

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

**IA NO. 2096 OF 2021 IN APPEAL NO. 11 OF 2022  
&  
IA NO. 1476 OF 2022 IN DFR NO. 380 OF 2022  
&  
IA NO. 1246 OF 2022 IN APPEAL NO. 456 OF 2022**

**Dated: 13.01.2023**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**IA NO. 2096 OF 2021 IN APPEAL NO. 11 OF 2022**

**VIBRANT GREENTECH INDIA PRIVATE  
LIMITED**

#7-1-22/14, LANE NEXT TO ROXANA  
TOWERS, GREENLANDS, HYDERABAD -  
500016, TELANGANA

**... Appellant(s)**

**VERSUS**

**1. ANDHRA PRADESH ELECTRICITY  
REGULATORY COMMISSION**

11-4-660, 4<sup>th</sup> FLOOR, SINGARENI BHAVAN  
RED HILLS, HYDERABAD - 500 004

**... Respondent No.1**

**2. SOUTHERN POWER DISTRIBUTION  
COMPANY OF ANDHRA PRADESH LIMITED**

#19-13-65/A, SRINIVASAPURAM,  
TIRUCHANOUR ROAD, TIRUPATI

**... Respondent No.2**

**3. ANDHRA PRADESH POWER  
COORDINATION COMMITTEE**  
VIDYUT SOUDHA, GUNADALA,  
ELURU RD, VIJAYAWADA,  
ANDHRA PRADESH – 520004,

... Respondent No.3

Counsel for the Appellant(s) : Mr. Mazag Andrabi  
: Ms. Tajali

Counsel for the Respondent(s) : Mr. Sridhar Potaraju  
: Ms. Shiwani Tushir  
: Mr. Y. V. Anil Kumar  
: Mr. Rajat Srivastava for R-1

: Mr. Sidhant Kumar  
: Ms. Manyaa Chandok  
: Mr. Shivankar Rao  
: Ms. Vidhi Uday Shanker for R-2 & 3

**IA NO. 1476 OF 2022 IN DFR NO. 380 OF 2022**

**1. SOUTHERN POWER DISTRIBUTION  
COMPANY  
OF ANDHRA PRADESH LTD.**

Through the Authorized Representative

Having registered office at:

19-13-65/A, Raghavendra Nagar,

KesavayanaGunta, Tiruchanoor Road, Tirupathi,

Andhra Pradesh - 517501

Phone no. - 9491049345

Email: [gmipcpspdcl@gmail.com](mailto:gmipcpspdcl@gmail.com)

... Appellant No.1

**2. SOUTHERN POWER DISTRIBUTION  
COMPANY**

**OF ANDHRA PRADESH LTD.**

Through the Chief General Manager

Having registered office at:

19-13-65/A, Raghavendra Nagar,

KesavayanaGunta, Tiruchanoor Road, Tirupathi,

Andhra Pradesh - 517501

Phone no. - 9491049345

Email: [gmipcspdcl@gmail.com](mailto:gmipcspdcl@gmail.com)

... Appellant No.2

**3. ANDHRA PRADESH POWER COORDINATION  
COMMITTEE**

Through Chairman

APPCC Building

First Floor, Vidyut Soudha - AP Transco

Beside KAY Hotel

Near Ramavappadu Ring Eluru Road

Vijayawada - 520004.

Email: [cgm-pp.vja@aptransco.co.in](mailto:cgm-pp.vja@aptransco.co.in);

[cecommercial@rediffmail.com](mailto:cecommercial@rediffmail.com)

... Appellant No.3

**VERSUS**

**1. ANDHRA PRADESH ELECTRICITY  
REGULATORY COMMISSION**

Through Secretary

Having office at: 4<sup>th</sup> Floor

Singareni Bhavan, Red Hills,

Hyderabad- 500004

Phone: 040-23307381

Email: [commn-secy@aperc.in](mailto:commn-secy@aperc.in)

... Respondent No.1

**2. M/S VIBRANT GREENTECH INDIA PVT. LTD.**

Through its Authorized Representative/ Partner

Having its registered office at:

6-3-1192/1/1, No.308,

3rd Floor, White House Building,

Block II, Kundanbagh, Begumpet,

Hyderabad-500016.

*Also at*

#7-1-22/14,

Lane next to Roxana Towers, Greenlands,  
Hyderabad -500016, Telangana

Ph: 040-23405601

Email: [umarao@vibrantgreentech.com](mailto:umarao@vibrantgreentech.com);

[mgmt.exe@vibrantgreentech.com](mailto:mgmt.exe@vibrantgreentech.com)...

... Respondent No.2

Counsel for the Appellant(s) : Mr. Sidhant Kumar  
: Ms. Manyaa Chandok  
: Mr. Shivankar Rao  
: Ms. Vidhi Uday Shankar

Counsel for the Respondent(s) : Mr. Sridhar Potaraju  
: Ms. Shiwani Tushir  
: Mr. Y. V. Anil Kumar  
: Mr. Rajat Srivastava for R-1  
  
: Mr. Challa Gunaranjan  
: Mr. Hitendra Nath Rath for R-2

**IA NO. 1246 of 2022 In APPEAL NO. 456 OF 2022**

**1. SOUTHERN POWER DISTRIBUTION  
COMPANY  
OF ANDHRA PRADESH LTD.**

Through the Authorized Representative

Having registered office at:

19-13-65/A, Raghavendra Nagar,

Kesavayana Gunta, Tiruchanoor Road, Tirupathi,

Andhra Pradesh - 517501

Phone no. - 9491049345

Email: [gmipcspdcl@gmail.com](mailto:gmipcspdcl@gmail.com)

... Appellant No.1

**2. SOUTHERN POWER DISTRIBUTION  
COMPANY**

**OF ANDHRA PRADESH LTD.**

Through the Chief General Manager

Having registered office at:

19-13-65/A, Raghavendra Nagar,  
KesavayanaGunta, Tiruchanoor Road, Tirupathi,  
Andhra Pradesh - 517501

Phone no. - 9491049345

Email: [gmipcspdcl@gmail.com](mailto:gmipcspdcl@gmail.com)

... **Appellant No.2**

**3. ANDHRA PRADESH POWER COORDINATION  
COMMITTEE**

Through Chairman

APPCC Building

First Floor, Vidyut Soudha - AP Transco

Beside KAY Hotel

Near Ramavappadu Ring, Eluru Road

Vijayawada - 520004.

Email: [cgm-pp.vja@aptransco.co.in](mailto:cgm-pp.vja@aptransco.co.in);

[cecommercial@rediffmail.com](mailto:cecommercial@rediffmail.com)

... **Appellant No.3**

**VERSUS**

**1. ANDHRA PRADESH ELECTRICITY  
REGULATORY COMMISSION**

Through Secretary

Having office at: 4<sup>th</sup> Floor

SingareniBhavan, Red Hills,

Hyderabad- 500004

Phone: 040-23307381

Email: [commn-secy@aperc.in](mailto:commn-secy@aperc.in)

... **Respondent No.1**

**2. M/S CHAITANYA PROJECTS LTD.**

Through its Authorized Representative/ Partner

Having its registered office at:  
H. No. 6-5-265-5  
Sri Nagar Colony, Near Water Tank, Anantapur  
Andhra Pradesh – 515001  
Ph: 9393856535; 08554-276535  
Email: [chaitanyaprojects99@gmail.com](mailto:chaitanyaprojects99@gmail.com)

... Respondent No.2

Counsel for the Appellant(s) : Mr. Sidhant Kumar  
: Ms. Manyaa Chandok  
: Mr. Shivankar Rao  
: Ms. Vidhi Uday Shankar

Counsel for the Respondent(s) : Mr. Sridhar Potaraju  
: Ms. Shiwani Tushir  
: Mr. Y. V. Anil Kumar  
: Mr. Rajat Srivastava for R-1

## **ORDER**

### **PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON**

IA No. 1476 of 2022 is filed by the Southern Power Distribution Company of Andhra Pradesh Limited ("**APSPDCL**" for short) seeking interim stay of operation of the Order passed by the Andhra Pradesh Electricity Regulatory Commission ( the "**Commission**" for short) on 05.07.2021 in Original Petition No. 9 of 2020, pending final adjudication of **DFR No. 380 of 2022.**

IA No. 2096 of 2021 is filed by M/s Vibrant Greentech India Private Limited ("**VGIPL**" for short) seeking interim stay of operation of the Order passed by the Commission on 05.07.2021 in Original Petition No. 9 of 2020;

and to direct *APSPDCL* to reconnect the 2.5 wind power project pending final adjudication of the appeal.

IA No. 1246 of 2022 is filed by *APSPDCL* seeking interim stay of operation of the Order passed by the Commission in Original Petition No. 20 of 2020 on 05.07.2021.

An order was passed by the Commission, in OP Nos. 9 and 20 of 2020 dated 05.07.2021, declaring the PPAs between the parties as unenforceable and not binding on *APSPDCL*; directing *APSPDCL* to pay *VGIPL* and *M/s Chaitanya Projects Ltd*, for the power received from them. till the date of disconnection, @ Rs.2.93 per unit as compensation within two months from the date of the Order; and holding that both *VGIPL* and *M/s Chaitanya Projects Ltd* could sell their power in the market as per the provisions of the Electricity Act, 2003 (for short “the Act”) and the Regulations made there under.

### **I.CONTENTENTS OF THE ORDER OF THE COMMISSION:**

OP No.9 of 2020 was filed by “*VGIPL*” and OP 20 of 2020 was filed by *M/s. Chaitanya Projects Ltd* seeking directions to *APSPDCL* to act upon the PPA dated 30.03.2017 entered into with them for purchase of power; and to pay for the power generated and supplied from their Wind Power Project for the period from the date of PPA i.e., 30.03.2017 along with interest. The Commission framed the following points as arising for its determination : (1).Whether the PPAs dated 30.03.2017 had been validly entered between the parties?; (2).Whether the PPAs dated 30.03.2017 were enforceable and binding on *APSPDCL* de hors the approval by the Commission?; (3) Whether the unilateral rescission of the PPAs by *APSPDCL* was valid in law?; (4) Whether the petitioners were entitled to receive the price for the power generated by them and let into the respondent’s Grid from the date of synchronization till the date of

disconnection?; and (5) Whether the petitioners were entitled to any relief and if so to what extent?

On Point Nos. (1) & (2), the Commission held that the PPA had not been validly entered into between the Petitioners and APSDCL; and, in the absence of approval by the Commission, such PPAs were not enforceable as they did not enjoy the benefit of deemed approvals, unlike in the case of the PPAs which were entered upto 31.03.2017. On Point No. (3), the Commission held that there was a mandatory requirement for obtaining approval of the PPAs, and the benefit of deemed approvals, flowing under the proceedings dated 01.0.2014 of the Commission, was not available to the Petitioners; once the PPAs were unenforceable, they did not exist in the eyes of law; there was no necessity for the Respondents to rescind the unenforceable contracts; and, even sans the rescission, no rights flowed from the PPAs entered between the petitioners and Respondent No.1.

On Point No. (4), the Commission relied on the judgments of the Supreme Court in **State of West Bengal Vs. B.K. Mondal and Sons :AIR 1962 SC 779**); **Mulamchand Vs. State of Madhya Pradesh :AIR 1968 SC 1218**; and **Mahanagar Telephone Nigam Limited Vs. Tata Communications Limited : (2019) 5 SCC 341**. It held that the Judgments of APTEL, relied upon by APSPDCL, turned on its own facts; and the law laid down in the judgments of the Supreme Court was the law of the land, which the Commission was bound to follow under Article 141 of the Constitution of India.

From the afore-mentioned judgments of the Supreme Court, the Commission summarised the legal position as (i) a claim for compensation lay even though there was no contract or there existed a contract which was not valid and enforceable; (ii) voluntary acceptance and enjoyment of the work by one party created a cause of action for the other party to make a



claim under Section 70; (iii) the word “lawfully” indicated that, after something is delivered or something is done by one person for another not intended to be gratuitous and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which forms the basis for claiming compensation; (iv) Claim for compensation is based on the footing that there has been no contract and that the conduct of the parties in relation to what is delivered or done creates a relationship resembling that arising out of a contract; (v) a claim for compensation may not mean the same thing as a claim for damages for breach of contract, if a contract was subsisting between the parties; and (vi) what Section 70 prevented was unjust enrichment, and it applied as much to individuals as to corporations and government.

The Commission then held that the projects were synchronized on 29-3-2017 and PPAs were entered into on 30-3-2017; pursuant to the said two documents, the respondents had allowed the petitioners to evacuate power into the Grid; at no point of time was any objection raised either by the functionaries of the Discom or by the SLDC officials; the respondents continued to avail the benefit of power supply from the petitioners till power was disconnected in March, 2020; the conduct of the parties i.e., supply of power by the petitioners on the one hand, and receiving and utilizing power by the respondent without any demur on the other, constituted a fresh relationship between the petitioners and the respondents dehors the PPAs which formed the basis for a claim under Section 70 of the Contract Act; this transaction was separable from the obligations arising under the PPAs; even though the PPAs were held to be unenforceable, the petitioners were nevertheless entitled for compensation under Section 70 of the Contract Act for the power supplied by them to APSDCL; in fact, the Commissioning Certificate in O.P.No.9/2020 was marked to the high functionaries such as CGM and SE/O of respondent No.1 and CE/IPC of respondent No.3; if they

had any reservation on receiving the power, they would have declined to receive the same and instructed the petitioners not to dispatch power; instead, the respondents continued to receive power till March 2020 when disconnection proceedings were issued; had APSPDCL not received the power, the petitioners would have had an opportunity of tapping the market sources for sale of the power generated by them; and by allowing the petitioners to inject the power generated by them, without any demur till it was disconnected, the respondents had denied the petitioners such an opportunity. On these facts, the Commission concluded, that the petitioners were entitled to reasonable compensation for the power supplied by them to the respondents.

On Point No. (5), the Commission held that, though the PPAs indicated a certain tariff, the respondents were not bound to pay the said tariff as the PPAs were unenforceable; the cost of power in exchanges was very dynamic and susceptible to change in every time block of 15 minutes during the day; keeping this in view, they had worked out the weighted average of the price discovered in the year 2017 through the bidding route for wind power projects in the country, and had arrived at the price @ Rs.2.93 per unit; and the said price was fair to both sides and should be applied for arriving at the compensation for the power supplied by the petitioners and received by APSPDCL up to the time it was disconnected.

## **II. RIVAL SUBMISSIONS:**

Before us, Shri Sidhant Kumar, learned counsel for APSPDCL, would submit that the Commission had erred in directing the Appellant to pay the Respondent-Petitioners compensation at Rs. 2.93 per unit; since the PPAs were held unenforceable by the Commission itself, the power injected by the Respondent-Petitioners into the grid was evidently an unlawful act; Section 70 of the Contract prohibits payment of compensation where the contract/act is unlawful; in view of Section 70, the Respondent-Petitioners,

who had indulged in the unlawful act of injecting power into the grid on their own accord, were not entitled to be paid compensation; on the respondent-petitioners injecting power into the Grid, APSPDCL had no choice but to receive the power so injected; and the order of the Commission, directing the Appellant to pay the respondent-petitioners compensation for the energy supplied at Rs. 2.93 per unit, should be stayed during the pendency of this appeal.

Shri Sidhant Kumar, Learned counsel, would further submit that the Order passed by this Tribunal is binding on the Commission and, failure on the part of the Commission to follow the judgments of this Tribunal in '***Kamachi Sponge & Power Corporation Ltd. vs. Tamil Nadu Generation and Distribution Corporation Ltd. & Anr.***' (Order in Appeal No. 120/2016 dated 08.05.2017) and '***Renew Wind Energy (AP) Private Limited v. Karnataka Electricity Regulatory Commission & Ors***, (Order in Appeal No. 117 of 2016 dated 13.09.2017), would necessitate the Order under appeal being set aside.

On the other hand, Shri Challa Gunaranjan learned counsel for Respondent- Petitioner in IA No. 1476 of 2022, and Ms. Mazag Andrabi, Learned counsel for the Appellant in IA No. 2096 of 2021, submit that both the above referred Judgments of this Tribunal have no application to the facts of the present case; the wind power projects were synchronised on 29.03.2017, and the PPAs were entered into on 30.03.2017; for three long years from March 2017 till power was disconnected in March, 2020, APSPDCL continued to receive the power supplied by the Respondent-Petitioners without protest or demur; since supply of power was non-gratuitous, the Respondent-Petitioners were entitled to be compensated for the power supplied by them which was received and consumed by the Appellant; having continuously received power from the Respondent-Petitioners for three long years, it is not open to APSPDCL to now turn

around and contend that they are not liable to compensate the Respondent-Petitioners for the power supplied by them, more so since the Appellant had, in turn, supplied the power (received by them from the respondent-petitioners) to their consumers, and must have collected amounts from them.

While concurring with the submissions of Mr. Challa Gunaranjan, Learned Counsel, Ms. Mazab Andrabi, Learned counsel for the Appellant in IA No. 2096 of 2021, would further state that the Commission had, in fact, erred in directing the Appellant to compensate the respondent-petitioners only at Rs. 2.93 per unit, and ought to have instead directed payment of the contracted rate in the PPAs of Rs. 4.84 per unit.

### **III. SECTION 70 OF THE CONTRACT ACT: ITS SCOPE:**

As the PPAs were not approved by the Commission, the Respondent-Petitioners are not entitled for payment of the tariff stipulated therein of Rs.4.84 per unit. The Commission has also not directed APSPDCL to pay the said amount, and has instead directed payment of Rs.2.93 per unit relying on Section 70 of the Contract Act. The only question which necessitates examination, at the interlocutory stage of these Appeals, is whether or not Section 70 is attracted.

In considering this aspect, it is useful to examine the scope and purport of the said provision. Section 70 occurs in Chapter V of the Contract Act, the heading of which is, "Of Certain Relations Resembling Those Created by Contract". In other words, this Chapter does not deal with the rights or liabilities arising from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by the contract. (***State of W.B. v. B.K. Mondal and Sons : AIR 1962 SC 779***). There are five Sections that are contained in this Chapter. Each of them is posited on the fact that there is, in fact, no contractual relationship between

the parties claiming under this Chapter. (***MTNL v. Tata Communications Ltd., (2019) 5 SCC 341***).

