IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL Nos. 261 of 2021 & 265 of 2022 & IA No. 86 of 2024

Dated : 9th July, 2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of :

APL No. 261 OF 2021

Adani Power Maharashtra Limited
Through its Authorised Signatory
9th Floor, Shikhar, Mithakhali Six Road,
Navrangpura, Ahemdabad– 380006 ...Appellant

Versus

1. **Maharashtra Electricity Regulatory Commission**
Through its Secretary,
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Mumbai 400005.
Email: mercindia@merc.gov.in

2. **Maharashtra State Electricity Distribution Company Ltd.**
Through the Chief Engineer (Commercial),
5th Floor, Prakashgadh, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai-400051.
Email: cercmsedcl@gmail.com ...Respondents

Counsel on record for the Appellant(s) : Amit Kapur for App. 1

Counsel on record for the Respondent(s) : Pratiti Rungta for Res. 1

Balbir Singh, Sr. Adv.
Anand K. Ganesan
Samir Malik
Rahul Sinha
Nikita Choukse for Res. 2

Appeal No. 265 of 2022 & IA No. 86 of 2024

Maharashtra State Electricity Distribution Company Ltd.
Through Chief Engineer,
5th Floor, Prakashgadh, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
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Email: cercmsedcl@gmail.com ...Appellant

Versus

1. **Maharashtra Electricity Regulatory Commission**
Through its Secretary,
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade,
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2. **Adani Power Maharashtra Limited**
Through its Managing Director
9th Floor, Shikhar, Mithakhali Six Road,
Navrangpura, Ahemdabad– 380006
Email: helpdesk.mumbaielectricity@adani.com ...Respondents

Counsel on record for the Appellant(s) : Balbir Singh, Sr. Adv.
Anand K. Ganesan
Samir Malik
Nikita Choukse
Rahul Sinha for App. 1

Counsel on record for the Respondent(s)	:	Pratiti Rungta for Res. 1 Amit Kapur for Res. 2

JUDGEMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. These two appeals arise out of the order dated 28th November, 2020 passed by Maharashtra Electricity Regulation Commission (MERC) in the Petition bearing case No. 132 of 2020 filed by Adani Power Maharashtra Limited (APML). Accordingly, both the appeals were heard together and are hereby being disposed off by way of this common judgement.

2. We find it convenient to refer to the parties by their names for the reason that describing them as Appellant or Respondent would cause confusion as a party which is Appellant in one of the Appeals, is a respondent in the other appeal.

3. Facts, in brief, giving rise to these two appeals are set out hereunder.

4. APML has set up a thermal power station with installed capacity of 3300 MW in District Tiroda, Maharashtra. Pursuant to competitive bidding exercise, it entered into four power purchase agreements with MSEDCL, details of which are as under :-

Particulars	**Unit 2**	**Unit 3**	**Unit 1**	**Unit 4**	**Unit**
Installed Capacity	660 MW	660 MW	660 MW	660 MW	660 MW
Contracted in the PPA(s) dated	1320 MW in PPA dated 08.09.2008		1200 MW in PPA dated 31.03.2010 125 MW in PPA dated 09.08.2010 440 MW in PPA dated 16.02.2013		
Date of Commencemen	30.03.2013		01.10.2013, 09.08.2014 and 16.02.2017		
Cut off date	14.02.2008		31.07.2009		
Total PPA Contracted Capacity	1320 MW from Units 2 & 3		1765 MW from Units 1, 4 and 5		
Originally envisaged coal source as per PPAs	Coal from Captive Mine, Linkage Coal and Imported Coal		Domestic Coal		
Current coal supply arrangement	(a) Linkage coal for 520 MW through FSA for 1180 MW under NCDP. (b) Linkage	Linkage coal for 660 MW under SHAKTI Policy	Linkage coal for 660 MW through FSA for 1180 MW under NCDP.	Linkage coal for 1320 MW under SHAKTI Policy	

5. Adani Power Mundra Limited also has set up a thermal power station of capacity 4620 MW at Mundra in Gujarat. It has also signed power purchase agreements with the Haryana utilities i.e. Uttar Haryana Bijli Vidyut Nigam Ltd. and Dakshin Haryana Bijli Vidyut Nigam Ltd. on 7th August, 2008 for supply of 1424 MW power from Phase IV of Mundra Power Project.

6. Fuel Supply Agreements (FSAs) were also signed by APML and APL Mundra for supply of domestic coal in terms of respective PPAs. APL Mundra signed FSA with Coal India Ltd. for 6.40 MT of Coal on 9th June, 2012 based on the PPA dated 7th August, 2008 for supplying power to Haryana utilities. APML also signed FSA with Coal India Limited for 4.91 MPPA quantum on 28th December, 2012 for its 1180 MW capacity for supplying power to MSEDCL.

7. The Govt. of India had notified New Coal Distribution Policy on 18th October, 2007 (in short NCDP 2007) assuring supply of 100% of normative coal requirement to Independent Power Producers (IPPs) at the prices notified by Coal India Limited as follows :-

> *"2.2 Power Utilities including Independent Power Producers (IPPs) / Captive Power Plants (CPPs) and Fertilizer Sector 100% of the quantity as per the normative requirement of the consumers would be considered*

for supply of coal, through Fuel Supply Agreement (FSA) by Coal India Limited (CIL) at fixed prices to be declared/notified by CIL. The units/power plants, which are yet to be commissioned but whose coal requirements has already been assessed and accepted by Ministry of Coal and linkage/ Letter of Assurance (LOA) approved as well as future commitments would also be covered accordingly."

