

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 904 of 2024**

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TORRENT POWER LIMITED

Versus

ELECTRICITY OMBUDSMAN GUJARAT STATE

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Appearance:

MR MIHIR JOSHI, SR. ADVOCATE with MR SALIL M THAKORE(5821)

for the Petitioner(s) No. 1

for the Respondent(s) No. 1

MR.KUNAL R.DESAI(3899) for the Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 19/01/2024**ORAL ORDER**

1. Heard Mr. Mihir Joshi, learned Senior Counsel with Mr. Salil M. Thakore, learned advocate appearing for the petitioner and Mr. Kunal R. Desai, learned advocate appearing on caveat for the respondent No.2.

2. Mr. Mihir Joshi, learned Senior Counsel appearing for the petitioner, submitted that the petitioner herein is aggrieved by the impugned orders dated 22.09.2023 and 22.12.2023 passed by the Electricity Ombudsman in Case No.10 of 2023 whereby, it is observed that “*the proposed modified formula adopted for the calculation of average power factor by the Respondent without approving the same before the Hon’ble Commission is*

not having any legal support as far as the changes in the existing formula for calculation of average power factor is concerned."

In view thereof, it is directed that the leading PF penalty with the proposed modified formula levied in energy bills and served to the appellant would not survive and the amount recovered from the power factor penalty by the Respondent is required to be refunded to the appellant.

2.1 Mr. Joshi, learned Senior Counsel, submitted that the impugned orders are contradictory in nature. It was submitted that if the Ombudsman were of the opinion that it is the GERC – Commission having power to decide the issue-in-question and the tariff-in-question is notified, the second part of the order could not have been passed by the competent authority. Reliance was placed on Clause 10.5 at page 320 which is Part-II, Supply Delivered at High Voltage. Placing reliance on the same, it was submitted that the aforesaid has been approved by the Commission and in view thereof, the question of taking further permission from the GERC – Commission does not arise.

3. Mr. Kunal R. Desai, learned advocate appearing on

caveat for the respondent No.2, requests for time to file reply to the petition. According to Mr. Desai, learned advocate, the present petition is not maintainable.

4. In the opinion of this Court, in absence of any appeal provided to challenge orders passed by the Ombudsman, the only remedy that the writ applicant has is to approach this Court invoking Article 226 of the Constitution of India.

5. Considering the submissions made by Mr. Joshi, learned Senior Counsel appearing for the petitioner, issue **Notice** making it returnable on **30.01.2024**.

6. In the meantime, the impugned order dated 22.09.2023 is directed to remain stayed till the next returnable date.

(VAIBHAVI D. NANAVATI,J)

NEHA