PPA between the parties in compliance with the previous order of the Commission dated 27.01.2016 passed in case no.21/2015. The prayers made in the petition are quoted hereinbelow: -

*"(a) Direct Vedanta to comply with Commission's Order dated 27.01.2016 **by executing the Revised Power Purchase Agreement incorporating the Penalty Clause as per MoM dated 01.11.2016** and the provision for Transmission/Wheeling of Power in line with the provisions in Revised PPA signed with other IPPs of the State.*

**(b) Approve the decisions taken in the Minutes of Meeting dated 01.11.2016 and 07.12.2017 respectively.”**

*(Emphasis supplied)*

16. It appears that during the course of proceedings of the petition, vide interim order dated 01.05.2019, the Commission appointed its Director (Regulatory Affairs) to supervise and help resolve the dispute between the parties thereby enabling them to execute the revised PPA. Vide subsequent order dated 21.05.2019, the Commission again directed the parties to sit together with Director (Regulatory Affairs) in the office of the Commission to resolve the issues regarding execution of revised PPA and submit the outcome of the said meeting by 21.06.2019.

17. Accordingly, a meeting was held between the parties on 07.06.2019 in the presence of Director (Regulatory Affairs) of the Commission wherein it was, *inter alia*, decided/agreed as under: -

*“1. It is resolved that for the past period i.e. FY: 2017-18 and FY: 2018-19 for short supply of power by M/s. Vedanta, it will have to pay additional cost borne by GRIDCO availing highest Energy Charge Rate (ECR) from marginal sources.*

*2. (a) In case of Inter State Generating Station (ISGS) (marginal sources) additional cost means ECR plus incentive (if any) less applicable tariff of M/s. Vedanta for the corresponding month.*

*(b) In case of Power Exchange (marginal source) additional cost means monthly average per unit cost paid to power exchange less applicable tariff of M/s. Vedanta for the corresponding month.*

*3. During above period M/s. Vedanta shall be eligible to claim capacity charges only once.*

*4. In case Compensation payable by M/s. Vedanta for a particular month is negative then same shall be treated as nil.”*

18. However, upon a request made by GRIDCO Limited, the Commission vide order dated 10.09.2019 directed Vedanta and GRIDCO to hold another meeting in the presence of Director (Regulatory Affairs) to discuss the issues prevailing between them. Consequently, another meeting was held between the parties on 20.09.2019 in the presence of Director (Regulatory Affairs) of

the Commission wherein also Vedanta proposed that the penalty provision in the revised PPA may be considered as per the minutes of the meeting dated 01.11.2016. But, according to GRIDCO, the logic/principle considered in the said meeting dated 07.06.2019 is totally not implementable.

19. Finally, the petition was disposed off by the Commission vide impugned order dated 22.06.2020. With regards to the issue of compensation payable by Vedanta for short supply/non-supply of power and incorporation of compensation clause in the revised PPA, the Commission, upon considering the rival contentions of the parties, held in Paragraph no.10(d) as under: -

**“Commission’s Observation:**

- *The present dispute is all about compensation to GRIDCO in case M/s. Vedanta fails to supply the State entitlement of power. The PPA between GRIDCO and M/s. Vedanta is nothing but a contract for supply of power by the latter to GRIDCO. This contract is governed under Indian Contract Act, 1872 once it is approved under Electricity Act, 2003 and OER Act, 1995. In case the contract is not honoured the affected party can move the appropriate forum under Indian*

*Contract Act. Section 73 of the Indian Contract Act defines compensation for breach of contract as follows.*

*“Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*

*Xxxxxx*

*When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.” Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying*



*the inconvenience caused by the non-performance of the contract must be taken into account.”*

