

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 26 of 2012  
In  
Petition No. 155/MP/2012**

**Coram**

Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member

**Date of Hearing:** 03.01.2013

**Date of Order** : 16.01.2013

**In the matter of**

Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103 of the CERC (Conduct of Business) Regulations, 1999 for Review of Order dated 16.10.2012 passed by this Commission in Petition No. 155 of 2012

**And in the matter of**

Petition under Section 79 of the Electricity Act, 2003 evolving a mechanism for Regulating including changing and-or revising tariff on account of frustration and-or of occurrence of force majeure (Article 12) and-or change in law (article 13) events under the PPAs due to change in circumstances for the allotment of domestic coal by GOI-CIL and enactment of new coal pricing Regulation by Indonesian Government.

**And in the matter of**

Adani Power Limited

**Petitioner**

Vs

1. Uttar Haryana Bijli Vitran Nigam Limited, Panchkula
2. Dakshin Haryana Bijli Vitran Nigam Limited, Panchkula
3. Gujarat Urja Vikas Nigam Limited, Vadodara

**Respondents**

**And**

**In the matter of**

1. Uttar Haryana Bijli Vitran Nigam Limited, Panchkula
2. Dakshin Haryana Bijli Vitran Nigam Limited, Panchkula

**Review Petitioners**



**Parties Present:**

1. Shri M.G Ramchandran, Advocate for Review Petitioners
2. Shri Jatin Jalundhwalia, GUVNL
3. Shri P.J. Jani, GUVNL
4. Shri H.K. Agarwal, UHBVN
5. Shri C S Vaidyanathan, Senior Advocate for APL
6. Shri Jignesh Langalia, APL
7. Shri Malav Deliwala, APL
8. Shri Vipul H. Jadav, APL
9. Ms. Poonam Verma, APL
10. Shri Gautam Shahi, APL
11. Shri Arun Kumar

**ORDER**

The review petition has been filed by Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter “the Review Petitioners”) under Section 94 of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 16.10.2012 (hereinafter “the impugned order”), whereby this Commission has decided in favour of maintainability of the Petition No.155 of 2012 filed by Adani Power Ltd.

2. Gujarat Urja Vikas Nigam Ltd (hereinafter “GUVNL”) and the Review Petitioners had invited bids for procurement of power in accordance with the competitive bidding guidelines issued by the Central Government, independently of each other. Adani Power Ltd participated in both the bidding processes and was declared successful. Accordingly, Adani Power Ltd entered into separate Power Purchase Agreements (hereinafter “the PPAs”) with GUVNL and the Review Petitioners for supply of power at tariffs discovered through the competitive bidding. The PPAs were approved by the respective State Commissions. According to Adani Power Ltd, it had taken into

consideration the prices of coal imported from Indonesia while quoting the tariff for supply of electricity. However, after enactment of New Coal Pricing Regulation by the Indonesian Government, the prices of imported coal were said to have substantially increased which, according to Adani Power Ltd, has made the supply of power at the agreed tariffs unviable. Therefore, Adani Power Ltd has filed the petition (Petition No 155/2012) before this Commission seeking the following reliefs, namely:

- a) *to evolve a mechanism to restore the Applicant to the same economic condition prior to occurrence of Subsequent Events mentioned in respective Part I & II hereinabove by adjudicating the disputes between the Applicant and the Respondent(s) in relation to regulate including changing and/or revising the price/tariff under PPAs dated 7.8.2008 with UHBVNL and DHBVNL and 2.2.2007 with GUVNL;*
- b) *in the alternative, to declare that the Applicant is discharged from the performance of the PPAs on account of frustration of the PPAs due to Subsequent Events in respective Part I & II;*
- c) *this Hon'ble Central Commission be pleased to declare that the revised tariff shall be applicable from the Scheduled Commercial Operation Date (SCoD) of the PPAs;*
- d) *that during the pendency of the present Application Hon'ble Central Commission may direct the Respondent(s) to procure power on the cost plus basis, alternatively, the Hon'ble Central Commission may suspend the operation of the PPAs till the final disposal of the Application;*
- e) *pass such further or other orders as the Hon'ble Central Commission may deem just and proper in the circumstances of the case."*

3. The question of jurisdiction of this Commission to adjudicate the dispute raised in the petition was considered as a preliminary issue. The Review Petitioners and GUVNL filed their replies on the question of maintainability. After hearing the parties and considering the pleadings, this Commission by the impugned order upheld its jurisdiction to adjudicate the dispute and admitted the petition for hearing on merits.

4. The Review Petitioners seek review of the impugned order alleging that while deciding the question of jurisdiction, this Commission has not considered the specific arguments made by them in their written submissions dated 24.9.2012. Firstly, the Review Petitioners have denied that they had conceded jurisdiction of this Commission and therefore, according to the Review Petitioners, this Commission incorrectly proceeded to decide the question of jurisdiction when it recorded in paras 10 and 16 of the impugned order a statement to that effect attributed to the Review Petitioners. On the contrary, the Review Petitioners have stated that it was projected on their behalf in the written submissions that the respective State Commissions only had the jurisdiction to decide the dispute raised by Adani Power Ltd. The Review Petitioners have pointed out that no cognisance of this submission made in the written submissions had been taken while deciding the question of jurisdiction. The Review Petitioners have also submitted that in the written submissions they had urged that the petition before this Commission was not maintainable in view the earlier order of this Commission in Petition No 103/2005 (Uttanchal Jal Nigam Ltd Vs Uttanchal Power Corporation Ltd and another), which submission was not considered in the impugned order.

5. Adani Power Ltd in its reply to the Review Petition has supported the impugned order. It has been stated by Adani Power Ltd that the impugned order was not passed just based on the concessions made but also contained elaborate discussion of the issues involved and concluded at paras 19 and 20 of the impugned order that Adani Power Ltd had the composite scheme. According to Adani Power Ltd, the impugned order was based on consideration of the issue of jurisdiction on merits. On this basis it has been submitted that the Review Petition is beyond the scope of Order 47, Rule 1 of

the Code of Civil Procedure. In this context Adani Power Ltd has drawn sustenance from the judgments of the Hon'ble Supreme Court in Thungabhadra Industries Ltd Vs Government of A.P (AIR 1964 SC 1372) and Haridas Das Vs Usha Rani Banik and others [(2006) 4 SCC 78]. To support this Commission's finding that the Review Petitioners had conceded the question of jurisdiction of this Commission to adjudicate the dispute, Adani Power Ltd has referred to para 8 of the reply filed by the Review Petitioners. Adani Power Ltd has averred that the impugned order and the order dated 26.3.2006 in Petition No 103/2005 are distinguishable on facts which aspect the Review Petitioners have failed to appreciate.

6. We have heard the learned counsel for the Review Petitioners and the learned senior counsel for Adani Power Ltd. Learned counsel for the Review Petitioner submitted that review of the impugned order dated 16.10.2012 has been sought on the grounds mentioned in para 11 of the review petition i.e. there has been no concession on the issue of jurisdiction on the part of Haryana Utilities and the earlier decisions of the Commission in UJVNL case has not been considered though specifically stated in the written submission. Learned counsel further submitted that as per para 2.4 of the Competitive Bidding Guidelines dated 19.1.2005 issued by Ministry of Power, Government of India, in case of combined procurement where the distribution licensees are located in more than one State, the Appropriate Commission for the purpose of these bidding guidelines shall be the Central Commission. Learned counsel submitted that in this case no combined bidding for procurement has taken place. Learned senior counsel for the Adani Power Limited submitted that the Commission has not decided the issue of jurisdiction on the basis of concession, but on the basis of elaborate

discussion of the issue of maintainability as is evident from paras 10,16, 20 and 23 of the impugned order. Learned senior counsel further submitted that there is no error on the face of the order and the Review Petitioner is rearguing the matter on merits which is not permissible in review. Learned senior counsel submitted that if the Review Petitioner is aggrieved by non-consideration of the orders of the Commission and the judgments of the Appellate Tribunal, the same cannot be a ground for review.

7. We have carefully considered the submissions made on behalf of the parties. The Review Petitioners have questioned the correctness of certain portions of paras 10 and 16 of the impugned order. These paras are extracted hereunder:

“10. When the petition was initially heard on 19.7.2012, this Commission directed the respondents to file their replies on maintainability. The respondents have accordingly filed their replies. In the replies filed by the respondents it has been conceded that presently Mundra Power Project is having a composite scheme for generation and sale of electricity in more than one State. The respondents have stated that this Commission would have the jurisdiction under clause (f) of sub-section (1) of Section 79 to adjudicate the disputes not affecting the rights and obligations of the parties under the PPAs. GUVNL has stated that this Commission cannot go into the questions already decided by GERC and the Appellate Tribunal. GUVNL has also placed on record the details of certain petitions filed by Adani before GERC seeking redressal of its grievances arising out of the PPAs to show that as per the understanding of Adani itself, GERC had the jurisdiction to adjudicate the disputes under the PPAs.”

“16. From the above contentions of the respondents, it is evident that the dispute raised by Adani is to be decided in accordance with the provisions of the PPAs. The clauses in the PPAs discharge the parties, the petitioner as well as the respondents, of their obligations on occurrence of one or more of the force majeure events. Adani has contended that changes in the terms of the FSA signed with Coal India Ltd for supply of power to Haryana and promulgation of the Indonesian Regulation which makes the generation of power for supply to Gujarat and Haryana costlier and unviable, are the events of force majeure under the PPAs. In view of Adani's contentions, the question is whether or not the dispute falls within the scope of the force majeure as defined in the PPAs and requires adjudication. Every agreement is subject to laws of the land, the Contract Act being one such law. The Contract Act also discharges the parties of the obligations on the grounds of frustration and impossibility to perform the contract. Therefore, the question that will require adjudication on merits is whether or not Adani stands relieved of its obligation to supply power under the PPAs on ground of frustration

in view of the supervening circumstances set out by Adani in the petition. The adjudication of these issues being within the scope of the PPAs, the maintainability of the petition before this Commission on the respondents' own pleas cannot be denied."

8. The Review Petitioners have objected to the observation in para 10 of the impugned order to the effect that the respondents had conceded that Mundra Power Project (owned by Adani Power Ltd) was having a composite scheme for generation and sale of electricity in more than one State. The other observation objected to by the Review Petitioners as recorded in the concluding sentence in para 16 of the impugned order is to the effect that the adjudication of the issues raised by Adani Power Ltd being within the scope of the PPAs, the maintainability of the petition on the respondents' own pleas could not be denied. We proceed to examine the matter.

9. As has been noted above, GUVNL and the Review Petitioners (UHBVNL & DHBVNL) had filed their replies on the question of maintainability of the main petition vide affidavits dated 23.8.2012 and 22.8.2012 respectively. The relevant portions of the replies are extracted hereunder:

#### **GUVNL**

"4. In terms of section 79(1)(b) of the Electricity Act the Hon'ble Commission can exercise jurisdiction to the extent of composite scheme for generation and sale of electricity in more than one state. Accordingly to the extent the Petitioner seeks to raise issues of composite nature affecting the generation and supply of power in more than one State, outside the PPAs dated 2.2.2007 and 6.2.2007 entered into with GUVNL and PPA dated 7.8.2007 entered into with the Haryana Utilities and without affecting the rights and obligations of the respective parties under these PPAs, the Hon'ble Commission may entertain the said petition for resolving such issues. Such a proceeding before the Hon'ble Commission under Section 79(1)(f) in so far it does not affect the rights and obligations of the parties under the PPAs mentioned herein above, can be considered as matters

relating to Section 79(1)(b), namely, in regard to matters connected with the composite scheme for generation and sale of electricity in more than one State.....” (Emphasis added)

#### **UHBVNL & DHBNL (Review Petitioners)**

*“8. Therefore, in view of the above quoted relevant extracts of the PPA and in view of Section 63 of the Act, it is humbly submitted that the present Petition is not maintainable before this Hon’ble Commission. It is submitted that once the Tariff is adopted under Section 63 of the Act the same is not subject to re-determination of Tariff under Section 62 of the Act. It is further submitted that relief sought by the Petitioner will have to be considered in view of the Terms and Conditions of the PPA dated -7.08.2008. It is humbly submitted that the Petitioner could invoke the Jurisdiction of the Hon’ble Commission under Section 79(1)(b) of the Electricity Act, 2003 as a composite scheme only for issues which are not squarely covered under the Terms and Conditions of the PPA with the Answering Respondent. It is further submitted that this Hon’ble Commission has jurisdiction on matters which concerns the Petitioner qua its multiple PPA’s.”* (Emphasis added)

10. We have extracted part of the reply of GUVNL since learned counsel who appeared for both GUVNL and Haryana Utilities had argued the question of maintainability on behalf of GUVNL and subsequently adopted the same while making submissions on behalf of the Review Petitioners. From the extracts of the replies of GUVNL and the Review Petitioners it is observed that their contention on the question of maintainability *inter-alia* was that this Commission would have jurisdiction under clause (b) of sub-section (1) of Section 79 of the Electricity Act in regard to matters covered under the composite scheme. This Commission exercises jurisdiction under clause (b) of sub-section (1) of Section 79 of the Electricity Act in respect of a generating company, other than a generating company owned or controlled by the Central Government, if such generating company has a composite scheme for generation and sale of electricity in more than one State. The existence of the composite scheme is a condition precedent for exercise of jurisdiction in respect of the



matters, within or outside the scope of the PPAs, under clause (b) of sub-section (1) of Section 79 of the Electricity Act. The Review Petitioners consented to exercise of jurisdiction by this Commission under clause (b) of sub-section (1) of Section 79 of the Electricity Act on the ground of existence of the composite scheme. Therefore, there is no error apparent on the face of record in para 10 of the impugned order.

11. The observation of this Commission in para 16 of the impugned order is based on para 6 of the reply filed vide affidavit dated 22.8.2012 by the Review Petitioners which is extracted below:

*“6. At the very outset it is humbly submitted that the present relief sought by the Petitioner is to be addressed strictly in accordance with the Terms and Conditions of the PPA dated 07.08.2008. ....”*

In view of the above submissions, this Commission categorically observed in the impugned order that the questions raised in the petition were to be considered in accordance with the PPAs signed between the parties.

12. The observations in paras 10 and 16 of the impugned order have been made after due consideration of the reply filed by the Review Petitioners. Even if, for sake of argument, it is accepted that some other view of the portions of the reply extracted above was also a possible view, it cannot be the legitimate ground for review of the impugned order. The matter cannot be reargued on merits in the garb of review proceedings whose scope is limited to the grounds enacted in Order 47, Rule 1 of the Code of Civil Procedure, 1908.

13. Now we consider the second ground raised by the Review Petitioners in support of their plea for review. The ground is that this Commission while passing the impugned order has not considered the binding precedents, the judgment the Appellate Tribunal as also this Commission's own orders. We discuss the judgments/orders relied upon by the Review Petitioners one by one to ascertain whether the view taken therein was at variance with the view taken in the impugned order.

14. Learned counsel for the Review Petitioners during the course of his oral submissions based his arguments on the following observations of the Appellate Tribunal in the judgment dated 23.11.2006 in Appeal No 228 of 2006 (PTC India Ltd Vs CERC and Others):

“56. What has been contemplated or provided for in Section 79 1(b) is to regulate the tariff of generating companies, if such a contingency arises for fixation of tariff for such generating companies in case of a generating company having a composite scheme of generation and sell electricity in more than one State. This obviously means that when sale of power takes place by the generator and with whom should the said utility / Discom, should have a uniform purchase price for such Discoms / utilities, the legislature has enabled the Central Commission to regulate the tariff of such generating companies and not otherwise.”

15. In our view, reliance by the Review Petitioners on the judgment of the Appellate Tribunal is misplaced. The view taken by this Commission in the impugned order is rather supported by the judgment of the Appellate Tribunal than sustaining the plea of the Review Petitioners. The ratio of the Appellate Tribunal's judgment is that this Commission regulates the tariff of the generating companies which sell power to the distribution companies etc at uniform rate. It needs to be borne in mind that where the rates for sale (tariffs) have been discovered through competitive bidding processes initiated by two or more States independently of each other and at different times, the

possibility of sale at uniform rates cannot be a reality. Such a possibility is extremely remote. However, what seems to have been emphasized by the Appellate Tribunal is the uniformity of approach on the issues related to tariff common to more than one State. The Appellate Tribunal further seems to have ruled that in such matters this Commission is conferred with the exclusive jurisdiction to avoid conflicting opinions by the different State Commissions. The observation of the Appellate Tribunal flows from the fact that the Parliament has invested this Commission with the powers of regulation in the matters of common interest. In the present case, the issue involved for decision is common to both the States being supplied power by Adani Power Ltd from a single generating station, that is, whether Adani Power Ltd is entitled to any relief to neutralize the impact of increase of prices of coal being imported from Indonesia and if so, to what extent. The issue deserves a uniform approach in keeping with the philosophy of the Electricity Act. This Commission was conscious of the need for common approach when at para 23 of the impugned order it observed as under-

*“Any other interpretation will also impinge on the policy of common approach on the matters of tariff of the generating companies supplying electricity to more than one State enshrined in clause (b) of subsection (1) of Section 79.”*

16. We may also point out that the Appellate Tribunal in its above judgment has interpreted the scope of clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003 in the following words:

*“40. On an analysis of Section 79(1) (b), in respect of generating companies other than those owned or controlled by Central Government falling under Section 79(1)(a), if a generating company enter into or otherwise has a composite scheme for generation and sale of electricity in more than one State, the fixation of tariff may arise in the hands of Central Commission. If the sale is within the State by the generator, then it follows that the Central Commission has no jurisdiction. If the generating company enters into or otherwise has composite scheme for generation and sale, in more than one state then the Central Commission may regulate the tariff of such generating company. In this respect it is useful to refer to*

*specific stand taken by the 1<sup>st</sup> respondent in its reply, which would go to show that the 2<sup>nd</sup> respondent is at liberty to establish a generating station and sell power to any licensee including electricity traders or a consumer in accordance with Section 10 of the Act, in which case the comfort of “in principle acceptance” of the project capital cost as per order dated 02.08.2006 will not be available and tariff will be determined in accordance with law applicable at the time of commercial operation of the generating station.”*

17. The Appellate Tribunal has held that when the sale by a generating company is within the State, this Commission has no jurisdiction. The Appellate Tribunal has further held that if the generating company enters into or otherwise has the composite scheme for generation and sale of power in more than one State, this Commission has jurisdiction to regulate the tariff. This Commission, as a consequence of an elaborate discussion in the impugned order has held that Adani Power Ltd, as a generating company, has the composite scheme for generation and sale of electricity in more than one State and accordingly, is amenable to jurisdiction of this Commission under clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003. When seen in the light of the judgment of the Appellate Tribunal as a whole, we find that there is no conflict between the judgment and the impugned order.

18. The Review Petitioners in their written submissions referred to the order dated 29.3.2006 in Petition No 103/2005. At the hearing learned counsel for the Review Petitioners drew this Commission’s attention to the following paras of the said order dated 29.3.2006:

*“28. A regards the interpretation of the expression “composite scheme” as provided in clause (b) of sub-section 1 of section 79(1) (b) of the Electricity Act, 2003, although the expression has not been defined in the Act, the Commission is of the view that ‘composite scheme’ is one in which a generating station is originally conceived for the purpose of meeting the power requirements of more than one State. The generating station could be set up in one State but the beneficiaries would be pre-identified and be in more than one State. Traditionally the central*

*generating stations have been set up as 'composite scheme'. Such generating stations had, at their very inception, inter-State beneficiaries identified and consequently the sale from such stations involved more than one State.*

*29. In this context, it would be relevant to discuss the general approach to grant of jurisdiction of the CERC across the Act and also specifically, in the context of the two clauses (a) and (b) of sub-section (1) of section 79(1) of the Act. The basis of CERC's jurisdiction is 'inter-State' operation. Under clause (a) of sub-section (1) of section 79 of the Act, thus the powers of fixation of tariff of Central Government owned generating companies were vested in CERC largely because such generating stations were inter-State in nature, with clearly identified beneficiaries, from the very beginning, in more than one State. Clause (b) of sub-section (1) of section 79 of the Act is a complementary provision for clause (a) of the said section, with the difference that clause (a) covers the Central Government owned generating stations while clause (b) covers primarily private projects. This follows that the expression 'composite scheme for generation and sale of electricity in more than one State' in clause (b) of sub-section (1) of section 79(1) of the Act should be interpreted to mean a composite scheme on lines of central generating companies where the generating stations were envisaged from the very beginning to have generation and sale in more than one State.*

*30. It also follows from the above that that a composite scheme is an inter- State scheme under which tariff applicable to all the beneficiaries of a project would also be the same. However, in the case of five inter-state hydro plants of UJVNL in question, it has been submitted by the petitioner in its affidavit dated 19.12.2005 that the agreement specifies that UJVNL will supply 25% of the electricity generated in Dhakrani, Dhalipur, Chibro and Khodri plants and 20% of the electricity generated in Kulhal plant to HPSEB at costs, i.e. excluding returns (excluding cost of servicing debt, return on equity and taxes). Hence the electricity supplied to HPSEB is at a lower rate than that for UPCL”.*

*31. In our opinion therefore, the hydro-stations in question do not qualify to be a 'composite scheme', as required under clause(b) of sub-section (1) of section 79(1) (b) of the Act.”*

19. In the above case, certain hydro power generating stations were established in the unified State of Uttar Pradesh based on an agreement dated 21.11.1972 between the State Governments of Uttar Pradesh and Himachal Pradesh. Under the Agreement, the State Government of Himachal Pradesh was given a fixed percentage of share in the electricity generated at the cost of generation in lieu of utilization of waters contributed partly from the catchment areas in Himachal Pradesh. The arrangement for supply of electricity to the State of Himachal is akin to barter arrangement The

Commission took into account the fact that the power was being supplied at the cost of generation which was at rates lower than the rates at which power was being supplied to the State of Uttar Pradesh originally and subsequently the State of Uttranchal (now Uttarakhand). This Commission found that supply of electricity to the State of Himachal Pradesh did not involve “sale” as it was in exchange of the rights relinquished by the State of Himachal Pradesh in the catchment areas. In view of the peculiar facts of that case, this Commission held that the generating stations in question were not covered under the composite scheme for generation and sale of electricity in more than one State. It also bears notice that the said order dated 29.3.2006 proceeds on the premise that the Central generating stations are envisaged to have generation and sale in more than one State from the very beginning. It is, however, a matter of common knowledge that a number of generating stations owned by NTPC Ltd, a Central Government undertaking, supply power to one State, for example, Faridabad TPS in Haryana, Simhadari TPS in Andhra Pradesh, etc. In the Central sector too there are generating stations such as Kayamkulam Combined Cycle Power Project, which were originally conceived for supply of power to one State but over a period of time have started supplying power to more than one State. Therefore, the very factual basis considered in the order of 29.3.2006 is not beyond a reasonable doubt. It is also to be noted that the said order confines its discussion in the context of the “generating station” and not in the context of “generating company”, as per clause (b) of sub-section (1) of Section 79 of the Electricity Act. For the purpose of examination of the question of jurisdiction, this Commission has to consider the generating company as a whole, and not the individual generating stations in view of clause (b) of sub-section (1) of Section 79 of the Electricity Act. In case of Adani Power Ltd it is on record that as a generating company

it has established and is in the process of establishing generating stations in different States. Therefore, Adani Power Ltd as a generating company is amenable to jurisdiction of this Commission by virtue of clause (b) of sub-section (1) of Section 79 of the Electricity Act. In view of the peculiar facts of the earlier case, the Review Petitioners cannot draw any sustenance from this Commission's order dated 29.3.2006 *ibid*.

20. Learned counsel for the Review Petitioners then referred to order of this Commission dated 16.5.2012 in Petition No 20/2012 (GMR Kamalanga Energy Ltd Vs Grid Corporation of Orissa Ltd). The petitioner, GMR-Kamalanga Energy Limited had filed the petition under Section 62 and clause (b) of sub-section (1) of Section 79 of the Electricity Act for approval of provisional tariff for sale of electricity to Grid Corporation of Orissa for first phase of 3 x 350 MW Kamalanga Thermal Power Plant. This Commission after considering the scope of clause (b) of sub-section (1) of Section 79 and clause (a) of sub-section (1) of Section 62 noted that this Commission would have the jurisdiction to determine the tariff of the generating company / generating stations which have a composite scheme for generation and sale of electricity in more than one State to distribution licensees. This Commission declined to approve the provisional tariff in that case since the sale by the petitioner was in one State, the State of Odisha. As the petitioner therein had urged that it was to supply power to other States as well, this Commission granted liberty to the petitioner to approach this Commission for determination of tariff of the generating station when the petitioner entered into or otherwise had a composite scheme for generation and sale of electricity to the distribution licensees in more than one State. The concluding para of the order is extracted below:

“19. In the circumstances, the present petition is dismissed as not maintainable with liberty to file an appropriate application before this Commission for determination of tariff of the generating station as and when the petitioner enters into or otherwise has a composite scheme for generation and sale of electricity in more than one State to distribution licensees.” (Emphasis added)

21. This Commission thus, while making the order dated 16.5.2012 *ibid* was clearly of the opinion that a generating company could enter into or have the composite scheme at any stage, even subsequent to commissioning of a part of the generating station and that it was not necessary for the generating company to have the composite scheme from the beginning. In the ultimate conclusion there is no inconsistency between the decisions arrived at in the order dated 16.5.2012 *ibid* and the impugned order and the two orders are in complete harmony.

22. Lastly, learned counsel for the Review Petitioners referred to the order of this Commission dated 11.1.2010 in Petition No 109/2009 filed by Torrent Power Ltd. The specific portion of the order on which reliance was placed is extracted under.

“8. We are of the view that the non-operationalisation of PPA between the petitioner and respondent Nos.3 and 4 with regard to the fulfilment of conditions of PPA/PSA or the scheduling of MP's share of power is outside the scope of the present petition which has been filed for determination of tariff of the generating station which needs to be decided as per the terms and conditions of the PPA/PSA. It is however observed that under Section 79(1)(b) of the Electricity Act, 2003, this Commission has been vested with the function to regulate the tariff of the generating company other than those owned and controlled by the Central Government if such generating company enter into or otherwise have a scheme for generation and sale of electricity in more than one State. In order that the tariff determined by this Commission remains applicable to the generating station, it is necessary that the petitioner should take necessary steps to maintain its inter-State character as provided in the Act.”



23. In the above case, Torrent Power Ltd was supplying electricity to more than one State, these States being the State of Gujarat and the State of Madhya Pradesh when it approached this Commission for approval of tariff. There is nothing in the above order to suggest, even remotely, that the decision therein is at variance with the decision in the impugned order. This Commission has not deviated from the binding view of the Appellate Tribunal or its own previous orders while deciding the question of jurisdiction by the impugned order.

24. In view of the above discussion, we conclude that there is no error of fact or law, apparent on the face of record. We do not find any justification for review of the impugned order. Accordingly, the review petition is devoid of merits and is accordingly dismissed.

*Sd/-*  
**(M Deena Dayalan)**  
**Member**

*Sd/-*  
**(V. S. Verma)**  
**Member**

*Sd/-*  
**(S. Jayaraman)**  
**Member**

*Sd/-*  
**(Dr. Pramod Deo)**  
**Chairperson**