2025 INSC 922

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 14098-14101 OF 2015

GUJARAT URJA VIKAS NIGAM LIMITED ..... Appellant

Versus

GREEN INFRA CORPORATE WIND PRIVATE LIMITED AND OTHERS ETC. ..... Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Gujarat Urja Vikas Nigam Limited (GUVNL), the appellant in these four appeals, assails the common judgment dated 28.09.2015 rendered by the Appellate Tribunal for Electricity (APTEL), New Delhi, in Appeal Nos. 198, 199, 200 and 291 of 2014. Thereby, the APTEL confirmed the orders dated 13.06.2014, 11.06.2014, 13.06.2014 and 20.09.2014 passed by the Gujarat Electricity Regulatory Commission (GERC), Gandhi Nagar, in Petition Nos. 1239 of 2012, 1221 of 2012, 1241 of 2012 and 1365 of 2013 filed by Green Infra Corporate Wind Private Limited, New Delhi; Vaayu

(India) Power Corporation Private Limited, Daman; Green Infra Wind Power Limited, New Delhi; and Tadas Wind Energy Private Limited, Mumbai, respectively, viz., the four contesting respondent companies.

2. By order dated 05.05.2016, this Court requested the GERC to defer its proceedings till the matter was finally decided and disposed of by this Court. This order was passed in view of the fact that, pursuant to the APTEL's common judgment under appeal, the GERC began hearings for determination of tariff on the petitions filed by each of the four respondent companies. Thereafter, by order dated 03.02.2023, this Court permitted the GERC to proceed with the tariff determination hearings subject to the condition that no final order should be passed without the leave of this Court. We are informed that the hearings before the GERC have concluded but the final orders have not been pronounced owing to the aforestated order.

3. The short issue for consideration is whether the four respondent companies were entitled to approach the GERC for determination of the tariff for procurement of power by GUVNL from their wind energy projects. The GERC answered this issue in their favour and the same stood confirmed by the APTEL. Hence, these statutory appeals.

4. By Order No. 1 of 2010 dated 30.01.2010, passed in exercise of the powers conferred by Sections 61(h), 62(1)(a) and 86(1)(e) of the Electricity Act, 2003 (for brevity, 'the Act of 2003'), the GERC determined the tariff for procurement of power by distribution licensees, such as GUVNL, from wind energy projects. This order was applicable for a control period of 3 years with effect from 11.08.2009. In consequence, all wind energy projects commissioned during that 3-year control period were covered by this order. One of the factors considered by the GERC for tariff determination thereunder is 'Depreciation'. In relation thereto, GUVNL and others had pointed out that some of the wind energy projects availed the benefit of 'Accelerated Depreciation' as a tax-planning measure and if the same is taken into account, the tariff would reduce drastically, i.e., to about ₹3.05 per unit, but if it is not taken into account, the tariff would be higher, working out to ₹3.77 per unit. They, therefore, suggested that the GERC should specify either an average tariff of ₹3.50 per unit or two different tariffs for wind energy projects - (i) those which are availing the benefit of accelerated depreciation; and (ii) those which are not availing the benefit of accelerated depreciation. They also suggested that the wind energy projects which did not avail accelerated depreciation benefit should be asked to submit affidavits along with supporting documents that accelerated depreciation

was not being claimed by them. Upon considering these objections/suggestions, the GERC ruled as follows: -

> 'Commission's Ruling
>
> Depreciation is a non-cash flow expenditure and it is linked with the loan repayment. The loan repayment period is considered by the Commission as 10 years. Hence, the requirement of cash flow in the initial 10 years is more to match with the loan repayment. After considering the suggestions of the objectors, the Commission decided to allow 6% of the capital cost per annum as depreciation for the initial 10 years and 2% per annum from 11th to 25th year of the plant.
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> The provisions of Accelerated Depreciation are provided in the Income Tax Act, 1961 and Rules framed thereunder. A person who qualifies under the above statutory provisions is entitled to get benefits of the Accelerated Depreciation. Hence, the Commission decides to determine the tariff taking into account the benefit of accelerated depreciation available under Income Tax Act, 1961 and Rules framed under it. Those who do not avail of such benefit may submit petitions on case-to-case basis.'

5. In effect, the GERC made it clear that those wind energy projects which did not avail the benefit of accelerated depreciation under the Income-Tax Act, 1961 (for brevity, 'the Act of 1961'), were entitled to approach it on a case-to-case basis for determination of tariff for the power supplied by them to distribution licensees. As regards those wind energy projects which did avail accelerated depreciation, the GERC took into consideration various factors and determined the levelized tariff for wind energy generation at ₹3.56 per kWh (Kilowatt-hour), a much higher tariff than that suggested by GUVNL. The GERC also made it clear that the said tariff took into account the benefit of accelerated depreciation under the Act

of 1961 and the Rules made thereunder and again reiterated that for a project which did not get such benefit, the GERC would, on a petition filed in that respect, determine a separate tariff taking into account all the relevant facts. The GERC further clarified that the tariff determined at ₹3.56 (constant) was applicable for the entire project life of 25 years, i.e., from the 1st year to the 25th year, in the case of wind energy projects which availed accelerated depreciation.

6. Section 32 of the Act of 1961 deals with depreciation of buildings, machinery, plant or furniture, being tangible assets. Section 32(1) provides that in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof would be allowed as depreciation to the assessee, as may be prescribed. Rule 5 of the Income-Tax Rules, 1962 (for brevity, 'the Rules of 1962'), deals with depreciation. Rules 5(1) and 5(1A) read thus: -

> '(1) Subject to the provisions of sub-rule (2), the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year:
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> (1A) The allowance under clause (i) of sub-section (1) of section 32 of the Act in respect of depreciation of assets acquired on or after 1st day of April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix IA of these rules on the actual cost thereof to the assessee as are used for the purposes of the business of the assessee at any time during the previous year:….'

The second and third *provisos* thereunder are of relevance insofar as 'Accelerated Depreciation' is concerned. The *provisos* read as follows: -

> '*Provided further* that the undertaking specified in clause (i) of sub-section (1) of section 32 of the Act may, instead of the depreciation specified in Appendix I-A, at its option, be allowed depreciation under sub-rule (1) read with Appendix I, if such option is exercised before the due date for furnishing the return of income under sub-section (1) of section 139 of the Act,
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> (a) for the assessment year 1998-99, in the case of an undertaking which began to generate power prior to 1st day of April, 1997; and
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> (b) for the assessment year relevant to the previous year in which it begins to generate power, in case of any other undertaking:
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> *Provided also* that any such option once exercised shall be final and shall apply to all the subsequent assessment years.'

7. Appendix I to the Rules of 1962 provides that, insofar as 'Renewable energy devices' are concerned, the rate of accelerated depreciation effective from Assessment Year 2006-2007 would be 80%. Wind mills and specially designed devices which run on wind mills are classified as 'Renewable energy devices' thereunder. Thus, if a wind energy project which began power generation after 01.04.1997 wishes to avail acceleration depreciation of 80%, as aforestated, it is required to exercise such option before the due date for furnishing its return of income for the Assessment Year relevant to the previous year in which it began generation of power.

8. In so far as tariff determination is concerned, Section 61 of the Act of 2003 vests the Appropriate Commission, i.e., the Central Electricity Regulatory Commission or the State Electricity Regulatory Commission, with the power to specify the terms and conditions for determination of tariff, guided by the factors enumerated therein under Clauses (a) to (i). Safeguarding of consumers' interest is one such factor but promotion of co-generation and generation of electricity from renewable sources of energy is also a factor. Section 62 of the Act of 2003 deals with determination of tariff. It states that the Appropriate Commission shall determine the tariff in accordance with the provisions of the Act of 2003 for supply of electricity by a generating company to a distribution licensee. Section 64 enables a generating company or licensee to apply to the Appropriate Commission for determination of tariff under Section 62. A detailed procedure is prescribed thereunder as to how the Commission would then go about dealing with such an application. Once the Commission issues a tariff order upon such an application, Section 64(6) provides that such tariff order, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order. The functions of State Electricity Regulatory Commissions, such as the GERC, are set out in Section 86 of the Act of 2003. Section 86(1)(a) states that

such Commission shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. Section 86(1)(b) provides that the Commission shall regulate electricity purchase and procurement process of distribution licensees, including the price at which electricity shall be procured from the generating companies or licensees or from other sources, through agreements for purchase of power for distribution and supply within the State.