Section 70 relates to obligations of person enjoying the benefit of a non-gratuitous act, and stipulates that, where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. Three conditions must be satisfied before Section 70 can be invoked. The first is that a person should lawfully do something for another person or deliver something to him. The second condition is that, in doing the said thing or delivering the said thing, he must not intend to act gratuitously; and the third is that the other person, for whom something is done or to whom something is delivered, must enjoy the benefit thereof. When these conditions are satisfied, Section 70 imposes upon the latter the liability to compensate the former in respect of, or to restore, the thing so done or delivered. (***State of W.B. v. B.K. Mondal and Sons : AIR 1962 SC 779***). Section 70 deals with cases where there is no valid contract, and provides for compensation to be paid in a case where the three requisite conditions prescribed by it are satisfied. (***State of W.B. v. B.K. Mondal and Sons : AIR 1962 SC 779***).

In appreciating the scope and effect of Section 70, it is useful to illustrate how this Section operates. If a person delivers something to another it would be open to the latter person to refuse to accept the thing or to return it. In that case, Section 70 would not come into operation. Similarly, if a person does something for another, it would be open to the latter not to accept what has been done by the former; in that case again Section 70 would not apply. In other words, the person said to be made liable under Section 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under

Section 70 arises. (***State of W.B. v. B.K. Mondal and Sons* : AIR 1962 SC 779**)

The cause of action for the claim of compensation is not the breach of any contract, but is based on the assumption that the contract was ineffective, and as such amounted to no contract at all. Where some work done by one party has been accepted and enjoyed by the other, it is the voluntary acceptance and enjoyment of the said work which forms the cause of action for the alternative claim. (***State of W.B. v. B.K. Mondal and Sons* : AIR 1962 SC 779**). As the cause of action for a claim for compensation under Section 70 is based not upon the delivery of the goods or the doing of any work as such, but upon the acceptance and enjoyment of the said goods or the said work, it is clear that Section 70 does not treat as valid the contravention of a statutory or a contractual provision. (***State of W.B. v. B.K. Mondal and Sons* : AIR 1962 SC 779**).

In cases falling under Section 70, the person doing something for another or delivering something to another cannot sue for the specific performance of the contract nor ask for damages for the breach of the contract, as there is no contract between him and the other person for whom he does something or to whom he delivers something. (***Mulamchand v. State of M.P* : AIR 1968 SC 1218; *MTNL v. Tata Communications Ltd.*, (2019) 5 SCC 341; *Orissa Industrial Infrastructure Development Corpn. v. MESCO Kalinga Steel Ltd.*, (2017) 5 SCC 86**). In the very nature of things, the claim for compensation is based on the footing that there is no contract. If the conditions imposed by Section 70 of the Indian Contract Act are satisfied, then the provisions of that Section can be invoked even by the aggrieved party to a void contract. (***Mulamchand v. State of M.P* : AIR 1968 SC 1218**). Consequently Section 70 may still apply, notwithstanding the fact that no contractual relationship exists between APSPDCL and the

respondent-Petitioners, as a result of the PPAs not being approved by the Commission.

The juristic basis of the obligation under Section 70 is not founded upon either contract or tort, but upon a third category of law, namely, quasi-contract or restitution. (***Mulamchand v. State of M.P* : AIR 1968 SC 1218; *MTNL v. Tata Communications Ltd.*, (2019) 5 SCC 341; *Orissa Industrial Infrastructure Development Corpn. v. MESCO Kalinga Steel Ltd.*, (2017) 5 SCC 86**). The remedies provided, for cases of what has been called unjust enrichment or unjust benefit ie to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep, are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution. (***Fibrosa v. Fairbairn* [1943 AC 32, 61; *Nelson v. Larholt* [1948 1 KB 330, 343; *Mulamchand v. State of M.P* : AIR 1968 SC 1218)**)

The thing delivered or done must, however, not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. When a thing is delivered or done by one person, it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done, which is the basis for the claim for compensation under Section 70, must be voluntary. If the act done by one of the parties was unauthorised and spurious, the other party can easily refuse to accept the said act, and then the former would not be entitled to make a claim for compensation. (***State of W.B. v. B.K. Mondal and Sons* : AIR 1962 SC 779**).



#### **IV. ARE ALL THE THREE CONDITIONS STIPULATED IN SECTION 70 FULFILLED IN THE PRESENT CASE?**

There is no dispute that, of the three conditions to be satisfied for Section 70 to be invoked, the second and third conditions are satisfied in the case on hand. As the respondent-petitioners did not intend to act gratuitously in supplying power to APSPDCL, the second condition for invoking Section 70 stands fulfilled. APSPDCL, to whom electricity was supplied by the respondent-petitioners, has undoubtedly enjoyed the benefit thereof, and has not, at any time during the three year period of supply, called upon the Respondent-Petitioners to either refrain from injecting power into the grid or to abstain from supplying power to them. The third condition, for Section 70 to be attracted, is also fulfilled in the present case.

The contention, urged on behalf of APSPDCL, however is that the first condition to attract Section 70, that a person should lawfully do something for another person or lawfully deliver something to him, is not satisfied in the present case. As noted hereinabove, the claim for compensation, made by one person against another under Section 70, is not on the basis of any subsisting contract between them, but is on the basis that the conduct of the parties, in relation to what is delivered or done, creates a relationship resembling that arising out of a contract. (***State of W.B. v. B.K. Mondal and Sons : AIR 1962 SC 779***).

It is true that Section 70 requires that a person should lawfully do something or lawfully deliver something to another, and the word “lawfully” is not a surplusage and must be treated as an essential part of the requirement of Section 70. Some lawful relationship must subsist between the person claiming compensation and the person against whom it is claimed, for that is the implication of the use of the word “lawfully” in Section 70; but the said lawful relationship arises not because the party claiming compensation has done something for the party against whom the



compensation is claimed, but because what has been done by the former has been accepted and enjoyed by the latter. It is only when the latter accepts and enjoys what is done by the former that a lawful relationship arises between the two and it is the existence of the said lawful relationship which gives rise to the claim for compensation. Therefore, all that the word “lawfully”, in this context, indicates is that after something is delivered or something is done by one person for another, and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which, under the provisions of Section 70, gives rise to a claim for compensation. **(State of W.B. v. B.K. Mondal and Sons : AIR 1962 SC 779).**

As APSPDCL had received and accepted the electricity injected by the Respondent-Petitioners into the grid, and had enjoyed the benefits of such supply, that a lawful relationship arose between the two, and it is the existence of such lawful relationship which has given rise to the claim for compensation.

As has been succinctly stated by the Commission, in the Order under Appeal, the word “lawfully” indicates that, after something is delivered or something is done by one person for another not intended to be gratuitous and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which forms the basis for claiming compensation.

As all the three conditions stipulated therein are satisfied, Section 70 imposed upon APSPDCL the liability to compensate the respondent-petitioners for the electricity supplied by them to the former. It is only as a measure of compensation, in terms of Section 70, that the Commission has directed APSPDCL to pay Rs.2,93 per unit towards the electricity supplied to them by the Respondent-Petitioners, and not at the rate stipulated in the PPA of Rs. 4.84 per unit.

## V. JUDGEMENTS OF THIS TRIBUNAL ON THE SCOPE OF SECTION 70:

Let us now examine the judgements of this Tribunal on which reliance is placed on behalf of APSPDCL. In **M/s Kamachi Sponge & Power Corporation Ltd**, the appellant had pumped energy into the grid for one month from 21.10.2011 to 27.11.2011 in three different spells. This Tribunal held that the energy pumped by the Appellant, on all the three occasions, was in clear violation of the terms and conditions of the connectivity/ open access granted by TANTRANSCO; and there was neither a contractual agreement nor was there any provision, as per connectivity and open access granted by TANTRANSCO, to account for the injection of excess energy by the Appellant during the period under dispute.

It is in this context that this Tribunal observed that the Appellant had pumped energy on its own without entering into any contract with Respondent No. 1 and without the knowledge/ schedule from SLDC; the energy pumped into the grid, during the period under dispute by the Appellant, was unauthorised and did not call for any payment by Respondent No.1; the Appellant had not sought any approval/ schedule from SLDC before synchronisation for pumping any power into the grid; even the SLDC was not aware of the power pumped during this period by the Appellant into the grid; a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee, and without the approval/scheduling of the power by the SLDC; and, therefore, they were not entitled for compensation.

In **Renew Wind Energy (AP) Private Limited v. Karnataka Electricity Regulatory Commission & Ors, (Order in Appeal No. 117 of 2016 dated 13.09.2017)**, the Appellant had commissioned its wind project on 29.06.2013 and had obtained provisional inter-connection to the grid on 28.06.2013; the Appellant, vide letter dated 08.07.2013, applied to the

SLDC for grant of Intra-State Open Access by way of a Wheeling and Banking Agreement (WBA); however, SLDC failed to grant open access to the Appellant there under, and a letter was filed by them before the State Commission explaining the delay in processing the application, and undertaking to have payments made by Electricity Supply Companies (ESCOMs), for the power injected by the Appellant till the signing of WBA, at the applicable generic tariff; thereafter on 19.03.2014, the letter was sent to the ESCOMs asking them to pay for the energy, injected by the Appellant, at the Generic Tariff; this was contested by the ESCOMs by way of a review petition before the Commission, and the State Commission granted liberty to the Appellant to initiate separate proceedings on the aspect of compensation arising out of the thirty days' time limit within which WBA was required to be processed by the SLDC. In the proceedings initiated by the Appellant thereafter, the State Commission held that the Appellant was not entitled to be paid compensation for the energy injected into the grid, from the date of commissioning i.e. 29.06.2013 up to 08.08.2013 being the 30 day period from the date of the Application before the SLDC.

