



IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No.5703 OF 2020

C/W

WRIT PETITION NOS.5303 OF 2020, 5341 OF 2020,

5346 OF 2020, 5347 OF 2020, 5354 OF 2020,

5357 OF 2020, 5361 OF 2020, 5362 OF 2020,

5364 OF 2020, 5365 OF 2020, 5368 OF 2020,

5369 OF 2020, 5371 OF 2020, 5374 OF 2020,

5375 OF 2020 (GM-KEB)

IN W.P.No.5703 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
2. M/S RAJAT RENEWABLES LTD
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,

VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
 BANGALORE-560 001
 REPRESENTED BY
 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

2. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
 A COMPANY REGISTERED UNDER THE PROVISIONS OF
 COMPANIES ACT, 1956, HAVING ITS REGISTERED
 OFFICE AT P.B.ROAD, NAVANAGAR,
 HUBBALI-580 025
 REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
 CORPORATION LTD.,
 A COMPANY REGISTERED UNDER THE
 PROVISIONS OF COMPANIES ACT 1956
 HAVING ITS REGISTERED OFFICE AT
 KAVERI BHAVAN, K.G.ROAD,
 BANGALORE-560 009
 REPRESENTED BY ITS
 MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
 SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R2
 SRI S.SRIRANGA, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
 THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO
 HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY
 PROCESSING THE INVOICES, DATED 07.08.2019, 06.09.2019,
 14.10.2019, 07.11.2019, 10.12.2019, AND 09.01.2019 ANNEX-H1 AND
 K (COLLY) AND MAKING A PAYMENT OF A SUM OF
 RS.3,63,03,568/- (RUPEES THREE CRORES SIXTY THREE LAKHS
 THREE THOUSAND FIVE HUNDRED AND SIXTY EIGHT ONLY) TO
 THE PETITIONER NO.2 AND ETC.

IN W.P.No.5303 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
 A COMPANY INCORPORATED UNDER
 THE PROVISIONS OF THE COMPANIES ACT, 2013
 AND HAVING ITS REGISTERED OFFICE AT
 NO.138, ANSAL CHAMBERS II,
 BIKAJI CAMA PLACE, DELHI-110 066
 REPRESENTED BY AUTHORIZED SIGNATORY,
 MR NIKHIL KUMAR Y.S.

2. RENEW WIND ENERGY (SILPA)
PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 2013 AND HAVING ITS
REGISTERED OFFICE AT NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
...PETITIONERS
- (BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT
2. HUBLI ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT P.B.ROAD,
NAVANAGAR, HUBBALI-580 025
REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD,
BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR
...RESPONDENTS
- (BY SRI RAMESH GOWDA A., AGA FOR R1
SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R2
SRI S.SRIRANGA, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO
HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY
PROCESSING THE INVOICES, DATED 06.08.2019, 06.09.2019,

09.10.2019, 06.11.2019, 06.12.2019, AND 06.01.2020 (ANNXURE-G1 AND J) AND MAKING A PAYMENT OF RS.34,96,63,750/- (RUPEES THIRTY FOUR CRORES NINETY SIX LAKHS SIXTY THREE THOUSAND SEVEN HUNDRED AND FIFTY ONLY) TO THE PETITIONER NO.2 AND ETC.

IN W.P.No.5341 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

2. KANAK RENEWABLES LIMITED
A COMPANY INCORPORATE UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT

2. HUBLI ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT P.B.ROAD,
NAVANAGAR, HUBBALI-580 025
REPRESENTED BY ITS MANAGING DIRECTOR

3. THE KARNATAKA POWER TRANSMISSION CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT KAVERI BHAVAN, K.G.ROAD,
BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DATED 06.09.2019, 14.10.2019, 07.11.2019, 10.12.2019, 09.01.2019 FOR 23.1 MW AND 6.9.2019, 14.10.2019, 7.11.2019, 10.12.2019, 09.01.2020 FOR 2.1 MW (ANNEXURE-H1 AND K COLLY) AND MAKING OF PAYMENT OF RS.8,73,560,740/- (RUPEES EIGHT CRORES SEVENTY THREE LAKHS FIFTY THOUSAND SEVEN HUNDRED AND FORTY ONLY) ON THE P.2 AND ETC.

IN W.P.No.5346 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
2. M/S RAJAT RENEWABLES LTD
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
2. GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED
A COMPANY REGISTERED UNDER THE PROVISIONS OF
COMPANIES ACT, 1956, HAVING ITS REGISTERED
OFFICE AT STATION ROAD, KALBURGI-585 101
REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009
REPRESENTED BY ITS MANAGING DIRECTOR
...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI MURUGESH V.CHARATI, ADVOCATE FOR R2
SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DTD.6.9.2019, 14.10.2019, 7.11.2019, 9.12.2019, 9.1.2019, (ANNEXURE-K (COLLY) AND MAKING OF PAYMENT OF RS.86,47,565/- (RUPEES EIGHT SIX LAKHS SEVENTY SEVEN THOUSAND FIVE HUNDRED AND SIXTY FIVE ONLY) ON THE P-2 AND ETC.

IN W.P.No.5347 OF 2020**BETWEEN:**

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

2. M/S RAJAT RENEWABLES LTD
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

2. HUBLI ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT P.B.ROAD,
NAVANAGAR, HUBBALI-580 025
REPRESENTED BY ITS MANAGING DIRECTOR

3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI MURUGESH V.CHARATI, ADVOCATE FOR R2
SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO
HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY
PROCESSING THE INVOICES, DATED 08.07.2019, 07.08.2019,
06.09.2019, 14.10.2019, 07.11.2019, 09.01.2020 (ANNEXURE-H1
AND K) AND MAKING A PAYMENT OF RS.6,59,75,311/- (RUPEES
SIX CRORES FIFTY NINE LAKHS SEVENTY FIVE THOUSAND
THREE HUNDRED AND ELEVEN ONLY) TO THE PETITIONER
NO.2 AND ETC.

IN W.P.No.5354 OF 2020**BETWEEN:**

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

2. M/S OSTRO DAKSHIN POWER PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT

2. GULBARGA ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
STATION ROAD, KALBURGI-585 101
REPRESENTED BY ITS MANAGING DIRECTOR

3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD,

BANGALORE-560 009
 REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
 SRI MURUGESH V.CHARATI, ADVOCATE FOR R2
 SRI S.SRIRANGA, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DTD.9.9.2019, 9.10.2019, 6.11.2019, 6.12.2019, 9.1.2020, ANENXURE-K (COLLY) AND MAKING A PAYMENT 57,02,775/- (RUPEES FIFTY SEVEN CRORES TWO LAKHS THIRTY EIGHT THOUSAND SEVEN HUNDRED AND SEVENTY FIVE ONLY) ON THE P-2 AND ETC.

IN W.P.No.5357 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
 A COMPANY INCORPORATED UNDER
 THE PROVISIONS OF THE COMPANIES ACT, 2013
 AND HAVING ITS REGISTERED OFFICE AT
 NO.138, ANSAL CHAMBERS II,
 BIKAJI CAMA PLACE, DELHI-110 066
 REPRESENTED BY AUTHORIZED SIGNATORY,
 MR NIKHIL KUMAR Y.S.

2. ADYAH SOLAR ENERGY PRIVATE LIMITED
 A COMPANY INCORPORATE UNDER THE PROVISIONS OF
 THE COMPANIES ACT, 2013 AND HAVING ITS
 REGISTERED OFFICE AT
 NO. 138, ANSAL CHAMBERS II,
 BIKAJI CAMA PLACE, DELHI 110 066,
 REPRESENTED BY AUTHORIZED SIGNATORORY, MR.
 NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
 SRI KUSUM RANGANATH, ADVOCATE
 SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
 DEPARTMENT OF ENERGY,
 VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
 BANGALORE-560 001
 REPRESENTED BY
 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

2. GULBARGA ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
STATION ROAD, KALBURGI - 585 101
REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD,
BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI MURUGESH V.CHARATI, ADVOCATE FOR R2
SRI S.G.PRASHANTH MURTHY, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DTD. 20.9.2019, 11.10.2019, 19.11.2019, 9.12.2019, AND 9.1.2020 ANNEXURE-L COLLECTIVELY AND MAKING PAYMENT OF RS.12,05,54,724/- (RUPEES TWELVE CRORES FIVE LAKHS FIFTY FOUR THOUSAND SEVEN HUNDRED TWENTY FOUR ONLY) ON THE P-2 AND ETC.

