

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

**APPEAL NO. 72 OF 2021 &
IA NOS. 82 OF 2021 & 1025 OF 2022**

Dated: 23.08.2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

Noida Power Company Limited

Through Its Authorized Representative
Plot No. E.S.S., Knowledge Park – IV,
Greater Noida, Uttar Pradesh – 201310

...Appellant

Versus

**Uttar Pradesh Electricity
Regulatory Commission**

Through Its Secretary
Vidyut Niyamak Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow – 226010

...Respondent

Counsel for the Appellant(s) :

Mr. Sanjay Sen. Sr.Adv.
Mr. Amit Kapur
Mr. Vishal Gupta
Mr. Akshat Jain
Ms. Divya Chaturvedi
Ms. Debolina Roy
Mr. Saransh Shaw
Mr. Avdesh Mandloi
Ms. Srishti Rai
Mr. Sumeet Sharma
Mr. Divyanshu Gupta
Mr. Paras Choudhary
Mr. Tenzen Tashi Negi
Mr. Pratibhanu Singh Kharola
Ms. Raksha Agrawal
Mr. Sharan Balakrishnan

“It is noted that the NPCL License is upto August 30, 2023 and the License of NPCL will expire within the Control period. Considering the importance of all the elements in the business of distribution licensee and to ensure business continuity, the Business Plan is approved subject to the following:

A. Business plan upto the period of license of NPCL is approved in respect to billing determinants, loss trajectory and other directions in respect to various matters.

B. Business plan for remaining period is taken on record for business continuity and subject to the decision taken by the Commission on the renewal/ grant of license from August 30, 2023 onwards.”

4. The Appellant is aggrieved by the said observation of the State Commission declaring the term of the Licence upto 30.08.2023 and approving the Business Plan accordingly and therefore, filed the captioned Appeal.

5. Therefore, the main issue emerging out is the term of Licence granted to the Appellant inter alia rejection of some of the claims pleaded by the Appellant in the Petition.

Parties: -

6. The Appellant, Noida Power Company Limited (in short “NPCL” or the “Licensee”), is a Company incorporated under the provisions of the Companies Act, 1956 read with the Companies Act, 2013 having been granted licence on 30th August 1993 (“the 1993 Licence”), further amended on 18th July 1996 (“the Amended Licence”) (hereinafter collectively referred to as the “Licence”) for distribution and retail supply of electricity in the

Greater Noida of the State of Uttar Pradesh under the Indian Electricity Act, 1910 (in short "Act 1910").

7. The Respondent, the Uttar Pradesh State Electricity Regulatory Commission, a statutory body constituted under the Electricity Regulatory Commissions Act, 1998 ("Act 1998") read with the Uttar Pradesh Electricity Reforms Act, 1999 ("Reforms Act") and the Electricity Act, 2003 (in short "Act 2003"), is responsible for discharging its functions envisaged under the Act 2003 inter-alia to regulate and adjudicate the issues under challenge.

Factual Matrix: -

8. On 18th March 1910, the Act 1910 was promulgated by the Central Government to amend the law pertaining to the supply and use of electricity energy, section 3 of the 1910 Act empowered the State Government to grant a licence to any person to supply electricity in any specified area, after consultation with the then existing State Electricity Board.

9. On 11th December 1992, Greater Noida Industrial Development Authority (GNIDA), a public authority of the Government of Uttar Pradesh, signed a Memorandum of Understanding with CESC Limited (now known as CESC Limited), thereby promoting the Appellant, for the purpose of undertaking supply of electricity to the consumers in the Greater Noida area, as a distinct and separate venture from the then existing Uttar Pradesh State Electricity Board ("UPSEB"), which was undertaking such distribution and supply of electricity in the State of Uttar Pradesh. GNIDA holds approximately 27% equity shareholding in the Appellant and the balance shareholding of approximately 73% is held by CESC Limited, which is a listed Company, the Chairman of GNIDA is also the Chairman of the Appellant.

10. Thereafter, on 30th August 1993, the State Government of Uttar Pradesh granted the Distribution Licence to the Appellant for distribution and retail supply of electricity in Greater Noida under section 3 of the Act 1910, which was further amended on 18th July 1996 whereby the licenced area of the Appellant was extended.