Before this Tribunal, the Appellant contended that Section 70 of the Indian Contract Act applied to the case on hand; and they should have been paid for the supply of power, since the Respondent had enjoyed the benefit of the energy that had been injected into the grid, and had recovered tariff in respect of the same.

It is in this context that this Tribunal held that the Appellant, inspite of knowing the restrictions/conditions in provisional inter-connection, had injected power into the grid; the Respondents had no other choice but to absorb the power so pumped by the Appellant into the grid; this act of the Appellant could not be termed as lawful; the Respondents were also forced to absorb the injected power unwillingly, as there was no choice before them; the power so injected, without the knowledge of the Respondents,

had to be absorbed instantly, and could not be rejected; and Section 70 of the Indian Contract Act, 1872 did not apply to the present case.

Neither in '*Kamachi Sponge & Power Corporation Ltd. vs. Tamil Nadu Generation and Distribution Corporation Ltd. & Anr.*' (Order in Appeal No. 120/2016 dated 08.05.2017), nor in *Renew Wind Energy (AP) Private Limited v. Karnataka Electricity Regulatory Commission & Ors*, (Order in Appeal No. 117 of 2016 dated 13.09.2017), was the attention of this Tribunal drawn to the judgements of the Supreme Court, in **State of West Bengal Vs. B.K. Mondal and Sons** AIR 1962 SC 779; and **Mulamchand Vs. State of Madhya Pradesh** AIR 1968 SC 1218. While the Orders of this Tribunal are no doubt binding on the Commission, in cases where there is a conflict between the Orders of this Tribunal and the law declared by the Supreme Court, the Commission is bound by the judgement of the Supreme Court in view of Article 141 of the Constitution of India.

Prima facie the Order under appeal, passed by the Commission, in so far as it directed APSPDCL to pay the Respondents-Petitioners compensation for the energy supplied at Rs.2.93 per unit, appears valid. At the interlocutory stage, it would not be proper for us to conclusively determine this issue, which would have to await a final determination when the main appeal is heard later.

#### **VI. PRINCIPLES GOVERNING GRANT OF INTERLOCUTORY RELIEF:**

In examining the question whether the Appellant APSPDCL is entitled for the interim reliefs sought by it, this Tribunal must satisfy itself that the three well established principles for grant of interlocutory relief is satisfied (1) whether a prima facie case has been made out, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater

inconvenience to them if interim relief is not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to if interim relief is granted, and (3) whether they would suffer irreparable injury.

Proof of prima facie case is the sine quo non for the grant of interlocutory relief. However, as the appeal before this Tribunal, is an appeal both on facts and law, and is more in the nature of a first appeal, we shall proceed on the premise, for the limited purpose of these interlocutory applications, that APSPDCL has made out a prima facie case.

With the first condition of a prima facie case being made out as the sine quo non, at least two conditions should be satisfied by the Appellant conjunctively, and mere proof of fulfilment of one of the three conditions would not entitle them to the grant of interlocutory relief. (**Nawab Mir Barkat Ali Khan V/s Nawab Zulfiquar Jah Bahadur and others – AIR 1975 AP 187 ; Gone Rajamma vs Chennamaneni Mohan Rao : 2010 (3) ALD 175 – dated 3rd March, 2010 ; Kishoresinh Ratansinh Jadeja v. Maruti Corpn. [(2009) 11 SCC 229] ; Best Sellers Retail (India) Private Ltd. v/s Aditya Birla Nuvo Ltd. – (2012) 6 SCC 792**). The Appellant must satisfy at least one of the other two requirements of (1) the balance of convenience being in their favour, and (2) they would suffer irreparable loss if they are not granted the interim relief they seek. This Tribunal, while granting or refusing to grant interim relief, should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if interim relief is refused, and compare it with that which is likely to be caused to the other side if interim relief is granted. (**Dalpat Kumar v. Prahlad Singh: AIR1993 SC 276 b; Mahadeo Savlaram Shelke and Ors. Vs. Puna Municipal Corporation and Ors. : MANU/SC/0673/1995**). This Tribunal must satisfy itself that the comparative hardship or mischief or inconvenience which is likely to occur from

withholding the interlocutory relief will be greater than that would be likely to arise from granting it. (**Dalpat Kumar v/s Prahlad Singh – AIR 1993 SC 276**).

As noted herein above, APSPDCL, despite receiving the electricity generated by the respondents-petitioners for three long years, has not made any payment to them. They, in turn, supplied the electricity, received from the respondents-petitioners, to their consumers, and must have received payment for such supply. As failure to compensate them for the supplies effected would result in APSPDCL unjustly enriching itself at their cost, the balance of convenience certainly lies in favour of the Respondents-Petitioners, and not in favour of APSPDCL.

This Tribunal must also satisfy itself that non-interference would result in “irreparable injury” to the party seeking relief ie the Appellant APSPDCL, and they needs protection from the consequences of the apprehended injury. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages (**Dalpat Kumar v. Prahlad Singh: AIR 1993 SC 276; Mahadeo Savlaram Shelke and Ors. Vs. Puna Municipal Corporation and Ors. : MANU/SC/0673/1995**). This Tribunal will refuse to grant interlocutory relief if the injury suffered by the Appellant, on account of refusal to grant interim relief, is not irreparable.

APSPDCL cannot also be said to suffer irreparable injury if interim relief is not granted in their favour, since they will not suffer any injury in compensating the Respondents-Petitioners at the lower rate of Rs.2.93 per unit, as against the rate of Rs.4.84 per unit stipulated in the PPAs, more so as they must have collected these amounts (may be more) from their consumers to whom they supplied the electricity received from the Respondents-Petitioners.

## VII.CONCLUSION:

We conclude holding that there is no justification for the grant of the interim relief, sought for by APSPDCL, since neither one of the other two ingredients, for the grant of interim relief, is satisfied in the present case.

The interim relief sought for by VGIPL, in IA No. 2096 of 2021, cannot also be granted, as any direction to *APSPDCL* to receive the power generated by the project pending the appeal, would amount to allowing the main appeal itself. For grant of the interim relief sought for by VGIPL, this Tribunal must also conclude that the order of the Commission, in holding the PPAs unenforceable, to be illegal. An inquiry, to arrive at such a conclusion, would not be undertaken at the interlocutory stage, and must await final adjudication of the Appeals.

All the three IAs fail and are, accordingly, dismissed. Suffice it to make it clear that payment made by APSPDCL to the respondents-petitioners, in compliance with the Order passed by the Commission, shall be subject to the result of the main Appeals.

Pronounced in the open court on this 13<sup>th</sup> day of January, 2023.

**(Sandesh Kumar Sharma)**  
Technical Member

**(Justice Ramesh Ranganathan)**  
Chairperson

**REPORTABLE / NON-REPORTABLE**

*tpd/ks*

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)

APL No. 11 OF 2022  
APL No. 456 OF 2022  
APL No. 468 OF 2022

Dated: 13th January, 2023

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon`ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

APL No. 11 OF 2022

Vibrant Greentech India Private Limited ..... Appellant(s)  
Versus  
Andhra Pradesh Electricity Regulatory Commission & Ors. .... Respondent(s)

Counsel on record for the Appellant(s) : Mr. Mazag Andrabi

Counsel on record for the Respondent(s) : Mr. Sridhar Potaraju  
Mr. Y.V Anil Kumar  
Mr. Rajat Srivastava for R-1

APL No. 456 OF 2022

Southern Power Distribution Company of Andhra Pradesh  
Ltd. & Ors. .... Appellant(s)  
Versus  
Andhra Pradesh Electricity Regulatory Commission & Anr. .... Respondent(s)

Counsel on record for the Appellant(s) : Mr. Sidhant Kumar  
Ms. Manyaa Chandok

Counsel on record for the Respondent(s) : Mr. Sridhar Potaraju  
Mr. Y.V Anil Kumar  
Mr. Rajat Srivastava for R-1

APL No. 468 OF 2022



Southern Power Distribution Company of Andhra Pradesh Limited & Ors. .... Appellant(s)

Versus

Andhra Pradesh Electricity Regulatory Commission & Anr. .... Respondent(s)

Counsel on record for the Appellant(s) : Mr. Sidhant Kumar  
Ms. Manyaa Chandok

Counsel on record for the Respondent(s) : Mr. Sridhar Potaraju  
Mr. Y.V Anil Kumar  
Mr. Rajat Srivastava for R-1  
  
Mr. Hitendra Nath Rath for R-2

### ORDER

It is represented by the Learned Counsel on both sides that pleadings are complete. Registry to verify and, thereafter, include this appeal in the List of Finals of Court-I to be taken up from there, in its turn.

Sandesh Kumar Sharma  
Technical Member

Justice Ramesh Ranganathan  
Chairperson

mk/mkj/dk