



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 2144, 2145, 2146, 2147 and 2148 of 2024

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Khambarkhera Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Utraula Thermal Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Kundarkhi Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Maqsoodapur Thermal Power Plant of Bajaj Energy Limited.



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AND

IN THE MATTER OF

Petition under Section 62, 86(1)(a) & 86 (1)(b) of the Electricity Act, 2003 read with Regulation 16 of UPERC (Terms and Condition of Tariff) Regulations, 2019 for Truing Up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Barkhera Thermal Power Plant of Bajaj Energy Limited.

AND

IN THE MATTER OF

Bajaj Energy Limited (BEL),

TC - 13, Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh

..... **Petitioner**

VERSUS

U.P. Power Corporation Ltd. (UPPCL)

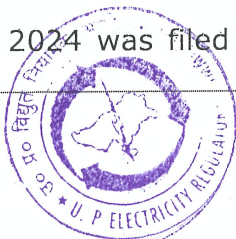
Shakti Bhawan, 14-Ashok Marg, Lucknow-226001

..... **Respondent**

ORDER

1. The Petitioner has filed the present Petition under Section 62, 86(1)(a) and 86(1)(b) of Electricity Act, 2003 read with Regulation 16 of the Uttar Pradesh Electricity Regulatory Commission (Terms and Condition of Generation Tariff) Regulations, 2019 for truing up for the period from 01.04.2019 to 31.03.2024 in respect of 2 x 45 MW Khambarkhera, Utraula, Kundarkhi, Maqsoodapur, and Barkhera Thermal Power Plants of BEL.
2. During the last hearing dated 30.09.2025, Sh. Hemant Sahai, counsel for UPPCL, submitted that present petitions were filed under Section 86(1)(a) & (b) of the Act read with Generation Tariff Regulations, 2019 for Truing Up. The matter in these true-up petitions involved dispute regarding entitlement under law, therefore, the presence of a Judicial Member in the quorum for the hearing was necessary keeping in view sanctity of the Commission's Order and prospective challengeability. Sh. Sahai, in support of his argument, referred to the Commission's Order dated 18.08.2025 in Petition No. 2106 of 2024 titled MEIL Lanco Anpara Power Ltd. v. UPPCL in the matter of reimbursement of expenditure incurred towards transportation of fly ash. He pointed out that while Petition No. 2106 of 2024 was filed under Section 86(1) (b), the Commission, in its

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Order, had observed that the matter would be decided after joining of Member (Law). Sh. Sahai relied upon the judgments of the Hon'ble Supreme Court in T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd, (2014) 11 SCC 53, (Paras 58-59) and State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21, (Paras 103, 125)

3. In response, Sh. Amit Kapur, Counsel for the Petitioner, argued that the present true up Petitions have not been filed under Section 86(1)(f) of the Act, therefore, the presence of a Legal Member was not mandatory for the hearing of these regulatory proceedings. He referred to the judgment of the Hon'ble Supreme Court in State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21, (Para 116). Sh. Kapur further submitted that the Petition number 2106 of 2024 was filed in compliance to the Commission Order dated 13.06.2023 in Petition No. 1884 of 2022, which was filed under Section 86(1)(b) & (f), requiring the presence of a Legal Member in the quorum. He further contended that the reliance placed by UPPCL's Counsel on the judgment of the Hon'ble Supreme Court in State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21 was not relevant to the instant matter, as quoted judgement was related to selection criteria of chairperson in terms of EA, 03 and not that Member (Law) was mandatory for tariff determination proceedings.
4. Sh. Sahai further submitted that adjudicatory functions are not restricted solely to matters under Section 86(1)(f) of the Act. He submitted that any dispute, whether covered under Section 86(1)(f) or any other clause of Section 86(1), necessitated the adjudicatory process and required the presence of a Judicial Member in the quorum. Sh. Sahai relied upon the judgments of the Hon'ble Supreme Court in T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd, (2014) 11 SCC 53, (Paras 58-59) and State of Gujarat & Ors. v. Utility Users' Welfare Association & Ors., (2018) 6 SCC 21, (Paras 103, 125)
5. In response, Sh. Kapur submitted that disputes related to tariff fixation were excluded from the requirement of a Legal Member in the quorum. He reiterated the judgment of the Hon'ble Supreme Court in T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd, (2014) 11 SCC 53, (Para 55). He further submitted that the Commission had passed Tariff Order dated 08.09.2025 in Petition No. 2166 of 2024 for UPPTCL and Tariff Order dated 08.09.2025 in Petition No. 2231 of 2025 for UPSLDC without Judicial Member, and hence there was no justification in keeping these petitions

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in abeyance on this pretext. He also emphasized that UPPCL had not contested this point of requirement of presence of Member (Law) neither in true up/ ARR matter of UPPTCL (Petition No. 2166 of 2024) and UPSLDC (Petition No. 2231 of 2025) nor in maintainability proceedings of true up matter of UPRVUNL, RPSCL and AHPCL.

6. After hearing the parties, the Commission directed both parties to file written submission carrying their arguments and quoted judgements within one week from the date of hearing.
7. The Commission, vide its ROP order dated 15.10.2025, again directed both parties to file their written submissions within 3 days of issuance of the order.

Written Submission by Petitioner:

8. On 15.10.2025, Petitioner filed its written submission and mainly submitted as under:

A. Regulatory and Adjudicatory Functions of SERCs:

- i. UPPCL has contended that it was disputing the additional capitalisation claims raised by BEPL in the present petitions, which would require adjudication under Section 86(1) (f) of the Act, and in order to decide such claims under Section 86(1) (f) of the Act, the Commission was required to adjudicate the present petitions in the presence of a legal member. In support of this contention, UPPCL relied on the judgement in Tamil Nadu Generation & Distribution Corporation Ltd. v. PPN Power Generation Co. (P) Ltd., (2014) 11 SCC 53 [Para 58-60] ('PPN Judgment'). Therefore, issues relating to additional capitalisation/tariff determination being a regulatory exercise under Section 62 and Section 86(1) (a)&(b) of the Act do not fall within the scope of adjudicatory function contemplated under Section 86(1) (f). Accordingly, UPPCL's reliance on Para 58-60 of the PPN Judgment is misplaced.
- ii. The functions of State Electricity Regulatory Commission (SERC) under Section 86 of the Act have been considered by the Hon'ble Supreme Court in 'State of Gujarat v. Utility Users' Welfare Assn', (2018) 6 SCC 21 ('Utility Welfare Judgment'). The issue framed by the Hon'ble Supreme Court in Utility Welfare Judgment was whether it was mandatory to have a judicial mind presiding over the Electricity Regulatory Commissions in the form of a judge. The Hon'ble Supreme Court while deciding this issue has clearly distinguished between regulatory and adjudicatory

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functions of SERC(s). Relevant extracts of the Utility Welfare Judgment are set forth below: -

*"The Electricity Act, 2003 (hereinafter referred to as "the said Act") provides for Central and State Regulatory Commissions. Insofar as the appointment of the Chairperson of these Commissions is concerned, the relevant provisions stipulate that the Chairperson "may" be a Judge of a High Court for the State Commission, a Judge of the Supreme Court or the Chief Justice of a High Court for the Central Commission. **The common question which arises for consideration in these appeals is whether the expression "may" should be read as "shall" i.e. whether it is mandatory to have a judicial mind presiding over these Commissions in the form of a Judge.***

.....
90. We may also look to the nature and functions performed by the State Commission. Functions of the State Commission are prescribed under Section 86 of the said Act. **The enumerated functions are determination of tariff, regulation of electricity purchase and procurement process of distribution licensees, facilitating intra-State transmission, issuing licences to persons, promoting cogeneration and generation of electricity from renewable sources, levy fee, specify or enforce standards, fix trading margins. All these functions are regulatory in character rather than adjudicatory. The real adjudicatory function is only provided in sub-clause (f) whereupon the Commission has the option of adjudicating the disputes between the licensees and generating companies, or to refer such disputes to arbitration...**

