

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
(APPELLATE JURISDICTION)**

**IA NO. 1137 OF 2019**  
**IN**  
**DFR NO. 2125 OF 2019**

**Dated : 29<sup>th</sup> January, 2020**

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON  
HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER**

**IN THE MATTER OF :**

**All India Power Engineers Federation**

Through its Secretary (Legal)

Regd. Off.: B-1A/45A,

Janakpuri, New Delhi-58.

.... **APPELLANT**

**Versus**

- 1. Central Electricity Regulatory Commission**  
Through its Secretary  
36, Janpath, New Delhi – 110 001
- 2. Gujarat Urja Vikas Nigam Limited**  
Through its Managing Director  
Sardar Patel Vidyut Bhavan  
Race Course Circle,  
Vadodara-390 007.
- 3. Adani Power (Mundra) Limited**  
Through its Managing Director  
ShikharII, Near Mithakhali Circle  
Navrangpura, Ahmedabad-380 009
- 4. Energy Watchdog**  
Through its Secretary  
302, Lotus Chamber, 2079/38,

Nalwa Street, Karol Bagh,  
New Delhi – 110 005.

5. **Prayas, Energy Group**  
Through its Secretary  
Unit III A & B, Devgiri,  
Joshi Railway Museum lane,  
Kothrud Industrial Area  
Kothrud, Pune  
Maharashtra – 411038

.... **RESPONDENT(S)**

**Counsel for the Appellant(s)** : Mr. Pranav Sachdeva  
Ms. Neha Rathi  
Mr. Jatin Bhardwaj

**Counsel for the Respondent(s)** : Mr. Anand K. Ganesan  
Mr. Ashwin Ramanathan for R-2

Mr. Amit Kapur  
Ms. Abiha Zaidi  
Ms. Aparajita Upadhyay for R-3

Ms. Ranjitha Ramachandran  
Ms. Poorva Saigal for R-5

## **ORDER**

### **PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON**

1. IA No. 1137 of 2019 is an application seeking leave to file the Appeal. The Appeal is filed against orders dated 12.04.2019 in Petition No. 374/MP/18 passed by the Central Electricity Regulatory Commission (**in short "CERC"**).

2. According to Appellant/applicant, by virtue of the impugned order, CERC has allowed Supplemental Power Purchase Agreements (in short “**SPPAs**”) dated 05.12.2018 signed between Respondents No. 2 & 3 which resulted in substantial hike in the tariff to be paid by the consumers, therefore, this undermines the tariff determined through tariff based bidding process conducted in a transparent manner in 2006 and 2007. The exercise of sovereign powers by Government of Gujarat in issuing the policy directive under the guise of public interest cannot be appreciated since it has cascading effect on the power tariff across the country.
3. Appellant further contends that since it is an organization which represents the interest of the consumers as a consumer organization, must be permitted to file the Appeal. To substantiate their contention, they contend that there are about 70,000 members in the applicant organization and more than 5000 members reside in the State of Gujarat. Out of these 5000 members, 04 members whose details are annexed to the accompanying Appeal clearly show that they have approached the Appellant organization to file the Appeal in question impugning the CERC order dated 12.04.2019.
4. Appellant further contends that the Federal Council of the Appellant has 60 members and 3 members out of the 60 members are from

Gujarat. This Federal Council, vide a resolution dated 15.05.2019, resolved to file this Appeal. Even from Gujarat Electricity Board Engineers Association, some Executive Committee members are part of the Federation Council. One of the principal objectives is to watch and safeguard consumer interests of the organization.

5. Further, they contend that Appellant's organization is directly concerned with the proper functioning of power sector in India; therefore, it is a 'person aggrieved' to the impugned order dated 12.04.2019. The SPPAs will have huge negative impact on the power sector by citing this as a precedent. Therefore, the applicant is before this Tribunal.
6. They further contend that the attempts of 3<sup>rd</sup> Respondent to secure undue windfall benefits in violation of agreements were successfully opposed by the applicant. The competitive bidding system is part of the Electricity Act 2003 (in short "**the Act**"), a law made in public interest; therefore, such system cannot be interfered with by SPPAs. This would give rise to massive corruption across all government contracts in the sector especially encouragement in arm-twisting exercise by contractors.
7. They further contend that the Appellant/applicant has participated in various public interest matters in the field of power sector and the

landmark case is ***AIPEF vs. Sasan power Limited and others*** in *Civil Appeal No. 5881-5882 of 2016*. They also contend that another case was filed i.e, ***AIPEF vs. Teesta Urja Limited*** in *Appeal No. 340/2017* by this applicant pertaining to transmission lines which is pending before this Tribunal.

8. Appellant further contends that in Appeal No. 202 of 2018 filed against the orders dated 17.05.2018 pertaining to Kawai Thermal Station located in Rajasthan in respect of power plant of 3<sup>rd</sup> Respondent, this Tribunal ordered in IA No. 915 by which 70% of the amount claimed by the generator therein was to be paid. Against this order, Rajasthan Discoms appealed before the Hon'ble Supreme Court and the Apex Court held that 50% of the amount claimed should be paid to 3<sup>rd</sup> Respondent-Adani Power. The Appellant also filed an Appeal before the Hon'ble Supreme Court on the additional ground with reference to invoice of imported coal, alleging that 3<sup>rd</sup> Respondent claimed highly inflated amount and the same was not considered by this Tribunal and the Hon'ble Supreme Court. On the other hand, the Supreme Court on 15.02.2019 gave permission to the Appellant to file appeal. However, the Apex Court rejected the appeal filed by the applicant imposing a cost of Rs.1,00,000/-. Then an Intervening Application came to be filed by the Appellant in

Appeal No. 202 of 2018 primarily on the allegation of over invoicing of imported coal.

9. According to Appellant, Shri Padamjit Singh, currently the Chief Patron of the Appellant organization was a member of Central Advisory Committee of CERC. Therefore, the credential of the applicant organization cannot be questioned. The gravity of the issues involved definitely calls for such intervention at the instance of the applicant.
10. With the above averments, the Appellant sought for leave in the application.

**As against this, objections of 3<sup>rd</sup> Respondent - Adani Power (Mundra) Limited, in brief, are as under:**

11. According to 3<sup>rd</sup> Respondent, some assertion as to precedence does not cause give a right to file an appeal before the Statutory Authority. Unless the rights and obligations of the Appellant/applicant are affected by the impugned order, he cannot be an aggrieved party. Mere unhappiness of the applicant with the benefit that may be granted to some party and if the applicant wants to challenge such benefit, it cannot be permitted. The applicant, in the absence of such powers either by its Memorandum or main objects of the Association to pursue the litigation on behalf of consumers, the

applicant cannot seek permission to file appeal. The Applicant having no apparent presence in the State of Gujarat, since it has its registered office at New Delhi, cannot maintain this Appeal.

12. 3<sup>rd</sup> Respondent also contends that it is well settled position that concept of Public Interest Litigation (**PIL**) cannot be brought before this Tribunal, since no such provision is provided in the Act. They also contend that since the Tribunal is not exercising jurisdiction under Article 226 of the Constitution, PIL cannot be entertained.
13. Further, the Appellant/applicant not being a party to the original proceedings can still file an appeal, provided the applicant himself occupies the place of aggrieved party and there has to be a prima facie case as to how he is prejudiced.
14. 3<sup>rd</sup> Respondent also contends that the contumacious allegations and submissions which are not only extraneous to the proceedings but also defamatory in nature only meant to scandalise the process of law, which cannot be encouraged. Similarly, allegations scandalising the process of law were made by the very same applicant in IA No. 398 of 2019 in Appeal No. 202 of 2018 and this Tribunal dismissed the said IA on 27.05.2019 with cost of Rs.50,000/- .

15. 3<sup>rd</sup> Respondent also brings on record the observations of Hon'ble Supreme Court in its Order dated 15.02.2019 wherein the applicant was reprimanded for lack of bona fides and also imposed a cost of Rs.1,00,000/-. Therefore, according to 3<sup>rd</sup> Respondent, leave cannot be granted to file the appeal.
16. Further, they contend that the impugned order in the Appeal was in terms of directions of the Hon'ble Supreme Court dated 29.10.2018 in M.A. No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 (the details will be referred to later).
17. 3<sup>rd</sup> Respondent further contends that the law laid in ***AIPEF vs. Sasan Power Lts. & Ors. [2017 (1) SCC 487]*** does not apply to the facts of the present case. In the above said orders dated 29.10.2018, the Hon'ble Supreme Court did refer to findings of the Appellate Court in ***Sasan Power*** judgment.
18. 3<sup>rd</sup> Respondent brings on record that on 24.05.2017, on the website of the Tribunal, it was notified in the cause list that orders in IA No. 378 of 2019 in Appeal No. 202 of 2018 would be pronounced. Suppressing this fact, the Appellant/applicant being fully aware of the same, concealed the fact at the time of filing the present application and also when the matter was listed on 18.07.2019 before the



Bench. Therefore, in the light of such suppression, the leave application has to be rejected.

19. 3<sup>rd</sup> Respondent also brings on record the merits involved in the Appeal and why the amendments to PPAs concerned became an issue in the impugned order. In order to secure sustainable and reliable supply of power, the Respondent-Commission approved the amendments to PPA. The applicant was neither a party to the proceedings before the Hon'ble Supreme Court nor a party to the proceedings before the Respondent-Commission. Therefore, now the applicant cannot obstruct the process of law with ill motive.
20. 3<sup>rd</sup> Respondent also contends that since the impugned order is not against public policy and further it does not threaten sanctity of the bidding process, therefore contention of the applicant that the impugned order is against public interest and threatens the sanctity of bidding process are far from truth. Further, the impugned order is passed in line with Section 63 and 79 (1) (b) of the Act read with Competitive Bidding Guidelines issued by Central Government.
21. Therefore, with the above submissions, contending that the present application is nothing but an abuse of process of law, 3<sup>rd</sup> Respondent seeks dismissal of the application.

**Rejoinder filed by the Appellant/applicant in brief is as under:**

22. The Appellant/applicant again brings on record that 4 (four) members residing in the State of Gujarat pushed the appellant/applicant organization to file the present appeal, since they are directly affected by any rise in the tariff due to SPPA. They reiterate their submissions in the application that they fall within the definition of “any aggrieved person”. According to the Appellant/applicant, in terms of SPPA, the compensatory tariff awarded by Gujarat Discom to 3<sup>rd</sup> Respondent will be ultimately a financial burden to consumers. Therefore, 4 members of the organization persuaded the Appellant/applicant Association to file this appeal, since aims and objects of Constitution of the Appellant body refers to providing a forum for formation of guidelines for the co-ordinated development of power in the best interest of the nation. The interaction or feedback between the consumers and Discom which is being manned at the level of Assistant Engineer; and since the applicant organization is an association of power engineers, the Appellant/applicant is of the opinion that it can project interest of the consumers. The aims and objectives are to achieve, promote and safeguard professional freedom, dignity and the interest of power engineers in the country is the stand of the Appellant.

23. The Appellant further contends that in a case involving big corporate player like the 3<sup>rd</sup> Respondent, a single consumer will be unable to raise challenge against such corporate office before the Court/Tribunal; this is because a single consumer has no sufficient funds to fight/pursue litigation. In order to overcome such deficits, the applicant organization comes forward to protect the interest of consumers at large.
24. According to Appellant, the orders of the Tribunal on 27.05.2019 in IA No. 378 of 2019 referred to above in no way has any bearing in deciding the *locus standi* of the Appellant. Further, the Appellant has already filed the Appeal against the said order of the Tribunal on 06.08.2019 and the same is pending.
25. Appellant also contends that till the filing date of the Appeal by the Appellant on 24.05.2019, no Appeal had been preferred against the impugned final order dated 12.04.2019 passed by CERC in Petition No. 374/MP/2018 by either of the two consumer groups. Moreover, the Appellant was not aware of the order dated 27.05.2019 in IA No. 378 of 2019 till the orders were pronounced. They have not suppressed any of the facts. The facts were substantially different in this Appeal when compared to IA No. 378 of 2019. The instant

Appeal is filed on 24.05.2019; therefore, there is no question of suppression of any material fact is the stand of the Appellant.

26. Appellant also contends that the observation of the Hon'ble Supreme Court in M.A. No. 2705-2706 of 2018 in Civil Appeal dated 29.10.2018 clearly indicate that CERC must give fair hearing to the consumer groups who had already appeared. Therefore, it does not bar any other consumer group to raise grievance before CERC or before the Tribunal. Therefore, even in the absence of the Appellant/applicant being a party to the proceedings before the Tribunal, there is no impediment to file the present Appeal. No other consumer group has preferred an Appeal till the Appellant filed the instant Appeal. The Appellant is seeking permission only to assist the Tribunal in deciding the matter which referred to grave public importance and wide ramifications.

