2026:CGHC:23516-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 379 of 2026

1 - Jindal Steel Limited Previously Jindal Steel And Power Limited A Company Registered Under The Provision Of Companies Act, 1956, Having Its Corporate Office At Jindal Centre, 12 Bhikaji Cama Place, New Delhi 110066.

2 - Mr. Pinaki Bhattacharjee Shareholder Of Appellant No. 1, Company, Working As Vice President, Jindal Steel And Power Ltd. Having Its Office At Kharsia Road, Raigarh, C.G. 496001.

... Appellant(s)

Versus

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

2 - Chhattisgarh State Power Distribution, Company. Limited Vidyut Seva Bhavan, Daganiya Raipur- Chhattisgarh . 492013.

3 - Chhattisgarh State Power Transmission Company. Limited, Vidyut Seva Bhavan, Daganiya Raipur C.G. 492013.

... Respondent(s)

For Appellant(s)	: Mr. Gopal Jain and Mr. Abhimanyu Bhandari, and Mr. Ashish Shrivastava, learned Senior Advocates, assisted by Ms. Divya Chaturvedi, Mr. Bhaskar Payashi, Mr. Saransh Shaw, Mr. Jai Dhanani, Mr. Pranav Sood and Ms. Pankhuri Gupta, Ms. Kriti Sharma and Mr. Rahul Ambast, Advocates.
For Respondent No. 1	: Mr. Adhiraj Surana, Advocate.
For Respondents No. 2 & 3	Mr. Raj Kumar Mehta, Ms. Himanshi Andley, Mr. Varun Sharma, Advocates.
Date of Hearing	: 08/05/2026
Date of Judgment	: 02/06/2026

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge

C.A.V Judgment

***Per* Ramesh Sinha, Chief Justice**

1 Heard Mr. Gopal Jain and Mr. Abhimanyu Bhandari, and Mr. Ashish Shrivastava, learned Senior Advocates, assisted by Ms. Divya Chaturvedi, Mr. Bhaskar Payashi, Mr. Saransh Shaw, Mr. Jai Dhanani, Mr. Pranav Sood and Ms. Pankhuri Gupta, Ms. Kriti Sharma and Mr. Rahul Ambast, learned counsel for the appellants. Also heard Mr. Adhiraj Surana, learned counsel for the respondent No. 1/Chhattisgarh State Electricity Regulatory Commission (for short, the Commission), as well as Mr. Raj Kumar Mehta, Ms. Himanshi Andley and Mr. Varun Sharma, learned counsel for the respondents No. 2 and 3/Power Companies.

2 Challenge in this appeal is to the order dated 30.03.2026 passed by the learned Single Judge in WP(C) No. 1927/2016 by which the petition filed by the writ petitioners/appellants was dismissed. The appellants have prayed for the following relief(s):

> *"10.1 Admit the present Appeal and set aside the Impugned Judgment dated 30.03.2026 issued by the Ld. Single Judge of this Hon'ble Court in Writ Petition (Civil) No. 1927/2016;*
>
> *10.2 Declare that Appellant No.1 is not liable to refund INR 153.55 Crores to the Chhattisgarh State Power Distribution Company Ltd. in relation to the power supplied to it for FY 2011-12 or for any subsequent tariff period;*
>
> *10.3 Quash the demand notice dated 07.07.2016 issued by Respondent No. 2/CSPDCL, upon the Appellant No.1 demanding refund of INR 153.55 Cores;*

10.4 Quash the letter dated 21.07.2016 issued by the Chhattisgarh State Power Distribution Company Limited;

10.5 Quash the letter dated 25.07.2016 issued by Chhattisgarh State Power Transmission Company Limited;

10.6 Declare that Respondents cannot take any other coercive measures/actions in the pursuance of aforesaid demand or letter(s)or take any fresh steps denying No Objection Certificate for grant of Short Term Open Access permission in pursuance of the Impugned Judgment, Tribunal Judgment or the Tariff Order passed in relation to the power supplied by the Appellant No.1 to the Respondent No.2 for FYs 2011-12 and 2012-13; and

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

3 The appellant No. 1 is a Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacture of sponge iron/ steel, generation of power etc. It is primarily engaged in manufacturing steel and for this purpose, it has established its Captive Power Plant (*for short, the CPP*) and is a Generating Company within the meaning of Section 2(8) of the Electricity Act and has a Captive Generating Plant at Patrapali village in Raigarh District, initially with a capacity of 265.7 MW which was enhanced to the capacity of 325.7 MW. The respondent No. 1 is the Chhattisgarh State Electricity Regulatory Commission which was constituted by the Government of Chhattisgarh vide Notification No. 3190/S/E/2002, dated 23.08.2002 read with Notification No. 432/R/352/03, dated 11.05.2004 and discharges functions enjoined upon it under Section 86 of the Electricity Act, 2003 (for short, the Act of 2003). The respondent No. 2/CSPDCL is the successor Company of Chhattisgarh State Electricity Board (*for short, the CSEB*) and a Government of Chhattisgarh undertaking. Respondent No. 3/CSPTCL is

also a successor Company of CSEB and the transmission utility in the State of Chhattisgarh and became functional w.e.f 01.01.2009. It also acts as the State Load Despatch Centre for the State of Chhattisgarh.

4 The writ petition was filed challenging the judgment dated 26.05.2016 passed by the Appellate Tribunal for Electricity (*for short, the Appellate Tribunal*) in Appeal Nos. 41 and 67 of 2015 {*CSPDCL v. CSERC*}, demand notice dated 07.07.2016 issued by the respondent No. 2/CSPDCL seeking refund of Rs. 153.55 Crores, letter dated 31.07.2016 issued by the respondent No. 2/CSPDCL refusing the appellant No. 1, a No Objection Certificate (*for short, the NoC*) for grant of Open Access for supplying power to the Indian Energy Exchange Ltd. (*for short, the IEX*), the letter dated 27.05.2016 of respondent No. 3/CSPTCL rejecting the application of the appellant No. 1 for grant of open access for supply of power to IEX in the month of August 2016 on the ground that the respondent No. 2/CSPDCL has not issued the NoC to the appellant No. 1 because of the alleged dues of Rs. 153.55 Crores. The challenge made by the appellants to the above orders/demand notices were turned down by the learned Single Judge vide order dated 30.03.2026 passed in WPC No. 1927/2016 holding that the denial of the NoC and rejection of Short Term Open Access (*for short, the STOA*) applications by respondent No. 3 was in consonance with the statutory mandate under Sections 32 and 33 of the Electricity Act, 2003 and was justified on grounds of maintaining grid discipline, system security and public interest.

5 The case of the appellants, in brief, is that a Power Purchase Agreement (*for short, the PPA*) was entered into on 02.11.2011 between appellant No.1 and respondent No.2/CSPDCL for supply of electricity. Under the

original PPA, 150 MW of power was agreed to be supplied for the period from 01.11.2011 to 30.06.2012. The agreement contained detailed provisions relating to calculation of load factor, scheduling of power, and tariff determination in accordance with the formula adopted in the suo motu order of the State Commission. It further permitted injection of power up to 110% during off-peak hours and up to 120% during peak hours, while any supply beyond the prescribed limits was payable at the rate of Re.1 per unit. The tariff structure was linked with the load factor, subject to a minimum effective rate of Rs.1.50 per unit. Thereafter, supplementary PPAs dated 12.07.2012, 13.08.2012, and 24.01.2013 were executed for subsequent periods extending up to 30.06.2013, with the contracted capacity varying between 150 MW and 75 MW. In pursuance of these agreements, the appellants supplied electricity during Financial Years 2011–12 and 2012–13 and raised invoices in accordance with the agreed terms, including billing based on load factor and concessional charges for excess injection. Respondent No.2/ CSPDCL accepted the power supplied and released payments without any protest, at average rates of Rs.2.42 per kWh and Rs.2.66 per kWh respectively. In the year 2014, respondent No.2/CSPDCL instituted Tariff Petition No.07/2014 before the State Commission seeking true-up and tariff determination. By order dated 12.06.2014, the State Commission approved a minimum base tariff of Rs.1.50 per kWh for electricity procured from the appellants and treated such procurement as “non-firm power.” According to the appellants, such classification was never envisaged under the PPAs executed between the parties. Subsequently, respondent No.2/CSPDCL preferred a Review Petition before the State Commission, which came to be dismissed by order dated 08.12.2014, thereby affirming the earlier order. Thereafter,

respondent No.2/CSPDCL challenged the tariff order as well as the review order before the Appellate Tribunal for Electricity by filing Appeals Nos.41 and 67 of 2015. The Appellate Tribunal, vide judgment dated 26.05.2016, upheld the orders passed by the State Commission. Following the said judgment, Respondent No.2/CSPDCL issued a demand notice dated 07.07.2016 seeking recovery of Rs.153.55 crore together with interest, alleging that excess amounts had been charged by the appellants for supply of power during FYs 2011–12 and 2012–13. The appellants contended that the demand was wholly arbitrary and contrary to the binding contractual provisions of the PPAs, asserting that all invoices had been raised strictly in accordance with the agreements and had been duly accepted and paid without objection at the relevant time. It was further the case of the appellants that in July 2016 they applied for STOA to enable supply of power through power exchanges. However, respondent No.2/CSPDCL refused to issue the requisite NoC on the ground of the alleged outstanding dues arising from the impugned demand notice. Consequently, respondent No.3/CSPTCL also rejected the application for open access on 25.07.2016 on the same basis, thereby preventing the appellants from undertaking transactions through the power exchange. The appellants submitted that power had been supplied to respondent No.2/CSPDCL during FYs 2011–12 and 2012–13 strictly in terms of the PPAs, and invoices were raised by calculating tariff on the basis of load factor during peak and off-peak periods, while charging only Re.1 per kWh for injection exceeding 110% during off-peak hours and 120% during peak hours, with weekly computation of load factor. According to the appellants, respondent No.2/CSPDCL accepted the supplies and made payments at average rates of Rs.2.42 per kWh in FY 2011–12 and Rs.2.66 per kWh in FY 2012–13 without ever disputing

the billing methodology or alleging that the power supplied was non-firm in nature. The appellants maintain that the PPAs constitute binding contracts and could not, after several years, be ignored unilaterally for seeking refund of amounts already paid. It is also contended that the PPAs were neither placed before the State Commission under Section 62 of the Electricity Act, 2003 nor properly explained during the tariff proceedings, thereby denying the Commission an opportunity to examine their terms. The appellants further point out that respondent No.2/CSPDCL itself admitted in the review proceedings that the PPAs were consistent with the orders of the State Commission and that payments had been made in accordance therewith, while also acknowledging that concluded transactions could not be reopened retrospectively. The appellants additionally challenged the demand notice and denial of NoC through representations dated 22.07.2016 and 23.07.2016, contending that neither the State Commission nor the Appellate Tribunal had issued any direction for refund and that liability could not be fastened upon them without affording an opportunity of hearing. It was also asserted that the contractual terms of the PPAs could not be retrospectively altered after complete performance and settlement of accounts between the parties. Aggrieved by the demand raised for Rs.153.55 crore, the denial of open access, and the reliance placed on orders passed in proceedings in which the appellants were not impleaded parties, the appellants instituted the writ petition seeking quashing of the judgment dated 26.05.2016 passed by the Appellate Tribunal, the consequential demand notice, and related communications. The appellants also prayed for issuance of directions restraining respondent No.2 from recovering the aforesaid amount and for grant of NoC and open access facilities which has been rejected by the learned

Single Judge.

6 Mr. Gopal Jain and Mr. Abhimanyu Bhandari, and Mr. Ashish Shrivastava, learned Senior Advocates, assisted by Ms. Divya Chaturvedi, Mr. Bhaskar Payashi, Mr. Saransh Shaw, Mr. Jai Dhanani, Mr. Pranav Sood and Ms. Pankhuri Gupta, Ms. Kriti Sharma and Mr. Rahul Ambast, learned counsel for the appellants would submit that the learned Single Judge has erred in law and on facts in passing the impugned judgment, which is manifestly self-contradictory and internally inconsistent. The contradictions are apparent on the face of the impugned judgment i.e., in paragraph 57, the learned Single Judge has expressly held that the writ petition is maintainable for adjudication of merits on the ground that the case fell within the recognized exceptions of violation of principles of natural justice, owing to appellant No.1 not having been impleaded as a party to the proceedings before the learned State Commission and the Hon'ble Appellate Tribunal. However, in direct contradiction to the foregoing findings / observations, in paragraph 69 of the impugned judgment, the learned Single Judge has held that in context of the proceedings in question, namely, the tariff determination and true-up proceedings, appellant No.1 was made aware of the said proceedings and that the principles of natural justice had not been vitiated. Thereafter, the learned Single Judge once again in contradiction to the foregoing findings regarding maintainability, in paragraph 73 of the impugned judgment has held that insofar as the appellant No.1 has placed reliance on the principles of natural justice, no prejudice, in the legal sense, has been demonstrated by appellant No. 1. Even after expressly and unequivocally holding that "the present case falls squarely within the recognized exceptions to the rule of alternative remedy,

namely, violation of principles of natural justice" having rendered the foundational findings, the learned Single Judge ought to have granted the relief sought by the appellants, instead of dismissing the writ petition and validating the very proceedings that had been characterised as violative of natural justice. It is a well-established proposition of constitutional law that where a Court finds that principles of natural justice have been violated in a proceeding, the proper remedy is to set aside the impugned action. A Court cannot, on one hand, hold that natural justice has been violated and, on the other, proceed to validate the consequences flowing from the very proceeding it has found to be vitiated. The writ Court failed to appreciate that the Tariff Order by learned State Commission and the judgment by Hon'ble Appellate Tribunal were passed without affording the appellant No. 1 an opportunity of being heard. Therefore, the aforesaid order and judgment are liable to be declared void ab initio qua the appellant No. 1, being in flagrant violation of the basic principles of natural justice enshrined under Article 14 of the Constitution. It is a settled proposition that no person shall be condemned unheard and any order passed in breach of the *audi alteram partem* rule is nullity in law The Hon'ble Supreme Court has categorically held that an order which is *void ab initio* cannot be validated by subsequent conduct and remains unenforceable. Further, the Hon'ble Supreme Court has also held that the distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored i e, a void decree can be challenged even in execution or a collateral proceeding holding. Therefore, the Tariff Order and Tribunal’s judgment having been passed without hearing the appellant, is *non est* in law, *void ab initio* qua the appellant No. 1, and cannot bind or prejudice appellant No. 1 in any manner. The reasoning in the impugned judgment

is self-defeating and cannot be sustained in law. The finding of natural justice violation, once made, necessarily entails the consequence of quashing the demand notice dated 07.07.2016 and the consequential actions. The inconsistency in the impugned judgment is not a mere procedural anomaly but reflects a fundamental error in the approach to constitutional adjudication. Where the foundational condition for the exercise of discretionary writ jurisdiction is found to exist, then in such a case the Hon'ble Court is obligated in law to exercise that jurisdiction in favour of the aggrieved party, unless there are compelling reasons of fact or law justifying a departure, which the learned Single Judge did not identify. The Tariff Order dated 12.06.2014 and the Tribunal's judgment dated 26.05.2016 were passed in proceedings to which the appellant was not a party. The findings recorded in the said proceedings to the extent they purport to characterise the nature of the appellant's power supply and to form the basis for a financial demand against the appellant are not binding upon the appellant. The order of the learned Single Judge erred in holding that the tariff determination and true-up exercise undertaken by the learned State Commission is legislative or quasi-legislative in character, carried out in accordance with the Chhattisgarh State Electricity Regulatory Commission (Conduct of Business) Regulations (*for short, the Regulations*) which contemplate issuance of public notices and stakeholder participation rather than individual impleadment of every entity that may be indirectly affected. Notably, the Hon'ble Supreme Court has held in several judgments that tariff determination exercise is an exercise of quasi-judicial powers of commission. Thus, the learned Single Judge has erred in proceeding on the basis that the tariff determination exercise was quasi-legislative in nature when the judicial precedents of Hon'ble Supreme Court establish

the contrary, i e, that such proceedings are quasi-judicial in nature.

7 Learned Senior Advocate appearing for the appellants would submit that the respondent No. 2/ CSPDCL, before the learned Single Judge had erroneously and misleadingly contended that a representative from appellant No. 1's office /organization was present during the hearing in the Review Petition before the learned State Commission and therefore, appellant No. 1 was aware about the proceedings before learned State Commission and cannot plead non-joinder. Even if an officer of appellant No. 1 Company was present in the review proceedings before learned State Commission, the alleged presence of some official from appellant No 1's office does not in any manner prove that the appellant No. 1 herein was aware about the proceedings against it. Further, the foregoing presence also does not waive of the procedural requirement to serve individual notice upon a necessary party. Notably. the officer of appellant No. 1 being a consumer of respondent No. 2 /CSPDCL was attending the review proceedings (a continuation of tariff proceedings) in his personal capacity. Therefore, such presence, and that too at the Review Petition stage cannot be considered to be sufficient notice to appellant No. 1. The respondent No. 2/ CSPDCL had erroneously and misleadingly referred to the public notices issued with respect to the tariff proceedings before learned State Commission and the proceedings before Hon'ble Appellate Tribunal to contend that claim of denial of opportunity of hearing by appellant No. 1 is wholly misconceived. In this regard, he would submit that the purpose of the public notice is to safeguard the interests of the consumers and it would not serve as sufficient notice to a party to the PPA, the terms of which allegedly have been adjudicated upon. Consumers are notified vide a public notice as it may be impracticable to

serve notice upon each and every consumer by hand delivery or registered post whereas notice could easily have been served upon appellant No.1. Thus, the 'public notice' issued by respondent No.2/CSPDCL on the directions of learned State Commission and Hon'ble Appellate Tribunal were inadequate qua appellant No.1. Further, the public notices issued by respondent No.2/CSPDCL only disclosed the fact that tariff of respondent No.2/CSPDCL is being determined. Neither the public notices provided a summary of the concerned petition/appeal nor the same mentioned anything specifically in relation to disallowance/treatment of cost of power purchased from appellant No. 1 by respondent No.2/CSPDCL Therefore, the so-called 'public notice' issued by respondent No.2/CSPDCL itself was insufficient and appellant No.1 has been denied a reasonable opportunity to be heard, as was also rightly observed by the learned Single Judge in the impugned judgment in paragraph 57. As per Regulation 13 of the Regulations, 'public notice' is sufficient only in cases where it is impracticable to serve notice through hand delivery or by registered post. However, the learned Single Judge while passing the impugned judgment failed to consider that if respondent No.2/CSPDCL intended to place liability for refund of power purchase cost on appellants, which is a Generating Company and not a consumer in the present dispute, respondent No.2/CSPDCL in terms of Regulation 13 of the Regulations, was required to serve notice to appellant separately. This submission was also raised by appellant No.1 before the learned Single Judge which has altogether been ignored, while passing the impugned judgment. The appellant in any event could not have been considered merely as "public" in terms of Section 64 of the Electricity Act when it had executed PPAs with respondent No.2/CSPDCL. Section 64 of the Electricity Act provides that a tariff

order is to be passed after considering all the suggestions and objections received from 'the public'. However, the Hon'ble Appellate Tribunal, vide its judgment has held that the term "public" can only be understood to mean a consumer and appellant No.1 in the present set of facts and context was not a consumer of respondent No.2/CSPDCL. The issuance of public notice does not exhaust the requirement to put appellant No.1 on notice of the proceedings and give it a reasonable opportunity to be heard, if according to respondent No.2/CSPDCL any liability were to directly be placed upon appellant No.1. The purpose of public notice is to invite suggestions and objections from the 'public', i.e., the consumers of respondent No.2/CSPDCL at the time of determination of tariff by the learned State Commission. The appellant No. 1 is a well-established Company with its offices in the State of Chhattisgarh and as such, notice could easily have been served upon appellant No.1 by hand delivery or registered post In light of this, the contention of respondent No.2/CSPDCL that 'public notice' issued by it was the only means to serve notice or that such service was sufficient to put appellant No.1 on notice of adjudication of issue of rate of power supplied by appellant No 1 to respondent No.2/CSPDCL in FYs 2011-12 and 2012-13 is clearly misconceived arbitrary and untenable Therefore. appellant No 1 is clearly an affected party and ought to have been issued notice specifically for the purpose of deciding the issue of rate of supply of power. It is settled principle of law that a "necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court In the present case, if respondent No. 2/CSPDCL intended to recover any amounts from appellant No.1, then the appellant herein was a "necessary party to the proceedings in Tariff Petition before learned State Commission and in

Appeal Nos 41 and 67 of 2015 before the Hon'ble Appellate Tribunal Hence, the appellant herein being a necessary party could have been impleaded at any stage as per Order 1 Rule 10(2) of the Civil Procedure Code, 1908. As per Regulation 15(1) of the Regulations, the learned State Commission may at any stage of the proceeding, either upon or without the application of either party, may add/ implead a party either as respondent or appellant whose presence may be necessary in order to enable learned State Commission to effectually and completely adjudicate upon and settle all questions involved in the petition Therefore, the appellants herein being a necessary party could have been impleaded at any stage, if any recovery was intended to be made from appellant No 1. Even the Hon'ble Appellate Tribunal in various order(s) has reiterated the mandatory requirement to implead necessary parties. The finding that public notices were issued and that a representative of the appellant No.1 was present at one hearing in the review proceedings does not cure the violation of natural justice. The appellant No. 1 was not a party to the proceedings. A person who is present at a hearing without party status and that too in its personal capacity as a consumer of the distribution licensee, without the right to file pleadings, lead evidence, cross-examine witnesses, or make formal submissions, cannot be said to have been "heard" in any legally meaningful sense. Notably, the Hon'ble Supreme Court vide one of its judgment has held that mere presence at a hearing does not constitute an opportunity of hearing if the person is not afforded the full procedural protections of a party.

8 Learned Senior Advocate for the appellants would next submit that the Tariff Order by the learned State Commission and the judgment by

Hon'ble Appellate Tribunal were passed without affording an opportunity of being heard to the appellant No. 1. These orders are thus, void ab initio qua the appellant No. 1, being in flagrant violation of the basic principles of natural justice enshrined under Article 14 of the Constitution. The invalidity of such orders could be set up and pleaded by the appellant No. 1 herein in execution and even in collateral proceedings. The distinction between legislative and quasi-judicial proceedings for the purposes of natural justice is not a rigid categorical rule but depends upon the nature and degree of the effect of the proceeding upon individual rights and interests. This principle was definitively settled by the Constitution Bench of the Hon'ble Supreme Court, wherein it was held that the question of whether a proceeding is legislative or quasi-judicial does not determine whether principles of natural justice apply, rather, the test is whether the proceeding. affects rights in a manner that demands the protection of fair procedure. The principle of *audi alteram partem* is a fundamental aspect of the rule of law and of the guarantee under Article 21 of the Constitution. Any action that visits a person with adverse civil or pecuniary consequences without affording an opportunity of hearing violates the constitutional guarantee of fair procedure. Right to be heard before an adverse order is passed is embedded in the guarantee of Articles 14, 19, and 21 of the Constitution. The learned State Commission during the tariff determination stage in FYs 2011-12 and 2012-13, vide its orders for respective years had clearly and unambiguously approved the short term power purchase cost of respondent No. 2/CSPDCL @ Rs. 3.10/unit with 2% escalation in each year. It is a settled principle of law that the State Electricity Regulatory Commission cannot at true-up stage adopt completely new methodology contrary to the one followed at the tariff determination stage, unless there

is an amendment in the prevailing regulatory framework, which was not the case in present scenario. The learned Single Judge has returned findings on the alleged exposure of respondent No. 2/CSPDCL to "congestion charges up at the rate of Rs.5.45 per kWh and the supposed adverse impact on consumers on the basis of facts, assumptions and issues that were neither pleaded by respondent No.2/CSPDCL, nor urged during the course of hearing. The entire reasoning proceeds on conjectural considerations drawn from certain observations/findings of learned Central Electricity Regulatory Commission in its order passed in suo-motu petition No. 01/2010, without any foundational pleading, issue, evidence or submission from respondent No.2/CSPDCL that such congestion charges were attracted to the facts of the present case. The findings based on conjectures and surmises, rather than legal evidence, cannot be sustained. The findings are based on surmises and speculative consequences, rather than pleaded facts and tested material, hence legally untenable. The observation that non-regulation of injection into the State grid would render respondent No.2/CSPDCL liable to congestion charges and that such situation could be avoided by adoption of merit order purchase and control of injection, is not a finding emerging from the pleadings or documents on record, but a conjectural assumption introduced suo motu by the learned Single Judge, without putting it to the appellant No.1 to contest the same. Such a course has caused serious prejudice to the appellant and has materially affected the outcome. In an adversarial system, no party can be taken by surprise by a case never set up in pleadings, and no finding can be sustained on a ground which the affected party had no notice of and consequently, no opportunity to meet. The appellants were was never put to notice that the issue of congestion charges, much less the applicability of the rate of

Rs.5.45 per kWh, would form part of the adjudicatory basis of the impugned judgment. The appellants were, therefore, denied a fair opportunity to controvert the factual premise, legal applicability and regulatory interpretation of the said material. The finding is thus in breach of the *audi alteram partem* rule and the broader principles of natural justice. The learned Single Judge could not have travelled beyond the pleadings and record to make out a new case for respondent No.2/CSPDCL. It is settled law that relief cannot be founded on matters not pleaded and equally, a judgment cannot rest on an issue outside the pleadings or on material on record not led on such issue, unless parties were fully aware and had consciously participated in the proceedings thereon in the present case, the question of congestion charges was never part of the *lis*, never crystalised as an issue and never opened to contest by the appellant No. 1. The learned Single Judge has gone beyond the findings of learned State Commission and Hon'ble Appellate Tribunal to supplement the reasoning contained therein, which is against the established principle of law that validity of an order must be judged by the reasons mentioned therein and cannot be supplemented by fresh findings as well as reasons subsequently given by the concerned authority making the order of what it meant, or of what was in its mind, or what it intended to do. Public orders made by public authorities must be construed objectively with reference to the language used therein as are meant to have public effect and affect the conduct of those to whom they are addressed.

9 Mr. Jain would next submit that the appellant No.1 was not liable to make any payments in terms of Tariff Order and Tribunal's judgment and demand was raised beyond limitation period. The learned Single Judge

has erroneously held vide the impugned judgment that since Hon'ble Appellate Tribunal and learned State Commission had already dealt with the aspect of nature of supply of power and these bodies being expert bodies in the subject matter, hence the Hon'ble Court cannot substitute the said findings. In this regard, it is pertinent to mention herein that both the Tariff Order dated 12.06.2014 and the Tribunal's judgment dated 26.05.2016 attribute all the negligence and fault to respondent No. 2/CSPDCL. The said regulatory fora did not find any wrong-doing, misrepresentation, fraud, or overcharging on the part of appellant No. 1. The learned Single Judge, while passing the impugned judgment failed to appreciate that there was never a direction against the appellant No. 1 to refund any monies, enabling respondent No.2/CSPDCL to raise such a demand. Rather, respondent No.2/CSPDCL itself had consistently defended the validity and performance of the PPAs before the learned State Commission and the Hon'ble Appellate Tribunal, and having accepted supply of power thereunder, honoured invoices and made payments without protest, cannot now be permitted to resile from submissions made in its own affidavits and from the concluded contractual arrangement and seek refund of monies already lawfully paid under a fully performed contract. Further, respondent No.2/CSPDCL having failed to defend its position, instead of challenging the Tribunal's judgment before the Hon'ble Supreme Court, erroneously and arbitrarily proceed to raise the alleged demand of Rs.153.55 Crores. Even otherwise the proceedings before the learned State Commission (true-up proceedings) and the proceedings before the Hon'ble Appellate Tribunal only dealt with the aspect of what amount of cost respondent No. 2/ CSPDCL was entitled to recover from its consumers. Hence, no finding therein can have any connection or nexus with what amount respondent

No. 2/CSPDCL is liable to pay to its generators from whom it has purchased power under a dispensation approved by the learned State Commission. The learned Single Judge did not appreciate the fact that despite there being no direction against appellant No.1 in the regulatory proceedings, respondent No. 2/CSPDCL had raised the illegal and baseless Demand Notice beyond the permissible limitation period. The Demand Notice dated 07.07.2016 raised by respondent No.2/CSPDCL for the electricity supplied in FY 2011-12 and FY 2012-13, was well beyond the limitation period for raising such demand under the Limitation Act, 1963. The provisions of the Limitation Act, 1963 also applies to the proceedings under the Electricity scenarios. Neither the Tribunal's judgment nor the Review Order/true-up order anywhere directed appellant No. 1 herein to refund the monies received by it for supply of power as per the PPA to respondent No.2/CSPDCL, to make good the loss allegedly incurred by respondent No.2/CSPDCL In the absence of a specific statutory provision, the Limitation Act, 1963 applies by virtue of Section 29(2) of the Limitation Act, 1963. Article 55 of the Schedule to the Limitation Act, 1963, prescribe a limitation period of 3 (three) years from the date on which the right to sue accrues. In the context of a claim for breach of contract, the right to sue accrues on the date when the breach in respect of which the suit is instituted occurs.

10 Mr. Jain would also submit that Section 62(6) of the Electricity Act does not create an automatic or self-executing refund claim. The learned Single Judge, vide the impugned judgment has erroneously held that once it is found, in accordance with law, that the tariff applicable to the supply in question is lower than what has been paid, the consequence of adjustment or recovery necessarily follows under Section 62(6) of the

Electricity Act. But a careful reading of the Section 62(6) of the Electricity Act reveals that the obligation to refund arises only when a "*generating company*" receives "*tariff which is in excess of the tariff fixed by the Appropriate Commission*". The proviso does not create an independent cause of action or an automatic liability that can be enforced. Therefore, learned Single Judge's construction of Section 62(6) as creating a self-executing and automatic refund obligation, without any proceeding against the Generating company, is contrary to the plain text and legislative intent of the provision. The true-up mechanism under the Electricity Act is designed to ensure that the actual costs of the distribution licensee are accurately reflected in the tariff charged to consumers. It is a regulatory tool for calibrating the distribution licensee's revenue requirement. It is not a mechanism for allowing the distribution licensee to seek recovery from the Generating Company of amounts voluntarily paid under a bilateral contract with the Generating company. In terms of Regulation 5.4(iv) of the CSERC (Terms and Conditions for Determination of Tariff according to Multi-Year Tariff Principles) Regulations, 2010 (*for short, the Tariff Regulations, 2010*), "*variations in power purchase unit costs*" are classifiable as an "*Uncontrollable Item*", a position that is further confirmed and reinforced by the subsequent Regulations promulgated by learned State Commission. By virtue of Regulation 5.10(b) of the Tariff Regulations, 2010, a specific and exhaustive mechanism exists for the treatment of aggregate revenue losses arising from uncontrollable items. Under this mechanism, such losses cannot be passed on to a Generating Company. Therefore, there is no regulatory basis to burden the generator with losses arising from the tariff determination or true-up proceedings. Such an erroneous and arbitrary interpretation of Section 62(6) of the Act, would have the effect

of allowing a distribution licensee to first voluntarily pay a Generating Company under a mutually agreed contract, then initiate tariff proceedings without impleading the Generating company, obtain findings against itself, and then use those findings to recover money from the Generating Company who was never heard. Such an interpretation violates the most elementary principles of natural justice and due process, which cannot be the intent of Section 62(6) of the Electricity Act. Even if the provisions of Section 62(6) were to be construed as applicable to the present facts, the same must be preceded by a determination in a proceeding to which the appellant No. 1 was a party. In the absence of such a proceeding, there exists no legal basis for the demand raised by respondent No.2/CSPDCL. Hence, the learned Single Judge while passing the impugned judgment failed to appreciate that the Tariff Order dated 12.06.2014 and the Tribunal's Judgment dated 26.05.2016 contain no direction of recovery against the appellant. The Tribunal's judgment records findings against respondent No.2/CSPDCL, thereby holding that respondent No.2/CSPDCL acted negligently in procuring 'non-firm' power and the consequence fastened is upon respondent No.2/CSPDCL (disallowance of power purchase cost). Converting a disallowance against respondent No.2/CSPDCL into a recovery from appellant No. 1, without any proceeding against it, is a legal impossibility. Recovery of amount paid by a distribution Company to a Generating Company can only be permitted under Section 62(6) of the Electricity Act where a regulatory commission determines (under an independent Section 62 proceeding between a Generating Company and a distribution company), that cost charged by the said generator was more than the permissible limits as per generation tariff regulations. Admittedly, no such proceeding has ever taken place in the present

circumstances.

11 Mr. Jain would also submit that the PPA dated 02.11.2011 and the subsequent supplementary PPAs contained no provision for refund of money by appellants in case the cost of procurement of power was disallowed by learned State Commission. Further, clause 21 of the PPA, lays down that if there is any change in tariff conditions subsequently introduced by learned State Commission, then a supplementary PPA is required to be signed, for incorporating the said change introduced by learned State Commission. However, in the present case there is neither any specific direction passed by learned State Commission directing modification of PPA nor any subsequent /consequent supplementary PPA which was signed by the parties, on the basis of which it can be contended by respondent No.2/CSPDCL that the appellant was liable to be paid only Rs. 1.50/unit for supply of power, in modification of terms of PPA. The tariff determination exercise qua a distribution licensee cannot lead to amendment of terms of a PPA signed by such licensee with a Generating company. Further, the learned State Commission has misinterpreted the provisions of Electricity Act to hold that the tariff order passed by learned State Commission will prevail over contracts entered into between parties. It is a settled principle of law that the sanctity of PPAs cannot be altered / changed by judicial fora, unless the said PPA is contrary to the prevailing regulatory and statutory framework. There is a distinction between regulation making powers of Commissions under Section 178 of Electricity Act and other orders of electricity regulatory Commissions, holding that terms of PPA can only be modified by way of framing of regulations and not passing orders. The learned Single Judge failed to appreciate that the Hon'ble Supreme Court vide its judgment in

Haryana Power Purchase Centre v. Sasan Power Limited & Ors. {2023 SCC Online SC 577} has held that a PPA could be interfered with by the concerned Electricity Regulatory Commission, only by framing Regulations, and not by exercising quasi-judicial power. Further, the Hon'ble Supreme vide Judgment dated 13.04.2023 passed in Civil Appeal No(s). 3480-3481 of 2020: ***Gujarat Urja Vikas Nigam & Ors. vs. Renew Wind Energy (Rajkot) Private Limited & Ors***, has held that when the PPAs are entered into in the exercise of equal bargaining power, after due negotiation by the parties, and within the framework of existing regulations, then in that case unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties. The learned Single Judge has failed to take note of the aforesaid important distinction between regulations framed by learned State Commission and tariff orders passed by the learned State Commission. In the present case, PPA is not in any manner contrary to then prevailing regulatory and statutory framework. Therefore, the terms of the PPA cannot be understood to have been modified merely by passing of the true-up otrder, especially considering no specific direction existed in the aforesaid order for modification of the PPA.

12 Mr. Jain would also submit that the PPAs were not examined by the learned State Commission and the contractual framework between parties negates Demand Notice dated 07.07.2016. It is an admitted and undisputed fact on the record that appellant No.1 was not afforded an opportunity to refer to the detailed terms contained in executed PPAs before learned State Commission in the Tariff Petition No. 07/2014. As a consequence, learned State Commission did not have the benefit of examining the contractual formula for computation of tariff, the load factor

mechanism, the permissible injection limits, and the agreed minimum effective rate under the PPAs. learned State Commission's characterization of appellant No.1's power as 'non-firm' was based upon a load curve analysis conducted without reference to the contractual framework that both parties had agreed upon. The learned Single Judge has continued with this error by entertaining the present writ petition and referring to the terms of the PPA but still not analyzing the said terms as well as submissions made by appellant No. 1. The learned State Commission did not had the opportunity to consider the following terms and conditions agreed between appellant No. 1 and respondent No.2/CSPDCL under the aforesaid PPAS:

(i) During off-peak hours i.e., between 00.00 hrs. to 18.00 hours & 23.00 hours to 24.00 hours, appellant will be permitted to inject up to 110% of scheduled power and for such over-injection, tariff of only Re 1.00 per kWh was payable by respondent No.2/ CSPDCL.

(ii) During peak hours (18.00 hours to 23.00 hours), appellant No.1 will be permitted to inject up to 120% of scheduled power and for such over-injection, tariff of only Re. 1.00 per kWh was payable by respondent No.2/CSPDCL.

(iii) Units supplied up to permitted injection rate of 110% during the off-peak hours and 120% during the peak hours will be booked as eligible units for calculation of load factor and payment.

(iv) The load factor was to be computed on weekly basis and for power supplied below the load factor of 80% on weekly basis, the tariff of such power supplied was to be reduced proportionately. It is noteworthy that in terms of the aforesaid provisions, appellant No.1

raised its invoices for the power and has charged only Re. 1.00/- per kWh for the power injected above 110% (during off-peak hours) and 120% (during peak hours) wherein the applicable load factor was computed on weekly basis in terms of the PPAs.

13 The appellant had always abide by the terms and conditions of the PPA. Hence, appellant cannot be penalised for no fault of its own when it had complied with all terms and conditions of the PPA as a diligent party. It is established principle of law that a person cannot be penalized for no fault on his part. Under the PPA, the appellant is permitted fluctuation/ deviation of +/-20%. Since it is impossible to ensure constant power injection throughout the term of the agreement (especially in the case of Captive Plants), all agreements provide for permitted fluctuations and deviations. If the generator stays within the limits provided, then the nature of supply is taken to be firm. If there is an injection of power within the permitted deviation, appellant is entitled to the full agreed base rate (i.e. Rs.2.50/Unit). However, in case of deviations above and beyond the permitted limit of 20%, Clause 5 of the PPA is relevant. In terms of Clause 5 of the PPA, in case of supply of power beyond the over-injection limit, a tariff of Re.1/kWh is payable by the respondent No. 2/CSPDCL for the supply of "infirm power" by appellant. The appellant had stayed within the aforesaid limit of permitted fluctuation and therefore, the power supplied by it could not have been termed as "infirm" power. The aforesaid position was clear from the power export invoices for applicable period brought on record by appellant No.1 in the writ petition. Hence, the Demand Notice dated 07.07.2016 is contrary to the terms of the PPA and liable to be quashed. The PPA does not contain any provision for fixing the 'minimum base rate' at Rs. 1.50 per kWh in

case of deviation from schedule. Accordingly, in terms of the said PPAs, the respondent No 2/CSPDCLhas paid appellant No. 1 at an average rate of Rs. 2.42 per kWh for the power supplied during FY 2011-12 and at an average rate of Rs 2.66/- per kWh in FY 2012-13. The maximum amount of tariff payable was Rs. 3.00/- per kWh, however, the payment made by respondent No. 2/CSPDCL was at a lesser rate as stated herein above, which already factored the fluctuations in supply of power, if any, basis the load factor calculations and concept of Eligible Units. The learned Single Judge has erroneously and arbitrarily held that respondent No.2/CSPDCL, being a distribution licensee, is bound to act in accordance with statutory tariff orders and cannot be estopped from enforcing the same merely because payments were earlier made under a different understanding and that the doctrine of estoppel cannot operate against a statute. In this regard, it is submitted that appellant's estoppel argument does not seek to use estoppel to override a statute. The argument is that respondent No.2/CSPDCL, having voluntarily and unconditionally entered into the PPAs with appellant No 1, having accepted power supply under those PPAs for 2 (two) full financial years, having made full payment of all invoices without any objection or protest, and having expressly admitted in its own pleadings before learned State Commission and Hon'ble Appellate Tribunal that the power was as per terms of PPA cannot now, several years later, turn around and seek refund of the same amounts from the appellant. The learned Single Judge has also erred in holding that the doctrine of estoppel cannot operate against a statute, nor can it be invoked to defeat public interest embedded in tariff regulation. The aforesaid finding is erroneous on 2 (two) counts, firstly, there was no question of public interest being affected since the disallowance of power purchase cost was only

required to be borne by respondent No.2/CSPDCL and not its consumers Secondly, the ground for estoppel raised by appellant No. 1 before this Hon'ble Court was in the context of express terms of a contract signed by respondent No 2/CSPDCL with appellant No 1. The Hon'ble Supreme Court, in ***Union of India vs. Indo-Afghan Agencies Limited***, {(1968) 2 SCR 366}, has held that the principle of promissory estoppel applies against the government and public authorities, and that a representation made to a party in the course of a transaction, on the basis of which the party has acted to its detriment, creates a binding obligation even where the underlying promise may not be enforceable as a contract in the traditional sense. Pertinently, it is also settled law that principle of estoppel is applicable in context of submissions made in other proceedings. In this regard, reference is made to the decision of the Supreme Court in ***Heeralal v. Kalyan Mal & Ors.*** {AIR 1998 SC 618}. Therefore, respondent No.2/CSPDCL having entered into a binding contract with appellant No. 1 and also made submissions in support of the power supply by appellant No. 1 in various proceedings before learned State Commission and Hon'ble Appellate Tribunal could not have resiled from such binding terms and statements. One category of public interest cannot be given precedence over another category of public interest. Appellant No. 1 being a public listed Company, any illegal and erroneous recovery made from it will adversely impact its shareholders, ie, the public at large Therefore, merely to purportedly protect interest of consumers of respondent No. 2/CSPDCL, the interest of shareholders of appellant No. 1 cannot be adversely affected. The respondent No. 2/CSPDCL, having entered into a PPA (which was blessed by learned State Commission itself vide the suo-motu order dated 30.04.2010) which permitted fluctuation of power to the extent

given under terms therein with open eyes, cannot seek to wriggle out of such agreement. It is settled position of law that those who enter into contract with open eyes must accept the burden of the contract along with its benefits. Therefore, once respondent No.2/CSPDCL had accepted the power supplied by the appellant and made the payment towards the monthly bill in terms of the PPA, it was estopped from raising the alleged claim of refund of monies for the said period ie., for FY 2011-12, by way of the alleged Demand Notice dated 07.07 2016. In this regard, reference is made to the judgment of the Apex Court in ***Har Shankar & Ors. v. DY. Excise and Taxation Commissioner & Ors.*** {(1975) 1 SCC 737} and ***Haryana Power Purchase Centre v. Sasan Power Limited & Ors***. {2023 SCC Online SC 577 (Para 95 & 96)}. The doctrine of finality of concluded transactions is a fundamental principle of contract law and of the law of restitution. Where a contract has been fully performed i.e., power supplied, received, and paid for without any contemporaneous dispute, protest, or reservation, the transaction is conclusively settled. A party cannot, years later, seek to reopen and revise the terms of a concluded transaction on the basis of subsequent regulatory proceedings. Where one party makes a clear and unambiguous representation to another party, and the other party acts in reliance upon that representation to its detriment, the first party is estopped from resiling from its representation even where the representation relates to a matter within the domain of statutory authority. In this regard, reference is made to the judgment of the Apex Court in ***Motilal Padampat Sugar Mills Company Limited vs. State of Uttar Pradesh*** {(1979) 2 SCC 409}.

14 Mr. Jain would also submit that the impugned judgment, in upholding a

unilateral and retrospective demand for refund of monies already paid under fully performed PPAs proceeds on an approach that is contrary not only to settled legal principles but also to the most basic and foundational economic principles governing commercial certainty, contractual sanctity and investment-backed expectations in the electricity sector. The electricity industry is by its very nature a capital-intensive sector, dependent upon long-term investment decisions, financial closure, bankability of contracts, predictability of tariff treatment, and certainty in enforcement of concluded bargains. Generating companies commit substantial capital, arrange debt and equity, and structure their commercial operations on the basis of binding PPAS and the legitimate expectation that payments validly received under such contracts, after due supply and acceptance of power, will attain finality unless displaced by a lawful adjudicatory process to which they are parties. If a distribution licensee, after consciously entering into a contract, accepting supply thereunder, making payment without protest, and even defending such contractual arrangement before the regulatory forums, is nevertheless permitted years later to reopen concluded transactions and recover monies by relying upon findings rendered in proceedings to which the generator was not impleaded, it would strike at the root of commercial confidence and legal certainty in the power sector.

15 With respect to the finding that the appellant supplied non-firm or infirm power, is unsustainable. The concept of infirm power is only applicable to the power plants that have not achieved Commercial Operation Date ("COD") in terms of the applicable regulatory and legal framework. The term "infirm power” has been defined under Regulation 3.23 of the Tariff Regulations 2010 as electricity injected into the grid prior to the

commercial operation of a unit or block of the generating station". Therefore, even in terms of the definition provided under the regulations of the learned State Commission, the supply of power by appellant to respondent No 2/CSPDCL could not have been termed as infirm power. Notably, the Raigarh Captive Plant of appellant, which is the subject matter in this case, had achieved COD in the year 2005. Under the PPA/regulations of learned State Commission, there was no defined term/concept of 'non-firm' power for the short-term procurement of conventional/thermal supply of power in the PPA(s) signed between appellant No. 1 and respondent No.2/CSPDCL. In fact, the term 'non-firm' power was only used in the CSERC (Terms and Conditions for Determination of Generation tariff and related matters for electricity generated by plants based renewable energy sources) Regulations, 2012 (read with subsequent amendments) in the context of biomass/renewable energy. Therefore, the usage of the term 'non-firm' power in the present case is irrational and without any basis in law, as the CPPs of appellant No. 1 are based on conventional source of power i.e., coal (Thermal Power Plants). Notably, there is a fundamental technical difference between the terms ‘infirm power’ and ‘irregular power’. ‘Infirm power’ is the power which is generated from generating plant before it has achieved commercial operation. Further, the foregoing power is called 'infirm power’ because a generating plant is said to achieve commercial operation only when it has proved its ability to generate power constantly for a minimum period of time which in normal parlance is 72 hours. If a generating plant is unable to generate constant power for such a period, then the power so generated is said to be ‘infirm power’. Pertinently, in case of a captive generating plant, the plant is fully capable of generating power consistently, therefore, the power is not

unstable' or 'infirm power'. However, in the present case since the power is primarily used by the steel plant of appellant No. 1 and it is only the surplus power that is sold to respondent No. 2/ CSPDCL, the power albeit stable is not readily available for entire period. Simply because the power is not available at the same quantity across the time blocks that does not mean the power is 'infirm power'. It only means that the power is not consistently available, but whenever the power is available it is stable and firm. Further, the method of calculation of load factor and rate of power supply as laid down in the said PPAs was based on the learned State Commission's suo-motu order dated 30.04.2010 passed in Suo Motu Petition No. 05 of 2010, which has attained finality in absence of any challenge to them. The appellant cannot be punished for following the suo motu order of the learned State Commission and also for diligently abiding by each and every term of the said PPAs. The 'minimum effective rate' of Rs.1.50/- per kWh in the suo motu order dated 30.04.2010 was provided as a safeguard in the interests of the power generators and not as a penal rate to be made applicable to supply by such companies in case the power generated by them is fluctuating. The doctrine of unjust enrichment applies where a party has received a benefit that it is not legally or contractually entitled to retain. In the present case, the appellant received payment under a valid, subsisting, and duly executed PPA. The amounts received were the agreed contractual consideration for the supply of power. They cannot be characterised as a benefit received without legal basis. The appellant did not receive any windfall or unilateral gain, it received the precise consideration agreed upon in the PPAs, which were executed by respondent No.2/CSPDCL and which the respondent No.2/CSPDCL performed without any contemporaneous objection. The appellant

retained nothing unjustly, rather it received consideration for goods supplied under a binding agreement. Therefore, the loss suffered by respondent No.2/CSPDCL, if any, flows from its own negligence in procuring 'non-firm' power, which it was expressly warned against by the regulatory framework. Further, the doctrine of unjust enrichment cannot be invoked to compel restitution where the enrichment is contractually justified and where the party seeking restitution was itself responsible for the circumstances giving rise to the claim. It is an established principle of law that the writ jurisdiction of this Hon'ble Court is wide and can be exercised in case there is a breach of principles of natural justice or fundamental rights of a party have been infringed upon by the decision of an expert body.

16 Mr. Jain would also submit that the denial of open access was founded solely on a disputed claim and could not be sustained on new grounds. The learned Single Judge while passing the impugned judgment failed to take into account an important aspect that denial of NoC by respondent No. 3/CSPTCL for open access was only because of the alleged outstanding amount as per demand notice dated 07.07.2016. However, the learned Single Judge while passing the impugned judgment has erroneously held that the denial of open access was not solely on account of alleged outstanding dues but is rooted in the larger consideration of maintaining grid discipline and ensuring secure, reliable, and economic operation of the power system. It has further been erroneously and arbitrarily observed that grant of open access is not a matter of right but is subject to fulfillment of regulatory conditions including adherence to grid discipline, technical feasibility and system security. On the date of the demand notice (07.07.2016) and the denial of

NoC (21.07.2016), there were no outstanding dues from the appellant to respondent No.2/CSPDCL or respondent No. 3/CSPTCL. All invoices had been fully paid and settled by 01.06.2013. The alleged "dues" of Rs. 153.55 Crores were a new and disputed claim raised by respondent No. 2/CSPDCL for the first time on 07.07.2016, and which the appellant had immediately disputed in its reply dated 22.07.2016. The letter dated 21.07.2016 denying NoC expressly stated "*As per our records notice for payment of Rs. 153.55 Cr issued to you on dated 07.07.2016 which is still unpaid*." Similarly, the rejection letter dated 25.07.2016 from respondent No. 3/CSPTCL referred specifically to the alleged dues as the basis for rejection. There were no contemporaneous communications denying open access on the ground of grid indiscipline or injection pattern at the time of the impugned denials. Hence, the learned Single Judge's reliance upon grid discipline concerns to uphold the denial of NoC goes beyond the stated grounds in the aforesaid letters and cannot be sustained. The learned Single Judge has materially erred in failing to adjudicate one of the substantive prayers specifically sought by appellant No. 1 in the Writ Petition (Civil) No 1927/2016, namely, the challenge to the letter dated 21.07.2016 issued by respondent No. 2/ CSDPCL The impugned judgment is entirely silent on this prayer and contains no finding, reasoning, or conclusion whether of acceptance or rejection in respect thereof. The complete absence of any adjudication on this prayer is contrary to settled position of law that a Courtseized of a matter is duty-bound to adjudicate all prayers placed before it and to return findings on each, whether in favour of or against the party seeking relief. The failure to do so amounts to an error of law and a failure to exercise jurisdiction vested in the learned Single Judge. In terms of Section 5(3) of the CSERC (Connectivity and Intra-State Open Access) Regulations,

2011, which was invoked by respondent No.2/CSPDCL as the basis for denying NoC, pertains to "unpaid outstanding dues". A disputed claim, the legal basis of which itself was under challenge, does not constitute "unpaid outstanding dues" within the meaning of the regulation. However, the learned Single Judge while passing the impugned Judgment failed to draw this distinction, thereby permitting respondent No.2/CSPDCL to use a disputed and legally contested claim as a unilateral mechanism to deny the appellant access to the power market. In this regard, it is pertinent to note that denial of open access to the appellant constitutes a direct restriction on the appellant 's right to carry on trade and business under Article 19(1)(g) of the Constitution of India.

17 Mr. Jain would lastly submit that this is a case of arbitrary singling out of the appellant and violation of Articles 14 and 19(1)(g) of the Constitution. The impugned judgment violates Article 14 of the Constitution, since the appellant's supply has been singled out and appellant has not been treated at par with the other similarly placed captive power plants. The learned Single Judge has erroneously held that appellant No. 1 is seeking negative parity by referring to PPAs signed by respondent No. 2/CSPDCLwith other similarly placed CPPs, where similar tariff has been paid for similar quality of power respondent No.2/CSPDCL had purchased surplus power from various other captive generators operating in the State of Chhattisgarh, only the appellant's purchase was singled out. In fact, respondent No 2/CSPDCL had itself made the aforesaid submission before the Hon'ble Appellate Tribunal. Therefore, there is a clear discrimination by the statutory authority against the appellant. This discrimination against the appellant without there being any fault on its part is violative of Article 14 of the Constitution. Hence,

the appellant herein was not in any manner trying to make any negative parity argument. The impugned judgment dated 30.03.2026 passed by the learned Single Judge in WPC No. 1927/2016 suffers from patent illegality and thus, deserves to be set aside and the writ petition deserves to be allowed.

18 In support of his contentions, Mr. Jain would place reliance on the decisions rendered in ***Prem Singh & Others v. Birbal & Others*** {(2006) 5 SCC 353}, ***Balvant N. Vishwamitra & Others v. Yadav Sadashiv Mule (Dead) through LRs & Others*** {(2004) 8 SCC 706}, ***PTC India Ltd. v. Central Electricity Regulatory Commission & Others*** {(2010) 4 SCC 603}, ***BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission*** {(2023) 4 SCC 788}, ***Pushpendra Surana v. Central Electricity Regulatory Commission & Others*** {judgment dated 10.03.2014 passed in IA No. 7 of 2014 in DFR No. 2675/2013 and batch}, ***Moreshar S/o Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi (Dead) Through LRs and Others*** {Civil Appeal Nos. 5755-5756 of 2011}, ***Kumar Gaurav v. State of Bihar*** {judgment dated 06.03.2024 passed by Patna High Court in Civil Miscellaneous Jurisdiction No. 482/2021}, ***Cellular Operators Association of India v. Chhattisgarh State Electricity Regulatory Commission & Another*** {order dated 06.08.2024 passed by the Appellate Tribunal in Appeal No. 126/2024}, ***State of Orissa v. Dr. Binapani Dei*** {(1967) 2 SCR 625}, ***A.K.Kraipak v. Union of India*** {(1969) 2 SCC 262}, ***Airports Economic Regulatory Authority of India v. Delhi International Airports Ltd. & Others*** {judgment dated 18.10.2024 passed in Civil Appeal Nos. 3098-2099 of 2023}, ***Olga Tellis v. Bombay Municipal Corporation*** {(1985) 3 SCC 545},

Maneka Gandhi v. Union of India {(1978) 1 SCC 248}, ***BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission*** {(2023) 4 SCC 788}, ***Omar Salay Mohamed Sait v. Commissioner of Income Tax, Madras*** {AIR 1959 SC 1238}, ***Ballu v. State of M.P.*** {(2024) 12 SCC 202}, ***Bachha Nahar v. Nilima Mandal*** {(2008) 17 SCC 491}, ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*** {1978 AIR 851}, ***Andhra Pradesh Power Coordination Committee & Others v. Lanco Kondapalli Power Ltd. & Others*** {(2016) 3 SCC 468}.

19 On the other hand, Mr. Adhiraj Surana, learned counsel appearing for the respondent/Commission, placing reliance on the return filed before the learned Single Judge would submit that the learned Single Judge has committed no illegality or irregularity while dismissing the petition filed by the appellant-Company. He would submit that the writ petition was also liable to be dismissed on the count of availability of alternative remedy of filing a review under Section 120(2)(f) of the Electricity Act, 2003 in case it has not been granted any opportunity of hearing. Further, the appellant had the effectively equal alternate remedy to approach the respondent No.1 Commission, for redressal of its grievances, under Section 86 (1) (f) of the Electricity Act, 2003 which has not been done by the appellant. Unless the order dated 26.05.2016 was challenged before the Hon'ble Supreme Court, under Section 125 of the Electricity Act, the notice dated 07.07.2016 need not be interfered with by this Hon'ble order Court. The demand letter and the said recovery of Rs.153.55 Crores is absolutely reasoned and justified in light of the tariff orders dated 12.06.2014 and 08.12.2014 and any protection against such demand shall lead to severe burden to be shred over to the public-at-large for assessing the Tariff

order for the forthcoming years. Mr. Surana would submit that the Electricity Act, 2003 was introduced for regulating the electricity supply in the country, to preserve it's core features other than those relating to the mandatory existence of the State Electricity Board and the responsibility of the State Government and the State Electricity Board, with respect to regulating licensees. There was also a need to provide newer concept like power and trading open access. By this Act, it was to be ensured that the development of electricity industries are promoted for competition together with protecting the interests of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies. Under the Section 82 of the Electricity Act, 2003, the respondent No. 1 was constituted and is discharging functions as described in Section 86 of the Act. The Commission, according to the Section 94 of the Act, for purposes of any inquiry or proceeding under this Act, have the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908. The Commission has been entrusted with the duty of determination of tariff under the provisions of part VII of the Act. The Commission had notified Chhattisgarh State Electricity Regulatory Commission Conditions for determination of tariff according to Multi Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012 (*for short, the Regulations, 2012*) in Chhattisgarh Rajpatra Dated 06.10.2012. The tariff petitions filed by the power companies i e. P No. 05 of 2014 by Chhattisgarh State Power Generation Company Limited, P.No. 06 of 2014 by Chhattisgarh State Power Transmission Company Limited (the respondent No.3 in this case), P. No. 08 of 2014 by Chhattisgarh State Load Despatch Centre

and P.No. 07 of 2014 by Chhattisgarh State Power Distribution Company Limited (the respondent No. 2 in this case) were decided and disposed of by the Commission through its order dated 12.06.2014, after complying the process under the Regulations, 2012. It is a fact that the demand for electricity has been rising fast in the State, but there was no significant addition of generation capacity by the State Utility, ie CSPGCL in past few years. It is not always feasible to meet the consumers' demand from the long-term PPAs only. For various reasons, including varying load-generation balance, weather conditions, seasonal demand, planned and forced outages of generators supplying power, a distribution utility may require alternative means to meet the seasonal or peaking demands. The CSPDCL needed to purchase power through short term power purchase agreements from various generators either CPP or IPP, generating electricity in small quantities. Looking to the requirement of the CSPDCL, the Commission has initiated a suo-motu proceedings as suo-motu petition No. 05 of 2010 and passed its order on 30.04.2010. As pleaded by the appellant, according to the order dated 30.04.2010, the appellant No. 1 and the respondent No.2 had entered into a PPA for short term power sale. These were executed for sale of firm power of 75 MW and firm power of 150 MW. In agreement executed between the appellant No.1 and respondent No.2, it is provided that "notwithstanding to the above, in case the CSERC issues any other guidelines or specifies/ modifies terms and conditions of power purchase by the licensee, the same shall be acceptable and binding on both the parties". According to the provisions of agreement the Commission's order is binding on the parties. The appellant No. 1 has accepted in several letters that they are not able to maintain consistence power supply as per their schedule and their power injection to CSPTCL network varies. M/s JSPL has been

operating in this manner for last 15 years and they never had any issue with CSPTCL authorities, regarding irregular power injection. In true-up process for FY 2011-12 and 2012-13 for CSPDCL i.e. the respondent No.2, the Commission in order dated 12/06/2014 observed as follows:

> *"6.3.2 Power Purchase Cost*
>
> *CSPDCL in its petition submitted that it had purchased power from CSPGCL generating stations, Central generating stations and other sources such as captive generating plants, bio-mass based power plants, IPPs, solar and other RE sources, CSPTrCL and other short term sources to meet the energy requirement of the State. The CSPDCL also submitted that net expenses of Rs 29.69 Crore on account of UI charges in FY 2012-13 has been reduced from income from inter state sales in the balance sheet, thereby reducing the income receipt. CSPDCL has submitted power CSERC MYT Order FY 2014-15 86 purchase cost of Rs. 5046.49 Crore for FY 2011-12 and Rs. 5138.96 Crore for FY 2012-13 respectively CSPDCL further requested the Commission to approve the power purchase expenses including transmission charges on actuals.*
>
> *Commission's View:*
>
> *The details submitted by CSPDCL regarding power purchase were analysed; source wise power purchase quantum and cost was verified from form R-4. From the R-4 submitted by CSPDCL it is observed that the utility has incurred Rs. 89.83 Crore for FY 2011-12 and Rs. 264.65 Crore for FY 2012-13 towards short-term power purchase from Mis Jindal Steel and Power Limited (JSPLI CSPDCL had purchased 359.32 MU at the average rate of Rs. 2.50 per unit in FY 2011-12 and 980.19 MUs of the average rate of Rs. 2.66 per unit in FY 2012-13.*
>
> *The load curve prepared by the SLDC shows that the injection pattern of the power supplied by JSPL to CSPDCL has wide variation. Supply from JSPL is changing frequently and it is unstable /non-firm power. To check sanctity of the fact, the Commission has done detailed analysis of the power supplied by JSPL."*

20 In the judgment passed by Hon'ble Appellate Tribunal in the Appeal No.89 of 2012 dated 07.03.2014, in the case of Raigarh Ispat Udyog Sangh v. CSERC and Jindal Steel and Power Ltd., JSPL itself has

submitted that surplus power at different times of the day was dependent on the actual consumption of steel plant which varied frequently. JSPL has shown inability to supply power from its captive plant to licensee area in which one of the reason is fluctuation of quantum of surplus power available from its Captive Power Plant due to fluctuating load of its steel plant The relevant clauses of the order reads as under:

> *"17. According to Jindal Steel, the surplus of annual aggregate generation of energy does not correctly reflect the surplus power on continuous and sustainable basis each day. The surplus power at different times of the day was dependent on the actual consumption of Steel Plant which varied frequently. Jindal Steel also submitted sample graphs of export from its Captive Power Plant for the months of July, 2010 and July, 2011 to substantiate its point. It is further submitted that their supply to CSPDCL formed a small part of total capacity handled by the network of CSPDCL, hence their network was able to absorb the fluctuations in power supply CSPDCL also refused to grant increase in contract demand from 1 MW to 80 MW for tts Steel Plant on 22.12.2008 against the request made by Jindal Steel on 6.9.2008 to enhance the contract demand to meet the increased demand of their Steel Plant.*
>
> *18. Thus, Jindal Steel has given the following reasons for non-supply of power from its captive power plant to its licensed area:*
>
> *(a) Increase in demand of electricity in its Steel Plant due to expansion of its steel plant.*
>
> *(b) Refusal of CSPDCL to increase contract demand for supply of power to its steel plant consequent to its increase in the power demand of its Steel Plant.*
>
> *(c) Fluctuation in quantum of surplus power available from its Captive Power Plant due to fluctuating load of its Steel Plant whereas Jindal Industrial Park required supply on continuous and sustainable basis Therefore, the surplus power from its captive*

Power Plant could not be utihsed in Jindal Industrial Park..."

It is amply clear that power supplied by JSPL to CSPDCL is fluctuating in nature In such a case, it is very difficult for CSPDCL to manage its load generation balance and some time it may have to over draw/ under draw from grid for which heavy penalty is required to be paid. The CSPDCL has signed power purchase agreement with JSPL for RTC power supply and not for non-firm power. It is also seen that CSPDCL has not taken any corrective steps overcome this situation and continued purchasing such power of poor quality. The Commission takes serious note on the same and directs CSPDCL for not to purchase unstable/non-firm power which creates disturbance in demand supply balance. As power purchased from JSPL by CSPDCL is of non-firm nature. The purchase price of non firm (unstable) power cannot be same as that of firm power. The Commission in suo motu Petition No. 05 of 2010 has decided the base rate for power supply based on load factor for stable power. The CSPDCL plans its power purchase on the basis of load factor and executes agreements accordingly so that CSPDCL may supply quality and reliable power to its consumers. The load factor base tariff has been determined to take care outages of generating plants The injection pattern of such generators causes commercial implications to the State distribution utility the State does not resort to drawal limitations for drawl of power from the regional grid.

It has been noticed that CSPDCL has ignored the quality of power (unstable supplied by JSPL, and entered in power purchase agreement for such power The Commission is of the strong view that burden of negligence of the CSPDCL should not be passed on to the consumers and hence approves minimum base rate of Rs. 1.50 per kWh as part of power purchase cost."

21 The aforesaid order dated 07.03.2014 passed in the abovesaid Appeal No.89/2012 led to taking cognizance of the payments made by the CSPDCL to JSPL against the said short term power supplied and ultimately into passing of the order dated 12.06.2014, review order dated

08.12.2014 was passed, after due regulatory process and giving opportunity of being heard to all stakeholders and the common public. A due notice of the hearing of the abovesaid case was published in local news papers. A review petition against the said order dated 12.06.2014 was preferred by the respondent No. 2-CSPDCL before the respondent-Commission, which was registered as petition No. 35 of 2014 and was decided on 08.12.2014. Even in this review petition, a prior notice of hearing was duly published by the respondent No. 1, as well as by the CSPDCL, and significantly enough, the representative of the appellant No. 1 had dulv participated in the proceedings. Hence, the appellant cannot now turn its back and take flimsy ground that, it was unaware about the proceedings as no opportunity of hearing was given to it. Even, the Hon'ble Appellate Tribunal, before passing of the impugned order dated 26.05.2016, has published notices in local news papers of Chhattisgarh and thereafter, the appeals were decided through the impugned order dated 26.05.2016, hence, the appellants purposely chose not to appear in the matter so as to take the malafide ground of no opportunity of hearing before this Hon'ble Court. It is significant to submit here that all the stakeholders including general public were invited through public notice published in largely circulated news papers in the State, with summary of proposals of the Annual Revenue Requirement (ARR), a copy of tariff petition was also uploaded in the website of the Commission and hard copies of the petition were available on payment of nominal cost in the office of the Commission. All the stakeholders including public were heard personally who attended the hearing held for this purpose and wanted to put their submissions. Hence the allegation of the appellant -Company was not given an opportunity of hearing is denied. Further, the Commission has not at all erred in terming the

power supplied by the appellant in the FYs 2011-12 and 2012-13 as 'non firm power' as the same is in consonance to the Commission's own suo-motu order dated 30.04.2010 and the PPAs. After going through the materials available to the Commission for determination of tariff and for the true-up process and prudently analyzing them, the Commission found that though the agreement executed between the appellant No. 1 and respondent No.2 was for sale of firm power, however, the power actually sold was non-firm in nature and therefore, the Commission approved minimum base rate of Rs. 1.50 per kWh for power purchase cost. By approving such base rate, the respondent No. 1 being a regulator actually denied to pass on the expenses made carelessly, to the common consumers. Hence, the present appeal deserves to be dismissed.

22 Mr. Raj Kumar Mehta, learned counsel appearing for the respondent No. 2 and 3, placing reliance on the return filed before the learned Single Judge, in addition to what has been stated by learned counsel for the respondent No. 1, would submit that the Chhattisgarh State Electricity Commission (Conduct of Business) Regulations, 2009 (for short, the 2009 Regulations), do not provide for issuance of individual notices to the interest parties. On the contrary, according to the Regulations 2009, public notice was issued with wide circulation during hearing of the aforesaid petitions so that the interest parties may attend the proceedings conducted by the respondent No. 1. Further, a public notice was also issued by the respondent No. 1 dated 26.04.2014 and as such, the appellants stood duly noticed by the respondent No. 1 about the impugned hearing conducted within the knowledge of the general public also. The respondent No. 2/CSPDCL also filed review petition being No. 35/2014 (T) before the respondent No. 1 on or about 31.07.2014. During

the proceedings of the hearing of the aforesaid review petition the authorized representative of the appellant No. 1, namely N.K.Chandiramani DGM, JSPL attended the proceedings on 28.10.2014 proof whereof about the marking of his attendance and mention in the order sheet of the respondent No. 1. However, the final order was made in the review petition only on 08.12.2014. Thus the appellants were well informed about the proceedings drawn and concluded by the respondent No. 1 for determination of tariff and other relevant issues. Still the appellants demonstrated their negligence and unwillingness to join the appropriate proceedings. Thereafter, the respondent No. 2 filed appeals bearing No. 41 and 67 of 2015 before the Appellate Tribunal. However, the Appellate Tribunal also dismissed the appeals filed by the respondent No. 2 vide order dated 26.05.2016. The respondent No. 2/CSPDCL also filed written submissions before the Appellate Tribunal. The order of Appellate Tribunal was communicated to the appellant according to its own admission by the respondent No. 2 at least through receipt of the demand letter vide No. 02-02/ACE-1/998 dated 07.07.2016 (Annexure P/2) mentioning therein clearly that "it is pertinent to note that the CSERC's findings regarding the non firm nature of the power supplied by JSPL have been upheld by the Appellate Tribunal, in its judgment dated 26.05.2016 in Appeal No. 41 and 67 of 2015 wherein the Appellate Tribunal has observed that it was of the considered opinion that injection pattern of such unstable power supply causes even commercial complications besides creating disturbance in the demand supply balance.

23 The appellants, despite knowledge of the aforesaid judgment did not take suitable remedial measures by approaching Appellate Tribunal for

rederssal of wrongs if allegedly done to the appellants as claimed. In this regard a public notice was also issued informing about the proceedings pending before Appellate Tribunal which is already filed along with all such public notices with regard to the proceedings drawn before the respondent No. 1. In view of the aforesaid development of the facts and circumstances concerning the dispute raised herein the appellants have neglected and avoided the proper course of adjudication of the likely dispute but had filed the writ petition although without any jurisdiction due to the statutory availability of the alternative remedy and forum in accordance with the provisions contained in the commanding institute being the Electricity Act 2003. Moreover vide Section 120 (2)(f) of the Act the appellants could have filed a review petition before Appellate Tribunal before approaching this Hon'ble Court. The order of the respondent No. 1 as also of Appellate Tribunal is based on technical data and details furnished by the respondent No. 3 as mentioned in the aforesaid binding orders.

24 Mr. Mehta would further submit that it is settled law of the Hon'ble Apex Court that under Article 226 the writ courts may refuse to entertain such petitions wherein intricate technical issues are so involved that it may not be justifiable to decide such issues for want of competent technical assistance to the Hon'ble Court. Moreover the dispute as raised involves several facts which are sought to be controverted against each other by the contesting parties and may be subjected to recording of evidence. As such also it has been already settled by the pronouncements of the Hon'ble Apex Court that the writ courts may refrain from deciding such issues involving complicated and several disputed facts. Hence, the learned Single Judge was justified in dismissing the petition. Further, the

appellants have not challenged the order dated 12.06.2014 made by the respondent No. 1 which was a product of the application of Regulations 2009, the applicability of which also has not been challenged. Several persons and associations attended the proceedings and even opposed the review petition filed by the respondent No. 2 through oral and written submissions. Such persons and institutions would be necessary and proper parties to the writ petition. But the appellants did not implead such persons and institutions as respondents in their own wisdom Therefore also the petition could not have been entertained by the learned Snigle Judge. The respondent No. 2 not having filed any appeal before the Apex Court as provided under Section 125 of the Electricity Act, and also the appellants not having resorted to filing any proceedings, the order and judgment of Appellate Tribunal has become final. There is no further scope to conduct any enquiry in that regard because the dispute whatever sought to have raised by the appellant has been hit by the doctrine of acquiescence due to the conduct of the appellants themselves. The appellant and the respondent No. 2 did have a common case until the decision of the Appellate Tribunal the dispute as unsuccessfully raised by the appellants would be regulated by the statutory provision contained vide Section 62 (6) of the Act which provides that *if any licensee or a generating Company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.*

25 Mr. Mehta would next submit that the term “infirm power” has been defined in the Central Electricity Regulatory Commission (Terms and

Conditions of Tariff) Regulations, 2014 which states that "Infirm Power" means electricity injected into the grid prior to the commercial operation of a unit or block of the generating station in accordance with Central Electricity Regulatory Commission (Grant of connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related maters) Regulations, 2009 as amended from time to time." The decision/derivation of 'non firm power distinguishing it from 'infirm power' and even equating the 'non firm power' supplied by the appellants to be paid at at par with the rate fixed for infirm power has been settled by Appellate Tribunal rather finally. Hence it cannot be questioned by the appellants as also the respondent/CSPDCL except in an appropriate forum. The respondent No. 2 being a distribution licensee as provided for in Section 14 of the Act procures power on short term basis to meet its total demand and energy requirement. In this regard the respondent No.1 had passed an order on 18.04.2009 in Suo Motu Petition No. 9/2009(M) and specified maximum ceiling rates and terms and conditions of short term power purchase for the period 2009-2010. The aforesaid order remained effective from 01.04.2009 to 31.03.2010. The respondent No. 2 for the same purpose for the year 2010-2011 submitted a proposal for pricing and other terms and conditions vide letter dated 19.02.2010 to the respondent No. 1. The respondent No. 1 thereupon registered a Suo Motu Petition vide No. 05/2010 The proposal contained in the aforesaid letter was forwarded to the State Government, members of the State Advisory Committee, all captive generation plants/independent power plants who are supplying power to the respondent No. 2 for offering their comments/views. The proposal was uploaded on the website of the respondent No. 1 on 24.02.2010 which was followed by a public notice in the newspapers dated 25.02.2010

asking for comments and suggestions up to 17.03.2010 followed by a public hearing in the matter which took place on 19.03.2010. The stake holders who submitted suggestions/comments and also participated in the aforesaid hearing included active participation of the appellants also. Mr. Mehta would refer to Section 86 (1) (b) of the Act, which states that "the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the Generating Companies or licensees or from other sources through agreements for purchase of powers for distribution and supply within the state." Further, Section 62 (1)(a) of the Act states that the Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for supply of electricity by a Generating Company to a distribution licensee provided that in in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a Generating Company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity.

26 According to Mr. Mehta, the respondent No.1 once again took in suo motu jurisdiction the determination of Tariff Order vide petitions No. 05 to 8 of 2014 (1) wherein the petition filed by the respondent No. 2 vide Petition No. 07/01/2014 (T) was also considered with regard to the power purchase agreements read with the earlier Tariff Order which was considered in relation to the appellants. The respondent No. 2 in its petition vide No. 07 of 2014 had contended that it had entered into short-term PPAs with the appellant No. 1 and also with other CPPs/IPPs on terms and conditions in accordance with the orders of the respondent

No. 1 dated 15.07.2011 and 05.05.2012, extracts whereof annexed/ quoted with the aforesaid order dated 30.04.2010 and also in accordance with the original draft PPAs approved by the respondent No.1 on 12/07/2010. The short term power purchase agreements were accordingly executed and the payments also made as provided for in the PPAs. The respondent No. 1 took the short-term power purchases made from the appellant No. 1 by the respondent No. 2 under consideration and referred to a load curve of injection pattern of the appellant No. 1 to conclude that the power injected was non-firm in nature. The respondent No. 2 submitted that the observations of the respondent No. 1 that the earlier order dated 30.04.2010 was for supply based on load factor for stable power and that the load factor based tariffs were determined to care of outages of generating plants and inferences sought to be drawn there from were not correct and were contrary to such previous orders and even considering that the short term supplies from other CPPS follow the same load curve. Several short term purchases followed the same injection pattern as that of the appellant No. 1. However the respondent No. 1 disagreed with the contentions of the respondent No. 2 and dismissed the aforesaid petition vide order dated 12.06.2014 made in Petition No. 07/2014. The respondent No. 1 was of the view that the power purchases from the appellant No. 1 were intermittent and caused grid disturbance. The respondent No. 1 therefore decided to limit the cost of such purchase to Rs1.50 per unit as fixed vide its order dated 30.04.2010. The appellant No. 1, in addition to having its power plant also possesses distribution license and supplies power to consumers in its industrial area. The respondent No. 1 also determines the distribution of electricity and retail supply tariff thereof for the appellant No. 1. The respondent No. 1 has not given any tariff hike to the appellants since the

appellant No. 1 did not fully comply with the directions of the Appellate Tribunal made on 07.03.2014 in Appeal No. 89/2012. Aggrieved by the impugned order dated 12.06.2014 passed by the respondent No. 1 in Petition No. 07 of 2014 (T) comprised in the common order passed in Petition Nos. 05 to 08 of 2014 (T), the respondent No. 2 filed the Appeal No. 212 of 2014 before the Appellate Tribunal on 19.08.2014. The said appeal was dismissed by order dated 10.11.2014 allegedly being not maintainable on the ground that the Review Petition on the same issue was pending before the respondent No. 1. Liberty, however, was given to the respondent No. 2 to file appeal against the order subject to the outcome of the review pending before the respondent No. 1 and subject to condonation of delay as well. The Review Petition, vide No. 35 of 2014 of the respondent No. 2 filed on 04.08.2014 before the respondent No. 1 was disposed of by an order dated 08.12.2014 partly allowing the review petition and partly rejecting. Aggrieved by the impugned order dated 12.06 2014 and in so far as the respondent No. 1 had rejected the Review Petition of the respondent No. 2 vide its order dated 08.12.2014, the respondent No. 2 filed Appeal No. 41 of 2014 and Appeal no 67 of 2014 before the Appellate Tribunal. Since the Appeals i.e. No. 41 of 2015 and 67 of 2015 were against the same impugned original order i.e. 12.06.2014 read in conjunction with the Review Order dated 08.12.2014, both the appeals were considered together by Appellate Tribunal which made a common order (Annexure P/1 to the writ petition). It was emphatically held by the Appellate Tribunal that "*the injection pattern of such unstable power supply causes even commercial implications, besides creating disturbance in the demand supply balance. Since the surplus power supply from the JSPL has been fluctuating in nature and unstable the purchase price of non firm power cannot be equated with*

purchase price of firm power and has to be given treatment as in the case of purchase of infirm power and the purchase cost of such type of power has to be significantly lower than the cost of firm power. We are in agreement with the findings of the impugned order of the State Commission on this issue and decide this issue against the appellant."

27 As such, the findings of the impugned order of the respondent No. 1 on the issue were affirmed. The observations of the respondent No. 1 that the burden of Rs.153.55 Crore should not be passed on to the consumers is in conformity with the provisions contained in Section 62 (6) of the Act. It is noteworthy that the order of the respondent No. 1 has been statedly made under Sections 32 (3), 45, 62 and 86 (1) of the Act. There was no need for the respondent No. 1 and the Appellate Tribunal to issue any specific directions for recovery for the aforesaid over paid amount having become due to be paid by the appellants in view also of the statutory provisions contained in Section 62 (6) of the Act. As such, the learned Single Judge was fully justified in dismissing writ petition and the present appeal also deserves to be dismissed.

28 In support of their contentions, learned counsel for the respondents No. 2 and 3 would place reliance on the decisions of the Apex Court in ***Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Transmission Co. Ltd. & Others*** {(2025) 8 SCC 705}, ***State of Himachal Pradesh & Another v. JSW Hydro Energy Ltd. & Others*** {2025 SCC OnLine SC 1460}, ***Jaipur Vidyut Vitran Nigam Ltd. & Another v. MB Power (Madhya Pradesh) & Others*** {(2024) 8 SCC 513}, ***Educanti Kistamma (Dead) through LRs v. S.Venkatareddy (Dead) through LRs & Others*** {(2010) 1 SCC 756}, ***Uttar Haryana Bijli Vitran Nigam Limited & Another v. Adani Power (Mundra) Ltd.***

& Others {(2023) 14 SCC 736}, ***Maharashtra State Electricity Distribution Company Ltd. v. Adani Power Maharashtra Ltd. & Others*** {(2023) 7 SCC 401}, ***GMR Warora Energy Ltd. v. Central Electricity Regulatory Commission (CERC) & Others*** {(2023) 10 SCC 401}, ***Indian Council for Enviro Legal Action v. Union of India*** {(2011) 8 SCC 161} and ***R.Muthukumar & Others v. Chairman and Managing Director, TANGEDCO*** {2022 SCC OnLine SC 151}***.***

29 We have heard learned counsel appearing for the parties, perused the pleadings and materials available on record.

30 The principal issue which falls for consideration is whether the findings recorded in tariff true-up proceedings and affirmed by Appellate Tribunal could be enforced against the appellant-Company without they being impleaded or afforded an effective opportunity of hearing. It is not disputed that the appellants were not arrayed as parties in the original tariff proceedings. Mere publication of public notices or alleged presence of some representative during review proceedings cannot substitute compliance with principles of natural justice where specific adverse findings are proposed against an identifiable contracting party.

31 This appeal came up for hearing before this Court on 25.04.2026 when during course of argument, in support of his contentions, Mr. Jain placed reliance upon the decision rendered by the Supreme Court in the matter of ***Krishnadatt Awasthy v. State of M.P. & Others*** {Civil Appeal No. 4806/2011, decided on 29.01.2025} and on the request of learned counsel for the respondents No. 2 and 3, the matter was directed to be listed on 05.05.2026 and till then, it was submitted by the learned counsel for the respondents No. 2 and 3 that the open access permission

to the appellants would be continued. On 05.05.2026, as the counsel for the respondent No. 1 was on adjustment, the matter was listed for 08.05.2026 and the interim relief granted to the appellant continued. The matter was finally argued on 08.05.2026 and reserved for judgment.

32 According to the learned counsel for the appellants, this is a clear case of violation of principles of natural justice and the consequence of violation of natural justice is fatal and consequently the demand for recovery by order dated 07.07.2016 is illegal in light of the decision rendered in ***Krishnadatt Awasthy*** (supra). Both the parties have placed their reliance on the said judgment. The appellants have placed reliance on paragraphs 66 and 67 whereas, the respondents have placed their reliance on paragraphs 42, 44 and 46 of the said judgment.

33 One of the core contention of the learned counsel for the appellant is that there is no provision under the PPA dated 02.11.2011 or any direction in any order of the learned Commission or the Appellate Tribunal to seek refund or recovery from the appellants which makes the demand *ex-facie* illegal. Rather, it is the respondent's own pleading that the appellant's invoices were cleared strictly in accordance with the PPA. In addition, the invoices raised by the appellants having been fully paid and settled by the respondent No. 2/CSPDCL, the said respondent could not have reopened the same without any opportunity of hearing which is another facet of violation of principles of natural justice. The consistent stand of the respondent No. 2/CSPDCL has been that the supply of power by the appellant/JSPL was as per the *suo motu* order of the learned Commission and the PPA. Respondent No. 2/CSPDCL is bound by its stand and was estopped from making a u-turn/change its stand. This goes to the root of the matter and vitiates the impugned demand notice.

Even the learned Single Judge has observed that the appellant was neither impleaded nor afforded any effective opportunity of hearing in the proceedings before the learned State Commission or before the Appellate Tribunal despite the fact that the entire subject matter of those proceedings pertained to power supplied by the appellant under duly executed PPA.

34 According to learned counsel for the appellants, power was supplied by the appellants to the respondent No. 2/CSPDCL in terms of the PPA. Supply was made in terms of the suo motu order dated 30.04.2010 which was for the benefit of the State. The respondent No. 2 accepted the same without any protest. The appellants raised invoices time to time at the agreed rate of Rs. 3/- per unit which were fully paid by the respondents. However, the respondent No. 2 raised a demand notice dated 07.07.2016 for Rs. 153.55 cores and withheld granting NoC for open access/use of the transmission system. This was precisely the subject matter of challenge before the learned Single Judge wherein an interim order was granted on 10.08.2016 to the effect staying the demand notice and to permit the open access to the appellants. The demand notice in effect amounts to retrospective recovery of energy bills already paid by Rs. 2/-despite the fact that there is no provision in the PPA for recovery / refund in any event. The reason for raising demand notice was the finding given by the respondent No. 1 wherein the respondent No. 2/ CSPDCL has been held to be negligent. The appellants were not a party to the true up proceedings before the Commission, or the subsequent review petition filed by the respondent No. 2/CSPDCL or the Appellate Tribunal and was not afforded any opportunity to present its case, clarify the contractual framework or defend the PPA.

35 It is also the contention of the learned counsel for the appellants that the learned Single Judge has misdirected itself and has gone beyond the scope of the impugned demand notice. The learned Single Judge entered into the arena of fluctuating power without any material on record and failed to note that the nature of short term supply from CPP was fluctuating/schedule variation, and not power variation, whereas, the fluctuation in CPP supply was expressly contemplated by the Commission. The Commission itself has recognized that fluctuation is the very nature of electricity supply from CPPs. According to the appellants, fluctuation was not treated as breach or irregularity but was expressly contemplated and provided for in the tariff mechanism. The Commission had always considered short term supplies from CPPs as likely to fluctuate, and therefore, the supply by the appellant No. 1 could not have been singled out or treated adversely on the ground of fluctuation especially when such fluctuation was already recognized under the Commission's own order. Moreover, the respondent No. 2/CSPDCL has pleaded that the PPAs were entered into in accordance with the Commissions orders and that payments were made as per the said PPAs.

36 According to Mr. Mehta, the doctrine of audi alteram partem should be understood in the context of nature of the proceedings in question. Tariff determination and true-up exercise undertaken by the Commission are legislative or quasi legislative in character, carried out in accordance with the Conduct of Business Regulations, which contemplates issuance of public notice and stakeholder participation rather than individual impleadment of every entity that may be indirectly affected. Notices were duly issued, proceedings were conducted and representatives of the

industry including the appellant participated at various stages. The appellant-Company did not chose to participate in the true-up proceedings. The role of the appellant-Company in the present case was of a fence sitter awaiting result of the proceedings initiated by others before initiating legal proceedings to challenge the orders by which it is aggrieved.

37 Section 64 of the Electricity Act provides the procedure for tariff order. It reads as under:

> ***"64. Procedure for tariff order.–*** *(1)An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.*
>
> *(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.*
>
> *(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,–*
>
> > *(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;*
> >
> > *(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:*
> >
> > *Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.*
>
> *(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.*
>
> *(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section*

by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

38 The demand notice dated 07.07.2016 (Annexure P/2 to the writ petition) was issued to the appellant pursuant to the Tariff Order dated 12.06.2014 (Annexure P/10 to the writ petition) passed by the respondent No. 1/Commission on the petition filed by the respondent No. 2/CSPDCL. The Tariff Order (Annexure P/10) was further challenged by the respondent No. 2/CSPDCL before the Appellate Tribunal which also stood dismissed vide order dated 26.05.2016 (Annexure P/1 to the writ petition). Both while passing the order dated 12.06.2014 by the learned Commission as well as the order dated 26.05.2016 by the learned Appellate Tribunal, the appellant-Company was not a party to the said proceedings. Without the appellant being noticed, the impugned orders were passed and a huge amount of Rs. 153.55 Crores have been saddled upon the appellants.

39 Clause 9 of the Chhattisgarh State Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 is in respect to initiation of proceedings by the Commission. It reads as under:

"9. Initiation of Proceedings.

(1) The Commission may initiate any proceedings suo motu or on a petition filed by any affected or interested person.

(2) Initiation of proceedings shall be by issuance of notices to the affected or interested parties for filing of replies and rejoinders.

(3) The Commission may, in appropriate cases, issue orders giving due publicity to the petition, through newspaper or otherwise inviting comments on the issues involved in the proceedings, in such forms as it may direct.

(4) While issuing notice, in suo motu proceedings and in any other appropriate cases, the Commission may designate an officer or any other person to present the matter in the capacity of a petitioner in the case."

40 Clause 13 of the Regulations 2009 deals with service of notice and processes issued by the Commission. The same reads as under:

> *"**13. Service of notices and processes issued by the Commission.***
>
> *(1) Any notice or process to be issued by the Commission may be served by any or more of the modes provided in section 171 of the Act and the Means of Delivery of Notice, Orders and Document Rules, 2004 notified by the Central Govt. which inter alia are the following:-*
>
> *(i) Service by the petitioner or the party to the proceedings;*
>
> *(ii) by hand delivery through a messenger obtaining signed acknowledgement;*
>
> *(iii) by registered post with acknowledgment due;*
>
> *(iv) by publication in newspaper in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices, processes, etc. on any person(s) in the manner mentioned above;*
>
> *(v) by fax; or*
>
> *(vi) by such other mode of service as may be provided from time to time.*
>
> *xxx xxx xxx*"

41 A bare perusal of the above provisions makes it amply clear that the Regulatory Commission may initiate any proceedings suo motu or on a petition filed by any affected or interested person. Further, the notice may be served by various modes as stated above, and if the Commission is satisfied that it is not reasonably practiacable to serve the notices, process etc. on any persons, then paper publication can also be made. However, in the present case, the appellant-Company could have been easily served notice on its registered address. The contention of the

appellants is that they were never heard before passing of the impugned orders. It is a settled proposition that no person shall be condemned unheard and any order passed in breach of the *audi alteram partem* rule is nullity in law The Hon'ble Supreme Court has categorically held that an order which is *void ab initio* cannot be validated by subsequent conduct and remains unenforceable.

42 The Apex Court in ***Krishnadatt Awasthy*** (supra), at paragraphs 66 to 68 observed as under:

> *"66. Additionally, a perusal of the order(s) of the Collector and Commissioner in Revision would also show that they are practically identical. An ineffective hearing at the initial stage therefore taints the entire decision-making process leading to a cascade of flawed orders at subsequent stages. Providing a hearing to the affected individual, minimizes the risk of administrative authorities making decisions in ignorance off acts or other relevant circumstances, as it allows all pertinent issues to be brought to light. This process not only aids the administration in arriving at a correct decisions but also enables courts to more effectively review such actions. The primary purpose of natural justice is to assist the administration in reaching sound decisions at the outset, reducing the likelihood of decisions being overturned later. Its significance lies in fostering fair and well-informed decision- making at the very first instance.*
>
> *67. Following the above discussion, it must be concluded that a defect at the initial stage cannot generally be cured at the appellate stage. Even in cases where a 'full jurisdiction' may be available at the appellate stage, the Courts must have the discretion to relegate it to the original stage for an opportunity of hearing. Therefore, the ex-parte decision to set aside the appellants selection stands vitiated.*
>
> *68. The principle of audi alteram partem is the cornerstone of justice, ensuring that no person is condemned unheard. This principle transforms justice from a mere technical formality into a humane pursuit. It safeguards against arbitrary decision-making, and is needed more so in cases of unequal power dynamics."*

43 The contention of the respondents that tariff proceedings are legislative in character and therefore individual hearing was unnecessary cannot be accepted in the facts of the present case. While tariff determination may ordinarily possess a regulatory or legislative flavour, the moment proceedings culminate in specific findings fastening adverse financial consequences upon a distinct Generating Company under identified PPAs, the proceedings assume a quasi-judicial character qua such entity. We also find substance in the submission of the appellants that neither the tariff orders nor the judgment of Appellate Tribunal expressly directed recovery from the Generating company. The Commission primarily examined the extent to which CSPDCL could pass on purchase cost to consumers while determining tariff. A regulatory disallowance vis-à-vis a distribution licensee cannot *ipso facto* become an executable recovery against a third-party generator without independent adjudication of liability.

44 Section 62(6) of the Electricity Act permits recovery where a licensee or Generating Company has recovered tariff in excess of the tariff determined under the Act. However, the provision does not dispense with the requirement of adjudication, particularly where the very basis of alleged excess recovery is seriously disputed and the concerned entity was never heard in the original proceedings.

45 The PPAs executed between the parties admittedly governed the field during the relevant period. The respondents accepted supply of electricity under the contracts and made payments accordingly. Whether the supplied power answered the contractual description of “firm power”, whether fluctuations were contractually permissible, and whether payments were made contrary to the approved tariff are all matters

requiring proper adjudication after affording full opportunity to the appellants.

46 In the present case, the non-hearing of the appellants has led to issuance of demand notice against them to the tune of Rs.153.55 crores which is penal in nature as the respondent No. 2/CSPDCL had made the payment to the appellant No. 1 Company as per the invoice generated and now, after passing of the order by the learned Commission, the respondent No. 2/CSPDCL is virtually seeking refund of the amount which has already been paid by it and further, when the contention of the respondent No. 2/CSPDCL is that the appellant's invoices were cleared strictly in accordance with the PPA. The appellant-Company never had the opportunity to put forth its stand and the order passed by the learned Commission which has been upheld by the Appellate Tribunal is clearly a case of violation of principles of natural justice. The appellant-Company was neither heard during tariff petition, review petition or the appeal before the Appellate Tribunal which in no manner can be justified especially when an order is passed on the basis of those proceedings which results into payment of Rs. 153.55 crores back to the respondent No. 2/CSPDCL. Such burden cannot be saddled upon the appellant-Company without it being heard.

47 The Court, in its opinion is unable to sustain the consequential denial of NoC and open access. The refusal is founded solely upon disputed dues arising from the impugned demand notice. In the absence of crystallized and adjudicated liability, such disputed claims cannot be treated as "outstanding dues" so as to deny open access rights.

48 The learned Single Judge, in our respectful view, erred in declining

interference despite recording that principles of natural justice stood violated. Once it was found that orders affecting the appellants had been passed without adequate hearing, the writ petition could not have been dismissed solely on the ground of availability of alternative remedies or finality of prior proceedings. The rule regarding alternative remedy is a rule of discretion and not one of compulsion. Where proceedings suffer from breach of natural justice or where orders are passed against a person without hearing, exercise of writ jurisdiction is fully justified. We are therefore of the considered opinion that the impugned recovery proceedings and consequential denial of NoC/open access cannot be sustained in law.

49 In view of the above discussion, this Court is of the considered opinion that the view taken by the learned Single Judge in dismissing the writ petition filed by the appellants/writ petitioners is palpably incorrect and as such, the order dated 30.03.2026 passed by the learned Single Judge in WPC No. 1927/2016 is set aside. It is directed that the the appellant-Company shall be afforded an opportunity of hearing and put forth its submissions before the learned Regulatory Commission in the proceedings relating to tariff order of CSPDCL and final true-up. After hearing the appellant-Company, the respondent No. 1/Commission may proceed to hear and decide the matter afresh, in accordance with law. Liberty is reserved to the respondents, if so advised, to initiate appropriate proceedings for adjudication of their claims in accordance with law after impleading the appellants and affording them full opportunity of hearing. Any such proceedings shall be decided independently on their own merits without being influenced by observations, if any, contained in this judgment and till such adjudication

is undertaken and liability, if any, is duly determined, the appellants shall not be denied NoC/open access solely on the basis of the impugned disputed demand. Needless to state that any such exercise shall be concluded by the learned Regulatory Commission preferably within a period of two months from the date of receipt of a copy of this judgment, if there is no legal impediment. Further, in case, any party is aggrieved by the outcome of the order passed by the learned Commission, and the same is challenged before the Appellate Tribunal, the Appellate Tribunal shall decide the same preferably within a further period of two months, as substantial period has already been passed.

50 Till then, the effect and operation of the judgment dated 26.05.2016 (Annexure P/1 to the writ petition) passed by the learned Appellate Tribunal, the demand notice dated 07.07.2016 (Annexure P/2 to the writ petition) demanding refund of Rs. 153.55 Crores, the letter dated 21.07.2016 (Annexure P/3 to the writ petition), the letter dated 25.07.2016 (Annexure P/4 to the writ petition) issued by the respondent No. 2/CSPDCL, shall be kept in abeyance.

51 Resultantly, the writ appeal as well as the writ petition stand **disposed of**.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Amit

Head Note

An ineffective hearing at the initial stage vitiates the entire decision-making process and may result in a series of flawed orders at subsequent stages. Granting a hearing to the affected individual enables the authority to consider all relevant facts and circumstances, thereby facilitating informed and fair decision-making. It also assists Courts in effectively reviewing administrative actions. The essence of natural justice lies in ensuring fair, informed, and legally sustainable decisions at the very outset, thereby minimizing the likelihood of such decisions being overturned later.