



2026:CGHC:14839



2026:CGHC:14839

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 1927 of 2016****Order reserved on 19/12/2025****Order delivered on 30/03/2026**

1 - Jindal Steel And Power Ltd. S/o A Company Registered Under The Provisions Of Companies Act, 1956, Having Its Corporate Office At Jindal Centre, 12 Bhikaji Cama Place, New Delhi- 110066, Through Mr. Rajesh Agrawal, Associate- Vice- President., Delhi

2 - Mr. Rajesh Agrawal, S/o Shri B.K. Agrawal Aged About 45 Years Shareholder Of Petitioner No.1, A V P- Electrical Power System, Jindal Steel And Power Ltd., R/o Hill View Colony, J S P L, Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh

... Petitioners**versus**

1 - Chhattisgarh State Electricity Regulatory Commission Irrigation Colony, Shanti Nagar, Raipur, Chhattisgarh 492001, Chhattisgarh

2 - Chhattisgarh State Power Distribution Company Ltd., A Successor Company Of C S E B, 4th Floor, Vidyut Sewa Bhavan, Daganiya, Raipur, Chhattisgarh 492013, District : Raipur, Chhattisgarh

3 - Chhattisgarh State Power Transmission Company Ltd., A Successor Company Of C S E B, Energy Info Tech Centre, Danganiya, Raipur, Chhattisgarh 492013, District : Raipur, Chhattisgarh

... Respondents

(Cause title taken from Case Information System)



For Petitioners	:	Mr. Abhimanyu Bhandari, Senior Advocate (through virtual mode) along with Mr. Bhaskar Payasi, Mr. Jai Dhanani, Ms. Divya Chaturvedi, Mr. Saransh Shaw, Mr. Pranav Sood and Mr. Pankhuri Gupta, Advocates
For Respondent No.1	:	Mr. Adhiraj Surana, Advocate
For Respondents No. 2 & 3	:	Mr. Rajkumar Mehta, Advocate (through virtual mode) with Mr. Varun Sharma, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

C.A.V. Order

1. For the sake of convenience, the following terms shall hereinafter be referred to as under:

Power Purchase Agreement - "PPA"

Chhattisgarh State Power Distribution Co. Ltd. - "CSPDCL"

Chhattisgarh State Power Transmission Co. Ltd. - "CSPTCL"

Short Term Open Access - "STOA"

Indian Electricity Grid Code - "IEGC"

Inter State Generating Station - "ISGS"

Availability Based Tariff - "ABT"

State Load dispatch Centre - "SLDC"

Electricity Power Survey - "EPS"

Inter State Generation Station – "ISGS"

Load Factor – "LF"

National Electricity Policy - "NEP"

2. The petitioners have filed the present writ petition challenging the judgment dated 26-05-2016 (Annexure P-1) passed by the Appellate



Tribunal for Electricity, in Appeal Nos. 41 and 67 of 2015, and also against the demand notice dated 07-07-2016 (Annexure P-2) issued by the Respondent No. 2, letter dated 21-07-2016 (Annexure P-3), letter dated 25-07-2016 (Annexure P-4), to issue No Objection Certificate to allow the petitioner to open access from the Respondent No. 3, and also to declare that the petitioner No. 1 is not liable to refund of amount of Rs. 153.55 Crore to the Respondent No. 2, and prayed for the following reliefs:-

“It is therefore most respectfully prayed that this Hon’ble Court may be pleased to:

10.1. Admit the Petition and set aside the Impugned Judgment dated 26.05.2016 (marked as Annexure P-1) passed by the Appellate Tribunal for Electricity in Appeal Nos. 41 & 67 of 2015 : CSPDLC vs. CSERC;

10.2. Quash the Impugned Demand Notice dated 07.07.2016 (marked as Annexure P-2) passed by the Chhattisgarh State Power Distribution Company Ltd.;

10.3. Quash the Impugned Letter dated 21.07.2016 (marked as Annexure P-3) passed by the Chhattisgarh State Power Distribution Company Ltd.;

10.4. Quash the Impugned Rejection Letter dated 25.07.2016 (marked as Annexure P-4) passed by the Chhattisgarh State Power Distribution Company Ltd.;

10.5. Direct the Chhattisgarh State Power Distribution Company Ltd. to issue No Objection Certificate to



allow the Petitioner No.1 to avail Open Access from the Chhattisgarh State Power Transmission Co. Ltd;

10.6. Direct the Chhattisgarh State Power Transmission Company Ltd. to grant open access to the Petitioner No.1 to supply power;

10.7. Declare that Petitioner is not liable to refund Rs.153.55 Crore to the Chhattisgarh State Power Distribution Company Ltd. in relation to the power supplied to it in the FY 2011-12 and FY 2012-13; and

10.8. Pass any such other Order or Orders as this Hon'ble Court may deem fit and proper in facts of the present case.”

3. Petitioner No.1 is a company incorporated under the Companies Act, 1956 and is engaged inter-alia in the business of manufacturing sponge iron and steel, as well as the generation of power. The Petitioner No.1 has established Captive Power Plants (CPPs) at Village Patrapali, District Raigarh, and is a “generating company” within the meaning of Section 2(28) of the Electricity Act, 2003. The installed capacity of its captive power plant was initially 265.7 MW, which was subsequently enhanced to 325.7 MW. Mr. Rajesh Agarwal has been authorized to prosecute the petition on behalf of Petitioner No.1 by virtue of a Board Resolution dated 26.07.2016.
4. On 02-11-2011, a PPA was executed between the Petitioner No. 1 and the Respondent No. 2, CSPDCL, for the supply of Electricity. The initial PPA provided for the sale of 150 MW power for the period



01.11.2011 to 30.06.2012 and incorporated specific provisions regarding load factor calculation, scheduled power, and tariff determination based on formulae adopted from the State Commission's Suo Motu Order. The agreement permitted injection of power up to 110% during off-peak hours and 120% during peak hours, with excess supply beyond these limits compensated at Rs. 1 per unit. The tariff was linked to the load factor, with a minimum effective rate of Rs. 1.50 per unit.

5. Subsequently, supplementary PPAs were executed on 12.07.2012, 13.08.2012, and 24.01.2013 covering different periods up to 30.06.2013, including variation in contracted capacity (150 MW and later 75 MW). The Petitioner supplied power in terms of these agreements during Financial Years 2011–12 and 2012–13 and raised invoices, including load factor-based billing and concessional rates for excess injection. Respondent No.2 accepted the supplies and made payments without any protest, at average rates of Rs. 2.42 per kWh and Rs. 2.66 per kWh, respectively.
6. In 2014, Respondent No.2 filed Tariff Petition No. 07/2014 before the State Commission seeking true-up and tariff determination. By order dated 12.06.2014, the State Commission approved a minimum base rate of Rs. 1.50 per kWh for power procured from the Petitioner, treating such power as “non-firm”. It is the case of the petitioners that this classification was not contemplated under the agreements between the parties. A Review Petition was filed by Respondent No.2



before the State Commission, which was dismissed on 08.12.2014, affirming the earlier findings.

7. The Respondent No.2 thereafter challenged the tariff and review orders before the Appellate Tribunal for Electricity in Appeals Nos. 41 and 67 of 2015. By judgment dated 26.05.2016, the Appellate Tribunal upheld the orders of the State Commission. Following the Tribunal's judgment, Respondent No.2 issued a demand notice dated 07.07.2016 claiming a refund of Rs. 153.55 crore along with interest, alleging overcharging by the Petitioner for power supplied during FYs 2011–12 and 2012–13. The Petitioner disputes this demand as arbitrary and contrary to the binding contractual terms, emphasizing that all invoices were raised strictly in accordance with the PPAs and duly honoured without objection at the relevant time.
8. The Petitioner sought Short Term Open Access (STOA) in July 2016 for the supply of power through power exchanges. However, Respondent No.2 refused to grant a No Objection Certificate (NOC), citing the alleged outstanding dues arising from the impugned demand. Consequently, Respondent No.3 (CSPTCL) also rejected the Petitioner's application for open access on 25.07.2016 on the same ground, thereby preventing the Petitioner from participating in power exchange transactions.
9. It is also the case of the petitioner that the Petitioner No.1 duly supplied power to Respondent No.2/CSPDCL during FYs 2011–12 and 2012–13 and raised invoices in accordance with the terms of the PPAs, computing tariff on the basis of load factor during peak and



off-peak hours and charging only Re. 1.00 per kWh for power injected beyond 110% (off-peak) and 120% (peak) limits, with load factor calculated on a weekly basis. Respondent No.2 accepted such supplies and made payments at average rates of Rs. 2.42 per kWh in FY 2011–12 and Rs. 2.66 per kWh in FY 2012–13 without any objection, and at no point prior to the impugned demand did it allege that the power supplied was non-firm or that the Petitioner had overcharged. The PPAs, being binding contracts, cannot be unilaterally disregarded by Respondent No.2 after a lapse of several years to seek refund of amounts already paid. It is further apparent that the said PPAs were neither placed before the State Commission under Section 62 of the Electricity Act, 2003 nor adequately explained during tariff proceedings, thereby depriving the Commission of the opportunity to examine their terms. Significantly, Respondent No.2 itself admitted in the Review Order that the PPAs were in consonance with the State Commission's orders, that payments were made in accordance with their terms, and that no retrospective alteration of such concluded transactions is permissible.

10. The Petitioners also challenged the demand notice and denial of NOC through representations dated 22.07.2016 and 23.07.2016, asserting that no direction had been issued by the State Commission or the Appellate Tribunal requiring refund, and that liability could not be imposed without affording the Petitioner an opportunity of hearing. The Petitioner further contended that the PPAs were binding and



could not be retrospectively altered, particularly after full performance and settlement of payments.

11. Aggrieved by the demand of Rs. 153.55 crore, denial of open access, and reliance on orders passed in proceedings to which it was not a party, the Petitioner has filed the present petition seeking quashing of the Appellate Tribunal's judgment dated 26.05.2016, the demand notice, and related communications. The Petitioner also seeks directions restraining Respondent No.2 from recovering the said amount and for the grant of NOC and open access facilities.
12. The Respondent No. 1, Chhattisgarh State Electricity Regulatory Commission, contested the claim of the petitioner and filed its return with the preliminary objection that the present petition is not maintainable and is liable to be dismissed in limine on account of the availability of efficacious alternative remedies under the provisions of the Electricity Act, 2003. It is submitted that the Petitioner has a statutory remedy under Section 125 of the Act of 2003 to assail the order dated 26.05.2016 passed by the Appellate Tribunal before the Hon'ble Supreme Court. Further, the Petitioner could have availed the remedy of review under Section 120(2)(f) of the Act before the Appellate Tribunal, particularly on the ground of alleged denial of opportunity of hearing. It is also pleaded that the Petitioner has an alternative remedy under Section 86(1)(f) of the Act to approach the State Commission for adjudication of disputes, which remedy has not been exhausted. The consequential proceedings, including the demand notice dated 07.07.2016, emanate from the order of the



Appellate Tribunal, and therefore, unless the said order is set aside by the competent forum, no interference with the consequential actions is warranted.

13. The Respondent No. 1 also pleaded that the demand raised against the Petitioner is justified and in consonance with the Tariff Orders dated 12.06.2014 and 08.12.2014 passed by the State Commission in exercise of its statutory powers. The Commission, while undertaking the true-up exercise for FYs 2011–12 and 2012–13, examined the nature of power supplied by the Petitioner and found the same to be non-firm and unstable, based on load curve analysis and findings recorded in earlier appellate proceedings. The Commission accordingly approved only a minimum base rate of Rs. 1.50 per kWh for such power, observing that the burden of procuring non-firm power at higher rates cannot be passed on to consumers. It is further pleaded that the PPAs themselves contained a stipulation making them subject to directions and guidelines issued by the Commission, thereby rendering the tariff orders binding upon the parties.
14. It is also the reply of the Respondent No. 1 that due process was followed by the State Commission as well as the Appellate Tribunal, including issuance of public notices and affording opportunity of hearing to stakeholders. The notices of tariff and review proceedings were published in newspapers, and that a representative of the Petitioner had participated in the review proceedings, thereby negating the plea of lack of opportunity of hearing or knowledge of



the proceeding. Similarly, the Appellate Tribunal also issued public notices prior to deciding the appeals. Therefore, the Petitioner cannot now claim ignorance of the proceedings or violation of principles of natural justice.

15. The Respondent No. 2/CSPDCL have filed their return and have raised a preliminary objection as to the maintainability of the present writ petition on the ground that the petitioners had an effective and statutory alternative remedy. It is submitted that the order dated 12.06.2014 passed by the State Commission in Petition Nos. 05 to 08 of 2014 (T), including Petition No. 07/2014 filed by respondent No. 2, was subjected to challenge before the Appellate Tribunal for Electricity (APTEL) by way of Appeal Nos. 41 and 67. The said appeals, directed against both the original order and the review order dated 08.12.2014, were dismissed by APTEL by a common judgment dated 26.05.2016. The petitioners have not preferred any appeal before the Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003. Therefore, the judgment of APTEL has attained finality and is binding on the petitioners, thereby precluding the petitioners from re-agitating the same issues in the present writ proceedings.
16. It is further pleaded that the petitioner company had entered into Power Purchase Agreements offering 150 MW of firm power on a round-the-clock basis, with a permissible reduction up to 20% and a guaranteed minimum supply of 120 MW, subject to the provisions of the Electricity Act, 2003 and regulatory guidelines issued by the State



Commission from time to time. Respondent No. 2, being a distribution licensee under Section 14 of the Act, procured power on a short-term basis in accordance with tariff orders and regulatory framework evolved by the State Commission through various suo motu proceedings since 2009, wherein ceiling tariffs and procurement conditions were determined after due public consultation and stakeholder participation, including that of the petitioners. In continuation thereof, the State Commission, while determining tariff in Petition Nos. 05 to 08 of 2014 (T), examined the short-term power purchases made by respondent No. 2 from the petitioner and, on analysis of the load curve and injection pattern, concluded that the power supplied was intermittent and non-firm in nature, causing grid disturbances, and accordingly restricted the tariff to a lower rate treating it akin to infirm power. Though respondent No. 2 initially contested these findings, its challenge failed, as the review petition was partly allowed and the subsequent appeals preferred before APTEL against the orders dated 12.06.2014 and 08.12.2014 were dismissed by a common judgment dated 26.05.2016, affirming that unstable and fluctuating power supply cannot be equated with firm power and must be compensated at a lower tariff.

17. It is further pleaded that the proceedings before the State Commission were conducted in accordance with the Chhattisgarh State Electricity Regulatory Commission (Conduct of Business) Regulations, 2009. Under the said Regulations, individual notices to stakeholders are not mandatory; rather, the procedure contemplates



issuance of public notice to ensure wider participation. In the present case, the petitions were uploaded on the Commission's website, copies were made available at the offices of the petitioners, and a public notice along with the gist of the petitions was published in newspapers inviting objections and suggestions. Public hearing was conducted at Raipur on 21.05.2014, followed by a separate interaction on 22.05.2014 with representatives of industries, HT consumers, and industrial associations. Additionally, consultations were held with members of the State Advisory Committee. The Commission, after considering all objections and performing due diligence, finalized its findings. A further public notice dated 26.04.2014 was also issued. Thus, the petitioners were duly notified and had full opportunity to participate.

18. The respondent No. 2 had filed Review Petition No. 35 of 2014 on 31.07.2014 before the State Commission. During the course of hearing on 28.10.2014, the authorized representative of petitioner No. 1, namely N.K. Chandiramani (DGM, JSPL), was present, as reflected in the order sheet. The review petition was ultimately disposed of on 08.12.2014. Despite having knowledge of and participating in the proceedings, the petitioners failed to effectively pursue their remedies or challenge the outcome at the appropriate stage. Even thereafter, when APTEL dismissed the appeals on 26.05.2016, the petitioners did not avail the statutory remedy of appeal before the Hon'ble Supreme Court. The respondents submit that such conduct demonstrates negligence and attracts the doctrine of acquiescence.



19. It is also pleaded that the dispute pertains to highly technical issues involving tariff determination, nature of power supply, and grid stability. The State Commission, exercising powers under Sections 62 and 86 of the Electricity Act, examined the power purchase agreements, load curves, and injection patterns, and concluded that the power supplied by the petitioner was non-firm in nature due to its fluctuating and unstable characteristics. Consequently, the tariff was restricted in line with the treatment of infirm power. This finding was specifically affirmed by APTEL, which observed that such unstable injection patterns create commercial complications and disturb the demand-supply balance. The respondents contend that such findings, based on technical data and expert analysis, are not amenable to judicial review under Article 226, particularly where disputed questions of fact are involved.
20. The respondent No. 2 further pleaded that the present petition suffers from non-joinder of necessary and proper parties. Several stakeholders, including industries and associations, who participated in the proceedings before the State Commission and opposed the claims, have not been impleaded in the present writ petition. Additionally, the petitioners have not challenged the foundational order dated 12.06.2014 or the applicability of the 2009 Regulations, which governed the entire process. In the absence of such challenge, the relief sought becomes untenable. It is also pleaded that the petitioners had knowledge of the APTEL judgment at least by 07.07.2016 through the demand notice issued by respondent No. 2, yet failed to take any appropriate remedial steps.



21. On the issue of recovery, the respondent No. 2 pleaded that the demand raised is in accordance with Section 62(6) of the Electricity Act, 2003, which mandates that any excess tariff recovered by a generating company shall be refundable along with interest at the bank rate. The demand of Rs. 153.55 crore has been raised pursuant to the findings of the State Commission and APTEL, and is supported by audited accounts and financial records considered during tariff determination. It is also pleaded that permitting the petitioners to retain such excess amount would result in unjust enrichment and would be contrary to public interest, particularly as respondent No. 2 is a public utility accountable to consumers.

22. Respondent No. 3 has also filed its return separately and in preliminary submissions, have pleaded the statutory framework of the Electricity Act, 2003, to justify their actions. It is pleaded that under Section 31 of the Act, the State Load Dispatch Centre (SLDC) has been constituted as the apex body for integrated operation of the power system within the State, and is operated by the State Transmission Utility in terms of Section 39. The SLDC is statutorily prohibited from engaging in the trading of electricity and is entrusted with critical operational responsibilities relating to grid management, scheduling, and dispatch. Further, under Section 86(1) of the Act, the State Regulatory Commission is vested with wide powers, including the determination of tariff, the regulation of procurement of electricity by distribution licensees, facilitation of intra-State transmission, adjudication of disputes, and specification of the State Grid Code, while ensuring transparency and adherence to national policies. In



furtherance of its statutory functions, the State Commission has notified the Chhattisgarh State Electricity Grid Code, 2011, and the SLDC discharges its functions under Section 32 of the Act, which include ensuring optimum scheduling and dispatch of electricity, monitoring grid operations, maintaining quality of electricity, supervising intra-State transmission, and carrying out real-time grid control for secure and economic operation. Additionally, under Section 33, the SLDC is empowered to issue binding directions to generating companies and licensees to maintain grid discipline, and such directions are mandatorily required to be complied with, failing which penal consequences may follow. The SLDC is also obligated to act in coordination with higher load dispatch centres and to ensure safe and stable grid operations.

23. The Respondent No. 3 further pleaded that the petitioner No. 1 has consistently injected fluctuating and non-firm power into the State grid over a prolonged period of time, including during the subsistence of the Power Purchase Agreements executed with respondent No. 2. The SLDC had repeatedly issued communications and directions to the petitioners, calling upon them to adhere to scheduled injection and grid discipline. The petitioner not only failed to comply but also admitted its inability to supply firm power on account of fluctuating internal consumption patterns. The SLDC, in multiple letters dated between 2014 and 2016, highlighted substantial deviations in injection ranging from zero to excessive levels, violation of open access regulations, and potential threat to grid security, even warning of disconnection in case of continued non-compliance.



Simultaneously, the SLDC also apprised the State Commission of the persistent issues arising from such fluctuating power supply and sought appropriate guidelines for the identification and treatment of “non-firm” or “poor quality” power. Several communications addressed to the Commission between 2014 and 2016 emphasized the operational difficulties faced in maintaining grid discipline, including warnings received from higher load dispatch centres. The SLDC specifically requested clarity on the criteria for non-firm power, permissible actions against defaulting generators, and the permissibility of granting open access in such cases. These communications were made in discharge of statutory obligations, including under Section 33(4) of the Act.

24. It is further pleaded that the State Commission, while passing the tariff order dated 12.06.2014 in Petition No. 07 of 2014 (T), examined the load curve and injection pattern of the petitioner and recorded a categorical finding that the power supplied was highly fluctuating, unstable, and non-firm in nature. It was observed that such erratic supply adversely impacted grid stability and compelled the distribution licensee to resort to overdrawal or underdrawal from the grid, attracting penalties. Consequently, the Commission held that such power could not be treated at par with firm power and restricted the tariff to a base rate of Rs. 1.50 per unit, further issuing specific directions to discourage procurement and injection of such non-firm power and mandating the SLDC to monitor and regulate the same.



25. The review petition filed by respondent No. 2 was disposed of on 08.12.2014, wherein the Commission reaffirmed its earlier findings, noting that no new material or error apparent on record had been brought forth. The Commission also relied on independent studies and consistent observations of the SLDC regarding the fluctuating injection pattern of the petitioner. The directives issued in the original order, including those relating to grid discipline and monitoring of non-firm power, thus attained finality at the regulatory level. Aggrieved thereby, respondent No. 2 preferred appeals before the Appellate Tribunal for Electricity (APTEL), which, by its judgment dated 26.05.2016, upheld the findings of the State Commission in entirety. The Tribunal took note of the petitioner's own admissions in earlier proceedings regarding the fluctuating nature of surplus power and inability to supply consistent power due to variable industrial demand. It was categorically held that such an unstable power supply has commercial as well as operational implications, disturbs demand-supply balance, and cannot be equated with firm power. The Tribunal affirmed that such power must be treated as akin to infirm power and compensated at a significantly lower rate.
26. It is further pleaded that the petitioners have neither challenged the tariff order dated 12.06.2014 nor the directives issued therein, nor the judgment of APTEL. In compliance with the said binding decisions and statutory mandate, the SLDC has continued to regulate and restrict open access to the petitioner in view of its non-compliance with grid discipline and continued injection of non-firm power. The rejection of short-term open access applications made by the



petitioners in July–August 2016 was thus based on statutory obligations, regulatory directives, and binding judicial findings, and not merely on account of any monetary dispute as alleged. The answering respondent has acted strictly within the framework of the Electricity Act, 2003, the State Grid Code, and the binding directions of the State Commission and APTEL. The continued conduct of the petitioner in injecting fluctuating power, coupled with its admitted inability to maintain firm supply, justified regulatory intervention and denial of open access in the interest of grid security, discipline, and public interest.

27. Learned counsel for the petitioners would submit that the present writ petition has been filed by the Petitioner, Jindal Steel & Power Limited (JSPL), assailing the demand notice dated 07.07.2016 issued by the Respondent No. 2, Chhattisgarh State Power Distribution Company Limited (CSPDCL), seeking recovery of Rs. 153.55 crores, along with the consequential denial of open access and the underlying judgment dated 26.05.2016 passed by the Appellate Tribunal for Electricity (APTEL). The core challenge of the Petitioner is that the impugned demand is wholly without jurisdiction, contrary to the settled principles of law, and has been raised in complete violation of principles of natural justice.
28. The undisputed fact that the Petitioner was never impleaded as a party in the proceedings before the State Commission or before APTEL. The true-up proceedings initiated by CSPDCL, the subsequent review proceedings, and the appeals before APTEL



were all conducted without issuing any notice to the Petitioner, despite the fact that the entire dispute pertained to power supplied by the Petitioner under duly executed Power Purchase Agreements. The Petitioner was thus denied any opportunity to place its case, clarify the nature of supply, or defend the contractual arrangement. It is a settled proposition of law that no adverse order can be passed against a party without affording it a reasonable opportunity of hearing, and any action taken in breach thereof stands vitiated. The impugned demand is ex facie illegal, as it seeks to impose a financial liability upon the Petitioner on the basis of proceedings to which it was not a party and in which no findings have been recorded against it. A perusal of the true-up order, review order, and the appellate judgment would reveal that the findings, if any, are against CSPDCL alone, particularly attributing negligence to it in procuring power. There is not even a whisper in the said orders directing recovery from the Petitioner or holding that the Petitioner is liable to refund any amount. In such circumstances, the unilateral issuance of the demand notice is nothing but an afterthought and is wholly unsustainable.

29. Learned counsel for the petitioners further submits that it had no occasion to challenge the orders passed by the State Commission or APTEL, as it was neither a party to those proceedings nor was any liability fastened upon it therein. The cause of action for the Petitioner arose only upon issuance of the impugned demand notice dated 07.07.2016. Therefore, the contention of CSPDCL that the Petitioner ought to have availed alternative remedies is misconceived. It is well



settled that where a party has not been heard and suffers civil consequences, the writ jurisdiction of this Hon'ble Court can be directly invoked. The Petitioner was a necessary party to the proceedings before the State Commission and APTEL, as the adjudication directly concerned the nature of power supplied by it and the payments made under the PPAs. In the absence of the Petitioner, no effective or binding determination could have been made on issues that ultimately form the basis of the impugned demand. The failure of CSPDCL to implead the Petitioner, despite having full knowledge of the contractual relationship and transactions, renders the entire exercise procedurally flawed. Such omission cannot now be used to prejudice the Petitioner by fastening liability upon it without due process.

30. It is further argued that the petitioner had supplied electricity strictly in terms of the Power Purchase Agreements executed with CSPDCL, which were based on the Suo-Motu Order passed by the State Commission. The contractual framework specifically recognized the nature of supply from captive generating plants, including permissible variations and the mechanism for computation of tariff through load factor and eligible units. The invoices raised by the Petitioner were in accordance with these agreed terms and were duly verified and paid by CSPDCL without any demur. It is an admitted position that CSPDCL accepted the power supplied by the Petitioner, utilized the same for distribution to consumers, and recovered the corresponding tariff. Payments were made over the relevant period in full satisfaction of contractual obligations, and at no stage during the



subsistence of the PPAs did CSPDCL raise any dispute regarding the nature or quality of power supplied. In such circumstances, the attempt to retrospectively reclassify the supply as “non-firm” and seek recovery of amounts already paid is impermissible in law and contrary to the doctrine of finality of concluded transactions.

31. The impugned demand, in effect, seeks to compel the Petitioner to refund monies for electricity that has already been generated, supplied, consumed, and paid for. Such a course of action is not only inequitable but also legally untenable, as there exists no provision in the PPAs or under any statutory framework permitting such recovery. In the absence of any contractual stipulation or regulatory direction requiring refund, CSPDCL cannot unilaterally impose a financial burden upon the Petitioner. Further, the findings of the State Commission, as affirmed by APTEL, clearly attribute negligence to CSPDCL in procuring power without due prudence. The regulatory authorities have held that the consequences of such negligence cannot be passed on to consumers. However, CSPDCL now seeks to shift this very burden onto the Petitioner, who was not even heard in the proceedings. This attempt to transfer liability is contrary to the findings of the regulatory authorities themselves and is legally impermissible.
32. It is further argued that the objection raised by CSPDCL regarding the availability of an alternative remedy under Section 125 of the *Electricity Act, 2003* is wholly misconceived and untenable in the facts of the present case. The remedy of appeal to the Hon'ble



Supreme Court under Section 125 is available only to a “person aggrieved” by an order passed by the Appellate Tribunal for Electricity (APTEL). In the present case, the Petitioner was neither a party to the proceedings before the State Commission nor before APTEL, and no adverse findings or directions have been issued against it in the impugned judgment. Consequently, the Petitioner cannot be said to be an “aggrieved person” within the meaning of Section 125 so as to avail the said appellate remedy. The cause of action for the Petitioner arose only upon issuance of the impugned demand notice dated 07.07.2016, whereby, for the first time, a liability has been sought to be imposed upon it without any adjudication or hearing. It is a settled principle of law that the existence of an alternative remedy does not bar the exercise of writ jurisdiction under Article 226 of the Constitution of India, particularly where the impugned action is wholly without jurisdiction, violative of principles of natural justice, or results in manifest injustice. In the present case, the Petitioner has been fastened with a substantial financial liability without being heard and without any legal basis, and therefore, the writ petition is not only maintainable but constitutes the only efficacious remedy available to the Petitioner.

33. The action of CSPDCL is also hit by the principles of estoppel, approbation and reprobation. Having accepted the contractual terms, acted upon them, and derived benefit from the Petitioner’s performance, CSPDCL cannot now take a contradictory stand to the detriment of the Petitioner. The law does not permit a party to accept benefits under a contract and subsequently challenge its validity or



seek restitution without any legal basis. The impugned demand notice is vitiated by violation of principles of natural justice, absence of jurisdictional foundation, lack of contractual or statutory basis, and arbitrariness. The Petitioner, having neither been heard nor held liable in any adjudicatory proceedings, cannot be subjected to recovery of amounts already paid for duly supplied electricity. Accordingly, the impugned demand and all consequential actions deserve to be quashed, and the Petitioner is entitled to appropriate reliefs from this Hon'ble Court.

34. In support of his submission, he would rely upon the judgments of **"Ramesh Hiranand Kundanmal v. Municipal Corporation of Greater Bombay"** 1992 (2) SCC 524, **"Whirlpool Corporation v. Registrar of Trade Marks"** 1998 (8) SCC 1, **"State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd."** 2005 (6) SCC 499, **"Harbans Lal Sahnia v. Indian Oil Corporation Ltd."** 2003 (2) SCC 107, **"Dhampur Sugar Mills Ltd. v. State of U.P. and Others"** 2007 (8) SCC 338, **"Har Shankar and Others v. Dy. Excise and Taxation Commissioner and Others"** 1975 (1) SCC 737, **"State Bank of Haryana and Others v. Jage Ram and Others"** 1980 (3) SCC 599, **"Mumbai International Airport (P) Ltd. v. Golden Chariot Airport"** 2010 (10) SCC 422, **"Hari Bans Lal v. Sahodar Prasad Mahto"** 2010 (9) SCC 655, **"Mohindar Singh Gill v. Chief Election Commissioner, New Delhi"** 1978 (1) SCC 405, **"Sharda Singh v. State of U.P."** 2009 (11) SCC 683, **"Chandi Prasad v. Jagdish Prasad"** 2004 (8) SCC 724, **"Pimpri Chinchwad New Town Development Authority v. State of Maharashtra"** 2005 (4)



Mh.L.J. 941, “**Haryana Power Purchase Centre v. Sasan Power Ltd. and Others**” 2023 SCC OnLine SC 577, “**Karnataka Power Corporation Limited v. EMTA Coal Limited and Another**”, order dated 20-05-2022, by Hon’ble Supreme Court in Civil Appeals Nos. 5401-5404 of 2017, “**Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited and Another**” 2017 (16) SCC 498.

35. Per contra, learned counsel appearing for the Respondent Nos. 2 and 3, at the outset, raises a preliminary objection regarding the maintainability of the present writ petition on the ground of the availability of efficacious statutory remedies under the Electricity Act, 2003. It is submitted that the petitioners had the remedy of filing an appeal before the Hon’ble Supreme Court under Section 125 against the judgment dated 26.05.2016 passed by the Appellate Tribunal for Electricity (APTEL), which has not been availed. The said judgment has thus attained finality and is binding upon the parties. The petitioners, by invoking writ jurisdiction, are impermissibly seeking to reopen issues already adjudicated by expert statutory forums, which is contrary to settled principles governing the exercise of jurisdiction under Article 226 of the Constitution of India.
36. It is further submitted that the dispute in question arises out of tariff determination and true-up proceedings undertaken by the State Commission in exercise of its statutory powers under Sections 62 and 86 of the Electricity Act, 2003. The State Commission, after detailed examination of load curves, injection patterns, and



operational data, recorded a categorical finding that the power supplied by the petitioner was non-firm, intermittent, and unstable in nature. Such findings, based on technical expertise and regulatory analysis, were affirmed by APTEL. The respondents submit that these concurrent findings of fact are not amenable to judicial review in writ jurisdiction, particularly when they involve highly technical and disputed questions requiring specialized adjudication.

37. It is further submitted that the Power Purchase Agreements (PPAs) relied upon by the petitioners were expressly subject to the provisions of the Electricity Act, 2003 and regulatory directions issued by the State Commission from time to time. Therefore, tariff determination by the Commission overrides contractual stipulations to the extent of inconsistency. The Commission, in its tariff order dated 12.06.2014, lawfully restricted the tariff for non-firm power to a base rate of Rs. 1.50 per kWh, in order to safeguard consumer interest and prevent undue financial burden on the distribution licensee. The petitioners cannot rely on contractual terms to defeat statutory tariff orders having an overriding effect. The demand of Rs. 153.55 crore has been raised strictly in accordance with Section 62(6) of the Electricity Act, 2003, which mandates the refund of excess tariff recovered by a generating company along with applicable interest. The excess amount was computed on the basis of audited financial data and in line with the findings recorded in the tariff and appellate proceedings. Retention of such an excess amount by the petitioner would result in unjust enrichment at the cost of public funds and electricity consumers, which is impermissible in law.



38. Learned counsel for Respondents Nos. 2 and 3 further submits that the petitioners were not denied an opportunity of hearing, as alleged. The proceedings before the State Commission were conducted in accordance with the applicable Conduct of Business Regulations, which provide for the issuance of public notices rather than individual notices. The tariff petitions were widely publicised through newspapers and the official website, and public hearings were conducted wherein stakeholders, including industry representatives, were given an opportunity to participate. In fact, the authorized representative of the petitioner was present during the review proceedings, demonstrating knowledge and participation in the process. Similarly, APTEL also issued public notices before deciding the appeals. It is also submitted that the petitioners, despite having knowledge of the proceedings and their outcome, failed to avail appropriate remedies at the relevant stages, including review before APTEL or appeal before the Hon'ble Supreme Court. Such inaction and acquiescence disentitle the petitioners from seeking discretionary relief under Article 226. The writ petition is thus liable to be dismissed on the ground of delay, laches, and waiver, apart from being an attempt to bypass statutory remedies.
39. It is further submitted that under Sections 31, 32, and 33 of the Electricity Act, 2003, the State Load Dispatch Centre (SLDC) is entrusted with the responsibility of maintaining grid discipline, ensuring secure and economic operation of the power system, and issuing binding directions to generating companies. The petitioner, however, has consistently violated grid discipline by injecting highly



fluctuating and non-firm power, thereby jeopardizing grid stability. Repeated communications and directions were issued by the SLDC to the petitioner between 2014 and 2016, calling upon it to adhere to scheduled generation and maintain consistency in power supply. The petitioner not only failed to comply but also admitted its inability to supply firm power due to fluctuating internal consumption. Such erratic injection patterns caused operational difficulties, including overdrawal and underdrawal situations, attracting penalties and affecting overall grid management. The State Commission, taking note of these issues, issued directions to regulate and discourage such non-firm power. Denial of No Objection Certificate (NOC) and rejection of Short Term Open Access (STOA) applications were not arbitrary but were based on statutory obligations, regulatory directives, and the petitioner's continued non-compliance with grid discipline. Grant of open access to an entity injecting unstable power would pose a serious threat to grid security and reliability. The impugned actions were therefore taken in the interest of maintaining stability of the power system and in compliance with binding directions of the State Commission and APTEL.

40. Lastly, it is also submitted that the present writ petition suffers from non-joinder of necessary parties, including stakeholders who participated in the tariff proceedings and whose interests are affected by the outcome. The petitioners have also failed to challenge the foundational tariff orders and regulatory framework, which form the basis of the impugned actions. In the absence of such a challenge, the reliefs sought are untenable. The respondents thus pray for



dismissal of the writ petition as being devoid of merit, not maintainable, and contrary to the statutory scheme of the Electricity Act, 2003.

41. He would rely upon the judgment of **“Power Grid Corporation of India Limited v. Madhya Pradesh Power Transmission Company Limited and Others”** 2025 (8) SCC 705, **“State of Himachal Pradesh and Another v. JSW Hydro Energy Limited and Others”** 2025 SCC OnLine SC 1460, **“Jaipur Vidyut Vitran Nigam Limited and another v. MB Power (Madhya Pradesh) and Others”** 2024 (8) SCC 513, **“Educanti Kistamma (Dead) through L.Rs. v. S. Venkatareddy (Dead) through L.Rs. and Others”** 2010 (1) SCC 756, **“Uttar Haryana Bijli Vitran Nigam Limited and Another v. Adani Power (Mundra) Limited and Others”** 2023 (14) SCC 736, **“Maharashtra State Electricity Distribution Company Limited v. Adani Power Maharashtra Limited and Others”** 2023 (7) SCC 401, **“GMR Warora Energy Ltd. V. CERC”** 2023 (10) SCC 401, **“R. Muthukumar and Others v. Chairman and managing Director TANGEDCO and Others”** 2022 SCC OnLine SC 151.
42. Learned Counsel appearing for the Respondent No. 1 would submit that the present writ petition under Article 226 of the Constitution of India is not maintainable. The petitioners have a complete and efficacious statutory remedy under Section 125 of the Electricity Act, 2003, to challenge the judgment dated 26.05.2016 of the Appellate Tribunal for Electricity (APTEL) before the Hon’ble Supreme Court. In addition, Section 120(2)(f) provides a remedy of review before



APTEL. The petitioners' failure to exhaust these statutory remedies precludes interference under writ jurisdiction as held in "***Union of India v. Satyawati Sharma***", (1965) 1 SCR 363, writ jurisdiction is discretionary and cannot be exercised where an alternative statutory remedy exists. By adopting the submissions made by learned counsel for the Respondents Nos. 2 and 3, he would submit that functions under the Electricity Act, 2003, with statutory powers defined under Sections 61, 62, and 86. Section 61 empowers the Commission to specify the principles for the determination of tariffs. Section 62 empowers the Commission to determine the tariff for the supply of electricity by a generating company to a distribution licensee. Section 86(1)(b) and (f) authorise the Commission to adjudicate disputes between licensees and generating companies, and to ensure compliance with the Act. All actions of the Commission, including the tariff orders dated 12.06.2014 and review dated 08.12.2014, were taken within the statutory framework, following due process. The Commission, in Petition No. 07/2014, undertook the true-up exercise for FYs 2011–12 and 2012–13 and determined the minimum base tariff at Rs. 1.50 per unit for non-firm power. Section 62(3) and 62(6) mandate that only the tariff determined under the Act is payable, and any excess collection must be refunded with interest. The petitioner's claim to receive a higher tariff or to avoid refund is contrary to statutory provisions and the principle that regulatory tariffs prevail over contractual agreements in matters of public utility and consumer interest.



43. He would further submit that principles of natural justice were fully complied with. Regulation 10 of the CSERC (Conduct of Business) Regulations, 2009, provides that public notices are sufficient to afford hearing to stakeholders. Notices were published in newspapers, petitions were uploaded on the Commission's website, and public hearings were conducted at Raipur on 21–22.05.2014. Representatives of the petitioner, including DGM N.K. Chandiramani, were present and participated in the review proceedings. Thus, the claim of denial of opportunity of hearing is wholly misconceived. The tariff orders passed by the Commission and affirmed by APTEL are binding on the parties under Section 62(6) and Section 111. The petitioners cannot seek collateral review through a writ petition to avoid statutory obligations. It is well-settled that once an order of a specialised tribunal attains finality, collateral attack under writ jurisdiction is impermissible (***NTPC Ltd. v. CERC & Ors.***, 2006 11 SCC 154). Any attempt to circumvent these orders undermines the statutory framework.
44. It is further argued that petitioners supplied fluctuating, non-firm power, which was duly examined in tariff proceedings. Sections 32 and 33 empower the SLDC and the Commission to monitor grid operations and issue binding directions for maintaining system stability. The petitioner's continued injection of unstable power created operational and commercial risks, which the Commission duly considered while limiting tariff. The denial of open access by the licensee (Respondent No. 2) was in conformity with the Commission's directives. The petitioners had full knowledge of the



tariff orders, review proceedings, and APTEL judgment. Their failure to challenge the orders before the Supreme Court demonstrates acquiescence. The orders under challenge are in furtherance of public interest and consumer protection, as mandated under Section 61(g) and 86(1)(b) of the Electricity Act, 2003. Allowing the petitioners to retain amounts already paid in excess of the statutory tariff would result in unjust enrichment and adversely affect consumers. The Commission's regulatory mandate cannot be undermined by private contractual claims. In view of the foregoing, he also prays that the writ petition be dismissed on the grounds of (i) non-maintainability due to existence of alternative statutory remedies, (ii) compliance with principles of natural justice and due process, (iii) binding nature of tariff orders and APTEL judgment, (iv) technical and regulatory basis of the orders, and (v) protection of public interest. The petitioners' claims are wholly unsustainable in law.

45. I have heard learned counsel for the respective parties and gone through the pleadings and documents annexed thereto.
46. The present writ petition consists of the challenge to the demand notice dated 07.07.2016 issued by Respondent No. 2 (CSPDCL), the consequential denial of Short Term Open Access (STOA) and No Objection Certificate (NOC), and the extent to which the judgment dated 26.05.2016 passed by the Appellate Tribunal for Electricity (APTEL) can be relied upon to fasten liability upon the petitioner. The foundational question which arises is whether the petitioner No. 1, admittedly not impleaded in the tariff proceedings before the State



Commission or in the appellate proceedings before APTEL, can be subjected to adverse civil and pecuniary consequences on the strength of findings recorded in such proceedings, and whether such action satisfies the mandate of the Electricity Act, 2003 and the settled principles of natural justice.

47. Before advertent to the merits of the controversy, it is necessary to deal with the preliminary objection raised by the respondents with regard to the maintainability of the present writ petition. The objection proceeds on the footing that the petitioner had efficacious alternative remedies under Sections 120(2)(f), 125, and 86(1)(f) of the Electricity Act, 2003, and having failed to avail the said remedies, the present writ petition ought not to be entertained. This Court is unable to accept the said contention for more than one reason.
48. It is trite that the rule of alternative remedy is a rule of self-imposed restraint and not a jurisdictional bar. The power of judicial review under Article 226 of the Constitution of India is plenary in nature and cannot be curtailed by statutory provisions. The Hon'ble Supreme Court in "**Whirlpool Corporation v. Registrar of Trade Marks**", (1998) 8 SCC 1, has authoritatively held that in at least three contingencies, namely, where the writ petition seeks enforcement of fundamental rights, where there is violation of principles of natural justice, and where the impugned orders are wholly without jurisdiction, the existence of an alternative remedy would not operate as a bar. This principle has been consistently reiterated in "**Harbanslal Sahnia v. Indian Oil Corporation Ltd.**", (2003) 2



SCC 107, wherein it has been held that the rule of exclusion of writ jurisdiction in view of the availability of an alternative remedy is a rule of discretion and not one of compulsion.

49. In the case of “**Whirlpool Corporation**” (supra), the Hon’ble Supreme Court has held that:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

50. In the case of “**Harbanslal Sahnia**” (supra), it has been held by their lordships of the Hon’ble Supreme Court that:-



“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned. suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice: or (n) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating 9 arbitration proceedings.”

51. In the case of “**Gujarat Ambuja Cement Ltd.**” (supra), it has been held that:-



“18. The Constitution Benches of this Court in *K.S. Rashid and Son v. Income Tax Investigation Commission*, AIR 1954 SC 207; *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 425; *Union of India v. T.R. Varma*, AIR 1957 SC 882; *State of U.P. v. Mohd. Nooh*, AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. v. State of Madras*, AIR 1966 SC 1089 held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

19. Another Constitution Bench of this Court in *State of M.P. v. Bhailal Bhai*, AIR 1964 SC 1006 held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in *N.T. Veluswami*



Thevar v. G. Raja Nainar, AIR 1959 SC 422; *Municipal Council, Khurai v. Kamal Kumar*, AIR 1965 SC 1321; *Siliguri Municipality v. Amalendu Das*, (1984) 2 SCC 436; *S.T. Muthusami v. K. Natarajan*, (1988) 1 SCC 572; *Rajasthan SRTC v. Krishna Kant*, 1995) 5 SCC 75; *Kerala SEB v. Kurien E. Kalathil*, (2000) 6 SCC 293; *A. Venkatasubbaiah Naidu v. S. Chellappan*, (2000) 7 SCC 695; *L.L. Sudhakar Reddy v. State of A.P.*, (2001) 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra*, (2001) 8 SCC 509; *Pratap Singh v. State of Haryana*, (2002) 7 SCC 484 and *GKN Driveshafts (India) Ltd. v. ITO*, (2003) 1 SCC 72.

20. In *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.



21. In *G. Veerappa Pillai v. Raman & Raman Ltd.*, AIR 1952 SC 192; *CCE v. Dunlop India Ltd.*, (1985) 1 SCC 260; *Ramendra Kishore Biswas v. State of Tripura*, (1999) 1 SCC 472; *Shivgonda Anna Patil v. State of Maharashtra*, (1999) 3 SCC 5; *C.A. Abraham v. ITO*, AIR 1961 SC 609; *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433; *H.B. Gandhi v. Gopi Nath and Sons*, 1992 Supp (2) SCC 312; *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1; *Tin Plate Co. of India Ltd. v. State of Bihar*, (1998) 8 SCC 272; *Sheela Devi v. Jaspal Singh*, (1999) 1 SCC 209 and *Punjab National Bank v. O.C. Krishnan*, (2001) 6 SCC 569, this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

22. If, as was noted in *Ram and Shyam Co. v. State of Haryana*, (1985) 3 SCC 267 the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the



statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in *First ITO v. Short Bros. (P) Ltd.*, AIR 1967 SC 81 and *State of U.P. v. Indian Hume Pipe Co. Ltd.*, (1977) 2 SCC 724 That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."



52. Tested on the anvil of the aforesaid principles, the facts of the present case clearly bring it within the well-recognized exceptions. The petitioner was neither impleaded nor afforded any effective opportunity of hearing in the proceedings before the State Commission or before APTEL, despite the fact that the entire subject matter of those proceedings pertained to power supplied by the petitioner under duly executed Power Purchase Agreements.
53. The contention of the respondents that the petitioner ought to have availed the appellate remedy under Section 125 of the Electricity Act, 2003 also does not merit acceptance. The said provision enables an appeal to the Hon'ble Supreme Court by a "person aggrieved" by an order of APTEL. In the present case, the petitioner was not a party to the proceedings before APTEL, nor does the impugned judgment record any finding or direction against it. In the absence of any lis involving the petitioner or any adjudication affecting its rights, it cannot be said that the petitioner was a "person aggrieved" so as to invoke Section 125. A remedy which is illusory or not efficacious in the given factual matrix cannot be pressed into service to non-suit the petitioner. It is necessary here to notice Section 125 of the Electricity Act, 2003, which reads as under:-

"Section 125. (Appeal to Supreme Court):

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the



Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

54. Similarly, the remedy of review under Section 120(2)(f) before APTEL cannot be said to be efficacious, as the petitioner was not on record in the appellate proceedings and could not have sought review of an order passed in a matter to which it was not a party. The suggestion that the petitioner could approach the State Commission under Section 86(1)(f) for adjudication of disputes is equally misconceived, inasmuch as the impugned demand has already been raised unilaterally on the basis of concluded proceedings, and the petitioner cannot be relegated to initiate fresh adjudicatory proceedings merely to contest an action of recovery of Rs. 153.55 crores.
55. It is also significant to note that the cause of action for the petitioner arose only upon issuance of the demand notice dated 07.07.2016, whereby, for the first time, a concrete and enforceable liability was sought to be imposed. Prior to this, there was neither any adjudication against the petitioner nor any indication that the amounts received under the PPAs were liable to be refunded.



Therefore, the petitioner cannot be faulted for not challenging the tariff order or the APTEL judgment, as no prejudice had been caused to it at that stage.

56. The objection of the respondents, if accepted, would lead to a situation where a party is saddled with serious civil consequences without being heard, and is then denied access to judicial review on the ground that it failed to challenge proceedings to which it was not even a party. Such an interpretation would be wholly unjust and contrary to the basic tenets of fairness embedded in Article 14 of the Constitution.
57. In view of the foregoing discussion, this Court is of the considered opinion that the present case falls squarely within the recognized exceptions to the rule of alternative remedy, namely, violation of principles of natural justice. The remedies suggested by the respondents are neither efficacious nor available in the true sense to the petitioner in the peculiar facts of the case. Accordingly, the preliminary objection regarding maintainability is rejected, and the writ petition is held to be maintainable for adjudication on merits.
58. The factual matrix, as borne out from the record, indicates that the petitioner had entered into multiple Power Purchase Agreements (PPAs) with CSPDCL during the period between 2011 and 2013 for the supply of electricity, which were acted upon by both parties. The petitioner supplied electricity and raised invoices in terms of the agreed contractual mechanism, including a load factor-based tariff. It is also not in dispute that CSPDCL accepted such supply and



effected payments during the relevant financial years. However, the mere fact that payments were made at a particular point in time, or that the transactions were not immediately disputed, cannot be construed to mean that such transactions attained irrevocable finality so as to be insulated from subsequent statutory scrutiny. It is necessary to notice here the initial PPA dated 02-11-2011, which is as under:-

POWER PURCHASE AGREEMENT

THIS AGREEMENT made on this 2nd day of November 2011 between the Chhattisgarh state Power Distribution Co. Ltd. (A Government of Chhattisgarh undertaking, a successor company of Chhattisgarh State Electricity Licensee, hereinafter referred to as "Licensee") which expression shall where the context so admits shall include its successors in office and assigns of the one part and M/s Jindal Steel & Power Limited (hereinafter referred as Company) a company incorporated under the companies Act 1956 having it's registered office at O.P. Jindal Marg, Hisar – 125005, Haryana which expression shall where the context so admits includes its successors in business executors administrators, legal representatives, and assigns of the other parts.

AND WHEREAS the company has set up the Captive Generating Plant at Dongamahua, District Raigarh and whereas the company has offered to sell



power on firm basis to the Licensee based on anticipated availability, which has been accepted by the Licensee vide letter No.02-02/ACE-I/2124 dt. 21.10.2011.

NOW This agreement witnesses and the parties hereto have agreed as below:-

(1) (a) The Company has offered 150 MW firm power on Round the Clock basis i.e. 00.00 hrs to 24.00 hrs, hereinafter referred to as maximum contracted quantum of power. The Company may reduce the quantum of power supply to the extent of 20% of maximum contracted power due to the reason which is not under the control of company to supply maximum contracted power. The minimum contracted power shall be 120 MW, which is not less than 80% of maximum contracted power. Load factor of company having minimum contracted power less than 10 MW will be calculated on monthly basis and having minimum contracted power of 10 MW and above will be calculated on weekly basis, during the term of this agreement the Licensee has agreed to purchase power generated by the company as per contracted capacity subject to the provisions contained in the Electricity Act, 2003 (herein after referred as 'the Act') and rules made there under as per Chhattisgarh State Electricity Regulatory Commission (CSERC) guideline



for power purchase and procurement and the terms and conditions of power purchase by Licensee as approved by CSERC from time to time.

(1) (b) The billing and scheduling modalities are as under:-

(i) Agreed rate:- Rs.3.00 (Rs.Three) per kWh for RTC power.

(ii) Merit order purchase:-

The power from the company will be purchased in accordance to merit order purchase principle under Section 32(2) of the Act. The State Load Despatch Centre (SLDC) will carry out real time operation for grid control and dispatch of electricity within the state through secured and economic operation of the grid. Both parties of this agreement shall abide themselves by the instructions issued by the SLDC for maintaining grid discipline. The SLDC may restrict power supply from the company by backing down of the generation / reduction in injection, if required, for secured and economic operation of the State grid. In case of clear instruction from SLDC, if, the company do not back down their generation / reduce their injection to the quantum as required by the SLDC, the company shall be liable for the payment at the rate which may be imposed on the licensee due to congestion in grid, or



panel UI charges or any other penalty in any form due to over injection in the grid.

In case, supply of power by the company is restricted by SLDC due to backing down of the generation / reduction in injection, then that backing down period of supply shall be considered as deemed generation with respect to the scheduled quantum of power and this deemed generation shall be taken into account for calculation of load factor, subject to certification of deemed generation from SLDC. The quantum of deemed generation will be considered for purpose of calculation of load factor only. Payment for purchase of power shall be done on the basis of actual energy injection.

(3) Scheduling:-

Company shall give a monthly schedule of quantum of power intended to be supplied to the Licensee for the ensuing month by 23rd of the month. The scheduled quantum of power shall be either maximum / minimum contracted power or between minimum and maximum contracted power. In case the monthly schedule for month is not submitted by the company upto prescribed date, to SLDC under intimation to the Licensee then the running schedule shall be considered as schedule for ensuing month also.



(4) Limit of Power Injection:-

(a) During off peak hour (00.00 to 18.00 hrs & 23.00 hrs to 24.00 hrs)

The company shall be permitted to inject up to 110% of scheduled power for off peak hours i.e. 00.00 hrs to 18.00 hrs & 23.00 hours to 24.00 hours subject to the technical limitation of equipment / line rating at sending and receiving ends. However, payment @ Rs.1.00 (Rs.One only) per unit shall be made for the energy injected over & above 110% of schedule subject to condition that technical limitation to be observed by Supplier. Units supplied upto permitted injection rate of 110% will be taken as eligible units for calculation of load factor and payment. Eligible units shall mean the units (energy) supplied upto permitted injection rate of 110% of schedule (schedule energy in time block) during off peak hours.

(b) During peak hours (18.00 hrs to 23.00 hrs)

The company shall be permitted to inject upto 120% of schedule for peak hours i.e. 18.00 hrs to 23.00 hrs subject to the technical limitation of equipment / line rating at sending and receiving ends. However, payment @ Rs.1.00 (Rs.One only) per unit shall be made for the energy injected over & above 120% of schedule subject to condition that technical limitation to be observed by supplier. Units supplied upto



permitted injection rate of 120% will be taken as eligible units for calculation of load factor and payment. Eligible units shall mean the units (energy) supplied upto permitted injection rate of 120% of schedule (schedule energy in time block) during peak hours.

(5) Load Factor:-

(a) For the power supplied the load factor will be calculated as below:-

$$LF = \frac{\text{Number of eligible units supplied during a month / week}}{\text{Monthly schedule quantum of power} \times 24 \text{ hrs.} \times \text{No. of days in a month / week}}$$

$$\text{Effective Rate in Rs.} = \frac{3.00 \times \text{Actual LF \% (monthly / weekly)}}{80\%}$$

In addition to the above, the following modalities for accounting & calculation of LF shall be taken into account :-

(i) Schedule power means quantum of power declared by generator for the month which is equal to maximum / minimum contracted power or in between maximum contracted power and minimum contracted power as per clause 1(a).

(ii) Load Factor shall be calculated on monthly / weekly basis as per clause 1(a).

(iii) The payment will be done on monthly basis.

(iv) The minimum effective rate shall be Rs.1.50 per unit.



(6) Rate of Infirm power:-

Power supplied by the company after synchronization with licensee's grid and before the COD (date of commercial operation) of their power plant shall be treated as infirm power and shall be paid @ Re.1/- per unit. This rate of infirm power is applicable to the power plant who enters PPA with licensee.

(7) The company having power purchase agreement with licensee only for peak hours, the injected between 17.30 hrs to 18.00 hrs and 23.00 hrs to 23.30 hrs shall be paid at a fixed rate of Rs 1.00 (Rs one only) per unit. No payment will be made for any injection prior to 17.30 hrs and after 23.30 hrs. However, if the company is having contract / agreement with other than licensee to supply of power during off peak hours i.e. between 23.00 hrs to 18.00 hrs, next day, no payment will be made for the power injected between 17.30 hrs to 18.00 hrs and 23.00 hrs to 23.30 hrs.

(8) Notwithstanding to the above in case the CSERC issues any other guidelines or specifies / modifies terms and conditions of power purchase by the licensee, the same shall be acceptable and binding on both the parties.

(9) Company shall abide by the grid discipline as per the provisions of State Electricity Grid Code and shall



maintain technical parameters regarding voltage, frequency, power factor, within the limit as per prudent utility practices, subject to the technical plant limits and in Line with prudent utility practices, the company shall operate and maintain the plant in such a manner, so as not to have an adverse effect on the operation of Licensee's Grid System. In case any violation is noted in abiding by Grid Discipline, the Licensee/SLDC may isolate company's power supply from its grid system, without any liability on the licensee when system security aspect of the State grid is involved, taking into consideration the provision of State Grid Code.

(10) For power supplied to Licensee, joint monthly/weekly reading or any other mechanism (AMR) as approved by CSERC. In respect of power exported to Licensee shall be taken by the authorized representative of company and Licensee. Company shall submit monthly invoice of energy sold to Licensee, to Superintending Engineer (O&M) CSPDCL at Raigarh under intimation to Chief Engineer (Comm.) of Licensee. Within after each monthly / weekly meter reading duly supported by the documents.

(11) PAYMENT

Normally, licensee shall make the payment within 30 days from the date of receipt of bill in the office of the



Superintending Engineer(O&M) CSPDCL at Raigarh under intimation to Chief Engineer(Comml) (licensee) Raipur. However, in case the company desires payment within fifteen days from the date of presentation of bill, they shall allow 2% (Two percent) rebate on the billed amount for supply of power. Further, in case payment is made after 30 days, a delayed payment surcharge of 1.00% (one percent) per month shall be paid by licensee. This delayed payment surcharge shall be calculated on simple interest basis on the number of days outstanding after the said period. In the event of 15/30th day being a holiday, the next working day shall be the due date for the payment for this purpose.

(12) METERING

12.1 The metering point for power purchase and billing purpose for generating plants which are connected to grid shall be at point of injection at Licensee / Chhattisgarh State Power Transmission Co. Ltd. (herein after referred as CSPTCL) sub-station. The provision related to metering shall be governed by the Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006 as amended from time to time.

12.2 The energy loss for dedicated lines, i.e. from the power plant to the point of injection at the sub-station



is to be borne by the company. The energy loss from the point of Injection onwards has to be borne by the licensee. In case billing and check meter installed at metering point i.e. at sub station end becomes defective, then the billing shall be done on the basis of injection recorded at generating station end meter if found functioning properly. However, in this case the company shall have to bear line loss as approved by CSERC.

12.3 Export/Import meters capable of recording active as well as reactive power shall be installed at the interconnection point. Reactive energy billing shall be as per the orders of CSERC issued from time to time: In case the CSERC approves reactive power billing on the basis of ABT meter then the rates and other modalities shall be as per CSERC's order.

12.4 The specifications of the Special Energy Meters shall be as approved by The Licensee/CSPTCL.

12.5 The meter shall be jointly tested and inspected and sealed on behalf of both the parties and shall not be interfered by either party except in the presence of the other party or its representatives.

12.6 Billing meters and the check meters (wherever provided) shall be tested for accuracy once in a year in presence of both the parties.



12.7 The meters shall be deemed to have working satisfactorily if the errors as determined in the tests are within the permissible limits as allowed in the relevant IS specifications or I.E. rules, 1958 applicable to high precision energy meters.

12.8 If during the periodical testing the billing meter is found to have errors, beyond permissible limits but the check meters (wherever provided) are found to have error within the permissible limit, billing shall be revised on the basis of generation / injection recorded by the check meter. However, billing meter shall be attended / replaced immediately and billing thereafter shall be as per generation / injection recorded by new tested billing meter.

12.8 If during the periodical testing both billing & check meters (wherever provided) are found to have error beyond permissible limits, the bill shall be revised by applying correction factor to the injection registered by the billing meter. The correction factor shall mean the percentage of error between the R.S.S. meter & billing meters.

12.10 If both the meters i.e. the billing meter and the check meter (wherever provided) fail to record or if any of the PT fuse is blown out, then the energy accounting shall be done as per clause 12(2) or on a mutually agreeable basis between licensee and the



company, in case the generator end meter also found defective.

12.11 All the tests on the billing and check meters (wherever provided) shall be conducted by the meter relay testing staff of the Licensee/CSPTCL jointly with the staff of company.

12.12 The licensee / CSPTCL will have access to the meters and metering equipments at any point of time for which company would provide entry to the Licensee/CSPTCL staff authorized "or this purpose.

12.13 All the data transfer facilities shall be provided by the Company for monitoring, billing and other accounting purpose.

(13) Dispute Resolution: in the event of any dispute arising between the Company and the licensee as regards to the interpretation of this agreement or any other matter arising out of or in connection with this agreement, such dispute or difference shall be referred to the CSERC for settlement of the dispute.

(14) FORCE-MAJEURE AND OUTAGE:

14.1 Force Majeure: Any event which is beyond the control of the agencies involved which they could not foresee or with a reasonable amount of diligence could not have foreseen or which could not be prevented and which substantially affect the



performance by either of the agency such as but not limited to:

(a) Acts of God, natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics.

(b) Acts of any Government domestic or foreign, including but not limited to war declared or undeclared, hostilities priorities, quarantines, embargoes,

(c) Riots or Civil Commotion

(d) Grid's failure not attributable to agencies involved
During force majeure period neither party shall be entitled for claiming compensation for damages in the event of force majeure.

14.2 Forced Outage: An outage of Generating Unit(s) of the company due to a fault or other reasons which has not been planned shall be considered as forced outage. The company supplying power to the licensee shall be eligible to claim a maximum of 240 hours in a year as forced outage period. There shall not be any requirement to verify the forced outage of the power plant of the company but company will intimate licensee and SLDC immediately in writing (by fax) regarding breakdown / forced outage and probable time to restore power supply and subsequently inform



when generator comes on the bus. The forced outage period of maximum 240 hours in a year shall be considered for LF calculation.

14.3 Planned Outage: The power plant of the company shall be eligible for maximum 15 days in a year for planned outage. The company shall declare about their outage planning to the licensee and SLDC well in advance at least 15 days from the date of starting of planned outage. The planned outage period shall be considered for L.F. calculation maximum to 15 days in a year.

14.4 The provision under clause 14.2 i.e. maximum 240 hours for force outage and under clause 14.3 i.e. maximum 15 days for planned outage in a year shall be considered for the purpose of LF calculation only, if company executes PPA with licensee for complete one year.

14.5 In case the company fails to supply power to the licensee for all the 12 months i.e. contracted period the company will not be entitled to get benefit of forced/planned outage for considering load factor calculation purpose. In such case the benefit availed by the company in this aspect shall be refundable to the licensee.

(15) DURATION:



This agreement shall remain operative for a period upto 30 June 2012 from the date of commencement of the agreement. The date of commencement of this agreement shall be 1st November 2011 and cease to operate automatically without any notice after 30 June 2012.

Notwithstanding to the above, this agreement shall be terminable during the currency period of the agreement by either party by serving one month notice or on the specific direction from CSERC.

(16) IDEMNITY: Company shall indemnify the Licensee/CSPTCL from any all damages which may occur to the Licensee/CSPTCL personnel during the operation of the interconnection

(17) INSPECTION BY LICENSEE/ CSPTCL, Company shall allow and accord necessary facilities for inspection at all times of its generation, interconnection equipments and records by personnel of the licensee CSPTCL to ensure their proper functioning. Records or such inspections shall be signed by the authorized representatives of company and licensee/CSPTCL.

(18) NOTICES- All notices shall be deemed to have been served when sent by registered post at the address given below:



(1) The Managing Director.

Chhattisgarh State Power Distribution Company Ltd.,
Vidyut Sewa Bhawan, PO: Sunder Nagar
Danganiya, Raipur-492013.

(ii) The Executive Director

M/s. Jindal Steel & Power Ltd.
Post Box No.16. Kharsia Road
Raigarh-496001 Chhattisgarh

(19) LOAD MANAGEMENT: The licensee shall endeavor to evacuate all the electricity offered by Company as per this agreement. However, licensee/ CSPTCL may ask the company to temporarily curtail or stop its electricity export to grid when necessary on account of.

(a) Inspection/repair/maintenance to its transmission network and associated equipments.

(b) Safety of equipment of the licensee/CSPTCL and

(c) Force-majeure conditions.

No compensation, whatsoever shall be paid by the licensee / CSPTCL due to non-evacuation of the power due to reasons stated above.

(20) NO WAIVER- No waiver of any of the terms & conditions of this agreement shall be binding or effectual for any purpose, unless expressed in writing



and signed by the party giving the same and any such waiver shall be effective only in the specific instance and for the purpose given, No failure or delay on the part of either party hereto in exercising any right, power of privilege hereunder shall operate as a waiver thereof.

(21) The terms and conditions (except rate) as mentioned in the CSERC order dated 30.04.2010 passed in suo motu petition No.05 of 2010 & orrler dated 15.07 2011 pessed in suo motu petition No.23 of 2011 are applicable for this PPA Any change in the existing rates and terms and conditions of power purchase of licensee, by CSERC will be made applicable to this power purchase agreement In that case supplementary PPA to incorporate such changes! modification shall be executed between licensee and company.

IN WITNESS WHEREOF parties through their respective duly authorized Officer/ representative have signed this agreement.

59. Paragraph (1)(a) of the said PPA clearly stipulates that **“During the term of this agreement, the licensee has agreed to purchase power generated by the company as per contracted capacity subject to the provisions contained in the Electricity Act, 2003, (hereinafter referred as “the Act”) and rules made there under as per Chhattisgarh State Electricity Regulatory Commission**



(CSERC) guideline for power purchase and procurement and the terms and conditions of power purchase by Licensee as approved by CSERC from time to time.” So, the PPA was governed under the terms of the Electricity Act, 2003 and guideline of CSERC.

60. The CSERC in its suo motu Petition No. 05 of 2010, decided on 30-04-2010, observed the Limits on over-injection that:-

“7. Limits on over-injection

The CSPDCL has requested to impose limits on over-injection during peak hour supply of power also. CSPDCL has submitted that, unrestricted injection during peak hours is misutilized by some of the generators to avail undue benefit from the market. The CSPDCL has proposed to limit injection rate to 110% throughout the day. Chhattisgarh Vidhyut Mandal Abhiyanta Sangh has requested the Commission to investigate into the matter and then proceed in this case. M/s JPL, M/s BMPL, CII, CUM, UIA, BALCO and others had opposed this proposal of CSPDCL and suggested to continue the existing mechanism. CSPDCL submitted that over-injection by the generators resulted into under-drawal by State, and the average rate for UI under-drawal for three consecutive months was about Rs 2.50 per unit. This position of the State requires attention. Although the



CSPDCL has not submitted any fact or analysis on commercial Implications of such under-drawal, but what we understand is that, if the average cost of short-term power purchase of CSPDCL is more than Rs 2.50 per unit in the respective three months (as indicated by CSPDCL) then this would adversely affect the commercial aspect of CSPDCL and ultimately the end consumers of the State. The tariff order 2009-10 emphasized to adopt merit order purchase principle during power procurement. The previous three tariff orders also directed the licensee to adopt merit order purchase principle. A mechanism was already in place, to prevent such situation, but whether it has been followed or not is not known to us. This may be examined in detail during truing up exercise of CSPCL's petition.

However, the fact submitted by CSPDCL cannot be overlooked. The loss on account of such power procurement by the CSPDCL will affect the consumers of the State. One more aspect needs to be seen. The CSPDCL is a UI pool member (regional entity as per IEGC) for regional grid operations. The Central commission has passed an order in suo-motu petition No. 01/2010 "in the matter of rate of congestion charge in real time operation in inter-State



transmission of electricity". para 2(5) of this order says:

"It is important to note that at a frequency greater than 50 Hz, the congestion would not be caused by the overdrawing utility but by the utility injecting power into the congested transmission corridor and the congestion charge would instead be applied on the Injecting utility. The detailed procedure for levy of congestion charge is given in the Congestion Charge Regulations. For the injecting utility, the remedy would be to reduce injection through reduction of generation in its control area.

Further 22 (c) of the referred CERC order says:

"at frequency below 50 Hz, congestion charge would be levied for over-drawal in the importing control area and at frequencies above 50 Hz, congestion charge would be levied for under-drawal in the exporting control area."

These two provisions of CERC relating to congestion charges requires special attention. As mentioned above, CSPDCL is a regional entity and UI pool member for inter-State power transactions. The power developers connected to the State grid are the intra-State entities. Now, at a situation when there is under-drawal position by CSPDCL, at frequency



above 50 Hz, if power injection (supply) is not regulated then the CSPDCL is liable to pay congestion charge at Rs 5.45 per kwh. This penal clause will definitely have an adverse impact. This situation can be avoided mainly by two methods. First, by adopting merit order purchase principle and second by properly controlling and regulating the Injection into the State grid. The first method of regulating power supply by adopting merit order purchase will be discussed in coming paragraphs. So here we will examine the second point i.e. injection limit only. There are two modes of power purchase by CSPDCL, long-term and short-term. Major portion of CSPDCL's power purchase is through long-term route. The rate of power purchase through long-term route is generally less than short-term power purchase price. For Central generating station, the IEGC and UI Regulations specifies provisions for controlled injection to avoid over-injection, misuse and gaming. The CSPGCL supplies its full power to State and also the tariff of State generating utility is less than rates of short-term power purchase by CSPDCL. So the supply from CSPGCL into the grid can not be restricted except otherwise under an extreme grid emergency conditions and for safety purpose. Hence, among the entities which are connected to the State grid, the remaining is the suppliers who supply power



through short-term route. According to the existing terms and conditions of short-term power supply, for off-peak hours there is an over-injection limit of 110%, which may take care of the situation to some extent. For off-peak hours supply, there is disincentive, if the IPPs/CGPs continue supplying power beyond 110% of the contracted quantum. For short-term peak hours supply, there is no limit of injection. Of course a power plant can supply power only upto its capacity of generation, but here in the State, most of the power plants who supply power to CSPDCL are CGPs which have in house captive load. The supply to the grid can vary (upto the capacity of generation), depending upon drawal of their captive load. Some IPPs supply power to the buyers outside the State, during peak hours also. Such IPPs may vary the quantum of power injection into the State grid as per their commercial interest. If an IPP or CGP understates its capacity and enters into contract for less quantum of power than what it can actually supply (for power supply during the peak hours) it has no disincentive as it can inject power to the extent to attain load factor of 80% and get the full rate (price) for supply of power though it may cause under-drawal by CSPDCL and congestion in the system. The associations and some generators have stated that there is TOD tariff for peak hours and so there should not be any injection limit. On this



point, the Commission would like to clarify that TOD is the tariff for supply to consumers during peak and other hours and here we are concerned with quantum of injection and drawal. In the order dated 18.04.09, the over-injection limit was kept at 110% for peak hours supply also, but on the request of the power developers and keeping in view that CSPDCL faces shortage of power specially during peak hours, this restriction was removed by order dated 23.06.09.

In the light of above discussions, the Commission comes into conclusion that there is a need to impose over-injection limit for peak hour short-term supply also. Summing up this issue, there are three main reasons for imposing injection limit during peak hour. First, commercial Implication to the State because of congestion charges. Second, to avoid possibility of misuse of the existing provisions for unlimited injection (for short-term supply) during peak hours. The third reason for imposing such limitation shall be covered in succeeding paragraphs 9 below.

Now what shall be the limit of over-injection is another important issue. Except a few, most of the power plants in the State are of low capacity. So in a general context, taking a liberal view the Commission fixes an over-injection limit of 120% for peak hours



supply, however, for off-peak hours the injection limit of 110% is maintained.

The over-injection limit has to be monitored on real time basis by SLDC. The real time data may not be available to SLDC in some cases. The Commission is of the view that apart from monitoring injection during real time operations, there should be a disincentive if the suppliers continue supplying power over the specified limit. For power supply during off-peak hours, the rate of power supply beyond the specified limits, was fixed at Re 1/- per unit which is maintained during 2010-11 also. This provision was incorporated with a view to discourage injection beyond the permissible limits and the same shall be continued for the year 2010-11. This rate of Re.1/- per unit shall also be applicable for supply during peak hour beyond the permissible limit.”

61. After having considered all the surrounding circumstances and the nature of the transaction and supply of electricity, the Commission decided the base rate, effective rate, minimum effective rate during the off-peak hours and peak hours, which is as under:-

“18. In view of the above, the Commission decides as follows:



(1) The maximum base rate for power supply at 80% and above load factor of the schedule power shall be Rs. 3.10 per kwh, which is 5% more as compare to the maximum base rate for the year 2009-10.

(2) The effective rate for power supply below 80% load factor will be calculated as follows:

$$\text{Effective Rate in Rs.} = \frac{\text{Agreed base rate} \times \text{XLFN}}{80\%}$$

The agreed base rate is the rate agreed between the supplier and CSPDCL, which may be equal to or less than the maximum base rate of Rs. 3.10 per kwh.

(3) The minimum effective rate shall be Rs 1.50 per unit.

(4) The rate for power supply during peak hours i.e. 18:00 hrs. to 23:00 hrs. shall be 5% more than the agreed base rate /effective rate, as the case may be.

(5) Rate for power supplied beyond over-injection limit:

Off peak hour supply: The rate for excess supply, i.e. for over-injection over and above 110% of scheduled energy in time block, Re 1/- per KWh.

Peak hour supply: The rate for excess supply, i.e. for over-injection over and above 120% of scheduled energy in time block, Re. 1/- per Kwh.



(6) The rate of infirm power, i.e. power supplied by any CGP/IPP, before the date of COD of their power plant shall be Rs. 1/- per unit. This rate of infirm power is applicable to the power plants who may enter PPA with CSPDCL.”

62. In the case of “**Power Grid Corporation of India Ltd.**” (supra), it has been considered that:

“11.4. Further, APTEL had already addressed a similar question in Nuclear Power Corpn. of India Ltd. v. CERC wherein it was held as under: (SCC OnLine APTEL para 10)

"10. ... 10.5. Accordingly, in absence of specific provisions in the Sharing Regulations/Tariff Regulations, 2014 to deal with the situation under question the Central Commission through exercise of its regulatory powers has prescribed a principle for sharing of transmission charges of the Transmission System of Respondent 2 in the impugned order. Thus, it is observed that by way of exercising its regulatory power by a way of judicial order(s) the Central Commission has laid down the principles of payment of transmission charges in such an eventuality. However, it is felt that the Central Commission in the impugned order has abruptly concluded the payment liability on the appellant just



by referring to its earlier orders and not establishing the linkage with the present case explicitly. This Tribunal would like to clarify the same."

Respondent 1 submitted that APTEL had taken a peculiar view of the matter. Although CERC exercises twin powers of adjudication and regulation, yet the fact remains that the regulatory power cannot be exercised by way of a judicial order. Since APTEL took a contrary view on the issues at hand, Respondent 1 was of the view that no useful purpose would be served by filing an appeal under Section 111.

12. Having heard the parties, the High Court affirmed that despite the availability of an alternative remedy, a writ petition can be entertained if any of the factors mentioned in *Whirlpool* are satisfied. Since Respondent 1 had challenged the constitutionality of the orders of CERC dated 21-1-2020 and 27-1-2020, respectively, on the grounds that the power exercised by CERC was beyond the powers vested in it as per the relevant regulation and that the relief granted to the appellant was beyond the reliefs prayed for, the High Court was of the opinion that the principles of natural justice were breached. Therefore, despite the availability of an alternative remedy, the writ petition deserved to be



entertained. Having held so, the High Court admitted the writ petition for hearing on merits.

67. In view of the aforesaid exposition of law, we find that this Court's observations in *Whirlpool* are of no avail to Respondent 1 as the present matter falls in none of the cases enumerated therein. Therefore, there was no occasion for the High Court to admit the writ petition of Respondent 1.

68. For all the foregoing reasons, we have reached the conclusion that the High Court committed an egregious error in passing the impugned judgment. We are left with no other option but to set aside the impugned judgment and order dated 25-2-2021 passed by the High Court and dismiss both the writ petitions. In the result, the appeals succeed and are hereby allowed.”

63. In a regulated sector such as electricity, all commercial arrangements remain subject to statutory tariff determination and regulatory oversight under the Electricity Act, 2003. Reliance has been placed on the judgment of “**Haryana Power Purchase Centre v. Sasan Power Ltd. and Others**”, 2023 SCC OnLine SC 577, wherein it has been held that:-

“95. We are of the view that what the parties contemplated under Article 13.2 was that change in law must be viewed through the specific provisions of



clauses (a) and (b). In other words, a change in law may occur during the period of construction. Then it is to be treated as falling under Article 13.2 (a). A change in law may occur during the period of its operation. It would then appear to be dealt with under clause (b). If a change in law takes place during the period of construction then its impact is to be measured with reference to the capital cost of the project. The word "capital cost" understandably has been defined in PPA. A formula has been engrafted. The formula contemplates that for every increase/decrease of each Rs 50 crores in the capital cost as a result of the change in law, the increase/decrease in the non-escalable capacity charges is to be 0.267% of the non-escalable capacity charges. No doubt, this is if the seller provides to the procurers documentary proof of such increase/decrease in establishing the impact of such change.

96. In other words, the effect of change in law during the construction period is captured by Article 13.2(a). We must understand that this is a meticulously thought through contract which emerged after a long rigorous process. Parties were clear about how the change in law had to be compensated and methodology has been set out clearly. Therefore, any



appeal made to the general part in Article 13.2 which speaks about the affected party being restored to the same economic condition as if such change in law had not occurred cannot result in departing from the specific formula which has been set in place. This meaning is inevitable from the words "to the extent contemplated in this Article 13", which precedes the general words."

64. The proposition emerging from paragraph 95 of "**Haryana Power Purchase Centre**" (*supra*), that regulatory authorities cannot override contractual terms, is not of universal application and is confined to the specific context of tariff discovered through competitive bidding under Section 63 of the Electricity Act, 2003. This position is qualified by earlier decisions of the Hon'ble Supreme Court, which have consistently held that contractual arrangements in the electricity sector are subservient to statutory regulation and public interest. In **All India Power Engineer Federation v. Sasan Power Ltd.**, (2017) 1 SCC 487, the Hon'ble Supreme Court categorically held that even contractual waivers or arrangements cannot be enforced if they are contrary to public interest or affect tariff determination, emphasizing the primacy of Sections 61 to 63 of the Act. Further, in "**Energy Watchdog v. Central Electricity Regulatory Commission**", (2017) 14 SCC 80, the Hon'ble Supreme Court has reiterated that tariff fixation is a statutory function of the Regulatory Commission and cannot be left to private agreements between parties, thereby underscoring that PPAs operate within, and



are subject to, the regulatory framework particularly in matters affecting tariff and public interest. These decisions clearly establish that tariff fixation is not a matter of private contract alone but is governed by statutory regulation.

65. In the case of “**Adani Power Maharashtra Ltd.**” (supra), the Hon’ble Supreme Court has observed that:

“119. In this respect, we may refer to the following observations of this Court in *Reliance Infrastructure Ltd. v. State of Maharashtra*¹⁸: (SCC pp. 376-77, paras 38-39)

"38. MERC is an expert body which is entrusted with the duty and function to frame regulations, including the terms and conditions for the determination of tariff. The Court, while exercising its power of judicial review, can step in where a case of manifest unreasonableness or arbitrariness is made out. Similarly, where the delegate of the legislature has failed to follow statutory procedures or to take into account factors which it is mandated by the statute to consider or has founded its determination of tariffs on extraneous considerations, the Court in the exercise of its power of judicial review will ensure that the statute is not breached. However, it is no part of the function of the Court to substitute its own determination for a determination which was made



by an expert body after due consideration of material circumstances.

39. In *Assn. of Industrial Electricity Users v. State of A.P.*¹⁹ a three-Judge Bench of this Court dealt with the fixation of tariffs and held thus: (SCC p. 717, para 11)

'11. We also agree with the High Court²⁰ that the judicial review in a matter with regard to fixation of tariff has not to be as that of an appellate authority in exercise of its jurisdiction under Article 226 of the Constitution. All that the High Court has to be satisfied with is that the Commission has followed the proper procedure and unless it can be demonstrated that its decision is on the face of it arbitrary or illegal or contrary to the Act, the court will not interfere. Fixing a tariff and providing for cross-subsidy is essentially a matter of policy and normally a court would refrain from interfering with a policy decision unless the power exercised is arbitrary or ex facie bad in law."

66. In the case of "**Sasan Power Ltd. (2017)**" (supra), the Hon'ble Supreme Court has held that:-



“21. Regard being had to the aforesaid decisions, it is clear that when waiver is spoken of in the realm of contract, [Section 63](#) of the Indian Contract Act, 1872 governs. But it is important to note that waiver is an intentional relinquishment of a known right, and that, therefore, unless there is a clear intention to relinquish a right that is fully known to a party, a party cannot be said to waive it. But the matter does not end here. It is also clear that if any element of public interest is involved and a waiver takes place by one of the parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest. This is clear from a reading of the following authorities.

22. In [Lachoo Mal v. Radhey Shyam](#), (1971) 1 SCC 619, it was held:-

“The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is *cuilibet licet renuntiare juri pro se introducto*. (See Maxwell on Interpretation of Statutes, Eleventh Edn., pp. 375 and 376). If there is any express prohibition against



contracting out of a statute in it then no question can arise of anyone entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy.”

23. In [Indira Bai v. Nand Kishore](#), (1990) 4 SCC 668, it was held:-

“The test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct.”

24. In [Krishna Bahadur v. Purna Theatre](#), (2004) 8 SCC 229, it was held:

“9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully



knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.”

25. It is thus clear that if there is any element of public interest involved, the court steps in to thwart any waiver which may be contrary to such public interest.

26. On the facts of this case, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected. This is in fact statutorily recognized by the [Electricity Act](#) in [Sections 61](#) to [63](#) thereof. Under [Section 61](#), the appropriate commission, when it specifies terms and conditions for determination of tariff, is to be guided inter alia by the safeguarding of the consumer interest and the recovery of the cost of electricity in a reasonable manner. For this purpose, factors that encourage competition, efficiency and good performance are also to be heeded. Under [Section 62](#)



of the Act, the appropriate commission is to determine such tariff in accordance with the principles contained in [Section 61](#). The present case, however, is covered by [Section 63](#), which begins with a non obstante clause stating that notwithstanding anything contained in [Section 62](#), the appropriate commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government. The guidelines dated 19.1.2005 issued by the Central Government under [Section 63](#) make it clear that such guidelines are framed with the following objectives in mind:

“These guidelines have been framed under the above provisions of [section 63](#) of the Act. The specific objectives of these guidelines are as follows:

- 1) Promote competitive procurement of electricity by distribution licensees;
- 2) Facilitate transparency and fairness in procurement processes;
- 3) Facilitate reduction of information asymmetries for various bidders;



- 4) Protect consumer interests by facilitating competitive conditions in procurement of electricity;
- 5) Enhance standardization and reduce ambiguity and hence time for materialization of projects;
- 6) Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers.

Clause 2.3 of the said guidelines reads as follows:

“2.3. Unless explicitly specified in these guidelines, the provisions of these guidelines shall be binding on the procurer. The process to be adopted in event of any deviation proposed from these guidelines is specified later in these guidelines under para 5.16.”

27. Paragraph 4 of the aforesaid guidelines relates to tariff structure and paragraph 4.11 in particular, which relates to energy charges, is as follows:-

“4.11 Where applicable, the energy charges payable during the operation of the contract shall be related on the base energy charges specified in the bid with suitable provision for escalation. In case the bidder provides firm energy charge rates for each of the years of the contract term, the same shall be permitted in the tariffs.”



28. Para 5.4 then speaks of a model power purchase agreement proposed to be entered into with the seller of electricity as follows:-

“(ii) Model PPA proposed to be entered into with the seller of electricity. The PPA shall include necessary details on:

- (a) Risk allocation between parties;
- (b) Technical requirements on minimum load conditions;
- (c) Assured offtake levels;
- (d) Force majeure clauses as per industry standards;
- (e) Lead times for scheduling of power;
- (f) Default conditions and cure thereof, and penalties;
- (g) Payment security proposed to be offered by the procurer.”

29. Paragraph 5.16 then goes on to state:-

“Deviation from process defined in the guidelines

5.16 In case there is any deviation from these guidelines, the same shall be with the prior approval of the Appropriate Commission. The Appropriate Commission shall decide on the modifications to the bid documents within a reasonable time not exceeding 90 days.”



30. A perusal of the CERC tariff adoption order in the present case dated 17.10.2007 makes it clear that the tariff is adopted by the Commission only because the competitive bidding process which has been undertaken is in accordance with the guidelines so issued.

31. All this would make it clear that even if a waiver is claimed of some of the provisions of the PPA, such waiver, if it affects tariffs that are ultimately payable by the consumer, would necessarily affect public interest and would have to pass muster of the Commission under [Sections 61](#) to [63](#) of the Electricity Act. This is for the reason that what is adopted by the Commission under [Section 63](#) is only a tariff obtained by competitive bidding in conformity with guidelines issued. If at any subsequent point of time such tariff is increased, which increase is outside the four corners of the PPA, even in cases covered by [Section 63](#), the legislative intent and the language of [Sections 61](#) and [62](#) make it clear that the Commission alone can accept such amended tariff as it would impact consumer interest and therefore public interest.”

67. Thus, the ratio in **Sasan Power** (2023) cannot be read as excluding regulatory intervention altogether; rather, it is confined to situations where the statute expressly preserves the sanctity of competitively



discovered tariff. In cases falling under Section 62, or involving issues of grid discipline, public interest, or statutory compliance, the regulatory authorities retain full jurisdiction, and contractual terms cannot be enforced in derogation of statutory mandate.

68. It is equally borne out that CSPDCL initiated tariff and true-up proceedings before the State Commission in 2014, wherein the Commission, upon detailed examination of load curve data, injection patterns, and operational parameters, recorded a categorical finding that the power supplied by the petitioner was non-firm, intermittent, and unstable in nature. Based on such technical evaluation, the Commission determined that such power could not be equated with firm power and accordingly restricted the tariff to a minimum base rate of Rs. 1.50 per kWh. The said findings were subjected to review and thereafter carried in appeal before the Appellate Tribunal for Electricity (APTEL), which, by its judgment dated 26.05.2016, affirmed the conclusions of the State Commission. These findings, having attained finality within the statutory framework, are binding and cannot be lightly interfered.
69. The principal contention advanced by the petitioner is that it was not impleaded as a party to the tariff or appellate proceedings and was not afforded any opportunity of hearing before imposing liability, and therefore, the subsequent demand raised against it is vitiated for violation of principles of natural justice. While the doctrine of *audi alteram partem* is indeed a fundamental facet of fair procedure, its application must be understood in the context of the nature of the



proceedings in question. The tariff determination and true-up exercise undertaken by the State Commission are legislative or quasi-legislative in character, carried out in accordance with the Conduct of Business Regulations, which contemplate issuance of public notices and stakeholder participation rather than individual impleadment of every entity that may be indirectly affected. The record reflects that public notices were duly issued, proceedings were conducted transparently, and representatives of industry, including that of the petitioner, had participated at various stages. In such circumstances, it cannot be said that the petitioner was wholly unaware of or excluded from the regulatory process.

70. Moreover, the impugned demand does not arise in isolation but is a direct consequence of the tariff determination made by the State Commission and affirmed by APTEL. The statutory scheme under Sections 61 and 62 of the Electricity Act, 2003, vests exclusive authority in the Commission to determine tariffs, and such determination overrides any contractual arrangement to the contrary. It is well settled that in matters of tariff, the regulatory framework prevails over private agreements, as the same is guided by considerations of public interest and consumer protection. Therefore, even if the PPAs provided for a particular pricing mechanism, the same would remain subject to the tariff ultimately determined by the Commission.
71. The submission that the tariff orders did not specifically direct recovery from the petitioner does not advance the case of the



petitioner. Once it is found, in accordance with law, that the tariff applicable to the supply in question is lower than what has been paid, the consequence of adjustment or recovery necessarily follows under Section 62(6) of the Act, which mandates refund of excess tariff recovered by a generating company. The absence of an express direction against the petitioner in the tariff order does not negate the statutory obligation arising therefrom. The demand raised by CSPDCL is thus traceable to and supported by the binding tariff orders and appellate judgment.

72. The argument that concluded transactions cannot be reopened is also devoid of merit in the present context. The true-up exercise undertaken by the Commission precisely envisages the adjustment of past transactions based on actual data and a prudence check. Such retrospective correction is an integral feature of tariff regulation and is intended to balance the interests of utilities and consumers. Accepting the petitioner's contention would defeat the very purpose of the statutory mechanism and permit retention of amounts found to be in excess of the permissible tariff, thereby resulting in unjust enrichment. In this regard, the judgment of Hon'ble Supreme Court in the case of "**Indian Council for Enviro-Legal Action v. Union of India**" 2011 (8) SCC 161 is relevant, in which it has been held that:

"151. Unjust enrichment has been defined as:

"Unjust enrichment. A benefit obtained from another, not intended as a gift and not legally justifiable, for



which the beneficiary must make restitution or recompense."

See Black's Law Dictionary, 8th Edn. (Bryan A. Garner) at p. 1573. A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience".

152. "Unjust enrichment" has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience". A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even



though he may have received [it] honestly in the first instance". (Schock v. Nash, A 2d, 232-33.)

154. Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain. In the leading case of *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd* 62, Lord Wright stated the principle thus: (AC p. 61)

"... [A]ny civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

155. Lord Denning also stated in *Nelson v. Larholt*⁶³ as under: (KB p. 343)

"... It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old



forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution, if the justice of the case so requires."

73. Insofar as the reliance placed by the petitioner on principles of natural justice is concerned, it must be noted that no prejudice, in the legal sense, has been demonstrated. The characterization of the power as non-firm is based on objective technical data relating to injection patterns, which have been consistently recorded by the State Commission and affirmed by APTEL. The petitioner has not placed any material before this Court to dislodge these findings or to demonstrate that the tariff applied by it was in conformity with the statutory determination. In the absence of any substantive challenge to the foundational findings, the plea of violation of natural justice cannot be invoked as a mere technical ground to invalidate consequential action.
74. The contention that the dispute involves complex technical issues further weighs with this Court in declining interference. The determination of the nature of power supply, its impact on grid stability, and the appropriate tariff are matters falling within the domain of expert regulatory bodies. The State Commission and APTEL, being specialized forums, have examined these aspects in



detail. It is not the function of this Court, in exercise of writ jurisdiction, to reappreciate such technical findings or sit in appeal over the conclusions reached by expert bodies.

75. The denial of No Objection Certificate (NOC) and the consequent rejection of the petitioner's applications for Short Term Open Access (STOA) by Respondent No. 3 also do not warrant interference. A scrutiny of the statutory scheme and the material placed on record would demonstrate that such action is rooted not merely in the existence of alleged outstanding dues, but in the larger and paramount consideration of maintaining grid discipline and ensuring secure, reliable, and economic operation of the power system within the State. Under Section 31 of the Electricity Act, 2003, the State Load Dispatch Centre (SLDC) is constituted as the apex body for integrated operation of the power system within the State, and under Section 32, it is entrusted with critical functions including scheduling and dispatch of electricity, monitoring grid operations, keeping accounts of electricity transmitted, and exercising supervision and control over intra-State transmission. These functions are not merely administrative but are technical and operational in nature, requiring continuous real-time assessment of grid conditions. Further, Section 33 confers wide powers upon the SLDC to issue binding directions to generating companies, licensees, and other participants in the grid to ensure stability and discipline. Compliance with such directions is mandatory, and any deviation has the potential to jeopardize the entire grid system.



76. In the present case, the record reveals that the petitioner had a consistent history of injecting power in a fluctuating and unpredictable manner, with significant variations in generation ranging from negligible or zero output to sudden high injections. Such erratic patterns of supply have been specifically noted by the SLDC in multiple communications issued over a period of time, wherein the petitioner was repeatedly called upon to adhere to scheduled generation and maintain grid discipline. These deviations were not isolated or sporadic but constituted a recurring operational concern, affecting load management and requiring compensatory adjustments by the system operator. The consequences of such non-firm and unstable injection are far-reaching. The grid operates on a delicate balance between supply and demand, and any significant deviation can result in overdrawal or underdrawal situations, frequency fluctuations, and potential grid disturbances. These, in turn, may attract penalties under applicable regulations and may even pose risks to the stability and integrity of the transmission system. It is in this backdrop that the State Commission, in its tariff order, also recognized the adverse impact of non-firm power on grid operations and issued directions to discourage such practices.
77. In light of these statutory responsibilities and technical considerations, the SLDC is duty-bound to exercise caution while granting open access to any entity. The grant of STOA is not a matter of right but is subject to the fulfilment of regulatory conditions, including adherence to grid discipline, technical feasibility, and system security. Where an entity has demonstrated a pattern of non-



compliance with scheduling norms or has been found to inject power in a manner detrimental to grid stability, the SLDC would be justified in withholding or regulating access in the larger public interest.

78. The contention of the petitioner that the denial of NOC was solely on account of the alleged outstanding dues does not find full support in the record. While the existence of dues may have been one of the factors considered, it is evident that the decision was also influenced by the petitioner's past conduct in relation to grid operations and its inability to ensure firm and reliable supply. The communications issued by Respondent No. 3 reflect concerns regarding operational discipline, compliance with scheduling instructions, and the potential risk posed to the grid. Therefore, the decision cannot be characterized as arbitrary or extraneous.
79. It is also pertinent to note that the statutory framework casts a responsibility upon the SLDC to act in a preventive manner rather than a reactive one. The objective is to ensure that grid disturbances are avoided, rather than remedied after occurrence. In such a scenario, the SLDC is entitled to take into account the past performance and operational behaviour of an applicant while considering the grant of open access. The petitioner, having been repeatedly cautioned and having failed to demonstrate consistent compliance, cannot claim an indefeasible right to open access. Judicial review in such matters is necessarily limited. The decision to grant or deny open access involves technical assessment, operational expertise, and real-time considerations, which fall within



the domain of specialized authorities. Unless the decision is shown to be mala fide, perverse, or in clear violation of statutory provisions, this Court would be slow to interfere. In the present case, no such infirmity has been demonstrated.

80. The another submission raised by learned counsel for the petitioners that with respect to other power generators, who are similarly situated, no order has been passed by the respondents. By submitting the said contention, the petitioners are claiming negative parity, which cannot be claimed, as has been held by the Hon'ble Supreme Court in the case of "**R. Muthukumar and others**" (supra), in which in para 28 and 29, it has been held that:

"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In *Basawaraj v. Special Land Acquisition Officer*, this court ruled that:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit



inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

29. Other decisions have enunciated or applied this principle (Ref: Chandigarh Admn. v. Jagjit Singh, Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P.17; Fuljit Kaur v. State of Punjab, and Chaman Lal v. State of Punjab). Recently, in The State of Odisha v. Anup Kumar Senapati this court observed as follows:

"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."

81. Accordingly, this Court is of the considered view that the denial of NOC and rejection of STOA applications by Respondent No. 3 is in consonance with the statutory mandate under Sections 32 and 33 of the Electricity Act, 2003, and is justified on grounds of maintaining grid discipline, system security, and public interest. The action, therefore, cannot be termed as arbitrary, unreasonable, or without authority of law.



82. The plea based on the doctrine of approbation and reprobation is equally untenable. CSPDCL, being a distribution licensee, is bound to act in accordance with statutory tariff orders and cannot be estopped from enforcing the same merely because payments were earlier made under a different understanding. The doctrine of estoppel cannot operate against a statute, nor can it be invoked to defeat public interest embedded in tariff regulation. The recovery sought is not in the nature of repudiation of contract, but in furtherance of statutory compliance.
83. Having regard to the totality of circumstances, this Court is of the considered opinion that the demand notice dated 07.07.2016 is not without jurisdiction, but is a consequential action flowing from binding tariff orders and the judgment of APTEL. The petitioner has failed to establish any ground warranting interference under Article 226 of the Constitution. The issues raised pertain to matters of tariff determination, technical evaluation, and regulatory policy, which have already been adjudicated by competent statutory forums.
84. Accordingly, this Court finds no merit in the writ petition. The same is liable to be and is hereby **dismissed**. No order as to costs.
85. Interim order granted earlier also stands vacated.

Sd/-
(**Ravindra Kumar Agrawal**)
Judge



HEAD NOTE

The principle that regulatory authorities cannot override contractual terms is not of universal application. Tariff fixation is a statutory function of the Regulatory Commission and cannot be left to private agreements between the parties; it is subject to the regulatory framework, particularly in matters affecting tariff and public interest.