



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

WEDNESDAY, THE THIRTEENTH DAY OF MARCH  
TWO THOUSAND NINETEEN

:Present:

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

(1) O.P.No.33 of 2009 (2) O.P.No.42 of 2009 & I.A.No.4 of 2010 (3) O.P.No.57 of 2011 (4) O.P.No.60 of 2012 (5) O.P.No.85 of 2012 (6) O.P (SR) No.25 of 2013 & I.A (SR) No.80 of 2013 (7) O.P.No.51 of 2013 (8) O.P.No.10 of 2014 (9) O.P.No.15 of 2014 (10) O.P.No.20 of 2014 (11) O.P.No.37 of 2014 & I.A.No.9 of 2014 (12) O.P.No.38 of 2014 (13) O.P.No.56 of 2014 (14) O.P.No.10 of 2015 (15) O.P.No.11 of 2015 (16) O.P.No.28 of 2017 & (17) O.P.No.41 of 2017

**(1) O.P. No. 33 of 2009**

**Between:**

M/s. Lanco Kondapally Power Private Limited ... Petitioner

**A N D**

APPCC, AP Transco & Discoms ... Respondents

**(2) O.P. No. 42 of 2009 & I.A. No. 4 of 2010**

**Between:**

M/s. Lanco Kondapally Power Private Limited ... Petitioner/Applicant

**A N D**

APPCC, AP Transco & Discoms ... Respondents/Respondents

**(3) O.P. No. 57 of 2011**

**Between:**

AP Transco ... Petitioner

**A N D**

M/s. Spectrum Power Generation Limited ... Respondent

**(4) O.P.No.60 of 2012**

**Between:**

M/s. NILE Limited ... Petitioner

**A N D**

Central Power Distribution Company of Andhra Pradesh Limited ... Respondent

**(5) O.P.No.85 of 2012****Between:**

M/s. Lanco Kondapally Power Limited ... Petitioner  
**A N D**  
 APPCC, AP Transco & Discoms ... Respondents

**(6) O.P.(SR) No.25 of 2013 & I.A. (SR) No.80 of 2013****Between:**

M/s. RVK Energy Private Limited ... Petitioner/Applicant  
**A N D**  
 The Managing Director, APPCC & another ... Respondents/Respondents

**(7) O.P.No.51 of 2013****Between:**

M/s. Penna Cement Industries Limited ... Petitioner  
**A N D**  
 AP Transco, APPCC & Discoms ... Respondents

**(8) O.P.No.10 of 2014****Between:**

M/s. Spectrum Power Generation Limited ... Petitioner  
**A N D**  
 AP Transco, Discoms & APPCC ... Respondents

**(9) O.P.No.15 of 2014****Between:**

M/s. EID Parry (India) Limited ... Petitioner  
**A N D**  
 AP Transco & Discoms ... Respondents

**(10) O.P.No.20 of 2014****Between:**

M/s. Silkroad Sugar Private Limited ... Petitioner  
**A N D**  
 The Chairman & Managing Director  
 AP Transco & another ... Respondents

**(11) O.P.No.37 of 2014 & I.A.No.9 of 2014****Between:**

M/s. Spectrum Power Generation Limited ... Petitioner/Applicant  
**A N D**

AP Transco, Discoms & APPCC ... Respondents/Respondents

**(12) O.P.No.38 of 2014****Between:**

M/s. Spectrum Power Generation Limited ... Petitioner  
**A N D**

AP Transco, Discoms & APPCC ... Respondents

**(13) O.P.No.56 of 2014****Between:**

M/s. Spectrum Power Generation Limited ... Petitioner  
**A N D**

AP Transco, Discoms & APPCC ... Respondents

**(14) O.P.No.10 of 2015****Between:**

M/s. Lanco Kondapally Power Limited ... Petitioner  
**A N D**

APPCC, APSPDCL & APEPDCL ... Respondents

**(15) O.P.No.11 of 2015****Between:**

APSPDCL & APEPDCL ... Petitioners  
**A N D**

M/s. Konaseema Gas Power Limited ... Respondent

**(16) O.P.No.28 of 2017****Between:**

APSPDCL & APEPDCL ... Petitioners  
**A N D**

M/s. Konaseema Gas Power Limited & others ... Respondents

**(17) O.P.No.41 of 2017****Between:**

M/s. Madhucon Sugar &amp; Power Industries Limited

... Petitioner

**A N D**

APPCC &amp; AP Discoms

... Respondents

All these Original Petitions and the Interlocutory Applications have come up for hearing finally on 02-03-2019 in the presence of **(1)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(2)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(3)** Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the petitioner and Sri M. Naga Deepak, learned counsel for the respondent **(4)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the 1<sup>st</sup> respondent **(5)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(6)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(7)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(8)** Sri M. Naga Deepak, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(9)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri

G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(10)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(11)** Sri M. Naga Deepak, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(12)** Sri M. Naga Deepak, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(13)** Sri M. Naga Deepak, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(14)** Sri Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents **(15)** Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the petitioners and Sri E. Satish Kumar, learned counsel for the respondent **(16)** Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the petitioners and Sri E. Satish Kumar, learned counsel for the 1<sup>st</sup> respondent **& (17)** Challa Gunaranjan, learned counsel for the petitioner and Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

**COMMON ORDER**

**O.P.No.33 of 2009** filed by M/s. Lanco Kondapally Power Private Limited against the erstwhile Andhra Pradesh Power Coordination Committee, the erstwhile

Transmission Corporation of Andhra Pradesh Limited and the four distribution companies presently in the territories of the States of Telangana and Andhra Pradesh is for declaration of entitlement of the petitioner to capacity charges of Rs.76.18 crores payable by the respondents 1 to 6 with interest till the date of realization and other appropriate orders. The subject matter of I.A.No.19 of 2009 raising the question of limitation was stated to be pending consideration before the Hon'ble Supreme Court, but nothing has been heard from the parties about any further or final orders of the Hon'ble Supreme Court in the matter.

**O.P.No.42 of 2009** filed by M/s. Lanco Kondapally Power Private Limited against the erstwhile Andhra Pradesh Power Coordination Committee, the erstwhile Transmission Corporation of Andhra Pradesh Limited and the four distribution companies presently in the territories of the States of Telangana and Andhra Pradesh is for reimbursement of Rs.10.79 crores towards finance and procurement costs from the respondents 1 to 6 with interest till realization and other appropriate orders.

**O.P.No.57 of 2011** filed by the erstwhile Transmission Corporation of Andhra Pradesh Limited against M/s. Spectrum Power Generation Limited is for suitable directions to amend the amended and restated Power Purchase Agreement under which the four distribution companies now located in the States of Telangana and Andhra Pradesh became the successors-in-interest of the erstwhile Transmission Corporation of Andhra Pradesh Limited.

**O.P.No.60 of 2012** filed by M/s. NILE Limited against the erstwhile Central Power Distribution Company of Andhra Pradesh Limited, Hyderabad as amended by the orders in I.A.No.26 of 2015, the Southern Power Distribution Company of Andhra

Pradesh Limited, Tirupati and Southern Power Distribution Company of Telangana Limited, Hyderabad is for declaring the withholding of amounts from the monthly power purchase bills of the petitioner as arbitrary, illegal and contrary to the Power Purchase Agreement dated 20-05-2002 and to direct the payment of the amounts with interest at 10% per annum by the respondents and also to furnish revolving Letter of Credit and other appropriate orders.

**O.P.No.85 of 2012** filed by M/s. Lanco Kondapally Power Limited against the erstwhile Andhra Pradesh Power Coordination Committee, the erstwhile Transmission Corporation of Andhra Pradesh Limited and the four distribution companies presently in the territories of the States of Telangana and Andhra Pradesh is for recovery of Rs.9,11,91,478/- towards reimbursement of minimum fuel off take charges with interest of Rs.1,95,91,189/-, Rs.4,94,48,439/- towards reimbursement of ship or pay charges with interest of Rs.26,27,959/- and Rs.42,40,44,136/-, by way of rebate with interest of Rs.7,72,05,492/- and further interest on the amounts from the date of the petition till realization, costs and other appropriate reliefs.

**O.P. (SR) No.25 of 2013 and I.A. (SR) No.80 of 2013** filed by M/s. RVK Energy Private Limited against the Managing Director and the Chief Engineer (Commercial) of the erstwhile Andhra Pradesh Power Coordination Committee is a petition for recovery of Rs.29,20,078/- with interest at 24% per annum from the date of the invoice till realization and costs and the Interlocutory Application is for impleading the Deputy Controller of Accounts (PP & S) of the erstwhile Andhra Pradesh Power Coordination Committee, four distribution companies now in the territories of the States of Telangana and Andhra Pradesh and the erstwhile

Transmission Corporation of Andhra Pradesh Limited, as the four distribution companies are the actual buyers of the power, liable to make the payment.

