

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 77 OF 2019

Dated: 11.10.2022

Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

KSK MAHANADI POWER COMPANY LIMITED

8-2-293/82/A/431/A, Road No. 22,
Jubilee Hills,
Hyderabad-500 033

... Appellant(s)

VERSUS

1. TAMIL NADU GENERATION & DISTRIBUTION CORPORATION LTD.

Through its Chairman and Managing Director
NPKRR Maligai, 6th Floor, Eastern Wing,
144, Anna Salai
Chennai – 600 002

2. PRAYAS ENERGY GROUP

Through its Research Associates
Unit III A & B, Devgiri
Joshi Railway Museum Road
Kothrud Industrial Area, Kothrud
Pune – 411 038

3. CENTRAL ELECTRICITY REGULATORY COMMISSION

Through its Secretary
3rd and 4th Floor, Chanderlok Building,
36, Janpath
New Delhi – 110 001

... Respondents

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Kirti Soni

Counsel for the Respondent (s) : Ms. Anusha Nagarajan
Ms. Aakanksha Bhola for R-1

Ms. Poorva Saigal
Mr. Shubham Arya
Ms. Reeha Singh for R-2

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant failed to satisfy the respondent, Central Electricity Regulatory Commission (hereinafter referred to variously as, 'CERC' or 'Central Commission') with regard to its claim for declaration of change in law on account of two events *viz.* cancellation of the coal blocks by Hon'ble Supreme Court by its Orders dated 25.08.2014 and 24.09.2014 in WP Cri No. 120 of 2012 *Manohar Lal Sharma v The Principal Secretary & ors.* and National Coal Distribution Policy 2013 which had reduced the assured quantum of coal for supply to the appellant under the tapering linkage granted to it. The Order dated 08.10.2018 of the Central Commission passed in Petition no. 179/MP/2016 is assailed, *inter alia*, on the basis of subsequent decision of this tribunal rendered on 21.12.2018 in Appeal no. 193 of 2017 in *GMR Kamalanga Energy Limited v Central Electricity Regulatory Commission & ors.* and judgment dated 31.08.2020 of Hon'ble Supreme Court in *Jaipur Vidyut Vitran Nigam Limited v Adani Power Rajasthan Limited* in Civil Appeal no. 8625-8626 of 2019 as indeed the ruling reported as *Energy Watchdog v Central Electricity Regulatory & ors.* (2017) 14 SCC 80.

2. The learned counsel for the first respondent, Tamil Nadu Generation & Distribution Corporation Ltd. (TANGEDCO) fairly submitted that the request of the appellant for remit to the Central Commission for revisit to

the matter may be granted, though she has some submissions to make on the distinguishing features. She also submitted that the rights of the first respondent (TANGEDCO) to raise such contentions and objections as may be available in law may be reserved.

3. In above view, the appeal is allowed. The impugned order is set aside. The matter is remitted to the Central Commission for reconsideration in light of the above-mentioned subsequent decisions of Hon'ble Supreme Court and this tribunal. The contentions of both sides are kept open. For removal of doubts, if any, we clarify that nothing in this order shall be construed as expression of opinion by this tribunal at this stage.

4. The appeal is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson