

COURT-I

**In the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**IA NO. 415 OF 2017 IN
APPEAL NO. 208 OF 2015**

Dated: 31st May, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I J. Kapoor, Technical Member**

In the matter of :

**Gujarat Urja Vikas Nigam Ltd.
Versus
ACB (India) Ltd. & Anr.**

...Appellant(s)

...Respondent(s)/Applicant(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran

Counsel for the Respondent(s) : Mr.Sanjay Sen, Sr. Adv.
Mr. Matrugupta Mishra for R-1

Ms.Suparna Srivastava for R-2

ORDER

**IA No. 415 OF 2017
*(Appl. for clarification)***

Appeal No.208 of 2015 was filed by Gujarat Urja Vikas Nigam Ltd against order dated 01/07/2015 passed by the Gujarat Electricity Regulatory Commission (“**the State Commission**”). By judgment and order dated 23/09/2016 without going into the merits of the case we remanded the matter to the State Commission.

Following is the operative part of the order:

“15. Hence, we pass the following order:

- (i) Without going into the merits of the case the impugned order dated 01/07/2015 is set aside.*
- (ii) The matter is remanded to the State Commission.*
- (ii) The State Commission is directed to permit Respondent No.1 to bring on record the additional documents which are annexed to IA No.411 of 2016 and IA No.441 of 2016 and which we have mentioned hereinabove.*
- (iv) The State Commission shall hear the parties afresh on all issues including the two issues raised by the Appellant which we have reproduced hereinabove and deliver judgment on all the said issues independently and in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case of either party. The State Commissions shall conduct the entire exercise as directed by us within three months from the date of receipt of this order.”*

This application is filed by Respondent No.1 for clarification. It is stated in the application that the Supreme Court has in its judgment dated 11/04/2017 in **Energy Watchdog vs. CERC & Ors.** held that when generation and sale of electricity takes place in more than one State the Central Electricity Regulatory Commission becomes the appropriate Commission under the Electricity Act, 2003. It is contended that the present matter will fall under the

jurisdiction of the Central Commission rather than the State Commission. It is prayed that therefore necessary direction be given to the State Commission.

After the judgment is declared no clarification can be issued in relation thereto by this Tribunal. It will of course be open to the State Commission to consider the judgment of the Supreme Court in **Energy Watchdog** and apply it to the facts of this case as the Supreme Court's judgment overrides all the existing contrary views if any. Needless to say that the State Commission will be free to take such decision as it deems proper upon perusal of the Supreme Court's judgment in **Energy Watchdog** after hearing the parties.

Application is disposed of.

(I.J. Kapoor)
Technical Member
pr/kt

(Justice Ranjana P. Desai)
Chairperson