

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 238/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 30.01.2026

In the matter of:

Petition under Sections 79(1)(b) and (f) of the Electricity Act, 2003, read with Article 7.2 of the Power Purchase Agreement dated 26.12.2005, seeking adjudication of dispute *qua* PCKL/ ESCOMs' illegal unilateral withholding of differential energy charges payable to Adani for the period 1.4.2016 to 31.3.2019.

And in the matter of:

Adani Power Limited,
Adani Group,
National Council of YMCA of India Bharat Yuvak Bhawan,
1, Jai Singh Road Gate No. 5,
New Delhi-110001.

...Petitioner

Versus

1. Power Company of Karnataka Limited,
KPTCL Building, Kaveri Bhavan,
K.G. Road, Bangalore-560009,
State of Karnataka.
2. Bangalore Electricity Supply Corporation Limited,
K.R. Circle, Bengaluru-560001,
State of Karnataka.
3. Mangalore Electricity Supply Corporation Limited,
MESCOM Bhavan, Corporate Office, MESCOM,
Kavoor Cross Road, Bejai, Mangalore-575004,
State of Karnataka.
4. Gulbarga Electricity Supply Corporation Limited,
Corporate Office-Gulbarga Electricity Supply Company,
Gulbarga-585102,
State of Karnataka.



5. Hubli Electricity Supply Company Limited,
Corporate Office, HESCOM,
Navanagar, P.B. Road,
Hubballi-580025, State of Karnataka.
6. Chamundeshwari Electricity Supply Corporation Limited,
CESC Mysore,
Corporate Office, 29, Vijayanagara 2nd Stage,
Hinkal, Mysuru-570017, Karnataka.

... Respondents

Parties Present: Shri M. G. Ramachandran, Sr. Advocate, PCKL
Shri Amit Kapur, Advocate, APL
Shri Saunak Rajguru, Advocate, APL
Shri Rajesh Jha, Advocate, APL
Ms. Bhabna Das, Advocate, PCKL
Ms. Srishti Khindaria, Advocate, PCKL
Shri Arpit Mishra, Advocate, PCKL
Shri Kumar Gaurav, APL

ORDER

Adani Power Limited has filed the instant petition under Sections 79(1)(b) and (f) of the Electricity Act, 2003 ("Act") read with Article 7.2 of the Power Purchase Agreement ("PPA") dated 26.12.2005 seeking adjudication of dispute *qua* Power Company of Karnataka Limited (PCKL)/ Electricity Supply Companies in Karnataka ("ESCOM's") illegal unilateral withholding of differential energy charges payable to the Petitioner for the period 1.4.2016 to 31.3.2019 and clarification of a finding in order dated 13.1.2023 in Petition No. 155/MP/2019. PCKL, Respondent No. 1, is the nodal agency for power procurement in the State of Karnataka and acts on behalf of Respondent Nos. 2 to 6, the ESCOMs.

2. The Petitioner has made the following prayers:

"(a) Clarify that the benchmark energy charges formula laid down at Para 137 of the Original Order applies to coal procurement through spot purchase from 'sister companies' only and is NOT applicable to Adani's coal procurement through spot purchase from 'entities other than sister companies'.

*(b) Direct PCKL/ Karnataka ESCOMs to pay Adani, the withheld differential energy charges and corresponding Carrying Cost to the tune of **Rs. 100 Cr.** towards spot procurement of coal during 01.04.2016 to 31.03.2019.*



*(c) Direct PCKL/Karnataka ESCOMs to pay Adani, the LPS to the tune of **Rs. 15.23 Cr.** (as of 30.04.2024) and until the date of payment, towards spot procurement of coal during 01.04.2016 to 31.03.2019 for the delay by PCKL/ ESCOMs in payment of withheld differential energy charges and corresponding Carrying Cost to Adani.*

(d) Pass such order(s) as this Ld. Commission may deem fit and proper in facts and circumstances of the present case.”

3. The petition was admitted on 7.10.2024, and a notice was issued to the Respondents. In response, PCKL has filed its reply vide affidavit dated 4.1.2025, and the Petitioner has filed its rejoinder vide affidavit dated 10.2.2025. Further, the Petitioner and PCKL filed their written submissions dated 12.8.2025 and 21.8.2025, respectively.

Brief facts

4. The brief facts of the matter are as follows:

a. To meet the coal requirement for operating its imported coal-based power project (“Project”) at an average PLF of 85%, the Petitioner entered into a long-term contract for the supply of coal with (i) Adaro for 1.2 MTPA, (ii) Banpu for 0.5 MTPA and (iii) Glencore for 0.5 MTPA. The cumulative coal quantity available under the said contracts was 2.2 MTPA, as against the total annual coal requirement of 3.635 MTPA. However, as per PCKL’s advice on 26.9.2013, the Petitioner terminated the long-term coal contracts with PT Adaro and Banpu.

b. The Petitioner’s agreement with Glencore for procuring 0.5 MTPA out of 3.635 MTPA only subsists, and the remaining coal requirement is met by spot procurement of coal.

c. In PCKL’s 46th Board of Directors’ meeting on 15.2.2017, it was resolved that the spot procurement of coal by the Petitioner till March 2016 would be allowed on the condition of self-certification by the Petitioner, certifying that CIF prices for spot coal procurement till March 2016 were not more than weighted average price of coal as per the terms of long-term coal supply contracts with Indominco, PT Adaro and Glencore, which were in force till March 2016.

d. PCKL informed the Petitioner on 16.11.2018 that in its 53rd Board of Directors’ meeting held on 25.8.2018, it was resolved that the methodology decided in the



46th Board of Directors' meeting shall continue for spot purchases of coal for 2016-17 and onwards.

e. PCKL's 55th Board of Directors' meeting held on 28.12.2018 resolved, with respect to Petitioner's coal procurements on a spot basis, as follows:

(a) Disallowance of the dead freight component of the long-term contract for comparison with the spot procurement price of coal.

