TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

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

I. A. No. 4 of 2023
in
O. P. No. 8 of 2021

Dated 01.04.2024

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s Singareni Collieries Company Limited,
Kothagudem Collieries,
Bhadradri Kothagudem District 507 101. ... Applicant/Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
   # 6-1-50, Corporate Office, Mint Compound, Hyderabad,
   Telangana State 500 063.

2. Northern Power Distribution Company of Telangana Limited,
   Corporate Office, H.No.2-5-31/2, Vidyut Bhavan,
   Nakkalagutta, Hanamkonda, Warangal 506 001.

… Respondents/Respondents

The application came up for hearing on 31.07.2023 and 21.08.2023. Sri. J. Dutta, DGM (R&C) for applicant/petitioner has appeared on 31.07.2023, Sri. P. Shiva Rao, counsel for the applicant/petitioner has appeared on 21.08.2023. Sri. D. N. Sarma, OSD/Commercial representing for respondents has appeared on 31.07.2023 and 21.08.2023 and the matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Singareni Collieries Company Limited (SCCL) (applicant/petitioner) has filed an interlocutory application under clause 39 read with 38 of TSERC Conduct of Business Regulations, 2015 (Regulation No.2 of 2015) requiring necessary clarification so that the difference of understanding of both parties as to the conclusive part of paragraph 12 of the order which has prevailing effect may be resolved by upholding already expressly given direction to DISCOMs to pay the coal cost as incurred by STPP up to the quantum of schedule generation of power. The averments in the application are extracted below:

a. It is stated that the applicant has entered in the business of power generation by setting up a 2x600 MW coal based thermal power plant, namely Singareni Thermal Power Plant (STPP) in Jaipur of Mancherial district and entered power purchase agreement (PPA) with TSDISCOMs to supply power to them. The units of STPP achieved COD during the financial year 2016-17. In terms of PPA dated 18.01.2016 total electricity generated from the applicant's station is being supplied to respondents.

b. It is stated that the applicant initially has filed truing up application in O.P.No.4 of 2019 for its 2x600 MW STPP for FY 2016-19 together with claims on certain bills which were not admitted by respondents. The Commission passed order dated 28.08.2020 for the true-up in O.P.No.04 of 2019. In the aforesaid order, the Commission has directed the applicant to file a separate petition in respect of billing disputes which arose during FY 2016-19.

c. It is stated that in accordance with the orders dated 28.08.2020 as the applicant earlier filed a petition as O.P.No.8 of 2021 on primary billing disputes. The Commission passed order dated 21.11.2022 in the said O.P.No.8 of 2021 on primary billing disputes between STPP, SCCL against respondents, while rejecting the tariff towards power generated beyond schedule quantum though it is within PLF of 85% but granted claim towards additional cost of coal to the extent of quantum of power within the schedule quantum.

d. It is stated that in compliance of said order dated 21.11.2022, STPP revised energy bills for additional cost of coal limiting its claim up to the quantum limit of scheduled energy. However, respondents declined to pay the additional cost

of coal even up to the scheduled generation, claiming that there is no order for payment towards additional cost of coal even in respect of power within scheduled quantity.

e. It is stated that as per the said order it is clear that additional cost of coal as per revised rate of cost of coal was allowed by the Commission up to quantum of scheduled energy. But the respondents as stated above misconceived the true effect of said orders. Thus, there exists difference of understanding as to effect of paragraph 12 of the order that is payment of bills towards additional cost of coal in the order dated 21.11.2022 in O.P.No.8 of 2021.

f. It is stated that earlier STPP has submitted a letter to the Commission seeking clarification on paragraph 12 of said order. However, the Commission vide letter No.S/RO-59/19/JD(Law)-1/D.No.250/2022 dated 13.04.2023 refused to clarify on the basis of a letter but stated that STPP may take steps for appropriate relief in respect of said grievance. Hence, this application is now filed seeking clarification as to the effect of paragraph 12 of the aforesaid order.

g. It is stated that the Commission has the power under clause 39 of Regulation No.2 of 2015 to provide necessary clarification or even to amend the order to reflect the correct purport of the said orders dated 21.11.2022. Further, the Commission has inherent powers to pass appropriate orders under clause 38 of Regulations No.2 of 2015. The said clause is reproduced hereunder for reference.

"38. Saving of inherent power of the Commission

(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such order as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure. Which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matte or class of matters.

(3) Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act or reform Act for which no Regulations have been framed

and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

h. It is stated that paragraph 12 of order dated 20.11.2022 passed by the Commission is reproduced hereunder:

"12. Issue-1 (Payment of bills towards additional Coal Cost for FY 2018-19:

a. The petitioner raised the issue of payment of additional coal cost running about Rs.118 crore for the period 2018-19. In this regard, the petitioner has extensively quoted the provisions of the Regulations and also the PPA in view of the objection raised by the DISCOMs.

b. It is the submission of the petitioner that raising of additional coal bills by SCCL (Mines department) has resulted in revision of energy charges for 2018-19 and such revision is made in accordance with the Clause (7) of Regulation 30 of CERC Terms and Conditions of Tariff 2014 and if this bill towards additional cost of coal is not accepted, the Petitioner will be put to losses and the same will result offending Clause 61(b) of the Electricity Act, 2003. Hence the requested the Commission to direct the respondents to pay the additional energy charge incurred due to additional coal bills.

c. As response to above submission of the petitioner it is the say of the respondents that the petitioner deliberately injected energy beyond state SLDC's schedule, which amounts to non-compliance of SLDC instructions besides causing financial loss to them and such injecting of excess energy was not required by the grid and if the petitioner had complied with SLDC instructions, limiting the generation equal to the Schedule in each time block within permissible deviation volume limit, then the issue of over-injection of 94.76 MU would not have arisen and to that extent they could have saved payment of Energy charges and such deliberate injection of excess energy into the grid intended to cause financial burden on the them besides violating grid code. The critical issue to be examined by the Commission is when the petitioner over injected energy into the system without the grid requirement by violating the grid code, in such situation are they liable for payment of Energy Charges (VC) in terms of APERC/CERC tariff Regulations. However, the Tariff Regulations does not support the contention/claim of the petitioner; therefore the Petitioner's claim should be disallowed.

d. The Commission opines that the dispute raised by the petitioner is with regard to additional cost of coal drawn for generating power apart from the regular cost agreed already. The petitioner having raised the invoices for the power supply made earlier, also raised supplementary bill towards amount incurred by it for availing coal supply through its own mines, which was permitted by GoI as a bridge linkage. The pricing for the said purpose would show that there is a division of two parts of 100% capacity of coal and the cost that is involved thereof. Further, the GoI through

MoC in its memorandum dated 08.02.2018 had provided for modalities towards bridge linkage of coal without mentioning the pricing in that office memorandum and the MoU reflects the same.

e. *In order to refute the claim of the petitioner with regard to additional coal cost, the respondents referred to the order passed by the Commission in O.P.No.9 of 2016 filed by the petitioner itself, the terms of the PPA as also the pricing structure as derived from MoU signed by the petitioner with its power plant division. The respondents relied heavily on the fact that the petitioner was allotted coal mine, and it was not drawing coal from the said source citing the reason that the production has not yet started and in turn required availing coal through other means and sources by requiring allotment by GoI to run its power plant. According to them, this has resulted in higher cost of fuel as onerous conditions have been imposed as a part of the allotment of bridge linkage, which had specific conditions on pricing as mentioned in the pleadings.*

f. *It appears that the petitioner in order to facilitate itself to operate the thermal plant proceeded to acquire coal allocation from the captive coal mine, which did not start production of coal, thus requiring the petitioner to source the coal supply from its own coal mines duly obtaining the permission from GoI. However, it is not clear from the pleadings and from the submissions of both sides as to whether the respondents had been put on notice with regard to availing bridge linkage of the coal and also entering into MoU by the petitioner with its thermal plant unit for supplying such bridge linkage coal. According to the petitioner that the coal supply availed would be at a higher cost under bridge linkage and such cost is reimbursable under the PPA and that coal supply availed under the MoU to the thermal plant in the absence of availability of coal through the original allocation made by the GoI and thus, it had incurred additional cost for procuring the same, which was noticed only on completion of FY 2018-19.*

g. *It is made to understand from the averments of the petition that the petitioner had raised supplementary bill towards additional coal cost after FY 2018-19 when the actual cost of coal was very much within its reach being the coal supplier as also the generator. The petitioner submits that it had drawn additional coal beyond the agreed quantum in order to generate additional power beyond the PLF agreed between the parties. This action of the petitioner appears to be in contravention to the regulations that are applicable and the agreement reached between the parties. Moreover, the petitioner had failed to inform the beneficiaries/respondents of the higher pricing of coal in a timely manner. Further, the petitioner sought to increase generation by using additional coal and it is not made clear whether it was at the instance of respondents or out of its own volition.*

h. *Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the*

agreed conditions between the parties. Propriety would require that the parties should adhere to the Act, 2003, rules, regulation and the clauses in the PPA to the extent they are applicable.

i. *As per Article 3.4.2 of the PPA in between the parties " the SCCL shall follow the SLDC directives, to back down, increase or resume generation, decrease generation at a times on a day, provided that such directives are consistent with the technical limits of the facility, Prudent Utility Practices or in accordance with discharge functions of SLDC. Number of Dispatch instructions per day shall not exceed two. The duration of back down and quantum of energy backed down each day shall be reconciled and certified by both SCCL (at station level) and SLDC on monthly basis".*

j. *As per clause 2 (ii) of Regulation 1 of 2008 "Schedule generation at any time or for any given period or time block means the scheduled of Generation in Mw at ex-bus given by the SLDC".*

k. *As per clause 14.1 of Regulation 1 of 2008 "the generating station shall be entitled to receive or shall be required to bear as the case may be, the charges for the deviation between energy sent out corresponding to scheduled generation and actual energy sent out, in accordance with the balancing and settlement code notified by the commission".*

l. *Further as per clause 13.1 (a) of Regulation 1 of 2008 "Energy charges shall cover fuels cost and shall be worked out on the bases of ex-bus energy sent out corresponding to Scheduled generation ... … "*

m. *Needless to add that as per the PPA it is the bounden duty of the petitioner to follow the dispatch instructions of SLDC and as per the Regulation 1 of 2008, the petitioner is eligible for payment of energy charges for ex-bus charges sent out corresponding to schedule generation. But it appears the petitioner has not followed dispatch instructions and injected excess energy to the grid in violation. The liability of the respondents to pay shall be only to the extent of coal cost corresponding to schedule generation and not for the energy generated over and above of the scheduled generation. For that, the tariff regulation does not support the claim of the petitioner; therefore, the petitioner is not entitled to receive additional coal cost beyond scheduled generation. Hence this issue is answered."*

i. It is stated that the above orders which relates to the issue of payment of bills towards additional cost of coal, clearly demonstrate that the applicant is not entitled for additional cost of coal in respect of power injected into grid beyond the schedule quantum given by respondents. But there is absolutely no finding that the applicant is not entitled for additional cost of coal even in respect of quantum of power supplied within the limit of scheduled quantum. Therefore, by reading the findings given at various places of paragraph 12, it is clear that

the applicant is entitled for additional cost of coal in respect of the power injected up to the limit of schedule quantum given by respondents.

j. It is stated that in compliance of said orders dated 21.11.2022 of the Commission, as to additional cost of coal in respect of power supplied up to the limit of schedule quantum of power, the applicant revised the bills stating that additional cost of coal was allowed by the Commission up to the limit of quantum of scheduled energy. However, respondents persistently declined to pay additional cost of coal even up to scheduled generation.

k. It is stated that it is well understood by SCCL that the "additional coal beyond the agreed quantum" mentioned above refers to additional coal required for generating energy over and above schedule generation.

l. It is stated that even if, for a moment, without admitting, hypothetically assumed that there is some conflict in the meaning between paragraph 12(h) and the final paragraph 12(m), sanity requires that the final paragraph will be conclusive and prevails and the paragraph 12(h), being subordinate to final paragraph has to be read in harmony/agreement with the conclusive paragraph.

m. It is stated that the Commission is requested to pass necessary clarification so that the difference of understanding by two parties may be resolved. It is stated that the Commission to harmoniously construct paragraph 12(h) and paragraph 12(m) of order dated 21.11.2022, so that the spirit of the order expressed in final part of paragraph 12 on this issue remains intact, unchanged and univocal.

n. It is stated that this application is filed only for seeking clarification as to paragraph 12 and nothing beyond. The scope of this application is limited to harmonious construction of paragraph 12 to reach its already expressed finality as worded in paragraph 12(m).

2. Therefore, the applicant/petitioner has sought the following reliefs in the application.

> *"To issue necessary clarification so that the difference of understanding of both parties as to the conclusive part of para 12 of the order which has prevailing effect may be resolved by upholding already expressly given direction to DISCOMs to pay the coal cost as incurred by STPP up to the quantum of schedule generation of power."*

3. The respondents have filed their counter affidavit and the averments thereof are as extracted below:

a. It is stated that the applicant averred that in the order dated 21.11.2022, the Commission decided in respect of issue-1 (payment of bills towards additional cost of coal for FY 2018-19) at paragraph 12(m) as "*... … therefore, the Petitioner is not entitled to receive additional coal cost beyond Scheduled Generation*".

b. It is stated that by interpreting the said decision in its favour, the petitioner contended that, it is entitled for additional cost of coal in respect of the power injected upto the limit of scheduled generation quantum given by respondents.

c. It is stated that the applicant stated that in compliance of the said orders dated 21.11.2022, regarding the additional cost of coal allowed in respect of power supplied upto the limit of scheduled quantum of power, it had revised the bills in respect of additional cost of coal upto the limit of scheduled generation quantum of energy and contended that TSDISCOMs had persistently declined to pay additional cost of coal even upto scheduled generation.

d. It is stated that the applicant further stated that "*... … even if for a moment, without admitting hypothetically assumed that there is some conflict in meaning between paragraph 12(h) and the final paragraph 12(m), sanity requires that the final para will be conclusive and prevails and the paragraph 12(h), being subordinate to final paragraph has to be read in harmony/agreement with the conclusive prayer*".

e. It is stated that stating the above, the applicant requested the Commission to pass necessary clarification, so that the difference of understanding by two parties may be resolved. The applicant further requested the Commission to harmoniously construct paragraph 12(h) and paragraph 12(m) of the order dated 21.11.2022, so that the spirit of order expressed in final part of paragraph 12 on this issue would remain intact, unchanged and univocal.

f. It is stated that applicant had filed the present application only for seeking clarification as to paragraph 12 and nothing beyond and the scope of the application is limited to harmonious construction of paragraph 12 to reach its already expressed finality as worded in paragraph 12(m).

g. It is stated that as could be seen from the interim application, the applicant is seeking clarification as to paragraph 12, particularly the paragraphs, paragraph 12(h) and (m), of the order dated 21.11.2022 passed in O.P.No.8 of 2021, in terms of the clauses No.38 and 39 of Regulation No.2 of 2015.

h. It is stated that further, the applicant has also requested the Commission to pass necessary clarification by harmonious construction of paragraph 12(h) and (m) of the order dated 21.11.2022, so that the final paragraph that is paragraph 12(m) prevails over the paragraph 12(h), being the subordinate paragraph and the order decided in the paragraph 12(m) would become absolute.

i. It is stated that at the outset, the present application filed by the applicant is not maintainable in law and also on merits. The factual position and legal position is stated below:

(i) It is stated that the applicant had filed the petition vide O.P.No.8 of 2021 before the Commission under section 86(1)(f) of the Act 2003 seeking adjudication of billing disputes arose during FY 2016-17 to FY 2018-19 under the PPA in respect of its 2x600 MW thermal power plant at Jaipur of Mancherial district. In the said petition, the Commission has decided the claims of the applicant by framing five issues and undertook elaborate discussion. At present, the applicant is seeking clarification against the 1st issue of the order passed, which claim was for payment of bills towards additional cost of coal during FY 2018-19.

(ii) It is stated that as regards the facts of the case, the claim of the applicant towards additional coal cost for Rs.121.4336 crore during FY 2018-19 had arisen on account of two reasons. The 1st reason was that applicant had injected excess generation into the grid beyond the energy scheduled by state load dispatch centre for the state of Telangana (TSSLDC), which entailed excess consumption of high priced coal for generating excess power. The 2nd reason was that applicant had utilized high priced coal under the bridge linkage scheme, the price of coal for the quantum of beyond 75% agreed quantity was at additional 20% price over and above the notified basic price of coal, applicable to non-power sector, which is not a regulated sector. The non-power sector includes cement, steel industries etc., which consume high quality (GCV) and high priced coal, whereas low grade coal (from G-11 to G-15)/low priced coal would be supplied to the coal based thermal power plants. The applicant being coal supplier and generator, had tried to take undue advantage of the bridge linkage coal supply arrangement by levying additional 20% premium on the notified basic price of coal applicable to non-power sector and revised the bills retrospectively, which had been opposed by the respondents in the proceedings of O.P.No.8 of 2021 before the Commission. After hearing the parties elaborately, the

Commission passed the order, deciding the 1st issue at paragraph 12(m) that, "... … the liability of the Respondents to pay shall be only to the extent of coal cost corresponding to schedule generation and not for the energy generated over and above of the scheduled generation. For that, the Tariff Regulations does not support the claim of the Petitioner, therefore, the Petitioner is not entitled to receive additional coal cost beyond scheduled generation. … … "

(iii) *It is stated that the applicant has selectively extracted the last two lines of the final paragraph 12(m) of the said order and misinterpreted that it is entitled for additional cost of coal in respect of the power injected upto the limit of schedule quantum given by respondents, which is absolutely not correct.*

(iv) *It is stated that the applicant has conveniently ignored the vital observations of this Commission at paragraph 12(h) of the said order as extract below:*

"12(h) *Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. Propriety would require that the parties should adhere to the Act 2003, rules, regulation and the Clauses in the PPA to the extent they are applicable. …. … "*

(v) *It is stated that the Commission further recorded its observations at paragraph 12 (g) of the said order is extract below:*

"12(g) *… … It is made to understand from the averments of the Petition that the petitioner had raised supplementary bill towards additional coal cost after FY 2018-19 when the actual cost of coal was very much within its reach being the coal supplier as also the generator. The petitioner submits that it had drawn additional coal beyond the agreed quantum in order to generate additional power beyond the PLF agreed between the parties. This action of the petitioner appears to be in contravention to the regulations that are applicable and the agreement reached between the parties. Moreover, the petitioner had failed to inform the beneficiaries/respondents of the higher pricing of coal in a timely manner. … … "*

(v) *It is stated that it could be seen from the above paragraphs 12(g) and (h), the Commission has clearly held that*

"utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. … …"

(vi) *It is stated that the Commission further held that*

"Propriety would require that the parties should adhere to the Act 2003, … … "

j. It is stated that the applicant has failed to meticulously understand as to why the Commission specifically referred to the Act 2003. The reason being, the Act 2003 mandated the Commission under Section 61(d) to safeguard the consumers' interest as prime duty, while allowing the recovery of cost of

electricity in a reasonable manner. The tariff regulation (Regulation No.1 of 2008) notified under the Act, 2003 never contemplated the usage of high-priced coal for power generation by generators, particularly the high price coal applicable to non-power sector, that too, with additional 20% premium over and above the said notified basic price of coal applicable to non-power sector. Therefore, the Commission has rightly disallowed the claim of the applicant for additional cost of coal for energy generation beyond scheduled generation but specifically allowed only cost of coal, but not additional cost of coal upto the scheduled generation, which need to be construed as the coal price applicable to power sector only, being a regulated sector.

k. It is stated that the applicant is trying to misinterpret the directions of the Commission in its favour by reading only selective portion of the paragraph 12(m), while disregarding the discussions/observations made by the Commission at paragraphs 12(g), (h) and (m) of the order, which interpretation is totally against the settled principles of interpretation of law.

l. It is stated that the applicant failed to understand that all the discussions/reasoning made under the issue framed has to be read holistically, which finally culminated into the conclusion/decision of the Commission. The final conclusion/decision cannot be at variance with the discussions made in the earlier paras.

m. It is stated that further, the applicant's averment that "*the final para-12(m), prevails over the Para-12(h)",* terming it as subordinate paragraph, is not a plausible argument, since the applicant itself has sought the Commission to harmoniously construct the paragraph 12(h) and paragraph 12(m) of the order.

n. It is stated that under the statutory principle of harmonious construction, in case of a conflict between two provisions of a statute, the provision of one section cannot be used to defeat the provision contained in another and effect is given to both the provisions, so as to harmonize these sections, since as per the settled laws, statute has to be read as a whole but it cannot be read in isolation.

o. It is stated that after detailed discussion and reasoning, the Commission expressly held at paragraph 12(m) that "*The liability of the respondents to pay shall be only to the extent of coal cost corresponding to scheduled generation*"

and the cost of coal has to be correlated to the power sector only, in terms of the Act, 2003 [Section 61(d)]. Therefore, there is no apparent error, much less ambiguity in the order passed by the Commission hence, there is no merit in the contention raised by the applicant under the guise of seeking clarification.

p. It is stated that in fact, the applicant tried to overreach the orders of the Commission, by revising the coal bills with additional 20% premium on the notified basic price of coal applicable to non-power sector, upto scheduled generation, which has been declined by the respondents, as the revised claim of the applicant was not in accordance with the orders passed by the Commission.

q. It is stated that with regard to interpretation of the order of the Commission, the respondent would seek to extract the observations of Uttarakhand Electricity Regulatory Commission (UERC), in its order dated 29.07.2019 passed in Petition Nos.11, 20 and 21 of 2019, which is very much relevant in the present I.A.

"UERC order dated 29.07.2019 –

"Para-

4.5 As far as applicability of Orders, PPA or Regulations is concerned, it is worth mentioning that the Orders of the Commission should be read in addition to the provisions of the Electricity Act, 2003 & Regulations notified thereunder and cannot have a digressive interpretation. The Orders of the Commission cannot be read in isolation to the prevailing provisions of the Regulations.

… … "

r. It is stated that with regard to the legal position, in case the applicant is aggrieved by the order of the Commission, then the Act 2003 has provided the legal recourse to the applicant, by way of filing an appeal before the Hon'ble ATE u/s 111 or it can seek review of the order u/s. 94(1)(f) of the Act 2003. It is on record that the applicant has not availed any of the legal remedies within the stipulated time period. Therefore, the Commission order dated 21.11.2022 in O.P.No.8 of 2012 has attained finality. As such, the applicant is circumspect in filing the interim application under the clause No.39 (general power to amend) r/w clause No.38 (Saving of Inherent powers of the Commission) of the Regulation No.2 of 2015, by stating that *"… … this application is submitted only*

for seeking clarification as to Para-12 and nothing beyond ... … ", since legal recourse under the Act, 2003 is no longer available to it.

s. It is stated that the applicant is trying to seek re-hearing of the matter already concluded, under the guise of seeking clarification, which is not maintainable in law as explained in the subsequent paras.

t. It is stated that regarding the applicant's reliance on the clause Nos. 38 and 39 of the Regulation No.2 of 2015, it is stated that the applicant has already invoked the adjudicatory powers of the Commission by filing the original petition vide O.P.No.8 of 2021 under Section 86(1)(f) of the Act, 2003. As already explained in the foregoing paragraphs, it has to seek only the legal remedies available to it under the Act, 2003. However, the applicant in the present I.A.is seeking to invoke the general regulatory powers vested under the Regulation No.2 of 2015, which are complementary powers, so as to get the matter reheard, which is not permissible as per the settled law by the Hon'ble Supreme Court, as referred to by the CERC in its order dated 22.01.2008 in I.A.No.49/2008 in Petition No.157/2004, as extracted below:

> *"CERC order dated 22.01.2008 (I.A.No.49/2008 in Petition No.157/ 2004) – extract*
>
> *… …*
>
> *11. In yet another recent judgement, the Hon'ble Supreme Court in Narpat Singh Vs. Rajasthan Financial Corporation AIR 2008 SC 77 has pointed out that no I.A. lies after a case is finally disposed of and that an I.A. is maintainable only in a pending case. The extract from the judgement of the Hon'ble Supreme Court from CERC order is placed below:*
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> > *"I.As.No.15-16 for clarification and direction of Court's order dated 3.5.2007 are totally misconceived. Moreover, ordinary no.I.A lies after a case is finally disposed of. Ordinarily, an I.A. is maintainable only in a pending case. Once a case is finally disposed of the Court becomes functus officio, and thereafter an I.A. lies ordinarily only for correcting clerical or accidental mistakes. The same are accordingly dismissed".*
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> *12. In the light of the above principle, the Commission cannot revisit the tariff already decided in the order dated 9.5.2006, unless the conditions laid down under Rule 3 order XX of the Code are satisfied. … … "*

The CERC in order finally dismissed the aforesaid I.A. as not maintainable. In terms of the aforesaid settled law, the present I.A. is not maintainable after the

disposal of the main petition vide O.P.No.8 of 2021, which was already disposed on 21.11.2022.

u. It is stated that regarding the invoking of inherent powers by the applicant under the clause No.38 of the Regulation No.2015, that the Hon'ble Supreme Court in its recent judgment dated 23.08.2022 in Civil Appeal No.5784 of 2022 has extracted its earlier judgment ratio decided in Padam Sen vs. State of U.P. reported in AIR 1961 SC 218.

"... …

26. Section 151 of the CPC provides for Civil Courts to invoke their inherent jurisdiction and utilize the same to meet the ends of justice or to prevent abuse of process. Although such a provision is worded broadly, this Court has tempered the provision to limit its ambit to only those circumstances where certain procedural gaps exist, to ensure that substantive justice is not obliterated by hyper technicalities. As far back as in 1961, this Court in Padam Sen v. State of U.P. reported in AIR 1961 SC 218, observed as under:

"8. … … The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."

… …

27. In exercising powers under Section 151 of the CPC, it cannot be said that the civil courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.

28. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC.

… …"

v. It is stated that as could be seen from the above, while discussing on the inherent powers of the court under sec 151 of CPC, the Hon'ble Supreme Court in the aforesaid Case law reported in AIR 1961 SC 218, held that inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the code. The Apex Court further held that sec 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. The Apex Court also held that sec 151 of CPC cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or review.

w. It is stated that the Section 151 (Saving of inherent powers of Court) of CPC is akin to clause 38 (Saving of inherent powers of the Commission) of the Regulation No.2 of 2015, notified under the Section 181 of the Act 2003. Applying the aforesaid ratio decidendi of the Apex Court, alternate remedy was available to the petitioner u/s 111 - Appeal/u/s 94(1)(f) for seeking review under the Act, 2003, in case aggrieved by the order of the Commission, which was not availed. Therefore, invoking of inherent powers under clause 38 read with clause 39 (General Power to Amend), despite the availability of alternate remedy under the Act, 2003, is not permissible.

x. It is stated that in light of the above submissions, the subject I.A. filed by the applicant/petitioner is, therefore, not maintainable.

aa. Therefore, the respondents pray the Commission to dismiss the interim application.

4. The applicant has filed rejoinder as extracted below:

a. It is stated that when STPP after the order dated 21.11.2022 has revised energy bills towards additional coal cost but limiting its claim only upto the quantum of scheduled energy (the energy bill dated 17.12.2022). The TSDISCOMs denied the claim based on the paragraph 12(h) of the order (letter No.FA&CCA/TSPCC/ F.Singareni/D.No.494/22, dt. 23.12.2022 issued by FA, TSPCC). The relevant portion is reproduced below:

> *"… … Hon'ble TSERC vide order dt. 21.11.2022 has disallowed the claim of SCCL towards Additional Coal Cost with Non-power sector pricing in the monthly Energy Bills for FY 2018-19 stating that "Utilization of additional coal beyond the agreed quantum at a higher rate is neither*

permissible nor within the ambit of the agreed conditions between the parties. … … "

b. It is stated that however, in the reply of this clarification petition they brought paragraph 12(g) in addition to paragraph 12(h) realizing that there is no de facto legal ground for raising any ambiguity in the language employed in paragraph 12(h) of the order dated 21.11.2022 passed by the Commission.

c. it is stated that the newly brought paragraph 12(g) was canvassed selectively without providing the final portion of paragraph 12(g) such amputated paragraph 12(g) is reproduced below:

"12(g) … … Further, the petitioner sought to increase generation by using additional coal and it is not made clear whether it was at the instance of respondents or out of its own volition."

d. It is stated that therefore, the reliance on selected paragraph of 12(g) is of little help to the stand of respondents. However, to have clarity on "additional coal" from the middle portion of paragraph 12(g), the same is reproduced below:

"The petitioner submits that it had drawn additional coal beyond the agreed quantum in order to generate additional power beyond the PLF agreed between the parties."

This phrase "additional coal" comes repeatedly in other paragraphs that follow 12(g). Therefore, it is required to reproduce paragraph 12(h) and paragraph 12 (m) hereunder stating the "additional coal" with associated relevant phrases, in bold format:

"12(h) Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. Propriety would require that the parties should adhere to the Act, 2003, rules, regulation and the clauses in the PPA to the extent they are applicable.

12(m) Needless to add that as per the PPA it is the bounden duty of the petitioner to follow the dispatch instructions of SLDC and as per the Regulation 1 of 2008, the petitioner is eligible for payment of energy charges for ex-bus charges sent out corresponding to schedule generation. But it appears the petitioner has not followed dispatch instructions and injected excess energy to the grid in violation. The liability of the respondents to pay shall be only to the extent of coal cost corresponding to schedule generation and not for the energy generated over and above of the scheduled generation. For that, the Tariff Regulations does not support the claim of the Petitioner; therefore, the Petitioner is not entitled to receive additional coal cost beyond scheduled generation. Hence this issue is answered."

e. It is stated that a reading of all the three above paragraphs clearly states that addition coal is something which is consumed for generating additional power, that is in excess of agreed/scheduled generation and the cost towards the additional cost of coal for generation of power is additional cost of coal.

f. It is stated that the Singareni Collieries understood the order of the Commission in letter and spirit and submitted the following in paragraph 11 of its clarification petition dated 08.06.2023.

> *"11) It is well understood by SCCL that the "additional coal beyond the agreed quantum" mentioned above refers to additional coal required for generating energy over and above schedule generation."*

g. It is stated that to bring to the notice of the Commission that the paragraph 21 of the reply submitted by the respondents, which is reproduced below:

> *"21. The petitioner failed to understand that all the discussions/reasoning made under the issue framed had to be read holistically, which finally culminated into the conclusion/decision of the Commission. The final conclusion/decision cannot be at variance with the discussions made in the earlier paras."*

h. It is stated that further, the respondents had stated that the final conclusion cannot be at variance with earlier paragraphs, as interpreted by them. Thus, the respondents are clearly admitting that the conclusion is contradictory to their understanding/interpretation of paragraph 12(h).

i. It is stated that in paragraph 22 of the reply, respondents stated that it is not a plausible argument that the final paragraph 12(m) prevails over subordinate paragraph 12(h). This also indicates that the respondent are very much aware about the effect of phrases employed in the final paragraph 12(m) and is clearly against their incorrect interpretation of paragraph 12(h) by respondents. In fact, the understanding/interpretation of SCCL is absolutely correct. Had this not been the case, respondents would have been very much inclined to accept the final paragraph 12(m), irrespective of whether it would have conflicted with any earlier paras. Therefore, paragraph 12(m) is unambiguous to both parties.

j. It is stated that the principle of harmonious construction in case of conflict in two provisions of a statute is absolutely different from harmonious construction among different paragraphs in a judicial/quasi-judicial order. The reason being the presence of conclusive paragraph, which concludes the plea in the final clause.

k. It is stated that the black's law dictionary provides that "*the conclusion of a plea is its final clause*". Accordingly, conclusion of a proceedings/plea is final and has prevailing effect on any previous paragraphs and such previous paragraphs have to be read harmonizing with it. However, it is well understood by SCCL that the additional coal beyond agreed quantum in paragraph 12(h) refers to additional coal required for generating energy over and above the scheduled generation.

l. Therefore, the Commission is requested to pass the necessary clarification so that the spirit of order expressed in final part of paragraph 12 of this issue remains intact, unchanged and univocal.

m. It is stated that the contents with regard to Section 151 C.P.C. and maintainability of application are strongly refuted as being misconceived. The respondents have filed some legal provisions relying on cases which have no similarity with the issue in this clarification petition. The respondents stated that the petitioner was trying to seek rehearing of the matter already concluded under the guise of seeking clarification, which is not maintainable in law. It is stated that in paragraph 15 of the application, SCCL clearly stated that this application is filed only for seeking clarification to paragraph 12 and nothing beyond. Accordingly, the allegations made by respondents are liable to be rejected.

n. It is stated that in several cases the Commissions have passed clarifications from time to time based on the requirements of the stakeholders. Sometimes clarifications were also passed suo motu to meet the end of justice. Few such clarifications are extracted hereunder:

i. The case in I.A.No.43/2016 of the petition No.251/GT/2023 is stated that where interlocutory application for clarification and directions were adjudicated by CERC in case of Bhakra-Beas Management Board vs Punjab State Power Corporation Limited. A relevant portion from the order is reproduced below:

> *"6. Though I.A. in the disposed of petition cannot be ordinarily entertained, except for correction of clerical errors, we feel it necessary to issue clarification as regards the orders dated 12.11.2015 and 21.3.2016 passed in Petition No.251/GT/2013, in order to put the scope of our orders in proper perspective."*

ii. *It is stated that the clarification order passed by MPERC vide their order dated 1st July 2008 in respect of tariff schedules for high tension consumers.*

iii. *The order of Karnataka Electricity Regulatory Commission, where it has clarified on various issues raised by the stakeholders on the terms and conditions for green energy open access regulations 2022.*

iv. *The clarification given by APERC with reference to W.P.No.14961 of 2009 is also attached for ready reference.*

v. *It is stated that in a recent case in petition No.541/MP/2020, the CERC admitted for the petition for clarification of order dated 05.02.2019 passed by Commission in petition No.192/MP/2018. The relevant portion of the record of proceedings is reproduced below:*

> *"5 After hearing the learned counsel for the Petitioner and learned senior counsel for the Respondent, SECI, the Commission admitted the Petition and directed to issue notice to the Respondents."*

vi. *It is stated that there are many instances where it is shown that clarificatory orders by ERCs are in fact both required and passed by them to implement orders/regulations in a convenient and acceptable way.*

vii. *It is stated that the respondents have cited one non-reportable Supreme Court order in the Civil Appeal No.5784 of 2022. They have put strenuous arguments on usage of sec 151 based on the above judgment. The same is not applicable to the issue on hand.*

viii. *It is stated that a clarification is an explanatory act which is generally passed to supply an obvious omission or to clean up doubts. The Regulation No.2 of 2015 of the Commission is contained suitable provisions to this effect.*

o. It is stated that the maxim "Actus Curiae Neminem Gravabit" which means that nobody should be allowed to suffer for fault of the Court. This maxim has wide application in the subordinate as well as higher judiciary in India.

p. In view of the above submissions, the Commission is prayed to pass necessary clarification holding that the respondents are liable to pay additional cost of coal as per the notifications issued SCCL time to time as to the cost of coal to be supplied.

5. The Commission has heard the parties to the application and also considered the material available on record. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 31.07.2023:

"… … The representative of the applicant stated that Sri P.Shiva Rao, counsel for applicant is out of station, hence he sought adjournment of the application to any other date. The representative of the respondents has no objection.

Considering the request of the representative of the applicant, the matter is adjourned"

Record of proceedings dated 21.08.2023:

"… … The counsel for the applicant stated that this application is filed invoking the jurisdiction of the Commission under the Conduct of Business Regulation, 2015 (CBR). Comprehensive power is vested in the Commission to entertain the application under the provisions of the CBR. The CBR as notified by the Commission had provided for similar power that is exercisable under the Code of Civil Procedure, 1908.

The counsel for the applicant stated that this application is filed in view of the ambiguity perceived by the respondents and therefore misinterpreting the same by the respondents with regard to the paragraph 12 of the order passed by the Commission. The issue raised is with regard to allowing additional coal cost incurred by the applicant over and above the quantum required for scheduling of the energy over and above 75% agreed to be made available under the PPA. In fact, the applicant had achieved more than 90% PLF whereas, PLF is fixed 85% of the project capacity and in any case, the applicant had to schedule such energy in terms of the PPA, for which it has to secure coal from various sources including its own production.

The counsel for the applicant stated that the 75% of the coal required for such scheduled generation has to be procured at the rate as fixed for power generation and the balance quantity of coal has to be procured at the rate of non-power utilization coal along with premium of 20%. The Commission, while passing the order, had made it very clear that the applicant is entitled to the coal cost incurred by it without reference to the source of supply of coal at the rate of non-power sector coal rate along with 20% premium for the quantum of energy required to be generated after using 75% of fuel for enabling scheduled generation quantum.

The counsel for the applicant stated that the Commission, while deciding the original matter, had taken into consideration the total scheduled generation for the relevant period and accepted the quantum of excess generation to the extent of approved figures in the tariff order. However, the Commission had refused to grant relief in respect of additional 1.6% of the PLF, which was the capacity achieved beyond the scheduled generation. This aspect has been accepted by the applicant. The issue now that remains for consideration is with regard to the cost of the quantum of coal utilized for scheduled generation to be paid to the applicant over and above 75% of the quantum of coal, which is used for scheduled generation and what rate. The Commission did not in its order elaborate as to what is the quantum of coal to be considered and at what rate, which the respondents are disputing and seeking to compute at power sector coal rate without any premium.

The counsel for the petitioner read out the order of the Commission extensively to show that the Commission itself had agreed to the payment of additional coal cost that is employed for generation of power over and above the quantum of scheduled generation. The respondents sought to lay emphasise on the scheduled generation and the corresponding quantum of fuel employed thereof. The respondents failed to understand the employment of fuel for generation is not static figure and depends on the quality of fuel available and the technical requirements for generation of each unit of power. Even though,

the Commission had specific answer in its order in respect of additional coal cost, the respondents are not willing to pay towards the claims made by the application for the additional coal cost.

The counsel for the applicant would endeavour to rely on the principle of change in law towards additional cost incurred by the applicant. Since, the quantum towards fuel and price are agreed to and any variations which are beyond the control of the applicant would constitute change in law. Even this aspect is not appreciated by the respondents. Therefore, in order to secure clarity in the order passed by the Commission as also to ensure recovery of the just and reasonable cost incurred towards fuel by the applicant, the present application is filed.

The representative of the respondents stated that the respondents have preliminary objection to maintainability of the application post disposal of the original petition. In this regard, reliance is placed on the orders passed by the CERC and UPERC, who have referred to judgment of the Hon'ble Supreme Court observing the maintainability of an interlocutory application after the disposal of the original petition. According to the respondents, there are no grounds for clarification of the order passed by the Commission. At best, the applicant has a good opportunity to file an appeal, as it has not been satisfied with the relief granted. The applicant, having allowed the order to become final, had neither invoked the review nor appellate jurisdiction and now cannot seek to get the order amended in the guise of this application.

The representative of the respondent stated that the order passed by the Commission is unambiguous and leaves no doubt as to its interpretation when the findings are taken into account in total. Even assuming that there is any deficiency in a particular aspect, the same is already answered elsewhere in the order. Hence, there is no case for clarification in the matter. Accordingly, the filing of the present I.A. is beyond the procedure and cannot be entertained.

The counsel for the applicant sought to rely on the CBR, wherein specific inherent powers have been set out. He also said that even in the absence of those provisions, the CPC has a wider provision in Section 151 and 152, which give ample power to the Commission to clarify/rectify any ambiguity in the order passed by it. Therefore, the Commission may consider clarifying the order on the aspects prayed for.

Having heard the parties to the application, the matter is reserved for orders."

6. The Commission has examined the rival contentions of the parties on the maintainability of the application as also need for clarifying the order passed by it earlier.

7. Reliance is placed on the maintainability of the application by invoking the clauses 38 and 39 of the Conduct of Business Regulation, 2015. The said clauses empowered the Commission with regard to inherent power and also to amend any proceedings before it. The clause 38 has already been extracted by the applicant at

point (g) above. However, clause 39 also is required to be considered in the matter, which is extracted below:

> *"**General Power to amend***
> *The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, rectify any defect or error in any proceeding before it, and all acts shall be done for the purpose of determining the real question or issue arising in the proceedings."*

The Conduct of Business Regulation, 2015 clearly provides for the power to the Commission to the extent, which is similar to the power exercised by a Civil Court under Section 151 of Civil Procedure Code, 1908. The said provision is extracted below:

> *"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."*

8. The respondents have rightly contended about the maintainability of the application, but by placing reliance on CERC and UERC orders. Both the orders would not serve any purpose for the reason that they are passed by coordinate Commissions. At the most they are of persuasive value only. Further as a part of the pleadings, the respondents also placed a judgment rendered by the Hon'ble Supreme Court in the matter of '*My Palace Mutually Aided Co-operative Society Vs. B.Mahesh & Ors.*' In Civil Appeal No.5784 of 2022. The relevant observations of the said judgment are extracted below:

> *"25. In response to the first leg of challenge, i.e., on the procedural aspect, we may note that the recall application was filed under Section 151 of the CPC against the final decree dated 19.09.2013. It is in this context that we must ascertain whether a third party to a final decree can be allowed to file such applications, by invoking the inherent powers of the Court under Section 151 of the CPC.*
>
> *26. Section 151 of the CPC provides for Civil Courts to invoke their inherent jurisdiction and utilize the same to meet the ends of justice or to prevent abuse of process. Although such a provision is worded broadly, this Court has tempered the provision to limit its ambit to only those circumstances where certain procedural gaps exist, to ensure that substantive justice is not obliterated by hyper technicalities. As far back as in 1961, this Court in Padam Sen v. State of U.P., AIR 1961 SC 218, observed as under:*
>
> > *"8. … … The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not*

in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."

27. *In exercising powers under Section 151 of the CPC, it cannot be said that the civil courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.*

28. *Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC.*

29. *The respondents in the present case had access to recourse under Section 96 of the CPC, which allows for appeals from an original decree. It must be remembered that the present matter was being heard by the High Court exercising its original jurisdiction. The High Court was in effect conducting a trial, and the final decree passed by the High Court on 19.09.2013 was in effect a decree in an original suit. As such, there existed a right of appeal under Section 96 of the CPC, for the respondents. Though they were not parties to the suit, they could have filed an appeal with the leave of the Court as an affected party. Section 96 of the CPC reads as under:*

> *96. Appeal from original decree*
>
> *(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.*
>
> *(2) An appeal may lie from an original decree passed ex parte.*
>
> *(3) No appeal shall lie from a decree passed by the Court with the consent of parties.*
>
> *[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.]*

30. *Sections 96 to 100 of CPC deals with the procedure for filing appeals from original decrees. A perusal of the above provision makes it clear that the provisions are silent about the category of persons who can prefer an appeal. But it is well settled legal position that a person who is*

affected by a judgment but is not a party to the suit, can prefer an appeal with the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned.

31. *In the light of the above, it can be safely concluded any aggrieved party can prefer an appeal with the leave of the Court.*

32. *The High Court, in the impugned judgment, relied on the judgment of this Court in Indian Bank vs Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550, wherein this Court acknowledges the possibility of maintaining a recall application against a judgement if it is obtained by fraud on the Court. However, it went on to hold that in cases of fraud, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. The Court held as follows:*

> *"22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud."*

33. *The subsequent judgment of this Court in Ram Prakash Agarwal v. Gopi Krishan, (2013) 11 SCC 296 further clarifies the law on the use of the power under Section 151 of the CPC by the Court in cases of fraud and holds as follows:*

> *"13. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. Similarly, inherent powers cannot be used to reopen settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited.*
>
> *… …*
>
> *19. In view of the above, the law on this issue stands crystallised to the effect that the inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of CPC. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of CPC. Moreover, in the event that a fraud*

has been played upon a party, the same may not be a case where inherent powers can be exercised."

34. *The High Court, relying upon the above judgments of this Court which recognizes the power to recall, seems to have lost sight of the restrictions imposed while exercising jurisdiction under Section 151 of the CPC, which were elaborately discussed by this Court in the above referred judgment about exercising of the power under Section 151 of the CPC being only in circumstances where alternate remedies do not exist.*

35. *Therefore, we are of the firm opinion that recalling a final decree in such circumstances cannot be countenanced under Section 151 of the CPC. The High Court erred in exercising its jurisdiction under Section 151 of the CPC, to hear and pass a detailed judgment recalling its earlier final decree dated 19.09.2013, rather than directing the respondents to pursue the effective alternate remedies under law. Having said the above, we must clarify that we are not, in any way, doubting the proposition of law that fraud nullifies all proceedings, or that the Court has power to recall an order which was passed due to a fraud played on the Court. However, while exercising the power under Section 151 CPC for 20 setting aside the final judgment and decree, the Division Bench should have taken into consideration the restriction which was observed by this Court in the captioned judgment. Once we have come to the irresistible conclusion that exercising power under Section 151 CPC in the facts and circumstances of the case is bad, we are not inclined to go into further issues that were extensively argued.*

9. Although reference is made to the orders of the various Commissions on entertaining the interlocutory applications by the applicant these have to be treated in the same line of consideration that there are only of persuasive value cannot bind the Commission. Moreover, such involving of the interlocutory application depends on case to case and is subject to the limitation placed in the judgments referred from the Hon'ble Supreme Court.

10. A combined analysis of the provisions in the Regulation No.2 of 2015 read with Section 151 CPC, 1908 as well as the findings rendered in the above judgments would clearly demonstrate that the Commission can exercise power only a limited extent to correct any procedural lapses in arriving at a decision and not otherwise. Suffice it to state that the applicant in this application made an endeavour to seek clarification of the findings set out in the order.

11. Though at first sight or a preliminary reading, it appears that the Commission in its findings had left out a particular aspect thereby creating some ambiguity in giving rise to claims and counterclaims on the aspect of additional cost of coal. Alas, it has

to be stated that while there is no denial that the Commission can exercise powers under clauses 38 and 39 of Regulation No.2 of 2015, in view of the findings of the Hon'ble Supreme Court referred above, it could not have tinkered with the reasoning either to settle or unsettle the findings already arrived at. What all it could have attempted was to elaborate the existing aspect, if it finds, that the meaning thereof is not discernable. Thus, this application is mis conceived and cannot be entertained.

12. Keeping in mind the findings rendered by the Hon'ble Supreme Court while interpreting the inherent power that where there is availability of appeal, there is no necessity for the Commission to plough through its own findings so as explain or elaborate on the understanding reached. Section 111 of the Act, 2003 provided for an appeal against the order of the Commission. Nothing prevented the applicant or for that matter the respondent from invoking the said appellate jurisdiction, if it is felt that there is some ambiguity in the order and they are not in a position to implement the same. Thus, the Commission cannot exercise inherent power in the matter in the facts and circumstances.

13. In view of the above, the Commission cannot interfere with the order passed by it by way of this application. Accordingly, the application is dismissed without any costs in the circumstances.

This Order is corrected and signed on this the 1st day of April, 2024.

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

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