

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A No.68/IA/2018

and

I.A No.72/IA/2018

in

Petition No. 91/MP/2018

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Pravas Kumar Singh, Member

Date of Order: 20th July, 2021

In the matter of

I.A No.68/IA/2018

Application seeking impleadment of Power Grid Corporation of India as a party Respondent and for directions

And

In the matter of

I.A No.72/IA/2018

Application seeking adjudication of the issue relating to jurisdiction of the Commission to adjudicate the dispute

And

In the matter of

Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of the monthly energy bills of the Petitioner by the Respondents.

And

In the matter of

KSK Mahanadi Power Company Limited,
8-2-293/82/A/431/A, Road No.22, Jubilee Hills,
Hyderabad – 500 033,
Andhra Pradesh.

...Petitioner/Applicant in I.A. No.68/2018

Vs

1. Southern Power Distribution Company of AP Limited,
D.No. 19-13-65/A, Tirchanoor Road,
Behind Srinivasa Kalyana Mandapam,
Kesavayanagunta, Tirupati – 517 503.



2. Eastern Power Distribution Company of AP Limited.
P&T Colony, Seethammadhara,
Visakhapatnam – 530 013.

...Respondents/Applicants in I.A. No.72/2018

Parties Present:

Shri Anand K. Ganesan, Advocate, KSKMPCL
Shri S. Vallinayagam, Advocate, AP Discoms
Ms. Suparna Srivastava, Advocate, PGCIL

ORDER

The Petitioner, KSK Mahanadi Power Company Ltd. (KSKMPCL), a company incorporated under the Companies Act, 1956 is in the process of setting up a coal based Thermal Power Project with an installed capacity of 3600 MW (six units of 600 MW each) (hereinafter referred to as “the Project”) at village Nariyara of Tehsil Akaltara in Janjgir-Champa district in the State of Chhattisgarh. Out of the six units, three units are under operation and the balance three units are at various stages of construction and commissioning. The Petitioner had entered into a PPA dated 31.7.2012 under Case-1 medium term open access bid floated by the erstwhile State of Andhra Pradesh for procurement of 400 MW of power by the Southern Power Distribution Company of Andhra Pradesh, Northern Power Distribution Company of Andhra Pradesh, Central Power Distribution Company of Andhra Pradesh and Eastern Power Distribution Company of Andhra Pradesh. The tariff for supply of power was adopted by the Andhra Pradesh Electricity Regulatory Commission (APERC) for the erstwhile undivided State of Andhra Pradesh, vide its order dated 18.6.2013 in O.P. No. 38/2013.

2. The supply of power under the said PPA dated 31.7.2012 was for a period of three years i.e. till 15.6.2016. After enactment of the Andhra Pradesh Reorganization Act, 2014 and post-bifurcation of the undivided State of Andhra Pradesh, the capacity of 400 MW under the PPA dated 31.7.2012 was divided between the distribution



licensees of the newly created State of Telangana for 215.56 MW and the distribution companies in the new State of Andhra Pradesh for 184.44 MW. Thereafter, by agreement dated 19.12.2014, the PPA was amended, and the Respondents herein (in short, 'the AP Discoms') agreed to purchase the entire 400 MW from the Petitioner for the period from 16.6.2016 till 31.3.2021, on the same terms and conditions as contained in the PPA dated 31.7.2012. This agreement was approved by APERC vide its order dated 19.8.2015 in O.P No. 3/2015.

Backdrop of the case

3. The Petitioner, KSKMPCL filed Petition No.91/MP/2018 under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 (in short 'the Act'), seeking adjudication of disputes under the PPA dated 31.7.2012, as amended on 19.12.2014 and 23.1.2018 claiming wrongful unilateral deduction of amounts from the monthly invoices raised by the Petitioner on the Respondents and to direct the Respondents to release payment towards capacity charges, energy charges and transmission charges to the Petitioner in terms of the PPA, along with the late payment charges up to 28.2.2018 and also for the future period, till the date of actual payment of the principal amounts by the Respondents. The Petition was admitted on 31.5.2018 and the Commission directed the parties to complete pleadings in the matter. Against this order, the Respondents filed Writ Petition (W.P. No.23887/2018) before the Hon'ble High Court of Andhra Pradesh, contending that this Commission does not have jurisdiction to entertain and admit the petition filed by the Petitioner. By order dated 31.7.2018, the writ petition was disposed of by the Hon'ble High Court, directing the Respondents herein to file appropriate application before this Commission, raising the plea of lack of jurisdiction of this Commission to decide the petition. The relevant portion of the order is extracted hereunder:



“7. Therefore, petitioners are directed to file appropriate pleadings before the 1st respondent raising the plea about the lack of its jurisdiction to entertain the petition filed by 2nd respondent within ten (10) days from the date of receipt of copy of the order, and if such application is filed, the 1st respondent shall decide the said issue after giving notice to petitioners as well as 2nd respondent and communicate its decision to both of them.”

4. While the Petitioner has filed interlocutory application (IA No. 68/2018) seeking impleadment of Power Grid Corporation of India Limited (PGCIL) as a party in the original petition, the AP Discoms have, in terms of the aforesaid directions dated 31.7.2018 of the Hon'ble High Court, filed interlocutory application (IA No. 72/2018) raising the issue of jurisdiction of the Commission to adjudicate the disputes between the parties in Petition No.91/MP/2018. The Commission on 9.10.2018 directed the parties to serve copies of the IAs to the other party and complete pleadings in the said IAs.

5. The IAs were heard on 25.6.2021 through video conferencing. Based on the submissions of the parties, we are disposing of the interlocutory applications in terms of the subsequent paragraphs.

Interlocutory Application No.68/2018

6. KSKMPCL, the applicant, has filed this IA seeking impleadment of PGCIL as a respondent in Petition No.91/MP/2018, stating therein that the issue of non-payment to PGCIL has arisen due to substantial defaults on part of the AP Discoms to make payments to the Petitioner and also for directions in relation to the payment of outstanding dues towards transmission of electricity and for furnishing of payment security. However, during the hearing, the learned counsel for the applicant submitted that the prayer for impleadment of PGCIL was not being pressed since the reliefs sought for by the applicant in the petition relates to the non-payment of dues by the AP Discoms and no relief was claimed against PGCIL. Accordingly, the learned counsel for the applicant prayed that the IA may be treated as withdrawn. In



consideration of the submissions of the learned counsel for the applicant, the IA No.68/2018 is dismissed as withdrawn.

Interlocutory Application No.72/2018

7. The applicants, the AP Discoms, have filed this IA, in terms of the directions dated 31.7.2018 of the Hon'ble High Court of Andhra Pradesh in W.P. No.23887/2018, raising issues relating to the jurisdiction of this Commission to adjudicate the disputes between the parties in Petition No.91/MP/2018. In this IA, the applicants have submitted the following:

(a) APERC in its order dated 18.6.2013 in O.P.No.38 of 2013 had adopted the tariff under Section 63 of the Electricity Act, 2003 with regard to procurement of power from KSKMPCL ('the Respondent' in IA) with a levelized tariff of Rs.4.2509 per kW, for a period till 15.6.2016. Although the Project is located in the State of Chhattisgarh and was supplying power to more than one State, the tariff discovered in the competitive bidding process was adopted by APERC as per Section 64(5) of the Act.

(b) The Respondent also filed two petitions viz., O.P.No.14 of 2014 claiming Rs. 23.60 crore towards liquidated damages and O.P.No.46 of 2014 praying for compensation for additional expenses incurred for purchase of coal at market prices on account of change in law before APERC against the four Discoms of the erstwhile undivided State of Andhra Pradesh. By the time the said petitions were filed, the Respondent was already supplying power to more than one State. Since the tariff and PPA was adopted/ approved by APERC, both parties filed cases against each other before APERC and the cases are still pending.

(c) After bifurcation of the State of Andhra Pradesh, in accordance with the Clause 2.2.1 of PPA dated 31.7.2012, the applicants and the Respondent had again entered into agreement dated 19.12.2014 with additional terms and conditions to the PPA for sale of 400 MW power, by extending the PPA period from 16.6.2016 to 31.3.2021. APERC vide its order dated 19.8.2015 in O.P. No. 3 of 2015 has, as per Section 64(5) of the Act, approved the said plan executed between the parties herein.



(d) Although, the Respondent had earlier filed two petitions (O.P. No. 46/2014 & O.P. No. 13/2014) in respect of other disputes before APERC, it has wrongly filed Petition No.91/MP/2018 before this Commission under Section 79(1)(f) of the Act, for directions on the applicants to pay Rs.165 crore together with surcharge and other charges.

