

Ensuring Fairness 1

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Billing: Hon'ble

Tribunal Reaffirms

Priority of

Conventional

Captive Power

Over Renewable

Energy

Supreme Court

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Affirms the

Statutory Power

of the State

Commissions to

Fix Tariffs

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ENSURING FAIRNESS IN OPEN ACCESS BILLING: HON'BLE TRIBUNAL REAFFIRMS PRIORITY OF CONVENTIONAL CAPTIVE POWER OVER RENEWABLE ENERGY

Case Name: Mahindra CIE Automotive Limited vs. Maharashtra Electricity Regulatory Commission & Anr.

Case No. Appeal No. 424 of 2019

Court: Appellate Tribunal for Electricity, New Delhi

Order Date: August 22, 2025

Facts of the Case

Mahindra CIE Automotive Limited (“CIE”), is a large industrial consumer classified as an open access user under the electricity regulations. CIE procures electricity from a conventional Captive Generating Plant (“CGP”) and various renewable energy (“RE”) sources, including wind power. Maharashtra State Electricity Distribution Company Limited (“MSEDCL”), the Respondent No. 2, is the state-owned distribution utility licensed under the Electricity Act, 2003 (“Act”) to supply electricity across the State of Maharashtra.

In May 2016, MSEDCL unilaterally altered its billing mechanism for open access (“OA”) consumers. Prior to this, from April 2014, MSEDCL adjusted conventional captive power first against total consumption, followed by RE power. This sequence was consistent with the physical characteristics of the sources since the conventional CGP power being schedulable and firm could be planned and dispatched reliably, but it cannot be banked as the excess units injected into the grid lapsed if not consumed immediately. In contrast, RE power, being intermittent and non-firm, enjoys must-run status under regulatory policies, allowing banking for later use.

MSEDCL, therefore, by crediting RE power first and then conventional CGP power, caused conventional units to lapse, which forced CIE to purchase additional power at higher costs from the grid. This led to substantial financial losses to CIE. Despite repeated requests, MSEDCL refused to rectify the bills from May 2016 onward.

In response, CIE filed Petition No. 71 of 2018 before Ld. Maharashtra Electricity Regulatory Commission (“Commission”), seeking bill corrections, credits for losses, and



adoption of the proper methodology. On October 23, 2018, Ld. Commission allowed the petition, directing MSEDCCL to follow the methodology from its earlier order in Case No. 139 of 2016 dated August 11, 2017, involving M/s Ultra Tech Cement Limited. The order directed that captive power supply be adjusted as a priority to avoid any lapse of units, with RE power being accounted for thereafter. Notably, MSEDCCL's appeal No. 368 of 2017 was dismissed by the Hon'ble Appellate Tribunal for Electricity ("Tribunal") on November 28, 2018, thereby finalizing the principle.

However, MSEDCCL's compliance was incomplete. CIE then filed Petition No. 93 of 2019 under Sections 142, 146, and 149 of the Act, seeking enforcement, payment of dues with interest, and initiation of contempt proceedings. The Ld. Commission's impugned order dated September 16, 2019, acknowledged partial compliance up to March 31, 2018, but introduced a distinction for the period post-April 2018, under which the methodology applied only to CGP power, not conventional power from Independent Power Producers ("IPPs"). Subsequently, aggrieved by the Ld. Commission's order dated September 16, 2019, CIE appealed before Hon'ble Tribunal.

Regulatory Context

The case operates within the framework of the Act, particularly Sections 38 to 42 of the Act, which regulates the OA. Ld. Commission, as a State Commission, regulates tariffs, open access charges, and billing under Section 86 of the Act. Key regulations include the MERC (Distribution Open Access) Regulations, 2016, and the National Electricity Policy, 2005. Section 142 of the Act empowers State Commissions to penalize non-compliance, while Sections 146 and 149 addresses contempt and execution.

Issues

1. **Whether the Ld. Commission was justified in concluding that MSEDCCL had fully complied for the period up to March 31, 2018, based solely on partial credit, without a detailed analysis.**

Hon'ble Tribunal observed that Ld. Commission's order was devoid of adequate reasoning. The Ld. Commission relied solely on CIE's acknowledgment of a credit in June 2019, without addressing MSEDCCL's delays and non-compliance. Hon'ble Tribunal emphasised that the objective of the compliance petition was to address ongoing violations, yet Ld. Commission failed to inquire MSEDCCL's neglect.

Further, Hon'ble Tribunal noted that Ld. Commission did not analyse CIE's detailed financial claims, including the comparison of amounts due versus those repaid, which constituted a breach of principles of natural justice and statutory duties. Accordingly, the Hon'ble Tribunal set aside the finding and remanded the matter for fresh consideration, directing Ld. Commission to conduct a comprehensive hearing with proper evalua-



-tion all submissions and financial calculations.

2. **Whether the Ld. Commission's creation of a distinction between conventional power sourced from CGPs and IPPs for the post-April 2018 period was permissible, and whether its direction to file a fresh petition was appropriate in a compliance proceeding.**

Hon'ble Tribunal held that the Ld. Commission committed a clear legal error by effectively reviewing its own order dated October 23, 2018, within a compliance proceeding under Section 142 of the Act. The Ld. Commission's role is limited to enforcement and not re-evaluation of its previous order. If errors existed, Ld. Commission ought to have invoked suo-moto review proceedings instead.

Substantively, the Hon'ble Tribunal rejected the Ld. Commission's distinction between CGP and IPPs as artificial, unjustified, and arbitrary. The tribunal reaffirmed that the determining factor is the inherent nature of the power not its source — conventional power is schedulable, firm, and non-bankable, and must be adjusted first to avoid lapse; whereas RE Power is non-firm, must-run, and bankable. This reasoning, originally affirmed in Case No. 139 of 2016 and upheld on appeal, was held to apply uniformly across all similar cases.

3. **Whether the Ld. Commission correctly rejected CIE's interest claim in light of the absence of express directions in prior orders, and whether the principle of restitution entitled CIE to such compensation.**

Overturning the Ld. Commission's denial, the Hon'ble Tribunal held that interest represents the "normal accretion to money," and does not constitute a penalty. The Hon'ble Tribunal clarified that the entitlement to interest arises from equitable principles and the doctrine of restitution, observing that when money is wrongfully withheld, the aggrieved party is entitled to compensation for the deprivation of its use.

Reliefs Granted

The Hon'ble Tribunal allowed the appeal, set aside the Ld. Commission's impugned order, and directed the Ld. Commission to rehear CIE's claims up to March 31, 2018, ensuring a detailed and reasoned analysis before issuing a fresh decision. MSEDCL was further directed to implement the 2017 methodology (adjusting conventional power first and RE thereafter) from April 2018 onward, and to refund the excess amounts within one month from August 22, 2025, together with interest at 9% per annum.



Conclusion

The Hon'ble Tribunal's judgment nullifies arbitrary distinctions and upholds the principles of fairness and equity under the Act. It serves as a deterrent against non-compliance by utilities, promotes consistency in billing practices, and strengthens the framework for open access, thereby advancing renewable energy integration and regulatory accountability.



SUPREME COURT AFFIRMS THE STATUTORY POWER OF THE STATE COMMISSIONS TO FIX TARIFFS

Case Name: Gujarat Urja Vikas Nigam Ltd. vs.

Green Infra Corporate Wind Power Ltd. & Ors. (2025 INSC 922)

Court: The Supreme Court, New Delhi

Order Date: August 04, 2025

Facts of the Case

The dispute originated from the determination of statutory tariffs and commercial agreements within the renewable energy sector. Ld. Gujarat Electricity Regulatory Commission ("GERC/ "Commission") vide Order No. 1 of 2010 determined a leveled tariff of Rs. 3.56 per kWh for wind projects commissioned within a specified three (3) year window. That rate was expressly applicable to projects that opted to claim Accelerated Depreciation ("AD") under the Income-Tax Act, 1961 while projects not availing AD were permitted to seek a project-specific tariff from the Ld. Commission.

Between 2010 and 2012 Gujarat Urja Vikas Nigam Limited ("GUVNL"), a state distribution company, entered into Power Purchase Agreements ("PPAs") with four (4) wind energy generators. These agreements stipulated a tariff rate of Rs. 3.56 per kWh for the purchase of electricity generated by the wind farms. After commissioning, the generators contended that they had not availed the AD benefits and approached the Ld. Commission seeking project-specific tariffs as provided under the tariff order. GUVNL opposed these petitions, asserting that the executed PPAs were binding commercial contracts and that the generators could not revisit tariff terms after execution. The matter was adjudicated before Ld. GERC and the Hon'ble Appellate Tribunal for Electricity ("APTEL") both of which ruled in favour of the generators. GUVNL thereafter appealed to the Hon'ble Supreme Court, which was called upon to determine whether a private contract could override the regulator's statutory authority in tariff determination.

Issues

1. Whether tariff fixation under the Electricity Act, 2003 ("Act") constitutes a matter of commercial negotiation or a statutory function that may be revisited by the regulator notwithstanding the terms of a concluded contractual.
2. Whether Ld. GERC's stipulation linking the applicable tariff to the generator's election to claim AD, could be unilaterally treated as binding by a distribution company at the PPA execution stage.



Regulatory Context

The Act establishes a comprehensive statutory regime for tariff fixation and sectoral regulation. Sections 61 and 62 of the Act set out the guiding principles and the mandate for the appropriate commission to determine tariffs, while Section 86(1)(a) and (b) of the Act empowers the State Commissions to regulate tariffs and procurement by distribution licensees. The Act therefore frames tariff determination as a statutory exercise carried out by technically constituted, expert regulatory bodies.

Under this statutory framework, PPAs operate as commercial contracts subject to regulatory oversight. The law envisions that tariff orders issued by the State Commission may guide or supersede contractual provisions on tariff fixation. The present dispute therefore, examined whether the regulatory primacy prevails even when distribution companies and generators have contractually agreed upon a tariff rate.

Finding and Analysis by the Hon'ble Supreme Court

The Hon'ble Supreme Court affirmed the primacy of statutory tariff determination and the regulator's overriding authority. It held unequivocally that electricity tariff is not a matter of free commercial negotiation but a statutory function entrusted to expert regulatory bodies. Accordingly, PPAs cannot override or supersede the statutory mechanisms and outcomes determined by the appropriate State Commission.

On the AD issue, the Hon'ble Supreme Court accepted the generators' position that AD is a tax benefit elected post- commissioning during the filing of income-tax returns and therefore, generators could not have been bound by that choice at the PPA execution stage. The GERC's 2010 order explicitly recognized this temporal and factual uncertainty by permitting non-AD projects to seek project-specific tariffs. The Hon'ble Supreme Court held it legally and equitably untenable for GUVNL to impose the AD-linked tariff upon projects that had not actually availed the tax benefit.

The Hon'ble Supreme Court disregarded GUVNL's argument of contractual sanctity, and emphasized that a PPA merely incorporates the tariff determined by the regulator and it does not create or displace the statutory determination itself. This established a clear hierarchy between the statutory law, regulatory orders and the contractual clauses in case of conflict. The Hon'ble Supreme Court reiterated that State Commissions are expert statutory bodies, and their orders have to be accorded binding effect, not treated as negotiable commercial variables.

The Hon'ble Supreme Court has also criticised the conduct of GUVNL, noting that as a state-owned distribution company, it is not a private trader but a public entity bound by the regulatory oversight and obligated to act under regulatory oversight and in the public interest, including supporting renewable energy policies. The state entities, therefore must negotiate and enforce contracts consistent with statutory frameworks and policy goals rather than prioritising commercial gain.



Accordingly, the Hon'ble Supreme Court dismissed GUVNL's appeals, upheld the rulings of Ld. GERC and Hon'ble APTEL, vacated its earlier interim stay, and directed that the four (4) generators be granted project-specific tariff determinations by the Ld. Commission, reflecting actual project costs without the assumption of AD.

Conclusion

The Hon'ble Supreme Court reaffirmed that tariff fixation under the Act is a statutory function, not subject to commercial negotiation, thereby reinforcing the authority and autonomy of the State Commissions. It held that PPAs must operate within this regulatory framework, and any clause that attempt to restrict statutory powers or pre-empt future tax choices is unenforceable where it conflicts with regulatory orders.

The ruling clarifies that the regulators may rectify contractual terms inconsistent with statutory mandates, while generators and investors must recognise that PPAs, though commercially vital, cannot override regulations. For state discoms, it underscores that commercial interests cannot displace regulatory oversight.

This judgment underscores that tariff law is rooted in regulation, not contractual agreement, setting a precedent that will influence the structuring of future PPAs and encourage a more transparent and policy-consistent power sector.



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Warm Regards,

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