

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 82 OF 2018 &**  
**IA NO. 73 OF 2019 ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

**Dated:** 29<sup>th</sup> January, 2019

**Present:** Hon'ble Mr. Justice N.K. Patil, Judicial Member  
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

**In the matter of:**

**Jindal India Thermal Power Limited**

Through it's Director  
Plot No. 12, Sector-B, Pocket-1,  
Local Shopping Complex, Vasant Kunj,  
New Delhi-110 070

..... Appellant

***VERSUS***

**1. Central Electricity Regulatory Commission**

Through it's Secretary  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building, 36, Janpath,  
New Delhi-110 001

**2. Power Grid Corporation of India**

Through it's Chairman  
B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi-110 016

**3. Central Electricity Authority**

Through it's Secretary  
Sewa Bhawan, Rama Krishna Puram,  
New Delhi-110 066

..... Respondents

Counsel for the Appellant (s) : Mr. Matragupta Mishra  
Mr. Hemant Singh  
Mr. Lakshyajit Singh Bagdwal

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1  
Ms. Suparna Srivastava for R-2

**The Appellant has presented the instant Appeal seeking the following reliefs:**

- (a) To set aside the Impugned Order dated 20.09.2017.
- (b) To pass such other or further orders as this Respondent Tribunal may deem appropriate.

## **ORDER**

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

1. Jindal India Thermal Power Limited, New Delhi (in short, the "Appellant") is questioning the legality and validity of the impugned Order dated 20.09.2017 passed in Petition No. 55/MP/2015 on the file of the Central Electricity Regulatory Commission, New Delhi, first Respondent herein, has filed the instant appeal, being No. 82 of 2018, under Section 111 of the Electricity Act, 2003 for considering the following questions of law:

- A. Whether the Respondent Commission was right in rejecting the plea of the existence of the force majeure events by the Appellant?
- B. Whether the Respondent Commission has committed an error by observing that cancellation of coal block by the order of the Hon'ble Supreme Court of India is not a force majeure event within the clause 9.0 of the BPTA?
- C. Whether the Respondent Commission can brush aside the absence of long term bids for procurement of power by Discoms/State Utilities as a commercial risk without appreciating the historical significance of which contributed towards investment by private developers in the business of generation of power?
- D. Whether the Respondent Commission has failed to exercise its regulatory power while adjudicating upon the issues brought before it by the Appellant?

**The brief facts leading to the present case are as follows:**

2. The learned counsel, Mr. Matrugupta Mishra, appearing for the Appellant, at the outset, submitted that, the only principal issue that arises for our consideration in the instant case, i.e. whether the order impugned passed by the Central Electricity Regulatory Commission (in short, “first Respondent/CERC”) is sustainable in law.

3. To substantiate his submissions, the counsel for the Appellant was quick to point out and taken us through the cause title of the impugned Order passed by the first Respondent/CERC where it emerged that the Coram consisting of three members have signed the impugned Order dated 20.09.2017. As a matter of fact, this matter has been heard with the Coram of two members only but when the order was issued it emerged that the three members have signed the impugned Order. The signing of the three members and releasing the order is contrary to the relevant Regulations of the first Respondent/CERC. Therefore, he vehemently submitted that, the impugned Order passed by the first Respondent/CERC cannot be sustainable and is liable to be set aside at threshold on this ground alone without going into the merits and demerits of the case and all the contentions of both the parties may kindly be left open.

4. ***Per-contra***, the learned counsel, Mr. Sethu Ramalingam, appearing for the first Respondent/CERC, inter-alia, contended and submitted that, in the course of hearing of the Appeal, it transpired that while the impugned order was

signed by the three members of the Commission, only two of them were present when the matter was finally heard. The Appellant has placed on records the papers in support of the above vide the IA under reply. Therefore, the first Respondent/CERC respectfully submitted that, only two members were present during the final hearing of the petition on 10.09.2015 and inadvertently the final order dated 20.09.2017 was signed by three members of the Respondent Commission. It is also most respectfully submitted that, the above error is purely an inadvertent omission of the rarest of rare nature. Therefore, he prayed that this Hon'ble Tribunal may take the above submission into account and pass a suitable order in the matter in the interest of justice and equity and the instant appeal may be disposed of.

5. ***Per-contra***, the learned counsel, Ms. Suparna Srivastava, appearing for the second Respondent/PGCIL, inter-alia, contended and submitted that, submissions of the counsel for the Appellant and the first Respondent/CERC, as stated supra, may be taken on record and in the light of their submissions, this Hon'ble Tribunal may pass an appropriate order to meet the ends of justice.

6. Submissions of the learned counsel for the Appellant and the Respondent Nos. 1 and 2, as stated supra, are placed on record.

7. We have heard the counsel appearing for the Appellant and the Respondent Nos. 1 and 2.

8. Third respondent, though served, is unrepresented.

9. After careful consideration of the submissions made by the learned counsel for the Appellant and the Respondent Nos. 1 and 2, the only core issue that arises for our consideration in the instant appeal is as under:

*Whether the impugned Order dated 20.09.2017 passed in Petition No. 55/MP/2015 on the file of the Central Electricity Regulatory Commission, New Delhi is sustainable in law?*

10. As rightly pointed out by the counsel for the Appellant, it is not in dispute that only two members were present when the matter was finally heard and this aspect has also been categorically admitted by the first Respondent/CERC in their reply dated 28.01.2019 stating that only two of them were present when the matter was finally heard. It is significant to note that the counsel for the first Respondent/CERC has specifically stated that the first Respondent/CERC respectfully submitted that, only two members were present during the final hearing of the petition filed by the Appellant on 10.09.2015 and inadvertently the final order dated 20.09.2017 was signed by three members of the Respondent Commission.

11. Further, it is respectfully submitted that, the above is purely an inadvertent omission of the rarest of rare in nature. Therefore, the counsel for the first Respondent/CERC fairly submitted that, this Hon'ble Tribunal may take the

above submission into account and a balanced and suitable order may kindly be passed in the matter in the interest of justice and equity.

12. Taking into consideration the submissions of the learned counsel for the Appellant and the Respondent Nos. 1 and 2, the impugned Order dated 20.09.2017 passed by the first Respondent/CERC in Petition No. 55/MP/2015 cannot be sustainable and is liable to be vitiated on this ground alone.

13. It is worthwhile to extract the statement of the first Respondent/CERC in its reply dated 28.01.2019 in paragraphs 2 to 4 which reads as under:

*“2. That the Appellant has challenged the order dated 20.09.2017 in Petition No. 55/MP/2015 passed by the Respondent Commission. In the course of the hearing of the Appeal, it transpired that while the impugned order was signed by the three members of the Commission, only two of them were present when the matter was finally heard. The Appellant has placed on records, the papers in support of the above vide the IA under reply.*

*3. Respondent Commission respectfully submits that only two members were present during the final hearing of the Petition on 10.09.2015 and inadvertently the final order dated 20.09.2017 was signed by three members of the Respondent Commission. It is also respectfully submitted that the above is purely an inadvertent omission of the rarest of rare nature.*

*4. It is prayed that the Hon’ble Tribunal may take the above submission into account and pass suitable order in the matter.”*

14. In the light of the facts and circumstances of the instant case, as stated supra, and in view of the categorical admission made by the first Respondent/CERC in paragraphs 2 to 4 of their aforementioned reply dated 28.01.2019, we are of the considered view that the order impugned cannot be sustainable and is liable to be set aside on the ground that the order impugned passed is contrary to the Regulations of the first Respondent/CERC and the matter requires reconsideration afresh by the first Respondent/CERC and decide the same in accordance with law.

15. Having regard to the facts and circumstances of the present case, as stated supra, the instant Appeal, being No. 82 of 2018, is allowed in part. The impugned Order dated 20.09.2017 passed in Petition No. 55/MP/2015 on the file of the Central Electricity Regulatory Commission, New Delhi is hereby set aside.

16. The matter stands remitted back for reconsideration afresh with the direction to the first Respondent/CERC to pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 2 and 3 and dispose of the matter as expeditiously as possible taking into consideration that the matter was pending for adjudication between the parties for several years.

17. The Appellant and the Respondent Nos. 2 and 3 herein are directed to present before the first Respondent/CERC on 20.02.2019 at 11:00 A.M. personally or through their counsel without notice to collect necessary date of hearing.

18. All the contentions of both the parties are left open.

19. With these observations, the instant appeal filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

**IA NO. 73 of 2019**

In view of the Appeal No. 82 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA No. 73 of 2019 does not survive for consideration and, hence, stands disposed of.

Parties to bear their own costs.

Order accordingly.

**(Ravindra Kumar Verma)**  
**Technical Member**

*vt/kt*

**(Justice N.K. Patil)**  
**Judicial Member**

√ **REPORTABLE**