

BEFORE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

Petition No.1456/2014 and I.A. No. 09 of 2014.

In the Matter of:

Petition for wrongful levy of Parallel Operation Charges by PGVCL from Essar Oil Limited under Section 86 (1) (f) of the Electricity Act, 2003 read with Clause 6 of the Settlement Agreement dated 11.12.2009 executed between Essar Oil Limited and GETCO.

Petitioner : Essar Oil Limited,
5th Floor, Tower -2,
Equinox Business Park, (Peninsula Techno Park),
Off. Bandra Kurla Complex, LBS Marg,
Mumbai – 400070.

Represented By : Learned Advocates Shri Abhishek Munot and
Shri Malcolm Desai

V/s.

Respondent No 1 : Gujarat Energy Transmission Corp. Limited,
Sardar Patel Vidyut Bhavan, Race Course Circle,
Vadodara-390007

Represented By : Learned Advocate Shri M. G. Ramchandran with
Shri N.P. Jadav and Shri Amit Sachan

Respondent No. 2 : Paschim Gujarat Vij Company Limited,
Off. Nana Mava Main Road,
Near Bhaktinagar Railway Station,
Laxminagar, Rajkot-360004.

Represented By : Shri J.J. Gandhi

Intervener No. 1 : Utility Users' Welfare Association
Laxmi Ginning Compound,
Opp: Union Co-Op. Bank,
Naroda, Ahmedabad – 382330.

Represented by : Shri Bharatkumar T. Gohil

Intervener No. 2 : Laghu Udyog Bharti,
307, Ashram Avenue, B/h. Kocharab Ashram,
Near Paldi Cross Road,
Ashram Road, Ahmedabad – 380006.

Represented By : Nobody was present.

Intervener No. 3 : Shri Amarsinh Chavda
127, Heritage Bungalow
Opp: Science City,
Ahmedabad – 380060.

Represented By : Shri Amarsinh Chavda

CORAM:

Shri P. J. Thakkar, Member

Shri K.M. Shringarpure, Member

Date: 29/11/2016.

DAILY ORDER

1. The matter was heard on 20.02.2016 on the issue of impleadment applications filed by Utility Users' Welfare Association (UUWA), Laghu

Udyog Bharti – Gujarat (LUB) and Shri Amarsinh Chavda in the present matter.

2. The present petition has been filed by the Essar Oil Limited with a prayer as under:

(a) To hold that pursuant to the Commission's order dated 01.06.2011, the petitioner's CPP is governed by the Settlement Agreement and is therefore liable to pay POC, for its entire CPP capacity, connected to GETCO grid in terms thereof;

(b) To direct PGVCL to refund the sum of Rs. 47.14 Crores for the period from 01.06.2011 to 31.07.2014 and any other sums wrongfully/illegally recovered as POC from the petitioner in excess of the rates prescribed under Settlement Agreement alongwith interest at the rate of 15% from 01.06.2011 till amounts are due and payable by the respondents to the petitioner;

(c) In alternative and without prejudice to prayer clause (a) and (b) above, hold that the petitioner in the peculiar facts of the present case, is not liable to pay POC at the rate of Rs. 26.50/KVA/Month corresponding to its installed capacity;

(d) In the alternative and without prejudice to prayer clause (a) and (b) above, the Commission devise an appropriate mechanism to calculate POC payable by the petitioner, if any, considering the

peculiar facts of the case and direct PGVCL to refund the sums wrongfully recovered as POC from the petitioner, in excess of the sums so arrived at by the Commission, alongwith interest at the rate of 15% from 01.06.2011 till such amounts are due and payable by the respondents to the petitioner;

(e) To pass any other order as the Commission may deem fit in light of the facts and circumstances of the present case.

3. During the proceedings of the aforesaid petition, the Commission received application from the parties, viz, Utility Users' Welfare Association, Laghu Udyog Bharti - Gujarat (LUB) and Shri Amarsinh Chavda, requesting the Commission to implead them as party to the proceedings. The applicants prayed to the Commission to allow the impleadment applications and direct the petitioner and the respondents to provide a copy of the petition alongwith other submissions made by them in the petition and also give an opportunity to make written and oral submissions in the matter.

3.1. The Utility Users' Welfare Association (UUWA) submitted that it is an Association of consumers registered vide registration No. F/14442 and its main objectives are to safeguard the interest of end users in usage of utility services and making consumers aware about the non-conventional sources like Solar, Wind, Biomass etc. Laghu Udyog Bharti -

Gujarat submitted that it is the only all India organization working for the interest of medium and small scale enterprises. Laghu Udyog Bharti - Gujarat members are the end users of electricity in the State of Gujarat and they are participating and representing the interest of consumers in various petitions before the Commission. Shri Amarsinh Chavda submitted that he is a social and an RTI activist and his main objective is to safeguard the interest of end users of electricity services. The above applicants have made their submissions which are common in nature.

3.2. Clause 12 (1) of GERC (Conduct of Business) Regulations, 2004 states that the Commission may permit any association or other bodies corporate or any group of the Consumers to participate in any proceedings before the Commission.

3.3. Clause 40 of GERC (Conduct of Business) Regulations, 2004 contemplates that if the Commission admits the petition, it may give notices to the respondents or other affected or interested parties for filing their reply in opposition or in support of petition in such form as the Commission may direct.

3.4. Section 86 (3) of the Act which pertains to functions of the State Commission provides that the Commission shall ensure transparency while exercising its powers and discharging its functions.

- 3.5. It is an established principle that when the consumers are going to be affected by outcome of the order in the petition in question, the affected persons should be provided an opportunity to put forward their views before the Commission, otherwise it is a violation of the Principles of Natural Justice.
- 3.6. The applicants relied upon the judgement of the Hon'ble Supreme Court in the case of Food Corporation of India V/s. State, AIR 2001 SC 250 and in the case of Canara Bank V/s. Debasish Das, AIR 2003 SC 2041, wherein the Hon'ble Supreme Court observed that one of the cardinal rules of fair play is that the person likely to face adverse consequences of administrative or quasi-judicial order has to be given notice and adequate opportunity of hearing.
- 3.7. Section 94 (3) of the Electricity Act, 2003 contemplates that the Commission may authorize any person as it deems fit, to represent the interest of the consumers in the proceedings before it.
- 3.8. It is submitted that the Commission in its order dated 31.08.2000 in Suo Motu Petition No. 24 of 2000 decided that POC is in the nature of determination of tariff by the Commission.

- 3.9. The judgement in this petition is going to affect the present tariff of the consumers as the respondents PGVCL and GETCO will add the amount refunded to the petitioner in their ARR and will recover the same from the consumers. In this way, the consumers are the most affected parties in the present petition and it is mandatory under Section 64 of the Electricity Act, 2003 to hear the consumers who are going to bear the brunt of the tariff by the outcome of the judgement of the present petition.
- 3.10. It is also submitted that even Hon'ble APTEL in its order dated 16/04/2015 in Appeal Nos. 258/2013 and 21/2014 filed by Indian Wind Energy Association V/s. GERC and Others has noted that GERC is acting against its own regulations. The Hon'ble APTEL held at the concluding para of order dated 25/04/2014 in Appeal No. 24 of 2013 that even for the review of RPO by the distribution licensees, the Commission is mandated to invite the suggestions and objections of the stakeholders which is a big stigma on the attitude of the Commission to avoid the stakeholders and consumers in the proceedings.
- 3.11. It has been proved from the evidences that the Discoms, GETCO, GUVNL and all companies of erstwhile GEB are in the collusion with the private generators with whom they entered into the power purchase agreement like Adani Power Limited, Essar Power Limited, CGPL, etc., also with captive power plant operating in parallel with GETCO' grid, to whom they sell power like Torrent

Power Limited, Solar power developers, Wind power developers etc. because GUVNL has not only executed the PPAs for purchase of power more than the requirement of its Discoms but GUVNL has also entered into the PPAs with Solar, Wind and other non-conventional power producers more than its obligation in context of total sale of energy of its Discoms. All this has led to a number of litigations with GUVNL's subsidiaries and the power producers at the risk and cost of the consumers.

3.12. It is submitted that under Section 86 (1) (f) of the Electricity Act, 2003 and PPA between APL, CGPL though it is the jurisdiction of the GERC which has been established and decided by GERC itself (in case No.1000, 1080 and others), CERC has encroached upon the jurisdiction of GERC and GUVNL & GERC remained silent spectators and neither of them challenged before the upper forum like APTEL or Apex court the decision of CERC. It is mandated in Section 61 of the Electricity Act, 2003 that it is the statutory duty of the Commission to protect the interest of the consumers. In view of this, the consumers are the most affected persons and that is why it is necessary to hear the consumers like applicant prior to passing any order in the said petition.

3.13. The petitioner Essar Oil Limited has prayed for refund of the Parallel Operation Charges paid by them which is in the nature of tariff adjustment/redetermination requested by petitioner and therefore, it is

necessary to hear the consumers prior to passing on any impact of it on the consumers as per Section 64 of the Electricity Act, 2003.

3.14. It is submitted that if the decision is taken without hearing the consumers as affected persons like applicant UUWA, LUB who is an association of end users of electricity working for protection of consumers, it will be a redetermination of agreed tariff only on consultative process between Essar Oil Limited and GETCO/PGVCL and burden of outcome will be imposed on the consumers without hearing them is a violation of the Principles of Natural Justice as per the Hon'ble APTEL's judgement at para 6 in OP No. 01 of 2014 and I.A. No. 119 of 2014.

3.15. In support of the request for impleadment the Applicant UUWA and LUB – Gujarat, cited the judgments in Appeal Nos. 187 of 2011 and 6 of 2012 in the case of M/s. Chemplast Sanmar Limited V/s. Joint Electricity Regulatory Commission, & Others., wherein Hon'ble APTEL held that for proper exercise of its discretion, it was necessary to hold the public hearing and since no public hearing had been held in this case, which is necessary in the facts and circumstances of this case, we are to hold that the lack of public hearing has vitiated the whole proceedings.

3.16. Based on the above submissions, the applicant UUWA and LUB – Gujarat submitted that the Commission may implead them as a party to the petition

and give an opportunity of hearing and direct the petitioner EOL and the respondents PGVCL/GETCO to provide a copy of the petition and submissions made by them in the present petition.

4. The petitioner Essar Oil Limited, filed its reply and submitted that the present petition is filed by the petitioner challenging the arbitrary/illegal/wrongful levy and recovery of POC by PGVCL and GETCO for the period from 01.06.2011 to 31.07.2014 contrary to the Commission's order dated 31.08.2000 in Suo-Motu Case No. 24 of 2000, Order dated 25.06.2004 in Case No. 256 of 2003, Order dated 01.06.2011 in Petition Nos. 256/2003 & 867/2006 and Judgement dated 21.10.2008 in SCA No. 14743 of 2004 and Judgement dated 28.04.2009 in MCA No. 2834 of 2008 of the Hon'ble Gujarat High Court and contrary to the terms of the Settlement Agreement dated 11.12.2009 signed by the parties during the proceedings of Petition No. 256 of 2003 & allied matters.

4.1. It is submitted that during the pendency of the present proceedings before the Commission, applicants have belatedly filed an application for joining as an affected party in the present proceedings, which is only an attempt to delay and derail the adjudication of the proceedings. The application has been primarily filed on the ground that the outcome of the present petition would have a direct impact on the tariff of the consumers.

- 4.2. It is submitted that the Interveners have failed to demonstrate that any legal injury or legal harm would be caused to the consumers, which warrants their impleadment in the present petition. The Interveners have no locus standi in the present matter and their presence is not necessary for the effective adjudication of the present dispute.
- 4.3. It is submitted that the present petition filed by the petitioner EOL for refund of the sums wrongfully/ illegally recovered as POC for the period from 01.06.2011 to 31.07.2014. Therefore, there is no occasion for the Intervener or any other consumer/consumers' association to intervene in the matter. As such, no end consumers whose interest is allegedly sought to be protected, are privy to contract with either EOL or GETCO.
- 4.4. It is submitted that the present petition is filed for adjudication of a dispute between EOL and GETCO, qua recovery of a wrongful/illegal charge and is not a PIL, where the rule of Locus Standi can be relaxed. The petitioner relied upon the judgement of the Hon'ble Supreme Court in Indian Bank's Association, Bombay and Others V/s. Devika Consultancy Service and Others, (2004) 11 SCC 1.
- 4.5. The Electricity Act, 2003 does not envisage filing of a PIL for adjudication of disputes. This has been confirmed by the Hon'ble Appellate Tribunal for Electricity in the case of Bharat Jhunjhunwala

V/s. Uttar Pradesh Electricity Regulatory Commission in its Order dated 20.12.2012 passed in LA. No. 392, 393, 394 and 399 of 2012 in DFR No. 1844 of 2012. It is submitted that this Order of the Hon'ble Tribunal was confirmed by the Hon'ble Supreme Court in its Order dated 19.08.2013 passed in the case of Bharat Jhunjhunwala V/s. Uttar Pradesh Electricity Regulatory Commission, in Civil Appeal No. 7303-7304 of 2013.