(b) Comparison of CIF cost on spot purchases with long-term contract on ship-to-ship basis instead of cumulative basis from November 2010 to November 2018.

f. In response, the Petitioner on 6.2.2019 wrote to PCKL informing the actual landed cost of coal incurred and highlighted that any disallowance in the landed cost of coal would lead to a reduction in assured RoE, which would be contrary to the letter and spirit of the Tariff Regulations.

g. On 27.2.2019, PCKL responded to the Petitioner's letter dated 6.2.2019, reiterating that PCKL's Board took a decision to consider CIF of spot purchases at a rate which shall not be more than the weighted average price of coal on long-term coal supply agreements.

h. On 11.3.2019, the Petitioner responded to PCKL's letter dated 27.2.2019, stating that PCKL's conclusion with regard to acceptance of the mechanism for allowance of CIF cost on an individual shipment basis without consideration of Dead Freight was incorrect and that the coal cost should be allowed on an actual landed cost basis as per the Tariff Regulations.

i. On 30.4.2019, PCKL responded, reiterating its decision and denying the cost of dead freight.

j. Due to non-consideration of actual landed cost of coal for computation of energy charges for the period 1.4.2016 to 31.3.2019 by ESCOMs, the Petitioner filed Petition No. 155/MP/2019 on 22.5.2019 seeking directions to ESCOMs to allow the cost of coal incurred by Adani on an actual basis and to allow the resultant amount of ₹336 crore incurred on spot procurement of coal.

k. PCKL objected to the Petitioner's claim of actual landed coal cost, as the Petitioner was procuring coal from sister companies through spot procurement without any transparency.

l. Taking into consideration the submissions of the Petitioner and PCKL, the Commission prescribed a formula in an order dated 13.1.2023 for the calculation of the base CIF price of coal procured on a spot basis from



countries other than Indonesia and the base CIF price for coal imported from Indonesia, in line with the formula prescribed in the CSPA with Glencore.

m. On 27.2.2023, Adani raised an invoice on PCKL/ ESCOMs in terms of the findings/ observations in order dated 13.1.2023, claiming ₹101 crore towards differential energy charges and ₹80 crore towards Carrying Cost on the differential energy charges.

n. On 10.4.2023, PCKL disputed the Petitioner's claim on the premise that the benchmark energy charges formula in the order dated 13.1.2023 applies to coal procurement from 'sister companies' and also to coal procurement from 'entities other than the sister companies'.

5. The gist of the submissions made by the Petitioner in support of its claims is as follows:

a. The Petitioner supplies 1080 MW of the installed capacity of 1200 MW to the distribution licensees of the State of Karnataka ("ESCOMs") in terms of the PPA, for which the annual coal requirement is 3.635 MTPA. During the period under dispute, i.e. 1.4.2016 to 31.3.2019, the Petitioner was procuring 0.5 MTPA of 3.635 MTPA from Glencore International AG ("Glencore") through a long-term contract, viz., bituminous Coal Sale and Purchase Agreement ("CSPA"), and the remaining coal requirement was met by spot procurement of coal.

b. The Petitioner filed the Petition No. 155/MP/2019 seeking adjudication of dispute between the Petitioner and ESCOMs relating to payment of (a) capacity charges, (b) energy charges for the period from November 2010 to March 2019 and (c) Carrying Cost for the difference between provisional, final and revised tariff based on various orders of the Commission and APTEL. As regards the energy charges with respect to Petitioner's claim for actual landed cost of coal procured through spot procurement, the Commission, in an order dated 13.1.2023, pegged the Petitioner's entitlement to a benchmark energy charges formula.

c. The Petitioner raised an invoice on 27.2.2023 against the Respondents in terms of the findings of the Commission in order dated 13.1.2023, wherein a claim was made for ₹101 crore towards differential energy charges and ₹80 crore towards Carrying Cost on the differential energy charges. The



Respondents admitted and paid ₹81 crore (of ₹181 crore) i.e., (i) ₹33.59 crore towards differential energy charges (ii) ₹47.38 crore towards Carrying Cost in September 2023. The Respondents unilaterally and illegally withheld the remaining payment of ₹100 crore (of ₹181 crore) i.e. (i) ₹67.41 crore towards differential energy charges (ii) ₹33.62 crore towards Carrying Cost.

d. Such withholding of payment of energy charges by Respondents is based on the ground that the benchmark energy charges formula laid down in the order dated 13.1.2023 applies to Petitioner's coal procurement through spot procurement (a) from 'sister companies' and (b) from 'entities other than the sister companies'.

e. As per the Petitioner, the benchmark energy charges formula specified in the order dated 13.1.2023 applies only to coal procurement through spot procurement from 'sister companies' and does not apply to the Petitioner's coal procurement from 'entities other than the sister companies'. This interpretation aligns with the pleadings by the parties in Petition No. 155/MP/2019 and with the observations and findings of the Commission in the order dated 13.1.2023. Therefore, the Petitioner is constrained to seek clarification that the benchmark energy charges formula applies to the Petitioner's coal procurement through spot procurement from 'sister companies' only and is not applicable to coal procurement through spot procurement from 'entities other than the sister companies'.

f. The dispute between the Petitioner and PCKL in Petition No. 155/MP/2019 was regarding computation of energy charges and it was primarily qua disallowance of 'actual landed coal cost' incurred by the Petitioner towards spot procurement of coal, which is contrary to Regulation 21 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ("2009 Tariff Regulations") and Regulation 30 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 ("2014 Tariff Regulations").

g. The main objection of PCKL is that the Petitioner was procuring coal from 'sister companies' at higher prices and without any transparent process. Therefore, the Commission, in an order dated 13.1.2023, aligned the coal purchase price through 'spot procurement from 'sister companies' with the benchmark price notified by the Government of Indonesia every month.



- h. The Commission modified the provision regarding coal pricing under CS&PA between the Petitioner and Glencore and laid down a benchmark energy charges formula for settlement of disputes between the parties with regard to the spot procurement of coal during the disputed period of 1.4.2016 to 31.3.201. The Commission further considered it appropriate to bifurcate the benchmark energy charges into two parts, viz. 'Base CIF price of coal procured on spot basis from countries other than Indonesia' and 'Base CIF price for coal imported from Indonesia'.
- i. Evidently, there was no dispute whatsoever regarding the Petitioner's coal procurement from 'entities other than sister companies' in Petition No. 155/MP/2019. Therefore, the benchmark energy charges formula is not applicable for the Petitioner's coal procurement from 'entities other than the sister companies'.
- j. The Respondents' interpretation of the order dated 13.1.2023 to apply the benchmark energy charges formula to Petitioner's coal procurement from 'entities other than the sister companies' is erroneous. Placing reliance on the Hon'ble Supreme Court judgements in Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649 (Para 254) and Goan Real Estate and Construction Ltd. & Anr. v. Union of India (2010) 5 SCC 388 (Para 31), the Petitioner has submitted that a judgment ought to be read in its context, and any observations made during the course of reasoning in a judgment should not be read divorced from the context in which it was used.
- k. A Judgment cannot be interpreted to have rendered a finding on a fact/issue which was not raised in the pleadings. Applying this legal principle to the facts of this case, since PCKL/ ESCOMs had raised no aspersions regarding Adani's coal procurement from 'entities other than the sister companies', the benchmark energy charges formula laid down cannot be read to apply to the Petitioner's coal procurement from 'entities other than the sister companies'. The Petitioner placed its reliance on P.S. Sathappan vs. Andhra Bank Ltd. (2004) 11 SCC 672 (Para 147) and Bacchaj Nahar v. Nilima Mandal, (2008) 17 SCC 491 (Para 17).
- l. The Petitioner is entitled to LPS for the delay in payment of differential energy charges. The Petitioner, on 27.2.2023, raised an invoice on the Respondents for ₹101 crore towards differential energy charges and ₹80 crore towards Carrying Cost on the differential energy charges in terms of the