11. The relevant provisions (section 3) of the Act 1910 are reproduced below for reference:

“3. Grant of licenses. –

(1) The State Government may, on application made in the prescribed form and on payment of the prescribed fee (if any) grant after consulting the State Electricity Board, a license to any person to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy, - ----”

12. However, the Licence granted under section 3 of the Act 1910 has no provision of term for expiry, the only provision as mandated under the said Act can provide change in the ownership through purchase under section 6 of the Act 1910 after a specified period of 30 years or subsequent period of 20 years thereafter. The Appellant, accordingly, pleaded that Licence so granted shall continue till such time it is purchased under the procedure laid down or revoked under section 5 of the said Act. The section 6 of the Act 1910 is reproduced below for reference:

“6. Purchase of undertakings. –

(1) *Where a license has been granted to any person, not being a local authority, the State Electricity Board shall –*

(a) In the case of a license granted before the commencement of the Indian Electricity (Amendment) Act, 1959 (32 of 1959), on the expiration of each such period as is specified in the license; and

(b) In the case of license granted on or after the commencement of the said Act, on the expiration of such period not exceeding thirty years and of, every such subsequent period, not exceeding twenty] years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period referred to in this subsection.

(2) Where a State Electricity Board has not been constituted, or if constituted, does not elect to purchase the undertaking, the State Government shall have the like option to be exercised in the like manner of purchasing the undertaking.

(3) Where neither the State Electricity Board nor the State Government elects to purchase the undertaking, any local authority constituted for an area within which the whole of the area of supply

is included shall have the like option to be exercised in the like manner of purchasing the undertaking.

(4) If the State Electricity Board intends to exercise the option of purchasing the undertaking under this section, it shall send all intimation in writing of such intention to the State Government at least eighteen months before the expiry of the relevant period referred to in subsection (1) and if no such intimation as aforesaid is received by the State Government the State Electricity Board shall be deemed to have elected not to purchase the undertaking.

(5) If the State Government intends to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such intention to the local authority, if any, referred to in subsection (3) at least fifteen months before the expiry of the relevant period referred to in sub- section (1) and if no such intimation as aforesaid is received by the local authority, the State Government shall be deemed to have elected not to purchase the undertaking.

(6) Where a notice exercising the option of purchasing the undertaking has been served upon the licensee under this section, the licensee shall deliver the undertaking to the State Electricity Board, the State Government or the local authority, as the case may be, on the expiration of the relevant period referred to in subsection (1) pending the determination and payment of the purchase price.

(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee the purchase price determined in accordance with the provisions of sub-section (4) of Section 7A.”

(Emphasis given)

13. Section 6, however, prescribes that option of purchase was exercisable only upon serving of a notice in writing, of not less than 1 (one) year, requiring the licensee to sell its undertaking at the expiry of the relevant period. Further, the terms of purchase can be amended by the State Government under section 10 of the Act 1910, quoted as under:

“10. General power for Government to vary terms of purchase. –

Notwithstanding anything in Sections 5, 6 and 8, the State Government may, in any license to be granted under this Act, -

(a) Vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or

(b) Direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.”

14. The Appellant submitted that the State Government of Uttar Pradesh granted the Distribution Licence to the Appellant on 30th August 1993, under Section 3(1) of the 1910 Act, however, the Licence has not stipulated any term or tenure of its validity and only provides a term for the purchase of undertaking under Clause 10 of the Licence, therefore, added that the

Licence so granted is perpetual in nature or otherwise revoked or purchased under the prescribed laws. The Clause 10 of the Licence is reproduced here under:

“Purchase of Undertaking

10. The option of purchase given by subsection (1) of section 6 of the Act shall be exercisable on the expiry of a period of 30 years from the date of the notification of this licence or on the expiry of every subsequent period of 20 years, as the case may be. The terms of such purchase shall be the percentage of the value to be determined in accordance with the provisions of Section 6, 7 and 7sA of Indian Electricity Act, 1910 as amended from time to time, in its application to Uttar Pradesh together with solatium on such value on account of compulsory purchase as shall be determined by the State Government.”

15. The claim of Appellant, regarding perpetuity of the term of Licence stating that neither the Act 1910 or the Licence granted to the Appellant has any provision under the Licence for the expiry of the Licence except that it can be purchased under section 6 or revoked under section 5 of the Act 1910, has been strongly contested by the Respondent Commission citing that no licence can be granted with perpetuity. We shall take up the issue later as the Act 1910 has already been repealed.

16. On 10th June 2003, the Act 2003 came into force which inter-alia repealed the Act 1910 and is the extant legislation holding the field, the Appellant continued as a deemed distribution licensee in terms of the first proviso to Section 14 of the Act 2003, also any provision of the Act 1910 shall

remain applicable till such time it is not inconsistent with any provision of the Act 2003. The relevant section (section 185) of the Act 2003 is reproduced here under:

“185. (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

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(Emphasis given)

17. Therefore, it is important to note here the relevant provisions of the Act 2003 regarding grant of distribution licence, its term and other related conditions. The relevant sections are quoted here under for reference:

2. Definitions

In this Act, unless the context otherwise requires, --

(38) "licence" means a licence granted under section 14;

(39) "licensee" means a person who has been granted a licence under section 14;

14. Grant of licence

The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person--

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

*PROVIDED that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, **and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:***

*PROVIDED FURTHER that the **Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:***

*PROVIDED also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government **shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:***

*PROVIDED also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, **shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act** and the provisions of the Damodar Valley Corporation Act, 1948, insofar as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:*

*PROVIDED also that the Government company or the company referred to in subsection (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, **shall be deemed to be a licensee under this Act:***

PROVIDED also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (relating to the capital adequacy, Credit

worthiness or code of conduct) as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

15. Procedure for grant of licence

(1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.

(8) A licence shall continue to be in force for a period of twenty-five years unless such licence is revoked.

16. Conditions of licence

The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

PROVIDED that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos of section 14 after the expiry of one year from the commencement of this Act.

(Emphasis supplied)

18. The Respondent Commission invited our attention to the difference in the provisions made under the first, second and fifth provisos with the third and fourth provisos. It was submitted that the Deemed Licensees under the third and fourth provisos need not have to obtain a licence whereas, the first, second and fifth provisos are silent and therefore, the Deemed Licensees (under first, second and fifth provisos) have to obtain the Licence under the present Act i.e. the Act 2003. We are inclined to accept the contention of the Respondent Commission.

19. Considering that the Appellant is covered by the first proviso, it has to obtain a Licence under the provisions of the Act 2003, by virtue of it, the term of the Licence shall be governed by the Act 2003.

20. On 31st December 2004, the State Commission notified the UPERC (General Conditions of Distribution License) Regulations, 2004 (“Distribution License Regulations”) in exercise of the powers conferred by section 16 read with section 181 of the Act 2003, which is applicable to all the distribution licensees in the State of Uttar Pradesh and on 12th May 2014, in exercise of the powers conferred under Section 61 read with Section 181 of the 2003 Act, the State Commission notified the Uttar Pradesh Electricity Regulatory Commission (Multi Year Distribution Tariff) Regulations, 2014 (the “MYT Regulations 2014”) governing the approval of the Revenue Requirements and determination of tariff.

21. It is noted from the above that the said Distribution License Regulations have been notified after a lapse of more than one year, therefore, as per section 14 of the Act 2003, the Appellant shall be the deemed licensee under the Act 2003 and the provisions of the repealed laws i.e. the Act 1910 shall continue for a period of one year i.e. up to 09.06.2004 and thereafter the

provisions of the Act 2003 shall be applicable including the term of the Licence.

22. The State Commission vide its letter dated 24th September 2019 directed the Appellant to file its Business Plan for FY 2020-21 to FY 2024-25 on or before 15th October 2019 as against 30th November 2019 proposed in the Draft MYT Regulations 2020 (under finalization). Accordingly, on 6th November 2019, the Appellant filed its Business Plan Petition No. 1526 of 2019 (the "Business Plan Petition") before the State Commission for approval of its Business Plan for MYT Control Period FY 2020-21 to FY 2024-25 against which the Impugned Order has been passed.

23. Separately, the Appellant has challenged the MYT Regulations 2019 by way of a Writ Petition being W.P. (MISB) No. 24992 of 2020 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench for being ultra vires to the provisions of the 2003 Act, which is pending decision.

24. On 26th November 2020, the State Commission passed the Impugned Order in the Business Plan Petition filed by the Appellant, the Appellant, by way of the present Appeal, challenged the Impugned Order on 16.01.2021 on account of declaring the term of the Licence up to 30.08.2029 and consequentially deciding on the Business Plan submitted by the Appellant for the control period FY 2020-21 to FY 2024-25, directing that:

"NPCL has submitted Business Plan for the second control period i.e. from FY 2020-21 to FY 2024-25 for review and approval of the Commission. The submission of NPCL includes Category / Sub-category wise number of consumers, connected load, Load factor, sales projections, Power Procurement Plan (Renewable Energy and

*Non- Renewable Energy) and Forecasting, Renewable Purchase Obligation (RPO) Planning and Forecasting, Distribution Loss trajectory, Capital Investment Plan, Financing Plan and Physical targets, Equity, Grants, etc. **It is noted that the NPCL was granted a 30-year supply License on August 31, 1993 i.e. upto August 30, 2023 and the License of NPCL will expire within the control period unless renewed as per law.***

Considering the importance of all these elements in the business of distribution licensee and to ensure business continuity the business plan is approved subject to the following:

A. Business Plan up to the period of License of NPCL i.e. August 30, 2023 is approved in respect to billing determinants, loss trajectory and above-mentioned directions of the Commission regarding various other matters.

B. Business plan for period beyond the license term i.e. August 30, 2023 is taken on record for business continuity purposes only and will be subject to renewal/ grant of license as per law.

C. The Order shall not be construed as approval of the Capital Investment Plan as the same shall be done in accordance with the directions given under the sub-head “Capital Expenditure Plan”.

With above observations, the Commission has approved the Billing Determinants for the Licensee as per Table No. 4 to 6 for the Control Period FY 2020 - 21 to 2024 - 25. Further, the

Distribution Loss Trajectory for the Control Period is approved as per Table No. 8.

Besides re-iterating the observations made on this Business Plan, the Commission also directs the licensee to fulfil its following obligations:

Metering

100% metering is a necessary condition for an efficient distribution network and financial viability of the distribution companies. As per the submission made by the Petitioner, the metering of all the consumers (except LMV-5) shall be completed by end of FY 2020-21. The Petitioner must ensure metering of consumers in LMV-5 category as well because 100% metering of consumers is essential.

The Petitioner is directed to ensure 100% feeder metering and DT metering within next one year.

The Commission directs that only either pre-paid meter or smart meters be installed for all new connections or replacement of faulty meters.

Power Purchase

In view of the expiration of license period in August 2023, the licensee is directed not to contract any long term or medium term PPA extending beyond the license period. However, no approval will be required for purchasing power through exchange to fulfil contingent / short term power requirements. For all other power purchases, prior approval of the Commission is necessary. The Licensee is also directed to strictly follow the Central Government

Guidelines for Procurement of power for short term (i.e. for a period more than one day to one year) through tariff-based bidding process using National e-bidding portal.”

Our Analysis & Observations: -

25. As already observed that the main issue under the dispute is the term of the Licence granted to the Appellant inter alia perpetuity of the Licence as claimed by the Appellant versus the date of expiry i.e. 30.08.2023 as decided by the State Commission.

26. The Respondent Commission vehemently opposed the contention and claim of the Appellant that the Licence granted is perpetual or otherwise purchased or revoked by submitting that the Licence was granted under Section 3(1) of the Act 1910, and as per section 6(b) of the Act 1910, the Licence can be granted for the maximum period of 30 years at one go and after the expiry of the said period, if not extended, the State Electricity Board /State Government/Local authority shall have the option of purchasing the undertaking in accordance with Sections 6, 7, and 7A of the Act 1910.

27. We decline to accept the contention of the Respondent Commission as section 3 or section 6 of the Act 1910 or any other provision therein do not have any provision of expiry or extension, the only provision which exists is purchase or revocation of the Licence. However, at this stage, the submission is irrelevant as the Act 1910 has already been repealed by the Act 2003, and any provision which is inconsistent with the provisions of the Act 2003 stands repealed.

28. Further, the option of purchase can be exercised under section 6 of the Act 1910, which has since been repealed, by the State Government/ State Electricity Board as per the repealed laws is one year prior to completion of 30 years from the date of issue i.e. 30.08.1993, therefore, the same is valid only if such a provision stands under the present law.

29. Undisputedly, the Appellant is deemed distribution licensee under the first proviso to section 14 of the Act 2003, for the sake of brevity it is quoted as under:

*“PROVIDED that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, **and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business.**”*

30. From the simple reading of the proviso, the Appellant, engaged in the business of supply of electricity under the Act 1910, is a deemed licensee under the Act 2003 and the provisions of its Licence as prescribed under the repealed law shall remain in place for a period of one year or for such period as decided by the State Commission, however, after such period, the

Appellant has to obtain the Licence under the provisions of the Act 2003 and the provisions contained therein shall come into force. The Appellant, therefore, is a Licensee under the Act 2003 and the term period as prescribed under the Act 2003 shall be applicable to the Licence.

31. In the present case, as already observed, the provisions of the Act 1910 shall continue for one year from the date of enactment of the Act 2003 and thereafter the provisions of the Act 2003 shall prevail. Therefore, from the date, the terms and conditions of the distribution licence as notified by the State Commission, such conditions consistent with the Act 2003 shall prevail.

32. The Respondent Commission informed that it has granted distribution licence for 25 years under the provisions of the Act 2003 to various other distribution licensees operating in the State, engaged in the business of supply of electricity, prior to the enactment of the Act 2003. Sub-section (8) of Section 15 of the Act 2003 provides that ***“A licence shall continue to be in force for a period of twenty-five years unless such licence is revoked.”***

33. We are inclined to accept the contention of the State Commission that any licence including the deemed licence shall continue to be in force for 25 years as per section 15 of the Act 2003 or otherwise it is revoked under the law, however, it shall come into force after the lapse of one year from the date of enactment of the Act 2003 or from the date the deemed status is recognized by the State Commission under the terms and condition for the distribution licensees, whichever is earlier.

34. Further, we find the contention of the Respondent Commission unjust and unreasonable that it has time and again made observations that the period of Licence is 30 years from the date of grant of it i.e. 30.08.1993, and

is denied. Once the Act 2003 has been promulgated, the provisions contained therein shall be in force, any contrary observation by the State Commission is totally unacceptable in the eyes of law.

35. During the pendency of the captioned Appeal, the Respondent Commission issued advertisement dated 08.06.2022 inviting 'expression of interest' from reputed consulting firms with experience in license application for assisting the Commission in the process of grant of distribution license for the area served by NPCL. Being aggrieved, the Appellant filed IA no 1025 of 2022, which was taken up for urgent hearing (on 08.07.2022 and 14.07.2022) and passed the interim order as quoted under:

“The matter has come up before us for early hearing in the context of IA No.1025 of 2022. It appears in the wake of the decision impugned in the main appeal, the respondent commission has published a public notice on 08.06.2022 inviting expression of interest, the purpose being essentially to select another entity, to replace the appellant as the licensee. We find the assumption in the impugned order that the license of the appellant would expire on 30.08.2023 to be open to debate. In these circumstances, we stay any steps to be taken pursuant to the impugned decision including action in the nature of invitation for expression of interest held out by public notice issued on 08.06.2022. The Commission shall issue a fresh public notice informing the public at large about this ad interim injunction.”

36. Considering the urgency of the subject matter, the Appeal was heard on 28.07.2022 and 29.07.2022 on the issue of term period of the Licence granted to the Appellant.

37. The submission of the Appellant that the State Commission has not specified any term of the Licence, it may continue as per the provision of the Act 1910, is not correct as the term of Licence including for deemed licensees shall be as per section 15(8) of the Act 2003. Even for the sake of argument, it is agreed that the provision contained under section 6 of the Act 1910 shall remain in force, the option of purchase of the Licensee's business shall occur only after the term of expiry of 30 years i.e. on 30.08.2023, however, considering that the provision is inconsistent with the Act 2003, the same cannot be exercised now and also the provision of continuity shall become void.