27. Appellant also contends that in terms of Section 94 (3) of the Act, "appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it", and the same does not bar the Appellant from filing the present Appeal. Once PPAs were signed in response to competitive bidding process, after SPPAs are allowed, it would make entire Section 63 of the Act nugatory; therefore, the impugned order which supports

substantial amendment of terms and conditions including the tariff cannot be permitted.

28. With the above submissions, the Appellant sought for allowing the application.
29. From the above pleadings, the point that would arise for our consideration is -

**“whether leave to Appeal deserves to be allowed or not?”**

30. The Appellant/applicant contends that during the oral arguments on 12.09.2019 in the instant application, the State Discom which was the sole petitioner before CERC submitted that it has no objection for the Appellant to seek leave to Appeal. Only the generator-3<sup>rd</sup> Respondent is objecting the said application.
31. In the instant Appeal, according to the Appellant, important and substantial question of law is involved. By virtue of the impugned order, CERC has allowed Discom and the 3<sup>rd</sup> Respondent-generator to amend their PPAs which resulted in altogether new SPAs which would result in substantial hike in tariff; hence it interferes with the procedure of competitive bidding process based on Central Government guidelines. The hike in tariff as claimed by 3<sup>rd</sup> Respondent is on account of change in price of Indonesian coal.

Consumer group like Prayas and Energy Watchdog fought the case up to the Hon'ble Supreme Court and finally the judgment in **Energy Watchdog vs. CERC & Ors** (Civil Appeal Nos.5399-5400 of 2016) was pronounced on 11.04.2017 disallowing the claim of 3<sup>rd</sup> Respondent seeking hike in tariff on the ground of force majeure. This was rejected by the Hon'ble Supreme Court, since arranging fuel was responsibility of the 3<sup>rd</sup> Respondent in a competitive bidding process. The Hon'ble Supreme Court in its order dated 29.10.2018 directed CERC to decide whether amendment to the PPA could be approved or not. The impugned order allows such amendment which negates the terms and conditions of PPA and bid documents that were negated by the Supreme Court.

32. The Appellant/applicant contends that it is a body registered under Societies Registration Act, 26 years back consisting of Power Engineers from 4 (four) Regional Federations having about 70,000 members. Out of them, 5000 members reside in the State of Gujarat. 4 members persuaded the Appellant association to file this Appeal.
33. Appellant again contends that in terms of ***AIPEF vs. Sasan Power Limited and Others*** (Civil Appeal No. 5881-5882 of 2016), the Appellant comes within the definition of 'aggrieved party' since the

consumers residing in the State of Gujarat will be the affected parties to pay the increased tariff. The right vested with the Appellant/applicant in terms of aims and objectives of the Appellant body provides such power to the Appellant to file this Appeal.

34. Appellant also contends that the Appellant body consists of highly respected and acclaimed professionals who have contributed great service to the regulation of power sector in the country like Shri R. Chidambaram, Ex-Chairman of the Appellant body who was a member of Central Advisory Committee of CERC, Shri Padamjit Singh, currently the Chief Patron of the Appellant body and one of the authorized signatories to file the instant Appeal, was a former members of CERC Advisory Committee.
35. According to the Appellant, after passing of the impugned order, Federal Council of the Appellant body discussed the ramifications of the impugned order and passed a resolution on 15.05.2019 to challenge the impugned order. In terms of the authorization letter dated 21.05.2019, Shri Padamjit Singh filed the appeal after draft of the appeal got approved. On 23.05.2019, the space for date of filing the appeal was left blank as “\_\_\_\_.05.2019”. The printout of the email dated 23.05.2019 clearly indicates when it was ready i.e., authorized signatory, Mr. Ashok Jain got the affidavits notarised on 23.05.2019.

The instant Appeal was filed on 24.05.2019, and inadvertently, the date was left blank at all places at the time of filing of the Appeal. But the record maintained by the Tribunal shows that the Appellant filed the Appeal on 24.05.2019. Only on 25.05.2019, the cause list of 27.05.2019 was emailed to the authorized signatory when it was clear that orders in IA No. 378 of 2019 in Appeal No. 202 of 2018 was to be pronounced on 27.05.2019. Therefore, the said fact was not within the knowledge of the authorized signatory when he notarised the affidavit and filed the Appeal. Urgent listing application was notarised on 27.05.2019 and filed on 28.05.2019. Application for Leave to file Appeal was notarised on 27.05.2019 and filed only after curing the defects. Meanwhile on 27.05.2019 another consumer group i.e., Prayas (Energy) Group also filed an appeal before the Tribunal against the very same impugned order dated 12.04.2019. Since defects were there, this Appeal came to be listed on 18.07.2019 subject to curing the defects. Some more defects were noticed during the period when the Appellant cured earlier defects that were noticed.