directions in order dated 13.1.2023. However, the Respondents paid only ₹81 crore (out of ₹181 crore), i.e., (i) ₹33.59 crore towards differential energy charges, (ii) ₹47.38 crore towards Carrying Cost in September 2023. The Respondents withheld the remaining payment of ₹100 crore on the pretext that the benchmark energy charges formula applies both to coal procurement from 'sister companies' and also to coal procurement from 'entities other than the sister companies'.

m. As per Regulation 59 of the 2019 Tariff Regulations, the Respondents are liable to pay LPS at the rate of 18% per annum to the Petitioner. The non-obstante clause under Article 6.4(a) of the PPA rules out any right conferred on the ESCOMs to delay payments. It is no longer res integra that for any delay in payment by the Respondents, the Respondents are liable to pay LPS at the rate specified in terms of the applicable Tariff Regulations. In this regard, the Petitioner placed reliance on the judgment of APTEL dated 2.11.2020 in Appeal No. 10 of 2020 and batch in PCKL & Ors. v. CERC & Ors., wherein, while considering the same PPA between the same parties, APTEL held that PCKL's argument that the rate of interest must be in terms of the PPA approved rate (SBI PLR) and not as per the provisions of the Tariff Regulations is contrary to the settled law that the Tariff Regulations have over-riding effect over the PPAs executed between the parties. The APTEL further held that the provision of LPS is a compensatory provision under the PPAs and the ESCOMs, having violated the provisions of the PPA with respect to the payment of dues, cannot seek to take advantage of the rate stipulated for interest under the PPA. The said judgement of APTEL was also upheld by the Hon'ble Supreme Court vide order dated 8.2.2022 in Civil Appeal (PCKL & Ors. v. CERC & Ors. in C.A. No. 838 of 2021) filed by the Respondents. Accordingly, the Respondents ought to pay ₹15.23 crore (up to 30.4.2024) towards LPS for the delay by the Respondents in payment of withheld differential energy charges to Adani.

n. The Petitioner filed Appeal DFR No. 265/ 2024 before APTEL against the Commission's order dated 13.1.2023 in Petition No.155/MP/2019, and it is pending disposal.

6. PCKL, Respondent No. 1, filed its reply vide affidavit dated 4.1.2025, and the gist of the submissions made by PCKL is as follows:



- a. The present petition is a gross abuse of the process of law, and it is not maintainable and deserves to be dismissed.
- b. The Petitioner has filed multiple cases in respect of the order dated 13.1.2023, and they are:
- (a) DFR 265/ 2024 pending before the APTEL, challenging the order dated 13.1.2023 and also seeking payment of over ₹350 crore.
 - (b) Petition No. 151/MP/2024 filed before this Commission seeking execution of the order dated 13.1.2023 and seeking payment of ₹566 crore.
 - (c) Petition No.238/MP/2024 (the instant petition) purportedly seeking clarification of the order dated 13.1.2023 and also seeking payment of over ₹115 crore.
- c. Section 79(1)(b) of the Act is not attracted to the present case, since the relevant tariff has already been determined by this Commission. Further, Section 79(1)(f) is also not attracted, since the dispute between the parties has already been adjudicated by the Commission in an order dated 13.1.2023 in Petition No. 155/MP/2019. The Commission has become functus officio insofar as the said dispute is concerned. The Petitioner is seeking a modification of the order dated 13.1.2023. In any event, the present petition has been filed after a gross delay of about 1.5 years after the order dated 13.1.2023, purely as an afterthought.
- d. The order dated 13.1.2023 is clear and suffers from no ambiguity. It applies to all the coal obtained by the Petitioner from the spot market. The parties have also implemented the said order by undertaking a detailed reconciliation of the accounts, pursuant to which, payments totalling ₹419.70 crore have already been made by the Escoms to the Petitioner in installments by September, 2023, in full compliance with the order dated 13.1.2023.
- e. The Commission has no power to issue clarifications in respect of its orders. If the Petitioner was aggrieved with the order dated 13.1.2023, the remedy available to the Petitioner is to file a review petition in terms of Section 94(1)(f) of the Act or to file an appeal before APTEL under Section 111 of the Act.
- f. The Petitioner has filed an appeal, being DFR No. 265/ 2024, before APTEL seeking a declaration that the Petitioner is entitled to energy charges for the coal procured through spot procurement during 1.4.2016 to 31.3.2019 as per the actual landed cost of coal without being pegged to any benchmark energy

charges formulae. The Petitioner is seeking the same relief in the present petition. Having elected to file an appeal, the Petitioner cannot simultaneously maintain another petition before this Commission seeking clarification of the same order and claiming further alleged dues and LPS. Further, since the remedy of review is also grossly time-barred, the Petitioner has filed this petition, under the pretext of seeking clarification, but effectively seeking a substantive modification/ review of the order, purely with a view to overcoming the aspect of limitation.

g. In this regard, the Respondents placed reliance on the judgment of the Hon'ble Supreme Court, in Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. Adani Power Rajasthan Ltd. & Anr., 2024 SCC On Line SC 313, wherein after the disposal of the main appeal, the Petitioner had filed an application seeking a direction to the Rajasthan Discoms to make a payment of ₹1376.35 crore towards LPS, even though it had not preferred any review of the order. The Hon'ble Supreme Court, after referring to a plethora of judgments, held as follows:

“25. We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the position of law as to when such post-disposal miscellaneous applications can be entertained after a matter is disposed of. This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments. The factual background of this Application does not fit into that description.”

h. Therefore, the present petition is nothing but an abuse of the process of law, is not maintainable, and has been filed by the Petitioner purely with the ulterior objective of unjustly enriching itself. The Petition therefore deserves to be dismissed with exemplary costs in favour of the Respondents.

i. In Petition No. 155/MP/2019, Issue No. 6 “Whether UPCL is entitled to recover actual landed cost of coal procured from spot market?” is framed in general terms and is not restricted to procurement only from the sister companies of the Petitioner. Similarly, the findings are also general and apply to all spot purchases of coal, irrespective of which party it is purchased from.

j. The prayer (d) in Petition 155/MP/2019 is couched in general terms as follows: *“Allow energy charges for the coal cost incurred by Udipi Power on account of spot procurement of coal, amounting to ₹336 crore, without any deductions/ future adjustment on account of PCKL’s proposed disallowances/ differences in computation”*. The Commission disallowed this prayer of the Petitioner and on the contrary, has deemed it fit to fix a formula/ benchmark for all spot purchases during the relevant period. There is no observation or finding in the order dated 13.1.2023 which permits the Petitioner to recover the actual cost in case of spot purchases made from entities other than the related parties. Allowing the same would defeat the entire purpose of having a formula/ benchmark, which is to regulate the cost of spot purchases and prevent the ESCOMS and consumers at large from being burdened with high costs.

k. The findings on Issue No. 6 give a clear picture that the order was not restricted merely to spot purchase from sister companies of the Petitioner, but applies to all spot purchases of coal, irrespective of from which party it is purchased. The same is clear from the following:

(a) The parties had agreed that the Petitioner could carry out spot procurement as long as the CIF price of each shipment did not exceed the weighted average price of coal as per the long-term contracts. However, the Petitioner subsequently insisted that the weighted average cost of all spot purchases, as opposed to the CIF price of each shipment, ought to be considered. In para 133, the Commission has succinctly captured the contours of the dispute between the parties by observing that *“Therefore there is no convergence of views between UPCL and PCKL regarding the manner capping of price of spot procurement of coal with the price of long term agreement with effect from April 2016 onwards i.e. whether on cumulative basis or ship to ship basis”*. The benchmark price is in relation to all spot purchases in general.

(b) In para 134, the Commission has stressed that *“UPCL is required to make all reasonable effort at all times to acquire fuel on commercially competitive terms competitive with market conditions”*. After comparing data with respect to various spot purchases made, not all of which were from group companies, it was further observed that *“Even though the parties have not explicitly pleaded that spot procurement of coal has been*

resorted from countries other than Indonesia, procurement of coal from other countries or High Seas cannot be ruled out”.

(c) In para 136, the Commission held that *“As for the disputed period from 1.3.2016 to 31.3.2019, UPCL has been buying from its sister companies as per the documents placed on record. However, the documents do not cover the entire period and therefore, spot procurement of coal through other parties cannot be ruled out.”*

(d) In para 137, the Commission has modified the pricing of coal as per the coal sale and purchase agreement, *“which shall be used as benchmark for settlement of dispute between the parties with regard to the spot purchase of coal during the disputed period of 01.04.2016 to 31.03.2019”*. As per paragraph 138, the Petitioner has to calculate ECR as per the CIF price laid down in para 137 for the entire period from 1.4.2016 to 31.3.2019. It is apparent that the benchmark is fixed for all spot purchases made during the period in question, no matter from whom the purchase is made.

(e) The Commission in para 139 observed that *“Since prices of spot procurement are volatile and not in consumer interest, we think it prudent to advise UPCL to take necessary steps for procurement of coal through long term agreements and urge upon PCKL to accord timely approval for such procurement as envisaged in the PPA. This will save both parties from the volatility of prices in the spot market and will be in the consumer interest.”* Therefore, the issue is evidently the acquisition of coal through the method of spot purchase, as opposed to through long-term agreements, and the significant financial implications spot purchase from any party has on the Respondents, since it is public money which is involved.

l. The Petitioner has made certain monetary claims of alleged differential energy charges and Carrying Cost to the tune of ₹100 crore towards spot procurement of coal and LPS to the tune of ₹15.23 crore with Carrying Cost. These prayers are not clarifications and are not maintainable at all. Further, the Petitioner cannot make fresh monetary claims of over ₹115 crore under the pretext of seeking a clarification.

m. PCKL and the Karnataka Discoms have filed Petition No. 335/MP/2024 dated 2.8.2024 before this Commission inter alia praying that the methodology specified in para 137 of the order dated 13.1.2023 be continued for the subsequent period from 1.4.2019 to 31.5.2020 i.e. the date of signing the long-



term FSA with PAN Asia Coal Trading Pte Ltd. Therefore, the present petition has been filed as an afterthought with the mala fide objective of extracting further sums of money from the ESCOMS.

n. The Government of India vide notification dated 31.3.2023, under Section 11 of the Act, has directed that the ECR will be calculated on the cost of coal based on the index linked with the lower cost of imported coal. Therefore, the Petitioner cannot be granted the actual landed cost of coal obtained through spot purchase.

o. The Petitioner is trying to limit the applicability of the formula specified in the order dated 13.1.2023 only to sister companies, which is impermissible. Doing so would be modifying/ reviewing the order dated 13.1.2023 under the garb of issuing a clarification. The judgments of Zee Telefilms, Goan Real Estate, P. Sathappan and Bacchaj Nahar are of no assistance to the Petitioner in the present case.

p. The contents of the invoice dated 27.2.2023 are incorrect, and ESCOMS is not liable to pay the amounts claimed therein. After a detailed reconciliation, which included officers of the Petitioner, the amounts due and payable have already been remitted to the Petitioner in compliance with the order dated 13.1.2024, and nothing further remains to be paid. The PCKL/ ESCOMS have not unilaterally or illegally withheld any payment under any pretext.

7. The Petitioner filed its rejoinder to the reply filed by the Petitioner vide affidavit dated 10.2.2025, and the gist of the submissions made in the rejoinder is as follows:

a. The Petitioner has filed an appeal [D.F.R. No. 265 of 2024] before APTEL challenging the findings of the Commission in order dated 13.1.2023 on (a) the correctness of the benchmark energy charges formula and (b) disallowance of the claim for deemed capacity charges during 16.1.2013 to 30.3.2013 on account of shortfall in generation due to non-availability of coal consequent to payment default by ESCOMS, and the appeal is pending. The Petitioner filed Petition No. 151/MP/2024 seeking directions to ESCOMS to comply with the order dated 13.1.2023 and Regulation 5(3) of the Tariff Regulations by paying the outstanding amount of ₹566 crore towards Carrying Cost and interest on Carrying Cost. The Petitioner is pursuing its remedies as available in law. Thus,

the subject matter of the said Appeal and Petition No. 151/MP/2024 and the present petition are fundamentally distinct from each other.

b. As regards PCKL's assertion that the Commission has become functus officio qua the issue, the Petitioner is not seeking any modification of any finding in the order dated 13.1.2023. The Petitioner is compelled to seek this clarification since PCKL has disputed the Petitioner's invoice dated 27.2.2023 of ₹181 crore by insisting that the order dated 13.1.2023 extends to all coal procurements.

