



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.Nos.1 of 2018, 2 of 2018 & 3 of 2018 and O.P.Nos.19 of 2016 & 21 of 2015
Date: 31-01-2018

Present
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

I.A.No.1 of 2018 in O.P.No.19 of 2016

Between:

1. Eastern Power Distribution Company of Andhra Pradesh Limited
 2. Southern Power Distribution Company of Andhra Pradesh Limited
- ... Applicants/Petitioners

A N D

M/s. Hinduja National Power Corporation Limited ... Respondent/ Respondent

I.A.No.2 of 2018 in O.P.No.21 of 2015

Between:

1. Eastern Power Distribution Company of Andhra Pradesh Limited
 2. Southern Power Distribution Company of Andhra Pradesh Limited
- ... Applicants/Respondents

A N D

M/s. Hinduja National Power Corporation Limited ... Respondent/Petitioner

I.A.No.3 of 2018 in O.P.No.19 of 2016

Between:

M/s. Hinduja National Power Corporation Limited ... Applicant/Respondent

A N D

1. Eastern Power Distribution Company of Andhra Pradesh Limited
 2. Southern Power Distribution Company of Andhra Pradesh Limited
- ... Respondents/Petitioners

O.P.No.19 of 2016

Between:

1. Eastern Power Distribution Company of Andhra Pradesh Limited
 2. Southern Power Distribution Company of Andhra Pradesh Limited
- ... Petitioners

A N D

M/s. Hinduja National Power Corporation Limited ... Respondent

O.P.No.21 of 2015

Between:

M/s. Hinduja National Power Corporation Limited ... Petitioner

A N D

1. Eastern Power Distribution Company of Andhra Pradesh Limited
 2. Southern Power Distribution Company of Andhra Pradesh Limited
- ... Respondents

These Interlocutory Applications and the Original Petitions respectively have come up for hearing finally on 27-01-2018 in the presence of Sri Shridhar Prabhu, Sri Ravi Charan Pentapati and Sri L. Venkateshwara Rao, learned counsel for M/s. Hinduja National Power Corporation Limited, Sri P. Shiva Rao, learned Standing Counsel for Andhra Pradesh Distribution Companies, Sri M. Venugopala Rao and Sri M. Thimma Reddy, learned objectors. After carefully considering the material available on record and after hearing the arguments of the parties present, the Commission passed the following:

COMMON ORDER

I.A.No.1 of 2018 is an Interlocutory Application filed by the Eastern and Southern Power Distribution Companies of Andhra Pradesh Limited purportedly under Order XXIII Rule 1 sub-Rule (3) of the Code of Civil Procedure, 1908 read with Clause 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of

Business) Regulations, 1999 to permit them to withdraw O.P.No.19 of 2016 on the file of this Commission together with the initialled Power Purchase Agreement in public interest with a liberty to submit the same, if necessary.

2. The case of the petitioners is that the circumstances that existed when MoA dated 17-05-2013 preceding the Power Purchase Agreement was under consideration, ceased to exist as on 16-05-2013. The respondent / Hinduja National Power Corporation Limited submitted a letter dated 16-05-2013 mentioning the tentative capital cost of the project as Rs.6098 crores as against Rs.5545 crores stated in June, 2010 at the time of financial closure and while entering into the MoA dated 17-05-2013, the Distribution Companies reserved their liberty to challenge every component of the said capital cost. The respondent now claims Rs.8087 crores and in spite of protest by the Distribution Companies, the Hinduja National Power Corporation Limited was not able to reduce the capital cost, could not commission the project in 2014 as assured and when it was commissioned, the Distribution Companies have surplus power situation. Therefore, the Distribution Companies are unable to purchase the power generated from the project and hence did not consider the same even in the ARR of 2018-19.

3. Initially, in pursuance of a Notification by the Ministry of Power, Government of India on 30-03-1992 conceiving a policy of privatization of generation of power, the then Andhra Pradesh State Electricity Board transferred the development of a power project at Devada near Visakhapatnam to Hinduja National Power Corporation Limited for which, it had already obtained necessary statutory clearances including coal linkage. The Andhra Pradesh State Electricity Board entered into a Power Purchase Agreement with Hinduja National Power Corporation Limited to supply the entire power to the State and necessary further clearances

from the Central Electricity Authority were also obtained. Then, as Hinduja National Power Corporation Limited sought for some amendments, an amended and restated Power Purchase Agreement dated 15-04-1998 was entered into and later, Ministry of Power, Government of India directed the State Government to prevail on Hinduja National Power Corporation Limited to reduce the capital cost of the project in tune with NTPC Simhadri Stage-I. The Hinduja National Power Corporation Limited could not adhere to the stipulations of the Power Purchase Agreement to achieve the financial closure within the stipulated period and at its request, it was extended till 30-09-2001 when it asked for further extension, Transmission Corporation of Andhra Pradesh Limited which succeeded the Andhra Pradesh State Electricity Board did not accept that request. The Transmission Corporation of Andhra Pradesh Limited informed the State Government that the effectiveness of all the documents including the Power Purchase Agreement dated 15-04-1998 had expired by 30-09-2001 and there is no liability for the Transmission Corporation of Andhra Pradesh Limited or the State Government. The Hinduja National Power Corporation Limited did not take steps for any continuation of the Power Purchase Agreement.

4. On 05-01-2007, Hinduja National Power Corporation Limited again approached the State Government intending to develop the project as merchant power plant with the State Government having the first right of refusal to purchase 25% of power from their project at regulated tariff, as may be determined by the Andhra Pradesh Electricity Regulatory Commission. The State Government did not agree to the proposal. In a meeting convened by the Chief Secretary to the State Government on 16-05-2007, Hinduja National Power Corporation Limited confirmed their proposal to sell 25% of the power generated from their project to the agency nominated by the State Government at the fixed cost rate of Rs.64.16 ps equal to the

