

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

Appeal No. 314 of 2022

Dated: 22nd March, 2024

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

In the matter of:

- 1) Southern Power Distribution Company of AP Limited
Through CGM (IPC & RAC)
D. No. 19-13-65/A,
Srinivasapuram, Tiruchanoor Road,
Tirupati, Chittoor District – 517503 (A.P.)
- 2) Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Gunadala,
Eluru Road, Vijaywada,
Andhra Pradesh – 520004.Appellant(s)

Vs.

- 1) Andhra Pradesh Electricity Regulatory Commission
Through Secretary,
4th Floor, Singaneri Bhavan,
Red Hills Road, Khairatabad,
Redhills, Hyderabad,
Telangana – 50004.
- 2) SNJ Sugars & Allied Products Pvt. Ltd.,
Through Managing Director,
Formerly known as
M/s. Sagar Sugars and Allied Products Ltd.
Nelavoy (V), Sri Rangarajanpuram,
Mandal Dhittor District,
Andhra Pradesh.Respondent(s)

Counsel for the Appellant(s) : Mr. Sidhant Kumar
Ms. Manya Chandok
Ms. Muskaan Gopal
Mr. Gurpreet Singh Bagga
Mr. Ardhendumauli Kr. Prasad
Ms. Ananya Sahoo
Mr. Aashish Madan
Ms. Shreya Srivastava

Counsel for the Respondent(s) : Mr. Sridhar Potaraju
Mr. Mukund Rao Angara
Ms. Ankita Sharma
Ms. Shiwani Tushir
Mr. Yashvir Kumar
Mr. Aayush
Mr. Rajat Srivastava for R-1

Mr. Challa Gunaranjan
Mr. Hitendra Nath Rath
Mr. Deepak Chowdhary
Mr. M. Sridha for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The captioned Appeal has been filed by M/s. Southern Power Distribution Company of Andhra Pradesh Ltd. (in short "AP Discom" or "Appellant") and M/s. Transmission Corporation of Andhra Pradesh Limited (in short "AP Transco" or "Appellant") challenging the order dated 16.03.2019 (in short "Impugned Order")

passed by the Andhra Pradesh State Electricity Regulatory Commission (hereinafter referred to as “State Commission” or “APERC”) in O.P. No. 10 of 2018, wherein the State Commission has decided that the petition is not barred by limitation and that the Power Purchase Agreement (in short “PPA”) dated 10.07.2002, and as amended from time to time, admittedly governs the rights of the parties and clause 5.2 of the said PPA makes the Appellants liable to pay interest at the rate of 10 per cent per annum as per the existing nationalized bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction, *inter-alia* directing that the Discom to pay an amount as claimed by the Respondent No. 2 in O.P. 10 of 2018, towards the principal value of the energy supplied at Rs 3.48 per unit and interest as per the contractual rate.

2. The Appellants are the distribution and transmission licensees, having area of operation within the State of Andhra Pradesh, the Respondent No. 1 i.e. APERC is the State Regulatory Commission having powers to adjudicate the matter in hand *inter-alia* vested with the functions under section 86 of the Electricity Act, 2003, and Respondent No. 2 is the generating station having setup the 20 MW bagasse based cogeneration power project.

3. The Non-conventional Energy Development Corporation of Andhra Pradesh Limited (hereinafter “NEDCAP”) had sanctioned 20 MW Bagasse based cogeneration project (in short “Project”) to Respondent No. 2 with bagasse as primary fuel, further, the Respondent No. 2 entered into PPA with Appellant No. 2 (APTRANSCO) on 10.7.2002 for Purchase of 9.99 MW during season and 16.94 MW during off season at a tariff of Rs.2.25 paise per unit with escalation at 5% per annum considering 1994-95 as base year.

4. The APERC issued consent to the PPA on 4.1.2003 along with the tariff payable to the developer indicated at article 2.2 of the PPA.
5. The Project was synchronized with the grid on 13.01.2003, however, the Appellants submitted that the Respondent No. 2 concealed the fact that the Project was not commissioned with bagasse as fuel.
6. The Appellants submitted that it was only when the Respondent No. 2 informed APTRANSCO vide letter dated 24.02.2003 that the commissioning of sugar plant is delayed and requested it to purchase entire energy exported to the grid, they came to know that Respondent No. 2 has not setup their sugar manufacturing plant, accordingly, APTRANSCO vide letter dated 17.03.2003 decided to stop power evacuation from the said project from 17.03.2003 onwards.
7. Consequently, being aggrieved, the Respondent No. 2 represented to the State Commission seeking direction to APTRANSCO to purchase entire power delivered from their power plant, the State Commission on 17.03.2003 directed APTRANSCO to purchase entire power from the project, thereafter, APTRANSCO filed a Review Petition, being RP No 10 of 2003, before the State Commission.
8. Separately, the Respondent No. 2 filed a Writ Petition being WP No.7395/2003 before the High Court of Andhra Pradesh seeking direction to APTRANSCO to evacuate entire power generated from its power plant which direction was already given by the State Commission, the Andhra Pradesh High

Court passed interim orders on 02.05.2003 directing APTRANSCO to purchase entire energy supplied by the generator at adhoc tariff of Rs. 2.00 per unit.