IN W.P.No.5361 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
2. ADYAH SOLAR ENERGY PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 2013 AND HAVING ITS
REGISTERED OFFICE AT
NO. 138, ANSAL CHAMBERS II,

BIKAJI CAMA PLACE, DELHI 110 066,
 REPRESENTED BY AUTHORIZED SIGNATORORY,
 MR. NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
 SRI KUSUM RANGANATH, ADVOCATE
 SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
 DEPARTMENT OF ENERGY,
 VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
 BANGALORE-560 001
 REPRESENTED BY
 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
2. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
 A COMPANY REGISTERED UNDER THE PROVISIONS OF
 COMPANIES ACT, 1956, HAVING ITS REGISTERED
 OFFICE AT P.B.ROAD, NAVANAGAR,
 HUBBALI-580 025
 REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
 CORPORATION LTD.,
 A COMPANY REGISTERED UNDER THE
 PROVISIONS OF COMPANIES ACT 1956
 HAVING ITS REGISTERED OFFICE AT
 KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009
 REPRESENTED BY ITS MANAGING DIRECTOR
 ...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
 SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
 THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO
 HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY
 PROCESSING THE INVOICES, DTD. 6.6.2019, 11.6.2019, 9.7.2019,
 6.8.2019, 17.9.2019, 10.10.2019, 14.11.2019, 9.12.2019, 9.1.2020
 ANNEXURE-J1, J AND L COLLECTIVELY AND MAKING A PAYMENT
 OF RS.17,84,65,057/- (RUPEES SEVENTEEN CRORES EIGHTY
 FOUR LAKHS SIXTY FIVE THOUSAND AND FIFTY SEVEN ONLY)
 ON THE P-2 AND ETC.

IN W.P.No.5362 OF 2020**BETWEEN:**

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

 2. RENEW WIND ENERGY (SIPLA) PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE PROVISION OF
THE COMPANIES ACT, 2013 AND HAVING ITS
REGISTERED OFFICE
AT NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY
MR. NIKHIL KUMAR Y.S
- ...PETITIONERS
- (BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF
SECRETARY TO GOVERNMENT

2. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT P.B.ROAD,
NAVANAGAR, HUBBALI-580 025
REPRESENTED BY ITS MANAGING DIRECTOR

3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD,

BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DATED 06.08.2019, 09.09.2019, 11.10.2019, 07.11.2019, 06.12.2019, 07.01.2020 VIDE ANNEX-G1 AND J (COLLECTIVELY) AND MAKING A PAYMENT OF RS.13,27,61,611/- (RUPEES THIRTEEN CRORES TWENTY SEVEN LAKHS SIXTY ONE THOUSAND SIX HUNDRED AND ELEVEN ONLY) TO THE PETITIONER NO.1 AND ETC.

IN W.P.No.5364 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
2. M/S BIDEAL RENEWABLE PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISION OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001

REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY TO GOVERNMENT

2. GULBARGA ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
STATION ROAD, KALBURGI-585 101
REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD,
BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI MURUGESH V.CHARATI, ADVOCATE FOR R2
SRI S.SRIRANGA, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DATED 09.07.2019, 07.08.2019, 09.09.2019, 09.10.2019, 06.11.2019, 09.12.2019, 06.01.2020 VIDE ANNEX-H1 AND K (COLLECTIVELY) AND MAKING A PAYMENT OF RS.29,89,75,310/- (RUPEES TWENTY NINE CRORES EIGHTY NINE LAKHS SEVENTY FIVE THOUSAND AND THREE HUNDRED AND TEN ONLY) TO THE PETITIONER NO.1 AND ETC.

IN W.P.No.5365 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
2. M/S PUGALUR RENEWEABLE PVT. LTD.,
A COMPANY INCORPORATED UNDER THE PROVISIONS

OF THE COMPANIES ACT, 2013 AND HAVING ITS
 REGISTERED OFFICE AT
 THE FUTURA, BLOCK B, 8TH FLOOR,
 NO.334, RAJIV GANDHI SALAI, SHOLINGANALLUR,
 CHENNAI 600 119.
 REPRESENTED BY AUTHORIZED SIGNATORY
 MR. NIKHIL KUMAR Y.S

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
 SRI KUSUM RANGANATH, ADVOCATE
 SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
 DEPARTMENT OF ENERGY,
 VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
 BANGALORE-560 001
 REPRESENTED BY
 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
2. GULBARGA ELECTRICITY SUPPLY CO. LTD.,
 A COMPANY REGISTERED UNDER
 THE PROVISIONS OF COMPANIES ACT, 1956,
 HAVING ITS REGISTERED OFFICE AT
 STATION ROAD, KALBURGI-585 101
 REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
 CORPORATION LTD.,
 A COMPANY REGISTERED UNDER THE
 PROVISIONS OF COMPANIES ACT 1956
 HAVING ITS REGISTERED OFFICE AT
 KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009
 REPRESENTED BY ITS
 MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
 SRI MURUGESH V.CHARATI, ADVOCATE FOR R2
 SRI S.SRIRANGA, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
 THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO
 HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY
 PROCESSING THE INVOICES, DATED 06.08.2019, 06.09.2019,
 09.10.2019, 07.11.2019, 06.12.2019, 06.01.2020 (ANNEXURE-K
 (COLLY)) AND MAKING A PAYMENT OF RS.34,98,34,295/-
 (RUPEES THIRTY FOUR CRORES NINETY EIGHT LAKHS THIRTY

FOUR THOUSAND TWO HUNDRED AND NINETY FIVE ONLY) TO THE PETITIONER NO.2 AND ETC.

IN W.P.No.5368 OF 2020

BETWEEN:

1. AZURE POWER INDIA PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT,
1956 AND HAVING ITS REGISTERED OFFICER
AT 3RD FLOOR, ASSET 301-304 AND 307,
WORLD MARK 3, AEROCITY,
NEW DELHI 110 037,
REP BY ITS AUTHORIZED SIGNATORY,
MR. NAGARAJA NAIK

2. AZURE POWER EARTH PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
AND HAVING ITS REGISTERED OFFICER
AT 3RD FLOOR, ASSET 301-304 AND 307,
WORLD MARK 3, AEROCITY,
NEW DELHI 110 037,
REP BY ITS AUTHORIZED SIGNATORY,
MR.NAGARAJA NAIK

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

2. HUBLI ELECTRICITY SUPPLY CO LTD
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT
P.B. ROAD, NAVANAGAR,
HUBBALLI -580 025
REP BY ITS MANAGING DIRECTOR

3. THE KARNATAKA POWER TRANSMISSION CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009.
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DTD. 6.6.2019, 5.7.2019, 3.8.2019, 7.9.2019, 11.10.2019, 12.11.2019, 9.12.2019, 8.1.2020 ANNEXURE-J COLLECTIVELY AND MAKING PAYMENT OF RS.26,05,68,575/- (RUPEES TWENTY SIX CRORE FIVE LAKHS SIXTY-EIGHT THOUSAND FIVE HUNDRED AND SEVENTY -FIVE ONLY) ON THE P-2 AND ETC.

IN W.P.No.5369 OF 2020

BETWEEN:

1. RENEW SOLAR POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO.138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI-110 066
REPRESENTED BY AUTHORIZED SIGNATORY,
MR NIKHIL KUMAR Y.S.
2. RENEW AGNI POWER PRIVATE LIMITED
A COMPANY INCORPORATE UNDER THE
PROVISIONS OF THE COMPANIES ACT, 2013 AND
HAVING ITS REGISTERED OFFICE AT NO. 138,
ANSAL CHAMBERS II, BIKAJI CAMA PLACE,
DELHI -110 066,
REPRESENTED BY AUTHORIZED SIGNATORORY,
MR. NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
2. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
A COMPANY REGISTERED UNDER THE PROVISIONS OF
COMPANIES ACT, 1956, HAVING ITS REGISTERED
OFFICE AT P.B.ROAD, NAVANAGAR,
HUBBALI-580 025
REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009
REPRESENTED BY ITS MANAGING DIRECTOR
...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DATED 06.08.2019, 05.09.2019, 09.10.2019, 06.11.2019, 06.12.2019 AND 09.01.2019 VIDE ANN-X-L AND MAKING A PAYMENT OF RS.8,41,78,410/- (RUPEES EIGHT CRORES FORTY ONE LAKHS SEVENTY-EIGHT THOUSAND FOUR HUNDRED AND TEN ONLY) TO THE PETITIONER NO.2 AND ETC.

IN W.P.No.5371 OF 2020**BETWEEN:**

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATE UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013

AND HAVING ITS REGISTERED OFFICE AT
NO. 138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI 110 066,
REP BY AUTHORIZED SIGNATORY,
MR. NIKHIL KUMAR Y.S.

2. RENEW WIND ENERGY (SIPLA) PRIVATE LIMITED
A COMPANY INCORPORATE UNDER THE PROVISIONS OF
THE COMPANIES ACT, 2013 AND HAVING ITS
REGISTERED OFFICE AT
NO. 138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI 110 066,
REP BY AUTHORIZED SIGNATORY,
MR. NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
2. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
P.B.ROAD, NAVANAGAR, HUBBALI-580 025
REPRESENTED BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD, BANGALORE-560 009
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R2 & R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO

HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DTD.9.9.2019, 11.10.2019, 7.11.2019, 6.12.2019, 7.1.2019, ANNEXURE-J COLLECTIVELY AND MAKING PAYMENT OF RS.14,11,70,7328/- (RUPEES FOURTEEN CRORES ELEVEN LAKHS SEVENTY THOUSAND SEVEN HUNDRED AND THIRTY EIGHT ONLY) ON THE P-2 AND ETC.

IN W.P.No.5374 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATE UNDER
THE PROVISIONS OF THE COMPANIES ACT, 2013
AND HAVING ITS REGISTERED OFFICE AT
NO. 138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI 110 066,
REP BY AUTHORIZED SIGNATORY,
MR. NIKHIL KUMAR Y.S.

2. KANAK RENEWABLES LIMITED
A COMPANY INCORPORATE UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956
AND HAVING ITS REGISTERED OFFICE AT
NO. 138, ANSAL CHAMBERS II,
BIKAJI CAMA PLACE, DELHI 110 066,
REP BY AUTHORIZED SIGNATORY,
MR. NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

2. GULBARGA ELECTRICITY SUPPLY CO. LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956,.
HAVING ITS REGISTERED OFFICE AT

STATION ROAD, KALABURGI 585102.
REP BY ITS MANAGING DIRECTOR

3. THE KARNATAKA POWER TRANSMISSION CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT KAVERI BHAVAN, K.G.ROAD,
BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI MURUGESH V. CHARATI, ADVOCATE FOR R2
SRI S.G.PRASHANTH MURTHY, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY PROCESSING THE INVOICES, DATED 06.09.2019, 14.10.2019, 07.11.2019, 09.12.2019, AND 09.01.2019, (ANNEXURE-K (COLLY)) AND MAKING A PAYMENT OF RS.1,42,26,996/- (RUPEES ONE CRORE FOURTY TWO LAKHS TWENTY SIX THOUSAND NINE HUNDRED AND NINETY SIX ONLY) TO THE PETITIONER NO.2 AND ETC.

IN W.P.No.5375 OF 2020

BETWEEN:

1. RENEW POWER PRIVATE LIMITED
A COMPANY INCORPORATE UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013 AND HAVING ITS REGISTERED OFFICE AT NO. 138, ANSAL CHAMBERS II, BIKAJI CAMA PLACE, DELHI 110 066,
REP BY AUTHORIZED SIGNATORY,
MR. NIKHIL KUMAR Y.S.
2. OSTRO MAHAWIND POWER PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 2013
AND HAVING ITS REGISTERED OFFICE

AT UNIT NO. G-0, GROUND FLOOR,
MIRA CORPORATE SUITES, 1 AND 2
ISHWAR INDUSTRIAL ESTATE,
MATHURA ROAD, NEW DELHI 110 065,
REPRESENTED BY AUTHORIZED SIGNATORY
MR. NIKHIL KUMAR Y.S.

...PETITIONERS

(BY SRI SAJJAN POOVAYYA, SR. ADVOCATE FOR
SRI SHODHAN BABU A.M., ADVOCATE
SRI KUSUM RANGANATH, ADVOCATE
SMT AMRITA JOSHI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
2. HUBLI ELECTRICITY SUPPLY CO LTD
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT
PB ROAD, NAVANAGAR, HUBBALI 580 025.
REP BY ITS MANAGING DIRECTOR
3. THE KARNATAKA POWER TRANSMISSION
CORPORATION LTD.,
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
KAVERI BHAVAN, K.G.ROAD,
BANGALORE-560 009
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENTS

(BY SRI RAMESH GOWDA A., AGA FOR R1
SRI MURUGESH V. CHARATI, ADVOCATE FOR R2
SRI S.G.PRASHANTH MURTHY, ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO
HONOR ITS PAYMENT OBLIGATIONS UNDER THE PPA, BY

PROCESSING THE INVOICES, DATED 08.08.2019, 06.09.2019, 09.10.2019, 06.11.2019, 06.12.2019, 06.01.2020 (ANNEXURE-G1 AND J (COLLY)) AND MAKING A PAYMENT OF RS.40,14,13,594/- (RUPEES FORTY CRORES FOURTEEN LAKHS THIRTEEN THOUSAND FIVE HUNDRED AND NINETY FOUR ONLY) TO THE PETITIONER NO.2 AND ETC.

THESE WRIT PETITIONS COMING ON FOR 'DICTATING ORDERS' THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

These batch of writ petitions which are filed by the petitioners who are renewable energy generating companies involved in the business of independent power production and establishing and operating power plants, while petitioners in some of the petitions are operating solar power plants, petitioners in the other petitions are operating wind power plants. The subject matter of all the petitions are Power Purchase Agreements (PPAs) entered into between the petitioners and the various Electricity Supply Companies (ESCOMs), who are arrayed as respondent No.2 in these petitions.

2. The details of the petitioners, PPAs, relevant clauses etc., are as under;-

PETITIONS (WIND) - PPA CLAUSES DETAILS

Sl. Nos.	WP No.	SPV	Respondent ESCOM	Wind / Solar	PPA Clause for payment of Invoice	PPA Clause for Late Payment Surcharge	PPA Clause for Payment obligation	PPA clause for opening Letter of Credit	PPA Clause for monthly Joint Meter Reading	Dispute Redressal Mechanism Clause
1	5703 of 2020 (Lead Petition)	Rajat Renewables	HESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition / Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10
2	5303 of 2020	Renew Wind Energy (Sipla)	HESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition/Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10
3	5341 of 2020	Kanak Renewables	HESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition/Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10
4	5346 of 2020	Rajat Renewables	GESCOM	Wind	Clause 6.2/ Page 46 of Petition	Clause 6.3 / Page 46 of Petition/ 1.25% PM	Clause 6.4/Page 46 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 47 of Petition	Clause 7.3/ Page 48 of Petition	Clause 10
5	5347 of 2020	Rajat Renewables	HESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10
6	5354 of 2020	Ostro Dakshin	GESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10
7	5362 of 2020	Renew Wind Energy (Sipla)	HESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10
8	5364 of 2020	Bidwal Renewable	GESCOM	Wind	Clause 6.2/ Page 48 of Petition	Clause 6.3 / Page 48 of Petition/ 1.25% PM	Clause 6.4/Page 48 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 49 of Petition	Clause 7.3/ Page 51 of Petition	Clause 10
9	5365 of 2020	Pugalur Renewable	GESCOM	Wind	Clause 6.2/ Page 47 of Petition	Clause 6.3 / Page 47 of Petition/ 1.25% PM	Clause 6.4/Page 47 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 48 of Petition	Clause 7.3/ Page 50 of Petition	Clause 10
10	5371 of 2020	Renew Wind Energy (Sipla)	HESCOM	Wind	Clause 6.2/ Page 44 of Petition	Clause 6.3 / Page 44 of Petition/ 1.25% PM	Clause 6.4/Page 44 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 45 of Petition	Clause 7.3/ Page 46 of Petition	Clause 10

11	5374 of 2020	Kanak Renewables	GESCOM	Wind	Clause 6.2/ Page 46 of Petition	Clause 6.3 / Page 46 of Petition/ 1.25% PM	Clause 6.4/Page 46 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 47 of Petition	Clause 7.3/ Page 48 of Petition	Clause 10
12	5375 of 2020	Ostro Mahawind	HESCOM	Wind	Clause 6.2/ Page 45 of Petition	Clause 6.3 / Page 46 of Petition/ 1.25% PM	Clause 6.4/Page 45 of Petition/ Obligation to pay 100% of the disputed amount	Clause 6.5/ Page 46 of Petition	Clause 7.3/ Page 48 of Petition	Clause 10

PETITIONS (SOLAR) - PPA CLAUSES DETAILS

Sl. Nos.	WP No.	SPV	Respondent ESCOMS	Wind/ Solar	PPA Clause for payment of Invoice	PPA Clause for Late Payment Surcharge	PPA Clause for Payment obligation	PPA clause for opening Letter of Credit	PPA Clause for monthly Joint Meter Reading	Dispute Redressal Mechanism Clause
1	5368 of 2020	Azure Earth Power	HESCOM	Solar	Clause 13.3.1/ Page 66 of Petition	Clause 13.4 / Page 67 of Petition/ 1.25% PM	Clause 13.7.1 & 13.7.2/Page 68 of Petition/Obligation to pay 95% of the outstanding invoice amount	Clause 13.6/ Page 67 of Petition	Clause 10.2/ Page 63 of Petition	Clause 18
2	5357 of 2020	Adyah Solar-Block 10	GESCOM	Solar	Clause 13.3.1/ Page 71 of Petition	Clause 13.4 / Page 72 of Petition/ 1.25% PM	Clause 13.7.1 & 13.7.2/Page 73 of Petition/Obligation to pay 95% of the outstanding invoice amount	Clause 13.6/ Page 72 of Petition	Clause 10.2/ Page 68 of Petition	Clause 18
3	5361 of 2020	Adyah Solar-Block 13	HESCOM	Solar	Clause 13.3.1/ Page 68 of Petition	Clause 13.4 / Page 69 of Petition/ 1.25% PM	Clause 13.7.1 & 13.7.2/Page 70 of Petition/Obligation to pay 95% of the outstanding invoice amount	Clause 13.6/ Page 69 of Petition	Clause 10.2/ Page 65 of Petition	Clause 18
4	5369 of 2020	Renew Agni Power	HESCOM	Solar	Clause 13.3.1/ Page 68 of Petition	Clause 13.4 / Page 72 of Petition/ 1.25% PM	Clause 13.7.1 & 13.7.2/Page 70 of Petition/Obligation to pay 95% of the outstanding invoice amount	Clause 13.6/ Page 69 of Petition	Clause 10.2/ Page 65 of Petition	Clause 18

PETITIONERS' CONTENTIONS

(i) The Respondent No.1 is the State of Karnataka,
while the Respondent No. 2 in all the petitions are the

respective Electricity Supply Companies (ESCOMS) which are statutory distribution licensees constituted under the Electricity Act, 2003 (herein referred as “the said Act of 2003” for brevity). The Respondent No.2 is a “State” within the meaning of Article 12 of the Constitution of India. The Respondent No.3-KPTCL performs **the functions of transmission of power in the entire State of Karnataka and also construction of stations and transmission lines and maintenance.**

(ii) It is contended that Respondent No.2-ESCOMs being statutory entities/authorities and instrumentalities of the State Government and wholly owned by the Govt. of Karnataka are discharging public, and statutory functions under the provisions of the said Act of 2003. The Respondent No.2-ESCOMs have an obligation to act fairly and reasonably in the discharge of their statutory and contractual functions. The act of non-payment of admitted and undisputed dues to the Petitioners-Generators is contrary to public good, public interest, illegal, unfair, arbitrary and therefore, contrary to Article 14 of the Constitution of India.

(iii) The petitioners have entered into PPAs as well as supplementary agreements with the Respondent No.2- ESCOMs for periods between 20-30 years. The payment of tariff approved by the respective State Electricity Regulatory Commissions, which is the Karnataka Electricity Regulatory Commissioner (KERC), in accordance with PPAs is a part of the ESCOM's statutory duty of procurement of electricity in accordance with the procedure and the contracts approved by the KERC, as per the KERC (Conditions of license for ESCOMs) Regulations, 2004. The Respondent No.2-ESCOMs cannot fulfill its statutory duty of procurement of electricity without paying the tariff for the energy procured from the Generators as specified by the KERC and the PPAs between the parties.

(iv) It is averred that the statutory duty of the Respondent No.2-ESCOMs to pay the tariff prescribed by the KERC, in accordance with the terms of the PPA entered into between the parties also arises from Section 61 of the Electricity Act, 2003 read with Regulation 21 of the KERC (Conditions of license for ESCOMs) Regulations, 2004, require the ESCOMs to act in accordance with the

process for procurement approved by the Commission and in accordance with the contracts approved by the Commission, which specifically states that the tariff determination process must be in accordance with commercially sound principles and ensure a reasonable return on investment of the Generators. It is submitted that permitting Respondent No.2-ESCOs to evade this statutory responsibility by delaying payment of dues for electricity supplied by the Generators is contrary to Section 61 of the said Act of 2003.

(v) It is contended that the Invoices are issued pursuant to a joint meter reading exercise and as per the tariff prescribed under the PPA. Respondent No.2-ESCOs has acknowledged the supply and quantum of electricity, despite which the ESCOs are arbitrarily withholding payment of the dues owed to the petitioner. The quantum of energy supplied by the petitioner and the tariff is admitted and undisputed by the respondents. The respondent No.2-ESCOs therefore is obligated to pay the petitioner as per the terms of the PPAs entered into between the parties. The respondent No.2-ESCOs has

also failed to provide the mandatory security towards non-payment of the tariff as prescribed under the PPA between the parties by failing to open irrevocable and revolving Letter of Credit in favour of the petitioner.

(vi) It is averred that the respondent No.2-ESCOMs has an obligation to make payment of the Invoices by the 5th day of the immediately succeeding month, in which the monthly bill/supplementary bill is issued by the petitioner as per the PPA. The petitioners are entitled to receipt of late payment surcharge for delays in payment as per the PPA. The non-payment of the petitioner's undisputed dues under the terms of the PPA has adversely affected the ability of the petitioner to proceed with the petitioner's operations, since the petitioner has an obligation to meet its expenses, liabilities and debt repayment obligations from the tariff received for the generation of electricity.

(vii) It is contended that the PPA expressly protects the rights of the petitioner by providing for payment of 95% of the Invoice amounts even in the case of a disputed invoice. The protection given to the petitioner is to ensure that the Generators are not prejudiced in the midst of

supplying electricity as per the terms of the PPA entered into between the parties. The Respondent No.2-ESCOMs can always recover the money from the Generators if there is excess payment for electricity supplied. However, the Generators will be severely prejudiced if their invoices are not honoured by the Respondent No.2-ESCOMs. Therefore, the non-payment of undisputed dues to the Petitioner No. 2 for electricity generated and supplied to the Respondent No. 2-ESCOMs is contrary to the public interest and public goods, as private generators may refrain from establishing generation of stations in Karnataka due to the arbitrary, unfair, and unreasonable actions of Respondent No. 2-ESCOMs in not honoring their payment obligations under the settled PPAs.

(viii) It is also contended that the arbitrary, unreasonable, and unjust negligence of the Respondent No. 2-ESCOMs of its statutory and contractual obligations has resulted in grave consequences for the petitioner, as the petitioner is finding it increasingly difficult to meet its debt repayment obligations and other liabilities; that the financing for the petitioner's projects is based primarily on

the timely payment of tariff by Respondent No. 2, as the petitioner will otherwise be unable to meet its debt obligations which will have a cascading effect on the financial health of the Petitioners and on the financial health of the banks and other financial institutions as well. The non-payment of statutory, admitted and undisputed dues to the Petitioner is therefore a matter of great public importance, especially since electricity is an essential good for the citizens, that the State Government procures from entities such as the Petitioner.

(ix) It is averred that supply of electricity is a fundamental right under Article 21 of the Constitution of India, as electricity forms a part of meaningful right to shelter under Article 21 of the Constitution of India. Respondent no. 2 is therefore discharging the functions of the State in ensuring that consumers are not prevented from access to their fundamental right to shelter under Article 21 of the Constitution of India. The willful default of Respondent No. 2 in not honoring its payment obligations has a significant impact on the health of the renewable energy sector as a whole as Generators will be unable to

continue generation of electricity due to the lack of return on their costs and investments.

(x) It is contended that the Respondent No.2- ESCOMs have an obligation to act in a reasonable, fair, and just manner even in contractual relations, especially when the state is performing a public function for public good through private persons. Procurement of electricity for the purpose of supply to various classes of consumers is a public function for public good which enables the state to meet its constitutional obligation of providing meaningful shelter and enabling commerce and industry. The Petitioners' credit rating and ability to raise finances for new projects are dependent on receiving timely payments from the Respondents as per the terms of the PPA entered into between the parties and approved by the KERC. The ESCOMs have an obligation to co-operate with the KERC in its measures to promote generation of renewable energy, and it is submitted that delaying payments of admitted dues to generators of renewable energy is contrary to the scheme of the Electricity Act, 2003.

(xi) It is averred that the Respondent No. 2 has an obligation to open and maintain a revolving and irrevocable letter of credit in favour of the Petitioner in accordance with the PPA entered into between the Parties. The Respondent No.2 has failed to open and maintain a revolving and irrevocable letter of credit in favour of the Petitioner contrary to the specific terms of the contract, and the non-compliance with an admitted term of the PPA entered into between the parties is arbitrary and violative of Article 14 of the Constitution of India. The irrevocable letter of credit is the only protection against such instances of non payment of the tariff dues of the Petitioner, and the Respondents have to mandatorily maintain an irrevocable LC as per the terms of the PPA.

(xii) It is contended that the tariff determination process carried out by the KERC is pursuant to Section 86 (1) (a) read with Sections 61 to 64 of the said Act of 2003. In the case of renewable energy, the tariff determination must also take into consideration Section 86(1)(e), which specifically casts a duty on the KERC to promote generation of electricity through renewable sources. The

tariff determination and the power procurement process are both functions regulated by the KERC. The two functions are intrinsically linked and not severable from each other as there can be no power procurement without the payment of tariff as prescribed by the KERC under the said Act of 2003.

(xiii) It is further averred that the provisions of the PPA that deal with tariff related aspects forms a statutory obligation and to that extent the tariff obligations are both statutory and contractual in nature. Therefore, the Respondent No.2 is not only in breach of its contractual functions but also in breach of its statutory functions under the provisions of the said Act of 2003. Respondent No. 2 being a deemed Distribution Licensee under Section 14 of the Electricity Act, 2003 has a statutory obligation to maintain capital adequacy, and creditworthiness to meet its payment obligations. The failure of Respondent No.2 to honor its undisputed payment obligations in a timely manner, is therefore arbitrary, contrary to the scheme of the 2003 Act, without any basis and a violation of the terms of its License under Section 14 read with Section 131 (2) of

the 2003 Act. The non-payment of tariff as per the manner in which it is prescribed in the PPA, approved by the KERC, in exercise of its regulatory function under Regulation 21 of the KERC (Conditions of license for ESCOMs) Regulations, 2004, is arbitrary and violative of Article 14 of the Constitution of India. The delay in payments of admitted dues is also contrary to Section 61(h) and 86(1) (e) of the Electricity Act, 2003, which specifically requires the appropriate commission, which is the KERC in the present instance to promote generation of electricity from renewable sources of energy.

3. The Respondent No.1 - the State and Respondent No.3 - KPTCL have not filed their statement of objections to the petition. The Respondent No. 2 - ESCOMs have filed their statement of objections resisting the petition.

CONTENTIONS OF RESPONDENT No.2-ESCOMs

(i) In addition to denying the various contentions urged in the petition, Respondent No.2-ESCOMs have contended that the petitions are not maintainable for the reason that the petitioners have efficacious alternative

remedy available to address the grievances raised in the above Petition. Section 86(1)(f) of the Electricity Act, 2003 provides for the Respondent No.2 to adjudicate upon disputes between a generating company and a distributing licensee. Section 86(1)(f) is a special and specific provision of law governing the disputes between a generating company and a distributing licensee and the KERC has been specially constituted to adjudicate on such disputes. All the contentions raised in the petition relate exclusively to the said PPAs and the actions of the Respondents around it and not otherwise. The said Act of 2003 establishes a hierarchy of remedies available to the Petitioner. So also, the PPAs stipulate that dispute resolution, either by way of adjudication or arbitration has to be done by the KERC which has to be approached by the petitioners. It is therefore contended that in view of availability of equally effective and alternative remedy for the petitioners to approach the KERC under Section 86(1)(f) of the said Act of 2003, the present petitions are liable to be dismissed as not maintainable.

(ii) It is contended that Government contracts generally have an impact on public welfare. Considering the impact of such Government contracts, Article 323-B of the Constitution provides for establishment of tribunals to deal with disputes affecting the public at large. If disputes arising out of non - payment of dues in all government contracts constituting a violation of a fundamental right are brought under the purview of the High Court's jurisdiction, there would be no need for any special tribunals. Article 322-B read with the provisions of the Electricity Act, 2003 are special provisions of law that govern the instant dispute and mandate the Petitioner to file necessary petition before the KERC and not by way of the present petitions.

(iii) It is averred that if this Court assumes writ jurisdiction over the issue at hand, a dangerous precedent will be set as all the matters under the jurisdiction of the KERC would be subsumed under the High Court's jurisdiction. If the KERC, a statutory body, equipped with technical and legal members, specifically constituted to deal with intricate disputes arising out of the Power Purchase Agreements is deprived of its jurisdiction at the

matter in hand on the ground that the act of non-payment of dues by a government company affects public interest at large; a negative precedent would be set, encouraging several litigants to circumvent the remedy readily available to them before approaching the Writ Courts. Through such an act of judicial adventurism, the purpose of establishing special courts and the mechanism for dispute resolution laid out in the Electricity Act, 2003 would be defeated. Moreover, the Petitioner's contention that the public interest is being affected can also be looked into by the KERC, as the provisions of the Act of 2003 mandates a balance of public and private interest in adjudication of all disputes. It is therefore contended that there is no merit in the petitions and that the same are liable to be dismissed.

REJOINDER OF THE PETITIONERS:

(i) In addition to controverting the various contentions urged by the Respondent No.2-ESCOMs in the defence, petitioners have pointed out in their rejoinder that the Respondent No. 2 has admitted the outstanding amounts towards the payment of electricity and that there is no

dispute on the issue of outstanding amounts, despite which the Respondent No. 2 has arbitrarily and repeatedly withheld payments due to the Petitioners. The issues of arbitrariness by the State in contractual matters and violation of Article 14 are required to be adjudicated and decided by this Hon'ble Court and therefore, the Petitioner has rightly approached this Court.

(ii) It is contended that the present writ petitions are maintainable against the State and/or State instrumentalities in contractual matters especially in cases such as the present instance, where the State is consistently acting arbitrarily and delaying payments of admitted dues to be made to the Petitioners. Petitioners have placed reliance upon the judgments of the Apex Court in order to contend that this Court may exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in matters, where a party is aggrieved by the action of a public body or authority especially when the action or conduct of a public body or authority is high handed, arbitrary, unjust and unlawful even in contractual

matters and even if there exists an arbitration clause/agreement in the contract.

(iii) It is also contended that the dues owed to the Petitioner are undisputed dues. The timely payment of tariff for electricity supplied is the foundational representation of the contract entered into with the Respondent No.1-State and the State owned Distribution Licensees i.e. Respondent No. 2 herein and that the Petitioner herein has rightly approached this Hon'ble Court particularly when Respondent No. 2 does not dispute that the PPAs have an element of public interest. It is averred that the payments owed to the Petitioner are undisputed dues towards supply of electricity to the State of Karnataka and that the quantum of dues or the electricity supplied is not in dispute, as well the fact that the obligation to make payment within fifteen days of the receipt of the invoices is also not in dispute. The Respondents are also aware that the Petitioners are dependent on prompt payment of dues. The commercial feasibility of the Project and the financial health of the electricity generators depend on the prompt payment of PPA tariff by the Respondents. It is therefore contended

that there is no merit in any of the contentions urged by Respondent No.2 and that petitioners are entitled to the relief's sought for by them in the petitions.

4. Heard Sri.K.G.Raghavan and Sri.Sajjan Poovaya, learned Senior Counsel appearing for the Petitioners, learned AGA as well as the learned counsel for Respondents 2 and 3 and perused the materials on record.

5. In addition to reiterating the various contentions urged in the petitions and referring to the documents produced by the petitioners, both the learned senior counsel for the petitioners submit that indisputably, petitioners have entered into separate PPAs and supplementary agreements with the respective ESCOMS for development of power projects across various places in Karnataka. Referring to the decisions of the Apex Court, learned senior counsel submitted that writ petitions are maintainable even in contractual matters relating to the PPAs, even though the same contain an arbitration clause/agreement, particularly when no disputed or

complicated questions of fact or contentious issues arise for consideration in the petitions.

5.1 Learned senior counsel invited my attention to the material on record including the relevant clauses in the PPAs in order to contend that pursuant to joint meter readings in the presence of both the Petitioner and Respondent No.2-ESCOs, despite the Petitioner raising invoices/bills for payments after conducting the requisite joint meter readings, the Respondent No.2 did not comply with its liability to make payment in favour of the petitioner. It is also submitted that the Respondent No.2 did not raise any dispute with regard to its liability to make payment nor took recourse to or resort to the dispute resolution mechanism stipulated under the PPAs. So also, the Respondent No.2 did not open a Letter of Credit as enjoined under the PPAs. It is therefore contended that the Respondent No.2-ESCOs cannot avoid or evade to honour or fulfil their liabilities and obligations under the PPAs by refusing to make payment, open letter of credit etc., and consequently, necessary directions are to be issued to them in this regard.

5.2 Learned senior counsel submit that Section 86(1)(f) of the Act of 2003 Act will apply only if there are disputes between the Petitioner and Respondent No.2 and not otherwise. Elaborating their submissions, learned senior counsel submit that the material on record viz., the joint meter readings conducted in the presence of the Petitioner as well as Respondent No 2., the bills/invoices raised by the Petitioner, complete inaction on the part of the Respondent to raise any dispute with regard to subject invoices/bills either prior to filing of the petition or thereafter clearly establish that there is no dispute between the Petitioner and Respondent No. 2 as regards their liability to make payments which requires adjudication/arbitration by the KERC under Section 86(1)(f); it is therefore contended that in the absence of any dispute between the Petitioner and Respondent, the question of the Petitioners seeking adjudication/resolution of a non-existing dispute before the KERC does not arise, particularly when the remedy under Section 86(1)(f) is dependent upon existence of a dispute between Petitioner and Respondent No. 2, and it is only

existing disputes that can be adjudicated/arbitrated by KERC under the said provision.

5.3 Learned senior counsel further submit that alternatively, even assuming but not conceding that Respondent No.2-ESCOs can dispute their liability with regard to payment of the amounts payable to the Petitioners, the PPAs make it obligatory/mandatory for the ESCOs to pay 95%(Solar) and 100%(Wind) of the invoice amounts upfront to the petitioners before raising a dispute and consequently, it is necessary that directions are issued to the Respondent No.2 to pay the dues to the petitioners, open a monthly irrevocable revolving Letter of Credit in favour of the petitioners; so also, Respondent No.2-ESCOs are to be issued necessary directions to honour all their obligations towards the petitioners under the PPAs henceforth, in the future also without driving the Petitioners to initiate fresh proceedings against the ESCOs for repeated defaults committed by them. In support of his submissions, learned senior counsel has placed reliance upon the following decisions;

(i) Arkay Energy (Rameswaram) Limited Vs. Tamilnadu Generation & Distribution Company Limited – (2021) 224 Comp Cas 381;

(ii) Union of India & Ors. Vs. Tania Construction Private Limited (2011) 5 SCC 697;

(iii) HarbansalSahnia & Anr. Vs. Indian Oil Corp Ltd & Ors. – (2003) 2 SCC 107;

(iv) Major (Retd) Inder Singh Rekhi Vs. Delhi Development Authority – (1988) 2 SCC 338;

(v) Unitech Limited & Ors Vs. Telangana State Industrial Infrastructure Corporation & Ors – Civil Appeal No.317/2021;

(vi) ABL International Ltd & Anr Vs. Export Credit Guarantee Corporation of India & ors. – (2004) 3 SCC 553;

(vii) Embassy Property Developments Pvt. Ltd Vs. State of Karnataka & ors. – (2020) 13 SCC 308.

6. Per contra, learned counsel for Respondent No.2 while reiterating the various contentions urged in the statement of objections submitted that writ petition is not maintainable since the dispute relates to contractual matter arising out of the PPAs which contain a dispute redressal mechanism including arbitration and approaching the KERC; it is submitted that in view of availability of equally

efficacious and alternative remedy of adjudication/arbitration of disputes under Section 86(1)(f) of the Act 2003 as well the PPAs, the Petitioners would necessarily have exhaust their remedy by approaching the KERC for adjudication/arbitration of their disputes and without doing so, the Petitioners are not entitled to invoke the extraordinary jurisdiction of the court in the present petition. It is contended that the present petitions arising out of the contractual matters and involving contentious issues and disputed/complicated questions of law and fact the same cannot be adjudicated upon by this court in the present petitions which are liable to be dismissed. In support of his contentions, learned counsel for Respondent No.2-ESCOs relied upon the following decisions:

(i) Gujarat Urja Vikas Nigam V. Essar Power Ltd – (2008) 4 SCC 755;

(ii) Spectrum Power Generation Limited V. TCALO – Appeal No.90/2011 Dated 10.08.2011 by the Electricity Appellate Tribunal;

(iii) Nabha Power Vs. Punjab Power State Corporation – Appeal No.283/2015 Dated 17.05.2018 by the Electricity Appellate Tribunal;

(iv) Gujarat Urja Vikas Nigam Vs. Solar Semiconductor – (2017) 16 SCC 498;

(v) Tachocline Renewables Vs. KERC – W.P.No.51696/2017 dated 05.04.2018;

(vi) State of Gujarat Vs. Utility Users Welfare Association – (2018) 6 SCC 21.

7. I have given my anxious consideration to the rival submissions and perused the material on record.

8. The following points arise for consideration in the present petitions;

- I. *Whether the present petitions in relation to a contract i.e., PPAs between the Petitioner and the Respondent No. 2-ESCOMs are maintainable under Article 226 of Constitution of India ?*
- II. *Whether the present petitions are maintainable in view of dispute redressal mechanism contained in the PPAs ?*
- III. *Whether the present petitions are maintainable in view of Section 86(1)(f) of the Electricity Act, 2003 ?*
- IV. *Whether the Petitioners are entitled to the reliefs sought in the petition?*

Re: Point No.1

Before advertng to this issue, it is necessary to refer to certain covenants in the PPAs with regard to joint meter reading/measurements, raising of invoices, payment of bills, late payment charges, opening of letters of credit etc.,

(i) As can be seen from the table extracted above, insofar as the petitioners who are operating solar power plants are concerned, Clause No.10 of the PPAs stipulates the procedure for joint meter reading/measurements. Clause No.13 provides for raising of bills/invoices by the petitioners and payment by the ESCOMs to them as well the obligation on the part of the ESCOMs to open revolving and irrevocable letters of credit in favour of the petitioners. Clause No.13.7 mandates that even if the ESCOMs dispute the bills/invoices, the ESCOMs would necessarily have to pay 95% of the disputed amount to the petitioners as a mandatory pre-condition and only thereafter, the ESCOMs would be entitled to pursue the said dispute. Clause No.18 provides for the dispute resolution mechanism.

(ii) Insofar as the petitioners who are operating wind power plants are concerned, Clause No.7 of the PPAs

stipulates the procedure for joint meter reading/measurements. Clause No.6 provides for raising of bills/invoices by the petitioners and payment by the ESCOMs to them as well the obligation on the part of the ESCOMs to open revolving and irrevocable letters of credit in favour of the petitioners. Clause No.6.4 mandates that even if the ESCOMs dispute the bills/invoices, the ESCOMs would necessarily have to pay 100% of the disputed amount to the petitioners as a mandatory precondition and only thereafter, the ESCOMs would be entitled to pursue the said dispute. Clause No.10 provides for the dispute resolution mechanism.

(iii) The material on record indicates that in the instant cases, the Respondent No.2-ESCOMs did not dispute any of the subject invoices of the petitioners nor raise any dispute in accordance with the aforesaid clauses of the PPAs. So also, even after filing of the present petitions, the ESCOMs did not raise any dispute as regards their obligation and liability to make payment and open irrevocable and revolving letters of credit in favour of the petitioners as per the PPAs; on the other hand, several

payments have been made by the ESCOMs in favour of some of the petitioners during the pendency of the petitions thereby admitting their duties, obligations and liabilities under the PPAs.

(iv) Section 61 of the said Act of 2003, inter-alia, requires the KERC to ensure that (a) generation, transmission, distribution and supply of electricity are conducted on commercial principles; (b) the factors which would encourage competition, efficiency, economical use of the resources, good performance, and optimum investments are promoted; and (c) co-generation and generation of electricity from renewable sources of energy is promoted.

(v) In addition to the above, the PPA is approved by the KERC under Regulation 21.4 of the KERC (Conditions of license for ESCOMs) Regulations, 2004. The KERC monitors the PPAs to ensure that the ESCOMs purchase electrical capacity and/or energy in an efficient and economical manner under a transparent power procurement process, and in accordance with the principles specified under Section 61 of the Act. Therefore, the PPA

has a statutory flavour and is not to be treated as a normal commercial contract between the Parties.

(vi) The question with regard to the jurisdiction of this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in contractual matters in relation to the PPAs entered into between the petitioners and Respondent No.2-ESCOMs which is a 'State' within the meaning of Article 12, is well settled by several decisions of the Apex Court and this Court. In the case of **Century Spinning and Manufacturing Company Ltd. & Ors. Vs The Ulhasnagar Municipal Council & Anr.-1970 (1) SCC 58**, the Apex Court held as under:

“ The High Court may, in exercise of its discretion, decline to ,exercise its extra-ordinary jurisdiction under Art. 226 of the Constitution. But the discretion is judicial : if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extra-ordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust, is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any

complicated questions of fact for determination, -and the claim could not be characterised as frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the Court we are satisfied that the Company was ,entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried.”

(vii) In the case of **ABL International Ltd. vs Export Credit Guarantee Corpn. of India Ltd – (2004) 3 SCC 553**, the Apex Court held as under;

" From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

(viii) In the case of **Kumari Shrilekha Vidyarthi vs State of U.P - (1991) 1 SCC 212**, it was held as under:

“.....Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts which cannot co-exist. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains `Directives Principles of State Policy which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action to

realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article-14 non-arbitrariness which is basic to rule of law - from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

There is an obvious difference in the contracts between private parties and contracts to which the State is a party, Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements

of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also fails within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

The State cannot be attributed the sprit personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in what- ever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

...Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14.

Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the

ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

....It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic tests in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.”

(ix) In its recent decision in the case of **Uttar Pradesh Power Transmission Corporation Limited v. C.G Power and Industrial Solutions and Limited and Anr - 2021 SCC OnLine SC 383**, the Apex Court reiterated that a writ petition is maintainable in contractual matters even if the contract contains an arbitration clause/agreement. Similarly, in the case of **Unitech**

Limited & Ors v. Telangana State Industrial Infrastructure Corporation & Ors - 2021 SCC OnLine SC

99, it was held as under:

“ However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters. 33 A two judge Bench of this Court in ABL International Ltd. v. Export Credit Guarantee Corporation of India⁷ [ABL International] analyzed a long line of precedent of this Court⁸ to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution.....

This exposition has been followed by this Court, and has been adopted by three- judge Bench decisions of this Court in State of UP v. Sudhir Kumar⁹ and Popatrao Vynkatrao Patil v. State of Maharashtra¹⁰. The decision in ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters. (2004) 3 SCC 553 K.N. Guruswamy v. State of Mysore, AIR 1954 SC 592; Gujarat State Financial Corporation. v.

Lotus Hotels (P) Ltd, (1983) 3 SCC 379; Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769 2020 Scconline SC 847 Civil Appeal 1600 of 2000 (Supreme Court of India) PART E Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under law. If the state instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution would lie. This principle was recognized in ABL International.....Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107; Ram Barai Singh & Co. v. State of Bihar & Ors., (2015) 13 SCC 592 power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction

under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does not oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

(x) In the instant case, the material on record clearly discloses that Respondent No.2-ESCOMs have not fulfilled, discharged or honoured the obligations and duties cast upon them under the PPAs; on the other hand, during the pendency of the present petitions, some of the ESCOMs have paid certain amounts towards the dues claimed by the petitioners under their invoices. So also, the ESCOMs have not raised any dispute with regard to their liability to make payment or the entitlement of the petitioners under the invoices in addition to not disputing their liability to open revolving and irrevocable letters of credit in favour of the petitioners as required under the PPAs. The material on

record and the rival contentions do not give rise to disputed/complicated questions of fact or contentious issues. As held by the Apex Court, the failure on the part of the Respondent No.2-ESCOMs to fulfil, discharge and honour their duties, obligations and liabilities under the PPAs clearly establishes that the Respondent No.2-ESCOMs are acting in an arbitrary, illegal, unfair, unreasonable, unjust and irrational manner which is violative of Article 14 of the Constitution of India warranting interference by this Court in the present petitions. Under these circumstances, in the facts of the case on hand, I am of the considered opinion that the petitions are maintainable.

Accordingly, **Point No.1** is answered in favour of the Petitioners by holding that the present petitions are maintainable before this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

Re: Point No.2

(i) This point relates to maintainability of the petitions in the light of dispute redressal mechanism contained in the

PPAs entered into between the petitioners and the Respondent No.2-ESCOMs. As stated supra, Clause No.18 of the PPAs provide for resolution of disputes as per the procedure provided therein. A perusal of Clause No.18(Solar) and Clause No.10(Wind) of the PPAs will indicate that the petitioners and the Respondent No.2-ESCOMs have agreed to resolve disputes arising out of the PPAs by amicable discussions/talks failing which the parties would have to seek resolution of their disputes before the KERC by way of arbitration or adjudication. It is the contention of the ESCOMs that in view of the dispute resolution mechanism contained in the PPAs, the present petitions are not maintainable before this Court.

(ii) In this context, it is necessary to state that a perusal of Clause No.18 of the PPAs will indicate that in order to invoke the said clause, it is absolutely essential for an actual dispute to exist between the petitioners and the Respondent No.2-ESCOMs; in other words, existence of a dispute is a sine-qua-non for the petitioners or the ESCOMs to invoke the said clause and seek resolution as per the procedure provided under Clause No.18(Solar) and

Clause No.10(Wind); it follows there from that in the absence of any dispute, Clause No.18(Solar) and Clause No.10(Wind) of the PPAs would not get attracted nor become applicable and consequently, the question of the parties invoking the said clause would not arise.

(iii) As stated supra, the material on record indicates that though procedure prescribed in Clauses 10 and 13 of the PPAs was followed and joint measurement/meter readings were recorded in the presence of both petitioners and Respondent No.2-ESCOs pursuant to which the petitioners had raised the subject invoices/bills and called upon the Respondent No.2 to make payment and open letters of credit, the Respondent No.2 did not fulfil, discharge or comply with their contractual obligations and duties under the PPAs; so also, the Respondent No.2 did not raise or put forth any dispute with regard to any of the invoices/bills as required in the aforesaid clauses and on the other hand, the Respondent No.2 has made certain payments to the petitioners, that too even after filing of the present petitions. To put it differently, so long as the Respondent No.2 did not raise any dispute with regard to

the bills/invoices of the petitioners or the liability of the Respondent No.2 to make payment to the petitioners, Clause No.18(Solar) and Clause No.10(Wind) of the PPAs which provides for a dispute redressal mechanism neither gets attracted nor is the said clause applicable/invocable by the petitioner to seek redressal of their grievances. Under these circumstances, in the absence of any dispute raised by the Respondent No.2 with regard to any of the amounts payable to the petitioners under the PPAs, it cannot be said that the present petitions are not maintainable.

(iv) As stated supra, before either party has to take steps to seek recourse to the dispute redressal mechanism provided in the PPAs, it is essential that there exists a dispute which requires to be resolved; the said dispute redressal mechanism provides for resolution of disputes by way of amicable settlement/adjudication/arbitration, as the case may be, in accordance with the aforesaid Clause No.18(Solar) and Clause No.10(Wind). It cannot be gainsaid that dispute resolution by way of amicable settlement/adjudication/arbitration presupposes existence of a dispute raised by the Respondent No.2-ESCOs. In

the case of *Major (Retd) Inder Singh Rekhi v. Delhi Development Authority (1988) 2 SCC 338*, the Apex Court has held that existence of a dispute necessarily requires an assertion of claim by one party and the denial of the claim by the other party; in the instant case, in the absence of any dispute between the petitioner and Respondent No.2 with regard to the PPAs, the contention of the Respondent No.2 that the petitions are not maintainable in view of the dispute resolution mechanism contained in the PPAs is clearly devoid of merit.

Accordingly, **Point No.2** is also answered in favour of the petitioners by holding that the present petitions are maintainable before this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

Re: Point No.3

(i) The Respondent No.2-ESCOMs have contended that the petitions are not maintainable in view of the equally efficacious and alternative remedy available to the petitioners under Section 86(1)(f) of the Electricity Act,

2003. In order to appreciate this contention, it is necessary to extract the said provision which reads as under:

“86. Functions of State Commission -

(1) The State Commission shall discharge the following functions, namely:

(a) xxxxxxxxxx

(b) xxxxxxxxxx

(c) xxxxxxxxxx

(d) xxxxxxxxxx

(e) xxxxxxxxxx

*(f) adjudicate upon the **disputes** between the licensees and generating companies and to refer any dispute for arbitration;”*

(ii) Reliance is placed upon the aforesaid provision by the Respondent No.2-ESCOMs in order to contend that in the light of the remedy available to the petitioners to seek redressal of their grievances before the KERC as provided under Section 86(1)(f), the present petitions are not maintainable. This contention urged on behalf of the ESCOMs also completely ignores the specific usage of the word, “**dispute**” in Section 86(1)(f); recourse to the remedy available under this provision also presupposes existence of a dispute between petitioner and the ESCOMs and in the absence of any dispute in relation to the PPAs, the

question of the petitioner taking recourse to remedies of adjudication or reference to arbitration by the KERC would not arise.

(iii) A plain reading of Section 86(1)(f) will indicate that in order to invoke the said provision, it is absolutely essential for an actual dispute to exist between the petitioners and the Respondent No.2-ESCOMs; in other words, existence of a dispute is a sine-qua-non for the petitioners to invoke the said provision and seek redressal of their grievances; it follows there from that in the absence of any dispute, Section 86(1)(f) would neither get attracted nor become applicable in the facts of the instant case.

(iv) As stated supra, the material on record indicates that though procedure prescribed in Clauses 10 and 13 of the PPAs was followed and joint measurement/meter readings were recorded in the presence of both petitioners and Respondent No.2-ESCOMs pursuant to which the petitioners had raised the subject invoices/bills and called upon the Respondent No.2 to make payment and open letters of credit, the Respondent No.2 did not fulfil, discharge or comply with their contractual obligations and

duties under the PPAs; so also, the Respondent No.2 did not raise or put forth any dispute with regard to any of the invoices/bills as required in the aforesaid clauses and on the other hand, the Respondent No.2 has made certain payments to the petitioners, that too even after filing of the present petitions. To put it differently, so long as the Respondent No.2 did not raise any dispute with regard to the bills/invoices of the petitioners or the liability of the Respondent No.2 to make payment to the petitioners, Section 86(1)(f) neither gets attracted nor is the said provision applicable/invocable by the petitioner to seek redressal of their grievances. Under these circumstances, in the absence of any dispute raised by the Respondent No.2 with regard to any of the amounts payable to the petitioners under the PPAs, it cannot be said that the present petitions are not maintainable.

(v) The judgement of the Hon'ble Supreme Court in the case of ***Gujarat Urja Vikas Nigam Limited v. Essar Power Ltd - (2008) 4 SCC 755*** relied upon by the Respondent No.2 pertains to the powers of the State Electricity Regulatory Commission under Section 86 (1) of

the Electricity Act to refer disputes to arbitration. So also, the judgement of the Apex Court in the case of ***State of Gujarat v. Utility Users Welfare Association –(2018) 6 SCC 21*** pertains to the nature of the functions of the State Electricity Regulatory Commissions and the need for a judicial member to possess legal qualifications and to mandatorily be part of the State Electricity Regulatory Commissions, to ensure that the adjudicatory functions of the State Electricity Regulatory Commissions are duly discharged; both these judgments are clearly inapplicable to the facts of the instant case given the fact that no dispute has arisen or been raised between the petitioner and Respondent No.2-ESCOMs with regard their obligations and liability to honour the terms and conditions of the PPAs.

(vi) Similarly, the decision in the ***Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Pvt Ltd. –(2017) 16 SCC 498*** is also inapplicable to the facts of the present case, as this judgement pertains to the scope of inherent powers of the State Commissions and does not limit the powers of this

Court under Article 226 of the Constitution of India. The other judgements cited by the Respondent No.2 are judgements of the Appellate Tribunal for Electricity which set out the powers of the KERC, and cannot have a bearing on the writ jurisdiction of this Court.

(vii) As stated supra, before either party has to take steps to seek recourse to Section 86(1)(f), it is essential that there exists a dispute which requires to be resolved; the said provision provides for resolution of disputes by way of adjudication/arbitration, as the case may be. As held by the Apex Court in *Major (Retd) Inder Singh Rekhi's case*(supra), existence of a dispute necessarily requires an assertion of claim by one party and the denial of the claim by the other party; in the instant case, in the absence of any dispute between the petitioner and Respondent No.2 with regard to the PPAs, the contention of the Respondent No.2 that the petitions are not maintainable in view of the Section 86(1)(f) of the Electricity Act, 2003 is clearly devoid of merit.

Accordingly, **Point No.3** is also answered in favour of the petitioners by holding that the present petitions are

maintainable before this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

Re: Point No.4

(i) The last question that arises for consideration is with regard to the relief's sought for by the petitioners and the orders to be passed/directions to be issued in the petitions. As stated supra, petitioners seek directions to the Respondent No.2-ESCOMs to pay the outstanding dues covered under the subject bills/invoices to the petitioners as well as continue to pay all the amounts in respect of the bills/invoices raised by the petitioners in future also as per the PPAs in addition to directions to be issued to open irrevocable and revolving letters of credit in favour of the petitioners towards the payments/dues payable by the ESCOMs. In this context, learned Senior Counsel for the petitioners submitted that in the interest of all power generating companies as well as the public at large, it is essential that general guidelines and suitable/appropriate directions are issued to all the ESCOMs in the State of

Karnataka to honour, discharge and fulfil their obligations and duties under the PPAs.

(ii) The material on record indicates that Respondent No.2's failure to make payments to the Petitioners is a consistent pattern which has led to a serious impediment for the Petitioners to carry on their work. Respondent No.2's failure to make payments in a timely manner has serious ramifications on the Petitioners' ability to continue to generate energy, which, needless to say, has a drastic and large-scale impact on the generation and supply of renewable energy. It cannot also be gainsaid that Respondent No.2 collects and receives monies from consumers for the supply of the energy generated by the Petitioners and other power generating companies. It is therefore in public interest and in the interest of preserving energy reforms that necessary directions are to be issued to Respondent No.2 to abide by the terms of the PPAs thereby preventing it from casting aside its solemn obligations under statutory contracts.

(iii) It is pertinent to point out that the Ministry of New and Renewable Energy ("**MNRE**"), granted must-run status

to renewable energy projects vide Office Memorandum, dated 1.4.2020. The MNRE, in its O.M., dated 1.4.2020, further stated that the renewable energy generators were to be paid their dues on time regardless of the Moratorium granted by the Power Ministry to ESCOMs/Distribution Licensees in the wake of Covid-19. The MNRE also issued a letter, dated 6.4.2020, directing the ESCOMs/Distribution Licensees pan India to open Letters of Credit as per the terms of the PPA as this is a pan India issue.

(iv) The conduct of the Respondent No. 2 is also directly contrary to Section 86(1) (e) which requires the KERC to promote generation of electricity through renewable sources of energy. The Respondent No.2 has a duty to act in the object and spirit of Section 86(1) (e) and aid the function of the KERC in promoting generation of energy from renewable sources. In ***Unitech Limited's case***(supra), the Apex Court has also held that investors who respond to the representations held out by the State while investing in public projects are legitimately entitled to assert that the representations must be fulfilled and to enforce compliance with duties which have been

contractually assumed. It is therefore clear that appropriate directions are to be issued to the ESCOMs to honour all their obligations under the PPAs.

(v) Learned counsel for the ESCOMs submitted that huge amounts due to the ESCOMs have not been paid by Rural Local Bodies, Urban Local Bodies, State Government dues, subsidy dues from farmers etc., and this has resulted in the ESCOMs not being in a position to pay the dues to the power generating companies including the Petitioners on time. It is also submitted that in respect of some of the petitioners, the ESCOMs have either already opened letters of credit or renewed existing letters of credit; so also, the ESCOMs have made payments to some of the petitioners during the pendency of these petitions. Further, learned counsel for the ESCOMs have also filed various Memos along with documents in this regard. The said Memos, documents and submissions of the learned counsel for the ESCOMs are placed on record.

(vi) In view of the aforesaid facts and circumstances, I am of the considered opinion that the petitioners are entitled to the relief's sought for by them in the petitions and

consequently, Respondent No.2-ESCOMs are to be directed to honour and discharge all their obligations and liabilities under the PPAs including making payment of the outstanding dues to the petitioners and to continue to make timely and prompt payments henceforth in the future also in; so also, the ESCOMs are to be directed to open / renew irrevocable and revolving monthly letters of credit in favour of the petitioners so as to ensure prompt, timely and regular payments being made to the petitioners. Further, general guidelines are also to be issued to all the ESCOMs in the State of Karnataka to honour and discharge all their obligations and liabilities under the PPAs entered into with anyone including making payments, opening / renewing letters of credit etc., in favour of all the power generators.

Accordingly, **Point No.4** is answered in favour of the petitioners by holding that the petitioners are entitled to the relief's sought for in the petitions and necessary directions and guidelines are to be issued to the ESCOMs.

9. In the result, I pass the following:

ORDER

(i) All the petitions are hereby allowed;

(ii) The Respondent No.2-ESCOMs in all the petitions are directed to honour, discharge and fulfil their duties, obligations and liabilities under the Power Purchase Agreements(PPAs) entered into between the Petitioners and Respondent No.2-ESCOMs;

(iii) The Respondent No.2-ESCOMs in all the petitions are directed to pay and clear all the outstanding dues payable by the ESCOMs in favour of the petitioners in relation to all the bills/invoices of the petitioners as on date;

(iv) The Respondent No.2-ESCOMs in all the petitions are also hereby directed to henceforth make prompt, regular and timely payments in favour of the petitioners without any delay in relation to all future bills/invoices also;

(v) The Respondent No.2-ESCOMs in all the petitions are also hereby directed to forthwith open / renew monthly irrevocable letters of credit in terms of the PPAs in favour of the petitioners for the purpose of enabling and ensuring payments of all amounts due to the petitioners from the ESCOMs;

**GENERAL GUIDELINES TO BE ISSUED TO ALL
ELECTRICITY SUPPLY COMPANIES(ESCOMS) AND
THE STATE OF KARNATAKA**

(i) All ESCOMs are directed to honour, discharge and fulfil their duties, obligations and liabilities under the Power Purchase Agreements(PPAs) entered into between the Power Generators and ESCOMs;

(ii) All ESCOMs are directed to henceforth make prompt, regular and timely payments in favour of the power generators without any delay in relation to all future bills/invoices of the power generators;

(iii) All ESCOMs are also hereby directed to forthwith open / renew monthly irrevocable letters of credit in terms of the PPAs in favour of the power generators for the purpose of enabling and ensuring payments of all amounts due to the power generators from the ESCOMs;

(iv) Registry is directed to send a copy of this order to the following persons:-

a) The Karnataka Electricity Regulatory Commission,
Bengaluru.

b) All Electricity Supply Companies (ESCOMs) in the entire State of Karnataka.

c) The Principal Secretary, Department of Energy, State of Karnataka.

d) The Chief Secretary, State of Karnataka.

SD/-
JUDGE

Srl.