SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justices B.R. Gavai and Prashant Kumar Mishra

Date of Decision: January 8, 2024

Civil Appeal Nos. 6503 of 2022 and 6502 of 2022

Civil Appeal No. 4612 of 2023

JAIPUR VIDYUT VITRAN NIGAM LTD. & ORS. ...APPELLANT (S)

VERSUS

MB POWER (MADHYA PRADESH) LIMITED & ORS. ...RESPONDENT (S)

Legislation:

Sections 63, 79, and 86 of the Electricity Act, 2003.

Subject:

The appeals challenge the judgment of the Rajasthan High Court, mandating the appellants to purchase electricity from MB Power at a specified rate, raising issues of judicial intervention in commercial contracts, transparency in bidding processes, and consumer interests in electricity procurement.

Headnotes:

Judicial Review of Commercial Decisions – Supreme Court's power under Article 226 to issue writs – High Court's discretion to entertain a writ petition – Restrictions and exceptions to the rule of alternate remedy – Considerations of natural justice, jurisdiction, and fundamental rights – Assessment of public interest in issuing a mandamus. [Paras 7, 97-110]

Electricity Act and Bidding Guidelines – Interpretation and application of Section 63 and Section 86(1)(b) of the Electricity Act – Role of State Commission in adopting tariffs determined through a transparent bidding process – Guidelines for bidding and evaluation of tariffs – Right to reject price bids if not aligned with market prices. [Paras 39, 66-75, 84-88]

Electricity Act, 2003 – Section 63 – Determination of Tariff by Bidding Process – scope of Section 63, emphasizing that the appropriate Commission does not "determine" tariff but only "adopts" it, provided the tariff has been determined through a transparent process of bidding in accordance with guidelines issued by the Central Government. The Court held that the Commission is not merely a post office and must ensure compliance with the guidelines. [Para 66-68, 70]

Electricity – Tariff – Competitive Bidding – Market Alignment –held that the evaluation committee under the Bidding Guidelines has the authority to reject all price bids if the rates quoted are not aligned with prevailing market prices. The Court emphasized that procurers are not bound to accept all bids in a competitive bidding process without considering market alignment. The decision-making process must be in the consumers' interest and public interest. [Para 73-74, 77-78, 90-92]

Judicial Review – Commercial Transactions – Court asserted that while the decision to award a contract is primarily a commercial one, the State and its instrumentalities must adhere to the norms, standards, and procedures they have set. The judiciary can review the decision-making process, but it should not interfere unless it finds evidence of arbitrariness, irrationality, or malfeasance. [Para 101-104]

Writ Jurisdiction – Alternate Remedy – Delay and Laches – The High Court should not have entertained the writ petition due to the availability of an alternate remedy under the Electricity Act, which is a complete code. Additionally, the significant delay in filing the writ petition after the relevant developments also warranted dismissal on the grounds of delay and laches. [Para 93, 98-99, 106]

Decision – Supreme Court allowed the appeals, quashing the High Court's order which had mandated procurement of electricity from MB Power at certain rates. The Court directed MB Power to pay costs to the appellants. [Para 106-110]

Referred Cases:

- Air India Ltd. v. Cochin International Airport Ltd. and others, (2000) 2 SCC 617=2000 INSC 39
- Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706
- Banwarilal Agarwalla v. State of Bihar, (1962) 1 SCR 33 : AIR 1961 SC 849
- CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75]
- CCT v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681 : 2020 SCC OnLine SC 440
- Chand Ratan v. Durga Prasad, (2003) 5 SCC 399
- Chief Inspector of Mines v. Lala Karam Chand Thapar, (1962) 1 SCR 9 : AIR 1961 SC 838
- Deccan Paper Mills Company Limited v. Regency Mahavir Properties & Ors., (2021) 4 SCC 786=2020 INSC 497
- Energy Watchdog v. Central Electricity Regulatory Commission and others, (2017) 14 SCC 80=2017 INSC 338
- Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568]
- Front & Huntingdon Building & Loan Assn. v. Berzinski, 130 Pa Super 297 : 196 A 572
- GMR Warora Energy Limited v. Central Electricity Regulatory Commission (CERC) & Ors., 2023 SCC Online SC 464=2023 INSC 398
- Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107
- Isle of Wight Railway Co. v. Tahourdin, (1883) LR 25 Ch D 320 (CA)
- K.P. Mohammed Salim v. CIT, (2008) 11 SCC 573
- Lala Karam Chand Thapar v. State of Bihar, 1958 SCC OnLine Pat 30
- Laxmikant and others v. Satyawan and others, (1996) 4 SCC 208=1996 INSC 409
- LDA v. M.K. Gupta, (1994) 1 SCC 243
- New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850
- PTC India Limited v. Central Electricity Regulatory Commission, Through Secretary, (2010) 4 SCC 603=2010 INSC 146
- R. Viswanathan and others v. Rukn-ul-Mulk Syed Abdul Wajid since deceased and others, (1963) 3 SCR 22=AIR 1963 SC 1=1962 INSC 205

- Radha Krishan Industries v. State of Himachal Pradesh and others, (2021) 6 SCC 771=2021 INSC 266
- Raj Kumar Shivhare v. Directorate of Enforcement, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712
- Rajasthan Housing Board and another v. G.S. Investments and another, (2007) 1 SCC 477 (para 8, 9 and 11)= 2006 INSC 766
- Rajasthan SEB v. Union of India, (2008) 5 SCC 632
- Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489]
- Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134]
- Raunaq International Ltd. v. I. V.R. Construction Ltd. [(1999) 1 SCC 492]
- Reliance Infrastructure Limited v. State of Maharashtra and others, (2019) 3 SCC 352=2019 INSC 63
- South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023 SCC OnLine SC 435 =2023 INSC 379
- Tata Cellular v. Union of India [(1994) 6 SCC 651]
- Tata Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission & Ors., 2022 SCC Online 1615=2022 INSC 1220
- Tej Kiran Jain v. N. Sanjiva Reddy, (1970) 2 SCC 272
- Union of India v. A.B. Shah, (1996) 8 SCC 540 : 1996 SCC (Cri) 688
- Vivek Narayan Sharma and others v. Union of India and others, (2023) 3 SCC 1=2023 INSC 2
- Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1

J U D G M E N T

B.R. GAVAI, J.

CIVIL APPEAL NO. 6503 OF 2022 AND CIVIL APPEAL NO. 6502 OF 2022

1. These appeals challenge the judgment and order dated 20th September 2021, passed by the Division Bench of the High Court of Judicature for Rajasthan, Bench at Jaipur, in D.B. Civil Writ Petition No. 14815 of 2020, thereby allowing the said writ petition filed by MB Power (Madhya Pradesh) Limited (hereinafter referred to as “MB Power”), respondent No.1

herein. By the impugned judgment and order, the High Court held that the respondent Nos. 1 to 5 therein (appellants herein and the State of Rajasthan) are bound to purchase a total of 906 MW electricity from the successful bidders. It, therefore, directed the writ petitioner- MB Power (respondent No.1 herein) and respondent No.7 - PTC India Ltd. (hereinafter referred to as "PTC India") in the said writ petition (respondent No.2 in the present appeals) to supply 200 MW electricity to the respondents therein (appellants herein) within the limit of 906 MW. It also directed the writ petitionerMB Power and PTC India, respondent No.7 in the said writ petition, to file an appropriate application before the respondent Nos. 1 to 5 in the said writ petition, within two weeks from the date of the order, complying with the necessary requisite conditions, including bank guarantee etc., as required in terms of the Request for Proposal (hereinafter referred to as "the RFP"). It further directed the respondent Nos. 1 to 5 in the said writ petition, for issuance of Letter of Intent ("LoI" for short) in respect of bid filed through PTC India for supplying 200 MW power from the power generating station of the writ petitioner i.e. MB Power at levelized tariff of Rs.5.517/Kwh, being in terms of their bid qualified by the Bid Evaluation Committee ("BEC" for short) and ranked L-7. It further directed the respondents No.1 to 5 in the said writ petition, to immediately within two weeks thereafter, execute the Power Purchase Agreement ("PPA" for short) with PTC India for procuring 200 MW power from the power generating station of MB Power, and then to start procuring power in accordance with law. As an interim measure, it directed that the tariff to be actually paid by the procurer-respondents before it, shall be the interim tariff i.e. Rs.2.88 per unit, as specified by this Court in its interim order dated 28th September 2020, passed in I.A. No.83693 of 2020 in Civil Appeal No.2721 of 2020. It further held that the final adoption of tariff to be paid to PTC India (respondent No.7 before it) under the PPA shall be subject to the final outcome of the said Civil Appeal No. 2721 of 2020, pending before this Court.

BRIEF FACTS:

2. The facts leading to the filing of these two appeals, as mentioned in Civil Appeal No. 6503 of 2022, are as under:

2.1 The Government of India vide Notification dated 19th January 2005, notified the Competitive Bidding Guidelines (hereinafter referred to as "the Bidding Guidelines") under Section 63 of the Electricity Act, 2003 (hereinafter referred to as "the Electricity Act"). The objective of the said Bidding Guidelines is for introduction of competition and protection of consumer interest.

Rank	*Qualified Bidder Name*	*Levelized Tariff (Rs/kWh)*	*Capacity Offered*	*Cumulative Capacity Offered*	*Average Cumulative Tariff (Rs/ kWh)*
L-1	PTC – Maruti Clean Coal and Power Limited	4.517	195	195	4.517
L-2	PTC – DB Power Limited	4.811	311	506	4.698
L-3	LPL – Lanco Babandh Power Limited	4.943	100	606	4.738
L-4	PTC – Athena Chhattisgarh Power Ltd	5.143	200	806	4.839
L-5	SKS Power Generation (Chhattisgarh) Limited	5.300	100	906	4.890
L-6	LPL – Lanco Vidarbha Thermal Power Limited	5.490	100	1006	4.949
L-7	PTC – MB Power (Madhya Pradesh) Ltd.	5.517	200	1206	5.043
L-8	KSK Mahanadi Power Company Limited	5.572	475	1681	5.193

L-9	Jindal Power Limited	6.038	300	1981	5.321
L-10	LPL – Lanco Amarkantak Power Ltd	7.110	100	2081	5.407

2.2 On 21st September 2009, Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter referred to as "RVPN") filed Petition No.205 of 2009 before the Rajasthan Electricity Regulatory Commission (hereinafter referred to as "the State Commission") seeking approval for procurement of 1000 MW of power by a competitive bidding process.

2.3 On 28th May 2012, RVPN issued an RFP, inviting sellers to participate in the competitive bidding for procurement of 1000 MW under the Bidding Guidelines.

2.4 In the month of February 2013, bids were received from the bidders.

2.5 On 4th April 2013, based on the preliminary evaluation of the non-financial bids by the BEC, 7 bidders were declared as qualified for opening of the financial bids. The respondent No.1MB Power herein was not a bidder in the above process.

Respondent No.2-PTC India herein had submitted a bid for 1041 MW, which it was to procure from five different generators. PTC India is a power-trading licensee company, which had procured the bid document after depositing a Bid Bond.

2.6 In the various meetings held between 17th April 2013 and 22nd April 2013, the BEC had placed the bids received in ascending order, from lowest to the highest tariff as follows:

2.7 In the 216th Meeting of the Board of Directors of RVPN, it was decided to take an opinion from the BEC as to whether negotiations should be held to reduce tariff keeping in view of the long-term impact and quantum of the amounts involved.

2.8 On 4th June 2013, the BEC gave its opinion that since the rates quoted vary considerably, negotiations could be held with the bidders.

2.9 Vide Resolution dated 4th June 2013, the Board of the RVPN decided to hold negotiations with the qualified bidders.

2.10 In the negotiations, the following offers were received:

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- L-1/Maruti Clean Coal & Power Ltd. offered an additional capacity of 55 MW, aggregating to a total of 250 MW.

- L-2/DB Power Limited, *inter-alia*, agreed to provide additional quantum of power to the tune of 99 MW, aggregating to a total of 410 MW.

- Similarly, L-3/Lanco Power Ltd. offered an additional capacity of 250 MW, aggregating to a total of 350 MW."

2.11 The Board of Directors of the RVPN, in its meeting held on 27th September 2013, directed that, LoI be issued in favour of the L-1, L-2 and L-3 bidders as under, subject to the approval of the State Commission while adopting the tariff.

"*S. No.*	*Bidder*	*Quoted Tariff (Rs. / kWh)*	*Capacity offered in Bid (MW)*	*Additional Capacity Offered (MW)*
1	M/s PTC India Ltd (through developer M/s Maruti Clean Coal and Power Limited)	4.517	195	55
2	M/s PTC India Ltd (through	4.811	311	99

	their developer M/s DB Power Limited)4.811			
3	M/s Lanco Power Limited (Generation Source – M/s Lanco Babandh Power Limited)	4.892	100	250
	Total		**606**	**404**
G. Total (A+B)			**1010 MW”**	

2.12 In consonance with the LoI, on 1st November 2013, PPAs were signed with the L-1, L-2 and L-3 bidders. Thereafter, RVPN filed Petition No.431 of 2013 before the State Commission under Section 63 of the Electricity Act read with clause 5.16 of the Bidding Guidelines for adoption of tariff for purchase of long-term base load power of 1000 MW (±10%) as quoted by the successful bidders (being L-1, L-2 and L-3) under the Case-I bidding process.

2.13 The Energy Assessment Committee (“EAC” for short), constituted by the Government of Rajasthan pursuant to Regulation 3 of the Power Procurement Regulations, in its 4th meeting held on 29th January 2014, recommended that there was no requirement for long term procurement of 1000 MW (±10%) power under Case-I for which PPAs had been executed and tariff adoption petition had been filed before the State Commission.

2.14 In the meantime, the L-4 and L-5 bidders filed Writ Petitions being CWP No. 19437 of 2013 and CWP No.18699 of 2013 respectively, before the High

Court, seeking to strike down the negotiations process and the higher quantum awarded to L-1, L2 and L-3 bidders.

2.15 The High Court vide judgment dated 7th February 2014, refused to entertain the writ petitions and relegated the parties to the State Commission. The said order dated 7th February 2014 came to be challenged by the L-4 and L-5 bidders by way of writ appeals being DB Special Appeals (Writ) Nos. 538 of 2014 and 604 of 2014. The said appeals also came to be dismissed by the High Court vide judgment and order dated 18th April 2014.

2.16 Subsequently, in its 5th meeting held on 21st May 2014, the EAC recommended that as against the quantum of 1000 MW power, for which PPAs had been executed and tariff adoption petition had been filed, a demand of 600 MW power ought to be considered, on account of availability of power from various sources and to meet future contingencies.

2.17 The Government of Rajasthan, therefore, vide its letter dated 25th July 2014, issued to the RVPN, approved the purchase of a quantum of 500 MW power on long term basis as against the quantum of 1000 MW for which PPAs had already been executed.

2.18 On the basis of the decision/recommendation of the EAC and the direction issued by the Government of Rajasthan, RVPN filed an application under Regulation 7 of the RERC (Power Purchase & Procurement Process of Distribution Licensee) Regulations 2004 (hereinafter referred to as "RERC Regulations 2004") in Petition No.431 of 2013, to bring on record the EAC decision/recommendation and the Government of Rajasthan approval. In the said application, *inter alia*, it was prayed for adoption of tariff and approval of the reduced quantum of 500 MW of power to be purchased as against the original 1000 MW of power for which PPAs had already been executed with the successful bidders.

2.19 Vide order dated 22nd July 2015 in Petition No.431 of 2013, the State Commission held that the quantum of only 500 MW power was liable to be approved considering the demand in the State as recommended by the EAC. The State Commission also approved the tariff quoted by the L-1 to L-3 bidders.

2.20 Aggrieved by the reduction of quantum by the State Commission, the L-2 and L-3 bidders preferred appeals before the learned Appellate Tribunal for Electricity (hereinafter referred to as "the learned APTEL") being Appeal Nos. 235 of 2015 and 191 of 2015 respectively.

2.21 Two separate appeals were also preferred by the L-4 and L5 bidders, being Appeal No. 264 of 2015 and Appeal No. 202 of 2015 respectively, wherein apart from challenging the reduction of quantum by the State Commission from 1000 MW to 500 MW, the increase in quantum granted to the L-1, L-2 and L-3 bidders was also challenged.

2.22 Vide order dated 2nd February 2018, the learned APTEL allowed the Appeal Nos. 191 of 2015 and 235 of 2015, filed by the L-3 and L-2 bidders, holding that the reduction of quantum by the State Commission from 1000 MW to 500 MW was incorrect. It, therefore, directed the State Commission to pass consequential orders for approving the PPAs for the L-2 and L-3 bidders for the higher quantum which was negotiated.

2.23 The order of the learned APTEL dated 2nd February 2018, was challenged by the present appellants before this Court by way of Civil Appeal Nos. 3481-3482 of 2018, on the ground that the RFP quantum cannot be restored from 500 MW to 1000 MW. Subsequently, Civil Appeal Nos. 2502-2503 of 2018 also came to be filed by L-5 bidder- SKS Power Generation (Chhattisgarh) Limited (hereinafter referred to as "SKS Power"), on the ground that the State Commission could not have permitted the procurement of higher quantum by the L-2 and L-3 bidders.

2.24 Vide order dated 25th April 2018, the said Civil Appeals were disposed of by this Court, upholding the decision of the learned APTEL, setting aside the reduction of quantum of procurement from 1000 MW to 500 MW after the bidding process was over. However, this Court held that the decision of the learned APTEL on the quantum to be procured from individual bidders was liable to be reversed and that the quantum originally offered by the bidders in the bidding process has to be taken into consideration and increase in quantum by means of negotiation was not permissible. Insofar as L-4 and L-5 bidders are concerned, since the tariff quoted was not considered at any stage by either the procurer, or by RVPN or by the State Commission, this Court directed the State Commission to go into the issue of approval for adoption of tariff with regard to L-4 and L-5 bidders.

2.25 Subsequent to the judgment and order dated 25th April 2018, passed by this Court, the BEC came to a finding that the tariffs quoted by the L-4 and L-5 bidders were not aligned to the prevailing market prices.

2.26 In the meantime, vide order dated 19th November 2018, this Court, on an application filed by RVPN, directed the State Commission to go into the

issue of adoption of tariff in terms of Section 63 of the Electricity Act and the law laid down by this Court under the said provision.

2.27 Vide order dated 26th February 2019, the State Commission held that the tariffs offered by the L-4 and L-5 bidders were not aligned to the prevailing market prices.

2.28 Being aggrieved by the same, SKS Power (L-5 bidder) challenged the above order dated 26th February 2019 before the learned APTEL by way of Appeal No.224 of 2019.

2.29 Vide the judgment and order dated 3rd February 2020, the learned APTEL allowed the appeal of the L-5 bidder – SKS Power and held that the State Commission had to necessarily adopt the tariff, and had no power to consider whether the tariff was aligned to market prices.

2.30 Aggrieved by the same, the present appellants have filed Civil Appeal No. 1937 of 2020 and Civil Appeal No.2721 of 2020. Initially, the present appeals were tagged along with the said appeals. However, vide order dated 10th October 2023, the same have been de-tagged.

2.31 On an interlocutory application being I.A. No.83693 of 2020 filed by L-5 bidder-SKS Power in Civil Appeal No. 2721 of 2020, an interim order 28th September 2020, came to be passed by this Court, holding that the L-5 bidder was entitled to supply power to the appellants at the tariff of Rs.2.88 per unit.

2.32 It appears that subsequently thereafter on 14th December 2020, a writ petition being Writ Petition No. 14815 of 2020 came to be filed by the respondent No.1-MB Power before the High Court, seeking following relief:

"(a) Issue appropriate Writ or order or direction in the nature of declaration or certiorari or any other writ or direction declaring Rule 69(2)(b) of the RTPP Rules as *ultra vires* Article 14, 19(1)(g) and 21 of the Constitution of India as well as Section 63 of the Electricity Act, 2003;

(b) Issue appropriate Writ or order or direction in the nature of mandamus directing the Respondent Nos. 1-4 to immediately issue a Letter of Intent in favour of the Petitioner, sign the power Purchase Agreement with the Petitioner as per its bid tariff, take steps for adoption of tariff of the Petitioner and immediately commence supply of power;

(c) Pass such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case in the interest of justice."

2.33 In the appeals filed by the present appellants, i.e., Civil Appeal Nos. 1937 of 2020 and 2721 of 2020, respondent No.1MB Power filed an application for impleadment, on the ground that the issue of role of the State Commission in adoption of tariff being decided by this Court in the said appeals would have an impact on the writ petition filed by it before the High Court.

2.34 Vide order dated 19th April 2021, this Court directed the said application for impleadment to be considered at the stage of hearing of the said appeals.

2.35 By the impugned judgment and order, the said writ petition filed by MB Power has been allowed by the High Court in terms of the aforesaid directions.

2.36 Hence the present appeals.

CIVIL APPEAL NO. 4612 OF 2023

3. This appeal filed by Rajasthan Urja Vikas Nigam Limited (hereinafter referred to as "RUVNL") challenges the order dated 1st June 2023, passed by the learned APTEL, whereby the learned APTEL has stayed the operation of the order dated 31st March 2023, passed by the State Commission in Petition No.RERC-2097 of 2023.

4. The facts, in brief, leading to the filing of Civil Appeal No.4612 of 2023, are as under:

4.1 In the year 2022, the RUVNL had proposed the procurement of 294 MW of power on long term basis and for that purpose had filed Petition No.2017 of 2022 before the State Commission.

4.2 Vide order dated 2nd November 2022, the State Commission rejected the procurement of power on long term basis.

4.3 Thereafter, considering the assessment and requirement of power, the RUVNL filed Petition No.RERC-2097 of 2023 before the State Commission, seeking approval for procurement of 160 MW of power on medium term basis i.e., for a period of 5 years and not for 25 years on long term basis.

4.4 Vide order dated 31st March 2023, the State Commission granted approval to the distribution licensees in the State of Rajasthan for procurement of 160 MW round-the-clock fuel agnostic power on medium term basis by way of a competitive bidding process.

4.5 Aggrieved thereby, the respondent No.1 herein, i.e., MB Power (Madhya Pradesh) Limited filed Appeal No. 466 of 2023 before the learned APTEL against the order dated 31st March 2023 passed by the State Commission, along with I.A. No.1004 of 2023 for the stay of the order.

4.6 Vide impugned order dated 1st June 2023, the learned APTEL stayed operation of the order passed by the State Commission and directed that in the bidding process for procurement of 160 MW of power on medium term basis the bid shall neither be finalized nor shall any Letter of Intent be issued pursuant to the opening of the bids.

5. Aggrieved thereby, the RUVNL has filed the present appeal.

6. Vide order dated 26th September 2023, this Court had permitted the appellant to proceed further with the tender process for procurement of 160 MW of power for 5 years on the basis of model bidding documents for medium term procurement.

7. Vide order dated 10th October 2023, this Court had been informed that pursuant to the aforesaid order dated 26th September 2023, bids had been opened and the lowest bid was at Rs.5.30 per unit. As a result, this Court had clarified that the pendency of the present appeal would not come in the way of the appellant in finalizing the tender and executing power purchase agreement with the successful bidders and the appellant would be at liberty to do so in order to overcome the difficulty of power shortage.

8. The order of the learned APTEL dated 1st June 2023 basically relies on the judgment of the Division Bench of the High Court of Judicature for Rajasthan, bench at Jaipur, passed in D.B. Civil Writ Petition No. 14815 of 2020, which is a subject matter of challenge in Civil Appeal Nos. 6503 of 2022 and 6502 of 2022. As such, the result of Civil Appeal No.4612 of 2023 would depend upon the outcome of Civil Appeal Nos. 6503 of 2022 and 6502 of 2022.

SUBMISSIONS OF THE APPELLANTS

9. We have heard Shri P. Chidambaram, learned Senior Counsel appearing for the appellants, and Dr. A.M. Singhvi and Shri C.S. Vaidyanathan, learned Senior Counsel appearing for the respondents.

10. Shri Chidambaram, at the outset, submits that the writ petition, filed by the respondent No.1-MB Power, was not maintainable before the High Court in its original jurisdiction under Article 226 of the Constitution of India. It is submitted that, if the respondent No.1-MB Power had any grievance, it could have either approached the State Commission or the learned APTEL.

11. He submits that this Court in the case of ***PTC India Limited v. Central Electricity Regulatory Commission, Through Secretary***[1] has held that the Electricity Act is an exhaustive code on all matters concerning electricity. The Electricity Act provides for the forum for adjudication of all disputes between a generator and the procurer/licensee. As such, the respondent No.1-MB Power, if had any grievance, ought to have filed an application before the State Commission or the

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learned APTEL and it could not have approached the High Court directly in its writ jurisdiction.

12. Shri Chidambaram further submitted that though L-1 to L-5 bidders have continuously been litigating their grievances from 2013 onwards, the respondent No.1-MB Power, since it was not short-listed, had taken no steps from 2013 onwards. It is submitted that, as a matter of fact, the bid of L-7 bidder was returned and on 6th January 2015, the Bid Bond bank guarantee was also directed to be not extended. Still, it kept silent for about 6 years. He further submits that even after the judgment and order was passed by this Court on 25th April 2018, respondent No.1-MB Power did not take any steps for about two years, and for the first time, on 14th December 2020, it filed a writ petition before the High Court. As such, it is clear that the respondent No.1-MB Power had acquiesced the direction by the appellants dated 6th January 2015 not to renew the Bid Bond bank guarantee. Shri Chidambaram, therefore, submits that the writ petition was liable to be dismissed on the ground of delay and laches itself.

13. Shri Chidambaram further submits that the term “successful bidder” has been defined in the RFP. It is submitted that the bidder(s) selected by the procurer/authorized representative, pursuant to the RFP for supply of power by itself or through the project company as per the terms of the RFP, and to whom a LoI has been issued, can only be termed as the “successful bidder”.

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[1] (2010) 4 SCC 603=2010 INSC 146

Since no LoI was issued to the respondent No.1-MB Power, it could not be construed as a "successful bidder".

14. Shri Chidambaram submits that the theory of "filling the bucket", as put forth by the respondent No.1-MB Power, has no basis either in the RFP or in the Bidding Guidelines. It is further submitted that the said theory is a dangerous proposition inasmuch as, it is expected that the procurer would be obliged to accept the bids of lower ranked financial bids, irrespective of the exorbitant tariff quoted by them. Shri Chidambaram has given an illustration to that effect that, if in a bid to procure 1000 MW, 2 bidders can be put forward as stalking horses who would bid lower tariffs and are ranked as L-1 and L-2. Thereafter, L-3 onwards can quote exorbitant tariffs which are not aligned to market prices. He submits that this specious theory of "filling the bucket", which would oblige the procurer to go to the last bidder, irrespective of their tariffs being completely exorbitant, is very dangerous. It is submitted that, in any case, clause 3.5.12 of the RFP enables the procurer to reject any bid where the quoted tariff is not aligned to market prices.

15. Shri Chidambaram further submits that the directions issued by this Court vide order dated 25th April 2018, were specifically restricted to L-1 to L-5 bidders, which were litigating. It is submitted that the contention of the respondent No.1-MB Power that the order of this Court dated 25th April 2018 was an order *in rem* is erroneous.

16. Relying on the judgment of this Court in the case of ***R. Viswanathan and others v. Rukn-ul-Mulk Syed Abdul Wajid since deceased and others***[2], Shri Chidambaram submits that the judgment *in rem* settles the destiny of the res itself. Whereas an order *in personam* determines the rights of persons before the Court and binds only the parties to the *lis*. Reliance in this respect is also placed on the judgment of this Court in the case of ***Deccan Paper Mills Company Limited v. Regency Mahavir Properties & Ors.***[3]

17. Shri Chidambaram further submits that the reliance by the respondents on the certificate, which certified the bid evaluation process was carried out in conformity with the provisions of the RFP, and, therefore, it is not permissible to go into the determination of tariff is incorrect. He submits that the certificate is not certifying that L-7 was qualified to be selected as a "successful bidder" or it had earned a right to have his bid accepted irrespective of the quoted tariff. He submits that if the quoted tariff of L-4 bidder of Rs.5.143 and L-5

[2] (1963) 3 SCR 22=AIR 1963 SC 1=1962 INSC 205
[3] (2021) 4 SCC 786=2020 INSC 497

bidder of Rs.5.300 were misaligned, then, most certainly, the quoted tariff of L-7 bidder of Rs.5.517 was also misaligned.

18. The learned Senior Counsel submits that the jurisdiction under Section 63 of the Electricity Act is not that of a mere post office. The State Commission has a power to reject the adoption of tariff if it is not aligned to market prices. In this respect, he refers to the judgments of this Court in the cases of ***Tata Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission & Ors.***[4] and ***Energy Watchdog v. Central Electricity Regulatory Commission and others***[5].

19. Shri Chidambaram submits that the State Commission while adopting the tariff is bound to take into consideration the protection of consumer interest. Reliance in this respect has been placed on the judgment of this Court in the case of ***GMR Warora Energy Limited v. Central Electricity Regulatory Commission (CERC) & Ors.***[6], wherein this Court has emphasized the need for balancing the interest of the consumers with that of the generators.

20. Shri Chidambaram further submits that in view of clauses 2.15.1 and 3.5.12 of the RFP and clause 5.15 of the Bidding Guidelines, the appellants had the power to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

21. Shri Chidambaram lastly submitted that the bidders have no vested right to contract. Article 226 of the Constitution of

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[4] 2022 SCC Online 1615=2022 INSC 1220

[5] (2017) 14 SCC 80=2017 INSC 338

[6] 2023 SCC Online SC 464=2023 INSC 398

India cannot be used to award a contract in favour of the bidder.

In this respect, he refers to the following judgments of this Court:

i. ***Tata Cellular v. Union of India***[4] *ii.* ***Rajasthan Housing Board and another v. G.S. Investments and another***[5] *iii.* ***Laxmikant and others v. Satyawan and others***[6] **21.** Shri Chidambaram, therefore, submits that the impugned judgment and order is not sustainable and is liable to be set aside.

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[4] (1994) 6 SCC 651 (para 94)= 1994 INSC 283

[5] (2007) 1 SCC 477 (para 8, 9 and 11)= 2006 INSC 766

[6] (1996) 4 SCC 208=1996 INSC 409

SUBMISSIONS OF THE RESPONDENTS

22. Dr. A.M. Singhvi, learned Senior Counsel, per contra, submits that unlike Section 62 read with Sections 61 and 64 of the Electricity Act, under Section 63 of the Electricity Act, the appropriate Commission only "adopts" tariff and does not
"determine" tariff. However, in cases under Section 63 of the Electricity Act, the Central Commission is bound by the guidelines issued by the Central Government and it is required to exercise its regulatory functions, albeit under Section 79(1)(b) only in accordance with those guidelines. In this respect, he relies on the judgment of this Court in the case of ***Energy Watchdog*** (supra) and ***Tata Power Company Limited Transmission*** (supra).

23. Dr. Singhvi submits that two issues that can be considered in a case under Section 63 of the Electricity Act by the Commission are:

(1) as to whether the bidding process was transparent; and

(2) as to whether the bidding process was held in accordance with the guidelines issued by the Central Government.

24. He submits that once the tariff is an outcome of the bidding process and the bidding process is transparent and held in accordance with the Bidding Guidelines, the appropriate Commission is mandated to adopt such tariff and it does not have a discretion to go into the question as to whether it is market aligned or not.

25. Dr. Singhvi further submits that while adopting an already determined tariff by the bidding process as per Section 63 of the Electricity Act, the issue of market alignment of respondent No.1's bid does not and cannot arise for consideration in these proceedings.

26. Without prejudice to the aforesaid submissions, Dr. Singhvi submits that it is not permissible for the State Commission to go into the question of market alignment. He submitted that the respondent No.1's quoted tariff was market aligned not only in the year 2013 but also today. Dr. Singhvi submits that in the recent tender for procurement of 160 MW electricity, conducted in pursuance to the permission granted by this Court, the lowest bid for 1st year tariff discovered and approved by the appellants is at Rs.5.30 per unit. It is submitted that there is a vast difference between "1st year tariff" and "levelized tariff". Dr. Singhvi submits that however, if this offer for supply in the first year

of the bid is to be levelized for 25 years, it would come to Rs.7.91 per unit, which is around 50% higher than the 1st year tariff of the said bidder itself.

27. Dr. Singhvi submits that M/s Deloitte is a common consultant insofar as the appellants and the Uttar Pradesh Power Corporation Limited ("UPPCL" for short). He submits that, in fact, BEC of UPPCL, in March 2013, accepted tariff up to Rs.

5.849 per unit i.e., a tariff much higher than that of respondent No.1-MB Power. It is submitted that the bidding period in the present case as well as in the case of UPPCL is the same. It is submitted that, however, in 2018, the Rajasthan BEC mischievously and selectively considered tariff only up to 2012 and compared bids of Andhra Pradesh and Kerala, which were, in fact, discovered in 2015 and 2014 respectively. It is submitted that similarly, in the State of Tamil Nadu, for the same period, the equivalent levelized tariff was determined by M/s Deloitte at Rs.5.75 per unit for 25 years and the same was accepted. It is, therefore, submitted that, considering the aforesaid, the levelized tariff of the respondent No.1-MB Power for 25 years at Rs.5.517 per unit is indisputably market aligned even as on 2012-2013.

28. Dr. Singhvi, relied on the following charts to show that the levelized tariff for 25 years, as quoted by the respondent No.1-MB Power, is very much market aligned.

"**Market Price as of 2012-13 – at the time of Rajasthan Bid**			
Procurer State	**1st Year Quoted Tariff**	**Levelized Tariff for 25 years**	**PPA Duration**
Rajasthan – L5 (i.e. SKS)	3.976	5.300	25 years
Rajasthan – L7 (i.e. R1 – MB Power Bid)	**4.137**	**5.517**	**25 years**

UP – 2013 Tariff approved by BEC (Deloitte as consultant)	4.36	5.849	25 years
TN – Approved Tariff	4.117	5.75	15 years

Prices discovered in Rajasthan Medium Term Tender in Sept / Oct 2023			
Procurer State	**1st Year Quoted Tariff**	**Levelized Tariff for 25 years**	**PPA Duration**
Rajasthan – 2023	**5.30**	**7.91**	**5 years**
Rajasthan – R1 (i.e. L7 – MB Power 2012 Bid)	**4.137**	**5.517**	**25 years"**

29. Dr. Singhvi, the learned Senior Counsel, relying on clause 3.5.9 of the RFP, submits that, no negotiations were permissible in spite of the specific clause in the RFP and the opinion to the contrary given by the consultant. It is submitted that the appellants tried to negotiate the prices with L-1 to L-3 bidders, which decision has been finally set aside by this Court vide order dated 25th April 2018.

30. Dr. Singhvi submits that in view of the specific certificate dated 4th June 2013, issued by the BEC, certifying that the bidding procedure for the bids in question had been carried out by the appellants in conformity with the provisions of the RFP and the Bidding Guidelines issued by the Government of India, it is not permissible for the appellants to take a contradictory stand.

31. Dr. Singhvi submits that what this Court had directed by order dated 25th April 2018, was to adopt the tariff with regard to L-4 and L-5 bidders. By the subsequent order dated 19th November 2018, this Court clarified and directed to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. It is submitted that the only scrutiny that could be done by the Commission was only with regard to the following of the twin requirements as observed by this Court in the case of ***Energy Watchdog*** (supra).

32. Dr. Singhvi submits that the power to reject the bids is in respect of all price bids. He submits that if it is found that the bidding process was not transparent and the Guidelines were not followed or the bids are not market aligned, then the appellants would be entitled to reject all bids and not individually and selectively some bids. He submits that if the interpretation as placed by the appellants is to be accepted, it will vest an arbitrary power with the procurer of energy to arbitrarily reject the bid of any of the bidders. It is submitted that such an unfettered and unchecked discretion cannot be permitted to be exercised by the appellants/distribution companies ("DISCOMS").

33. Dr. Singhvi submits that insofar as the aspect with regard to "consumer's interest" is concerned, the learned APTEL has squarely covered the same. It has been held by the learned APTEL that the consumers' interest is a broad term and among others, involves reliable, quality and un-interrupted power on long term basis besides being competitive.

34. The learned Senior Counsel submits that the State of Rajasthan needed 1000 MW of power when it invited the bids in question. He submits that the DISCOMS have even fairly admitted that they are still in need of power and as such, filed an Interlocutory Application being I.A. No. 150366 of 2023 in Civil Appeal No.4612 of 2023 (for permission to file additional documents) seeking permission to procure power for medium term from the State Commission. It is, therefore, submitted that even in the larger public interest and consumer interest, the appellants should procure the power from the respondent No.1MB Power. Dr. Singhvi submits that the appellants are bound to procure 906 MW of power in view of the orders passed by this Court on 25th of April 2018. He submits that the RFP provides for bucket filling. It is, therefore, submitted that the appellants are required to procure the power going down the ladder from the bidders starting from L-1 to the one till procurement of 906 MW of power is complete. It is submitted that since many of the bidders had now gone into insolvency, it is only 3 bidders, which are

left in the fray. L-1 bidder is supplying 195 MW power and L-2 is supplying 311 MW power. It is submitted that even in the event, this Court permits L-5 bidder to supply 100 MW power and 160 MW power for medium term in pursuance to the order passed by this Court on 26th September 2023, still the total would not be beyond 766 MW. Still the balance of 140 MW power would remain.

35. Dr. Singhvi submits insofar as contention of the appellants with regard to delay and laches is concerned, the same is without substance. He submits that only after the respondent No.1 came to know about the incapacity of L-3, L-4 and L-6 bidders to honour their offered capacity, the occasion to revalidate the claim of the respondent No.1 arose. The learned Senior Counsel, relying on clause 3.5.6 of the RFP, submits that the selection process shall continue till the requisitioned capacity has been achieved through the summation of the quantum offered by the "successful bidders" or when the balance of the requisitioned capacity is less than the minimum bid capacity. It is submitted that since there is still a gap of 140 MW, to comply with this Court's order dated 25th April 2018, the appellants are bound to enter into PPAs with the qualified bidders until the entire requisitioned capacity of 906 MW is met.

36. Dr. Singhvi relied on the following chart to show that the prices discovered in all medium and long term bids are much higher than the levelized price quoted by the respondent No.1-

MB Power.

ed in all medium and long term bids since 2022			
Procurer State	**1st Year Quoted Tariff**	**Levelized Tariff for 25 years**	**PPA Duration**
Adani Mumbai– 2022	5.98	8.78	2.1 years
Uttarakhand– 2023	5.41	7.93	1.5 years
Noida Power – 2022	5.15	7.46	3 years

Mundra SEZ–2023	5.00	6.69	15 years
Haryana – 2022	5.70 to 5.75	8.36	3 years
J & K – 2023	6.05	8.22	5 years
Haryana – 2023	6.05	8.22	5 years
NDMC – 2023	6.05	8.22	5 years
Madhya Pradesh–2023	6.05	8.22	5 years
Haryana – 2023	5.79	8.49	5 years
Gujarat – 2023	5.18 to 5.69	6.81	15 years
Uttarakhand–2023	7.97	11.72	3.5 years
Noida Power – 2023	6.30	9.18	3 years”

37. Dr. Singhvi, therefore, submits that, if the directions as issued by the High Court are maintained, it will be in the interests of the consumers, who will be getting the electricity at lesser prices than what has recently been emerged as a levelized price in the bidding process. He submits that this is specifically so when indisputably even according to the appellants they are in dire need of power. Dr. Singhvi, therefore, prays for dismissal of the present appeals.

38. Shri C.S. Vaidyanathan, learned Senior Counsel also addressed similar arguments and prayed for dismissal of the present appeals.

CONSIDERATIONS

39. For considering the rival submissions, it will be necessary to refer to some of the provisions of the Electricity Act, which are as under:

“**63. Determination of tariff by bidding process. -** Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been

determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

xxx xxx xxx

79. Functions of Central Commission.-(1) The Central Commission shall discharge the following functions, namely:-

(a) ……

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

xxx xxx xxx

"**86. Functions of State Commission.-** (1) The State Commission shall discharge the following functions, namely: -

(a) …….

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;"

40. It will also be relevant to refer to part of the preamble of the Bidding Guidelines notified by the Union of India vide Resolution dated 19th January 2005, which is as under:

"These guidelines have been framed under the above provisions of section 63 of the Act. The specific objectives of these guidelines are as follows:

1. Promote competitive procurement of electricity by

distribution licensees;

2. Facilitate transparency and fairness in procurement processes;

3. Facilitate reduction of information asymmetries for various bidders;

4. Protect consumer interests by facilitating competitive conditions in procurement of electricity;

5. Enhance standardization and reduce ambiguity and hence time for materialization of projects;

6. Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers."

41. It will also be relevant to refer to certain clauses of the RFP, which are as under:

"**2.15 Right to withdraw the RFP and to reject any Bid.**

2.15.1 This RFP may be withdrawn or cancelled by the Procurer/ Authorized Representative at any time without assigning any reasons thereof. The Procurer/ Authorized Representative further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account."

xxx xxx xxx

"**3.5 STEP IV- Successful Bidder(s) Selection**

3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.

3.5.2 The Levelized Tariff calculated as per Clause 3.4.8 for all Financial Bids of Qualified Bidders shall be ranked from the lowest to the highest.

3.5.3 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.

3.5.4 The selection process of the Successful Bidder as mentioned above in Clause 3.5.3 shall be repeated for all the remaining Financial Bids of Qualified Bidders until the entire Requisitioned Capacity is met or until the time when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.

3.5.5 At any step in the process in Clause 3.5.4, in case the Requisitioned Capacity has not been achieved and the offered capacity of the Bidder with the lowest Levelized Tariff amongst the remaining Financial Bids is larger than the balance Requisitioned Capacity, any fraction or combination of fractions offered by such Bidder shall be considered for selection, towards meeting the Requisitioned Capacity.

3.5.6 The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.

Provided however in case only one Bidder remains at any step of the selection process and the balance Requisitioned Capacity exceeds the Minimum Bid
Capacity, Financial Bid(s) of such Bidder shall be referred to Appropriate Commission and the selection of the Bidder shall then be at the sole discretion of the Appropriate Commission.

3.5.7 At any step during the selection of Successful Bidder(s) in accordance with Clauses 3.5.2 to 3.5.6, the Procurer / Authorized Representative reserves the right to increase / decrease the Requisitioned Capacity by up to ten percent (10%) of the quantum indicated in Clause 1.3.1 to achieve the balance Requisitioned Capacity and select the Successful Bidder with the lowest Levelized Tariff amongst the remaining Bids. Any increase / decrease in the Requisitioned Capacity exceeding ten percent (10%) of the quantum in Clause 1.3.1. can be made only with the approval of the Appropriate Commission.

3.5.8 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause 3.5.

3.5.9 There shall be no negotiation on the Quoted Tariff between the Authorized Representative/ Procurer and the Bidder(s) during the process of evaluation.

3.5.10 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, "Accepted Unconditionally", under the signature of the authorized signatory of the Successful Bidder and return such copy to the Procurer/ Authorized Representative within seven (7) days of issue of LOI.

3.5.11 If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clauses 2.2.8 and 2.2.9, the Procurer / Authorized Representative reserves the right to annul the award of the Letter of Intent of such Successful Bidder. Further, in such a case, the provisions of Clause 2.5 (b) shall apply.

3.5.12 The Procurer / Authorized Representative, in its own discretion, has the right to reject all Bids if the Quoted Tariff are not aligned to the prevailing market prices."

42. It will also be relevant to refer to clause 5.15 of the Bidding

Guidelines, which is as under:

"5.15 The bidder who has quoted lowest levellised tariff as per evaluation procedure, shall be considered for the award. ***The evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices***."

[emphasis supplied]

43. Successful bidder has been defined in the RFP as under:

"Successful Bidder(s)" shall mean the Bidder(s) selected by the Procurer/ Authorized Representative, as applicable pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;"

44. The impugned judgment of the High Court is basically based on the judgment of the learned APTEL dated 3rd February 2020 in the case of SKS Power and orders passed by this Court as already observed herein above. After the bids were received for procurement of 1000 MW, the BEC decided to accept the bids of L-1, L-2 and L-3 bidders. However, as the State government had recommended reduction of purchase to only 500 MW power,
RVPN filed an application under Regulation 7 of the RERC Regulations 2004, for adoption of tariff of L-1 to L-3, so also allowing it to purchase only 500 MW of power as against 1000 MW. The said application was allowed by the State Commission. The State Commission also adopted the tariff determined through the bidding process for purchase of 500 MW power vide its order dated 22nd July 2015. The said order of the State Commission was challenged before the learned APTEL by M/s D.B. Power Ltd [L-2 bidder] and by M/s Lanco Power Ltd. [L-3 bidder] by way of Appeal Nos. 235 of 2015 and 191 of 2015 respectively.

45. The learned APTEL in the said appeals, vide judgment and order dated 2nd February 2018, set aside the order of the State Commission dated 22nd July, 2015, and passed the following directions:

"ORDER

Hence, the Appeal Nos. 235 of 2015 and 191 of 2015 are allowed and the State Commission's order dated 22.07.2015 is set aside. The State Commission is directed to pass consequential order in accordance with the law keeping in view our observations made above as well as the judgments of this Tribunal rendered earlier on the aspects of the scope of Section 63 of the Act as expeditiously as possible, preferably, within 2 months from today. No order as to costs."

46. After the learned APTEL passed the aforesaid order, M/s D.B. Power Ltd. (L-2 bidder) filed an Interlocutory Application before the State Commission, praying for passing forthwith consequential orders in terms of the judgment of the learned APTEL. It also sought a direction to DISCOMS to start procuring power from it to the extent of 410 MW as per the PPA dated 1st November 2013.

47. When the matter was heard by the State Commission on 8th March 2018, it was noticed that appeals against the order of the learned APTEL were pending before this Court.

48. This Court disposed of the said appeals vide judgment and order dated 25th April 2018, and issued the following directions:

"We are in agreement with the earlier conclusion of the APTEL. We are of the view that the direction of reduction of capacity from 1000 mw to 500 mw by the State Commission was correctly set aside. Since L1 to L-5 were represented before this Court, we direct that they shall be entitled to supply of power in terms of the originally offered amount, mentioned above, in accordance with para 3.5 of the Request for Proposal. The power supply will now be reduced to a total of 906 mw. The State Commission may now go into the issue of approval for adoption of tariff with regard to L-4 and L-5. All Letters of Intent (LOIs) shall stand modified in terms of the above. All the appeals shall stand disposed of in terms of the above order."

49. Consequent to the orders passed by this Court, the State Commission vide its order dated 29th May 2018, directed RVPN/DISCOMS to file an appropriate application/petition in relation to L-3, L-4 and L-5 bidders.

50. RVPN accordingly filed an application on 27th August 2018 before the State Commission, submitting therein that the tariff of L-4 and L-5 bidders was very

high and not aligned to market prices and, therefore, sought not to be adopted in terms of the competitive bidding guidelines and documents.

51. In the meantime, a Contempt Petition came to be filed before this Court by SKS Power. This Court vide order dated 20th September 2018, in the said Contempt Petition, issued the following directions:

" We are of the view that there is no doubt whatsoever that now the PPA has to be signed between the parties. However, the State Commission, may, as per our order, ***go into the issue of approval of adoption of tariff with regard to L-5***, who is the party before us, and will decide the same within a period of six weeks from today.

PPA is to be signed immediately thereafter."
[emphasis supplied]

52. Thereafter, SKS Power filed an Interlocutory Application on 5th October 2018, praying for adoption of its tariff as per the orders of this Court dated 25th April 2018 and 20th September 2018.

53. It was contended before the State Commission by SKS Power that the State Commission was bound to adopt tariff as quoted by it. However, per contra, it was contended by the RVPN and DISCOMS that since the tariff quoted by SKS Power was not market aligned, it could not be adopted. In view of the counter submission, the State Commission vide its order dated 16th October 2018, gave an opportunity to the RVPN to file an amended application or seek direction on the issue from this Court.

54. Accordingly, RVPN filed a Miscellaneous Application before this Court. This Court vide order dated 19th November 2018, passed the following order:

"Having heard learned counsels for both the parties, we only clarify that the Rajasthan Electricity Regulatory Commission [the State Commission) is to decide the tariff underSection 63 of the Electricity Act, 2003 having regard to the law laid down both statutorily and by this Court.

The State Commission to finalise the aforesaid prices within a period of eight weeks from today.

The MAs are disposed of accordingly."

55. A review application was also filed on behalf of the SKS Power. The said review application was disposed of by this Court vide order dated 21st January 2019, with the following directions:

"------. We find that as per the Standard Bidding Guidelines the PPA is first to be signed after which the question of adoption of tariff has to be taken up.

With this clarification of the 20.09.2018 order, we dispose of the review and the M.A.

The State Commission which has reserved its judgment on 16.01.2019 will hear the parties within a period of two weeks from today and will pass orders after taking into account the order that we have passed today."

56. In accordance with the directions issued by this Court, the State Commission considered the rival submissions of the parties and came to a conclusion that the tariff quoted by SKS Power was not market aligned. The State Commission also found that, adoption of such high rate would be against the consumer interest. The State Commission, therefore, vide order dated 26th February 2019, decided not to adopt the tariff quoted by L-4 and L-5 bidders.

57. The said order dated 26th February 2019 of the State

Commission was challenged before the learned APTEL by SKS Power by way of Appeal No.224 of 2019. The learned APTEL framed the following three issues in the said appeal:

"ISSUE NO.1: Whether the Respondent Commission could reject the tariff/bid of the Appellant, in terms of Section 63 of the Electricity Act, 2003 and the directions issued by the Hon'ble Supreme Court?

ISSUE NO.2: Whether there was a sufficient proof to show that the bid of the Appellant was market aligned?

ISSUE NO.3: Whether the argument of Consumer interest be advanced by the Rajasthan Discoms in the facts of the present Appeal?"

58. The learned APTEL while answering the first issue, came to the conclusion that the State Commission, while adopting tariff under Section 63, has to only consider that the Bidding Guidelines issued by the Central Government providing for tariff structure were complied with or not. The learned APTEL also held that the State Commission cannot exercise its powers *de hors* such guidelines. It further held that the State Commission has no power to reject the tariff of a bidder.

59. Insofar as the second issue is concerned, the learned APTEL came to a finding that, since the bid of SKS Power was already evaluated, and the subsequent certificates were issued by the BEC confirming the transparency of the bid, it was not open for the State Commission to go into the question, as to whether the tariff quoted by SKS Power was market aligned or not. It further held that, after the order dated 25th April 2018 was passed by this Court, it was not open for the State Commission to reevaluate the bid.

60. Insofar as the third issue with regard to consumers' interest is concerned, the learned APTEL held that the said issue cannot be raised again at that stage when the same had been dealt with in detail by the learned APTEL vide order dated 2nd February 2018 and also considered by this Court before passing the order dated 25th April, 2018.

61. Accordingly, the appeal was allowed by the learned APTEL vide order dated 3rd February 2020 and the order dated 26th February 2019 of the State Commission was set aside. The learned APTEL directed that the tariff of SKS Power, as offered in its bid, shall be adopted. The parties were directed to revive and implement the PPA dated 4th February 2019. This order dated 3rd February 2020, passed by the learned APTEL has been challenged by the DISCOMS and RVPN before this Court by way of Civil Appeal No.1937 of 2020 and Civil Appeal No. 2721 of 2020 respectively.

62. The respondent No.1 in the present proceedings rests its claim on the aforesaid orders passed by this Court and the order dated 3rd February 2020, passed by the learned APTEL.

63. Basically, it is the contention of the respondent No.1-MB Power that after the orders were passed by this Court, RVPN and the DISCOMS were bound to procure electricity/power from the bidders going down the ladder until the entire 906 MW power was exhausted. It is their contention that once it is certified that the bid evaluation process has been complied with as per the Bidding Guidelines issued by the Central Government, it is presumed that the process was transparent and it is not permissible for the State Commission to go into the question of market aligned tariff and also the consumer interest. It is their contention that without considering the question, as to whether the tariff was market aligned or not, the procurers were bound to accept supply from the bidders at the rates quoted by them. It is their submission that the power under Section 63 of the Electricity Act restricted the scrutiny only to two aspects, viz., (1) whether the Bidding Guidelines framed by the Union of India under Section 63 of the Electricity Act were followed; and (2) whether the bidding process was transparent or not.

64. The High Court in the impugned judgment, relying on the observations of the learned APTEL and the earlier orders of this Court has come to a conclusion that, applying the test of "filling the bucket", the procurers were bound to take supply from the respondent No.1-MB Power at the rates quoted by it. On the basis of the judgment of the learned APTEL, the High Court held that the respondent No.1-MB Power had a right to supply power since there was a gap of 300 MW between the power procured by the procurers and the ceiling of 906 MW determined by this Court. In these premises, the High Court issued a mandamus directing the appellants to take supply of 200 MW electricity/power from the respondent No.1-MB Power at the rates quoted by it.

65. We, therefore, find that, before deciding the correctness or otherwise of the impugned judgment, it will be necessary for us to examine the correctness of the judgment and order dated 3rd February 2020, passed by the learned APTEL in the case of SKS Power.

66. We have already reproduced Section 63 of the Electricity Act. The provisions of Section 63 of the Electricity Act fell for consideration before this Court in the case of ***Energy Watchdog*** (supra). It will be apposite to refer to paragraphs 19 and 20 of the said judgment, which are as under:

"**19.** The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non

obstante clause, but it is a non obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. ***What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government.*** Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions dehors its general regulatory power under Section 79(1)(*b*). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections

must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(*b*) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(*d*), Section 79(1)(*b*) is a wider source of power to

"regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(*b*), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(*b*) can then be used."

[emphasis supplied]

67. It could thus be seen that it has been held by this Court that unlike Section 62 read with Sections 61 and 64, under the provisions of Section 63 of the Electricity Act, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. It has further been held that, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and that, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. It was sought to be contended before this Court in the said case that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at

except the bid itself which must accord with guidelines issued by the Central Government. However, rejecting the said contention, this Court observed that the appropriate Commission does not act as a mere post office under Section 63. It has been observed that, Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

68. This Court in the said case, in paragraph 20, further observed that the entire Act shall be read as a whole. It has been held that, all the discordant notes struck by the various sections must be harmonized. It has been held that, considering the fact that the non obstante clause advisedly restricts itself to Section 62, there is no reason to put Section 79 out of the way altogether.

It has been held that, either under Section 62, or under Section 63, the general regulatory power of the Commission under Section 79(1)(*b*) is the source of the power to regulate, which includes the power to determine or adopt tariff. It has been held that, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. It has further been held that, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(*b*), only in accordance with those guidelines. It has further been held that, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(*b*) can be used.

69. The aforesaid view of this Court in the case of ***Energy Watchdog*** (supra), which is a judgment delivered by two Judge Bench, has been approved by three Judge Bench of this Court in the case of ***Tata Power Company Limited Transmission***

(supra).

70. We have already referred to Section 86(1)(b) of the Electricity Act, which is analogous to Section 79 of the Electricity Act. Section 79 determines the functions of Central Commission, whereas Section 86 provides for the functions of the State Commission. Section 86 of the Electricity Act empowers the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

71. It can thus be seen that Section 86(1)(b) of the Electricity Act gives ample power on the State Commission to regulate electricity purchase and procurement process of distribution licensees. It also empowers the State Commission to regulate the matters including the price at which electricity shall be procured from the generating companies, etc.

72. It will also be relevant to refer to the Bidding Guidelines notified by the Central Government vide Resolution dated 19th January 2005. The preamble of the Bidding Guidelines specifically states that, one of the objectives of the said Bidding Guidelines is to facilitate transparency and fairness in procurement processes and protection of consumer interests by facilitating competitive conditions in procurement of electricity.

73. Clause 5.15 of the Bidding Guidelines is an important clause. It provides that, the bidder who has quoted lowest levelized tariff as per evaluation procedure, shall be considered for the award. It also provides that the evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

74. It is thus amply clear that the evaluation committee is empowered to consider, as to whether the rates quoted are aligned to the market price or not, and that the evaluation committee shall have the right to reject all the price bids if it finds that the rates quoted are not aligned to the prevailing market price. The orders which are relied upon by the learned APTEL, specifically the order dated 19th November 2018 of this Court, had specifically clarified that the State Commission was to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court.

75. In this background, the State Commission was justified in considering clause 5.15 of the Bidding Guidelines, which specifically permits to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

76. The contention that this Court has ordered that the bids quoted by the bidders are to be accepted without going into the question of it being market aligned or not, in our view, is without substance.

77. If the contention of the respondent No.1-MB Power that the procurer is bound to accept all the bids emerged in a competitive bidding process once the bidding process was found to be transparent and in compliance with the Bidding Guidelines is to be accepted, in our view, it will do complete violence to clause 5.15 of the Bidding Guidelines itself. If that view is accepted, the DISCOMS will be compelled to purchase electricity at a much higher rate as compared with other suppliers. The said higher rate will be passed on to the

consumers. As such, accepting the contention of the respondent No.1 would result in adversely affecting the interests of the consumers and, in turn, would be against the larger public interest. For example, if in a bidding process for 1000 MW power, 10 persons emerged as "qualified bidders". L-1 bidder quotes Rs.2 per unit for 100 MW power and L-2 bidder quotes Rs.2.25 per unit for another 100 MW power and from L-3 bidder onwards, they start quoting Rs.10 per unit and above for balance 800 MW power, could the public interest be subserved by compelling the procurer to buy balance 800 MW power at Rs.10 per unit and above when the prices quoted are totally not aligned to market prices.

78. We are, therefore, of the considered view that the learned APTEL has grossly erred in holding that the State Commission has no power to go into the question, as to whether the prices quoted are market aligned or not and also not to take into consideration the aspect of consumers' interest.

79. When the Bidding Guidelines itself permit the BEC to reject all price bids if the rates quoted are not aligned to the prevailing market prices, there is no question of the State Commission being not in a position to go into the question, as to whether the rates quoted are market aligned or not, specifically, in the light of ample powers vested with the State Commission under Section 86(1)(b) of the Electricity Act, which also includes the power to regulate the prices at which electricity shall be procured from the generating companies, etc. The finding of the learned APTEL, in our view, therefore, is totally erroneous.

80. In the case of SKS Power, the BEC, consisting of following 6 members, has considered the levelized tariff quoted by L-4 and L-5 bidders:

(i) Shri R.K. Jain, Chief Engineer (NPP & RA), RVPN,

Jaipur;

(ii) Shri Manish Saxena, Chief Controller of Accounts,

RVPN, Jaipur;

(iii) Shri M.M. Ranwa, Chief Engineer, RUVNL, Jaipur;

(iv) Shri K.L. Meena, Addl. Chief Engineer (Fuel), RVUN, Jaipur;

(v) Shri S.K. Mathur, Chief Engineer (HQ), JVVNL, Jaipur; and

(vi) Shri Tarun Agarwal, CA, Partner M/s Shyamlal Agrawal & Co., Jaipur

81. It can be seen that the said Committee consisted of 4 technical members of the rank of Chief Engineer/Additional Chief Engineer. It consisted of the Chief Controller of Account, RVPN, Jaipur. It also consisted of a Chartered Accountant, who is an expert in financial matters. After due deliberations, the BEC consisting of experts found that the prices quoted by L-4 and L5 bidders were exorbitantly high and it would result in additional financial burden of more than Rs.1715 crore on the consumers of the State as compared to the tariff of L-1 bidder.

82. The State Commission after considering the detailed analysis of the BEC had come to the considered conclusion that the prices offered by SKS Power (L-5 bidder) were not market aligned, and therefore, not in the consumers' interest. We, therefore, find that the learned APTEL has grossly erred in reversing the well-reasoned order passed by the State Commission, which was, in turn, based on the decision of the BEC in accordance with clause 5.15 of the Bidding Guidelines.

83. We further find that it cannot be read from the orders of this Court that the State Commission was bound to accept the bids as quoted by the bidders till the bucket was filled. Firstly, no such direction can be issued by this Court *de hors* the provisions of

Section 63 and 86(1)(b) of the Electricity Act and the Bidding Guidelines. In any event, vide order dated 19th November 2018, this Court had specifically directed the State Commission to decide the tariff under Section 63 of the Electricity Act having regard to the law laid down both statutorily and by this Court. As such, the State Commission was bound to take into consideration the Bidding Guidelines and specifically clause 5.15 thereof.

84. With regard to the contention that the power under clause 5.15 of the Bidding Guidelines can be exercised only when the bidding process is found to be not in compliance with the Bidding Guidelines and is not transparent in respect of all the bidders and not in respect of some of the bidders is concerned, in our view, the same is without substance.

85. We may in this respect refer to Section 13(2) of the General Clauses Act, which reads thus:

"13. **Gender and number**.—In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,—

(1) ……; and

(2) words in the singular shall include the plural, and vice versa."

86. Apart from that, the Constitution Bench of this Court in the case of ***Vivek Narayan Sharma and others v. Union of India and others***[7] had an occasion to consider the question, as to whether the word "any" would include "all" and vice versa. The Constitution Bench of this Court observed thus:

> *"***113.** It is strenuously urged by the learned Senior Counsel appearing on behalf of the petitioners that the word "any" used in subsection (2) of Section 26 of the RBI Act will have to be given a restricted meaning to mean "some". It is submitted that if sub-section (2) of Section 26 of the RBI Act is not read in such manner, the very power available under the said sub-section will have to be held to be invalid on the ground of excessive delegation. It is submitted that it cannot be construed that the legislature intended to bestow uncanalised, unguided and arbitrary power on the Central Government to demonetise the entire currency. It is, therefore, the submission of the petitioners that in order to save the said section from being declared void, the word "any" requires to be interpreted in a restricted manner to mean "some".
>
> **114.** Per contra, it is submitted on behalf of the respondents that the word "any" under sub-section (2) of Section 26 of the RBI Act, cannot be interpreted in a narrow manner and it will have to be construed to include
>
> "all".
>
> ***Precedents construing the word "any"***

115. A Constitution Bench of this Court in *Chief Inspector of Mines* v. *Lala Karam Chand Thapar* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] was considering the question as to whether the phrase "any one of the Directors" as found in Section 76 of the Mines Act, 1952 could mean "only one of the Directors" or could it be construed to mean "every one of the Directors". In the said case, all the Directors of the Company were prosecuted for the offences punishable under Sections 73 and 74 of the Mines Act, 1952. The High Court had held [*Lala Karam Chand Thapar* v. *State of Bihar*, 1958 SCC

[7] (2023) 3 SCC 1=2023 INSC 2

OnLine Pat 30] that any "one" of the Directors of the Company could only be prosecuted.

116. The Constitution Bench of this Court observed thus : (*Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] , AIR pp. 847-48, paras 29-34)

"*29*. It is quite clear and indeed not disputed that in some contexts, "any one" means "one only it matters not which one" the phrase "any of the Directors" is therefore quite capable of meaning "only one of the Directors, it does not matter which one". Is the phrase however capable of no other meaning? If it is not, the courts cannot look further, and must interpret these words in that meaning only, irrespective of what the intention of the legislature might be believed to have been. If however the phrase is capable of another meaning, as suggested viz. "every one of the Directors" it will be necessary to decide which of the two meanings was intended by the legislature.

30. If one examines the use of the words "any one" in common conversation or literature, there can be no doubt that they are not infrequently used to mean "every one" — not one, but all. Thus we say of any one can see that this is wrong, to mean "everyone can see that this is wrong". "Any one may enter" does not mean that "only one person may enter", but that all may enter. It is permissible and indeed profitable to turn in this connection to Oxford English Dictionary, at p. 378, of which, we find the meaning of "any" given thus:'In affirmative sentences, it asserts, concerning a being or thing of the sort named, without limitation as to which, and thus collectively of every one of them'. One of the illustrations given is — "I challenge anyone to contradict my assertions". Certainly, this does not mean that one only is challenged; but that all are challenged. It is abundantly clear therefore that "any one" is not infrequently used to mean "every one".

31. But, argues Mr Pathak, granting that this is so, it must be held that when the phrase "any one" is used with the preposition "of", followed by a word denoting a number of persons, it never means "every one". The extract from *Oxford Dictionary*, it is interesting to notice, speaks of an assertion "concerning a being or

thing of the sort named"; it is not unreasonable to say that, the word "of" followed by a word denoting a number of persons or things is just such "naming of a sort" as mentioned there. Suppose, the illustration "I challenge any one to contradict my assertions" was changed to "I challenge any one of my opponents to contradict my assertion". "Any one of my opponents" here would mean "all my opponents" — not one only of the opponents.

32. While the phrase "any one of them" or any similar phrase consisting of "any one", followed by "of" which is followed in its turn by words denoting a number of persons or things, does not appear to have fallen for judicial construction, in our courts or in England — the phrase "any of the present Directors" had to be interpreted in an old English case, *Isle of Wight Railway Co.* v. *Tahourdin* [*Isle of Wight Railway Co.* v. *Tahourdin*, (1883) LR 25 Ch D 320 (CA)] . A number of shareholders required the Directors to call a meeting of the company for two objects. One of the objects was mentioned as 'To remove, if deemed necessary or expedient any of the present Directors, and to elect Directors to fill any vacancy on the Board'. The Directors issued a notice to convene a meeting for the other object and held the meeting. Then the shareholders, under the Companies Clauses Act, 1845, issued a notice of their own convening a meeting for both the objects in the original requisition. In an action by the Directors to restrain the requisitionists, from holding the meeting, the Court of Appeal held that a notice to remove "any of the present Directors" would justify a resolution for removing all who are Directors at the present time. "Any", Lord Cotton, L.J. pointed out, would involve "all".

33. It is true that the language there was "any of the present Directors" and not "any one of the present Directors" and it is urged that the word "one", in the latter phrase makes all the difference. We think it will be wrong to put too much emphasis on the word "one" here. It may be pointed out in this connection that the Permanent Edition of *Words and Phrases*, mentions an American case *Front & Huntingdon Building & Loan Assn.* v. *Berzinski* [*Front & Huntingdon Building & Loan Assn.* v. *Berzinski*, 130 Pa Super 297 : 196 A 572 (Superior Court of Pennsylvania 1938)] where the words "any of them" were held to be the equivalent of "any one of them".

34. After giving the matter full and anxious consideration, we have come to the conclusion that the words "any one of the Directors" is ambiguous; in some contexts, it means "only one of the Directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the Directors". Which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on a consideration of the context in which the words appear, and in particular, the scheme and object of the legislation."

(emphasis supplied)

117. The Constitution Bench in *Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] found that the words "any one" have been commonly used to mean "every one" i.e. not one, but all. It found that the word "any", in affirmative sentences, asserts, concerning a being or thing of the sort named, without limitation. It held that it is abundantly clear that the words "any one" are not infrequently used to mean "every one".

118. It could be seen that the Constitution Bench in *Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] , after giving the matter full and anxious consideration, came to the conclusion that the words "any one of the Directors" was an ambiguous one. It held that in some contexts, it means "only one of the Directors, does not matter which one", but in other contexts, it is capable of meaning "every one of the Directors". It held that which of these two meanings was intended by the legislature in any particular statutory phrase has to be decided by the courts on consideration of the context in which the words appear, and in particular, the scheme and object of the legislation.

119. After examining the scheme of the Mines Act, 1952, the Constitution Bench of this Court further observed thus : (*Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam*

Chand Thapar, (1962) 1 SCR 9 : AIR 1961 SC 838] , AIR pp. 848-49, paras 36-38)

"*36*. But, argues Mr Pathak, one must not forget the special rule of interpretation for "penal statute" that if the language is ambiguous, the interpretation in favour of the accused should ordinarily be adopted. If you interpret "any one" in the sense suggested by him, the legislation he suggests is void and so the accused escapes. One of the two possible constructions, thus being in favour of the accused, should therefore be adopted. In our opinion, there is no substance in this contention. *The rule of strict interpretation of penal statutes in favour of the accused is not of universal application, and must be considered along with other well-established rules of interpretation. We have already seen that the scheme and object of the statute makes it reasonable to think that the legislature intended to subject all the Directors of a company owning coal mines to prosecution and penalties, and not one only of the Directors. In the face of these considerations there is no scope here of the application of the rule for strict interpretation of penal statutes in favour of the accused*.

37. The High Court appears to have been greatly impressed by the fact that in other statutes where the legislature wanted to make every one out of a group or a class of persons liable it used clear language expressing the intention; and that the phrase "any one" has not been used in any other statute in this country to express "every one". *It will be unreasonable, in our opinion, to attach too much weight to this circumstance; and as for the reasons mentioned above, we think the phrase "any one of the Directors" is capable of meaning "every one of the Directors", the fact that in other statutes, different words were used to express a similar meaning is not of any significance*.

38. We have, on all these considerations come to the conclusion that the words "any one of the Directors" has been used in Section 76 to mean "every one of the Directors", and that the contrary interpretation given by the High Court is not correct."

(emphasis supplied)

120. It could thus be seen that though it was sought to be argued before the Court that since the rule of strict interpretation of penal statutes

in favour of the accused has to be adopted and that the word "any" was suffixed by the word "one", it has to be given restricted meaning; the Court in *Lala Karam Chand Thapar case* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] came to the conclusion that the words "any one of the Directors" used in Section 76 of the Mines Act, 1952 would mean "every one of the Directors". It is further to be noted that the word "any" in the said case was suffixed by the word "one", still the Court held that the words "any one" would mean "all" and not "one". It is to be noted that in the present case, the legislature has not employed the word "one" after the word "any". It is settled law that it has to be construed that every single word employed or not employed by the legislature has a purpose behind it.

121. On the very date on which the judgment in *Chief Inspector of Mines* v. *Lala Karam Chand Thapar* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] was pronounced, the same Constitution Bench also pronounced the judgment in *Banwarilal Agarwalla* [*Banwarilal Agarwalla* v. *State of Bihar*, (1962) 1 SCR 33 : AIR 1961 SC 849] , wherein the Constitution Bench observed thus : (*Banwarilal Agarwalla case* [*Banwarilal Agarwalla* v. *State of Bihar*, (1962) 1 SCR 33 : AIR 1961 SC 849] , AIR p. 850, para 3)

"*3*. The first contention is based on an assumption that the word "any one" in Section 76 means only "one of the Directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in Section 76 was raised in Criminal Appeals Nos. 98 to 106 of 1959 (*Chief Inspector of Mines* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] , etc.) and it has been decided there that the word "any one" should be interpreted there as "every one". *Thus under Section 76 every one of the shareholders of a private company owning the mine, and every one of the Directors of a public company owning the mine is liable to prosecution. No question of violation of Article 14 therefore arises*."

(emphasis supplied)

122. Another Constitution Bench of this Court in *Tej Kiran Jain* [*Tej Kiran Jain* v. *N. Sanjiva Reddy*, (1970) 2 SCC 272] was considering the provisions of Article 105 of the Constitution of India and, particularly, the immunity as available to the Member of Parliament "in respect of anything said … in Parliament". The Constitution Bench

observed thus : (SCC p. 274, para 8)

"*8*. In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of "anything said … in Parliament". *The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament*. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."

(emphasis supplied)

123. This Court held in *Tej Kiran Jain case* [*Tej Kiran Jain* v. *N. Sanjiva Reddy*, (1970) 2 SCC 272] that the word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. It held that, once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court.

124. This Court, in *LDA* [*LDA* v. *M.K. Gupta*, (1994) 1 SCC 243] , was considering clause (*o*) of Section 2(1) of the Consumer Protection

Act, 1986 which defines "service", wherein the word "any" again fell for consideration. This Court observed thus : (SCC p. 255, para 4)

"*4*. … The words "any" and "potential" are significant. Both are of wide amplitude. The word "any" dictionarily means "one or some or all". In *Black's Law Dictionary* it is explained thus, 'word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subjectmatter of the statute'. The use of the word "any" in the context it has been used in clause (*o*) indicates that it has been used in wider sense extending from one to all."

125. This Court held in *LDA case* [*LDA* v. *M.K. Gupta*, (1994) 1 SCC 243] that the word "any" is of wide amplitude. It means "one or some or all". Referring to *Black's Law Dictionary*, the Court observed that the word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one". However, the meaning which is to be given to it would depend upon the context and the subjectmatter of the statute.

126. In *K.P. Mohammed Salim* [*K.P. Mohammed Salim* v. *CIT*, (2008) 11 SCC 573] , this Court was considering the power of the Director General or Chief Commissioner or Commissioner to transfer any case from one or more assessing officers subordinate to him to any other assessing officer or assessing officers. This Court observed thus : (SCC p. 578, para 17)

"*17*. The word "any" must be read in the context of the statute and for the said purpose, it may in a situation of this nature, means all. The principles of purposive construction for the said purpose may be resorted to. (See *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia* [*New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850] .) *Thus, in the context of a statute, the word "any" may be read as all in the context of the Income Tax Act for which the power of transfer has been conferred upon the authorities specified under Section 127*."
(emphasis supplied)

127. The Court in *K.P. Mohammed Salim* [*K.P. Mohammed Salim* v. *CIT*, (2008) 11 SCC 573] again reiterated that the word "any" must be read in the context of the statute. The Court also applied the principles of purposive construction to the term "any" to mean "all".

128. In *Raj Kumar Shivhare* [*Raj Kumar Shivhare* v. *Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712] , an argument was sought to be advanced that since Section 35 of the Foreign Exchange Management Act, 1999 uses the words "any decision or order", only appeals from final order could be filed. Rejecting the said contention, this Court observed thus : (SCC pp. 779-80, paras 19-20 & 26)

"*19*. The word "any" in this context would mean "all". We are of this opinion in view of the fact that this section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by statute, as it is barred here under Section 34 of FEMA, is an inherent right (see Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by a statute. While conferring such right a statute may impose restrictions, like limitation or predeposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise.

20. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from "any" "order" or "decision" of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word "any" would mean "all".

***

26. In the instant case also when a right is conferred on a person aggrieved to file appeal from "any" order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning. Therefore, in our judgment in Section 35 of FEMA, any "order" or "decision" of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all

such decisions or orders are, subject to limitation, appealable to the High Court on a question of law."

(emphasis supplied)

129. While holding that the word "any" in the context would mean "all", this Court in *Raj Kumar Shivhare* [*Raj Kumar Shivhare* v. *Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712] observed that a right of appeal is always conferred by a statute. It has been held that, while conferring such right, a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. It has been held that whenever such limitations are imposed, they are to be strictly followed. It has been held that in a case where there is no limitation, the right of appeal cannot be curtailed by this Court on the basis of an interpretative exercise.

130. Shri P. Chidambaram, learned Senior Counsel relied on the judgment of this Court in *Union of India* v. *A.B. Shah* [*Union of India* v. *A.B. Shah*, (1996) 8 SCC 540 : 1996 SCC (Cri) 688] . In the said case, the High Court was considering an appeal preferred by the Union of India wherein it had challenged the acquittal of the accused by the learned trial court, which was confirmed in appeal by the High Court. The learned trial court and the High Court had held that the complaint filed was beyond limitation. This Court reversed the judgments of the learned trial court and the High Court.

131. This Court while interpreting the expression "at any time" observed thus : (*A.B. Shah case* [*Union of India* v. *A.B. Shah*, (1996) 8 SCC 540 : 1996 SCC (Cri) 688] , SCC p. 546, para 12)

"*12*. If we look into Conditions 3 and 6 with the object and purpose of the Act in mind, it has to be held that these conditions are not only relatable to what was required at the commencement of depillaring process, but the unstowing for the required length must exist always. *The expression "at any time" finding place in Condition 6 has to mean, in the context in which it has been used,*

"at any point of time", the effect of which is that the required length must be maintained all the time. The accomplishment of object of the Act, one of which is safety in the mines, requires taking of such a view, especially in the backdrop of repeated mine disasters which have been taking, off and on, heavy toll of lives of the miners. *It may be pointed out that the word "any" has a diversity of meaning and in* Black's Law Dictionary *it has been stated that this word may be employed to indicate "all" or "every", and its meaning will depend "upon the context and subject-matter of the statute"*. A reference to what has been stated in *Stroud's Judicial Dictionary*, Vol. I, is revealing inasmuch as the import of the word "any" has been explained from pp. 145 to 153 of the 4th Edn., a perusal of which shows it has different connotations depending primarily on the subject-matter of the statute and the context of its use. A Bench of this Court in *LDA* v. *M.K. Gupta* [*LDA* v. *M.K. Gupta*, (1994) 1 SCC 243] , gave a very wide meaning to this word finding place in Section 2(1)(*o*) of the Consumer Protection Act, 1986 defining "service". (*See* para 4)"

(emphasis supplied)

132. Shri Chidambaram rightly argued that the word "any" will have to be construed in its context, taking into consideration the scheme and the purpose of the enactment. There can be no quarrel with regard to the said proposition. Right from the judgment of the Constitution Bench of this Court in *Chief Inspector of Mines* v. *Lala Karam Chand Thapar* [*Chief Inspector of Mines* v. *Lala Karam Chand Thapar*, (1962) 1 SCR 9 : AIR 1961 SC 838] , the position is clear. What is the meaning which the legislature intended to give to a particular statutory provision has to be decided by the Court on a consideration of the context in which the word(s) appear(s) and in particular, the scheme and object of the legislation."

87. From the perusal of the various judgments, which have been referred to in detail by the Constitution Bench, it will be clear that the words "all" or "any" will have to be construed in their context taking into consideration the scheme and purpose of the enactment. What is the meaning which the legislature intended to give to a particular statutory provision has to be decided by the Court on a consideration of the context in which the word(s) appear(s) and in

particular, the scheme and object of the legislation. We have no hesitation to hold that the word "all" used in clause 5.15 of the Bidding Guidelines, read with the legislative policy for which the Electricity Act was enacted and read with Section 86(1)(b) of the Electricity Act, will have to be construed to be the one including "any". As such, the contention in that regard is to be rejected.

88. In any case, applying the principle of literal interpretation, the evaluation committee/BEC would be entitled to reject only such of the price bids if it finds that the rates quoted by the bidders are not aligned to the prevailing market prices. It does not stipulate rejection of all the bids in the bidding process. For example, if in a bidding process, which is in accordance with the Bidding Guidelines and is transparent, 5 bidders emerged. Out of the said bidders, the rates quoted by only 3 bidders are market aligned and the rates quoted by rest of the 2 bidders are not market aligned. In accordance with the Bidding Guidelines, the BEC would be entitled to recommend acceptance of the bids of the first 3 bidders and reject the bids of rest of the 2 bidders whose quoted rates/prices are not found to be market aligned.

We, therefore, reject the contention in this behalf.

89. We further find that the Court, while interpreting a particular provision, will have to apply the principles of purposive construction. The Constitution Bench of this Court in the case of ***Vivek Narayan Sharma*** (supra) after surveying various judgments on the issue has held thus:

> "**148.** It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent

injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."

90. It could thus be seen that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed.

91. If the contention that clause 5.15 of the Bidding Guidelines will come into play, which permits the Evaluation Committee to reject "all" price bids and not "any" one of them is accepted, it will lead to nothing else than resulting in absurdity. Suppose, if L-1 bidder quotes Rs.3 per unit and L-5 bidder quotes Rs.7 per unit, requirement to reject the bid of L-1 bidder, whose bid is found market aligned along with that of L-5 bidder, which is not market aligned, would lead to an anomalous situation. Could the consumer be deprived of the electricity to be procured from L-1 at a market aligned price only because some of the bidders have quoted much higher prices and are not market aligned. In our view, such an interpretation would result in defeating one of the main objects of the enactment, i.e., protection of the consumer.

92. It is needless to state that this Court, time and again, in various judgments including the one in the case of ***GMR Warora Energy Limited*** (supra) has recognised the requirement of balancing the consumers' interest with that of the interest of the generators. It will not be permissible to take a lopsided view only to protect the interest of the generators ignoring the consumers' interest and public interest.

93. We find that the High Court was not justified in entertaining the petition. The Constitution Bench of this Court in the case of ***PTC India Limited*** (supra) has held that the Electricity Act is an exhaustive code on all matters concerning electricity. Under the Electricity Act, all issues dealing with electricity have to be considered by the authorities constituted under the said Act. As held by

the Constitution Bench of this Court, the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. Not only that, these Tribunals are tribunals consisting of experts having vast experience in the field of electricity. As such, we find that the High Court erred in directly entertaining the writ petition when the respondent No.1, i.e., the writ petitioner before the High Court had an adequate alternate remedy of approaching the State Electricity Commission.

94. This Court in the case of ***Reliance Infrastructure Limited v. State of Maharashtra and others***[8] has held that while exercising its power of judicial review, the Court can step in where a case of manifest unreasonableness or arbitrariness is made out.

95. In the present case, there is not even an allegation with regard to that effect. In such circumstances, recourse to a petition under Article 226 of the Constitution of India in the availability of efficacious alternate remedy under a statute, which is a complete code in itself, in our view, was not justified.

96. No doubt that availability of an alternate remedy is not a complete bar in the exercise of the power of judicial review by the High Courts. But, recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. A reference in this respect could be made to the judgments of this Court in the cases of ***Radha Krishan***

Industries v. State of Himachal Pradesh and others[12] and ***South Indian Bank Ltd. and others v. Naveen Mathew Philip and another***[13].

97. We may gainfully refer to the observation of this Court in the case of ***Radha Krishan Industries*** (supra), wherein this Court has laid down certain principles after referring to the earlier judgments:

"**24.** The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in *CCT* v. *Glaxo Smith Kline Consumer Health Care Ltd.* [*CCT* v. *Glaxo Smith Kline Consumer Health Care Ltd.*, (2020) 19 SCC 681 : 2020 SCC OnLine SC 440] , the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain

[8] (2019) 3 SCC 352=2019 INSC 63

exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the

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[12] (2021) 6 SCC 771=2021 INSC 266

[13] 2023 SCC OnLine SC 435 =2023 INSC 379

principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In *Whirlpool Corpn.* v. *Registrar of Trade Marks* [*Whirlpool Corpn.* v. *Registrar of Trade Marks*, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-
15)

"*14.* The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. *But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged*. There is a plethora of case-law on this point

but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

26. Following the dictum of this Court in *Whirlpool* [*Whirlpool Corpn.* v. *Registrar of Trade Marks*, (1998) 8 SCC 1] , in *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.* [*Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107] , this Court noted that : (*Harbanslal Sahnia case* [*Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107] , SCC p. 110, para 7)

"*7.* So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. *In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged*. (See *Whirlpool Corpn.*v. *Registrar of Trade Marks* [*Whirlpool Corpn.* v. *Registrar of Trade Marks*, (1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(emphasis supplied)

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (*a*) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (*b*) there has been a violation of the principles of natural justice; (*c*) the order or proceedings are wholly without jurisdiction; or (*d*) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan* v. *Durga Prasad* [*Chand Ratan* v. *Durga*

Prasad, (2003) 5 SCC 399] , *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB* v. *Union of India* [*Rajasthan SEB* v. *Union of India*, (2008) 5 SCC 632] among other decisions."

98. This Court has clearly held that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India.

99. Recently, this Court in the case of ***M/s South Indian Bank Ltd. & Ors.*** (supra) has also taken a similar view.

100. There is another ground on which the High Court ought to have refused to entertain the petition. The bid of L-7 bidder was returned and the Bid Bond bank guarantee was also directed not to be extended vide the communication dated 6th January 2015. The judgment and order passed by this Court, on which reliance is placed by respondent No.1, is also delivered on 25th April 2018. However, the respondent No.1 did not take any steps from 6th January 2015 and in any case, from 25th April 2018 till 14th December 2020, on which date the petition came to be filed before the High Court. No doubt that the petition need not be dismissed solely on the ground of delay and laches. However, if petitioner approaches the Court with delay, he has to satisfy the Court about the justification for delay in approaching the Court belatedly. In our considered view, the High Court ought not to have entertained the petition also on the ground of delay and laches.

101. In any case, we find that the High Court was not justified in issuing the mandamus in the nature which it has issued. This Court in the case of ***Air India Ltd. v. Cochin International Airport Ltd. and others***[9] has observed thus:

"**7.** The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty* v. *International Airport Authority of India* [(1979) 3 SCC 489] , *Fertilizer Corpn. Kamgar Union (Regd.)* v.

[9] (2000) 2 SCC 617=2000 INSC 39

Union of India [(1981) 1 SCC 568] , *CCE* v. *Dunlop India Ltd.* [(1985) 1
SCC 260 : 1985 SCC (Tax) 75] , *Tata*
Cellular v. *Union of India* [(1994) 6 SCC 651]
, *Ramniklal N. Bhutta* v. *State of Maharashtra* [(1997) 1 SCC 134] and *Raunaq International Ltd.* v. *I.V.R. Construction Ltd.* [(1999) 1 SCC 492] The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decisionmaking process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

102. It could thus be seen that this Court has held that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are paramount are commercial considerations. It has been held that

the State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It has further been held that the State can enter into negotiations before finally deciding to accept one of the offers made to it. It has further been held that, price need not always be the sole criterion for awarding a contract. It has been held that the State may not accept the offer even though it happens to be the highest or the lowest. However, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decisionmaking process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. It has further been held that even when some defect has been found in the decisionmaking process, the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

103. As has been held by this Court in the case of ***Tata Cellular*** (supra), the Court is not only concerned with the merits of the decision but also with the decision-making process. Unless the Court finds that the decision-making process is vitiated by arbitrariness, mala fides, irrationality, it will not be permissible for the Court to interfere with the same.

104. In the present case, the decision-making process, as adopted by the BEC was totally in conformity with the principles laid down by this Court from time to time. The BEC after considering the competitive rates offered in the bidding process in various States came to a conclusion that the rates quoted by SKS Power (L-5 bidder) were not market aligned. The said decision has been approved by the State Commission. Since the decision-making process adopted by the BEC, which has been approved by the State Commission, was in accordance with the law laid down by this Court, the same ought not to have been interfered with by the learned APTEL.

105. In any case, the High Court, by the impugned judgment and order, could not have issued a mandamus to the instrumentalities of the State to enter into a contract, which was totally harmful to the public interest. Inasmuch as, if the power/electricity is to be procured

by the procurers at the rates quoted by the respondent No.1-MB Power, which is even higher than the rates quoted by the SKS Power (L-5 bidder), then the State would have been required to bear financial burden in thousands of crore rupees, which would have, in turn, passed on to the consumers. As such, we are of the considered view that the mandamus issued by the Court is issued by failing to take into consideration the larger consumers' interest and the consequential public interest. We are, therefore, of the view that the impugned judgment and order passed by the High Court is not sustainable in law and deserves to be quashed and set aside.

CIVIL APPEAL NO. 6503 OF 2022 AND CIVIL APPEAL NO. 6502 OF 2022

106. The appeals are, therefore, allowed. The impugned judgment and order of the Division Bench of the High Court of Judicature for Rajasthan, Bench at Jaipur dated 20th September 2021 in D.B. Civil Writ Petition No. 14815 of 2020 is quashed and set aside. The respondent No.1-M.B. Power (Madhya Pradesh) Limited is directed to pay costs, quantified at Rs.5,00,000/- (Rupees Five Lakh) in each case to the appellants.

107. Pending applications, if any, shall stand disposed of.

CIVIL APPEAL NO. 4612 OF 2023

108. Since we have already set aside the judgment and order of the High Court dated 20th September 2021 in D.B. Civil Writ Petition No.14815 of 2020 and the order impugned in the present appeal is based on the said order of the High Court dated 20th September 2021, the present appeal is also allowed. The judgment and order of the learned APTEL dated 1st June 2023 is quashed and set aside.

109. Since we have saddled the costs in Civil Appeal Nos. 6503 of 2022 and 6502 of 2022, there shall be no order as to costs in the present appeal.

110. Pending applications, if any, shall stand disposed of.