TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. (SR) No. 23 of 2021

&

I. A. (SR) No. 24 of 2021

Dated 31.01.2022

Present

Sri T. Sriranga Rao, Chairman

Sri M. D. Manohar Raju, Member (Technical)

Sri Bandaru Krishnaiah, Member (Finance)

Between:

1. M/s Heavy Water Plant (Manuguru),
   Gautaminagar P.O., Manuguru,
   Aswapuram, Bhadradri – Kothagudem District – 507 116.

2. Union of India, Department of Atomic Energy,
   Anushakti Bhavan, Chhatrapti Shivaji Maharaj Marg,
   Mumbai – 400 001 … Petitioners.

AND

1. Northern Power Distribution Company of Telangana Limited,
   # 2-5-31/2, Corporate Office, Vidyut Bhavan, Nakkalgutta,
   Hanamkonda, Warangal – 506 001.

2. Superintending Engineer,
   TSNPDCL, Operation Circle,
   Bhadradri – Kothagudem. ... Respondents.

The petition came up for hearing on 15.09.2021 in respect of maintainability of the petition. Sri D. Narendar Naik, Advocate for petitioner has appeared through video conference on 15.09.2021. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioners have filed a petition under Section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003), seeking to question the demand made towards Grid Support Charges. The averments of the petition are as below:

a. It is stated that this petition is being filed under Section 86(1)(f) of the Act, 2003 for adjudication of dispute in relation to impugned demand notices dated 30.01.2021 and 08.06.2021 issued by respondents to the petitioner No.1 for payment of Grid Support Charges in gross violation of Section 184 of the Act, 2003. The respondents have threatened to disconnect the electricity power connection of S. C. No. BKM 013 of petitioner No.1, which is a project of immense National Security and National Interest without further notice after 15 days from date of receipt of the demand notice dated 08.06.2021. The impugned demand notice was received on 10.06.2021.

b. It is stated that the petitioner is a unit of Heavy Water Board (HWB), Department of Atomic Energy (DAE), Government of India (GoI). It is stated that the DAE is under the direct control of the Hon'ble Prime Minister of India. The petitioner No.1 plant is engaged in production of Nuclear Grade Heavy Water (D_20), which is used as coolant and moderator in Nuclear Power Reactors. It is stated that the petitioner No.1 plays a crucial role in implementing the nuclear power programme in India and the petitioner No.1 plant is crucial for National Security and National Interest.

c. It is stated that the petitioner No.1 in order to cater the power and steam requirement for the process of production of heavy water installed three pulverized fuel fired steam generators and three turbo generators along with associate auxiliaries to commission a cogeneration power plant. The cogeneration plant which was commissioned has been in operation since 1991. The capacity of each turbo generator is 30 MW. Later on it has taken various energy conservation and process optimization

measures in order to reduce power consumption from initial usage of 48.9 MW to present 34.5 MW.

d. It is stated that the petitioner No.1 has also commissioned and installed 12 MWp solar photovoltaic power plant to harness the renewable energy and the said solar power plant is connected to 6.6 kV switchyard of the petitioner No.1 for meeting in-house power consumption in addition to captive power plant. Therefore, it's reliance on the respondent's grid is also minimal and notwithstanding the pure questions of law on which the present challenge is made, the Petitioners also do not agree with the arbitrary and illegal calculation method adopted by the respondents.

e. It is stated that the cogeneration power plant which has been commissioned by the petitioner No.1 is connected to grid at 220 kV level through 220 kV sub-station of respondent No.2 (erstwhile Andhra Pradesh State Electricity Board) as an alternative source for system stability and to cater the start-up requirement of the plant. It is not out of place to mention that it has been paying monthly bills raised by respondent No.1 as per the terms specified in agreement for supply of electricity at high tension dated 21.12.2006 for utilising the grid of respondent No.2. Further, it is stated that the abovementioned agreement between the petitioner No.1 and respondents is a private arrangement between the petitioner No.1 and respondents.

f. It is stated that the respondent No.1 issued a letter dated 30.01.2021 and on 08.06.2021 to the petitioner No.1 demanding payment of an amount of Rs.294.08 crore towards Grid Support Charges from FY 2002-03 to FY 2008-09 with interest up to 31.05.2021. It is pertinent to note that the erstwhile APERC by order dated 08.02.2002 had determined Grid Support Charges. The order of the APERC was challenged before the Hon’ble High Court and the Hon’ble High Court set aside the order of APERC. Subsequently, the order of the Hon’ble High Court was challenged by the respondent No.2 before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the Commission is vested with the power to determine Grid Support Charges, In view of the order and judgment passed by the Hon'ble Supreme Court India, it is admitted that while the Commission is vested with the power to determine Grid

Support Charges, such Grid Support Charges would not be applicable to the petitioners in light of Section 184 of the Act, 2003. It is not out of place to state that the petitioners were not party to the aforesaid proceedings before the APERC, Hon'ble High Court and the Hon'ble Supreme Court. For the convenience of the Commission, Section 184 of the Act, 2003 is reproduced below:

> *"Section 184:* ***Provisions of Act not apply in certain cases***
>
> *The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government."*

g. It is stated that Section 184 of the Act, 2003 creates a separate classification of persons/entities/departments which are exempted from the provisions of the Act, 2003. This separate classification covers the Ministry of Defence (MoD) and the DAE and such other ministries which may be exempted by way of a notification by the Central Government. Therefore while the Act, 2003 may be applicable to all persons generally, the same is specifically exempted for a special class of persons and the said exemption is in order to safeguard and protect National Security and National Interest and therefore this is the reasonable nexus between Section 184 and the purpose it is trying to achieve. Therefore, unless and until the provision itself is amended or repealed or set aside, Section 184 is binding on all concerned persons including the petitioners and the respondents.

h. It is stated that in view thereof, while the DAE through the petitioner No.1, while it is a user of the state grid, it is under no obligation to pay the said Grid Support Charges as there is a specific exemption. The impugned demand notice with a threat of disconnection is a gross violation of the principle that delegated legislation/subordinate legislation cannot be ultra vires the primary legislation which in this case is Section 184 of the Act, 2003.

i. It is stated that the petitioner No.1 produces D_20 through bi-thermal H_2S-H_20 process and accordingly 400 MT of H_2S is stored. It is stated that H_2S is a hazardous gas. In ease of disruption of power supply the sealant system in support of H_2S may cause leakage even though sufficient mechanism has been put forth by it. It is stated that our Nation has already witnessed numerous gas leaks incidents such as the Bhopal gas leak, Vizag gas leak etc. due to negligent acts of authorities. Further, the actions of the respondents are interfering with the sovereign functions being carried out by the petitioners.

j. It is stated that the respondent No.1 derives its authority to impose Grid Support Charges from the order of erstwhile APERC. The APERC in turn derives its authority from the Act, 2003. The order issued by APERC to impose Grid Support Charges would not be binding on the Petitioners as the provisions of Act, 2003 itself are not applicable to the petitioners. Therefore, the impugned demand notices dated 30.01.2021 and 08.06.2021 issued by the respondents to the petitioner No.1 are ultra vires the provisions of the Act, 2003.

k. It is stated that the petitioners in reply to the first impugned notice dated 30.01.2021 issued letter on 06.02.2021 bearing No. HWPM / EU / 92 / 2021 / 1 to the 1st respondent seeking clarification with regard to levy of Grid Support Charges.

l. It is stated that subsequently, the petitioners issued another letter to respondent No.1 dated 09.04.2021 bearing No. HWPM / ADM / AOII(IR) / 5 / 2021 stating that issue is being taken up by the respondent No.2 with regard to admissibility of Grid Support Charges as the petitioner No.1 is exempted under provisions of the Act, 2003.

m. It is stated that the respondent No.2 issued letter to the Petitioner No.1 dated 16.04.2021 bearing letter No. CE / SLDC / F. RPPO / D. No. 18 / 21 informing that the petitioner No.1 would be treated as a captive consumer and that it cannot be exempted from RPPO compliance under Regulation No.2 of 2018 in accordance with order issued by the Commission vide O. P. No. 31 of 2020 dated 09.03.2021.

n. It is stated that in O. P. No. 31 of 2020, the Commission was not given proper assistance by the respondent No.1 and the respondent No.1

merely placed a letter before the Commission. It is stated that the Hon'ble Supreme Court of India in the case of "*TVS Motor Company Limited Vs. State of Tamil Nadu 2019 (13) SCC 403"* while dealing with a case regarding exemption provided to State Government or Central Government from VAT registration under the Tamil Nadu Value Added Tax Act, 2006, observed that:

> *"47. Thus, wherever the State Government buys, sells, supplies or distribute goods, it shall be deemed to be the dealer for the purposes of TNVAT Act. At the same time, TNVAT Act does not require registration by the State Government inasmuch as Section 38 which deals with registration of dealers explicitly provides, under sub-section (8) thereof, that this provision shall not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the State of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the TNVAT Act."*

o. It is stated that therefore in such situations wherever the Governments are also parties involved in business or in the present case use of the Grid, Section 184 carves out an exemption with respect to the applicability of the provisions of the Act, 2003 and hence the MoD and DAE are not under any obligation to pay the Grid Support Charges.

p. It is stated that the petitioner No.1, though is a necessary party in O. P. No. 31 of 2020, was not given any notice, was not made a party and was not given any opportunity to be heard or present its case before the Commission. The petitioners reserve their rights vis-à-vis the order dated 09.03.2021 in O.P.No.31 of 2020.

q. It is stated that the said order of the Commission in O. P. No. 31 of 2020 dated 09.03.2021 is only in respect of *'In the matter of Suo-Moto determination of compliance of Renewable Power Purchase Obligation (RPPO) of obligated entities for FY 2018-19*' and not in respect of Grid Support Charges. Therefore, any reliance by the respondents on this order of the Commission for claiming Grid Support Charges is bad in law and without jurisdiction.

r. It is stated that the petitioners vide Letter dated 10.06.2020 bearing No. HWPM (M) / EU / 05 / TSNPDCL / TSTRANSCO / 2020 / 02 made representation to Chief Engineer, SLDC, TSTRANSCO stating that the provisions of the Act, 2003 would not be applicable to DAE in view of Section 184 of the Act, 2003.

s. It is stated that the petitioner No.1 vide Letter dated 02.01.2021 bearing Doc. No.2021 HWPM(M) / EU / 05 / TSTRANSCO / 2021 / 01 issued letter to the respondent No.2 stating that RPPO compliance charges may not be applicable to the petitioners.

t. It is stated that the respondents finally issued the final impugned demand notice dated 08.06.2021 bearing No. SE / Op / BKGM / SAO / AA / JAO(HT) / D. No.188 / 21 to the petitioner No.1 demanding payment of Rs.289.59 crore within fifteen days from date of receipt of letter failing which electricity connection bearing No.BKM 013 would be disconnected. It is stated that the impugned demand notice issued by the respondent No.1 bearing No. SE / Op / BKGM / SAO / AA / JAO(HT) / D. No.188 / 21 is illegal and ultra vires the provisions of the Act, 2003.

u. It is stated that the impugned demand notices dated 30.01.2021 and 08.06.2021 issued by the respondents to the petitioner No.1 are liable to be set aside on the following grounds, among others:

i. The action of the respondents in demanding Grid Support Charges under the Act, 2003 is directly contrary to the provision of the Section 184 of the Act, 2003.

ii. The impugned demand notices issued by the respondents are ultra vires and beyond jurisdiction in view of the existing and subsisting exemption under law for the purposes of application of the Act, 2003 and, therefore, the impugned demand notices with threat of disconnection are an absolute nullity.

iii. The respondents have failed to appreciate that the petitioners being the GoI, DAE squarely fall under a separate classification and therefore there are statutory safeguards provided in the form of Section 184 of the Act, 2003.

iv. The impugned demand notices do not take into account the principles that any law enacted or delegated legislation or

demand notice pursuant to a provision of any law cannot be opposed to a fundamental law and if any such action of the state while enacting laws is in excess of fundamental authority is a nullity. [*Namit Sharma Vs. Union of India 2013 (1) SCC 745*]

v. The impugned demand notices do not take into consideration the clarification given by the Hon'ble Supreme Court in TVS Motors viz, that while a person can be a user, when there is a specific exemption granted under the Act, such user will have no obligation under the Act which grants such exemption.

vi. The impugned demand notices with a threat of disconnection of electricity connection from the grid is made without application of mind for the fact that in case of such disconnection and if there is any accident at the site, there will not be any electricity back up for controlling a large scale disaster akin to the Bhopal Gas Tragedy or the Visakhapatnam gas leak.

vii. The impugned demand notices have been issued by a wrong reliance on the order dated 09.03.2021 in O.P.No.31 of 2020 passed by this Commission which was in respect of RPPO but the respondents are using it for claiming Grid Support Charges.

viii. The impugned demand notice and threat of disconnection of power does not take into the fact that in case of any such disconnection of power connection and if there is a leak or accident at the heavy water plant which employs hazardous chemicals and substances, the DAE will have to rely on diesel generator sets to control the situation which by itself may not suffice.

ix. The respondent No.1 derives its powers from the Act and therefore any actions of the respondent No.1 pursuant to the Act, 2003 is delegated legislation and as such this delegated or secondary legislation cannot override and supersede Section 184 which is a binding primary statutory provision of the same Act, 2003.

x. The respondent No.1 derives its authority to impose Grid Support Charges from the order of erstwhile APERC. The APERC in turn

derives its authority from the Act, 2003. The order issued by APERC to impose Grid Support Charges would not be binding on the petitioners as the provisions of Act, 2003 itself are not applicable to petitioners. Therefore, the impugned demand notices issued by respondent No.1 are ultra vires the provision of the Act, 2003.

xi. The actions of the respondents is directly in violation of the judgment of the Hon'ble Supreme Court in "*Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondar School and Ors. 2007 (1) SCC 268"* wherein while dealing with a similar provision regarding exemption of an establishment or undertaking belonging to or under the control of the Central Government from the provisions of EPF Act, 1952 and EPF and Miscellaneous Act, 1988 held that a demand for recovery was bad and illegal when there was a specific exemption provided in the Act for all establishments belonging to or under the control of the Central Government or State Government and consequently dismissed the appeal filed by the Regional Provident Fund Commissioner.

xii. The impugned demand notices also do not take into consideration the judgment and order passed by the Hon'ble Supreme Court in "*Kunj Behari Lal Butail and Ors. Vs. State of Himachal Pradesh and Ors. 2000 (3) SCC 40*" wherein while discussing the exemptions granted to Tea Estates from the purview of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 and State Government made Rules, 1973 to bypass such exemption under the Act therein, the Hon'ble Supreme Court while allowing the appeal struck down the illegal proviso inserted in the Rules 1973 as invalid and ultra vires the provisions of the parent legislation which granted the exemption.

xiii. That the Gujarat Electricity Regulatory Commission held vide its order dated 27.09.2019 in Petition No.1750 of 2018 that,

> *"9.2 … … Asper the aforesaid Section, the provisions of the Electricity Act shall not apply to the Ministry or Department of the Central Government dealing with*

Defence, Atomic Energy or such other similar Ministries.

… …

9.3 The Petitioner Garrison Engineer (Army) is the department of the Indian Army, Ministry of Defence and accordingly, covered under Section 184 of the Electricity Act, 2003.

9.4 Keeping in view the intent of the law, the Commission is of the view that the restriction of 50% of contract demand as per the GERC Net Metering Regulations shall not apply to the Petitioner's Plant."

v. It is stated that in view of abovementioned grounds the Commission may declare the actions of respondents in issuing the impugned demand notices dated 30.01.2021 and 08.06.2021 issued by the respondents to the petitioner No.1 for payment of Grid Support Charges in gross violation of, invalid and ultra vires the provisions of Section 184 of the Act, 2003.

2. The petitioners have prayed the Commission for the following relief in the petition.

"(a) To declare the actions of respondents in issuing impugned demand notices dated 30.01.2021 and 08.06.2021 as null and void, illegal and in violation of the exemption granted under Section 184 of the Act, 2003 and consequently set aside the demand made by the respondents on petitioner No.1 for Rs.294.08 crore towards Grid Support Charges from FY 2002-03 to FY 2008-09 with interest up to 31.05.2021.

(b) To suspend the impugned demand notices dated 30.01.2021 and 08.06.2021 issued by the respondents to the petitioner No.1 and suspend all further proceedings of the respondents pursuant to the impugned demand notices dated 30.01.2021 and 08.06.2021."

3. The petitioners have also filed an Interlocutory Application (I.A.) under Section 94 (2) of the Electricity Act, 2003 r/w clause 55 of Conduct of Business Regulation and sought the following relief pending disposal of the above petition, in the application.

"Suspend the impugned demand notices dated 30.01.2021 and 08.06.2021 issued by the respondents to the petitioner No.1 and suspend all further proceedings of the respondents pursuant to the impugned demand notices dated 30.01.2021 and 08.06.2021."

4. The petition has been scrutinized by the office and it sent a letter dated 12.07.2021 to the counsel for the petitioners, seeking reply on the following aspects.

"(i) State and explain how the petition is maintainable under sec 86(1)(f) of the Act, 2003, as you are neither a generator nor a licensee.

(ii) What is the relevance of the order dated 09.03.2021 in O.P.No.31 of 2020 of the Commission and the correspondence pertaining to the said order to the issue on hand that is levy of Grid Support Charges?

(iii) Is not the levy of Grid Support Charges confirmed by the Hon'ble Supreme Court, and if so, what is the issue that remains to be adjudicated by the Commission as the Commission's order is upheld."

5. The counsel for the petitioners replied by filing a memo received on 19.07.2021 and stated as below:

a) In reply to objection No. (i), it is submitted that as per Section 2(28) of the Electricity Act, 2003 a generating company means "*any company or body corporate or association or body if individuals, whether incorporated or not or artificial juridical person, which owns or operates or maintains a generating station*." It is submitted that petitioner No.1 runs solar and thermal power plant and hence is generating station and therefore falls within the definition of generating company. Thereby, this Hon'ble Commission is empowered to adjudicate the dispute under Section 86 (1) (f) of the Electricity Act, 2003.

b) In reply to objection No. (ii), it is submitted that order of Hon'ble Commission in O. P. No. 31 of 2020 dated March 9, 2021 is with regard to RPPO compliance. It is not out of place to mention that petitioner No.1 was not made party to O.P.No.31 of 2020 and no opportunity was provided to petitioner No.1 to be heard before this Hon'ble Commission. However, O. P. No. 31 of 2020 is not applicable to the present case in which the subject matter is Grid Support Charges whereas in O. P. No.

31 of 2020 the subject matter was renewable power purchase obligations. The respondents are wrongly relying on this order of Hon'ble Commission in O. P. No. 31 of 2020 to demand Grid Support Charges for FY 2002-03 to 2008-09.

c) In reply to objection No. (iii), it is submitted that the Hon'ble Supreme Court has confirmed the power of the State Electricity Commission to determine Grid Support Charges. However, such Grid Support Charges would not be applicable to petitioner No.1 in light of Section 184 of the Electricity Act. It is submitted that the respondent No.1 derives its authority to impose Grid Support Charges from the order of erstwhile APERC. The APERC in turn derives its authority from the Electricity Act, 2003. The order issued by APERC to impose Grid Support Charges would not be binding on the petitioners as the provisions of Electricity Act, 2003 itself are not applicable to petitioners.

d) In view of the aforesaid clarifications it is humbly prayed that the above mentioned petition be numbered and placed before the Commission for adjudication of the matter.

6. The Commission has heard the arguments of the counsel for the petitioner in respect of the maintainability of the petition by issuing a notice as also examined the contentions made in the petition with legal references. The counsel for the petitioner stated on the date of hearing as below:

"… … The counsel for the petitioner stated about the issue involved in the petition. He relied on Section 184 of the Electricity Act, 2003 to state that the petitioners are exempted from the provisions of the Act, 2003. As such, the claim made by the DISCOM towards arrears of Grid Support Charges cannot be agreed to. The counsel for petitioner relied on several other enactments wherein specific Central Government Departments and institutions are exempted from respective enactments of the Government. He relied on EPF Act and similar Acts. He also relied on the provisions of Value Added Tax. Reference has also been made to a judgment of the Hon'ble Supreme Court rendered in the year 2011. It is stated that though it is a fact that any consumer is liable to pay Grid Support Charges but the petitioners herein are not liable for

the same. Having heard the submissions of the counsel for petitioners, the matter is reserved for orders in respect of the maintainability of the petition."

7. The Commission notices that the petitioner No.1 is a generating company as it is having captive solar and thermal plants. It may be considered as a generator under Section 2(28) of the Act, 2003, but for invoking the Section 86(1)(f) of the Act, 2003, it is not undertaking any sale of energy to any consumer or the licensee itself. Thus, the issue raised in the petition cannot be termed as a dispute between the licensee and a generator. As such, the petitioner could not have invoked Section 86(1)(f) of the Act, 2003 to approach this Commission. Moreover, the main grouse of the petitioners is with reference to levy of Grid Support Charges, which is a tariff issue and cannot be termed as an issue arising out of any agreement or understanding between both the parties.

8. Reference has been made to an order dated 09.03.2021 passed by the Commission in O. P. No. 31 of 2020 with regard to compliance of RPO obligation under Regulation No. 2 of 2018 being the Telangana State Electricity Regulatory Commission (Compliance by Purchase of Renewable Energy / Renewable Energy Certificates) Regulations, 2018. The said order was passed by the Commission after due consultation with all the stakeholders. The statement made by the petitioners that there was no notice to them, is contrary to the record. In this regard, this Commission recollects the relevant portion of the order to rebut the statement made by the petitioners in the petition.

*"**Obligated Entity's Submission***

28. Heavy Water Plant vide its letter to TSSLDC dated 10.06.2020 submitted that Heavy Water Plant (Manuguru) is a captive user and it has 3x30 MW and 1x3.4 MW Thermal Power Plants and a 12 MW Solar Power Plant in addition to its consumption from the DISCOM at 220 kV level. It further submitted that it is a strategic unit of the Department of Atomic Energy, Government of India. Therefore, as per the Section 184 of the Act, the provisions of the Act shall not be applicable on Heavy Water Plant. It requested to look into the matter of applicability of RPPO in light of the said provision of the Act.

Commission's View

29. The Commission has noted the submission of Heavy Water Plant. The Commission is of view that Heavy Water Plant is consumer of TSNPDCL whose tariff is determined by considering provisions of Act. In addition, just like any other captive consumer, it is governed by the relevant provisions of the Act, and subsequent Regulations issued under the regulatory provisions of the Act. Hence, Heavy Water Plant shall be treated just like any other captive consumer and cannot be exempted from RPPO compliance under Regulation No.2 of 2018."

9. Thus, the statement that no opportunity was given to the petitioners, is neither correct nor appropriate, as the Commission had notified the initiation of the proceedings in public domain. Accordingly, this contention would not stand in support of the petitioners.

10. The petitioners also stated that reference had been made by the licensee of the above said order, if any, while dealing with the Grid Support Charges. It has to be stated that the licensee did not make a reference to RPPO compliance order of the Commission while claiming the amount due towards Grid Support Charges. Therefore, the submission appears to be out of place. In this connection, it has to be stated that the letter referred by the petitioners dated 16.04.2021 is issued by the Transmission Corporation of Telangana Limited through its Chief Engineer overseeing the matters relating to the State Load Despatch Centre functions (SLDC). This has nothing to do with the letter dated 30.01.2021 and 08.06.2021 issued by the respondent No.1 through the respondent No.2, which specifically deal with the issue raised by the petitioners in this petition. The compliance or otherwise of RPPO is neither concerned nor related to Grid Support Charges. While the compliance of the RPPO is arising under Section 86(1)(e) of the Electricity Act, 2003 r/w TSERC Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulation No.2 of 2018 , the issue raised in the present petition is arising out of the Tariff determination for retail sale of electricity by the then Andhra Pradesh Electricity Regulatory Commission (APERC) under Section 62 of the Electricity Act, 2003 r/w Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity, Regulation No.4 of 2005 and the same as confirmed by the Hon'ble Supreme Court.

11. The petitioners relied on Section 184 of the Act, 2003 to state that the levy of Grid Support Charges is not applicable to the petitioners. It is stated that Section 184 of the Act, 2003 mandates non-application of the provisions of the Act, 2003 to such Ministries or such departments as may be exempted by way of notification by the Central Government including the petitioner No.2. In this regard, the relevant provision is extracted below at the cost of repetition.

> *"184.* ***Provisions of Act not to apply in certain cases****:- The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government."*

12. It is relevant to mention here that Section 173 read with Sections 174 and 175 of the Act, 2003, which make it clear that the provisions of the Act, 2003 would have say in the matters arising out of it and cannot be waived off. For the said purpose, the above said provisions are extracted below.

> *"173.* ***Inconsistency in laws Act****:- Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.*
>
> *174.* ***Act to have overriding effect****:- Save as otherwise provided in Section 168, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*
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> *175. Provisions of this Act to be in addition to and not in derogation of other laws. The provisions of this Act are in addition to and not in derogation of any other law for the time being in force."*

13. The provisions amply make it clear on a combined reading, that the Act, 2003 supersedes all other enactments for the time being in force insofar as the issues relating to electricity are concerned. Based on the above understanding, the present petition is not maintainable. For being made inapplicable the provisions of the Act, 2003, the provisions of the said enactments should be inconsistent with the provisions

of the Act, 2003. Also the Act, 2003 intended to be in addition and not in derogation of the said enactments. It is appropriate to state that the aspect of levy of Grid Support Charges, which relates to use of electricity or electrical plant cannot be subject matter of the said or any other enactments. Thus, the petitioners cannot claim any exemption in the matter.

14. On a consolidated and combined reading of the provisions referred by the petitioners as also noticed by the Commission above, it can be safely interpreted that unless, there are inconsistent provisions in the enactments applicable to the petitioners, the petitioners would continue to be ordinary consumers like any other entity/individual. If that is the situation, they cannot claim exemption from the applicable regulations and tariff that had been determined by the Commission exercising power under the Act, 2003.

15. The Grid Support Charges were decided by the then APERC under Telangana (A.P.) Electricity Reform Act, 1998 prior to the Act, 2003. The 1st petitioner had approached the Hon'ble High Court of Andhra Pradesh as it then was in CMA No.1581 of 2003, questioning the levy of Grid Support Charges. The said appeal came to be disposed of on 17.08.2009 in terms of the judgment of the Hon'ble High Court of Andhra Pradesh on 02.05.2003 in batch of appeals in CMA No.1104 of 2002 filed by M/s Vishnu Cements Limited and others. The Hon'ble High Court had observed as below:

> *"… …*
>
> *2. It is submitted by the learned counsel for the appellant that a Division Bench of this Court in Vishnu Cements Limited Vs. Central Power Disctribution Company of Andhra Pradesh Limited, Vidyut Soudha, Hyderabad (CMA Nos.1104 of 2002 and batch dated 02-05-2003) allowed the batch of appeals, arising out of the same impugned order dated 08-02-2002, and this appeal has also to be allowed following the said decision.*
>
> *3. Recording the submission of the learned counsel for the appellant, this Civil Miscellaneous Appeal is also allowed following the above decision."*

16. The original order dated 02.05.2003 of the Hon'ble High Court in batch of appeals in CMA No.1104 of 2002 filed by M/s Vishnu Cements Limited and others was challenged before the Hon'ble Supreme Court in Civil Appeal Nos.4569 of 2003 and

batch [three (3) batches of appeals], which came to be disposed of on 29.11.2019, dully setting aside the order of the Hon'ble High Court dated 02.05.2003. The finding of the Hon'ble Supreme Court is in the last paragraph of the judgment as regards Grid Support Charges, the same is extracted below:

> *"73. Resultantly, we have to allow the appeals. The judgment and order passed by the High Court relating to wheeling charges and Grid Support Charges and that passed by the APTEL regarding continuance of incentive as per G.O.Ms dated 18.11.1997 and 22.12.1998, are set* aside. The appeals are allowed, and the orders passed by APERC are restored.

17. Thus, the levy of Grid Support Charges stood confirmed. It is also worth mentioning that the petitioner No.1 is bound by the decision of the Hon'ble Supreme Court. As such, the levy now sought to be recovered is subsumed in the powers of the Commission to determine the tariff under Section 62 of the Act, 2003 and stands confirmed by the Hon'ble Supreme Court. Thus, the petitioners cannot allege that the levy of Grid Support Charges is not applicable to the petitioners.

18. At this stage, the Commission is of the view that exemptions provided under the Act, 2003 cannot be claimed in the absence of any finding to the contrary by the Hon'ble Supreme Court, which has affirmed the levy of Grid Support Charges. This Commission cannot go beyond the law laid down by the Hon'ble Supreme Court.

19. The petitioners referred to judgment of the Hon'ble Supreme Court in the matter of "*Kunj Behari Lal Butail and others Vs. State of Himachal Pradesh and others*". The said judgment arises out of Himachal Pradesh Ceiling on Land Holdings Act, 1972. The Hon'ble Supreme Court was dealing with exemptions from the application of the provisions of the said Act in particular Section 5 of the said Act, which is extracted below along with connected paragraphs.

> *"Section 4 of the Act defines the permissible area which a landowner, a tenant or a mortgagee with possession or a person holding partly one or other of the above said status may hold Section 6 places a ceiling on the entitlement to hold any land beyond what is permitted by the Act. Section 7 empowers the State Government to determine the surplus area of the land held by any one ignoring the transfer after the appointed day of a land held in excess of the permissible except bona fide transfers. Section 5 of the Act provides for Exemptions and*

enacts that the provisions of this Act shall not apply amongst others to "tea estates".

Section 5 reads as under:

"5. Exemptions. - The provisions of this Act shall not apply to -

(a) lands owned by the State Government or the Central Government;

(b) lands belonging to registered Co-operative Fanning Societies;

Provided that the share of a member of such society, together with his other land, if any does not exceed the permissible area;

(c) lands belonging to Land Mortgage Banks, the State and Central Co-operative Banks and any other Banks as defined in the Explanation - not reproduced.

(d) lands belonging to or vested in local authorities;

(e) lands belonging to Himachal Pradesh Agriculture University;

(f) lands owned by the Bhudan Yagna Board established under the law in force in the State of Himachal Pradesh and

(g) tea estates."

20. The above judgment would not in any way aid the petitioner, as there is quite substantial difference between Section 5 of the said Act extracted above and Section 184 of the Act, 2003. The reference made above has specific items or places to be exempted, such is not the case with Section 184 of the Act, 2003. Adverting to the said judgment, the same cannot be applied to the facts and circumstances of the case, as statutory functions have been assigned to this Commission specifically by virtue of provisions in the Act, 2003 and it has been given supremacy over all other enactments. Therefore, the judgment cannot be relied upon by the petitioner.

21. The petitioner relied on the judgment in the matter of "*TVS Motor Company Ltd. Vs. The State of Tamil Nadu and others*". The said judgment is on the issue of application of Section 19 (5) (c) of the Tamil Nadu Value Added Tax Act, 2006 and the rules thereof. In the said judgment, the Hon'ble Supreme Court undertook the interpretation of Section 19 of the said Act relating to levy of Input Tax. In the said case, the issue before the Hon'ble Supreme Court is with reference to Section 19(5)(c)

of TNVAT Act, 2006. The said provision along with notification under the said Act, is extracted below.

> *"No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)"*

The notification thereof issued on 01.01.2007 is also referred to, which is as below:

> *"Input tax credit on inter-state sales shall be allowed only if Form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 is filed."*

Further while upholding the above aspects, the judgment also referred to the term 'dealer', which is extracted below:

> *"Explanation II: The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act."*

Having relied on the above provisions, the Hon'ble Supreme Court came to the conclusion after dealing with the entire case law on the subject, sought to hold as below:

> *"47. Thus, wherever the State Government buys, sells, supplies or distribute goods, it shall be deemed to be the dealer for the purposes of TNVAT Act. At the same time, TNVAT Act does not require registration by the State Government inasmuch as Section 38 which deals with registration of dealers explicitly provides, under sub-section (8) thereof, that this provision shall not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the State of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the TNVAT Act. … …"*

22. The finding referred by the petitioners was rendered in the context of the above extracted provisions and questions of law. Moreover, the said act is applicable to the State of Tamil Nadu and the provisions thereof relied upon by the petitioners cannot be applied as it is not in *pari materia* with Section 184 of the Act, 2003. There is subtle distinction between the judgment referred above and the issue raised in this petition

about the application of the Act, 2003. Therefore, the said judgment is of no use to the petitioner herein.

23. The petitioner proceeded to refer to the judgment rendered by the Hon'ble Supreme Court in the matter of "*Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and others*", on the interpretation of provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952. The judgment involved Section 16 of EPF Act 1952 and Schedule I(3) of the notification of the year 1982 under the said Act along with Rajasthan Non-Government Education Institutions Act, 1989 and the Rules for payment of Grant-in-Aid to Non-Government Educational, Cultural and Physical Educational Institutions in Rajasthan, 1963. Reference has been drawn to the provisions of EPF Act, 1952, which is extracted below, which judgment is relied upon by the petitioner *(not extracted in the judgment)*.

> *"16(1) of the EPF Act, 1952 was substituted by new clauses (b), (c) and (d). The amended provisions read as under:*
>
> *(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits;*
>
> *(c) to any other establishment set up under any Central Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;*
>
> *(d) to any other establishment newly set up until the expiry of a period of three years from the date on which such establishment is has been set up"*

24. The above said judgment specifically dealt with the application of the Provident Fund Act in the context of State enactment of Rajasthan and rules thereunder. Inasmuch as there is a specific provision identifying the specific category persons who are outside the purview of EPF Act, 1952. To the same effect and subsequent notifications mentioned in the judgment reflect the non-application of EPF Act, 1952 in the State of Rajasthan as has been discussed in the judgment under the State law. The Section 184 of the Act, 2003 mandates non-application of the provisions of the

Electricity Act, 2003 to such Ministries or such departments as may be exempted by way of notification by the Central Government and in the absence of any notification thereof issued by the Government of India, the claim of the petitioner that it is exempted from application of the provisions of the Electricity Act, 2003 is farfetched. In the light of the above observations, this judgment of Hon'ble Supreme Court would not enure to the case of the petitioner.

25. The petitioner relied on the order of the Gujarat Electricity Regulatory Commission in Petition No.1750 of 2018 decided on 27.09.2019 on the issue of application of GERC Net Metering Regulation to Garrison Engineer (Army) being a defence establishment. The claim therein was specifically for exemption from the restriction of 50% contract demand as per GERC Net Metering Regulation under Section 184 of the Act, 2003. Moreover, the decision rendered by another Commission is of only persuasive value to this Commission and not binding on it. Thus, the contention of the petitioner fails and is accordingly rejected.

26. One other contention has been raised by the petitioner relating to delegated legislation and fundamental law. Reliance is placed on the decision of the Hon'ble Supreme Court in the matter of "*Namit Sharma Vs. Union of India*". The original judgment was rendered by the Hon'ble Supreme Court in respect of appointment of the Information Commissioners under the RTI Act, 2005 and the need to have adequate capacity to adjudicate upon the appeals arising out of non-provision of information. The Hon'ble Supreme Court after extensive discussion allowed the writ petition and gave directions to the Government on modification of the provisions of the RTI Act, 2005. Further a review had been filed by the Government and State of Rajasthan on the said judgment and the Hon'ble Supreme Court had occasion to observe as below while disposing of the review petition.

> *"29. In the judgment under review, in direction no.5, the Central Government and/or the competent authority have been directed to frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law and with particular reference to Sections 27 and 28 of the Act within a period of six months. Sections 27(1) and 28(1) of the Act are extracted herein below:*

"27. Power to make rules by appropriate Government.— (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

28. Power to make rules by competent authority.— (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

The use of word "may" in Sections 27 and 28 of the Act make it clear that Parliament has left it to the discretion of the rule making authority to make rules to carry out the provisions of the Act. Hence, no mandamus can be issued to the rule making authority to make the rules either within a specific time or in a particular manner. If, however, the rules are made by the rule making authority and the rules are not in accordance with the provisions of the Act, the Court can strike down such rules as ultra vires the Act, but the Court cannot direct the rule making authority to make the rules where the Legislature confers discretion on the rule making authority to make rules. In the judgment under review, therefore, this Court made a patent error in directing the rule making authority to make rules within a period of six months."

27. The petitioner contended that the delegated legislation or notice cannot be opposed to fundamental law and it would be a nullity. Inasmuch as, neither there is a rule making issue nor it is violative of the fundamental law in determination of Grid Support Charges by the then Commission as adopted by this Commission and affirmed by the Hon'ble Supreme Court. The petitioner appears to have misguided itself. Under the Act, 2003 this Commission has authority to determine the charges to be collected from the various stakeholders depending on usage of power supply or usage of network. In this case, the issue is relating to usage of network and determination of Grid Support Charges, has been affirmed by the Hon'ble Supreme Court. The determination of charges is not a rule or regulation making function, but it is a legislative act as has been enshrined in the Act, 2003 itself and elucidated by various pronouncements of the Hon'ble Supreme Court. In these circumstances, the reliance placed on the said judgment is uncalled for.

28. The Commission gainfully refers to a judgment rendered by the Hon'ble Supreme Court in the matter of "*Renaissance Hotel Holdings Inc. Vs. B. Vijaya Sai*

and others" decided on 19.01.2022. The said judgment though arising out of the issue of Trade Marks Act, 1999 dealt extensively on the aspect of text and context of the provisions of the enactments made by the Parliament of State Legislature. In this regard, the Commission would place on record the relevant portion of the judgment, which has explained the concept by relying on several earlier judgments.

> *"60. We find that the High Court has failed to take into consideration two important principles of interpretation. The first one being of textual and contextual interpretation. It will be apposite to refer to the guiding principles, succinctly summed up by Chinnappa Reddy, J., in the judgment of this Court in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others:*
>
> > *"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4 SCC 507: (1981) 1 SCR 801: 51 Com Cas 464] and we find no reason to depart from the Court's construction."*

61. It is thus trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. As already discussed hereinabove, the said Act has been enacted by the legislature taking into consideration the increased globalization of trade and industry, the need to encourage investment flows and transfer of technology, and the need for simplification and harmonization of trade mark management systems. One of the purposes for which the said Act has been enacted is prohibiting the use of someone else's trade mark as a part of the corporate name or the name of business concern. If the entire scheme of the Act is construed as a whole, it provides for the rights conferred by registration and the right to sue for infringement of the registered trade mark by its proprietor. The legislative scheme as enacted under the said statute elaborately provides for the eventualities in which a proprietor of the registered trade mark can bring an action for infringement of the trade mark and the limits on effect of the registered trade mark. By picking up a part of the provisions in sub-section (4) of Section 29 of the said Act and a part of the provision in sub-section (1) of Section 30 of the said Act and giving it a textual meaning without considering the context in which the said provisions have to be construed, in our view, would not be permissible. We are at pains to say that the High Court fell in error in doing so.

62. Another principle that the High Court has failed to notice is that a part of a section cannot be read in isolation. This Court, speaking through A.P. Sen, J., in the case of Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others, observed thus:

> *"4. … … It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section. … …"*
>
> *This principle was reiterated by this Court in the case of Kalawatibai Vs. Soiryabai and Others:*

"6. It is well settled that a section has to be read in its entirety as one composite unit without bifurcating it or ignoring any part of it. … …"

63. Ignoring this principle, the High Court has picked up clause (c) of sub-section (4) of Section 29 of the said Act in isolation without even noticing the other provisions contained in the said sub-section (4) of Section 29 of the said Act. Similarly, again while considering the import of sub-section (1) of Section 30 of the said Act, the High Court has only picked up clause (b) of sub-section (1) of Section 30 of the said Act, ignoring the provisions contained in clause (a) of the said sub-section (1) of Section 30 of the said Act.

29. Applying the above principle, it is appropriate to interpret the provisions of the Act, 2003, more particularly Section 184 thereof. The said provision cannot be read in isolation or the part thereof which is relevant to the petitioner. As has been held by the Hon'ble Supreme Court, the provision has to be read in toto and the various provisions of the Act, 2003 itself on the combined reading. The petitioner sought to canvas that Section 184 of the Act, 2003 exempts the petitioner and that exemption is pursuant to it being a department of Government of India as mentioned in the said provision. Such narrow construction cannot be resorted to as it would amount to uncalled for consequences as specific and unambiguous authority has been created and specific functions have been assigned to this Commission coupled with powers enumerated therein. The Commission would have to discharge several functions and exercise several powers under the various provisions of the Act, 2003. Therefore, any exemption or relaxation cannot inferred by merely reading a particular provision, but has to be seen in the text and the context as has been observed by the Hon'ble Supreme Court. Applying the said principle, the petitioner is bound to follow the decisions of this Commission. Thus, the contentions raised in the present petition is a figment of imagination and contrary to the settled law.

30. Owing to the observations and discussion supra, the present petition is not maintainable as entertaining or deciding it in any manner, would amount to interfering with the findings of the Hon'ble Supreme Court on the subject matter, which have become final.

31. In these circumstances, the petition is liable to be rejected and is accordingly rejected, but in the circumstances without any cost.

32. Consequently, nothing remains to be considered in the interlocutory application and accordingly the same also rejected.

This order is corrected and signed on this the 31st day of January, 2022.

Sd/-	**Sd/-**	**Sd/-**
(BANDARU KRISHNAIAH)	(M.D.MANOHAR RAJU)	(T.SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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