

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)

**RP No. 26 OF 2025 & IA Nos. 1731 & 1732 OF 2025**

**In**  
**Appeal No. 104 of 2019**

Dated : 1<sup>st</sup> December, 2025

Present: Hon'ble Ms. Seema Gupta, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**Swasti Power Private Limited**

(Formerly Swasti Power Engineering Ltd.)

Through its Authorised Signatory

Rakesh Harshvardhan Shah

Road No. 36, Jubilee Hills

Hyderabad – 500033

Email: [rakesh.s@greenkogroup.com](mailto:rakesh.s@greenkogroup.com)

... Petitioner(s)

*Versus*

**1. Punjab State Electricity Regulatory Commission**

Through its Secretary

SCO No. 220-21, Sector 34-A

Chandigarh, Punjab – 160022

Email: [secretarypsercchd@gmail.com](mailto:secretarypsercchd@gmail.com)

**2. PTC India Limited**

Through its Director

2<sup>nd</sup> Floor, NBCC Tower 15

Bhikaji Cama Place

New Delhi – 110066

Email: [cmd@ptcindia.com](mailto:cmd@ptcindia.com)

**3. Punjab State Power Corporation Limited**

Through its Chief Engineer, ARR  
The Mall, Old PSEB Building  
Patiala – 147001  
Email: [ce-arr-tr@pspcl.in](mailto:ce-arr-tr@pspcl.in)

... Respondent (s)

Counsel for the Petitioner(s) : Sanjay Sen, Sr. Adv.  
Parinay Deep Shah  
Shikha Ohri  
Kartik Sharma  
for App. 1

Counsel for the Respondent(s) : Amit Kapur  
Akshat Jain  
Avdesh Mandloi  
Anant Singh  
Shikhar Verma  
Sayan Ghosh  
for Rs. 2

### **ORDER**

#### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The Appellant/Petitioner is seeking review of the judgement of this Tribunal dated 22<sup>nd</sup> August, 2025 passed in Appeal No. 104 of 2019.
2. In the said appeal, the Appellant/Petitioner had assailed the order dated 15<sup>th</sup> January, 2019 passed by Punjab State Electricity Regulatory Commission (hereinafter referred to as "the Commission") in Petition No. 55 of 2017 filed by 2<sup>nd</sup> Respondent i.e. PTC India Limited. In the said impugned order, the Commission had:-

(a) *"Declared the letter dated 9<sup>th</sup> March, 2011 issued by  
Appellant for termination of power purchase agreement*

*(PPA) dated 24<sup>th</sup> August, 2005 executed between the Appellant and PTC as invalid;*

*(b) Declared the PPA dated 3<sup>rd</sup> July, 2009 executed between the Appellant and Uttarakhand Power Corporation Limited (UPCL) as vide ab initio;*

*(c) Directed Appellant to specifically perform its obligations under the PPA dated 24<sup>th</sup> August, 2005 executed with PTC.”*

3. This Tribunal had formulated following four issues for determination in the appeal :-

*(a) “Whether the Commission i.e. Punjab Electricity Regulatory Commission had jurisdiction to entertain the petition filed by PTC;*

*(b) Whether the letter dated 9<sup>th</sup> March, issued by the Appellant for termination of PPA dated 24<sup>th</sup> August, 2005 executed by it with PTC is legally valid;*

*(c) Whether the Commission was competent to declare the PPA dated 3<sup>rd</sup> July, 2009 executed between the Appellant and UPCL as vide ab initio;*

*(d) Whether the Commission's direction to Appellant to specifically perform its obligations under the PPA dated 24<sup>th</sup> August, 2005 executed with PTC is legally tenable."*

4. On issue No. (a), this Tribunal held that the Punjab Commission did not lack territorial jurisdiction to entertain the petition filed by PTC. On issue No. (b) the findings of the Commission to the effect that notice dated 9<sup>th</sup> March, 2011 issued by Appellant/Petitioner of termination of PPA dated 24<sup>th</sup> August, 2005 executed between the parties is not legally valid were affirmed. In so far as issue No. (c) is concerned, this Tribunal set aside the impugned order of the Commission to the effect it declared the PPA dated 3<sup>rd</sup> July, 2009 between the Appellant and UPCL as void ab-initio. On issue No. (d), the directions issued by the Commission to the Appellant to perform its applications towards PTC under PPA dated 24<sup>th</sup> August, 2005 were set aside.

5. According to the Review Petitioner, the judgement under review dated 22<sup>nd</sup> August, 2025 suffers from following errors apparent on the face of record.

*(a) "This Hon'ble Tribunal erroneously held that the Review Petitioner had not raised any objection regarding the State Commission's jurisdiction in Petition No. 55 of 2017. This is*

*factually incorrect. The State Commission's Order dated 15.01.2019 records the Review Petitioner's submissions challenging the State Commission's jurisdiction to adjudicate upon the validity of the UPCL-PPA and grant reliefs sought by PTC. The Review Petitioner had specifically argued that the State Commission lacked power under the Electricity Act, 2003 to adjudicate upon the prayers and direct cancellation of the UPCL-PPA, which fell under Ld. UERC's regulatory jurisdiction.*

*Further, even assuming arguendo that no such objection was raised, lack of subject-matter jurisdiction (involving interstate sale of power to a trader) can be raised at any stage. As held in Energy Watchdog v. CERC (2017) 14 SCC 80 and Odisha State Financial Corpn. v. Vigyan Chemical Industries (2025 SCC OnLine SC 1609), disputes involving interstate sale/trading fall within CERC's jurisdiction. Thus, the State Commission lacked jurisdiction to entertain PTC's petition, and the failure to apply this settled principle requires correction. Importantly, the Order under Review confines its analysis to territorial jurisdiction under Section 21 of the CPC.*

*It completely fails to address the lack of subject-matter jurisdiction of the State Commission.*

*(b) This Hon'ble Tribunal erroneously treated the Force Majeure event as a single, discrete occurrence on 10.06.2009, leading to the erroneous conclusion that the Force Majeure notice dated 08.07.2009 was untimely. The Review Petitioner had claimed a composite and continuing Force Majeure comprising: on account of (a) erroneous interpretation of Clause 4.1 of the Implementation Agreement by Ld. UERC/denial of open access and (b) the failure/delay in providing connectivity at the 220KV substation of PTCUL.*

*(c) This Hon'ble Tribunal failed to appreciate that the primary Force Majeure was the continuing non-performance by PTCUL in providing transmission infrastructure, which had no fixed "start date" triggering the 7-day notice requirement. The extensive correspondence shows that PTCUL had committed to complete the 220kV substation by various dates (initially 2007, then June 2012, later revised to December 2016), but the infrastructure remains incomplete even today.*

(d) *This Hon'ble Tribunal's finding that the Extended Force Majeure “came to an end on 11th January, 2011” is erroneous. This Hon'ble Tribunal's Order dated 11.01.2011 only resolved the open access interpretation issue but did not address the continuing physical impossibility due to the non-construction of the 220kV substation. The undisputed evidence shows that performance remained physically impossible, with PTCUL's own timeline extending to December 2016 and beyond.*

(e) *Based on the primary errors above, this Hon'ble Tribunal erroneously concluded that the Review Petitioner was in “event of default” and liable for compensation under Article 15.6.1 of the PPA. Since the termination was valid under the Extended Force Majeure provisions, no default occurred. A valid contractual termination cannot constitute an “event of default.”*

(f) *This Hon'ble Tribunal has erroneously recorded in multiple paragraphs that the Review Petitioner had approached*

*APTEL in Appeal No. 88 of 2010 and Appeal No. 93 of 2010. This is factually incorrect. Appeal No. 88 of 2010 was filed by PTC, and Appeal No. 93 of 2010 was filed by M/s Bhilangana Hydro Power Limited, not by the Review Petitioner. This error also appears in the List of Dates relied upon by this Hon'ble Tribunal."*

6. We have heard Learned Senior Counsel, Shri Sanjay Sen appearing on behalf of the Appellant/petitioner as well as Shri Amit Kapur, Learned Counsel for Respondent No. 2.

7. It was submitted by Learned Senior Counsel appearing on behalf of the Appellant that this Tribunal has erred in affirming the findings of the Commission to the effect that notice dated 9<sup>th</sup> March, 2011 issued by the Appellant for termination of PPA dated 24<sup>th</sup> August, 2005 is not legally valid. He argued that this Tribunal has erred in ignoring the fact that the project of the Review Petitioner suffered an extended Force Majeure event on account of (a) erroneous interpretation of clause 4.1 of the Implementation Agreement by the Uttarakhand Regulatory Commission and (b) the failure/delay in providing connectivity at 220 kv sub-station of PTCUL. It is his submission that the finding of this Tribunal in paragraph No. 33 of the judgement under review that the Force

Majeure notice was untimely, is erroneous and has been rendered without taking note of the nature of Force Majeure event being claimed by the Review Petitioner. He argued that this Tribunal has proceeded on the erroneous assumption that Force Majeure event was a single and discreet event that occurred on June 10, 2009.

8. We have considered the submissions of the Learned Senior Counsel for the Review Petitioner and perused the judgement under review.

9. We note that issue No. (b) framed by this Tribunal in the judgement under review related to the legal validity or otherwise of letter dated 9<sup>th</sup> March, 2011 issued by the Appellant for termination of PPA dated 24<sup>th</sup> August, 2005. There is extensive discussion of the rival contentions/submissions of the parties on this issue in the judgement under review which spans over 17 pages. This Tribunal has taken note of each and every contention /submission of the Appellant/Review Petitioner including the plea of extended Force Majeure. Therefore, we are unable to agree with the submissions of the Learned Senior Counsel for the Review Petitioner that the judgment under review has been rendered while relying upon wrong set of facts and ignoring the material facts.

10. We may also note here that there is a clear-cut distinction between an erroneous judgement and the judgement suffering from error apparent on the face of record. The expression “error apparent on the face of record” used in Order XLVII Rule 1 CPC indicates an error which is self-evident and staring in the eye. Power of the review can be exercised only where a glaring omission or a patent mistake is found in the judgement under review. The power of review can be exercised only for correction of patent mistake but not to substitute the view for the reason that a review petition cannot be permitted to be an appeal in disguise.

11. In the instant case, it is manifest that in the garb of review petition, the Appellant/Petitioner has assailed our findings on the merits of the case and wants us to re-appreciate the material on record afresh which is not permissible. This Review Petition is actually an appeal in disguise.

12. Perusal of the contents of the Review Petition itself would make it manifest that according to the petitioner, the judgement under review is an erroneous judgement. The erroneous judgement can only be assailed before the higher forum by way of an appeal. Therefore, in case in the opinion of the petitioner, the judgement dated 22<sup>nd</sup> August, 2025 is

erroneous, he may assail the same by way of an appeal before the Hon'ble Supreme Court. We are unable to discern the wisdom of the petitioner in filing this Review Petition when no patent error can be pointed out in the judgement dated 22<sup>nd</sup> August, 2025.

13. In view thereof, the Review Petition is found to be sans any merit and is hereby dismissed.

(Virender Bhat)  
Judicial Member

(Seema Gupta)  
Technical Member (Electricity)

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*REPORTABLE / ~~NON-REPORTABLE~~*

*Js/dk*