9. Being aggrieved, the APTRANSCO filed Writ Appeal No. 745/2003 before Division Bench of High Court challenging the interim orders of the High Court, however, in compliance with interim orders of AP High Court dated 02.05.2003, the Respondent No. 2 was permitted for synchronization of their power plant on 16.05.2003 and entire energy delivered by power plant was purchased at Rs. 2 per unit.

10. Subsequently, the Division bench of High Court of AP passed orders on 10.07.2003 in WA No. 745/2003 clarifying that APTRANSCO is bound to purchase not the entire power generated by the Respondent No. 2 but the power, which they are bound to purchase as per the terms of PPA entered between the parties, the High Court of AP also clarified that pending the writ petition the State Commission can hear and dispose of review petition in accordance with law as expeditiously as possible.

11. In compliance with orders of the Division Bench of High Court in WA No. 745 of 2003, APTRANSCO purchased the energy from the said project at Rs. 2.00 per unit to extent of the exportable capacity in terms of the PPA.

12. Further, in the light of directions of Division Bench of High Court of AP on 10.07.2003 in WA No. 745 of 2003, the State Commission heard the review petition filed by APTRANSCO and passed the order on 01.10.2003 holding that

there was an error crept-in while issuing directions by the Commission in its order dated 17.03.2003 to purchase the entire power and the same are cancelled.

13. Thereafter, the Respondent No. 2 filed Civil Miscellaneous Appeal (CMA) No. 3613/2003 before High Court of AP against APERC orders in RP No. 10 of 2003 and obtained interim suspension of said orders passed in RP No. 10 of 2003, being aggrieved, APTRANSCO filed stay vacate petition on interim orders granted by the High Court.

14. The Single Judge of AP High Court passed orders on 15.12.2003 in writ petition No. 7395/2003 filed by the Respondent No. 2 and directing APTRANSCO to evacuate power as agreed under the PPA.

15. Again, APTRANSCO by Writ Appeal (WA) No. 191/2004 approached the division bench of High court of AP against the Single Judge orders, the High Court passed interim directions on 12.02.2004 that pending the appeal no further payments need to be made.

16. The Respondent No. 2 commissioned its sugar plant on 20.01.2004.

17. Thereafter, the Division Bench of High Court modified the interim order and directed the Appellants herein to pay Rs. 2.69 per unit.

18. Finally, the Division Bench of High Court after hearing the matter had pronounced orders on 30.07.2004 in WA No. 191 of 2004 filed by APTRANSCO and also on CMA No. 3613 of 2003 filed by the Respondent No. 2 against

directions dated 01.10.2003 issued by State Commission, the High Court held that the parties shall approach appropriate forum for redressal of their grievance pertaining to the period from January 2003 to January 2004, also, upheld the directions dated 01.10.2003 issued by the State Commission *inter-alia* directing that the Respondent No. 2 to approach authorities concerned to evacuate power generated, as mutually agreed under the terms of the PPA, from the date of commissioning of the Sugar Plant.

19. The Appellant submitted that, in compliance with orders of the Division Bench of AP High Court, the Appellant purchased energy as per the eligible quantities stipulated in PPA, from the Respondent No. 2 from the date of commissioning of Sugar Plant i.e. from 21.01.2004, hence, the power that was supplied by Respondent No. 2 during the period from Synchronization of the bagasse plant (13.01.2003) to the date of commissioning of sugar plant (20.01.2004) is the period that is under dispute, further, submitted that prior to commissioning of cogeneration plant (sugar Plant), APTRANSCO paid an amount of Rs 20.09 Crs. to Respondent No. 2 for energy delivered at the adhoc tariff of Rs. 2.00 per unit fixed by High Court.

20. The Appellant informed that the Appellant challenged aforesaid order dated 30.07.2004 of the Division Bench of High Court by way of SLPs 22034/2004 and 22038 of 2004 (later converted as Civil Appeals 5157 & 5159 of 2005) before the Supreme Court.

21. Also submitted that, the Supreme Court passed interim orders on 08.02.2006 in CA No. 5157 & 5159 of 2005 filed by Respondent No. 2 to pay Rs

3.11 per unit for the energy delivered by Respondent No. 2 during the period prior to 20.01.2004 when the Sugar plant was not commissioned, and, as per the interim direction of the Supreme court, the Appellant has released the differential amounts at tariff of Rs. 1.11 (Rs.3.11- Rs.2.0) per unit for the energy delivered proportionate to capacity as per terms of PPA, thus, a total amount of Rs. 30.96 Cr was paid to the Respondent No. 2 for the energy delivered during the disputed period (13.01.2003 to 20.01.2004).

22. The Supreme Court disposed of the Civil Appeals being CA No. 5157 & CA No. 5159 of 2005 vide judgment dated 13.10.2011 directing that the State Commission has expertise in determining the price and tariff of power and therefore, the State Commission shall consider all relevant materials and factors and finally determine the price for power supplied from 13.01.2003 to 21.01.2004, the disputed period.

23. Pursuant to the aforesaid direction of the Supreme Court, the State Commission heard the parties and passed the final orders on 27.08.2012 duly fixing the tariff of Rs. 0.92 per unit for the period 13.01.2003 to 31.03.2003 and Rs. 0.97 per unit for the period from 01.04.2003 to 20.01.2004.

24. Being aggrieved by the price fixed by the State Commission for the disputed period, the Respondent No. 2 filed Appeal No. 228 of 2012 before this Tribunal, which was disposed of by judgment dated 04.02.2013 wherein this Tribunal has held that the Respondent No. 2 is entitled to a tariff of Rs. 3.32 per unit for the period 13.01.2003 to 31.03.2003 and at Rs. 3.48 per unit for the period 01.04.2003 to 21.01.2004 covering the two spells of periods under dispute.