tariff fixed by the Central Electricity Regulatory Commission for NTPC Simhadri Stage-I. On 22-07-2009, the State Government held another meeting and directed to apply the same terms and conditions of Simhadri Stage-II and follow the existing policy of other IPPs. The minutes of meeting dated 11-01-2010 were conveyed stating the application for revival to be only for merchant power and not for 100% supply to the State grid. The Hinduja National Power Corporation Limited did not agree to make any further capacity available during negotiations on 04-08-2010. Later, the Hinduja National Power Corporation Limited submitted a bid in 2011 when bids were invited to supply power under Case-I bidding policy, to supply 60% of its capacity to Andhra Pradesh Distribution Companies. Evaluation by a high powered committee of the Special Chief Secretary (Finance) and the Special Chief Secretary (Energy) decided that the power from this project was already committed to the Distribution Companies, the bid of Hinduja National Power Corporation Limited is deleted from the evaluation of bids. Later, in response to a letter from the Hinduja National Power Corporation Limited dated 06-08-2012, the decision of the State Government directing the Andhra Pradesh Distribution Companies to enter into a continuation agreement with Hinduja National Power Corporation Limited was communicated. A draft MoA was submitted by the Hinduja National Power Corporation Limited on 27-02-2013 and after several meetings, the MoA dated 17-05-2013 was entered into while reserving the right of the Distribution Companies to contest every component of the project cost at the time of determination of the capital cost by the Andhra Pradesh Electricity Regulatory Commission. Later, the Hinduja National Power Corporation Limited informed that Units 1 and 2 of the project are expected to be completed by the end of June and October, 2014 respectively. M/s. Hinduja National Power Corporation Limited submitted an

application for approval of the capital cost in O.P.No.21 of 2015, but the Power Purchase Agreement was not finalized as the Hinduja National Power Corporation Limited sought for incorporation of many impermissible terms. A draft Power Purchase Agreement was subsequently initialled on 28-04-2016 still with some clauses under disagreement, but the same was submitted to the Commission on 12-05-2016 for approval in O.P.No.19 of 2016. The Hinduja National Power Corporation Limited through an addendum application dated 28-07-2015 sought for revising the capital cost from Rs.6998 crores to Rs.8087 crores. Both the O.P.Nos.19 of 2016 and 21 of 2015 were heard together and reserved for orders on 15-05-2017.

5. The National Tariff Policy, 2006 and Regulation 1 of 2008 of this Commission apart from a letter dated 16-09-2016 from the Commission to the Distribution Companies to pursue the possibility of entering into the Power Purchase Agreements in future for 5 to 12 years only and not to enter into agreements for beyond 12 years, have to be kept in view in this regard.

6. The Hinduja National Power Corporation Limited escalated its capital cost from Rs.5545 crores to Rs.6098 crores and then to Rs.6998 crores to Rs.8087 crores. They did not agree for reduction of capital cost. Even if the capital cost method is permissible, the capital cost will be restricted to Rs.5623 crores, which results in a fixed cost of Rs.2.11 ps per unit in 2016-17 and Rs.2.04 ps per unit in 2017-18. The rail corridor could not be completed by the Hinduja National Power Corporation Limited till date and hence the transport of coal is costing much high. Until the proposed plan of the Distribution Companies is approved by the Commission, it remains a plan only with no legal obligation on the Distribution Companies. The initialled Power Purchase Agreement remains a plan till approval

by the Commission. The Hon'ble Supreme Court laid down that public interest is the paramount consideration in regulating the Power Purchase Agreements. Hence, the applicants sought for reopening of the case and permission to withdraw O.P.No.19 of 2016 together with the initialled Power Purchase Agreement in public interest with liberty to submit the same if necessary.

7. M/s. Hinduja National Power Corporation Limited filed a Common Brief Statement of Objections on 09-01-2018 on the maintainability of I.A.Nos.1 and 2 of 2018 contending that the Applications are an abuse of the process of the Court and *mala fide* attempt to further delay the proceedings. The Distribution Companies which filed an Application before the Hon'ble Appellate Tribunal for Electricity to direct the Commission to pass orders in I.A.Nos.1 of 2018 and 2 of 2018 before deciding O.P.Nos.19 of 2016 and 21 of 2015 did not mention it before the Hon'ble Appellate Tribunal for Electricity. The orders in the main O.Ps., may be pronounced on the appointed date. The Hon'ble Appellate Tribunal for Electricity fixed 14-08-2017 and then end of October, 2017 and then 16-12-2017 and lastly 15-01-2018 to comply with their orders to dispose of the main O.Ps. The Hinduja National Power Corporation Limited relied on the cited decisions to claim the prayer legally to be not sustainable. The order dated 01-06-2017 shows that the appeal of Hinduja National Power Corporation Limited to have been disposed of on the basis of the Commission deciding the two main O.Ps., on or before 14-08-2017 and otherwise, the order dated 01-06-2017 becomes redundant. Events and issues prior to the continuation agreement dated 28-04-2016 were waived when the Government of Andhra Pradesh decided to purchase 100% power from Hinduja National Power Corporation Limited. The amended and restated Power Purchase Agreement dated 15-04-1998 executed with the approval of the State Government and the Andhra

Pradesh State Electricity Board was before the constitution of the State Commission. The Distribution Companies are bound by the decisions of the Andhra Pradesh State Electricity Board as specifically provided in the State Reform Act, 1998 and the transfer scheme. Even if the petition for approval of the continuation agreement is withdrawn, it will not affect enforcement of the amended and restated Power Purchase Agreement dated 15-04-1998 for which, no separate approval is required. The Distribution Companies which were honouring the invoices on the off-take of the power generated cannot withdraw from the Power Purchase Agreement, more so, when Hinduja National Power Corporation Limited invested substantially altering its position. The two Interlocutory Applications are *mala fide* and the principles laid down in judicial precedents are in favour of Hinduja National Power Corporation Limited. Hence, the Commission was requested to reject the two Interlocutory Applications and proceed to pronounce its decision in both the main O.Ps.

8. The Hinduja National Power Corporation Limited filed Additional Objections on 12-01-2018 referring to the order of the Hon'ble Appellate Tribunal for Electricity on 10-01-2018 stating that having heard the learned counsel for the parties and considering the peculiar circumstances of the case, they do not want to express any opinion on the pending I.As., before the State Commission. However, the time to dispose of the main O.Ps., was extended till 31-01-2018 and with that direction, the Interlocutory Application was disposed of. It clearly shows that the Hon'ble Appellate Tribunal for Electricity was not inclined to grant the relief in I.A.No.38 of 2018 and when the prayer is not allowed, it is deemed that the Interlocutory Applications are rejected. The Hinduja National Power Corporation Limited relied on a precedent from Delhi. The Hon'ble Appellate Tribunal for Electricity only extended time by 15 days for orders in the main O.Ps., and even this Commission in O.P.Nos.14 to 25 of 2012

dated 11-08-2014 ordered that a case of withdrawal from an agreement without notice, capacity and in deviation from the procedure prescribed in the Power Purchase Agreements for dispute resolution is not valid. Hence, the Hinduja National Power Corporation Limited prayed to reject the I.A.Nos.1 and 2 of 2018 and to proceed to pronounce the orders in the main O.Ps. During the hearing on 12-01-2018, the Advocate for the petitioner filed a Memo describing APEPDCL as the petitioner and stated that now the petitioner is not pressing for second limb of the prayer about the liberty to be granted and confines to the relief of withdrawal of petition O.P.No.19 of 2016.

