

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

Dated: 28-09-2016

Present

Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghunath, Member

O.P.Nos.12 of 2008; 19 of 2009; 33 of 2009; 42 of 2009 & I.A. No. 4 of 2010; 57 of 2011; 70 of 2012; 71 of 2012; 72 of 2012; 79 of 2012; 85 of 2012; 8 of 2013 & I.A.No.1 of 2013; 9 of 2013 & I.A.No.2 of 2013; 12 of 2013; 23 of 2013; 24 of 2013 & I.A.No.14 of 2013; OP (SR) No.25 of 2013 & IA (SR) No.80 of 2013; 51 of 2013; 58 of 2013 & I.A.No.31 of 2013; 60 of 2013 & I.A.No.37 of 2013; 1 of 2014; 2 of 2014; 10 of 2014; 12 of 2014 & I.A.No.3 of 2014; 13 of 2014; 14 of 2014; 15 of 2014; 20 of 2014; 34 of 2014; 37 of 2014 & I.A.No.9 of 2014; 38 of 2014; 40 of 2014; 46 of 2014; 56 of 2014 and R.P.No.1 of 2014 in O.P. No. 44 of 2013

O.P. No. 12 of 2008

Between:

GVK Industries Ltd

... Petitioner

And

Eastern Power Distribution Company of Andhra Pradesh Ltd & others

.... Respondents

Counsel for the Petitioner/s : Sri Vishrov Mukerjee

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 19 of 2009

Between:

APTRANSCO & others

... Petitioners

And

GVK Industries Ltd

... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri Vishrov Mukerjee

O.P. No. 33 of 2009

Between:

Lanco Kondapalli Power Ltd

... Petitioner

And

APPCC & others

.... Respondents

Counsel for the Petitioner/s : Sri Challa Gunaranjan

Counsel for the Respondent/s : Sri P. Shiva Rao

O.P. No. 42 of 2009 & I.A. No. 4 of 2010

Between:

Lanco Kondapalli Power Ltd

... Petitioner

And

APPCC & 5 others

.... Respondents

Counsel for the Petitioner/s : Sri Challa Gunaranjan

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 57 of 2011

Between:

APTRANSCO

... Petitioner

And

Spectrum Power Generation Ltd

.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao

Counsel for the Respondent/s : Sri. Ch. Pushyam Kiran and Sri T. Uma Shankar

O.P. No. 70 of 2012

Between:

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others

...Petitioners

And

GMR Vemagiri Power Generation Ltd

.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri S. Niranjana Reddy and Sri Kaustubh Mishra

O.P. No. 71 of 2012

Between:

GMR Vemagiri Power Generation Ltd

... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)

& others

.... Respondents

Counsel for the Petitioner/s : Sri S. Niranjan Reddy and Sri Kaustubh Mishra

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 72 of 2012

Between:

GMR Vemagiri Power Generation Ltd

... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)

& others

.... Respondents

Counsel for the Petitioner/s : Sri S. Niranjan Reddy and Sri Kaustubh Mishra

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 79 of 2012

Between:

Reliance Infrastructure Ltd

... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)

& others

.... Respondents

Counsel for the Petitioner/s : Sri P. Vikram

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 85 of 2012

Between:

Lanco Kondapalli Power Ltd

... Petitioner

And

Andhra Pradesh Power Coordination Committee (APPCC) & others

.... Respondents

Counsel for the Petitioner/s : Sri Challa Gunaranjan

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 8 of 2013 & I.A. No. 1 of 2013

Between:

GVK Gautami Power Ltd

... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others

.... Respondents

Counsel for the Petitioner/s : Sri Vishrov Mukerjee

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 9 of 2013 & I.A. No. 2 of 2013

Between:

GVK Industries Ltd

... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others

.... Respondents

Counsel for the Petitioner/s : Sri Vishrov Mukerjee

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 12 of 2013

Between:

GMR Vemagiri Power Generation Ltd
... Petitioner

And

Andhra Pradesh Power Coordination Committee (APPCC) & others
.... Respondents

Counsel for the Petitioner/s : Sri S. Niranjan Reddy and Sri Kaustubh Mishra

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 23 of 2013

Between:

GVK Industries Ltd
... Petitioner

And

Eastern Power Distribution Company of Andhra Pradesh Ltd (APEPDCL)
& others
.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 24 of 2013 & I.A. No. 14 of 2013

Between:

GVK Industries Ltd
... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others
.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

OP (SR) No. 25 of 2013 & IA (SR) No.80 of 2013

Between:

RVK Energy Pvt. Ltd

... Petitioner

And

Andhra Pradesh Power Coordination Committee (APPCC) & others

.... Respondents

Counsel for the Petitioner/s : Sri Challa Gunaranjan

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 51 of 2013

Between:

Penna Cement Industries Ltd

... Petitioner

And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others

.... Respondents

Counsel for the Petitioner/s : Sri J. Satyanarayana

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 58 of 2013 & I.A. No. 31 of 2013

Between:

GMR Vemagiri Power Generation Ltd

... Petitioner

And

Andhra Pradesh Power Coordination Committee (APPCC) & others

.... Respondents

Counsel for the Petitioner/s : Sri S. Niranjan Reddy and Sri Kaustubh Mishra

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 60 of 2013 & I.A. No. 37 of 2013

Between:

Andhra Pradesh Power Coordination Committee (APPCC) & others

... Petitioners

And

Reliance Infrastructure Ltd

.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri P. Vikram

O.P. No. 1 of 2014

Between:

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others

... Petitioners

And

GVK Gautami Power Ltd

.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri Ch. Pushyam Kiran

O.P. No. 2 of 2014

Between:

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others

... Petitioners

And

GVK Industries Ltd

.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri Ch. Pushyam Kiran

O.P. No. 10 of 2014

Between:

Spectrum Power Generation Ltd

... Petitioner

And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others

.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 12 of 2014 & I.A. No. 3 of 2014

Between:

Reliance Infrastructure Ltd

... Petitioner

And

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others

.... Respondents

Counsel for the Petitioner/s : Sri P. Vikram

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 13 of 2014

Between:

KSK Mahanadi Power Company Ltd ... Petitioner
And

Eastern Power Distribution Company of Andhra Pradesh Ltd (APEPDCL)
Southern Power Distribution Company of Andhra Pradesh Ltd (APSPDCL)
.... Respondents

Counsel for the Petitioner/s : Sri Anand K. Ganesan
Smt. Swapna Seshadri

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 14 of 2014

Between:

Central Power Distribution Company of Andhra Pradesh Ltd (now TSSPDCL)
& others ... Petitioners
And

KSK Mahanadi Power Company Ltd & others
.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri Anand K. Ganesan
Smt. Swapna Seshadri

O.P. No. 15 of 2014

Between:

EID Parry (India) Ltd ... Petitioner
And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others
.... Respondents

Counsel for the Petitioner/s : Sri Challa Gunaranjan

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 20 of 2014

Between:

Silkroad Sugar Pvt. Ltd ... Petitioner
And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & another
.... Respondents

Counsel for the Petitioner/s : Sri Challa Gunaranjan

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 34 of 2014

Between:

GVK Industries Ltd

... Petitioner

And

Eastern Power Distribution Company of Andhra Pradesh Ltd & others

.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 37 of 2014 & I.A. No. 9 of 2014

Between:

Spectrum Power Generation Ltd

... Petitioner

And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others

.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 38 of 2014

Between:

Spectrum Power Generation Ltd

... Petitioner

And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others

.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 40 of 2014

Between:

Bharath Aluminum Company Ltd

... Petitioner

And

PTC India Ltd & others

.... Respondents

Counsel for the Petitioner/s : Sri Sri K. Gopal Choudary

Counsel for the Respondent/s : Sri Ravi Kishore and Sri G. Pramod Kumar
Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 46 of 2014

Between:

KSK Mahanadi Power Company Ltd

... Petitioner

And

Eastern Power Distribution Company of Andhra Pradesh Ltd (APEPDCL) & others

.... Respondents

Counsel for the Petitioner/s : Sri Anand K. Ganesan
Smt. Swapna Seshadri

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

O.P. No. 56 of 2014

Between:

Spectrum Power Generation Ltd

... Petitioner

And

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others

.... Respondents

Counsel for the Petitioner/s : Sri Ch. Pushyam Kiran

Counsel for the Respondent/s : Sri P. Shiva Rao
Sri Y. Rama Rao

R.P. No. 1 of 2014 in O.P. No. 44 of 2013

Between:

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) & others

... Petitioners

And

Spectrum Power Generation Ltd

.... Respondent

Counsel for the Petitioner/s : Sri P. Shiva Rao
Sri Y. Rama Rao

Counsel for the Respondent/s : Sri Ch. Pushyam Kiran

The petitions have come up for hearing before the Commission on 24-07-2016 in the presence of learned counsel for the parties concerned, mentioned in the cause title. After carefully considering the material

available on record and after hearing the arguments of the persons present, the Commission passed the following:

COMMON ORDER

Per the Hon'ble Member, Dr.P.Raghu :

(in O.P.Nos.85 of 2012, 33 of 2009, 42 of 2009, 25 of 2013, 15 of 2014, 20 of 2014)

The petitioner(s) (Lanco Kondapalli Power Ltd & others) had filed the present petition(s) before the Andhra Pradesh Electricity Regulatory Commission(APERC), being the State Commission for the then undivided state of Andhra Pradesh, under section86(1)(f)of the Electricity Act 2003 read with Regulation 8(1) and 55(1) of the APERC(conduct of business Regulations 1999). As the issues involved for determination and decision in this order are same, a common order is passed for sake of convenience.

2. The petitioner has set up a 368.144 MW combined cycle power project at Kondapalli, Krishna District, Andhra Pradesh pursuant to a competitive bidding and award of the project to the petitioner on Build, Own and Operative basis.

2.1 The petitioner entered into a Power Purchase Agreement("PPA") with the erstwhile Andhra Pradesh State Electricity Board. As a result of implementation of AP Electricity reforms Act 1998 w.e.f from 1.2.1999 and subsequent Govt notifications, the rights and obligations and contracts stood vested in the four distribution companies with effect from 9.06.2005.

3. The petitioner claims that the respondents are liable to reimburse minimum fuel off-take charges consequent to back-down instructions in terms of Article 3.3 (b) of the PPA. The Petitioner claimed the ship-or-pay charges, imbalance charges and deficiency charges levied by the gas suppliers / transporters arising out of curtailment of generation by back-down instructions in their bills from September 2009 to July 2012. The respondents made payments of the monthly bills deducting the amounts of ship-or-pay charges, imbalance charges and deficiency charges, but without raising any dispute with respect to such charges within the terms of the PPA. The petitioner made several representations on 06-01-2010 and subsequently for the reimbursements. The respondents eventually disputed the liability to pay such charges claimed by the petitioner for the first time by letter dated 07-07-2012.

3.1 Thereupon, the petitioner has filed the present petition(s) claiming the following reliefs –

- (i) To direct the respondents to pay an amount of Rs. 9.22 Crs towards reimbursement of minimum fuel off-take charges as claimed forming part of monthly bill from September, 2009 to October, 2011 along with interest of Rs. 1.95 Crs upto July, 2012 for delay in payment.
- (ii) To direct the respondents to pay similar ship or pay charges of Rs. 4.94 crs for the period of October, 2011 to July, 2012 plus interest of Rs. 26.27 lakhs till that period towards delay in payment.
- (iii) To direct the respondents to pay similar charges of Rs. 42.40 Crs availed by them by way of rebate from bills 113 to 116 with interest of Rs. 7.72 Crs thereof upto July, 2012.
- (iv) To declare that that petitioner is entitled to be paid interest on the amounts claimed above from the date of petition till realization with a direction to respondents to pay the same.
- (v) To award cost of the petition and pass such orders as deemed fit in the interest of justice.

3.2 The petitioner was heard by the APERC of undivided State of Andhra Pradesh and reserved for orders on 05-08-2013. However, no orders were passed, even though petition was heard again and reserved for orders on 01-03-2014.

4. Consequent to the passing of A.P.Reorganisation Act, 2014 effective from 02-06-2014, as per schedule thereof the erstwhile APERC functioned as joint regulatory body till separate ERCs were formed for Telangana & residuary State of Andhra Pradesh on 26-07-2014 and 01-08-2014 respectively. And, the joint regulatory body stood dissolved from 01-08-2014 by operation of law and no orders were passed on the petition pending.

5. The petitioner claims that the issue before the present Commission (new APERC) is with regard to jurisdiction to take up the present pending petition and adjudicate the dispute raised therein and also to determine and direct the steps to be taken for further proceedings to the extent the Commission has jurisdiction after considering the following facts and relevant provisions of law.

5.1 The payments were being made earlier by APPCC to whom bills were being submitted. The second respondent Transmission Corporation of

Andhra Pradesh was divided into two Transmission Corporations for Andhra Pradesh & Telangana and TSTRANSCO may be added as party if the Commission feels it necessary.

5.2 Third respondent APCPDCL is changed to TSSPDCL with two districts being merged into APSPDCL and consequently the liabilities of the petitioners between the respondents may be affected. Fifth respondent APNPDCL has been changed to TSNPDCL. Consequently, the distribution companies involved in the disputes now falls within the both the States of Telangana & Andhra Pradesh.

6. The contentions raised and submissions made on behalf of the petitioner(s) in the matter of jurisdiction are as under

The petition is filed under section 86(1) (f) of the Electricity Act, 2003 and hence only a State Commission can adjudicate and / or decide the dispute. The issue of jurisdiction has to be considered with reference to the provisions of section 105 of A.P.Reorganisation Act, 2014.

Section 105 (1) of this Act reads as under.

“105 (1) Transfer of pending proceedings : (1) Every proceeding pending immediately before the appointed day before a court (other than High Court), tribunal, authority or officer in any area which on that day falls within the State of Andhra Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of the State of Telangana, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1) it shall be referred to the High Court at Hyderabad and the decision of that High Court shall be final.”

Clearly the term “authority” in the above provisions would include the erstwhile APERC of the undivided State of Andhra Pradesh and Joint Electricity Regulatory Commission/Body during the transition period and the new ERCs of both the new States. As per the above provisions, proceedings relating exclusively to the territory of the new State of Telangana have been transferred to the TSERC.

6.1 The pending petition was filed u/s 86 (1)(f) of Electricity Act, 2003 and only a State Commission can adjudicate and/or decide the dispute. The present dispute doesn't relate exclusively to the territory of State of Telangana. It relates to the Distribution Licensees within the both the States of Telangana & residuary Andhra Pradesh arising out of a single PPA entered into in the undivided State of Andhra Pradesh. The requirement of exclusiveness as mentioned in the section 105 (1) is not satisfied. Hence, the petition is not transferred to TSERC as it has no jurisdiction.

6.2 There is no specific / explicit provision in the A.P. Re-organisation Act,2014 to deal with the pending cases before the Joint Regulatory Commission to be transferred to the corresponding authority i.e. APERC newly constituted for the residuary State of Andhra Pradesh. It cannot be construed that intention of the Parliament that even cases exclusively relating to the territories of the residuary state of Andhra Pradesh cannot be transferred to APERC constituted for this new State.

6.3 The Provisions of the A.P. Reorganisation Act need to be interpreted in such a manner that all the pending cases are construed to be transferred to an authority within one of the two States. As provision is made in the Reorganisation Act, only for transfer of particular class of cases to the authority / TSERC in the State of Telangana, the provisions of section 105 (2) are not applicable and cannot be invoked. It would follow by necessary implication that the rest of the cases continue to be with or stand transferred to the APERC of the new State of Andhra Pradesh. This implies that the pending cases relating exclusively to the state of Andhra Pradesh and also pending cases relating to the both the States (and not exclusively relating to Telangana) be transferred to the newly created APERC. This would mean that the Commission for residuary State of Andhra Pradesh will have jurisdiction to adjudicate the petition in the present case and all such similar cases.

6.4 Whether CERC has acquired the jurisdiction on pending disputes

(i) Whether CERC has now acquired jurisdiction to the exclusion of the SERCs of A.P. & Telangana u/s 79 (1) (f) read with 79 (1) (b) of the Act on the ground of the composite scheme for generation and sale of electricity in more than one state having evolved or emerged upon bifurcation of undivided Andhra Pradesh has arisen.

(ii) CERC in its order dt.27-4-2015 in GMRs case held that the generating station has acquired the status of an inter-state generating station by the reason of operation of A.P.Reorganisation Act, 2014 and that CERC has the jurisdiction to determine the issues / disputes relating to implementation of tariff thereof. The order was made at the admission stage.

(iii) It was contended on behalf of the Petitioner that the CERC has not correctly and properly appreciated the provisions of the Act and it has proceeded to assert and extend its jurisdiction without proper and lawful justification. The scope of jurisdiction of CERC is defined by 79(1) (b) read with section 79 (1) (f) and the adjudicatory power of CERC is restricted compared to the such powers of SERC under section 86 (1) (f) which is wide and it is to be construed accordingly.

(iv) The power of CERC to regulate or determine the tariff of generating station arises only when there is "*ab initio*" a scheme for generation of electricity in more than one State and the generating station is conceived and setup on the basis. It must be akin to the manner in which a central generating station is established with a specific purpose of supply to more than one State. It is not applicable where the generating station was setup for supply of electricity within one state and subsequently the supply is extended to more than one state for any reason.

(v) The approach of CERC that jurisdiction for adjudication of disputes before it, is somewhat of a dynamic nature and keeps varying according to the changes in time in the supply to one more States by generating stations cannot be countenanced because it will lead to an absurd and unacceptable situation.

(vi) The approach of CERC would render the non-obstante clause of section 64(5) meaningless and otiose. The CERC cannot encroach and trample upon the jurisdiction of SERCs.

(vii) The question of jurisdiction may be referred to High Court under section 105(2) if felt necessary.

7. It is requested that the issue of jurisdiction may be decided conclusively before adjudicating upon the petition on the merits of the case.

8. The contentions raised and the submissions made by Sri Gopala Chowdary, learned counsel on behalf of some of the petitioners / respondents are summarised as under:

The pending disputes before the Commission at the time of bifurcation of the erstwhile state of Andhra Pradesh can be categorized as under:

- (a) Issues / disputes arising between the four DISCOMs of undivided A.P. acting together through the then APPCC or otherwise on one hand, and the Generating Companies now situated in Telangana or A.P. on the other hand arising out of single PPA relating to tariff affecting the both the States and / or consequent to the inclusion of Kurnool & Anantapur districts in the residuary State of Andhra Pradesh, due to the transfer from TSSPDCL to APSPDCL.
- (b) Issues / disputes not relating to tariff or interpretation tariff between four DISCOMs of undivided A.P. and generating companies now situated in either A.P. or Telangana including those arising out of transfer of two districts from TSSPDCL to APSPDCL.
- (c) Issues / disputes between licensees (Distribution or transmission or trading) and generating companies or between such licensees where the parties fall now under both the A.P. & Telangana.
- (d) Review petitions arising out of the orders issued prior to the bifurcation.
- (e) Cases remanded by appellate authorities on any issue of the orders passed by the APERC of undivided State where the parties fall now under both A.P. & Telangana.

8.1 Whether CERC has acquired jurisdiction

In respect of the cases listed 8 (a) above the issue whether CERC has now acquired jurisdiction to the exclusion of the SERCs of A.P. & Telangana u/s 79 (1) (f) read with 79 (1) (b) of the Act on the ground of the composite scheme for generation and sale of electricity in more than one state having evolved or emerged upon bifurcation of undivided Andhra Pradesh has also arisen.

8.2 CERC in its order dt.27-4-2015 in GMRs case held that the generating station has acquired the status of an inter-state generating station by the reason of operation of A.P.Reorganisation Act, 2014 and that CERC has the jurisdiction to determine the issues / disputes relating to

implementation of tariff thereof. The order was made at the admission stage.

8.3 It was contended on behalf of the Petitioner that the CERC has not correctly and properly appreciated the provisions of the Act and it has proceeded to assert and extend its jurisdiction without proper and lawful justification. The scope of jurisdiction of CERC is defined by 79(1) (b) read with section 79 (1) (f) and the adjudicatory power of CERC is restricted compared to the such powers of SERC under section 86 (1) (f) which is wide and it is to be construed accordingly.

8.4 The power of CERC to regulate or determine the tariff of generating station arises only when there is “*ab initio*” a scheme for generation of electricity in more than on State and the generating station is conceived and setup on the basis. It must be akin to the manner in which a central generating station is established with a specific purpose of supply to more than one State. It is not applicable where the generating station was setup for supply of electricity within one state and subsequently the supply is extended to more than one state for any reason.

8.5 The approach of CERC that jurisdiction for adjudication of disputes before it, is somewhat of a dynamic nature and keeps varying according to the changes in time in the supply to one more States by generating stations cannot be countenanced because it will lead to an absurd and unacceptable situation.

8.6 The approach of CERC would render the non-obstante clause of section 64(5) meaningless and otiose. The CERC cannot encroach and trample upon the jurisdiction of SERCs. section 64(5) of Electricity Act, 2003 reads as follows :

section 64(5) of Electricity Act, 2003 reads as follows :

“Notwithstanding anything contained in Part X, the tariff for any inter-state supply, transmission of wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

8.7 Provisions of A.P.Reorganisation Act, 2014

(a) As per clause c(3) of 12th schedule to A.P.Reorganisation Act, 2014 provides that the then APERC shall function as joint regulatory body (as a joint Commission) for a period of not exceeding 6 months within which time separate SERCs will be formed in Telangana & the residuary State of Andhra Pradesh. It follows there from that the erstwhile APERC functioning as joint commission in the interim period would stand dissolved after expiry of 6 months from 02-06-2014 or upon separate SERCs being constituted for the two States whichever is earlier.

(b) The A.P.Reorganisation Act, 2014 nowhere makes any specific provision for transfer of cases to separate SERCs pending before the erstwhile APERC functioning as joint Commission in the interregnum before on its dissolution. The omission of such a specific provision cannot be construed to mean that the pending cases would remain stranded and without any authority at all for the subsequently established SERCs to decide those cases.

(c) whereas 105 of the A.P.Reorganisation Act, 2014 provides for transfer of all proceedings pending before any authority in the undivided State of Andhra Pradesh as on 02-06-2014 , it should equally apply to all such proceedings pending on the dissolution of erstwhile APERC as joint Commission on 01-08-2014, i.e. on the day of constitution of APERC for the residuary State of Andhra Pradesh. In the absence of specific provisions for transfer of cases to separate ERCs, the jurisdiction of two ERCs must necessarily be discerned and construed by the interpretation of the provision of A.P.Reorganisation Act, 2014 and the legislative intention and policy therein.

8.8 Legal principles to be considered

(i) Law does not contemplate or permits situation where a pending dispute / proceeding thereof is left stranded without adjudication and / or resolution and /or remedy. The provisions of statutes have to be interrelated in such a manner that the pending disputes are adjudicated by the authorities having the power to do so. Thus if a dispute was raised under section 86(1) (f) and if it remains pending its only an SERC having power and functions under section 86 (1) (f) that can and must adjudicate on such

disputes. It is therefore imperative that such jurisdiction is to be found within the framework of the statute by a purposive, harmonious and constructive interpretation of statute and the legislative policy manifest therein.

(ii) Law doesn't contemplate multiple adjudication of the same dispute and contrary or inconsistent decisions on the same issues, facts and law between the same parties. This general principle of law is of wide import and the principles of *res sub judice* and *res judicata* are universally applicable. Section 10 and 11 CPC give codified effect to the principle in civil disputes before civil courts.

(iii) There cannot be more than one adjudication of the very same dispute. If the cause of action (being that bundle of facts material and germane to the arising of the dispute) and/or the issues (factual and legal) are not severable distinctly, and the parties to the dispute are necessary to be joined together, only one adjudication is permissible. The reliefs, though maybe apportionable between one or more parties to the dispute is merely consequential to the determination of the non-severable factual and legal issues. Therefore, in such circumstances, there can be an adjudication by only one SERC. Both the SERCs cannot proceed simultaneously to adjudicate upon the same facts and issues between the same parties.

8.9 Analysis of section 105 of A.P.Reorganisation Act, 2014

(a) section 105 clearly shows the intention of legislature is that all proceedings pending before any authority are to be transferred / and or continued by a corresponding authority in the two States. The principles of such transfers have been laid down. Accordingly all the pending matters that are exclusively relates to the State of Telangana are to be transferred to the authority / TSERC constituted for the state of Telangana as specifically provided therein.

(b) Though there is no mention with regard to matters that don't pertain to exclusively to Telangana it must follow by necessary implication that the rest and residue of the pending matters are to be continued or proceeded with by a similar authority (APERC) for the State of Andhra Pradesh. The issue as to whether section 105 would apply to the proceeding that remain with pending the erstwhile APERC functioning as joint Commission needs to

be considered and interpreted harmoniously with the legislative policy and intention and purpose of A.P.Reorganisation Act, 2014 on sound legal reasoning.

9. The relevant facts, contentions raised and submissions made by the Petitioner / respondent (Spectrum Power Generation Ltd., & Others) in the present case(s) are discussed here under:

9.1 The petitioner entered into the Power Purchase Agreement with Transmission Corporation of Andhra Pradesh – pursuant to the third transfer scheme dated 9-6-2005 issued by the then Govt. of Andhra Pradesh, the rights and obligations and all contracts for purchase and procurement of power were transferred from the Transmission Corporation of Andhra Pradesh (TRANSCO) to four Distribution Companies (DISCOMs) of erstwhile state of Andhra Pradesh, now located in the states of Telangana and residuary Andhra Pradesh. The Distribution Companies are successors in interest to the transmission corporation of Andhra Pradesh. They are APCPDCL, APNPDCL, APEPDCL, APSPDCL.

9.2. Consequent to the bifurcation of the erstwhile Andhra Pradesh by the A.P.Reorganisation Act, 2014, section 53 thereof provides for allocation of assets and liabilities. Section 53 provides for allocation of the assets and liabilities relating to all commercial undertakings in the existing state of Andhra Pradesh to the Successor State in which such undertaking is located or its operations are situated. Section 53 also stipulates that where the operation of such undertakings becomes inter-state, the operational units of the undertakings shall be apportioned between the two successive States based on location.

9.3 Section 68 of the A.P.Reorganisation Act, 2014 provides for assets and liabilities of the companies mentioned in the 9th schedule of A.P.Reorganisation Act, 2014 to be apportioned between the successor States in the manner provided in the section 53.

9.4 Section 105 (referred in the paragraph 6 above) provides for transfer of proceedings pending before a court/tribunal/Authority to the corresponding authority in the state of Telangana if it relates exclusively to the territory of Telangana.

9.5 In terms of 12th schedule the existing PPAs with respective DISCOMs shall continue as ongoing projects.

9.6 It is contention of the petitioner that :

- (a) The assets and liabilities including contracts for supply of power will be allocated to the successor States based on the area of operation of the respective DISCOMs.
- (b) The four Distribution Companies listed at Sr. Nos. 30-33 in the ninth schedule of the A.P.Reorganisation Act, 2014 will be divided between the States of Andhra Pradesh and Telangana based on the areas which they are supplying power.
- (c) The claims in the petition will have to be apportioned to each of the DISCOMs.

9.7 Legal submissions

- (a) By operation of law as on the date of bifurcation the petitioner has a single Power Purchase Agreement for supply of power to four DISCOMs (referred above) in the state of Andhra Pradesh and Telangana at a common tariff. As Power Purchase Agreement has not been split up ,the petitioner is supplying power to the four DISCOMs situated in the both the States, APEPDCL & APSPDCL in the state of Andhra Pradesh and TSNPDCL & TSSPDCL in the State of Telangana.
- (b) The petitioner is supplying power to DISCOMs in the more than one state and is therefore an inter-state generating station in terms of section 79(1) (b) of the Electricity Act, 2003.
- (c) Section 79 (1) (b) and (1) (f) which are relevant are mentioned here under :

“Sec 79.Functions of Central Commission:

(a) To regulate the tariff of generating companies owned or controlled by Central Government.

“(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State ;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”

(d) CERC is the appropriate Commission to adjudicate on the present dispute, as the petitioner has a composite scheme for generation sale of power to more than one state upon the enactment of A.P.Reorganisation Act, 2014 which provides for continuation of the existing PPAs.

(e) The petitioner relies on the following decisions / citations :

“(i) Order dated 16.10.2012 passed by the Ld. CERC in petition No. 155/MP/2012 - Adani Power Limited vs. Uttar Haryana BijliVidyut Nigam Ltd. Inter alia holding that it is not necessary that a composite scheme for generation and supply of power to more than one state through PPA should be only at the inception stage. It can be at any time during the life of generating station owned by it. In that case M/s Adani entered into more than one state when it signed its PPAs with the DISCOMs in not only Gujarat but also in Haryana. The CERC held that the dispute between the generator and DISCOMs in the two states is within its jurisdiction for adjudication.

(ii) Judgment of Ld. CERC dated 24.12.2012 in petition 160/GT/2012 M/s Udipi Power Corporation Limited V. Power Company of Karnataka Ltd and Others- inter alia holding that the words “otherwise have a composite scheme” in section 79 (1) (b) would mean that the scheme that has emerged otherwise than through agreement, for example a generating company may be required under Statute to generate and supply electricity to more than one state or at the time of inception it may supply electricity to one state but subsequently start supply to more than one state. If the PPA with one of the States is terminated and what remains is only Power Purchase Agreement with one state it would be no longer a composite scheme. It was held that based on the PPAs

entered into by the petitioner with the DISCOMS of Karnataka & Punjab for generation and sale of power from the generating station, a composite scheme emerged and CERC has jurisdiction to regulate the tariff for such a composite scheme.

- (f) the scope and interplay of section 86 & 79 of Electricity Act, 2003 was dealt with by the Appellate Tribunal for Electricity in its Judgment dated 04.09.2012 in appeal No. 94 of 2012 titled BSES Rajdhani Power Ltd. Vs. Delhi Electricity Regulatory Commission & Another, holding that provision of section 86 have to be read subject to section 79 i.e. the jurisdiction of the state Commission will exist with respect to those matters which are not covered by the jurisdiction of the central Commission u/s 79. The provision of section 79 being specific in nature will prevail over the provision of section 86 which are general in nature.

9.8 Further, as both Telangana State Electricity Regulatory Commission & the A.P. Electricity Regulatory Commission for the residuary State of Andhra Pradesh have been constituted as per 12th schedule of the A.P.Reorganisation Act, 2014, as successors the Joint Regulatory body , just as TSERC has no jurisdiction to decide matters involving generating companies, generating and supplying power to both the States so also the new APERC does not have jurisdiction to decide on such matters. The appropriate Commission to adjudicate upon disputes involving generation companies such as the petitioner which has a PPA for supply of power to both the States is CERC in view of section 79 of the Electricity Act, 2003. In fact, CERC has passed an order dated 24-07-2015 in M.P.No. 463 of 2014 filed by GMR Vemagiri Power Generation Ltd., holding that the generating company supplying power to more than one state must be deemed to be having a composite scheme as mentioned in section 79(1) (b). Writ petitions have been filed by the DISCOMs of both Telangana & Andhra Pradesh against the order of CERC before the Hon'ble High Court of A.P. & Telangana , Hyderabad and the matter is pending as on date.

9.9 Any order passed by the erstwhile APERC before bifurcation has no bearing on the issue of jurisdiction of the respective state Commissions. In

any event there can be no estoppel against a statute and the jurisdiction will have to be determined in terms of the provisions of the Electricity Act, 2003 and not the agreement / submissions of the parties.

9.10 Without prejudice to above contentions it was argued that as per section 105 (1) of A.P.Reorganisation Act, 2014 disputes pertain exclusively to Telangana DISCOMs alone can be transformed to TSERC, but a question arises as to whether the present APERC could take up the matters that were pending before erstwhile APERC to which Telangana DISCOMs were parties. As the erstwhile APERC stood dissolved, it cannot be inferred that the present APERC can entertain all the disputes that were pending on the date of bifurcation excluding the ones transferred to TSERC as the language used in the section 105(1) and schedule 12 of A.P.Reorganisation Act, 2014 does not provided clarity on this issue. The only logical inference that can be drawn by applying the principle *causis omisus* is that APERC can exercise jurisdiction only over matters that pertain exclusively to the territories of residuary state of Andhra Pradesh. There is no scope to draw conclusion that the present APERC can exercise jurisdiction over matters pending before the erstwhile APERC on the date of bifurcation ,as that would be the expanding the scope of section 105(1) read with schedule 12 of A.P.Reorganisation Act, 2014. The legislative intent is certainly to restrict the jurisdiction of the respective SERCs to respective territories of the two states. Further, the cause of action pertaining to the disputes cannot be split as all the four Distribution Companies are necessary parties to the petitioner. It is therefore submitted that the present APERC does not have the jurisdiction to entertain the matters which arise out of PPAs to which both Andhra Pradesh &Telangana DISCOMs are parties.

9.11 If the present petitions where all the four DISCOMs parties are decided by the both SERCs (APERC & TSERC) it results in a conflicting situation in case of two different judgments.

10. In response to the contentions raised/submissions made and arguments advanced on behalf of the petitioners (or respondents as the case may be), Sri P.Shiva Rao, learned standing counsel for the APTRANSCO / APPCC and the

DISCOMs of Andhra Pradesh viz., APEPDCL & APSPDCL (respondents / petitioners) has argued the case and made the following submissions.

10.1 One of the methods by which the present issue about the status of the generating company which supplies power to all four DISCOMs even after bifurcation of State, needs to be analysed is with the help of the principle laid down in the judgment of Hon'ble Supreme Court in a case between C.C.T Ranchi Vs. SwarnRekha cokes and Coal pvt. Ltd., reported at 2004 (6) SCC 689. Para 27 and 28 of the decision is about the effect of reorganisation of State on the existing policy after the reorganisation of the State has taken place. It is held that though the industrial policy of erstwhile Bihar State made in 1995 was not applicable to interstate supplies and though Bihar State is now divided into two States, still it is held that unless contrary appears in the Reorganisation Act, the earlier policy applies de hors to the two new States and the supply cannot be treated as inter-state supply, and it applies to suppliers of state now carved into Bihar and Jharkhand, even after Jharkhand State has declared its new industrial policy.

10.2 From the said legal fiction in our case, supply made by generator, (since PPAs are required to continue as per schedule 12 (c) (2) of the Reorganisation Act,) cannot be treated as interstate supply at all. Consequently parties are not entitled to seek jurisdiction of CERC.

10.3 Then the second issue is whether two Commissions separately can entertain pending cases as on 2.6.2014 to the extent of two DISCOMs concerned, if not, which of the two Commissions of successor states has the jurisdiction to entertain the same.

10.4 The relevant provisions of A.P.Reorganisation Act, 2014 are section 105 (1) & (2) as reproduced at paragraph '6' above.....Section 107 of the Act provides that provisions of A.P.Reorganisation Act, 2014 shall have effect notwithstanding anything contained in any other law.

10.4.1 The relevant provisions of Electricity Act, 2003 regarding the functions of a state commission are :

“Sec. 86(1) (a) : determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;"

"Sec.86(1)(b) : regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State ;

Sec 86(1)(f) : adjudicate upon the disputes between the licensees, and generating companies and to refer to any dispute for arbitration;

10.4.2 It was argued that when two enactments have overriding provisions the later one will prevail as held by Supreme Court in the case of Maruti Udyog Ltd., Vs. Ramlal 2005(2)SCC 638. Further, it was claimed that, where a later special law is repugnant to or inconsistent with earlier general law a special law will prevail over the general law as held by the Supreme Court in the case of Maya Mathew Vs. State of Kerala in 2010(4) section SCC 498. On the strength of these decisions it was claimed that as both the Electricity Act and the A.P.Reorganisation Act, 2014 contain non- obstante clauses A.P.Reorganisation Act, 2014 being a special act ,will prevail.

10.5 On the question as to whether or not both the newly constituted Commissions APERC & TSERC can be construed as successor entities of the erstwhile APERC of the undivided State, it was contended that the APERC of the undivided State was converted into a joint regulatory body conferring jurisdiction over the both the States(Schedule 12 of the act) and it was succeeded by separate ERCs of both the States and the assets and liabilities of the joint regulatory body were divided as per section 64 of the A.P.Reorganisation Act, 2014, the joint regulatory body is successor to the

erstwhile APERC and the present two ERCs are successors to joint regulatory body. Sri P.Shiva Rao referred to the section 17 & 18 of the General Clauses Act and the decision of Supreme Court in the case of Shri Sibbali Steels Vs State of U.P reported at 2011(3)SCC PAGE 193. to conclude that the present ERCs of the two States are successors to the Joint Regulatory body which succeeded the erstwhile APERC.

10.6 As cases / disputes exclusively relating to the territory of Telangana only can be transferred to Telangana Electricity Regulatory Commission as per section 105 (1) of the A.P.Reorganisation Act, 2014, the pending disputes where present DISCOMs of both the States are necessary parties by virtue of single Power Purchase Agreement entered into with the generator, before bifurcation, the dispute cannot be bifurcated. In the event only one authority / SERC can deal and decide on the dispute. Doctrine of *res-sub-judice* and doctrine *res-judicata* would also come into apply when both authorities decided to deal the same dispute, in respect of DISCOMs of concerned State. By necessary implication of section 105 of the A.P.Reorganisation Act, 2014 the balance pending cases shall be adjudicated by the successor APERC as even earlier traders licensees of other States are parties and the erstwhile Commission adjudicated the dispute on the ground that place of cause of action confers jurisdiction de hors to residence of parties, even as per section 86(1) (b).

10.7 Then as to the interpretation of section 105, about the balance pending cases is concerned, the precedents passed by Supreme Court would help in deciding the matter. The Judgment of Hon'ble Supreme Court in a case between State of Jharkhand Vs. Govind Singh reported at 2005(10) SCC 437 at para 17 to 21 held that when literal meaning is driving to unreasonable result, do some violence of words and so achieve the obvious intention of legislature and produce rational construction. Further it was held that where, however, a casus omissus does really occur, either through the inadvertence of legislature, or on the principle quod semel and bis exist in must be disposed of according to law as it exist. Therefore on the basis of principle of interpretation of purposive construction, and the rule of text and context of interpretation, the present APERC may be correct

authority to entertain those cases. However if the Authority entertains any doubt as to balance pending cases, as per section 105 of Reorganisation Act, to the extent of such limited issue, the same may be referred to Hon'ble High Court under section 105 (2) of A.P.Reorganisation Act, 2014 for resolution of dispute.

11. In response to the notice issued to two DISCOMs of the Telangana, TSSPDCL & TSNPDCL Sri Y.Ramarao, learned Standing Counsel appeared on their behalf and argued the case. He has stated that he has no specific submissions or arguments to make and the issues involved including the matter of jurisdiction may be decided on the merits of the case and as per law.

12. In the light of the facts and circumstances of the case and the contentions raised by the petitioner(s) and the respondent(s) as also others discussed above, the questions/ issues to be decided by the Commission in this context are formulated as under :

- I. Whether the Central Electricity Regulatory Commission (CERC) has acquired jurisdiction in the pending disputes, in the case of petitioners.
- II. Whether Telangana State Electricity Regulatory Commission (TSERC) has jurisdiction in the pending cases where the dispute is between the licensee and four Distribution Companies of the undivided state of Andhra Pradesh.
- III. Whether the newly constituted APERC for the residuary State of Andhra Pradesh can be deemed to be successor to the erstwhile APERC of the undivided State of A.P. and hence will have jurisdiction in the pending cases over which the TSERC has no jurisdiction as per the A.P. Reorganisation Act.

Each of the above issues is examined hereunder :

12.1 Jurisdiction of CERC

(i) The relevant provisions regarding the functions of CERC are section 79(1) (a) to (1)(f). 79(1) (a) speaks of the function to regulate the tariff of generating companies owned or controlled by the Central Government. Section 79(1)(b) & (f) which are relevant in this context are mentioned at paragraph 9.7 (f) above. Section 79(1) (b) provides that the CERC shall regulate the tariff of generation companies, other than those owned or

controlled by the Central Government if such generation companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State. Clause (c) to (e) related to transmission of electricity and issue of licenses and determination of tariff etc. Section 79(1) (f) provides that the CERC shall adjudicate upon the issues involving generation companies or transmission licensees in regard to matters connected with clause (a) to (d) and to refer any dispute for arbitration.

(ii) Let us examine whether 79(1) (b) has application in the present context so that section 79(1) (f) comes into play. As can be seen section 79(1) (b) applies only if the generating company enters into or otherwise has a composite scheme for a generation and sale of power in more than one state etc. In the present case there is an agreement entered into between the generation company and the four DISCOMs of the undivided State of Andhra Pradesh of which two each now belong to the newly constituted States of Telangana & residuary State of Andhra Pradesh (with some minor changes). Now, it is to be considered whether there is a composite scheme of generation and sale of electricity consequent to the bifurcation of State of Andhra Pradesh into two States w.e.f. 02-06-2014. As seen above there is an agreement / PPA between the four DISCOMS and the generation company before bifurcation and as per schedule 12 of the A.P.Reorganisation Act, 2014, the existing PPAs with respective DISCOMs shall continue for both ongoing projects and projects under construction. Further, the role of CERC is only to regulate the tariff of generation companies and section 64(5) mentioned in paragraph 8.6 above clearly specifies that it is the State Commission having jurisdiction in respect of the licensees who intend to distribute electricity and make payments therefor, which shall determine the tariff for inter-state supply / transmission / wheeling of electricity. Section 64(5) is an overriding provision over section 79(part-X). This position is also strengthened / clarified by rule 8 of Electricity rules, 2005 read with 176 of Electricity Act, 2003 which reads as under :

“Rule 8: The tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub-section (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section

(1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.

(iii) Thus, when the Power Purchase Agreement between a licensee and generating company is approved by the State Commission under 86(1) (b), logically it is the State Commission which acquires jurisdiction to adjudicate upon the issues/disputes between the licensees and the generating companies. The order of CERC in GMR case holding that the generating station has acquired the status of an inter-state generation by reason of the operation of A.P.Reorganisation Act, 2014, to adjudicate on the issues on the implementation of the tariff / other issues is not correct as it is made at the admission stage without hearing the respondents and all the parties concerned. The CERC has not analysed and appreciated the provisions of Electricity Act in a harmonious manner. The power of CERC to regulate or determine the tariff of generating companies is only where, there is a composite scheme for generation and sale of electricity in more than one State and generation stations are conceived of and set up on that basis. It is not applicable where the generating station was setup for supply of electricity within one State and subsequently supply is to more than one State for any reason. The approach of the CERC and submissions and contentions before the Commission suggesting that the jurisdiction for determination of disputes is somewhat of dynamic nature and can keep varying according to the changes from time to time in the supply of power to one or more States by a generation station cannot be accepted as correct because it would lead to an absurd and impractical situations.

(iv) Consider for instance a case where generating station of 500 MW enters into PPA with more than one Distribution Licensees within one State for a capacity of 300 MW leaving the rest of the capacity uncommitted and fully available for sale to consumers or traders within the State / outside the State. Clearly, the SERC has jurisdiction to determine the tariff for supply of 300 MW to the distribution licensees within the State. If after that the generation has commenced and stabilized and generating company enters into short-term contract of 100 MW power to a distribution licensee of

another State, it cannot be said the CERC thereby acquired jurisdiction to determine the tariff for whole of supply by a generation company and adjudicate disputes so long as such contract exists and thereafter the CERC will cease to have jurisdiction after supply to the distribution company in the other State ceases. As seen above, if such interpretation accepted, the provision of section 64(5) will be rendered meaningless, unworkable and otiose.

(v) I have gone through the detailed submissions made by the petitioner Spectrum Power Generation Ltd., & Others discussed from para 9.1 to 9.11 above including the decisions of CERC and Appellate Tribunal for Electricity, cited. Those decisions were rendered in different context and facts and circumstances of each case and they are not directly applicable to the issue of jurisdiction being considered in this order.

(vi) For the above reasons it can clearly concluded that CERC doesn't have the jurisdiction in present case where the dispute relates to a single PPA between four DISCOMs and the generating companies ,entered into before bifurcation in the undivided State of Andhra Pradesh. Subsequent bifurcation of the State cannot alter the position for the applicability of section 86(1) (f) as per which only SERCs have jurisdiction to adjudicate the disputes.

12.2 Jurisdiction of TSERC

(i) TSERC has been constituted w.e.f. 26-7-2014, consequent to the bifurcation of the erstwhile State of Andhra Pradesh. As per schedule 12(2) read with section 92 of the A.P.Reorganisation Act 2014, the existing APERC shall function as joint regulatory body for a period not exceeding 6 months within which time separate SERC will be formed in successor States. Accordingly new APERC has also come into existing w.e.f. 1-08-2014.As per section 105(1) of this Act, every proceeding pending before 02-06-2014 within the state of undivided State of Andhra Pradesh before any court (other than High Court) / tribunal / authority, if it is a proceeding relating exclusively to the territory which forms part from the territories of Telangana, shall stand transferred to the corresponding court/tribunal/authority. If any doubt arises in this matter it can be referred the High Court at Hyderabad u/s 105(2) of the Act whose decision should be final. Obviously only disputes which relate exclusively to the territory of Telangana or between the two DISCOMs / licensees of Telangana and a generating company can be transferred and

adjudicated by TSERC. The present petition involving the four Distribution Companies of undivided State of Andhra Pradesh and the generating company clearly falls outside the scope of jurisdiction of TSERC.

The need for any reference to High Court on 105(2) of the A.P.Reorganisation Act, 2014 arises only if there is a question or doubt of transfer of proceedings from a court / tribunal / authority existing before bifurcation to the corresponding court/ tribunal / authority constituted of existing in the State of Telangana after bifurcation. Hence, the disputes pending where all the four DISCOMs of the two States were involved cannot be transferred and adjudicate upon by the TSERC.

This is the only conclusion than can be drawn from a constructive and harmonious interpretation of the provisions of section 92 & 105 of A.P.Reorganisation Act, 2014 and section 86 of Central Electricity Act, 2003.

12.3 Jurisdiction of APERC

(i) The APERC of undivided State of Andhra Pradesh is succeeded by the joint regulatory body (joint Commission) w.e.f 2-6-2014 as per schedule 12 of the A.P.Reorganisation Act, 2014 . Consequent on the constitution of separate ERCs for Telangana & residuary State of Andhra Pradesh the joint regulatory body has ceased to exist w.e.f 01-08-2014. As per section 105(1) of the A.P.Reorganisation Act, 2014 the proceedings pending before the joint regulatory body stand transferred to the TSERC in so far as they relate / pertain to exclusively to the territory of Telangana. The A.P.Reorganisation Act, 2014 is silent on as to how the proceedings in the remaining cases pending with the joint regulating body are to be dealt with. A natural corollary is that proceedings relating or pertaining to the territory of residuary State of Andhra Pradesh be transferred to the newly constituted APERC. The issue / controversy is only regarding the proceedings where DISCOMs of both the new States (corresponding to the four DISCOMs of the undivided State) are parties to the dispute consequent to a single Power Purchase Agreement signed by them together with the generation / transmission entity before bifurcation and which are pending with the Joint Regulatory Body after bifurcation.

(ii) We have seen above that neither CERC nor TSERC has jurisdiction over such cases where there is single PPA between the DISCOMs and the generating / transmission companies. As per section 86(1) (f) it is only a State Commission which can adjudicate on such disputes. As the cause of action for the dispute pending arose before the date of bifurcation and the petitions are filed before the bifurcation, its only the State Commission which can adjudicate the disputes as there was no composite agreement either at the time of entering into PPA or at the time of filing the petition before, the then APERC.

(iii) As the dispute between the generating company / transmission licensee and the DISCOMs is not severable, only one adjudication is permissible under law ,though the relief if any can be apportioned among parties to the dispute, consequent to the determination / adjudication of the issues , (both factual and legal) involved in the dispute. Though there is no specific provision under the A.P.Reorganisation Act, 2014 for the adjudication of such cases, there cannot be a vacuum and the petitioners who have filed the petitions cannot be left without a remedy for the resolution of the disputes. As TSERC has jurisdiction only over the cases exclusively relating to Telangana, the new APERC which is also a successor to the erstwhile APERC, through the transitory joint regulatory body ,it is but proper and appropriate to consider the APERC as a successor to the joint regulatory body in so far as the disputes pending before the bifurcation over which the TSERC has no jurisdiction. A purposive and constructive interpretation of the provision of A.P.Reorganisation Act, 2014 read with the provision of Electricity Act, 2003 will result in such an interpretation on the facts and circumstances of the case.

13. Discussion on Legal Principles involved

13.1 Purposive construction

when two interpretations are possible the task of the court would be to find which one or the other interpretation would promote the object of the statute, (A.P.Reorganisation Act, 2014 in this context), serves the purpose and strengthens its smooth working and prefer the one which sub-serves or promotes the object, to the other which introduces inconvenience or uncertainty in the working of its system. Supreme Court in the case of Bombay Dyeing & Mfg. Co. Ltd., Bombay v. Bombay Environmental Action Group, AIR 2006 Supreme Court 1489 has referred to the following on statutory interpretation :

Francis Bennion has described purposive construction in the following manner:

“ A purposive construction of an enactment is one which gives effect to the legislative purpose by –

- (a) Following the literal meaning of the enactment where the meaning is in accordance with the legislative purpose, or
- (b) Applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.”

In *Indian Handicraft Emporium v. Union of India*, the Supreme Court expounded the theories of purposive construction. (to incorporate)

In *Lalit Mohan Pandey v. Pooransingh* (AIR 2004 Supreme Court 2303), it was held that the objective underlying the statute is required to be given effect to by applying the principles of purposive construction.

13.2 Intention of the legislature :

It is well recognised rule of construction that in order to ascertain the true meaning of a provision the intention of the legislature as ascertainable from the language of the provision is the safe guide (*Special Land Acquisition Officers v. G.C.Paramraj*, AIR 1992 Kant 97 : ILR (1991)2 Kant 1109 (DB), referred in *State of Karnataka v. Laxuman*, AIR 2006 Supreme Court 24.)

The Supreme Court in *Bhavanagar University v. Palitana Sugar Mill (P.) Ltd.*, observed as under :

“Scope of legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, a statutory enactment must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.”

Maxwell in the interpretation statutes 10th edition pg.7 referred to in *Mohan Kumar Singhania v. Union of India*, AIR 1992 SC 1 at p. 19: (1992) 1 SCC supp 594 says thus :

“.... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result.”

The Supreme Court in *Commissioner of Income-tax v. S.Teja Singh*(AIR 1959 SC 352), has expressed that a construction which would defeat the object of Legislature must, if that is possible, be avoided.

In *Commissioner of Income-tax, Bangalore v. J.H.Gotla* (**AIR 1985 SC 1698**), the Supreme Court observed as under :

“Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by learned Judge Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.(emphasis supplied).

In *Shiv Shakti Co-op. Housing Society, Nagpur v. Swaraj Developers* (AIR 2003 SC 2434) the Supreme Court held that an intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. Supreme Court further observed that if the application of the words literally defeats the obvious intention of the legislation and produces a wholly unreasonable result, in such circumstances, the Court must do violence to the words so as to achieve the obvious intention and produce a rational construction.

- 13.3 Applying the principles and the views expressed by the Supreme Court in the decisions discussed above it is to be borne in mind that Parliament would not have intended to create a vacuum for the petitioners who have

filed cases before the erstwhile APERC and be left without remedy consequent to the bifurcation of the erstwhile State of Andhra Pradesh. It has to be deciphered and discovered from a proper and rational interpretation of the provisions of the A.P.Reorganisation Act, 2014. As the provisions of section 92 read with schedule 12 of the A.P.Reorganisation Act, 2014 and section 105 (1) of the Act are silent on the scope of jurisdiction over the cases where, DISCOMs of both the States are parties to the single Power Purchase Agreement, but nevertheless specified that only cases relating exclusively to the territory of Telangana to be transferred to TSERC, the natural consequence / corollary is that the remaining cases (exclusively relating to the territory of residuary State of Andhra Pradesh as also cases where DISCOMs of the both States are parties to the pending disputes) will continue to remain with the reconstituted APERC which is a successor to the joint regulatory body (succeeding the erstwhile APERC of the undivided State of Andhra Pradesh)and be decided / adjudicated by it as per law.

13.4 Harmonious interpretation

It is a cardinal rule of construction that when there are in a statute two provisions which are in conflict with each other such that both of them cannot stand, there should, if possible, be so interpreted that effect can be given to both. A construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is known as rule of 'harmonious construction'. This rule of harmonious construction has been emphasised by Supreme Court in J.K.Cotton Spinning & weaving Mills co. Ltd. V. State of UP (AIR 1961 SC 1170). The rule of harmonious construction has two facets :

- (a) Where there are two conflicting provisions in an Act which cannot be reconciled with each other then they should be so interpreted that if possible effect should be given to both.
- (b) An interpretation which reduces one of the (apparently conflicting) provisions as a "dead letter" or "useless lumber" should not be adopted. To harmonise is not to destroy any statutory provision or render it *otiose* (Sultana Bagam v. Prem Chand Jain, AIR 1997 Supreme Court 1006).

When two provisions of the same statute become applicable in a given case, a harmonious construction should be taken recourse to.

It was observed by the Supreme Court in *VenkataramanaDevaru v. State of Mysore*, (AIR 1958 Supreme Court 255 at P.268) as follows :

“The rule of construction is well settled that when there are an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction.”

The above principles are relevant in the present context to examine the scope of jurisdiction of CERC to disputes where there is a single Power Purchase Agreement between the four DISCOMs of the undivided State of Andhra Pradesh and the petition on the dispute arising there from is pending on the date of bifurcation of State ,wherein the CERC has taken a view (or it was argued so in this context by the petitioner) that consequent on bifurcation of one State into two States, a composite scheme of generation and sale of electricity more than one State has come into existence as per section 79 (1) (b) of the Electricity Act 2003. An illustration to explain this section is given in paragraph 6.1above.If it were so provision of section 64(5) will become meaningless and *otiose*. 64 (5) is an non-obstante provision conferring jurisdiction on the State Commission to fix the tariff for any inter-state supply transmission or wheeling as the case may be involving the territories of one or two or more States by the State Commission having jurisdiction in respect of licensee who applies to the Commission intending to distribute electricity and make payment therefor. A harmonious interpretation of these two provisions is provided by rule – 8 of Electricity rules, 2005 (please refer to Paragraph 12.1 above). Thus, though the tariff of generating companies may be regulated/determined by the central Commission under section 79 (1) (a) or (1) (b), it is a State Commission which shall determine under section 86 (1) (b) whether a distribution licensee should enter into a PPA or procurement process with such generating companies based on the tariff determined by the central Commission which is not subject to re-determination by the SERC.

In the present context as the Power Purchase Agreement between the four DISCOMs & the generating company of the erstwhile State of Andhra Pradesh was approved by the State Commission, any dispute arising there from has to be adjudicated by the State Commission under section 86(1) (f) and the Central Commission will have no jurisdiction to decide such dispute. For this reason the CERC has no jurisdiction to decide and adjudicate on the pending dispute in this case. And it is only SERC (APEREC as discussed above) which has jurisdiction to adjudicate in this matter.

13.5 Statute to be construed to make it effective and workable – Rules of construction

It is well-settled rule of construction that when the words in the statute are reasonably capable of more than one interpretation, the object and purpose of the statute, a general conspectus of its provisions and the context in which they occur might induce a Court to adopt a more liberal or a more strict view of the provisions, as the case may be, as being more consonant with the underlying purpose (KisanGovindraoWalke v. State of Maharashtra, 1984 CTJ 419 (Bom)).

In *Punjab Beverages Pvt. Ltd., Chandigarh (M/s.) v. Suresh Chand*, (AIR 1972 Supreme Court 995 at p. 998 : 1978 Lab IC 693), the Supreme Court observed as under :

“It is well-settled rule of construction that no one section of a statute should be read in isolation, but it should be construed with reference to the context and other provisions of the statute of the statute, so as, as far as possible, to make a consistent enactment of the whole statute. Lord Herschell stated the rule in the following words in Colquhoun v. Brooks (1889 14 AC 493):

“it is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the statute which throw light on the intention of the Legislature, and which may serve light on the intention of the Legislature, and which may serve to show that the particular provision, ought not to be construed as it would be alone and apart from the rest of the Act”.

The Courts strongly lean against any construction which tends to reduce a statute to a futility. The provisions of a statute must be so construed as to make it effective and operative, on the principle “ut res majisvaleat quam pariat (Tinsukhia Electric supply co. Ltd., v. State of Assam, AIR 1990 SC 123 at p. 152)”.

Applying the above interpretation to the provisions of A.P.Reorganisation Act, 2014 we should conclude that the object and purpose of the statute is to find remedy for the resolution of the pending disputes before the erstwhile APERC and the joint regulatory body (in respect of single PPA between four DISCOMs and generating / transmission company) at the time of bifurcation and as the existing PPA s will continue and they are approved by the erstwhile APERC and as TSERC has no jurisdiction over such cases and as CERC cannot have jurisdiction in such disputes as discussed above , it is only the APERC which is a successor to the joint regulatory body(in effect erstwhile APERC)that can adjudicate the pending disputes in such type of cases..

13.6 **Casus omissus**

A construction which requires for its support, addition of words, has to be avoided. The words of a statute never should, in interpretation, be added or subtracted from without almost a necessity. It is contrary to all rules of construction to read words into a statute unless it is absolutely to do so.

The doctrine of Casus omissus, explained in felicitous language in C.S.T. v. Parson Tools and Plants (AIR 1975 SC 1039) is as under :

“ If the legislature willfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engraving on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon the preserves of Legislature. The primary function of a Court of law is *jus dicere* and not *jus dare*.”

In *Illachidevi v. Jain Society , Protection of Orphans India* (AIR 2003 Supreme Court 3397) while reiterating that the Court cannot supply *casus omissus* and that the Court cannot read anything into the statutory provision, which is plain and unambiguous, the Supreme Court laid down as under :

“It is equally well settled that when the legislature has employed a plain and unambiguous language, the Court is not concerned with the consequence arising therefrom. Recourse to interpretation of statutes may be resorted only when the meaning of the statute is obscure. The Court is not concerned with the reason as to why the Legislature thought it fit to lay emphasis on one category of suitors than the others. A statute must be read in its entirety for the purpose of finding out the support and object thereof. The Court, in the event of its coming to the conclusion that a literal meaning is possible to be rendered, would not embark upon the exercise of judicial interpretation thereof and nothing is to be added or taken from a statute unless it is held that the same would lead to an absurdity or manifest injustice”.

In *Sri Ram Saha v. State of West Bengal* (AIR 2004 Supreme Court 5080), the Supreme Court held that when the language of the statute is plain and unambiguous, *casus omissus* cannot be supplied. It was observed as under:

“ It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading ; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, Courts will interpret such a provision keeping in mind that objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or, favours the object of the Act and purpose it serves, is to be preferred. (emphasis supplied)

14. While it is true as observed by Supreme Court on various occasions, that Courts cannot supply “*casus omissus*” it is equally important that a statute and its

provisions have to be given a purposive and constructive interpretation to fulfill and serve the object and the purpose for which it is enacted. The decisions of the Supreme Court highlighted above clearly bring out the position that in case of difficulty or doubt arising in the interpretation of the provisions of an enactment (A.P.Reorganisation Act, 2014 in the present context) the provisions of the act have to be interpreted by reading the enactment as a whole and keeping in mind the objects sought to be achieved by such enactment and advance the cause for which enactment is brought into force and if two interpretations are possible the interpretation which promotes or favours the object of the enactment is to be preferred.

15. Thus, to conclude, while TSERC has no jurisdiction as per the provisions of section 105 (1) of the A.P.Reorganisation Act, 2014 and as CERC cannot have jurisdiction under section 79 (f) read with section 86 (1) (b) as discussed above, in the matter of adjudication/determination of the disputes relating to/ arising out of a single PPA / agreement between the four DISCOMs (now within the two States) and the generating company / transmission licensee, a harmonious and constructive interpretation of the provisions of the statute and keeping in view the necessity to provide a forum for adjudication of disputes of this nature, it is logical and rational to conclude that the successor APERC to the joint regulatory body (with which the cases are pending) is the authority competent to adjudicate and decide the disputes pending at the time of bifurcation by operation of law. This is the only logical deduction on a purposeful interpretation of the provisions of A.P.Reorganisation Act, 2014 read with Electricity Act, 2003. The APERC of the successor State of (residuary) Andhra Pradesh thus has acquired jurisdiction under section 86(1) (f) to adjudicate the dispute(s) referred to above. The pending petition(s) will be adjudicated and decided accordingly.

Sd/-
(Dr. P. RAGHU)

***per the Hon'ble Chairman, Sri Justice G. Bhavani Prasad:
(in all 34 matters)***

Andhra Pradesh Electricity Regulatory Commission established and constituted under the Andhra Pradesh Electricity Reform Act, 1998 and continued under the Electricity Act, 2003 read with the State Act was the State Electricity Regulatory Commission for the State of Andhra Pradesh as it existed upto the Andhra Pradesh Reorganisation Act, 2014 coming into force with effect from 02-06-2014 on notification of the said Act in the Gazette of India.

2. By virtue of Section 92 of the Andhra Pradesh Reorganisation Act, 2014 read with the Twelfth Schedule thereof, the then existing Andhra Pradesh Electricity Regulatory Commission was mandated to function as a joint regulatory body for a period not exceeding six months within which time separate State Electricity Regulatory Commissions will have to be formed in the successor States. Accordingly, the Andhra Pradesh Electricity Regulatory Commission for the State of Andhra Pradesh and the Telangana State Electricity Regulatory Commission for the State of Telangana were duly formed and constituted. However, the Twelfth Schedule which was stated by Section 92 to be enumerating the principles, guidelines, directions and orders issued by the Central Government on and from the appointed day on matters relating to power generation, transmission and distribution which shall be implemented by the successor States did not state anything about the proceedings pending before the then existing Andhra Pradesh Electricity Regulatory Commission in a similar manner as it stated about the division of units of Generation Corporation of Andhra Pradesh Limited or the existing Power Purchase Agreements or the functioning of the existing State Load Despatch Centre or transmission lines of Transmission Corporation of Andhra Pradesh Limited or the ratio of allotment of power by Central Generating Stations or the first right of refusal of such power or a reassignment of the districts of Anantapur and Kurnool to the A.P. Southern Power Distribution Company Limited. In the absence of any principles or guidelines or directions or orders issued by the Central Government on these matters in Section 92 or the Twelfth Schedule, a need had arisen to look elsewhere for the procedure to be adopted in respect of the proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission by the appointed day or atleast pending by the time the joint regulatory body envisaged by the Twelfth Schedule.C.Power.3 ceased to

function on the formation of separate State Electricity Regulatory Commissions in the successor States.

3. The Andhra Pradesh Electricity Regulatory Commission functioning as a joint regulatory body since 02-06-2014 initially took a preliminary view that on enactment of Act 6 of 2014, jurisdiction relating to adjudication of a dispute between the generator in one newly formed State and the licensee in another newly formed State shifted to the Central Electricity Regulatory Commission under the relevant provisions of the Electricity Act, 2003. An intrastate dispute earlier was considered to have been transformed into an interstate dispute.

4. However, after notices to all the parties concerned and hearing on such preliminary view, the joint regulatory body pronounced a common order on 04-07-2014. The Commission held that it will have differentiated and independent jurisdiction over the two States till the respective Regulatory Commissions for the two States commence functioning and the existing jurisdiction will continue unchanged subject to the mandate of Act 6 of 2014. The Commission specifically noted that in any of the cases before the Commission, no composite scheme was entered into by the generators and licensees located in different States by the impact of Act 6 of 2014. A generating company which entered into a Power Purchase Agreement for generation and sale of electricity in a single State finds itself selling power to a licensee located in a State other than its own. These preexisting supply arrangements cannot in any sense of the words be called composite schemes designed to cater to licensees in the newly created States of Andhra Pradesh and Telanagana falling within the ambit of Section 79 (1) (b) of the Act, 2003. The Commission also opined that concluding that all arrangements for interstate supply of electricity in all the States in the Country will be subject to the jurisdiction of the Central Commission will be manifestly inconsistent with the provisions of Section 86 (1) (f) of 2003 Act. The contention that supply of power to Discoms across two States consequent to the Reorganisation Act would amount to a composite scheme was rejected. The Commission referred to the decisions of the Appellate Tribunal for Electricity in Appeal No.200 of 2009 and Appeal No.183 of 2009 to conclude that all disputes between the licensees which do not fall under Section 79 (1) (a) to (d) are within the jurisdiction of the State Commission and there is no limitation that the distribution licensee would mean a distribution licensee in the same State. The phrases as appearing in Section 79 (1) (b), "enter

into” or “have” were interpreted with reference to the meaning given in Law Lexicon and it was stated that neither the generators have entered into an agreement or contract or holding in possession an agreement or contract for generation and sale of electricity in more than one State. Hence, the joint regulatory body concluded that the Central Commission does not appear to have the jurisdiction to adjudicate upon a dispute pending before the erstwhile State Commission which alone has such power.

5. The order of the erstwhile Andhra Pradesh Electricity Regulatory Commission functioning as a joint regulatory body then, under the Twelfth Schedule to Central Act 6 of 2014, was not the subject of challenge in any higher Forum like the Appellate Tribunal for Electricity or the Hon’ble High Court or the Hon’ble Supreme Court or even the Central Electricity Regulatory Commission.

6. On the constitution of this Commission with effect from 01-08-2014, a circular dated 03-12-2014 was issued concerning the steps to be taken in respect of the proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission and which have to be continued before this Commission as being within its jurisdiction. The circular is extracted below:

“The Andhra Pradesh Reorganisation Act, 2014 directed in the Twelfth Schedule formation of separate State Electricity Regulatory Commissions in the successor States in the place of the then existing Andhra Pradesh Electricity Regulatory Commission. Accordingly, the Andhra Pradesh Electricity Regulatory Commission has been constituted with effect from 01-08-2014 for the State of Andhra Pradesh by the State Government.

Proceedings in the Original Petitions, Review Petitions and Interlocutory Applications pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission have to be continued before this Commission, in so far as the present Commission has territorial jurisdiction, jurisdiction over the subject matter and jurisdiction over the parties to the proceedings. The pending proceedings have to be suitably amended in respect of the parties or the subject matter or the relief claimed or concerning any other relevant aspect so as to confine them to the extent of existence of jurisdiction of this Commission.

To achieve the said purpose, the following procedure is to be followed in all the proceedings:

- (1) The petitioners have to report to the Commission whether their petitions/applications as framed and as pending are within the jurisdiction of the present Commission and need no amendment.
- (2) If the respondents desire to question the existence of such jurisdiction, it is open to them to file an additional pleading to that effect, in response to which, the petitioners can file their rejoinder. The question of jurisdiction will be decided by the Commission on merits, if so raised.
- (3) If the petitioners report that the petitions/applications require to be amended in respect of the parties or the subject matter or the relief or otherwise in respect of any part of the pending proceedings, they can come up with appropriate Interlocutory Applications which can be resisted by the respondents by filing counters and the Commission will decide the amendment applications on merits.
- (4) If the amendment applications are allowed, necessary consequential procedural steps will be ordered and respondents will have a right to file additional pleadings in response to the amended petitions/applications.

In following the above general principles in the matters pending with this Commission, the provisions of the Electricity Act, 2003 and the Andhra Pradesh Electricity Reform Act, 1998 to the extent they are not inconsistent with the Central Act, the statutory Rules and Regulations will be duly observed and complied with.

All original petitions, review petitions and interlocutory applications filed before the erstwhile Andhra Pradesh Electricity Regulatory Commission or this Commission and not yet taken on file and all such petitions and applications that will be henceforth filed before this Commission will be entertained, enquired into and decided on merits in accordance with law to the extent of the jurisdiction of this Commission.”

7. 134 petitions in total were identified as pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission among which the records of all those petitions exclusively relating to the territories of the State of Telangana were transmitted to the Telangana State Electricity Regulatory Commission for

proceeding further in accordance with law as those matters fell within the jurisdiction of that Commission in relation to the subject matter or parties or territory.

8. There remained matters over which this Commission has exclusive jurisdiction territorially, over the subject matter and over the parties and also matters which do not exclusively relate to the territory of the State of Andhra Pradesh or a subject matter or parties exclusively relating to the State of Andhra Pradesh.

9. While there is no controversy concerning the matters which are exclusively within the jurisdiction of either this Commission or the Telangana State Electricity Regulatory Commission, the question of jurisdiction over the matters transcending beyond the boundaries of the State of Andhra Pradesh in respect of the subject matter or parties or territory, conflicting contentions were raised before the Commission and it has become imperative to determine the question of jurisdiction in all such cases before proceeding to deal with any such matter in any manner or to determine the same on merits.

10. The impact of bifurcation of the erstwhile State of Andhra Pradesh on the jurisdiction of the appropriate Electricity Regulatory Commission received the attention of the Central Electricity Regulatory Commission in its order dated 27-04-2015 in Petition No.MP/463/2014. The order of the Central Commission showed that the request of the petitioner therein for reliefs against the two distribution companies each of the States of Telangana and Andhra Pradesh was not straightaway entertained by the Central Commission and the learned counsel for the petitioner therein was first heard on the question of maintainability. The learned counsel appeared to have argued that by virtue of the Andhra Pradesh Reorganisation Act, 2014, the generating station has evolved into an interstate generating station, the dispute relating to tariff of which can be adjudicated by the Central Commission in terms of Section 79 (1) (f) and (b). The learned counsel also appeared to have contended that any dispute in relation to a tariff for a generating station or tariff for a composite scheme for generation and sale of electricity in more than one State has to be decided by the Central Commission under Section 79 (1) (f) and not by any other State Commission. The casual link between the generating company and the erstwhile State Commission was claimed to have been snapped upon reorganisation of the State of Andhra Pradesh. The

Central Commission referred to Clause C.2 of the Twelfth Schedule of the Andhra Pradesh Reorganisation Act, 2014, Central Act 6 of 2014 which came into effect from 02-06-2014 which said that the existing Power Purchase Agreements (PPAs) with respective DISCOMS shall continue for both on-going projects and projects under construction. The Central Commission considered that the words “or otherwise have” used in sub-clause (b) of clause (1) of Section 79 have to be given purposive interpretation to signify the existence of a composite scheme which has emerged otherwise than through contract for generation and supply of power to more than one State. The situation on account of operation of Andhra Pradesh Reorganisation Act, 2014 was considered to make the petitioner therein satisfy Section 79 (1) (b) due to which the tariff of such generating station should be regulated by the Central Commission and any dispute shall be adjudicated by the Central Commission. Consequently the Central Commission directed issuance of notices to the respondents therein who were not heard before the assumption of jurisdiction by the Central Commission. Significantly the Central Commission noted that in terms of Section 86 (1), the jurisdiction over a generating company as conceived and executed as an intrastate generating station in the undivided State of Andhra Pradesh to supply power to the distribution companies of the erstwhile State and not owned or controlled by the Central Government as referred to in Section 76 (1) (a) was vested with the Andhra Pradesh Electricity Regulatory Commission. Thus, the Central Commission opined that the implementation of the Andhra Pradesh Reorganisation Act, 2014 brought the generating station out of Section 86 and within Section 79.

11. Again, in its order dated 15-06-2016 in Petition No.183/MP/2014, the Central Electricity Regulatory Commission again considered the question of maintainability of such a petition with reference to the petitioner therein claiming supply of power to more than one State to be under a composite scheme, the dispute arising from which has to be adjudicated by the Central Commission under Section 79 (1) (b) and (f), while the respondents therein contended the dispute to be falling under the jurisdiction of the respective States under Section 86 (1) (f). As in the earlier case, the Central Commission heard the petitioner therein on maintainability before issuing notices to the respondents about the claim for compensation for the increase in clean energy cess. The Central Commission referred to PTC India Ltd., Vs Jai Prakash Power Ventures Ltd., decided by the Delhi High Court concerning a Power Purchase Agreement for sale of contracted

power to the distribution companies in four States. The Hon'ble High Court held that where it is an interstate supply, the various factors will be accounted by the Central Electricity Regulatory Commission and where it is an intrastate supply, the State Electricity Regulatory Commission would have the jurisdiction. The Central Commission also referred to Uttar Haryana Bijli Vitaran Nigam Ltd., Vs Central Electricity Regulatory Commission decided by the Appellate Tribunal for Electricity in Appeal No.100/2013 in which case the generating companies are supplying the power to more than one State. The Appellate Tribunal held the generating company to have composite scheme for generation and sale of electricity in more than one State and hence amenable to the jurisdiction of the Central Commission. The Central Commission therefore concluded that sale of electricity by the petitioner therein to the States of Andhra Pradesh and Telangana through PTC is sale to more than one State as contemplated under Section 79 (1) (b) and hence a composite scheme.

12. Against the order of the Central Electricity Regulatory Commission dated 27-04-2015, the two distribution companies of the State of Andhra Pradesh filed W.P.No.15848 of 2015 and the two distribution companies of the State of Telangana filed W.P.No.19894 of 2015. The distribution companies contended that the unit of the generating company is within the territorial jurisdiction of the State of Andhra Pradesh and the writ petitioners in W.P.No.15848 of 2015 are also located in the State of Andhra Pradesh and any dispute between them cannot be stated to be an interstate dispute. There were no prior notices or opportunity to the distribution companies on the maintainability issue which violates the principles of natural justice and fair play. The Central Commission itself held in an earlier decision dated 05-01-2006 that Section 79 applies only for ultra mega power plants, contemplated to supply power to more than one State having composite scheme. Section 105 of the Andhra Pradesh Reorganisation Act, 2014 took into account such situation and if any question is arising there-under, the matters are referred to and decided by the Hon'ble High Court. Mere sale of power to the licensees in two States after the formation of such States cannot be construed as a composite scheme. Hence, the distribution companies requested for setting aside the orders of the Central Commission and quashing the proceedings before it and to prohibit the Central Commission from entertaining the petition.

13. GMR Vemagiri Power Generation Ltd., whose petitions before the Central Electricity Regulatory Commission led to the order of that Commission dated 27-04-2015, filed W.P.No.7965 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. The said writ petitioner was the petitioner in O.P.No.70 of 2012 and O.P.No.72 of 2012 before the erstwhile Andhra Pradesh Electricity Regulatory Commission. The writ petitioner contended that clause C.2. of the Twelfth Schedule of the Andhra Pradesh Reorganisation Act, 2014 made the writ petitioner evolve into an interstate generating company/station and the continuance of operation of the Power Purchase Agreement with two Discoms each in the successor States led to a composite scheme for generation and sale of electricity. The writ petitioner referred to an order of the Central Electricity Regulatory Commission dated 16-10-2012 holding that the expression "or otherwise have a composite scheme" in Section 79 (1) (b) envisages and encompasses a situation where even though parties may not have entered into a composite scheme for generation and sale of electricity for more than one State right from inception, yet a composite scheme may emerge due to subsequent events or by operation of law. Referring to the established principles of statutory interpretation, the writ petitioner contended that full effect and meaning must be given to the words and expressions used in a statute. Hence, the writ petitioner contended that the State Electricity Regulatory Commissions cannot have jurisdiction or power of adjudication over the dispute in such cases and Section 79 (1) (b) and (f) squarely apply. The writ petitioner therefore requested the Hon'ble High Court to declare the Central Commission as an appropriate Forum to which State Commissions shall transfer the records or to decide the appropriate Forum. The writ petition was stated to be due to the questions arising in W.P.No.15848 of 2015 and W.P.No.19894 of 2015.

14. GVK Industries Ltd. also filed W.P.No.14254 of 2016 before the Hon'ble High Court of Judicature at Hyderabad in support of the claim that the Central Electricity Regulatory Commission is an appropriate Forum having jurisdiction to adjudicate such dispute and not the State Electricity Regulatory Commission. Otherwise it was also requested for the Hon'ble High Court declaring the appropriate Forum in such cases. It was contended by the writ petitioner that nine original petitions arose before the Telangana and Andhra Pradesh Electricity Regulatory Commissions and while raising contentions similar to GMR Vemagiri Power Generation Limited, it was pleaded that Section 105 does not enable the

two State Commissions to exercise jurisdiction over the matters to which Discoms of both States are parties. No reference was made to the Hon'ble High Court under Section 105 (2) and the power of the President of India to remove difficulties under Section 108 of the Andhra Pradesh Reorganisation Act, 2014 was also not invoked. Hence this writ petitioner also requested that Central Commission be declared as an appropriate Forum or the Hon'ble High Court may decide and declare which is the appropriate Forum for adjudication of such disputes.

15. The order of the Central Commission dated 15-06-2016 was challenged by the two distribution companies of the State of Andhra Pradesh in W.P.No.22850 of 2016 before the Hon'ble High Court of Judicature at Hyderabad. The writ petitioners stated that the Central Commission did not determine the tariff of the trader or generator and the tariff was in fact determined by the erstwhile Andhra Pradesh Electricity Regulatory Commission. There was also no composite scheme to attract Section 79 and there was no inter State dispute. The Central Commission totally lacks jurisdiction and the decision of the Appellate Tribunal for Electricity in Appeal No.100 of 2013 is the subject matter of the pending civil appeal before the Hon'ble Supreme Court. The Hon'ble High Court granted interim directions in W.P.No.15848 of 2015 and hence the writ petitioner desired the Central Commission to be prohibited from entertaining such a petition.

16. In W.P.No.32992 of 2014 filed by M/s. Reliance Infrastructure Limited, after the matters involving the question of jurisdiction were heard on that issue and orders were reserved by this Commission, the writ petitioner prayed for a declaration on use of alternative fuel etc., which reliefs were already sought for in the original petitions before the Commission. The Hon'ble High Court in its order dated 22-04-2016 noted the grievance of the petitioner about no orders being passed by the State Commissions and recorded that the entire disputes pending in relation to the petitioner were stated by the learned Standing Counsel for the State Commissions to be decided on merits including the controversy with regard to jurisdiction within three months. The Hon'ble High Court made such submissions part of record and referred to the general opinion including that expressed by the Hon'ble Supreme Court about the absence of capability of such tribunals to decide complicated legal issues. Subsequently this Commission filed W.P.M.P.No.27544 of 2016 explaining the circumstances under which the matters could not be decided on the question of jurisdiction and sought for extension of time. The

Hon'ble High Court was pleased to extend the time granted earlier by two more months from the date of the order on 28-07-2016.

17. All the above writ petitions are stated to be still pending before the Hon'ble High Court, including W.P. No.11353 of 2016 requesting the Hon'ble High Court to declare which Commission has jurisdiction to adjudicate.

18. With the above background, the point for consideration at this stage is as to who has the jurisdiction over disputes arising under the Electricity Act, 2003, the scope of which travels beyond the frontiers of the State of Andhra Pradesh in respect of the subject matter or parties or territory and which is the appropriate Commission for adjudication of such disputes.

19. As already stated, Section 92 of the Andhra Pradesh Reorganisation Act, 2014 or the Twelfth Schedule do not throw any light on the manner in which the proceedings then pending before the then existing Andhra Pradesh Electricity Regulatory Commission should be dealt with.

20. Section 105 of the Andhra Pradesh Reorganisation Act, 2014, Central Act 6 of 2014 is the only provision which directly dealt with transfer of pending proceedings. "Proceeding" was defined by sub-Section (3) (a) thereof as including any suit, case or appeal and the inclusive definition does not exclude proceedings like those arising before a State Electricity Regulatory Commission from its scope. A corresponding court, tribunal, authority or officer in the State of Telangana was defined in Section 105 (3) (b) which description is answered by the Telangana State Electricity Regulatory Commission but in so far as this Commission is concerned, the Twelfth Schedule C.3 expressed itself in such a way that the existing Andhra Pradesh Electricity Regulatory Commission which continued as a joint regulatory body till the formation of this Commission and this Commission formed in the successor State as a separate State Electricity Regulatory Commission are different legal entities. Hence, proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission before the appointed day not relating exclusively to the territory, as from that day are the territories of the State of Telangana, cannot be straightaway said to be pending before the same tribunal, authority or officer before or after the appointed day as conceived by Section 105 (1) in such cases. What could have been referred to the Hon'ble High Court under Section 105 (2) is only a question whether any proceeding should

stand transferred under Section 5 (1) to the corresponding court, tribunal, authority or officer in the State of Telangana but not concerning any proceedings which did not so stand transferred as they do not relate exclusively to the territory of the State of Telangana. The power to remove difficulties under Section 108 to give effect to the provisions of the Act was not so far invoked by anybody nor exercised by the President and it is well settled that a court or tribunal or authority or officer have the jurisdiction to decide whether they have jurisdiction over a matter which is of course subject to any decision by a higher court or tribunal or authority or officer, as the case may be. As such, this Commission, in the absence of any interim or final orders or directions by the Hon'ble High Court or Hon'ble Appellate Tribunal for Electricity in the matters pending before them regarding the same question, has to take a decision on merits, more so in view of the positive directions of the Hon'ble High Court to take such a decision.

21. To come to an appropriate conclusion, the context and content of the Andhra Pradesh Reorganisation Act, 2014 have to be looked into. The short and long titles of the Act refer to reorganisation of the existing State of Andhra Pradesh signifying that the existing State is being reorganized but not abolished. The statement of objects and reasons for the bill also stated that the bill aimed at reconstituting the existing State of Andhra Pradesh into two separate States. The definition of transferred territory under Section 2 (k) defined it as territory transferred from the existing State to the State of Telangana. The territories specified in Section 3 form the new State, while Section 4 did not refer to the State of Andhra Pradesh comprising of the remaining territories of the existing State as a new State. While both the States are described as the successor States, the existing capital and High Court are continued as common. An examination of the provisions of Central Act 6 of 2014 will reveal that wherever exclusivity in respect of the new State of Telangana could be ensured straightaway that was ensured and wherever the common bond hitherto existing cannot be straightaway snapped, such things were either continued commonly or specific provisions were made to deal with matters which cannot be confined to the new State of Telangana alone. If it was so, the Twelfth Schedule and Section 105 of the Andhra Pradesh Reorganisation Act, 2014 have to be read together as a statute has to be read as a whole and not in bits and pieces to comprehend its effect. The omission of any reference to the proceedings pending before the erstwhile joint regulatory body by the time of formation of separate State Electricity Regulatory Commissions in the

Twelfth Schedule has to be understood as not excluding such proceedings from the scope of Section 105 (1). For safeguarding a harmonious, purposive and beneficial interpretation to give due respect and effect to the obvious intentions of the legislature, the present Andhra Pradesh Electricity Regulatory Commission can be considered as a continuation of the erstwhile Andhra Pradesh Electricity Regulatory Commission or the successor to it in law for the purposes of Section 105 (1) of the Andhra Pradesh Reorganisation Act, 2014.

22. In the absence of anything specific in the Andhra Pradesh Reorganisation Act, 2014 on the erstwhile State Commission which was transformed into a joint regulatory body during transition and the present separate State Electricity Regulatory Commissions for the successor States, the general principle of law under the General Clauses Act, 1897 can be usefully referred to, more particularly Sections 17 and 18 thereof. Section 17 deals with substitution of functionaries while Section 18 deals with successors. In *Shree Sidhali Steels Ltd., Vs State of U.P.* AIR (2011) SC 1175, the Hon'ble Supreme Court held that the purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretation of words and legal principles, which would otherwise have to be specified separately in many different Acts and Regulations. Hence, the Hon'ble Supreme Court laid down that whatever General Clauses Act says whether as regards meanings of the words or as regards legal principles has to be read into every statute to which it applies. It was held in *K. Gopalkrishnaiah Vs State of A.P.* AIR 1959 AP 292 that the General Clauses Act does not prescribe that there should be identity of the authorities and surely it is open to the successor authority to implement or continue the work started by another statutory body. In that view of the matter, the two State Electricity Regulatory Commissions in the successor States can be considered to be the successors in law of the joint regulatory body and can be considered to be so for the purposes of Section 105 (1) of the Andhra Pradesh Reorganisation Act, 2014.

23. *Raj Nandan Prasad Vs State of Jharkhand* 2003 (4) JCR 411 Jhr is a case where the Jharkhand State legal services authority and the Jharkhand High Court legal services committee were claimed to be independent bodies formed after reorganisation of the State and creation of Jharkhand High Court and the employee of the legal service committee of the Ranchi Bench of the Patna High Court was not considered to be an employee of the Jharkhand High Court legal

services committee. The Jharkhand High Court held that though no provision has been made under any Act, law or the Bihar Reorganisation Act, 2000, an appropriate decision has to be taken by the successor authority for retention/absorption of the employees of the legal services committee of the Ranchi Bench. Thus notwithstanding that Jharkhand High Court legal service committee was independently constituted and the State Reorganisation Act made no provision in this regard, the Hon'ble High Court in exercise of its extraordinary original jurisdiction under Article 226 of the Constitution of India issued a Writ to have smooth succession and continuity in the functioning of the institution. Such a course of action as would protect the rights and interests of all concerned would be the most appropriate and reasonable course of action in the cases before this Commission also.

24. Such a limited liberty in interpretation is permissible is evident from the dictum of the Hon'ble Supreme Court in *State of Jharkhand Vs Govind Singh* 2004 (8) Supreme 678 wherein it was pointed out that when the words of a Statute are clear, plain or unambiguous" i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, while stating that a construction requiring for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. The Hon'ble Supreme Court referred to two principles of construction, one relating to *casus omissus* and the other in regard to reading the statute as a whole. While holding that a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself, the Hon'ble Supreme Court approved such supply of *casus omissus* when otherwise inevitable to give effect to clear legislative intent. It was hence pointed out that if literal construction of a particular clause would "defeat the obvious intention of the legislature and produce a wholly unreasonable result", the Court must "do violence to the words" to achieve that obvious intention and produce a rational construction. If that were the settled legal position, construing the present Andhra Pradesh Electricity Regulatory Commission as similar or equal in status to the erstwhile Andhra Pradesh Electricity Regulatory Commission in existence in the undivided State prior to reorganisation, for the purposes of Section 105 (1) of the Andhra Pradesh Reorganization Act, 2014 will be giving faithful effect to the intention of the legislature. It may also be noted that for dividing the assets and liabilities of the joint regulatory body between the two separate

Electricity Regulatory Commissions for the two successor states, recourse was taken by the two State Governments to Section 64 of the Andhra Pradesh Reorganisation Act, 2014 which is a residuary provision giving the benefit or burden of an asset or liability of the existing State of Andhra Pradesh not dealt with in the other provisions to the State of Andhra Pradesh in the first instance. Read with Section 105, this may suggest that proceedings not exclusively relating to the territory of Telangana should remain with the State Electricity Regulatory Commission of the successor State of Andhra Pradesh. The adjudication of the proceedings before it by a State Electricity Regulatory Commission is undoubtedly identical with such adjudication by a tribunal or authority and the present Andhra Pradesh Electricity Regulatory Commission as already stated can safely be construed to be a tribunal or authority within the meaning of Section 105 (1) of the Andhra Pradesh Reorganisation Act, 2014. While proceedings exclusively relating to the territory of the State of Telangana stand transferred to the Telangana State Electricity Regulatory Commission under Section 105 (1), all the remaining proceedings shall, by necessary implication, be continued with the corresponding tribunal or authority in the residual State of Andhra Pradesh as otherwise the parties will be left with rights without remedies.

25. The perception that the coming into force of the Andhra Pradesh Reorganisation Act, 2014 resulted in bringing all proceedings which do not exclusively relate to the territories of the States of Telangana and Andhra Pradesh respectively, within the jurisdiction of the Central Electricity Regulatory Commission under Section 79 of the Electricity Act, 2003 does not appear to be in tune with either statute. The functions of the Central Commission under Section 79 of the Electricity Act, 2003 in so far as they relate to such proceedings are covered by clauses (a) to (d) and (f) of Section 79. Clause (a) of course has no relevance to the present issue as the generating companies are neither owned nor controlled by the Central Government. Even the first part of clause (b) has no application as the other generating companies not owned or controlled by the Central Government involved herein did not enter into a composite scheme for generation and sale of electricity in more than one State in any pending proceedings. They are attempted to be brought under clause (b) with reference to the words “otherwise have a composite scheme for generation and sale of electricity in more than one State”. The legal consequences of the Andhra Pradesh Reorganisation Act, 2014 are interpreted to have brought such a composite scheme into existence but it has to

be first noted that the Central Electricity Regulatory Commission did not regulate the tariff in any of the proceedings pending before the State Commissions and it is only matters connected with clauses (a) to (d) regarding regulation of such tariff for generation or transmission that bring disputes involving the generating companies or transmission licensees within the scope of clause (f) of Section 79 (1). None of the transmission licensees involved in the proceedings before the State Commissions are the licensees of Central Electricity Regulatory Commission, while Section 2 (38) read with Section 14 refers to a licence by an appropriate Commission. In the absence of either regulation or determination of tariff or grant of licence concerning any party to any proceedings before the State Commission, clauses (a) to (d) and (f) of Section 79 (1) do not appear susceptible to be invoked. The decision of the Central Electricity Regulatory Commission in Adani Power Ltd., Vs Uttar Haryana Bijli Vidyut Nigam Ltd., dated 16-10-2012 arose out of a generating company initially selling electricity to one State and later supplying power to another State. The generating company was also in the process of establishing generating stations in different States. The Central Commission observed that the stage of entering into a composite scheme of generation and sale of electricity to more than one State arises when it executes Power Purchase Agreements in more than one State or enters into any other similar arrangement which need not be necessarily at the inception stage. Thus the commercial arrangements between the generator and more than one State were a matter of volition but not the result of a legislative creation. When this composite scheme was created by a party originally or later, the Central Commission assumed jurisdiction for regulation of tariff.

26. Similarly the judgment of the Central Electricity Regulatory Commission in Udupi Power Corporation Ltd., Vs Power Company of Karnataka Ltd., and others dated 24-12-2012 interpreted the words “otherwise have a composite scheme” to mean the scheme that has emerged other than through agreements like a generating company being required under a statute to generate and supply electricity to more than one State. The Andhra Pradesh Reorganisation Act, 2014 did not require any generating company to generate and supply electricity to more than one State though it made the existing Power Purchase Agreements with respective DISCOMS continue for both on-going projects and projects under construction under the Twelfth Schedule C.2. In this case before the Central Commission also, the generating company entered into an agreement at the

inception for supply of electricity to one State only and later entered into agreements with other States on its own due to which the Central Commission assumed jurisdiction to regulate the tariff interpreting that a composite scheme has emerged.

27. The judgment of the Appellate Tribunal for Electricity in Appeal No.94 of 2012 dated 04-09-2012 in the case between BSES Rajdhani Power Ltd. Vs Delhi Electricity Regulatory Commission & Anr is about the supremacy of the specific functions of the Central Commission under Section 79 over the general functions of the State Commission under Section 86. This supremacy as seen from the judgment is only in respect of generating companies falling under clause (a) or clause (b) of sub-clause (1) of Section 79 but in the present case, the situation of a generating company selling electricity to two States had arisen out of a statute dividing one State into two States but the statute itself provided for any proceedings before any authority or tribunal not confined exclusively to the new State to be retained by the authority or tribunal in the State of Andhra Pradesh. By virtue of Section 107 of the Andhra Pradesh Reorganisation Act, 2014, the Reorganisation Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. The general law under the Electricity Act, 2003 should give way for the special law under the Andhra Pradesh Reorganisation Act, 2014, both being central legislations with the latter being the later law. If so, even assuming that the generation and/or sale of electricity to two States by a generating company due to a statutory intervention will result in such generating company “otherwise having a composite scheme” within the meaning of Section 79 (1) (b), still the mandate of Section 105 (1) should override the consequences of any such deeming effect in retaining all such proceedings with the tribunal or authority or its successor in the State of Andhra Pradesh. While it is true that there can be no estoppel against the statute, the circumstances under consideration herein are about reconciling and construing harmoniously the provisions of the general law and the special law and not otherwise.

28. While Section 105 of the Andhra Pradesh Reorganisation Act, 2014 speaks of every proceeding pending before the appointed day, the proceedings in question now continued to be pending even after the appointed day before the erstwhile Andhra Pradesh Electricity Regulatory Commission which was mandated to function as a joint regulatory body for a period not exceeding six months by the

Twelfth Schedule C.3. But for the said enabling provision, separate State Electricity Regulatory Commissions should have been formed in the successor States on and with effect from the appointed day itself and postponement of the formation of the separate State Commissions as a transitional measure for administrative convenience and continuity, need not deter from applying Section 105 (1) to all proceedings pending before the joint regulatory body before and till the formation of the separate State Electricity Regulatory Commissions. While there is no controversy about the proceedings relating exclusively to the territories of the States of Telangana and Andhra Pradesh in every aspect, it is only in respect of proceedings not exclusively relating to the territory of the State of Telangana or the State of Andhra Pradesh that any controversy arose. Even in respect of such matters, it cannot be in doubt that the Telangana State Electricity Regulatory Commission cannot have jurisdiction as its right to have the pending proceedings transferred to it is confined to proceedings relating to that State territories alone and there is no other provision in the Andhra Pradesh Reorganisation Act, 2014 or elsewhere in law under which Telangana State Electricity Regulatory Commission can assume jurisdiction over any such proceedings. Then remained either the Central Electricity Regulatory Commission or this Commission that can be competent to entertain and determine such proceedings. As already stated, the relevant tariffs in the pending proceedings are determined by the State Commission and the electricity purchase and procurement process was regulated by the State Commission under Section 86 (1) (a) and (b) and the Central Electricity Regulatory Commission was no-where in the picture in regulating or determining the tariff for generation or transmission to bring any of the proceedings within the scope of (a) to (d) of Section 79 (1) of the Electricity Act, 2003 apart from the generating companies admittedly not being owned and controlled by the Central Government and the generating companies not entering into a composite scheme for generation. By a strained reasoning, generation and sale of electricity extending to the successor States is sought to be construed as “otherwise having” a composite scheme within the scope of Section 79 (1) (b) but even then, the first part of Section 79 (1) (b) remained not satisfied as there was no regulation of the tariff of the generating companies in such cases and the power of adjudication under Section 79 (1) (f) is only in regard to the matters connected with clauses (a) to (d) which primarily concerned themselves with regulation of tariff. If so, on the plain and unambiguous language of Section 79, the Central Commission does not

appear to have jurisdiction. On such interpretation, this Commission alone can be the alternative Forum for adjudication. If the principle underlying Section 105 (1) of the Andhra Pradesh Reorganisation Act, 2014 is extended to such cases only, the parties will have a Forum for adjudication of their disputes and otherwise they will be left without a remedy having no Forum for agitating and enforcing their rights. The question of any multiplicity of proceedings before both State Commissions or a State Commission and the Central Commission will not arise due to Central Electricity Regulatory Commission or Telangana State Electricity Regulatory Commission being not enabled under law to assume such jurisdiction and though the distribution licensees or transmission licensees or the supply of power by the generator may be beyond the territorial jurisdiction of the State of Andhra Pradesh and this Commission, still the jurisdiction of this Commission remains unaffected because of the enabling provision under Section 105 (1). Even if any conflict between the Electricity Act, 2003 and Andhra Pradesh Reorganisation Act, 2014 were to be assumed as perceived by some, Andhra Pradesh Reorganisation Act, 2014 will prevail in view of Section 107 of the Andhra Pradesh Reorganisation Act, 2014, while it should be made clear that in effect and substance, there is no such conflict.

29. The approach to be adopted in such cases was explained by the Hon'ble Supreme Court in Commissioner of Commercial Tax Vs Swarn Rekha Cokes And Coals Private Ltd., 2004 SC 3380 wherein the Apex Court cautioned that we must not permit our mind to boggle by imagining that what was one State earlier has now become two and consequently what were intrastate sale transactions earlier are now interstate sale transactions. If any law in force before the appointed day must have the effect, in the absence of its modification or repeal, the benefit under that law must flow notwithstanding the fact that in reality intrastate transactions may have become interstate transactions. In that case, the effect of the bifurcation of the existing State of Bihar on the industrial policy of that State was under consideration. Considering similar provisions as in the Andhra Pradesh Reorganisation Act, 2014 relating to the operation of the existing law, the Hon'ble Supreme Court pointed out that the laws that operated, continued to operate notwithstanding the bifurcation and creation of new State until and unless altered, repealed or amended. In Iridium India Telecom Ltd., Vs Motorola Inc. AIR 2005 SC 514, the Hon'ble Supreme Court stated that that interpretation is best which makes the textual interpretation match with the contextual. We must look at the

Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. The statutes have to be construed so that every word has a place and everything is in its place. Such salutary method of construing a law should lead to upholding the jurisdiction of this Commission and not otherwise. The absence of jurisdiction of the Central Electricity Regulatory Commission during the existence of the erstwhile State Commission in the then existing State of Andhra Pradesh or during the continuance of the same as a joint regulatory body under the Twelfth Schedule to Central Act 6 of 2014 as held by it in the orders dated 04-07-2014 continues even after the constitution of two separate State Electricity Regulatory Commissions for the various reasons stated above.

30. The references by those in favour of the Central Electricity Regulatory Commission assuming jurisdiction to Sections 53 and 68 of the Andhra Pradesh Reorganisation Act, 2014 etc., as supporting their contentions clearly appear to be misconceived. Section 53 about the assets and liabilities of State undertakings or Section 68 read with the Ninth Schedule about the provisions for various companies and corporations specified in the Ninth Schedule have no direct or indirect impact on the proceedings pending before the erstwhile State Commission or the joint regulatory body, while it is true that the AP Genco, AP Transco and the four distribution licensees of Andhra Pradesh as existing by the appointed day were the subject of items 5, 6 and 30 to 33 of the Ninth Schedule of the Andhra Pradesh Reorganisation Act, 2014. The apportionment or retention of the assets, rights and liabilities and the place or area of operation of these six utilities with reference to Sections 53 and 68 or the stipulations of the Twelfth Schedule on the subject of power may have an impact on the final result of the proceedings pending before this Commission in granting appropriate reliefs or determining the respective rights and liabilities of these utilities vis-à-vis the rights of the other parties to the petitions but these provisions cannot have any impact on the jurisdiction of this Commission with reference to the other provisions and principles of law already referred to. The continuance of the existing Power Purchase Agreements with respective DISCOMS for both on-going projects and projects under construction will also similarly have an impact on the determination of the rights of the parties but not the jurisdiction of the Commission.

31. Some petitioners like KSK Mahanadi Power Limited desired to pursue their cases against the distribution licensees of the State of Andhra Pradesh before this Commission and their cases against the distribution licensees in the State of Telangana before the Telangana State Electricity Regulatory Commission claiming that the claims against the distribution licensees are separate and exclusive for each licensee and can be adjudicated independently. They claimed that mere possibility of different views being taken by the two Commissions in similar circumstances is no ground for ousting or vesting of jurisdiction. Different High Courts taking different views on identical questions was referred to and the separate and severable liability of each licensee has been requested to be permitted to be decided separately. In such cases, as the petitioner (s) in each case is the *dominus litus*, parties/persons against whom the petitioner (s) is unwilling to proceed or make a claim, cannot be thrust on him. In such cases, the petitioner (s) proceeds with his case in the manner he desires and chooses at his risk leaving open the question of maintainability of his petition in such form and sustainability of reliefs claimed against particular party(s) severally and separately to be determined by the Commission on merits in accordance with law.

32. Thus the view taken by the Central Electricity Regulatory Commission in two cases for assuming jurisdiction in the disputes raised before it which petitions are still pending, with great respect, does not appear to be in consonance with the language and effect of the Electricity Act, 2003 read with the Andhra Pradesh Reorganisation Act, 2014. Though the orders of the Central Commission have a great persuasive value, they could not be concurred with for the various reasons detailed in this order and it is either Telangana State Commission or this Commission that has to exercise jurisdiction over the proceedings pending before the joint regulatory body till it ceased to exist. As every right should have a remedy and no person entitled to enforce a right can be left in a vacuum without a Forum for enforcement, the interpretation of relevant provisions and principles has to be purposive, wholesome, harmonious and meaningful. The mere possibility of different views being taken by the competent Fora in parallel proceedings should not deter this Commission from taking an appropriate and reasonable view. Of course, in each matter a decision has to be arrived at on all the remaining questions on controversy on merits in accordance with law on the pleadings and evidence placed before the Commission in each case.

33. Apart from these 34 cases, during the course of hearing of some other cases pending before this Commission also, either the learned counsel for the licensees or the learned Standing Counsel for the utilities submitted that question of jurisdiction is involved in such cases also. It is needless to state that the conclusions arrived at herein will operate in respect of those cases also to the extent of determination of jurisdiction of this Commission.

34. Before scribing this order, I had the immense advantage and benefit of the order prepared by the Hon'ble Member Dr. P. Raghu which is a scholarly exposition of all the questions in issue making evident the study and research that have gone into it. While I agree with his conclusion that this Commission alone has jurisdiction to adjudicate the disputes pending before the joint regulatory body except those exclusively relating to the territories of the State of Telangana, in view of the extreme significance and importance, I desired to express myself in my own vocabulary and language which I attempted to my best possible ability.

35. Before summarising the effect of the above discussion, the invaluable intellectual assistance provided by the learned counsel for generating companies and the learned Standing Counsel for the licensees through their oral and written submissions has to be acknowledged and the appreciation of the Commission should be placed on record though the names of each learned counsel and their contentions are not referred to separately to avoid the order becoming unwieldy. To the best possible extent every plea and aspect placed before the Commission by them has been attempted to be referred to.

36. The conclusions herein will necessarily be subject to any order that may be passed or any direction that may be given by the Hon'ble Appellate Tribunal for Electricity or the Hon'ble High Court of Judicature at Hyderabad or the Hon'ble Supreme Court in any matters pending before them or that may be brought before them. As this Commission is differing with the Central Electricity Regulatory Commission on the question of jurisdiction and as different parties have different perceptions on grounds which may merit further examination at a higher level, the matters should be posted atleast beyond a month from today so as to enable any party desirous of approaching a superior court or tribunal against this order to have a reasonable opportunity to do so.

Sd/-

(JUSTICE G. BHAVANI PRASAD)

RESULT:

In the result,--

- (a) all proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission functioning as a joint regulatory body till the formation of State Electricity Regulatory Commissions in the successor States, in so far as they relate exclusively to the territory which as from the appointed day are the territories of the State of Telangana, stood transferred to the Telangana State Electricity Regulatory Commission;
- (b) out of the remaining proceedings pending, all those proceedings relating exclusively to the territories of the State of Andhra Pradesh shall fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;
- (c) the remaining proceedings which may not exclusively relate to the territory of the State of Andhra Pradesh and do not exclusively relate to the territory of the new State of Telangana shall also fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;
- (d) in any pending proceeding, petitioner (s) is at liberty to proceed only against such parties/persons as respondents as he may desire, leaving open the question of maintainability of his petition in such form and sustainability of reliefs claimed against the particular party (s) severally and separately to be decided by this Commission in accordance with law;
- (e) all the 34 matters covered by this common order shall stand posted to **28-10-2016 Friday at 3:00 PM** for continuation of hearing on the remaining questions in controversy between the parties for determination of the disputes on merits in accordance with law;
- (f) the conclusions of this Commission in this order on the question of jurisdiction shall be applicable to all the remaining proceedings pending before this Commission also.
- (g) This order is subject to any order that may be passed or any direction that may be given by the Hon'ble Appellate Tribunal for Electricity or the Hon'ble High Court of Judicature at Hyderabad or the Hon'ble Supreme Court in any matters pending before them or that may be brought before them.

This order is corrected and signed on this the 28th day of September, 2016.

Sd/-
Dr. P. RAGHU
Member

Sd/-
Justice G. BHAVANI PRASAD
Chairman