8. On 19th June, 2013, the Coal India Limited issued a letter intimating all its subsidiaries the decision taken at 298th Board meeting of the Company, allowing Interplant Transfer of Coal ("IPT") as under :-

***"...A** proposal for allowing inter power plant transfer of coal from one Power Plant to another under the modified FSA applicable for New Power Plants (for both PSU/Govt. Pus and Private Pus) was placed before the 298th CIL Board in its meeting held on 27.5.2013. The CIL Board while approving to the proposal allowed such dispensation subject to the following conditions which stand as below after legal vetting:*

a) *Transfer of coal shall be allowed only between the power plants wholly owned by the Purchaser or its wholly owned subsidiary. No transfer of coal shall be allowed for a JV company of the Purchaser. The supply of coal shall for all commercial purpose under the FSA remain unchanged and on account of the original Power Plant.*
b) *Both the Power Plants should have executed FSA in the modified FSA Model applicable for new power plants and not having any supplies linked to coal blocks. In case of IPPs both the plants must have valid long term PPAs with DISCOMS.*
c) *In no case the transferred quantity to a plant together with the quantity supplied under the applicable FSA shall exceed the ACQ o f the Transferee Plant for a particular year which is proportional to the long term PPA with DISCOMS.*
d) *Transfer of coal will not be allowed to those plants who are allotted coal blocks under the arrangement.*
e) *In case of change in the ownership and no environmental clearance of the plant this facility shall stand withdrawn, and*
f) *Penalty/ Incentive under this arrangement would be considered in terms of (a) above..."*

9. Thus, as per the said IPT scheme, transfer of coal was allowed between power plants owned by the same company or its wholly

owned subsidiaries with a condition that supply of coal for all commercial purpose under FSA shall remain unchanged and shall be accounted for at the original plant. The scheme also put a ceiling to the effect that transferred coal quantity to a plant together with quantity supplied under FSA shall not exceed Assured Coal Quantity (ACQ) of the transferee plant. However, the said ceiling was subsequently removed vide letter dated 5th October, 2016 issued by Coal India Limited which reads as under :-

> *"Sub. Decision of 332nd CIL Board held on 13.9.2016 on Interplant Transfer of coal beyond the ceiling of ACQ of the transferee plant*
>
> *CIL Board after detailed deliberations and in view of the details brought in the agenda note, accorded its approval to the following:-*
>
> ***A) Allow Inter-Plant Transfer of coal beyond ceiling of ACQ of the Transferee Plant (taking together its own ACQ and quantum of the transferred coal) subject to furnishing an affidavit by the transferee plant affirming that theadditional coal supply beyond ACQ shall only be used for generating power for distribution under long term PPAs with DISCOMs.***
>
> *B) Enabling such dispensation through execution of an amendment agreement between Purchaser and relevant coal supplying subsidiary. And*
>
> *C) Modification in the relevant FAS clauses as placed in the Annexure (enclosed)*"
>
> [**emphasis supplied**]

10. On the basis of above referred notification dated 19th June, 2013 of Coal India Limited permitting IPT of coal, linkage coal meant for

consumption at Mundra Power Project was transferred to Tiroda power plant of APML since the FY 2013-14 and the coal imported by APML for consumption at Tiroda plant was actually utilized at Mundra Power Plant. As envisaged by the IPT scheme, the linkage coal consumed at Tiroda Power Plant was accounted for in the books of Mundra Power Plant whereas the imported coal consumed at Mundra Power Plant was accounted for in the books of Tiroda Power Plant.

11. Taking into account the overall domestic availability as well as actual requirement of coal, the Ministry of Coal, Govt. of India notified changes in NCDP 2007 on 26th July, 2013 in a relation to the coal to be supplied for next four years of the 12th Five Year Plan limiting the domestic coal quantity to 65%-75% of Annual Contracted Quantity (ACQ). This resulted in a significant change in the assurance of 100% normative coal supply requirement envisaged under the previous NCDP 2007. The relevant portion of the NCDP 2013 are quoted hereunder :-

> *"...2. Government has now approved a revised arrangement for supply of coal to the identified Thermal Power Stations (TPPs) of 78,000 MW capacity commissioned or likely to be commissioned during the period from 01.04.2009 to 31.03.2015. Taking into account the overall domestic availability and the likely actual requirements of these TPPs, it has been decided that FSAs will be signed for the domestic coal quantity of 65%, 65%, 67% and 75% of ACQ for the*

remaining four years of the 12th Plan for the power plants having normal coal linkages. ...

3. Para 2.2 and 5.2 of the New Coal Distribution Policy issued vide OM No. 23011/4/2007-CPD dated 18.10.2007 stand modified to the above event."

12. In the judgement rendered in Civil Appeal Nos. 5399-5400 titled Energy Watch Dog Vs. CERC &Anr. dated 11th April, 2017, the Hon'ble Supreme Court held NCDP 2013 to constitute Change in Law event thereby entitling the power producers to be compensated suitably for the loss suffered by them.

13. Meanwhile APML had filed two petitions bearing case Nos. 189 of 2013 and 140 of 2014 before MERC seeking Change in Law compensation in terms of the restitutory provisions contained in the PPAs.

14. While allowing the claims of APML for Change in Law compensation due to domestic coal shortfall, the Commission vide order dated 7th March, 2018 passed in these two petitions gave methodology based on the "difference of actual landed cost of alternate coal and landed cost of linkage coal" for restituting the APML to same economic position. We find it profitable to quote here the relevant portion of the order :-

"37. In terms of the ratio laid down by the Supreme Court in the Energy Watchdog Judgment, it is clear that the change in the coal supply assurance contained in the NCDP 2007 brought in through various directives and culminating in the NCDP 2013 notified by the MoC constitutes a Change in Law event. Therefore, Generators relying on domestic coal supply from CIL and whose bids were based on such supply, having been adversely affected by the curtailment in the supply of coal and non-issuance of domestic coal linkage/ LoA/FSA, are entitled to relief on account of such Change in Law in terms of their PPAs:

a) As per the NCDP 2007, assurance was given to all existing and future power Generators for supply of 100% coal (on normative requirement basis) through linkage/FSA at notified prices.
b) This position was substantially altered when the NCDP 2013 curtailed the assurance to existing LoA/FSA holders from 100% to 65-75%, and the assurance given for future commitments in NCDP 2007 was also deleted.
c) Further, the quantity assured under the NCDP 2007 was 100% at normative PLF, instead of which the quantity to be supplied under the NCDP 2013 was limited to 65-75%, depending on the year, for Generators with linkage/FSA; and the MoP Advisory envisaged, on the basis of the CCEA decision, that Generators who procure coal from other sources to meet this shortfall would be compensated by the Appropriate Commission."

15. Vide order dated 31st May, 2018 passed in Petition No. 97/MP/2017 titled Adani Power Mundra Limited Vs. Uttar and Dakshin Haryana Bijli Vidyut Vitran Nigam Limited, the Central Electricity Regulatory Commission (CERC) passed an order regarding settlement of Change in Law claims. While confirming the commercial settlement to be done for IPT Coal, CERC directed that the coal diverted to other plants shall be accounted for in the accounts of the original power plant i.e. Mundra (Gujarat) power plant and not that of Tiroda (Maharashtra) power plant. The relevant portion of the order is quoted hereunder:-

"*in our view, inter plant transfer of coal is permissible under the CIL policy and therefore, the coal supplied under the FSA dated 9.6.2012 to other plants has to be accounted for against the generation and supply of power to Haryana Utilities from Units 7, 8 and 9 of Mundra and all claims for change in law with respect to the PPA dated 7.8.2008 with respect to Haryana Utilities shall be considered after taking into account the coal diverted under inter plant transfer."*

16. In pursuance to the order dated 7th March, 2018 passed by MERC in the Case Nos. 189 of 2013 and 140 of 2014, APML raised invoices dated 6th October, 2018 on account of domestic coal shortfall for the period up to March, 2017 seeking compensation on the basis of the formula approved by the Commission. The details of the invoices are as under:-

PPA MW	**Period**	**Amount Rs Cr**
1320	July 13 to March 17	113.52
1200	August 14 to March 17	2461.60
125	August 14 to March 17	222.92
440	February 17 to March 17	23.36
	TOTAL	2821.40

17. Vide letter dated 4th January, 2019 APML intimated MSEDCL that the impact of NCDP 2013 needs to be re-calculated and also sent an e-mail of the even date revising its claim to Rs.3094/- crores. The

said claim was worked out by calculating the price of IPT coal at par with imported coal for all these previous years.

18. It appears that the MSEDCL was not agreeable to the revised claim of APML which included in-land transportation cost in the landed cost of imported coal accounted for at Tiroda Power Station. There had been exchange of emails between the parties in this regard but no fruitful result was yielded. Accordingly, aggrieved by the conduct of MSEDCL in not considering the in-land transportation costs in landed cost of imported coal accounted for at Tiroda power plant for computing the restitutory benefits for APML on account of Change in Law, the APMLapproached the Commission i.e. MERC by way of Petition bearing case No. 132 of 2020 which was disposed of by the Commission vide impugned order dated 28th November, 2020.

19. The reliefs claimed by APML in the Petition were as under :-

a) *Direct that in-land transportation cost of coal consumed by APML at Tiroda TPS pursuant to IPT of coal is subsumed in the methodology approved by this Ld. Commission for computing Change in Law compensation payable by MSEDCL in earlier Change in Law orders;*
b) *Direct MSEDCL to pay in-land transportation cost from sea port to Tiroda TPS for IPT coal as part of landed cost of alternate coal.*
c) *c) Direct MSEDCL to make full payments in compliance with this Ld. Commission's earlier Change in Law orders along with carrying cost/late payment surcharge in a time bound manner.*

20. The Petition was allowed by the MERC vide impugned order dated 28th November, 2020. Operative portion of the order passed by the Commission is as under :-

1. *Case No 132 of 2020 is allowed.*
2. *Inter Plant Transferred coal consumed at Tiroda shall be billed at cost of imported coal cost parity on GCV equivalence basis including normative in-land transportation cost from nearest sea-port (Dahej) to Tiroda. While doing that, any Change in Law relating to taxes and duties paid earlier needs to be adjusted so as to ensure that there is no over or under recovery of Change in Law compensation.*
3. *Adani Power Maharashtra Ltd to provide required data to Maharashtra Electricity Distribution Co. Ltd. within a month from issuance of this Order and Maharashtra Electricity Distribution Co. Ltd. to complete scrutiny of claim within 2 months thereafter.*
4. *As ruled in Order dated 7 March 2018, Adani Power Maharashtra Ltd is eligible for change in law compensation which is incremental cost incurred by it for sourcing alternate coal due to coal supply shortfall i.e. difference between landed cost of alternate coal and landed cost of FSA/MoU coal.*
5. *Maharashtra Electricity Distribution Co. Ltd. is at liberty to file Petition before Central Electricity Regulatory Commission claiming passthrough of benefit accrued to Adani Mundra due to Inter Plant Transfer scheme.*
6. *As ruled in para 20.15 above, specifically Adani Power Maharashtra Ltd. shall within the timeline given opt for more economical option to the IPT Coal.*

21. These directions/findings of the Commission have been assailed by MSEDCL in Appeal No. 265 of 2022.

22. Apart from granting the reliefs to the APML in the impugned order, the Commission has also issued following directions to it :-

a) *Direction to APML to participate in swapping of coal and transfer saving to be accrued to consumers which will be scrutinized and monitored by the Committee appointed by the Govt. of India.*

b) *Any generation above normative Plant Load Factor (PLF) on annual basis would not be eligible for compensation on account of coal shortfall.*

c) *APML to submit appropriate index for another nearest route and port, handling charges for nearest major port approved by TAMP.*

d) *Direction that the Delayed Payment Charges (DPC) shall not be payable by MSEDCL in case the delay is attributable to APML.*

e) *Direction to APML to approach Coal India Limited for transfer of cheapest coal to cheaper generator i.e. cheapest unit Tiroda TPS.*

23. APML is aggrieved by these directions issued by the Commission in the impugned order and has assailed the same by way of Appeal No. 261 of 2021.

24. We find it necessary to note that Adani Power (Mundra) Ltd. had filed another petition bearing No. 269/MP/2018 before CERC for

clarification/declaration that the findings of the Commission contained in para 61 of the order dated 31st May, 2018 in Petition No. 97/MP/2017 and IA No. 21 of 2018 are applicable to the Change in Law compensation pertaining to taxes and duties approved under Order dated 6th February, 2017 in Petition No. 156/MP/2014 as well and further direction to the respondent to pay Rs.895.14 crores (Rs.566.83 crores related to domestic coal shortfall + Rs.328.58 crores related to taxes and duties) unilaterally deducted from the monthly bills, supplementary invoices along with applicable late payment surcharge.

25. The petition was disposed of by the Commission vide order dated 8th July, 2019 in favour of AP(M)L. The CERC rejected the contention of Haryana utilities that APML was liable to pay taxes and duties only for the coal which has actually been consumed and not for IPT coal and held that in view of the order dated 6th February, 2017 in Petition No. 156/MP/2014, the coal supply, under Fuel Supply Agreement dated 9th June, 2012, to other plant has to be accounted for the generation and supply of power to Haryana Utilities from units 7,8 & 9 on Mundra TPP for all commercial purposes.

26. The Haryana utilities appealed against the said order of the Commission before this Tribunal by way of Appeal No. 231 of 2021. Vide judgement dated 21st December, 2021, this Tribunal held that communication dated 19th June, 2013 issued by Coal India Limited permitting IPT not to be a Change in Law event.

27. The matter was carried to the Hon'ble Supreme Court by the Haryana utilities by way of Civil Appeal No. 2908 of 2022. In the judgement dated 20th April, 2023, reported as (2023) 7 Supreme Court Cases 623 Uttar Haryana Bijli Vitran Nigam Limited and Anr. Vs. Adani Power (Mundra) Limited and Anr., the Hon'ble Supreme Court held the IPT policy to be a Change in Law event benefitting the licensees and directed the CERC to compute and pass on the benefit to the Distribution Licensees of Haryana, Maharashtra and Rajasthan.

28. We may also note that during the proceedings of these appeals before this Tribunal, MSEDCL had approached the Hon'ble Supreme Court by way of Civil Appeal Nos. 1781 and 1782 of 2024 seeking postponement of hearing these appeals till after the decision of the CERC pursuant to the directions of the Hon'ble Supreme Court in judgement dated 20th April, 2023. However, the Hon'ble Supreme Court

vide order dated 8th February, 2024, after taking on record of submissions made by Learned Senior Counsels appearing for the parties, left it to this Tribunal to proceed in accordance with law, after ascertaining the factual position.

29. Accordingly, we have heard the Learned Counsels appearing for APML and MERC as well as the Learned Senior Counsel appearing for MSEDCL on the said aspect covered under above noted order dated 8thFebruary, 2024 of the Hon'ble Supreme Court as well as on merits of both the Appeals.

Appeal No. 265 of 2022

30. Following issues arise for our determination in this Appeal:-

(i) Whether the hearing of the appeal should be postponed till after the decision of CERC in the light of the directions made by the Hon'ble Supreme Court in above noted judgement dated 20th April, 2023 in Civil Appeal No. 2908 of 2022 titled as Uttar Haryana Bijli Vitran Nigam Limited and Anr. Vs. Adani Power (Mundra) Limited and Anr.?

(ii) Whether normative transportation costs from nearest sea port Dahej up to Tiroda has to be included in the cost of imported coal for arriving at landed cost for alternate coal at Tiroda plant?

Issue No. 1 :

31. Learned Senior Counsel appearing for MSEDCL vehemently argued that the impugned order has been passed by MERC on the basis of the order dated 31st May, 2018 of the CERC which held the IPT policy to be commercial mechanism for the benefit of generator and not a Change in Law event to benefit the Distribution Licensees. This was followed by the order dated 8th July, 2019 from the CERC in Petition No. 269/MP/2018 holding that IPT Policy would effect the Distribution Licensees of Haryana, Maharashtra and Rajasthan as it involved inter plant transfer from the generating station of Adani Power in Mundra (Gujarat), Tiroda (Maharashtra) and Kawai (Rajasthan). He submitted that definition of Law has been changed completely in as much as the Hon'ble Supreme Court judgement dated 20th April, 2023 holds the IPT policy a change in Law event benefitting the Distribution Licensees. It is argued that the Hon'ble Supreme Court has reversed both the above decision of CERC dated 31st May, 2018 and 8th July, 2019 as well as

the decision of this Tribunal dated 21st December, 2021 in Appeal No. 231 of 2021 by holding the savings of transportation charges have to be passed on to appropriate Distribution Licensees.

32. It is argued that the petition filed by APML before MERC was based on the contention that IPT policy is not a Change in Law event but it has now taken a completely different position by stating before the Hon'ble Supreme Court on 8th February, 2024 during the course of the hearing in Civil Appeal Nos. 1781 & 1782 of 2024 filed by MSEDCL that issue involved in the said appeal is nothing to do with the IPT policy and it only pertains to imported coal.

33. It is further submitted that the remand proceedings before the CERC as directed by the Hon'ble Supreme Court in the judgement dated 20th April, 2023 have reached an advanced stage and, therefore, this Tribunal ought not to decide the instant appeal for the reason that any attempt to adjudicate the present appeal would tantamount to deciding the aspect which has been referred by the Hon'ble Supreme Court to CERC. It is argued that there are misleading statements which have been given on behalf of the APML before the Hon'ble Supreme

Court on 8th April, 2024 only with a view to avoid the implications of the decision of the Hon'ble Supreme Court dated 20th April, 2023.

34. Per contra, it is argued on behalf of the APML that the judgement of Hon'ble Supreme Court dated 20th April, 2023 in Civil Appeal No. 2908 of 2022 has no bearing on the present appeal for the reason that it is only with regards to the domestic/linkage coal and does not deal with imported coal. It has been further pointed out that the judgement is only with regards to the Mundra Power station of Adani Power (Mundra) Limited and does not deal with Tiroda Thermal Power Station of APML. It is further argued that the focal point of distinction between the two cases is source of coal i.e. imported or domestic and not whether the issue pertains to IPT of coal. Thus, it is submitted that there is no need to await the decision of CERC in the remand proceedings as it will have absolutely no bearing upon the outcome of this appeal.

35. In order to properly analyze the rival submissions of the Learned Counsels, we find it apposite to reproduce the order dated 8th February, 2024passed by the Hon'ble Supreme Court in Civil Appeal Nos. 1781 & 1782 of 2024 titled as MSEDCL Vs. APML & Anr.:-

"Learned Senior Advocate appearing on behalf of the appellant – Maharashtra State Electricity Distribution Company Limited submits that the judgment passed by this Court on 20.04.2023 in "Uttar Haryana Bijli Vitran Nigam Limited and another vs. Adani Power (Mudra) Limited and Another" has remanded the matter to the Central Electricity Regulatory Commission after, inter-alia, holding that the inter-Plant Transfer amounts to 'Change in Law', and it has bearing on the cross-appeals pending before the Appellate Tribunal for Electricity.
Learned Senior Advocate(s) for respondent no. 1 – Adani Power Maharashtra Limited is present in the Court on advance notice/Caveat. It is stated on behalf of respondent no.1 – Adani Power Maharashtra Limited that the issues raised in the cross appeals filed by respondent no. 1 – Adani Power Maharashtra Limited and the appellant – Maharashtra State Electricity Distribution Company Limited before the APTEL pertain only to imported coal, and the issue with regard to the IPT, which arises in the case of domestic coal, is not sub-judice in the appeals.

We have taken the statements on record, ***but would leave it to the APTEL to proceed in accordance with law, after ascertaining the factual position****.*

Recording the aforesaid, the appeals are disposed of.

Pending application(s), if any, shall stand disposed of."

(Emphasis supplied)

36. From the perusal of the said order, it is manifest that the Hon'ble Supreme Court merely recorded the statements of the Learned Senior Counsels appearing on behalf of the parties and left it to this Tribunal to proceed in accordance with law after ascertaining the factual position. Therefore, it is for this Tribunal to ascertain whether the decision of CERC in the remand proceedings pursuant to judgement

dated 20th April, 2023 of the Hon'ble Supreme Court in Civil Appeal No. 2908 of 2022 would have any bearing upon the outcome of this appeal.

37. Perusal of the pleadings of the parties i.e. APML & MSEDCL before MERC in Petition No. 132 of 2020 (which has been disposed off by the Commission vide impugned order dated 28th November, 2020) would clearly reveal that the petition has been filed by APML to claim in-land transportation costs of the imported coal from nearest port upto Tiroda power plant as restitutory benefits on the basis of order dated 7th March, 2018 passed by MERC in Case Nos. 189 of 2013 and 140 of 2014 filed by APML directing MSEDCL to pay to APML "Difference of landed cost of alternate coal and landed cost of linkage coal" as Change in Law compensation. It is noteworthy that MERC had passed the order dated 7th March, 2018 in pursuance to the judgement of the Hon'ble Supreme Court in Energy Watch Dog Vs. CERC &Anr. Dated 11th April, 2017 wherein NCDP 2013 was held to be Change in Law event entitling the power producers to be compensated suitably for the loss suffered by them on account of shortfall in supply of domestic coal occasioned due to the said policy.

38. It is evident that the petition of APML concerned only with the Thermal Power Station at Tiroda in Maharashtra and related to imported coal. It did not deal with either with the linkage coal or the Thermal Power Station at Mundra in Gujarat. To the contrary, the case before the Hon'ble Supreme Court in Civil Appeal No. 2908 of 2022 (decided on 20th April, 2023) concerns with Thermal Power Station at Mundra in Gujarat and raised an issue as to whether the IPT policy constituted a Change in Law event which was answered in affirmative by the Court. Therefore, the subject matter of the case before the Hon'ble Supreme Court in Civil Appeal No. 2908 of 2022 and the issues involved therein were totally distinct from the subject matter of the present appeal and the issues involved therein.

39. Essentially there had been two independent transactions which may be stated as under :

(i) Transfer of linkage coal from MCL Coal Mine Talchar by AP(M)L to Tiroda power plant of APML and its utilization in the said plant under the IPT scheme. Despite being utilized in Tiroda power plant, such coal was booked at Mundra power plant as envisaged under the IPT scheme.

(ii) Import of coal by APML which was actually consumed at Mundra power plant of AP(M)L but has been booked at Tiroda power plant of APML for the reason that under the IPT scheme, domestic/linkage coal consumed at Tiroda power plant has been booked at Mundra power plant.

40. The case before the Hon'ble Supreme Court in Civil Appeal No. 2908 of 2022 decided on 20th April, 2023 related to the transaction No. (i) whereas the instant appeal related to the transaction No. (ii) and thus, are totally independent of each other. This fact is also manifest from the following observations of the Hon'ble Supreme Court in the said judgement dated 20th April, 2023 in Civil Appeal No. 2908 of 2022;

> *32. "It is to be noted that, while submitting the bid, AP(M)L must have factored in the cost of transportation of linkage coal from MCL Coal Mine, Talcher to its plant at Mundra. As per the details given in the PPA, the mode of transportation is through railway. As such, prior to the IPT being permitted, AP(M)L was bound to utilize the linkage coal from MCL Coal Mine, Talcher, only for the purpose of its original power plant i.e., AP(M)L. Only on account of the IPT would it be in a position to utilize the coal from MCL Coal Mine, Talcher either for its plant in Maharashtra or in Rajasthan. Similarly, it will be entitled to utilize the coal linkages for its plant in Maharashtra or in Rajasthan for production of energy in its other power plants. As such, there is bound to be a variance in the cost of transportation by railways. For example, if the coal is to be transported from MCL Coal Mine, Talcher to AP(M)L, the cost of*

railway transportation would be higher as compared to the cost of railway transportation from MCL Coal Mine, Talcher to Tiroda TPS. We are only giving this example as an illustration."

41. It is, therefore, clear that the IPT scheme affected only the Mundra power plant of AP(M)L in Gujarat for the reason that on account of the said scheme, it utilized the coal from MCL coal mine, Talchar in the power plant at Tiroda in Maharashtra. Hence, the beneficiaries would be the Haryana utilities to whom power is supplied from Mundra power plant. MSEDCL cannot be claimed to be a beneficiary under the IPT scheme for the reason that it does not get any power supply from Mundra power plant. Despite the same, if MSEDCL intends to derive any financial benefit from IPT Policy, which has been held as a Change in Law event by the Hon'ble Supreme Court in judgement dated 20th April, 2023, it would be well advised to file an appropriate petition before the MERC which would be looked into by the Commission as per law. MSEDCL cannot be permitted to raise such a claim in the present proceedings which has been initiated by APML claiming restitutory compensation for the loss suffered by it on account of NCDP 2013 which has been held as a Change in Law event by the Hon'ble Supreme Court in Energy Watch Dog judgement.

42. To clarify further, we may note that there are two Change in Law events which affect and concern the Thermal Power Stations. First event is the shortfall of domestic coal supply which resulted due to NCDP 2013 and was held to be Change in Law event by the Hon'ble Supreme Court in Energy Watch Dog judgement. Another is IPT policy reflected in the letters dated 19th June, 2013 and 5th October, 2016 issued by Coal India Limited permitting transfer of coal between power plants owned by the same company or its wholly owned subsidiaries with certain conditions, which has been held as a Change in Law event by the Hon'ble Supreme Court in judgement dated 20th April, 2023 in Civil Appeal No. 2908 of 2022 in Uttar Haryana Bijli Vitran Nigam Ltd. case (supra). The case of APML is based upon the first mentioned Change in Law event which was to the benefit of power producers entitling them to be compensated suitably for the loss suffered by them due to shortfall in supply of domestic coal. The case before the Hon'ble Supreme Court in Civil Appeal No. 2908 of 2022 was founded upon the 2nd mentioned Change in Law event related to the IPT Policy specified in the letters dated 19th July, 2013 and 5th October, 2016 issued by Coal India Limited which were held to be benefitting the Distribution Licensees as it resulted in the savings in the railway transportation of

coal which ought to be passed on to the DISCOMS and ultimately to the consumers.

43. Hence, we are of the considered opinion that the decision of CERC in the remand proceedings in the light of the judgement dated 20th April, 2023 of the Hon'ble Supreme Court would have absolutely no bearing upon the facts of the instant appeal. Therefore, no need is felt to postpone the hearing as well as decision of this Appeal.

44. Having held so, we shall now proceed to adjudicate upon the main controversy between the parties which has been crystalized in Issue No. 2 herein above.

Issue No. 2

45. We have already noted hereinabove that the domestic/linkage coal meant for Mundra Power plant was transferred to and consumed at Tiroda Power Plant under IPT scheme but has been accounted for at Mundra Plant. As a corollary imported coal meant for Tiroda plant was consumed at Mundra plant but has been accounted for at Tiroda plant. Accordingly AP(M)L has billed APML for imported coal on GCV equivalence basis. Normative Transportation cost of coal from nearest

sea port Dahej upto Tiroda has been included in the bill. APML has paid the bill and booked it in its audited accounts, for which it has sought to be compensated by MSEDCL (to whom it supplies power from the Tiroda power plant) under “Change in Law” clause of the PPA.

46. Undisputedly, the imported coal has not been actually transported to Tiroda as it was utilized at Mundra Plant. As per the contentions of APML, it is settled legal position that transportation cost needs to be allowed while computing Change in Law compensation and hence it is entitled to claim normative transportation cost of imported coal also from MSEDCL.

47. MSEDCL is not disputing its liability to pay APML the cost of imported coal, which has been consumed at Mundra Plant but accounted for at Tiroda Plant, as change in law compensation. It is only opposing the inclusion of normative transportation cost of imported coal in the bill by APML on the contention that no portion of compensation under Change in Law can be granted on hypothetical grounds without actually incurring any expenses.

48. Hence, we are called upon to decide whether normative in-land transportation cost from nearest sea port Dahej upto Tiroda can be included in the cost of imported coal to arrive at landed cost of alternated coal at Tiroda plant?

49. Learned Senior Counsel appearing for MSEDCL sternly argued that such claim of APML is only fictional in nature as there was no actual in land transportation of imported coal from sea port to Tiroda. It is argued that in the absence of any actual in-land transportation, no question of payment of transportation charges even as normative basis arises. Relying upon the judgements of Hon'ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power Ltd. (2019)5 SCC 325, Karsandas H. Thacker vs The Saran Engineering Co. Ltd. AIR 1965 SC 1981 and Mafatlal Industries Ltd. Vs. UOI (1997) 5 SCC 536, it is argued by Learned Senior Counsel that compensation is payable only when there has actual loss/expenditure and not on fictional basis.

50. It is further argued that mere payment of such transportation charges by APML to AP(M)L would not make it actual expenditure in the absence of any actual in land transportation of imported coal to Tiroda. It is submitted that MSEDCL cannot be made to pay for a non-

existant or fictional transaction. It is further argued that such payment, if any, made by APML to AP(M)L was without any consideration and hence MSEDCL cannot be burdened with the same. According to the Learned Counsel, such a sham transaction between APML &AP(M)L attracts Doctrine of Lifting of Corporate veil to uncover the fraudulent nature of transaction between the two companies.

51. Per contra, Learned Counsel for APML argued that APML is claiming restitution as Change in Law relief on account of domestic coal shortfall i.e. entire landed cost of alternate (imported) coal which necessarily included inland transportation cost. It is submitted that once imported coal is deemed to have been utilized as alternate coal at Tiroda power plant of APML, all costs associated with such alternate coal including the in-land transportation cost ought to be paid as part of landed cost of alternate coal.

52. It is further argued by the Ld. Counsel that APML has actually paid normative in land transportation cost of imported coal to AP(M)L as per bill raised by AP(M)L and therefore, its claim in this regard cannot be said to be fictional or imaginary. To show such payment made by APML to AP(M)L, Learned Counsel has drawn our attention to auditor's

certificate dated 06/11/2020 which was filled before the Commission also and demonstrates that claim of APML in invoice dated 06/10/2018 subsumes in-land transportation cost of coal. He would further submit that the transaction between APML & AP(M)L was not a fraudulent or fictitious but a genuine one permitted under IPT scheme and based on settled legal principles. He argued that there is nothing record which may necessitate Lifting of Corporate veil of the two companies [APML & AP(M)L] as contended on behalf of MSEDCL.

53. Learned Counsel for MERC has supported the impugned order in its entirety and submitted that it does not suffer from any error at all.

54. We have given our anxious consideration to the rival submissions made by the Learned Counsel and have also gone through the written submissions filed by them.

55. We may note that NCDP-2013 created a shortfall in supply of domestic coal to the thermal power plants by limiting the domestic coal quantity to 65%-75% of Annual Contracted Quantity (ACQ) as per the Fuel Supply Agreements (FSA) for the remaining four years of the 12th Five Year Plan. Prior to it, Coal India Ltd. has issued notification dated

19/06/2013 allowing Inter Plant Transfer (IPT) of coal between power plants wholly owned by the coal purchaser or its wholly owned subsidiaries subject to certain conditions set out therein, which were released vide subsequent letter dated 05/10/2016 issued by the Company. However, it was specified that supply of coal for all commercial purposes and the FSAs shall remain unchanged and the supplied coal shall be accounted for at the original power plant as per the FSA.

56. As per the case of APML, when shortfall of domestic (linkage) coal to its Tiroda Power Plant from MCL coal mine, Talcher was sought to be mitigated by usage of imported coal, it resulted in frequent technical problems due to variation in thermal stress, thereby causing damage to the equipment. Accordingly, it opted for IPT scheme in order to overcome technical constraints in operating the power plant and to ensure continuous power supply to MSEDCL.

57. Consequently, the domestic coal from MCL Coal Mine, Talcher (which was meant for Mundra Power Plant as per the FSA) was utilized in Tiroda Power Plant of APM but was accounted for in the books of Mundra Power Plant as envisaged under the IPT scheme. As a

corollary, the imported coal was utilized at Mundra Power Plant of AP(M)L but was booked at Tiroda Power Plant.

58. IPT scheme had created a fiction that even though coal meant for a particular power plant under the FSA, is consumed at some other power plant under the scheme yet it would be deemed to have been consumed at the original power plant as per the FSA and would be booked there. It is for this reason that the domestic coal and imported coal, in the present case, were deemed to have been utilized at Mundra Power Plant and Tiroda Power Plant respectively (even though it was actually vice-versa) and were accounted for in the books of these power plants.

59. We feel in agreement with arguments on behalf of APML that once the imported coal was deemed to have been consumed at its Tiroda Power Plant, all costs associated with such coal including in land transportation from nearest sea port ought to be taken into account while arriving at the landed cost of the imported coal. Evidently, the imported coal has not been utilized at the sea port itself. It had to be transported to a thermal power plant where it could be consumed. In the present case, when the imported coal is deemed to have been

consumed at Tiroda power plant of APML due to legal fiction created by IPT scheme and has been booked there, it naturally follows that the landed cost of imported coal must include the normative in land transportation cost from nearest sea port.

60. It is a settled law that a legal fiction must be carried to its logical extent and be given full effect to enable a person, for whose benefit it was created, to obtain all the consequences flowing therefrom. On this aspect, we find it advantageous to quote the following observations of Hon'ble Supreme Court in State of Mysore V/s Fakkrusab Babusab Karanandi (1977) 1 SCC 666:

> *"**3.** Now in order to appreciate the contention that has been raised on behalf of the State in support of the appeal, it is necessary to notice the various changes which Section 60 of the Principal Act went through from time to time during the relevant period. Section 60 clause (b) as it originally stood provided that no Magistrate shall take cognizance of an offence punishable under any section of the Act other than Section 35 or 38 or 46 or 48 "except on his own knowledge or suspicion or on the complaint or report of an Excise or Police Officer". But before the charge-sheet in the present case came to be filed by the police, an amendment was made in Section 60 clause (b) by Mysore Ordinance 4 of 1970 which came into force on August 7, 1970. Section 18 of this amending Ordinance omitted the words "or police" in clause (b) of Section 60. The result was that cognizance of an offence punishable under Section 34 could not be taken by a Magistrate "except on his own knowledge or suspicion or on the complaint or report of an Excise Officer". Section 60(b) was also added at the same time and by this new section inter alia offence under Section 34 was made cognizable and the provisions of the Code of Criminal Procedure, 1898 with respect to cognizable offences were made applicable to such offence. It was on the basis of the amended clause (b) Section 60 that the learned Judicial Magistrate as well as the Sessions Judge Held that cognizance of the offence*

under Section 34 charged against the respondent could not be taken, since the charge-sheet was filed by the police and not by an Excise Officer. The learned counsel appearing on behalf of the State contended before us that even on the language of the amended clause (b) of Section 60 without the words "or police", it was competent to the Judicial Magistrate by reason of the enactment of Section 60(B) to take cognizance of the offence, but it is necessary for us to examine this contention since we find that before the Revision Application came to be heard by the High Court, a further amendment was made in clause (b) of Section 60 by Mysore Act 1 of 1971 and that restored the position which obtained prior to the amendment made by Mysore Ordinance 4 of 1970. Mysore Act 1 of 1971 was deemed to have come into force on August 7, 1970 and Section 23 of this Act provided inter alia that the amendment to Section 60 made by Mysore Ordinance 4 of 1971 shall be deemed never to have been made and the provisions of Section 60 as they stood prior to the said amendment shall be deemed to continue to be in force. The result of the enactment of this provision by More Act 1 of 1971 was that the amendment made in Section 60 clause (b) by deleting the words "or police" by Mysore Ordinance 4 of 1970, was obliterated and wiped out with retrospective effect so that in the eye of the law it was never made at all. ***It is now settled law that when a legal fiction is enacted by the legislature, the Court should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect to it.*** *We must, therefore, proceed on the basis that the words "or police" were always there in clause (b) of Section 60, even at the time when the learned Judicial Magistrate made his order dated October 3, 1970 refusing to take cognizance of the offence and returning the charge-sheet to the police. If these words were in clause (b) of Section 60 at that time, then obviously the learned Magistrate was in error in refusing to take cognizance of the complaint on the ground that the charge-sheet was not filed by an Excise Officer but by the police. That is the clear effect of the legal fiction enacted in Section 23 of Mysore Act 1 of 1971 and that this would be so is amply supported by the decision of this Court in M.K. Venkatachalam, I.T.O. v. Bombay Dyeing and Manufacturing Co. Ltd. [AIR 1958 SC 875 : 1959 SCR 703 : 34 TR 143] The High Court as well as the Court of Sessions, were therefore, clearly in error in affirming the order made by the learned Judicial Magistrate and it must be Held that the charge-sheet was validly filed before the learned Judicial Magistrate by the police and the Judicial Magistrate was entitled to take cognizance of the offence on the basis of such charge-sheet."*

61. Again in State of A.P. & Anr. V/s A.P. Pensioner's Association (2005) 13 SCC 161, the Apex court observed as under :-

*"**28.** Computation of retirement gratuity payable to a government servant is, therefore, required to be done on the basis of the formula laid down therein. A bare perusal of the aforementioned Rule clearly shows that for the purpose of computation either 1/4th of the emoluments for each completed six-monthly period of service, or 3/16th of emoluments for each completed six-monthly period of service, is to be taken into consideration. Such emoluments necessarily were payable either immediately before the date of retirement or the date of death. On 1-4-1999, in view of the clear expressions contained in the aforementioned GO No. 114, those employees who retired between the period 1-7-1998 and 1-4-1999 would have received the actual benefit calculated in terms of the said Rule. The submission of Mr Lalit to the effect that they became entitled to enhanced pay and, therefore, to enhanced gratuity from 1-7-1998 is not wholly correct. They became entitled thereto but only notionally for the purpose of calculation of such recurring liability of the State which became payable with effect from 1-4-1999. The High Court has heavily relied upon the **purported legal fiction created in the said Rule** [**Ed.**: Rule 1(2) of the A.P. Revised Scales of Pay Rules, 1999.] to the effect that the same would come into force with effect from 1-7-1998. **The legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom**.*

***29.** In GurupadKhandappaMagdum v. HirabaiKhandappaMagdum [(1978) 3 SCC 383 : (1978) 3 SCR 761] , whereupon Mr Lalit placed strong reliance, the Court was concerned with the share of the deceased in the coparcenary property in terms of Section 6 of the Hindu Succession Act, 1956. In terms of the said provision a legal fiction was created for the purpose of reckoning the share of the deceased which would have been allotted to him if a partition of the property had taken place immediately before his death. The plaintiff therein had 1/6th interest in the share. Applying the principles laid down in the Explanation appended to Section 6 of the Hindu Succession Act, it was held that the plaintiff was also entitled to 1/6th share from 1/4th share of the coparcenary property i.e. to say 1/24th. As on the date of partition, the plaintiff was to have an independent 1/4th share, the Court held that the plaintiff's share would be 1/4th + 1/24th in the property.*

30.** The case at hand indeed poses a different problem. Although like GurupadKhandappaMagdum [(1978) 3 SCC 383 : (1978) 3 SCR 761] a notional revision of pay was to be considered as if the same took effect from 1-7-1998, but the Rules went further and stated that the actual monetary benefit thereof shall be given with effect from 1-4-1999. The Rules, therefore, not only create a legal fiction but also provide the limitations in operation thereof. If the effect of the legal fiction is extended in the manner suggested by Mr Lalit, clause (4) (sic Rule 4) of the Rules will become otiose. In other words, **all the consequences ordinarily flowing from a rule would be given effect to if the

rule otherwise does not limit the operation thereof. *If the rule itself provides a limitation on its operation, the consequences flowing from the legal fiction have to be understood in the light of the limitations prescribed. Thus, it is not possible to construe the legal fiction as simply as suggested by Mr Lalit."*

62. So, when the MSEDCL is willing to pay the cost of imported coal which is notionally deemed to have been utilized at Tiroda Power Plant, we see no reason as to why it must not pay the notional transportation cost of such coal from nearest sea port upto the Tiroda plant.

63. Further, APML has actually paid such transportation charges for imported coal to AP(M)L and hence, its claim regarding the same cannot be said to be without any basis or without having incurred such expenditure. Argument on behalf of MSEDCL that any such payment made by the APML to AP(M)L is without any consideration as there was no actual transportation of coal and thus, the transaction is hit by Section 25 of the Contract Act, is devoid of any merits. Such charges have been billed by the AP(M)L and paid by APML on the basis of a transaction created by legal fiction under the IPT scheme. In case the argument of MSEDCL is to be accepted, it would not be liable to pay even the cost of imported coal also as the same has not been actually consumed at Tiroda Power Plant from where it gets power supply. The MSEDCL would be getting power supply free of cost. It is to avoid such

an undesirable situation that the legal fiction, noted hereinabove, was envisaged in the IPT scheme.

64. So far as the arguments regarding lifting of the Corporate Veil are concerned, we may note that Doctrine of Lifting of Corporate Veil has to be applied very sparingly and in exceptional cases where the Court sniffs some criminal activity going on in the affairs of a Company or where it appears that a company has been set up merely as a camouflage for avoiding any liability. Following observations of the Hon'ble Supreme Court in *Balwant Rai Saluja vs. Air India* (2014) 9 SCC 407 *are apposite in this regard*

> "**74.** *Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However,* ***this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability.*** *The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case*."

65. It is not the case of MSEDCL that APML and AP(M) are shell companies and have been set up only as a camouflage to avoid any liability. No material has been pointed out from the record to show that any unlawful activities are being carried out in the affairs of these two

companies. Therefore, we see no ground or reason to apply the said doctrine to the instant case.

66. Hence, we hold that landed cost of imported coal would include the normative in land transportation cost of such coal from nearest sea port Dahej upto the Tiroda Power Plant of APML. Accordingly, no error is found in the impugned order and the appeal deserves to be dismissed.

Appeal No. 261 of 2021

67. This appeal has been filed by APML feeling aggrieved by certain directions given to it by the Commission in the impugned order. The impugned directions have already been noted in paragraph No. 22 hereinabove and are reproduced here again for the sake of convenience:-

> 22. Apart from granting the reliefs to the APML in the impugned order, the Commission has also issued following directions to it :-
>
> *a) Direction to APML to participate in swapping of coal and transfer saving to be accrued to consumers which will be scrutinized and monitored by the Committee appointed by the Govt. of India.*

b) Any generation above normative Plant Load Factor (PLF) on annual basis would not be eligible for compensation on account of coal shortfall.

c) APML to submit appropriate index for another nearest route and port, handling charges for nearest major port approved by TAMP.

d) Direction that the Delayed Payment Charges (DPC) shall not be payable by MSEDCL in case the delay is attributable to APML.

e) Direction to APML to approach Coal India Limited for transfer of cheapest coal to cheaper generator i.e. cheapest unit Tiroda TPS.

68. It appears that in the reply submitted by MSEDCL to the petition of APML before the Commission, it had, apart from opposing the contentions of APML, also sought certain clarifications. It is upon discussing the points on which clarifications were sought by MSEDCL that these directions have been issued.

69. On behalf of APML, it is vehemently argued that no such directions should have been passed against it in the petition filed by it claiming a specific relief and by doing so, the Commission has clearly exceeded its jurisdiction.

70. Having gone through the relevant portion of the impugned order and having heard the learned counsels, we are of the opinion that the commission has erred in issuing these directions against APML.

71. The Commission was dealing with the petition of APML in which a specific prayer was made. It should have confined itself to the pleadings and submissions of the parties relevant to that prayer alone. It is a settled principle that a court cannot travel beyond the relief sought by the petitioner before it and any pleadings which are alien to the prayer sought in petition deserved to be discarded.

72. In the instant case, the part of MSEDCL's reply in which clarifications were sought, was totally irrelevant to the contents of APML's petition and the relief sought therein. Hence, that part of reply ought to have been totally ignored. It was not permissible for the Commission to consider the pleadings of MSEDCL which were de hors and beyond the contents of APML's petition, and to issue directions against APML thereby clarifying the points identified by MSEDCL. Such a course adopted by the Commission is unknown to law and would, if approved by this Tribunal, set a very bad precedent.

73. MSEDCL could have been well advised to file a separate petition to seek the clarifications in question.

74. In view of the same, the appeal deserved to be allowed.

Conclusion :-

75. Accordingly, the appeal No. 265 of 2022 is found sans any merit and is hereby dismissed along with all pending IAs.

76. However, the appeal No. 261 of 2021 is hereby allowed and the directions issued against APML in the impugned order are hereby set aside.

Pronounced in the open court on this 9th day of July, 2024.

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

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