

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Shri Harish Dudani, Member

Date of Order: 29th August, 2026

ORDER

I respectfully disagree with the decision as approved by the Chairperson and other Members of the Commission. The reasons and circumstances leading to a different decision are discussed in subsequent paragraphs.

2. The instant Petition has been filed under Section 63 of The Electricity Act, 2003 (hereinafter called as 'the Act') filed by the Petitioner for adoption of tariff in respect of a **pilot project** for a Surface Hydrokinetic Power Plant of 1 MW (4x250 kW) capacity, proposed to be developed under the RESCO mode for a period of **40 years**. Section 63 of the Act empowers this Commission to adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

3. The Petitioner has pleaded that the technology in question is a nascent technology and no guidelines under Section 63 of the Act have been issued by the Central Government. As per the Petitioner BBMB, it is a statutory body constituted under the provisions of Section 79(1) read with Section 80(6) of the Punjab Reorganization Act, 1966, and has been engaged in regulating the supply of water, generation, and transmission of power from the Bhakra Nangal and Beas Projects.

4. As per Section 79(2)(a) of Punjab Reorganization Act, 1966, the Bhakra Beas Management Board (BBMB) shall consist of a whole time Chairman and two whole

time Members to be appointed by the Central Government. Section 63 of the Act contemplates adoption of tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. Since, the Chairman and two whole time Member of the Petitioner BBMB have been appointed by the Central Government, they are presumed to be aware of the requirement of guidelines issued by the Central Government under Section 63 of the Act. In its various decisions, this Commission has always upheld the sanctity of the guidelines issued by the Central Government under Section 63 of the Act.

5. As in the present case, the Petitioner has pleaded that no guidelines under Section 63 of the Act in respect of technology in question have been issued by the Central Government. On that account, Legal Division was sent a note on 13th July, 2026, to check the records and to inform that whether the Petitioner has approached Central Government for issuance of guidelines before approaching this Commission, and also to mention details of such communication, if any, and decision thereon. On the said note, a copy of Letter No. 9255-59/B-103/SHKT/4P, dated 20.05.26, written by Special Secretary of Bhakra Beas Management Board, addressed to Director (Hydro), the Ministry of Power (MoP), New Delhi was sent by the Legal Division, which was received in the office of the Commission vide No. 99458/2026/CPU-CERC dated 01.06.2026. However, the said letter dated 20.5.2026 was sent to the Legal Division by the concerned office of the Commission on 29.6.2026. The aforesaid letter dated 20.5.2026 of the Special Secretary reads as under:

“प्रेषक
विशेष सचिव

सेवा में,
Director (Hydro)
Ministry of Power (MOP)
New Delhi.

क्रमांक: 9255-59/B-103/SHKT/4P

दिनांक: 20.05.2026

विषय: Surface Hydrokinetic Power Plant at downstream of Kotla Hydro Power Station, BBMB under RESCO mode for period of 40 years seeking adoption of tariff discovered through a transparent, competitive bidding process Bidding guideline.

The Government of India (Gol), vide its letter dated 13.8.2021, constituted a committee to study the Concept and Commercial applications of Hydrokinetic turbine. CEA in its report recommended that the Gol consider advising Power Generating Utilities under its administrative control to undertake such technology demonstration projects for suitable capacities at various locations & under varying Environment conditions, to promote R&D activities in the country, for development of indigenous technology and for establishment of technology to help in deeper penetration of RE in the energy spectrum of the country.

The Surface Hydrokinetic Turbine Technology ('SHKT') harnesses energy from flowing water without requiring dams or major civil structures. The said technology has achieved Technology Readiness Level 9 (TRL-9) as certified by the Central Electricity Authority ('CEA') vide its letter dated 04.01.2024, and has been recognized as Small Hydro Power Technology by CEA vide its Office Memorandum dated 20.11.2024, and was recommended by MNRE for deployment under existing hydro policies.

Thereafter, a meeting was held on 21.01.2025 under the Chairmanship of Secretary (Power) to discuss MACLEC's indigenous Surface Hydrokinetic Turbine (SHKT) Technology, which was also attended by BBMB. Pursuant to the said meeting, M/s MACLEC conducted a site visit to the BBMB Nangal Hydel Channel and subsequently submitted its detailed proposal for the 4x250 kW SHKT project at downstream of Ketla Hydro Power Station, BBMB.

To promote this technology, an NIT was floated on 23.05.2025 for setting up of 4x250 kW SHKT power plant at Nangal Hydel Channel, downstream of Kotla Hydro Power Station, BBMB. The project is a pilot and demonstrative project, implemented to establish techno-commercial viability of Hydrokinetic Technology in canal-based systems under RESCO mode.

*After the transparent and competitive bidding process, BBMB placed an order on M/s MACLEC (**L-1 bidder**) for setting up the said pilot project at competitive tariff of Rs. 3.39 per unit over the period of 40 years.*

Section 63 of The Electricity Act, 2003, provides as under:

"Section 63. (Determination of tariff by bidding process): Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

In compliance to above, BBMB has filed a petition in CERC (145/AT/2026) on 02.02.2026 for adoption of tariff of the above said Hydrokinetic project.

Since there are no specific bidding guidelines for this new technology issued by Central Govt., BBMB is facing challenges in getting its tariff adopted from the Hon'ble CERC. This technology has huge potential with lot of opportunities to harness renewable energy, leading to overall growth of power sector.

In view of the above, it is requested that specific guidelines for this new Hydro Kinetic Technology (HKT) Turbines may be framed at the earliest.

विशेष सचिव"

6. It is to be noted that the instant Petition has been filed for adoption of tariff of a **pilot project** for a period of **40 years** in respect of which no guidelines have been issued by the Central Government under Section 63 of the Act, and also that the Chairman of the BBMB is appointed by the Central Government under Section 79(2)(a) of the Punjab Reorganization Act, 1966, and being aware of the provisions of the Section 63 of the Act, the Chairman might have addressed some communication to the Central Government for issuance of the guidelines under Section 63 of the Act, the Legal Division was asked to check and submit if Petitioner (BBMB) had made any request to the Central Government for issuance of guidelines under Section 63 of the Act before initiating the process of inviting bids for the pilot project on which aforesaid letter dated 20.05.2026 was shared by the Legal Division.