36. According to the Appellant, as per common practice, date was not filled at the time of taking print out of the Appeal Memo and other applications. It is a bona fide mistake, though the Appeal was filed on 24.05.2019. Three notarized affidavits indicate dates of affidavits



as 23.05.2019. One affidavit is dated 27.05.2019. The Appellant seeks unconditional apology for the above said inadvertent lapses. There was no ill motive and all possible steps were taken to disclose all facts is the stand of the Appellant.

37. Appellant reiterates the facts pertaining to Appeal No. 202 of 2018, so also the order dated 15.02.2019 pertaining to Rajasthan Electricity Regulatory Commission (RERC) order imposing Rs.1,00,000/- on the Appellant by the Hon'ble Supreme Court. The Appellant filed an application for intervention and the same was dismissed on 27.05.2019 by this Tribunal against which an Appeal is pending in the said matter.

38. According to Appellant the reason for intervention in this Appeal at a belated stage in this fashion is as under:

(i) In Petition No. 155/MP/2012 filed by 3<sup>rd</sup> Respondent, the controversy pertains to terms and conditions of original PPA. The State Discoms were not supporting the claim of 3<sup>rd</sup> Respondent at that time. Challenging the orders dated 21.02.2014 of CERC, other consumer groups like Prayas and Energy Watchdog, filed appeals. Till passing of judgment dated 11.04.2017 in **Energy Watchdog's** case, the Appellant body did not intervene, since other consumer groups were opposing 3<sup>rd</sup> Respondent's claim.

(ii) In the second round of litigation, the approval of SPPAs became the subject matter. Consumer groups were opposing the said issue. The impugned order came to be passed on 12.04.2019. Thereafter, the Appellant body got certain documents which reveal over invoicing of the coal price by Adani Group companies. Then the Appellant decided to file the Appeal.

39. According to the Appellant, if every appeal is considered as a scurrilous attack, then the purpose of existence of Courts and Tribunals become purposeless. Further they contend that no uncalled remarks/attack was made against CERC and its intention is only to assist the Tribunal in deciding the issue.
40. Appellant also contends that the question of law may be heard. Grave issues are raised in the appeal by the Appellant. The instant Appeal has to be heard without being influenced or persuaded by observations of the Hon'ble Supreme Court's order dated 29.10.2018. Only two bodies i.e., Prayas Energy Group and the Appellant herein have preferred appeal against judgment/order dated 12.04.2019. Therefore, according to the Appellant, leave if granted, it would assist the Tribunal to dispose of the Appeal in a proper and effective manner.

**Per contra, 3<sup>rd</sup> Respondent's counsel argued, in brief as under:**

41. 3<sup>rd</sup> Respondent contends that the Appellant/applicant has made similar attempt in IA No. 398 of 2019 in Appeal No. 202 of 2018 intervening in the proceedings between generator and distribution licensee on the pretext of representing consumers' interest and the said IA was considered by Order dated 27.05.2019.
42. According to 3<sup>rd</sup> Respondent, the Appellant/Applicant has no locus standi to file this Appeal, since the impugned order is not in public interest and the consumers group which represent consumer interest before CERC have not filed any Appeal. They further contend that in terms of Section 111 of Electricity Act 2003, only an aggrieved person may file an Appeal before the Tribunal. Nothing on record placed by the applicant establish that it is an aggrieved party.
43. They further contend that mere residence of a member does not give sufficient cause to claim right to file an Appeal before the statutory authority unless there is satisfactory explanation indicating that aggrieved parties' rights and obligations are affected by the impugned order. Therefore, even if 4 residents out of 5000 residents in the State of Gujarat form part of 70,000 members of the applicant, and if such applicant is unhappy about the benefit granted to some party, an Appeal cannot be entertained by granting leave,.