9. The Hinduja National Power Corporation Limited filed an Additional Statement of Objections on 17-01-2018 stating that the Hon'ble Appellate Tribunal for Electricity did not grant the relief in I.A.No.38 of 2018 and only extended the time for making orders in the main O.Ps., till 31-01-2018. When the prayer is not allowed, it is deemed that the Interlocutory Applications are rejected. The failure of the Andhra Pradesh Distribution Companies to secure any order from the Hon'ble Appellate Tribunal for Electricity has to be the basis for considering the maintainability of the Interlocutory Applications. The decision of the Hon'ble Delhi High Court to that effect was cited. The attempt of the Distribution Companies to unconditionally withdraw O.P.No.19 of 2016 is liable to be rejected. Abandonment of a suit has no application to the proceedings under the Electricity Act, 2003. Section 94 of the Electricity Act, 2003 did not list Order XXIII among the limited provisions of the CPC applied to the proceedings before the Commission. Where the interests of the defendant are adversely affected, the plaintiff is debarred from withdrawing of a suit and O.P.No.19 of 2016 is not a *lis* between the parties, as both are interested in approval of the continuation agreement sought for. The request for withdrawal should be disallowed

or in the alternative, the Hinduja National Power Corporation Limited should be transposed as the petitioner for which a separate Memo is being filed. The power purchases under the agreement stood implemented and the Hinduja National Power Corporation Limited was prevented from selling part of the capacity to Telangana State. Even if any withdrawal of continuation agreement is there, the amended and restated Power Purchase Agreement continues to be valid and the Commission has to determine the tariff under that agreement. When a prayer before the Court is ignored and no opinion is expressed by the Court, it is deemed to be rejected. The Retail Supply Tariff Order 2017-18 binds the Distribution Companies to purchase power till 31-03-2018 and a long term Power Purchase Agreement for 30 years which is valid and subsisting, cannot be so simply withdrawn. A.P. Electricity Reform Act, 1998 provided for deemed approval of the Power Purchase Agreements executed prior to the constitution of the State Commission and hence, O.P.No.21 of 2015 is bound to be adjudicated.

10. I.A.No.2 of 2018 is an Interlocutory Application under Clause 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 requesting to reopen O.P.No.21 of 2015 and return the same after permitting the distribution companies to withdraw O.P.No.19 of 2016.

11. The petitioners contended that the Commission is empowered to determine the tariff only for supply of electricity by a generating company to a distribution licensee, but not otherwise under Section 62 (1) (a) of the Electricity Act, 2003. As the distribution companies decided not to purchase power from M/s. Hinduja National Power Corporation Limited for the present and the Government is reviewing the Power Purchase Agreement in the case, there is no necessity for determination of tariff in respect of the said project and hence, the Interlocutory Application.

12. M/s. Hinduja National Power Corporation Limited filed I.A.No.3 of 2018 under Order I Rule 10 (2) read with Section 151 of the Code of Civil Procedure and Clause 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking permission of the Commission to transpose M/s. Hinduja National Power Corporation Limited as petitioner and the Distribution Companies as respondents in O.P.No.19 of 2016 for effectual and complete adjudication of the proceedings.

13. M/s. Hinduja National Power Corporation Limited contended that the respondents / Distribution Companies have filed I.A.No.1 of 2018 to permit them to withdraw O.P.No.19 of 2016. However, it invested Rs.8,087 crores, pending adjudication before the Commission and if it is not transposed as petitioner, the statutory, legal and contractual rights which accrued in favour of the petitioner would be effected. The Distribution Companies cannot wriggle out of their statutory obligations and there is no proposal for unilateral simpliciter withdrawal till 12-01-2018. All the parties are bound by the Government Orders dated 01-06-2016 allocating 100% power to the Distribution Companies and if the petitioner precluded from selling power to other States under Open Access, if it is not transposed as the petitioner, it suffers irreparable loss and injury and all the rights and obligations of the parties can be justly adjudicated, if transposition is made. Hence, the petition.

14. The respondents/Distribution Companies in their counter submitted that under Section 21 of the Electricity Reform Act, a licensee alone is competent to seek approval / consent of the PPA. A generator is not competent to seek approval or consent. The procedure prescribed by the Electricity Law stands on a different footing than the general agreements under Civil Law and a Power Purchase Agreement entered into under the Electricity Law remains only a plan, until the same

is approved by the concerned Regulatory Commission. The dispute between the parties prior to the commencement of the PPA has to be agitated before a Civil Court under Section 27 of the Specific Relief Act, over which this Commission has no jurisdiction. The same was laid down in Appeal No.47 of 2009 dated 19-04-2010. Hence, the Distribution Companies desired I.A.No.3 of 2018 to be dismissed.

15. M/s. Hinduja National Power Corporation Limited in its rejoinder stated that Section 21 of the A.P. Electricity Reform Act does not create any exclusive right for the licensee and the consent is on an application filed by the licensee or a generating company or *suo motu*. The neutral language of Section 86 (1) makes it clear that the procurement process needs to be approved irrespective of whether a Genco or Discom choose to file an application or not. It is not an exclusivity in favour of a licensee to submit a Power Purchase Agreement for approval. The petitioner is supplying power under an interim tariff determined by the Commission and hence there is a statutory requirement and legitimate expectation to finalize the tariff. The scheme of the Electricity Act is for scrutiny of the capital and other tariff elements considering the issue of safeguarding the interests of the consumers and it is not open to the respondents to seek withdrawal of the petition and thereby avoid the regulatory scrutiny and decision by the Commission in the best interests of the consumers. The Memo dated 09-01-2018 filed by the Distribution Companies virtually effaced all the pleadings and it is not clear as to whether one petitioner is withdrawing or both petitioners are withdrawing the proceedings. The Transposition Application is an effective bar against the withdrawal. By withdrawing O.P.No.19 of 2016, the petitioner is escaping from the statutory duty to get regulatory approval on the amendments mutually affecting the parties; otherwise, every generator will try to escape the regulated tariff after getting initial tariff. Section 26 of the Specific Relief

Act was referred to in the judgment of the Hon'ble Appellate Tribunal for Electricity in the context of alleged coercion and hence it is requested that the transposition be made and O.P.No.19 of 2016 be effectually and completely be adjudicated.