c. As regards PCKL's assertion that the present petition is barred by a delay of about 1.5 years after the issue of the order dated 13.1.2023, there is no limitation prescribed for the filing of petitions seeking clarification. As per Sl. No. 137 of the Schedule to the Limitation Act, 1963, for applications for which no period of limitation is provided elsewhere, the applicable period of limitation is 3 years from when the right to apply accrues. Accordingly, the present petition is within the limitation and is not time-barred.

d. As regards PCKL's assertion, a fresh claim of ₹115 crore is made by the Petitioner in the present petition. The Petitioner raised an invoice of ₹181 crore on PCKL/ ESCOMs as per the order dated 13.1.2023. The Respondents have paid ₹81 crore (out of ₹181 crore) and illegally withheld the remaining payment of ₹100 crore. If the LPS payable as on 30.4.2024 is added, the total amount due is ₹115 crore; therefore, it is not a fresh claim, and the same has increased to ₹127 crore as on 31.12.2024 on account of LPS.

e. As regards PCKL's allegation that the present petition is an afterthought, the present petition was filed on 16.5.2023, and PCKL filed Petition No. 335/MP/2024 only on 25.8.2024.

f. The benchmark energy charges formula prescribed in the order dated 13.1.2023 applies only to spot procurements of coal from 'sister companies'. PCKL has selectively relied on a few portions of the order to mislead the Commission and contend that they are applicable to all spot procurements made by Adani. This view is erroneous on account of the following:

(a) The Commission in the first sentence in paragraph 129 of the order noted that PCKL in its additional affidavit dated 4.8.2020 submitted that the Petitioner was seeking to modify the basis of comparison to facilitate the purchase of expensive coal from its 'sister companies'.

(b) The Commission's observation in paragraph 133, regarding there being no convergence of views between the Petitioner and the



Respondent, was with respect to the arbitrary modification of conditions for spot procurement by PCKL in its 53rd Board Meeting dated, contrary to its own decision in 46th Board Meeting dated 15.2.2017. Further, the Commission recorded PCKL's submission that the Petitioner is buying a bulk of its spot procurement from 'sister companies' and the alleged difference in cost of coal procured from 'sister companies' with that of the long-term fuel supply agreements.

(c) In paragraph 134, the Commission has merely assumed (*without pleadings/ data on record*) that Adani's coal procurement from 'sister companies' could be taking place from countries other than Indonesia. Accordingly, the Commission considered it appropriate to bifurcate the benchmark energy charges into two parts, viz. '*Base CIF price of coal procured on spot basis from countries other than Indonesia*' and '*Base CIF price for coal imported from Indonesia*'. The Commission did not extend these formulae to coal procurements other than the Petitioner's sister companies.

(d) In paragraph 136 of the order, the Commission taking into cognizance that the Petitioner could be procuring coal both from 'sister companies' and 'entities other than sister companies', laid down the rationale for fixing the benchmark energy charges formula in the first place, i.e., the spot procurements being done through sister companies at negotiated price and the need to align the purchase price. The only consideration before the Commission to fix the benchmark energy charges formula was the spot procurements through 'sister companies'.

(e) In paragraphs 137 and 138, the Commission observed that the benchmark energy charges formula prescribed shall be used for the settlement of disputes between the parties. Since the only objection raised by PCKL in its pleadings was with respect to the Petitioner's coal procurements from 'sister companies', the applicability of the benchmark energy charges formula ought to be restricted to coal procurements from 'sister companies' and not otherwise.

g. The PCKL's reliance on the Ministry of Power's Notification dated 31.3.2023 issued under Section 11 of the Act has no relevance because the period in dispute in the present case is 1.3.2016 to 31.3.2019. The MoP's directive applies prospectively and is not applicable to this period. The Petitioner

supplies power to ESCOMs pursuant to the signed PPA under Section 62 of the Act. Therefore, the Petitioner is entitled to actual energy charges under the PPA, read with applicable Tariff Regulations. Further, as per MoP's directive dated 5.5.2022, the benchmark price determined by the Working Group is only applicable for the generating stations which do not have a pass-through mechanism under PPAs, and therefore, such benchmark price determined by the Working Group is not applicable to the Petitioner, which is a Project under Section 62 of the Act.

8. The Petitioner reiterated the submissions made in the petition and its rejoinder to the reply filed by PCKL in its Written Submission dated 12.8.2025.

9. PCKL, while reiterating the submissions made in its reply, made the following additional submissions in its Written Submission dated 21.8.2025:

a. The kind of modification sought by the Petitioner is completely out of the scope of an application for clarification. The Petitioner is, in reality, seeking the review of the order dated 13.1.2023 so as to restrict its applicability to only one category of entities from which coal is procured (sister concerns), and not to procurement from others without long-term contracts.

b. The Petitioner has contended that it is entitled to the alleged actual charges paid for the coal procured through spot purchases from entities other than sister companies. However, there is no rationale or logic whatsoever for restricting the benchmark formula only to some spot purchases and not extending it to others. All spot purchases made in the absence of a long-term arrangement must be treated alike, and the Commission has correctly not drawn a distinction between such spot purchases depending on the party from whom the procurement is made.

c. As per Article 4.7(c) of the PPA, the Petitioner shall use all reasonable efforts to acquire the Primary and Secondary Fuel on commercially competitive terms consistent with market conditions. Therefore, the Petitioner is not entitled to a price higher than the market price. Even the Tariff Regulations require the Commission to conduct a prudence check before determining the energy charge/ tariff. Therefore, the Commission has correctly formulated and applied a benchmark formula to coal procurements made by the Petitioner through spot purchases.

d. There is no reason/ rationale for the Petitioner to procure coal from entities other than the sister companies through spot purchases at a price higher than the benchmark price, when the Commission has rejected the Petitioner's claim to allow such procurement on actual prices, and instead devised the methodology for computing benchmark prices in case of any procurement other than under a long-term arrangement.

e. The Petitioner had relied on Regulations 30(5), (6) and (8) of the 2014 Tariff Regulations, during the oral arguments, to support its contention that it should be allowed to recover the actual coal cost. The actual cost of coal would necessarily mean, in the context of regulatory control and oversight, a cost prudently incurred. The procurers/beneficiaries are not expected to pay for the higher cost of coal that may be inflated or procured imprudently. The tariff determined or regulated by the Commission necessarily involves scrutiny of the method and manner of coal procurement. It would be preposterous to claim that a generating company should be paid the actual cost of fuel incurred by it, however imprudent it may be.

f. The Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission v. CESC Ltd., (2002) 8 SCC 715 has held that the Commission, while determining tariff, is not bound by the accounts of the company audited by a statutory auditor and is free to accept or reject the expenditure reflected in such accounts after considering factors such as efficient management of the company and interest of the consumers.

g. The Commission, in an order dated 13.1.2023, considered the very aspect that, for the cost of coal to be allowed, there is a necessity to fix a benchmark price where the Petitioner did not enter into a long-term arrangement for the procurement of coal, contrary to the PPA terms. The plea raised by the Petitioner is therefore patently erroneous and misplaced.

Analysis & Decision

10. We have considered the submissions of the Petitioner and PCKL and have gone through the documents on record. The Petitioner has filed the instant petition seeking clarification of the findings of the Commission in Issue No.6 in the order dated 13.1.2023 in Petition No.155/MP/2019, wherein the Commission specified a formula



for computing the base CIF price of the coal procured on a spot basis from countries other than Indonesia and the coal imported from Indonesia. The Petitioner claims that the formula specified by the Commission in the order dated 13.1.2023 is applicable only to the coal procured from its “sister companies”, whereas PCKL contends that the same is applicable for the coal procured by the Petitioner from its “sister companies” and “entities other than the sister companies”. Therefore, the only issue that arises for our consideration is “whether the formula specified by the Commission for computing the base CIF price of the coal procured on spot basis in order dated 13.1.2023 applies only to the coal procured by the Petitioner from the “sister companies” of the Petitioner as contended by the Petitioner or to the coal procured from the “sister companies” of the Petitioner and to the “entities other than the sister companies” as contended by PCKL”.

11. The Commission’s findings in the order dated 13.1.2023 on the issue (Issue No.6) that is before us in this petition are as follows:

“132. From the above sequence of facts and submissions made by both UPCL and PCKL, it emerges that as per the Regulation 21 of Tariff Regulations, 2009 and Regulation 30 of Tariff Regulations, 2014, the landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail/road or any other means and transit and handling losses as percentage of quantity of coal. The Tariff Regulations do not provide for the process and source of procurement of coal. In the present case, UPCL and ESCOMs of Karnataka have agreed to a process of procurement of coal in the PPA. Article 4.7 of the PPA requires UPCL to make reasonable efforts to acquire the Primary and Secondary Fuel on commercially competitive terms consistent with the market conditions and obtain the approval/consent of ESCOMs at each stage of procurement/purchase. In fact, UPCL has been procuring coal after taking the approval of PCKL from time to time. Procurement of coal is being made by UPCL under long term fuel supply agreements and spot procurement. There is no dispute between the parties in so far as prices for procurement of coal through long term fuel supply agreements is concerned. As regards the spot procurement, PCKL initially capped the coal price to the applicable HBA indices for the month of purchase. Subsequently, on the request of UPCL, PCKL Board in its 46th Board Meeting held on 15.2.2017 approved spot procurement till March 2016 on self-declaration by UPCL subject to the condition that CIF prices shall not be more than the weighted average price of coal as per the long term coal supply agreements with M/s Adaro, M/s Indomino and M/s Glencore which were in force till March 2016. UPCL has accepted the said decision and certified the price of coal accordingly till March 2016 vide its letter dated 9.10.2017.

133. The dispute has arisen between the parties as to the price of coal through spot procurement from 2016-17 onwards. While PCKL has stated that it has merely extended



the decision taken in its 46th Board Meeting held on 15.2.2017 to subsequent years, UPCL has alleged that the decision has been changed by PCKL. Therefore, there is no convergence of views between UPCL and PCKL regarding the manner capping of price of spot procurement of coal with the price of long term agreement with effect from April 2016 onwards i.e. whether on cumulative basis or ship to ship basis. UPCL has submitted that Tariff Regulations mandate the consideration of actual landed cost of coal without any exception and/or disallowance as part of energy charge calculation. On the other hand, PCKL has submitted that UPCL is buying bulk of its spot procurement from Adani Group companies including Adani Global Pte Ltd and Adani Global FZE for which no transparent basis of pricing is available. PCKL in its written submission has compared the coal procured in the month of January 2017, February 2017 and March 2017 from M/s Adani Global Pte Ltd and M/s Adani Global FZE with cost of received from M/s Glencore as per long term fuel supply agreement and has submitted that per MT cost in many cases is higher by almost USD 30-35 per MT.

134. The Commission is of the view that as per Article 4.7 of the PPA, UPCL is required to make all reasonable effort at all times to acquire fuel on commercially competitive terms consistent with market conditions. UPCL had entered into long term fuel supply agreements with three suppliers for about 2.2 MTPA out of the coal requirement of 3.635 MTPA. Though UPCL tried to enter into long term contracts for the balance quantum by inviting bids, it could not succeed due to inadequate responses and sometimes due to inordinate delay in approval by PCKL. Consequently, it resorted to spot procurement of coal with the consent of PCKL. It is noticed from Annexure P-55 of the petition that during the period between November 2010 till March 2016, UPCL has received 69 shipments of coal through spot procurement. Out of the 69 shipments, 60 shipments are from the Adani Group of companies Viz. Adani Global Pte Ltd, Adani Global FZE, Adani Enterprises Limited, Adani Power Maharashtra, Adani Power Rajasthan Further, in Annexure A-3 of the PCKL's affidavit dated 4.8.2020 (filed on 13.10.2020), PCKL has compared the prices claimed by UPCL for the 35 spot shipments received during FY 2017-18 with the CIF as per HBA, CIF as per ICI 5800 and CIF as per Kalimantan 5900. As per the data submitted by PCKL, CIF price of coal claimed by UPCL is higher than the CIF price of coal as per HBA and CIF price of coal as per ICI 5800 in case of all spot shipments whereas CIF as per Kalimantan is more than CIF price claimed by UPCL in 16 out of 35 spot shipments. Even though the parties have not explicitly pleaded that spot procurement of coal has been resorted from countries other than Indonesia, procurement of coal from other countries or High Seas cannot be ruled out.

135. As regards the FOB price of coal from Indonesia, the Commission has already taken a view in order dated 3.6.2022 in Petition No. 111/MP/2022 that export from Indonesia below the HBA price is not permissible since here is a statutory bar on the export of coal below the HBA index from Indonesia. Relevant para of the judgement is extracted as under:

“81. Thus, a plain reading of the Minister Regulations shows that it is not permissible to export coal below the benchmark price failing which the coal company shall be subjected to administrative sanctions. GUVNL has relied on Regulation 35 of Indonesian Regulation 25/2018 to contend that coal can be exported from Indonesia below HBA price. However, as already noted, such coals are of certain types and for specific purposes which do not meet the requirement of APMuL for generation of electricity from Units 1 to 6 of Mundra Power Project.”

In the light of the above decision, the Commission is not inclined to accept the contention of PCKL that it is permissible to export coal from Indonesia at prices other than those linked to HBA index and therefore, comparison of the price at which coal is imported by UPCL with that of CIF ICI 5800 and CIF Kalimantan 5800 is unwarranted. Therefore, the only standard benchmark for comparison will be the HPB price linked to HBA Index.

136. As for the disputed period from 1.3.2016 to 31.3.2019, UPCL has been buying from its sister companies as per the documents placed on record. However, the documents do not cover the entire period and therefore, spot procurement of coal through other parties cannot be ruled out. In our view, since the procurement on spot basis is not through competitive bidding but through sister companies at negotiated price, there is a need to align the purchase price with the benchmark price notified by Government of Indonesia every month. We notice that UPCL had entered into an "Amended and Restated Bituminous Coal Sale Agreement" dated 2.11.2010 (Coal Sale and Purchase Agreement) with Glencore International AG for supply of coal which has provision for pricing of coal in Article 7.01A and 7.01B in respect of coal from country of origin except Indonesia and country of origin from Indonesia respectively (placed on record as Annexure A 5 to GUVNL affidavit dated 4.8.2020 filed on 13.10.2020). The said provisions are extracted as under:

"7.01 A The base CIF price for each metric ton of the Coal supplied under this Agreement during the Term from any origin except Indonesia shall be determined as follows:

FOB Price: GC Newcastle Quarterly Price for the calendar quarter preceding the Quarter in which delivery is made

less: 3% discount

*-----
(a)*

CV adjusted: (a) x 6200/6250

*Final FOB price _____
(b)*

*Plus freight & Insurance US\$13.25/mt
_____*

CIF Price: (b)+ US\$ 13.25

The base CIF price of the Coal shall be subject to adjustments as detailed in Article 8."

"7.01 B The base CIF price for each metric ton of the Coal supplied under this Agreement during the Term from Indonesia shall be determined as follows:

FOB Price: Based on the actual results declared in the Loadport Certificate of Sampling and Analysis issued by the Loadport Agency, the FOB price shall be arrived as per following formula.

*Invoice price (b) USS PMT = (HBA * K(i) * A(i)) - (B(i) + U(i))*

1) K(i) = GCV / 6322

2) A(i) = (100 - TM) / (100 - 8)

*3) B(i) = (TS - 0.8) * 3*

4) U(i) = (TA-15) 0.3*

Where

HBA= Average HBA index for the calendar quarter preceding the Quarter in which delivery is made

GCV = Gross Calorific value (arb)

TM = Total Moisture (adb)

TS = Total Sulphur (adb)



TA= Total Ash (adb)
Plus freight & Insurance @ US\$13.25/ml
CIF Price:(b) +US\$13.25

Plus freight & Insurance @ US\$ 13.25/mt

CIF Price: (b) + US\$ 13.25”

The coal supply on long term basis on the basis of the Coal Sale and Purchase Agreement has been accepted by PCKL.

137. In the above formula, one of the components of CIF price of coal is the FOB price of coal which has been worked out on quarterly basis based on the price of the preceding quarter in which delivery is made. Since UPCL has been making spot procurement, the FOB price needs to be determined based on the price or index for the relevant month in which the delivery is made. Therefore, the pricing of coal as per the above provisions of Coal Sale and Purchase Agreement has been modified as under which shall be used as benchmark for settlement of dispute between the parties with regard to the spot purchase of coal during the disputed period of 1.4.2016 to 31.3.2019:

(A) Base CIF price of coal procured on spot basis from countries other than Indonesia

FOB Price: GC Newcastle Quarterly Price for the calendar month in which delivery is made

less: discount, if any

(a)

CV adjusted: (a) x 6200/6250

Final FOB price (b)

Plus freight & Insurance US\$13.25/MT

CIF Price: (b)+ USS 13.25

Base price of coal is subject to adjustment with reference to GCV, ash content, Sulphur content and fines (%sizes less than 2 mm) as per Clauses 8.02, 8.03, 8.04 and 8.05 of Coal Sale and Purchase Agreement

(B) Base CIF price for Coal imported from Indonesia

FOB Price: Based on the actual results declared in the Loadport Certificate of Sampling and Analysis issued by the Loadport Agency, the FOB price shall be arrived as per following formula.

Invoice price (b) USS PMT = (HBA * K(i) * A(i)) - (B(i) + U(i))

1) K(i) = GCV / 6322

2) A(i) = (100 - TM) / (100 - 8)

3) B(i) = (TS - 0.8) * 3

4) U(i) = (TA-15)* 0.3



Where

*HBA= Average HBA index for the calendar month in which delivery is made GCV
= Gross Calorific value (arb)*

TM = Total Moisture (adb)

TS = Total Sulphur (adb)

TA= Total Ash (adb)

Plus freight & Insurance @ US\$13.25/ml

CIF Price:(b) +US\$13.25

Plus freight & Insurance @ US\$ 13.25/mt

CIF Price: (b) + US\$ 13.25”

138. UPCL shall calculate the ECR as per the provisions of the relevant Tariff Regulations after considering the CIF price of coal as determined above for the period 1.4.2016 to 31.3.2019 supported by relevant documents to PCKL for settlement of the dues with regard to the energy charges.

139. Since prices of spot procurement are volatile and not in consumer interest, we think it prudent to advise UPCL to take necessary steps for procurement of coal through long term agreements and urge upon PCKL to accord timely approval for such procurement as envisaged in the PPA. This will save both parties from the volatility of prices in the spot market and will be in the consumer interest.”

12. To meet the coal requirements of 3.635 MTPA of its generating station, which is based on imported coal, the Petitioner entered into a long-term contract with Glencore for the supply of coal 0.5 MTPA, and the remaining coal requirement is met by spot procurement. PCKL in its 46th Board of Directors' meeting held on 15.2.2017 resolved that spot procurement of coal by the Petitioner till March, 2016 would be allowed on the self-certification by the Petitioner that the CIF (cost, insurance and freight) prices of coal procured till March 2016 were not more than weighted average price of coal as per its existing long-term contracts for supply of coal. PCKL, in its 53rd Board of Directors' meeting held on 25.8.2018, decided to continue with the same methodology for spot purchases of coal from 2016-17 onwards. At the 55th Board of Directors of PCKL, it was decided to disallow the dead freight component of the long-term contract for comparison with the spot procurement price of coal and also to compare the CIF cost of spot purchases with the long-term contract on a ship-to-ship

basis instead of a cumulative basis from November 2010 to November 2018. However, the Petitioner sought the actual landed cost of the coal paid by the Petitioner, which was declined by PCKL, leading the Petitioner to file Petition No. 155/MP/2019.