(e) The Hon'ble Supreme Court in its judgment dated 11.4.2017 in Energy Watchdog case held that the jurisdiction of the Central Commission is applicable to the issues raised in the said case. The issue which was before the Hon'ble Supreme Court in the Energy Watchdog case is different from the issue raised in the present petition. In Petition No. 91/MP/2018, the prayers sought by the Respondent relate to payment of transmission charges to PGCIL, which is an issue exclusively limited to the dispute between the Respondent and the applicants. There is no composite scheme involving the claim of change in law. Since it is a dispute inter se the parties to the PPA, the APERC alone has the jurisdiction to adjudicate the issues in terms of Section 64(5) of the Act.

(f) The Respondent had filed an application under Section 142 of the Act against the applicants after the judgment in the Energy Watchdog case for alleged non-compliance of the directions regarding non-payment of charges to PGCIL and differential capacity and energy charges by AP Discoms for the year 2017-18. When the Respondent came to know that APERC had not admitted the said petition on the ground that there is no specific direction to AP Discoms to pay any amount, the Respondent withdrew the said case filed in APERC.

(g) The provisions of Section 79(1)(b) of the Act are not applicable to the tariff adopted by APERC under section 86(1)(b) of the Act. This petition, filed under Section 79 of the Act is not maintainable, as this section deals with the determination and regulation of the tariff determined under section 62 of the Act and not under section 63 of the Act.

Accordingly, the applicants have submitted that the petition is not maintainable, and that the Respondent is not entitled to any of the reliefs claimed in Petition No.91/MP/2018.



Reply of the Respondent (KSKMPCL) in IA No. 72/2018

8. The Respondent, KSKMPCL in its reply dated 31.10.2019 in IA has submitted the following:

(a) The issue of jurisdiction has already been settled by APTEL vide its judgment dated 31.10.2018 in Appeal No. 230 of 2017 between the The said appeal was filed against the order of APERC, wherein it had assumed jurisdiction in a matter between the applicants and the Respondent. APTEL had upheld the jurisdiction of this Commission as the Respondent has a composite scheme for generation and supply of power.

(b) The aforesaid judgment dated 31.10.2018 of APTEL was also upheld by the Hon'ble Supreme Court vide its order dated 3.12.2018 in Civil Appeal No.11142 of 2018 filed by the applicants. Thus the decision upon the point has attained finality. Further, this Commission in its order dated 16.9.2019 in Petition No. 169/MP/2016 and in order dated 21.2.2018 in Petition No. 21/MP/2018 had upheld its jurisdiction between the same parties. Thus, the issue of jurisdiction especially in matters involving the present parties has been well settled.

(c) The Hon'ble Supreme Court in the *Energy Watchdog case (2017) 14 SCC 80* has held that the moment generation and sale takes place in more than one State, the Central Commission will have exclusive jurisdiction to adjudicate upon the disputes under the Act and not the SERCs. In the present case, the generating station is located in the State of Chhattisgarh and the power is supplied to the States of Andhra Pradesh, Tamil Nadu, Uttar Pradesh and Chhattisgarh. In view of this judgment, the jurisdiction in the present case lies with the Central Commission.

(d) The bifurcation of the erstwhile State of Andhra Pradesh into the new State of Andhra Pradesh and the State of Telangana has no relevance whatsoever to the present case and, therefore, cannot mean that this Commission's jurisdiction has been taken away. The petitions filed before APERC were in consonance with the legal position as to jurisdiction prevailing in terms of decisions of APTEL at that point of time. APERC has, vide its order dated 29.12.2018, transferred the said petitions filed before it by the parties herein, to this Commission, in view of the issue of jurisdiction of the parties being settled by APTEL in its order dated



31.10.2018 in Appeal No. 230 of 2017. Therefore, the reliance on the petitions filed before APERC does not stand good as on date.

(e) It is also factually incorrect that APERC had approved the extension of PPA vide its order dated 19.8.2015 under Section 64(5) of the Act. The said order was not passed under Section 64(5) since this section of the Act does not apply to PPAs entered into in terms of Section 63 of the Act.

Accordingly, the Respondent has submitted that there is no merit in this application filed by the applicants and has prayed that the same may be dismissed with costs.

Hearing dated 25.6.2021

9. During the hearing on 25.6.2021, the learned counsel for the Applicants, the AP Discoms and the learned counsel for the Respondent, KSKMPCL reiterated the above submissions and the same is not being reproduced here for the sake of brevity. The issue for consideration at this stage is whether this Commission has jurisdiction to deal with the disputes raised in the present petition, in view of the objections raised by the applicants, the AP Discoms.

Analysis and Decision

10. The jurisdiction of this Commission to regulate the tariff of the generating companies is derived from Sections 79(1)(a) and 79(1)(b) of the Act and that to adjudicate the dispute from Section 79(1)(f) of the Act. The said provisions are extracted as under:

“Section 79. (Functions of Central Commission): --- (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;



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(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”

11. Under Section 79(1)(b) of the Act, the Central Commission has the jurisdiction to regulate the tariff of generating companies other than those owned or controlled by the Central Government if those generating companies have composite scheme for generation and sale of electricity in more than one State.

12. The Hon'ble Supreme Court in its judgment dated 11.4.2017 in Energy Watchdog case (2017) 14 SCC 80, has dealt with the issue of composite scheme under Section 79(1)(b) of the Act as under:

“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in subsections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.”

13. In terms of the above decision of the Hon'ble Supreme Court, the moment generation and sale of electricity takes place in more than one State, this Commission is the appropriate Commission under the Act. In the present case, the generating station of the Respondent is located in the State of Chhattisgarh and besides the applicants, it is also supplying the power to the distribution companies of the States of Uttar Pradesh, Tamil Nadu and Chhattisgarh. Thus, it has a composite scheme for



generation and supply of power to more than one State. In the light of the decision of the Hon'ble Supreme Court in Energy Watchdog case, we are of the view that this Commission has the jurisdiction to regulate the tariff of the generating station of the Respondent KSKMPCL under Section 79(1)(b) of the Act and to adjudicate the disputes raised in respect thereof, under Section 79(1)(f) of the Act.

14. The applicants have contended that since APERC had adopted the tariff and approved the PPA under Section 64(5) of the Act, this Commission does not have the jurisdiction to adjudicate the present dispute between the parties. It has also stated that in terms of paragraph 29 of the judgment of the Hon`ble Supreme Court in Energy Watchdog case, the present case is squarely covered under Section 64(5) of the Act. It has been submitted by the applicants that Section 64(5) of the Act is a non obstante clause and that the said provision carves out an exception for approval of tariff and PPA and for consequent adjudication of disputes by APERC. The applicants have also argued that once the jurisdiction of APERC has been invoked by consent of parties in accordance with the provisions of Section 64(5) of the Act, the parties to the PPA cannot be allowed to later claim that APERC has no jurisdiction.

15. Per contra, the Respondent has submitted that the petitions filed before APERC (prior to bifurcation of the erstwhile State of AP) were in consonance with the legal position as to jurisdiction prevailing in terms of decisions of APTEL at that point of time. It has also submitted that APERC vide its order dated 29.12.2018 in O.P. No.46/2014 had transferred these petitions to this Commission, in view of the issue of jurisdiction of the parties being settled by APTEL in its order dated 31.10.2018 in Appeal No. 230 of 2017. The Respondent has also pointed out that judgment dated 31.10.2018 of APTEL was also upheld by the Hon'ble Supreme Court vide its order dated 3.12.2018 in Civil Appeal No.11142 of 2018 filed by the applicants. The



Respondent has further pointed out that this Commission in its order dated 16.9.2019 in Petition No. 169/MP/2016 and in order dated 21.2.2018 in Petition No. 21/MP/2018 had upheld its jurisdiction in matters involving the same parties. Accordingly, the Respondent has argued that the issue of jurisdiction especially in matters involving the parties herein has been well settled by the aforesaid decisions.

16. We have considered the submissions of the parties. The issue of jurisdiction between the parties in terms of the PPA dated 31.7.2012, as amended, is no more *res integra*. It is observed that the submissions of the applicants that APERC has the jurisdiction to adjudicate the disputes, since it has adopted the tariff under the PPA in terms of Section 64(5) of the Act, had already been examined by this Commission in Petition No. 61/MP/2021 (KSKMPCL V AP discoms) filed by the Respondent for adjudication of the disputes arising on account of termination of the PPA dated 31.7.2012 by the applicants and the same was rejected by the Commission vide its order dated 1.5.2021. The relevant portion of the said order is extracted hereunder:

“16. With regard to Section 64(5) of the Act, the Hon’ble Supreme Court in its judgment dated 11.4.2017 in Energy Watchdog Case had observed the following:

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In our view, the findings of the Hon’ble Supreme Court on Section 64(5) of the Act do not in any manner support the argument of the Respondents that the State Commission/APERC will have jurisdiction in matters relating to inter-State supply of power. Hon’ble Supreme Court in above paragraph has observed that the non-obstante clause in Section 64(5) clearly indicates that in case of inter-State supply, transmission and wheeling, the Central Commission alone has the jurisdiction. Notwithstanding the jurisdiction being with Central Commission, by application of the parties concerned, the jurisdiction can be given under Section 64(5) of the Act to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity. “By application of the parties concerned” would mean the parties to the inter-State supply in terms of Section 64(5) of the Act i.e. parties to the inter-State supply involving territories of two States. In respect of PPA dated 31.7.2012 and its subsequent amendment dated 19.12.2014, the Respondents, AP Discoms have invoked the jurisdiction of the State Commission/APERC for adoption of tariff under Section 63 of the Act and approval of the PPA under Section 86(1)(b) of the Act. The said Petitions can be construed as a joint application by the parties under Section 64(5) invoking the jurisdiction of the State Commission. Further, there is nothing on record to show that both the Petitioner and AP Discoms had approached the State Commission for determination of tariff under Section 64(5) of the Act. In our view, the case of the Petitioner is not covered under Section 64(5) of the Act, since the generating station of the Petitioner is supplying power to more than one State and therefore, has a composite



scheme for generation and supply of power under Section 79(1) (b) of the Act. Consequently, any dispute involving Section 79(1)(b) of the Act can only be adjudicated by the Central Commission under Section 79(1)(f) of the Act. In the light of the above discussion, we are of the view that even though the tariff discovered under the competitive bid process was adopted by the State Commission under Section 63 of the Act, Section 64(5) has no application in the present case since the generating station is having composite scheme of generation and supply of electricity in more than one State and in terms of judgment of the Hon'ble Supreme Court in Energy Watchdog Case, the jurisdiction for regulating the tariff of the generating station of the Petitioner and adjudication of disputes vest in the Central Commission. Accordingly, the submission of the Respondents, AP Discoms on this count is not sustainable.”

17. In line with the above decision, the submissions of the applicants that this Commission has no jurisdiction stands rejected.

18. The applicants have submitted that the Respondent had filed application before APERC under Section 142 of the Act against the applicants, even after the judgment in the Energy Watchdog case for alleged non-compliance of the directions regarding non-payment of charges to PGCIL and differential capacity and energy charges by applicants for the year 2017-18. Per contra, the Respondent has submitted that reliance to the petitions filed before APERC, to assume jurisdiction, does not have any legal basis, pursuant to the judgment dated 31.10.2018 of APTEL in Appeal No.230/2017, as confirmed by the Hon'ble Supreme Court and after APERC has, vide its order dated 29.12.2018, transferred the said petitions filed before it by the parties, to this Commission, in terms of the aforesaid decisions.

19. We have examined the matter. As stated earlier, the Respondent has on 31.7.2012 entered into a PPA with the distribution licensees in the undivided State of Andhra Pradesh, for supply of 400 MW power from the Project and the tariff for the said supply was adopted by APERC vide its order dated 18.6.2013 in OP. No. 38/2013 under Section 63 of the Act. Subsequently, the parties herein, based on the legal position prevailing at the relevant point in time, had filed several petitions viz., OP No.13/2014 (KSKMPCL v AP discoms) OP.No.14/2014 (APCPDCL v KSKMPCL), OP. No.46/2014 (KSKMPCL v AP discoms) and OP No.3/2015 (AP discoms v KSKMPCL),



before APERC on various issues. However, in OP. No.46/2014 filed by the Respondent, the APERC vide its order dated 28.9.2016 decided that it has the jurisdiction to deal with the disputes between the parties herein, notwithstanding the fact that the supply of power by the Respondent was to two or more States. Against this order, the Respondent filed appeal (Appeal No.230/2017) before APTEL and by judgment dated 31.10.2018, APTEL, in respect of the same PPA *inter se* upheld the jurisdiction of this Commission, as under:

“5.5.....While analyzing Sections 79, 86 and 65, Their Lordship, while interpreting composite scheme opined that the State Commission has jurisdiction only where generation and supply takes place within the State (intra-State). But in a case where the generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. In the present case, the generation of electricity is in the State of Chhattisgarh and sale of electricity is not restricted to either State of Chattisgarh or State of Andhra Pradesh. The Appellant generating company supplies electricity to other States as well, i.e. Tamil Nadu, Uttar Pradesh and Telengana apart from Andhra Pradesh and Chhattisgarh.”