16. Both the learned counsel made elaborate, oral and written submissions and submitted a number of precedents which will be referred to in due course.

17. The points that arise for consideration are,--

(1) Whether M/s. Hinduja National Power Corporation Limited has to be transposed as petitioner and both the Distribution Companies have to be transposed as respondents in O.P.No.19 of 2016?

(2) Whether the capital cost and tariff have to be determined in O.P.No.21 of 2015 irrespective of the request of the Distribution Companies for permission to withdraw O.P.No.19 of 2016?

(3) Whether the Distribution Companies have to be permitted to withdraw O.P.No.19 of 2016 and whether both the Original Petitions have to fail in consequence?

Points (1), (2) & (3):

18. M/s. Hinduja National Power Corporation Limited and the Andhra Pradesh State Electricity Board entered into an Amended and Restated Power Purchase Agreement on 15-04-1998 which amended, restated and superseded in its entirety the earlier Power Purchase Agreement between the parties dated 09-12-1994. This agreement dated 15-04-1998 provided for determination of tariff on the basis of two part tariff for each tariff year which shall be the sum of fixed charge, variable charge and incentive payment, if any, as per Article 3 of the agreement. The conditions precedent for imposing on either party any duty, obligation or liability were stated in Article 14.

19. Later, the Southern and Eastern Power Distribution Companies of Andhra Pradesh Limited and M/s. Hinduja National Power Corporation Limited entered into a Continuation Agreement as required by the changes in the Governing Acts and Regulations of the State Commission. Both the Distribution Companies filed O.P.No.19 of 2016 seeking approval / consent of the Commission for the Continuation Agreement to the Power Purchase Agreement dated 28-04-2016 together with the Amended and Restated Power Purchase Agreement dated 15-04-1998. The petition itself shows that the parties were in clear disagreement about the quantum of the capital cost. O.P.No.21 of 2015 filed by M/s. Hinduja National Power Corporation Limited for approving the capital cost also does not indicate any consensus on the capital cost incurred or to be incurred. All the questions in controversy between the parties on the terms and conditions, which should govern the enforcement of the Continuation Agreement between them and the basis on which the capital cost shall be arrived at are the subject of the prolonged enquiry in both the Original Petitions respectively and when both the matters stood reserved for orders, the present Interlocutory Applications came to be filed, the determination of which on merits in accordance with law will decide the further steps to be taken in the main proceedings.

20. M/s. Hinduja National Power Corporation Limited wanted itself to be transposed as petitioner and both the Distribution Companies to be transposed as respondents in O.P.No.19 of 2016 to prevent the consequences of any permission to the Distribution Companies to withdraw O.P.No.19 of 2016. The Interlocutory Application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 invokes the power of the Court to transpose the parties as well as to order amendments consequent upon such transposition as part of the power to add or strike out parties.

21. In *Bangaru Pattabhi Ramaiah and Ors Vs Bangaru Gopala Krishnaiah and Ors* AIR 1986 AP 270, their Lordships of the Division Bench noted that ordinarily a plaintiff in a suit has an undoubted right to withdraw the suit either with or without the consent of the Court and the language of Order XXIII generally supports such a right. It was noted that the right thus appears to be almost complete but it is further found that the plaintiff's exercise of his right to withdraw the suit should only be in the presence of the defendants and another provision which works against the theory of unlimited right to withdraw the suit is Order I Rule 10 CPC under which a defendant may apply to be transposed as plaintiff and may continue the suit if permitted by the Court. This right to apply for transposition would operate as a limitation on the power of the plaintiff to withdraw the suit. Referring to various precedents, their Lordships of the Division Bench concluded that the Court can only exercise its jurisdiction in favour of the plaintiffs where the interests of the defendants are not adversely affected in any way if the plaintiffs are allowed to withdraw the suit and a leave to withdraw should not be granted by the Court without notice to the defendants where the defendants can apply to transpose themselves as plaintiffs.

22. Question of transposition of parties was considered in *Kiran Tandon Vs Allahabad Development Authority and Anr* AIR 2004 SC 2006 wherein it was held that the Court has power under Order I Rule 10 (2) CPC to transpose the defendants to the category of plaintiffs to do complete justice between the parties.

23. In *Piyush Hasmukhlal Desai Vs International Society for Krishna Consciousness (ISKCON)* AIR 2015 Orissa 43, a Division Bench of the Hon'ble Orissa High Court found the substitution granted to the 2nd respondent therein was a patent error of law as the interest and identity are not the same between the plaintiff and the defendant. Referring to the precedents on the aspect, it was held that the

transposition of a defendant as plaintiff can only be made when the defendant has some interest in common with that of the plaintiff and a person, whose interest is adverse to the plaintiff, cannot be permitted to be transposed as plaintiff. If that were so, in the present case, it is doubtful whether the Distribution Companies and M/s. Hinduja National Power Corporation Limited have the same interest and identity between them.

24. In *Jethiben Vs Maniben and Anr* AIR 1993 Gujarat 194 also, the normal consideration for transposition was said to be that interest of the person to be transposed as plaintiff must be identical to the interest of the plaintiff who tries to withdraw.

25. In *Smt. Ajita Debi Vs Hossenara Begum and Ors* AIR 1977 Calcutta 59, it was pointed out that where an Application has been made under Order XXIII Rule 1, the plaintiff is entitled to withdraw his suit and the defendants cannot be heard to oppose such prayer. The said legal right of the plaintiffs to withdraw the suit is not unconditional or absolute. The Court can only exercise its jurisdiction in favour of the plaintiffs where the interests of the defendants are not adversely affected in any way if the plaintiffs are allowed to withdraw the suit. But, if an Application on behalf of such defendants having an interest in the suit is made for, their transposition to the category of the plaintiffs and for transposition of the plaintiffs to the category of defendants, the plaintiffs cannot be allowed to withdraw.

