



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.1805/2021

**MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LIMITED**

APPELLANT(S)

VERSUS

**RATTAN INDIA POWER LIMITED
& ANR.**

RESPONDENT(S)

J U D G M E N T

B.R. GAVALI, J.

1. This appeal challenges the order passed by the Appellate Tribunal for Electricity dated 13.11.2020. The operative part of the order reads thus:-

“77. In view of the foregoing conclusions, we set aside the impugned order passed on 03.04.2018 by the Maharashtra Electricity Regulatory Commission in case No.154 of 2013 and case no.147 of 2014 to the extent thereby the above-mentioned five issues were determined and direct that:-

(i) the matter relating to issues of SGRM GCV and of compensation for change in law beyond 31.03.2017 be considered afresh in light of judgment dated 14.09.2020 by this tribunal in Appeal No.182 of 2019

Adani Power Maharashtra Limited (APML) v. Maharashtra State Electricity Distribution Company Limited & Ors., as per decisions summarized in para 35 above; and (ii) the full impact of additional cost actually incurred in procurement of coal from alternative sources to the extent of shortfall in supply of linkage coal and it being utilized on monthly basis for the period in question, and the consequent carrying cost, be given pass through such that the appellant is fully compensated and put in the same economic position as it would have been but for change of law, as concluded in paras 70 and 76 above.

78. The appeal is allowed in above terms.”

2. Shri Balbir Singh, learned Additional Solicitor General of India (‘ASG’ for short) appearing on behalf of the Distribution Company (‘DISCOM’ for short), submits that though the respondent gets a specific quantity for a particular month out of the Annual Contracted Quantity (ACQ), in the event the same is not utilized for a particular month, it is not carried forward to the next month, thereby giving undue benefit to the generator.

3. Shri Sajan Poovayya, learned Senior Counsel and Mr. Vishrov Mukerjee, learned counsel appearing on behalf of the Generator submit that the said apprehension is totally misconceived as could be seen from the impugned judgment.

4. We find that the apprehension is not well merited. Insofar as direction No.1 is concerned, the same is in tune with the view taken by us in ***Maharashtra State Electricity Distribution Company Ltd. v. Adani Power Maharashtra Limited and Others***¹. Insofar as, direction No.2 is concerned, the same is also covered by the judgment of this Court in ***Adani Power Maharashtra Limited*** (supra) following the law laid down in ***Energy Watchdog v. Central Electricity Regulatory Commission and Others***².

5. Insofar as the apprehension with regard to unutilized coal quantity for a particular month being not carried forward to the next month is concerned, the same is also

1 **2023 SCC Online SC 233**

2 **(2017) 14 SCC 80**

without substance. In this respect, it will be relevant to reproduce paragraph 43 of the impugned judgment, wherein the learned Tribunal has recorded the submission of the respondent/generator, which is extracted below:-

“43. The appellant, on the other hand, argues that MERC has erred in stating that computation of compensation for monthly coal quantum variation shall be on an annual basis. It is submitted that demand and consequent offtake of coal changes month to month and is subject to various factors such as Plant Load Factor (PLF), demand, actual coal supplied etc. Thus, it is possible that in a given month there is no (or low) demand of coal than the quantity of coal offered by CIL for offtake. If compensation is calculated cumulatively on annual basis, the aforesaid surplus may get set off against shortfall in coal in another month, when the demand of coal was higher than the quantity of coal supplied. This is illustrated by example based on date (Considering capacity of 1000 MW) as tabulated below:-

Month	Coal Assured	Coal Delivered	Actual Generation	Shortfall
January	850 MW	750 MW	800 MW	50 MW
February	850 MW	800 MW	700 MW	+100 MW
March	850 MW	600 MW	750	50 MW”

6. The chart itself would show that for the month of February the coal assured was 850 MW, the coal delivered was 800 MW and the actual generation was 700 MW. As such, for the said month the generator had surplus coal for production of 100 MW energy. The same has been carried forward for the month of March. It is clear from the chart that though for the month of March the assured coal was 850 MW, the actual coal delivered was only 600 MW and the generation was 750 MW. If the apprehension of the learned ASG was to be of substance, then the generator could have claimed a shortfall of 150 MW, however, the surplus coal of 100 MW from the month of February has been carried forward and the shortfall claimed is only 50 MW.

7. If this methodology is adopted by the generator, we do not find that the apprehension of the learned Additional Solicitor General of India would be substantiated.

8. The appeal is, accordingly, disposed of.

9. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

NEW DELHI;
MARCH 27, 2023