- *From the above explanation in the Contract Act it is clear that the remedy for non-supply of power by M/s. Vedanta lies in purchase of same quantity of power by GRIDCO from marginal ISGS sources, un-requisitioned ISGS sources, IEX and DSM sources. In case GRIDCO draws power from marginal ISGS sources it has to pay variable charges only since the capacity charge is payable anyway irrespective of whether power is drawn or not since the GRIDCO has long term contract with them. Similarly, in case of un-requisitioned ISGS sources, the GRIDCO has to pay both fixed and variable charges. In case of IEX and DSM sources the price of the power is to be paid on single part basis. In case of non-supply of power by M/s. Vedanta, GRIDCO is to bear expenses to purchase same quantity of power by paying variable charge to ISGS sources, both fixed and variable charge to un-requisitioned ISGS sources and single part tariff to IEX and DSM sources. GRIDCO*

*must be compensated if it incurs loss while purchasing such power. The loss here is additional price GRIDCO pays to those sources over and above the price GRIDCO would have paid to M/s. Vedanta had it purchased power from them. This is the inconvenience to GRIDCO and must be remedied through a compensation as per the Contract Act. The compensation shall always be positive or nil depending upon the price at which GRIDCO purchases power from marginal sources. In no case it can be negative, which otherwise means GRIDCO is able to purchase power from sources cheaper than that of M/s. Vedanta. However, when shortfall for a particular period is compensated by more than one marginal source, the highest cost of marginal source of power would get compensated first, then the balance shortfall is compensated by second highest cost of marginal sources of power and so on, till the recovery of complete shortfall in energy for that period. Accordingly, both the parties are directed to incorporate a clause in the revised PPA on the issue of compensation arising*

*out of non-compliance of commitment of M/s. Vedanta for supply of State entitlement of power.*

- The issue of agreement with M/s. JITPL on compensation for non-supply of power to GRIDCO has no application here. In case of JITPL it supplies 12%/14% of generated power to GRIDCO on variable cost basis only whereas M/s. Vedanta supplies power on full cost basis which consists of both fixed and variable charges. In case of short supply or no supply of power from Unit-II (IPP unit) of Vedanta, it is duty bound to replenish the same from its converted CGPs which is not the case of M/s. JITPL.”*

20. With regards to the issue regarding utilization of linkage coal for captive purposes, the Commission has held in Paragraph no.10(k) of the impugned order as under: -

**“Commission’s Observation:**

- The Commission observed that as per the allegation of GRIDCO M/s. Vedanta Limited has availed*

linkage coal from MCL during the FY 2017-18 but had not supplied State entitlement of power to GRIDCO to the extent of linkage coal availed. But as stated by M/s. Vedanta Limited under utilization of coal during the FY 2017-18 was on account of the breach of ash pond and stoppage of operations of Unit-2 & 3. The linkage coal availed by M/s. Vedanta Ltd. has been utilized in converted CGP units 1 & 4 during stoppage of unit-2 due to breach of ash pond. From the existing PPA it is observed that the capacity allocated to GRIDCO shall be upto 25% + 7%/5% of the installed capacity of the thermal power station of M/s. Vedanta Ltd. GRIDCO might have received less power from M/s. Vedanta Ltd. than the contractual quantum. Therefore, GRIDCO is entitled for compensation for less availability of power from M/s. Vedanta during the breach of ash pond. This compensation shall be computed as per the procedure mentioned in this order for less or no supply of power by M/s. Vedanta to GRIDCO. GRIDCO is entitled to purchase power from the IPP

*of M/s. Vedanta Ltd. to the extent of power generated from the linkage coal since it is supplied to M/s. Vedanta for State use and GRIDCO may purchase power beyond that upto the state entitlement if it is commercially cheaper. GRIDCO is directed to plan accordingly sufficiently ahead intimating the same to M/s. Vedanta Ltd. Further, the Commission directs M/s. Vedanta Limited to supply State entitlement of power to the extent of linkage coal availed from MCL in future without fail.”*

*(Emphasis supplied)*

21. Vedanta has assailed the said order of the Commission in appeal no.107/2022 on the premise that the Commission has erred in devising a protocol for computation of compensation in case of any short supply/non-supply of power by Vedanta from its IPP i.e. unit-II of the power plant under the consolidated PPA dated 19.12.2012 executed between the parties, which is contrary to the last agreed and accepted position of the parties vide minutes of meeting dated 07.06.2019. It is the contention of Vedanta that the Commission has proceeded to act in a manner which is inconsistent/contrary to the fundamental principles of party autonomy as well

as to various judicial renditions of the Hon'ble Supreme Court. In this regard, reliance is placed on the minutes of meeting dated 01.11.2016 and 03.09.2018.

22. GRIDCO Limited has impugned the said order of the Commission by way of appeal no.312/2022 on the ground that while framing the compensation protocol in the said order, the Commission should have premised the said compensation with an element of deterrence by way of additional penalty in order to prevent Vedanta from violating the orders of the Commission. It is also the contention of GRIDCO that the Commission ought not to have decided the issue of compensation without considering the reasons for non-supply / short supply of power by Vedanta.

23. We have heard learned senior counsel Shri Sajan Poovayya appearing on behalf of Vedanta, Mr. R K Mehta, learned counsel for GRIDCO Limited and Mr. Rutwik Panda, learned counsel for the Commission. We have also perused the written submissions filed by the learned counsels.

**Our Analysis: -**

24. We note that there was a concluded contract between the Vedanta and GRIDCO Limited in the shape of consolidated PPA dated 19.12.2012 with regards to the supply of power by Vedanta from its thermal power plant in

question to GRIDCO Limited. The PPA was duly approved by the Commission vide order dated 12.06.2013 passed in case no.117/2009. It contains detailed clauses related to entitlement of power of GRIDCO Limited, transmission/wheeling of power, energy accounting and tariff etc. However, significantly this PPA did not contain any provision for payment of compensation by Vedanta for short supply/non supply of power to GRIDCO.

25. In the subsequent petition no.21/2015 filed by Vedanta on 17.06.2015, it had sought conversion of all the four IPP units of its thermal power plant into captive generating units for the purpose of meeting the load requirement of its Aluminum smelter plant. However, vide order dated 27.01.2016 passed by the Commission in this petition, only three units i.e. Unit-I, III and IV of the power plant were converted to CGP with effect from 01.04.2015 whereas unit-II of the power plant was directed to remain as IPP connected to state grid. The detailed directions passed in this regard by the Commission have already been noted in Paragraph no.9 hereinabove. In view of these directions, the Commission had called upon the parties to bring about necessary change in the PPA and place the same for approval of the Commission within 15 days. Intriguingly, at this stage also neither did the Commission notice that there is no compensation clause in the PPA with regards to non-supply/ short supply of power by Vedanta to GRIDCO nor

was such shortcoming in the PPA brought to the notice of the Commission by any of the parties, particularly GRIDCO Limited.

26. It appears that for the first time in the meeting dated 01.11.2016 held between the parties, the issue of compensation payable by Vedanta to GRIDCO Limited for any shortfall in power supply had cropped up and discussed. Accordingly, a compensation clause was drafted and included in the minutes of said meeting which has already been extracted in Paragraph no.10 hereinabove. It had been agreed between the parties that Vedanta shall compensate GRIDCO for the quantum of power not injected into the grid at the DSM rate/highest ISGS rate (of ISGS stations from whom GRIDCO has certain entitlements) during such period, whichever is higher.

27. Since a revised PPA, as directed by the Commission vide order dated 27.01.2016 passed in case no.21/2015, remained to be executed between the parties, the GRIDCO approached the Commission by way of petition bearing no.68/2018 seeking execution of revised PPA, which has been disposed off vide the order dated 22.06.2020 impugned in these two appeals.

28. As already noted hereinabove, during the proceedings of the said petition, the Commission had vide orders dated 01.05.2019 and 21.05.2019 directed the parties to sit together in the presence of Director (Regulatory



Affairs) of the Commission to resolve the issues regarding execution of the revised PPA.

29. We may note here that one of the prayers made by the GRIDCO Limited in the petition was to approve the decision taken in the minutes of meeting dated 01.11.2016 purportedly with regards to the compensation clause agreed to between the parties in the said meeting. Despite the same, GRIDCO Limited agreed to discuss the issue with Vedanta afresh in pursuance to the orders dated 01.05.2019 and 21.05.2019 passed by the Commission. Accordingly, a meeting took place in this regard between the parties on 07.06.2019 in the office of the Commission in the presence of Director (Regulatory Affairs) of the Commission wherein the issue of compensation was discussed threadbare and an agreement in this regard was reached. At the cost of repetition, we find it pertinent to extract hereunder the minutes of the said meeting dated 07.06.2019: -

*“1. It is resolved that for the past period i.e. FY: 2017-18 and FY: 2018-19 for short supply of power by M/s. Vedanta, it will have to pay additional cost borne by GRIDCO availing highest Energy Charge Rate (ECR) from marginal sources.*

*2. (a) In case of Inter State Generating Station (ISGS) (marginal sources) additional cost means ECR plus incentive (if any) less applicable tariff of M/s. Vedanta for the corresponding month.*

*(b) In case of Power Exchange (marginal source) additional cost means monthly average per unit cost paid to power exchange less applicable tariff of M/s. Vedanta for the corresponding month.*

*3. During above period M/s. Vedanta shall be eligible to claim capacity charges only once.*

*4. In case Compensation payable by M/s. Vedanta for a particular month is negative then same shall be treated as nil.”*

30. On 10.09.2019, it was submitted on behalf of the GRIDCO Limited before the Commission that the principle for computation of compensation agreed in the meeting dated 07.06.2019 was not implementable and accordingly a request was made for another meeting on this issue between the parties. Subsequently, another meeting was held between the parties on 20.09.2019 in which the parties stuck to their respective stand and hence,

no further agreement could be reached between them. In fact, neither GRIDCO nor the Commission could take a U-turn from a protocol which stood agreed upon between the parties earlier, as recorded in the minutes of meeting dated 07.06.2019.

31. Taking note of these facts and circumstances as well as rival contentions of the parties, the Commission evolved its own protocol for computation of compensation in case of non-supply/ short supply of the power by Vedanta from its IPP i.e. Unit-II of the thermal power plant to GRIDCO Limited, which has been extracted in Paragraph no.18 hereinabove.

32. It is elementary that a Power Purchase Agreement is the outcome of conscious commercial discussion between a power generator and procurer with regards to the terms upon which the procurer shall procure the power from the power generator. As per the regulatory framework envisaged under the Electricity Act, 2003, particularly Section 86 of the Electricity Act, the Commission is not involved at all during such discussions and the parties are free to agree upon the terms for supply/procurement of power. The role of the Commission envisaged under Section 86(1)(b) of the Electricity Act, 2003 commences as and when the PPA executed between the power generator and the procurer is submitted to it for approval. It is upon

submission of the PPA for approval that the Commission assumes the power of regulator and proceeds to examine whether the procurer i.e. distribution licensee is genuinely in need of the power sought to be procured/purchased under the PPA and whether the power is sought to be purchased at a reasonable price which is not detrimental to the interest of the end consumer.

33. As a consequence of the liberalization and privatization policy envisaged under the Electricity Act, 2003, a generating company is free to enter into an agreement, particularly long-term PPA with a procurer/distribution agency. However, the terms and conditions of such an agreement are not unregulated and are subject to the grant of approval by the Commission. The duty of the Commission is to check if the allocation of power under the PPA is reasonable and in case the terms and conditions relating the quantity, price, mode of supply, the need of the distribution agency vis-à-vis the consumer etc. are not to be found reasonable, approval may not be granted.

34. No doubt the Commission is vested with the jurisdiction to determine tariff at which the distribution licensee should procurer/purchase electricity which is exercised either by determining tariff under Section 62 of the Electricity Act, 2003 or by adopting tariff discovered through a competitive bidding process under Section 63 or by issuing generic tariff orders. Section

61 of the Act specifies the principles upon which tariff is to be determined by the com. At the same time, Section 86(1)(b) empowers the State Commission to oversee the purchase and procurement of power by the distribution licensees. In other words, this Section confers power upon the State Electricity Commissions to “regulate” electricity purchase and procurement undertaken by the distribution licensees for distribution and supply within the state. The Commission is entrusted with the power to regulate the price of sale and purchase of electricity between the generating companies and the distribution licensees through power purchase agreements in order to ensure that such sale and purchase of electricity is not against the interests of the consumer.

35. Admittedly, the Consolidated PPA lacks a compensation mechanism in case of any short-supply/ non-supply of power by Vedanta. In order to address this issue, a meeting took place between the parties, which culminated in the Minutes of Meeting (MoM) dated 01.11.2016. In these minutes, it was, inter alia, mentioned that in case of any shortfall in supply of power by Vedanta, GRIDCO was to be compensated. However, the resolution was superseded by another meeting, as noted earlier, which culminated in the MoM dated 03.09.2018, whereby it was recorded as under:-

*“M/s. Vedanta mentioned that when the Minutes of Meeting dated 01.11.2016 was signed, they had not foreseen the fact that they would not be able to supply State entitlement of power to GRIDCO consistently and the shortfall quantum would pile up to such an extent. Further, they have proposed the following rates of penalty on short supply of power instead of highest DSM/ ISGS as per the said matters.*

*i. Actual expenses incurred by GRIDCO less Vedanta Tariff.*

*OR*

*ii. Differential cost of average IEX rate and Vedanta Tariff*

*GRIDCO mentioned that such penalty clause (MoM: 01.11.2016) on non-supply of power was required to be framed in view of Hon'ble OERC's direction regarding ensuring supply of State entitlement of power by M/s. Vedanta Ltd. under any circumstances whatsoever.*

*GRIDCO further mentioned that, an application regarding execution of Revised Power Purchase Agreement shall be*

*filed by GRIDCO before Hon'ble OERC along with the MoM. Thus, M/s Vedanta Ltd. may take this opportunity to put forth their issues before Hon'ble Commission for necessary consideration and direction on above proposal. Penalty for short supply will be claimed based on the decision of Hon'ble Commission on penalty rate."*

36. Pursuant to the above MoM dated 03.09.2018, GRIDCO filed the Case No. 68 of 2018, inter alia, during the proceedings, OERC vide daily orders dated 01.05.2019 and 21.05.2019 directed parties to sit together with Director (RA), OERC, to resolve the issues regarding agreement in the PPA.

37. The petition filed by GRIDCO Limited before the Commission was not under Section 86(1)(b) of the Electricity Act for approval of a PPA. It was a petition under Section 86(1)(f) of the Act for resolution of dispute regarding the execution of revised PPA in compliance with the directions of the Commission vide order dated 27.01.2016 passed in case no.21/2015. Importantly, in the said order dated 27.01.2016 there was no direction of the Commission to incorporate a compensation clause in the revised PPA. Despite the same, parties had discussed the issue of payment of compensation in the meeting dated 01.11.2016 and a compensation clause was agreed upon. Accordingly, a prayer was made by GRIDCO in the

petition to approve the decision taken in this regard in the minutes of meeting dated 01.11.2016.

38. It appears that none of the parties harped upon the said compensation clause contained in the minutes of meeting dated 01.11.2016, during proceedings of the petition before the Commission and accordingly, the issue was again discussed between the parties in the meeting dated 07.06.2019 held in the office of the Commission in the presence of the Director (Regulatory Affairs) of the Commission in pursuance to the orders dated 01.05.2019 and 21.05.2019 of the Commission. A protocol for computation of compensation for non-supply/short supply of power by Vedanta to GRIDCO Limited was agreed to in the said meeting, which has already been noted hereinabove. However, subsequently, the GRIDCO Limited submitted before the Commission on 10.09.2019 that the principle for payment of compensation evolved in meeting dated 07.06.2019 is not implementable. Hence, at the request of GRIDCO Limited, again a meeting was held between the parties on 20.09.2019 wherein no further agreement was reached.

39. It cannot be disputed that the last consensual decision between GRIDCO and Vedanta in the presence of Director (RA) OERC was arrived at during the meeting held on 07.06.2019, where an agreement was reached



between the parties, as the said MoM was signed by all the said three parties. The said MoM is reproduced hereinbelow:

*“1. It is resolved that for the past period i.e., FY 2017-18 and FY 2018-19 for short supply of power by M/s Vedanta, it will have to pay additional cost borne by GRIDCO availing highest Energy Charge Rate (ECR) from marginal sources.*

*2. (a) In case of Inter-state Generating Station (ISGC) (marginal sources) additional cost means ECR plus incentive (if any) less applicable tariff of M/s Vedanta for corresponding month.*

*(b) In case of Power Exchange (marginal source) additional cost means monthly average per unit cost paid to power exchange less applicable tariff of M/s Vedanta for the corresponding month.*

*3. During the above period M/s Vedanta shall be eligible to claim capacity charges only once.*

*4. In case compensation payable by M/s Vedanta for a particular month is negative then same shall be treated as nil.*

*Sd  
For M/s. Vedanta*

*Sd/-  
for GRIDCO*

*Sd/-  
Director (RA),  
OERC”*

40. These minutes reflect the last agreed position between the parties, which were also signed by the Director (RA), OERC. In fact, what is agreed therein was a methodology or protocol for compensation and certainly a part of the tariff. Therefore, there is no possibility of any regulatory intervention qua a compensation mechanism to be incorporated in a PPA, as the Regulatory Commission only has powers to determine or regulate the tariff of generating companies under Sections 61, 62, 63, and 64 of the Electricity Act, 2003.

41. Thus, for the purpose of a compensatory mechanism, the Regulatory Commissions cannot pass any directions which, in turn, result in modifying or rewriting a contract or an arrangement that exists between the parties to the PPA, as has been done in the impugned order.

42. The contention on behalf of the Commission that the impugned order does not add to terms of the contract; rather, it merely ‘recognizes’ a method

for the determination of compensation for short supply, and such determination is based on the prescribed statutory and 'regulatory' methodology and parameters, cannot be accepted. The same stands contrary to the principle laid down by the Hon'ble Supreme Court in the ***Haryana Power Purchase Centre v. Sasan Power Ltd., (2024) 1 SCC 247*** that courts cannot rewrite contracts by deviating from the last agreed position between the parties.

43. The observations of the Hon'ble Supreme Court in latest judgment in Civil Appeal No.6888 of 2018 Chamundeshwari Electricity Supply Company Ltd. v Saisudhir Energy (Chitradurga) Pvt. Ltd. & Anr. decided on 25.08.2025 are also material in this regard and are quoted hereinbelow: -

*“43. Finally, as to the competence of the regulatory fora, Appellant and Respondent No. 2/KPTCL, though both State instrumentalities, are parties to a commercial contract concluded through competitive bidding. Their relationship is governed not by overarching notions of equity but by the terms of the PPA. The jurisdiction of the regulatory bodies is to ensure compliance with law and to adjudicate disputes within the four corners of the contract. It does not extend to recasting the contractual framework*

*by directing restitution of amount lawfully realized under the PPA, or by mandating alterations to tariff and timelines in a manner inconsistent with the agreement. The directions of the State Commission, affirmed by the APTEL, requiring restoration of the performance security, extension of contractual timelines, and renegotiation of tariff, transgress the limits of that jurisdiction.”*

44. In these facts and circumstances, we feel in agreement with the submissions on behalf of the Vedanta that the Commission has exceeded its jurisdiction in devising a protocol for computation of compensation payable by Vedanta in case of non-supply/short supply of power to GRIDCO Limited, which was never either discussed by the parties or agreed upon between the parties. The Commission at best, could have either put its stamp upon the compensation formula devised between the parties in the meeting dated 07.06.2019 or in case of subsequent reasonable disagreement between the parties on the same, directed the parties to again sit together to devise a fresh compensation formula/protocol. The duty of the Commission, while adjudicating the petition of GRIDCO Limited, was only to facilitate the parties to arrive at a mutual consensus with regards to the protocol/formula for payment of compensation by Vedanta in case of non-supply/short supply of

power to GRIDCO Limited. It was not within the powers and jurisdiction of the Commission to devise a protocol on its own and thrust the same upon the parties which would certainly tantamount to writing or rewriting contract i.e. PPA on behalf of the parties. That kind of role is nowhere envisaged for the Electricity Commissions under the Electricity Act, 2003.

45. The aforesaid position of law has already been enunciated in ***Haryana Power Purchase Centre v. Sasan Power Ltd., (2024) 1 SCC 247***, by the Hon'ble Supreme Court by observing as under: -

*“103. We are of the view that the Tribunal cannot indeed make a new bargain for the parties. The Tribunal cannot rewrite a contract solemnly entered into. It cannot ink a new agreement. **Such residuary powers to act which varies the written contract cannot be located in the power to regulate. The power cannot, at any rate, be exercised in the teeth of express provisions of the contract.***

*104. We notice this for the reason that the first respondent has a case that what is provided in Article 13.2(a) (since we are dealing with the case of alleged change in law*

during the construction period) does not do justice to the parties or that it is incapable of producing a fair result and therefore, the Tribunal would necessarily be clothed with power bearing in mind its regulatory nature. In a matter where the parties have entered into a contract with express provisions, we are unable to agree with the first respondent that the Tribunal would have power to disregard the express provisions of the contract on the score that as it turns out that with passage of time and even change in circumstances, it is found that the contract cannot be worked except at a loss for the contractor.

... ..

109. ----- **All that we are holding is that in a case where the matter is governed by express terms of the contract, it may not be open to the Commission even donning the garb of a regulatory body to go beyond the express terms of the contract.”**

46. Accordingly, the law is well settled that the Tribunals/Commissions under the Electricity Act 2003, cannot rewrite express terms of a contract or arrangement, even under the garb of its regulatory functions.

47. We, thus, hold that once the parties agreed to a compensatory protocol, vide the minutes of meeting dated 07.06.2019, the said protocol has to be considered as part and parcel of the PPA and the same cannot be modified or altered by the State Commission. Therefore, the Commission ought not have decided on a new compensation protocol, which amounts to rewriting of contract, which is impermissible in law.

48. Therefore, we are unable to sustain the impugned order of the Commission on this aspect and the same deserves to be set aside.

49. As a result of the above, we find that it is not necessary for us to further examine as to whether the Commission could have introduced new principles for computation of compensation for short-supply or non-supply of power by Vedanta, such as (i) Definition of Marginal Sources and priority of Marginal Sources; (ii) Annual Fixed Charge / Capacity Charges Calculation; (iii) Compensation for short supply and Incorporation of Compensation Clause in PPA; (iv) Additional PoC Charges & Losses; and (v) Opportunity loss of GRIDCO due to short supply of power by Vedanta, as we have already held hereinabove that the parties must adhere to the minutes of meeting dated 07.06.2019. Consequently, anything which is outside the scope of such minutes of meeting in the impugned order is not sustainable.

50. Learned senior counsel for the Vedanta also drew our attention to the following sentence in Paragraph No.10(k) of the impugned order with regards to the utilization of linkage coal for captive purposes: -

*“The linkage coal availed by M/s Vedanta Ltd. has been utilized in converted CGP units 1&4 during stoppage of unit-2 due to breach of ash pond.”*

51. It is argued on behalf of Vedanta that these findings are baseless, erroneous and have been wrongly recorded in the impugned order and are likely to subject Vedanta to CBI enquiry for misutilization of linkage coal. On behalf of the GRIDCO Limited, it is argued that these submissions of Vedanta are completely baseless, misconceived and devoid of any merit.

52. It is also pointed out on behalf of Vedanta that as per communication dated 06.05.2019 issued by Mahanadi Coalfields Ltd. to Vedanta, it is categorically recorded that Vedanta utilized the entire linkage coal for the purpose of supplying power to GRIDCO. GRIDCO also issued letters dated 27.03.2019 and 30.04.2019, thereby certifying that Vedanta supplied power in commensuration with linkage coal during FY 2017-18.

53. On being asked, GRIDCO has not denied such submission of Vedanta.



54. It is also not disputed that the contractual position which stands between the parties is that Vedanta has the obligation to supply power to the extent of linkage coal made available to it by MCL, and that any short supply can only be alleged against Vedanta if it supplies power less than the power which can be generated from the available linkage coal.

55. Reference was invited to various orders passed by the State Commission, which have not been challenged on this ground by either party. The details of these orders and the observations of the Commission contained therein are reproduced hereunder:-

- (i) Order dated 27.01.2016 passed by the Commission  
in Case No. 21/2015:

*“35. In conclusion the Commission issues the following  
directions:*

.....

*(d) The coal used for generating power for State  
entitlement shall be linkage coal / captive mines  
allocated to the Petitioner for State use”*

(ii) Impugned order dated 22.06.2020 passed by OERC in  
Case No. 68/2018:

*“k. Issue regarding utilization of linkage coal for captive  
purposes*

*... ..*

*Commission’s Observation:*

*.....GRIDCO is entitled to purchase power from  
the IPP of M/s. Vedanta Ltd. to the extent of power  
generated from the linkage coal since it is supplied to  
M/s. Vedanta for State use and GRIDCO may  
purchase power beyond that upto the state entitlement  
if it is commercially cheaper.....”*

(iii) Order dated 26.03.2021 passed by the Commission in  
Case No. 72/2020:

*“230. -----Further, as per the Commission’s order  
dated 22.06.2020 in Case No. 68/2018, it may  
purchase power beyond that, if it is commercially  
cheaper.”*

- (iv) Order dated 08.02.2023 passed by the Commission in  
Case No. 62/2019:

*“13. Heard the parties through virtual mode and their written notes of submissions are taken into consideration. Basing upon the same, we observe that;  
... ..*

*vii. From the above order dated 22.06.2020 passed in Case No.68 of 2018, it is clear that GRIDCO is entitled to procure power from M/s. Vedanta Limited upto the State entitlement of power as per PPA. However, M/s. Vedanta Limited must supply power to the GRIDCO to the extent of power generated from the linkage coal. In case the power generated from the linkage coal falls short of the State entitlement power, GRIDCO may purchase power beyond the generation from linkage coal upto the State entitlement of power, if it is commercially viable to it and in such eventualities M/s. Vedanta Ltd. has to supply power to GRIDCO beyond the generation from linkage coal upto the State*

*entitlement of power, under requisition from GRIDCO in this regard. GRIDCO has to plan accordingly and intimate M/s. Vedanta Limited if it desires to purchase such power beyond the generation from linkage coal.”*

56. We find that these observations of the Commission in Para 10(k) of the impugned order were totally uncalled for and not in accordance with the contentions of GRIDCO Limited and prayer made by it in the petition. No such prayer had been made in this regard in the petition with regards to misutilization of linkage coal by Vedanta. We also find that no proper enquiry was made by the Commission on this aspect before recording such adverse findings against Vedanta which, in all probability, would have exposed it to criminal liability. Therefore, these observations of the Commission contained in the impugned order are also liable to be set aside.

57. It is also deliberated before us whether the OERC in the impugned order has wrongly premised the computation of compensation based on 15-minute time block basis, which is against the agreed position between the parties under the MoM dated 07.06.2019.

58. We make it clear that any compensation amount payable has to be in accordance with the last agreed methodology, i.e., as per 07.06.2019, in

case approved by the State Commission, or otherwise as may be mutually agreed to by the parties.

**Conclusion: -**

59. For the aforesaid reasons, we are unable to sustain the impugned order of the Commission as the same is erroneous. The impugned order is hereby set aside. The case is remanded back to the Commission with the direction to call upon the parties to execute revised PPA as per their mutual agreement in terms of the order dated 27.01.2016 passed by the Commission in petition no.21/2015.

60. Meanwhile, GRIDCO shall release/reimburse the entire payment to Vedanta within three months from date of this judgment, which was withheld by it in pursuance to impugned order of the Commission.

61. Accordingly, appeal no.107/2022 filed by Vedanta stands allowed whereas appeal no.312/2022 filed by GRIDCO Limited stands dismissed.

**Pronounced in the open court on this the 09<sup>th</sup> day of September, 2025.**

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

√  
REPORTABLE / ~~NON-REPORTABLE~~

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