**O.P.No.51 of 2013** filed by M/s. Penna Cement Industries Limited against the erstwhile Transmission Corporation of Andhra Pradesh Limited, the erstwhile Andhra Pradesh Power Coordination Committee and the four distribution companies now in the territories of the States of Telangana and Andhra Pradesh is a petition for recovery of Rs.1,55,40,975/- with interest towards the price of 35,98,658 units supplied by the petitioner prior to the receipt of the Purchase Order, Rs.26,19,411/- towards deduction of shortfall and Rs.14,10,181/- towards transmission and SLDC charges deducted totaling to Rs.40,29,592/- with interest, Rs.70,63,728/- towards deducted units and penalty imposed for short supply with interest and other appropriate reliefs.

**O.P.No.10 of 2014** filed by M/s. Spectrum Power Generation Limited against the erstwhile Transmission Corporation of Andhra Pradesh Limited, four distribution companies now in the territories of the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee is for adjudication of the disputes between the petitioner and the respondents about the imbalance charges and ship or pay charges on account of minimum off take charges and to compensate the petitioner of the said charges with interest and other appropriate reliefs.

**O.P.No.15 of 2014** filed by M/s. EID Parry (India) Limited against the erstwhile Transmission Corporation of Andhra Pradesh Limited and the four distribution companies now located in the territories of the States of Telangana and



Andhra Pradesh is a petition for recovery of Rs.4,28,23,048/- towards fixed cost with interest of Rs.2,95,94,157/- upto realization and other appropriate orders.

**O.P.No.20 of 2014** filed by M/s. Silkroad Sugar Private Limited against the erstwhile Chairman & Managing Director and Chief Engineer of the erstwhile Transmission Corporation of Andhra Pradesh Limited is for refund of Rs.2,51,55,786/- illegally collected towards transmission charges, setting off SLDC charges with interest at 18% per annum till realization and other appropriate orders.

**O.P.No.37 of 2014 and I.A.No.9 of 2014** filed by M/s. Spectrum Power Generation Limited against the erstwhile Transmission Corporation of Andhra Pradesh Limited, four distribution companies now in the territories of the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee is for adjudication of the disputes about the incentives and disincentives and for recovery of Rs.18,53,49,515/- towards incentives and refund of Rs.1,07,14,629/- towards disincentives with interest till realization and other appropriate orders.

**O.P.No.38 of 2014** filed by M/s. Spectrum Power Generation Limited against the erstwhile Transmission Corporation of Andhra Pradesh Limited, four distribution companies now in the territories of the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee is for adjudication of the disputes about the incentives and disincentives and for recovery of Rs.18,53,49,515/- towards incentives and refund of Rs.2,57,26,723/- towards disincentives with interest and other appropriate orders.

**O.P.No.56 of 2014** filed by M/s. Spectrum Power Generation Limited against the erstwhile Transmission Corporation of Andhra Pradesh Limited, four distribution companies now in the territories of the States of Telangana and Andhra Pradesh and the erstwhile Andhra Pradesh Power Coordination Committee is for approving and allowing completed capital cost of Rs.972.60 crores, approval of revised tariff, direct payment of the outstanding amounts and incentives in twelve equal installments, refer the dispute to an arbitrator, who is a retired Judge of the Hon'ble High Court of Andhra Pradesh and other appropriate reliefs.

**O.P.No.10 of 2015** filed by M/s. Lanco Kondapally Power Limited against the Andhra Pradesh Power Coordination Committee and the two distribution companies of the State of Andhra Pradesh is for reimbursement of bank guarantee to a tune of Rs.25,73,656/- with interest / late charges for delayed payment of the supplementary bills and other appropriate reliefs. The claim is in respect of 46.11% of the total amount of bills with interest due to reorganization of the State under the Andhra Pradesh Reorganization Act, 2014, while the original Power Purchase Agreement was dated 31-03-1997 with the erstwhile Andhra Pradesh State Electricity Board.

**O.P.No.11 of 2015** filed by the two distribution companies of the present State of Andhra Pradesh against M/s. Konaseema Gas Power Limited, Hyderabad is to declare the alternate fuel clause in the amended Power Purchase Agreement dated 12-01-2005 as nonest.

**O.P.No.28 of 2017** filed by the two distribution companies of the present State of Andhra Pradesh against M/s. Konaseema Gas Power Limited, Hyderabad and the two distribution companies of the present State of Telangana is for a direction to the 1<sup>st</sup> respondent for payment of bill at HT-I category tariff for imported energy drawn from March, 2013 up-to-date with interest at 18% per annum.

**O.P.No.41 of 2017** filed by M/s. Madhucon Sugar & Power Industries Limited against the Andhra Pradesh Power Coordination Committee, its Chief Engineer, its Dy. Chief Controller of Accounts and the two distribution companies located in the present State of Andhra Pradesh is for recovery of Rs.1,26,90,295/- towards 46.11% of the total amount due from the four distribution companies now in the territories of the States of Telangana and Andhra Pradesh with interest.

2. All the seventeen Original Petitions and the Interlocutory Applications pending in some of them are pending enquiry before the Commission and they were heard on the question of jurisdiction of the Commission after the bifurcation of the erstwhile State of Andhra Pradesh into the States of Telangana and Andhra Pradesh by the Andhra Pradesh Reorganization Act, 2014 and the consequential constitution of the Telangana and the Andhra Pradesh State Electricity Regulatory Commissions with territorial jurisdiction over the respective States. A common order was passed in a batch of thirty four matters on 28-09-2016 as follows:

- (a) all proceedings pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission functioning as a joint regulatory body till the formation of State Electricity Regulatory Commissions in the successor States, in so far as they relate exclusively to the territory which as from the appointed day are the territories of the State of Telangana, stood transferred to the Telangana State Electricity Regulatory Commission;
- (b) out of the remaining proceedings pending, all those proceedings relating exclusively to the territories of the State of Andhra Pradesh shall fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;

- (c) the remaining proceedings which may not exclusively relate to the territory of the State of Andhra Pradesh and do not exclusively relate to the territory of the new State of Telangana shall also fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;
- (d) in any pending proceeding, petitioner (s) is at liberty to proceed only against such parties/persons as respondents as he may desire, leaving open the question of maintainability of his petition in such form and sustainability of reliefs claimed against the particular party (s) severally and separately to be decided by this Commission in accordance with law;
- (e) all the 34 matters covered by this common order shall stand posted to **28-10-2016 Friday at 3:00 PM** for continuation of hearing on the remaining questions in controversy between the parties for determination of the disputes on merits in accordance with law;
- (f) the conclusions of this Commission in this order on the question of jurisdiction shall be applicable to all the remaining proceedings pending before this Commission also.
- (g) This order is subject to any order that may be passed or any direction that may be given by the Hon'ble Appellate Tribunal for Electricity or the Hon'ble High Court of Judicature at Hyderabad or the Hon'ble Supreme Court in any matters pending before them or that may be brought before them.
3. The common order was carried to the Hon'ble High Court in a number of Writ Petitions and the batch of Writ Petitions was disposed of by a common order of a Division Bench of the Hon'ble High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh on 31-12-2018.

4. It may be noted that the erstwhile Andhra Pradesh Electricity Regulatory Commission functioning as a joint regulatory body since 02-06-2014 initially took a preliminary view that on enactment of Act No.6 of 2014, jurisdiction relating to adjudication of a dispute between the generator in one newly formed State and the licensee in another newly formed State shifted to the Central Electricity Regulatory Commission under the relevant provisions of the Electricity Act, 2003. An intrastate dispute earlier was considered to have been transformed into an interstate dispute. However, after notices to all the concerned parties and hearing on such a preliminary view, the joint regulatory body pronounced a common order on 04-07-2014 holding that the erstwhile State Commission alone had the power and jurisdiction over such matters even after the bifurcation of the State.

5. In this background, those Original Petitions and the Interlocutory Applications therein, which are covered by the batch of Writ Petitions disposed of by the Hon'ble High Court on 31-12-2018 were transmitted to the Central Electricity Regulatory Commission in compliance with the specific directions of the Hon'ble High Court. Out of the remaining Original Petitions and the Interlocutory Applications pending therein covered by the common order of this Commission dated 28-09-2016, four other matters relating to M/s. Reliance Infrastructure Limited were also held by this Commission to be liable to be proceeded in accordance with law before the Central Electricity Regulatory Commission in accordance with the common order of the Hon'ble High Court and accordingly records therein were transmitted to the Central Electricity Regulatory Commission by virtue of the orders of the Commission dated 02-03-2019. Out of the seventeen matters under consideration herein, O.P.No.10 of 2015, O.P.No.11 of 2015, O.P.No.28 of 2017 and O.P.No.41 of 2017 filed

subsequent to the bifurcation of the State are also stated to be involving the question of jurisdiction of the Commission.

