REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3480-3481 OF 2020

GUJARAT URJA VIKAS NIGAM LIMITED & ORS. **…APPELLANT(S)**

VERSUS

RENEW WIND ENERGY (RAJKOT) PRIVATE LIMITED & ORS. **…RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The current civil appeals,[1] under Section 125 of the Electricity Act, 2003, (hereafter, "the Act") challenge orders of the Appellate Tribunal for Electricity (hereafter, "APTEL"), dated 06.12.2018 ("*first impugned order*")[2] and order dated 24.07.2020 ("*second impugned order*")[3]. The APTEL had, by those orders, rejected the appeals preferred by the present appellant, and the review petition, as well. Resultantly, the order of the Gujarat Electricity Regulatory

1 Civil Appeals Nos. 3480 and 3481 of 2020
2 in Appeal No 209/2015
3 in Review Petition No 03/2019

Commission (hereafter "the State Commission"), dated 01.07.2015[4] was affirmed.

2. The first appellant – Gujarat Urja Vikas Nigam Limited (hereafter "Gujarat Urja") had approached this court previously challenging the order of APTEL, which was disposed of by this court[5] granting liberty to it, to seek review/rectification. Gujarat Urja then preferred a review petition, which was rejected by APTEL, by the second impugned order. When this appeal was taken up for hearing, on 14.10.2020, this court had issued notice and stayed the impugned order of APTEL.

Background

3. Gujarat Urja procures power in bulk on behalf of distribution licensees in the state of Gujarat; it is an authorized licensee within the meaning of the term under the Act. The second, third, fourth and fifth appellants are distribution licensees in the State of Gujarat. The first respondent, Renew Wind Energy (Rajkot) Pvt Ltd (hereafter "RWE") is a wind generator which had set up 25.2 MW Wind Turbine Generators at District Rajkot, Gujarat under the Renewable Energy Certification scheme notified by the Central Electricity Regulatory Commission (hereafter, "Central Commission"). The second respondent is the Wind Independent Power Producers Association (hereafter "Association"). The Respondent No 3, Gujarat Electricity Regulatory Commission (hereinafter "the

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4 in petition No 1363/2013
5 Civil Appeal No 1253/2019 by order dated 15.02.2019

State Commission") is the regulatory commission under the Act, for the State of Gujarat. The fourth respondent, Wish Wind Infrastructure LLP ("Wish Wind" hereafter) is a wind generator.

4. By Section 86 of the Act[6], State Commissions discharge several functions- which include the determination of tariff *"for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State"*. The tariff determination process should accord with Sections 62 and 64 of the Act. Section 62, requires "the Appropriate Commission" (in this case, the State Commission) to determine tariffs in accordance with the provisions of the Act for – among other purposes, retail supply of electricity. The State Commissions are also empowered to frame regulations, under Section 181 of the Act. That power includes the formulation of the *"terms and conditions for determination of tariff Under Section 61"*.[7] Additionally, the tariff order can be modified or imposed with conditions under

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6 The relevant extract of Section 86 is as follows:

*"**86. Functions of State Commission.**-(1) The State Commission shall discharge the following functions, namely:-*

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

…..

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

(c) facilitate intra-State transmission and wheeling of electricity;

…..

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

…. [..]"

7 Clause 181(2)(zd) of the Act.

Section 64(3). The State Commission is guided by the principles specified in Section 61 of the Act while formulation of the tariff regulations. This court has held that state commissions as expert bodies have to strike a balance between various competing concerns and interests while framing such regulations.[8] The Gujarat State Commission, for a Multi-Year period (also called the "control period"), frames Regulations for determination of tariff. The state commission then determines the Multi-Year Tariff Order based on the data available. Furthermore, Section 64 (6) prescribes that tariff orders *"shall continue to be in force for such period as may be specified in the Tariff Order unless amended or revoked"*. If any party is aggrieved by any conditions of a given Tariff Order, it can seek its amendment or revocation. Orders are also appealable under Section 111 to APTEL, and thereafter to this court under Section 125 of the Act. Tariff Orders under Section 64 of the Act are *quasi-judicial* in nature and *ipso facto* binding on the parties unless amended or modified through law.

5. On 29.01.2010, the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and issuance of Renewable Energy Certificate

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8 *Kerala State Electricity Board & Anr v. Principal Sir Syed Institute for Technical Studies*, 2020 7 SCR 885:

> *7. [..] "While fixing tariff, the Commission cannot show undue preference to any consumer of electricity. The Commission, however, is vested with the power to prescribe differential rates according to the consumers' load factor, power factor, voltage, total consumption of electricity during any specified period of time at which supply is required. So far as fixing different rates for these two categories of the educational institutions, these factors did not come into play. The other permissible differentiating factors are geographical position of any area, the nature of supply and the purpose for which the supply is required. As regards this set of differentiating factors, the tariff advantage for government run and aided educational institutions do not appear to be based on geographical position or nature of supply. The Commission however has justified the classification of the aforesaid two sets of tariffs on the basis of purpose for which supply is required by the consumers."*

for Renewable Energy Generation) Regulations, 2010 (hereafter "REC Regulations 2010") were framed by the Central Commission for the development of a power market for non-conventional sources of energy by the issuance of tradable and saleable credit certificates (hereafter "RECs"). Regulation 5 of the said REC Regulations 2010 provides for the required eligibility for the renewable generators for participating in the RE Certificates:

> "5. *Eligibility and Registration for Certificates:*
> *(1) A generating company engaged* in *generation of electricity from renewable energy sources shall be eligible to apply for registration for* issuance *of and dealing* in *Certificates if it fulfills the following* conditions:
> *a. it has obtained accreditation from the State Agency;*
> *b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and*
> *c. it sells the electricity generated either*
> *(i) to the distribution licensee of the area in which the eligible entity* is *located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or*
> *(ii) to any other licensee or* to *an open access consumer at a mutually agreed price, or through power exchange at market determined price.*
> *Explanation. - for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."*

6. The objective of the REC Regulations 2010 was to separate the physical electrical component and the environmental (renewable) component of the energy for issuance of RECs. This was an alternate mechanism developed for the sale of renewable energy at a preferential tariff to any licensee or directly to any consumer. The REC Regulations 2010 aimed at selling the renewable component through the RE Certificates containing promotional benefits of

renewable energy while the physical electrical component was sold as any other conventional electricity. The REC Regulations 2010 also provided that generators based on the REC mechanism had the option to sell physical energy to the distribution licensee at a "*price not exceeding the Average Pooled Power Purchase Cost*" (hereinafter as "APPC") of the distribution licensee[9]. This was to ensure that generators did not benefit twice over, by selling RECs and also selling physical energy at higher promotional tariffs or taking concessional benefits from the concerned distribution licensee.

7. Under the REC Regulations 2010, distribution licensees were not obliged to purchase the physical component of electricity from renewable energy generators set up under the REC mechanism since such REC based generators had alternative options with regard to the physical component of electricity, namely, (i) sale of electricity power exchanges (ii) wheeling of power for sale to third parties at mutually agreed rates or (iii) wheeling of power for their own consumption. In the case of the sale of the physical component of electricity, the price for the electrical component could not exceed average pooled cost of the distribution licensees. The regulations also provided that the generators (of renewable energy) were not eligible for any benefits including banking facilities, exemption from payment of cross subsidy surcharge etc. amongst other things. The stated promotional benefits were applicable only in terms of trading and selling of the RE Certificates.

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9 Regulation 5(1)(c) of REC Regulations 2010.

8. The REC Regulations 2010 provided for floor price and forbearance price i.e. minimum price and maximum price respectively at which RECs could be traded in the power exchange. Those prices i.e. floor price and the forbearance prices were to be determined by the central commission for the entire country.

9. In the present case, the State Commission by its order[10] determined the tariff for procurement of power by distribution licensees from wind energy generators and also ruled on other commercial issues for wind energy generators set up under a preferential tariff mechanism. The order provided for a preferential levelized tariff of ₹ 3.56 per kWh for the supply of energy to the distribution licensee for meeting it's Renewable Power Purchase Obligation (RPO). The "control period" of the Order [dated 30.1.2010] was for the period 11.08.2009 to 10.08.2012[11]. The order, *inter alia*, also provided the following promotional benefits for wind generators set up for third party sale under a preferential mechanism:

> (a) Exemption from cross subsidy charges for the sale of wind energy to open access users in the State.
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> (b) Payment for excess (over and above that set off against monthly consumption in the 15 minutes time block) would be treated as a sale to

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10 Dated 30.01.2010 in Order No 1/2010

11 The relevant provision of the Order reads as follows:

"***2.2 Control period*** *The Commission had, vide its Order No.2 of 2006 dated 11th August,2006, determined the Wind Energy Tariff for a period of three years, i.e. upto 10th August,2009. The draft for the present order was published on 17.05.2009 and it was proposed to be effective from 1st July, 2009.However, some of the objectors suggested that the present order be made effective from the end of previous control period. Since the previous control period expired on 10th August, 2009, the Commission decides that the control period for this order will be 3 (three) years w.e.f. 11th August, 2009."*

the distribution licensee concerned at a rate of 85% of the preferential tariff determined by commission for such renewable energy sources.

10. On 17.04.2010, the State Commission notified Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereafter "State Regulations"). The State Regulations provided for the percentage of total consumption that distribution licensees were to purchase from RPOs and further recognized that RPO could be fulfilled by the purchase of such RECs. Further, obligated entities could fulfil their renewable purchase obligation through two sources:

(a) Purchase of renewable energy directly (at preferential tariff determined by State Commission); and

(b) Purchase of RECs at a market price between Floor Price and Forbearance price determined by Central Commission

11. A Power Purchase Agreement (hereafter "PPA") in terms of the REC Regulations 2010, was entered into between the Gujarat Urja and the wind power developers (hereafter, "WPDs") including respondent RWE on 29.03.2012. The agreement provided for a ceiling on tariff at ₹ 2.64 per unit for 25 years. In addition to the tariff, WPDs were eligible for the issue of RECs for each unit of electricity generated and supplied by them to the appellants. The alternate route available for the WPDs (such as RWE, Wish Wind etc.) at the time of entering into the PPA was to sell electricity at a promotional tariff of ₹ 3.56 per unit - as determined by the State Commission. By choosing the option,

the WPDs were ensured tariff at ₹ 2.64 per unit *plus* tradable RECs whose price was determined on the basis of the "weighted average pooled price"[12]. Distribution licensees were enabled to adjust such quantum of power purchased towards RPO specified under Section 86(1)(e) of the Act. Thus, the interests of both segments of the industry were taken care of.

12. The State Commission by its order dated 08.08.2012[13] determined the tariff at which the power could be procured by the distribution licensees and others from wind power projects commissioned in the control period from 11.08.2012 to 31.03.2016.

13. On 11.07.2013, Central Commission amended the REC Regulations 2010 (hereafter "Second Amendment") and replaced *"at a price not exceeding pooled cost of the power purchase* "with*" at the pooled cost of power purchase"*[14] along with the relevant statement of reasons for the said amendment. It was clarified in the amendment that PPAs already executed prior to this amendment at a tariff lower than APCC would not be affected. The first two respondents were aggrieved by the order of the Central Commission. They filed a petition[15]

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12 See Explanation to Regulation 5 of the REC Regulations 2010 which defines average pooled price as follows:

"the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."

13 in Order No. 2/2012

14 The relevant amendment to Regulation 5 (c), reads as follows:

"(2) In sub-clause (c) of clause (1) of Regulation 5 of the Principal Regulations, the words "at price not exceeding the pooled cost of the power purchase of such distribution licensee" shall be substituted with the words "at the pooled cost of power purchase of such distribution licensee as determined by the Appropriate Commission"."

15 Petition No. 1363 of 2013

before the State Commission arguing that the terms of the PPA had to be changed in view of the change in the REC regulations. This petition was allowed by the State Commission directing that the order of the Central Commission was general and was therefore applicable to all similarly situated wind power generators. Aggrieved by the order of the State Commission, Gujarat Urja had preferred an appeal[16] before APTEL. This appeal was rejected by APTEL by order dated 06.12.2018. The appellants preferred review petition against APTEL's order rejecting their appeal against State Commission's order; that too was dismissed by APTEL vide order dated 24.07.2020.

Arguments of the Appellant

14. The learned senior counsel for the appellant, Mr. C.A. Sundaram submitted that governing regulations for the PPAs in question were the CERC Regulations 2010. Therefore, the State Commission had no jurisdiction to decide the tariff contrary to the agreement. Further, counsel argued that Central Commission itself has clarified by the Second Amendment that in respect of PPAs entered into prior to 11.07.2013, tariffs mutually agreed upon between the parties would be valid for the entire duration of the PPA (i.e. 25 years) and they could not be substituted or re-determined by the State Commission. It was further argued that had the appellants known about the APPC on year-on-year basis at the time of signing the agreement, they would not have adopted the REC mechanism but instead would have availed a different method whereby

16 Appeal No. 209/2015

prices were fixed and appellants would have been entitled to RPO benefits as well.

15. Reliance was placed on this court's judgment in *Gujarat Urja Vikas Nigam Limited v. Solar Semi-Conductors Power Limited Company (India) Private Limited*[17] to argue that if the State Commission re-determines the tariff amongst the parties, then the aggrieved party cannot be compelled to continue the said agreement or enter into a new agreement on such increased tariff.

16. The appellants further submitted that State Commission had no jurisdiction to reopen the PPA as the same was entered into in terms of the REC Regulations 2010 that was framed by the Central Commission and was within its exclusive jurisdiction. Moreover, it was argued that the appellants would fail in their duty towards their consumers if they cannot negotiate for a lower tariff or if they agree to purchase power at a higher tariff despite the availability of power at a lower tariff. In such an event, the higher cost of procurement of power so imposed would be ultimately passed on to the consumers which would be contrary to a specified public interest, under the Act.

17. The learned senior counsel argued that the definition of the "APPC" cannot be relied upon in the present case[18] and the PPA in question provided for a tariff. There was consequently no bar in any law or regulations for the parties

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17 (2017) 14 SCR 115

18 APPC as clause 1.1 of the PPA is defined as:

> *"**Average Power Purchase Cost" means the weighted average** pooled price at which the distribution licensee has. Purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term; but excluding those based on renewable energy sources, as the case may be. Further, for this agreement, Average Power Purchase Cost for the term of the agreement shall be as per Article No. 5.2*

to agree to such tariff and in fact, REC Regulations 2010 itself recognized that the PPA can be "*at a price not exceeding the pooled purchase cost*". Likewise, for the sale of such power to customers or the licensees, reference is made to "*mutually agreed price*" and therefore reference to "*mutually agreed price*" can mean that price can also be a fixed price and need not mean that it has to be dynamic and varying every year.

18. It was argued that the interpretation placed by APTEL is not founded on any express provision in the regulations, or anything arising out of necessary implication. The change in regulations, unless made specifically operable for a prior period, cannot be construed to be retrospective. Thus, contracts concluded prior to the entered into prior to the amendment [in 2013] cannot be governed by amended provisions. Doing so would not only be contrary to the express terms of the amended regulations but would also be contrary to the terms of the PPA which do not accommodate or provide for such change in regulations.

19. The appellants further urged that the PPA was consciously entered into by the respondents on 29.03.2012, *which was before the state commission's tariff order dated 08.08.2012*. The PPAs were signed by the respondents before 11.07.2013, (when the amendment was made to the REC regulations) voluntarily without any reservation. The terms of the PPA were binding and enforceable, unaffected by the Second Amendment, which applied

prospectively. Learned counsel relied on the clarification by the CERC in the Statement of Reasons published in this regard.[19]

20. It is argued that the National Action Plan on Climate Change and the Union Ministry of Power resolution dated 28-01-2016 and Tariff Policy underline the necessity of the co-generation of renewable sources of energy, progressively, so that it reaches a greater proportion. The policy aims at increasing investment, and ensuring that viable units generating renewable energy are set up.

