

APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
(APPELLATE JURISDICTION)

**APPEAL No. 556 OF 2023 &  
IA Nos. 1373 & 1372 of 2023**

**Dated: 17.08. 2023**

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

**In the matter of:**

**Teesta Urja Limited (Now Sikkim Urja Limited)**

Registered office: B-2/1A Safdarjung Enclave,  
Africa Avenue, new Delhi – 110029

[(Represented by its Executive Director (PS&R))

**...Appellant**

VERSUS

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok building,  
36, Janpath, New Delhi – 110001  
(Represented by its Secretary)
2. Uttar Pradesh Power Corporation Limited  
14<sup>th</sup> Floor, Shakti Bhawan Extension,  
14-Ashok Marg, Lucknow,  
Uttar Pradesh – 226001  
(Represented by its Managing Director)
3. Paschimanchal Vidyut Vitran Nigam Limited  
Urja Bhawan, Victoria Park,  
Meerut, Uttar Pradesh – 250 001  
(Represented by its Managing Director)
4. Purvanchal Vidyut Vitran Nigam limited  
DLW Bhikaripur, Varanasi,  
Uttar Pradesh – 221 004  
(Represented by its Managing Director)

5. Madhyanchal Vidyut Vitran Nigam Limited  
4-A, Gokhale Marg,  
Lucknow, Uttar Pradesh – 226001  
(Represented by its Managing Director)
6. Dakshinanchal Vidyut Vitran Nigam Limited  
Urja Bhawan, NH-2, (Agra-Delhi bypass Road),  
Sikandra, Agra, Uttar Pradesh – 282002  
(Represented by its Managing Director)
7. Grid Controller of India Limited  
(Erstwhile Power System Operation Corporation  
Limited)  
B-9 (First Floor), Qutab institutional Area,  
Katawaria Sarai, New Delhi – 110016  
(Represented by its Chairman cum Managing Director)

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Basava Prabhu S. Patil, Sr.  
Adv. Mr. Vidhan Vyas  
Mr. Syed Haider Shah  
Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Sitesh Mukherjee for R-2 to 6

**JUDGMENT**

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

We had, by our order dated 19.06.2023, granted interim stay of the impugned order till 10.07.2023, making the stay order conditional on the Appellant continuing to inject power into the National Grid for a period of three weeks from today, and in not entering into any third party agreements,

to the extent of the capacity contracted with Respondent Nos. 2 to 6, during this period of three weeks.

As noted in our Order dated 19.06.2023, the dispute before the CERC related to a Power Purchase agreement entered into between the Appellant and Respondent Nos. 2 to 6 on 17.05.2021. Pursuant thereto, the Appellant supplied power to Respondent Nos. 2 to 6 for just 11 days from 20.10.2021 to 31.10.2021. It is not in dispute that, after 31.10.2021, the Appellant has not supplied power on any subsequent date (even till today) to Respondent Nos. 2 to 6. It is also necessary to note that the Appellant's grievance also includes non-payment by Respondent Nos. 2 to 6, for the supplies effected during the 10 day period between 20.10.2021 and 31.10.2021, for a period of more than 3½ months thereafter.

In terms of the PPA dated 17.05.2021, the Appellant issued a pre-termination notice on 30.01.2023 questioning which Respondent Nos. 2 to 6 invoked the jurisdiction of the CERC. The reliefs sought in the Petition filed by them before the CERC reads as under:

- “(a) Set-aside and quash the Impugned Letter dated 30.01.2023 bearing Reference No. TUL/PS&R/0001/2021-22/028 issued by Teesta Urja Limited;
- (b) restrain TUL from taking any coercive action/ further action pursuant to its Impugned Letter dated 30.01.2023;
- (c) direct TUL to pay compensation/consequential losses and damages along with carrying cost/interest under the HPPA to the Petitioners as may be determined by this Hon'ble Commission, based on the computation provided by the petitioners;
- (d) award cost and legal expenses in favour of the Petitioners; and

(e) grant such order, further relief(s) in facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioners.”

During the pendency of proceedings before the CERC, the Appellant terminated the PPA by its letter dated 26.04.2023. On the very same day, the Appellant filed an affidavit before the CERC intimating that the PPA had been terminated. It is not in dispute that, after 26.04.2023, several hearings took place before the CERC, including on 30.05.2023 wherein the CERC, after recording the submissions urged on behalf of the Respondents herein, also noted the submissions urged on behalf of the Appellant which included that the Respondents herein (Petitioners before the Commission) had not even prayed for resumption of supply in terms of the HPPA, they had only prayed for a stay of the letter issued by the Appellant on 30.01.2023, and, in any case, they had failed to make out any case for stay of termination of the HPPA or any other interim relief.

The CERC had, thereafter, observed that, keeping in view that the disagreements between the parties pertained to the form of the LC and the Default Escrow Account, it was appropriate to direct the parties to convene a meeting, and attempt to resolve such differences to arrive at a mutually agreed form of such PSM documents. The CERC further directed the parties to file their respective affidavits, after such meetings along with the minutes thereof, on or before 06.06.2023.

Thereafter, by the impugned order dated 08.06.2023, the CERC observed –

“3. Keeping in view the detailed submissions already made by both sides on 30.5.2023 and the outcome of their attempts to arrive at a mutually agreed form of PSM documents as brought on record by the respective

additional affidavit, the Commission taking into account the onset of the summer season and high demand period, deemed it appropriate to put in place a temporary arrangement for the resumption of power supply by TUL to UPPCL under the HPPA. However, keeping in view the concerns of TUL, the Commission ordered that such arrangements for the resumption of supply shall be subject to the following conditions:

(a) In addition to the LC & Escrow accounts as per the HPPA, UPPCL to make an advance payment to TUL equivalent to 1 (one) month's average supply bill. For the subsequent month, such an advance will be deposited by UPPCL, three days prior to the beginning of each month.

(b) UPPCL to provide LC to TUL, which will not include the word 'manually' as agreed to in the Meeting dated 3.6.2023. In addition, UPPCL will provide the DEA and Deed of Hypothecation in the format as agreed to by it.

(c) UPPCL to comply with the above PSM within a week from the date of issuance of this Record of Proceedings subject to which TUL will resume the supply under the HPPA immediately after that. In case, UPPCL fails to comply within the given timeline, TUL will not be obligated to resume the supply. In addition, if there is a default on the part of UPPCL to clear its dues against the supply of power at any time during the above interim arrangement, TUL will be at liberty to act in terms of the PPA.

(d) The above arrangement is purely ad-interim in nature and will continue till next date of hearing and will also be subject to the outcome of the present petition.

4. The matter to be listed for hearing on 11.8.2023.”

Mr. Basava Prabhu S. Patil, learned Senior Counsel and Mr. Anand K. Ganesan, learned Counsel appearing on behalf of the Appellant, would

submit that the CERC, despite being made aware that the PPA had itself been terminated on 26.04.2023 and though the Respondents had not subjected the said termination of the PPA to challenge before it, had issued directions which, in effect, amounted to implementation of the terms and conditions of the terminated PPA; the last supply effected by the Appellant to the Respondents was on 31.10.2021, more than a year and half prior to the date on which the Respondents had invoked the jurisdiction of the CERC on 06.02.2023; as on the date of the impugned order, there was no agreement in existence between the parties; and the CERC could not have directed enforcement of a non-existent agreement by way of the impugned order, more so an interim order passed during the pendency of proceedings before the Commission. Reliance is placed, on behalf of the Appellant, on **I.S. Sikandar (Dead) by LRs. Vs. K. Subramani and Others: (2013) 15 SCC Cases 27** in this regard. The Judgment, relied on behalf of the Respondents ie the Judgment of the Supreme Court in **Dorab Cawasji Warden vs. Coomi Sorab Warden and Others: (1990) 2 Supreme Court Cases 117** is sought to be distinguished by the learned Senior Counsel and the Learned Counsel for Appellant contending that restoration of status quo ante can, at best, be from the date of institution of the proceedings before the Commission; and, since the Appellant was not supplying power to the Respondents for nearly an year and half prior thereto, the said Judgment, which dealt with the conditions subject to which an interim mandatory injunction can be granted, is of no relevance.

On the other hand, Mr. Sitesh Mukherjee, learned Counsel for the 2<sup>nd</sup> Respondent, would submit that the prayer, sought in the Petition filed before the CERC, is widely couched and would bring within its ambit even a future termination of the PPA; by terminating the PPA, during the pendency of proceedings before the CERC, the Appellant had sought to