26. In *Veerabhadrapa and Anr Vs Smt. Gangamma and Anr* AIR 2003 Karnataka 348 is a case where a defendant cannot be transposed as one of the plaintiffs and the Court held the Written Statement filed by him to have got transposed and formed part of the plaint.

27. The Written Submissions of M/s. Hinduja National Power Corporation Limited themselves recognize that ordinarily the plaintiff in a suit has an undoubted right to withdraw the suit with or without consent of the Court. There was no accusation of want of notice of request for withdrawal or any denial of any reasonable opportunity of hearing. The withdrawal with notice to the generating company was not clearly shown to have adversely affected any right vested in the generating company. While the pleadings themselves show that the rights and interests claimed by the parties under the Power Purchase Agreement were not identical, transposition in the strict sense of Order I Rule 10 CPC does not fit as in the interests and identity of the parties in the subject matter cannot be considered common and identical.

28. The Distribution Companies relied on *Velagapudi Power Generation Limited Vs SPDCL and others* Appeal No.47 of 2009 decided by the Hon'ble Appellate Tribunal for Electricity on 19-04-2010 wherein the contention raised by the appellant was that the obligation to obtain consent from the State Commission for a Power Purchase Agreement or its amendment is only on the licensee but not on the generating company. The Hon'ble Appellate Tribunal for Electricity held that Section 21 of the Andhra Pradesh Electricity Reform Act, 1998 makes it clear that obtaining consent from the State Commission is mandatory and in that case, the generating company was held disentitled to seek the tariff determined by the State Commission under Section 62 of the Electricity Act as it never followed the procedure prescribed under Section 64 of the Act. The Hon'ble Appellate Tribunal for Electricity held that only with regard to adjudication of the dispute, post contract that the State Commission can be approached. The Distribution Companies relied on the decision of the Hon'ble Appellate Tribunal for Electricity to contend that the jurisdiction of the State Commission cannot be invoked by the generating company in the present case

and if so, question of transposing the generator as the petitioner in O.P.No.19 of 2016 does not arise. The Distribution Companies also relied on *Madaka Anjaneyulu Vs Madaka Balaiah and others* 2001 (1) ALD 312, wherein the 1st defendant appeared to be transposed as an appellant in the Appeal Suit, which was dismissed as withdrawn earlier. He contended that the Application for dismissing the appeal was in collusion with the other defendant. The Hon'ble High Court pointed out following an Apex Court decision that Order XXIII Rule 1 (1) of the Code of Civil Procedure, 1908, a plaintiff has got unqualified right to withdraw the suit and that there was no provision in the CPC which enables the Court to refuse permission to withdraw the suit and compel the plaintiff to proceed with it. The Court also referred to an Application for transposition by a defendant as plaintiff in deciding which the Court shall have due regard to the question whether the defendant has a substantial question to be decided against any other defendants. It was laid down that the principle is well settled that if the interest of a defendant is not adverse to the interest of a proforma defendant, he can be transposed as a plaintiff in the event of withdrawal or abandonment by the original plaintiff. The same is not true when a defendant who seeks transposition as plaintiff is not able to show that his interest is similar to the interest of the plaintiff. In the present case, the interest of M/s. Hinduja National Power Corporation Limited and the Distribution Companies are not in any manner shown to be similar or at least to be not adverse to each other.

29. In *Ahmed Abdul Saleem and Ors Vs Ahmed Abdul Sameer and Ors* 2002 (4) ALT 470, the Hon'ble High Court was considering a question of transposition of the petitioners defendants as plaintiffs and the plaintiff as a defendant. It was pointed out that where a plaintiff seeks withdrawal of a suit or abandons the suit, if a defendant applies to be transposed as a plaintiff under Order I Rule 10 CPC, while considering

the Application for withdrawal, the Court shall have regard to the question whether the applicant has a substantial question to be decided as against any other defendants. Therefore, to get transposed from the array of the defendants to the array of the plaintiffs in a suit, the applicant must satisfy the Court that they have got a substantial question to be decided as against any of the other defendants. However, in the present case, there is no question which needs to be decided in between any *inter se* defendants leave alone, substantial questions.

30. Whether the nature of the proceedings between the parties in O.P.Nos.21 of 2015 and 19 of 2016 are in the nature of adversarial proceedings or inquisitorial proceedings was raised by the learned counsel for M/s. Hinduja National Power Corporation Limited and it was sought to be canvassed that there was no *lis* between the parties in the sense of any adversarial litigation. However, the present consideration is more about the right of the Distribution Companies, the petitioners in O.P.No.19 of 2016 to withdraw the same and its impact on the request for fixing the capital cost in O.P.No.21 of 2015. The Written Submissions of M/s. Hinduja National Power Corporation Limited dated 24-01-2018 themselves admit that the plaintiff in the suit has undoubted right to withdraw the suit either with or without the consent of the Court, but, of course, with notice to the defendants and subject to the liability to pay any costs that may be awarded. Either the obligation to put the defendant on notice or the liability to pay any costs do not detract from the basic right of the plaintiff to withdraw a suit at his volition and choice. The right of the defendant to apply for transposition as a plaintiff may operate as a hindrance for any unconditional withdrawal of the suit provided that the defendant satisfies the basic requirements necessary to be transposed as a plaintiff. Section 21 (4) of the Andhra Pradesh Electricity Reform Act, 1998 provides for the holder of a supply or transmission

licence entering into arrangements for purchase of electricity from a generating company with the consent of the Commission and the specific language of the provision signifies the holder of a supply licence entering into such arrangement for purchase of electricity from a generating company and when the provision further refers to the same being with the consent of the Commission, the plain and unambiguous manner of the provision may indicate such holder of a supply licence entering into an arrangement with a generating company for purchase of electricity approaching the Commission for its consent because any such agreement unless made with or subject to such consent is void under sub-section (5) of Section 21 of the A.P. Electricity Reform Act, 1998. Under Section 86 (1) (b) of the Electricity Act, 2003, the State Commission shall discharge its function of regulating the electricity purchase and procurement process of the Distribution Licensees including its price for procurement from generating companies through agreements for purchase of power for distribution and supply within the State. Here also what is regulated is purchase and procurement process of the Distribution Licensees under agreements for purchase of power from generating companies and though the nature of Sections 86 and 21 may not prohibit in verbatim, an application by a generating company in this regard, the jurisdiction of the Commission under the provisions appears primarily invocable by a Distribution Licensee. At any rate, in the present case, it is the Distribution Licensee that made and wishes to withdraw the request and states that it no longer desires to purchase electricity from the generating company. Can there be a compulsive consent given under Section 21 (4) and (5) of A.P. Electricity Reform Act, 1998 or a coercive regulation of purchase and procurement process under Section 86 (1) (b) of the Electricity Act, 2003 is a question which cannot be considered to have a straight satisfactory answer in favour of a generating company.

If it is not the generating company either under Section 21 or under Section 86 (1) (b) that takes the lead or initiative of entering into an arrangement for purchase of electricity or to procure the same through agreements for purchase of power, it does not appear to be entitled to be considered to be transposed as a petitioner under Section 21 (4) or Section 86 (1) (b). Though there appears no specific prohibition, the request of M/s. Hinduja National Power Corporation Limited to be transposed as a petitioner in O.P.No.19 of 2016 does not appear feasible as the interests of the parties do not in any manner appear to be common or identical and the assertion of the rights of the generating company may be permissible in some other manner provided under law but not by transposition as a petitioner in the petition of the Distribution Companies. The agreement between the parties as incorporated in the amended and restated Power Purchase Agreement dated 15-04-1998 read with the Continuation Agreement dated 28-04-2016 was clearly stated to be as required by the statutory framework and the Regulations issued by the Andhra Pradesh Electricity Regulatory Commission. O.P.No.19 of 2016 is for approval / consent from the same. O.P.No.21 of 2015 by the generating company is for approval of the capital cost and for determination of tariff. So far there was no consent / approval for the Agreement of 1998 or the Continuation Agreement of 2016, there was no approval of the capital cost and there was no determination of the tariff and therefore, M/s. Hinduja National Power Corporation Limited cannot claim any right to have vested in it or acquired by it in respect of the enforceability of the Agreements between them or any right to have any tariff determined and paid in proportion to capital cost determined. While the Distribution Companies claimed that till consent / approval by the Commission, any agreement / arrangement remains a mere plan /

arrangement and not an enforceable agreement, the generating company cannot claim to be transposed as a matter of right without any such rights.

31. M/s. Hinduja National Power Corporation Limited laid much emphasis on the order of the Hon'ble Appellate Tribunal for Electricity in I.A.No.38 of 2018 in Appeal No.153 of 2017 dated 10-01-2018 wherein, the Hon'ble Appellate Tribunal for Electricity stated that having heard learned counsel for the parties and considering the peculiar circumstances of the case, they do not want to express any opinion on the pending Interlocutory Applications before the State Commission. The Hon'ble Appellate Tribunal for Electricity further extended time to dispose of the main Original Petitions till 31-01-2018. This is sought to be construed as rejection of the Interlocutory Applications pending before the State Commission for which purpose the decision reported in *Dalip Kumar Vs Union of India & Ors* 2013 SCC Online Delhi 1795 was relied on. What was stated in that decision was that if a prayer is made and the same is not allowed, it shall be deemed to have been rejected. There can be no dispute with the principle but what was prayed for in I.A.No.38 of 2018 before the Hon'ble Appellate Tribunal for Electricity is not what was prayed for in I.A.Nos.1 and 2 of 2018 before this Commission. The prayer before the Hon'ble Appellate Tribunal for Electricity was to direct the State Commission to pass orders in I.A.Nos.1 and 2 of 2018 in the first instance and then pass appropriate orders on the main Original Petitions depending on the orders that may be passed in the Interlocutory Applications. What the Hon'ble Appellate Tribunal for Electricity had considered or not considered was the specific prayer made in I.A.No.38 of 2018 while the time was extended for disposal of the main Original Petitions till 31-01-2018 because the Hon'ble Appellate Tribunal for Electricity felt it not appropriate to express any opinion on the pending Interlocutory Applications before

the State Commission. Therefore, it is very clear that the Hon'ble Appellate Tribunal for Electricity left the subject matter of and the prayer in the I.A.Nos.1 and 2 of 2018 to be considered on their own merits in accordance with law by the State Commission and did not express any opinion. To say that the prayer in I.A.Nos.1 and 2 of 2018 must have been deemed to be rejected by the orders of the Hon'ble Appellate Tribunal for Electricity in I.A.No.38 of 2018 is, to say the least, reading a consequence which cannot ensue by any stretch of imagination or any manner of interpretation of the orders of the Hon'ble Appellate Tribunal for Electricity. When the Hon'ble Appellate Tribunal for Electricity did not desire to express any opinion on the pending Interlocutory Applications before the State Commission, the matter was clearly left by the Hon'ble Appellate Tribunal for Electricity to be decided by this Commission on its own merits and reading anything else into the orders will be violating the plain and unambiguous language, intent and purport of the orders of the Hon'ble Appellate Tribunal for Electricity.

32. As such, I.A.Nos.1, 2 and 3 of 2018 and O.P.Nos.19 of 2016 and 21 of 2015 have to be decided on merits in accordance with law. The reference to the order of the erstwhile Commission in O.P.Nos.14 to 25 of 2012 dated 11-08-2014 is not germane as that was a case of withdrawal from an Agreement without notice, capacity and in deviation of the prescribed procedure. Here, the issue is not one of withdrawal from Agreement but withdrawing a petition filed by Distribution Licensees. It is not the validity and subsistence of the Agreement between the parties that is in question at this stage.

33. The attempt by the Distribution Companies to file a Memo making the withdrawal of O.P.No.19 of 2016 unconditional without any liberty was sought to be questioned severely. But, firstly it should be noted that the reference to Order XXIII

of CPC for the present consideration is not because it is one of the provisions listed in Section 94 of the Electricity Act, 2003 but because there is no specific provision under the Electricity Act or the Regulations providing for procedure that should govern such a contingency. It is true that in *M. Radhakrishna Murthy Vs Government of A.P. and others* (2001) 3 ALD 330 (DB) with reference to Administrative Tribunals Act, 1985, it was held that all the provisions contained in the Code of Civil Procedure, 1908 *stricto sensu* are not applicable in the proceedings initiated under Section 19 of the Administrative Tribunals Act, 1985. But, the Division Bench clearly held that the general principles contained therein may be found applicable. While recognizing that when no vested right in favour of the Opposite Party had come into existence at the stage of withdrawal of the suit, there was no ground on which the Court could refuse to allow withdrawal of the suit. In a normal situation abandonment of a claim would be an absolute right of the petitioner. Thus, though Order XXIII Rule 1 does not in terms apply to the Administrative Tribunals Act, 1985, their Lordships of the Division Bench directed reconsideration. As such, it is clear that even under a special statute, which has no identical provision, the general principles contained in Order XXIII Rule 1 of the Code of Civil Procedure, 1908 or principles analogous thereto may be of relevance.

34. M/s. Hinduja National Power Corporation Limited also relied on *Ajita Debi Vs Hossenara Begum and others* AIR 1977 Calcutta 59, *Mathuralal Vs Chiranji Lal* AIR 1962 Rajasthan 109, *The Registrar, Manonmaniam Sundaranar University, Tirunelveli Vs Suhura Beevi Educational Trust* 1994-1-L.W.235 etc., to contend that withdrawal of a suit should not be permitted where interests of the defendants are adversely affected. The principle is unexceptionable. But, as already stated, no rights can be claimed to have vested in the generating company at this stage.

35. It is true that as per the Retail Supply Tariff Order of 2017-18, the Distribution Companies may be continuing to purchase power from M/s. Hinduja National Power Corporation Limited till 31-03-2018 and it is sought to be insisted upon that O.P.No.21 of 2015 has to therefore be decided on merits in any view. However, Section 62 (1) (a) of the Electricity Act, 2003 mandates the appropriate Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee. Proviso to Section 62 (1) (a) states that the appropriate Commission may in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an Agreement entered into between a generating company and a licensee or between the licensees, for a period not exceeding one year to ensure reasonable prices of electricity. The provisions of Sections 61 to 64 read together obviously presuppose fixation of long term tariff under long term transactions and short term tariff under short term transactions and if the Distribution Companies decided not to purchase power from the generating company under the long term Power Purchase Agreement entered into between them, then the fixation of price for shorter periods should be so as to ensure reasonable prices of electricity but not necessarily in pursuance of the Agreement between the parties. The considerations that govern such decisions may be distinct and different and therefore the Retail Supply Tariff Order of 2017-18 may not be used to compel continuance of O.P.No.21 of 2015 when the Distribution Companies desired not to purchase any power under the long term Power Purchase Agreement. The generating company is at liberty to move an appropriate Application for fixing a reasonable price of electricity for the short term purchases made by virtue of the Retail Supply Tariff Order and it has to be noted

that an interim tariff as per the directions of this Commission is in place which was directed to be paid for the power purchased until further orders of the Commission.

36. The Memo filed by the learned Advocate for the Distribution Companies dated 12-01-2018 is found fault with for various technical and factual reasons and it is true that the Memo appears to be imperfect and in haste. Still the fact that both the Distribution Companies were instructing their Standing Counsel cannot be in dispute and any technical errors notwithstanding, there is no ambiguity in what was being sought to be conveyed that both the Distribution Companies are requesting for permission for unconditional withdrawal of O.P.No.19 of 2016. The Rules of procedure are intended to be hand maids of justice and technicalities which have no bearing on the substantive rights notwithstanding, the aim should be to arrive at the truth and advance substantial justice. The generating company had every opportunity to meet the claims of the Distribution Companies and even the alleged lack of opportunity for an oral hearing claimed to be violation of the principles of natural justice was answered by hearing the learned counsel for the generating company at length without any fetters or limitations. The basic character of the request remained unaffected except that the Distribution Companies did not even desire to have any liberty to make the same request afresh. If the Distribution Companies indulged in breach of their contractual obligations, the remedies of the generating company do not appear to be the subject of these two Original Petitions.

37. Whether the Distribution Companies are estopped under the principles of promissory estoppel to go back from the Agreement is not a question which prejudices their right of withdrawal of their petitions. *Madhu Jajoo Vs State of Rajasthan and others* AIR 1999 Rajasthan 1 was a case where in a subsequent Writ Petition filed before the Jaipur Bench of the Rajasthan High Court, challenging the

validity of a statutory provision, pendency of an earlier Writ Petition before principal seat of the High Court, challenging the order of suspension under the impugned provision was not disclosed and was suppressed. The Rajasthan High Court noted the distinction between withdrawal with a liberty to file a successive petition and a mere withdrawal and observed that in the former case, the Court has to examine whether any right or interest which accrued in favour of the respondent is attempted to be defeated or the petitioner is trying to overreach the Court or the petitioner's conduct tantamount to abuse of the process of the Court. As in that case, the petitioner who could not obtain an interim order in the earlier Writ Petition did not disclose about the earlier Writ Petition in the subsequent Writ Petition, the same was considered to be an abuse of process of the Court, amounting to playing fraud with ulterior motive. It was on the facts and circumstances of that case, the application to withdraw was dismissed. It was observed that the Court should not allow to withdraw a petition if it prejudices a respondent and it was found in that case that the petitioner was trying to settle the political rivalries by using a Court as a Forum. In *Yash Mehra Vs Arundhati Mehra* (2006) 4 CCC 316, a petition for divorce through a mutual consent which was reiterated after the lapse of the statutory period of six months, after it was reserved for judgment, was attempted by the wife to withdraw her consent and was allowed by the Trial Court but the Hon'ble High Court observed that after the Court reserved the matter for orders what all had to be done is to pronounce the judgment and it was not permissible for the respondent at that stage to move application seeking to withdraw consent. In *Pujya Sindhi Panchayat Vs Prof. C.L. Mishra & Ors* AIR 2002 Rajasthan 274, the Hon'ble High Court observed that after the judgment is reserved, there remains no stage in any case and there is no break between the two stages of reservation of judgment and pronouncing it. *Arjun*

Singh Vs Mohindra Kumar AIR 1964 SC 993 was followed. In *Arjun Singh Vs Mohindra Kumar and others* AIR 1964 SC 993, the Hon'ble Supreme Court held that there is no hiatus between the two stages of reservation and judgment and pronouncing the judgment. Where the hearing is completed, the parties have no rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after interval, after the hearing is completed.

38. Similarly, *Rabiya Bi Kassim M Vs The Country Wide Consumer Financial Service Ltd.* ILR 2004 Karnataka 2215 was a case where it was held that once the matter was finally heard and posted for judgment, nothing is required to be done by the Court except to pronounce the judgment and an Application to reopen for further recording of evidence, at that stage was held not permissible. The principles of these decisions are not in dispute but the question here is with reference to the right of withdrawal under Order XXIII Rule 1 CPC which refers to any time after institution of the suit at which the plaintiff can abandon the suit against all or any of the defendants or abandon a part of the claim. This withdrawal or abandonment do not appear to be limited to any particular stage and the absence of any right of the parties to reopen the matter for any other purpose after the matter was reserved for judgment may not be the same as the right to withdraw before the judgment is pronounced.