25. The aforesaid judgment of this Tribunal dated 04.02.2013, was challenged by the Appellant through Civil Appeal No. 6754/2013 before Supreme Court, however, the Supreme Court dismissed the said vide order dated 12.07.2016 and thereafter, the review petition filed by the Appellant was also dismissed vide order dated 04.10.2016, the Appellant also filed curative petition No. 231 of 2017 in RP No.3235 of 2016 in CA No.6754 of 2013 before Supreme Court which was also dismissed on 07.08.2018.

26. Being aggrieved by the non-compliance of this Tribunal's judgment dated 04.02.2013, the Respondent No. 2 filed the Execution Petition No. 01 of 2017 before this Tribunal for payment of differential amount for the energy supplied during the disputed period i.e. from 13.01.2003 to 20.01.2004 which was disposed of by vide order dated 31.05.2017 remanding the matter to the State Commission for determining the differential amount, in compliance the State Commission issued order dated 03.11.2017 and directed the Appellant to pay Rs. 13,84,19,133/- to the Respondent No. 2.

27. Aggrieved by the said order dated 03.11.2017 passed by the State Commission, the Appellant herein filed the appeal and the Respondent No. 2 also filed application before this Tribunal pertaining to the issues arising out of the said order dated 03.11.2017, the said proceedings pending before this Tribunal has been disposed of by way of its judgment dated 12.03.2020 passed in Appeal No. 387 of 2017 and Execution Petition No. 01 of 2017 in Appeal No. 228 of 2012.

28. The Appellant submitted that the entire proceedings of above said dispute is nothing to do with present claim decided by the State Commission which is in respect of the power beyond the capacity that was agreed under the PPA for different spells of the year, however, the State Commission by considering the abovementioned litigation between the parties held that the present claim made by the Respondent No. 2 was not barred by limitation, also argued that the present claim is apparently barred by Law of Limitation which is three years from the date of cause of action.

29. The Appellants have submitted common written submission, which is noted in the succeeding paragraphs.

30. The Appellants submitted that despite its entitlement for the Subject Period being crystalized by the Remand Order on 27.08.2012, Respondent No. 2, six years later, chose to file O. P. No. 10 of 2018 (in short "Claim Petition") before Respondent No. 1 seeking differential tariff for the Subject Period whereby, the Respondent No. 2 itself admitted that the tariff for the Subject Period had attained finality by the Remand Order, accordingly, the cause of action for the Claim Petition arose on 28.08.2012 and the Impugned Order wrongly excludes the time spent in litigation after 28.08.2012 till 12.08.2016, consequently, the Impugned Order is unsustainable and is required to be set aside.

31. Further, argued that the averments in the Claim Petition itself assert that the cause of action for seeking the unpaid tariff of the Subject Period arose on 28.08.2012 with the Remand Order, thus, the liability to pay tariff for the Subject

Period was crystallized by the Remand Order in terms of Article 2.2, the following averment from the Claim Petition is relevant and reproduced below:

“12. The claim made herein relates to the period 21.1.2004 to 31.3.2004 which is in no way concerned with the claims subject matter of the proceedings in E. P. No. 1 of 2017; pending before APTEL. Admittedly the respondents received the energy during the said period and all though the amounts were not settled merely because respondents disputed the tariff payable for those units. In as much APERC vide orders dated 27.8.2012 determined the tariff for the period 21.1.2004 to 31.3.2004, and the same attained finality, the respondents are bound to pay the petitioner as per the said tariff. The petitioner is also entitled for interest in terms of clause 2 of Article 5 of the PPA on the delayed payments.”

32. Accordingly, submitted that the cause having arisen under the Remand Order and the tariff relating to the subject period having attained finality, therefore clear that for the purpose of limitation the date of reckoning is 27 August 2012, the Claim Petition, however, was filed with the affidavit in support sworn on 04.01.2018 after about five and a half years.

33. The Appellants claimed that it is a settled principle of law that limitation applies to adjudicatory proceedings before Respondent No. 1 under Section 86 of the Electricity Act, 2003, the Claim Petition is therefore beyond limitation and merits dismissal on this ground alone, the Impugned Order has found the Claim Petition to have been filed within the limitation period of three years by excluding

the time spend in litigation in terms of Section 12 of the Limitation Act, 1963 inter-alia the period spent in prosecuting the Appeal against the Remand Order before this Tribunal till the Order passed by this Tribunal attained finality before the Supreme Court by order dated 12.08.2016 is to be excluded, these findings are without basis and contrary to the record before Respondent No. 1 as is evident by the facts set out above.

34. Also, submitted that this Tribunal Order including the issue framed and the finding rendered demonstrates that the Remand Order in so far as it determines the tariff for the Subject Period was not challenged, the recital of facts in the Order as follows makes this clear:

“2. Aggrieved by the impugned order dated 27.8.2012 passed by the State Commission fixing the tariff of the Appellant’s power supplied to the APTRANSCO during the period between 13.1.2003 to 21.1.2004 when its sugar plant had not commenced its production of sugar, the Appellant has presented this Appeal mainly on the ground that State Commission had fixed the tariff much below the rate, without following the directions issued in the remand order passed by the Hon’ble Supreme Court.”

“6. In view of the above rival contentions urged by the Learned Senior Counsel as well as the Learned Counsel for the Respondent, the only question that would arise for consideration is as follows:-

“Whether or not during the period 13.1.2003 to 21.1.2004 i.e., when the sugar plant of the Appellant had not commenced its production of sugar, the unutilized power supplied by the Appellant to the APTRANSCO (R-1) will have the same price as the price of the power supplied by other non-conventional energy producers as determined earlier by the State Commission?”

35. The Appellant further, argued that the aforesaid Order clearly found that the issue as framed above was the only question before it, the challenge, therefore, before this Tribunal, was clearly limited to the Disputed Period which is distinct and unrelated to these proceedings, consequently, the proceedings before the Supreme Court assailing the Tribunal's Order are of no consequence in relation to the Claim Petition that pertains to the Subject Period, the findings in the Impugned Order to this effect are therefore clearly incorrect.

36. The Appellant claimed that the Claim Petition itself indicates that the cause of action agitated arose under the Remand Order which attained finality in respect of the Subject Period, it is also specifically pleaded that the Claim Petition has no concern with E.P. No. 1 of 2017 which seeks enforcement of the aforesaid Order, accordingly, it is undisputed that the Subject Period and the claims relating thereto have no relation with the Order itself, further, the Claim Petition does not seek any exclusion of time in terms of Section 12 of the Limitation Act, therefore, the findings rendered in the Impugned Order are beyond and contrary to the express pleadings of Respondent No. 2.

37. Further, countered the contention of Respondent No. 2 that by the reason of various interim orders passed in the Supreme Court, in the proceedings arising from the aforesaid Order, Respondent No. 2 has been disabled from making claims that are subject matter of the Claim Petition, it was only after the disposal of the challenge to the Tribunal's Order that Respondent No. 2 was able to institute proceedings, the Appellants claimed that this is clearly misconceived, by Respondent No. 2's own admission, the liability of the Appellants had attained finality by the Remand Order, pertinently, in relation to the enforcement of the said Order, it is clearly construed that the enforcement proceedings in E. P No. 1 of 2017 had no relation to the Subject Period as is stated in the Claim Petition, accordingly, the submissions merit rejection and therefore the Appeal must be allowed.

38. On the contrary, the Respondent No. 2 submitted as noted in the succeeding paragraphs.

39. The issue in the present case is the claim towards the differential amount of Rs. 62,86,451/- along with interest of Rs. 1,23,71,566/-, totaling to an amount of Rs. 1,86,58,017/- towards the balance amount payable for the energy supplied by the 2nd Respondent during the period from 21.01.2004 to 31.03.2004 on the rate of tariff as paid by the Appellant under the order dated 08.02.2006 passed by the Supreme Court of India in Civil Appeal No.5159 of 2005 and subsequent the interim order dated 06.11.2012 as passed by this Tribunal in Appeal No.228 of 2012, as per the aforesaid recitational and conditional orders, the Appellant had made payment of price for supply of power at the rate of Rs.3.11 as against the tariff rate of Rs.3.48 which the Respondent No.2 is entitled to get the same for the

period 21.01.2004 to 31.03.2004, as per the APERC determined tariff rate in RP No.10 of 2003 dated 27.08.2012 and agreed tariff under the power purchase agreement dated 10.07.2002.

40. Argued that, the case of the Appellant is that the differential claim amount of the Respondent No.2 for the period 21.01.2004 to 31.03.2004 is beyond the period of limitation, submitted that he has filed the OP No.10 of 2018 before the State Commission in the year 2018, in pursuance of the various Orders and Judgements passed by the 1st Respondent Commission, this Tribunal and the Supreme Court by which the tariff and liability to pay for the energy supplied for the period 21.01.2004 to 31.03.2004 had been adjudicated and determined, and came to be finally crystallized on 04.10.2016.

41. The Respondent No. 2 submitted that PPA entered into between the 2nd Respondent and the Appellants is for the supply of 9.99 MW during the sugar season and 16.94 MW during off-season, the State Commission vide order dated 20.06.2001 in O.P. No. 1075/2000 directed all non-conventional energy to be supplied to the Appellants and prohibited third party sales, as such, in terms of the PPA, all energy generated could be sold only to the Appellants after synchronization from 13.01.2003 onwards, the APERC, on 17.03.2003, directed an amendment to the PPA providing for the surplus power to be purchased by the Appellants, which power was unutilized due to the 2nd Respondent's sugar plant not having being commissioned as on that date.

42. Also reiterated the fact that in Civil Appeal No. 5159 of 2005, the Supreme Court vide interim order dt. 08.02.2006 directed the Appellants to pay Rs. 3.11 per

unit for the period from 13.01.2003 to 20.01.2004 and also for the period 21.01.2004 onwards till the date of interim order excluding the money already paid, while finally disposing of the Civil Appeal No. 5159 of 2005 vide order dated 13.10.2011, the Supreme Court directed the APERC to consider all relevant materials and to finally determine the price of power supplied for the disputed period and thereafter, and in accordance with the determination made by the 1st Respondent Commission, balance payments, if any, will be made by the 2nd Appellant to the 2nd Respondent.