render the Petition itself infructuous; with a view to ensure that the situation, prevailing as on the date on which Respondent Nos. 2 to 6 had filed a Petition before the CERC, was maintained during the pendency of proceedings before it, it is always open to the CERC to issue directions such as those which have been subjected to challenge by the Appellant in the present appellate proceedings; it is evident, in the light of the law declared by the Supreme Court in **Dorab Cawasji Warden vs. Coomi Sorab Warden and Others: (1990) 2 SCC 117**, that the order passed by the CERC is in the nature of an interim mandatory injunction disabling the Appellant from causing prejudice to the Respondents herein; this Tribunal would not countenance any attempt by the Appellant to render the proceedings before the CERC infructuous; even if this Tribunal were to be inclined to remand the matter to the CERC, the directions issued by it on 19.06.2023 should be maintained during the pendency of proceedings before the CERC, as these orders are in the nature of a prohibitory injunction disabling the Appellant from rendering the Petition before the CERC infructuous; and, in the light of Section 94(2) of the Electricity Act, it is open to the CERC to pass such interim orders as it considers appropriate.

It is convenient to examine the aforesaid submissions, urged by Learned Senior Counsel and Learned Counsel on either side, under different heads.

#### **I. IS THE IMPUGNED INTERIM ORDER IN THE NATURE OF AN INTERIM MANDATORY INJUNCTION?**

While it is contended on behalf of the appellant, that the directions issued by the CERC, amounts to implementation of the terms and conditions of the terminated PPA which is impermissible in law, the submission urged on behalf of the 2<sup>nd</sup> Respondent, is that, by terminating the PPA during the pendency of proceedings before the CERC, the

Appellant had sought to render the Petition itself infructuous; with a view to ensure that the situation, prevailing as on the date on which Respondent Nos. 2 to 6 had filed a Petition before the CERC, was maintained during the pendency of proceedings before it, it is always open to the CERC to issue directions such as those which have been subjected to challenge by the Appellant in the present appellate proceedings; and the order passed by the CERC is in the nature of an interim mandatory injunction disabling the Appellant from causing prejudice to the Respondents herein.

Despite being made aware that the PPA had itself been terminated on 26.04.2023, and though the Respondents had not subjected the said termination of the PPA to challenge before it, the CERC, by the impugned order dated 08.06.2023, put in place a temporary arrangement for the resumption of power supply by the Appellant to the 2<sup>nd</sup> Respondent under the PPA, in view of the onset of summer season and high demand period, subject to the conditions that (a) in addition to the LC & Escrow accounts as per the PPA, the second respondent should make an advance payment to the Appellant equivalent to 1 (one) month's average supply bill; and, for the subsequent month, such advance should be deposited by the 2<sup>nd</sup> Respondent, three days prior to the beginning of each month; (b) the 2<sup>nd</sup> Respondent should provide LC to the Appellant, which will not include the word 'manually' as agreed to in the Meeting dated 3.6.2023; in addition, the 2<sup>nd</sup> Respondent should provide the DEA and Deed of Hypothecation in the format as agreed by it; (c) the 2<sup>nd</sup> Respondent should comply with the above PSM within a week from the date of issuance of this Record of Proceedings subject to which the Appellant should resume supply under the PPA immediately thereafter; in case, the 2<sup>nd</sup> Respondent failed to comply with the timelines, the Appellant would not be obligated to resume supply; and in addition, if there was a default on the part of the 2<sup>nd</sup> Respondent to clear



its dues against supply of power, at any time during the above interim arrangement, the Appellant would be at liberty to act in terms of the PPA.

As noted hereinabove, the PPA was not even in existence on the date of the impugned order. The CERC could not, therefore, have directed enforcement of a non-existent agreement, much less by way of an interim order passed during the pendency of proceedings before it. The repeated reference to the PPA in the interim order, more particularly the liberty granted to the Appellant to act in terms of the PPA in case the 2<sup>nd</sup> Respondent failed to clear its dues against supply of power at any time during the stipulated interim arrangement, establishes that the CERC had proceeded on the premise that the PPA was still in existence, despite being made aware by the Appellant, more than a month prior thereto, of its termination

Regarding the submission, urged on behalf of the 2<sup>nd</sup> Respondent, that the order passed by the CERC is in the nature of an interim mandatory injunction disabling the Appellant from causing prejudice to the Respondents, it must be borne in mind that a mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application. (**Halsbury's Laws of England, 4th Edn., Vol. 24, Para 948; Dorab Cawasji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117;**

**Samir Narain Bhojwani v. Aurora Properties & Investments, (2018) 17 SCC 203)**

The relief of interlocutory mandatory injunction is, generally, granted to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are: (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction. (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money. (3) The balance of convenience is in favour of the one seeking such relief. Being essentially an equitable relief, the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. (**Dorab Cawasji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117; Samir Narain Bhojwani v. Aurora Properties & Investments, (2018) 17 SCC 203**).