116. In the context of the question which we are now dealing with, if we were to take the proposition as "no member having knowledge of law is required to be a member of the Commission" then we have a problem at hand. This is so because while interpreting Section 86 of the said Act, it has been expressed that the Commission has the "trappings of the court", an aspect we have agreed to hereinbefore. Once it has the "trappings of the court" and performs judicial functions, albeit limited ones in the context of the overall functioning of the Commission, still while performing such judicial functions which may be of far-reaching effect, the presence of a member having knowledge of law would become necessary. **The absence of a member having knowledge of law would make the composition of the State Commission such as would make it incapable of performing the functions under Section 86(1)(f) of the said Act."**

- iii. As recognized by the Hon'ble Supreme Court, the functions of the SERC(s) ranges from framing of regulations, tariff determination, regulation of electricity purchase, issue licenses to persons, promote co-generation and generation of renewable sources, fixing trading margin, and advice State Government. The only adjudicatory function is provided in Section 86(1) (f) of the Act, wherein the SERC may adjudicate the disputes between licensees and generating companies or, in the alternative, refer such disputes to arbitration.

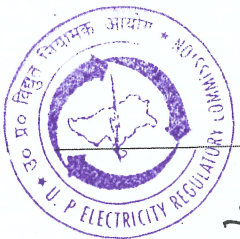




- iv. The presence of a legal member was required in those cases where legal issue was involved in conjunction with the Commission's regulatory functions. In the present petitions, there is no such legal issue arises since BEPL is only seeking true up of its tariff under Section 62 and Section 86(1)(a) & (b) of the Act on account of additional capital expenditure incurred during the period from 01.04.2019 to 31.03.2024, which falls entirely within the regulatory function of the Commission, squarely covered by the UPERC Generation Tariff Regulations, 2019.
- v. Hon'ble Supreme Court in BRPL v. Union of India & Ors, 2025 SCC Online SC 1637 (BRPL Judgment) [Para 70(IV)] also recognized that the tariff determination is a regulatory function, and it is the exclusive province of the SERC(s).
- vi. The present petitions have been filed by BEPL under Section 62, Section 86(1)(a) & Section 86(1) (b) seeking true up its tariff for the period from 01.04.2019 to 31.03.2024, and not under Section 86(1) (f) of the Act. Therefore, the presence of a legal member was not mandatory for the hearing in the present true up petitions. The regulatory functions under Sections 86(1) (a) and 86(1) (b) are confined to tariff determination and regulation of the electricity purchase and procurement process by distribution licensees, respectively, and do not contemplate the adjudication of disputes, which remains the distinct prerogative under Section 86(1) (f) of the Act.
- vii. Hon'ble Supreme Court in PTC India Ltd. v. CERC, (2010) 4 SCC 603 ('PTC Judgment') [Para 49 & 92(i)] observed that between the legislative and administrative functions there is another function, i.e., regulatory function. Relevant extracts of the Judgment are set forth below:

"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. **According to Professor Wade, "between legislative and administrative functions we have regulatory functions".** A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (See Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223])."

...
92. (i) In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission,



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under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by orders (decisions)."

- viii. Contention of UPPCL that the Central Electricity Regulatory Commission (CERC) did not conduct hearings during a particular span due to the absence of a legal member is misplaced.
- a) The Hon'ble Supreme Court in Utility Welfare Judgment [Para 125.6] has categorically held that in case there is no member from law as a member of the Electricity Regulatory Commission, then the next vacancy shall be filled by a member from law.
- b) The directions in Utility Welfare Judgment were breached on account of appointments made to the CERC on 21.01.2019 and thereafter on 07.04.2020 without appointing a member from law.
- c) Consequently, the Hon'ble Supreme Court by its Order(s) dated 28.08.2020 and 07.12.2020 in Contempt Petition (Civil) No. 429 of 2020 in Civil Appeal No. 14697 of 2015 (culminated into Utility Welfare Judgment) observed that any member appointed subsequent to the Utility Welfare Judgment should not be permitted to function until a person from law is appointed first. Accordingly, the members appointed in the CERC were directed to proceed on leave until the appointment of member from law.

B. Tariff Orders passed by the Commission:

- ix. The Commission (bench comprising of the Hon'ble Chairperson and the Hon'ble Technical member) by its Order dated 20.08.2025 adjudicated the Petition No. 2130 of 2024 titled Dhariwal Infrastructure Ltd. v. Noida Power Company Ltd. seeking additional capital expenditure on account of the De-Nox system. Notably, in the present true petitions, BEPL has also raised the claims in relation to the additional capital expenditure incurred during FY 2019-24. Accordingly, the present true up petitions may be heard by the Commission.
- x. This Commission by its Order dated 03.09.2025 in Petition No. 2151 of 2024 seeking true up of tariff of Srinagar Hydro Electric Project for FY 2019-20 to FY 2023-24, has already listed the matter for final hearing on 23.09.2025





(rescheduled to 30.10.2025). Therefore, there is no occasion to keep the present petitions in abeyance in terms of the settled position of law.

Submission by Respondent:

9. Respondent, through its Counsel, via an email dated 17.10.2025 submitted that UPPCL did not wish to file its Written Submissions on the arguments made during the hearing and the Commission may pass appropriate order in this regard. UPPCL reserved its right to make appropriate submissions on the merits of the matter as and when the matter was listed for hearing.

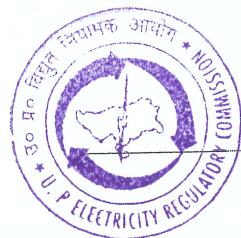
Commission's View:

10. The arguments marshalled by rival parties projects and frescoes a scenario wherein the petitioner is advocating that the requirement of Member (Law) in the bench of State Commission is mandatory only while exercising its adjudicatory functions under Section 86 (1)(f), as held by the Hon'ble Supreme Court in "State of Gujarat vs Utility Users' Welfare Association (2018) 6 SCC 21". In contrast, the Respondents argue that the presence of Member (Law) is mandatory for all functions of the Commission, where there is a potentiality of dispute, as Section 86 (1) (f) of Electricity Act 2003 does not specify the nature of disputes to be adjudicated by the Commission between the licensees and generating companies.

Before delving into analysis and scrutiny of the arguments, it is apt to recall the words of eminent political scientist William Pier "it is endless to dispute about everything that is disputable". An expansive reading of Section 86(1)(f), so as to import its requirement into every provision of the Electricity Act, 2003, would lead to a potentially perilous situation where the entire functioning of Electricity Regulatory Commissions may come to a grinding halt in the absence of Member (Law).

11. Hon'ble Supreme Court, in its Utility Welfare judgement, has succinctly distinguished between the regulatory and adjudicatory functions of the Commission and has restricted the requirement of Member (Law) only in case of adjudication under Section 86 (1)(f). The relevant portion of the Hon'ble Supreme Court judgement is reproduced below:

*"90. We may also look to the nature and functions performed by the State Commission. Functions of the State Commission are prescribed under Section 86 of the said Act. **The enumerated functions are determination of tariff,***



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regulation of the licensees, facilitating intra-State transmission, issuing licenses to persons, promoting generation and generation of electricity from renewable sources, levy fee, specify or enforce standards, fix trading margins. All these functions are regulatory in character rather than adjudicatory. The real adjudicatory function is only provided in sub-clause (f) whereupon the Commission has the option of adjudicating the disputes between the licenses and generating companies, or to refer such disputes to arbitration.....

116. In the context of the question which we are now dealing with, if we were to take the proposition as "no member having knowledge of law is required to be a member of the Commission" then we have a problem at hand. This is so because while interpreting Section 86 of the said Act, it has been expressed that the Commission has the "trappings of the Court" and performs judicial functions, albeit limited ones in the context of the overall functioning of the Commission, still while performing such judicial functions which may be of far-reaching effect, the presence of a member having knowledge of law would become necessary. ***The absence of a member having knowledge of law would make the composition of the state Commission such as would make it incapable of performing functions under Section 86(1)(f) of the said Act."***

12.As recognized by the Hon'ble Supreme Court, the requirement of Member (Law) is confined to the adjudicatory function contemplated under Section 86(1) (f) of the Act. It is pertinent to note that Section 86(1)(f) of the Act employs the expression "adjudicate upon the disputes", whereas Section 86(1)(a) & 86(1)(b) use the expressions "determine the tariff" and "regulate electricity purchase and procurement" respectively, under which the present true-up petition has been filed.

It is a settled position of statutory interpretation that different words or expressions used within the same statute must be construed to carry different meanings. The contention of UPPCL, that section 86(1)(a) and 86(1)(b) should be subsumed within section 86(1)(f) merely because a potential dispute may arise in the proceedings, is therefore untenable. In ordinary circumstances, the language employed in the statute is the primary and determinative guide to legislative intent.

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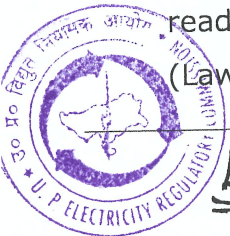
To borrow the resounding words of Justice Gajendragadkar, "*the first and primary rule of construction of the legislature must be found in words of the legislature itself. The question is not what may be supposed to have been intended but what has been said*". He further emphasized "*I do not care what the intention was, I only want to know what the words mean*".

13. Besides, it is equally important to note that apart from Section 79 and Section 86, which enumerate the functions of the Central and State Commissions, and wherein the term "*adjudication*" appears under Section 79(1)(f) and Section 86(1)(f), for which the Hon'ble Supreme Court in the Gujarat Utility judgment mandated the requirement of Member (Law), – the expression '*adjudication*' also appears at three other places under the framework of Electricity Act 2003, namely, Sections 9(2), 35 and 143.

Section 9(2) provides that any dispute regarding the availability of transmission facility in case of Captive Generation shall be adjudicated upon by the appropriate Commission. Similarly, section 35 provides that dispute regarding the extent of surplus capacity available with the licensee shall be adjudicated upon by the appropriate Commission in case of intervening transmission facilities. It is pertinent to mention that the dispute envisaged under section 9(2) is essentially a dispute between a captive generating plant and a transmission licensee, whereas disputes under section 35 are disputes between two transmission licensees.

It is therefore evident that while Sections 9(2) and 35 involve disputes between generating companies and licensees, or between licensees inter se, similar in nature to those covered under Sections 79(1)(f) and 86(1)(f), the Gujarat Utility judgment, or any other pronouncement of the Hon'ble Supreme Court to date, does not extend the requirement of a Member (Law) to these provisions. Notably, Sections 9(2) and 35 continue to remain in their original, unamended form even after the pronouncement of Gujarat Utility.

While Gujarat Utility judgement mandates the presence of Member (Law) for the functions of the Central Commission and State Commission under section 79(1)(f) & 86(1)(f) respectively, it nowhere holds that such a requirement applies to all provisions of the Act involving adjudication, as it did not insert this requirement under Section 9(2) and Section 35 of the Act. For the purposes of section 9(2) and section 35, the plain reading of Act still requires only the quorum of the Commission, with or without Member (Law), as Hon'ble Supreme court has held in catena of judgements that "*in the task of*





interpreting and analyzing a statute, judges have to be conscious that in the end the statute is the master and not the servant of the judgement."

14. In fact, while the learned counsel for the respondent argued that the expression "adjudication" must be read into every provision of the Electricity Act, 2003 wherever there exists the potential for a dispute, a closer examination of Section 143 suggests that such an interpretation would create inconsistencies within the statute itself. Section 143 provides:

*"143(1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint **any of its Members** to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty."*

Even after the Gujarat Utility judgment, Section 143(1) continues to authorize the appointment of **any Member of the Commission as the adjudicating officer**. This pertains to enforcement of compliance with Sections 29 and 33, which relate to directions issued by the RLDCs and SLDCs to licensees, generating companies, or other persons. Non-compliance under Sections 29 or 33 often involves multiple generating companies and/or licensees, thereby leading to complex, multi-party disputes. Yet, even in such circumstances, the Act does not require that only a Member (Law) exercise this adjudicatory function; any Member may do so.

This statutory design reveals a crucial imbalance: if the respondent's interpretation that every potential dispute invokes the requirement of a Member (Law) were accepted, Section 143 itself would need a revisit, as its present wording would stand at odds with that expansive reading. The Gujarat Utility judgment confines the presence of a Member (Law) to the adjudicatory functions under Sections 79(1)(f) and 86(1)(f) - those involving non-tariff, contractual disputes between generating companies and licensees. Extending that mandate to the Commission's regulatory domain under Sections 86(1)(a) and 86(1)(b) would upset the balance of the Act. Therefore, in the scheme of things discussed above, it cannot be accepted that a tariff or true-up petition filed under Section 86(1)(a) & 86(1)(b), i.e., essentially the regulatory jurisdiction of the Commission, must mandatorily require Member (Law) by importing the reading Section 86(1)(f), i.e., invoking adjudicatory jurisdiction within the realm of 86(1) (a) & 86(1)(b).

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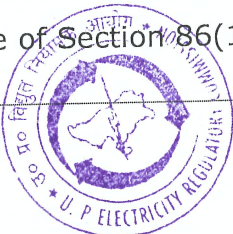




To do so would amount to invoking the adjudicatory jurisdiction of the Commission within the realm of its regulatory functions, a construction neither warranted by the statutory language nor supported by judicial precedent.

15. It is also pertinent to highlight that whereas, Section 79(1)(f) and Section 86(1)(f) of Act are general provisions related to disputes between Generating companies and Licensees, Section 9(2), Section 35 & Section 143 are the special Sections dealing with disputes between Captive Generator & Transmission Licensee, between two Transmission Licensees and disputes related to non-compliance of the directions issued by RLDCs & SLDCs. It is a settled principle of statutory interpretation, which has been used in catena of Hon'ble Supreme Court and Hon'ble High Court judgments that "Generalia Specialibus Non Derogant" i.e. special provision override the general provision. The same principle also gets echoed in the **Gunapradhan Axiom** of Mimansa Rules of Interpretation, which states that "If a word or sentence purporting to express a general idea clashes with the special idea, the former must be adjusted to the latter or must be disregarded altogether". It is in this context that the harmonious interpretation would reveal that the dispute resolution dispensation as given in Section 9(2), Section 35 & Section 143 will prevail over the general dispute resolution dispensation, as provided in Section 86(1)(f), which has been slightly modified by Hon'ble Supreme Court in the Gujarat Utility judgment mandating the requirement of Member (Law). A deeper scrutiny of the provisions would reveal that above harmonious interpretation stands to logic as disputes under Section 9(2), Section 35 & Section 143 essentially deal with availability of transmission facility in case of Section 9(2), extent of surplus transmission capacity available with the Licensee under Section 35 and non-compliance of directions of SLDC/ RLDC under Section 143 – all these are factual disputes and do not involve analysis and interpretation of complex contractual provisions, to be undertaken under Section 86(1)(f), which is meant for settling the rights & obligations of parties in dispute through interpretation of contracts viz Power Purchase Agreement (PPA), Transmission Service Agreement (TSA) & Power Supply Agreement (PSA) etc. In the same spirit determination of Tariff/ True Up and Regulation of power procurement process, which are undertaken under Section 86(1)(a) and 86(1)(b) are factual tasks under the regulatory jurisdiction of the Commission, wherein the Commission analyzes the claims of the Generating companies/ Licensees viz a viz the provisions contained in the Regulations. From above analysis, it is amply clear that the scope of Section 86(1)(f) cannot be expanded within the realm of Section 86(1)(a)

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and 86(1)(b) as such an extension would not only be legally incorrect but would also be against the express ratio of State of Gujarat vs Utility Users' Welfare Association (2018) judgement of Hon'ble Supreme Court.

16. In this context, it needs to be highlighted that respondent's counsel has referred to para 58-60 of T.N. Generation & Distribution Corp. Ltd. V. PPN Power Generating Co.(P) Ltd. In these paras, the judgment highlights that state Commission must have essential trapping of the court which can only be achieved by the presence of one or more judicial members in the State Commission which is called upon to decide complicated contractual or civil issues which would normally have been decided by a civil court. On the contrary, the counsel has interpreted the judgement that since the issue, though within the realm of the UPERC Generation Tariff Regulations, 2019, involved dispute, the presence of Member (Law) was essential for adjudication. Para 55 of the judgment need to be highlighted wherein it has been provided that the adjudicatory functions generally ought not to be conducted by the State Commission in the absence of a judicial member, especially in relation to disputes which are not fairly relative to tariff fixation or the advisory and recommendatory functions of the State Commission. Para 55 of the judgement is reproduced below:

"55. We, however, find substance in the submission of Mr. Nariman that adjudicatory function generally ought not to be conducted by the State Commission in the absence of a judicial Member, especially in relation to disputes which are not fairly related to tariff fixation or the advisory and recommendatory functions of the State Commission."

The paragraph containing twin negation, on a deeper reading, makes it clear that presence of Member (Law) is not mandatory in functions related to tariff fixation or the advisory function of the State Commission. It also needs to be stressed that the plain reading of the Act makes it clear that the mandatory requirement of Member (Law) is also not envisaged for the regulatory functions of the Commission, viz, the power to frame regulations.

17. It also needs to be highlighted that the Gujarat Utility judgement does not specify the requirement of Member (Law) even for the purposes of framing regulations under section 181. It can be understood by necessary implication that if the Commission, sans Member (Law), can specify various regulations, then the same quorum of the

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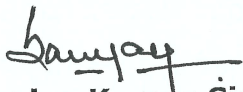
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Commission can also ensure tariff or true-up determination or regulation of procurement process, as envisaged under section 86(1)(a) and 86(1)(b), wherein the regulations need to be applied on the claims of the petitioner, which essentially means neat understanding of the regulations and its proper application vis a vis the claim of the petitioner.

18. Before parting with the order, it is apt to recall the famous words of George Orwell with obeisance "*courts are the places, where disputes are supposed to end and not disputes are supposed to begin*". If the contentions advanced by the respondent were to be accepted, it would effectively amount to reading the possibility of a dispute into numerous sections and sub sections of the Act, thereby necessitating the presence of Member (Law), though in reality, these disputes do not find a home in these sections. Such an interpretation would not only be legally untenable but would also be fraught with danger of undermining the regulatory functioning of the Commission and disrupting the smooth operation of the power sector. Further, Hans Kelsen developed the theory of legal positivism further by separating law not only from morality but by introducing the concept of a norm as an "**ought**" statement as distinct from a factual "**is**" statement. The contention of the petitioner i.e. sweeping inclusion of Section 86(1)(f) powers under all sections of the Act involving potentiality of disputes may be his "**ought**" statement but that must be negated and restricted to what Hon'ble Supreme Court says in Gujrat Utility judgement i.e. the "**is**" statement as a factual existing state of law. Hence, the preliminary objection of the respondent is set aside and the Commission will take up the matter on merits in its next hearing scheduled on 18.12.2025.

19. List the matter for hearing on 18.12.2025.


(Sanjay Kumar Singh)
Member




(Arvind Kumar)
Chairman

Place: Lucknow

Dated: 13.11.2025

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