43. Further, due to multiple proceedings before different courts and forums, R.P. No. 10 of 2003 was not disposed of by the APERC, however, in terms of the directions of the Supreme Court in its Judgment dated 13.10.2011, the APERC heard R.P. No. 10 of 2003 and framed the following issue to be decided:

“Now the issue to be decided by the Commission is, what shall be the tariff payable for the power supplied during the period between 13.01.2003 to 20.01.2004 and thereafter ?”

44. The APERC vide its order in R.P.No.10 of 2003 dated 27.08.2012 determined the tariff for the various periods under the PPA as under:

Period (FY)	Tariff applicable
13.01.2003 to 31.03.2003 (FY 2002-03)	Variable cost of Rs. 0.92 per unit

01.04.2003 to 20.01.2004 (FY 2003-04)	Variable cost of Rs. 0.97 per unit
21.01.2004 to 31.03.2004	As per MNES Guidelines paid to similarly placed generators
01.04.2004 onwards	As per order dt. 20.03.2004 and such other subsequent applicable orders issued from time to time

45. Being aggrieved, the 2nd Respondent filed Appeal No. 228 of 2012 before this Tribunal and this Tribunal vide interim order dated 06.11.2012 directed the Appellant to pay the price for supply of power at the rate of Rs.3.11 as directed by the Supreme Court vide order dated 08.02.2006, however, the Respondent No. 2 claimed that he is entitled to get the price for power supply at the rate of Rs.3.48 as per the direction and order passed by the APERC in RP No.10 of 2003 however as there is a resistive order and direction by this Tribunal, the Appellant paid the price for power supply at the rate of Rs.3.11 as against Rs.3.48, accordingly, the Appellant has made the payment of price for power supply at the rate of Rs.3.11, through out the litigation period.

46. The Respondent No. 2 further submitted that this Tribunal vide order dated 04.02.2013 in Appeal No. 228 of 2012 determined the tariff of Rs.3.32 per unit for the period 13.01.2003 to 31.03.2003 and Rs. 3.48 per unit for the period 01.04.2003 to 21.01.2004, however, considering that the Appellant has made the payment towards the price of power supply at the rate of Rs.3.11 as against Rs.3.48, the Respondent No.2 filed an execution petition claiming the amount

during the disputed period and the differential amount in the year 2014 before this Tribunal.

47. Separately, after filing of the execution petition in the year 2014, the Appellant raised an objection that it has filed Appeal bearing Civil Appeal No.6754 of 2013 before the Supreme Court and the Supreme Court vide interim order dated 19.08.2013 directed the Respondent No.2 not to press for the payment of the differential amount of the tariff, due to the objection of the Appellant and as there is an restricted interim order, the Respondent No.2 withdrew the execution petition filed in year 2014 with the liberty to file it a fresh, and, pursuant to dismissal of CA by the Supreme Court, the Respondent No. 2 addressed several letters to the Appellants requesting for the balance due with interest after giving credit to the payments made by the Appellants, however, neither there was any response from the Appellants nor there was any payment of amounts, therefore, the Respondent No. 2 filed E.P. No. 1 of 2017 before this Tribunal for payment of the principal differential amount for the period from 13.01.2003 to 31.03.2004 along with the interest at 10%, further, added that in the counter affidavit filed in E.P. No. 1 of 2017, the Appellants for the very first time stated that there was no dispute with regard to the payment and energy supplied after 20.10.2004, and on the said basis, the Respondent No. 2 filed O.P. No. 10 of 2018 seeking the balance payment due for the period from 21.01.2004 to 31.03.2004, which tariff has been crystallized by virtue of the Supreme Court's final order dated 12.07.2016 in the Civil Appeal No. 6754 of 2013.

48. Further, claimed that the above facts clearly established that there is an interim order from 06.11.2012 to 04.02.2013 and subsequently from 19.08.2013

to 12.07.2016 and the Execution Petition filed by the Respondent No.2 in the year 2014, also, the Appellant without any basis and only as per the direction and restriction order was paying Rs.3.11 as against Rs.3.48, thus, Appellant themselves have already paid Rs.3.11 unit as per the orders of the Supreme Court for the period from 21.01.2004 to 31.03.2004, and it was the balance amount to be paid, further, the tariff came to be finally crystalized at Rs.3.48 unit, i.e., leaving a balance of Rs.0.37/ unit in the year 2016, after the disposal of the appeal by the Supreme Court.

49. Further, mentioned that the Appellant as per the direction and order dated 08.02.2006 passed by the Supreme Court in Civil Appeal No.5159 of 2005 as well as the order dated 06.11.2012 passed by this Tribunal in Appeal No.228/2012 had paid Rs.3.11 from 2006 onward till 2018, when the Supreme Court dismissed the Civil Appeal and subsequently the order passed by this Tribunal in EP No.1 of 2017, hence, the cause of action for recovery of the differential amount of Rs.0.37 only arose after the dismissal of the Civil Appeal No.6754/2013, accordingly, it cannot be disputed that the present petition is not barred by limitation, even the language of the interim order dated 06.11.20212 clearly indicates that **“consequently, the Respondents are directed to pay the price for supply of power at the rate of Rs.3.11 as indicated in the Hon’ble Supreme Court’s Order”**, i.e the Appellants had made the payment of Rs.3.11 as against rate of Rs.3.48 even after the disputed period till the year 2018.

50. The Respondent No. 2, accordingly, argued that the parties are in litigation and if the interim/resistive period as well as the litigation period will be excluded, the differential claim of the Respondent No.2 is within the limitation period, the

State Commission has rightly held that in the present case though the tariff was fixed by the order dated 27.08.2012 by the APERC, the Appellant has not chosen to make the differential price in spite of repeated demands in writing by the Respondent No.2.

51. Further, claimed that the present petition is being covered under Article 136 of the Limitation Act with a period of limitation of 12 years as on execution petition, hence, the present petition is not barred by limitation, also submitted that so far as the quantum and price of the Power Supply is concerned the same are not disputed by the Appellant and it is first time admitted by the Appellant in the objection filed in E.P. No.1 of 2017 before this Tribunal that there was no dispute with regard to the payment and energy supplied after 20.01.2004.

52. The Respondent No. 2 placed reliance on the provision of Section 17(1)(c) of the Limitation Act, 1963 that in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time, also, relied upon *Asst. Engineer (D1) Ajmer Vidyut Vitran Nigam Ltd. Vs Rahamatullah Khan @ Rahamjulla (2020) 4 SCC 650* and stated that Supreme Court in *Mahabir Kishore and Ors. v. State of Madhya Pradesh, (1989) 4 SCC 1*, has held as under:

—

“Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a

mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.”

53. Also submitted that as per the clause 5.2 of the PPA the Appellant is liable to pay interest @10% p.a. to the Respondent No.2.

54. The only issue before us is whether the petition being OP No. 10 of 2018 filed before the State Commission was barred by Limitation.

55. It cannot be disputed that the final tariff for disputed period was determined by this Tribunal vide order dated 04.02.2013 in Appeal No. 228 of 2012, however, it was challenged by the Appellants before the Supreme Court which finally disposed of the challenging Civil Appeals and finally the curative petition No. 231 of 2017 in RP No.3235 of 2016 in CA No.6754 of 2013 by dismissing the same on 07.08.2018.

56. Further, the Respondent No. 2 filed the Execution Petition No. 01 of 2017 before this Tribunal for payment of differential amount for the energy supplied during the disputed period i.e. from 13.01.2003 to 20.01.2004 which was disposed of by vide order dated 31.05.2017 remanding the matter to the State Commission with the directions for determining the differential amount, in compliance the State

Commission issued order dated 03.11.2017 and directed the Appellant to pay Rs. 13,84,19,133/- to the Respondent No. 2.

57. From the above facts, the tariff as determined by this Tribunal achieved finality only once the Supreme Court upheld the judgment of this Tribunal by dismissing the CAs and subsequent Curative Petition filed by the Appellant.

58. The State Commission while passing the Impugned Order has dealt the issue of Limitation, the relevant extract is quoted as under:

“7. The points that arise for consideration and decision herein are:

- (i) Whether the claims of the petitioner are barred by limitation?*
- (ii) Whether the petitioner is entitled to any interest, if so, for what period and at what rate?*
- (iii) To what relief?*

8. Point No.(i): *In Tamil Nadu Generation and Distribution Corporation Limited Vs PPN Power Generating Company Private Limited (2014) 11 Supreme Court Cases 53, the Hon'ble Supreme Court was dealing with a challenge to the decision of the Hon'ble Appellate Tribunal for Electricity against an order of State Electricity Regulatory Commission in which the Hon'ble Appellate Tribunal for Electricity held that the Limitation Act would not apply to the proceedings under the Electricity Act. The learned Senior Counsel for the appellant submitted to the Hon'ble Supreme Court that the claim was barred and reference to arbitration and even if Limitation Act was not applicable, the*

maximum period of time for filing a suit, in a civil court ought to be taken as a reasonable standard by which the issues with reference to such delay and latches can be measured. The learned Senior Counsel for the respondent claimed to the contrary that the provisions of Limitation Act, 1963 would not be applicable to the proceedings before the State Commission and the Electricity Act, 2003 being a complete code, which is self-contained and comprehensive, the provisions of the Limitation Act, 1963 would not apply. The learned Senior Counsel relied on Consolidated Engineering Enterprises Vs Irrigation Department (2008) 7 Supreme Court Cases 169 for the submission that the Limitation Act would be inapplicable to the tribunals and quasi-judicial authorities. The Hon'ble Supreme Court concluded that in any event, the Limitation Act is inapplicable to the proceedings before the State Commission.

9. *M.P. Steel Corporation Vs Commissioner of Central Excise (2015) 7 Supreme Court Cases 58 was exhaustively considering the question whether the Limitation Act applies only to courts and not to tribunals and extensively quoting from Consolidated Engineering Enterprises Vs Irrigation Department (2008) 7 Supreme Court Cases 169 and various other decisions of the Hon'ble Supreme Court, the Hon'ble Supreme Court concluded that the Limitation Act will not apply to quasi-judicial bodies or tribunals.*

10. *In addition, the learned Senior Counsel for the petitioner also relied on Nalgonda Co-operative Marketing Society Ltd., Vs. Labour Court, Hyderabad and others (1993) 2 CLR 928, wherein a Full Bench of the*

Hon'ble High Court of Andhra Pradesh considered with reference to various precedents, the applicability of the Limitation Act and found that the Limitation Act is applicable only to applications made to a court either under Code of Civil Procedure or any Act. After an exhaustive survey of the various precedents from the Hon'ble Supreme Court and the Hon'ble High Court, it is found that the preponderance of judicial opinion based on well established principles of law is to the effect that they are applicable to the proceedings before a court and not applicable to the proceedings in a tribunal.

*11. The respondents attempted to rely on A.P. Power Coordination Committee and others Vs M/s. Lanco Kondapalli Power Limited and others in Civil Appeal No.6036 of 2012 & batch, decided on 16-10-2015 as laying down the applicable principles of law. The Hon'ble Supreme Court noted that two important points were thrown firstly whether the Limitation Act is applicable to a claim before the Commission and if the answer is in positive then secondly whether applying Section 14 of the Limitation Act in that case was in accordance with law or not ? The Hon'ble Supreme Court specifically considered the decisions reported in Tamil Nadu Generation and Distribution Corporation Limited Vs PPN Power Generating Company Private Limited **(2014) 11 Supreme Court Cases 53** and M.P. Steel Corporation Vs Commissioner of Central Excise **(2015) 7 Supreme Court Cases 58** relied on by the petitioner in this case. The Hon'ble Supreme Court clearly observed that in view of law notified by them and for the reasons noted in M.P. Steel Corporation (supra) they respectfully concur and hold that by itself Limitation Act will*

not be applicable to the Commission under the Electricity Act, 2003, as the Commission is not a court stricto sensu. They also observed that the further stand of the respondents therein that the Commission being the statutory tribunal, cannot act beyond the four walls of the Electricity Act, also does not brook any exception. However, the Hon'ble Supreme Court made a further scrutiny as to whether the provisions of the Limitation Act will govern or curtail the powers of the Commission in entertaining a claim under Section 86 (1) (f) of the Electricity Act, 2003. After an exhaustive discussion, the Hon'ble Supreme Court concluded that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for ordinary suit before a civil court. But in an appropriate case, a specified period may be excluded on account of principle underlying salutary provisions like Section 5 or 14 of the Limitation Act. Such limitation upon the Commission would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory. The Hon'ble Supreme Court laid down that in the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation or taking away a right of the other side to take a lawful defence of limitation, in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation.

12. The respondents also relied on the common order of this Commission in O.P.No.55/2014 & batch dated 24-09-2016 wherein the question of limitation governing recovery of any reactive power surcharge was under consideration. With reference to the relevant statutory provisions and precedent, it was concluded that the right of the respondents to recover the reactive power surcharge should be upheld upto a period of three years prior to the date of demand but not beyond three years from the date of demand. The amounts in question therein were found to be due each month as per the respective agreements and with reference to the specific provisions of the Limitation Act, Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and Rules 1985, Andhra Pradesh Electricity Reform Act, 1998 and the Electricity Act, 2003 and with further reference to Section 56 (1) of the Electricity Act, 2003 in particular, apart from the precedents cited. The Commission concluded that with reference to the absence of any special procedure or special periods of limitation, general law of limitation will apply for the liability for payment of reactive power surcharge in question therein. However, in the present case, the issue was not mere question of demand and payment and the computation of the period of limitation in straight calculation of the periods of time with reference to such dates.

13. Under the Power Purchase Agreement dated 10-07-2002, the Due Date of Payment means the date on which the amount payable by the APTRANSCO to the petitioner for Delivered Energy supplied during the Billing Month becomes due for payment, which date shall be thirty (30) days from the Metering Date. The tariff for the purchase of delivered

energy was specified in the Agreement. In Civil Appeal No.5159/2005, the Hon'ble Supreme Court by the Judgment dated 13-10-2011 directed the Andhra Pradesh Electricity Regulatory Commission to consider all relevant materials and factors and finally determine the price of the power supplied during 13-01-2003 to 21-01-2004 and thereafter and in accordance with determination made by the Andhra Pradesh Electricity Regulatory Commission, balance payments, if any, will be made by the AP Transco to the petitioner's predecessor viz., M/s. Sagar Sugar & Allied Products Limited. The Judgment shows that litigation between the parties was before the Hon'ble High Court since W.P.No.7395/2003 followed by W.A.No.371/2004, WA No.191/2004, CMA No.3613/2003 etc., concerning evacuation of power and payment of price for the power so evacuated. The Hon'ble Supreme Court found that it will be more appropriate for the Regulatory Commission with expertise in determination of price and tariff of power to decide what would be the price for supply of power during the disputed period and thereafter. Therefore, it is clear that the petitioner was before the courts throughout within the period of limitation either for the period from 13-01-2003 to 21-01-2004 or the period thereafter concerning evacuation of power and its price and its tariff against the processor-in-interest of the present respondents. In R.P.No.10/2003, the erstwhile Andhra Pradesh Electricity Regulatory Commission was accordingly deciding the tariff in between 13-01-2003 to 20-01-2004 and thereafter and decided the tariff for the period relevant to this petition from 21-01-2004 to 31-03-2004 as that as per MNES guidelines paid to similarly placed generators. Till the orders in R.P.No.10/2003 on 27-08-2012, the tariff applicable for the