An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim

mandatory injunction. (**Kishore Kumar Khaitan v. Praveen Kumar Singh, (2006) 3 SCC 312**).

There is a marked distinction between moulding of relief and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a new set of things differing from the stage which existed at the date when the suit was instituted. (**Samir Narain Bhojwani v. Aurora Properties & Investments, (2018) 17 SCC 203**).

It is well established that an interim mandatory injunction is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. (**Metro Marins v. Bonus Watch Co. (P) Ltd., (2004) 7 SCC 478; Kishore Kumar Khaitan v. Praveen Kumar Singh, (2006) 3 SCC 312; Purshottam Vishandas Raheja v. Shrichand Vishandas Raheja, (2011) 6 SCC 73; and Samir Narain Bhojwani v. Aurora Properties & Investments, (2018) 17 SCC 203**).

In **Kishore Kumar Khaitan v. Praveen Kumar Singh, (2006) 3 SCC 312**, the Supreme Court held that, before ordering an interim mandatory injunction or refusing it, the court has first to consider whether the plaintiff has proved that he was in possession on the date of suit and on the date of the order, and he had been dispossessed the next day; unless a clear prima facie finding that the plaintiff was in possession on those dates is entered, an order for interim mandatory injunction could not have been passed; and any such order passed would be one without jurisdiction.

As a mandatory relief at an interlocutory stage can be granted only to restore the status quo, and not to establish a new set of things differing from

the state which existed at the date when the petition was instituted, the 2<sup>nd</sup> Respondent could only have been put in a position it was in on 06.02.2023 when they filed the Petition before the CERC. In the present case, the Appellant had stopped supply of power to the 2<sup>nd</sup> Respondent on 31.10.2021, more than a year and half prior thereto. As putting the 2<sup>nd</sup> Respondent, in the position it was in on 06.02.2023, would not have entitled them to claim supply of power from the Appellant, the submission that the interim order passed by the CERC is in the nature of an interim mandatory injunction is only to be noted to be rejected.

Further, none of the aforesaid tests stipulated for grant of interim mandatory injunction is satisfied in the present case. The impugned Order does not disclose the CERC even having considered whether the case before it satisfied any of the tests for grant of any such relief. In any event, the CERC could not have, by an interim order, sought to enforce the terms and conditions of the PPA which was neither in existence nor was its termination under challenge in the Petition pending before the CERC.

## **II. IN THE ABSENCE OF A CHALLENGE TO THE LETTER OF TERMINATION, NO INTERIM RELIEF COULD HAVE BEEN GRANTED:**

The submission, urged on behalf of the 2<sup>nd</sup> Respondent, that the prayer sought in the Petition filed before the CERC, is widely couched and would bring within its ambit even a future termination of the PPA, is devoid of merits.

After the petition was filed by the 2<sup>nd</sup> Respondent before the CERC on 06.02.2023, and during pendency of such proceedings, the Appellant terminated the PPA dated 17.05.2021 by its letter dated 26.04.2023, and informed the CERC of such termination by way of an affidavit filed on the same day. Though more than a month elapsed thereafter, before the

interim order was passed by the CERC on 08.06.2023, the 2<sup>nd</sup> Respondent took no steps to amend their pleadings and the prayer in the petition filed by them, to include a challenge to the letter of termination dated 26.04.2023. We have not been informed of the 2<sup>nd</sup> Respondent having taken any such steps even thereafter till Orders were reserved in this Appeal .

In this context, it is necessary to note that a party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party, and deprive him of his valuable rights; and the principle that the court should mould the relief, taking into consideration subsequent events, is not applicable in such cases. (**Om Prakash v. Ram Kumar, (1991) 1 SCC 441**)

In **Vinay Krishna v. Keshav Chandra, 1993 Supp (3) SCC 129**, the Supreme Court held that, from a reading of the plaint, it was clear that the specific case of the plaintiff was that she was in exclusive possession of property; she thought it was not necessary to seek the additional relief of possession; however, in view of the written statement of both the first and the second defendant, the plaintiff ought to have amended and prayed for the relief of possession also; by choosing not to do so, she took a risk; it was now evident that she was not in exclusive possession; there were also other tenants in occupation; in such an event, the relief of possession ought to have been asked for; and failure to do so, undoubtedly, bars the discretion of the Court to grant the decree for declaration.