4.6. It is submitted that the interest of the consumers was duly represented by Consumer Education & Research Society, Ahmedabad (CERS), who had filed Petition No. 941 of 2008 before this Commission (challenging the illegal levy of POC). CERS itself is a non-profit, non-government body, dedicated to the protection and promotion of consumers' interest and is recognized as a research institute by the Government of India and as a consumers' organization by the Government of Gujarat. As such the consumers' interest was well protected. It is further stated that the Intervener had not participated in the proceedings before this Commission when the quantum/methodology of POC was determined. Even otherwise, the present dispute pertains to recovery of POC wrongfully/illegally levied and recovered by PGVCL/ GETCO for the period from 01.06.2011 to 31.07.2014. It is submitted that the Electricity Act does not give right to each and every individual to interfere in the proceedings before a regulator. Consumers' interest was well protected in the

proceedings (Petition. No. 256 of 2003 and 867 of 2006) in which POC was determined and the Settlement Agreement was adopted. Therefore, it is not necessary that all the consumers should be permitted to make representations before an order is passed on the interpretation of this Commission's order dated 01.06.2011. In this regard, the petitioner relied upon the Judgment of the Hon'ble Supreme Court in the case of West Bengal Electricity Regulatory Commission V/s. CESC Limited & Others, (2002) 8 SCC 715.

4.7. It is submitted that even in the event this Commission holds in favour of EOL, the amount which is due to EOL legally, cannot be denied just because it would have an impact on the retail supply tariff of the State Utility. Furthermore, EOL cannot be denied the relief on the ground that the other consumers have received some concessions, from such illegal levy/ recovery. In this regard, the petitioner relied upon the Judgment dated 03.07.2013 passed in the case of the Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association, Kerala V/s. Kerala State Electricity Regulatory Commission & Anr., 2013 ELR (APTEL) 0988.

4.8. It is submitted that no prejudice would be caused to the consumers in the event the Commission permits refund of the sums illegally/wrongfully recovered by PGVCL/GETCO, as POC from EOL. In

this regard, it is submitted that as is evident from the Commission's order dated 01.06.2011, POC received from CPPs is to be shared between GETCO and PGVCL in the ratio of 2:1. However, POC recovered by PGVCL from the CPPs is not reflected in PGVCL's ARR, which is evident from the various Tariff Orders passed by the Commission for the period between 2011 and 2015. Admittedly, as determined by the Commission in its orders dated 31.08.2000 and 01.06.2011, POC is in the nature of tariff. This finding of the Commission has not been challenged and has thus attained finality. Therefore, refund of the sums illegally/ wrongfully recovered by PGVCL/GETCO as POC will not cause any injury or harm to the consumers.

4.9. It is submitted that belated and dilatory interventions are frowned upon by the courts in India. The courts have consistently held that belated intervention applications should be dismissed and allowing such applications would result in *de novo* trial. In this regard, the petitioner relied upon the Orders passed by the Hon'ble Supreme Court in Vidur Impex V/s. Tosh Apartments Pvt. Ltd., (2012) 8 SCC 384 and State Bank of India V/s. Siddhartha Enterprise, 1996 (36) DRJ 416.

4.10. It is submitted that the Intervener has failed to establish its locus standi. In this regard, it is submitted that the Hon'ble Supreme Court and the Hon'ble Tribunal while determining the locus standi in electricity

matters have held that the party filing a petition must establish that it is an aggrieved party i.e. he must be a person who has suffered legal grievance or legal injury or one who has been unjustly deprived and denied the rights which he would have been entitled in the normal course. In this regard, the petitioner relied upon the Orders passed by the Hon'ble Supreme Court of India in Grid Corporation of Orissa Limited V/s. Gajendra Haldia and Others (2008) 13 SC 414 and BSES Rajdhani Power Limited V/s. Delhi Electricity Regulatory Commission & Others, (2010) ELR (APTEL) 0404. Therefore, at this belated stage, there is absolutely no justification in permitting a third party with no locus standi to unduly delay the proceedings, on the pretext of making submissions which are unnecessary for the adjudication of the Petition.

4.11. It is submitted that if the aforesaid applications of impleadment are allowed, it would result in turning the clock back, as the pleadings are completed and as such, it would delay the ongoing adjudicatory process.

4.12. In view of the above, it is submitted that the impleadment applications filed by the interveners are liable to be dismissed with exemplary cost.

5. The Commission heard the petitioner, respondents PGVCL & GETCO and the above three applicants on 20.02.2016.

- 5.1. Shri Bharatkumar Gohil, on behalf of the applicant UUWA, reiterated the facts as stated in Para 3 above. He further submitted that the contentions of the petitioner that the applicant is not an affected party is incorrect and invalid because the subject matter of present petition is pertaining to Parallel Operation Charges whether payable by the petitioner or not. The POC is an element of tariff determined by the Commission as a part of tariff payable by the consumers. Therefore, the contention of the petitioner that the applicant is not an affected person and neither a proper nor a necessary party is not valid.
- 5.2. The Commission is bound by the provisions of the Electricity Act, 2003 and regulations framed thereunder. The preamble of the Electricity Act, 2003 contemplates that the protection of consumers' interest by the Commission is one of the duties of the Commission.
- 5.3. Section 61 (d) of the Act contemplates safeguarding the consumers' interest and at the same time recovery of the cost of electricity in reasonable manner.
- 5.4. Section 86 (3) of the Act pertains to functions of the State Electricity Regulatory Commission (SERC) which states that the SERC shall ensure transparency, while exercising its power and discharging its function.

- 5.5. Section 94 (3) of the Electricity Act, 2003 contemplates that the Commission may authorize any person as it deems fit, to represent the interest of the consumer in the proceedings before it.
- 5.6. Clause 12 (1) of GERC (Conduct of Businesses) Regulations, 2004 states that the Commission may permit any association or other bodies corporate or any group of the consumers to participate in any proceedings before the Commission.
- 5.7. Clause 40 of GERC (Conduct of Business) Regulations, 2004 contemplates that if the Commission admits the petition, it may give notices to the respondents or other affected or interested parties for filing their reply in opposition or in support of petition in such form as the Commission may direct.
- 5.8. The above provisions of the Act as well as GERC (Conduct of Business) Regulations, 2004 empower the Commission to join any person or any consumer association, as a party to the petition and to allow them to represent for protection of consumers' interest.
- 5.9. The issue involved in the present petition is pertaining to POC leviable by the respondent on the petitioner which is a part of tariff determination or not and the POC which were paid after 01.06.2011 or new CGP capacity as to whether refundable to the petitioner or not. The tariff

deamination process mandates the appropriate Commission to hear the consumers/consumers organizations because any income received by the licensee is to be given effect in the ARR of the licensee as well as in the tariff applicable to different categories of the consumers. The consumers are affected party in the present case, wherein the issue is whether the POC is leviable or not on the petitioner. The respondent is revenue neutral hence, if the POC is received from the petitioner, then it is required to be passed on into the consumers' tariff and if POC is not recoverable or received from the petitioner, then the same may not be given effect in the tariff. Therefore, the result of the present petition is directly linked with the consumers' tariff. Hence, consumers/consumers' organizations are affected party and required to be joined as party to the present petition.

5.10. In the present case, the issue is that whether POC is payable by the petitioner or not and if it is payable, then what is the rate at which it is payable, for what period it is payable? The POC is an element of tariff/ARR of the distribution licensees determined by the Commission on annual basis as a part of tariff determination under Section 61, 62 ,64 and 86 (1) (a) of the Electricity Act, 2003. It is, therefore, necessary to hear consumer or consumers' associations. Therefore, consumer/consumers' associations are affected persons and a necessary and proper party in such type of subject matters because any decision in

such matters is directly affecting the ARR of Discoms/GETCO and impact of the same is also on the consumers' tariff.

5.11. If the petitioner who is having CGP and the respondent licensees are in collusion, and if the licensees do not defend properly, then the respondent is not in loss in any manner because the ultimate result of the petition determining whether POC is leviable or not is passed on to the consumers. Therefore, the consumers as a necessary and affected party, need to be enjoined as a party to the petition.

5.12. In Suo motu proceedings in Petition No. 24 of 2000, the Commission has put up POC in the category of tariff required to be determined by the Commission as per the provisions of the Commissions' tariff regulations. In the absence of submission of tariff proposal by either distribution licensee or CGP or generating companies, the Commission may decide the same on suo-motu basis.

5.13. Neither GETCO nor GUVNL has filed any petition before the Commission for determination of the POC every year nor did they file any petition for clarification of any ambiguity in the terms and conditions of the agreement, commercial circulars etc. Not only that, the distribution licensees never raised the bill of POC to the CGP for its recovery alongwith the energy bills.

5.14. When any network infrastructure of the licensees is used by CGP, it is required to pay the licensees for the usage of its network/assets and such charges recovered as POC for utilization of assets of the licensee are shown as revenue by GETCO/Discoms in their ARR and also given effect in the true up of ARR. The Commission while approving the ARR/true up of the distribution licensee or transmission licensee in tariff determination considers the income received by GETCO/Discoms on this account and gives effect in the tariff determination. Therefore, the claims of the petitioner that POC is not leviable or it is not directly affecting the revenue of GETCO/Discoms for their assets utilization, is not legal and valid.

5.15. The assets of GETCO and Discoms are created from consumers' funds by way of tariff for energy supplied by the licensees as approved by the Commission. Therefore, whether POC is leviable or not, it is directly affecting the ARR of GETCO/Discoms and ultimately the final burden is passed on to the consumers. Therefore, consumers are affected and necessary persons who bear the brunt of the outcome of such petition. The respondents are not affected in any manner by the decisions of the present petition as they are revenue neutral.

5.16. Prima facie, it seems that the petitioner desires to get refund of POC amount which he paid without any protest over a number of years. The

present petition is an afterthought for refund of POC already paid which is in collusion with GETCO/Discoms.

5.17. If the petitioner is exempted from the payment of POC and if it is decided to refund the POC amount, in that case, consumers should also be exempted from the payment of the fixed charges as a part of tariff payable to GETCO/Discom so as to maintain the doctrine of equality and no discriminatory treatment is given to the petitioner's CGP only. Therefore, an opportunity of hearing be given to consumers.

5.18. It is only the Commission who is empowered to determine and decide the POC issue in terms of Section 86 (1) (a) read with Section 86 (1) (f) of Electricity Act, 2003. As the petitioner is a generating company and the respondent is a licensee, the tariff payable by the generating company to the licensee falls in Part VII of the Electricity Act, 2003 which requires the provisions of Section 61 to 64 of the Act and the tariff regulations notified by the Commission to be followed and hence, consumers need to be enjoined as party to the petition. Therefore, in the present case, it is necessary to consider Section 86 (1) (a) read with 86 (1) (f) as well as preamble of Electricity Act, 2003.

5.19. The assets of GUVNL/GETCO/Discoms are created from consumers' money/funds as the interest on loan, RoE, depreciation, O & M

expenditure and all expenditure in operation and maintenance of the assets are borne by the consumers through tariff. GUVNL/GETCO/Discoms are only trustees of such assets. When such assets are used by anyone, they have to pay for such usage. In such circumstances, consumers who are the owners of these assets, they must be heard in the proceedings to meet the end of justice so that their rights and interests are protected.

5.20. The electrical accidents are happening on GETCO/Discoms network due to various reasons. There may be cases that the CGP connected with grid and operating in parallel may cause such accidents. However, the compensation is paid by GETCO/Discoms and in such cases, the burden of such compensation is ultimately borne by the consumers through tariff.

5.21. In view of the above, it is submitted that the objectors are a necessary and proper party in this present case.

6. Shri Amarsinh Chavda submitted that he is a consumer of GEB/Discom and tariff paid by him consists of POC element. The present petition filed by the petitioner for declaring that the petitioner is not liable to pay POC is illegal and not tenable. The Commission determines the tariff and ARR of the distribution licensees. The order passed by the Commission

consists of POC to be collected by the licensees and such orders are passed after hearing the consumers.

6.1. He further submitted that when the subject matter of the petition is in respect of POC as to whether payable by the person concerned or not, and in such matter if the consumers are not heard by the Commission and the distribution licensees and the persons concerned mutually agreed that the POC is not payable by such persons, in that case, the burden of POC is passed on to other consumers and thus, the licensees are not affected in any manner. It is, therefore, necessary to hear consumers in the present petition because consumers are directly affected. In fact, the Commission should call for comments/suggestions from all the stakeholders.

6.2. He further submitted that the Commission has earlier joined him as party in Petition No. 1000 of 2010 in which the issue was termination of PPA executed between Adani Power Limited and GUVNL and the petition was rejected by the Commission. He is also a party to the appeal against the Commission's order before the Hon'ble APTEL. He is also a party before the Hon'ble Supreme Court in which the judgement of the Hon'ble APTEL is challenged by Adani Power Limited confirming the judgement passed by the Commission. Therefore, the Commission may implead him as a party to the present petition.

- 6.3. He submitted that by impleading the applicants as a party, the petitioner or the respondents are not affected in any manner. Moreover, the respondents have not objected to the impleadment applications filed by the applicants. Therefore, the Commission may implead him as a party to the present petition.
7. For the petitioner, Learned Advocate Shri Abhishek Munot, reiterated the facts stated in para 4 above. He contended that the applicants have no locus standi in the present petition. The petition is not a public interest litigation in which the consumers need to be heard.
- 7.1. The present petition has been filed by the petitioner challenging the arbitrary and illegal/wrongful levy and recovery of POC for the period 01.06.2011 to 31.07.2014 by PGVCL as well as GETCO who are respondents in contravention of the orders (i) dated 31.08.2000 passed in suo-motu Petition No. 24 of 2000, (ii) order dated 25.06.2004 in Case No. 256 of 2003 and (iii) judgement dated 01.06.2011 in Petition Nos. 256 of 2003 and 867 of 2006 passed by the Commission read with order dated 21.10.2008 passed in the SCA No. 14743 of 2004 in the case of Hindalco Limited & Others V/s. GETCO & Others and order dated 28.04.2009 passed in MCA No. 2834 of 2008 in SCA No. 14743 of 2004 in the case of Ultratech Cement Limited & Others V/s. GETCO & Others.

- 7.2. The impleadment applications are filed by the applicants at belated stage to delay the proceedings. The present proceedings before the Commission is in exercise of power as an adjudicator for adjudicating the disputes between the parties under Section 86 (1) (f) of the Electricity Act, 2003. The said Section provides that the Commission may itself adjudicate the dispute or may refer to the arbitration. In such situation, third party would not be permitted to intervene in such proceedings.
- 7.3. The present petition is filed by the petitioner for refund of POC recovered by the respondents for the period from 01.06.2011 to 31.07.2014. The petitioner is not seeking any determination or re-determination of tariff which mandates consumers' representation. The petitioner is seeking correct implementation of the said judgement for recovery of dues illegally levied and recovered by the respondents. The interveners have failed to demonstrate any legal injury or legal harm caused to them.
- 7.4. He further submitted that Shri Amarsinh Chavda is not a consumer of the licensee. Hence, he is not affected in any manner.
- 7.5. He submitted that the present petition is filed by the petitioner challenging the illegal recovery of POC in ignorance of the agreement

signed by the parties which is required to be refunded as the levy of POC is illegal.

7.6. The present impleadment application have been filed at a belated stage to delay and derail the adjudication of the present proceedings for the reasons best known to the interveners. The courts have in such cases dismissed and not allowed such applications as it would result in de novo trials. In support of the above, he relied upon the judgement of the Hon'ble Supreme Court of India in Vidur Impex V/s. Tosh Apartments Private Limited (2012) 8 SCC 384 and State Bank of India V/s. Siddhartha Enterprise, (1996) (36) DRJ 416.

7.7. He further submitted that under the Electricity Act, 2003 the Commission has a dual role i.e. as a regulator and as an adjudicator. In the tariff determination proceedings, the Commission acts as a regulator and such proceedings necessarily involve hearing of the consumers, whereas in case of dispute between a licensee & generator, the Commission acts as an adjudicator and in any adjudicatory proceedings no third party is involved. Dispute needs to be settled between the two parties to the dispute. In the present petition, the role of the Commission is that of an adjudicator and not a regulator and hence, the Commission need not hear any third party.

7.8. He submitted that the intervener has failed to establish its locus standi. In this regard, it is submitted that the Hon'ble Supreme Court and the Hon'ble Tribunal while determining the locus standi in electricity matters have held that the party filing a petition must establish that it is an aggrieved party i.e. he must be a person who has suffered legal grievance or legal injury or one who has been unjustly deprived and denied the rights which he would have been entitled in normal course. In this regard, the petitioner relied upon the Orders passed by the Hon'ble Supreme Court of India in (i) Grid Corporation of Orissa Limited V/s. Gajendra Haldia and Others (2008) 13 SCC 414 and (ii) BSES Rajdhani Power Limited V/s. Delhi Electricity Regulatory Commission & Others, reported in (2010) ELR (APTEL) 0404.

7.9. The Electricity Act, 2003 does not prescribe for consumers' representation in adjudication of dispute between the parties and/or interpretation of past order/judgement. The present petition is filed by the petitioner for refund of wrongful/illegal recovery of POC by the respondent. The petitioner is not seeking any determination or re-determination which mandates consumers' intervention. The present petition is for correct implementation of the Commission's judgement by the respondent.

7.10. The present interveners have failed to demonstrate any legal injury/legal harm caused to them which warrants their impleadment in the present petition.

7.11. The present proceedings are for implementation of the settlement agreement dated 11.12.2009 executed with GETCO. The said agreement was executed between the parties as per the directions of Hon'ble High Court of Gujarat's order dated 28.04.2009 passed in Misc. Civil Application No. 2834 of 2008. Therefore, there is no occasion for interveners or any consumers/consumers' organization to intervene in the matter.

7.12. The Electricity Act, 2003 does not give right to each and every individual to interfere in the proceedings before the Commission. The consumers' interest was well protected in the proceedings in Petition Nos. 256 of 2003 and 867 of 2006 in which POC was determined by the Commission and the settlement agreement was adopted.

7.13. In the present petition the petitioner is not seeking determination of POC/Tariff. Therefore, it is not necessary to allow all consumers to make their representation before the Commission, where the interpretation of earlier judgements is sought by the petitioner.

- 7.14. The petitioner has, by way of present petition, only sought the refund of amount illegally/wrongfully recovered by PGVCL/GETCO as POC from the petitioner in excess of the prescribed rate under the settlement agreement read with judgement dated 01.06.2011 in Petition Nos. 256 of 2003 and 867 of 2006 of the Commission.
- 7.15. The application filed by the interveners is on the basis of assumption and presumption without there being any iota of evidence on record to show that the interveners are a necessary and proper party and affected party in the present petition. Therefore, the applications deserve to be rejected.
- 7.16. A person may be impleaded as a necessary party or proper party to the proceedings only if he has some legal interest or direct interest in the proceedings. The plea of General Public Interest cannot be of much relevance.
- 7.17. The petitioner is dominus litis since the petition is filed by it and no respondents/opponents can be added against the wish of the petitioner unless the court is of the view that the third party has direct or legal interest in the subject matter of the petition. Even if any party is having commercial interest or remote interest, he cannot be impleaded as party to the proceedings.

7.18. The plea of the interveners that they are likely to secure right/interest in the subject petition after the same is decided will not make intervener a necessary party or proper party to the present petition. A party may be impleaded only if his presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon the question involved in the petition. In the present case, the issue is refund of sum wrongfully/illegally recovered against the terms of settlement agreement wherein the necessary and proper party are already impleaded. Therefore, the interveners should not be impleaded as a respondent party.

7.19. While assuming that Order 1 Rule 10 of CPC, 1908 is not applicable to the Commission but the principles laid down under CPC, 1908 and by the Hon'ble Supreme Court through various judgements, shall have a bearing in deciding the impleadment applications before this Commission. Otherwise any person will file impleadment application and will seek intervention in each and every dispute under Section 86 (1) (f) of the Act before the Commission. Therefore, the impleadment application filed by the applicants is not maintainable.

7.20. If the Commission decides in favour of the petitioner, in that event the illegal recovery is required to be refunded by the licensees and it would have impact on tariff of the consumers. But the petitioner cannot be

denied the relief only on the ground that other consumers received some concessions due to such levy/recovery.

7.21. The petitioner also relied upon following judgement/orders in support of his arguments:

(a) Mumbai International Airport (P) Limited V/s. Regency Convention Centre and Hotels Private Limited & Others, (2010) 7 SCC 417;

(b) Ravi Yashwant Bhoir V/s. District Collector, Raigad and Others, (2012) 4 SCC 407;

(c) Ramesh Hirachandani Kundanmal V/s. Municipal Corporation of Greater Bombay and Others, (1992) 2 SCC 524.

7.22. In view of above, he submitted that the impleadment applications of the applicants be rejected.

8. Learned Advocate Shri M.G. Ramchandran, on behalf of the respondents, submitted that the petitioner has continuously paid the POC during the period from 01.06.2011 to 31.07.2014 for the new installed capacity of CGP added by the petitioner after signing the agreement as per the Hon'ble High Court's order. The agreement was signed between the parties is for the capacity which was in existence on a date of signing of the agreement dated 11.12.2009 as per the settlement arrived between the parties as per the judgement of the Hon'ble High Court dated

28.04.2008 in MCA No. 2834 of 2008 and judgement dated 21.10.2008 in SCA No. 14743 of 2009 & allied matters. The said agreement says that the petitioner is agreed to pay POC for the services obtained by them for grid support taken by the petitioner as per agreed terms between the parties. The said agreement does not say about the new capacity of CGP be added in future. New capacity of CGP which was added after 01.06.2011 of 220.48 MW and 302.8 MW is liable to pay POC as per the Commission order dated 01.06.2011 in Petition No. 256 of 2003 and allied matters.

- 8.1. The respondent licensees have collected POC and also given effect in the ARR/Tariff which are trued-up by the Commission in various tariff orders for year 2011 to 2015. Therefore, any refund of the said amount would lead to chain of reactions on the consumers' tariff. Hence, it is incorrect to say that the consumers are not affected in the present petition and they are not an affected party and necessary party. As such in the present petition, they are a necessary and proper party as the result of present petition would be affecting the consumers at large.
- 8.2. He further submitted that the Principle of Promissory Estoppel also applies to the present case as the petitioner had paid the POC based on undertaking. The respondent had granted Parallel Operation to the petitioner's CGP based on the promise given by him to pay POC for availing grid support, after 01.06.2011 as per the Commission's order.

8.3. He further submitted that the civil courts have no jurisdiction to adjudicate the dispute between the utility and consumers, when there is a lis between them. In the present case, as claimed by the petitioner, if the POC paid by the petitioner is required to be refunded, in that case, it would have to recover the said amount from consumers by way of increase in tariff to make up for the shortfall in revenue. Hence, prior to imposing such charges/amount on the consumers, it is necessary to give an opportunity of hearing to the consumers.

8.4. He submitted that the petitioner has paid POC during the period from 01.06.2011 to 31.07.2014 based on the agreement signed between the parties as per order dated 01.06.2011 in Petition No. 256 of 2003 and allied matters which attained finality. The petitioner willingly agreed to pay POC as per the agreed rate between the parties. Therefore, it is incorrect to say that POC is not leviable. Now, after paying POC for a long time, the petitioner is claiming refund of POC which has an impact on the tariff payable by the consumers. Therefore, it is necessary to join consumers/consumers' association in the present petition.

8.5. He submitted that the respondents are revenue neutral. The result of the present petition would be directly affecting the consumers. If the decision of the Commission is against the respondents and the POC is

required to be refunded in that case the burden would be passed on to the consumers. Hence, the consumers are a necessary and affected party.

8.6. If the impleaders are joined as a party, the petitioner is not affected in any manner. In contrast, if the consumers/ consumers' organizations are not joined as a party, it violates their right of hearing.

9. We have carefully considered the submissions made by the parties. The issue which emerged for the decision of the Commission is whether the applicants, viz, (i) Utility Users' Welfare Association (UUWA), (ii) Laghu Udyog Bharti – Gujarat (LUB) and (iii) Shri Amarsinh Chavda are to be impleaded in the present petition or not.

9.1. The issue arise for decision of the Commission in the present petition is as to whether the petitioner is liable to pay the Parallel Operation Charges for the additional capacity of 220.48 MW and 302.8 MW for which an undertaking/agreement signed by the petitioner on 21.09.2010 for 220 MW and 08.06.2012 for 302.8 MW. As both the Captive Generating Plants were commissioned and operated parallel with the grid after the order passed in Petition No. 256/2011 by the Commission on 01.06.2011, the petitioner is governed by the agreement dated 11.12.2009 for the existing CGP capacity of 77 MW on that date during the proceedings of Petition No. 256/2003 and allied matters. It is undisputed between the parties that the 77 MW CGP of the petitioner

was commissioned and operated parallel with the grid prior to 11.12.2009 and 01.06.2011. Moreover, 220.48 MW and 302.8 MW CGPs were commissioned and operated parallel with the grid only after 01.06.2011. Further, the petitioner had given an undertakings/ agreement and agreed to pay the POC as decided by the Commission in Petition No. 256/2003 and allied matters. Accordingly, the petitioner was paying charges for the additional CGP capacity of 220.48 MW and 302.8 MW. Thus, the following issues emerged for the decision of the Commission:

- Whether the petitioner is liable to pay the POC for the additional CGPs of 220.48 MW and 302.8 MW which were commissioned and operated parallel with grid after 01.06.2011 or not?
- Whether the petitioner is eligible for refund of the POC paid by it for the above additional CGP capacities after 01.06.2011 or not?
and;
- Whether the applicants who filed the impleadment application in the present matter, be impleaded or not?