39. It is true that as stated in *Gujarat Urja Vikas Nigam Ltd. Vs Essar Power Ltd.* (2008) 4 Supreme Court Cases 755, it is the State Commission or an Arbitrator appointed by it alone that has to resolve all disputes between the licensees and generating companies and there is no restriction about the nature of disputes.

40. In *Dharani Sugars and Chemicals Ltd. Vs T.M.N. Engineering Industries* decided on 30-08-2017 by the High Court of Madras, it was pointed out that the Court has power to reopen, recall and permit marking of documents, if the same is to clarify certain ambiguity in the evidence let in by the parties. Similarly, in *Bharati Behera Vs Jhili Prava Behera* AIR 2015 CC 216, it was held that once the judgment is reserved after completion of hearing, it cannot be routinely reopened at the behest of any of the parties.

41. In *Kiran Girhotra & Ors Vs Raj Kumar & Ors* decided by the High Court of Delhi on 10-11-2009, it was held that the Court should not allow the withdrawal of a matter if it prejudices the right of the other party and the party withdrawing the suit wants to achieve an ulterior goal by adopting an oblique method. However, in appreciating any of these precedents, one should keep in mind the principles laid down by the Hon'ble Supreme Court of India in *Haryana Financial Corporation and Anr Vs Jagdamba Oil Mills and Anr* AIR 2002 2 SC 834 wherein it was pointed out the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The observations of Courts must be read in the context in which they appear and judgments of Courts are not to be construed as statutes. Circumstantial flexibility may make a world of difference between conclusions in two cases.

42. The Distribution Companies relied on *Smt. Abha Arora Vs Angela Sharma and Anr* 148 (2008) DLT 506, *Chunilal Trikamlal Thakkar Vs Secretary* decided on 10-02-2017, *Hulas Rai Baij Nath Vs Firm K.B. Bass* AIR 1968 SC 111 and *Bijayananda Patnaik Vs Satrughna Sahu & Ors* AIR 1963 SC 1566. In the first of the decisions, it was held that there is no provision in the CPC which requires a Court to refuse permission to withdraw the suit and compel the plaintiff to proceed with it.

The right of the plaintiff to withdraw from a suit was said to be unqualified. In the second of the decisions also it was held that withdrawal of litigation is an absolute right of the litigant who has initiated such a litigation at any stage and there cannot be any objection by other side or even by the concerned authority so as to refuse such withdrawal. The third of the decisions laid down that a defendant cannot insist that the plaintiff must be compelled to proceed with a suit when he did not become entitled to a relief in his favour. In the fourth decision, it was pointed out that under Order XXIII Rule 1 (1) CPC the plaintiff can withdraw at any time after the institution of the suit. These decisions in favour of right of withdrawal of a suit for the plaintiff further strengthen the claim of the Distribution Companies.

43. It could have been a little different if there were any vested rights with the generating company but in the absence of any such vested rights, the right of the petitioners in O.P.No.19 of 2016 to withdraw appears to be not resistible by the generating company and if it has no legal rights to enforce to compel the Distribution Companies to continue their application, they cannot be compelled to do so.

44. Under the circumstances, the rights and interests of the Distribution Companies and the generating company being not common or identical, transposition of the generating company as a petitioner in O.P.No.19 of 2016 also does not appear feasible.

45. Transposition of defendants as plaintiffs under Order XXIII Rule 1-A CPC is feasible only having due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants. The question of substantial rights of any other defendants vis-à-vis generating company did not arise herein and it cannot be said within the meaning of Order I Rule 10 (2) of the Code of Civil Procedure, 1908 that any such transposition becomes necessary to

enable the Commission to factually and completely adjudicate upon and settle all the questions involved in the suit. The parameters of law necessary for permitting such transposition cannot be considered to be present in the present case. It is true that O.P.No.21 of 2015 was filed by the generating company which is sought to be closed by the distribution companies. The Application was filed under Regulation 1 of 2008 and the very Regulation is intended for determination of tariff for supply of electricity by a generating company to a distribution licensee and purchase of electricity by a distribution licensee. Once the Distribution Companies herein refuse to make any purchase of electricity from the generating company, the question of determination of tariff for such purchase and supply may not arise within the meaning of the said Regulation. While it is true that sale and purchase of electricity between the parties was and is taking place and is likely to take place till 31-03-2018 in view of the Retail Supply Tariff Order of the Commission for FY 2017-18. It is also true that the interim tariff has been fixed by the Commission itself and it is being paid and a reasonable price of electricity has to be fixed for the said period of supply and purchase. It will be open for M/s. Hinduja National Power Corporation Limited to file an appropriate Application for ensuring reasonable price of electricity for the short term sale and purchase made between the parties which can be determined in accordance with law as per the prescribed procedure on merits and continuing to fix capital cost for purposes of Regulation 1 of 2008 and determine the tariff determinable under the said Regulation no longer arise in view of the Distribution Companies withdrawing from O.P.No.19 of 2016.

46. Therefore, I.A.No.3 of 2018 should fail and I.A.Nos.1 and 2 of 2018 should succeed. The main Original Petitions have to be disposed of in terms of the orders

on I.A.Nos.1 and 2 of 2018. In the peculiar circumstances of the case, the parties should be directed to bear their own costs.

47. Accordingly, I.A.No.3 of 2018 in O.P.No.19 of 2016 is dismissed and I.A.No.1 of 2018 in O.P.No.19 of 2016 and I.A.No.2 of 2018 in O.P.No.21 of 2015 are allowed. O.P.No.19 of 2016 is consequentially dismissed as withdrawn. O.P.No.21 of 2015 is consequentially closed with liberty to M/s. Hinduja National Power Corporation Limited to pursue all remedies available to it under law for fixation and payment of a reasonable price for electricity supplied by it to both the Distribution Companies of Andhra Pradesh and subject to the same, the Distribution Companies are bound to continue to pay the interim tariff already fixed by this Commission for the electricity received by them from M/s. Hinduja National Power Corporation Limited. The parties shall bear their own costs in the Interlocutory Applications and the main Original Petitions.

This common order is corrected and signed on this the **31st day of January, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman