



## **ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

SATURDAY, THE SIXTEENTH DAY OF MARCH  
TWO THOUSAND NINETEEN

:Present:

**Justice G. Bhavani Prasad, Chairman**  
**Dr. P. Raghu, Member**

O.P.No. 10 of 2018

**Between:**

M/s. SNJ Sugars and Products Limitedd

... **Petitioner**

**A N D**

APTRANSCO & APSPDCL

... **Respondents**

This Original Petition has come up for hearing finally on 29-12-2018 in the presence of Sri M.S. Prasad, learned Senior Counsel representing Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

### **ORDER**

A petition to direct the respondents to pay Rs.62,86,451/- with interest of Rs.1,23,71,566/- totalling to Rs.1,86,58,017/- towards balance payable for the energy supplied by the petitioner during 21-01-2004 to 31-03-2004 as per APERC determined tariff in R.P.No.10 of 2003 dated 27-08-2012 and the agreed tariff under the Power Purchase Agreement dated 10-07-2002 with future interest and other appropriate orders.

2. The petitioner's case is that the petitioner originally incorporated as M/s. Sagar Sugars & Allied Products Limited, established a 4000 TCD sugar plant, 70 KLPD distillery plant and a 20 MW bagasse based cogeneration plant at Nelavoy Village, Sri Rangarajpuram Mandal, Chittoor District. The petitioner entered into a

Memorandum of Understanding with the Non-Conventional Energy Development Corporation of Andhra Pradesh Limited (NEDCAP) on 29-04-2000 for setting up of a bagasse based cogeneration plant and the erstwhile Andhra Pradesh Electricity Regulatory Commission permitted the petitioner by an order dated 25-01-2002 to supply the generated power to the 1<sup>st</sup> respondent / Transmission Corporation of Andhra Pradesh Limited, which took over the functions of the erstwhile Andhra Pradesh State Electricity Board. A Power Purchase Agreement was entered into between the petitioner and the 1<sup>st</sup> respondent on 10-07-2002, which provided that 9.99 MW of power will be supplied during season and 16.94 MW will be supplied during off-season. The 1<sup>st</sup> respondent permitted the petitioner to synchronize its plant with grid on 11-01-2003 and the petitioner was supplying electricity to the 1<sup>st</sup> respondent from 13-01-2003. The erstwhile Andhra Pradesh Electricity Regulatory Commission was approached by the petitioner to direct the 1<sup>st</sup> respondent to purchase the unutilized power of the petitioner, as the generated power remained unutilized due to the petitioner's sugar plant being not commissioned due to some difficulties. The erstwhile Andhra Pradesh Electricity Regulatory Commission directed the petitioner by an order dated 17-03-2003 to amend the Power Purchase Agreement to accommodate the surplus / additional quantity of power from the petitioner. On the same day, the Chief Engineer of the 1<sup>st</sup> respondent wrote to the Superintending Engineer directing him to stop evacuation of power from the power plant of the petitioner and cut-off supply as the petitioner's plant cannot be classified as cogeneration plant till the sugar plant of the petitioner has commissioned. In W.P.No.7395/2003 challenging the letter dated 17-03-2003, the Hon'ble High Court ordered on 02-05-2003 to purchase power from the petitioner at Rs.2.00 per unit as an interim measure. The 1<sup>st</sup> respondent filed a Review Petition before the Andhra

Pradesh Electricity Regulatory Commission for reconsideration of the directions to amend the Power Purchase Agreement and the Andhra Pradesh Electricity Regulatory Commission allowed the Review Petition on 01-10-2003. The petitioner challenged the review order dated 01-10-2003 before a Division Bench of the Hon'ble High Court in CMA No.3613/2003 and a Division Bench of the Hon'ble High Court granted an interim stay. The petitioner also filed Review Petition No.10/2003 before the Andhra Pradesh Electricity Regulatory Commission. The letter dated 17-03-2003 was quashed in W.P.No.7395/2003 on 15-12-2003 and the respondents were directed to evacuate the power as agreed under the Power Purchase Agreement and as directed in Andhra Pradesh Electricity Regulatory Commission's order dated 17-03-2003. The 1<sup>st</sup> respondent filed W.A.No.191/2004 in which a Division Bench passed an interim order on 12-02-2004 that the 1<sup>st</sup> respondent needs to make no further payment to the petitioner. After appearance of the petitioner before the Division Bench, the orders were modified on 22-04-2004 directing the 1<sup>st</sup> respondent to pay the petitioner at Rs.2.69 per unit until further orders in the Writ Appeal. In W.A.No.191/2004 and CMA No.3613/2003, a Division Bench set aside the order of the Single Judge dated 15-12-2003 on 30-07-2004 and directed the parties to approach the appropriate Forum chosen by the parties under the Power Purchase Agreement for resolving the disputes. It was also held that the petitioner is entitled to tariff as fixed by the Division Bench in W.A.No.371/2004. The 1<sup>st</sup> respondent then filed Civil Appeal No.5159/2005 before the Hon'ble Supreme Court, which by an interim order dated 08-02-2006 directed the respondents to pay Rs.3.11 per unit for the periods from 13-01-2003 to 20-01-2004 and 21-01-2004 till the date of the interim order excluding the money already paid. The Appeal itself was disposed of by an order dated 13-10-2011 directing the Andhra Pradesh Electricity

Regulatory Commission to consider all the relevant materials and finally determine the price of the power supplied during 13-01-2003 to 21-01-2004 and thereafter and the balance payment will be made by the 1<sup>st</sup> respondent to the petitioner in accordance with determination made by the Andhra Pradesh Electricity Regulatory Commission. R.P.No.10/2003 was not disposed of by the Andhra Pradesh Electricity Regulatory Commission earlier and in terms of the directions of the Hon'ble Supreme Court dated 13-10-2011, Andhra Pradesh Electricity Regulatory Commission passed an order in R.P.No.10/2003 on 27-08-2012 determining the tariff as under:

<b>Period (FY)</b>	<b>Tariff applicable</b>
13-01-2003 to 31-03-2003 (FY 2002-03)	Variable Cost of Rs.0.92 per unit
01-04-2003 to 20-01-2004 (FY 2003-04)	Variable Cost of Rs.0.97 per unit
21-01-2004 to 31-03-2004	As per MNES Guidelines paid to similarly placed generators.
01-04-2004 onwards	As per the order dated 20-03-2004 and such other subsequent applicable orders issued from time to time.

As against the claim of the petitioner for Rs.3.32 per unit from 13-01-2003 to 31-03-2003 and Rs.3.48 per unit from 01-04-2003 to 20-01-2004, the Andhra Pradesh Electricity Regulatory Commission determined only Rs.0.97 ps variable cost without any fixed cost. But, from 21-01-2004 to 31-03-2004, the Andhra Pradesh Electricity Regulatory Commission determined the tariff as Rs.3.48 ps., as paid to the other cogeneration plants. The petitioner filed Appeal No.228/2012 before the Hon'ble Appellate Tribunal for Electricity against the tariff from 13-01-2003 to 31-03-2003 and 01-04-2003 to 20-01-2004. The Hon'ble Appellate Tribunal for Electricity by an order dated 04-02-2013 determined the tariff at Rs.3.32

per unit and at Rs.3.48 per unit for the two periods respectively and Civil Appeal No.6754/2013 filed by the respondents against that order was dismissed by the Hon'ble Supreme Court on 12-07-2016 and a Review Petition was also dismissed on 04-10-2016. Then the petitioner addressed letters dated 25-07-2016 and 08-10-2016 to the respondents duly enclosing statement of balance payment to be made from 13-01-2003 to 20-01-2004 and 21-01-2004 to 31-03-2004. The request was to make payment with interest. The petitioner requested to make payment from 21-01-2004 to 31-03-2004 amounting to Rs.1,86,58,017/- by a letter dated 29-06-2017 for 1,69,86,710 units supplied at a tariff of Rs.3.48 per unit. That was the balance due with interest after giving credit to the payments made. The respondents neither replied to the petitioner's letters nor responded to the approaches by the officers of the petitioner nor paid the amounts. The total electricity supplied from 21-01-2004 to 31-03-2004 was evidenced by the respective monthly bills and joint meter readings. The petitioner is liable for further interest from 30-06-2017 till the payment as stated in the notice and this claim for this period is independent of the subject matter of E.P.No.1/2017 pending before the Hon'ble Appellate Tribunal for Electricity. The energy admittedly was received by the respondents. The order of the Andhra Pradesh Electricity Regulatory Commission dated 27-08-2012 fixing the tariff attained finality and the petitioner is entitled to interest in terms of clause 2 of article 5 of the Power Purchase Agreement on delayed payments. Hence, the petition.

**3.** The respondents 1 and 2 in their counter stated that the NEDCAP sanctioned 20 MW bagasse based cogeneration plant to the petitioner, who entered into a Power Purchase Agreement with the 1<sup>st</sup> respondent on 10-07-2002 at a tariff of Rs.2.25 per unit with escalation of 5% per annum with 1994 as the base year. The Andhra Pradesh Electricity Regulatory Commission consented to the Power

Purchase Agreement on 04-01-2003 concealing the fact that the sugar plant was not commissioned. The petitioner synchronized the project with the grid on 13-01-2003, which was permitted by the respondents. It was only by a letter dated 24-02-2003 that the petitioner informed the respondents that the erection of the sugar plant was delayed and the entire energy be exported to the grid and purchased. The respondents then decided to stop the power evacuation from the petitioner from 17-03-2003 and on 17-03-2003 the Andhra Pradesh Electricity Regulatory Commission directed the respondents to purchase the entire power from the project against which the respondents filed a Review Petition in R.P.No.10/2003. The petitioner filed W.P.No.7395/2003 against the letter of the respondents dated 17-03-2003 and the Hon'ble High Court by interim orders dated 02-05-2003 directed the respondents to purchase the entire energy supplied by the generators at the adhoc tariff of Rs.2.00 per unit. The respondents filed W.A.No.745/2003 against the interim orders of the Hon'ble High Court dated 02-05-2003, but still permitted synchronization of the power plant on 16-05-2003 and purchase of the entire energy generated at Rs.2.00 per unit. A Division Bench of the Hon'ble High Court ordered on 10-07-2003 that the respondents are bound to purchase only that power under the Power Purchase Agreement entered between the parties, but not the entire power. In compliance with the directions of the Division Bench, while the respondents purchased the energy from the petitioner at Rs.2.00 per unit to the extent of the exportable capacity as per the Power Purchase Agreement, the Andhra Pradesh Electricity Regulatory Commission passed orders in R.P.No.10/2003 on 01-10-2003 cancelling the earlier directions dated 17-03-2003 to purchase the entire power. In CMA No.3613/2003 preferred by the petitioner before the Hon'ble High Court, an interim suspension of the Andhra Pradesh Electricity Regulatory

Commission' order was granted and on 15-12-2003, the A.P. High Court directed in W.P.No.7395/2003 to evacuate power as agreed under the Power Purchase Agreement. The respondents filed W.A.No.191/2004 in which the interim directions were given on 12-02-2004 that no further payments be made pending appeal. After the petitioner commissioned the sugar plant on 20-01-2004 and a Division Bench of the Hon'ble High Court modified the interim order directing the respondents to pay Rs.2.69 per unit. Finally, W.A.No.191/2004 and CMA No.3613/2003 were ordered on 30-07-2004 upholding the directions of the Andhra Pradesh Electricity Regulatory Commission dated 01-10-2003 and to approach the appropriate Forum for the period from January, 2003 to January, 2004 and the concerned authorities to evacuate the generated power as agreed under the Power Purchase Agreement from the date of commissioning of the sugar plant. The respondents purchased the eligible quantities of power from the petitioner from 21-01-2004, the date of commissioning of the plant. Only the power supplied from 13-03-2003 to 20-01-2004 from synchronization of the bagasse plant till the commissioning of the sugar plant during the period is in dispute and prior to the commissioning of the sugar plant, the respondents paid Rs.20.09 crores to the petitioner for the energy delivered at an adhoc tariff of Rs.2.00 per unit fixed by the Hon'ble High Court. The petitioner filed SLPs / Civil Appeals 5157 to 5159/2005 before the Hon'ble Supreme Court against the Division Bench orders dated 30-07-2004. The Hon'ble Supreme Court in its interim orders directed the payment of Rs.3.11 per unit prior to 21-01-2004 when the sugar mill was not commissioned and the differential amounts were released for a total sum of Rs.30.96 crores for the energy delivered during the disputed period. The Hon'ble Supreme Court finally ordered on 13-11-2005 that the Andhra Pradesh Electricity Regulatory Commission shall determine the price of

power supplied from 13-01-2003 to 21-01-2004 considering all the relevant materials and facts. The Andhra Pradesh Electricity Regulatory Commission passed orders on 27-08-2012 fixing the tariff at Rs.0.92 ps per unit from 13-01-2003 to 31-03-2003 and at Rs.0.97 ps per unit from 01-04-2003 to 20-01-2004. The petitioner approached the Hon'ble Appellate Tribunal for Electricity in Appeal No.228/2012, which passed final orders on 02-02-2013 granting Rs.3.32 and Rs.3.48 respectively for the relevant periods. The respondents filed Civil Appeal No.6754/2013 against that order, which was dismissed on 12-07-2016 with the review being dismissed on 04-10-2016. A Curative Petition filed by the respondents in No.231/2017 in R.P.No.3235/2016 is still pending. The petitioner filed E.P.No.1/2017 before the Hon'ble Appellate Tribunal for Electricity for payment of the differential amount for the period from 13-01-2003 to 20-01-2004. As the Hon'ble Appellate Tribunal for Electricity remanded the matter on 31-05-2017 for calculation, the Andhra Pradesh Electricity Regulatory Commission issued an order dated 03-11-2017 directing the respondents to pay Rs.13,84,19,133/- to the petitioner. The appeal against the order by the parties is pending before the Hon'ble Appellate Tribunal for Electricity. The present claim is for the period from 21-01-2004 to 31-03-2004. The petitioner already received Rs.3.11 per unit for the period from 21-01-2004 to 31-03-2004 without any demur and waived the balance claimed. The petitioner should have filed this petition within three years from 13-10-2004 when the Hon'ble Supreme Court passed the final orders and hence the petition is barred by limitation. The petitioner is claiming interest from the due date of raising the invoice in spite of its letters on 25-07-2016, 08-10-2016 and 29-06-2017 being only for the differential amounts. The respondent is not liable to pay interest or principal and the petition is not maintainable in law or on facts. Any claim for money should be within three years



from the date of cause of action under the Limitation Act and all the claims being beyond three years to the petition, they are barred by limitation. Hence, the respondents desired the petition be dismissed with costs.

4. The petitioner in its rejoinder dated 28-11-2018 and 03-12-2018 stated that the law of limitation has no application to the proceedings before the Commission as held by the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court. The petitioner admitted the chronology of events and the claims are in time and there are no latches or delays in filing this application. The petitioner was raising the invoices and bills regularly as per the provisions of the Power Purchase Agreement and the respondents never disputed the quantum of power supplied or the amounts claimed in the invoices. The payments made were only by way of an interim arrangement because of the litigation since inception. The directions of the Commission for payment of Rs.3.48 per unit from 21-01-2004 to 31-03-2004 have become final and in E.P.No.1/2017 the respondents admitted in their objection petition that there was no dispute about the quantity of the energy supplied and the rate per unit. The admitted facts clearly show that the claims of the respondents are unsustainable and unjust and when the respondents admittedly paid Rs.3.11 per unit as per the orders of the Hon'ble Supreme Court for the period from 21-01-2004 to 31-03-2004 they are not justified in pleading any bar of limitation.

5. The petitioner and the respondents also filed written submissions reiterating their contentions and referring to various binding precedents on various aspects.

6. It is seen from the petition, counter, rejoinders and the written submissions that the questions in controversy between the parties are only regarding the claim being barred by law of limitation and the entitlement or disentitlement of the petitioner to interest. The chronology of events, the various proceedings before the

State Electricity Regulatory Commission, Hon'ble Appellate Tribunal for Electricity, Hon'ble High Court and the Hon'ble Supreme Court between the parties arising out of the Power Purchase Agreement dated 10-07-2002 in respect of a 20 MW bagasse based cogeneration plant of the petitioner regarding the period and quantum of energy supplied and the price payable for it and the various orders passed thereon etc., are not in dispute, the facts and circumstances being more or less admitted.

7. The points that arise for consideration and decision herein are:

- (i) Whether the claims of the petitioner are barred by limitation ?
- (ii) Whether the petitioner is entitled to any interest, if so, for what period and at what rate ?
- (iii) To what relief ?

8. **Point No.(i):** In Tamil Nadu Generation and Distribution Corporation Limited Vs PPN Power Generating Company Private Limited **(2014) 11 Supreme Court Cases 53**, the Hon'ble Supreme Court was dealing with a challenge to the decision of the Hon'ble Appellate Tribunal for Electricity against an order of State Electricity Regulatory Commission in which the Hon'ble Appellate Tribunal for Electricity held that the Limitation Act would not apply to the proceedings under the Electricity Act. The learned Senior Counsel for the appellant submitted to the Hon'ble Supreme Court that the claim was barred and reference to arbitration and even if Limitation Act was not applicable, the maximum period of time for filing a suit, in a civil court ought to be taken as a reasonable standard by which the issues with reference to such delay and latches can be measured. The learned Senior Counsel for the respondent claimed to the contrary that the provisions of Limitation Act, 1963 would not be applicable to the proceedings before the State Commission and the Electricity Act, 2003 being a complete code, which is self-contained and comprehensive, the

provisions of the Limitation Act, 1963 would not apply. The learned Senior Counsel relied on Consolidated Engineering Enterprises Vs Irrigation Department **(2008) 7 Supreme Court Cases 169** for the submission that the Limitation Act would be inapplicable to the tribunals and quasi-judicial authorities. The Hon'ble Supreme Court concluded that in any event, the Limitation Act is inapplicable to the proceedings before the State Commission.

9. M.P. Steel Corporation Vs Commissioner of Central Excise **(2015) 7 Supreme Court Cases 58** was exhaustively considering the question whether the Limitation Act applies only to courts and not to tribunals and extensively quoting from Consolidated Engineering Enterprises Vs Irrigation Department **(2008) 7 Supreme Court Cases 169** and various other decisions of the Hon'ble Supreme Court, the Hon'ble Supreme Court concluded that the Limitation Act will not apply to quasi-judicial bodies or tribunals.

10. In addition, the learned Senior Counsel for the petitioner also relied on Nalgonda Co-operative Marketing Society Ltd., Vs. Labour Court, Hyderabad and others **(1993) 2 CLR 928**, wherein a Full Bench of the Hon'ble High Court of Andhra Pradesh considered with reference to various precedents, the applicability of the Limitation Act and found that the Limitation Act is applicable only to applications made to a court either under Code of Civil Procedure or any Act. After an exhaustive survey of the various precedents from the Hon'ble Supreme Court and the Hon'ble High Court, it is found that the preponderance of judicial opinion based on well established principles of law is to the effect that they are applicable to the proceedings before a court and not applicable to the proceedings in a tribunal.

11. The respondents attempted to rely on A.P. Power Coordination Committee and others Vs M/s. Lanco Kondapalli Power Limited and others in Civil Appeal

No.6036 of 2012 & batch, decided on 16-10-2015 as laying down the applicable principles of law. The Hon'ble Supreme Court noted that two important points were thrown firstly whether the Limitation Act is applicable to a claim before the Commission and if the answer is in positive then secondly whether applying Section 14 of the Limitation Act in that case was in accordance with law or not ? The Hon'ble Supreme Court specifically considered the decisions reported in Tamil Nadu Generation and Distribution Corporation Limited Vs PPN Power Generating Company Private Limited **(2014) 11 Supreme Court Cases 53** and M.P. Steel Corporation Vs Commissioner of Central Excise **(2015) 7 Supreme Court Cases 58** relied on by the petitioner in this case. The Hon'ble Supreme Court clearly observed that in view of law notified by them and for the reasons noted in M.P. Steel Corporation (supra) they respectfully concur and hold that by itself Limitation Act will not be applicable to the Commission under the Electricity Act, 2003, as the Commission is not a court *stricto sensu*. They also observed that the further stand of the respondents therein that the Commission being the statutory tribunal, cannot act beyond the four walls of the Electricity Act, also does not brook any exception. However, the Hon'ble Supreme Court made a further scrutiny as to whether the provisions of the Limitation Act will govern or curtail the powers of the Commission in entertaining a claim under Section 86 (1) (f) of the Electricity Act, 2003. After an exhaustive discussion, the Hon'ble Supreme Court concluded that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for ordinary suit before a civil court. But in an appropriate case, a specified period may be excluded on account of principle underlying salutary provisions like Section 5 or 14 of the Limitation Act. Such limitation upon the Commission would be only in respect of its judicial power under clause (f) of sub-

section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory. The Hon'ble Supreme Court laid down that in the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation or taking away a right of the other side to take a lawful defence of limitation, in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation.

**12.** The respondents also relied on the common order of this Commission in O.P.No.55/2014 & batch dated 24-09-2016 wherein the question of limitation governing recovery of any reactive power surcharge was under consideration. With reference to the relevant statutory provisions and precedent, it was concluded that the right of the respondents to recover the reactive power surcharge should be upheld upto a period of three years prior to the date of demand but not beyond three years from the date of demand. The amounts in question therein were found to be due each month as per the respective agreements and with reference to the specific provisions of the Limitation Act, Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and Rules 1985, Andhra Pradesh Electricity Reform Act, 1998 and the Electricity Act, 2003 and with further reference to Section 56 (1) of the Electricity Act, 2003 in particular, apart from the precedents cited. The Commission concluded that with reference to the absence of any special procedure or special periods of limitation, general law of limitation will apply for the liability for payment of reactive power surcharge in question therein. However, in the present case, the issue was

not mere question of demand and payment and the computation of the period of limitation in straight calculation of the periods of time with reference to such dates.

**13.** Under the Power Purchase Agreement dated 10-07-2002, the Due Date of Payment means the date on which the amount payable by the APTRANSCO to the petitioner for Delivered Energy supplied during the Billing Month becomes due for payment, which date shall be thirty (30) days from the Metering Date. The tariff for the purchase of delivered energy was specified in the Agreement. In Civil Appeal No.5159/2005, the Hon'ble Supreme Court by the Judgment dated 13-10-2011 directed the Andhra Pradesh Electricity Regulatory Commission to consider all relevant materials and factors and finally determine the price of the power supplied during 13-01-2003 to 21-01-2004 and thereafter and in accordance with determination made by the Andhra Pradesh Electricity Regulatory Commission, balance payments, if any, will be made by the AP Transco to the petitioner's predecessor viz., M/s. Sagar Sugar & Allied Products Limited. The Judgment shows that litigation between the parties was before the Hon'ble High Court since W.P.No.7395/2003 followed by W.A.No.371/2004, WA No.191/2004, CMA No.3613/2003 etc., concerning evacuation of power and payment of price for the power so evacuated. The Hon'ble Supreme Court found that it will be more appropriate for the Regulatory Commission with expertise in determination of price and tariff of power to decide what would be the price for supply of power during the disputed period and thereafter. Therefore, it is clear that the petitioner was before the courts throughout within the period of limitation either for the period from 13-01-2003 to 21-01-2004 or the period thereafter concerning evacuation of power and its price and its tariff against the processor-in-interest of the present respondents. In R.P.No.10/2003, the erstwhile Andhra Pradesh Electricity

Regulatory Commission was accordingly deciding the tariff in between 13-01-2003 to 20-01-2004 and thereafter and decided the tariff for the period relevant to this petition from 21-01-2004 to 31-03-2004 as that as per MNES guidelines paid to similarly placed generators. Till the orders in R.P.No.10/2003 on 27-08-2012, the tariff applicable for the energy supplied during this period remained fluid and disputed. Again, this order dated 27-08-2012 in R.P.No.10/2003 was the subject of Appeal No.228/2012 before the Hon'ble Appellate Tribunal for Electricity, which was decided only on 04-12-2013. The Hon'ble Appellate Tribunal for Electricity found that in view of the order of the State Commission dated 20-06-2001 prohibiting third party sale, there was no other option for the petitioner herein except to supply power to AP Transco and the petitioner herein used only bagasse as fuel which should be considered as Non-Conventional source of energy. Accordingly, the petitioner herein was found entitled to a tariff of Rs.3.32 per unit from 13-01-2003 to 31-03-2003 and at Rs.3.48 per unit for the period from 01-04-2003 to 21-01-2004. A Civil Appeal against the said order and the Review Petition against the order stood dismissed by the Hon'ble Supreme Court and therefore, till the disposal of the Review Petition by the Hon'ble Supreme Court dated 04-10-2016, there was no finality to the litigation between the parties on the tariff payable for the energy supplied during the period from 21-01-2004 to 31-03-2004. The petitioner made a demand for payment for the period from 13-01-2003 to 31-03-2004 as per the orders of the Commission, Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court on the question of the tariff payable for the period in question herein. The respondents were reminded on 08-10-2016 and 29-06-2017 but in vain. Copies of the letters enclosing the invoices for January to March, 2004 were also filed. Thus, in short, the right of the petitioner to evacuate power to the respondents and

its tariff under the Power Purchase Agreement dated 10-07-2002 was the subject of various proceedings before the Hon'ble High Court, this Commission, Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court right from W.P.No.7395/2003 to Review Petition in C.A.No.6754 of 2013 dismissed on 04-10-2016. In fact AP Transco and others filed a further Curative Petition before the Hon'ble Supreme Court in C.A.No.6754/2013, which was straightaway dismissed by the Hon'ble Supreme Court on 07-08-2018 much later to the filing of the present petition showing that the respondents did not allow the fixation of tariff to become final till even after this petition, excluding any scope for running of time against the claims. Even thereafter, in spite of demands to pay Rs.3.48 per unit for the power supplied during 21-01-2004 to 31-03-2004 with interest thereon, the respondents did not respond, leading to this petition. Section 12 of the Limitation Act, 1963 excludes time taken in legal proceedings in computing the period of limitation for any suit, appeal or application. Similarly, even if the proceedings were before a court without jurisdiction, exclusion of such time taken for the proceedings *bona fide* is mandated to be excluded by Section 14 of the Limitation Act, 1963. Only when the tariff fixed for supply of power during the relevant period had become final, the time again begins to run after the time expired between the date of accrual of the cause of action, the date of demand and the date of commencement of the litigation by way of Writ Petition before the Hon'ble High Court. Another factor to be taken into account must be the payments made towards such energy supplied as per the various interim or final orders in between and the quantum of energy supplied was never in dispute. The payments so made or the correspondence so exchanged in between may also have the effect of an acknowledgment in writing under Section 18 of the Limitation Act, 1963 and the effect of payment of debt under Section 19 of the



Limitation Act, 1963. The chronology of events or the contents of the documents or the orders passed in various proceedings are not in dispute. The claim in the counter of the respondents is that the petition ought to have been filed within three years from 13-10-2011 when the Hon'ble Supreme Court disposed of C.A.No.5159/2005 but as narrated above, when the Andhra Pradesh Electricity Regulatory Commission was directed to determine the tariff by the said orders of the Hon'ble Supreme Court, limitation cannot run until the compliance with the orders of the Hon'ble Supreme Court had become final.

**14.** The written submissions on behalf of the petitioner also attempted to show the present petition as being in the nature of an Execution Petition and not a Claim Petition in view of the admission of the respondents in the objections in E.P.No.1/2017 on the file of the Hon'ble Appellate Tribunal for Electricity that there was no dispute with regard to the payment of energy supplied after 20-01-2004 as the sugar plant was commissioned on 20-01-2004 as a Captive Power Plant for which it was sanctioned and the dispute is confined to the period prior to 20-01-2004. While the said plea has considerable force, there was no need for the Commission to make any further probe into any such ground in view of the conclusion of the Commission about absence of any bar of limitation for reasons detailed above. Similar is the contention of the petitioner in the written submissions about the present petition being one covered by article 136 of the Limitation Act with a period of limitation of twelve years as an execution petition. The petitioner relied on the observations of the Hon'ble Supreme Court in *Urban Improvement Trust, Bikaner Vs Mohan Lal* **(2010) 1 Supreme Court Cases 512** wherein the Hon'ble Supreme Court expressed its concern that frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities

exist to discharge statutory functions in public interest and should be responsible litigants. Without adding anything further, it should be concluded on this point that the present petition is not barred by time.

**15. Point No.(ii):** In the written submissions of the respondents, the clause in the Power Purchase Agreement about the liability to pay interest if the amount due is not paid within the stipulated period is not disputed but the alleged payment of tariff, as decided by the Hon'ble High Court and the Hon'ble Supreme Court from time to time was pleaded as making the clause inapplicable. The respondents relied on the order of the erstwhile Andhra Pradesh Electricity Regulatory Commission dated 27-08-2012 not mentioning about the liability for interest for past or future and also Section 34 of the Code of Civil Procedure but the respondents did not comply with the order of the Commission dated 27-08-2012 so far. The decision of the Hon'ble Supreme Court in NTPC Vs M.P. State Electricity Board referred to in the written submissions of the respondents was a case where NTPC has adjusted the excess amount received once the tariff was fixed subsequently when the proceedings were pending for the tariff fixation. In the present case, though the tariff was fixed by the order dated 27-08-2012, the respondents have not chosen to make good the deficit price in spite of repeated demands in writing. The industry practice referred to by the Hon'ble Supreme Court in such cases also does not apply to the present situation. Under such circumstances where the price fixation had taken place long back and the price fixed was not paid, in fact that was the case where the Hon'ble Supreme Court found that the terms of the supply agreement, governing regulation and notifications or industry practice did not contain any provision for interest. In the present case, existence of a specific condition for payment of interest in the Power Purchase Agreement itself is admitted. The financial conditions of the respondents

which were precarious and the necessity to join all four distribution companies of the erstwhile State of Andhra Pradesh were also referred in the submissions of the respondents. These financial conditions of the respondents cannot negative or nullify the legal rights of the petitioner to recover any amount, if the petitioner is proved to have such a right and the plea that the petition is bad for nonjoinder of the four distribution companies of the erstwhile Andhra Pradesh State was not taken in any of the pleadings in this petition. Even otherwise, such a plea was negated by the Hon'ble Appellate Tribunal for Electricity in E.P.No.1/2017 in the orders dated 31-05-2017 in E.P.No.1/2017 and the said conclusion of the Hon'ble Appellate Tribunal for Electricity in Appeal No.228/2012 (Para 11 of the order) continues to be in force between the parties and this Commission is bound by the same.

**16.** The Power Purchase Agreement dated 10-07-2002 as amended from time to time admittedly governs the rights of the parties and clause 5.2 of the said Power Purchase Agreement makes the AP Transco liable to pay interest at the rate of 10% per annum as per the existing nationalized bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction. It is true that the tariff fixation took quite some time and the finality of such tariff fixation also took quite some time but when the tariff was found to be payable at a rate decided, that will be deemed to be payable right from the due date and nonpayment thereof within the due date will automatically invite the application of clause 5.2 of the Power Purchase Agreement. The respondents did not claim the calculation of the total amount due claimed towards interest to be not correct and the petitioner calculated such interest only upto 30-06-2017, the date of the notice. In fact, interest was so claimed by notice in writing apart from the contractual liability to pay such interest and hence, the amount claimed in the petition towards the principal value of the

energy supplied at Rs.3.48 per unit and interest as per the contractual rate granted to the petitioner. The respondents did not show that the rate of interest of the nationalized banks was reduced at any time during such period to claim any reduction in the interest claimed.

**17.** The petitioner has also claimed further eligibility for interest from 30-06-2017, the day next after the notice till the date of total payment in para 11 of the petition, but in the prayer the rate of future interest which the petitioner is claiming is not stated. Section 34 of the Code of Civil Procedure, 1908 makes future interest subject to the judicial discretion of the court. The interest from the date of suit till the date of decree and from the date of decree to the date of payment has thus been made awardable at the judicial discretion of the court, as the court deems reasonable or as it thinks fit. Even the given precarious financial conditions of the respondents is a matter in public domain of which this Commission can take judicial notice of and grant of any future interest from 30-06-2017 will impose an onerous burden on the respondents which are public utilities. Section 34 of the Code of Civil Procedure, 1908 is applicable as a principle of justice, equity and good conscience even before this Commission and hence in exercise of the judicial discretion of this Commission, the grant of any future interest to the petitioner from the date of the notice is not considered, more so, in view of the fact that the interest already claimed is more than double the principal amount due. For the same reasons, the costs of the petition, which are also awardable in exercise of the judicial discretion of the Commission on principle analogous to Section 35 of the Code of Civil Procedure, 1908 are to be directed to be borne by the parties themselves respectively. Hence, this point is concluded holding that the petitioner is entitled to interest claimed in the petition but not to any future interest from the date of notice

i.e., 30-06-2017 up-to-date or till payment and that the parties shall bear their own costs.

**18. Point No.(iii):** In view of the conclusions at point Nos.(i) & (ii), the petition should be ordered on those lines.

Accordingly, this Original Petition is allowed as prayed for, but without any future interest from 30-06-2017 and without costs.

This order is corrected and signed on this the **16<sup>th</sup> day of March, 2019.**

**Sd/-**  
**Dr. P. Raghu**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman