



**Petition No. 1277/2018**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Date of Order: 22.07.2021**

**PRESENT:**

Hon'ble Shri Raj Pratap Singh, Chairman

Hon'ble Shri Kaushal Kishore Sharma, Member

**IN THE MATTER OF**

Petition under Section 86(1)(b),(f) of the Electricity Act 2003 read with UPERC (Conduct of Business) Regulations, 2004 and also relevant provisions of PPA dated 21.11.2008 executed between PPGCL and Discoms of State of UP to compensate the PPGCL for the increase in costs and expenses in view of inordinate delay in completion of the Project for the reasons which are solely attributed to the Respondents herein, failure of the Respondent to fulfill their obligation and on account of such unforeseeable events and circumstances, including Change in Law events, which were beyond the reasonable control of the PPGCL along with Affidavit.

1. Prayagraj Power Generation Company Limited,  
Sector-128, Noida- 201304

**...Petitioner**

**Versus**

1. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14 Ashok Marg, Lucknow - 226001
2. Paschimanchal Vidyut Vitran Nigam Limited,  
Victoria Hydrel Inspection House,  
Hydel Colony, Victoria Park, Meerut-250001
3. Purvanchal Vidyut Vitran Nigam Limited,  
Vidyut Nagar, Bhikharipur, P.O. DLW, Varanasi- 220101
4. Madhyanchal Vidyut Vitran Nigam Limited,  
4A, Gokhale Marg, Lucknow-226001
5. Dakshinanchal Vidyut Vitran Nigam Limited,  
Urja Bhawan, NH2 (Agra-Delhi Bypass Road),  
Sikandra, Agra - 282002



6. Kanpur Electricity Supply Company Limited,  
14/71, Civil Lines, KESA House, Kanpur - 208001

...Respondents

The following were present:

1. Shri Venkatesh, Counsel PPGCL
2. Shri Abhishek Nangia, Counsel, PPGCL
3. Shri Suhael Butta, Counsel, PPGCL
4. Shri Sanjay Bhargava, PPGCL
5. Shri Pankaj Prakash, PPGCL
6. CE(Planning), UPPCL
7. Mohd. Altaf Mansoor, Counsel UPPCL

### ORDER

(Date of Hearing 08.07.2021)

1. The Commission vide earlier Order dated 27.5.21 had allowed further four-week time to the parties to file requisite affidavit. All the Discoms, Kesco and UPPCL have filed affidavit dated 22.06.2021. The matter came up for hearing today.
2. During the hearing, the Commission observed that, this matter being adjudicatory in nature, presence of legal member of the Bench is mandatory in terms of Hon'ble Supreme Court judgement dated 12.04.2018 in Civil Appeal No. 14697 of 2015. The relevant extracts of the said judgement is as below:

**"Conclusion:**

*114. In view of our observations above, we conclude as under:*

*i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.*

*ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.*

*[Signature]*

*[Signature]*



iii. That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.

iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission.

v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.

vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above."

3. In view of the above and considering the unavailability of the Member (Legal) in today's <sup>quorum</sup> ~~coram~~, the Commission asked the parties whether they would like to proceed further. The counsel of the parties responded that the matter can be adjourned. After hearing the parties, the Commission adjourned the hearing.

List the matter for next hearing on 29.07.2021.

**(Kaushal Kishore Sharma)**  
Member

**(Raj Pratap Singh)**  
Chairman

Place: Lucknow  
Dated: 12.07.2021