44. They further contend that the Applicant is not even given power to pursue litigation on behalf of consumers by filing this appeal. The Aims and Objectives of the Constitution of the Appellant/Applicant do not give rights to such fact. The Aims and Objects clearly indicate that the interest of power engineers in the country is to be promoted. This cannot be equated with the interest of some consumers who are residing in the State of Gujarat. The Applicant having its registered office at New Delhi has no apparent presence in the state of Gujarat.
45. They further contend that in the absence of any specific provision which permits filing of Public Interest Litigation against orders of Electricity Regulatory Commissions; therefore the present appeal which is in the nature of PIL cannot be allowed to be permitted. Hence, leave has to be rejected. The same order which is under challenge in this appeal has already been filed by another appeal in DFR No. 2127 of 2019 by Prayas Energy Group. Therefore, submission of the Applicant that no other consumer group is representing the interest of the consumers is erroneous.
46. Further, 3<sup>rd</sup> Respondent contends that the Applicant has no locus standi to file the appeal in question and the proceedings are nothing but abuse of process of law by the Applicant. They further contend

that the stream of justice cannot be allowed to be polluted by unscrupulous litigation as held in the case of ***Kishore Samrite vs. State of U.P. (2013 2 SCC 398)*** (Para 32.7 and 32.8). They further contend that in the judgment of the Hon'ble Supreme Court in ***Energy Watchdog & Ors. vs. CERC & Ors. (2017 (14) SCC 80)*** pronounced on 29.10.2018 in the clarification sought by Gujarat Urja Vikas Nigam Limited ("**GUVNL**") and Government of Gujarat, it is clear that parties to the PPA may approach the Commission for approval of the amendment to the PPAs. In Civil Appeals Nos. 5399-5400 of 2016 before the Hon'ble Supreme Court seeking clarification whether amendments to PPA in the light of the recommendations of the High Powered Committee would be in contravention /violation of judgment of the Hon'ble Supreme Court in ***Energy Watchdog's*** case, the Hon'ble Supreme Court opined that parties to PPA could approach for approval of the amendment and the judgment in ***Energy Watchdog's*** case would not come in the way of such application. The Hon'ble Supreme Court also held that consumer groups who appeared in MA No. 2705-2706 of 2018 would be heard on all objections that they may make to the proposed PPAs. The Commission may then decide the matter in accordance with law within a period of eight weeks from 29.10.2018. In the light

of the above directions, GUVNL filed petition before the Commission seeking amendments to the PPAs i.e. Bid-01 and Bid-02.

47. 3<sup>rd</sup> Respondent further contends that in pursuance of policy decision of Government of Gujarat to secure sustainable and reliable supply of electricity, this applicant was neither a party to the proceedings before the Hon'ble Supreme Court nor before the Commission. In none of the proceedings relating to the Mundra Power Project of 3<sup>rd</sup> Respondent, this applicant participated at any point of time. In the absence of such representation from the applicant as stated above, and absence of such representation even during the consultation process, the applicant cannot be allowed to challenge the impugned order.
48. They further contend that before passing the impugned order, several petitions were filed before CERC and other Committees. At no point of time, this applicant took part in the said proceedings.
49. According to 3<sup>rd</sup> Respondent, consumer groups - Prayas Energy Group, Energy Watchdog, Gujarat Discoms and Haryana Discoms filed several Appeals including Appeal No. 116 of 2014 and 98 of 2014 challenging the Order of the Central Commission dated 21.02.2014. The applicant never intervened. Full Bench disposed of

Appeal No. 100 of 2013 along with several other matters after hearing on different dates. The applicant never participated.

50. They further contend that on the submission of High Powered Committee, the amendments were proposed to PPAs and approval was sought as stated above. Challenging the decision of Government of Gujarat dated 01.08.2018, this applicant never approached any forum.
51. According to 3<sup>rd</sup> Respondent, conduct of the applicant was noticed by the Hon'ble Supreme Court in its order dated 15.02.2019 and so also by this Tribunal on 27.05.2019 pertaining to ***All India Power Engineers' Federation vs. M/s Adani Power Rajasthan Limited & Ors.*** It is very clear that the applicant is making scurrilous attack on the Commission to allege that the impugned order will lead to massive corruption, and several other allegations are made which are scandalous in nature.
52. 3<sup>rd</sup> Respondent further contends that during inspection of the files filed by the applicant in the present matter on 14.08.2019, they found that though the filing date of the Appeal on the cover page is 24.05.2019, the index and the Vakalatnama are dated 27.05.2019. The cause list of the Tribunal for 27.05.2019 was uploaded on 24.05.2019. Therefore, the statement of the applicant in the rejoinder

that it was not aware when it filed the Appeal on 24.05.2019 that the Tribunal would be pronouncing orders on 27.05.2019 in IA No. 378 of 2019 is false. This is nothing, but concealment of material.