21. It was argued that the PPA was a commercial transaction, freely entered into between the parties. Neither the appellants nor the first Respondent was obliged to enter into the PPA nor agree to any specific terms or conditions. In case the terms were not acceptable, both parties had the freedom to reject the transaction and seek to sell or buy power through other alternative available options as provided under the REC Regulations 2010. Further at the time of signing the PPA, and even thereafter till the filing of the Petition before the State Commission in the month of December 2013 (i.e. more than one and half years after the execution of the PPA), the first respondent did not raise any objections or protest on being allegedly coerced or placed under duress to agree to the terms and conditions of the PPA. The terms of the PPA were fully in

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19 Dated 10.07.2013, which *inter alia*, stated that

"Some of the stakeholders have suggested to clarify as to whether the PPAs executed at price lower than APPC would become ineligible under REC Mechanism. It is felt that the tariff for electricity component lower or higher than APPC may lead to avoidable loss or profit to RE generator. The Commission would like to clarify that the intention is not to debar the projects that have executed PPA at tariff lower than APPC. This amendment will apply prospectively and as such will not affect the" already executed PPAs at lower than APPC."

compliance with the provisions of the REC Regulations 2010 as the restriction in those regulations was for the price not to exceed the Pooled Power Purchase Cost. The price agreed to between the appellant and Respondent No. 1 was ₹ 2.64/- per unit or Pooled Power Purchase Cost of the subsequent year, whichever was lower.

22. The appellants argue that till 11.07.2013 none of the WPDs/ respondents raised any issue on the tariff of ₹ 2.64/kWh for the entire duration of the PPA. It was only on 10.12.2013, the first two respondents filed Petition No.1363/ 2013 before the State Commission claiming that the tariff should be the APPC cost year-on-year basis instead of a fixed ₹ 2.64/kWh. This was contrary to the decision by CERC on the application of Second Amendment only prospectively -which is, for PPAs entered on or after 11.07.2013. The state commission by its order (dated 01.07.2015) allowed the respondent's petition and further directed that the order is generic in nature and applicable to all similarly placed WPDs- which was affirmed by the first impugned order. The appellants argue that the governing Regulations for PPAs adopting the REC Mechanism are 2010 REC Regulations and the state commission cannot decide on tariff contrary to the same. When the Central Commission clarified that for PPAs entered into prior to 11.07.2013, the tariff mutually agreed is valid for the entire duration of the PPA (25 years), the state commission and APTEL fell into error in substituting a new tariff at the instance of the WPDs/Respondents. It is pointed out that Rule

8[20] of the Electricity Rules, 2005, notified by the Central Government, is binding, and specifically provides that tariff determined by the Central Commission (CERC) shall not be subject to re-determination by the GERC/State Commission.

23. Learned senior counsel argued that if at the time of signing the PPAs WPDs-Respondents had sought for tariff at APPC on year-on-year basis, the appellants would not have entered into PPAs under the REC mechanism route and would have only adopted the alternate route where the price was fixed and in addition, the appellants would have been entitled to RPO benefits. This is also clear as the appellants did not sign any PPAs after the Second Amendment for procuring power under the REC mechanism. The appellants urge that the Impugned Order is contrary to the decision of this court in *Gujarat Urja Vikas Nigam Limited v Solar Semi-Conductors Power Company (Pvt) Ltd (Supra)* holding that if the state commission re-determines the tariff, it cannot force the appellants to continue the PPAs or enter into a contract based on such increased tariff. Furthermore, it is argued that the principle that WPDs having validly executed the PPAs cannot seek a modification to the tariff terms and conditions contained in the PPAs under a prevalent dispensation for an increase in the tariff or for any other terms and conditions: counsel referred to *Transmission*

20 Rule 8 reads as follows:

*"8. **Tariffs of generating companies under section 79**. –The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to redetermination by the State Commission in exercise of functions under clauses (a) or (b) of sub section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee* in *the State should enter into Power Purchase Agreement or procurement process with such generating companies based ,on the tariff determined by the Central Commission."*

Corporation of Andhra Pradesh Ltd v Sai Renewable Power Private Limited (hereafter "Transmission Corporation of Andhra Pradesh Ltd")[21]; *Gujarat Urja Vikas Nigam Limited v EMCO Limited (hereafter "Emco Ltd")*[22]; and *Gujarat Urja Vikas Nigam Limited v ACME Solar Technologies (Gujarat) Pvt Ltd & Others*[23]in support of the above contention.

24. Mr. Sundaram argued – for the appellants that the plea of coercion or duress or unequal bargaining etc, raised by the WPDs was patently erroneous for the following reasons: (a) the petition before the state commission was filed only by the first two Respondents; therefore, it cannot be a ground for alleging coercion against all WPDs; (b) the allegations by the said two Respondents were vague and unsubstantiated, and an afterthought as no such plea was raised till December 2013, i.e., till after the amended CERC Regulations; and (c) as held by this Court such plea of coercion had to be specifically pleaded and proved. In this regard, reliance was placed on *Transmission Corporation of Andhra Pradesh Ltd* (Supra).

25. It is further argued that there is no Regulation of the state or central commissions prohibiting a term being incorporated in PPA which permits an option to either party to switch from REC mechanism to Preferential Tariff Mechanism. The impugned order had not considered judgments referred to by the appellants on clauses granting power to one party to cancel the contract. In

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21 (2010) 8 SCR 636
22 (2016) 1 SCR 857
23 (2017) 16 SCC 498

this regard, reliance is placed on *Central Bank of India v Hartford Fire Insurance Co. Ltd*[24]; and *Her Highness Maharani Shantidevi P Gaikwad v Savjibai Haribai Patel & Ors*[25].

Respondents' Submissions

26. Mr. Shyam Divan and Mr. Dhruv Mehta, learned senior counsels appearing for the first two respondents urged that State Commission had jurisdiction in the present case. Reliance was placed on the definitional clause of the PPA (Article 1.1) to submit that commission meant 'State Commission'. It was urged that in terms of the extant regulatory framework, (which provided for regulatory oversight by the appropriate commission), PPAs executed by generating companies and distribution licensees necessarily required approval by the appropriate commission. Firstly, Section 86(1)(b) of the Act specifically vests the State Commission with the power to regulate the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies. This provision empowers the state commission to modify, alter or vary the terms of PPAs, to ensure their compliance in accordance with the regulatory framework. Secondly, under the Multi Year Tariff Regulations, 2011 (hereafter "GERC (Multi Year Tariff) Regulations") notified by the State Commission, , PPAs are to be mandatorily approved in order for them to be considered effective and

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24 AIR 1965 SC 1288
25 2001 (5) SCC 101

enforceable. Learned counsel relied on provisions of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019, (Regulation 21); Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations 2001 (Regulation 45) and Andhra Pradesh Electricity Regulatory Commission (Distribution Licensee) Regulations, 2013 (Regulation 36) to support the contention that prior filing and approval of PPAs is necessary and was not undertaken in this case, which undermines its legal efficacy.

27. It was submitted that pooled purchased cost of power to be taken into consideration under the REC mechanism has to be the APPC of the previous financial year- which has to be modified / increased on a regular basis. When pooled purchase cost increases, the floor price of REC will decrease as the floor price and forbearance price of RECs are subject to fluctuation, at the end of each control period. Thus, wind power projects under the REC mechanism will be viable, only when the realization from the power component increases to compensate for the reduction in prices of RECs. It was submitted that if the APPC computed is lower than what has been taken by the CERC for the determination of the REC price band, there could be a viability gap problem for RE generators under the REC mechanism, especially in cases where the price discovered in the power exchange is closer to the floor price.

28. It was further submitted that the Second Amendment to REC regulations specifically replaced the words “at a price not exceeding” to “at the pooled cost”, which meant that the cost of electricity purchased could neither be lower

nor higher than the power purchase cost. Counsel further placed reliance on Statement of Reasons dated 10.07.2013 issued by the Central Commission regarding the Second Amendment to contend that REC contracts cannot be fixed price contracts as they would affect the viability of REC projects as the price band (floor price / forbearance price) are subject to periodic revision. Relevant extracts of the said statement of reasons are reproduced below:

> *"4.3 Analysis and decision*
> *Some of the stakeholders have suggested to clarify as to whether the PPAs executed at price lower than APPC would become ineligible under REC Mechanism. It is felt that the tariff for electricity component lower or higher than APPC may lead to avoidable loss or profit to RE generator. The Commission would like to clarify that the intention is not to debar the projects that have executed PPA at tariff lower than APPC. This amendment will apply prospectively and as such will not affect the already executed PPAs at lower than APPC.*
> *Regarding suggestion received that PPA of electricity component should be a fixed price long term contract (without escalation) since Commission has assumed fixed price while determining REC price bands in its methodology, it is clarified that the price band is subject to periodic revision; hence fixed APPC or long-term contract without escalation might affect viability of RE Projects. In any case proposed amendment provides that APPC would be determined by the Appropriate Commission"*

29. Counsel appearing for the association submitted that in terms of the regulatory framework, PPAs executed by generating companies and distribution licensees have to be approved by the appropriate commission; and that the PPA in question was never approved by State Commission nor did the appellants approach the State Commission for such approval. It was further submitted that floor price and forbearance price are to be determined guided by various principles, *inter alia*, variations in APPC across the states, (which is revised on

an annual basis). Hence, the APPC cannot be a static concept else variation in floor price or forbearance price would lead to under recovery to generators.

30. It was further contended that APPC along with REC pricing, together, are the tariff determined and approved for the supply of power. That is to say that APPC and REC pricing are two halves of the same whole which constitutes the overall tariff which a generating company registered under the REC mechanism is entitled to receive. APPC along with REC pricing is what was intended to be incorporated as part of the tariff clause in the PPA. If either of the components is pegged or capped artificially, and without the approval of the State Commission, it would lead to a skewed application of the REC mechanism to the detriment of generating company, leading to under-recovery and unviability of the RE generator.

31. It was argued that Regulation 9(2) of REC Regulations 2010 provides for the determination of the floor price (minimum price) and the forbearance price (maximum price) within which the RECs can be traded in power exchanges. The floor price and the forbearance are to be determined by CERC for the entire country guided by various principles, *inter alia,* variations in APPC across the States, which is revised on an annual basis. Therefore, if APPC is made static then variation in Floor Price/ Forbearance price would lead to under recovery to generators.

32. The APPC to be taken into consideration under the REC mechanism must be dynamic and must be revised on a regular basis. When APPC is increased,

the floor price of REC comes down and vice versa and the same is subject to change every year. The APPC along with REC pricing, together, are the tariff determined and approved for the supply of power. In other words, the APPC and REC pricing are two halves of the same whole, which constitute the overall tariff which a generating company registered under the REC mechanism is entitled to receive. *APPC along with REC pricing is what was intended to be incorporated as part of the tariff clause in the PPA.* If either component is pegged or capped artificially, and that too without approval from GERC, the same would lead to a skewed application of the REC mechanism to the detriment of the generating company, leading to under-recovery and unviability of the RE Generator.

33. It was submitted that the tariff in the PPA was in violation of the principal regulation, which does not contemplate a fixed long-term price/ tariff. It is, therefore, illegal and had to be aligned with the regulation. The APTEL correctly aligned the tariff to the regulation. The regulation has not been challenged and it has the force of statute and it mandates that PPAs should be aligned to the regulations. Reliance is placed on *PTC India Ltd. v. CERC (hereafter "PTC India")*[26].

34. Counsel for the third respondent argued that there could not be a tariff between a generating company and a distribution licensee in a PPA which was not in line with the CERC Regulations and tariff orders issued by the State

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26 (2010) 3 S.C.R. 609

Commission. It was further contended that the court cannot enforce a contract where unequal bargaining power exists amongst the parties. It was further submitted that State Commission has rightly observed that the fixed tariff of ₹ 2.64/unit for a period of 25 years by the parties violates not only the provisions of the Act but also the National Electricity Policy and tariff policy as notified under Section 3 of the Act which promotes renewable energy sources through preferential pricing.

35. Counsel for Wish Wind submitted that it cannot be bound by the onerous terms of the PPA as it was never approved by the State Commission and thus not in consonance with the statutory procedure prescribed under the Act. Learned counsel also submitted that present proceedings are not a case where a contract has been interdicted by the State Commission but rather where a contract has been aligned with the relevant regulatory regime in the exercise of the regulatory power vested by the Act. In response to Gujarat Urja's argument that State Commission has no jurisdiction to reopen the PPA, it was submitted that Section 86(1)(b) of the Act places an obligation upon distribution licensees to get PPAs (executed by them) approved by the State Commission and in the present case, state commission never had the opportunity to verify/regulate such PPAs in accordance with the law.

36. It was also submitted that Section 86(1)(b) of the Act empowers the state commission to modify, alter or vary the terms of the agreement of PPAs, to ensure their compliance in accordance with the regulatory framework

established under the Act. It was further submitted that taking into consideration the definition of APPC, it is evident that floor price and forbearance price are dynamic in nature and APPC being associated with the floor price and the forbearance price is also required to be determined on a year-to-year basis so that the guaranteed return to the generators is not affected.

Analysis and Findings

37. The crisis arising out of, and the enormous environmental cost involved in the continued use of fossil fuels has led governments, world over, to promote alternative and renewable sources of energy. The rapid growth of renewable energy over the decade and a half has witnessed that solar and wind power are now the cheapest sources of energy in many countries in the world. Once green energy was an expensive alternative, however, it is now helping to reduce energy bills.

38. The rapidly changing economics of such sources has led, the Union government to realize that solar and other renewables can potentially transform the energy landscape, increase access and help India meet its climate change objectives. Grid transmission capacity has been a barrier; however, distributed and off-grid solar solutions provide a viable solution for increasing energy access. Being dependent primarily on cheap coal-based power generation, traditional thinking on energy has been that increase in renewable energy's share of electricity generation would further impair local distribution

companies' poor financial situation. Over the years, India has established a comprehensive policy and regulatory frameworks to encourage renewable energy development. India began its development of wind power in the 1990s and has significantly increased its capacity over the last few years. Compared to established countries with wind energy capacities like the USA or Denmark, India is a latecomer. Yet, its support for wind power, through its policies has resulted in India becoming the producer with the fourth largest installed wind power capacity, in the world; wind power accounts for 10% of India's total installed power capacity. As of February 2023, the installed capacity of wind power in India was 42,015 megawatts (MW).[27]

39. Section 86 of the Act enumerates the functions of state commissions; Section 86 (1)(e) reads as follows:

> ***"Section 86(1):*** *The State Commission shall discharge the following functions, namely:*
>
> ********** **********
>
> *(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;"*

40. State Commissions have placed significant emphasis on the last part of this important clause while developing regulations for Distribution Licensees

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27 Physical Progress (Achievements) Ministry of New and Renewable Energy, Govt. of India. https://mnre.gov.in/the-ministry/physical-progress, visited on 06.04.2023 at 20:30 hours.

under their jurisdiction. The National Tariff Policy, issued by the Central Government in terms of Section 3 of the Act states as follows:

> *"Clause 6.4: Non-conventional sources of energy generation including co-generation:*
>
> *(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006."*

By virtue of Regulation 4 (1) of the REC Regulations 2010, there are two categories of RECs: solar and non-solar. Regulation 4 (2) mandates that "*non-solar certificate shall be sold to the obligated entities to enable them to meet their obligation for purchase from renewable energy sources other than solar.*" Regulation 5 (1) of the REC regulations (extracted earlier) spells out the eligibility conditions for renewable energy generating companies to apply and seek registration for certificates; these are that the company should have: (a) obtained accreditation from the State Agency; (b) it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and (c) it sells the electricity generated either-(i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price. What is meant by "pooled cost or purchase" is

elaborated in the Explanation (to Regulation 5) to mean *"the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous ·year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources.* as *the case may be."*

41. The objectives of the REC Regulations 2010 were described in the judgment of this court, reported as *Hindustan Zinc Ltd.* v. *Rajasthan Electricity Regulatory Commission*,[28]

> *"44. [..] Regulations have been enacted in order to effectuate the object of promotion of generation of electricity from renewable sources of energy as against the polluting sources of energy which principle is enshrined in the Act, the National Electricity Policy of 2005 and the Tariff Policy of 2006. The provisions requiring purchase of minimum percentage of energy from renewable sources of energy have been framed with an object of fulfilling the constitutional mandate with a view to protect environment and prevent pollution in the area by utilising renewable energy sources as much as possible in larger public interest.[..]"*

42. The approach of this court, therefore, has to consider the objective of the policy of promoting non-renewable sources of energy, the purpose of introducing RECs, and the progressive obligations placed upon licensees, to ensure that they purchase energy from such "green" or "clean" sources, in a viable manner. In the present case, the obligation to procure renewable energy, is located in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereafter

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28 (2015) 7 S.C.R. 1104

the "Renewable Sources Regulations"). Regulation 4 (1) of the said Renewable sources Regulations reads as follows:

> *"4. **Quantum of Renewable Purchase Obligation (RPO)***
> *4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.*
> *The defined minimum percentages are given below in the Table 1.*

Table 1

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
(1)	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.5%	0.5%
2012-13	7%	5.5%	1.0%	0.5%

> *If the above-mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.*
> *Provided further that such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by the obligated entity concerned:*
> *Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove."*

43. In terms of Regulation 9 (1) of the Renewable Sources Regulations, if an obligated entity[29] (such as the present appellant) does not fulfil the renewable purchase obligation as provided in the regulations during any year and also does not purchase the certificates, the State Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the State Commission may determine. Thus, obligated entities, (distribution licences included) had to take steps to progressively increase the purchase of power from renewable energy sources. To incentivize this, flexibility was granted; the power generators could either have the tariff fixed, according to the State Commission's Tariff determination order, or adopt another mechanism, i.e., the one contemplated in the REC Regulations.

44. The relevant conditions and stipulations set out in the PPA in this case, are extracted below:

> *"RATES AND CHARGES*
> *5.1 Monthly energy charges: the GUVNL shall pay for the delivered energy as certified by the SEA of Gujarat SLDC, for the term of this agreement from the commercial operation date of signing of power purchase agreement whichever is later, to the power producer every month. The tariff payable by GUVNL for energy purchased shall be as per clause 5.2 herein.*

29 An "obligated entity" is defined in Regulation 2 (k) as "the entity mandated under clause (e) of subsection (1) of section 86 of the (Electricity) Act to fulfil the renewable purchase obligation and identified under clause 3 of these Regulations.

5.2. GUVNL shall pay a fixed rate of Rs. 2.64 per KWh (average power purchase cost for previous FY i.e. 2010-11) during the term of this agreement for delivered energy certified by Gujarat SLDC in the monthly State energy Account (SEA):

a) In case in any subsequent FY the APPC goes below the APPC goes below the APPC of FY 2010-11, the applicable tariff for ensuring. FY shall be such lower APPC of the previous year.

b) Power producer and power procurer both have option to switch over from REC mechanism to preferential tariff after 10 years from commissioning of the 23.10 MW WTGS. In case either party exercises the option, the tariff shall be Rs. 3.56 per KWh (as determined by GERC through order no. 1 of 2010 dated 30.1.2010) for balance term of the agreement. Further, power producer shall submit documentary evidence to GUVNL for de-registration of wind project from REC mechanism in case either party ·exercise. Option to switch over from REC to preferential tariff.

5.3 For each KVRAH drawn from the grid, the Company shall pay at the rate of as determined by the Commission to GETCO from time to time for each KARH drawn.

5.4 Till the intra-State ABT is implemented, the certificate issued by GEDA for generation share of wind turbine shall be acceptable for monthly energy bill. The other provisions of intrastate ABT and Open access regulations appearing in this agreement shall also be applicable only after the intra-State ABT is implemented.

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ARTICLE 9
TERM, TERMINATION AND DEFAULT
9.1 Term of the agreement: This agreement shall become effective upon the executive and delivery thereof by the parties hereto and unless terminated pursuant to other provisions of the agreement, shall continue to be in force for such time until the completion of a period of 25 (twenty five) years from the commercial operation date."

……..

Did the PPA in the present case, require prior approval of the state commission

45. RWE and the other respondents urge that the PPA was unenforceable because it was not approved by the State Commission. This court is of the considered view that the argument is unmerited and insubstantial.

46. The State Commission's regulations (Renewable Sources Regulations) relating to procurement of energy from Renewable Sources, provides, *inter alia*, pertinently, as follows:

> *"3. Applicability of Renewable Purchase Obligation: These Regulations shall apply to: (1) Distribution licensee (2) Any other person consuming electricity*
> *(i) generated from conventional Captive Generating Plant having capacity of 5 MW and above for his own use and / or*
> *(ii) procured from conventional generation through open access and third party sale."*

47. From a reading of the above provision, it is evident that there was never any provision, which mandated prior approval by the state commission, of PPAs entered into, by parties, in exercise of their free choice, in relation to renewable energy sources. As a matter of fact, in the case of renewable power, the state commission had approved a model PPA. Further, the tariff terms and conditions to the extent decided are by the Central Commission and not by the State Commission. These are incorporated in the model PPA. Neither the commission, nor the contesting respondents, during the hearings in the present appeals, were able to point out any provision in the PPA in the present case, which conflicted with any provision of the model PPA, or any express regulation. Furthermore, it was not established how in the absence of any

reference to the Multi Year Tariff Regulations, they were applicable to PPAs relating to renewable energy sources.

48. This court is also of the considered view, that in the absence of specific norms prescribing prior approval of PPAs like in the case of provisions of Regulation 21 of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019; Regulation 45 of the Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations 2001 and Regulation 36 of the Andhra Pradesh Electricity Regulatory Commission (Distribution Licensee) Regulations, 2013, the respondent's arguments on this aspect cannot be accepted. In these circumstances, the findings of APTEL, not based on any stipulated obligations under provisions of the state regulations, requiring approval of the state commission, for its operation, cannot be sustained.

Whether change in the REC Regulations obliged revision of the PPA in this case

49. In *Emco Ltd* (supra), the parties had entered into a PPA on 09.12.2010 for the sale and purchase of solar power. The PPA was modified on 07.05.2011 in view of certain difficulties in the location of the unit. When the PPA was entered into, the tariff order was applicable. The PPA was thus entered into during the control period of the first tariff order. The second tariff order came into force on 27.01.2012. It granted certain concessions to purchase and availing of the benefit of accelerated depreciation under the income tax and did not grant

such benefits to purchasers and tariff payable to power purchasers which did not avail of the benefit of accelerated depreciation. The respondent Emco had not availed accelerated depreciation. Despite that, it approached the Gujarat State Commission, seeking a determination of the tariff afresh, contending that the position had changed. This court noticed that the power purchaser had contended that notwithstanding that it entered into a PPA during the control period, it was not obliged to sell power to the distributor for a price specified in the PPA and was legally entitled to seek fixation of separate tariff. The Court rejected the contention after noticing the arguments. The relevant extracts of the judgment (In *Emco Ltd.*) are as below:

> "*11. The case of the first respondent is that notwithstanding the fact that it entered into a PPA during the "control period" specified in the First Tariff Order, it is not obliged to sell power to the appellant for the price specified in Article5.2 of the PPA and is legally entitled to seek (from the second respondent) fixation of a separate tariff. It is the further case of the first respondent that under the PPA, the appellant is under an obligation to procure the power from the first respondent for a period of 25 years if the first respondent commences the generation of power within the "control period" and is also obliged to pay for the power procured by it at the rates specified in Article 5.2 of the PPA. But the obligation of the first respondent to sell power generated by it to the appellant at the rates specified in Article 5.2 of the PPA comes into existence only on the happening of the two contingencies i.e. the first respondent (i) commencing the generation of power within the "control period" stipulated under the First Tariff Order; and (ii) choosing to avail the "benefit of accelerated depreciation" under the Income Tax Act. According to the first respondent, the stipulation under the First Tariff Order that the tariff fixed there under is not applicable to those Projects which "do not get such benefit, the Commission would on a petition in that respect determine a separate tariff taking into account all the relevant facts from not" would only imply that tariff fixed under the First Tariff Order is not applicable to those Projects/power producers which do not avail the "benefit of accelerated depreciation" under the Income Tax Act.*
>
> *xxxxxx* *xxxxxx* *xxxxxx*

> *13. We have already noticed that the first respondent did not commence generation of power within the "control period" stipulated under the First Tariff Order and also did not avail the "benefit of the accelerated depreciation" under the Income Tax Act. It is admitted on all hands that the "benefit of accelerated depreciation" mentioned in the First Tariff Order and the PPA is the stipulation contained in Section 32(1)(i) of the Income Tax Act read with Rule 5(1-A) of the Income Tax Rules. They provide for the method and manner in which depreciation of the assets of an assessee is to be calculated.*
>
> *xxxxxx xxxxxx xxxxxx*
>
> *26. Apart from that, the conclusion of the Tribunal in the instant case is wrong. First of all the PPA does not give any option to the respondent to opt out of the terms of the PPA. It only visualises a possibility of the producer not commissioning its Project within the "control period" stipulated under the First Tariff Order and provides that in such an eventuality what should be the tariff applicable to the sale of power by the first respondent. Secondly, the PPA does not "entitle" the first respondent to the "tariff as determined by the" second respondent by the Second Tariff Order. On the other hand, the PPA clearly stipulates that in such an eventuality:*
> *"Above tariff shall apply for solar projects commissioned on or before 31-12-2011. In case, commissioning of solar power project is delayed beyond 31-12-2011, GUVNL shall pay the tariff as determined*
> *by the Hon'ble GERC for solar projects effective on the date of commissioning of solar power project or abovementioned tariff, whichever is lower."*
>
> *(emphasis supplied)"*

50. In *Transmission Corporation of Andhra Pradesh Ltd (Supra)*, the state commission had, by an order dated 20.06.2001 directed generators of non-conventional energy to supply power exclusively to the A.P. Transmission Corporation. Energy developers were not permitted to sell power to third parties. The Commission also approved the rate prevailing earlier for supply @ ₹ 2.25/- per unit with a 5% escalation per annum from 1994-1995 being the base year. The parties entered into PPA after the passing of the Regulatory Commission's order. The PPA embodied or reflected the tariff @ ₹ 2.25/- per

unit with escalation @ 5% per annum having 1994 as the base year to be revised annually upto 2003-04. After that, the purchase price was to be decided by the state commission. The stipulation also provided that further review of the purchase price on the completion of 10 years from the commissioning of the project would be made.

51. The *A.P. Transmission Corporation's* functions devolved upon discoms by operation of law. In this background, the state commission exercised *suo motu* powers to revise non-conventional energy purchase tariffs. The APTEL rejected the appeal of the A.P. Transmission Corporation. This court held that once agreements were signed and were enforceable in law, such enforceable obligations could not be frustrated. The court also negatived the arguments on behalf of the power generator that they had been subjected to coercion or duress. The observations of this court in this regard are pertinent in this regard and are extracted below:

> *"39. [..] In the present case the order dated 20-6-2001 was fully accepted by the parties without any reservation. After the lapse of more than reasonable time of their own accord they voluntarily signed the PPA which contained a specific stipulation prohibiting sale of generated power by them to third parties. The agreement also had a renewal clause empowering TRANSCO/ APTRANSCO/Board to revise the tariff. Thus, the documents executed by these parties and their conduct of acting upon such agreements over a long period, in our view, bind them to the rights and obligations stated in the contract. The parties can hardly deny the facts as they existed at the relevant time, just because it may not be convenient now to adhere to those terms. Conditions of a contract cannot be altered/avoided on presumptions or assumptions or the parties having a second thought that a term of contract may not be beneficial to them at a subsequent stage. They would have to abide by the existing facts, correctness of which, they*

> *can hardly deny. Such conduct, would be hit by allegans contraria non est audiendus."*
> ---
> *42. Now, we will proceed to examine the merits or otherwise of the findings recorded by the Tribunal that the PPAs executed by the parties were result of some duress and thus, it will not vest the authorities with the power to review the tariff and other granted incentives. PPAs were executed prior and subsequent to the issuance of the order dated 20-6 2001. Different persons executed the contracts at different times in full awareness of the terms and conditions of such PPAS. To frustrate a contract on the ground of duress or coercion, there have to be definite pleadings which have to be substantiated normally by leading cogent and proper evidence. However, in the case where summary procedure is adopted like the present one, at least some documentary evidence or affidavit ought to have been filed raising this plea of duress specifically.*
> *43. [..] From the record before us, nothing was brought to our notice to state the plea of duress and to prove the alleged facts which constituted duress, so as to vitiate and/or even partially reduce the effect of the PPAs. On the one hand, the Tribunal appears to have doubted the binding nature of the contracts stating that they contained unilateral conditions introduced by virtue of order and approval of the Regulatory Commission, while on the other hand, in para 53 of the order, it proceeded on the presumption that PPAS are final and binding and still drew the conclusion that the Regulatory Commission could not revise the tariff. Even in the order, no facts have been pointed out which, in the opinion of the Tribunal, constituted duress within*
> *the meaning of the Contract Act so as to render the contract voidable."*

52. In *Gujarat Urja v. Solar Power Company India Pvt. Ltd.*[30]*(hereafter "Solar Power Company India Pvt. Ltd")*, the issue involved was whether the State Commission could extend the control period. One of the arguments made was that having regard to the terms of the PPA, the exercise of such power to extend the control period was not available under the statute. The Court (*per Kurian Joseph, J*) referred to *Gujarat Urja Vikas Nigam Ltd. v. Tarini Infrastructure Ltd*.[31] wherein it was held that:

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30 (2017) 14 S.C.R. 115
31 (2016) 5 S.C.R. 990

> *"10. While Section 61 of the Act lays down the principles for determination of tariff, Section 62 of the Act deals with different kinds of tariffs/charges to be fixed. Section 64 enumerates the manner in which determination of tariff is required to be made by the Commission. On the other hand, Section 86 which deals with the functions of the Commission reiterates determination of tariff to be one of the primary functions of the Commission which determination includes, as noticed above, a regulatory power with regard to purchase and procurement of electricity from generating companies by entering into PPA(s). The power of tariff determination/fixation undoubtedly is statutory and that has been the view of this Court expressed in paras 36 and 64 of A.P. TRANSCO v. Sai Renewable Power (P) Ltd. This, of course, is subject to determination of price of power in open access (Section 42) or in the case of open bidding (Section 63). In the present case, admittedly, the tariff incorporated in PPA between the generating company and the distribution licensee is the tariff fixed by the State Regulatory Commission in exercise of its statutory powers. In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved.*
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> ********** **********

This Court in *Solar Power Company India Pvt. Ltd*(Supra)further observed that:

> *35. 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" andSection61 (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.*
>
> *36. 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.

37. 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."

53. The concurring view expressed by Banumathi J, crucially held that:

*"**Sanctity of power purchase agreement***

22. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to be inviolable. Merely because in PPA, tariff rate as per Tariff Order, 2010 is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the generating company, Respondent 1 and disadvantage of the appellant. Terms of PPA are binding on both the parties equally.

66. In Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd., facts were similar and the question of law raised was whether by passing the terms and conditions of PPA, the respondent can assail the sanctity of PPA. This Court held that power producer cannot go against the terms of the PPA and that as per the terms of the PPA, in case, the first respondent is not able to commence the generation of electricity within the "control period" the first respondent will be entitled only for lower of the tariffs."

54. Similarly, in *Bangalore Electricity Supply Co. Ltd. vs. Konark Power Projects Ltd. & Ors*[32]this court held as follows:

> *"13. The contention that Under Regulations 5.2, 5.3, 5.4 of the 2004 Regulations as well as Sections 61 and 62 of the Electricity Act, power is vested with the Commission to vary the tariff is concerned, such power specifically provided for in the said Regulations will only operate prior to fixing of the tariff once the concerned Power Purchase Agreements are ultimately concluded and the terms are agreed between the parties under the Power Purchase Agreements, thereafter, in our considered opinion, Regulation 5.1 of the 2004 Regulations alone would apply in the case of the parties before us. Consequently, there was no scope for the Commission to vary the tariff agreed between the parties under the approved Power Purchase Agreement."*

55. Section 61 of the Act enacts the basis for tariff determination. On the other hand, Section 62 is concerned with the fixation of various other charges and tariffs. Section 64 lists the manner and procedure for tariff determination by the Commission. Section 86 lists the functions of the Commission and reiterates the determination of tariffs to be a prominent task of the commission. Tariff determination no doubt, comprehends the exercise of regulatory function, including purchase, sourcing, procurement of electricity from generators, by distribution and other licensees, and their sales. This part involves generating companies entering into PPA(s) with procuring entities or licensees. Tariff fixation is a statutory function. Yet, by virtue of Section 42, it is subject to open access determination of the price of power, and subject to Section 63 wherever it involves open bidding. In the facts of this case, the PPA incorporated a tariff between the respondents and Gujarat Urja constituted the tariff fixed by the

32 (2016) 13 SCC 515

State Regulatory Commission in the exercise of its statutory powers. The issue and sale of RECs, constituted an important part of that bargain, between the two parties, based on the assessment of their commercial interest.

56. The important feature of the REC Mechanism is that in it, WPDs (i.e. respondents) had to sell power to distribution licensees at a mutually agreed price, not exceeding the Average Power Purchase Cost ('APPC') of the DISCOMs, (such as Gujarat Urja). The WPDs *were entitled to* the additional benefit of Renewable Energy Certificates issued to it which could be traded in Power Exchange for a price. The consideration payable to WPDs consisted of firstly, a mutually agreed *power Component* and secondly a green component through RECs traded in the Exchange. The alternative to the WPDs was to sell to licensees at *a preferential tariff*, determined by the state commission. In the latter event, WPDs were not entitled to the additional benefit of the green component, which was the tradable RECs the sale of which would have led to increased revenues. The respondent WPDs chose the REC mechanism, while entering into PPAs in these cases, with Gujarat Urja. The PPAs entered by WPDs provided for the fixed tariff of ₹2.64/kWh for the entire term (25 years), as mutually agreed (Article 5.2 of PPA). WPDs were entitled to and were trading RECs in the power exchange, deriving extra monetary benefits: which, at the relevant period was ₹ 1.50/kWh (floor price at the time of signing of PPA). The Preferential Tariff determined by the state commission, for WPDs not opting for the REC Mechanism was ₹ 3.56/kWh. The WPDs were not

entitled to any additional REC benefits, had they adopted the preferential tariff route.

57. The respondents successfully complained before the State Commission, and APTEL, that the PPA, which they had entered into with Gujarat Urja, whereby the tariff was fixed at ₹ 2.64/kWh (with the price of RECs sold by them) was, in the long run, less beneficial than ₹ 3.56/kWh. During the hearing, it was sought to be urged that the cost of RECs in the exchange, had been decreasing, whereas the preferential tariffs had risen. On this aspect, Regulation 9 of the REC Regulations 2010 prescribes the price determination mechanism for RECs in the power exchange. Proviso to Regulation 9 (1) of the REC Regulations 2010 empowers the central commission, in consultation with the Central Agency and the Forum of Regulators, to provide the floor price and forbearance price separately for solar and non-solar certificates. This provision is important because it enables regulatory intervention in the public interest: if the price went below a certain limit, the floor price was to be prescribed, to take care of the interests of generators- like the respondents; if the price went too high, a forbearance price could be fixed, to take care of the interests of the consumers and distributors. By Regulation 9 (2) of the REC Regulations 2010, the Central Commission, was to be guided, in determining the floor and forbearance price, by diverse factors, such as (a) variation in cost of generation of different renewable energy technologies falling under solar and non-solar

category, across states in the country; (b) variation in the Pooled Cost of Purchase across States in the country; (c) Expected electricity generation for non-renewable energy sources [including (i) expected renewable energy capacity under preferential tariff (ii) expected renewable energy under mechanism of certificates] (d) Renewable purchase obligation targets set by various State Commissions. By virtue of Explanation to Regulation 5 (1) of the REC Regulations, *"the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."* An important factor which cannot be lost sight of is that all the respondent's WPDs were registered, under the REC Regulations, based on the state commission's tariff order, of 2010. It is undisputed, that to register under the REC Regulations 2010, an entity (such as WPDs) had to be (a) accredited, with a State Agency [(defined by Regulation 2 (n) of the REC Regulations as an agency *"designated by the State Commission to act as the agency for accreditation and recommending the renewable energy projects for registration"*) and an entity *"not having any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission*].

58. Furthermore, the state commission, in its tariff order, dated 30.01.2010 (which was operative for three years, with the control period beginning from

10.08.2009) while determining the preferential tariff, had observed that it would apply for 25 years:

> *"The Commission, therefore, determines the tariff for generation of electricity from wind energy projects at Rs.3.56 (constant) for its entire project life of 25 years i.e. from the first year to the twenty fifth year. This tariff shall be applicable for purchase of wind energy by Distribution Licensees/ other entities for complying with the renewable power purchase obligations specified in the regulation by commission from time to time. This tariff is applicable to wind energy projects which commission brand new wind energy plants and equipments on 11th August, 2009 onwards."*

59. In the present case, the PPA was entered into by the parties on 29.03.2102, *within the control period* stipulated in the tariff order of 2010. The change in the REC Regulations 2010, whereby the Explanation to Regulation 5 was amended resulted in a change. The pre-existing clause that the power would be *"at a price not exceeding pooled cost of the power purchase"* was altered to *"at the pooled cost of power purchase"*. This change, was through the Second Amendment (to the REC Regulations), carried out on 10.07.2013. It is a matter of record, that for the period between 29.03.2102 and 10.07.2013 - and indeed, after the Second Amendment, no difficulty was experienced in the pricing mechanism agreed by the parties, under the PPA. It was on 10.12.2013 that the respondent WPD approached the state commission for re-determination of tariff. Clearly, this was an opportunistic attempt to derive advantage from the change, brought about by the Second Amendment, and seek to have it applied to an existing contract, which cannot be countenanced. In view of these reasons, it

is held that the reasoning of APTEL, and the State Commission cannot be upheld.

Applicability of the Second Amendment to pre-existing contracts- the general law

60. Power Purchase Agreements are essentially not statutory contracts; however, certain terms contained in those contracts, are regulated by law, i.e. applicable regulations, under the Act. The PPA between a generating company or, as in this case, a wind generator, and a distribution licensee, such as Gujarat Urja, is the outcome of a carefully considered decision, whereby the parties, after due deliberations and negotiations, agree on terms, which are based on existing law and regulations. Aside from contending that the PPA had to be approved, (which this court has rejected in a previous part of this judgment) but was not, the respondents also urge, independently, that the Second Amendment had necessitated re-visiting of the terms of the PPA, relating to the payment of average pooled power purchase cost, given that the amendment mandated that the power would be at the pooled power purchase cost, as opposed to the previous provision, which stated that the cost would not exceed the pooled power purchase cost.

61. Regulation 1 (2) of the Second Amendment clearly provides that the amendments were to come into force from the date of their publication in the Official Gazette, which is 10th July, 2013. Furthermore, the Statement of

Reasons, accompanying the Second Amendment, clarified that existing PPAs were not affected:

> *"Some of the stakeholders have suggested to clarify as to whether the PPAs executed at price lower than APPC would become ineligible under REC Mechanism. It is felt that the tariff for electricity component lower or higher than APPC may lead to avoidable loss or profit to RE generator. The Commission would like to clarify that the intention is not to debar the projects that have executed PPA at tariff lower than APPC. This amendment will apply prospectively and as such will not affect the already executed PPAs at lower than APPC."*

62. The Constitution Bench of this Court, in *PTC India* (supra) had indicated that state commissions possess the power to vary existing contracts, especially PPAs:

> *"40. [..] To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court, which we have discussed hereinafter. For example, under Section 79(1)(g), the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.*
>
> *********
>
> *40. [..] One must keep in mind the dichotomy between the power to make a regulation under Section 178 on the one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a precondition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central*

> *Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures the Central Commission takes under Section 79(1)(j) have to be in conformity with Section 178. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case-to-case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognised, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate legislation. Such subordinate legislation can even override the existing contracts including power purchase agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an order of the Central Commission under Section 79(1)(j).*
>
> *********
>
> *43. [..] While deciding the nature of an order (decision) vis-à-vis a regulation under the Act, one needs to apply the test of general application. On the making of the impugned 2006 Regulations, even the existing power purchase agreements (PPA) had to be modified and aligned with the said Regulations. In other words, the impugned Regulations make an inroad into even the existing contracts. This itself indicates the width of the power conferred on CERC under Section 178 of the 2003 Act. All contracts coming into existence after making of the impugned 2006 Regulations have also to factor in the capping of the trading margin. This itself indicates that the impugned Regulations are in the nature of subordinate legislation. Such regulatory intervention into the existing contracts across the board could have been done only by making regulations under Section 178 and not bypassing an order under Section 79(1)(j) of the 2003 Act. Therefore, in our view, if we keep the above discussion in mind, it becomes clear that the word "order" in Section 111 of the 2003 Act cannot include the impugned 2006 Regulations made under Section 178 of the 2003 Act."*

63. Whilst there cannot be any doubt that regulations framed under the Act can be made applicable to existing contracts, what is discernible from *PTC India* (supra) is that in that case, the applicability of the Trading Margin Regulations which for the first time, compelled persons engaged in trading of

electricity, in terms of Section 2 (17) of the Act, to register, obtain licenses, and operate within the margin limits indicated in the regulations. These provisions introduced a new *regime*, regulating an area, or activity which had hitherto been unregulated. The entire edifice of prescribing general standards for application to all those operating within its sweep, is to ensure that they are universal and constitute a code. The observations in *PTC India* (supra), therefore, are to be seen in this context. Being regulations of general application, dealing with a range of commercial activity, there could have been no question of existing contracts, operating in isolation, through separate silos, outside of their framework. In the present case, however, the PPAs were entered into in the exercise of equal bargaining power, after due negotiation by the parties, and within the framework of existing regulations: both central and state. Therefore, unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties.

64. That amendments to laws, or regulations, unless expressly retrospective, are always prospective, is a settled proposition. In *Purbanchal Cables & Conductors (P) Ltd.* v. *Assam State Electricity Board & Ors.*[33], the position was articulated in this manner:

> *"39. [..] This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure.*

33 (2012) 6 S.C.R. 905

> *40. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior."*

65. In *Commissioner of Income Tax v Vatika Township (P) Ltd.*[34], this court observed, in this context, that:

> *"31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [Phillips v. Eyre, (1870) LR 6 QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*
>
> *32. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in [L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd., (1994) 1 All ER 20 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."*

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34 (2014) 12 S.C.R. 1037

This proposition was again explained and applied in *Union of India v. Indusind Bank Ltd*[35].

66. In view of the above discussion, it is held that agreements, such as the PPAs in the present case, entered into, voluntarily by the parties, before the Second Amendment, were not affected, by its terms. The findings to the contrary in the impugned order, are set aside.

Were the respondents coerced into entering into PPAs

67. The State Commission had concluded that the PPAs were also unenforceable, to the extent of being in non-conformity with the pre-amended Rule 5, of the REC Regulations, as the contracts were entered into by parties with unequal bargaining power. This aspect was noted by APTEL, which held as follows:

> *"9.19 [..] The State Commission after careful consideration of the submissions made by both the parties and after due analysis of the available material on record has recorded its findings in the impugned order that the conditions envisaged in the PPA relating to the tariff and other associated conditions appeared to be one sided in favour of the Appellant and accordingly concluded the case of coercion or duress and unequal bargaining power between the parties being responsible for executing an Agreement full of unjustness and perversity. In view of these facts, we hold that the State Commission has analysed this issue rightly in accordance with law and passed the order assigning cogent reasoning. Thus, we do not find any material case or ground for our interference in the matter.*
>
> *10. SUMMARY OF OUR FINDINGS:*
> *Having regard to the careful consideration and critical analysis of the facts and submissions of the learned counsel for the Appellants as well as the Respondents, we hold that the findings of the State Commission are just and right in accordance with law."*

35 (2016) 11 S.C.R. 700

68. In *Transmission Corporation of Andhra Pradesh Ltd* (supra), this court observed, in the context of a contention of coercion, as follows:

> *"42. [..] To frustrate a contract on the ground of duress or coercion, there have to be definite pleadings which have to be substantiated normally by leading cogent and proper evidence. However, in the case where summary procedure is adopted like the present one, at least some documentary evidence or affidavit ought to have been filed raising this plea of duress specifically.[..]"*

69. In *Shanti Budhiya Vesta Patel & Ors. v. Nirmala Jayprakash Tiwari& Ors.*[36] , this court held that to establish fraud or coercion, there should be *"(a) an express allegation of coercion or fraud, and (b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set out with full particulars."* The court had cited and applied the principle enunciated in *Bishundeo Narain* v. *Seogeni Rai*[37]where it was held that:

> *" […] Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion. [See Order 6 Rule 4 of the Civil Procedure Code.]"*

70. In *New Indian Assurance Co. Ltd v Genus Power Infrastructure Ltd*[38] this court dealt with the standard of pleadings and evidence, needed in cases, where coercion or duress is alleged:

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36 (2010) 4 S.C.R. 958
37 (1951) 1 SCR 548
38 2014 (12) SCR 360

> *"8. It is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prime facie establish the same by placing material before the Chief Justice/his designate."*

71. In the present case, this salutary rule was thrown to the wind, by the State Commission. In this court's opinion, APTEL, in the most cavalier fashion, virtually rubber stamped the State Commission's findings on coercion, in regard to the entering into the PPA by the parties. There was no shred of evidence, nor any particularity of pleadings, beyond a bare allegation of coercion, alleged against Gujarat Urja. It is incomprehensible how such an allegation could have been entertained and incorporated as a finding, given that the respondents are established companies, who enter into negotiations and have the support of experts, including legal advisers, when contracts are finalized. The findings regarding coercion are, therefore, wholly untenable. This court is also of the opinion that the casual approach of APTEL, in not reasoning how such findings could be rendered, cannot be countenanced. As a judicial tribunal, dealing with contracts and bargains, which are entered into by parties with equal bargaining power, APTEL is not expected to casually render findings of coercion, or fraud, without proper pleadings or proof, or without probing into evidence. The findings of coercion are therefore, set aside.

Conclusions

72. In view of the foregoing discussion, it is held that the concurrent findings and orders of the State Commission and APTEL cannot be sustained. They are

accordingly set aside. The appeals are allowed, with costs payable to the appellants.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[S. RAVINDRA BHAT]

.....J.
[M. M. SUNDRESH]

New Delhi,
April 13, 2023

ITEM NO.1501 COURT NO.13 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3480-3481/2020

GUJARAT URJA VIKAS NIGAM LIMITED & ORS. Appellant(s)

VERSUS

RENEW WIND ENERGY (RAJKOT) PRIVATE LIMITED & ORS. Respondent(s)

([HEARD BY HON'BLE SANJAY KISHAN KAUL, HON'BLE S. RAVINDRA BHAT AND HON'BLE M.M. SUNDRESH ,JJ.]
IA No. 77529/2020 - GRANT OF INTERIM RELIEF)

Date : 13-04-2023 These matters were called on for hearing today.

For Appellant(s) Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Srishti Khindaria, Adv.

For Respondent(s) Ms. Nishtha Kumar, AOR

Mr. Vishal Gupta, AOR
Mr. Nikilesh Ramachandran, AOR
Mr. Nitin Saluja, AOR

UPON hearing the counsel the Court made the following
O R D E R

Hon’ble Mr. Justice S. Ravindra Bhat pronounced the reportable judgment of the Bench comprising Hon’ble Mr. Justice Sanjay Kishan Kaul, His Lordship and Hon’ble Mr. Justice M.M. Sundresh.

It is held that the concurrent findings and orders of the State Commission and APTEL cannot be sustained. They are accordingly set aside. The appeals are allowed, with costs payable to the appellants in terms of the reportable judgment.

Pending application(s), if any, are disposed of.

(HARSHITA UPPAL) **(MATHEW ABRAHAM)**
SENIOR PERSONAL ASSISTANT **COURT MASTER (NSH)**

(Original signed Reportable Judgment is placed on the file)