On the question, whether the original suit filed by the plaintiff seeking a decree for specific performance, against the Defendants in respect of the suit schedule property, without seeking the declaratory relief with respect to termination of the agreement of sale was maintainable, the Supreme Court, in **I.S. Sikandar v. K. Subramani, (2013) 15 SCC 27**, held that, in the

original suit, the plaintiff had not sought a declaratory relief to declare the termination of agreement of sale as bad in law; in the absence of such a prayer having been sought by the plaintiff, the original suit filed by him before the trial court, for grant of decree for specific performance in respect of the suit schedule property on the basis of the agreement of sale, and consequential relief of decree for permanent injunction, was not maintainable in law.

In the light of the law declared by the Supreme Court, in the aforesaid judgements, the 2<sup>nd</sup> Respondent could not have been granted the relief of having the PPA implemented, even without the letter of termination of the PPA dated 26.04.2023 being set aside, which relief had not even been claimed by them even till the impugned interim order was passed on 08.06.2023.

### **III. FINAL RELIEF CANNOT BE GRANTED BY WAY OF AN INTERIM ORDER:**

Among the final reliefs sought by the 2<sup>nd</sup> Respondent, in the Petition filed before the CERC was to restrain the Appellant from taking any coercive action/ further action pursuant to its Impugned Letter dated 30.01.2023. Such a relief could have been granted by the CERC while passing final orders in the petition, only if the PPA had not been terminated by then. An order of restraint is to prevent any such action being taken, and not to set at naught an action already taken. Save the Petition being suitably amended to include a challenge to the letter of termination dated 26.04.2023, and a prayer to set it aside, no relief to implement a non-existent PPA could have been granted even as a final relief much less by way of an interim Order.

It is well settled that interim relief is granted in aid of, and as ancillary to, the main relief which may be available to the party on the final

determination of his rights in a suit or proceedings. As this is the purpose to achieve which power to grant temporary relief is conferred, in cases where the final relief cannot be granted in the terms sought for, temporary relief of the same nature cannot be granted (**State of Orissa Vs. Madan Gopal Rungta : AIR 1952 SC 12; Cotton Corporation of India Vs. United Industrial Bank, (1983) 4 SCC 625**). A relief which can be granted only at the final hearing of the matter, should not ordinarily be granted by way of an interim order. (**State of U.P. v. Desh Raj, (2007) 1 SCC 257**). The final relief, sought in a petition, cannot be granted at an interlocutory stage, that too without deciding the issues involved in the case. (**Union of India v. Modiluft Ltd., (2003) 6 SCC 65**)

Relying on its earlier decisions, in **CCE v. Dunlop India Ltd. (1985) 1 SCC 260**, **State of Rajasthan v. Swaika Properties (1985) 3 SCC 217**, **State of U.P. v. Visheshwar (1995 Supp (3) SCC 590)**, **Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa (1995 Supp (2) SCC 593)**, **Shiv Shankar v. Board of Directors, U.P.SRTC (1995 Supp (2) SCC 726)** and **Commr/Secy to Govt. Health and Medical Education Deptt. Civil Sectt. v. Dr. Ashok Kumar Kohli (1995 Supp (4) SCC 214)**, the Supreme Court, in **State of U.P. and others v. Ram Sukhi Devi, (2005) 9 SCC 733**, held that time and again the Supreme Court had deprecated the practice of granting interim orders which practically give the principal relief sought in the petition.

As held by the Supreme Court, in **State of Orissa Vs. Madan Gopal Rungta : AIR 1952 SC 12** and **Cotton Corporation of India Vs. United Industrial Bank, (1983) 4 SCC 625**, in cases where the final relief cannot be granted in the terms sought for, temporary relief of the same nature cannot be granted. As the CERC could not have granted the 2<sup>nd</sup> Respondent, the final relief sought by them in their petition, without their amending their petition to seek the relief of having the letter of termination

dated 26.04.2023 set aside, the CERC was wholly unjustified in granting them interim relief, which, in effect, is for implementation of the conditions of the PPA.

#### **IV. SECTION 94(2) OF THE ELECTRICITY ACT:**

The submission, urged on behalf of the 2<sup>nd</sup> Respondent, is that, in the light of Section 94(2) of the Electricity Act, it is open to the CERC to pass such interim orders as it considers appropriate.

Section 94 of the Electricity Act relates to the powers of the Appropriate Commission and, under sub-section (2) thereof, the Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

Section 94(2) expressly confers power on the Appropriate Commission to pass interim orders. The power conferred to pass such interim orders, as the Commission considers appropriate, is with reference to the nature of the interim order to be passed on the facts and circumstances of each case. While Section 94(2) uses the words “consider appropriate”, Section 111(3) uses the words “as it thinks fit”. Neither do the words “consider appropriate” confer power on the appropriate Commission to pass any interim order, nor do the words “as it thinks fit” enable this Tribunal to pass orders, at its whim or an order contrary to law.

The Commission is a creature of the Electricity Act, and its powers are circumscribed by the provisions of the said Act, the Rules made by the Central/State Govt, and the Regulations framed by itself. In a system governed by the Rule of law, no authority including the Commission can pass an order which does not satisfy the test of reason or an order which does not accord with law. Parliament has, in its wisdom, subjected orders



of the Commission, be it interlocutory or final, to the appellate scrutiny of this Tribunal, under Section 111 of the Electricity Act, only to ensure that the Commission does not overstep its bounds while passing any such order.

#### **V. INTERIM ORDER CANNOT BE CONTINUED AFTER THE APPEAL IS FINALLY DISPOSED OF:**

With regards the submission of Mr. Sitesh Mukherjee, learned Counsel for the 2<sup>nd</sup> Respondent, that, even if this Tribunal were to be inclined to remand the matter to the CERC, the directions issued by it on 19.06.2023 should be maintained during the pendency of proceedings before the CERC, as these orders are in the nature of a prohibitory injunction disabling the Appellant from rendering the Petition before the CERC infructuous, it must be borne in mind that the only course open to the 2<sup>nd</sup> Respondent to ensure that the proceedings before the CERC are not rendered infructuous, is to take necessary steps to challenge the validity of the letter of termination of the PPA dated 26.04.2023 before it.

That would, however, not justify this Tribunal continuing the interim order, passed during the pendency of appellate proceedings, even after the Appeal, preferred against the interim order passed by the CERC, is disposed of, for it is well settled that once the proceedings, wherein a stay was granted, are disposed of, any interim order granted earlier merges with the final order, **(State of U.P. thr. Secretary and Others Versus Prem Chopra 2022 SCC OnLine SC 1770; South Eastern Coalfields Ltd. v. State of M.P. (2003) 8 SCC 648)**, and an order of stay, which is granted during the pendency of proceedings, comes to an end with the disposal of the substantive proceedings. **(State of U.P. thr. Secretary and Others Versus Prem Chopra 2022 SCC OnLine SC 1770; Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board (1997) 5 SCC 772).**

While the interim order granted by us earlier can no longer be continued after the Appeal itself is allowed, it is made clear that this Order would not disable the 2<sup>nd</sup> Respondent from seeking appropriate interim relief before the CERC, and in case any such relief is sought, the prayer shall be considered in accordance with law.

Subject to the aforesaid observations, the Appeal is, accordingly, allowed. Consequently, the IAs pending shall also stand dismissed.

Pronounced in the open court on this the **17<sup>th</sup> day of August, 2023.**

(Sandesh Kumar Sharma)  
Technical Member

(Justice Ramesh Ranganathan)  
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

*tpd*

**COURT-1**

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

**APL No. 556 OF 2023 & IA No. 1906 OF 2023 & IA No. 1905 OF 2023**

**Dated: 24th August, 2023**

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

**In the matter of:**

**Teesta Urja Limited (Now Sikkim Urja Limited) .... Appellant(s)**

**Versus**

**Central Electricity Regulatory Commission .... Respondent(s)  
&Ors.**

Counsel on record for the Appellant(s) : Vidhan Vyas  
Syed Haider Shah For App1

Counsel on record for the Respondent(s) : For Res1  
Sitesh Mukherjee For Res2

**ORDER**

IA No. 1906 of 2023  
(*Urgent Listing*)

The matter having been listed before us, the application filed by the applicant/appellant having served its purpose stands disposed of.

IA No. 1905 of 2023  
(*for modification*)

There is an error in the Order passed by this Tribunal on 17.08.2023 to the extent that, while the contention urged on behalf of Respondent Nos. 2 to 6 was rejected, the order erroneously records the appeal having

been dismissed, when it should have been recorded that the Appeal was allowed. The word “dismissed” in the 2<sup>nd</sup> and 3<sup>rd</sup> last paragraph of this order shall stand substituted with the word “Allowed” and the word “fails and”, in the second last paragraph, shall stand deleted. A corrected copy of the order shall be made available to both the parties. Accordingly, the IA is disposed of.

**(Sandesh Kumar Sharma)**  
**Technical Member**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

*pr/js/sk*