9. This being the scheme forming the backdrop of the case, we may now take note of relevant case law. The decision of this Court in ***Gujarat Urja Vikas Nigam Limited vs. EMCO Limited and another***[1] pertained to a solar energy project and determination of tariff for that project. The GERC's First Tariff Order, *viz.*, Order No. 2 of 2010, was dated 29.01.2010 and the tariff per unit was fixed thereunder by the GERC for solar energy projects that availed the benefit of accelerated depreciation. The GERC made it clear that, for projects not availing such benefit, it would, on a petition in that respect, determine a separate tariff taking into account all the relevant facts. GUVNL entered into a PPA on 09.12.2010 for purchase of power from EMCO Ltd.'s solar energy project. While so, the Second

[1] (2016) 11 SCC 182

Tariff Order came to be issued by the GERC on 27.01.2012 and was made applicable to solar power projects commissioned on or after 29.01.2012. EMCO Ltd. commissioned its project on 02.03.2012 due to some delays and it did not avail accelerated depreciation under the Act of 1961. The tariff under the Second Tariff Order for projects availing accelerated depreciation was less favourable to them and the tariff payable to power producers which did not avail such benefit was more favourable.

10. EMCO Ltd., thereupon, approached the GERC claiming entitlement to determination of tariff under the Second Tariff Order on the ground that it had not availed accelerated depreciation. The GERC held in its favour and the APTEL confirmed the same, holding that the Second Tariff Order applied as EMCO Ltd.'s project was commissioned only on 02.03.2012. Further, as it had not availed accelerated depreciation, the APTEL held that the tariff determined without accelerated depreciation should be applied to it. GUVNL, thereupon, approached this Court. The case of EMCO Ltd. was that, though it had entered into a PPA during the control period specified in the First Tariff Order, it was not bound by the tariff mentioned therein and was entitled to seek fixation of tariff by the GERC under the Second Tariff Order. *Per contra*, GUVNL contended that the First Tariff Order was applicable only to those projects which availed the benefit of accelerated

depreciation and if EMCO Ltd. did not wish to avail that benefit, it ought not to have entered into a PPA without first seeking determination of the tariff. GUVNL contended that, having chosen to enter into a PPA, EMCO Ltd. could not opt for not availing accelerated depreciation at a later point of time and claim the benefit of a more advantageous tariff under the Second Tariff Order. GUVNL further contended that the tariff under the First Tariff Order would not apply to only those power generating projects which, by operation of law and not by their own violation, were not entitled to claim accelerated depreciation.

11. Noting that neither party had contended that, in law, there was a possibility of a power project not getting the benefit of accelerated depreciation if it opted for it, but assuming for the sake of argument that in law such a possibility exists, this Court observed that the construction sought to be placed on the relevant portion of the First Tariff Order by GUVNL could not be accepted, because it would be inherently illogical. The relevant portion of the First Tariff Order, in this context, stated that for a project that does not get such benefit of accelerated depreciation under the Act of 1961, the Commission would, on a petition in that respect, determine a separate tariff taking into account all the relevant facts. The submission of

GUVNL as to the construction of the aforestated clause in the First Tariff Order was accordingly rejected by this Court.

12. This Court, thereafter, dealt with the issue as to whether EMCO Ltd. had the right to exercise its choice not to avail accelerated depreciation after signing the PPA. This Court also considered the question as to whether it's right under the Act of 1961 to make such a choice could be so exercised, resulting in a situation whereby GUVNL would be obliged under the PPA to purchase the power generated by it for a period of 25 years without knowing the price at which EMCO Ltd. would supply such power. The real question, *per* this Court, was as to what would be the point of time at which the power producer can exercise the right to seek the determination of a separate tariff? It was noted that the Act of 1961 gave the option to the power producer to avail or not to avail accelerated depreciation and also specified the point of time at which that option was to be exercised. However, the availability of such an option was held not to relieve the power producer of the contractual obligations incurred under the PPA. Significantly, no finding was recorded as to whether EMCO Ltd. had given a commitment to GUVNL about availing accelerated depreciation. It was also noted that the PPA contained a condition that, in case commissioning of the project was delayed beyond 31.12.2011, GUVNL

would pay the tariff determined by GERC for solar energy projects effective on the date of commissioning of such project or the tariff mentioned in the PPA, whichever was lower. This stipulation, *per* this Court, envisaged a situation where EMCO Ltd. was not able to commence generation of electricity within the control period stipulated in the First Tariff Order and dealt with that contingency. It was, therefore, held that EMCO Ltd. could not seek tariff fixation under the Second Tariff Order.

13. Certain observations in the above decision, taken in isolation, undoubtedly support the GUVNL presently but the law laid down in the said decision would have to be understood in the factual context thereof, involving two tariff orders and a specific condition in the PPA. This aspect was pointed out by this Court in ***Gujarat Urja Vikas Nigam Limited vs. Tarini Infrastructure Limited and others***[2]. Therein, this Court had occasion to consider the power of the GERC to redetermine tariff even after execution of a PPA, incorporating a particular tariff. The question for consideration was specifically framed as to whether the tariff fixed under a PPA was sacrosanct or inviolable and beyond review and correction by the GERC, which is the statutory authority for fixation of tariff under the Act of

[2] (2016) 8 SCC 743

2003. The GERC had not conferred upon itself such power but the APTEL disagreed and held that such power would be available to the GERC. That is how the matter came before this Court at the behest of the GUVNL. Tarini Infrastructure Ltd. was a power producer which had setup hydropower projects. It entered into a PPA with GUVNL to supply power for a period of 35 years at a determined tariff. Thereafter, it sought enhancement of the tariff on the ground that additional infrastructure was required to be put up by it, in the form of a transmission line over 23 kilometres instead of the originally envisaged 4 kilometres. It applied to the GERC for redetermination of the tariff. The GERC, however, negated its plea on the ground that once the tariff was determined and incorporated in the PPA, there was no scope for redetermination at the unilateral request of the power producer. In another set of appeals, redetermination of the tariff was sought by power producer(s) therein on the ground of increase in the price of biomass fuel but it was rejected by the GERC on a similar ground.

14. In appeal, the APTEL held that the GERC was clothed by the statute with the power to determine the tariff and, therefore, the tariff incorporated in a PPA was also liable to be reviewed in the light of changed circumstances of a given case. Taking note of the statutory scheme of the Act of 2003, this Court held that it would not be possible to hold that the

tariff agreed by and between the parties, though it found mention in a contractual context, was the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. It was affirmed that tariff determination was made in exercise of statutory powers and the same only got incorporated in a mutual agreement between the two parties involved. Referring to Section 86(1)(b) of the Act of 2003, this Court held that it must lean in favour of flexibility and not read inviolability into the terms of a PPA in so far as the tariff stipulated therein is concerned. It was further held that it would be a sound principle of interpretation to confer such power if public interest, dictated by surrounding events and circumstances, required review of the tariff. Dealing with the earlier judgment in ***EMCO Limited*** (*supra*), this Court observed that the power producer in that case did not seek determination of a separate tariff under the First Tariff Order, as it ought to have done, but sought tariff fixation under the Second Tariff Order, which was wholly inapplicable to it, given the terms of the First Tariff Order and the PPA. The decision in ***EMCO Limited*** (*supra*) was, therefore, distinguished on facts.

15. We may now note certain facts which are of particular relevance to this adjudication. GUVNL entered into individual Power Purchase Agreements (PPAs) with the four respondent companies. These PPAs were

entered into by them between June, 2010, and March, 2012, i.e., during the 3-year control period specified in Order No.1 of 2010 dated 30.01.2010 issued by the GERC and the four respondent companies also commissioned their wind energy projects during the said control period. Each of these PPAs contained a clause with regard to the tariff applicable for purchase of power from the respondent companies' wind energy projects. For the purpose of illustration, clause 5.2 in the Power Purchase Agreement dated 28.03.2011 pertaining to Green Infra Wind Power Limited is extracted hereunder:

> '5.2 GUVNL shall pay a fixed rate of Rs.3.56 per kWh for delivered energy as certified by SEA of Gujarat SLDC during the 25 years life of the project as determined by the Commission through Order No.1 of 2010 dated 30th January, 2010.'

16. It is an admitted fact that the four respondent companies signed PPAs with GUVNL with identical clauses therein. Having done so, they then approached the GERC seeking project-wise determination of tariff, claiming that they had not availed accelerated depreciation. This prayer was made by them in the subject petitions filed in 2012/2013 before the GERC. GUVNL contested their claim before the GERC, arguing that these wind energy projects had willingly entered into PPAs with it, binding themselves to the tariff rate of ₹3.56 per kWh, and were, therefore, not at liberty to seek determination of tariff on a case-to-case basis thereafter. GUVNL asserted

that, in the light of the valid, binding and enforceable contracts between the parties, embodied in the PPAs, the wind energy projects could not seek such benefit. It further asserted that, had these projects opted for a case-to-case specific tariff, it would not have even entered into PPAs with them. It claimed that it had not entered into any PPAs with wind energy projects that had not availed the benefit of accelerated depreciation and asserted that it could not be compelled to abide by the change of mind on the part of these wind energy projects and, thereby, be compelled to pay a higher tariff to them on the basis of a case-to-case determination by the GERC.

17. This argument on the part of GUVNL would have been compelling, had it simply been a commercial contract between two profit-oriented business entities. However, we cannot lose sight of the fact that GUVNL is an instrumentality of the State and was, therefore, bound by the policy directives of the State. It cannot advance commercial considerations in isolation on par with a private party, divorced from its responsibility to abide by and further the policy objectives of the State. In that context, it would be relevant to note the objectives underlying the Act of 2003 in relation to non-conventional and renewable energy sources, such as wind power, solar power, etc. Part II of the Act of 2003 is titled ‘National Electricity Policy and Plan’. Section 3 therein provides that the Central Government shall, from

time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.

18. A separate Ministry of New and Renewable Energy was setup by the Government of India as the nodal Ministry for all matters relating to new and renewable energy. The broad aim of this Ministry is to develop and deploy new and renewable energy to supplement the energy requirements of the country. Energy self-sufficiency was identified as the major driver for developing and promoting new and renewable energy generation in the country in the wake of the two oil shocks of 1970s; the sudden increase in the price of oil; the uncertainties associated with its supply; and the adverse impact on the balance of payments position.

19. In furtherance of the policy and vision of the Government of India in relation to non-conventional renewable energy generation, the Government of Gujarat, through its Energy and Petro-chemicals Department, promulgated the Wind Power Policy – 2007 dated 13.06.2007. It stated therein that it was keen on development of the renewable energy sector, given the dwindling resources of fossil fuels; increased threat of global

warming; and the concerns of environmental protection. It further stated that it was committed to having investment in clean and green energy to reduce carbon dioxide emissions. In order to accelerate investment in this sector, the Government of Gujarat recognized that there was a need to extend Governmental support and, in that context, the Government reviewed its wind power policy. This new policy was to come into effect on 20.06.2007 and remain in operation till 30.06.2012. Wind Turbine Generators (WTGs) installed and commissioned during the operative period were to be considered eligible for the incentives declared under the policy for 20 years or for their life span, whichever was shorter. With regard to sale of such energy, the policy provided that the electricity generated by the WTGs may be sold to GUVNL and/or any distribution licensee within the State at the rate of ₹3.37 per unit of electricity as per the GERC order, as amended from time to time. The requisite PPA was to be made between the purchaser of power and the eligible unit. Notably, the tariff of ₹3.37 per unit mentioned in the policy was relatable to the earlier Tariff Order of the GERC, viz., Order No.2 of 2006 dated 11.08.2006, which was in operation for a period of 3 years, i.e., upto 10.08.2009. Various other incentives were offered to WTGs under the aforestated policy of the Government of Gujarat. Thereafter, the Government of Gujarat's Wind Power Policy-2013,

effective from 25.07.2013 to 31.03.2016, reaffirmed its resolve and commitment to develop and promote wind energy projects, by offering them various incentives.

20. In the light of the aforestated policies and directives of the Government of Gujarat and as an instrumentality of the State, GUVNL was bound to promote and advance the objectives of the said policy. It may be noted that the PPAs executed by and between GUVNL and the four respondent companies specifically referred to the approvals given by the Gujarat Energy Development Agency (GEDA) for setting up of their wind energy projects. One such approval letter dated 01.08.2011 issued by GEDA in favour of Green Infra Corporate Wind Private Limited was placed before us. Perusal thereof reflects that permission was granted to the said company to setup two WTGs subject to the terms and conditions specified in the Government of Gujarat's Wind Policy, GERC orders pertaining to wind power and the conditions stipulated in the said letter. One of the conditions stipulated therein was that the company should enter into an Agreement with the GUVNL/DISCOM for selling or wheeling of the electricity generated from the Wind Farm. Though GUVNL was not the only distribution licensee in the State of Gujarat at that point of time, we cannot

lose sight of the fact that, being a State-instrumentality, it was and is a major distributor of electricity across the State of Gujarat.

21. Further, it is manifest and demonstrable from the statutory scheme obtaining under the Act of 2003 that the price at which power is to be procured by a distribution licensee from a generating company is not a matter of consensus and private agreement between the parties as it is to be fixed statutorily by the Appropriate Commission. GUVNL cannot, therefore, fix its own price or bind a generating company to such price, contrary to the dictum of the GERC. Significantly, in Tariff Order No. 1 of 2010 dated 30.01.2010, the GERC clearly stipulated that the levelized price of ₹3.56 per kWh was to apply only to those wind energy projects that availed the benefit of accelerated depreciation under the Act of 1961 and the Rules of 1962.

22. Pertinently, the scheme of the Act of 1961 and the Rules of 1962 makes it clear that an assessee is required to choose the option of either availing accelerated depreciation or normal depreciation only at the time it files its return for the assessment year relatable to the previous year in which it started generation of power, if the same was after 01.04.1997. This liberty and discretion given to an assessee could not be truncated or cut-short by GUVNL by fixing a binding price unilaterally in the PPA executed

long before the assessee had to statutorily choose its option, i.e., at the time it filed its return of income for the assessment year relatable to the previous year in which it actually started generation of power.

23. The conundrum in which a power producer is placed in this scenario is patent. Unless it generates power and sells it to a distribution licensee under a PPA, the power producer would not file its return of income in relation thereto. It is only at that stage that it is required to exercise its option to choose the rate of depreciation, but it would have already signed a PPA as it cannot sell the power generated by it without first entering into a PPA. In such circumstances, the tariff mentioned in the PPA would necessarily have to be conditional and dependent upon exercise of the statutory option by the power producer at the relevant point of time. The situation would, however, be different if the power producer chooses its option at the time of entering into the PPA with the distribution licensee itself and gives a commitment to such distribution licensee that it would only avail accelerated depreciation when the time comes and would, therefore, be bound by the tariff fixed for power producers availing such benefit.

24. Admittedly, GUVNL never secured any written commitments from the four respondent companies that they would only avail accelerated

depreciation and would not choose to opt for the regular depreciation rate when the time came. Without securing such commitments from them, merely because these companies signed the PPAs with a fixed tariff which was applicable only to those projects that availed accelerated depreciation, GUVNL cannot take advantage of its dominant position and its PPAs so as to bind them to the price mentioned therein for the entire life of their projects. As pointed out earlier, GUVNL is bound to promote and give effect to the Government's policy of encouraging generation of power from renewable energy sources. When the Government promulgated a policy in that regard, offering various incentives to wind energy projects, GUVNL cannot act contrary thereto by fixing a tariff for purchase of power from such wind energy projects, which, on the face of it, is contrary to the mandate of Order No.1 of 2010 dated 30.01.2010 issued by the GERC. The said order put it beyond the pale of doubt that the tariff of ₹3.56 per kWh was applicable only to those wind energy projects that availed the benefit of accelerated depreciation. GUVNL does not dispute the fact that the four respondent companies did not avail such benefit. *Ergo*, the question of applying to them the tariff that was only meant for wind energy projects that did avail accelerated depreciation would not arise. GUVNL cannot be guided only by its own commercial interests, like a private

business entity and it's conduct, as a State-instrumentality, must be of the standard of a model citizen. However, patently unfair treatment was sought to be meted out by GUVNL to the respondent companies by binding them to a rate that was wholly inapplicable to them. Such conduct, akin to a Shylock, does not reflect positively upon GUVNL.

25. Given the circumstances obtaining in the appeals on hand and in the light of the law laid down by this Court earlier in ***Tarini Infrastructure Limited*** (*supra*), it is not open to GUVNL to contend that the four respondent companies are estopped from seeking determination of tariff by the GERC as they had willingly signed PPAs with it at the tariff fixed for wind energy projects availing accelerated depreciation. As GUVNL failed to obtain commitments from the respondent companies that they would only avail accelerated depreciation at the time they had to choose that option, GUVNL has no indefeasible right to bind them to a tariff which was applicable only to such wind energy projects that availed accelerated depreciation. The GERC had made it quite clear that the tariff of ₹3.56 per kWh would apply only to those wind energy projects that availed accelerated depreciation. Therefore, that tariff has no application to a wind energy project that did not avail accelerated depreciation. GUVNL cannot apply that wholly inapplicable tariff to the respondent companies which,

admittedly, did not avail accelerated depreciation. The orders passed by the GERC and the APTEL holding to this effect, therefore, do not brook any interference.

The appeals are bereft of merit and are, accordingly, dismissed.

Order dated 03.02.2023 shall stand vacated.

Pending applications, if any, shall also stand dismissed.

....., J
Sanjay Kumar

....., J
Satish Chandra Sharma

August 4, 2025;
New Delhi.