7. On perusal of the letter dated 20.05.2026 of the Special Secretary, BBMB, addressed to Ministry of Power, thereby requesting for issuance of specific

guidelines for the technology in question, and also keeping in view that the Petition involves exercise of powers by this Commission which are vested in the Central Government, it was observed that in the circumstances of the case, the presence of Central Government is necessary in order to enable the Commission to effectually and completely to adjudicate and settle all the questions involved in the Petition, the appropriate Government be impleaded as a Party and the response of appropriate Government may be obtained and matter be listed for hearing. However, the Chairperson and other Members did not agree for impleading appropriate Government or from obtaining its response. In the case titled as **State of Gujarat & Ors. v Utility Users' Welfare Association & Ors.**, Civil Appeal No. 14697 of 2015, the Hon'ble Supreme Court has observed as under:

"93. A perusal of these provisions would show that apart from their definition, even otherwise, these are powers of a civil court under [the Code of Civil Procedure](#), 1908 (hereinafter referred to as the 'said 38 supra Code'). Powers such as summoning, enforcement of attendance of any person and examination on oath, discovery and production of documents, receiving affidavit of evidence, requisitioning of public records, etc., all form part of [Section 94](#). In terms of [Section 95](#), all such proceedings before the State Commission would be deemed to be judicial proceedings within the meaning of [Sections 193](#) and [228](#) of the Indian Penal Code, 1860 and the commission would be a civil court for purposes of [Sections 345 & 346](#) of the Code of Criminal Procedure, 1973. Not only that, [Section 96](#) confers the extreme power of entry and seizure in respect of any building and place where the Commission has reason to believe that any document relating to the subject matter of enquiry may be found and may be seized. The power is conferred on the Commission under [Section 129](#) for securing compliances of orders and under [Sections 142 & 146](#) for punishment for non-compliance of orders and directions. This, thus, leaves no manner of doubt that the State Commission, though defined as a 'Commission' has all the 'trappings of the Court'.

....
99. Once we find that the tribunal has the trappings of the court in respect of its functions, we turn to the effect of the same.
....

106. In *Madras Bar Association*⁵⁹ (MJ-II), the Constitution Bench, referring to the decision in *Madras Bar Association*⁶⁰ (MJ-I) observed that members of tribunals discharging judicial functions could only be drawn from sources

possessed of expertise in law and competent to discharge judicial functions. We are conscious of the fact that the case (MJ-I) dealt with a factual matrix where the powers vested in courts were sought to be transferred to the tribunal, but what is relevant is the aspect of judicial functions with all the 'trappings of the court' and exercise of judicial power, at least, in respect of same part of the functioning of the State Commission. Thus, if the Chairman of the Commission is not a man of law, there should, at least, be a member who is drawn from the legal field. The observations of the Constitution Bench in Madras Bar Association⁶¹ (MJ-II) constitutes a 59 supra 60 supra 61 supra declaration on the concept of basic structure with reference to the concepts of "separation of powers", "rule of law" and "judicial review". The first question raised before the Constitution Bench as to whether judicial review was part of the basic structure of the Constitution was, thus, answered in the affirmative."

8. In **Rojer Mathew v South Indian Bank Ltd and Ors.**, [(2020) 6 SCC 1], the Hon'ble Supreme Court has been pleased to observe as under:

"14. Further, this Court has in various judgments explicitly held that tribunals are mutually exclusive from administrative or legislative bodies, and although not strictly Courts, they nevertheless perform judicial functions. With the inclusion of technical members along with judicial members in composition of Tribunals, it is ensured that the adjudicatory authority is equipped with the technical knowledge required to comprehend and decide issues involving specialised subjects.

...

48. The bench observed that if Tribunals are established in substitution of Courts, they must also possess independence, security and capacity. Additionally, with transfer of jurisdiction from a traditional Court to a Tribunal, it would be 16 (2010) 11 SCC 1 imperative to include members of the judiciary as presiding officers/members of the Tribunal. Technical members could only be in addition to judicial members and that also only when specialised knowledge or know-how is required. Any inclusion of technical members in the absence of any discernible requirement of specialisation would amount to dilution and encroachment upon the independence of the judiciary. "

9. The perusal of the Order approved by the majority shows that they have relied upon the decision of *Energy Watchdog v. CERC* [(2017) 14 SCC 80], the APTEL judgment dated 9.3.2018, in Appeal No. 278 of 2016, *JBM Solar Power Private Limited v. Haryana Electricity Regulatory Commission & Ors.*, the APTEL judgment dated 27.5.2019, in Appeal No. 150 of 2016 *M/s Siwana Solar Power Project (P) Limited v. Haryana Electricity Regulatory Commission & Ors.*, and the Hon'ble Gujarat High Court decision in *Indian Wind Energy Association v. Gujarat Urja Vikas*

Nigam Limited. The reliance on aforesaid decisions by the majority members clearly shows that the Petition involved interpretation of question of law.

10. After hearing the learned counsels for the Petitioner at length and carefully considering their submissions and on perusal of the relevant documents available on record, the main issue that arises for consideration is, whether in the absence of Guidelines as stipulated in Section 63 of the Act, this Commission can arrogate to itself the power to adopt the tariff, for which no Guidelines have been framed by the Central Government.

11. The Petitioner has submitted that the proposed Project is a **pilot project** for a Surface Hydrokinetic Power Plant, which is proposed to be established under the RESCO mode for a period of **40 years** and is stated to be the first project of its kind in a canal system. The Petitioner has further submitted that the Surface Hydrokinetic Turbine Technology (SHKT), is an emerging renewable energy technology that harnesses kinetic energy from flowing water without requiring dams or major civil structures. In support thereof, the Petitioner has pointed out that the MoP vide Notification dated 13.8.2021, acknowledged the technology and constituted a committee to study its concept and commercial applications. The said technology has achieved Technology Readiness Level 9 (TRL-9) as certified by the CEA vide letter dated 4.1.2024, and has been recognized as Small Hydro Power Technology by CEA vide Office Memorandum dated 20.11.2024, and has also been recommended by the MNRE for deployment under the existing hydro power policy framework.

12. The Petitioner has submitted that, no technology-specific tariff-based competitive bidding guidelines have been issued by the Ministry of Power or the Ministry of New and Renewable Energy for Hydrokinetic Power Projects. Accordingly, in the absence of such Guidelines, BBMB had issued the Tender Document dated 23.5.2025, in accordance with the CVC Manual for Procurement of Works and the applicable CEA/MNRE guidelines for hydro-based projects RESCO mode, and accordingly, the bidding process was conducted. The Petitioner has contended that the absence of technology-specific Guidelines does not create a jurisdictional vacuum and cannot, by itself, render the present Petition non-maintainable.

13. **Section 63** of the Act reads as under:

“Section 63: Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

14. The scope and ambit of Section 63 of the Act makes it evident that adoption of tariff by the Appropriate Commission is contingent upon satisfaction of two essential requirements, namely, – a) the tariff must be determined through a transparent process of bidding; and b) such transparent bidding process must be conducted in accordance with the Guidelines issued by the Central Government. It is to be noted that Section 63 is couched in mandatory form and no exception by way of any proviso has been provided in the said Section by the legislature thereby empowering this Commission to substitute its own views in place of Guidelines framed by the Central Government.

15. In the Present Petition, the Petitioner has sought adoption of tariff under Section 63 of the Act. It is, however, an admitted position that no technology-specific Guidelines have been issued by the Ministry of Power or MNRE governing tariff discovery for Hydrokinetic Power Projects. Consequently, the statutory requirement under Section 63 is not merely that tariff should be discovered through a competitive process but that such competitive bidding should be undertaken in accordance with the Guidelines framed by the Appropriate Government. In such circumstances, the Commission cannot undertake an examination as to whether the bidding process conforms to the Guidelines envisaged under the provision.

16. The Petitioner, vide affidavit dated 24.4.2026, has contended that the absence of technology-specific Guidelines does not create a legal or regulatory vacuum and that the Commission is empowered to exercise its regulatory powers under Section 79(1)(b) of the Act while considering the present Petition for the adoption of tariff.

17. The Petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Energy Watchdog v. CERC** [(2017) 14 SCC 80], to contend that, in absence of technology-specific Guidelines, the Commission may invoke its regulatory jurisdiction under Section 79(1)(b) of the Electricity Act, 2003. The Hon'ble Supreme Court observed that where the Guidelines framed under Section 63 do not cover a particular situation, or where no Guidelines have been framed, the Commission's regulatory powers under Section 79(1)(b) continue to subsist. At the same time, the Court categorically held that wherever the statutory Guidelines operate, the Commission is bound to act in conformity therewith and cannot

disregard the legislative scheme. The relevant extract of the said judgment is reproduced below:

“... it is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission’s general regulatory powers under Section 79(1) (b) can then be used.”

18. I have considered the position of law emerging from the aforesaid judgment. The principle laid down by the Hon’ble Supreme Court in *Energy Watchdog v. CERC*, [(2017) 14 SCC 80], recognizes that the Commission's regulatory powers under Section 79(1)(b) of the Act may be invoked in situations where the Central Government Guidelines do not address a particular situation. However, the said power is neither absolute nor unfettered. The regulatory power under Section 79(1)(b) is intended to supplement the statutory framework and cannot be exercised so as to supplant or override the mandatory conditions contemplated under Section 63 of the Act.

19. It is pertinent to note that the Hon’ble Supreme Court in its judgment in the case of **PTC India Ltd. v. Central Electricity Regulatory Commission**, [(2010) 4 SCC 603], emphasized that regulatory powers must operate within the framework of the Act and cannot be exercised in a manner that defeats or overrides the statutory scheme enacted by Parliament.

20. The Petitioner has placed reliance upon the CVC Manual for procurement of works, BBMB's internal procurement procedures and the applicable CEA/MNRE framework, governing hydro-based projects under the RESCO mode. While these

documents may constitute the governing framework for the procurement process undertaken by the Petitioner and may demonstrate adherence to accepted procurement practices, they cannot be equated with the statutory requirement contemplated under Section 63 of the Act. The CVC Manual governs procurement practices and vigilance aspects; it is not a substitute for the bidding Guidelines contemplated under Section 63.

21. The Commission, vide its order dated 9.7.2025 in **Petition No. 241/AT/2025**, reiterated that the jurisdiction under Section 63 of the Act is circumscribed by the statutory requirement that the tariff must be discovered through a transparent process of bidding conducted in accordance with the Guidelines issued by the Central Government. Since the bidding process in that case had materially deviated from the applicable Guidelines, the Commission declined to adopt the tariff. The relevant extract of the said order is reproduced as under:

“35. In the aforesaid letter dated 28.06.2024, the Government of West Bengal has mentioned that the said sanction has been issued in pursuance of CESC Letter No. SEC:1028/2024-25/65 dated 31.05.2024 of the Petitioner. The letter No. SEC:1028/2024-25/65 dated 31.05.2024 which is on record shows that the said letter has been written by the Petitioner to the Secretary, Department of Power, Government of West Bengal thereby requesting for approval of deviation under Clause 19 of the Hybrid Bidding Guidelines and under Clause 16 of the Solar Bidding Guidelines. The perusal of the letter No. SEC:1028/2024-25/65 dated 31.05.2024 shows that by way of the said letter, the Petitioner has informed the Secretary that the Petitioner seeks to procure renewable power from wind-solar Hybrid power under the competitive bidding route following the Hybrid Bidding Guidelines and from the Solar PV Power plants under the Solar Bidding Guidelines and as per Clause 6.2.4 of Hybrid Bidding Guidelines and as per Clause 5.3 of Solar Bidding Guidelines, a single bidder cannot be allocated more than 50% of the total capacity for which bid is invited by the procurer and to ensure most cost effective procurement of renewable energy, the Petitioner seeks the bidders to have the option of bidding for up to 100% of the bid capacity. However, in the said letter No. SEC:1028/2024-25/65 dated 31.05.2024 the Petitioner has not informed the Secretary, Department of Power, Government of West Bengal that the proposed deviations have been sought in respect of Inter-State Transmission System (ISTS) project and thereby induced the Government of West Bengal

to issue the sanction vide 1044-POW-30015(13)/3/2019-SECTION(POWER) dated 28.6.2024 under Clause 19 of the above stated Guidelines dated 21.8.2023 and Clause 16 of the above stated Guidelines dated 28.7.2023. The Petitioner was well aware that, as per Clause 19 of the above-stated Guidelines dated 21.8.2023 and Clause 16 of the above-stated Guidelines dated 28.7.2023, the “Appropriate Government” in respect of an ISTS Project is the Central Government. However, the Petitioner concealed the material fact that the project was an ISTS project from the Government of West Bengal and obtained sanction for deviations vide letter No. 1044-POW-30015(13)/3/2019- SECTION(POWER) dated 28.6.2024. The sanction for deviations as accorded by the Government of West Bengal vide letter No. 1044-POW-30015(13)/3/2019- SECTION(POWER) dated 28.6.2024 is non est as the same has been issued by the Government of West Bengal by exercising the jurisdiction which was not vested in it and the said jurisdiction was to be exercised by the Central Government. Consequently, the present petition has been filed by the Petitioner on the basis of sanction obtained from the Government of West Bengal which is non est and does not confer any right on the Petitioner being in non-conformity with the provisions of Clause 19 of the above stated Guidelines dated 21.8.2023 and Clause 16 of the above stated Guidelines dated 28.7.2023. The Commission is aware that in the order dated 5.11.2024 in Petition No. 365/AT/2024, the Commission had considered the similar prior approval of the Govt. of West Bengal as obtained by the Petitioner while adopting the tariff discovered in the said case, however, the said special dispensation allowed by the Commission therein cannot be relied upon by the Petitioner for the subsequent tenders, as the same was allowed keeping in mind the exigency of the situation at the relevant time and the Petitioner was made aware by the observation of the Commission as regards the “Appropriate Government” vide Record of Proceedings for hearing dated 5.11.2024.

36. It is noted that pursuant to the Commission’s observation dated 5.11.2024 in Petition No. 365/AT/2024, the Petitioner ought to have taken suitable measures in respect of the subsequent RfS as issued on 8.11.2024. The perusal of the record shows that the RfS of the present case was issued on 8.11.2024, a Pre-Bid meeting was held on 13.11.2024, clarification on the RfS was issued on 21.11.2024, and the last date of bid submission was 30.11.2024. Hence after issuance ROP dated 5.11.2024 in Petition No. 365/AT/2024, the Petitioner had sufficient time till the last date of bid submission, i.e. 30.11.2024 to recall the bidding process and to obtain prior permission of the “Appropriate Government” for permission for the proposed deviations from the Guidelines issued in this regard. But the Petitioner instead of following the procedure as prescribed by Clause 19 of the above stated Guidelines dated 21.8.2023 and Clause 16 of the above stated Guidelines dated 28.7.2023 proceeded with the bidding process on the basis of an earlier approval to deviations accorded vide letter dated 28.6.2024 by the Government of West Bengal which is a non-est document, as discussed above.

37. *In view of the above, we are of the view that acceptance of the Petitioner's prayers in the instant petition would not be in consonance with the principles as contained in Section 63 of the Electricity Act, 2003. As such, we reject the adoption of the tariff so discovered, as the Petitioner has not complied with the bidding guidelines under Section 63 of the Act. The Petitioner may go for re-bidding, if so advised, strictly in accordance with the guidelines issued under Section 63 of the Act."*

22. In the aforesaid order, the Commission declined to adopt the discovered tariff on account of non-compliance with the Hybrid Guidelines issued by the Ministry of Power for Grid Connected Wind-Solar Hybrid Project under tariff Based Competitive Bidding for meeting Renewable Purchase Obligation (RPO) under Section 63 of the Act.

23. Similarly, the Commission, vide its order dated 04.05.2026 in **Petition No. 739/MP/2025**, permitted certain deviations from the Bidding Guidelines. In that case, the applicable Central Government Bidding Guidelines expressly empowered the Appropriate Commission to consider and approve deviations therefrom. The Commission, therefore, exercised a jurisdiction traceable to the Guidelines themselves. However, in the present case, no technology-specific Guidelines have been issued by the Central Government for Surface Hydrokinetic Power Projects. Consequently, the question is not one of permitting deviations from existing Guidelines, but of the complete absence of the statutory framework contemplated under Section 63. Therefore, the ratio of the order in **Petition No. 739/MP/2025** does not advance the Petitioner's case.

24. The facts of the present case are distinguishable inasmuch as no technology-specific Guidelines have been issued by the Central Government for the **pilot** Surface Hydrokinetic Power Project, the underlying statutory principle remains the same. Section 63 of the Act contemplates adoption of tariff only where the bidding

process has been conducted in accordance with the Guidelines issued by the Central Government. In the present case, the Petitioner has conducted the procurement process in accordance with the CVC Manual for Procurement of Works, BBMB's internal procurement procedures and the applicable CEA/MNRE framework. While these instruments may govern the procurement methodology and ensure transparency in the tendering process, they cannot be equated with or substituted for the Guidelines contemplated under Section 63 of the Act.

25. The Hon'ble Supreme Court in **New India Assurance Company Limited v. Hilli Multipurpose Cold Storage (P) Limited**, [(2020) 5 SCC 757], reiterated the settled principle of statutory interpretation that where the legislature prescribes a specific condition or procedure for the exercise of a statutory power, the same is required to be complied with in its letter and spirit and cannot be diluted by judicial interpretation on considerations of equity, hardship or convenience. The relevant observations are extracted below:

"20. The legislature in its wisdom has provided for filing of complaint or appeal beyond the period specific under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be to the satisfaction of the authority concerned. No such discretion has been provided for under Section 13 (2) (a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provisions for further extension in the period of filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific provision of the status is not within the jurisdiction of the courts, and it is so done, it would amount to legislating or inserting a provision in the statute, which is not permissible.

22. ... Further hardship cannot be a ground for changing the mandatory nature of the status, as has been held by this court in Bhikraj Jaipuria V. Union of India and Fairgrowth Investment Ltd. Vs. Custodian. Hardship cannot thus be a ground to interpret the provision so as to enlarge the time,

where the statute provides for a specific time, which in our opinion, has to be complied in letter and spirit.”

In the aforesaid judgment, the Hon`ble Supreme Court held that hardship cannot be a ground to enlarge a scope where the statute provides a specific time which must be complied with “in letter and spirit”. It was also observed that when the legislature has prescribed a specific provision, it is not open to change the same on grounds of hardship or administrative inconvenience.

26. Further, the Hon’ble Supreme Court in the case of **Sharif-ud-din v. Abdul Gani Lone**, [(1980) 1 SCC 403 (Para 9)] has laid down the definitive test for whenever a statute prescribes that an act is to be done in a particular manner and also lays down that failure to comply leads to a specific consequence, such requirement shall be understood as mandatory in nature.

27. The Hon'ble Supreme Court in the case of **Jaipur Vidyut Vitran Nigam Limited v. MB Power (M.P.) Ltd.**, [(2024) 8 SCC 513], while reiterating the principles laid down in *Energy Watchdog v. CERC*, held that under Section 63 of the Act, the Appropriate Commission does not determine tariff but merely adopts the tariff discovered through competitive bidding, subject to satisfaction of the twin statutory requirements, namely, that (i) the bidding process was transparent, and (ii) it was conducted in accordance with the Guidelines issued by the Central Government. The Hon'ble Supreme Court further held that the Commission is not a mere post office and is duty-bound to examine whether these statutory requirements have been fulfilled before adopting the tariff.

28. The Hon'ble Supreme Court in the case of **Tata Power Transmission Company Limited v. Maharashtra Electricity Regulatory Commission**, [(2023) 11

SCC 1], while reaffirming the principles laid down in *Energy Watchdog v. CERC*, [(2017) 14 SCC 80], held that the Appropriate Commission is not a mere post office while exercising jurisdiction under Section 63 of the Act. The Commission is required to satisfy itself that the tariff has been discovered through a transparent process of competitive bidding conducted in accordance with the Guidelines issued by the Central Government. The Hon'ble Supreme Court further held that unless the twin statutory requirements of transparency and compliance with the Central Government Guidelines are satisfied, the Commission is not obliged to adopt the discovered tariff and may decline such adoption.

29. As per decision in *Energy Watchdog* (supra), the Hon'ble Supreme Court, while interpreting the provisions of the Act observed that the entire Act must be read as a whole and while interpreting the provisions of the Act, it was held that either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(b) is the source of power to regulate, which includes power to determine or adopt the tariff. It was further held that Sections 62 & 63 deal with "determination" of tariff, which is part of regulating tariff. In that context, the Hon'ble Supreme Court observed that in the absence of guidelines under Section 63, the general regulatory powers under Section 79(1)(b) can be invoked. In *Tata Power Transmission Company Limited v. Maharashtra Electricity Regulatory Commission* (2023) 11 SCC 1, the Hon'ble Supreme Court has held that the appropriate Commission is not a mere post office while exercising jurisdiction under Section 63 of the Act. However, as per decision of the Hon'ble Supreme Court in *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage (P) Limited*

(supra), it is not within the jurisdiction of the Court to carve out an exception in a specific provision of the statute.

30. It is pertinent to note that, subsequent to the filing of the present Petition, the Petitioner addressed a communication dated 20.5.2026 to the Ministry of Power requesting issuance of technology-specific Guidelines for Surface Hydrokinetic Power Projects. The said communication itself acknowledges the absence of any Guidelines governing tariff adoption under Section 63 of the Act and seeks formulation of an appropriate regulatory framework for the said technology. The conduct of the Petitioner, in approaching the Ministry of Power for issuance of such Guidelines, reinforces the admitted position that no technology-specific Guidelines existed at the time of filing of the present Petition.

31. The communication dated 20.5.2026 clearly demonstrates that the Petitioner itself has admitted that no specific Central Government Guidelines exist for tariff-based competitive bidding process with respect to the Hydrokinetic Power Projects and that, on account of such absence, the tariff discovered through the bidding process cannot presently be considered for adoption under Section 63 of the Act. This admission substantially undermines the Petitioner's contention that, notwithstanding the absence of the statutory Guidelines, the Commission should invoke its general regulatory powers under Section 79(1)(b) of the Act to adopt the discovered tariff. If the Petitioner genuinely believed that the absence of guidelines was immaterial and could be cured by Section 79(1)(b), there would have been no occasion for the Petitioner to approach the Ministry of Power post-facto to request the very guidelines that Section 63 mandates. This subsequent correspondence

establishes that the Petitioner was aware that the statutory condition precedent under Section 63 was missing.

32. It is an admitted position that no technology-specific Guidelines or regulatory framework governing tariff discovery for Hydrokinetic Power Projects have been issued by the Central Government under Section 63 of the Act. In the absence of such framework, the Commission is deprived of the statutory benchmark against which the transparency and competitiveness of the bidding process may be evaluated for the purpose of tariff adoption under Section 63 of the Act. Consequently, the reliance placed by the Petitioner on the CVC Manual, which is general procurement manual for government work, BBMB's internal procurement procedures and the applicable CEA/MNRE framework, cannot substitute the statutory requirement prescribed under Section 63.

33. The Hon'ble Supreme Court in the case of **All India Power Engineer Federation v Sasan Power Ltd. & Ors.**, [CIVIL APPEAL NOS.5881-5882 OF 2016], has observed as under:

“25. On the facts of this case, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected. This is in fact statutorily recognized by the [Electricity Act](#) in [Sections 61](#) to [63](#) thereof. Under [Section 61](#), the appropriate commission, when it specifies terms and conditions for determination of tariff, is to be guided inter alia by the safeguarding of the consumer interest and the recovery of the cost of electricity in a reasonable manner. For this purpose, factors that encourage competition, efficiency and good performance are also to be heeded. Under [Section 62](#) of the Act, the appropriate commission is to determine such tariff in accordance with the principles contained in [Section 61](#). The present case, however, is covered by [Section 63](#), which begins with a non obstante clause stating that notwithstanding anything contained in [Section 62](#), the appropriate commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the

Central Government. The guidelines dated 19.1.2005 issued by the Central Government under [Section 63](#) make it clear that such guidelines are framed with the following objectives in mind:

“These guidelines have been framed under the above provisions of [section 63](#) of the Act. The specific objectives of these guidelines are as follows:

- 1) Promote competitive procurement of electricity by distribution licensees;*
- 2) Facilitate transparency and fairness in procurement processes;*
- 3) Facilitate reduction of information asymmetries for various bidders;*
- 4) Protect consumer interests by facilitating competitive conditions in procurement of electricity;*
- 5) Enhance standardization and reduce ambiguity and hence time for materialization of projects;*
- 6) Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers.”*

34. The legislature while enacting Section 63 of the Act did not lay down for necessity of framing guidelines by the Central Government merely as a formality or only to ensure transparency, fairness, and standardisation of the bidding process, but also to ensure that the technology in respect of which the guidelines are to be framed is suitable for the nation and can be adopted for commercial purposes in a cost-effective manner for larger public interest.

35. The Petitioner in para 11 of the Petition has submitted that in October 2021, the Central Electricity Authority (CEA) had issued a report of the Committee to study the concept and commercial application of Hydro Kinetic Turbine developed by MACLEC (Respondent no. 1 herein) using indigenously developed technology, and the Committee included members from CEA/MNRE/NHPC/THDCII/IIT Roorkee, and the said report is Annexed as Annexure-‘B’. The title of Annexure-‘B’ reads as **“Report of the Committee to Study the Concept & Commercial Applications of Hydro Kinetic Turbine developed by M/s MACLEC”**. In para 2.1.4.3 on page 12 of

the report Annexure-‘B’, the Committee has observed that the ***“However, the assessment of useful life and O&M costs in Indian scenario can be firmed up only after observing its performance in field (i.e. actual operating environment) for a reasonable period of time”***. In para 2.1.6 (II) on page 15 of the report Annexure-‘B’, the Committee has observed that ***“no evidence for the efficiency, performance testing, velocity of the flow such as 7 m/s, guaranteed output, impact on environment, technology readiness level and potential assessment based on standard procedure were presented or shared before the Committee”***. In para 2.2.5 on page 26 of the report Annexure-‘B’, the Committee has observed that ***“As such, at this stage , pilot installation of SHK TG can be planned by vendors as Technology Demonstration Projects for ascertaining its performance in Indian Power System. The deployment of such TG modules for commercial applications/scale can be done only after ascertaining the satisfactory performance of the pilot installations”***. In para 3.2(2) on page 35 of the report Annexure-‘B’, the Committee has observed ***“Performance of these turbines need to be observed in field trials for a reasonable period of time and after successful results of such pilot project(s), further course of action for implementation of SHK technology for commercial purpose and on commercial/large scale may be undertaken”***.

36. On page 37 of the report Annexure-‘B’, the Committee has concluded as ***“Also, the regulated framework for permissions for implementation of Hydro Kinetic Energy technologies in India would need to be prepared. However, this may be required upon successful outcome of Technology Demonstration in***

Indian scenario and for further embarking on its implementation for commercial purpose/scale”.

37. Hence as per report Annexure-‘B’, before putting the technology for implementation for commercial purpose, the regulated framework or permissions for implementing SHK technologies was required to be prepared. The Petitioner has only stated, in para 12 of the Petition, that on 10.10.2022, the Ministry of Power issued an Order to BBMB directing BBMB to take up new Hydro-electric projects, pump-storage projects, renewable energy projects (small hydro/solar/wind/biomass etc.) within the geographical area of BBMB participating states. In para 13 of the Petition, the Petitioner has stated that on 23.05.2025, the Petitioner issued the Tender Document for Design, engineering, supply, installation, commissioning, own, operation & Maintenance for a period of 40 years of 4x250 kWh Surface Hydrokinetic Power Plant at Tail Race Channel of Kotla Hydro Power Station, BBMB under RESCO mode.

38. It is to be noted that the report Annexure-‘B’ was prepared in October 2021 which mandated for preparation of regulated framework for permissions for implementation of SHK technologies. The Petitioner has not placed on record any communication which was addressed by it after October 2021, and prior to 23.05.2025(which is the date when BBMB issued the Tender Document), thereby requesting the Central Government to frame guidelines under Section 63 of the Act. Although as observed above, the Chairman and two whole time Members of the Bhakra Management Board are appointed by the Central Government as per Section 79(2)(a) of the Punjab Reorganization Act, 1966.

39. In para 20 of the Petition, the Petitioner has stated that on 08.10.2025 and 10.10.2025, the 257th Board Meeting of BBMB was held, wherein it was decided to place an order on MACLEC (Respondent no. 1 herein) to set up a **pilot project** of 4x250 kWh as Surface Hydrokinetic Power Plant in NHC at downstream of Kotla Hydro Power Station, BBMB under RESCO mode for 40 years at a tariff of Rs. 3.39 per Unit. On page 1 of Annexure-‘E’, the details of Pre-Bid meeting dated 12th June 2025 are mentioned, and in column at Sr. No. 2, under the Comments of BBMB, it is stated that the NHC Channel between RD 94000 ft. to 97000 ft. is considered optimal installation of this **pilot project**, and turbine with minimum rated capacity of 250kW or higher shall be considered with cumulative project capacity of 1000kW for installation of **SHKT Pilot Project** at the proposed site.

BIDDING PROCESS:

40. As per the Petitioner, BBMB, it issued the Tender Document on 23.5.2025 in accordance with the CVC Manual for Procurement of Works and applicable CEA/MNRE guidelines for hydro-based projects RESCO mode, and accordingly, the bidding process was conducted. As per Minutes of Meeting dated 5.8.2025, of the Committee constituted to carry out the evaluation of bids received against the Tender, the following 3 bidders submitted the bid:

- a. M/s MACLEC Technical Projects Laboratory Pvt. Ltd.
- b. M/s Passi Machine Tools
- c. M/s S.K. Sales Company

41. As per the aforesaid Minutes of Meeting dated 5.8.2025, the Committee sought some clarifications from M/s MACLEC Technical Projects Laboratory Pvt. Ltd. regarding Technical Eligibility Criteria as the said entity had not submitted the Work Order/Purchase Order as well as Satisfactory Performance Certificate of the

Project(s) issued by the competent authority of the respective End-user/Client/Owner of the project. The said entity was also required to submit documents regarding Financial Eligibility Criteria as stated in Annexure-B in the said Minutes of Meeting dated 5.8.2025. Similarly, M/s Passi Machine Tools had also not submitted the documents regarding Technical & Financial Eligibility Criteria, and were also required to submit the same. M/s S.K. Sales Company was also required to submit documents regarding Technical & Financial Eligibility Criteria.

42. As per Minutes of Meeting of the Tender Committee dated 21.8.2025 (Annexure-H), M/s S.K. Sales Company did not meet the minimum Technical Eligibility Criteria, and despite opportunities, the said firm did not submit the requisite documents, and it was decided that the bid submitted by M/s S.K. Sales Company shall be treated as non-responsive bid, and shall not be considered for further evaluation. In Annexure-H, it is observed as under:

"It is further brought out that M/s MACLEC was requested to supply relevant work order/purchase order to establish the requisite technical experience, as claimed by the bidder. However, in response, it has been clarified that the project was executed as a pilot initiative by M/s MACLEC, on verbal direction and in collaboration/cooperation with the Divisional Forest Officer (DFO), Ramnagar. Accordingly, no formal Work Order or Purchase Order was issued for the execution of this project.

However, since the end-user (i.e., O/o Divisional Forest Officer, Ramnagar Forest Division, Dist. Nainital, Uttarakhand) has furnished satisfactory performance certificate, indicating that 3x5 kWh Hydrokinetic turbine has been installed by M/s MACLEC in time bound manner on 29.12.2021 (handed over to concerned Forest Division on 02.01.2022) and is performing satisfactorily since its installation. Therefore, the experience as claimed by the bidder in respect of minimum one Hydrokinetic project is established and found in order. As such, the bid is considered technically qualified and recommended for opening of Price Bid."

As per the said Minutes of Meeting, the Tender Evaluation Committee recommended the opening of Price Bids of M/s MACLEC Technical Projects Laboratory Pvt. Ltd. and M/s Passi Machine Tools.

43. The Minutes of Meeting dated 28.8.2025 (Annexure-I) states as under:

Sr. No.	Name of Bidder	Tariff quoted for Sale of Electricity to BBMB for Entire PPA period of 40 years	Tariff arrived after completion of e-RA	Bidder Rank
1	MACLEC Technical Project Laboratory Pvt. Ltd.	Rs. 3.45 per Unit	Rs. 3.39 per Unit	L-1
2	Passi Machine Tools	Rs. 3.48 per Unit	Rs. 3.40 per Unit	L-2

44. Vide aforesaid Minutes of Meeting dated 28.08.2025, the Committee recommended for award of Contract in favour of M/s MACLEC Technical Project Laboratory Pvt. Ltd.

45. The relevant extract of the Conformity Certificate issued by the Petitioner to the Respondent No. 1 after conclusion of the tender process reads as:

“CONFORMITY CERTIFICATE

With respect to Tender Document (Specification No. 7/BBMB/CS/C-197 – dated 23.5.2025) for Design, Engineering, Supply, installation, Commissioning, Own, Operation and Maintenance for a period of 40 years of 4x250 kW Surface Hydrokinetic Power Plant at tale race Channel of Kotla Hydro Power Station, BBMB under RSECO Mode, it is hereby declared as follows:

1. This project is a pilot project based on a technology which is nascent, presently there are no specific Guidelines issued by the Ministry of Power, or Ministry of New and Renewable Energy governing tariff-based bidding process for SHKT power project. However, BBMB has followed CVC Manual for Procurement of works guidelines (wherever is applicable) as well as

relevant MNRE/ MoP guidelines for hydro based RESCO model for bidding process and there is no deviation from the guidelines in the tender documents for the above tender.

2. After the conclusion of bid submission, Tender Evaluation Committee constituted for evaluation of bids have evaluated the bids and found the conformity with the provisions of Tender Document.

.....”

46. A bare perusal of the aforesaid Conformity Certificate shows that the contract has been awarded for a **pilot project for a period of 40 years** and in the said certificate, the Petitioner has stated that the process of bidding has been conducted in the absence of specific guidelines framed by the Central Govt. the contents of the Conformity Certificate show that the Petitioner was aware of requirement of framing of specific guidelines by the Central Govt. under Section 63 of the Act, but the Petitioner proceeded with the bidding process ignoring the provisions of Section 63 of the Act.

