

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 185 OF 2015

Dated: 25th October, 2018

**Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF

**Kalani Industries Pvt. Ltd.,
"Treasure Island", 6th Floor, Tukoganj Main Road,
Indore-452001 (MP)
Through Shri Prakulp Mattha,
Vice President (Finance)**

.... Appellant

VERSUS

- 1. Rajasthan Electricity Regulatory Commission (RERC),
"Vidyut Vinyamak Bhawan",
Near State Motor Garage, Sahakar Marg,
Jaipur-302005
through its Secretary**
- 2. Jaipur Vidyut Vitran Nigam Ltd. (JVVNL),
Vidyut Bhawan, Near Vidhan Sabha,
Janpath,
Jaipur-302005
through its Managing Director**
- 3. Ajmer Vidyut Vitran Nigam Ltd. (AVVNL),
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road,
Ajmer-305004 (Rajasthan)
through its Managing Director**
- 4. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL),
New Power House, Industrial Area,
Jodhpur-342003 (Rajasthan)
through its Managing Director**

5. **Rajasthan Discoms Power Procurement Centre**
(RDPPC),
Shed No. 5/5, VidyutBhawan,
Jaipur-302005 (Rajasthan)
through its Chief Engineer Respondents
- Counsel for the Appellant ... Mr. P.N. Bhandari
- Counsel for the Respondent(s)... Mr. Raj Kumar Mehta
Ms. Himanshi Andley for R-1
- Mr. Bipin Gupta
Mr. Sunil Bansal for R-2 to R-5

J U D G M E N T

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. M/s Kalani Industries Pvt. Ltd., Jaisalmer (Rajasthan) (in short, '**Appellant**'), assailing the validity, legality and propriety of the Impugned Order dated 01.05.2015 in Petition No. RERC-474/14, passed by Rajasthan Electricity Regulatory Commission, Jaipur (First Respondent/State Regulatory Commission), has filed the instant Appeal, being Appeal No. 185 of 2015, under Section 111 of the Electricity Act, 2013.

2. **The Appellant has sought the following reliefs in the instant Appeal:**

- i. The impugned order dated 1.5.2015 of the Id. Commission may kindly be quashed.
- ii. The Respondent nos.2, 3, 4 & 5 may kindly be directed to allow interest as laid down in Commission's order dated 10.12.2012 from

the date already fixed in the RERC Regulations, which has attained finality as no appeal has been filed against that order.

- iii. Heavy cost may kindly be imposed upon the respondent Discoms for unduly dragging this matter for such a long time.
- iv. Any other relief which the Hon'ble Tribunal deems proper, in the interest of justice and fair play.

3. The Appellant has presented this Appeal for considering the following Questions of Law:

- A. Whether in the light of exhaustive list of 7 items under Section 94(1) of the Electricity Act, the Commission can invoke other provisions of the Civil Procedure Code while adjudicating the disputes between the parties.
- B. Whether keeping in view the specific restriction under section 120 (1) of the Act that the Hon'ble APTEL "WOULD NOT BE BOUND BY THE PROCEDURE LAID DOWN IN THE CIVIL PROCEDURE CODE" and whether in the light of section 92(1) the Commission has "to observe its rules of procedure as notified", the Commission is still free to invoke any other provision of the Civil Procedure Code.
- C. Whether the LITIGATING PARTIES CAN BE TAKEN BY SURPRISE by the Commission by invoking any provision of the CPC while the Electricity Act unequivocally lays down that the

Civil Procedure Code would be applicable only in SEVEN ROUTINE MATTERS SPECIFICALLY ENUMERATED IN SECTION 94 (1).

- D. Whether the restriction of limited applicability of CPC is applicable not only for the litigants but also for the adjudicating authorities like the Regulatory Commissions.
- E. Whether the Commission has failed to notice that if it travels beyond the seven items listed in section 94(1), that way it would RENDER SECTION 94 IRRELEVANT AND MEANINGLESS.
- F. Whether for the sake of argument even if the bar under order II Rule 2 of CPC was applicable, still it would not be applicable to the present case as the earlier petition by the appellant was not filed for claiming outstanding amount, as wrongly assumed by the learned Commission. The earlier petition was restricted to the prayer for declaration that the tariff for the year 2011-12, 2012-13 & 2013-14 was applicable as per the RERC Regulations and not fresh determination of tariff as was being insisted by the Discoms.
- G. Whether the Commission was factually and legally justified in assuming that the earlier petition filed by the appellant was concerned with the claim of outstanding amount when there was no such prayer in the petition no.326/2012 filed by the appellant.

- H. Whether the Commission was legally justified in invoking the relevant CPC provisions on the ground of earlier petition by the petitioner allegedly for claiming outstanding amount when there is not even a whisper about any claim of outstanding by the appellant either in the petition or in the common order dated 10.12.2012 of the Commission.
- I. Whether after holding in para 16 that the petitioner was entitled to claim interest as laid down in the PPA, the Commission could ignore that claim in para 17 without indicating any reason for such contradictory observations.
- J. Whether the Respondent Discoms had any right to arbitrarily and unilaterally reduce the rate of interest as laid down in the PPAs executed several years back.
- K. Whether the Commission failed in its role of providing a level playing field to all the litigating parties by endorsing the illegal decision of the Discoms in unilaterally reducing the rate of interest laid down in the PPA.
- L. Whether the Commission failed in its mandate under section 86 (1) (e) for promoting and protecting the legitimate interest of the generator of renewable energy, by ignoring the interest rate for delayed payment laid down in the PPA.

BRIEF FACTS OF THE CASE:

4. The Appellant is a renewable energy generator and has set up a 2.76 MW captive wind power plant in Jaisalmer (Rajasthan) under Government of Rajasthan's "Policy for Promotion of Electricity Generation from 2003". In view of the above government policy, the Appellant executed a Power Purchase Agreement (PPA) for 20 years with RVPN (Transmission Company) and Jodhpur Discom on 14.03.2001 for selling power to them. The plant was commissioned in the first quarter of 2001. As per the Electricity Act 2003, the functions of RVPN (Transmission Company) were shifted to Discoms from 28.02.2004 and since then the Appellant has been dealing with the Discoms through its nodal agency i.e. Rajasthan Discoms Power Procurement Centre (in brief "**RDPPC**") (for sale and purchase of power) which is the fifth Respondent in the present appeal. The first Respondent/State Regulatory Commission notified Terms and Conditions for determination of Tariff Regulations, 2009 on 23.01.2009. Since the Discoms were insisting for fresh determination of tariff after 10th year of PPA, the Appellant addressed a letter to Superintending Engineer, RDPPC on 20.08.2011 requesting that in view of the Regulations, the tariff had already been prescribed for the years 2011-12 to 2013-14 and, hence, there was no need for fresh determination of tariff. Thereafter, a reminder letter was sent by the Appellant to SE on 25.10.2011. In spite of communicating the letter, as referred above, SE, RDPPC, however, vide his letters dated 16.11.2011 & 15.12.2011 insisted that the Appellant should approach the Commission for fresh determination of tariff from 11th year onwards.

5. It is the case of the Appellant that, he reliably learnt about the meeting of the Directional Committee held on 12.12.2011 which confirmed that the Discoms were not inclined to follow the Regulations and insisted that wind energy generators like the Appellant will have to approach the Commission for fresh determination of tariff.

6. The Appellant vide its communication dated 02.04.2012 addressed to SE, RDPPC in response to his letter of 06.01.2012 pointed out that it was unfair on the part of the Discoms to impose tariff which had been determined during that period only for newly established plants.

7. The Appellant has constrained to file a Petition No.326/12 before the first Respondent/State Regulatory Commission on 14.05.2012 for declaring that the tariff for the year 2011-12 to 2013-14 was applicable as per the RERC Regulations and, hence, no fresh determination of tariff was required for those three years. After considering the grounds made out by the Appellant, the first Respondent/State Regulatory Commission has pronounced its common Order dated 10.12.2012 passed in three petitions including Petition No. 326/12 of the Appellant, clarifying that no fresh determination of tariff was required and tariff would be payable as per the Regulations which had already fixed tariff for the year 2011-12 to 2013-14. Against the said common Order dated 10.12.2012 passed by the first Respondent/State Regulatory Commission, no appeal was filed by the Discoms (which included Kalani Industries also) and, hence, that order attained finality.

8. In spite of first Respondent/State Regulatory Commission in its common Order dated 10.12.2012 relied upon identical case of Kalpataru Power Transmission Co. Pvt. Ltd. (Petition No.298/12) in which it had held that the tariff for the year 2011-12 to 2013-14 was payable as laid down in the Regulations, the Discoms were not inclined to allow the tariff as per the Regulations and insisted for acceptance of the lower tariff of Rs.4.22 per unit (instead of the tariff of Rs.5.1823 which had been fixed by the Regulations for the 2011-12), till the disposal of the appeal before this Tribunal in the case of Kalpataru. The Appellant had no option but to accept the terms dictated by the Discoms till the disposal of the appeal relating to Kalpataru.

9. The Appeal filed by the Discoms in the identical case of Kalpataru was dismissed by this Tribunal and the Commission's Order was affirmed. Even after the dismissal of the Appeal, heavy amount remained due and the Discoms delayed payment on one ground or the other. Hence, the Appellant was compelled to file Petition No. 474/14 for claiming interest as per the PPA from the period prescribed by the Regulations. A claim of Rs.35,60,495/- was made towards interest and, subsequently, when further details of the interest rates of the Reserve Bank of India became available, the claim was revised and reduced to Rs.33,61,641/-. The said matter had come up for consideration before the first Respondent on 01.05.2015 and after hearing learned counsel appearing for the Appellant, the Respondents, by assigning valid and cogent reasons in paragraphs 16 to 19 of the impugned Order dated 01.05.2015, the petition filed by the Petitioner (Appellant herein) stands disposed of in above terms.

Being aggrieved by the impugned Order dated 01.05.2015, passed by the first Respondent/State Regulatory Commission, the Appellant herein felt necessitated to present this appeal for redressing his grievances.

MR. P.N. BHANDARI, LEARNED COUNSEL APPEARING FOR THE APPELLANT PRESENTED THE FOLLOWING SUBMISSIONS:

10. Learned counsel, Mr. P.N. Bhandari, appearing for the Appellant, vehemently contended that, the petition of the Appellant was decided on 01.05.2015. In para 7 of the impugned order, the first Respondent/State Regulatory Commission admitted thus about the interest liability:

“7. Further as per clause 5.1(b) of the PPA late payment shall carry, for the period of delay, interest at an annual rate equal to the Bank rate plus eight percent (8%).....”

11. Again in para 16 of the Order of the first Respondent/State Regulatory Commission, it is read thus:

“16. In our considered view mere pendency of an appeal without their being any stay order will not exonerate the Respondents from their liability to pay the tariff as specified by the regulations and order of this Commission. The Petitioner had a right to receive a tariff as ordered by this Commission in its petition from the date of the order and Petitioner is entitled to interest on the delayed payment from that date if amount is not paid. Admittedly, the Respondents did not make payment to the Petitioner even after this Commission made an order clarifying what is the tariff payable. Once this Commission decides what is the tariff payable, thereafter there is no ground for the Respondents to deny the payment which is legitimately due and interest thereon. Once they have no right to withhold the payment, the terms of the PPA come into operation and entitle the Petitioner for the delayed payment interest as provided in the PPA. Therefore we are of

the view that the Petitioner is entitled to claim interest as per the terms of the PPA for the delay caused after the order of this Commission dated 10.12.2012.”

12. The first Respondent/State Regulatory Commission, in above paragraphs, accepted the liability of Discoms to pay interest for delayed payment but without any justification it disallowed interest liability on the ground of Rule 11, Order 2 of CPC. The relevant part of para 18 read thus:

“18. Order II Rule 2 of CPC, thus specifically states that all the claims arising out of the same course of action shall be included in the suit and otherwise it is considered as given up and cannot be claimed in subsequent suit. It is observed from the records of petition No 326/12 that Petitioner claimed payment for the electricity supplied based on tariff specified in the Regulations but did not ask for the same with interest though PPA provided for it.”

13. The above consideration in para 16 & 18 is factually and legally incorrect. The first Respondent/State Regulatory Commission has failed to notice that the earlier petition of the Appellant was not related to outstanding payments and so there was no question of claiming interest arising out of delayed payment. It was simply a prayer for declaration that the tariff was payable as per the Commission's Regulations. Therefore the question of claiming interest at that stage just did not arise.

14. It is significant to note that, in the earlier Petition No.326/12, there is no occasion of claiming the interest wherein the petitioner has sought three prayers and which is again showed that the dispute concerned with the declaration of

tariff as per the Regulations and no claim was made by the petitioners for payment of outstanding amount. When the very applicability of tariff as per the Regulations was in question, there was no question of either claiming of due amount or interest, on that due amount could be determined only after the Commission clarified by its order of 10.12.2012 that the tariff would be applicable as per the Regulations. Therefore the Appellant could not have jumped to claim interest on arrears, even before the Commission had decided, as to which tariff was applicable.

15. Further, learned counsel for the Appellant vehemently submitted that, claiming interest, before claiming even principal amount would be like putting the cart before the horse. The State Regulatory Commission has failed to observe the sequence of events. The petitioner did not and could not claim for payment of interest on so-called arrears, when the applicable tariff was yet to be clarified by the first Respondent/State Regulatory Commission.

16. On the ground that the dispute at that stage was not for non-payment or delayed payment, it was only about the applicability of tariff as per the Regulations. The Commission had rightly decided earlier in the identical case of Kalpataru (Petition No.298/2012) that it was payable as per the Regulations. This Tribunal also affirmed this order of the Commission relating to Kalpataru. The Commission's Order of 10.12.2012 dealt with 3 petitions, including that of the Appellant and relied totally on its earlier order of Kalpataru duly affirmed by this Tribunal.

17. It is a patent error factually and legally to assume as held by the first Respondent/State Regulatory Commission in para 17 of the Order that the petition is barred by order II, rule 2 of CPC, as the issue of interest was allegedly not raised in the earlier petition filed by the Appellant.

18. The earlier Order dated 10.12.2012 of the first Respondent/State Regulatory Commission was a clarificatory order, which laid down that the tariff payable by the Discoms had to be as per the Regulations. It is well established and time honored practice that a clarification is always with retrospective effect. At no stage, the first Respondent/State Regulatory Commission indicated in its order that its order would be applicable only from the date of order. The order was issued on 10.12.2012 while the tariff as per the Regulations was held to be payable from 01.04.2011. Therefore, obviously the clarification was with retrospective effect, as is the universal practice for all clarificatory orders. Therefore, the observation in para 19 of the impugned Order for the applicability of the order “after the order of this Commission dated 10.12.2012” is patently erroneous. Hence, it is liable to be set aside at threshold.

19. In the impugned Order, the first Respondent/State Regulatory Commission has apparently ignored its role as an adjudicatory authority under section 86(1)(f) of the Act. It has virtually left it to the generosity of the Discoms, when it observes in para 19 of the impugned Order contrary to the case made out by the Appellant and to the relevant provisions of the Electricity Act, 2003.

Once such an arbitrary action comes to the notice of the State Regulatory Commission, it should have put a break upon such a one sided order but surprisingly the State Regulatory Commission has put its seal of approval by suggesting to the Appellant to convey its consent for the reduced rate of interest.

20. It emerged from the reasoning given in para 19 of the order, the first Respondent/State Regulatory Commission ignores its adjudicatory role and unwittingly endorses the decision of the Discoms to arm-twist the suppliers of renewable energy by suggesting to the Appellant to convey acceptance for the reduced percentage of interest as decided by the Discoms.

21. As held in para 16 of the impugned Order that the Appellant is entitled for the interest as per the PPA, the Commission has grossly erred in para 19 of the impugned Order by endorsing the unilateral declaration of the Discoms in reducing the rate of interest to 10%, in supersession of the interest rate laid down in the PPA years ago. Therefore, on this ground also, it emerged that there is no application of mind on the part of the first Respondent/ State Regulatory Commission and, therefore, the impugned Order passed by the first Respondent/State Regulatory Commission is liable to be vitiated.

22. Learned counsel for the Appellant, further, contended that, if the State Regulatory Commission has held in para 7 and 16 that the Appellant is entitled for interest on delayed payment, as provided in the PPA, it cannot dilute that provision by adding “after the order of this Commission.” It would be patently

unethical and illegal to hold that interest should have been paid as per the PPA from the date prescribed in the regulations but if the Discoms have not paid, then the due amount of interest need not be paid by the Discoms, till the litigation concludes and the State Regulatory Commission passes its Order dated 10.12.2012.

23. It would encourage avoidable litigation to hold that the interest is payable from the beginning as per the PPA, but its non-payment would be condoned till the pronouncement of the order by the State Regulatory Commission. This will be a wrong precedent. The Discoms will try to avoid payment, being conscious that the State Regulatory Commission will allow interest only from the date of its order in spite of their default as per the Regulations.

24. Learned counsel for the Appellant submitted that, as per relevant provisions of the Electricity Act, 2003, under Section 120(1) of the Act and Section 94(1), a combined reading of the two sections would show that CPC is not applicable except in seven routine matters enumerated in Section 94(1) of the Act only. Therefore, the first Respondent/State Regulatory Commission has erred in relying upon the order II, Rule 2 of the CPC. The very purpose of specifically excluding the provisions of CPC in the Electricity Act, is defeated if through the backdoor, the ghost of CPC affects the decision making of the authorities in the power sector.

25. The first Respondent/State Regulatory Commission ought to have taken note of the reason and object of the Electricity Act, 2003 before holding that

order II, Rule 2 of the CPC is applicable, the said reasoning cannot be justiceable on the ground that relevant provisions of the Electricity Act, 2003 intended that the State Regulatory Commissions and this Tribunal should be guided by principles of natural justice rather than the cumbersome procedural laws of CPC. If the Electricity Act specifically declares that CPC is not applicable, then it is binding upon all, including the State Regulatory Commissions. It would create very odd situation if the parties, relying upon the Electricity Act, presume that the CPC is not applicable in their cases while the Commissions continue to operate under CPC. If CPC is to be made applicable, then the parties must know in advance so that they also meticulously follow the CPC provisions. The parties should not be taken by surprise by invoking CPC provision, which are not applicable in the proceedings under the Electricity Act.

26. Further, learned counsel for the Appellant quick to point out and submitted that, in view of the mandate under section 86(1)(e) of the Electricity Act for promoting renewable energy, the State Regulatory Commission should have allowed the legitimate claim of interest, instead of defeating that claim by travelling beyond its jurisdiction and invoking provisions of CPC which are totally inapplicable.

27. In view of the well settled principal of law laid down by the Hon'ble Apex Court in the case of Cellular Operators Association v. Union of India – AIR 2003 SC 899, wherein it is held that”

“The regulatory bodies exercises wide jurisdiction. They lay down the law. They may prosecute. They may punish.

Intrinsically, they act like an internal audit. They may fix the price, they may fix the area of operation and so on and so forth. While doing so, they may, as in the present case, interfere with the existing rights of the licensees.”

28. Further, learned counsel for the Appellant placed reliance on the judgment of this Tribunal dated 22.08.2014 passed in Appeal No. 279 of 2013 in the case of Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission and Ors and taken us through para 22 of the judgment wherein it is held that, *“At the outset, it is to be pointed out that the strict Rules of the Civil Procedure Code do not apply to the proceedings before the State Commission and the State Commission is free to decide on its own procedure which satisfies two aspects i.e. (1) Principles of Natural Justice and (2) Transparency.”*

29. The Electricity Act is an exclusive Code which is not bound by the procedures contemplated under the Civil Procedure Code. The State Commission is well within its rights to adopt the procedure, which would satisfy the above two elements. The procedure cannot be said to be illegal because some of the procedure contemplated under CPC having been followed. As already stated above, the State Regulatory Commission would follow its own procedure instead of the procedure referred to in the CPC either in order 7 rule 11 or order 14 rule 2 of the CPC. Therefore, in view of the well settled law laid down by this Tribunal, as stated supra, the impugned Order passed by the first Respondent/State Regulatory Commission is liable to be quashed and the prayer sought in the appeal filed by the Appellant may kindly be allowed as prayed for in the interest of justice and equity.

MR. RAJ KUMAR MEHTA, LEARNED COUNSEL APPEARING FOR THE FIRST RESPONDENT/STATE REGULATORY COMMISSION OFFERED THE FOLLOWING SUBMISSIONS:

30. ***Per-contra***, learned counsel, Mr. Raj Kumar Mehta, appearing for the first Respondent, has filed his detailed written submission contending that, in the impugned Order passed by the first Respondent/State Regulatory Commission has taken a view that, since the Appellant had not raised the claim for interest in Petition No. 326 of 2012, the said claim is barred on the principle of Order II Rule 2 of CPC.

31. Further, he submitted that, the contention of the Appellant that the provisions of CPC do not apply to the proceedings before the Commission under Section 86 (1) (f) of the Electricity Act, 2003 is misconceived and untenable. To substantiate his submission, he quick to point out and taken us through section 175 of the Electricity Act, 2003, which provides as under:

“175. Provisions of the Act to be in addition to and not in derogation of other laws – the provisions of this Act are in addition to and not in derogation of any other law for time being in force.”

32. Therefore, he submitted that, the provisions of CPC in so far as the same are not inconsistent with the provisions of the Electricity Act, 2003 will apply to the proceedings before the Commission under Section 86 (1) (f) of the Electricity Act, 2003.

33. Learned counsel for the first Respondent has placed reliance on the judgment of this Tribunal in the case of New Bombay Ispat Udyog Limited vs. MSEDCL (Judgment dated 06.05.2010 in Appeal No. 55 of 2009) wherein it held that there is no dispute regarding the settled position of law that general provisions must yield to the special provisions. But this principle would apply only when there is a conflict between the provisions of the special statutes and the general provisions. In this case there is nothing to indicate that the provisions of the CPC are in conflict with the provisions of the Electricity Act. As a matter of fact in the case of Gujarat Urja Vikas Nigam Ltd. vs. Essar Power in 2008 (4) SCC 755 the Hon'ble Supreme Court held that:

“This can be done by holding that when there is any express or implied conflict between the provisions of the Electricity Act and any other Act that the provisions of the Electricity Act, 2003 would prevail but when there is no conflict, express or implied, both the acts are to be read together”

.....

27. Therefore, it has to be held in answering the first question that this Tribunal is adequately empowered to regulate its own procedure and that there is no embargo on this Tribunal from invoking provisions of the CPC.”

34. Learned counsel for the first Respondent also placed reliance on the judgment of Hon'ble Supreme Court in the case of Bharat Amratlal Kothari and Another v. Dosukhan Samadkhan Sindhi and Others reported in (2010) 1 SCC 234 wherein it was held that:

“29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner

is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue to respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the Petitioner to claim all reliefs he seeks from the Court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

35. Further, he placed reliance on the judgment of Hon’ble Apex Court in the case of A.P. Power Co-ordination Committee v. Lanco (2016) 3 SCC 468 as held in para 29 & 30 of the judgment. Therefore, he submitted that, in view of the well settled law laid down by the Hon’ble Apex Court in the above case, the instant appeal filed by the Appellant is liable to be dismissed.

36. Learned counsel for the first Respondent vehemently submitted that, the view of the first Respondent/State Regulatory Commission in the impugned Order that the claim of the Appellant is barred by Order II Rule 2 of CPC is fully justified. There is no error, illegality and infirmity in the impugned Order dated 01.05.2015 passed by the first Respondent/State Regulatory Commission and interference by this Court does not called for and the instant appeal filed by the Appellant is liable to be dismissed as devoid of merits.

MR. BIPIN GUPTA, LEARNED COUNSEL APPEARING FOR RESPONDENT NOS. 2 TO 5 PRESENTED THE FOLLOWING SUBMISSIONS:

37. Learned counsel, Mr. Bipin Gupta, appearing for the Respondent Nos. 2 to 5 has filed his reply and also his written arguments on behalf of the Respondent Nos. 2 to 5.

38. In his reply, he contended that, the Appellant has not stated the correct facts of the case in hand. He submitted that, the Appellant has set up a wind energy plant of 2.76 Mw in Jaisalmer District under the Government of Rajasthan Policy for wind energy and a PPA was executed on 14.03.2001. It is significant to note that the PPA was executed prior to coming into force of the Electricity Act, 2003 and, after 10 years, the tariff as per the PPA itself was to be mutually settled between the Generator and the Licensee as per Clause 3.1 of the PPA.

39. Further, learned counsel for the Respondent Nos. 2 to 5 submitted that, during that 10 years operational period, there was no dispute as to tariff. However, since during that intervening period, Electricity Act, 2003 had come into force, therefore, the tariff as per the Act was supposed to be decided by the first Respondent/State Regulatory Commission. Since, after 10 years, as per PPA, no tariff existed for the generators, therefore, the Directional Committee of the Discoms decided to give the tariff of the generic tariff of the year, in which 10 years had expired and, on account of which, dispute arose between such

generators and licensees and one petition by Kalptaru came to be filed before the first Respondent/State Regulatory Commission in Petition No. 298/2012, contending therein that in the Tariff Regulation of 2009, already the tariff for Biomass and Wind Power Plants have been specified under Regulation 82(1)(a). The defense of the Discom was that the said specified tariff was only for the period till the tariff is not determined by the first Respondent/State Regulatory Commission on expiry of 10 years and the said was made on the basis of the statement made by Kalptru during the determination of Tariff Regulation, 2009. After considering the case made out by the parties and on the basis of relevant material available on records, the first Respondent/State Regulatory Commission, vide its Order dated 29.03.2012 allowed the petition filed by Kalpatru and held that the tariff had already been specified and the Discom is supposed to pay according to the said tariff. Since the issue was a legal one and was affecting huge number of generators and many petitions were coming, therefore, for the intervening period, the Discom decided to file an appeal in case of Kalptaru and to contest the said and to other generators, it was decided that the payment would be made according to the Orders of the State Regulatory Commission passed in Kalptaru but, however, it was also requested to the generators that they would give an undertaking to receive payment and to abide by any decision which could be passed in Appeal in case of Kalptaru. It is, further, submitted that, Kalani Industries (Appellant herein) itself has filed a Petition bearing NO. 326/12 before the State Regulatory commission for payment according to the tariff specified by the RERC and did not claim any interest at that point of time. The said petition was decided on

10.12.2012. Accordingly, the generators'/appellant's payment were made without interest.

40. It is further, submitted that, the dispute in case of Kalptaru stood decided by this Tribunal vide its judgment and Order dated 09.10.2012 in Appeal No. 114/12 and the said matter is pending for adjudication before the Hon'ble Supreme Court. Therefore, the Core issue is still pending that whether the generators are entitled for tariff at the rate as specified in Tariff Regulation 2009 or the generators, after expiry of period of 10 years, would be entitled for any other tariff in the nature of generic tariff of that year, which is to be adjudicated by the Hon'ble Apex Court.

41. Since the matter as to tariff itself is disputed and is pending adjudication before the Hon'ble Apex Court, therefore, though the Discoms have paid the higher tariff as ordered by the first Respondent/State Regulatory Commission, the interest is not payable as the dispute of final tariff to be paid to a generator after expiry of 10 years, as per the PPA Clause 3.1, is still pending adjudication before the Hon'ble Apex Court and, therefore, in light of the above factual aspects, it is submitted that the appellant is not entitled for any sort of interest as it is admitted position that till the dispute of Kalptaru is finally decided, the payments of the bill having been made by the Discom, under protest to follow the Order of the State Regulatory Commission, and to that effect, there is admission of the generator the appellant to abide by the final decision and there

arises no question of any interest as being claimed by the appellant under the PPA Clause 5.1.

42. Further, learned counsel for the Respondent Nos. 2 to 5, submitted that, the financial condition of Discoms is very stringent and, therefore, Discom is not financially in a position to pay interest as claimed by the Appellant. Therefore, the State Regulatory Commission, after taking all relevant facts into consideration and the case made out by the parties, has passed a proper and sound order and interference by this Court does not call for.

43. Further, learned counsel for the Respondent Nos. 2 to 5 has filed a detailed written arguments contending that, the only issue before this tribunal in the present appeal is in regard to applicability of Order 2 rule 2 CPC in the Proceedings before the State Regulatory Commission and whether the interest prior to order dated 10.12.2012 has been rightly denied by the first Respondent/State Regulatory Commission on the basis of provisions of Order 2 rule 2 of CPC. It is crystal clear from the order II, rule 2 of CPC that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

44. It is significant to note that the Appellant in its earlier Petition No. 326/2012 decided on 10.12.2012 when the payments were not made as per the PPA and the regulations, claimed the Tariff as per PPA and the Regulations but did not claim interest and, thus, omitted to claim interest and in the subsequent

Petition No. 474/2014 claimed interest for the period prior to Order dated 10.12.2012 as well as subsequent period and the first Respondent/State Regulatory Commission has allowed the interest as per PPA for the period subsequent to Order dated 10.12.2012 and denied the interest prior to 10.12.2012 on the basis of provisions of order 2 rule 2 CPC. The said denial is in accordance with law and by assigning valid and cogent reasons; the first Respondent/State Regulatory Commission has passed the Order. Therefore, interference by this Tribunal does not call for.

45. Further, he submitted that, the Appellant, in the instant Appeal, has claimed that all CPC provisions are not applicable and only provisions as provided in section 94 are applicable. In that regard, it is submitted that, in section 94 of the Electricity Act, CPC has not been barred where as in section 120 of the Electricity Act CPC has been barred therefore, the applicability of CPC before the State Regulatory Commission has not been barred.

46. The reason behind not barring the CPC in section 94 is that the Commission has a role of adjudicatory function also on the contracts/disputes between the Generators and Licensees, thus acts as a civil court and, therefore, what could not be recovered in a civil suit cannot be recovered thorough Commission under section 86(1)(f) of the Electricity Act. For that purpose the Respondents place reliance on the judgment reported in SCC 2016(3) page 468, Andhra Pradesh Power Coordination v. Lanco in para 29 & 30 of the judgment.

47. In the light of the well settled principal of law laid down in para 29 & 30 of the judgment in the case of Andhra Pradesh Power Coordination v. Lanco, it is clear that while deciding the disputes under section 86(1)(f) of the Electricity Act based on the contract, the status of the Commission is of Civil Court and if anything which cannot be recovered through suit in a civil court, the same cannot be recovered through proceedings under section 86(1)(f) of the Electricity Act and the provisions of CPC would be applicable.

48. Learned counsel for the Respondent Nos. 2 to 5 also placed reliance on the judgment dated 18.05.2011 of this Tribunal in the case of Bihar Steel Manufacturers Association vs Bihar Electricity Regulatory Commission in Appeal No. 172 of 2010, wherein in para 33 of the judgment, it is held that, "It is settled law that in every proceeding the whole of the claim which a party is entitled to make should be made and where a party omits to sue in respect of any portion of the claim he cannot afterwards sue for the portion omitted. Therefore, he submitted that, reasoning given in para 33 of the above judgment, clearly stipulates the applicability of Order 2 Rule 2 CPC and, therefore, contention of the Appellant that the provisions of CPC are not applicable are baseless and against the settled principles of law.

49. Finally, he placed reliance on the judgment dated 05.09.2017 in the case of Raptakos Brett And Company Limited v Ganesh Property reported in (2017) 10 SCC 643, in para 24 & 25 wherein it is held that the provisions of Order II, Rule 2 will come into play and in comparison to the second suit for mesne

profits or arrears of rent till the decree, the earlier suit will attain finality. Therefore, it is specifically held that, thus, the prohibition contained in Order II Rule 2 would squarely apply in the instant case.

50. Applying the above provisions in the present case also the Appellant had a cause of action in the earlier petition also to have claimed interest but omitted to claim interest, therefore, in subsequent proceedings, interest prior to the period of order in the earlier petition which was decided on 10.12.2012 could not have been granted and only interest for the period subsequent to the order dated 10.12.2012 could have been granted and rightly the first Respondent/State Regulatory Commission has denied the interest prior to the period of 10.12.2012 and have rightly granted interest as per PPA for the period post 10.12.2012 and, therefore, the impugned Order passed by the first Respondent/State Regulatory Commission is just and reasonable and there is no error, infirmity or perversity in the impugned Order. Therefore, the instant Appeal filed by the Appellant is liable to be dismissed as misconceived with cost in the interest of justice and equity.

OUR CONSIDERATION:

51. We have heard learned counsel, Mr. P.N. Bhandari, appearing for the Appellant, learned counsel, Mr. Raj Kumar Mehta, appearing for the first Respondent/State Regulatory Commission and learned counsel, Mr. Bipin Gupta, appearing for the Respondent Nos. 2 to 5 at considerable length of time. We have carefully gone through the impugned Order dated 01.05.2015 passed

by the first Respondent/State Regulatory Commission and also reply and written submissions filed by the concerned learned counsel and all other relevant material available on record.

52. On the basis of the pleadings available on file, the only issue that arises for our consideration is:

“Whether the impugned Order dated 01.05.2015 passed in Petition No. RERC-474/14 by the first Respondent/State Regulatory Commission is sustainable in law?”

53. The first Respondent/State Regulatory Commission, after considering the case made out by learned counsel appearing for the Appellant and the Respondents and after taking into consideration the oral and documentary evidences available on record, have assigned valid and cogent reasons in para 16 to 18 in its Order dated 01.05.2015, which read as hereunder:

“16. In our considered view mere pendency of an appeal without their being any stay order will not exonerate the Respondents from their liability to pay the tariff as specified by the regulations and order of this Commission. The Petitioner had a right to receive a tariff as ordered by this Commission in its petition from the date of the order and Petitioner is entitled to interest on the delayed payment from that date if amount is not paid. Admittedly, the Respondents did not make payment to the Petitioner even after this Commission made an order clarifying what is the tariff payable. Once this Commission decides what is the tariff payable, thereafter there is no ground for the Respondents to deny the payment which is legitimately due and interest thereon. Once they have no right to withhold the payment, the terms of the PPA come into operation and entitle the Petitioner for the delayed payment interest as provided in the PPA. Therefore we are of the view that

the Petitioner is entitled to claim interest as per the terms of the PPA for the delay caused after the order of this Commission dated 10.12.2012.

17. Now coming to payment of interest for the period prior to the order of the Commission, we have to accept the submissions of Respondents that no interest is payable in view of bar in Order II Rule 2 of CPC. Order II Rule 2 of CPC reads as under:

“2. Suit to include the whole claim- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action;

but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

18. Order II Rule 2 of CPC, thus specifically states that all the claims arising out of the same course of action shall be included in the suit and otherwise it is considered as given up and cannot be claimed in subsequent suit. It is observed from the records of petition No 326/12 that Petitioner claimed payment for the electricity supplied based on tariff specified in the Regulations but did not ask for the same with interest though PPA provided for it.”

54. After microscopic evaluation of the impugned Order passed by the first Respondent/State Regulatory Commission and after careful perusal of the reply and written submissions filed by learned counsel appearing for the Appellant and Respondents it is manifest that, it is an undisputed fact that the Appellant herein has filed a Petition No. 326/12 on the file of the Rajasthan Electricity Regulatory Commission, Jaipur for determination of tariff and had not claimed any interest in the petition.

55. It is the case of the Appellant that the Appellant has a wind energy plant of 2.76 MW in Jaisalmer District and had entered into a Power Purchase Agreement (PPA) with Rajasthan Rajya Vidyut Prasaran Nigam Ltd (RVPN)/Jodhpur/Discom on 14.03.2001 in the light of the Govt. of Rajasthan's policy for wind energy. In the meanwhile, the Electricity Act, 2003 was enacted and the functions of purchase of electricity, etc. shifted from RVPN to Discoms. Accordingly, the bill was started to be raised by the Appellant in the name of Discoms and the payment was also started to be made by the Discoms instead of RVPN. The Appellant has raised the bills from July'2011 to March'2012 to Discoms at the rate of Rs.5.1823/unit as specified in Tariff Regulations, 2009. RDPPC acting on behalf of Discoms, compelled the Appellant to accept the payment at the lower rate of Rs. 4.22/unit as some litigation regarding tariff was pending before this Tribunal. The Appellant had no option but to accept whatever payment was being made by Discoms.

56. Accordingly, the Appellant continued to raise the bills at the rate prescribed by the RERC Regulations but the Discoms compelled the Appellant

to accept the payment at the lower rate of Rs. 4.22/ unit. This stand of the Discoms was totally arbitrary and illegal as there was no stay against the State Regulatory Commission's Order dated 10.12.2012. However the balance amount @ Rs. 0.96 (Rs. 5.18-Rs 4.22) per unit was received by the Appellant on 30.09.2013. The Appellant has repeatedly made requests to the concerned authorities and indicated the shortfall in the monthly payments along with the delay in each case and made a total claim of Rs. 35,60,495/- toward interest of delayed payments which was later revised to Rs. 33,61,641/-. Therefore, he was constrained to file a Petition bearing No. RERC-474/14 before the first Respondent/State Regulatory Commission seeking appropriate relief.

57. Further, it emerges from the impugned Order in para 10 that a similar question arose before the State Regulatory Commission in Petition No.298 of 2012 filed by M/s. Kalptaru Power Transmission Co. Pvt. Ltd. The State Regulatory Commission, after considering the terms of the PPA and Tariff Regulations, 2009, held that the Companies which have signed the PPAs shall be entitled to the tariff determined by the Commission as per the GoR Policy, 1999. In other words the Commission held that the Petitioner therein is entitled for the tariff for FY 2011-12, 2012-13 and 2013-14 at Rs.5.1855/unit, Rs.5.4448/unit and Rs.5.7171/unit respectively.

58. The Appellant herein had also filed a petition having No. 326/12 before the first Respondent/State Regulatory Commission seeking a direction to the Discoms to pay the tariff as per Tariff Regulations, 2009 and also as held in the

case of M/s. Kalptaru Transmission Pvt. Ltd, wherein the first Respondent/State Regulatory Commission, after hearing the parties, has held as follows:

“23. In light of the above, we direct that tariff payable to the petitioners, i.e., for RREC, M/s Kalani and RSMML after a period of 10 years and up to FY-14, would be as specified in the table below regulation 82(1) (a) of the RERC (Terms and Conditions for determination of Tariff) Regulations, 2009 as below:

Sr No.	Wind Farm Location and dt. of completion of 10 year PPA	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
1.	2.00 MW Wind Farm of Amarsagar, Jaisalmer set up by RREC (10 year PPA completed on 11.3.2009)	4.4795	4.7034	4.9386	5.1855	5.4448	5.7171
2.	2.25 MW Wind Farm of Devgarh, Pratapgarh set up by RREC (10 year PPA completed on 13.12.2009)	--	4.7034	4.9386	5.1855	5.4448	5.7171
3.	2.10 MW Wind Farm at Jodhpur set up by RREC (10 year PPA completed on 9.11.2010)	--	--	4.9356	5.1823	5.4414	5.7135
4.	Wind power plant at Badabagh, Jaisalmer set up by M/s Kalani (10 year PPA completed on 14.3.2011)	--	--	--	5.1823	5.4414	5.7135
5.	Wind power plant at Badabagh, Jaisalmer set up by RSMML (10 year PPA completed on 28.8.2011)	--	--	--	5.1823	5.4414	5.7135

The petition filed by the Appellant was accordingly disposed of.

59. It is also not in dispute that no appeal has been filed against the said order and the order therefore, has become final.

60. The first Respondent/State Regulatory Commission, after analyzing the oral and documentary evidences available on record and after considering the submissions made by the learned counsel appearing for both the parties, by assigning valid and cogent reasons in para 16 of its Order opined that Once they have no right to withhold the payment, the terms of the PPA come into

operation and entitle the Petitioner (Appellant herein) for the delayed payment interest as provided in the PPA. Therefore, we are of the view that the Petitioner/Appellant is entitled to claim interest as per the terms of the PPA for the delay caused after the order of this Commission dated 10.12.2012. After holding the same, the Commission has accepted the submissions of the Respondents that no interest is payable in view of bar in Order II Rule 2 of CPC and specifically pointed out that the Order II Rule 2 of CPC states that all the claims arising out of the same course of action shall be included in the suit and otherwise it is considered as given up and cannot be claimed in subsequent suit. In the instant case, it is not in dispute that earlier the Appellant has filed a petition No. 326/12 and that the Appellant claimed payment for the electricity supplied based on tariff specified in the Regulations but did not claim the interest as provided under PPA.

61. It is worthwhile to extract the relevant provisions of Order II, Rule 2 of CPC which reads as under:

“2. Suit to include the whole claim – (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim – Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs – A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the

leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

62. In view of the relevant provisions of the Order II, Rule 2 of CPC, the State Regulatory Commission has rightly justified in denying the interest prior to Commission's Order dated 10.12.2012 which is just and reasonable. We do not find any error, infirmity or perversity in the impugned Order. The impugned Order has been passed by the first Respondent/State Regulatory Commission by assigning valid and cogent reasons. Therefore, interference by this Tribunal does not call for.

63. The first Respondent/State Regulatory Commission, in its Order, has taken a view that since the Appellant had not raised the claim for interest in Petition No. 326 of 2012, the said claim is barred on the principle of Order II Rule 2 CPC. Therefore, the contention of the Appellant that the provisions of CPC do not apply to the proceedings before the State Regulatory Commission under Section 86 (1) (f) of the Electricity Act, 2003 is misconceived and unsustainable.

64. As per Section 175 of the Electricity Act, 2003 provides that provisions of the Act to be in addition to and not in derogation of other laws – the provisions of this Act are in addition to and not in derogation of any other law for time being in force. It is clear that the provisions of CPC in so far as the same are not inconsistent with the provisions of the Electricity Act, 2003 will apply to the

proceedings before the Commission under Section 86 (1) (f) of the Electricity Act, 2003.

65. This Tribunal, in case of New Bombay Ispat Udyog Limited v. MSEDCL (Judgment dated 06.05.2010 in Appeal No. 55 of 2009) in para 25, has held as under:

“25. There is no dispute regarding the settled position of law that general provisions must yield to the special provisions. But this principle would apply only when there is a conflict between the provisions of the special statutes and the general provisions. In this case there is nothing to indicate that the provisions of the CPC are in conflict with the provisions of the Electricity Act. As a matter of fact it is held in Gujarat Urja Vikas Nigam Ltd. Versus Essar Power in 2008 (4) SCC 755 by the Hon’ble Supreme Court as follows:

“This can be done by holding that when there is any express or implied conflict between the provisions of the Electricity Act and any other Act that the provisions of the Electricity Act, 2003 would prevail but when there is no conflict, express or implied, both the acts are to be read together”

66. In the aforementioned judgment dated 06.05.2010 passed by this Tribunal wherein it has been specifically held that this Tribunal is adequately empowered to regulate its own procedure and that there is no embargo on this Tribunal from invoking provisions of the CPC. It is significant to note that in view of the well settled proposition of law laid down by the Hon’ble Apex Court and by this Tribunal in the catena of judgments, the Commission is adequately empowered to regulate its own procedure and that there is no embargo on the Commission

from invoking provisions of the CPC because the provisions of CPC in so far as the same are not inconsistent with the provisions of the Electricity Act, 2003 will apply to the proceedings before the Commission under Section 86 (1) (f) of the Electricity Act, 2003. Therefore, we do not find any substance in the submission of learned counsel for the Appellant that under Section 120(1) of the Electricity Act, 2003 and Section 94(1), a combined reading of the two sections would show that CPC is not applicable except in seven routine matters enumerated in Section 94(1) of the Act only. Further, we do not find any force in the submission of learned counsel for the Appellant that the State Regulatory Commission has erred in relying upon the Order II, Rule 2 of the CPC. The very purpose of specifically excluding the provisions of CPC in the Electricity Act, is defeated if through the backdoor, the ghost of CPC affects the decision making of the authorities in the power sector. Therefore, we hold that the submission of learned counsel for the Appellant is not applicable to the facts and circumstances of the case in hand.

67. Further, as rightly pointed out by learned counsel appearing for the first Respondent and Respondent Nos. 2 to 5 and heavily placed reliance on the judgment of the Hon'ble Apex Court in the case of A.P. Power Coordination Committee v. Lanco reported in (2016) 3 SCC 468 and submitted that the ratio of the said judgment is aptly applicable to the facts and circumstances of the case in hand. There is substance in the submissions of learned counsel appearing for the Respondents. The relevant portion of the judgment of the Hon'ble Apex Court, as stated supra, reads as under:-

- (i) *A plain reading of this section leads to a conclusion that unless the provisions of the Electricity Act are in conflict with any other law when this Act will have overriding effect as per Section 174, the provisions of the Electricity Act will be additional provisions without adversely affecting or subtracting anything from any other law which may be in force.*
- (ii) *In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Section 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence or limitation, we are persuaded to hold that in the light nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation.*
- (iii) *In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86 (1)(f) also appears to be for speedy resolution so that a vital developmental factor – electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes*

by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.”

{Emphasis supplied}

68. After careful preposition of law envisaged in the aforementioned paragraphs, we are persuaded to hold that in the light nature of judicial power conferred on the State Regulatory Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding. Hence, we hold that the claim coming before the State Regulatory Commission cannot be entertained or allowed as contended by the learned counsel appearing for the Appellant. We do not find any good ground for the reasons that it is not in dispute that earlier the Appellant herein has filed a petition No.326/12 before the State Regulatory Commission wherein he has not raised the claim of interest, therefore, the said claim of the Appellant is barred by Order II, Rule 2 of CPC. Therefore, we are of the considered view

that the impugned Order passed by the first Respondent/State Regulatory Commission is strictly inconsonance with relevant provisions of the Electricity Act and Regulations. Therefore, interference by this Tribunal does not call for.

69. The reliance placed by learned counsel appearing for the Appellant on the judgment dated 22.08.2014 passed by this Tribunal in Appeal No. 279 of 2013 in the case of Gujarat Urja Vikas Nigam Limited v Gujarat Electricity Regulatory Commission & Ors is not applicable to the facts and circumstances of the case in hand.

70. The first Respondent/State Regulatory Commission, after due appreciation of the oral and documentary evidences available on record and after considering the case made out by the learned counsel appearing for the Appellant and the Respondents and taking into consideration the relevant provisions of the Electricity Act and Regulations and by assigning valid and cogent reasons has passed the impugned Order. We do not find any error or irregularity or perversity in the impugned Order. The Appellant has failed to make out any valid ground to consider the prayer sought in the instant Appeal.

After taking all relevant factors into consideration, as stated supra, the instant Appeal filed by the Appellant is liable to be dismissed as devoid of merits.

ORDER

Having regard to the factual and legal aspects of the matter, as stated supra, the instant Appeal filed by the Appellant, is liable to be dismissed as devoid of merits and accordingly dismissed.

Parties to bear their own costs.

PRONOUNCED IN THE OPEN COURT ON THIS 25TH DAY OF OCTOBER, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

√ **REPORTABLE**

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