The respondents submitted that the POC recovered from the Petitioner was given effect in the ARR /Tariff of the respondent licensees. Hence, the claim of the Petitioner that the applicants are not affected in any manner, if they, are not heard is not correct. Further, the POC paid by the

Petitioner had been factored in the ARR of the respondent GETCO and the same was further reflected in the ARR/Tariff of the Distribution Licensees. Any decision in the present Petition would reflect in ARR/Tariff of the Distribution Licensees, who are paying the transmission charges. The POC recovered from the petitioner by the respondents for the period from the date of CGP operating parallel with the grid after 01.06.2011, for the capacity of 220.48 MW and 302.8 MW was already reflected as Other Income in the ARR/Tariff of the respondent licensees in the tariff petition by the licensees and tariff orders passed by the Commission after 01.06.2011 to the date of filing the petition and onwards also. Hence, if the POC already paid for the capacity of 220.48 MW and 302.8 MW is to be refunded by the respondents, in that case, the consumers would be affected. Therefore, it is incorrect to say that the consumers are not affected in any manner, if the decision in the present petition is in favour of the Petitioner. Further, the respondents are the licensees. They are revenue neutral and they will not be affected in any manner if the decision comes in their favour or against them. However, the consumers would be affected if the decision is against the respondents because the effect of the decision would be reflected in ARR/Tariff of the respondent licensees and ultimately it will be passed on to the consumers. If the consumers/consumers' organization are not impleaded as a party respondent, they may also be deprived from their right of appeal against the Order of the Commission,

as they are not party to the present petition. We also note that if the consumers/consumers' organization are impleaded and heard, it will not affect in any manner the Petitioner because decision is taken by the Commission after considering the facts of the case and legal provisions applicable in the case.

9.2. The Petitioner has contended that the applications for impleadment were filed by the applicants at belated stage to derail and delay the proceedings. We note that the Petitioner had set up the 220.48 MW CGP on 28.10.2010 and 27.01.2011 and 302.8 MW CGP on 24.06.2012, 15.09.2012 and 15.12.2012 and also paid the POC from the aforesaid dates. We observe that the present Petition was filed by the Petitioner on 10.10.2014 i.e. after more than 3 years from the date of synchronization of first unit out of 220.48 MW to get refund of the POC paid by the Petitioner and also to declare that the Petitioner is not liable to pay the POC. The aforesaid act of the Petitioner proves beyond doubt that the Petitioner himself filed this petition at belated stage after the POC recovered by the Respondent was factored in the ARR/Tariff of the licensees and the benefit of the same was passed on to the consumers. The application filed by the applicants for impleadment is to protect the interest of the consumers before the decision is taken by the Commission in the present Petition. Hence, the contention of the Petitioner that the

application is filed at belated stage to derail the proceeding is not valid and the same is rejected.

9.3. The petitioner relied upon the various judgements/orders in support of its petition as stated in para 4 and 7 above on the ground that the impleaders are not affected persons. They have no locus standi in the present petition. It is not a Public Interest Litigation. Hence, the impleaders are not required to be impleaded in the present petition. We note that the POC recovered by GETCO/PGVCL are reflected in the Annual Revenue Requirement of these licensees. Further, the revenue received through POC from the petitioner is also reflected as a part of other income of these licensees and have been given effect in the ARR of the above licensees and consumers' tariff. Therefore, it is incorrect to say that the impleaders who are either consumers or consumers' organization whose members are the consumers of the licensees are not an affected person. Hence, the plea of the petitioner that impleaders are not an affected party is not legal and valid.

9.4. We note that the Utility Users' Welfare Association (UUWA), Laghu Udyog Bharti (LUB) and Shri Amarsinh Chavda have filed an application as an intervener on the ground that as consumers' associations/consumers they are required to protect the rights and interest of their members. UUWA is a consumer organization

representing the consumers who are purchasing the electricity from the State utilities. LUB submitted that it is an organization of small and medium scale industries, who are receiving power supply in different parts of the State from different distribution licensees which include the respondent licensee. Shri Amarsinh Chavda submitted that he is a consumer of UGVCL and is receiving power supply from UGVCL who gets the power supply through GETCO network from the generators. Thus, the cost of GETCO is reflected in the tariff/ARR of UGVCL also. Hence, it is not correct to say that the impleaders are not affected persons. We are, therefore, of the view that all the impleaders are affected person.

- 9.5. We note that the Petitioner has paid the POC for the additional capacity of 220.48 MW and 302.8 MW during the period from 01.06.2011 to 31.07.2014 based on the undertaking/agreement given by him to the respondent which is undisputed. We also note that the POC paid by the petitioner was factored in the ARR/Tariff of the respondent licensees as Other Income and the Commission had given effect of the same in the ARR/Tariff orders from time to time. Hence, the impact of recovery of POC is already factored in the earlier period's ARR/Tariff of the respondent licensees. We also note that the consumers were heard while determining the ARR/Tariff of the respondent licensees. The decision of the present petition is directly affecting the ARR/tariff of the Distribution Licensee/Transmission Licensee which were trued up by the

Commission. Hence, the decision in the present petition would affect the ARR of the Respondent Licensees and ultimate impact of the same would be passed on to the consumers through tariff payable by them. Hence, the plea of the petitioner that the impleaders are not a necessary or proper party is incorrect and not valid because the decision of the Commission in the present petition would be directly affecting the consumers of the Distribution Licensees which include the impleaders. Hence, we decide to implead them.

9.6. The Petitioner contended that the applicants were not a party to the earlier proceedings filed by CERS before the Commission for illegal levy of POC. The CERS itself is a non-profit, non-governmental body dedicated to protection and promotion of consumers' interest and recognized as a research institute by the Government of India and Government of Gujarat. The interveners were not a party to the Petition No. 256 of 2003 and 867 of 2006, in which the Commission determined the POC. The present Petition is not for determination of tariff/POC. We note that the present Petition is filed by the Petitioner for refund of the POC paid by it for the period from 01.06.2011 to 31.07.2014 on the ground that the recovery of POC by the respondent was illegal and arbitrary. The Petitioner contended that the recovery of POC based on undertaking and agreements signed between the parties is illegal and arbitrary. It is an admitted fact that the petitioner had neither challenged the order dated

01.06.2011 in Petition No. 256 of 2003 and allied matters, nor the undertaking nor agreement signed by it after installation of 220.48 MW and 302.8 MW CGP and continued to pay the POC during the period from 01.06.2011 to 31.07.2014 based on the undertaking/agreements signed between the parties. The Petitioner also had not raised the aforesaid issues in the tariff/ARR proceedings of GETCO/PGVCL. Thus, the issue of POC paid by the petitioner during 01.06.2011 to 31.07.2014 arose after the decision of the Commission in Petition No. 256/2003 and allied matters. Therefore, the contention of the Petitioner that the applicants have not participated in Petition No. 256 of 2003 and 867 of 2006 and therefore they are not eligible for the impleadment is not correct and legal. We further note that the proceedings of Petition Nos. 256 of 2003 and 867 of 2006 were for determination of POC leviable on CGPs who are connected with grid. The Commission had in aforesaid petition decided about the POC payable by the CGPs installed prior to 01.06.2011. The present proceedings are different and distinct from the proceeding of the Petition No. 256 of 2003 & allied matters. Therefore, the contention of the petitioner that the impleaders have not participated in the aforesaid proceedings is not a ground to not implead them in the present proceedings. In the present proceedings, the Petitioner has claimed refund of the POC paid by it during the period from 01.06.2011 to 31.07.2014, which has a direct impact on the ARR/Tariff of the consumers. Hence, the applicants need to be heard because the outcome

of the present petition directly affects the ARR/Tariff of the licensees and ultimately the same is passed on to the consumers.

9.7. The Petitioner contended that the CERS had filed Petition No. 941 of 2008 in which it challenged the levy of POC. The subject matter of Petition No. 941 of 2008 is different and distinct from the subject matter of the present petition. We further note that the petitioner had admitted that the Petition No. 941 of 2008 filed by CERS which is a consumer organization and heard by the Commission alongwith Petition No. 256 of 2003 and 867 of 2006 and passed order dated 1.06.2011 and decided the rate for levy of POC. It proves that the consumers' organizations/consumers are eligible to participate in the proceedings related to the POC. As regards the protection of interest of the consumers in Order dated 1.06.2011 by the Commission in Petition No. 256 of 2003 and allied matters is concerned, we clarify that the Commission in these petitions determined the POC payable by the CGPs which are operating in parallel with the grid and also decided that the POC received by the licensees shall be shared amongst them. The subject matter of present petition is refund of the POC which is directly reflected in ARR of the licensees and the tariff payable by the consumers. Hence, there is no relationship in outcome of the present petition and the above Petitions.

9.8. The Petitioner contended that it has not prayed for determination of tariff but prayed for refund of POC recovered by the respondent and hence, the applicants need not be joined as a party. We note that the POC paid by the petitioner as per undertaking /agreement is reflected in the ARR of the licensee and the tariff payable by the consumers. If the order is passed by the Commission for refund of POC, the applicants will have no right to challenge the same in the ARR/tariff proceedings. Moreover, the applicants will have no right to challenge the order in the present proceedings if they are not a party to this proceeding. The refund of POC paid by the petitioner based on the agreement/undertaking is having direct impact on the ARR/Tariff of the consumers. Hence, they are affected party in this case. There is no bar on hearing the consumers/ consumers' organizations in such cases where the result is likely to impact the consumers tariff. The preamble of the Electricity Act, 2003 and Section 61 (b), 86 and 94 of the Act provide for protection of the consumers' interest. Hence, the plea of the petitioner on the above ground not to implead the applicants is not valid and the same is rejected.

9.9. The Petitioner contended that a person can be impleaded as a necessary party or a proper party only if, he has some legal interest or direct interest in the subject matter of the proceedings. We note that the Parallel Operation Charge is recovered by the licensee for providing the

grid support to the Captive Generating Plant of the petitioner. The income of POC received by the licensees is considered as a part of their Other Income and given effect in the ARR/Tariff determination of the licensees. It is undisputed that the ARR/Tariff has been determined/trued up by the Commission for the period in question. Hence, any decision in the present petition is having effect on the consumer tariff. Therefore, it is incorrect to say that the applicants who are consumers' organizations/consumers have no legal interest or direct interest in the present Petition.

9.10. The applicants submitted that the Commission is the guardian of consumers and it has to protect the interest of the consumers. We note that the Electricity Act, 2003 provides that the consumers' interest needs to be protected. The Commission is mandated to protect the consumers' interest. It is, therefore, incorrect and illegal not to join them as party if the consumers come before the Commission with a plea to join them as a party respondent. In the present case the applicants requested the Commission to join them as a party respondent, as the result of the present Petition is affecting the consumers. Therefore, we are of the view that the aforesaid plea of the Petitioner is not valid and the same is rejected.

9.11. The Petitioner submitted that the present Petition is for refund of illegal recovery of POC by the respondent. Hence, there is no need to join the applicants as a party respondent. The aforesaid view of the petitioner is its own view which is not proved before any competent forum as it is not yet declared that the recovery of POC by the respondent based on the undertaking/agreement signed between the parties is illegal and arbitrary. Further, the petitioner paid the POC to the respondent from 01.06.2011 to 31.07.2014 without any objection and also not disputed the same. Therefore, till such time the recovery of POC is decided as illegal and invalid by the Commission or any other competent authority, it is premature and incorrect to say that the recovery of POC by the respondent for the period 01.06.2011 to 31.07.2014 was illegal.

9.12. The Petitioner contended that the applicants have no locus standi. We note that as decided in earlier para the issue involved in the present petition is directly linked with ARR/Tariff determination and impacting the consumers. The decision in the present petition is not affecting in any manner to the respondents as they are revenue neutral. Therefore, the contention of the Petitioner that the applicants who are consumers/consumers' organization have no locus standi is not legal and valid. Hence the same is rejected.

9.13. In the present case, the petitioner has disputed the recovery of POC on one or the other pretext, which is objected to by the respondents. As recorded in earlier para though the aforesaid dispute is between the petitioner and GETCO, it is directly affecting the ARR of GETCO and other distribution licensees and tariff payable by the consumers of the aforesaid licensees as POC recovered from the petitioner is given effect in the ARR of the distribution licensee as the transmission charge payable to GETCO and also factored in the tariff payable by the consumers of the licensee for the electricity supplied to them. Hence, the contention of the petitioner that the present dispute is between the petitioner and the respondents and the consumers have no locus standi or they are not affected in any manner is not correct and the same is rejected.

9.14. The petitioner contended that the present petition is not a Public Interest Litigation and the applicants who have filed an application for becoming an intervener have no locus standi. In this regard, we clarify that the Electricity Act, 2003 consists of various provisions. Section 62 read with Section 64 and 86 of the Act, mandate the Commission to hear the consumers prior to passing an order for determination of tariff. As stated in earlier para, the tariff applicable to different categories of consumers is derived from the total cost incurred by the distribution licensees and also any income earned on assets created by the licensees.

When any person utilizes such assets, the revenue earned on such utilization needs to be factored in the total cost recoverable by the distribution licensees in ARR and tariff by considering such income as a part of revenue earned by the licensee. In the present case, the POC earned by GETCO is factored in the transmission tariff, which is reflected in tariff payable by DISCOMs to GETCO and the same is reflected in consumer tariff also. The amount of POC received by the respondent is given effect in Annual Revenue Requirement (ARR) of the licensees in the tariff determination process by the Commission under the Electricity Act, 2003. Therefore, when the Electricity Act, 2003 recognizes that the other income earned on utilization of assets created by the licensee needs to be factored in tariff determination, the question as to whether POC recovered from the CGP connected with grid, whether it is directly affecting the consumers or not, whether it is a Public Interest Litigation and whether interveners are to be impleaded or not does not arise because the consumers are directly affected by the outcome/decision of the present petition as it would be reflected in ARR/tariff payable by the consumers. The interveners are representatives of the consumers. Moreover, Section 61 (d) and 94 (3) of the Electricity Act, 2003 provide that the State Electricity Regulatory Commission shall protect the interest of the consumers. In view of the above observations, we decide that the plea of the petitioner that the applicants are not to be impleaded

in the present proceedings as it is not a Public Interest Litigation is not accepted and the same is rejected.

9.15. Regarding the contention of the petitioner that the present petition is under Section 86 (1) (f) of the Electricity Act, 2003 and it is a dispute between the two parties, and the applicants who have filed applications for impleadment are not affected person, hence they are not allowed to be impleaded, we have, in earlier para, decided that the issue involved in the present petition i.e. the refund of POC claimed by the petitioner, is directly affecting the consumers of the respondent licensees as the same is reflected in the tariff payable by the consumers. The applicants/their members who are consumers of the licensees are directly affected by the decision in the present petition. Therefore, the above contention of the petitioner is not sustainable and the same is rejected.

9.16. The petitioner contended that the applicants are not the affected persons or aggrieved persons in the present dispute, therefore, they are not to be impleaded in the present petition. We clarify that in earlier para we decided that the decision of the present petition for refund of POC claimed by the petitioner has direct effect on the ARR of the respondents and the tariff payable by various categories of consumers. The income on account of POC received from the petitioner whose CGP is connected with grid was given effect in ARR of the licensees and tariff applicable to

various categories of consumers as determined in previous years by the Commission. Therefore, the consumers are also the affected persons in this case and hence, when any consumer organization/consumer requests for being given an opportunity of hearing, the same is valid and legal. The respondents have also during the hearing admitted and stated that the final decision in the present petition will have an impact on the tariff applicable to the consumers of the licensees. They have also admitted that the applicants are affected persons who are required to be joined in the present petition. The petitioner is not affected in any manner if the impleaders are allowed. We, therefore, decide that the contention of the petitioner that the applicants are not aggrieved persons or affected persons, is not legal and valid and the same is rejected.

9.17. The petitioner contended that in the present case the role of the Commission is that of an adjudicator and not as a regulator and hence no one except the petitioner and the respondent are required to be heard. In this regard, we clarify that as decided in earlier para, the issues involved in the present petition are (i) whether the POC paid by the petitioner for CGP based on undertaking/agreement for the period from 01.06.2011 to 31.07.2014 is illegal and arbitrary, (ii) whether the same impacts the ARR/tariff of the respondents or not, (iii) whether the same affects the consumers only or the respondents only or both, (iv) what are

its implications on the tariff of ultimate consumers of the respondent reflected through their ARR and the tariff determination of the respondent licensee if the order is passed in favour of the petitioner. The above issues majorly affect the revenues of the respondent licensees and consequently the tariff of the consumers. Hence, the plea of the petitioner that the Commission is not required to hear the applicants in the adjudicatory process of the present petition is not correct and legal as it is affecting the tariff/ARR of the respondent licensee and finally the consumers of the distribution licensees, hence the same is rejected.

9.18. The petitioner has, in support of his argument relied upon the judgement of Hon'ble Supreme Court of India reported in (2004) SCC 1 in the case of Indian Banks Association Bombay & Others V/s. Devika Consultancy Services & Others and submitted that the issue involved in the present petition is not an issue of PIL, the Electricity Act, 2003 does not envisage filing of PIL and the interveners have no locus standi. It is necessary to refer para 32, 33 and 34 of the said judgment which are relevant in this case:

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32. The writ petitioner before the High Court was a firm of the Chartered Accountant. As an expert in accountancy and auditing, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to or in furtherance of

the impugned action of the appellants. By reason of such an action on the part of the appellants as also the Reserve Bank of India, as noticed hereinbefore, the citizens of India had to pay a higher amount of tax as also a higher amount of interest for no fault on their part. The same had been recovered from them without any authority of law. While entertaining a public interest litigation, this Court in exercise of its jurisdiction under Article 32 of the Constitution of India and the High Courts under Article 226 thereof are entitled to entertain a petition moved by a person having knowledge in the subject matter of lis and, thus, having an interest therein as contradistinguished from a busy body, is the welfare of the people. The rule of locus has been relaxed by the courts for such purposes with a view to enable a citizen of India to approach the courts to vindicate legal injury or legal wrong caused to a section of people by way of violation of any statutory or constitutional right.

33. In fact the Courts had even been treating a letter or telegram sent to them as a public interest litigation by relaxing the procedural laws especially the law relating to pleadings. We need not dilate further on this subject as a Bench of this Court in Guruvayur Devaswom Managing Committee & Anr. Vs. C.K. Rajan & Others [JT 2003 (7) SC 312] observed:

“41. "The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, deprived, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The Courts in pro

bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. (See Mumbai Kamgar Sabha, Bombay Vs. M/s. Abdulbhai Faizullahai & Others (1976) 3 SCR 591).

42. The Court in pro bono publico proceedings intervened when there had been callous neglect as a policy of State, a lack of probity in public life, abuse of power in control and destruction of environment. It also protected the inmates of prisons and homes. It sought to restrain exploitation of labour practices.

43. The court expanded the meaning of life and liberty as envisaged in Article 21 of the Constitution of India. It jealously enforced Article 23 of the Constitution. Statutes were interpreted with human rights angle in view. Statutes were interpreted in the light of international treaties, protocols and conventions. Justice was made available having regard to the concept of human right even in cases where the State was not otherwise apparently liable. (See Kapila Hingorani V/s. State of Bihar reported in JT 2003 (5) SC 1).

44. The people of India have turned to courts more and more for justice whenever there had been a legitimate grievance against the States statutory authorities and other public organizations. People come to courts as the final resort, to protect their rights and to secure probity in public life.

45. Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with

much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice."

34. Furthermore, even where a writ petition has been held to be not entertainable on the ground or otherwise of lack of locus, the court in larger public interest has entertained a writ petition. In an appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of the personal grievance, the Court in furtherance of public interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case. We, therefore, do not agree with the submissions of the learned counsel of the appellants that the respondent had no locus to maintain the public interest litigation or the writ petition filed by him pro bono publico before the High Court was not maintainable.

....."

The above judgement provides that the Hon'ble High Court under Article 226 and Hon'ble Supreme Court under Article 32 of the Constitution of

India are empowered to allow PIL filed by a person who may or may not have interest in the subject. The person may or may not have any linkage with subject matter. Moreover, the rule of locus standi may be relaxed by the courts with a view to enable citizen of India to vindicate legal injury or legal wrong caused to a section of the people due to violation of any statutory or constitutional right. In the present case, the issue of POC sought to be refunded by the petitioner is directly related with the ARR of the respondents and the tariff payable by the consumers of the respondent licensee as discussed above. Moreover, it is a part and parcel of tariff determination process being carried out by the Commission. Hence, any decision in the present petition will directly affect the consumers of the respondent licensees. The applicants are either consumers or the organizations representing the consumers. Hence, the reliance of the above judgment is in favour of the interveners.

9.19. The petitioner relied upon the Judgment of Hon'ble Supreme Court of India reported in (2012) 8 SCC 384 in Civil Appeal No. 5918 of 2012 in the case of Vidur Impex & Traders Pvt. Limited V/s. Tosh Apartments Pvt. Limited. The relevant portion of said judgement is reproduced below:

“

41. *Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:*

41.1. *The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.*

41.2. *A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.*

41.3. *A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*

41.4. *If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.*

41.5. *In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.*

41.6. *However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.*

.....

43. *We are in complete agreement with the Delhi High Court that the application for impleadment filed by the appellants was highly*

belated. Although, the appellants have pleaded that at the time of execution of the agreements for sale by respondent No.2 in their favour in February 1997, they did not know about the suit filed by respondent No.1, it is difficult, if not impossible, to accept their statement because the smallness of time gap between the agreements for sale and the sale deeds executed by respondent No.2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe that respondent No.2, the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating agreement for sale dated 13.9.1988 executed in favour of respondent No.1 and the suit pending before the Delhi High Court. In any case, the appellants will be deemed to have become aware of the same on receipt of summons in Suit No. 161/1999 filed by respondent No.2 for annulment of the agreements for sale and the sale deeds in which respondent No. 2 had clearly made a mention of Suit No. 425/1993 filed by respondent No. 1 for specific performance of agreement for sale dated 13.12.1988 and injunction or at least when the learned Single Judge of the Delhi High Court entertained IA No. 625/2001 filed by respondent No. 1 and restrained respondent Nos.2 and 4 from transferring possession of the suit property to the appellants. However, in the application for impleadment filed by them, the appellants did not offer any tangible explanation as to why the application for impleadment was filed only on 4.2.2008 i.e. after 7 years of the passing of injunction order dated 22.1.2001 and, in our considered view, this constituted a valid ground for declining their prayer for impleadment as parties to Suit No. 425/ 1993.

.....”

In the aforesaid finding, the Hon'ble Supreme Court has laid down the principles with regard to necessary and proper party in para 41 of its judgement. As per the aforesaid decision, a person whose presence before the court is necessary for effective and complete adjudication of

the issue involved in the suit and the necessary party is a person who ought to be joined as party to the suit and in whose absence, an effective decree cannot be passed by the court. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues though he may not be a person in whose favour or against whom a decree is to be made. It is further held that in a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board and who files application for being joined as a party within a reasonable time of his acquiring knowledge about pending litigation.

In the present case, the applicants have made an application on 02.05.2015 during the pendency of the aforesaid petition when they came to know about the subject matter of the petition. We also noted in the earlier para that the decision in the present petition will be directly reflected in the ARR of the respondent licensees and the tariff payable by the consumers. The revenue of the respondents is not altered in any manner by the decision in the present petition. Therefore, the applicants are a necessary and proper party in the present petition.

In para 43 of the said order, the Hon'ble Supreme Court recorded that the applications for impleadment was filed on 04.02.2008 i.e. after 7 years of passing the injunction order dated 22.01.2001 by Delhi High Court restraining the respondent No. 2 and 4 from transferring the

possession of suit property to the appellants of the aforesaid case. As recorded in earlier para, in the present case, the applicants have not filed the applications at belated stage but the petitioner has filed the petition at belated stage on 09.10.2014 after paying POC from 01.06.2011 to 31.07.2014 and issue is not pertaining to specific performance of the agreement for sale of immovable property between the parties. The subject matter of the said case is pertaining to the property dispute and specific performance of the agreement for sale of immovable property which qualifies as a dispute between the individual private parties and limited to the affected parties by way of the decision of such dispute between the individual private parties and limited to the disputing parties. In such case necessary and proper party are those persons who are affected by the decision in such dispute as they are the persons who have direct linkage with the subject matter of sale and purchase of property. In the present petition decision is sought for the refund of POC paid by the petitioner which is already reflected in the ARR of respondent licensees and tariff of the consumers. Thus, the above decision of Hon'ble Supreme Court is not applicable in the present case.

9.20. The petitioner also relied upon the order of Hon'ble Delhi High Court reported in 1996 (36) DRJ 416 in the case of State Bank of India V/s. Siddhartha Enterprise. In para 9 of the said order, it is stated that a

person be impleaded as a party or not is a matter of judicious discretion of the authority concerned which is reproduced below:

“

10. The addition of parties under Order 1 Rule 10 CPC, 1908 is a matter of judicious discretion to be exercised, in the light of the facts and circumstances of the case. The fact that a party has relevant evidence to give will not make it a necessary or proper party, it would only make him a necessary witness.

.....”

As discussed in the earlier para the rights and interests of the applicants are getting impacted with either rise or reduction in the tariff applicable to them by the decision in the present case. Therefore, they qualify as a necessary and proper party and become eligible for being joined in the present petition.

9.21. The petitioner also relied upon the judgment of Hon'ble Supreme Court reported in (2008) 13 SCC 414 in the case of Grid Corporation of Orissa Limited V/s. Gajendra Haldea & Others and submitted that the person is required to establish that he suffered legal grievances or the legal injury. The relevant portion of the said Judgment is reproduced below:

“

13. Additionally, learned counsel for GRIDCO has submitted that in reply to the petition filed GRIDCO had categorically submitted that respondent Gajendra had no locus standi to file the petition and the petition filed was not maintainable. CERC held that trading margins are not applicable to GRIDCO since it is carried out the functions of bulk supply of electricity within the State of Orissa under Bulk Supply Licence issued by the CERC and the transactions were completed in the State of Orissa. The entire benefit from the sale of such surplus power was passed on to the consumers of the State through the Bulk Supply Tariff Orders.

14. CERC, it is pointed out, had dismissed the petition by respondent No.1-Gajendra Haldea by holding that GRIDCO is an intra state trader. GRIDCO's transactions under the said contract with PTC were completed within the State of Orissa. Accordingly, it was held that the Regulations were not applicable to GRIDCO. CERC in view of the above did not deal with the question of locus standi. Appellate Tribunal held that Gajendra Haldea had locus standi to file the petition. Though it did not disturb the findings of CERC that GRIDCO is an intra-state trader, it held that the transactions of sale of surplus power by GRIDCO to the inter-state traders are in the nature of inter-state trading. Accordingly, it held that the transactions of GRIDCO are governed by the Trading Regulations and directed CERC to find out a methodology for refund of the excess amount.

15. On behalf of respondent No.1-Gajendra Haldea the order of Appellate Tribunal is supported.

16. It is unnecessary to go into the question as to the nature of the transaction, because respondent No.1-Gajendra Haldea in order to prove that he had locus standi relied on Section 121 and 142 of the Act. It was also stated that it is not in the nature of PIL. It was stated that the prayer for refund was not being pressed.

17. A bare reading of Section 121 and 142 of the Act which read as follows shows that those provisions are not applicable”

“121. Power of Appellate Tribunal- The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions

as it may deem fit, to any Appropriate Commission for the performance of its statutory function under this Act.

"142. Punishment for non-compliance of directions by Appropriate Commission.-In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

Therefore, the Appellate Tribunal was wrong in interfering with the conclusions of CERC that respondent No.1's petition was not entertainable and/or maintainable.

In the above case, the issue is pertaining to the trading margin levied by the traders. Moreover, the respondent Gajendra Haldea in order to prove that he had locus standi relied upon Sections 121 and 142 of the Electricity Act, 2003. Hon'ble Supreme Court of India held that the respondent Gajendra Haldea's petition is not entertainable and or maintainable. The facts of above case are different and distinct from the facts in the present petition as the issue for consideration in the present petition is whether POC paid by the petitioner based on undertaking/Agreement between the parties and given effect in ARR of

the licensees is refundable to the petitioner or not and whether levy of POC by the respondents was legal and valid or not. Hence, the reliance of the petitioner on above judgment is not pertinent in the present case.

9.22. The petitioner also relied upon the judgement reported in (2012) 4 SCC 407 in the case of Ravi Yashwant Bhoir V/s. District Collector, Raigad and Others, and submitted that the applicant cannot be a party to the lis. Moreover, the person who suffers from legal injury can only challenge the act or omission. It is necessary for a person that he has been deprived of or denied of legal right, he suffered injury and it is necessary to protect his legal interest.

Moreover, a person cannot be permitted to make a case as on the ground of general public interest. Further, the person who wants to become a party in a case, has to establish that he has the right which has been or is threatened to be violated. A person cannot be heard as a party unless he answers the description of aggrieved party. He referred the para 58 to 61 as under: -

“

58. Shri Chintaman Raghunath Gharat, Ex-President was the complainant, thus, at the most, he could lead the evidence as a witness. He could not claim the status of an adversial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person

*who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eyes of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.*

*59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a *lis*. A fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.*

*60. Under the garb of being necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the *lis*, as the person wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party. (Vide: *Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, AIR 1971 SC 385; Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors., AIR 1976 SC 578; Maharaj Singh v. State of Uttar Pradesh & Ors., AIR 1976 SC 2602; Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33; and Kabushiki Kaisha Toshiba v. Tosiba Appliances Company & Ors., (2008) 10 SCC 766*). The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in correct perspective at all.*

61. In such a fact-situation, the complaint filed by the respondent No. 5 could at the most be pressed into service as a material exhibit in

order to collect the evidence to find out the truth. In the instant case, as all the charges proved against the appellant have been dealt with exclusively on the basis of documentary evidence, there is nothing on record by which the complainant could show that the General Body meeting was not called, as statutorily required, by the appellant intentionally.

.....”

The facts of the aforesaid case are that the appellant Ravi Yashwant Bhoir was elected as member of Uran Municipal Council and subsequently elected as a President of the Municipal Council. The appellant was served with show cause notice by the State of Maharashtra calling upon him to explain why action under Section 55 (B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 be not taken against him. Thereafter, the Chief Minister directed the Secretary to fix up the date of hearing, however, no date of hearing was fixed and impugned order dated 21.03.2009 has been passed without affording any opportunity of hearing to the appellant.

The order dated 21.03.2009 of the Chief Minister was challenged by appellant by filing Writ Petition (Civil) No. 4665 of 2009 before the Hon'ble High Court of Bombay. The Hon'ble High Court of Bombay vide its order dated 18.06.2009 affirmed and upheld the order of Chief Minister of Maharashtra declaring that the conduct of the appellant was unbecoming of the President of Uran Municipal Council and declared him

to be disqualified for the remaining tenure of municipal councillorship under Section 55 (B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and further declared him disqualified for a period of six years from the date of order i.e. 21.03.2009. The said proceeding is under different Act and pertaining to the duties of the President of Municipal Council against whom the actions had been taken by the Chief Minister of Maharashtra. Moreover, in the complaint filed against Shri Ravi Yashwant Bhoir by Shri Chintaman R. Gharat, Ex-President, the complainant sought to join as party to the proceedings against the appellant. Thus, the complainant sought relief to join as party respondent in the aforesaid case who is not affected in any manner or suffered any legal injury by the decision of the competent authority against Shri Ravi Yashwant Bhoir. Therefore, the Hon'ble Supreme Court held that the complainant is neither a necessary nor an affected party in the aforesaid matter and also not an aggrieved party. Hence, he has no locus standi in that case.

The facts of the aforesaid case are different and distinct from the facts of the present petition. In the present petition as stated in earlier para, the applicants are either a consumer or consumers' association. The interest of their members may be affected by the order of the Commission in the present petition because the decision in the present petition may impact the ARR of Distribution Licensees and ultimately the consumers' tariff.

Hence, it is incorrect to say that the consumers are not affected by the present petition. We, therefore, decide that the reliance of the petitioner on the above judgement is not applicable in the present case. Hence, the same is rejected.

9.23. The petitioner relied upon the judgement dated 20.12.2012 of Hon'ble APTEL in IA Nos. 392, 393, 394 and 399 of 2012 in DFR No. 1844 of 2012 between Bharat Jhunjhunwala V/s. Uttar Pradesh Electricity Regulatory Commission and submitted that the Electricity Act, 2003 does not envisage filing of a Public Interest Litigation for adjudication of disputes which is also confirmed by the Hon'ble APTEL and the Hon'ble Supreme Court of India. He referred the para 6,7,8, and 9 of APTEL's order dated 20.12.2012 which are reproduced hereunder: -

“

6. According to Section 111 of the Electricity Act, only a person aggrieved by the order of the Appropriate Commission can prefer an Appeal before the Appellate Tribunal. The Applicant is not a consumer of the distribution licensees of Uttar Pradesh are the beneficiaries of the PPA with Alaknanda Hydro Power Co. Ltd.

7. According to the Ld. Counsel, the Applicant/Appellant is presently living somewhere in incognito and therefore the address of correspondence in the Appeal has been mentioned as his lawyer's chamber in Delhi High Court. Even if it is assumed that he is a resident of Uttrakhand, the PPA for purchase of power from Alaknanda Hydro Power Corporation has been entered into by UP Power Corporation for supply to the distribution licensees of Uttar Pradesh.

8. *Admittedly the Applicant/Appellant has neither produced any material nor indicated in the Appeal Paper Book that he is a consumer of the distribution licensees in Uttar Pradesh. Therefore, he cannot be considered as a person aggrieved by the impugned orders, so as to challenge the same under Section 111 of the Act.*

9. *When we sought clarifications on this issue, the Ld. Counsel for the Applicant said that this Appeal has been filed as a Public Interest Litigation. We do not find any provision in the Electricity Act, 2003 for filing PIL against the orders of the State Commission. In view of above, we are unable to entertain the above IAs and the Appeal. Thus, the Application Nos. 392, 393, 394 and 399 of 2012 in DFR No. 1844 of 2012 are dismissed. Consequently, the Appeal is also rejected.*

.....”

The above judgement was challenged by the appellant Shri Bharat Jhunjhunwala before the Hon’ble Supreme Court by filing Civil Appeal No. 7303-7304 of 2012 in which the Hon’ble Supreme Court dismissed the appeal and confirmed the Hon’ble APTEL’s judgement. The relevant portion is reproduced as under:

“.....

Delay condoned.

Since the Public Interest Litigation was not maintainable before the U.P. Electricity Regulatory Commission, we find no reason to entertain these appeals, which are, accordingly, dismissed.

.....”

The facts of the case are that Shri Bharat Jhunjhunwala is residing in Uttrakhand and sought his impleadment in the PPA entered into by Uttar Pradesh Power Corporation Limited for supply of electricity to the

licensees of Uttar Pradesh from Alaknanda Hydro Power Co. Limited of Srinagar Hydro Electric Project being constructed in Uttrakhand. The Hon'ble Tribunal held that Shri Bharat Jhunjunwala, the appellant is not the consumer of the distribution licensee of Uttar Pradesh. It is also admitted by the applicant that the said IA No. 392 filed by the applicant is as Public Interest Litigation. The Hon'ble Tribunal held that there are no provisions in the Electricity Act, 2003 with regard to filing Public Interest Litigation against the order of the State Electricity Regulatory Commission. Hence, the said appeal was dismissed by the Hon'ble Tribunal and Civil Appeal No. 7303-7304 of 2013 filed against the judgement dated 20.12.2012 of the Hon'ble APTEL were dismissed by the Hon'ble Supreme Court and the decision of the Hon'ble APTEL was upheld.

In the present case, as stated in earlier para, the impleaders are either consumers or consumers' organization representing the consumers who are situated in the license area of the respondents. The decision of the present petition will affect the ARR/tariff of the respondent licensee and ultimately consumers' tariff to whom the impleaders are representing. Therefore, the above impleaders are affected persons and are necessary party to the present petition. We also note that the application filed by the applicants is not as a Public Interest Litigation (PIL). Hence, the

reliance of the petitioner on the aforesaid judgement is not acceptable and the same is rejected.

9.24. The petitioner relied upon the judgement of Hon'ble Supreme Court of India reported in (2002) 8 SCC 715, in case of West Bengal Electricity Regulatory Commission V/s. CESC Limited & Others. The petitioner referred the para 30 to 40 of the aforesaid judgement which are reproduced below:

“

30. The Commission before which the Company had filed its application for fixing of tariff for the year 2002-2003, did not entertain the said application, on the ground that the same was belated. But on the Company's application for the year 2000-01, the Commission after hearing the parties and taking into consideration other materials on record, including the report of the consultants, fixed the tariff for the said year @ Rs. 3.39 per unit, which is an increase of 1.15 per cent on the rate of tariff of the Company for the previous year. The Commission also fixed Rs. 3.41 per unit for the year 2001-2002. While so determining the tariff, the Commission followed the provisions of the 1998 Act and the regulations framed by it.

31. Being aggrieved by the said determination of tariff, the Company, as stated above, preferred the statutory appeal before the High Court, making the Commission alone the respondent. The High Court while rejecting the impleadment application of the appellant-organizations, proceeded to re-fix the tariff by only following the principles of Schedule VI to the 1948 Act and to the exclusion of other requirements of Section 29 of the 1998 Act. In the said process it re-fixed the average tariff for the year 2000-01 at Rs. 3.96 per unit and at Rs. 4 per unit for the year 2001-02. In

the course of its judgment, the High Court also came to the conclusion that the regulations framed by the Commission, especially the ones pertaining to the right of the consumers to be heard in the proceedings, as also applications of the principles to be followed in determining the tariff, were contrary to law and directed in no uncertain terms that these regulations will have to be modified to bring them in conformity with its observations in the judgment, and further stated that failure to do so might result in the invocation of the High Court's power under the Contempt of Courts Act. In deciding the validity of the regulations, the High Court proceeded on the basis that while entertaining the power of appeal under Section 27 of the 1998 Act, it also has the power vested in it under Article 226 and 227 of the Constitution of India. It also held that the non-obstante clause found in Section 29 of the 1998 Act and the other overriding provisions found in the 1998 Act could not come in the way of the application of the VI Schedule to the 1948 Act alone, while determining the tariff by the Commission. On factual aspects, it reversed many of the findings of the Commission to which separate reference will be made by us when we take up those issues for consideration.

32. It is against this judgment of the High Court; various appeals have been filed.

33. In these appeals the appellants have questioned each and every finding of the High Court, both in regard to the interpretation of the provisions of the 1998 Act and the 1948 Act, as also the factual findings given by the High Court in regard to various heads of accounts either accepted or rejected by the High Court in the process of re-determining the tariff.

34. At one point of time we thought it appropriate to decide the legal issues pertaining to interpretation of the statutes alone and to remit the matter back to the Commission to reconsider the factual issues, to be determined by the Commission in the light of our findings on the legal issues. However, after hearing the parties at length, we thought that the ends of justice would be served if we could finally decide all the important issues arising

in these appeals and thereafter to remit the matter to the Commission only, to apply those principles and recalculate the tariff on the basis of our findings and directions given in these appeals. It is in this light that we will now endeavor to settle the questions involved in these appeals.

35. One of the important issues which arises for our consideration in these appeals is as to the locus standi of the consumers before the Commission in its proceedings, as also before the High Court in an appeal under Section 27 of the 1998 Act. The Commission in the proceedings before it, issued a newspaper publication calling upon the persons to appear and file objections in case they were interested in the proceedings before it. Pursuant to the said publication, it is stated that a number of organizations including some of the appellants herein, representing sections of the consumers, appeared and filed their objections and submitted their arguments which were taken note of by the Commission in the proceedings before it. This was not objected to by the respondent company. As noticed above, the respondent company being aggrieved by the final order of fixation of tariff by the Commission preferred the statutory appeal before the High Court. To the said appeal, may be for reasons of convenience, the respondent company impleaded only the Commission as a party respondent, but the High Court in the initial stage thought it appropriate to issue a public notification of the filing of the appeal and called upon the interested parties to represent themselves before it. Pursuant to the said publication, some of the organizations representing consumers sought impleadment before the High Court. However, when the matter came up for final hearing the applications of these consumer organizations were rejected by the High Court holding that the Commission does not have the power to issue indiscriminate notice to the consumers or for hearing them. It also held that the advertisements published in this regard as per the Commission's regulations as also the advertisements issued by the High Court in the appeal were all on an erroneous view that the 1998 Act envisages such procedures.

36. *The question, therefore, for our consideration is whether the consumers have a legal right or not to be heard in the proceedings before the Commission under Section 29(2) of the 1998 Act, as also in an appeal under Section 27 of the said Act. The High Court in the course of its judgment has negated this right to the consumers, primarily on the ground that permitting a large number of consumers who in the instant case are to the extent of 17 lacs would amount to an indiscriminate representation. It observed that permitting such large scale interference in the proceedings would lead to absurdity. It also held that normally a rate payer is not heard before such a rate is fixed on the basis of public policy. In support of this conclusion, the High Court relied upon the procedure for fixing the rate of income-tax wherein a tax-payer had no such say in such fixation of the rate of income-tax. It also observed in the course of the judgment that the rates to be fixed cannot be opposed by consumers by observing as follows:*

"...The rates of the consumers cannot be affected by a general public clamour of the sort, that the rates are too high, that the CESC accounts are in no way reliable, that they cannot be losing money, when they are earning so much. That, this organization in Bombay, or that concern of the Tata's, is doing so much better, that in the same State in another area of supply, another Company is managing with such low rates; this sort general 'newspaper' objection has no place in any court of law or a Tribunal which does something to affect the legal rights and liabilities of Companies and citizens."

37. *Such objections according to the learned Judges are irrelevant for the purpose of granting a right of hearing to the consumers. While discussing this question, the High Court also came to the conclusion that since the procedure laid down in Schedule VI to the 1948 Act is the sole consideration for the purpose of fixation of tariff and Schedule VI not having contemplated any role to be played by the consumers, the same procedure should be followed even in regard to fixation of tariff*

under the 1998 Act, which would mean that the consumers have no say whatsoever in the fixation of tariff. The court also held that if at all any representation of the consumers is permissible, the same should be done only in accordance with Section 26, by the Commission recognizing a particular consumer association to represent them. Even in this regard, the High Court expressed some doubt because an organization chosen to represent the consumers by the Commission may not be acceptable to another section of the consumers and, therefore, in reality, such recognition of a particular organization by the Commission would also be futile.

38. Learned counsel appearing for the appellants have very strenuously contended that this view of the High Court is wholly unsustainable. They contend that under the various provisions of the Act, rules and regulations, the Parliament either directly or by subordinate legislation has conferred the right of representation on the consumers and it is not open to the High Court to negative such statutory right. Though, learned counsel representing the respondent company had stated before the High Court that the company had no objection to the impleadment of the consumers either before the Commission or before the High Court, still tried to justify the finding of the High Court before us.

39. Having considered the finding of the High Court, we are of the opinion that though generally it is true that the price fixation is in the nature of a legislative action and no rule of natural justice is applicable, (See Shri Sitaram Sugar Company Ltd. and Anr. etc. v. Union of India and Ors.), the said principle cannot be applied where the statute itself has provided a right of representation to the party concerned. Therefore, it will be our endeavor to find out whether, as contended by learned counsel for the appellants, the statute has provided such a right to the consumers or not.

40. While considering his question, it is relevant to notice that so far as the 1948 Act is concerned, the consumers had no such specific right. But we notice that the 1998 Act brought about a substantial change in the manner in which the determination of tariff has to be made. It not only took away the right of the licensee or a utility to determine the tariff, but also conferred the

said power on the Commission. This was done because one of the primary objects of the 1998 Act was to create an independent regulatory authority with the power of determining the tariff, bearing in mind the interests of the consumers whose rights were till then totally neglected. The fact that the Commission was obligated to bear in mind the interests of the consumers is also indicative of the fact that the Commission had to hear the consumers in regard to fixation of tariff. This right of the consumers is further supported by the language of Section 26 of the Act, which specifically mandates the Commission to authorize any person as it deems fit to represent the interest of the consumers in all proceedings before it. If the above provision of the Act is read in conjunction with Sections 22 and 29 read with Section 28(2)(d) of the Act 1998 Act, it is clear that the Commission while framing the regulations must keep in mind the interest of the consumers for the purpose of determining the tariff. At this stage, it may be worthwhile to notice the mandate of the Parliament in Section 37 of the 1998 Act to the Commission that the Commission should ensure transparency while exercising its powers and discharging its functions which also indicates that the proceedings of the Commission should be public which, in itself, shows participation by interested persons. That apart, the State of West Bengal in exercise of its power under Section 57 of the Act has enacted the West Bengal Electricity Regulatory Commission (Appointment of Chairperson and Members Functions, Budget and Annual Report) Rules, 1999. In the said rule under Rule 4(SIC) the State Government has provided that the Commission before taking any decision on the rates of tariff must notify its intention in this behalf, in leading newspapers of West Bengal and hold public hearing for the said purpose (emphasis supplied). Even the Commission under the power conferred on it in Section 58 of the Act, has framed the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2000 as amended by Regulations dated 3.2.2000, wherein, under Regulation 18 the Commission, can permit an association or other body corporate or any group of consumers to participate in any proceedings before the Commission, on such terms and conditions, including, in regard to be nature and extent of participation as the Commission may

consider appropriate. The Commission under Regulation 19 is also empowered to notify a procedure to association, groups, forums or body corporate or registered consumer associations, for the purpose of representation before the Commission. These Regulations also provide for the procedure for the filing of affidavits, pleadings, service of notice and the right of participation. Under Regulation 32 of the manner of hearing before the Commission is also provided for. These rules and regulations framed by the State Government and the Commission will have to be placed before the State legislature under Section 59 of the 1998 Act. Thus, these rules and regulations have the necessary statutory force. A combined reading of these provisions of the Act, rules and regulations, clearly shows that the statute has unequivocally provided a right of hearing/representation to the consumers, though the manner of exercise of such right is to be regulated by the Commission. This right of the consumer is neither indiscriminate nor unregulated as erroneously held by the High Court. It is true that in Calcutta the respondent company supplies energy to nearly 17 lacs consumers, but the statute does not give individual rights to every one of these consumers. The same is controlled by the Regulations. Therefore, the question of indiscriminate hearing as held by the High Court will not arise. That apart, when a statute confers a right which is in conformity with the principles of natural justice, in our opinion, the same cannot be negated by a court on an imaginary ground that there is a likelihood of an unmanageable hearing before the forum concerned. As noticed above, though normally price fixation is in the nature of a legislative function and the principles of natural justice are not normally applicable, in cases where such right is conferred under a statute, it becomes a vested right, compliance of which becomes mandatory. While the requirement of the principles of natural justice can be taken away by a statute, such a right when given under the statute cannot be taken away by courts on the ground of practical convenience, even if such inconvenience does in fact exist. In our opinion, statute having conferred a right on the consumer to be heard in the matter pertaining to determination of the tariff, the High Court was in error in denying that right to the consumers. Consequently, the right of the consumer of prefer an appeal

under Section 27 of the 1998 Act to the High Court is similar, if they are in any manner aggrieved by any order made by the Commission. Alternatively, if the company is an aggrieved party and if it prefers an appeal, then it has to make such of those consumers who have been heard by the Commission, as party respondent, and such consumers will have the right of audience before the appellate court. In the instant case, none of the consumers/consumer organizations were allowed to participate in the proceedings by the Commission have been made parties to the appeal. Therefore, the High Court ought to have impleaded and heard the consumer-appellants herein.

.....”

In the aforesaid judgement, the Hon'ble Supreme Court held that the provisions of the Electricity Regulatory Act, 1998 and Rules and Regulations framed thereunder clearly show that the Statute inequitably provides the rights of hearing or representation of the consumers though the manner of exercise of such rights is to be regulated by the Commission. This right of the consumer is neither indiscriminate nor unregulated. Further, when the Statute confers the right which is in conformity with the Principles of Natural Justice, in our opinion, the same cannot be negated by the court on an imaginary grounds that there is a likelihood of an unmanageable hearing before the Commission. Further, it is also held that the price fixation is a legislative function and the Principles of Natural Justice are not normally applicable, in the cases where such right is conferred under a statute, it becomes a vested right, compliance of which becomes mandatory. It is also held that when statute conferred a right on the consumers to be heard in the matter

pertaining to determination of tariff, the High Court was in error in denying that right to the consumers. The Hon'ble Supreme Court held that the High Court ought to have impleaded and heard the consumers. Therefore, it is incorrect to say that the consumers/consumers' association need not to be heard in the present case which pertains to POC issues and the decision of the present petition is reflected in the ARR of the licensees and also tariff payable by the consumers. Hence, the contention of the petitioner that the impleaders are not required to be heard in the present case is not accepted and rejected.

9.25. The petitioner has also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Ramesh Hirachandani Kundanmal V/s. Municipal Corporation of Greater Bombay and Others reported in (1992) 2 SCC 524 and submitted that a necessary party is one without whom no order can made effectively. A proper party is one in whose absence an effective order can be made, but whose presence is necessary for complete and final decision on the question involved in the proceeding. The court is empowered to join a person whose presence is necessary for the prescribed purpose. The relevant portion of the said order is reproduced below:

.....”

7. *In the present case, the subject matter of the dispute between the appellant and respondent 1 is the demolition of the unauthorized construction in pursuance to the notice under Section 351 of the Bombay Municipal Act. Respondent 2, the lessee, in possession of the service station asserts that the appellant has made an unauthorized construction and respondent 2 is in possession of material evidence to that effect. No notice has been issued to respondent 2 by the Municipal Corporation and no case of any collusion between the appellant and the Municipal Corporation is alleged. On the other hand, it is the case of the appellant that respondent 2 is instrumental in the initiation of the proceedings by the Municipal Corporation against the appellant and the present application is for collateral purposes. In the light of such averments, it has to be considered whether respondent 2 is a necessary or proper party in the present action.*
8. *The power of the Court to add parties under Order 1 Rule 10, CPC, came up for consideration before this Court in Razia Begum. In that case it was pointed out that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it be the questions relating to movable or immovable property.*
9. *In that case the appellant instituted a case against respondent 3 inter alia for a declaration that she was his lawfully married wife. Respondent 3 filed his written statement admitting the claim but on the same date respondents 1 and 2 made an application under*

Order 1 Rule 10(2) of CPC, for being impleaded in the suit as defendants on the grounds that they were respectively the wife and son of respondent 3 and that they were interested in denying the appellant's status as wife and the status of children as the legitimate children of respondent 3 that the suit was the result of the collusion between the appellant and respondent 3 and that if the appellant was declared to be lawfully wedded to respondent 3, the rights and interests of respondents 1 and 2 in the estate of respondent 3 would be affected. The application was contested by both the appellant and respondent 3. The trial court allowed the application and the order was confirmed by the High Court in its revisional jurisdiction. The question in the appeal before this Court was whether the lower court did not exceed their powers in directing the addition of respondents 1 and 2 as parties' defendants in the action.

10. Sinha. J. speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the Court but also upon persons claiming through them respectively. The Court laid down the law that in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation. Where the subject matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy. In cases covered by the statutory provisions of Sections 42 and 43 of the Specific Relief Act, the Court is not

bound to grant the declaration prayed for on a mere admission of the claim by the defendant. If the Court has reasons to insist upon a clear proof apart from the admission, the result of a declaratory decree on the question of status such as the controversy in that suit affects not only the parties actually before the Court but generation to come and in view of that consideration, the rule of present interest as evolved by case law relating to disputes about property does not apply with full force. Applying the propositions enunciated to the facts of the case, the Court came to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties' defendants in the action nor it could be said that the exercise of the discretion was not sound.

.....”

The Hon'ble Supreme Court has in the aforesaid para of the judgment held that the person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate the disputes and settle the question involved in the suit is a necessary party. The disputes involved in the aforesaid petition is pertaining to demolition of unauthorized construction under Section 351 of the Bombay Municipal Act. It is held that the court laid down the law in a suit relating to property in order that a person may be added as a party, he should have direct interest as distinguished from a commercial interest. Where the subject matter of litigation is a declaration as regards status or a legal character, the rule of present or direct interest

may be relaxed in a suitable case where the Court is of the opinion that by adding a party it would be in a better position to effectually and completely adjudicate upon the controversy.

9.26. The petitioner also relied upon the judgement dated 31.03.2010 in Appeal Nos. 106/2009 and 107/2009 and submitted that the applicants are not the aggrieved persons in the present case and relied on para 10, 11 and 12 of the said judgement which are reproduced below:

“

10. According to the Appellants, the expression “person aggrieved” appearing under Section 111 of the Act, which has not been defined in the Act, has to be given its natural and liberal meaning in the wider sense possible and since the impugned order had been passed in disregard of clause 5.1 of the NTP which would result in denial to access of power to the Appellant through Competitive Bidding Process which consequentially would adversely affect the interest of the consumer, the Appellants would certainly come under the category of aggrieved person and therefore, the Appeal is maintainable. Though the word “person aggrieved” as provided under Section 111 of the Act has not been defined, this Tribunal as well as the Supreme Court has given interpretation and meaning of the words “person aggrieved” in the following decisions:

(i) GRIDCO V/s. Gajendra Haldia and others, (2008) 13 SCC 414

(ii) (2007) - APTEL 746 Energy Journal in Chhattisgarh State Electricity Board V/s. Chhattisgarh State Electricity Regulatory Commission and others.

(iii) The recent decision is (2000)-LR-APTEL 0459 Jindal

Stainless Limited V/s. State of Orissa.

11. In the *Jindal Stainless Limited* case this Tribunal has quoted the various Supreme Court decisions in (2003) 9606 *Banarasi and others Versus Rampal*; (1997) 7 SCC 452 in *Northern Plastic Limited V/s. Hindustan Photo Films* and referred to various propositions laid down by the Supreme Court with reference to the term "Aggrieved person". These propositions are as follows:

- (i) A person who was not a party to the original proceedings may still file an appeal with leave of the Appellate court, provided that the person claiming himself to be the aggrieved party shall make it a *prima facie* case as to how he is aggrieved.
- (ii) A person can be said to be aggrieved by an order only when it caused on him some prejudice in some former another unless the person is prejudicially or adversely affected by the order, he cannot have been titled to file an Appeal as an aggrieved person.
- (iii) The words "person aggrieved" did not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed. A person aggrieved means a person who has suffered a legal grievance, a person against whom a decision has been pronounced which have wrongly deprived him of something or wrongfully refused him something or wrongly affected his title to something.
- (iv) When a person had not been deprived of a legal right, when he is not subject to legal wrong, when he has not suffered any legal grievance, when he has no legal peg for a justifiable claim to hang on, he cannot claim that he is a person aggrieved.

12. In the light of the above principles laid down by the Hon'ble Supreme Court, this question has to be analyzed. There is no dispute in the fact that the Appellants were a party in the proceedings

before the State Commission as they had opposed the prayer made by the NDPL (R-2). But that alone will not entitle the person to file an appeal before this Tribunal. The ratio decided by the Supreme Court as mentioned above is that a person aggrieved does not mean a man who is merely disappointed of a benefit which he might have received. On the other hand, it is to be established that the order impugned has caused legal grievance to him, order impugned is prejudicially or adversely affecting him, or the order impugned has wrongfully deprived him or wrongly refused him something. Only when all these ingredients are satisfied, the party can claim himself as aggrieved party and is entitled to file an appeal.

.....”

On perusal of the aforesaid judgement, it transpires that a person is aggrieved only when the impugned order causes grievance to him, the order is prejudicially or adversely affecting him or wrongfully depriving him or wrongly refusing him something. In the present case, the issue is whether the POC paid by the petitioner based on undertaking/ agreement is refundable or not and whether any decision in the present petition will be reflected in ARR of the respondent or not and whether it will ultimately affect the consumers of the licensees or not and whether it is a part of tariff determination process or not. If the POC amount is refunded to the petitioner, it will be reflected in the Annual Revenue Requirement of the respondent licensees as well as tariff payable by the consumers of the respondent licensees to whom the applicants are representing. Hence, if the applicants are not impleaded; it is a prejudice against them and will adversely affect their rights to protect

the interest of the consumers. We also note that during the hearing, the respondents fairly admitted that the applicants are directly affected due to result in the present petition and the respondents are not affected in any manner as they are revenue neutral. The impact of POC is passed on in the ARR of the respondent licensees and factored in the tariff payable by the consumers which is determined by the Commission under tariff determination proceedings. It is therefore, incorrect to say that the applicants are not an affected or aggrieved party. We are, therefore, of the view that the applicants are aggrieved persons in light of the aforesaid judgement.

9.27. The petitioner also relied upon the daily order dated 29.03.2014 of this Commission in Petition No. 1296 of 2013 and submitted that in said petition, the Commission decided not to implead UUWA as a party to that petition. The relevant portion of the said judgement i.e. para 7.8, 7.9, and 8 is reproduced below:

“

10.8. The applicant also relied on the judgment passed by the CERC in Petition No. 159/MP/2012 in Coastal Gujarat Power Limited V/s. GUVNL and in Case No. 155 of 2013 of Tata Power Limited in which Prayas Energy Group and Mr. Surana were allowed to be impleaded as a party. On this issue, the petitioner has submitted that the prayers sought in these petitions were quite

different and not within the ambit of the PPA, whereas in the present case, the petitioner's claims are strictly within the ambit of the approved PPA. We agree with the contention of the petitioner and observe that these judgements are not relevant in the present case.

10.9. *The Hon'ble Supreme Court of India has in the case of Union of India & Anr V/s. M/s. Jesus Sales Corporation, 1996 AIR 1509, 1996 SCC (4) 69, held as under:*

"...5. The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred. It need not be pointed out that under different situations and conditions the requirement of the compliance of the principle of natural justice varies. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it

cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded.....”

In the above judgement, the Hon’ble Supreme Court has decided that the principles of natural justice vary under different situation and conditions. It cannot be insisted that under all circumstances and under different statutory provisions, personal hearings have to be afforded to the person concerned. When Qausi-Judicial Authorities apply their judicial mind over the grievances made by the appellants or applicants concerned, it cannot be held that before dismissing such appeals or applications, in all events, the quasi-judicial authorities must hear the appellants or the applicants as the case may be.

In the present case, the Commission has adopted the tariff as recommended by the Bid Evaluation Committee and the PPA was uploaded on the website of the Commission and thereafter decided the matter. Hence, it is incorrect to say that the Principles of Natural Justice is being violated.

8) *Considering the above facts, we decide that the request of the applicant UUWA to implead it as a party to the present petition is not valid and the same is rejected.*

.....”

In the aforesaid order, the Commission decided that the subject matter of Petition No. 159/MP/2012 in case of Coastal Gujarat Pvt. Limited V/s. GUVNL and Case No. 155/MP/2013 in case of Tata Power Limited, in which CERC allowed Prayas Energy Group and Mr. Surana as party, is having the subject matter different and distinct from the subject matter of Petition No. 1296 of 2013 in which the subject matter is pertaining to Change in Law. The Commission has relied upon the judgement of Hon'ble Supreme Court of India in the case of Union of India (UOI) & Others V/s. Jesus Sales Corporation, AIR (1996) 1509. In the said judgement, the Hon'ble Supreme Court decided that when the quasi-judicial authorities apply their judicial mind over the grievances of the appellant, it cannot be held that in all events, the Qausi Judicial Authorities must hear all the appellants or the applicants as the case may be. Thus, the issues decided in the aforesaid petition are with

regard to Principles of Natural Justice and Opportunity of hearing afforded to the parties. The Commission also recorded that the tariff adopted by the Commission is as per the recommendation of Bid Evaluation Committee. The PPA was uploaded on the website of the Commission and thereafter the matter was decided by the Commission and hence, it is incorrect to say that the Principle of Natural Justice is violated in that case. In the present case, the issue is pertaining to refund of Parallel Operation Charges claimed by the petitioner and whether it impacts the ARR of the licensees and tariff payable by the consumers and whether the consumers who are directly affected by the decision in the present petition are required to be heard or not. Thus, the subject matter of the present petition is different and distinct from the aforesaid decision and the same is not applicable in the present case.

9.28. The Petitioner contended that the impleaders are not *dominus litis* and they are not entitled to seek any relief against the Petitioner. Further, they are neither a necessary party nor a proper party as per Order 1 Rule 10 (2) of the Civil Procedure Code, 1908. The Petitioner relied upon the judgment in the case of Mumbai International Airport (P) Limited V/s. Regency Convention Centre and Hotels Private Limited & Others reported in (2010) 7 SCC 417. We therefore refer the relevant part of the aforesaid judgment which reads as under:

“

9 *The said application was resisted by the first respondent inter alia on the ground that the appellant did not have any interest in the suit property and therefore the appellant was neither a necessary party nor a proper party to the suit. It was also contended that AAI itself being a substantial shareholder, having 26% share in the appellant company, would protect the interest of the appellant by contesting the suit and therefore the appellant was not a necessary party. AAI has also filed a response to the appellant's application for impleadment raising two contentions: (i) any impleadment at that stage of the suit would delay the recording of evidence and final hearing thereby seriously affecting the interests of AAI; and (ii) the suit plot measuring 31,000 sq. m was not leased to the appellant.*

10 *A learned Single Judge dismissed the appellant's application by an order dated 1-4-2008. The learned Single Judge was of the view that as the appellant was yet to acquire any interest in the suit land and as the pending suit by the first respondent was for specific performance of an agreement which was a distinct earlier transaction between the first respondent and AAI to which the appellant was not a party, and as the first respondent was not a party to the arrangement between AAI and the appellant, the Court cannot permit impleadment of the appellant with reference to some future right which may accrue in future, after the decision in the suit.*

11 *The appeal filed by the appellant was also dismissed by a Division Bench by an order dated 25.08.2008. The Division Bench held that the appellant did not make out that he was a necessary party and the application merely disclosed that he was only claiming to be a proper party; that the appellant's claim was not based on a present demise but a future expectation based on spes successionis; and that therefore, the impleadment of the appellant either as a necessary party or proper party or formal party was not warranted.*

.....

14 *The said provision makes it clear that a court may, at any state of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined*

as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15 *A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.
.....”*

In the aforesaid decision Hon’ble Supreme Court held that the rule in regard to impleadment of parties is that the plaintiff in a suit, may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Further, it is also provided that the court at any stage of proceedings either upon or without any application on such terms as may appear, direct that any of the persons may be added as a party who ought to have been joined as plaintiff or defendant but not added or any person whose presence before the court may be necessary in order to effectively and completely adjudicate upon and settle the question involved in the suit. Necessary party is a party in whose absence no

effective decree can be passed at the Court. A proper party is a party who though not a necessary party is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though, he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him against the wishes of the plaintiff. It is also held by the Hon'ble Supreme Court that the court has discretion either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances of the case and no person has a right to insist that he should be impleaded as a party. In the aforesaid judgment the court held that the appellant is neither a necessary party nor a proper party. The appellant is neither a purchaser nor a lessee of the suit property and has no right, title or interest therein. The respondent plaintiff in the suit has not sought any relief against the appellant. The Hon'ble Supreme Court also held that the presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the respondent plaintiff against Airports Authority of India (AAI).

9.29. We note that the present petition is filed by the petitioner seeking refund of the Parallel Operation Charges paid by it for the period from 01.06.2011 to 31.07.2014. The aforesaid issue is directly linked with the tariff/ARR of the respondents because the POC which were recovered by the respondents based on undertaking /agreement signed between the parties have been shown as a part of ARR/Tariff of the respondent licensees and also given effect in the ARR/Tariff of the aforesaid licensees. Therefore, any refund if granted by the Commission, it will be reflected in the ARR/Tariff of the licensees affecting the consumer tariff of the aforesaid licensees. Hence, it is incorrect to say that the consumers/consumers' organizations who prayed for impleadment in the present proceedings are not a proper and necessary party. We, therefore, decide that the contention of the petitioner that the impleadment applicants are not a necessary and proper party is not valid and the same is rejected.

9.30. In the present case as recorded in earlier para, we note that the application for impleadment is filed by a consumer and consumers' organization who have requested to be impleaded on the ground that the result of present petition is directly affecting the ARR/Tariff of the respondent licensees and ultimately the same is also affecting the tariff of the consumers which may be increased as the burden would be passed on to the consumers by the licensees since the licensees are

revenue neutral. We also note, that the petitioner has prayed that the POC recovered by the respondent GETCO and PGVCL should be refunded as the same was recovered illegally by them. Further, the recovery of POC based on the undertaking given by the petitioner and the agreement signed between the parties was passed on as a part of other income in the ARR/Tariff determination of the respondents by the Commission in respective years and also given effect in the ARR/Tariff payable by the consumers. We also note that while determining the tariff/ARR of the aforesaid licensees, the Commission had heard the consumers. Therefore, the present petition in which the issue involved is with regard to POC which was paid by the petitioner during the period from 01.06.2011 to 31.07.2014 whether refundable or not is necessarily affecting the consumers and hence the contention of the petitioner that the applicants are not affected in any manner is not correct. They are the persons who are directly affected by the outcome of the present petition. Hence, the applicants are a proper party in this case and therefore, we decide to join them as a party respondent.

10. In view of the above observations, we decide to implead UUWA, Laghu Udyog Bharti - Gujarat and Shri Amarsinh Chavda as a party respondent in the present petition. The petitioner and the respondents are directed to provide a copy of petition and all other submissions made by them in

the present petition to the impleaders within 15 days from the receipt of this order. The respondents are directed to file their submissions, if any, within three weeks after the receipt of the aforesaid submissions from the parties.

11. The next date of hearing will be on 09.12.2016 at 11:30 A.M.

12. We order accordingly.

Sd/-
[P. J. THAKKAR]
MEMBER

Sd/-
[K. M. SHRINGARPURE]
MEMBER

Place: Gandhinagar.
Date: 29/11/2016.