47. As per the conditions of Tender Documents, the Tender Committee was also required to satisfy itself that there is no cartel formation amongst the participants. The perusal of the reports of the Tender Committee shows that M/s S.K. Sales Company was not found eligible in the first meeting of the Tender Committee itself. In the circumstances, it cannot be ruled out that M/s S.K. Sales Company had submitted the Tender Documents at the instance of any of the participating entities in order to inflate the number of participants. Moreover, as noted above from the Minutes of Meeting dated 05.08.2025 of the Committee, the Committee had observed that M/s MACLEC had not submitted documents fulfilling the Technical Eligibility Criteria.

48. As per the Minutes of Meeting dated 21.08.2025 (Annexure-H), M/s MACLEC was required to supply relevant Work Order/Purchase Order to establish the requisite Technical Experience. However, in response thereto, MACLEC submitted that the project was executed as a pilot initiative by M/s MACLEC, on **verbal direction** and in collaboration/cooperation with the Divisional Forest Officer (DFO), Ramnagar, and accordingly, no formal Work Order/Purchase Order was issued for execution of the said project. The Tender Committee ignored the fact that DFO is a Government/Public Entity and is required to execute works as per the Government norms, and may not be competent to issue Work Order/Purchase Order on verbal directions. The Tender Committee has not recorded the satisfaction that they obtained any details of payment made to M/s MACLEC on the basis of verbal order from the DFO, Ramnagar. The Tender Committee has also not recorded that after submission of Technical Bid, it was competent to negotiate with any party for fulfilment of major deficiencies i.e. technical eligibility documentary requirements. However, the Tender Committee, ignoring the same, recorded that the end-user, i.e., Office of DFO, Ramnagar, has furnished Satisfactory Performance Certificate.

49. The entire Tender Process is to be seen in the light of the fact that it is at the instance of M/s MACLEC, the report of the Committee to study the Concept and Commercial applications of Hydrokinetic turbine developed by MACLEC, was prepared in October 2021 and also the contents of letter dated 20.5.2026 of the Petitioner, BBMB, wherein it has been stated that *'Thereafter, a meeting was held on 21.01.2025 under the Chairmanship of Secretary (Power) to discuss MACLEC's indigenous Surface Hydrokinetic Turbine (SHKT) Technology, which was also attended by BBMB. Pursuant to the said meeting, M/s MACLEC conducted a site*

visit to the BBMB Nangal Hydel Channel and subsequently submitted its detailed proposal for the 4x250 kW SHKT project at downstream of Ketla Hydro Power Station, BBMB.'

50. As per the tender process, after rejection of bid of M/s S.K. Sales, only two participants were left, one of which was MACLEC itself, which was involved in the entire process of study, and while submitting the tender documents to fulfil the eligibility criteria regarding execution of previous project had stated that the same was executed on verbal direction by them for a Government entity, i.e., DFO, Ramnagar. Moreover, the prices which were finally discovered on the conclusion of the Tender process show that the bid of M/s MACLEC (Respondent-1) was Rs. 3.39 per Unit, while that of M/s Passi was Rs. 3.40 per Unit.

51. Clause 5.6.5 of the Manual For Procurement Of Works, published by the Department of Expenditure, Ministry of Finance, Govt. of India, provides that pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. It is not borne out from the documents filed on record that the Tender Committee looking into the aspect of low number of participants, and quoting very close rates, and that the contract was to be awarded for a long period of **40 years** for a **pilot project**, had ruled out the possibility of cartelization. In the totality of circumstances, the tender process does not inspire confidence.

52. The Petitioner has sought adoption of tariff of a **pilot project** for a period of **40 years** at the rate of Rs. 3.39 per Unit, in respect of which, no specific guidelines have been framed by the Central Government under Section 63 of the Act. It has already been observed that framing of guidelines under Section 63 of the Act will

also involve examination of the question, whether the technology in question is in the interest of the nation, and can be commercially used for public benefit in a cost-effective manner.

53. Another facet of the proposed project which needs examination is , what should be period of pilot project keeping in view observations of the Committee in the report Annexure B. In para 3.2(2) on page 35 of the report Annexure-‘B’, the Committee has observed that “Performance of these turbines need to be observed in field trials for a reasonable period of time and after successful results of such pilot project(s), further course of action for implementation of SHK technology for commercial purpose and on commercial/large scale may be undertaken”. Moreover, in the letter dated 20.05.2026, referred above the Petitioner itself has stated, “*The project is a pilot and demonstrative project, implemented to establish techno-commercial viability of Hydrokinetic Technology in canal-based systems.*”

54. On page 22 of the Report Annexure-‘B’, which was prepared in October 2021, it is observed that the *claim for an indigenous HKT product is cheaper and amounts to as low as about Rs. 8 Crores/MW for 1MW installation*. The Petitioner has stated that it was in receipt of letter dated 10.10.22 from the Ministry of Power to take up new Hydro-electric projects, pump-storage projects, renewable energy projects (small hydro/solar/wind/biomass etc.). However, the Petitioner has not filed any communication on record whereby it informed the Ministry of Power/appropriate Government of its intention to take up such project prior to conducting tendering process on 23.05.2025. The Ministry of Power/Central Government was the appropriate authority to decide whether the pilot project of 1 MW in question was to be executed by TBCB or RTM or as R&D project of the Petitioner and its

participating States. The Ministry of Power/Central Government could have also taken appropriate decision whether the Petitioner, which is a Generation and Transmission Company, can enter into Power Purchase Agreement from the present **pilot project** for **40 years**, the power from which will be ultimately supplied to the consumers of the participating States.

55. In light of the above discussion, I find no merit in the Petition filed for adoption of the tariff and accordingly the same is disposed of.

56. A copy of the order be sent to the Secretary, Ministry of Power for information.

Sd/-
(Harish Dudani)
Member