53. 3<sup>rd</sup> Respondent further contend that the impugned order is not against public policy and it is not threatening the sanctity of the bidding process as contended by the applicant.
54. With the above submissions, 3<sup>rd</sup> Respondent sought for dismissal of the application.
55. It is seen from record that the present applicant was not the consumer group as a party to the Original Petition. Consumer groups – Prayas Energy and Energy Watchdog, apart from Gujarat Discoms and Haryana Discoms, were parties to the proceedings. The order of CERC dated 21.02.2014 came to be challenged by the above said consumer groups and not the present applicant. In the application, the stand of the applicant is that four members who live in the State of Gujarat insisted the applicant to challenge the impugned order.
56. In the present case, the issue involved seems to be pertaining to approval of SPPAs which came to be entered into between the Discom concerned and the 3<sup>rd</sup> Respondent. The SPPA came into



existence not just by mutual decision of Discom and 3<sup>rd</sup> Respondent. The exercise behind the SPPA pertains to Order of the Apex Court dated 29.10.2018. Government of Gujarat and Urja Vikas Nigam Limited filed M.A. No. 2705-2706 of 2018 in Civil Appeal No. 5399-5400 of 2016 before the Hon'ble Supreme Court seeking clarification as to whether any amendment to the PPA in the light of the recommendations of the High Powered Committee would be in violation/contravention of the judgment of the Hon'ble Supreme Court in ***Energy Watchdog & Ors. vs. CERC & Ors.*** [2017 (14) SCC 80]. On 29.10.2018, Hon'ble Supreme Court held in the clarification sought by GUVNL and Government of Gujarat as under:

*“We are of the view that, having perused the High Power Committee’s report, which was given after our judgment dated 11<sup>th</sup> April, 2017, it will be open to the applicants to approach the Central Electricity Regulatory Commission (C.E.R.C.) for approval of the proposed amendments to be made to the Power Purchase Agreements (PPAs) in question.*

*We make it clear that our judgment will not stand in the way of maintaining such application. We also make it clear that each of the consumer groups, who had appeared before us and who have appeared before us today, will be heard on all objections that they may make to the proposed amendments to the PPA, after which, it will be open to the C.E.R.C. to decide the matter in*

*accordance with law. Given the conclusions in the High Power Committee report, we are of the view that the C.E.R.C. should decide this matter as expeditiously as possible, and definitely within a period of eight weeks from today.”*

57. The clarification granted by the Hon'ble Supreme Court indicate that parties to the PPA may approach the Commission concerned for approval of amendments to the PPAs concerned, and opinion of the Hon'ble Supreme Court in the judgment of **Energy Watchdog** would not come in the way of consideration of such application filed by the parties before the Commission. It also clarified that the consumer groups which have appeared before the Hon'ble Supreme Court in the above said miscellaneous Appeals would be heard on all objections they may raise pertaining to proposed amendments to the PPAs. The Commission was required to decide the matter within 8 (eight) weeks from 29.10.2018. In pursuance of this direction of the Apex Court, it was GUVNL who approached the Respondent-Commission seeking amendments to PPAs dated 06.02.2007 and 02.02.2007 in pursuance of policy decisions of Government of Gujarat to secure sustainable and reliable supply of energy.
58. We are not referring to correctness of the impugned order at this stage, since such exercise is not required at this stage. No doubt, the applicant contends that the impugned order is against public

interest and threatens the sanctity of bidding process. More or less, based on such averments, consumer groups i.e., Energy Watchdog and Prayas Energy Group have already filed Appeals. 3<sup>rd</sup> Respondent – Adani Power, the generator and the Discom GUVNL as well as Government of Gujarat are supporting the impugned order. The amendments which came to be approved by the Respondent-Commission were backed by an Expert Committee after going through consultation process. These amendments have come into existence after three Government of Gujarat policy decisions dated 03.05.2013, 03.07.2018 and 01.12.2018; three Expert Committees were constituted i.e., Deepak Parekh Committee (2013), Working Group Committee (January 2018) and High Power Committee (October 2018); reports of the Parliamentary Standing Committee of Energy Report; 37<sup>th</sup> Report, dated March 2018 under the title ‘Stressed/Non-performing Assets in electricity sector’; and 40<sup>th</sup> Report dated August 2018 under the title ‘Impact of RBI’s revised framework for resolution of Stressed Assets on NPAs in the electricity sector’, were all considered.

59. Apparently, the Appellant/applicant itself is not an aggrieved party. Reason for the Applicant to file this application is that 4 four) residents of the State of Gujarat who are its members are also affected, being consumers of the distribution company in question,

on account of the impugned order. If every individual or consumer group representing one or two consumers are permitted to approach the Tribunal in this manner, it would open floodgates to file Appeals even by a single individual. If such action is entertained, number of Appeals for the same issue would tremendously increase. One can understand if interest of consumers at large is not represented or fought.

60. Apparently, Prayas Energy Group and Energy Watchdog who were parties to the proceedings initially and also before the Hon'ble Supreme Court have filed the Appeals. Therefore, even if the interest of four members of Applicant's Association are residing within the State of Gujarat were to be affected, their interest is taken care of by other energy consumer groups which are fighting the cause of the consumers in general within the State of Gujarat. Therefore, in that view of the matter, the applicant cannot be held to be aggrieved party in the strict sense of the definition. If other energy groups have not filed appeal questioning the impugned order, it would be altogether a different situation. But we are not faced with such lacunae or deficiency so far as the impugned order.
61. Though we are aware of the fact that this very applicant filed IA No. 378 of 2019 in Appeal No. 202 of 2018 before this Tribunal which

came to be disposed of on 27.05.2019 rejecting the Intervention Application by imposing cost of Rs.50,000/-, so also the fact of imposition of cost of Rs.1,00,000/- by the Hon'ble Supreme Court while rejecting the Appeal of this applicant pertaining to interim orders of this Tribunal in Appeal No. 202 of 2018, we are of the opinion that such imposition of cost and the observations made in those matters need not be considered for considering the application in question.

62. However, the fact of the applicant's pleading ignorance of the date of the cause list dated 24.05.2019 listing IA No. 378 of 2019 for pronouncement of orders does have some relevance which depicts the conduct of the applicant. On perusal of records of the Registry, including website providing backlog filing, the Appeal under DFR No. 2125 of 2019 came to be filed on 24.05.2019. However, date of verification on Memo of Appeal seems to be on 27.05.2019. The present IA No. 1137 of 2019 was filed on 07.06.2019. Other IAs were filed on 24.05.2019. Urgent listing IA was filed on 28.05.2019. Though verification date of Appeal was 27.05.2019, again it is corrected as 23.05.2019 without any initial. If the Appeal was filed on 24.05.2019, why the verification was 27.05.2019 came to be verified by the Registry. Several defects were pointed out by the Registry after filing of the Appeal on 24.05.2019. One of the defects

was dates in the Appeal Memo and IAs were left blank and advocate concerned had not verified the same. Therefore, one could guess that dates were subsequently filled up which must have been on 27.05.2019. But strangely the date of 27.05.2019 is corrected as 23.05.2019. This must have been done only to make it look as if the verification was done on 23.05.2019. Defects have to be pointed out only after filing the Appeal. Therefore, if dates were not filled up as on 24.05.2019, mentioning date of 23.05.2019 obviously displays the conduct of the Appellant/applicant that the Appellant/applicant intended to show that verification was done on 23.05.2019 which cannot be ignored. Apparently, staff of the Registry were also negligent and careless in allowing such interpolation of dates without any initial of the person who interpolated the dates. This definitely indicates that the Appellant/applicant or his counsel has done interpolation in a casual manner without entertaining a thought how serious such action could lead to. Registry is directed to look into the same and warn the staff concerned.

63. However, so far as the IA is concerned, we have to see only one relevant fact i.e., 'whether appearance of Appellant is necessary or proper to adjudicate the Appeal on merits?' Since other consumer groups who were on record since inception of the litigation have already filed Appeals challenging the very same impugned order, we

are of the opinion, leave sought to Appeal in the above application need not be entertained. Accordingly, the IA is dismissed. Consequently, the Appeal shall also stand dismissed. Pending IAs if any, shall stand disposed of as infructuous.

64. No order as to costs.

65. Pronounced in Court-I on this the **29<sup>th</sup> day of January 2020**.

**(Ravindra Kumar Verma)**  
Technical Member

**(Justice Manjula Chellur)**  
Chairperson

**REPORTABLE / NON-REPORTABLE**

*tpd*