38. The Respondent Commission, as already pointed out, has opposed the submission of the Appellant on perpetuity citing various provisions of the Act 2003 (reference section 14, section 15, section 16 and section 185) and various judgments rendered by Hon'ble Supreme Court of India. As already indicated in the preceding paragraphs, the Licence granted to the Appellant shall be deemed to be granted under the provisions of the Act 2003 after its enactment. As per section 15(8) read with first proviso to section 14 of the Act 2003, the term of Licence shall be 25 years after expiry of one year from the date of enactment of the Act 2003 i.e. 10th June, 2003 as the State Commission has not specified any date earlier to completion of one year for which the existing provision as specified in the Licence granted under the Act 1910 shall continue. Therefore, the argument of perpetuity is rejected.

39. We are of the view that after elapse of one year post enforcement of Act 2003, the appellant was required to apply for a licence under Section 15. This requirement seems to have escaped the notice of all concerned perhaps because of the first proviso to Section 14 not being properly construed. It is, however, too late in the day – at this distance in time – for us to insist on strict compliance in such regard by the appellant. We have rejected the claim of perpetual licence because the same would be inconsistent with the provisions of Act 2003, in particular Section 15(8) which envisages the term of the licence granted under this law to be for a period of 25 years which can be curtailed by revocation, there being no provision for it being exceeded. Since the appellant has been allowed to continue as the licensee for the area under its control, even after the elapse of one year from the date of commencement of Act 2003, without the arrangement being formalized, more by sufferance on account of default than by a conscious decision, we would treat the remaining term of the licence thus exercised by the appellant as one subject to the provisions of Act 2003.

40. Considering issues other than term of the Licence as prayed under the petition no. 1526 of 2019, before the State Commission, are restricted to or rejected on the ground that the Licence granted to the Appellant shall expire on 31.08.2023 i.e. before the term of the control period, need revisit by the State Commission appropriately for the control period FY 2020-21 to FY 2024-25, especially, the issue of signing up of power supply contracts/PPAs for Long Term and Medium Term for purchase of power beyond August 2022, as it has a direct bearing on the consumers of the licensed area of Appellant inter alia the economics of cost of power purchase.

41. Keeping the above in view, we opine that the Clause 10 of the Licence regarding term of the Licence or perpetuity of the Licence is rendered otiose

as the 1910 Act has been repealed, differently, Clause 10 of the Licence cannot be read as term of the Licence but merely an “option to purchase”, the option which cannot be exercised at this stage as observed in the preceding paragraphs.

42. Therefore, the term of the Licence shall be governed by the provisions contained under the Act 2003 from the date of coming in to effect of the Act 2003, also, with the repeal of the 1910 Act, the option to purchase the assets of the Appellant by State Board/Utility/State Government or by any designated agency appointed under section 6 of the Act 1910 stand repealed.

43. Accordingly, the term/tenure of the Appellant has to be read in context of the provisions of the first Proviso to Section 14 read with subsection (8) of section 15 i.e. 25 years in terms of Section 15(8) of the Act from the lapse of one year from the date of coming into effect the Act 2003 i.e. 10th June 2004. Thus, the Appellant licensee’s term/tenure is held to be valid till 9th June 2029.

ORDER

For the foregoing reasons as stated above, the captioned Appeal i.e. Appeal No.72 of 2021 has merit and is allowed. The Impugned Order dated 26.11.2020 passed by the Uttar Pradesh Electricity Regulatory Commission (the State Commission) in Petition no. 1526 of 2019 is set aside. We hold that the Licence of the Appellant shall continue to be valid and subsisting up to 09.06.2029 and direct for all consequential action to be taken by the concerned.

We remit the matter to the State Commission for a fresh decision on the issues other than the term of Licence as raised before the State Commission through Petition no. 1526 of 2019, considering the term of the Licence up to 09.06.2029.

Needless to say, the State Commission shall ensure that the order it passes pursuant to our directions is scrupulously complied with expeditiously and in a time-bound manner, the issue having persisted for long, we would expect the State Commission to pass the fresh order in terms of above directions expeditiously, not later than three months from the date of this judgment.

The captioned Appeal is disposed of accordingly, including all pending IAs, if any.

Pronounced in the Open Court on this 23rd day of August, 2022.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

REPORTABLE/NON-REPORTABLE

pr/mkj