

MEMORANDUM OF WRIT PETITION  
(SPECIAL ORIGINAL JURISDICTION)  
(UNDER ART. 226 OF THE CONSTITUTION OF INDIA)

IN THE HIGH COURT OF ANDHRA PRADESH

W.P. NO. 5706 OF 2019

Between:

Orange Uravakonda Wind Power Private Limited.  
Having its Registered Office at  
D-21, Corporate Park, 3rd Floor,  
Sector - 21, Dwaraka,  
New Delhi South - 110 077.  
Represented by its Authorized Signatory  
Mr.J.Ashvin Kumar

..Petitioner/s

AND

1. State of Andhra Pradesh.  
Represented by its Principal Secretary,  
Electricity Department,  
Andhra Pradesh Secretariat,  
Velagapudi, Amaravathi.  
Guntur District - 522 503
2. Andhra Pradesh Electricity Regulatory Commission,  
Represented by its Secretary,  
4th Floor, Singareni Bhavan,  
Red Hills, Hyderabad - 500 004.
3. State Load Dispatch Centre,  
Transmission Corporation of Andhra Pradesh Limited  
Vidyut Soudha, Gunadala,  
Eluru Road, Vijayawada,  
Andhra Pradesh Krishna District - 520 004

..Respondent/s

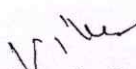
The address for service on the above named Petitioners is that of their counsel  
P. Vikram, N. Jeevan Kumar, Yathindra Dev. D, Advocates, Flat No. B3, Rehmat  
Manzil, Red Hills, Hyderabad - 500 004

In consideration of the facts, circumstances and reasons stated above, it is humbly  
prayed that, this Hon'ble Court may be pleased to pass an order or orders,  
direction or writ more particularly one in the nature of Writ of Mandamus: -

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- (a) Declaring the impugned regulations dated 21.08.2017 issued by APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017 framed by the Respondent No. 2 as arbitrary, illegal, unconstitutional and also violative of principles of natural justice;
- (b) Direct the Respondent No.3 not to levy any penalty towards Deviation Settlement;
- (c) Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case against the Respondents and in favour of the Petitioners be granted.

Amaravathi  
DATE: 24-04-2019

  
Counsel for the Petitioner

Anantapur District

IN THE HIGH COURT OF ANDHRA  
PRADESH

W.P. NO. 5706 OF 2019

Orange Uravakonda Wind Power Private  
Limited \*

..Petitioner

AND

State of Andhra Pradesh and others

...Respondent

WRIT PETITION

Filed By:

M/s P. Vikram(8227)

N. Jeevan Kumar

Yathindradev Dev. D

Advocate

Counsel for Petitioner



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## IN THE HIGH COURT OF ANDHRA PRADESH

W.P.NO. 5706 of 2019

Between:

Orange Uravakonda Wind Power Private Limited

..Petitioner/s

AND

State of Andhra Pradesh and others

.Respondent/s,

LIST OF EVENTSAnnexure – I

S.No	Date	Description of the Events	Page Nos in Affidavit	Para No. in Affidavit
1	28.07.2016	The Petitioner Achieved it's commissioning of wind power project and was able to sign a Power Purchase Agreement with APSDCL on 31-05-2016 for supply of 100.84 MW of Power.	08	04
2	11.04.2008 & 09.09.2008	The State of Andhra Pradesh notified the Wind Power Policy vide G.O.Ms. No. 48 and G.O.Ms. No. 99.	09	05
3	27.07.2015	It is worthwhile to note that the date of incorporation of the Petitioner Company 27.07.2015 and the date of notification of the Power Project Policy, 2015 is 13.2.2015. Therefore, it is within the reasonable determination that the instant SPV was incorporated to implement the wind power project in furtherance to the Power Project Policy, 2015.	09	05
4	21.08.2017	Respondent No. 2 / APERC, after framing the draft regulations invited written comments, suggestion and/or objections from concerned stakeholders and thereafter on 21.08.2017 without considering the written comments, suggestion and/or	10	08

		objections of the Petitioner-Company, the Respondent No. 1 published the Impugned Regulations in the Official Gazette		
5	22.12.2017	The petitioner-company vide its letter dated 22.12.2017 was compelled to inform the Respondent No. 3 regarding appointment of M/s Statkraft Markets Pvt. Ltd as the QCA, which is duly registered with the SLDC.	14	18

## ANNEXURE-II

Under Article 226 of Constitution of India.

Amaravath  
DATE: 24-04-2019

*V. B.*  
Counsel for Petitioner/s

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IN THE HIGH COURT FOR THE STATE OF ANDHRA PRADESH  
AT AMARAVATHI

W.P.NO.5706 OF 2019

Between:

Orange Uravakonda Wind Power Private Limited  
Having its Registered Office at,  
D-21, Corporate Park, 3<sup>rd</sup> Floor,  
Sector – 21, Dwaraka,  
New Delhi South – 110 077.  
Represented by its AGM-Legal  
Mr.J.Ashvin Kumar

.....Petitioner

And

1. State of Andhra Pradesh.  
Represented by its Principal Secretary,  
Electricity Department,  
Andhra Pradesh Secretariat,  
Velagapudi, Amaravathi.  
Guntur District – 522 503.
2. Andhra Pradesh Electricity Regulatory Commission,  
Represented by its Secretary,  
4<sup>th</sup> Floor, Singareni Bhavan,  
Red Hills, Hyderabad – 500 004.
3. State Load Dispatch Centre,  
Transmission Corporation of Andhra Pradesh Limited  
Vidyut Soudha, Gunadala,  
Eluru Road, Vijayawada,  
Andhra Pradesh,  
Krishna District – 520 004

....Respondents

**AFFIDAVIT FILED BY THE PETITIONER**

I, J.Ashwin Kumar, S/o. Late Sri J. Gunde Rao, Aged about 57 Years,  
Occupation: Private Service, R/o. Flat No 303, Sri Lakshmi Nilayam, Sri Krishna  
Nagar, Dilsukhnagar, Hyderabad – 500060, do hereby solemnly affirm and state  
as follows:

1. I am duly authorized by the Petitioner Company to swear to this affidavit  
as such I am well conversant with the facts of the case.



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2. By the present writ petition filed under Article 226 of the Constitution of India, the Petitioner, inter alia, challenges the vires of Regulation 4 of 2017 of the APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017. The copy of the Regulation 4 of 2017 is annexed herewith and marked as **Annexure P-1**.
3. That, the petitioner is a Private Limited Company duly incorporated and registered under the provisions of Companies Act, 2013 and is engaged in the business of development and management of the Wind Power Project. That vide resolution dated 20.04.2019 Mr. J.Ashwin Kumar has been authorized to file the present petition. The Copies of Resolution dated 09.04.2019 and Certificate of Incorporation are annexed herewith and marked as **Annexure P-2 & P-3**.
4. That, the Petitioner-Company is a 'Generating Company' within the provision of Section 2(28) of the Electricity Act, 2003, for the purposes of setting up a 100.84 MW wind power plant at Belugappa under the Wind Power Policy, 2012 of the State of Andhra Pradesh. For the purposes of commissioning, Petitioner acquired various equipment including wind turbines generators etc. and brought them to the location of the project and undertook civil construction, erection and installation works for the construction of control room and inverter rooms, civil foundation work, laying of overhead cables, laying of roads, connectivity transmission lines and dedicated transmission systems etc at the project site for the purposes of supplying power to various distribution companies and bulk consumers embedded in the State of Andhra Pradesh. The Petitioner achieved its commissioning of wind power project on 28.7.2016 and was able to sign a

Power Purchase Agreement with APSPDCL on 31.5.2016 for supply of 100.84 MW of power. The copy of the Power Purchase Agreement dated 31.05.2016 entered with APSPDCL is annexed herewith and marked as **Annexure P-4**.

5. That, the State of Andhra Pradesh, with the endeavor to promote clean and green energy, notified the Wind Power Policy vide G.O.Ms.No.48 dated 11.04.2008 and G.O.Ms.No.99 dated 09.09.2008. The said policy was first of its kind, which propagated development of power projects from renewable and unconventional sources such as wind, solar and bio-energy through an incentive for investments driven model. Further the policy was revised and substituted with the "Wind Power Project Policy, 2015" which was published in the extraordinary gazette of State of Andhra Pradesh on 13.2.2015. It is worthwhile to note that the date of incorporation of the Petitioner Company 27.07.2015 and the date of notification of the Power Project Policy, 2015 is 13.2.2015. Therefore, it is within the reasonable determination that the instant SPV was incorporated to implement the wind power project in furtherance to the Power Project Policy, 2015. The copy of the Wind Power Project Policy, 2015 is annexed herewith and marked as **Annexure P-5**.
6. That, the petitioner is a green power project developer, having commissioned its wind power plant of 100.84 MW under the Wind Power Projects Policy, 2015. The Wind Energy Policy, 2015, was adopted from the National Renewable Policy of the Government of India, which propagated development of renewable generation through policy incentives and commercial benefits to the early investors. Apart from providing land at subsidized rates and waiving charges, taxes and duties,



the policy also provided the wind power developers 'preferential dispatch rights' of power based on the actual generation. This preferential dispatch rights were essential for early developers to secure their investments, as the wind energy is extremely variable and is contingent upon the availability and velocity of wind at a given point of time. Therefore, the policies stated that the entire power generated from such wind power plans shall be dispatched to state distribution companies or other consumers on the basis of actual generation and the same quantum shall be used to calculate transmission charges for such developers.

7. That, since commissioning of its power plant, the petitioner has been forecasting and scheduling the generation of power from its wind power plant as per the extant regulatory framework as mentioned in the Wind Power Project Policy, 2015. Since, the generation of electricity from wind is dependent on the availability and velocity of wind, which is variable by nature and cannot be in any manner regulated by the petitioner. Though there are variances in generation of actual energy when compared to the schedule energy, these variations are accepted by the Respondent No. 3, Distribution Companies (hereinafter referred as 'DISCOMs') and the Andhra Pradesh Electricity Regulatory Commission (hereinafter referred as 'APERC / Commission'), as these variations are inevitable and peculiar to RE sources of energy like wind and solar.
8. That, the Respondent No. 2 / APERC, after framing the draft regulations invited written comments, suggestion and/or objections from concerned stakeholders and thereafter on 21.08.2017 without considering the written comments, suggestion and/or objections of the Petitioner-Company, the Respondent No. 1 published the Impugned Regulations in the Official

Gazette. The copy of the objections dated 24.11.2016 is annexed herewith and marked as **Annexure P-6**.

9. That, on 21.08.2017, the Respondent No.2 / APERC notified the 'Impugned Regulations' under section 181 of the Electricity Act, 2003, with the ultimate objective, as provided under Regulation 3.1, to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement on over and under injection of electricity by the renewable generators.
  
10. That, the Respondent no. 3 (hereinafter referred as 'SLDC') is established under section 31(1) of the Act of 2003, and is responsible for coordinating, scheduling of the Buyers and the Sellers in accordance with the provisions of state Grid Code. In terms of the Section 32 (a) of the Act, the SLDC shall be responsible for optimum scheduling and dispatch of electricity within the State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State. Further, SLDC is responsible for monitoring grid operations, for exercising supervision and control over the intra state transmission system, is responsible for carrying out real time operations for grid control and dispatch of electricity within the state through secure and economic cooperation of the State grid in accordance with grid standards and the State Grid Code. Further, Section 32 (3) provides that the SLDC may levy and collect such fees and charges from the generating companies and licensees engaged in intra- state transmission of electricity as may be specified by the State Commission. However, the Impugned Regulations contrary to the statutory obligations provided under Section 32 and 33 of the Act, provides for unbridled powers to SLDC in Regulations 4.2 (c),



4.6 and 6.11, in as much as the Regulations do not provide that the directions that SLDC may issue under the Regulations need prior approval of the Commission.

11. It is pertinent to mention here that, Regulation 3.2 the Impugned Regulations are made applicable to, inter alia, all wind and solar generators supplying power to DISCOMS which are connected to the Grid including those connected via pooling stations and also apply to third parties through open access or for captive generation through open access and selling power within or outside the state.
12. It is further submitted that the SLDC is also vested with the responsibility to provide a detailed procedure / necessary directions for data telemetry, formats of forecast submission and other details in accordance with Section 33 (1) Regulation 4.2 (c), Regulation 4.6 (c) and Regulation 6.11 of the Impugned Regulations. However, no such directions have been issued by SLDC towards the implementation of Impugned Regulations.
13. It is further submitted that in the backdrop of the Statutory framework provided under Section 32 and 33 of the Act, the Impugned Regulations were notified contrary to the said statutory framework. In terms of the Regulation 4.4 every wind and solar generator or a QCA shall submit a day ahead and week ahead schedule for each generating station or pooling station as the case may be.
14. Whereas as per the Impugned Regulations, the wind and solar energy generators will be required to provide their generation schedule in 96-time blocks, each of 15-minutes duration one day ahead of actual generation. The tariff as per the Power Purchase Agreement ("PPA") will be paid



based on the actual energy, and if there is any deviation between schedule energy as declared in advanced and actual energy as generated, the deviation will be levied with 'deviation charges' at rates provided under the Impugned Regulations. It is further submitted that the Respondent No. 2 shall revise the scheduling period from 96-time blocks, each of 15-minutes duration to 288-time blocks, each of 5 minute duration from any date notified by it.

15. Further Regulation 4.7 of the Impugned Regulations read as under:

"4.7. Any commercial impact on account of deviation from schedule based on the forecast shall be borne by the wind or solar generator either by itself or through the representing QCA."

It can be seen from the above Regulation 4.7 that, in the event of any deviation from the schedule of power under Regulations 4.4 and 4.5, the commercial impact on account of such deviation is fastened to the generator or QCA which is representing a group of generators. Under the scheme of Impugned Regulations, QCA has no obligations to bear financial consequences and it will only pass on to the generators. Therefore, only generator is liable under Regulation 4.7. This is clearly contrary and in violation to the Section 32 (3) of the Act which clearly states that any fees or charges that may be levied by SLDC has to be from *generating company and licensees* engaged in intra – state transmission of electricity.

16. It is submitted that in terms of Section 33, SLDC has a discretion to issue such directions to generators and licensees for ensuring integrated grid operations and for achieving the maximum economy and achievements. Upon issue of such directions, if the same are not followed by any

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licensee, generating company or any other person, in such an event, penalty stipulated not exceeding Rupees Five Lacs.

Whereas the Impugned Regulations in Appendix I to the Regulations provide for a framework for competition of deviation charges which are in the nature of penalty for under or over injection by wind or solar generators and in terms thereof there is rates are provided for levy of such deviation charges. This framework provided under Appendix I to the Impugned Regulations is completely contrary to Section 33 of the Act.

17. That, the respondents mandates that each wind and solar energy generators connected to the pooling sub-station, either to register themselves with a Qualified Co-ordinating Agency (hereinafter referred as 'QCA') appointed by State or undertake the forecasting activity individually to provide their forecast day ahead of the schedule delivery along with dispatch schedule to the SLDC to enable the SLDC to assess availability of energy and margins available in the intra-state grid. It is submitted that forecasting is an estimation of probable generation of energy by the generator on the basis of weather forecast of the next day. Further, the Impugned Regulation requires the QCA to be registered with the SLDC and to be the single point of contact between the SLDC and the generating companies, including petitioner (Regulation 5.1.).
18. That, in view of the Impugned Regulations, the petitioner-company vide its letter dated 22.12.2017 was compelled to inform the Respondent No. 3 regarding appointment of M/s Statkraft Markets Pvt. Ltd as the QCA, which is duly registered with the SLDC. A Copy of letter dated



22.12.2017 by the petitioner-company is annexed herewith and marked as Annexure P-7.

19. That, as per the Impugned Regulations every wind and solar power generator will be under the purview of the Deviation Settlement Mechanism (DSM). Under the DSM, the permissible deviation from the schedule energy is detailed below. If there is any deviation exceeding the permissible limits, the generator has to pay DSM charges as under:-

**Schedule : Deviation Charges for Wind/Solar Generating Stations**

**Deviation Charges in case of under or over-injection, for sale/supply of power within the State**

S.No.	Absolute Error in the 15-minute time block	Deviation Charges payable to State Pool Account
1.	$\leq 15\%$	None
2.	$> 15\%$ but $\leq 25\%$	At Rs.0.50 per unit for the shortfall or excess energy for absolute error beyond 15% and up to 25%.
3.	$> 25\%$ but $\leq 35\%$	At Rs.0.50 per unit for the Shortfall or excess energy for absolute error beyond 15% and up to 25% + Rs.1.0 per unit for balance energy beyond 25% and up to 35%.
4.	$> 35\%$	At Rs.0.50 per unit for the shortfall or excess energy for absolute error beyond 15% and up to 25% + Rs.1.0 per unit for balance energy beyond 25% and upto 35% + Rs.1.50 per unit for balance energy beyond 35%.

**Table – I: Deviation Charges in case of under injection**

S.No.	Absolute Error in the 15-minute time block	Deviation Charges payable to State Pool Account
1.	$\leq 15\%$	At the Fixed Rate for the shortfall energy for absolute error upto 15%.
2.	$> 15\%$ but $\leq 25\%$	At the Fixed Rate for the shortfall energy for absolute error up to 15% + 110% of Fixed Rate for balance energy beyond 15% and upto 25%.
3.	$> 25\%$ but $\leq 35\%$	At the Fixed Rate for the shortfall energy for absolute error upto 15% + 110% of the Fixed Rate for balance energy beyond 5% and upto



		25% + 120% of the Fixed Rate for balance energy beyond 25% and upto 35%.
4.	>35%	At the Fixed Rate for the shortfall energy for absolute error upto 15% + 110% of the Fixed Rate for balance energy beyond 15% and upto 25% + 120% of the Fixed Rate for balance energy beyond 25% and upto 35% + 130% of the Fixed Rate for balance energy beyond 35%.

**Table – II : Deviation Charges in case of over injection**

S.No.	Absolute Error in the 15-minute time block	Deviation Charges payable to State Deviation Pool Account
1.	$\leq 15\%$	At the Fixed Rate for excess energy upto 15%
2.	$>15\%$ but $\leq 25\%$	At the Fixed Rate for excess energy up to 15% + 90% of the Fixed Rate for excess energy beyond 15% and upto 25%.
3.	$>25\%$ but $\leq 35\%$	At the Fixed Rate for excess energy up to 15% + 90% of the Fixed Rate for excess energy beyond 15% and upto 25% + 80% of the Fixed Rate for excess energy beyond 25% and upto 35%.
4.	$>35\%$	At the Fixed Rate for excess energy up to 15% + 90% of the Fixed Rate for excess energy beyond 15% and upto 25% + 80% of the Fixed Rate for excess energy beyond 25% and upto 35% + 70% of the Fixed Rate of excess energy beyond 35%.

20. Since the aforesaid impugned regulations dated 21.08.2017, framed by the respondent no. 2 is illegal, arbitrary, discriminatory, inoperative and without jurisdiction, therefore the present writ petition is being submitted by the petitioner on the following amongst grounds without prejudice to each other:

#### **GROUND**

- A. Because, the petitioner submits that the Impugned Regulation are arbitrary, unreasonable and are liable to be set aside. The petitioner further submits that the Impugned Regulations, being delegated legislation, are manifestly arbitrary and ought to be struck down on this ground alone.

The Requirement for the petitioner to forecast the exact amount of energy to be generated, with no room for margins, is unreasonable and practically impossible since the said energy is generated from natural resources. The petitioner is generating electricity through wind turbines. It is submitted that wind emanates from natural sources such as oceans, forests, seasonable and unseasonable rains, surface and upper layer of coastal belts etc and therefore, it flows differently at different terrains. It is not possible for the Petitioner to predict the flow of wind weather on annual basis and even on daily or quarter of an hour basis, as provisioned under the Impugned Regulations. In spite of much technological advancement, there are so many uncertainties, inconsistencies, unpredictability and ambiguities in wind flow patterns that despite advancement in forecasting technologies, has not attained the state of zero error. Therefore, it is beyond the petitioner's control to forecast and generate energy in accordance with the Impugned Regulations.

- B. Because, the petitioner submits that the requirement to forecast wind energy and penalizing the generator in the event of deviation is baseless and arbitrary and is contrary to scheme of the Act under Sections 32 and 33 of the Act. Since any forecasting of wind is underdeveloped, unreliable and inconsistent, condition to provide forecasting schedule of generation of electricity is highly onerous and cannot be enforced. Therefore, the Impugned Regulation is invalid and prejudicial in character.
- C. Because, the imposition of the impugned penalty for deviation from the scheduled generation, in terms of the Impugned Regulations, is manifestly arbitrary and violative of Article 14 of the Constitution of India. It is submitted that there is absolutely no basis for the imposition of the



impugned penalty and the same is completely irrational. The petitioner submits that such impugned mandatory penalty would also be violative of the petitioner's fundamental rights under Article 19 (1) (g) and would not be saved by Article 19 (6) of the Constitution, being a backdoor legislation notified to override the incentives granted under the express policy of Wind Power Projects Policy, 2015.

- D. Because, APERC under the pretext of the Impugned Regulations is denying the distinction between conventional form of generation such as Thermal and Gas and renewable generators. A similar regulation for settlement of deviation from the scheduled power for conventional generation hinges on two principles, one being the generators using reliable and invariable / controllable supply of fuel such as Coal and Gas, where the forecasted MW can be managed and controlled based on forecasts. Secondly, this legislation is not discriminating between the injecting entities (generators) and drawing entities (DISCOMs / Bulk consumers etc.) and is levying deviation charges upon both, the injecting entities and drawing entities. Whereas, in the Impugned Regulations, vide notification of the proposed First amendment to these regulations, APERC is delineating the renewable generators as sole entities for payment of 'deviation settlement charges' without considering the rational that the 'fuel' or 'source' of generation is a natural resource available in the atmosphere at all times, having varied intensities which results in varied generation. Since this variability is inherent in the nature of business, Government of India, Government of Andhra Pradesh and APERC had made provisions for preferential dispatches of the full generated quantum, without any fetters of such deviation charges on account of uncontrollable factors.



- E. Because, it is a settled position in law that any uncontrollable factor, which is beyond the control of a party, cannot become a ground for imposing penalty or reduce the revenue of a business entity. The Government of Andhra Pradesh while formulating the Wind Power Project Policy, 2012, considered the risks associated with solar and wind generation in form of deviation on account of variation in availability of wind and sunlight and therefore, did not provisioned for any deviation charges as was already present for thermal and gas based generation. Therefore, to now levy deviation charges for variation in generation on account of forecasting anomalies is basically taking away right of fair and reasonable market place for undertaking businesses and to do it for projects which are already commissioned operational much prior to the Impugned regulations is clearly violative of Article 14 read with Article 19(1)(g) of the Constitution.
- F. Because levy of purposed deviation charges is clearly contrary to the scheme of the Act as provided in Sections 32 and 33 of Act and there is bad in law.
- G. Because, it is submitted that the impugned charges are onerous and are, effectively, a mandatory levy, in form of penalty upon the generators, since there is absolutely no possibility of avoiding any deviation as prescribed under the Impugned Regulations. It is, therefore, arbitrary, excessive and beyond the control of the generating companies.
- H. Because, it is settled position in law that there may be circumstance of force majeure which may prevent a bona fide assessee from complying with the terms imposed under a primary or delegated legislation, and on certain given factual circumstances, despite there being no fault on the

part of the assessee in complying with imposed requirement in time, mandatory penalty would be compulsorily leviable and recoverable from such assessee. This would, however, be extremely arbitrary and violative of Article 14.

- I. Because, it is submitted that the Impugned Regulation are delegated legislation and ultra vires the parent Act, i.e., the Electricity Act, 2003, and is therefore, liable to be struck down. It is submitted that the objective of the Act is to, inter alia, take measure conducive to development of electricity industry and promoting competition therein. However, the imposition of deviation charges as mandatory penalty upon the generators is completely contrary to the very object of the parent Act itself.
- J. Because, it is submitted that APERC while notifying the impugned regulations, exceeded its jurisdiction and powers vested under Section 181 'Powers of State Commission to make Regulations', of the Electricity Act, 2003. Whereby, the impugned regulations have made the very functioning and operations of the wind power projects grossly unworkable and unviable and thus resulted into serious illegality, arbitrariness and injustice. Further, the Impugned Regulations are also violative of the mandates and intent of the legislations promoting development of Wind Power Projects in the State of Andhra Pradesh under the Wind Power Project Policy, 2015.
- K. Because, the key rationale for scheduling and forecasting appears to be primarily maintain load-generation balance in the power system at any given point of time. However, at the same time it has been acknowledged that RE generation from sources like wind and solar is variable, uncertain and intermittent in nature. hence, considering the inherent challenge in



reliably achieving the above stated objective, the regulation has erred in proposing penalty for deviation in scheduling by the RE generator.

- L. Because, it is submitted that sub-section 1 of Section 181 of the Electricity Act, 2003 states that the State Commission, by notification, is empowered to make regulations consistent with the Act and rules, to carry out the provisions of the act. Further, sub-section 2 of Section 181 provides for the issues which would fall within the jurisdiction on State Commission to frame regulations. Wherein, under sub-section 181(2)(g) it has been provided that a State Commission can make regulations to levy and collect fees and charges from generating companies or licensees under Section 32(3). The relevant provisions of Section 181 are reproduced below:

*"Section 181. (Powers of State Commissions to make regulations): --- (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.*

*(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely: -*

*(g) levy and collection of fees and charges from generating companies or licensees under sub-section (3) of section 32;"*

- M. Because, Section 32 of the Electricity Act, 2003 stipulates the functions of the State Load Despatch Centres, wherein, sub-section 1 state that the State Load Despatch Centre shall be the apex body to ensure integrated operations of the power system in a given State. Sub-section 2 stipulates that the State Load Despatch Centre shall be responsible for optimum scheduling and despatch of electricity within the State, in accordance with the contracts entered into with the licensees or the generating companies



operating within the State. The SLDC shall also be the body responsible for monitoring grid operations and keeping account of electricity transmitted through the state grid while exercising supervision and control over the intra-state transmission system. The instant sub-section also holds the State Load Despatch Centre responsible for carrying out real time operations of grid control and despatch of electricity within the State through secure and economic operations of the State Grid. Further, sub-section 3 of the instant section corresponds to Section 181(2)(g) and provides that State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in Intra-state transmission of electricity as specified by the State Commission and does not specify for levy of Deviation Charges. Such fee shall be fee for connectivity of generators to the Intra-State Transmission Systems, whereas, charges are akin towards employee costs, administrative and general expenses, repairs and maintenance charges, depreciation, interest and finance charge, interest on working capital, return on equity and any other expenses incidental to discharging the functions of SLDCs. The provisions of Section 32 are reproduced below:

*"Section 32. (Functions of State Load Despatch Centres):---(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*

*(2) The State Load Despatch Centre shall -*

- (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*
- (b) monitor grid operations;*
- (c) keep accounts of the quantity of electricity transmitted through the State grid;*
- (d) exercise supervision and control over the intra-State transmission system; and*

*(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

*(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission."*

- N. Because, it is the respectful submission of the Petitioner that levy of fees and charges as provided in Section 32(4) of the 2003 Act is only for intra-state transmission of power on generating companies and licensees. The said sub section has not provided for levy of 'Deviation Charges' either expressly or impliedly. Whereas the Impugned Regulations provides for levy of deviation charges and that too only on solar and wind generating companies. Therefore, such a levy of Deviation Charges by the impugned Regulations is clearly arbitrary and patently inconsistent with the parent Act and therefore ultra vires the Electricity Act, 2003 and is in violation of Article 14, 19 (1) (g) and 21 of the Constitution of India.
- O. Because, the fee and charges to be levied under Section 32(3) can only be in form of transmission and connectivity charges or fees can be read under the provisions of Section 42 of the Electricity Act, 2003, wherein, no such provision of imposing a charge for deviation in forecasting and scheduling is either prescribed. It is also worthwhile to mention that the generating companies or licensees under the provisions of Section 32 & 33 are bound by the directions of SLDC for ensuring integrated grid operations and for achieving maximum economy and efficiency in the operation of power system in the State. Whereas, under the proposed first amendment to the Impugned Regulations, these charges are imposed only upon the



generating companies, instead of being levied on generators and licenses equally as per Section 32(4). Therefore, the imposition of deviation charges only upon the generators is not only draconian but also violative of the scheme of the Electricity Act, 2003 itself, since, the act does not provide for imposition of deviation charges upon any generator.

P. Because, the scheduling and Despatch is an activity strictly being undertaken on the directions of the SLDC, such charges must be levied on the body under whose directions the instant scheduling is being undertaken and not on Generating Company.

Q. Because, under Section 7 of the Electricity Act, 2003 a generating company is entitled to establish, maintain and operate a generating station upon compliance of technical standards relating to connectivity with regard to the grid referred under section 73(b). Section 73(b) empowers the Authority established under the Act to specify technical standards for construction of electrical plants, electric lines and connectivity to the grid only. There are no other fetters like forecasting and scheduling which are imposed upon a generating company by the Impugned Regulations. Above all, the Impugned Regulations of APERC provides for disconnection from the grid of a generator, not complying with the directions therein, which is clearly a draconian provision, in violation of the parent Act, the Constitution of India and in violation of principles of natural justice.

R. Because, the Hon'ble Supreme Court in **Tata Power Company Limited vs. Reliance Energy Limited & Ors.** [(2009) 16 SCC 659], wherein the core question for consideration before the court was that, whether despite the parliamentary intent of giving a go-bye to its licensing policy to

generating companies, whether through imposing stringent regulatory measures the same purpose should be allowed to be achieved. The relevant findings of the Hon'ble Supreme Court are reproduced below:

*"76. The Act is a consolidating statute. It brings within its purview generation, transmission, distribution, trade and use of electricity. Whereas generation of electricity has been brought outside the purview of the licensing regime, the transmission, distribution and trading are subject to grant of licence and are kept within the regulatory regime. The statute provides for measures to be taken which would be conducive to development of electricity industry. Measures are also required to be taken for promoting competition which would also mean the development of electricity industry. It, indisputably, provides for measures relating to the protection of interest of consumers and supply of electricity to all areas.*

*77. The generating companies, however, despite delicensing, do not enjoy the monopoly status. They are subject to rationalisation of electricity tariff. The Preamble envisages ensuring transparent policies, policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.*

*81. Delicensing of generation as also grant of free permission for captive generation is one of the main features of the 2003 Act. It is clearly provided that only hydro-generating projects would need the approval of the State Commission and the Central Electricity Regulatory Authority. It recognised the need of prohibiting transmission licensees. It also for the first time provided for open access in transmission from the outset. It even provides where the distribution licensee proposes to undertake distribution of electricity for a specified area within the area of supply through another person, that person shall not be required to obtain separate licence.*



83. The primary object, therefore, was to free the generating companies from the shackles of licensing regime. The 2003 Act encourages free generation and more and more competition amongst the generating companies and the other licensees so as to achieve customer satisfaction and equitable distribution of electricity. The generation company, thus, exercises freedom in respect of choice of site and investment of the generation unit; choice of counter-party buyer; freedom from tariff regulation when the generating company supplies to a trader or directly to the consumer.

84. If delicensing of the generation is the prime object of the Act, the courts while interpreting the provisions of the statute must guard itself from doing so in such a manner which would defeat the purpose thereof. It must bear in mind that licensing provisions are not brought back through the side-door of regulations.

109. A generating company has to make a huge investment and assurances given to it that subject to the provisions of the Act it would be free to generate electricity and supply the same to those who intend to enter into an agreement with it. Only in terms of the said statutory policy, it makes huge investment. If all its activities are subject to regulatory regime, it may not be interested in making investment. The business in regard to allocation of electricity at the hands of the generating company was the subject-matter of the licensing regime. While interpreting the statute it must be borne in mind that such a mechanism should not come back."

- S. Because, it is the respectful submission of the Petitioner that, the Impugned Regulations of APERC is clearly in violation of the express directions of the Hon'ble Supreme Court cited above because the measures taken by APERC to impose the responsibility of forecasting and scheduling upon the generators is contrary to the provisions of Section 32, wherein, this responsibility is prescribed to be discharged by the concerned State Load Despatch Centre. Further, to additionally burden the generators by levying deviation charges which are basically in form of

penalty for deviations in the scheduling from the forecast made by the generator. The instant policy at one hand is discouraging and making it difficult or rather impossible for the existing generators to continue their operations and on the other is discouraging new generators by penalising them on a condition which is beyond their control and supervision. Further, the Hon'ble Supreme Court also specified in para 76 of the instant judgment that, each generating company is already subject to a rational electricity tariff which is determined by the Commission through transparent policies including policies of subsidies which are in the interest of the development of the sector, whereas, the instant regulations are discriminating renewable generators on the basis of inherent fallacies and known conditions associated with RE generation such as forecast and prediction of availability of such RE source. This in any way cannot be construed to be policies promoting efficiency of power sector in the State of Andhra Pradesh.

- T. Because, it must also be noted the provisions of the Impugned Regulations by APERC is a draconian sub-legislation not complying with the scheme of the Electricity Act, 2003, as it adds condition upon a wind and solar generator to mandatorily register with QCA for forecasting and settlement, which becomes a pre-condition for new generators and reason for exercise of power under "Power to Regulate Regulations" of APERC for the existing generators, by threatening them to disconnect from the grid in case of non-compliance. Further, there is no dispute resolution mechanism between QCA/generator, QCA/SLDC, generator/SLDC in case of difference of opinion or proof of miscalculation of DSM charges under a single QCA or connected to a single polling station. Such a regulation and imposition is clearly not provided under Section 7 of the



Electricity Act, 2003 which stipulated requirements for a generator to develop operate and maintain a generating plant.

- U. Because, the Hon'ble Supreme Court at para 109 of the above cited judgment [Tata Power] observed that, a generating company making huge investments on the basis of assurances given to it under various regulations and policies, that subject to the provisions of the Act, would be free to generate electricity and supply the same to those who intend to enter into an agreement with it. If all its activities are subject to such uncertain regulatory regimes, it may not be interested in making investments. The business in regard to allocation of electricity at the hands of the generating company was the subject-matter of the licensing regime. While interpreting the statute it must be borne in mind that such a mechanism should not come back. Therefore, in the humble submission of the Petitioner, that it undertook huge investment by commissioning Wind Power Plants in the State of Andhra Pradesh under its Wind Power Project Policy, 2015 and duly the tariff was determined under the relevant provisions of the Regulations for determination of tariff of renewable energy sources where no such charges as deviation charges are imposed upon the wind and solar generators. Further, the instant regulations are clearly violating the scheme of the act as well, as the instant regulations puts an embargo on the generation from wind and solar sources and penalises the generators who deviate from a tentative forecast made on the basis of a report of a third party in form of deviation settlement charges imposed to penalise such generators who deviate from their forecasted generation.

- V. Because, it is the humble submission of the Petitioner that Impugned Regulations are ultra vires to the provisions and scheme of the Electricity Act, 2003 as the instant regulations not only affect the new generators adversely, but also affect the existing generators with quite adversities. As a result of enforcement of the Impugned Regulations on the existing projects, the tariff fixed for those projects will be adversely affected, and projects of the Petitioner are also likely to become unviable. The Respondent No. 2 – APERC, ought to have taken note of these adverse effect on existing generators and ought to have at least protected from the vicissitudes of the impugned regulations.
- W. Because, the Petitioner had signed the Power Purchase Agreement with APSPDCL on 31.05.2016 for supply of 100.84 MW of, which was pursuant to the Wind Power Project Policy, 2015 and extant tariff regulations of APERC and the provisions of Section 86(1)(e) of the Electricity Act, 2003, which distinguishes conventional generators with renewable generators and specifies that the State Commission must undertake to implement policies which promotes cogeneration and generation from RE sources. Therefore, the Impugned Regulations cannot take away vest rights under the existing PPAs which are statutory contracts signed based APERC regulations, especially when they are outside the mandate and scope of the Electricity Act, 2003 itself.
- X. Because, the Petitioner further submits that power to make regulations, cannot be exercised by the Regulatory Commissions so as to bring into substantive rights or obligations or disabilities upon generating companies which are not contemplated under the Electricity Act, 2003 itself. In this regard the Petitioner would like to place its reliance on the judgment of



the Hon'ble Supreme Court in *Global Energy Limited & Another vs. Central Electricity Regulatory Commission* [(2009) 15 SCC 570], the relevant paras are reproduced below:

*"25. It is now a well-settled principle of law that the rule-making power 'for carrying out the purpose of the Act' is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.*

*26. We may, in this connection refer to a decision of this Court in Kunj Behari Lal Butail v. State of H.P. [(2000) 3 SCC 40] wherein a three-Judge Bench of this Court held as under: (SCC p. 47, para 14)*

*"14. We are also of the opinion that a delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."*

*[See also State of Kerala v. Unni [(2007) 2 SCC 365] (SCC paras 32 to 37) and A.P. Electricity Regulatory Commission v. R.V.K. Energy (P) Ltd. [(2008) 17 SCC 769 : (2008) 9 Scale 529] ]*

*27. The power of the regulation-making authority, thus, must be interpreted keeping in view the provisions of the Act. The Act is silent as regards conditions for grant of licence. It does not lay down any pre-qualifications therefor. Provisions for imposition of general conditions of licence or conditions laying down the pre-qualifications therefor and/or the conditions/qualifications for grant or revocation of licence, in absence of such a clear provision may be held to be laying down guidelines by necessary implication providing for conditions/qualifications for grant of licence also."*

- Y. Because, the Petitioner further respectfully submits that, it is settled position of law that what cannot be done directly cannot be done indirectly by the Regulatory Commission. The Petitioner seeks to refer to the Judgment of the Hon'ble Supreme Court in **Dayal Singh vs. Union of India** [(2003) 2 SCC 593], the relevant extract is reiterated below:

*"19. Furthermore, the criteria for determination of compensation in terms of sub-section (3) of Section 8 must be viewed with the limitations contained therein. In any event the market value of a property may also be determined from the standpoint of a willing purchaser of the land ready and willing to offer the consideration therefor to a seller. The owner of a land normally would opt for the best offer. Once he has agreed to a price, so far as he is concerned, the same ordinarily should be presumed to be the best offer which he could get."*

That the Petitioner respectfully submits that, in the present case, there is no provision for levy of deviation settlement Charges (penalty) under the Electricity Act, 2003 which these instant regulations are imposing upon the generators arbitrarily.

- Z. Because, the petitioner submits that the levy under the Impugned Regulation is purported to be in exercise of the rule making power granted by the parliament under the Electricity Act, 2003. the power to the levy a tax is beyond the legislative competence of the parliament. Entry 38 of List III of the seventh schedule, Constitution of India, read with Entry 47 of List III, empower the centre and the state to levy fees in respect of "Electricity". The power of levy a tax on consumption and sale of electricity falls under Entry 53 of List II. the Impugned Regulation have been framed by the Respondent No. 2 in exercise of power conferred under the Electricity Act, viz., a Central Act. since the imposition of tax on electricity is beyond the legislative competence of the parliament, the



said levy can, in any event, not be imposed by a delegated exercise of power purported to be conferred by the parliament. the Impugned Regulation are, therefore, also violative of Article 246 of the Constitution of India and ought to be struck down on this ground as well.

- AA. Because, the petitioner submits that the quantum of the impugned penalty payable is too high and unreasonable. It is submitted that the imposition of the impugned penalty is an afterthought, after 16 years, to have unlawful gain. the petitioner submits that, there is no rational co-relation between the quantum of deviation and the rate of penalty imposed under the Impugned Regulation. The levy is, therefore, form of confiscatory tax being imposed on the petitioner and other generating in the state. The petitioner seeks to place its reliance on two Judgments of the Hon'ble Supreme Court in *Ahmedabad UDA vs Sharadkumar J Pasawala & Ors* [(1992) 3 SCC 285], wherein the Hon'ble Supreme Court observed that:

*"7. After giving our anxious consideration to the contentions raised by Mr Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. The facts and circumstances in the case of District Council of Jowai are entirely different. The exercise of powers by the Autonomous Jaintia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for a specific purpose by the autonomous District was justified and such*

*power was implied. The said decision cannot be made applicable in the facts of this case or the same should not be held to have laid down any legal proposition that in matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in Khargram Panchayat Samiti case [(1987) 3 SCC 82] also deals with the exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee."*

- BB. That the Petitioner further submits that it is settled position of law that Regulatory powers cannot be exercised in the absence of substantive provisions under the Act to correspond with the exercise of such power through a subordinate legislation. In this regard the Petitioner seeks to draw the kind attention of the Hon'ble Court towards the orders of the Hon'ble Supreme Court in **Union of India & Others vs. S. Srinivasan & Others** [(2012) 7 SCC 683], the relevant paragraphs are reproduced below:

*"21. At this stage, it is apposite to state about the rule-making powers of a delegating authority. If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it."*

- CC. That it is clear from the findings of the Supreme Court in the instant judgment that where the rules go beyond the scope of the statute which has conferred these powers upon such authority making sub-legislation, the sub-legislation becomes ultra vires to the act. As in the instant case, there are very limited powers vested upon the State Commission to levy fees and charges upon the generators, which must be strictly constructed in alignment with the provisions of the Act. As such, it is in the respectful



submission of the Petitioner that there is no provision contained in the entire Electricity Act, 2003 which could confer such powers upon the State Commission or the Central Commission to levy deviation charges.

- DD. That, the Petitioner wishes to further state that the impugned Regulations are sub-ordinate legislations and does not conform to the statutory and constitutional requirements as it offends Articles 14, 19 and 21(g) of the Act. In this regard the Petitioner seeks to place its reliance on the submissions on **J.K. Industries Limited vs. Union of India** [(2007) 13 SCC 673], wherein, the Petitioner challenged the Accounting Standard 22 issued by the Institute of Chartered Accountants in India is as para 9 of AS 22 provides for inclusion of Deferred Tax Liability in determination of net profit(loss) is contrary to and inconsistent with Part II of Clause 3(vi) of Schedule VI and consequently it amounted to excessive exercise of powers conferred under Section 211 read with Section 642(1) of the Companies Act. The Hon'ble Supreme Court while deciding on the question of law also defined the meaning and purpose of the "Doctrine of the ultra vires":

*"(ii) Doctrine of ultra vires*

*127. At the outset, we may state that on account of globalisation and socio-economic problems (including income disparities in our economy) the power of delegation has become a constituent element of legislative power as a whole. However, as held in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it*

*is inconsistent with the provisions of the Act or that it is contrary to some other statute applicable on the same subject-matter. Therefore, it has to yield to plenary legislation. It can also be questioned on the ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be in conformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution."*

EE. Because, the Petitioner wish to recall its abovementioned submissions and state that the Impugned Regulations which provides for levy of Deviation Charges in respect of forecasting & scheduling undertaken by a solar or wind generating company to ascertain weather conditions and sell maximum power to the market at any given point of time are now being used against such generator to faulty and malafidely penalise the generator for the same forecasting which was earlier promoted to supply maximum power into the grid from these solar and wind power projects. It must also be noted that, the intent of forecasting under the Wind Power Project Policy, 2015 of State of Andhra Pradesh was to promote forecasting of RE generation for the benefit of such RE generators to provide peak generation at all possible times. The instant regulations dehoes and destruct the very purpose with which sub-section 86(e) was incorporated by the legislatures under the Electricity Act, 2003. The Petitioner respectfully submits that the purpose was to keep the RE generation distinct from the other conventional generation sources.

FF. The Petitioner further directs the attention of this Hon'ble Court to the Supreme Court Judgment in **Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductors Power Company (India) Private Limited &**



Ors. [(2017) 16 SCC 498], wherein the court opened that a Commission is a creature of statute and cannot assume any powers which are not otherwise conferred on it. The kind attention of this Hon'ble Court is also sought on the relevant paras of the Judgment reproduced below:

*"37. This Court should be specially careful in dealing with matters of exercise of inherent powers when the interest of consumers is at stake. The interest of consumers, as an objective, can be clearly ascertained from the Act. The Preamble of the Act mentions "protecting interest of consumers" and Section 61(d) requires that the interests of the consumers are to be safeguarded when the appropriate Commission specifies the terms and conditions for determination of tariff. Under Section 64 read with Section 62, determination of tariff is to be made only after considering all suggestions and objections received from the public. Hence, the generic tariff once determined under the statute with notice to the public can be amended only by following the same procedure. Therefore, the approach of this Court ought to be cautious and guarded when the decision has its bearing on the consumers.*

*38. Regulation 85 provides for extension of time. It may be seen that the same is available only in two specified situations — (i) for extension of time prescribed by the Regulations, and (ii) extension of time prescribed by the Commission in its order for doing any act. The control period is not something prescribed by the Commission under the Conduct of Business Regulations. The control period is also not an order by the Commission for doing any act. Commissioning of a project is the act to be performed in terms of the obligation under the PPA and that is between the producer and the purchaser viz. Respondent 1 and appellant. Hence, the Commission cannot extend the time stipulated under the PPA for doing any act contemplated under the agreement in exercise of its powers under Regulation 85. Therefore, there cannot be an extension of the control period under the inherent powers of the Commission.*

*39. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed*

above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act."

Whereas, the instant regulations are completely and fundamentally ultra vires to the scheme of the Act applicable to RE generators and is nothing but a colourable exercise of powers vested upon Commissions.

- GG. The Petitioner also wishes to draw the kind attention of the Hon'ble Court to the directions of the Hon'ble Supreme Court in **Mohinder Singh Gill vs. CEC, New Delhi** [AIR 1978 SC 851], wherein it was held that, A statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.
- HH. The Petitioner further wished to submit that, the impugned Regulations are inconsistent with para 4.2.2 of National Action Plan for climate change, Preamble of the Act of 2003 which emphasis on promotion of efficient and environmentally benign policy of the state to encourage consumption of green energy to sub serve mandate of Article 21 read with Article 51A(g) of the Constitution of India and is inconsistent with the international obligations of India ratified under Kyoto Protocol on 26.08.2002.
- II. The Supreme Court has held in catena of cases that the delegated legislation must confirm exactly to the power granted. The court should consider the nature, object and scheme of the enabling Act, and also the area over which the power has been delegated under the enabling Act and then decide whether the subordinate legislation confirm to the parent statute. It is also settled law that a subordinate regulation must be read in the context of the Act. The respondent no. 2 erred in making the



impugned regulation as the same is contrary to its own functions under section 86(1)(e) and 86 (4) of the Act. The Impugned Regulation are contrary to the very scheme of the Electricity Act and are liable to be struck down as ultra vires the parent Act and unconstitutional.

- JJ. That, the Petitioner craves leave to urge all other grounds at the time of hearing.
21. In view of the above, the Petitioner rights and interests need immediate protection and therefore, the Petitioner is compelled to file the present Writ Petition, seeking urgent relief in terms hereof. The Petitioner further submit that, it is evident from the facts set out hereinabove that Respondent No.2 is in a position to further prejudice the Petitioner's interest and the Petitioner apprehend that unless urgent relief is granted as prayed for herein, by staying the impugned regulations dated 21.08.2017 framed by Respondent No.2, it would suffer irretrievable & irreparable harm and injury to the Petitioner.
22. It is submitted that, in the similar circumstances, the Hon'ble High Court of Karnataka vide Order dated 15.03.2018 in Writ Petition No.43571 of 2016, Order dated 07.06.2018 in Writ Petition No. 18750 of 2018, and Hon'ble High Court Of Rajasthan vide order dated 13.04.2018 in D.B. Civil Writ No. 7892 of 2018 have granted interim relief and stayed implementation of forecasting and scheduling regulations, similar to the Impugned Regulation, framed by the Electricity Regulatory Commissions of the respective states. The copies of the orders passed by various High Courts is annexed and marked as Annexure P-8 to P-10 respectively.

23. It is submitted that, the Petitioner has no other efficacious alternative remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India. It is also submitted that, the Petitioner has not filed any writ or suit seeking the relief prayed for in this Writ Petition.

In consideration of the facts, circumstances and reasons stated above, it is humbly prayed that, this Hon'ble Court may be pleased to pass an order or orders, direction or writ more particularly one in the nature of Writ of Mandamus: -

- (a) Declaring the impugned regulations dated 21.08.2017 issued by APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017 framed by the Respondent No. 2 as arbitrary, illegal, unconstitutional and also violative of principles of natural justice;
- (b) Direct the Respondent No.3 not to levy any penalty towards Deviation Settlement;
- (c) Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case against the Respondents and in favour of the Petitioners be granted.

It is further prayed that this Hon'ble Court may be pleased to suspend the operation and effect of the impugned regulations (APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017) issued by the Respondent No. 2 and the Procedure notified thereunder pending disposal of this Writ Petition and to pass such other Order or Orders as this Hon'ble Court may deem fit and proper in the interest of justice.



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It is further prayed that, this Hon'ble Court may be pleased to stay the levy of purported deviation charges in pursuant to the impugned regulations, APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017 (Regulation No.4 of 2017) dated 21.08.2017 framed by the Respondent No. 2 pending disposal of this Writ Petition and to pass such other Order or Orders as this Hon'ble Court may deem fit and proper in the interest of justice.

Sworn and Signed before me on this the  
23<sup>rd</sup> Day of April, 2019, at Hyderabad

DEPONENT

Before Me,

Advocate/Hyderabad

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VERIFICATION STATEMENT

I, J.Ashwin Kumar s/o Late Sri J. Gunde Rao, aged about 57 years ,  
Occupation: Private Service R/o Flat No 303, Sri Lakshmi Nilayam, Sri Krishna  
Nagar , Dilsukhnagar , Hyderabad – 500060, being the Petitioner acquainted with  
the facts do hereby verify and state that the contents of paras ( 1 ) to ( 23 ) etc.,  
of the affidavit filed in support of the Writ Petition are true to my personal  
knowledge and based on records and believed to be correct and are based on  
legal advice believed to be correct.

Verified at Hyderabad on this the 23<sup>rd</sup> day of April, 2019

  
ADVOCATE

DEPONENT



IN THE HIGH COURT OF ANDHRA PRADESH

W.P.No. 5706 OF 2019

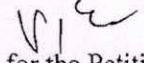
CHRONOLOGICAL / RUNNING INDEX

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7.	P1	Copy of the Regulation 4 of 2017	21-08-2017	-do-	42 - 74
8.	P2	Copy of the Board Resolution	09-04-2019	-do-	75
9.	P3	Copy of the Certificate of Incorporation	27-07-2015	-do-	76
10.	P4	Copy of the Power Purchase Agreement	31-05-2016	-do-	77 - 152
11.	P5	Copy of the Wind Power Project Policy, 2015 issued in G.O.Ms.No.9	13-02-2015	-do-	153 - 160
12.	P6	Copy of the objections	24-11-2016	-do-	161 - 164
13.	P7	Copy of the letter by the Petitioner Company	22-12-2017	-do-	165
14.	P8	Copy of the order passed by Hon'ble High Court of Karnataka in Writ Petition No. 43751 of 2016	15.03.2018	-do-	166 - 168

25/04/19 - Service Certificate affixed.  
Interim order issued. Petitioner's relief granted.

15	P9	Copy of the order passed by Hon'ble High Court of Karnataka in Writ Petition No. 18750 of 2018	07-06-2018	-do-	169 – 170
16	P10	Copy of the order passed by Hon'ble High Court of Rajasthan in Writ Petition No. 7892 of 2018	13-04-2018	-do-	171
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DATE: 24-04-2019  
Amaravathi

  
Counsel for the Petitioner