6. Accordingly all the matters are heard on the applicability of the principles laid down by the Hon'ble Division Bench of the Hon'ble High Court to these petitions and to decide further course of action, in compliance with the directions of the Hon'ble High Court in accordance with law.

7. The first thirteen matters under consideration herein relate to the contractual and legal relationship between the parties arising under the Power Purchase Agreements prior to the bifurcation of the erstwhile State of Andhra Pradesh and the disputes involved, the rights and obligations of the four distribution companies within the territories of the erstwhile State of Andhra Pradesh. With effect from 02-06-2014, the erstwhile State of Andhra Pradesh stood divided into the States of Telangana and Andhra Pradesh as per the Andhra Pradesh Reorganization Act, 2014 and since then two distribution companies each fell within the jurisdiction of the two States out of the four distribution companies.

8. Though O.P.No.10 of 2015 was filed subsequent to the reorganization of the State, the Power Purchase Agreement between the petitioner therein and the erstwhile Andhra Pradesh State Electricity Board was dated 31-03-1997. The four distribution companies now located in the two States are the successors-in-interest of the erstwhile Andhra Pradesh Electricity Board. The claim of the petitioner therein is for 46.11% of the alleged liability of the four distribution companies to be recovered from the two distribution companies of the State of Andhra Pradesh and the Andhra Pradesh Power Coordination Committee representing them.

**9.** O.P.No.11 of 2015 filed by the two distribution companies of the present State of Andhra Pradesh against the respondent therein is also arising out of a Power Purchase Agreement dated 31-03-1997 with the erstwhile Andhra Pradesh State Electricity Board and any declaration that alternate fuel clause therein is nonest, will effect all the successors-in-interest of the erstwhile Andhra Pradesh State Electricity Board and not merely the two petitioners. The petition also shows that there were various other proceedings between the distribution companies of the erstwhile State of Andhra Pradesh and the respondent in O.P.No.11 of 2015 relating to the same agreement.

**10.** O.P.No.28 of 2017 is another petition again filed by both the distribution companies of the present State of Andhra Pradesh against M/s. Konaseema Gas Power Limited, this time impleading both the distribution companies of the State of Telangana as proforma respondents. The petition clearly mentions that the erstwhile Transmission Corporation of Andhra Pradesh Limited, which was the successor-in-interest of the erstwhile Andhra Pradesh State Electricity Board, transferred the Power Purchase Agreement concerned to the four distribution companies, who are at present located in the States of Telangana and Andhra Pradesh and the petition is for reliefs arising out of the rights and obligations under such Power Purchase Agreement.

**11.** O.P.No.41 of 2017 is about the generation and sale of electricity from a co-generating plant located in the territory of the State of Telangana and the claim is about 46.11% of the total amount of bills due from the four distribution companies and the erstwhile Andhra Pradesh Power Coordination Committee. The petitioner

also claimed to have retained its liberty to claim the balance amount from the distribution companies operating in the State of Telangana.

**12.** Thus, though these four Original Petitions have been filed before this Commission subsequent to the reorganization of the erstwhile State of Andhra Pradesh into two States with two distribution companies each coming under each State, the rights and obligations sought to be enforced are those under agreements originally with the erstwhile Andhra Pradesh State Electricity Board, the successors-in-interest of which are the erstwhile Transmission Corporation of Andhra Pradesh Limited and thereafter the four distribution companies now under the territory of the two States. The legal rights and obligations arising for adjudication also therefore are not purely intrastate in character but are interstate in content and substance.

**13.** With this background, the disputes arising before this Commission in all the seventeen petitions under consideration herein are broadly similar in character.

**14.** The Hon'ble High Court concluded in Para 51 of the common order that if a generating company had entered into or otherwise have a composite scheme for generation and sale of electricity in more than one State, then the dispute involving such generating company would fall within Section 79 (1) (b). It is also held that similarly, if there was conveyance of electricity by means of main transmission line from the territory of one State to another State or the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such transmission of electricity ....., then it becomes interstate transmission within the meaning of Clauses (c) and (d) of Section 79 (1). The Hon'ble High Court held that from the appointed day viz., 02-06-2014, one single scheme the generating companies had, has become a composite scheme and



that scheme was for generation and sale of electricity in two States, viz., the States of Telangana and Andhra Pradesh. It further held that the moment the State was reorganized and the companies, with which the generating companies had agreements, came to be located in two different States, the nature of the dispute assumed as that of an interstate dispute. The Hon'ble High Court further held that in respect of matters relating to jurisdiction conferred by special enactments, the date on which the cause of action arose and the date on which the dispute was raised, may not be the sole criteria to determine the continued existence of jurisdiction. The Hon'ble Division Bench referred to Energy Watchdog Vs CERC (2017) 14 SCC 80 for the proposition that the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Act and it is enough that the generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State to satisfy the expression composite scheme.

**15.** KSK Mahanadi Power Company Limited Vs APERC and the two distribution companies of the State of Andhra Pradesh in Appeal No.230 of 2017 is decided by the Hon'ble Appellate Tribunal for Electricity on 31-10-2018. That appeal was also against the common order passed by this Commission on 28-09-2016, which was the subject matter of the decision of the Hon'ble Division Bench of the Hon'ble High Court. The Hon'ble Appellate Tribunal also referred to the Energy Watchdog case holding that in the case of inter-state sale, it would be a composite scheme within the exclusive jurisdiction of the Central Commission. The Hon'ble Appellate Tribunal also referred to Uttar Haryana Bijli Vitran Nigam Ltd. Vs Central Electricity Regulatory Commission & Ors in Appeal No.100 of 2013 decided by it on 07-04-2016 in which, it was held that mere sale of electricity by a generator to two or more States would

mean it is a composite scheme attracting the provisions of Section 79 (1) (b) and therefore, it would be within the exclusive jurisdiction of the Central Commission to adjudicate disputes between the parties to Power Purchase Agreement. The Hon'ble Appellate Tribunal also had set aside the common order of this Commission dated 28-09-2016. Thus, the principles laid down in Energy Watchdog by the Hon'ble Supreme Court, in KSK Mahanadi Power Company Limited by the Hon'ble Appellate Tribunal for Electricity and in a batch of Writ Petitions disposed of on 31-12-2018 by the Hon'ble High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh clearly concluded that the moment generation and sale take place in more than one State, the Central Commission becomes the appropriate Commission under the Electricity Act, 2003.

**16.** In these seventeen petitions, the rights and obligations of the parties arose out of the contractual and legal relationship emanating from the Power Purchase Agreements with the erstwhile Andhra Pradesh State Electricity Board, the successors of interest of which are the erstwhile Transmission Corporation of Andhra Pradesh Limited and then the four distribution companies now located in two States. The Hon'ble High Court clearly held at Para 58 of the common order that the moment the State was reorganized and the companies, with which the generating companies had agreements, came to be located in two different States, the nature of the dispute assumed as that of an interstate dispute.

**17.** Under the circumstances, the disputes covered by these seventeen petitions consequently appear to clearly fall within the principles laid down by the Hon'ble Supreme Court, Hon'ble High Court and the Hon'ble Appellate Tribunal for Electricity that the moment generation and sale take place in more than one State, the Central

Commission becomes the appropriate Commission under the Electricity Act, 2003 and that it is enough that the generating company has a scheme for generation and sale of electricity in more than one State making it a composite scheme.

**18.** Therefore, the records in O.P.No.33 of 2009, O.P.No.42 of 2009 & I.A.No.4 of 2010, O.P.No.57 of 2011, O.P.No.60 of 2012, O.P.No.85 of 2012, O.P (SR) No.25 of 2013 & I.A (SR) No.80 of 2013, O.P.No.51 of 2013, O.P.No.10 of 2014, O.P.No.15 of 2014, O.P.No.20 of 2014, O.P.No.37 of 2014 & I.A.No.9 of 2014, O.P.No.38 of 2014, O.P.No.56 of 2014, O.P.No.10 of 2015, O.P.No.11 of 2015, O.P.No.28 of 2017 & O.P.No.41 of 2017 shall be duly indexed and transmitted to the Central Electricity Regulatory Commission for being proceeded with in accordance with law in compliance with the common order of the Hon'ble High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh in W.P.No.15848 of 2015 & batch dated 31-12-2018.

This order is corrected and signed on this the **13<sup>th</sup> day of March, 2019.**

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

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