Rajasthan Electricity Regulatory Commission

Petition No. RERC-2128/2023

Petition filed under Section 86(1)(f) and other applicable provisions of the Electricity Act, 2003 for adjudication of disputes with respect to excess payment made by the Petitioners to the Respondent on account of payment towards energy charge (principal + interest) and change in law and respective adjustments in favour of the Petitioner.

Coram:

Dr. B. N. Sharma, Chairman
Shri Hemant Kumar Jain, Member
Dr. Rajesh Sharma, Member

Petitioners :

1. Rajasthan Urja Vikas Nigam Limited (RUVNL)
2. Jaipur Vidyut Vitran Nigam Limited (JVVNL)
3. Ajmer Vidyut Vitran Nigam Limited (AVVNL)
4. Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)

Respondent : Adani Power Rajasthan Limited.

Date of hearing : 04.07.2023 & 01.08.2023

Present :

1. Sh. Bipin Gupta, Advocate for Petitioner RUVNL.
2. Sh. Kartik Seth, Advocate for Petitioner Discoms.
3. Sh. Amit Kapur, Advocate for Respondent.

Date of Order: 01.09.2023

ORDER

1. Rajasthan Urja Vikas Nigam Ltd. and Discoms (hereinafter referred as "Petitioners"), have filed the instant Petition Under Section 86(1)(f) and other applicable provisions of the Electricity Act, 2003 for adjudication of disputes between the Petitioner and the Respondent with respect to excess payment made by them to the Respondent on account of payment towards energy charge (principal + interest) and change in law and respective adjustments in favour of the Petitioners.

2. Notice was issued through Online Portal to Respondent to file reply to the petition. Accordingly, M/s Adani Power Rajasthan Limited (APRL) submitted its reply on 10.07.2023, RUVNL submitted its rejoinder on 31.07.2023. Petitioners and Respondent APRL have also filed written submissions.

3. The matter was heard finally on 01.08.2023. Sh. Bipin Gupta, Advocate, appeared for the Petitioner RUVNL and Sh. Kartik Seth, Advocate appeared for Petitioner Discoms. Sh. Amit Kapur, Advocate, appeared for the Respondent.

4. Petitioners in its petition, rejoinder, written submission and during hearing have submitted as under:

4.1. In 2009, a competitive bidding process was initiated for meeting the power requirement of Rajasthan. The Respondent participated in the bidding process and sought qualification based on the conditions specified in Clause 2.1.2.2 (b)(ii) in the RFP and submitted a Fuel Supply Agreement for 50% of the quantity of imported coal required for a term of 5 years. The Respondent, for the purpose of bid qualification, in terms of Clause 2.1.2.2 (b) (ii) of the RFP, submitted the Coal Supply Agreement dated 25.06.2009 executed with M/s. Adani Enterprises Limited which was valid for a period of 5 years and for a capacity of 50% as required under Clause 2.1.2.2 (b)(ii). Although the Respondent did not have any allocation of domestic linkage coal, it submitted tariff based on the domestic linkage coal.

4.2. Respondent, APRL was selected through a tariff based competitive bidding process initiated by the Petitioner/ power distribution companies of Rajasthan as per guidelines issued by Ministry of Power, Government of India under the provision of Section 63 of Electricity Act, 2003. The Petitioner and Respondent had entered into a Power Purchase Agreement dated 28.01.2010 ("PPA").

4.3. Disputes arose between the parties ever since commissioning of the Respondent's power plant in the year 2013 and commencement of power supply for the issues pertaining to the shortage and/or non-availability of domestic linkage coal, and use of imported coal by the Respondent for generation of power at its Kawai Power Project and compensation sought by the Respondent on the grounds of change in law.

4.4. The Respondent on 22.04.2013 filed a petition bearing Petition No. RERC-392/13 before this Commission claiming reliefs on the tariff payable under the PPA. The primary grievance in the petition was that since the promulgation of Indonesian Regulations, which had impacted the coal prices, the tariff payable under the PPA had become unviable and therefore the same needs to be adjusted to make the project viable. It was also claimed in the petition that the Respondent assumed that they would get a coal linkage which they did not get and therefore they were using imported coal for the entire plant capacity which was not envisaged by the Respondent.

4.5. The Commission allowed petition in part and issued its Order on 17.5.2018. Commission directed the Respondent to furnish relevant documentary evidence as required by the Petitioner for computation of compensation on account of shortfall and/or non-availability of domestic linkage and directed the Petitioner to make computation of compensation and make payment to the Respondent.

4.6. The methodology suggested by the Respondent to the Commission in its I.A. No. 6 in Petition No. 392/2013 had not been accepted by the Commission. It is evident from the Order dated 08.01.2019 of the Commission wherein it held that its Order dated 17.5.2018 is clear enough and thus, there is no need for any clarification.

4.7. Challenging the Order dated 17.05.2018, both the Petitioner and the Respondent filed cross-appeals before the Hon'ble Appellate Tribunal for Electricity (hereinafter "APTEL") bearing Appeal No. 202 of 2018 and Appeal No. 305 of 2018 respectively. The Petitioner challenged the whole of the Order dated 17.05.2018 on the ground that there was no change in law which would have impacted the Respondent herein. On the other hand, the Respondent challenged it on the ground that the Commission restricted the relief of change in law from the date of commercial operation till the date of the Respondent entering into a Fuel Supply Agreement (FSA) and that the Commission denied the claim of carrying cost to the Respondent.

4.8. The Hon'ble APTEL disposed of the appeals vide final judgment and Order dated 14.09.2019 wherein it dismissed the Appeal no. 202 of 2018 filed by the Petitioner herein while holding that the claims of the Respondent were covered under the law and further allowed the claims of the Respondent without any computation or adjudication. Hon'ble APTEL partly upheld this Commission's Order dated 17.5.2018 and partly set it aside to the extent of findings and directions set out in para 14.1 to 14.4 of the judgment as under:

"14.1 In view of the discussions and reasoning mentioned hereinabove, we hold that bid of Adani Rajasthan was based on domestic coal and accordingly covered under the Change in Law event in terms of PPA and the judgment of Hon'ble Supreme Court in Energy Watchdog case. Further, Adani Rajasthan is also entitled for Change in Law under the Shakti Scheme as well as payment towards carrying cost.

14.2 Rajasthan Discomsare directed to pay the amount of Change in Law compensation, as approved herein, along with applicable Carrying Cost by duly verifying the relevant supporting documents for fuel cost and as per applicable Tariff Regulations for operating parameters. Since Adani Rajasthan has already incurred the costs in procuring alternate coal and supplying power to the Rajasthan Discoms using such coal, equity requires that the compensation payments for the period up to the date of this order be made expeditiously.

14.3 We are informed that Rajasthan Discoms have already paid 50% of the Change in Law claim approved by the RERC, pursuant to the order of the Hon'ble Supreme Court. Accordingly, Rajasthan Discoms are directed to verify the documents submitted by Adani Rajasthan and make balance 50% payment along with Carrying Cost within two months from the date of this Judgment & order.

14.4 For the Change in Law claim pertaining to the period after the grant of coal linkage under the SHAKTI Policy, Rajasthan Discoms shall make payment along with Carrying Cost to Adani Rajasthan within three months of it submitting the claim along with the requisite supporting documents."

4.9. The directions issued by the Commission in its Order dated 17.5.2018 were never challenged by either of the parties before the Hon'ble APTEL. Further, Hon'ble APTEL in its judgement dated 14.9.2019 directed the Petitioner to verify the claims of the Respondent and make payment to the Respondent. Both RERC and APTEL at this juncture had issued directions to the Petitioner to verify the claims of the Respondent and make payments to the Respondent.

4.10. After issuance of the Order by the Commission, the Respondent had submitted its claims totaling Rs. 5,130.92 crore towards additional expenditure incurred on procurement of alternate coal and the Petitioner had filed a stay application before Hon'ble APTEL. In the meantime, Hon'ble APTEL rejected the stay application of the Petitioner herein and passed an Order to make payment of 70% of the compensation claimed/demanded by the Respondent as provisional compensation within two weeks from date of the receipt of the copy of the Order subject to the final decision in the main appeal (Appeal no. 202 of 2018). The Petitioner challenged the Order passed by the Hon'ble APTEL before the Hon'ble Supreme Court. On 29.10.2018, the Hon'ble Supreme Court reduced the payment to be made to the Respondent from 70% to 50% of the claim. Pursuant to the Supreme Court Order, the Petitioner made payment of Rs. 2,426.81 Crore to the Respondent.

4.11. It is pertinent to note that neither in the Order dated 17.05.2018 passed by this Commission nor in the Order of the Hon'ble APTEL, there was any determination of the amount payable by the Petitioner to the Respondent.

4.12. The Petitioner herein challenged the judgment dated 14.09.2019 passed by the Hon'ble APTEL before the Hon'ble Supreme Court of India in Civil Appeal No. 8625-8626 of 2019, on the grounds that the Respondent was not entitled to change in law compensation; that the claims of the Respondent were allowed without any computation and adjudication; that the State Commission had disallowed the carrying cost on the ground that the Respondent has not submitted the supporting documentation as required in the PPA as per Article 10.3.3 of the PPA.

4.13. The Hon'ble Supreme Court vide its final judgment and Order dated 31.08.2020 partly allowed the appeal of the Petitioner and directed the Petitioner to verify the documents submitted by the Respondent and make payment on the basis of the principles worked out by this Commission and Hon'ble APTEL. Relevant extracts of the judgement dated 31.08.2020 are reproduced hereinbelow:

> *"65. It was argued that the RERC and the APTEL had not determined the amount. It is apparent that the principle has been worked out by the RERC as well as the APTEL. The quantification directions have been issued to Rajasthan Discoms to verify the documents submitted by APRL and make payment in terms of the judgment and order. Nothing further was required to be done by the RERC as well as the APTEL."*

4.14. The Petitioner herein filed a Review Petition bearing Review Petition (C) No. 1811-1812 of 2020 against Order dated 31.08.2020 passed by the Hon'ble Supreme Court and challenged the methodology which was to be considered for making payment to Respondent. Review petition was dismissed vide Order dated 02.03.2021.

4.15. It is pertinent to submit here that directions issued by this Commission in its Order dated 17.5.2018 were never challenged by either party even before the Hon'ble Supreme Court. Hence, it is abundantly clear from above-mentioned Order of this Commission & judgements of the Hon'ble APTEL and Hon'ble Supreme Court that:

- The Respondent is entitled to seek compensation for shortfall in domestic linkage coal under the PPA
- Principles for computation of compensation is decided by both RERC and APTEL

- The Petitioner had to verify the claims raised by the Respondent and make payments to the Respondent for the shortfall in the domestic linkage coal.
- Principle approved for computation of the compensation amount is:

  "Change in Law relief = Actual landed cost of alternate coal as certified by Auditor – landed cost of Domestic Linkage coal"

4.16. Pursuant to the judgement of the Hon'ble Supreme Court, the Respondent gave the Petitioner a unilateral computation of Rs. 10,008.05 Crores for the period "May 2013 to January 2018" and Rs. 1,244.07 Crores for the period "February 2018 to March 2021" aggregating to Rs. 11,252.12 Crores. However, the Respondent has been claiming the compensation for the period thereafter also.

4.17. Petitioner had been calling upon the Respondent to furnish the requisite documents, details and information in support of its claim mentioned in the preceding paragraph, however no prompt response was received from the Respondent.

4.18. Based on the details furnished by the Respondent, the Petitioner herein undertook exercise for computation of the claim amount payable to the Respondent. Based on scrutiny of the documents, the Petitioner discovered that it had made excess payment to the Respondent. Thereafter, the Petitioner communicated the same to the Respondent vide letter dated 29.10.2021 and thereupon informed the Respondent that it is rather the Petitioner who is entitled to a payment of Rs. 506.19 crores paid in excess by the Petitioner and that the same was recoverable by the Petitioner under various adjustments. A detailed calculation was annexed in the said letter. The Respondent vide its letter dated 13.11.2021 submitted its reply to the above letter of the Petitioner.

4.19. The Respondent herein filed a Contempt petition bearing Contempt Petition (Civil) No. 877-878 of 2021 in Civil Appeal No. 8625-8626 of 2019 against the Chairman and Managing Director of Petitioner and respective Managing Directors of the Rajasthan state Discoms alleging disobedience of the Order dated 31.08.2020 passed by the Hon'ble Supreme Court in the Civil Appeal and sought immediate payment of the total outstanding principal amounts claimed by the Respondent in terms of its methodology.

4.20. The Hon'ble Supreme Court, vide its Order dated 25.02.2022 passed in the said contempt proceedings, directed the Petitioner to make payment to the Respondent of the principal amount minus Rs. 2,426.81 crores deposited in terms of interim Order dated 29.10.2018 (which would come to Rs. 3,048.63 crores) along with interest as per the applicable SBAR not exceeding 9% p.a. compounded annually from the date the amount became due till the date of actual payment within 4 weeks from the date of the Order.

4.21. On 24.03.2022, the Petitioner made the entire payment to the tune of Rs. 5,996.44 Crores as directed vide Order dated 25.02.2022. Details of the said payment are as follows:

Principal amount was = Rs. 5,475.40 crores
(-) Amount already paid = Rs. 2,426.81 crores
= Rs. 3,048.63 crores
+ interest @ 9% compounded annually till 23.3.22
= Rs. 2,947.81 crores
Total amount paid = Rs. 5,996.44 crores

4.22. The Petitioner in the above-mentioned contempt petition once again submitted to the court that it had made four adjustments from the claims raised by the Respondent which are necessary to arrive at final compensation amount the Respondent is actually entitled to. It was also reiterated that the Petitioner is entitled to recover the excess payment made by the Petitioner.

4.23. With respect to the issue of claims and adjustments of the Rajasthan utilities against the Respondent, the Hon'ble Supreme Court vide its Order dated 19.04.2022 observed that if so advised and if entitled under the law, the Petitioners can raise the said issue. Relevant extracts from the Order dated 19.04.2022 are as follows:

> *"With regard to the last issue raised by the respondents, which is to the effect that the claim of the Rajasthan Utilities against the petitioner outside the judgment dated 31.08.2020 be permitted to be made, we would only like to observe that the same cannot be a matter to be considered in a contempt petition and as such neither we are inclined to grant any such relief nor stop them from raising any such issue, if the respondents are so advised and found entitled under the law."*

4.24. Petitioner has filed the present petition to seek refund of the excess payment on account of Energy Charges which is equivalent to Fuel cost equivalent to Landed fuel cost of domestic coal as quoted by the APRL in its Bid and PPA as entered between the parties. Since the entire actual fuel cost has already been paid by the Petitioner to the Respondent towards compensation for procurement of coal from alternate sources and interest thereon. The payment made towards Energy charges after the payment of entire alternate fuel cost is double payment of Fuel Cost which after adjustments the claimant is entitled to refund back from Respondent. The Petitioner has raised the following issues in this petition:-

(i) Issue No. 1:- Excess payment made as the energy charges under the PPA which is equivalent to Fuel Cost/landed fuel cost of domestic coal under the PPA and has been paid in excess against the total claim of Respondent on account of fuel cost.

(ii) Issue No. 2:- Adjustments made on account of cost of alternate coal and plant operational parameters and adjustment on account of scheduled energy versus actual energy.

(iii) Issue No. 3:- Adjustment for power supplied from other sources.

(iv) Issue No. 4: Inter-plant transfer of coal .

4.25. In light of the said Order dated 19.04.2022, the Petitioner has approached the Commission to seek refund of Rs. 4648.93 Crore**.** The above-mentioned amounts are for the period upto September-2022. Based on the same principles and without prejudice, the Petitioner will claim refund for the subsequent periods. Further the interest on this amount may also be ordered to be paid.

4.26. Respondent is constantly forcing Petitioner to make payment of all its claims without putting itself through scrutiny of the claims. Respondent has made it a practice to approach the banks seeking invocation of 'Letter of Credit' issued by the Petitioner securing payment of regular monthly bills as per PPA provisions and/or forcing expeditious payment through PRAAPTI portal of Ministry of Power.

4.27. Petitioner needs full information all requisite information for computation of the claims raised by the Respondent to ensure that there was shortfall in the domestic coal quantity and that imported coal is used to meet this shortfall only. Petitioner has all rights under the law to scrutiny the claims raised by the Respondent.

4.28. It is the responsibility of the Respondent to furnish the requisite information, details and documents sought by the Petitioner and render full co-operation for computation of the claim amounts.

4.29. Total amount claimed by Petitioner under the petition are summarised as under:

S.N.	Particulars	Amount in (Rs. Cr.)
1.	Cost of domestic linkage coal equivalent to energy charges.	2392.01
2.	Adjustments-(Cost of SHR, Scheduled and Actual Energy and FOB & Ocean Freight)	1574.56
3.	Adjustments (Towards alternate source supply)	133.68
4.	Adjustments (Inter Plant Transfer)	548.68
	Total Amount	**4648.93**

4.30. Respondent has not responded to the present petition on merits of the case as it has no valid case and response to the legitimate claims raised by the Petitioner herein. The Respondent is attempting to escape its turn to reply to the present petition on merits. The excess amount paid by the Petitioner, if not recovered, shall cause a huge loss to the public exchequer which includes the hard earned money of the public.

4.31. Further, in the Commission's Order dated 17.05.2018 (passed in Petition No. 392 of 2013), it is merely recorded that the Respondent herein had proposed a methodology for grant of relief under Change in Law, however, there is no whisper of acceptance of such methodology in the said Order. In any case, the Petitioner herein is not challenging the methodology but only the unilateral computation given by the Respondent as per which the Respondent has extorted over and above the actually payable amounts. Thus, by way of the present petition, the Petitioner is seeking refund of the excess amounts paid as energy charges.

4.32. Furthermore, Respondent is misleading this Commission by referring to the decision of the Hon'ble APTEL and the Hon'ble Supreme Court as the dispute in the present petition pertains to refund of excess amount paid by the Petitioner to the Respondent and several adjustments in favour of the Petitioner to that effect. It is clarified that it is the computation that is being challenged by way of this petition which was patently unilateral and on the basis of which the Respondent was made payments over and above actually payable amount. On the issue of maintainability the Petitioners have placed reliance on Vithalbhai (P) Ltd. v. Union Bank of India (2005) 4 SCC 315.

4.33. In view of above, the Petitioner has prayed to the Commission to:

(i) Direct Respondent to first establish shortfall in domestic linkage coal before raising claims for additional cost of alternate coal and furnish all document as required by Petitioner for verification of the claims raised.

(ii) The Energy charges mentioned in PPA as per RFS may be declared to be equivalent to fuel cost and further equivalent to landed cost of domestic fuel.

(iii) Direct the Respondent to refund Rs. 4648.93 Crore already paid by the Petitioner.

(iv) Direct Respondent to refund above mentioned amounts within 30 days of order of this commission along with applicable interest.

5. Respondent in its reply, written submission and during hearing has submitted as under:

5.1. Rajasthan Discoms filed the present Petition inter alia seeking a direction to Adani Power Ltd. (erstwhile Adani Power Rajasthan Ltd.) (APL) to refund Rs. 4638.93 Cr. towards certain adjustments qua Change in Law compensation paid to APL on account of domestic coal shortfall, claims since 22.04.2013 both for Change in Law and restitution. They seek this Commission to pass orders to re-open and go behind the direction of Hon'ble Supreme Court dated 25.02.2022 in contempt proceedings. The petition deserves to be dismissed as not maintainable

5.2. In the Petition, Rajasthan Discoms primarily are questioning the methodology approved for Change in Law compensation and seek to re-open the entire gamut of Change in Law proceedings which attained finality after five rounds of judicial proceedings viz.: -

(i) RERC Order dated 17.05.2018: Relying upon the ratio of Hon'ble Supreme Court's Judgment in Energy Watchdog & Ors. v. CERC & Ors. (2017) 14 SCC 80 ("Energy Watchdog"), this Commission by Order dated 17.05.2018 in APRL v. JVVNL in Petition No. 392 of 2013 allowed APL to recover Change in Law compensation from Rajasthan Discoms in view of domestic coal shortfall due to NCDP, 2013. While doing so, RERC approved the methodology for computing Change in Law compensation viz. 'Actual landed cost of alternate coal as certified by Auditor - Landed cost of domestic linkage coal' as proposed by APL and NOT objected by Rajasthan Discoms.

(ii) APTEL Judgment: Hon'ble Appellate Tribunal for Electricity ("APTEL") upheld this Commission's Order by Judgment dated 14.09.2019 reported as 2019 SCC OnLine APTEL 98 alongside, observing inter alia that (i) Rajasthan Discoms had NOT objected to the methodology for computing Change in Law compensation proposed by APL before RERC, (ii) that it was not permissible to raise such issues disputing the methodology for computing Change in Law compensation at appellate stage, and (iii) that the methodology for computing Change in Law compensation adopted by RERC was correct viz.

(iii) SC Judgment: On 31.08.2020, Hon'ble Supreme Court upheld Hon'ble APTEL's Judgment in JVVNL & Ors. v. APRL & Anr. reported as 2020 SCC OnLine SC 697 including the findings qua methodology for computing Change in Law compensation.

Pertinently, Rajasthan Discoms raised similar contentions before the Hon'ble Supreme Court (as raised in the present Petition) qua methodology. The SC Judgment noted and considered Rajasthan Discoms' submissions, to uphold the methodology adopted by RERC & Hon'ble APTEL, in itself, rejecting the contentions of Rajasthan Discoms with respect to methodology for computing Change in Law compensation. Moreover, Hon'ble Supreme Court's observation that "nothing further was required to be done by this Commission as well as APTEL" underscores that the issue of methodology for computing Change in Law compensation has been settled and nothing more was left to be decided or adjudicated upon.

(iv) SC Review: On 02.03.2021, Hon'ble Supreme Court dismissed the Review Petition filed by Rajasthan Discoms (R.P.(C) No. 1811 – 1812 of 2020) against the SC Judgment.

(v) Contempt Proceedings: APL was constrained to file contempt petition against Rajasthan Discoms in view of their wilful non-compliance of the directions in SC Judgment to pay Change in Law compensation. The following is noteworthy.

In Counter Affidavit dated 30.12.2021 and Affidavit dated 04.02.2022 filed in contempt proceedings, Rajasthan Discoms again raised disputes qua the methodology as raised in the present Petition.

By Order dated 25.02.2022, Hon'ble Supreme Court, after careful analysis of all pleadings, including Rajasthan Discoms' afore-mentioned Affidavit dated 04.02.2022, again upheld the methodology for Change in Law compensation to hold(1) Rajasthan Discoms liable for contempt, (2) the methodology cannot be reopened at this stage,(3) quantified a particular amount, and (4) directed Rajasthan Discoms to pay such amount to APL.

5.3. Hon'ble Supreme Court has rejected all efforts of Rajasthan Discoms to re-agitate the settled questions as to Change in Law compensation methodology to direct them to complete the payment within four weeks. The direction was absolute and unqualified in nature without subject to any further assessment or question.

5.4. By Order dated 19.04.2022, Hon'ble Supreme Court noted that Rajasthan Discoms had paid Rs. 5996.44 crores to APL. Rajasthan Discoms argued that for their claims beyond the SC Judgment, they may be permitted to raise them separately. On this issue, Hon'ble Supreme Court did NOT grant any relief, nor stopped Rajasthan Discoms to raise any issue 'outside' the SC Judgment, if so advised. It is submitted that all issues raised by Rajasthan Discoms in the present Petition fall squarely under the ambit of the SC Judgment. Accordingly, Rajasthan Discoms cannot take umbrage of this observation of Hon'ble Supreme Court to re-agitate their claims all over again.

5.5. By re-agitating their contentions qua methodology for Change in Law compensation, Rajasthan Discoms are seeking to re-open closed chapters, a practice which has been repeatedly condemned by Hon'ble Supreme Court for causing undue interest/carrying cost/LPS burden on consumers. In this regard, reliance is placed on the following judgements: (a) Order dated 09.03.2021 in Nabha Power vs. PSPCL in Contempt Petition Nos. 1174-1177 of 2019 in Civil Appeal No. 179 of 2017. (b) MSEDCL v. APML& Ors. 2023 SCC OnLine SC 233 dt. 03.03.2023. (c) GMR Warora Energy Limited vs. CERC & Ors. 2023 SCC OnLine SC 464 dt. 20.04.2023, Rajasthan Discoms was one of the Discoms involved in this batch.

5.6. In compliance of the directions of Hon'ble Supreme Court in the above judgment, Ministry of Power ("MoP") on 21.06.2023, called upon all stakeholders of the power sector including Discoms to avoid unnecessary and unwarranted litigation.

5.7. On 28.06.2023, MoP also notified draft Electricity (Amendment) Rules, 2023 wherein Rule 25 is proposed to be inserted mandating that if an Order of an Appropriate Commission is appealed, then the Appellant is required to pay at least 75% of the payable amount in case of matters related to Change in Law, and at least 50% of the payable amount in remaining matters. Para 3(iv) of the MoP Notification dated 28.06.2023 underscores that the underlying intent to introduce proposed Rule 25 is to avoid unnecessary and unwarranted litigation.

5.8. Due to the long-standing legal battle at the instance of Rajasthan Discoms, Rajasthan Discoms have already incurred interest amounts to APL higher than the principal amounts at the cost of end consumers with a tariff shock. Any further delay by Rajasthan Discoms in making payments as directed by Hon'ble Supreme Court, alongside being contemptuous, would result in an incremental interest liability on consumers, thereby, seriously jeopardising consumers' interest.

5.9. Rajasthan Discoms' Petition is barred by doctrine of res-judicata and ought to be dismissed. Since the issue qua methodology has been decided by five judicial pronouncements as captured above. Rajasthan Discoms cannot reagitate the said issue. In this regard, the following judgments have been relied upon; (a) State of Karnataka v. All India Manufacturers Organisation, (2006) 4 SCC 683, (b) Direct Recruit ClassII Engg. Officers vs. St. of Maharashtra (1990) 2 SCC 715.

5.10. Rajasthan Discoms' Petition also ought to be dismissed as it seeks this Commission to sit over Appeal/Review of the findings of SC Judgment and directions of Hon'ble Supreme Court in Contempt Proceedings. In *A. V. Papayya Sastry* v. *Govt. of A.P.*(2007) 4 SCC 221, Hon'ble Supreme Court held:-

> *"38. The matter can be looked at from a different angle as well. Suppose a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/ authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order."*

5.11. Rajasthan Discoms as Appellants raised identical objections to APL's entitlement to Change in Law reliefs before Hon'ble Supreme Court, and which has been rejected by the Hon'ble Supreme Court. As per settled position of law, Rajasthan Discoms cannot now reagitate identical objections before this Commission. In this regard, the following judgments are noteworthy:

(a) In Union of India v. Nanak Singh AIR 1968 SC 1370, the Hon'ble Supreme Court held that where a petition was dismissed on one ground, the other ground upon which also the petition was based, shall be deemed to have been rejected even if there was no express finding in that regard.

(b) Gulab- Chand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153, the Hon'ble Supreme Court.

(c) Yashwant Sinha & Ors. v. Central Bureau of Investigation & Anr. (2020) 2 SCC 338,

5.12. In view of the above, the Respondent has prayed to dismiss the Petition as not maintainable.

Commission's view

6. Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioners and Respondent.

7. Petitioners have filed this petition for adjudication of dispute with respect to excess payment made by them to the Respondent on account of :

a) Excess payment made as the energy charges under the PPA which is equivalent to Fuel Cost/landed fuel cost of domestic coal under the PPA and has been paid in excess against the total claim of Respondent on account of fuel cost is Rs. 2392.01 Cr.

b) Adjustments made on account of cost of alternate coal and plant operational parameters and adjustment on account of scheduled energy versus actual energy is Rs. 1574.56 Cr.

c) Adjustment for power supplied from other sources is Rs. 133.68 Cr.

d) Adjustment for Inter-plant transfer of coal (IPT) is Rs. 548.68 Cr.

8. Per Contra Respondents raised the issue of maintainability and contended that Discoms primarily are questioning the methodology approved for Change in Law compensation. By doing so, Discoms are seeking to re-open and re-agitate the entire gamut of Change in Law proceedings including the methodology for computing the Change in Law compensation for domestic coal shortfall, which attained finality after five rounds of judicial proceedings at various judicial forums from RERC, APTEL upto Hon'ble Supreme Court after hearing Discoms extensively. Petition, therefore deserves to be dismissed as not maintainable.

9. It is observed that Petitioners have approached this Commission on the basis of Order dated 19.04.2022 passed by Hon'ble Supreme Court, whereas the Respondent has raised the issue of maintainability of the Petition.

10. To decide the maintainability of the petition, Commission has looked into the matter and the various Orders passed by Hon'ble Supreme court in the matter. The Petitioners have approached this Commission on the basis of directions issued by Hon'ble Supreme Court vide order dated 19.04.2022 which reads as under:

"With regard to the last issue raised by the respondents, which is to the effect that the claim of the Rajasthan Utilities against the petitioner outside the judgment dated 31.08.2020 be permitted to be made, we would only like to observe that the same cannot be a matter to be

considered in a contempt petition and as such neither we are inclined to grant any such relief nor stop them from raising any such issue, if the respondents are so advised and found entitled under the law."

11. Hon'ble Supreme Court vide above Order observed that for the issues outside 31.08.2020 they are not inclined to grant any relief nor stopping Petitioners herein from raising any such issue. Thus as per Order dated 19.04.2022 Petitioners can raise the issues which are outside the judgment dated 31.08.2020.

12. For deciding the maintainability of the petition, the only question before the Commission is to ascertain whether the issues in this petition are covered under the judgement dated 31.08.2020 or not.

13. We observe that three rounds of proceedings has taken place before Hon'ble Supreme Court vide Civil Appeal No. 8625-8626 of 2019, Review Petition (C) No. 1811-1812 of 2020 and Contempt Petition (Civil) No. 877-878 of 2021 and various directions have been passed by Hon'ble Supreme Court in these Appeals and judicial proceedings from time to time.

14. Hon'ble Supreme Court vide its Order dated 31.08.2020 in Civil Appeal No. 8625-8626 of 2019 has observed as under:

"65. It was argued that the RERC and the APTEL had not determined the amount. It is apparent that the principle has been worked out by the RERC as well as the APTEL. The quantification directions have been issued to Rajasthan Discoms to verify the documents submitted by APRL and make payment in terms of the judgment and order. Nothing further was required to be done by the RERC as well as the APTEL."

15. Thereafter, Petitioners filed a Review Petition bearing Review Petition (C) No. 1811-1812 of 2020 against Order dated 31.08.2020 passed by the

Hon'ble Supreme Court. Review petition was dismissed vide Order dated 02.03.2021.

16. Then, the Respondent filed a Contempt petition bearing Contempt Petition (Civil) No. 877-878 of 2021 in Civil Appeal No. 8625-8626 of 2019 alleging disobedience of the Order dated 31.08.2020 passed by the Hon'ble Supreme Court and sought immediate payment of the total outstanding principal amounts claimed by the Respondent. Hon'ble Supreme Court, vide its Order dated 25.02.2022 observed as under:

"9. Firstly, what we have to consider is only the effect of "change in law", which as per RERC, APTEL and this Court would be the actual landed cost of alternate coal/imported coal minus the landed cost of domestic linkage coal. The question of any claim which the respondents may have against the petitioner, is not an issue before us. As per the principle laid down by RERC and affirmed up till this Court, the petitioner has claimed an amount of Rs.5344.75 crores up to March, 2021. The said principle having been affirmed by the APTEL as well as by this Court and even in Review Petition, cannot be reopened now.It cannot be disputed that after March, 2021 also, the petitioner would be entitled to payment on the basis of the same calculation, which up to November, 2021 comes to Rs.130.69 crores. As such, the due amount up to November 2021 would be Rs.5344.75 + Rs.130.69 = 5475.44 crores. …

10. As such, considering the totality of facts and circumstances of this case, prima facie we are of the opinion that the respondents are liable for contempt for not complying this Court's order dated 31.08.2020. We thus direct the respondents to pay to the petitioner, the principal amount (as per the terms/norms laid down in the judgment of this court dated 31.08.2020) minus Rs. 2426.81 crores deposited by the respondents in terms of the interim order dated 29.10.2018…"

17. From above three rounds of proceedings which have taken place before Hon'ble Supreme Court vide Civil Appeal No. 8625-8626 of 2019, Review Petition (C) No. 1811-1812 of 2020 and Contempt Petition (Civil) No. 877-

878 of 2021 various directions have been passed by Hon'ble Supreme Court in these Proceedings from time to time.

18. It is evident that Commission is not an appropriate forum to interpret and decide about the findings and decisions of Hon'ble Supreme Court and therefore cannot decide that the contentions raised by the Petitioner in this petition falls outside the ambit of Order dated 31.08.2020 of Hon'ble Supreme or not.

19. We also observe that on the issue of Late Payment surcharge sought by the Respondent APL, in Order dated 19.04.2022 Hon'ble Supreme Court noted that they are not inclined to pass any further orders on the question of late payment surcharge and allowed the APL to raise its claim in this regard before an appropriate forum, for which the Respondent APL approached the Hon'ble Supreme Court in the miscellaneous diary No. 21994 of 2022 in Civil Appeal No. 8625-8626 of 2019.

20. On combined reading of Orders dated 31.08.2020 and 19.04.2022 passed by Hon'ble Supreme Court, we are of the considered view that the instant Petition filed before the Commission is not maintainable as the Commission is not an appropriate forum to decide whether or not the contentions raised by the Petitioner in this petition fall outside the ambit of Order dated 31.08.2020 of Hon'ble Supreme Court. However, Petitioners are at liberty to raise these issues before appropriate legal forum in terms of Order passed by Hon'ble Supreme Court dated 19.04.2022.

21. The petition is disposed of accordingly.

(Dr. Rajesh Sharma)	(Hemant Kumar Jain)	(Dr. B. N. Sharma)
Member	Member	Chairman