20. The aforesaid decision of APTEL was challenged by the applicants herein, before the Hon'ble Supreme Court in Civil Appeal No. 11142 of 2018 and the Hon'ble Court on 3.12.2018, upheld the judgment of APTEL dated 31.10.2018 in Appeal No.230/2017, as extracted hereunder:

“2) We are not inclined to interfere with the order passed by the Appellate Tribunal for Electricity, New Delhi.

3) Accordingly, the Civil appeal is dismissed.

4) However, we make it clear that we have considered only the case of K.S.K Mahanadi Power Company Ltd.”

21. Pursuant to the above judgment of APTEL dated 31.10.2018, as confirmed by the Hon'ble Supreme Court on 3.12.2018, APERC, vide its order dated 29.12.2018, has transferred the entire records in O.P. No.46/2014 to this Commission. Similarly, APERC vide its orders dated 19.1.2019 in O.P. No.13/2014 and O.P. No.14/2014 has transmitted the entire records of these petitions to this Commission. It is pertinent to mention that in the light of the aforesaid decisions, this Commission, vide its order dated 1.5.2021 in Petition No. 61/MP/2021, had rejected the submissions of the



applicants on the issue of jurisdiction. Thus, the jurisdiction of this Commission to adjudicate the disputes between the parties has been settled by the aforesaid decisions and has attained finality, the submissions of the applicants that APERC only has the jurisdiction in the matter, cannot be entertained and is accordingly rejected.

22. Pursuant to the aforesaid orders/judgments upholding the jurisdiction of this Commission to adjudicate the disputes between the parties in respect of the PPA dated 31.7.2012, the other submissions of the applicants namely, that the judgment of the Hon'ble Supreme Court in Energy Watchdog case is not applicable to the present case; that the provisions of Section 79(1)(b) of the Act are not applicable to the tariff adopted by APERC under section 86(1)(b) of the said Act; and that the parties had approached APERC even after the judgment of the Hon'ble Supreme Court in Energy Watchdog case, have all been rendered inconsequential.

23. Thus, the issue of jurisdiction having been settled in favour of this Commission in terms of the above orders/judgments, the same cannot be unsettled by the applicants, by once again raising issues on jurisdiction, on extraneous grounds. In the light of the above, we hold that this Commission has the jurisdiction to regulate the tariff of the project of the Respondent, under Section 79(1)(b) of the Act and to adjudicate the disputes in terms of Section 79(1)(f) of the Act.

24. It is, however, clarified that this order is limited to determination of the issue of the jurisdiction of this Commission to adjudicate the disputes between the parties and we have not expressed any view on merits of the matter raised in Petition No. 91/MP/2018.

Petition No. 91/MP/2018

25. During the hearing, the learned counsel for the Petitioner submitted that considering the fact that the PPA had expired in March, 2021 and that the claims in



the petition are required to be updated, the Commission may either dispose of this petition granting liberty to the Petitioner to file fresh petition or permit to amend the petition. This was opposed by the learned counsel for the Respondent, AP Discoms on the ground that no claims had been made by the Petitioner in Petition No.61/MP/2021 (which was disposed of) and that the same will be hit by delays and latches. In response, the learned counsel for the Petitioner clarified that since the Respondent AP Discoms are liable to make payments along with Late Payment Surcharge, the claims of the Petitioner are legally tenable.

26. The Commission after hearing the parties directed the Petitioner to submit, on affidavit, the total arrears/dues payable as on 31.7.2021 by the Respondent AP Discoms to the Petitioner. The said affidavit shall be filed by the Petitioner on or before 13.8.2021 and the Petitioner shall serve copy to Respondents, who shall file their response by 22.8.2021. Parties are directed to complete further pleadings on merits, if any, within the said dates. No further extension of time for completion of pleadings shall be permitted.

27. IA No. 68/2018 and IA No. 72/2018 are disposed of in terms of the above. Petition No. 91/MP/2018 will be listed in due course for hearing on 'merits' for which separate notice will be issued to parties.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(I.S.Jha)
Member

Sd/-
(P.K.Pujari)
Chairperson