energy supplied during this period remained fluid and disputed. Again, this order dated 27-08-2012 in R.P.No.10/2003 was the subject of Appeal No.228/2012 before the Hon'ble Appellate Tribunal for Electricity, which was decided only on 04-12-2013. The Hon'ble Appellate Tribunal for Electricity found that in view of the order of the State Commission dated 20-06-2001 prohibiting third party sale, there was no other option for the petitioner herein except to supply power to AP Transco and the petitioner herein used only bagasse as fuel which should be considered as Non-Conventional source of energy. Accordingly, the petitioner herein was found entitled to a tariff of Rs.3.32 per unit from 13-01-2003 to 31-03-2003 and at Rs.3.48 per unit for the period from 01-04-2003 to 21-01-2004. A Civil Appeal against the said order and the Review Petition against the order stood dismissed by the Hon'ble Supreme Court and therefore, till the disposal of the Review Petition by the Hon'ble Supreme Court dated 04-10-2016, there was no finality to the litigation between the parties on the tariff payable for the energy supplied during the period from 21-01-2004 to 31-03-2004. The petitioner made a demand for payment for the period from 13-01-2003 to 31-03-2004 as per the orders of the Commission, Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court on the question of the tariff payable for the period in question herein. The respondents were reminded on 08-10-2016 and 29-06-2017 but in vain. Copies of the letters enclosing the invoices for January to March, 2004 were also filed. Thus, in short, the right of the petitioner to evacuate power to the respondents and its tariff under the Power Purchase Agreement dated 10-07-2002 was the subject of various proceedings before the Hon'ble High Court, this Commission, Hon'ble

Appellate Tribunal for Electricity and the Hon'ble Supreme Court right from W.P.No.7395/2003 to Review Petition in C.A.No.6754 of 2013 dismissed on 04-10-2016. In fact AP Transco and others filed a further Curative Petition before the Hon'ble Supreme Court in C.A.No.6754/2013, which was straightaway dismissed by the Hon'ble Supreme Court on 07-08-2018 much later to the filing of the present petition showing that the respondents did not allow the fixation of tariff to become final till even after this petition, excluding any scope for running of time against the claims. Even thereafter, in spite of demands to pay Rs.3.48 per unit for the power supplied during 21-01-2004 to 31-03-2004 with interest thereon, the respondents did not respond, leading to this petition. Section 12 of the Limitation Act, 1963 excludes time taken in legal proceedings in computing the period of limitation for any suit, appeal or application. Similarly, even if the proceedings were before a court without jurisdiction, exclusion of such time taken for the proceedings bona fide is mandated to be excluded by Section 14 of the Limitation Act, 1963. Only when the tariff fixed for supply of power during the relevant period had become final, the time again begins to run after the time expired between the date of accrual of the cause of action, the date of demand and the date of commencement of the litigation by way of Writ Petition before the Hon'ble High Court. Another factor to be taken into account must be the payments made towards such energy supplied as per the various interim or final orders in between and the quantum of energy supplied was never in dispute. The payments so made or the correspondence so exchanged in between may also have the effect of an acknowledgment in writing under Section 18 of the Limitation Act,

1963 and the effect of payment of debt under Section 19 of the Limitation Act, 1963. The chronology of events or the contents of the documents or the orders passed in various proceedings are not in dispute. The claim in the counter of the respondents is that the petition ought to have been filed within three years from 13-10-2011 when the Hon'ble Supreme Court disposed of C.A.No.5159/2005 but as narrated above, when the Andhra Pradesh Electricity Regulatory Commission was directed to determine the tariff by the said orders of the Hon'ble Supreme Court, limitation cannot run until the compliance with the orders of the Hon'ble Supreme Court had become final.

14. The written submissions on behalf of the petitioner also attempted to show the present petition as being in the nature of an Execution Petition and not a Claim Petition in view of the admission of the respondents in the objections in E.P.No.1/2017 on the file of the Hon'ble Appellate Tribunal for Electricity that there was no dispute with regard to the payment of energy supplied after 20-01-2004 as the sugar plant was commissioned on 20-01-2004 as a Captive Power Plant for which it was sanctioned and the dispute is confined to the period prior to 20-01-2004. While the said plea has considerable force, there was no need for the Commission to make any further probe into any such ground in view of the conclusion of the Commission about absence of any bar of limitation for reasons detailed above. Similar is the contention of the petitioner in the written submissions about the present petition being one covered by article 136 of the Limitation Act with a period of limitation of twelve years as an execution petition. The petitioner relied on the

observations of the Hon'ble Supreme Court in Urban Improvement Trust, Bikaner Vs Mohan Lal (2010) 1 Supreme Court Cases 512 wherein the Hon'ble Supreme Court expressed its concern that frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory functions in public interest and should be responsible litigants. Without adding anything further, it should be concluded on this point that the present petition is not barred by time."

59. From the above, it is seen that the State Commission has dealt the issue of Limitation in detail, relying upon the judgments of the Supreme Court and of the High Court, and, has rightly justified that the OP 10 of 2018 filed by the Respondent No. 2 is not barred by Limitation, also made reference to the observation of the Supreme Court that "***Hon'ble Supreme Court in Urban Improvement Trust, Bikaner Vs Mohan Lal (2010) 1 Supreme Court Cases 512 wherein the Hon'ble Supreme Court expressed its concern that frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory functions in public interest and should be responsible litigants. Without adding anything further, it should be concluded on this point that the present petition is not barred by time."***

60. We find just and reasonable the decision of the State Commission in rejecting the contentions of the respondents therein (the Appellants in this captioned Appeal), the Impugned Order, thus, passed by the State Commission is

without any infirmities, the contentions of the Appellants are frivolous and deserved to be rejected.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 314 of 2022 is without any merit and stands dismissed as devoid of merit.

The pending IAs, if any, are also disposed of accordingly.

PRONOUNCED IN THE OPEN COURT ON THIS 22ND DAY OF MARCH, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj