

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)

APL No. 165 OF 2025 & IA No. 869 OF 2025

**Dated: 8<sup>th</sup> August, 2025**

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Tamil Nadu Power Distribution Corporation Limited  
(formerly known as Tamil Nadu Generation and  
Distribution Corporation Limited) .... Appellant(s)

Versus

Central Electricity Regulatory Commission & Anr. .... Respondent(s)

Counsel on record for the Appellant(s) : Anusha Nagarajan  
for App. 1

Counsel on record for the Respondent(s) : Sanjeev K. Kapoor  
Divya Chaturvedi  
Saransh Shaw  
Srishti Rai  
Jai Dhanani  
for Res. 2

**ORDER**

IA No. 869 OF 2025  
(For interim relief)

The present appeal is filed against the order passed by the Central Electricity Regulatory Commission (“**CERC**” for short), in Petition No. 338/MP/2022 dated 22.03.2025, holding that the deduction made by the Appellant herein, for the period after September 2020 till March, 2024, was not in accordance with law. In terms of the said order, the 2<sup>nd</sup> Respondent herein raised an invoice claiming payment from October, 2020 till March, 2024. On the failure of the Appellant to make payment, the 2<sup>nd</sup> Respondent uploaded the said invoice on the Praapti Portal. The trigger date for regulation of power, for non-payment of the invoice, is

the 18<sup>th</sup> of August, 2025. It is in such circumstances that the Appellant seeks an interim order of stay of the impugned order, lest supply of power to them be regulated, after 18<sup>th</sup> August, 2025, for non-payment of the invoice amount.

In the Petition filed by the 2<sup>nd</sup> Respondent herein, claiming compensation on account of the occurrence of the change in law event as per Article 10.1.1 of the PPA dated 27.11.2013, the CERC passed an order on 29.03.2020, wherein it summarised its decision, under change in law during the operating period of the project, in the form of a table which reads as under:

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| <i>S.No.</i> | <i>Change in Law event</i>                                                                        | <i>Decision</i>                                                                    |
|--------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| <i>1.</i>    | <i>Increase in cost of coal on account of Change in Law events</i>                                |                                                                                    |
| <i>A.</i>    | <i>Contribution towards District Mineral Foundation and National Mineral Exploration Trust</i>    | <i>Allowed</i>                                                                     |
| <i>B.</i>    | <i>Increase in Surface Transportation Charges</i>                                                 | <i>Not Allowed</i>                                                                 |
| <i>C.</i>    | <i>Increase in Sizing Charges</i>                                                                 | <i>Not Allowed</i>                                                                 |
| <i>D.</i>    | <i>Increase in Clean Energy Cess</i>                                                              | <i>Allowed</i>                                                                     |
| <i>E.</i>    | <i>Increase in Chhattisgarh Environment Cess and Infrastructure Development Cess</i>              | <i>Allowed</i>                                                                     |
| <i>F.</i>    | <i>Change in the Components for Computation of Central Excise Duty leviable on Coal</i>           | <i>Allowed</i>                                                                     |
| <i>G.</i>    | <i>Benefits to be passed on to TANGEDCO for implementation of GST</i>                             | <i>Allowed</i>                                                                     |
| <i>H.</i>    | <i>Use of Blended or Washed Coal with Ash Content Not Exceeding 34% with effect from 5.6.2016</i> | <i>Liberty is granted to approach the Commission along with relevant documents</i> |
| <i>I.</i>    | <i>Additional Cost of sourcing alternate coal due to short supply of FSA Grade Coal from SECL</i> | <i>Allowed</i>                                                                     |
| <i>J.</i>    | <i>Increase in Royalty on Coal</i>                                                                | <i>Allowed</i>                                                                     |
| <i>K.</i>    | <i>Levy of Evacuation Facility Charges</i>                                                        | <i>Allowed</i>                                                                     |

|             |                                                                                                                                                                    |                                                                                    |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| <i>L.</i>   | <i>Increase in amount payable towards Niryat Kar</i>                                                                                                               | <i>Liberty is granted to approach the Commission along with relevant documents</i> |
| <i>M.</i>   | <i>Increase in amount payable towards the Central Sales Tax</i>                                                                                                    | <i>Allowed</i>                                                                     |
| <i>II.</i>  | <i>Increase in cost of transportation of domestic coal supplied by Coal India Limited and its subsidiaries, including SECL, on account of Change in Law events</i> |                                                                                    |
| <i>A.</i>   | <i>Increase in Service Tax on Railway Freight</i>                                                                                                                  | <i>Allowed</i>                                                                     |
| <i>B.</i>   | <i>Levy of Coal Terminal Surcharge</i>                                                                                                                             | <i>Allowed</i>                                                                     |
| <i>C.</i>   | <i>Levy of Busy Season Charges</i>                                                                                                                                 | <i>Allowed</i>                                                                     |
| <i>D.</i>   | <i>Increase in amount payable towards the Development Surcharge</i>                                                                                                | <i>Allowed</i>                                                                     |
| <i>III.</i> | <i>Carrying Cost</i>                                                                                                                                               | <i>Allowed</i>                                                                     |

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Thereafter, both the Appellant and the 2<sup>nd</sup> Respondent entered into an agreement on 21.01.2021 during the pendency of Appeal No. 22 of 2019 and batch filed by the Appellant herein against Bharat Aluminium Company Ltd (BALCO) and others. These Appeals related to issues which may, possibly, have a bearing on, if not being similar to those raised in, the present appeal. Subsequently, by order dated 12.08.2021, this Tribunal dismissed the said batch of appeals filed by the Appellant herein against the orders passed by the CERC in the case of BALCO and others.

The second Respondent herein filed Petition No. 338/MP/2022 seeking refund of the amount wrongly deducted by the Appellant along with applicable carrying cost towards change in law compensation contending, among others, that the agreement executed by them with the Appellant on 21.01.2021 was on account of a mistake of fact and was an agreement obtained by coercion. The CERC rejected the claim of the second Respondent-Petitioner of a mistake of fact and of the

agreement being vitiated by coercion. However, the CERC was of the view that the said agreement was applicable only till September, 2020 and not beyond and, consequently, the Appellant herein was faulted for having deducted amounts in terms of the said agreement beyond September, 2020. While the petition filed by the second Respondent herein relied on the judgment of this Tribunal in the case of BALCO and others, the CERC held in favour of the second Respondent-Applicant holding that the agreement which they had executed earlier was applicable only till September, 2020 and not beyond.

The Appellant herein filed Civil Appeal No. 4058 of 2022 against the order passed by this Tribunal in Appeal No. 22 of 2019 dated 12.08.2021 (ie in the case of BALCO) and, by an interim order passed on 20.10.2023, the Supreme Court granted stay of operation of the afore-said judgment of this Tribunal subject to the condition that the Appellant paid 25% of the disputed amount. The Supreme Court further observed that this direction would also apply to future payments, and made the interim order subject to the outcome of the Civil Appeal.

While the second Respondent claims that, since the agreement dated 21.01.2021 is vitiated by a mistake of fact and coercion, the Appellant is required to make payment from 2015 onwards, the submission urged on behalf of the Appellant is that the said agreement dated 21.01.2021 is not limited only for the period up to September, 2020, but would continue to operate even thereafter; and, consequently, the impugned Order, requiring the Appellant to pay amounts from October, 2020 onwards, must be stayed in its entirety till the appeal is finally heard and adjudicated. Further, while Mr. Sanjay Sen, Learned Senior Counsel appearing on behalf of the second Respondent, would contend that, since the Appellant had permitted the earlier order of the CERC dated 29.03.2020 to attain finality, they are not entitled for any interim relief, the submission of Mr. B.P. Patil, Learned Senior Counsel

appearing on behalf of the Appellant, is that the earlier order of the CERC is of no consequence since the parties had subsequently entered into an agreement on 21.01.2021. We are of the view that the afore-said rival contentions must await a final adjudication of the main appeal or the final decision of the Supreme Court in Civil Appeal No. 4058 of 2022.

Following the interim order passed by the Supreme Court in Civil Appeal No. 4058 of 2022 dated 20.10.2023, and in terms thereof, there shall be interim stay as sought for by the Appellant on condition that they pay the second Respondent 25% of the disputed amount for the period subsequent to September, 2020 and continue to make such payment during the pendency of the present appeal. Needless to state that the Appellant shall also be liable to pay the second Respondent LPS for the belated payment of 25% from the date it was due till the date of actual payment of arrears.

The IA is accordingly disposed of.

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Learned Senior Counsel on both sides agree that the issue involved in the present appeal is short. Let the appeal be included in the List of Short Matters, to be taken up from there for hearing in its turn.

(Seema Gupta)  
Technical Member (Electricity)

(Justice Ramesh Ranganathan)  
Chairperson

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