

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

APPEAL NO. 31 OF 2017 &
APPEAL NO. 32 OF 2017

Dated: 24th September, 2019

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Judicial Member

APPEAL NO. 31 OF 2017

In the matter of:

M/s. Ramnad Renewable Energy Ltd.
Adani House, Nr. Mithakhali Six Roads,
Ahmedabad – 380 009

...Appellant(s)

Versus

1. Tamil Nadu Electricity Regulatory
Commission,
No 19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008

...Respondent No.1

2. Tamil Nadu Generation and Distribution
Corporation Limited
No. 144, Anna Salai,
Chennai- 600 002

...Respondent No.2

3. Chief Engineer/Non-Conventional
Energy Sources (NCES)
2nd Floor, NPKRR Malaligai,144,
Anna Salai, Chennai- 600 002

...Respondent No.3

Counsel for the Appellant(s) : Mr. Amit Kapur
Ms. Poonam Verma
Ms. Aparajitha Upadhyay
Ms. Abiha Zaidi

Mr. Rakesh Shah (Rep.)

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1

**Mr. G. Umapathy
Mr. S. Vallinayagam
Ms. S. Amali for R-2 to 3**

APPEAL NO. 32 OF 2017

**M/s. Kamuthi Solar Power Ltd.
Adani House, Nr. Mithakhali Six Roads,
Ahmedabad – 380 009**

...Appellant(s)

Versus

**1. Tamil Nadu Electricity Regulatory
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Mr. S. Vallinayagam
Ms. S. Amali for R-2 to 3**

JUDGMENT

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. Prayer of the Appellant.

- (a) Allow the Appeal and set aside the Impugned Order, as per the submissions of the Appellant and direct the Respondent Commission to examine the Petition of the Appellant in exercise of its regulatory powers; and
- (b) Pass such other and further orders, as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case

2. Questions of Law:

- A. Whether the Respondent Commission failed to appreciate that the Petition filed by Ramnad Renewable Energy Ltd. was regulatory and not adjudicatory in nature?
- B. Whether the Respondent Commission acted contrary to:-
 - (a) the settled position of law that:-
 - (i) “regulatory” and “adjudicatory” functions of an Electricity Regulatory Commission are different;
 - (ii) Within the regulatory framework under the aegis of the Electricity Commissions, project developers are entitled to extension of control period when the project

commissioning is delayed for no fault of the project developers;

(b) judgments of this Hon'ble Tribunal including the case of **GUVNL vs. GERC**, reported as MANU/ET/0057/2016; and

(c) Regulation 3 of TNERC New and Renewable Sources of Energy Regulations, 2008 which provides that the obligation of providing evacuation facility from the solar power plant is of the Respondent No. 2?

C. Whether the Impugned Order is violative of the objectives of Section 86(1)(e) of the Electricity Act, 2003, National Electricity Policy, Tariff Policy, Energy Policy 2012 issued by the State of Tamil Nadu and doctrine of legitimate expectation as also the international convention, UNFCCC, which incentivises generation of electricity from renewable sources?

D. Whether the Respondent Commission failed to appreciate that there is no dispute with regard to the date of commissioning of the Appellant's power plant and that the Appellant is only seeking extension of control period which is well within the powers and jurisdiction of the Respondent Commission in terms of Regulations 48 of (Conduct of Business) Regulations, 2004?

E. Whether the Respondent Commission rightly directed conversion of the Petition filed by Appellant invoking regulatory power, into a

Dispute Resolution Petition despite the fact that the affidavit filed by the Respondent Commission in the Tamil Nadu High Court wherein they have voluntarily given under taking that they would not take up hearing of the Dispute Petitions, pending the final outcome of the court case in the Madras High Court (now pending with Hon'ble Supreme Court)?

3. **Brief facts of the Case**

- 3.1 The present Appeal has been filed by M/s. Ramnad Rebewabke Energy Ltd. (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “**Act**”) against the Order dated 16.11.2016 (“**Impugned Order**”) passed by the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as the “**State Commission/TNERC**”) in the Pre-Registration Case No. 2 of 2016.
- 3.2 M/s. Ramnad Rebewabke Energy Ltd., the Appellant herein is primarily engaged in the business of setting up of Renewable Energy power plants and generation of electricity thereof in the State of Tamil Nadu.
- 3.3 Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as the “State Commission/the Respondent No.1”) is the Regulatory Commission in the State of Tamil Nadu which functions defined in the Electricity Act, 2003.
- 3.4 Tamil Nadu Generation and Distribution Commission Limited (TANGEDCO) (hereinafter referred to as the “Respondent No.2”) is the Distribution Company in the State of Tamil Nadu.

- 3.5 Chief Engineer, Non-Conventional Energy Sources (NCES), (hereinafter referred to as the “Respondent No.3”) is the authorised representative of the Respondent No. 2.
- 3.6 The Appellant has entered into an Energy Purchase Agreement dated 04.07.2015 of 72 MW capacity with the Tamil Nadu Generation and Development Company (“TANGEDCO”) for the implementation of its 72 MW Solar Power Project.
- 3.7 In 2012, the Tamil Nadu State Government issued a Solar Energy Policy with a vision to lead the country by generating 3000 MW of Solar Power by 2015 through a policy conducive to promoting solar energy in the State. The Appellant proposed to set up solar power plants of varied capacity using solar photovoltaic (“PV”) technology in the State in consonance with the new solar initiative. One of the aspects of the State Government’s Policy was to encourage setting up of solar plants and fixation of tariff at a nominal rate with respect to solar power, wherein solar PV technology is used.
- 3.8 The State Commission issued a Comprehensive Tariff Order on Solar Power being Order No. 4 of 2014 dated 12.09.2014 (Corrected vide an Erratum as Order No. 7 of 2014) (“*Solar Tariff Order*”). As per the said Order, the tariff for Solar PV plants was fixed at Rs. 7.01 per unit. Furthermore, in terms of the TNERC Power Procurement from New and Renewable Sources of Energy

Regulations, 2008, the control period of the tariff was fixed as one year from the date of the order, and the format for the Energy Purchase Agreement ("*EPA*") was to be determined by State Commission after discussions with the generators and the distribution licensees.

3.9 Pursuant to the Solar Tariff Order, on 07.10.2014, Respondent No. 2 issued proceedings being CMD TANGEDCO Proceedings No.454 prescribing instructions for the processing of applications for establishment of solar power plants under the Preferential Tariff Scheme. It was, *inter alia*, stated that the initial documents required to be furnished along with applications include:-

- (a) Request letter of the developer mentioning the project capacity, location viz. survey number of the land, Village Taluk, District and option (sale to board/captive/third party sale);
- (b) Duly filled application format;
- (c) Copy of land document – Registered sale deed or lease deed, if available;
- (d) Registration fees –Rs. 10,000/- per application;
- (e) Load flow study consultation charges (Up to project capacity of 15 MW –Rs. 2, 00, 000/- + service tax and for project capacity greater than 15 MW – Rs. 5, 00, 000/- + service tax; and
- (f) 50% of the applicable security deposit.

- 3.10 In the meanwhile, several review petitions were filed against the Solar Tariff Order, specifically with regard to the issue of control period. All such review petitions were dismissed by the State Commission. However, in light of the emergent situation, the State Commission, *suomotu*, initiated proceedings to consider extension of the control period for applicability of the preferential tariff.
- 3.11 By Order No. 4 of 2015 dated 01.04.2015, the State Commission extended the control period of solar power tariff till 31.03.2016. Accordingly, all solar power projects commissioned on or before 31.03.2016 became entitled to a tariff of Rs. 7.01 per unit.
- 3.12 In response to the above, on 26.05.2016, the Appellant made an application for the establishment of a 72 MW solar PV power plant at O.Karisalkulam village, Kamuthi Taluk, Ramnad District.
- 3.13 The Respondent No. 3 by its letter dated 17.06.2015 proposed to interface the Appellant's power plant with the TANTRANSCO grid at the sanctioned new Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV line for a distance of 8 KM, connecting the proposed 72 MW solar PV power plant and the sanctioned Kamuthi 400/230-110 KV SS. The above grid connectivity was to be effected only after commissioning of sanctioned new Kamuthi 400/230-110 KV SS at Kamuthi, Ramnad District. It was further noted that the Appellant had already made a payment of 50% of

the applicable refundable security deposit. The Appellant was accordingly required to pay the remaining 50% for further consideration of its proposal.

3.14 In compliance thereof, the Appellant furnished the entire security deposit of Rs. 425.50 Lakhs vide P.R. No. 209350 dated 02.05.2015 and P.R. No. 210594 dated 17.06.2015 for establishment of the 72 MW solar PV power plant at O.Karisalkulam village, Kamuthi Taluk, Ramnad District.

3.15 On 21.01.2015, the model Energy Purchase Agreement was approved by the State Commission.

3.16 Accordingly, thereafter, the Appellant's proposal was accepted by the Respondent No. 2 by its Letter of Approval dated 04.07.2015 and consequently, an Energy Purchase Agreement ("*EPA*") dated 04.07.2015 was entered into between the Appellant and the Respondent No. 2.

3.17 Subsequent to the execution of the EPA, the Appellant commenced construction of its 72 MW project. The Appellant was fully aware that it had to commission its project on or before 31.03.2016, i.e., the expiry of the control period, in order to avail the preferential tariff declared by the State Commission under the Solar Tariff Order.

3.18 The Appellant acquired land in respect of the project and appointed Engineering, Procurement and Construction ("*EPC*") contractors. Further, the Appellant obtained the requisite permissions and approvals from the local bodies including consent from the Tamil Nadu Pollution Control Board for the commencement of the project. The Appellant also made arrangements for financial assistance from banks and financial institutions for the project. It is pertinent to note that 70% of the funding was provided by banks and financial institutions and the entire financial projections and estimates were computed on the basis of the Tariff Order dated 12.09.2014.

3.19 In November, 2015, as a result of a cyclone that hit the State of Tamil Nadu, resulting in unprecedented rainfall recorded in Kamuthi Taluk, Ramnad District, there was a stoppage of construction work. The said situation continued for over a month and flooding of the construction site continued even after stoppage of rain. The Appellant took all steps and measures to continue the construction work. However, despite the Appellant's best efforts, the entire project was delayed due to the flooding, which was entirely beyond the Appellant's control. The Appellant informed the Respondent No.2 that the stalling of the construction was on account of force majeure, and was beyond the Appellant's control.

Despite the rampant rain and flooding, the Appellant took all steps possible for completion of construction and commissioning of the plant within the control period as fixed by the State Commission in the order dated 12.09.2014.

3.20 It is relevant to note that the Respondent No. 3 had approved the Appellant's solar power project by interfacing it with the TANTRANSCO grid at sanctioned Kamuthi 400/230-110 KV SS at 110 KV level by erecting 110 KV line for a distance of 8 KM. The Respondent No. 2 was entirely responsible for the commissioning of the sub-station and as per the extant regulations, the evacuation facilities/ grid connectivity for evacuating power from the solar power plant.

3.21 By 22.03.2016, the Appellant's plant was ready for commissioning. However, the Respondent No. 2 failed to commission the 110 KV sub-station at Kamuthi.

3.22 On 22.03.2016, the Chief Electrical Inspector granted approval for the commissioning of the Appellant's 72 MW project, in terms of Regulation 43 (2) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. Similar consent for operation of the power plant was issued by the Tamil Nadu Pollution Control Board in accordance with Sections 21 and 25 of the Air (Prevention and Control of Pollution) Act, 1981 and

Water (Prevention and Control of Pollution) Act, 1974 respectively on 19.02.2016.

3.23 On 24.03.2016, the Appellant sent a letter to the Respondent No. 3 inform that the Solar PV power plant was ready for commissioning by 22.03.2016 and requested the Respondent No. 3 to consider their alternate proposal by permitting the Appellant to evacuate the power through a one circuit of 110 KV D/C Old Kamuthi Substation to New Kamuthi Sub-station line at New Kamuthi substation end.

3.24 Thereafter, the Appellant sent letters dated 25.03.2016 and 31.03.2016 to the Respondent No. 3 and Superintending Engineer, Solar Energy/NCES, reiterating that the Appellant's plant has been ready to commence evacuation of power from its plant since 22.03.2016 and the non-evacuation of power is on account of non-completion of evacuation infrastructure by Respondent No. 2. It was further pointed out that all necessary approvals and consents for commencement of its operations had been obtained and that the project was ready for commissioning.

3.25 On 15.04.2016, Respondent No. 2 sent a letter to the Appellant alleging that the Appellant's plant was not ready for commissioning as on 31.03.2016. It was stated that in terms of the letter dated 17.06.2015, it was duly clarified that the Appellant would not be entitled to claim any deemed generation or any other benefits from

the Respondent No. 2 in case the TANTRANSCO could not commission the proposed sub-station at Kamuthi.

3.26 On 09.05.2016, the Appellant promptly replied to the Respondent No. 2's letter specifically denying that the Appellant's plant was incomplete and reiterating that the project was ready for commissioning.

3.27 Aggrieved by Respondent No. 2's failure to inter-connect the Appellant's project with the grid or recognize the Appellant's project as deemed commissioning before 31.03.2016, the Appellant filed a Petition before the State Commission.

3.28 On 11.08.2016, State Commission dismissed the Petition filed by Appellant and directed Appellant to comply with directions issued by State Commission in Order dated 01.08.2016 in P. R. C. No. 1 of 2016 i.e. SEI Kathiravan Power Private Ltd. vs. TANGEDCO.

3.29 Thereafter, the Appellant again approached the Registry of the State Commission requesting that the matter be placed before the Commission itself for maintainability. Accordingly, the Petition was numbered as Pre-Registration Case No. 2 of 2016 and listed the same for hearing on 27.09.2016.

3.30 On 16.11.2016, the State Commission passed the Impugned Order directing the Appellant to file appropriate court fees, while

observing that the matter involved a dispute in terms of Section 86(1)(f) of the Electricity Act.

3.31 Aggrieved by the Order dated 16.11.2016 passed by the State Commission, the Appellant has presented the instant Appeal.

4. Submissions of the Appellant

4.1 The Appellants have installed Solar PV projects with an installed capacity of 288 MW at an aggregate capital investment of Rs.1887.76 Crores, relying on the promises held out by the Respondents re. tariff in terms of:-

- (a) The Tamil Nadu Solar Policy;
- (b) The Energy Purchase Agreements dated 04.07.2015; and
- (c) TNERC's Solar Tariff Order dated 12.09.2014 (Order No. 4 of 2014, amended *vide* Order dated 01.04.2015), wherein tariff of Rs. 7.01 per unit was fixed for solar power plants commissioned upto 31.03.2016 (i.e. within the control period from 12.09.2014 to 31.03.2016)].

4.2. In this backdrop, to secure its legitimate dues, the Appellants' diligent efforts to commission and commercially operate their plants within the said control period were thwarted due to defaults and delays of TANGEDCO in—

- (a) Connecting the solar power plants with the grid within time; and
- (b) Recognising deemed commissioning of the Appellants' projects before 31.03.2016.

4.3. Once the connectivity to the promised evacuation facility was made available by TANGEDCO, the Appellants were able to commence commercial operations from 18.09.2016. Yet, the Appellants have been paid a significantly lower tariff of Rs. 5.10/unit in terms of TNERC Solar Tariff Order dated 28.03.2016. Being aggrieved, the Appellants filed respective Petitions before TNERC, seeking appropriate relief in the following terms:-

- (a) TANGEDCO should pay tariff as per the TNERC Solar Tariff Order dated 12.09.2014 since the Appellants had fulfilled all their obligations with respect to commissioning of the plant within the control period of TNERC's Comprehensive Tariff Order dated 12.09.2014, and it was TANGEDCO that failed to back charge the plants by connecting it to evacuation system within the control period. The 400kV new Kamuthi substation to which the Appellants' projects were to be connected for evacuation of power, was not available when the Appellants' projects were ready for commissioning i.e. 15.03.2016 (216 MW) and 22.03.2016 (72 MW). As such the Appellants' cannot be made to suffer for delay that was beyond their control.
- (b) In terms of Clause 5 of EPA and the Comprehensive Tariff Order dated 12.09.2014 the Appellants' solar power projects are entitled to a tariff of Rs. 7.01/unit.

By the Impugned Orders, TNERC refused to entertain the Petitions filed by the Appellants on the ground that the issue involved in the Petitions is not regulatory in nature. TNERC has directed that the Petitions be registered as a Dispute Resolution Petition ("*DRP*") and not as a Miscellaneous Petition ("*MP*"), relying on the TNERC

– Fees and Fines Regulations, 2004 as amended from time to time (*“Fees and Fines Regulations”*). The relevant extract of the Impugned Order in Appeal No. 31 of 2016 (identical to Appeal No. 32 of 2016) is as under:-

“3.5. In this connection, it is necessary to elaborate on the nature of Dispute Resolutions. A Dispute Resolution Petition is one which is taken up upon a motion made by either of the parties i.e. the Petitioner or the Licensee for resolution of a dispute.

...

3.6 It may be seen from the express provision in section 86 (1) (f), the Commission is empowered to adjudicate all disputes between the Licensees and Generating Companies and hence any dispute between a Licensee and a generating company, or generating companies or Licensees inter se whether such dispute relates to a period anterior to the signing of PPA or posterior to the signing of PPA can be adjudicated only by the Commission.

3.7. Having held so, the short question which arises for consideration in this petition is whether the prayers of the Petitioner as set out in para 1 herein are in the nature of dispute resolution. It may be seen from the prayers of the Petitioner that there are prayers such as (a) to declare that the Petitioner’s 72 MW Solar Project, was commissioned on or before March 31, 2016, (b) to declare that the Petitioner’s Solar Power Project is entitled to a tariff of Rs.7.01 per unit which in our view, are in the nature of dispute resolution as they involve monetary claims between the Licensee and the Generator. Needless to say, any monetary claim cannot be adjudicated without resorting to appropriate dispute resolution mechanism. Any order passed without following the required procedures would not be in consonance with the section 86 (1) (f) of the Electricity Act, 2003. Though the Petitioner seeks to contend that the prayers are of miscellaneous nature, the fact remains that the prayers herein are clothed with the attributes of dispute resolution. Without hearing the response of the Licensee the issues raised in this petition cannot be disposed on merit....”

4.4 It is submitted that the Impugned Order has decided the nature of the Petition based on the Fees and Fines Regulations, rather than actually analysing the nature of the issues involved. The aforesaid findings are based on an incorrect interpretation of the provisions of the Electricity Act, 2003 ("*Electricity Act*") as well as the Fees and Fines Regulations. In passing the Impugned Orders, TNERC has failed to appreciate that:-

- (a) The Appellants' were ready for commissioning their projects well before 31.03.2016 (within the control period of Comprehensive Tariff Order). To this effect, respective certificates were issued by Chief Electrical Inspector on 22.03.2016.
- (b) TANGEDCO has never challenged the authenticity of the Chief Electrical Inspector's certificates declaring that the Appellants' plant was ready for commissioning on 22.03.2016.
- (c) TANGEDCO was admittedly unable to construct the sub-station for connectivity and declined the Appellants' request for providing alternative connectivity effectively bottling up installed solar capacity. In such a scenario, Appellants have invoked *regulatory powers* of TNERC, to declare commissioning of its power projects.
- (d) Declaration of successful commissioning of the projects does not constitute a *lis* which can be mutually settled between the parties. TNERC has the power to grant the relief sought for, by exercising its regulatory functions.

4.5 The Appellants regret to point out that TNERC issued such a direction when it was not discharging its adjudicatory functions under Section 86(1)(f) of the Electricity Act as is evident from the tabulated sequence of events. To date there is no clarity as to if

and when the judicial member shall be appointed. It is noteworthy that simultaneously TNERC was entertaining other matters re. Solar projects which involved issues of MUST RUN Status and compensation for BACKING DOWN. It is submitted that this incongruent stance of TNERC has led to a delay of three years in grant of relief to the Appellants, who have suffered adverse financial impact on account of the said delay.

- A. The present case is to be decided by exercise of regulatory powers.

Re. Regulatory and Adjudicatory functions of the Commission

4.6 The position stated above is borne out by the fact that the Solar Tariff Orders issued by TNERC on 12.09.2014, 01.04.2015, 28.03.2016 et.al. contains and deals with several comments/objections of the public to the proposed tariff. Yet, the Solar Tariff Order was NOT been issued under Section 86(1)(f). Mere raising of objections by Respondents did not convert the matter into “adjudicatory” in those case. As such, perhaps raising of objections is not a conclusive of a matter being adjudicatory. TNERC in exercise of its powers under Sections 14 and 62 regularly undertakes exercises of grant of license and tariff determination respectively, through a public consultation process. Should the view taken by TNERC be accepted, every time an objection is raised by a stakeholder in a public hearing (even in cases involving Section 14 and 62), it shall become a dispute and there will be no effective “regulatory powers”. It is submitted:-

- (a) Central Electricity Regulatory Commission (“Central Commission”) as well as the TNERC while deciding tariff and license petitions filed by various generating/transmission companies on a regular

basis deals with the objections raised regarding delay in commissioning of the assets on account of reasons beyond the control of the transmission utility/generator and accordingly determines COD and tariff. Pertinently, such orders are passed by the Central Commission while exercising its regulatory powers under Sections 61, 62, 64, 79(1)(a) to 79(1)(e) and not under the adjudicatory functions of Central Commission under Section 79(1)(f) and by TNERC under Sections 61, 62, 64 read with Section 86(1)(a) and (b) of the Electricity Act.

- (b) Similarly, reference be made to the proceedings before the Central Commission and TNERC wherein PPA amendments have been approved by exercising regulatory powers. In these cases too, objections to PPA amendments were raised by the Respondents and the issue was decided by exercise of regulatory powers. The relevant extracts are as under:-

- (i) Central Commission - GUVNL PPA Amendment case - Order dated 12.04.2019 in Petition No. 374/MP/2018 in *Gujarat Urja Vikas Nigam Limited vs. Adani Power (Mundra) Limited*.

“37 g) In the light of the above judgments, it emerges that the PPAs in question including the powers to approve amendments thereto contained in Article 18.1 of the respective PPAs flow from and are consistent with the Guidelines and Section 63 of the Act. Without prejudice to the above power flowing from Article 18.1 of PPAs, the Commission can exercise its powers to regulate tariff under Section 79(1) (b) of the Act in a scenario where it is not covered by any of the provisions of the Guidelines or where no Guidelines are framed at all or Guidelines do not deal with a given situation, as clearly stipulated in paragraph 20 of the judgment in Energy Watchdog Case extracted above.

Therefore, not only does the Commission have the statutory powers to allow amendments pursuant to Article 18.1 of the respective PPAs, but also has the regulatory power under Section 79(1) (b) of the Act in the absence of any Guidelines or specific provisions in the Guidelines with regard to amendment of the PPAs to either approve the proposed amendment or reject the same.”

- (ii) TNERC-TANGEDCO PPA Amendment case- Order dated 12.02.2019 in Petition No. M.P. 1 of 2019 in *TANGEDCO vs. KSK Mahanadi Power Company Ltd.*

“6.6 During the hearing on 31-01-2019, the respondent has filed an affidavit affirming the prayer of the petitioner and also stated that they seek the approval of the Commission for the amendments to the PPA dated 27-11-2013 as requested by the South Eastern Coalfields Ltd. to make coal supplies to the respondent under the Fuel Supply Agreement (FSA).

6.7 The Commission perceives that the amendments have been approved by the Hon’ble CERC. However, taking into consideration, the request of both the parties, the Commission during the hearing on 31-01-2019 directed to go ahead. Accordingly, the Commission hereby allows the petition of TANGEDCO seeking amendments to the PPA dated 27-11-2013 executed between KMPCL and TANGEDCO incorporating the formula for passing on discount to the petitioner in terms of SHAKTI Policy and LOI issued to Coal India Ltd.”

- 4.7 It is noteworthy that TNERC determined the “control period” and the “tariff” applicable to the Appellants plants by Order dated 12.09.2014 admittedly in exercise of powers under Sections 181, 61(h), 62 and 86(1)(e) of the Electricity Act. Being an issue re. implementation of their order, i.e., TANGEDCO’s delay in making connectivity to evacuation facilities available in time and therefore recognition of deemed COD, is a regulatory issue. TNERC ought

to have similarly considered the issue in exercise of its regulatory powers since:-

- (a) The Electricity Act was enacted to address problems of creditworthiness crisis in the power sector due to uneconomic tariffs. Part VII (Sections 61 to 66) and Part X (Sections 79 and 86) were specifically enacted to fulfil the twin statutory objectives of safeguarding consumer interest and while protecting investments by providing for recovery of cost of electricity in a reasonable manner.
- (b) In this background, independent regulators were appointed, vested with diverse roles i.e., grant of licence, determining tariff, regulating diverse activities, establishing and enforcing standards, conducting investigation, enforcing laws, adjudicating upon disputes and advising on policy making.[Ref. - *L. Chandra Kumar vs. Union of India* (1997) 3 SCC 261; *Namit Sharma vs. Union of India* (2013) 1 SCC 745]. The Central/State Commissions *combine within its ambit divergent functions and powers, which may be classified into 3 categories (each being distinct):-*
 - (i) *Legislative:* To frame binding regulations under Sections 61, 79(1)(h), 86(1)(h), 178 and 181.
 - (ii) *Executive:* *Granting licence; determining tariff; adopting tariff discovered through competitive bidding; regulate procurement process and PPAs; facilitate inter-state/intra-state carriage of electricity (transmission and wheeling); specify and enforce standards on licensees; fixing trading margin; advising Governments' on policy and sectoral issues.*

- (iii) *Adjudicatory: Deciding specified disputes under the said statutory and regulated contracts.*
- (c) It is noteworthy that, Parliament has used different words in different provisions to signify different functions of the regulator. For example –
- (i) Section 86(1)(a) of the Electricity Act empowers the State Commission to determine tariff.
 - (ii) Section 86(1)(b) empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees through agreements for power produced for distribution and supply.
 - (iii) Section 86(1)(f) empowers the State Commission to adjudicate upon disputes between licensee and generating companies.
- (d) There is a distinction between “regulatory” and “adjudicatory” powers of the Commission. De-hors the legislative context and scheme, the traditional definition of ‘lis’ can be extended to cover each of the 11 functions listed in Section 86(1) whenever the related proceedings involve a claim and a denial on such claim. It does not appear to be the legislative intent behind the Act to club everything under ‘adjudicatory’ function thereby rendering the other functions nugatory. As such, the implementation of obligations of the Procurer to grant connectivity to enable a solar generator to commission and to evacuate power must be seen as a regulatory function in terms of IEGC read with State Grid Code, Tamil Nadu Solar Policy and the Energy Purchase Agreements. The etymology of the term “regulate” is to control, adjust, manage,

balance, synchronize, modulate et al. Power to regulate carries with it, full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded plenary over the entire subject. In this regard, reliance is placed on the following Judgments:-

- (i) *GUVNL vs. Tarini Infrastructure Ltd.* (2016) 8 SCC 743 (para 17).
- (ii) *PTC India Ltd. vs. CERC* (2010) 4 SCC 603 (paras 49, 53, 55, 92).
- (iii) *Bharat Sanchar Nigam Ltd. vs. TRAI* (2014) 3 SCC 222 (para 88).

4.8 It is noteworthy that the Hon'ble Supreme Court in *Energy Watchdog & Ors. vs. CERC & Ors.* (2017) 14 SCC 80, has held that Regulatory Commissions can exercise their general regulatory powers in the absence of any guidelines. Evidently, this is a fit case where TNERC ought to have exercised its regulatory powers, for granting relief to the Appellants, and declaring applicability of tariff of Rs. 7.01 per unit.

Re. Monetary relief/claim.

4.9 In addition to the above, it is submitted that merely because the matter, *inter alia*, involves a monetary claim, it does not automatically convert the matter into dispute under Section 86(1)(f) of the Electricity Act. This is an incorrect approach adopted by TNERC in classifying a Petition. In this regard, it is submitted that:-

- (a) TNERC while performing its regulatory functions, *inter alia*, for fixation of tariff, is also required to settle monetary claims involved therein.

- (b) It has been wrongly observed by TNERC that since the matter involves a monetary claim, the Respondents are required to be heard and therefore the matter ought to be registered as a D.R.P. It is a settled position that even in exercise of regulatory powers the Commission is required to observe principles of natural justice. *(eg. In tariff determination, TNERC is required to afford an opportunity of hearing to the consumers who may like to raise objections)*

Re. Fees and Fines Regulations.

- 4.10 TNERC further fell into error in attempting to decide the nature of the proceedings on the basis of which classification shall attract higher fees under the Fees and Fines Regulations. It is submitted that TNERC has not considered that the determinative factor will be the claim and the relief sought. TNERC was required to decide the nature of the Petition by appreciating the nature of prayers sought in the Petition and then accordingly, the fees would have been paid as per the Fees and Fines Regulations.
- 4.11 In view of the aforesaid provisions, it is clear that the Statutory Scheme and Framework bestows powers upon the Appropriate Commission to grant relief in the facts of the present case by exercise of regulatory power. It is therefore submitted that TNERC ought to have considered the nuanced difference between regulatory and adjudicatory powers vested with State Electricity Regulatory Commissions, which have been specifically invoked by the Appellants herein. It is therefore submitted that, the case of the Appellants falling squarely within the parameters of the aforementioned decision, the TNERC, ought to have exercised its regulatory powers and granted relief to the Appellants.

B. Appellants are entitled to Tariff of Rs. 7.01/unit.

Re. Delay in commissioning

4.12 It is submitted that while passing the Impugned Order, TNERC has failed to take note of the fact that the Appellants' had completed their projects well in time. It was TANDEGCO's failure to provide the evacuation facility in time (before 31.03.2016) which now seeks to take advantage of its own wrong. In this regard, Appellants submit as under:-

- (a) The commissioning certificates were issued by the Chief Electrical Inspector under Regulation 43 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010, and the same are conclusive proof that the Appellants' projects were ready for commissioning on 22.03.2016. These certificates have never been challenged by TANGEDCO. In this regard, reliance is placed on *GUVNL vs. Acme Solar Technologies (Gujarat) Private Limited* (2017) 11 SCC 801, wherein Hon'ble Supreme Court concluded that the switchyard was ready to be energized by solely relying on the report of the Electrical Inspector. The relevant extract has been reproduced hereinunder:-

"7. However, in this regard, we have taken note of the communication / certificate issued by the Office of the Chief Electrical Inspector dated 31-12-2011 (a mandatory requirement under Clause 3 Schedule 2 extracted above) to the first respondent which goes on to recite that upon inspection of the electrical installation and associated equipments at switchyard of the first respondent at the new site, permission is granted to energize the above electrical installations along with associated equipments. This would indicate that the switchyard of the first respondent was ready for being energized on 31-12-2011."

- (b) No appeal was filed by the Respondents challenging the authenticity of the Chief Electrical Inspector's certificates [under Section 162 (2) of the Electricity Act] till date. In view of the above, it is submitted that the Appellants' projects merit declaration of deemed COD on 22.03.2016.
- (c) It is submitted that no prejudice would be caused to the Respondents if the Appellants' power plants are deemed to have been commissioned on 22.03.2016.
- (d) As per the EPA, COD shall mean COD as defined in the TNERC (Terms and Conditions for the determination of Tariff) Regulations, 2005(*"TNERC Tariff Regulations"*), viz.:-

"Date of Commercial Operation' or 'COD' in relation to a unit means the date declared by the generator after demonstrating the Maximum Continuous Rating (MCR) or Installed Capacity (IC) through a successful trial run, after notice to the beneficiaries, and in relation to the generating station the date of commercial operation means the date of commercial operation of the last unit of the generating station;

- (e) As an aid to construction, reliance is also placed on Regulation 4.3(ii) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 (*"CERC Tariff Regulations"*) which provides for approval of date of commercial operation of a transmission licensee from the date so declared, in the event the delay in commissioning is not attributable to the licensee. The relevant extract is quoted as under:-

"4 (3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful

trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

....

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof..."

- (f) In deciding the present issues, CERC Regulations have statutory force as per Section 61(a) of the Electricity Act. Reliance in this regard is placed on the Judgment of the Appellate Tribunal for Electricity in the case of *Lanco Amarkantak Power Ltd. vs. Haryana Electricity Regulatory Commission*, 2014 SCC OnLine APTEL 4: [2014] APTEL 9 (para 44) wherein it has been held that if the State Commission's Regulations do not have a specific provision for any financial and operational parameters, then the State Commission has to be guided by the relevant Tariff Regulations of the Central Commission. Therefore, TNERC ought to have followed the principles and methodology adopted by Central Commission.

Re. Legitimate Expectation.

- 4.13 It is submitted that the Appellants' projects were constructed, and considerable investment was made by the Appellants based on the legitimate expectation that the tariff of Rs. 7.01/unit would be applicable to the Appellants' projects. TNERC ought to have

decided the Petitions in a timely fashion. The Hon'ble Supreme Court in a catena of judgments has opined on the doctrine of legitimate expectation. In this regard, Hon'ble Supreme Court's judgement in *DERC v. BSES Yamuna Power Ltd. & Ors.* (2007) 3 SCC 33 is noteworthy wherein the Hon'ble Supreme Court has held as under:

"42....In the present case, DERC was required to consider the effect of its decision. Privatisation and disinvestment were the policy decisions taken by GoNCTD. The utilities were incurring losses. The assets of the utilities were getting depleted. The public-private participation is the order of the day. Therefore, the Policy Directions invited bids from the private sector on the basis of certain assurances. Under the above circumstances, on the facts of the present case, legitimate expectation was built into the investments made by the DISCOMs herein. The representations were there in the Policy Directions, BST Order laying down normative principles for tariff fixation for 5 years and the Transfer Scheme. Drawing up of tariff for 5 years was to impart certainty. ...In other words, what is given by one hand is taken away by the other. In other words, the return on the total package becomes illusory if the rate of depreciation is reduced from 6.69% to 3.75%. The certainty for 5 years is also obliterated for reducing the rate of depreciation. This violation also infringes the doctrine of legitimate expectation of the DISCOMs to get lawful and reasonable recovery of expenditure. DERC was expected to fix the rate in the context of the policy of privatisation. The object behind fixation of principles for 5 years was to impart certainty and consistency in tariff designing, putting the prospective investors to notice regarding their tariff entitlements for 5 years and to provide a level playing field to the DISCOMs to compete with other competitors in the electricity industry.... "

- 4.14 In this context, it is submitted that the Tamil Nadu government had made express promises to promote solar power in the state and the TNERC had itself fixed a tariff of Rs. 7.01/unit for the projects

commissioned by 31.03.2016. However, due to TANGEDCO's failure to provide the appropriate evacuation facility, the commissioning of the Appellants' projects was delayed and consequently, the lower tariff of Rs. 5.10 has been made applicable to the Appellants' projects. And, in such a case doctrine of legitimate expectation is squarely applicable to the Appellants' case, and the Appellants' are entitled to the tariff of Rs. 7.01/unit, as the delay in commissioning of Appellants' projects was beyond the control of the Appellants.

Re. Power of this Tribunal to mould relief and grant appropriate remedy to the Appellants in the facts of the present case.

4.15 In view of the incorrect stand taken by the TNERC, a delay of three years in grant of relief to the Appellants, who have suffered adverse financial impact on account of the said delay and prays for appropriate resolution of present issue at the earliest before this Tribunal.

4.16 It is submitted that this Tribunal may grant appropriate relief to the Appellants in view of:

- (a) Section 121 of the Electricity Act: which provides that this Tribunal may issue orders, instructions or directions as it may deem fit to any appropriate commission for the performance of its statutory functions.
- (b) The legal maxim '*actus curiae neminem gravabit*', which means that nobody should suffer owing to the mistake of the court. In this reliance is placed on *Haryana State Electricity Board & Anr. vs. Gulshan Lal & Ors.*(2009)12 SCC 231

- (c) Ex debito justitiae, i.e., in the interest of justice. In this reliance is placed on *Ashiq Hussain Faktoo vs. Union of India & Ors.* (2016) 9 SCC 739 (para 10).

Re. Promotion of Renewable Energy.

4.17 It is submitted that the non-application of mind by the TNERC while passing the Impugned Orders has caused great prejudice to the Appellants. It is submitted that this Tribunal has the powers to rectify the mistakes of TNERC by providing appropriate relief to the Appellants, i.e. declaration of deemed COD of the Appellants' projects based on the Chief Electrical Inspector's commissioning certificate and consequently declaring that the tariff of Rs. 7.01/unit would be applicable to the Appellants' projects.

4.18 The denial of the legitimate tariff entitlement to the Appellants is also in derogation of principles enshrined in the Electricity Act and policy framework that mandate promotion of renewable energy. In this regard, the following provisions under the existing Statute and policy framework pertaining to promotion of renewable energy are noteworthy:-

- (a) Electricity Act: As per Section 86 (1) (e), State Electricity Regulatory Commissions are mandated to promote generation of electricity from renewable sources of energy in their respective States. [Also refer to the preamble of the Electricity Act; Section 3(1) and (4); Section 61(c),(h) and (i), Section 166(5)(c)]
- (b) National Electricity Policy, 2005: Clause 5.2.20 and 5.12.1 provides that renewable energy generation of electricity should be encouraged and its potential fully exploited;

- (c) Tariff Policy, 2016: As per clause 4, it is the stated objective of the Tariff Policy to promote generation of electricity from renewable sources.
 - (d) Jawaharlal Nehru National Solar Mission: The Solar Policy/Mission's immediate aim is to focus on setting up an enabling environment for solar technology penetration in the country both at a centralized and decentralized level.
- C. Power of this Tribunal to mould relief and grant appropriate remedy.
- 4.19 This Tribunal exercises its statutory power in terms of Sections 111 and 120 read with Section 121 of the Electricity Act, 2003. Tribunal has wide jurisdiction to grant appropriate relief to the Appellants in the facts of the case and to further the interest of justice.
- (a) Section 111(1) and (3) – Power to pass orders as it thinks fit, confirming, modifying or setting aside the order appealed against.
 - (b) Section 120: The Tribunal is guided by principles of natural justice in regulating its own procedure, and may draw upon principles under the Civil Procedure Code, besides powers specified for specific purposes under Section 120(2). [*New Bombay Ispat Udyog Ltd. vs. Maharashtra State Electricity Distribution Co. Ltd. & Anr.* 2010 SCC OnLine APTEL 44; *Industrial Credit and Investment Corporation of India vs. Grapco Industries Ltd & Ors.* 1999 (4) SCC 710].
 - (c) Section 121: Power to issue orders, instructions or directions as it may deem fit to appropriate commission for the performance of its statutory functions.

4.20 The jurisprudential basis for exercise of power by Appellate Courts including Tribunals is provided under the Code of Civil Procedure, 1908 (“CPC”) - Sections 96 (Appeal from original decree), Section 107 (Powers of Appellate Court) read with Order VII Rule 7 (Power to mould relief) and Order XLI Rule 32 (What Judgment may direct) and 33 (Power of Court of Appeal).

4.21 The Hon’ble Supreme Court in *Prahlad & Ors. vs. State of Maharashtra & Anr.* (2010) 10 SCC 458] while construing the provisions of Order 41 Rule 33 CPC [*akin to Section 111(3) of the Act*] laid down the following principles:-

- (a) The provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties, i.e., *ex debito justitiae*.
- (b) Such power is unfettered by considerations as to what is the subject-matter of the appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against.
- (c) One of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice.
- (d) The power can be exercised subject to three limitations:-
 - (i) power cannot be exercised to the prejudice of a person who is not a party before the court;
 - (ii) power cannot be exercised in favour of a claim which has been given up or lost;

- (iii) power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party.

4.22 The said principles have been consistently applied to exercise of powers by Appellate Courts holding that court should not refuse to exercise that discretion on mere technicalities in the following Judgments:-

- (a) *State of Punjab & Ors. vs. Bakshish Singh*(1998) 8 SCC 222
- (b) *Kardela Parthasaradhi vs. Gangula Ramanamma* (2014) 15 SCC 789
- (c) *Mahant Dhangir & Anr. vs. Madan Mohan & Ors.* 1987 (Supp) SCC 528

4.23. Specifically dealing with powers of a Tribunals, the Hon'ble Supreme Court in:-

- (a) *Income Tax Officer, Cannanore vs. M.K. Mohammed Kunhi* AIR 1969 SC 71 ITR 815 observed that “*when Section confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.*”

The Court held so relying on Maxwell on Interpretation of Statues, 11th Edn., that provides “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.

- (b) *Union of India and Anr. vs. Paras Laminates (P) Ltd.*(1990) 4 SCC 453 held that the *Tribunal functions as a court within the limits of its jurisdiction and has all the powers conferred expressly by the*

statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised.

4.24. Further, while elaborating how courts exercise powers ‘*ex debito justitiae*’, the Supreme Court in *Comptroller and Auditor General of India vs. K.S. Jagannathan* (1986) 2 SCC 679 observed as under: -

“19. ... In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders can give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or given directions which the government or public authority should have passed or given had it properly and lawfully exercised its discretion.”

(Emphasis Supplied)

4.25 Power of Court to mould relief has been laid down in *U.P. State Brassware Corpn. Ltd. & Anr. vs. Uday Narain Pandey*: (2006) 1 SCC 479 as under:-

- (a) No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputable, it depends upon the facts and circumstances of each case.

- (b) It is one thing to say that the court interprets a provision of a statute and lays down a law, but it is another thing to say that the courts although exercise plenary jurisdiction will have no discretionary power at all in the matter of moulding the relief or otherwise give any such reliefs, as the parties may be found to be entitled to in equity and justice. If that be so, the court's function as court of justice would be totally impaired. Discretionary jurisdiction in a court need not always be conferred by a statute.
- (c) Order 7 Rule 7 of the Code of Civil Procedure confers power upon the court to mould relief in a given situation.

4.26 In view thereof, in the facts of the present case, Appellants may be granted relief by recognising deemed COD to the Appellants to allow them to claim tariff in terms of the Solar Tariff Order dated 12.09.2014 as provided under the PPA.

4.27 In addition to the aforesaid, it is submitted that TNERC has violated fundamental norms of transparency enshrined in Section 86 of the Electricity Act in failing to follow due process of law to return the Petitions holding that the same involve a dispute. Such an observation has been passed even prior to the Petitions being registered and numbered as an M.P. Registry of TNERC placed the Petitions before the Chairman, as PRC, culminating in the Impugned Orders, which have been passed without a proper hearing leave alone appreciating the facts and merits of the case.

4.28. In this view of the matter, it is humbly prayed that the present Appeals may be allowed, and appropriate relief may be granted to the Appellants, which would be in the interest of renewable energy sector in the State of Tamil Nadu.

5. Submissions of the Respondent No.1/State Commission

5.1 The learned counsel appearing for the Respondent No.1/State Commission submitted that the question raised in this Appeal is the sustainability of the orders dated 16.11.2016 of the Respondent Commission in Pre-Registration Cases PRC No. 2 and 3 of 2017. Operative portion of the impugned orders reads as under:

“3.8. In view of the same, the Commission is unable to accede to the prayer of the Petitioner for treating the present petition as miscellaneous one. In the result, we hold that this petition cannot be treated as a miscellaneous petition. The Petitioner is directed to pay the required fees as applicable for D.R.P. to enable the Registry to admit and list the same.

Ordered accordingly”.

5.2 Thus, the issue for adjudication before this Tribunal is whether the Appellant was required to file a Dispute Resolution Petition or a Miscellaneous Petition before the Respondent Commission or to put it alternatively, whether there was any dispute between the parties arrayed in the proceedings before the Respondent Commission.

5.3 Respondent Commission submits that there is substantial difference between the facts, circumstances and the prayers in the proceedings leading to the instant Appeals and those pertaining to Appeals No. 350-351-352 of 2017 which were disposed of by this Tribunal vide three similar orders on 30 May 2019.

5.4 In the proceedings leading to Appeal No. 31 and 32 of 2017, the Appellant had made the following prayers before the Respondent Commission:

- “(i) grant the Petitioner a project specific extension of the Control Period from March 31, 2016 to the date of inter-connection of the Petitioner’s 72 MW project to the grid, in order for the Respondent to pay the Petitioner the tariff of Rs.7.01 a unit;*
- (ii) declare that the Petitioner has successfully commissioned its 72 MW solar power project on or before March 31, 2016;*
- (iii) declare that the Petitioner’s solar power project is entitled to a tariff of Rs.7.01 a unit;*
- (iv) pass an ex parte ad-interim order and / or grant interim relief directing TANGEDCO to provide interim connectivity to the Petitioner’s project till the substation is ready;*
- (v) pass an ex parte ad-interim order and / or grant interim relief in terms of prayer (iii) directing TANGEDCO to pay the Petitioner a tariff of Rs.7.01 per unit upon commissioning of its project pending disposal of this petition;*
- (vi) pass such other and further orders, as the Commission deems fit and proper in the facts and circumstances of the case”.*

5.5 Per contra, the prayers in the proceedings which culminated in the orders impugned in Appeals No. 350-351-352 of 2017 were as under:

- “(a) direct the respondents to forthwith stop issuing backing down / curtailment instructions to solar projects as the backing down is causing huge losses to the solar developers almost on daily basis, pending final decision in the matter;*
- (b) issue a direction to respondent to strictly enforce / implement “MUST RUN” status on all solar power plants in the State of Tamil Nadu and consequently direct the respondent not to issue orders to the solar power plants to switch off generation or to back down generation;*
- (c) issue appropriate directions to consider deemed generation to solar plants for the loss of generation due to outages / backing*

down instructions of respondents and to approve the methodology for estimating deemed generation;

- (d) direct the respondents to compensate the petitioners corresponding to loss of generation on account of backing down instructions with retrospective effect at the tariff of the PPAs;*
- (e) declare that all directions issued by the respondents to the solar plants in the State of Tamil Nadu, directing them to switch of generation or back down generation, till date as invalid, in case they are not able to establish compliance with above stated provisions and to issue guidelines for formal procedure to be adopted and conditions to be satisfied for carrying out / giving backing down instructions in future”.*

5.6 It may be seen from the above that following are among the significant distinguishing features between the prayers in the instant batch of Appeals and in Appeals No. 350-351-352 of 2017:

- (a) MUST RUN status, which was the bone of contention in the proceedings pursued through Appeals No. 350-351-352 of 2017, is NOT an issue in the present proceedings.
- (b) Project specific extension of control period is a feature of the present proceedings; but not so in the earlier batch of Appeals.
- (c) Allegations of delay on the part of the State Utilities for providing evacuation facilities leading to delay in Commissioning of the Solar Projects are another distinguishing feature of the instant batch of Appeals.
- (d) Most importantly, a Miscellaneous Petition (No. 16 of 2016 by NSEF) with identical prayers vis-à-vis Appeals No. 350-351-

352 of 2017 was entertained by the Respondent Commission. There is no such similarity of any previous petitions with identical prayer treated earlier by the Commission as Miscellaneous Petitions pertaining to Appeals No.31 and 32 of 2017.

5.7 From the foregoing, it is evident that the conclusions drawn by this Appellate Tribunal in the earlier batch of Appeals No. 350-351-352 of 2017 do not apply to the instant Appeals on all the fours.

5.8 Respondent Commission respectfully submits that as in the previous batch of Appeals, the Appellant had tried to raise the issue of distinction between Regulatory Vs Adjudicatory functions the Respondent Commission in the instant batch of Appeals as well. It is respectfully submitted that irrespective of whether the issues involved fall under regulatory or adjudicatory functions of the Respondent Commission, what is relevant and significant is whether at all, there is a dispute involved in the issues raised in the proceedings before the Respondent Commission. In this connection, the Respondent Commission respectfully submit the following:

- (a) Neither the Fees and Fines Regulations nor any other regulation defines any category of proceedings such as Regulatory or Adjudicatory.
- (b) In the absence of any formal definition, the phrase “Dispute Resolution Petition” is to be understood in its dictionary meaning.

- (c) Whether there was a dispute between the parties to the proceedings is to be inferred from the pleadings and background of the case.
- (d) If a dispute between the parties can be inferred from the pleadings and background of the case, it is immaterial whether the issue raised in the proceedings fall under the Regulatory or Adjudicatory functions of the Respondent Commission.

5.9 It may be seen from the petition filed by the Appellant before the Respondent Commission that the Appellant Petitioner's effort was to secure a declaration that the Power Project was commissioned on or before 31 March 2016 and consequently claim tariff @ Rs. 7.01 per unit. This was resisted by the respondents before the Commission.

5.10 That there was a serious dispute between the parties before the Respondent Commission is evident, inter alia, from the following averments in the Petition filed by the Appellant before the Respondent Commission:

- (a) In Para 13 of the Petition before the Respondent Commission, the Appellant Petitioner had stated that *".....The Respondents were entirely responsible for the Commissioning of the sub-station However, TANGEDCO was not acting with the same vigour and speed to enable completion of the construction of the evacuation facilities...."*
- (b) In para 14 of the Petition before the Respondent Commission, the Appellant had averred that *".....The Petitioner's plant was ready for commissioning by 22.03.2016. However, the*

Respondents failed to commission the 110 kv substation at Kamuthi”

- (c) In para 16 of the Petition before the Respondent Commission the Appellant had alleged that “..... *the non-evacuation of power is on account of complete inaction on the part of TANGEDCO....”*
- (d) In para 17 of the Petition before the Respondent Commission the Appellant had alleged “.... *TANGEDCO failed to accede to the Petitioner’s request for issuing Deemed Commissioning certificate as of 31.03.2016. It is stated that the Petitioner promptly replied to the letter on 09.05.2016 **denying** that the Petitioner’s plant was incomplete and reiterating that the project was ready for commissioning.*” (Emphasis supplied).
- (e) In para 18 of the Petition before the Respondent Commission the Appellant had contended that “.....*the 1st Respondent ought to have enabled evacuation within the control period. The **Respondents have failed to discharge their obligations** in terms of the Energy Purchase Agreement dated 04.07.2015.”* (Emphasis supplied)

5.11 In this connection the Respondent Commission craves leave to clause 11 of the Energy Purchase Agreement between the Appellant and TANGEDCO annexed as Annexure A/7 to the Appeal No. 31 of 2017 which is extracted hereunder for ease of reference:

“If any dispute or difference of any kind whatsoever arises between the parties relating to this agreement, it shall in the first instance be settled amicably, by the parties, failing which either party may approach the Commission for the adjudication of such dispute under section 86(1) (f) of the Electricity Act, 2003. In accordance with Conduct of Business Regulations 2004 of the Commission.

This agreement shall be governed by the laws of India and the Courts at Chennai alone shall have jurisdiction.”

5.12 From the foregoing, it is evident that by the Appellant's own contention, there was a dispute between the Appellant and TANGEDCO and the Respondent Commission was approached for adjudication of such dispute. Having invoked the adjudicatory function of the Respondent Commission, the Appellant is estopped from contending that the proceedings came under the Regulatory functions of the Respondent Commission, much less that the issue did not involve dispute resolution.

5.13 Respondent Commission further submits that the following grounds urged in the Petition before it also affirms the conclusion that the Appellant was raising a Dispute before the Respondent Commission:

- (a) Ground II: TANGEDCO cannot be Permitted to Benefit from its own Wrong
- (b) Ground IV: TANGEDCO Will not Suffer Prejudice if the Petitioner is Granted a Tariff of Rs. 7.01 a Unit
- (c) Ground V: TANGEDCO Cannot Arbitrarily Discriminate Between Projects that Would Result in Prejudice to Equally Situate Persons

(d) Ground VI: TANGEDCO's Actions have the Potential to Seriously and Detrimentially Affect the Very Viability of the Petitioner's Project

5.14 It is evident that all the above grounds amount to levelling of serious allegations on the contesting party and give rise to keen disputes.

5.16 Before parting, the Respondent Commission respectfully submits that the crux of the issue in these proceedings relates to the effort of the Appellant to get entitled for Tariff of Rs. 7.01 per unit for the Solar power generated from its 72 MW plants as against Rs. 5.10 per unit prevailing on the date of its commissioning. If the Appellant Petitioner were to file a Dispute Resolution Petition, it would be required to file Court Fee to the tune of approximately Rs. Twenty Lakh. Allowing the Appellant to get the issue resolved through a Miscellaneous Petition would result in loss of about Rs. Twenty lakh to the public exchequer.

6. Submissions of the Respondent No. 2 and 3.

6.1 The grievance of the appellant is that the application of the appellant filed under section 61, 62, 61 (a) (b) & (e) of the Act, 2003 r/w TNERC Power Procurement from New and Renewable Sources of Energy Regulations, 2008 should be heard as a Miscellaneous Petition and not as a Dispute Resolution Petition. The contentions of the appellant are:

(i) *The regulatory commission failed to appreciate that the petition filed by the appellant was regulatory not adjudicate the nature.*

- (ii) *Within the regulatory framework, the project developers are entitled to extension of the control period by the Regulatory Commissions when the project commissioning is delayed for no fault of the project developers.*
- (iii) *The obligation of providing evacuation facility from the solar power plant is that of the Generation and Distribution company.*
- (iv) *The impugned order is violative of objectives of section 86 (1) (e) of Act, 2003, Tariff Policy, Energy Policy and doctrine of legitimate expectations.*
- (v) *The Regulatory Commission failed to appreciate that there is no dispute with regard to the date of commissioning of the appellant's power plant.*
- (vi) *That the appellant is only seeking extension of control period which is well within the powers of the Regulatory Commission in terms of Regulation 48 of (Conduct of Business) Regulations 2004.*
- (vii) *The Regulatory Commission should not have directed conversion of the petition filed by the appellant invoking the regulatory power into a Dispute Resolution Petition despite the fact that the Regulatory Commission had given an undertaking before the High Court that it will not take a dispute resolution petitions pending disposal of the writ petitions before the Madras High Court.*

6.2 It is submitted that the contention of the appellant that the petition filed by it before a Regulator Commission was under the regulatory jurisdiction of the Commission and not under the adjudicatory jurisdiction of the Commission is wrong. This is evident from the prayers sought by the appellant before the Regulatory Commission. The prayers sought before the Commission are:

- (i) *Grant the appellant project specific extension of the control period from 31/03/2016 till the date of interconnection of the appellant's 72 MW project to the grid by Respondent No. 2, in*

order for Respondent No. 2 to pay the petitioner the tariff of rupees and 7.01 unit.

- (ii) Declare that the appellant has successfully commissioned its 72 MW solar power project on or before 31/03/2016.*
- (iii) Declare that the appellant solar power project is entitled to a tariff of ₹ 7.01 per unit.*
- (iv) Pass an ex parte ad interim or grant interim relief directing the Respondent No. 2 to provide interim connectivity to the appellant's project till the substation is ready; and*
- (v) pass and expertise ad interim and oblique or grant interim relief in terms of prayer (d) directing the Respondent No. 2 to pay the applicant a tariff of ₹ 7.01 per unit upon commissioning of its project pending disposal of the petition.*

6.3 It is submitted that the matter is purely a dispute between the appellant and the distribution licensee.

Annexure A-8 is a letter written by the Chief Electrical Inspector to the appellant dated 22.3.2016 approval of granted to the appellant temporarily for a period of three months up to 21.06.2016 to commission the electrical installations Inspectorate on 11.03.2016 at the premises of the appellant. This letter specifically states that the approval was granted subject to certain conditions and complying with the terms and conditions of the supplier. The first condition was that the appellant should get a permission as per the provisions of Electricity Act 2003 and Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 for the 33 KV cable crossing the public road/canal/pond from PV segment 1 and 2.

Annexure A-9 is the letter of the appellant's to the Chief Engineer, NCES dated 24.03.2016 wherein the appellant claimed that the 72

MW Solar Power Project is complete in all respects and is ready for commissioning since 22.03.2016.

Annexure A-11 is the letter of Chief Engineer/NCES which sets out the fact of temporary connectivity given to 3 projects of the appellant group which were also required to be connected to the proposed Kamuthi 400 KV SS and the practical difficulty in giving temporary connectivity in respect of the remaining two projects of the same group. This letter also sets out the operative part of the undertaking given by the appellant dated 16.06.2015 wherein the appellant had given an undertaking that it will not claim any deemed generation or any other benefit whatsoever from the distribution licensee, in case the transmission licensee could not commission the proposed 400 KV SS at Kamuthi, Ramanad District even though the project of the appellant is complete well in advance. The letter states that:

“In such of those letters issued during the last 10 days or before 31.03.2016, your group companies fourth and fifth have also specifically claimed that the projects are ready for commissioning. On a thorough field verification, it was revealed that the project works were not in complete shape and were not ready for commissioning. Besides, your request to take lines by crossing the road is still to be approved by the Government of Tamil Nadu. It is not known to the TANGEDCO, how your group companies fourth and fifth had claimed that they were ready for commissioning without obtaining permission to lay lines by crossing the road from the Government. The above said factual position clearly falsifies fourth and fifth of your group companies claim of ready for commissioning of the subject plants”

In the second last paragraph of the same letter, the distribution licensee specifically stated that:

“TANGEDCO it has not even stated at any point of time the proposed date of commissioning of sanctioned Kamuthi 400 KV SS and associated transmission network and in any case has never guaranteed that the commissioning of Kamuthi 400 to be SS will be prior to 31.03.2016 so as to achieve probable date of commissioning of the SPG prior to 31.03.2016.”

Annexure A-12 is the letter of the appellant dated 09.05.2016, apparently, the appellant disputes the contention of the distribution licensee that there was never a guarantee given by the distribution licensee that the commissioning of Kamuthi 400 KV SS will be prior to 31.03.2016.

Paragraph 2 of the same letter contends that the understanding of parties was that the commissioning of 400 KV SS and providing connectivity to the projects would be done within the control period. This again is contrary to what is contended and stated by the distribution licensee in the second last paragraph of its letter dated 15.04.2016.

At paragraph 6, the appellant disputes the contention of the distribution licensee that the projects of fourth and fifth group of companies of the appellant were not ready for commissioning. The appellant in letter dated 09.05.2016 only refers to the approval dated 22.03.2016, which is a conditional approval. Further the appellant in reply to the specific contention of the distribution licensee that -- *Besides, your request to take lines by crossing the road is still to be approved by the Government of Tamil Nadu.* -- states that the project is complete in all respect and it had not made any false self-declaration.

6.4 The facts stated in the above paragraph establish that there exist more than one dispute. (i) Whether the conditions stipulated in conditional approval dated 22.03.2016 were complied with to the satisfaction of the Chief Electrical Inspector; (ii) Whether approval of Government of Tamil Nadu was obtained by the appellant for taking the 33 KV cable across the public road; (iii) Whether the undertaking given by the appellant is to be read as contended by the appellant or as contended by the distribution licensee; (iv) Whether the project is complete as contended by the appellant as on 31.03.2016 or incomplete as contended by the distribution licensee.

6.5 Apart from the above factual disputes spelt out from the correspondences between the appellant and the distribution licensee, marked as annexures, the contention and prayer of the appellant to its entitlement for project specific extension of the control period from 31/03/2016 till the date of interconnection of the appellant's 72 MW project to the grid by Respondent No. 2, in order for Respondent No. 2 to pay the petitioner the tariff of rupees and 7.01 unit is not a regulatory issue as contended by the appellant in the petition before the Regulatory Commission and before this Appellate Tribunal. Extension of control period of a generic tariff for a particular project is not contemplated under any of the Regulations of TNERC.

6.6 The above prayer of the appellant is not maintainable in view of the law laid down by the Hon'ble Supreme Court in *Gujarat Urja Vikas*

Nigam Ltd. v. Solar Semiconductor Power Co. (India) (P) Ltd.,
(2017) 16 SCC 498 : 2017 SCC OnLine SC 1248 at page 533 ---

“60. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs 15 per unit for twelve years, the first respondent should commission the solar PV power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers.

61. As pointed out earlier, the Appellate Tribunal has taken the view that the control period of the Tariff Order was fixed by the State Commission itself and hence the State Commission has inherent power to extend the control period of the Tariff Order. It may be that the tariff rate as per Tariff Order, 2010 as determined by the Committee has been incorporated in Clause 5.2 of the PPA. But that does not in any manner confer power upon the State Commission to exercise its inherent jurisdiction to extend the control period to the advantage of the project proponent, first respondent and to the disadvantage of GUVNL who are governed by the terms and conditions of the contract. It is not within the powers of the Commission to exercise its inherent jurisdiction to extend the control period to the advantage of any party and to the disadvantage of the other would amount to varying the terms of the contract between the parties.”

“68. In exercise of its statutory power, under Section 62 of the Electricity Act, the Commission has fixed the tariff rate. The word “tariff” has not been defined in the Act. Tariff means a schedule of standard/prices or charges provided to the category or categories for procurement by the licensee from the generating company, wholesale or bulk or retail/various categories of consumers. After taking into consideration the factors in Sections 61(a) to (i), the State Commission determined the tariff rate for various categories including solar power PV project and the same is applied uniformly throughout the State. When the said tariff rate as determined by the Tariff Order, 2010 is incorporated in the PPA between the parties, it is a matter of contract between the parties. In my view, Respondent 1 is bound by the terms and conditions of PPA entered into between Respondent 1 and the appellant by mutual consent and that the State Commission was not right in exercising its inherent jurisdiction by extending the first control period beyond its due date and thereby substituting its view in the PPA, which is essentially a matter of contract between the parties.”

“72.1. When the first respondent commissioned its project beyond 13-3-2012, the Commission cannot exercise its inherent jurisdiction and vary the terms to extend the control period of Tariff Order dated 29-1-2010 insofar as the 1st respondent of the contract-power purchase agreement (PPA) between GUVNL and the first respondent”

- 6.7 In view of the fact that there are disputed contentions and the extension of control period is beyond the jurisdiction of the Regulatory Commission, the appeal filed by the appellant is not maintainable and is liable to be dismissed.
7. The issue and facts of the case and the submissions of the Appellant and the Respondents in Appeal No. 32 of 2017 are similar to that in Appeal No. 31 of 2017, and, therefore, for the sake of

brevity we shall take up the issue and facts of the case and the submissions of Appeal No. 31 of 2017 and, hence, a common judgment is being rendered.

8. Findings and analysis:-

Let us have a look at the chronology of events leading to this appeal-

- i) In 2012, the Government of Tamil Nadu issued a Solar Energy Policy to generate 3000 MW solar power by 2015.
- ii) The State Commission issued a comprehensive order on solar power on 12.09.2014 and fixed the tariff for Solar Power Plants at Rs.7.10 per unit.
- iii) In terms of TNERC Power Procurement from New Renewable Sources of Energy Regulations, 2008, the control period of the tariff was fixed as one year from the date of the order.
- iv) The State Commission vide their order dated 01.04.2015 extended the control period of solar power tariff till 31.03.2016. Accordingly, all solar power projects commissioned on or before 31.03.2016 became entitled to a tariff of Rs. 7.10 per unit.
- v) On 04.07.2015, the Appellant entered into an Energy Purchase Agreement with the TANGEDCO for the implementation of its 72 MW solar power project.

- vi) The Respondent No.3 proposed to interface the Appellant power plant with the TANTRANSCO Grid at the sanctioned new Kamuthi 400/230-110 kV sub-station by erecting 110 kV line for a distance of 8 kilometer. As per the extent Regulation, the Respondent No.2 was entirely responsible by commissioning the Kamuthi sub-station and the 110 kV line connecting the sub-station and the solar plant.
- vii) On 22.03.2016, the Chief Electrical Inspector accorded approval to commission the solar power plant.
- viii) On 24.03.2016, the Appellant informed the Respondent No.3 that the project was ready for commissioning. However, the Respondent No.2 could not commission the sub-station at Kamuthi. The Appellant requested to consider an alternate proposal to evacuate the power through one circuit of 110 kV DYC old Kamuthi sub-station to new Kamuthi sub-station line at new Kamuthi sub-station. However, the alternate proposal was not accepted.
- ix) The Appellant vide its letter dated 25.03.2016 and 31.03.2016 informed the Respondent No.3 and Chief Engineer NCES that the Appellant's plant has been ready since 22.03.2016 and non-evacuation power is on account of non-commissioning of new sub-station at Kamuthi by Respondent No.2.
- x) On 15.04.2016, the Respondent No.2 informed the Appellant that the Appellant's plant was not ready for commissioning on

31.03.2016 and in terms of letter dated 17.06.2015 it was duly clarified that the Appellant would not be entitled to claim any deemed generation or any other benefit from the Respondent No.2 in case the TANTRANSCO could not commission proposed sub-station at Kamuthi.

- xi) Subsequently, the Appellant could commence commercial operation of their plant only on 18.09.2016 after the commissioning of Kamuthi sub-station by Respondent No.2. Though the delay in commercial operation of the plant was due to delay in commissioning of Kamuthi sub-station by Respondent No.2 but the Appellant is being paid a lower tariff of Rs. 5.10 per unit attributing the delay in commissioning of the plant on the Appellant.
- xii) Being aggrieved, the Appellant filed a Petition before the State Commission as a Miscellaneous Petition however the Registry of the State Commission directed the Petitioner to file the same as a Dispute Resolution Petition (DRP) and returned the Petition. The Appellant again approached the Registry to place the matter before the State Commission for maintainability.
- xiii) On 16.11.2016, the State Commission passed the Impugned Order directing the Appellant to file appropriate fees while observing that the matter involved a dispute in terms of Section 86(1)(f) of the Electricity Act, 2003. Aggrieved by this order the Appellant has filed the instant Appeal.
- xiv) **Now let us have a look at the Order passed by the State Commission.**

The relevant operative portion of the Impugned Order of the State Commission is reproduced below:-

“3.5. In this connection, it is necessary to elaborate on the nature of Dispute Resolutions. A Dispute Resolution Petition is one which is taken up upon a motion made by either of the parties i.e. the Petitioner or the Licensee for resolution of a dispute. The power of the Commission to resolve the dispute flows from section 86 (1) of the Electricity Act, 2003 which provides as follows:-

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

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) x x x

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

x x x x x x

3.6. It may be seen from the express provision in section 86 (1) (f), the Commission is empowered to adjudicate all disputes between the Licensees and Generating Companies and hence any dispute between a Licensee and a generating company, or generating companies or Licensees inter se whether such dispute relates to a period anterior to the signing of PPA or posterior to the signing of PPA can be adjudicated only by the Commission.

3.7. *Having held so, the short question which arises for consideration in this petition is whether the prayers of the Petitioner as set out in para 1 herein are in the nature of dispute resolution. It may be seen from the prayers of the Petitioner that there are prayers such as (a) to declare that the Petitioner's 72 MW Solar Project, was commissioned on or before March 31, 2016, (b) to declare that the Petitioner's Solar Power Project is entitled to a tariff of Rs.7.01 per unit which in our view, are in the nature of dispute resolution as they involve monetary claims between the Licensee and the Generator. Needless to say, any monetary claim cannot be adjudicated without resorting to appropriate dispute resolution mechanism. Any order passed without following the required procedures would not be in consonance with the section 86 (1) (f) of the Electricity Act, 2003. Though the Petitioner seeks to contend that the prayers are of miscellaneous nature, the fact remains that the prayers herein are clothed with the attributes of dispute resolution. Without hearing the response of the Licensee the issues raised in this petition cannot be disposed on merit."*

- xv) Though the State Commission in the Impugned Order have considered submission made by the Appellant and have recorded that the Appellant filed their Petition as Miscellaneous Petition but, in the findings, the State Commission framed the only question for consideration, whether the prayers of the Petitioners are in the nature of dispute resolution.

xvi) Now let us have a look at the grounds on which the petition has been filed and also the prayer of the Appellant:

Grounds:

- I. This Hon'ble Commission has inherent powers to extend the control period for the Petitioner on a project specific basis.
- II. TANGEDCO cannot be permitted to Benefit from its own wrong
- III. The Petitioner had legitimate expectations that its project would be inter-connected on or Before March 31, 2016.
- IV. TANGEDCO will not suffer prejudice if the Petitioner is granted a tariff of Rs. 7.01 a unit.
- V. TANGEDCO cannot arbitrarily discriminate between projects that would result in prejudice to equally situate persons.
- VI. TANGEDCO's actions have the potential to seriously and detrimentally affect the very viability of the Petitioner's project.
- VII. The extension of the applicability of the tariff of Rs. 7.01 to the Petitioner's project is also essential to satisfy the statutory mandate and policy applicable.
- VIII. Grounds for interim relief.

Prayer:

“(i) grant the Petitioner a project specific extension of the Control Period from March 31, 2016 to the date of inter-connection of the Petitioner's 72 MW project to the grid, in order for the Respondent to pay the Petitioner the tariff of Rs.7.01 a unit;

- (ii) *declare that the Petitioner has successfully commissioned its 72 MW solar power project on or before March 31, 2016;*
- (iii) *declare that the Petitioner's solar power project is entitled to a tariff of Rs.7.01 a unit;*
- (iv) *pass an exparte ad-interim order and / or grant interim relief directing TANGEDCO to provide interim connectivity to the Petitioner's project till the substation is ready;*
- (v) *pass an exparte ad-interim order and / or grant interim relief in terms of prayer (iii) directing TANGEDCO to pay the Petitioner a tariff of Rs.7.01 per unit upon commissioning of its project pending disposal of this petition;*
- (vi) *pass such other and further orders, as the Commission deems fit and proper in the facts and circumstances of the case.*

xvii) The State Commission has not discussed about the following facts of the case:

- the Chief Electrical Inspector granted approval for the commissioning of the plant on 22.03.2016 but the commercial operation was delayed due to delay in commissioning of Kamuthi sub-station by Respondent No.2,
- the request to the State Commission for invoking its regulatory powers to extend the control period due to non-commissioning of evacuation facility by Respondent No.2,
- the fact that the solar plant was set up by the Appellant by making huge investment under the promotional Solar Policy notified by the State Government, wherein a tariff of Rs. 7.01 per unit was to be given to the Appellant on completion of the project by 31.03.2016,

- TNERC New and Renewable Sources of Energy Regulations, 2008.

- xviii) The State Commission has not discussed the facts of the case and the prayer of the Appellant, to consider the Petition filed by them, as Miscellaneous Petition and also to exercise the regulatory powers of the State Commission. The entire analysis is bent towards justifying that it is a Dispute Resolution Petition.
- xix) The Electricity Act, 2003 has assigned multiple functions to the State Commission. The State Commission determines the tariff, regulates the purchase and procurement of electricity, plays the role of facilitator, issue licences, promote the co-generation and new and renewable energy sources, levy fees, specify grid code, enforce standards, fix trading margin and discharge other functions assigned under the Electricity Act, 2003 besides adjudicating function.
- xx) The Appellant in their prayer have asked the State Commission to exercise their regulatory powers. In the interest of natural justice and equity, the State Commission besides elaborating on the nature of dispute resolution should also have discussed the other aspects of regulatory nature of the prayer. There is absolutely no discussion on this aspect of regulatory nature of the prayer sought by the Appellant.
- xxi) The State Commission, as defined under the Act, is a regulator and performance monitor, a statutory body to oversee the development of power sector in the State so as to evolve

sustainable business model to supply electricity to the consumers in the State in the most efficient manner. With this objective in mind, the endeavour of the State Commission while dealing with such matters should be lenient one, especially in matters relating to promotion of electricity generation from solar power plant under the promotional schemes notified by the State Government. This instant case is one such case wherein the Appellant have invested huge sums of money for generation of electricity through solar plant on the premise that if the plant is completed by 31.03.2016 than it will be paid a tariff of Rs. 7.01 per unit. The availability of tariff of Rs. 7.01 per unit is the very basis of setting up of this project by the Appellant. In this case the project has been completed before 31.03.2016. The Appellant have submitted the certificate issued by the Chief Electrical Inspector on ground that the evacuation infrastructure to be created by the Respondent No.2 was not completed and therefore evacuation of power from the solar plant of the Appellant could not take place. It is at this time the Appellant approached the State Commission for exercise of the regulatory powers to accede to their prayer. In view of the facts of the case, the averments made by the Appellant, the grounds given by the Appellant in their appeal and the prayer made by the Appellant, it would be appropriate to treat the Petition of the Appellant as Miscellaneous Petition and not as a Dispute Resolution Petition because of monetary claims between the licensee and the generator.

ORDER

Having regard to the facts and circumstances of the case as stated above, the Appeal No. 31 of 2017 and Appeal No. 32 of 2017 filed by the Appellants are allowed.

The Impugned Orders dated 16.11.2016 passed by the first Respondent/the State Commission in the Pre-Registration Case No.2 and Pre-Registration Case No.3 are hereby set aside.

The matter stands remitted back to the first Respondent/the State Commission with the direction to pass the order in the light of the observations made in the preceding paragraphs above in accordance with law as expeditiously as possible within a period of three months after receiving the copy of this judgement.

The Appellant and the Respondents are hereby directed to appear before the 1st Respondent/the State Commission personally or through their counsel on 01.10.2019 without further notice.

No order as to costs.

Pronounced in the Open Court on this **24th September, 2019.**

(Ravindra Kumar Verma)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Manjula Chellur)
Chairperson