13. The Petitioner filed Petition No.155/MP/2019 for adjudication of the disputes between the Petitioner and the Respondents, and one of the disputes raised in the petition was regarding the computation of energy charges due to the disallowance of the actual landed cost of the coal procured on a spot basis. The prayers made by the Petitioner in Petition No.155/MP/2019 in this regard are as follows:

“(d) Allow energy charges for the coal cost incurred by Udupi Power on account of spot procurement of coal, amounting to Rs. 336 Crores, without any deductions/ future adjustment on account of PCKL’s proposed disallowances/ differences in computation.

(e) Direct Karnataka ESCOMs to pay Rs 112.2 Crores to Udupi Power towards reimbursement of coal and coal related cost, along with carrying cost.”

14. Taking into consideration the submissions made by the Petitioner and Respondents with respect to energy charges, the Commission framed the following issue in Petition No.155/MP/2019:

“Issue No.6: Whether UPCL is entitled to recover actual landed cost of coal procured from spot-market?”

15. Thus, one of the prayers made by the Petitioner in Petition No.155/MP/2019 was for allowance of the actual coal cost procured through the spot market along with the Carrying Cost. The Petitioner did not distinguish between the coal procured from the “sister companies” and the coal procured from “entities other than the sister companies” in Petition No.155/MP/2019. Accordingly, the only issue before the Commission was whether the Petitioner was entitled to recover the actual cost of coal procured from the spot market. Therefore, the Commission did not distinguish between the coal procured from the “sister companies” and from “entities other than the sister companies” in its findings in the order dated 13.1.2023.

16. The Commission, taking into consideration the contentions of the Petitioner and PCKL, including the submission of PCKL that the bulk of the Petitioner's procurement of coal on a spot basis is from the group companies of the Petitioner without any transparency in pricing, specified a formula for the computation of the base CIF price for coal. While doing so, the Commission took into consideration the "Amended and Restated Bituminous Coal Sale Agreement" dated 2.11.2010 between the Petitioner and Glencore for the supply of coal, which has provisions for pricing of coal in respect of coal from the country of origin, except Indonesia and coal imported from Indonesia. On similar lines, the Commission specified a formula for computing "Base CIF price of coal procured on spot basis from countries other than Indonesia" and "Base CIF price for Coal imported from Indonesia". The Commission specified the formula, taking into consideration the existing contract between the Petitioner and Glencore, which had the consent of PCKL. The Commission did not restrict the applicability of the formula specified in the order dated 13.1.2023 only to the coal procured through spot purchases from "sister companies". If the intention of the Commission was to restrict the findings in the order dated 13.1.2023 to "sister companies", then the Commission would have clearly specified so, as it has specified distinctly in the case of coal procured on the spot market from countries other than Indonesia and coal imported from Indonesia.

17. If the contention of the Petitioner, that the benchmark energy charges formula specified in order dated 13.1.2023 applies only to "sister companies" and not applicable to "entities other than the sister companies", is accepted, then it would amount to allowing the actual landed cost of coal in case of the coal procured on spot basis from "entities other than the sister companies". That was not the Commission's intention. As no distinction was made in the order dated 13.1.2023 between the coal procured on a spot basis from the "sister companies" and the "entities other than the

sister companies”, the formula specified is applicable to all procurements of coal made by the Petitioner. Therefore, the order is clear, and there is no ambiguity in the order dated 13.1.2023, and the Petitioner cannot read what was not envisaged in the said order.

18. The Petitioner referring to the Hon’ble Supreme Court judgements in Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649 (Para 254) and Goan Real Estate and Construction Ltd. & Anr. v. Union of India (2010) 5 SCC 388 (Para 31), has submitted that a judgment ought to be read in its context, and any observations made during the course of reasoning in a judgment should not be read divorced from the context in which it was used. The Petitioner has submitted that there is no ambiguity that the energy charges formula specified is applicable only to the Petitioner’s “sister companies” and not to coal procurement from “entities other than the sister companies”. We have considered the Petitioner’s contention. It appears that the Petitioner is referring to the reference made by the Commission, in order dated 13.1.2023, to PCKL’s submission that the cost of coal procured by the Petitioner from its “sister companies” is more than the market prices, to claim that the formula specified by the Commission is only applicable to the coal procured from its “sister companies”. The Commission has specified the formula for the computation of the base CIF price, taking into consideration the existing agreements of the Petitioner and not mainly on the submissions of PCKL that the cost of coal procured from the “sister companies” of the Petitioner is higher. Therefore, the reliance placed by the Petitioner on the above-referred judgements of the Hon’ble Supreme Court to claim that the Commission’s findings are applicable only to the coal procured from its “sister companies” is misplaced.

19. Further, placing reliance on the Hon’ble Supreme Court judgements in P.S. Sathappan v. Andhra Bank Ltd. (2004) 11 SCC 672 (Para 147) and Bacchaj Nahar v.



Nilima Mandal, (2008) 17 SCC 491 (Para 17), the Petitioner has submitted that a judgment cannot be interpreted to have rendered a finding on fact/ issue which was not raised in pleadings. Applying this legal principle to the facts of this case, since Respondents had raised no aspersions regarding the Petitioner's coal procurement from 'entities other than the sister companies', the benchmark energy charges formula laid down cannot be read to apply to the Petitioner's coal procurement from 'entities other than the sister companies'. We have considered the Petitioner's submissions. We have already made it clear (in paragraph 17) that the Commission's findings in the order dated 13.1.2023 are applicable to the coal procured from the Petitioner's "sister companies" and "entities other than the sister companies" and there is no distinction made on the basis of the source of coal. Therefore, the Petitioner's claim that, as no aspersions were cast on the coal procured from 'entities other than sister companies', the formula specified cannot be made applicable to the Petitioner's coal procurement from 'entities other than the sister companies' does not hold good.

20. Allowing the contention of the Petitioner that the formula specified by the Commission would only apply to its "sister companies" and not to "entities other than the sister companies" would amount to modification of the order dated 13.1.2023, as contended by PCKL, which is impermissible in the instant petition, which is filed seeking clarification of the order dated 13.1.2023.

21. In view of the above discussion, the Petitioner's prayers for directions to the Respondents to pay the withheld differential energy charges and corresponding Carrying Cost of ₹100 crore towards spot procurement of coal during 1.4.2026 to 31.3.2019 and the consequent LPS of ₹15.23 crore have become infructuous.



22. The Petition No. 238/MP/2024 is disposed of in terms of the above.

sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V)
Member

sd/-
(Jishnu Barua)
Chairperson

