



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 2332 of 2025 & IA

QUORUM

Hon'ble Shri Arvind Kumar, Chairman
Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section 86(1)(f) read with Section 158 and Section 94(2) along with other relevant provisions of the Electricity Act, 2003 read with terms of the Power Purchase Agreements, seeking referral of certain non-tariff issues for arbitration in terms of Clause 17.3.2 of the Power Purchase Agreements.

AND

IN THE MATTER OF

1. M/s B & G Renewable Energy Pvt. Ltd.

New No. 25, Old No. 10, Sir Madhavan Nair Road,
Mahalingapuram, Nungambakkam, Chennai – 600034

2. Nirgajini Hydel Project Pvt. Ltd.

New No. 25, Old No. 10, Sir Madhavan Nair Road,
Mahalingapuram, Nungambakkam, Chennai – 600034

3. Salawa Hydel Project Pvt. Ltd.

New No. 25, Old No. 10, Sir Madhavan Nair Road,
Mahalingapuram, Nungambakkam, Chennai – 600034

.....Petitioner(s)

VERSUS

1. Uttar Pradesh Power Corporation Ltd. (UPPCL),

Through its Managing Director

Shakti Bhawan, 14, Ashok Marg, Lucknow – 226001

by



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2. UP Rajya Vidyut Utpadan Nigam Ltd. (UPRVUNL),

(formerly UP Jal Vidyut Nigam Ltd.)

Through its Managing Director,

Shakti Bhawan 14, Ashok Marg, Lucknow-226001

3. Chief Engineer (PPA)

Uttar Pradesh Power Corporation Limited,

Shakti Bhawan, 14, Ashok Marg, Lucknow – 226001

...Respondent(s)

FOLLOWING WERE PRESENT

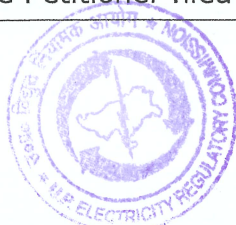
1. Sh. D.D. Chopra, Sr. Advocate, Petitioner
2. Sh. Shailesh Verma, Advocate, Petitioner
3. Ms. Chandni Bhatia, Advocate, Petitioner
4. Sh. Sanyam Agarwal, Advocate, Petitioner
5. Sh. A.K. Pradhan, Director, Petitioner
6. Sh. D.B. Yadav, CE, UPRVUNL
7. Sh. Arvind Kumar, EE-S&I, UPRVUNL
8. Sh. K.C. Verma, EE, UPRVUNL
9. Sh. Divyanshu Bhatt, Advocate, UPRVUNL
10. Sh. Abhayaditya Singh, Advocate, UPRVUNL
11. Sh. Shashwat Singh, Advocate, UPRVUNL
12. Ms. Puja Priyadarshini, Advocate, UPPCL
13. Sh. Deeptanshu Chandak, Advocate, UPPCL
14. Sh. Vikas Gupta, EE-PPA, UPPCL

ORDER

(DATE OF HEARING: 14.05.2026)

1. The Commission vide its earlier Order dated 06.03.2026 allowed Respondent(s) to file their detailed reply with a copy to the Petitioner and Petitioner may file their rejoinder to the respective reply of the Respondent(s). On 30.04.2026 & 13.05.2026 UPPCL & UPRVUNL filed their respective reply. On 13.05.2026, Petitioner filed its rejoinder to the UPPCL's reply. Thereafter, the Petitioner filed urgent Application in the matter seeking

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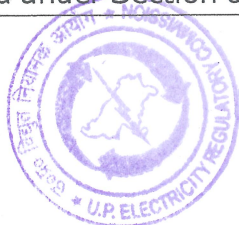
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immediate intervention of the Commission in Tender No. 04/E-Tender/Jal Vidyut/2026 dated 18.02.2026 issued by UPRVUNL. The Commission vide its Order dated 11.05.2026 allowed Respondent(s) to file their reply to the Petitioner's Application (i.e. IA) and directed to list this IA on 14.05.2026 along with instant Petition. On 12.05.2026 & 13.05.2026, UPPCL & UPRVUNL filed their respective reply to the IA. On 13.05.2026, Petitioner(s) filed its rejoinder to the UPPCL's reply on the IA.

2. During the hearing today, Sh. D.D. Chopra submitted that earlier they filed two Petitions: Petition No. 2214 of 2025 concerning extension of COD, and Petition No. 2217 of 2025 regarding declaration of Change in Law event and its consequential relief. He further submitted that instant petition had been filed in relation to arbitration and therefore, issue raised herein is distinct from the issues raised in those aforesaid two Petitions. Further, Ms. Puja Priyadarshini submitted that the Petitioner has filed three number of Petition i.e., Petition No. 2214 of 2025, 2217 of 2025, and instant 2332 of 2025, from a singular cause of action- delay in transfer of land. In response, Sh. D.D. Chopra argued that each of these three pertains to a different issue. He further added that Petition No. 2214 of 2025 was filed for extension of SCOD while Petition No. 2217 of 2025 was filed for Change in Law event under the PPA and instant Petition has been filed in respect of arbitration for invocation of BG and dispute notice dated 07.07.2025.
3. On specific query of the Commission whether Bank Guarantee was already encashed at the time of filing Petition No. 2214 of 2025. Sh. D.D. Chopra responded that Bank Guarantee was not encashed at that time. Ms. Puja Priyadarshini argued that present Petition is not maintainable on three grounds- firstly, Petitioner did not seek liberty from the Commission to withdraw Prayer (c) relating to arbitration in Petition No. 2214 of 2025 for filing afresh petition on the same issue. She also referred Order XXIII Rule 1 of the Code of Civil Procedure 1908 regarding withdrawal of suits with liberty to file afresh. Secondly, present Petition is barred under Section 10 of the Code of Civil Procedure 1908, which provides for the stay of a subsequently filed suit where the matter in issue is directly and substantially the same as in a previously instituted suit between the same parties pending before a competent court. Thirdly, all three Petitions arise from a single cause of action, i.e., the delay in transfer of land, and therefore, the present petition is not maintainable and hence the IA. Sh. Chopra submitted that the present Petition has been filed under Section 86(1)(f) of the Electricity Act, 2003, hence,

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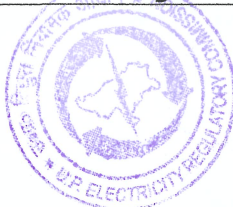


~~and~~ presence of the Member (Law) is essential for adjudication of the matter in accordance with the ruling of the Hon'ble Supreme Court of India.

4. The Commission observed that Petitioner continuously requested to decide its IA. It is a matter of record that Petitioner itself filed the present Petition knowing fully about the vacancy in the post of the judicial member/Member (Law). Thereafter, Petitioner even in their IA seeking immediate intervention of this Commission despite the said vacancy. Further, Petitioner fully participated in the proceedings which were continued at their own behest and argued the matter fully on each occasion seeking indulgence and immediate intervention from this Commission. However, upon being queried by the Commission on certain aspects, at the fag-end of the proceedings after the arguments were complete by both sides, the Petitioner have taken a U-turn and raised the objection regarding vacancy in the post of the judicial member in light of the ruling of the Hon'ble Supreme Court- a situation that was well known to the Petitioner right from the inception and even at the time urgent intervention and indulgence were being sought.
5. It is noteworthy to mention that instant situation is akin to the situation before the Hon'ble Supreme Court in the case of ***T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd., (2014) 11 SCC 53***. In the PPN Power case, the Hon'ble Supreme Court had the occasion to analyse the effect on acquiescence by the litigant in the context of *quorum non judice*. In the PPN Power Case, PPN Power had fully participated in the proceedings before the TNERC in a proceeding under Section 86(1)(f) of the Electricity Act, 2003 even in the absence of Judicial Member. Subsequently, PPN Power raised an objection that since the State Commission was not constituted in accordance with law and the order having been passed without any Judicial Member, is a nullity *non est* in law. It was submitted by PPN Power that the proceedings of the Commission are *coram non judice* and, therefore, liable to be set aside. However, even after agreeing with the legal proposition, the Hon'ble Supreme declined to entertain this objection from PPN Power on the ground of acquiescence by PPN Power. The relevant portions of the judgment are:

"29. Mr Nariman then submitted that the Chairman of APTEL is required under Section 113 of the Electricity Act to be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court. A person can also be appointed as a member of the Appellate Tribunal who is or has been or is qualified to be a Judge of the High Court. This, according to him, clearly shows

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that the adjudicatory functions performed by the State Commission as well as the Appellate Tribunal are judicial in nature and ought to be performed only by the tribunal which has either a Chairman or a member(s) who are or were Judges of the Supreme Court or a High Court. **Mr Nariman submitted that since the State Commission was not constituted in accordance with law and the order having been passed without any judicial member, is a nullity non est in law. He submitted that the proceedings of the Commission are coram non jure and, therefore, liable to be set aside.**

...
55. We, however, find substance in the submission of Mr Nariman that 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 related to tariff fixation or the advisory and recommendatory functions of the State Commission.

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63. **These observations, however, do not in any manner affect the jurisdiction exercised by the State Commission in the present matter. It has been rightly pointed out by the respondent that having filed the written statement in reply to the petition filed by the respondent, the appellant willingly participated in the proceedings and invited the findings recorded by the State Commission. It would be too late in the day to interfere with the jurisdiction exercised by the State Commission in these proceedings.**

6. We find the conduct of the Petitioner in the present case extremely disheartening. The Petitioner had come to the Commission seeking intervention, made submissions in writing urging the Commission to decide the issue and fully argued the matter. Thereafter, finding itself cornered on certain aspects by the other side, instead of answering the objections raised, the Petitioner sought to scuttle out of proceedings raising procedural objections on the proceedings being conducted. As facts and records demonstrate, the Petitioner have been indulging into this practice not only before this Commission but have in the past too, sought to test waters with different forums and thereafter, tried to escape final orders being passed.
7. However, the Commission is aware of the directions of the Hon'ble Supreme Court and has utmost reverence for it. The Hon'ble Supreme Court in the case of **State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21** has held as follows-

"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

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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.

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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. There is also an advisory role to be performed by the State Commission as specified in sub-section (2). The issue, however, is not whether a Judge would be comfortable doing this function but whether these are types of functions which necessarily mandate a Judge to be a Chairperson. The answer to this would also be in the negative, supporting the view we have adopted on the plain reading of the section.

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121. We are, thus, of the unequivocal view that for all adjudicatory functions, the Bench must necessarily have at least one member, who is or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law and who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge."

8. While the view taken by the Hon'ble Supreme Court in the PPN Power judgment is squarely applicable and the most befitting to the facts of the present matter, as a measure of abundant caution, and as per the request of Sh. Chopra, the Commission is putting the present matter **in abeyance till the appointment of the Member (Law)**.


(Sanjay Kumar Singh)
Member


(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 30.06.2026

