

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri S K Ray Mohapatra, Member**

Case No. 62/2019

GRIDCO Limited	Petitioner
Vrs.		
M/s. Vedanta Limited and Others	Respondents

In the matter of: **Application under Section 142 of the Electricity Act, 2003 seeking compliance with the order dated 27.01.2016 of the OERC passed in Case No.21 of 2015 by M/s. Vedanta Limited.**

For Petitioner: Shri R. K. Mehta, Sr. Advocate

For Respondents: Shri Buddy Ranganathan, Advocate, Ms. Lavanya Panwar, Advocate and Ms. Supriya Rastogi, Advocate on behalf of M/s. Vedanta Limited, Shri Rakesh Sharma, Advocate on behalf of M/s. MCL, Shri K. C. Nanda, GM (RA& Strategy), TPWODL, Shri B. K. Das, GM, OPTCL, the representative of SLDC.

Nobody is present on behalf of DoE, GoO.

ORDER

Date of hearing: 06.12.2022

Date of order:08.02.2023

The petitioner-GRIDCO Limited has filed the present application under Section 142 of the Electricity Act, 2003 seeking compliance of the order dated 27.01.2016 of the OERC passed in Case No.21 of 2015 by M/s. Vedanta Limited in respect of consistent supply of assured power to the State/GRIDCO from its power station (IPP unit of 600 MW and CGP units of 3 x 600 MW).

2. The petitioner GRIDCO has submitted that the Commission, vide its order dated 12.06.2013, had approved the consolidated PPA dated 19.12.2012 executed between M/s. Sterlite Energy Limited (now M/s. Vedanta Limited) and GRIDCO Limited towards purchase of State entitlement power by GRIDCO from the thermal power station (4 x 600 MW) of M/s. Vedanta Limited. The said power station was operated commercially w.e.f. 26.04.2012. Subsequently, M/s. Vedanta Limited filed an application before the Commission to declare its 4 x 600 MW power plant (IPP) as captive power plant (CGP) which was registered as Case No.21 of 2015. The

Commission had pronounced the final order dated 27.01.2016 in Case No. 21 of 2015 with the following directions:

“In conclusion the Commission issues the following directions:

- a) Unit – II of the 4 x 600 MW power plant of Vedanta Ltd. will continue to remain as IPP and connected to the State Grid.*
- b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*
- c) Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.*
- d) The coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- e) The pricing of power of State entitlement shall be based on IPP pricing Regulation of the Commission.*
- f) The above decisions are made on the basis of assurance of the Petitioner that it shall honour all the conditions as stipulated in the existing PPA in spite of conversion of some IPP units to CGP.*
- g) We direct the Petitioner and GRIDCO to bring about necessary changes in the PPA as per the present order and place the same for the approval of the Commission within 15 days. OPTCL is also directed to bring about necessary changes in the connectivity agreement as stated by them in Para-15.”*

3. GRIDCO has stated that M/s. Vedanta Ltd. has failed to honour its assurance made through affidavit in Case No. 21 of 2015 that notwithstanding to the conversion of generating units, it will comply with the requirement of supplying power to GRIDCO under the terms of the PPA dated 19.12.2012, which is valid for 25 years from the COD of the power station i.e. till 20.04.2037. The Commission in various ARR & BSP orders, has been consistently emphasizing the matter of such supply from the IPPs and has directed GRIDCO to purchase full share of power from M/s. Vedanta Limited for State consumption. GRIDCO has requested M/s. Vedanta Limited several times for supply of State entitlement power and in the meeting on 07.12.2017, M/s. Vedanta Limited had agreed to supply power from alternate sources in lieu of IPP power, when the IPP unit-2 is out of operation. But M/s. Vedanta Limited has consistently defaulted in supplying State share of power. There has been a short supply of power by M/s.

Vedanta Limited to the tune of 4462 MU for the period from October, 2016 to March, 2019 as indicated in the table below:

FY	Quantum of Power supplied to GRIDCO	Total Generation from the plant	Entitlement of State at 30% of ESO	Quantum of short fall
2010-17 (Oct., 16 to March, 17)	1489.25	4458.05	1337.41	182.32
2017-18	970.89	9977.06	2993.12	2012.14
2018-19	902.09	10533.77	3160.13	2267.53
Total				4462.00

4. GRIDCO Ltd. stated that the supply of state entitlement power was a commitment to the Government of Odisha by M/s. Vedanta Ltd. through MoU, based on which the thermal power station was established and accordingly PPA dated 19.12.2012 was signed in line with the state thermal policy dated 08.08.2008 and assurance of M/s. Vedanta Ltd. before the Commission in Case No.21 of 2015. Further, in absence of such power from M/s. Vedanta Ltd. GRIDCO is forced to procure costly power which is a burden to the state consumer. In the meeting with GRIDCO on 07.12.2017, M/s. Vedanta Ltd. had agreed to supply power from alternate sources in lieu of IPP power when IPP-Unit-II is out of operation.
5. GRIDCO has submitted that M/s. Vedanta Ltd. got coal linkage for the IPP-Unit-II (State dedicated unit) through FSA only to supply state entitlement of power. In reply to the letter of MCL dated 07.02.2018 for confirmation of PPA capacity, GRIDCO had informed MCL regarding non-supply of power by M/s. Vedanta Ltd. to the State. M/s. Vedanta Ltd. has failed to supply power to GRIDCO and utilised the generated power from its converted CGP units for its own captive consumption. Though M/s. Vedanta Ltd. had lifted the linkage coal during FY 2017-18, it has not supplied state entitlement power to GRIDCO in respective months.
6. In response to the above submission of GRIDCO, the respondent M/s. Vedanta Ltd submitted that it has not been able to comply with its supply obligation as per Commission's order dated 27.01.2016 on account of the following events affecting generation from the power plant:
 - a) Due to accidental breach of ash-pond at Lagoon-2 of the power plant, Odisha State Pollution Control Board (OSPCB) had directed to stop discharge at Lagoon-2, for which power generation from all four units for the period from

29.08.2017 to 08.01.2018 was not there. On 13.09.2017, OSPCB had issued notice to M/s. Vedanta Ltd. for closure of three units of its 1215 MW CGP and two units of 2400 MW thermal power plant and all the five units (including IPP Unit-2) was sealed by the Government officials for the period from 13.09.2017 to 10.11.2017. This was a force majeure event, which was communicated to GRIDCO on 29.03.2018.

- b) The Commission vide its order dated 27.01.2016 in Case No.21 of 2015 at para 35(d) had held that the coal to be used for supplying power to GRIDCO shall be linkage coal. However, MCL vide its letter dated 29.03.2018 had suspended supply of linkage coal for the period from 29.03.2018 to 18.12.2019, on the alleged apprehension of misutilisation of linkage coal. Owing to such suspension, M/s. Vedanta Ltd. was unable to supply the contracted quantum of power to GRIDCO despite the units were available for generation. This was communicated to GRIDCO, vide letter dated 22.12.2018 & 30.03.2019. However, after resolution of the dispute, MCL agreed to resume supply of linkage coal to IPP Unit-2 from 30.12.2019.

7. M/s. Vedanta Ltd. further stated that prior to revocation of suspension of linkage coal it had clarified MCL that power supply to GRIDCO during FY 2017-18 and 2018-19 had to commensurate with the supply of linkage coal to M/s. Vedanta Ltd. which was acknowledged and accepted by MCL. In terms of the direction of the Commission in its order dated 27.01.2016, power had to be supplied to GRIDCO by using linkage coal. Therefore, in absence of linkage coal supply since March, 2018, supply of power to GRIDCO had been hindered and the total shortfall in supply of state entitled power during FY 2017-18 & 2018-19 is 4054.67 MU.
8. M/s. Vedanta further stated that it had not been able to supply state entitlement of power to GRIDCO since June, 2017 on the above-mentioned force majeure events which had resulted in the alleged violation of supply obligation. GRIDCO had sought remedy for such breach by seeking compensation towards short supply of power by filing Case No.68 of 2018. M/s. Vedanta has already in-principle agreed to pay compensation to GRIDCO. GRIDCO after electing the remedy of compensation for breach of supply obligation, cannot simultaneously seek alternative remedy for the same cause of action by initiating the proceedings under Section 142 of the Electricity Act, 2003 or in other words, it cannot choose the compensation in one hand and claim of penalty in other hand.

9. In the meantime, the order in Case No.68 of 2018 was issued on 22.06.2020, wherein the Commission have fixed the modalities for compensation on account of short supply of power by M/s. Vedanta Ltd. This was raised by both the parties during the hearing of the present case on 21.07.2020. In its interim order dated 21.07.2020, the Commission directed GRIDCO to file a modified petition in view of the order passed in Case No.68 of 2018.
10. Further, GRIDCO filed another application on 03.03.2021 with a prayer to implead Mahanadi Coalfield Ltd. (MCL) as a respondent in the present petition, since several issues regarding both quantum and quality (GCV) of linkage coal are involved in the present case. During the hearing on 25.05.2021, GRIDCO raised certain queries regarding linkage coal and GCV of coal supplied to M/s. Vedanta Ltd. and prayed the Commission to direct M/s. MCL to furnish the required information. In its interim order dated 06.07.2021, Commission directed M/s. MCL to file its reply to the queries of GRIDCO. The Respondent-MCL, in its reply to the queries raised by GRIDCO, has submitted that:
- M/s. Vedanta Limited had signed to separate FSAs with MCL, one for its Units-1&3 on 10.09.2011 and another for Unit-2 on 27.08.2013.
 - The percentage of linkage coal procured by M/s. Vedanta Limited under the FSAs vis-à-vis respective Annual Contracted Quantity (ACQ) and unit-wise quantum of coal procured by M/s. Vedanta Limited during the year 2012-13 to 2020-21 have been furnished by the MCL.
 - The ACQ as mentioned under Schedule-I of the FSA of Unit-1 & 3 is 46,29,933 Tonnes. However, capacity of 1000 MW out of 3 x 600 MW was covered under Tapering Linkage Policy, as per which, linkage quantity got reduced based on the normative production date of the allocated coal block. Since Vedanta Ltd. was not having any PPA for Unit-1 & 3, coal supply under the FSA was applicable upto 50% of the linkage quantity. Therefore, in view of unavailability of PPA and applicability of tapering linkage, the ACQ for Unit-1&3 under FSA dated 20.01.2012, was considered as per the table mentioned below.

Year	ACQ
2012-13	2314967
2013-14	22210521
2014-15	2028617
2015-16	1639768
2016-17	128609

- d) The ACQ as per FSA dated 27.08.2013 for Unit-2 is 25.70 lakh Tonnes. Coal supply to M/s. Vedanta Ltd. under FSA of Unit-2 was under suspension for entire FY 2018-19(with effect from 29.03.2018) till December, 2020. As per available records of billed quantity, MCL had earlier mentioned that quantity of 10,268 Tonnes was supplied to M/s. Vedanta Unit-2 during 2018-19. The same was re-examined and it was found that the billed quantity is of non-power category supplied to M/s. Vedanta Ltd. and does not pertain to Unit-2. Therefore, the earlier statement of MCL stands modified to this effect.
- e) MCL has furnished the copies of declaration of grade of GCV upto the year 2020-21. The weighted average GCV vis-à-vis notified grade of GCV, for despatch of coal to M/s. Vedanta Limited (month-wise post third-party sampling) has been submitted by MCL. However, prior to third party sampling, the billing was done at the declared grade/notified grade of the GCV. The third-party sampling is being done by CIMFR. The sample results had been supplied by CIMFR to M/s. Vedanta Limited as well as to MCL. The reports as supplied by CIMFR from January, 2017 have been submitted by MCL. The GCV is measured on equilibrated basis as per BIS guidelines-1350 part-2, based on the norms/guidelines of Coal Controller Organisation (CCO) as well as Govt. of India notification of GCV based gradation. From the compiled data of the year 2019-20, the weighted average of declared grade GCV(midpoint GCV band) is 3301 corresponding to grade G-14, weighted average analysed the GCV (pre-referee) is 3105 responding to grade G-14 and weighted average analysed GCV considering referee results is 3092 corresponding to Grade G-15.
- f) The details of credit/debit notes issued against Vedanta Ltd. for Unit-2 for the period from 2015-16 to 2020-21 are given below:

FY	Credit note (in Rs.)	Debit note (in Rs.)	Total (in Rs.)
2015-16	-8,50,339.90	-	-8,50,339.90
2016-17	-	-	-
2017-18	-3,70,36,100.86	8,71,69,670.71	5,01,33,569.85
2018-19	-4,07,60,722.38	3,99,32,704.14	-8,28,018.24
2019-20	-56,99,242.78	6,10,206.29	-50,89,036.49
2020-21	-7,28,00,757.58	8,42,46,961.95	1,14,46,204.37
Grand Total	-15,62,96,823.60	21,19,59,543.09	5,56,62,719.49

- g) M/s. Vedanta Limited has procured coal by both rail mode and road mode as per the provisions of FSAs. It has raised complaints on different occasions regarding

quality/ grade slippage of coal and the said complaints were addressed with cogent/valid reasons by MCL. FSAs specifies separate provisions for order booking of coal by rail and by road. In the event of any quantity remaining undelivered/un-lifted, the purchaser is entitled to receive the refund of the proportionate value of such quantity, once the validity period of sale order/delivery order expires.

- h) The information regarding landed price of e-auction coal is not available with MCL. Coal is supplied as the declared GCV grade of the particular mines/siding. A bidder is free to book coal in e-auction as per their requirement. Provision/condition of eligibility against shortfall in supply (if any) due to grade slippage is not available in the scheme of e-auction.
- i) GRIDCO vide its letter dated 22.03.2018 informed MCL that M/s. Vedanta Limited has not supplied the State entitlement of power during 2017-18 and it was also observed from the details of the letter that there was no power generation from Unit-II of M/s. Vedanta Limited during the period from July, 2017 to December, 2017. Therefore, M/s. Vedanta Limited was requested to furnish the reasons for none generation of power from Unit-II and details of utilization of coal procured under the FSAs during 2017-18. At the same time, the coal supply to M/s. Vedanta Limited was kept in abeyance w.e.f. 29.03.2018 to prevent mis-utilization of coal. A dispute resolution understanding was signed between MCL and M/s. Vedanta Limited on 28.11.2019 to resolve the commercial disputes pertaining to short lifting of coal by M/s. Vedanta Limited. Subsequently, coal supply to M/s. Vedanta Ltd. was resumed from December, 2019.
- j) The coal was supplied at declared GCV grade of respective mines/siding of MCL. Grade of coal seams/dispatch point are declared annually by Coal Controller Organisation. MCL has already furnished the GCV of linkage coal supplied to M/s. Vedanta Ltd.
- k) There was no shortage in coal supply to M/s. Vedanta Ltd. However, due to disputes involving short supply of power by M/s. Vedanta Ltd. to GRIDCO (as informed by GRIDCO) and resultant commercial dispute between MCL and M/s. Vedanta Ltd. on account of short lifting of coal by M/s. Vedanta Ltd., coal

supply to M/s. Vedanta Ltd. was kept in abeyance from 29.03.2018 till November, 2019.

- l) The existing policy of Ministry of Coal/Coal India Ltd. does not allow allocation of linkages against the surrendered FSA.

11. The petitioner-GRIDCO has submitted that:

- a) M/s. Vedanta Limited did not supply the requisite quantum of power to GRIDCO, in compliance to the order dated 27.11.2016 passed in Case No.21 of 2015, from July, 2017 to January, 2020. There has been wilful violation of the said order, since in case of non-availability of power from IPP Unit-II, power could have been supplied by M/s. Vedanta Limited from its CGP Units as has been directed in the said order on the basis of the assurance of M/s. Vedanta Limited.
- b) M/s. Vedanta Limited is not supplying full entitlement of state share of power to GRIDCO on the plea of insufficient linkage coal supplied under FSA. As per the MCL data on ACQ of linkage coal under FSA and receipt of coal by M/s. Vedanta Limited, the latter has received more than 100% of the ACQ for generation of power from Unit-II (600 MW) upto the year 2015-16 which could also cover linkage coal for 5% of the energy sent out at variable cost. However, from 2016-17 onwards M/s. Vedanta Limited has short lifted the linkage coal from MCL and thus, it was supplying less power to the State. The quantum of linkage coal procured under FSA by M/s. Vedanta Limited vis-à-vis power supply to GRIDCO are as follows:

FY	Quantum of Linkage coal procured under FSA (MT)	Average GCV of Linkage Coal (Kcal/kg)	Power that could have been supplied (MW)	Power actually supplied to GRIDCO (MW)	Remark
2013-14	41,87,678	3,315	630	325	
2014-15	39,36,106	3,351	598	353	
2015-16	41,69,443	3,368	635	389	
2016-17	23,56,484	3,320	355	367	
2017-18	15,20,395	2,950	204	121	Power supplied from alternate sources
2018-19	-	-	0	112	Power supplied from alternate sources except Feb, 2019
2019-20	4,43,039	2,947	59	85	

FY	Quantum of Linkage coal procured under FSA (MT)	Average GCV of Linkage Coal (Kcal/kg)	Power that could have been supplied (MW)	Power actually supplied to GRIDCO (MW)	Remark
2020-21	23,38,985	3,222	342	320	
2021-22	17,70,449	3,326	353	318	Jan,2022 to March, 2022, power not supplied
2022-23	12,78,932	3,308	381	335	Upto Sept, 2022

Note: - Till FY 2019-20, it was “As Fired” GCV of Linkage Coal and from FY 2020-21, “As Received” of Linkage coal is considered.

- c) As per MCL, linkage coal supply was received by M/s. Vedanta Limited basing on the ACQ except the period of suspension of linkage coal and there was no shortage to justify short/non-supply of power to GRIDCO. Suspension of linkage coal is completely attributed to M/s. Vedanta Limited as it was lifting linkage coal under FSA for IPP unit without informing MCL that the IPP Unit-II as out of operation from July, 2017 to January, 2019 and from March, 2019 to January, 2020.
- d) After ten years of operation of the power plant M/s. Vedanta Limited for the first-time states that the short supply of power to GRIDCO is due to poor quality of linkage coal/grade slippage in GCV etc. belatedly in July, 2022 only after GRIDCO disputed shortage of linkage coal as the reason for short supply of power to GRIDCO. There is huge difference in GCV of coal claimed by M/s. Vedanta Limited in the monthly energy bills raised on GRIDCO, in spite of getting linkage coal within the notified grade or better quality of coal. Further, in case of grade slippage, MCL had also issued credit note to M/s. Vedanta Limited in each financial year which were never furnished to GRIDCO by M/s. Vedanta Limited in spite of several requested letters. This was also not produced before the Commission in tariff proceedings or in Case No.68 of 2018 for consideration and deduction from the cost incurred towards procurement of linkage coal.
- e) M/s Vedanta Limited, vide letter dated 01.10.2018 informed that due to acute shortage of coal they are unable to generate full capacity of the units and requested to pursue the matter with MCL to resume coal supply to Unit-II. Whereas, vide its letter dated 05.11.2018 i.e. after almost 8 months, M/s. Vedanta Limited clarified MCL that shortfall in supply of power to GRIDCO

during the period July, 2017 to January, 2018 is due to force majeure situation like breach of ash dyke and technical issues in Unit-II. No data regarding procurement of linkage coal was produced to GRIDCO even after several request made by GRIDCO.

- f) M/s MCL, Vide letter dated 23.03.2019 provided month-wise/grade-wise coal supply to Unit-II of M/s. Vedanta Limited during FY 2017-18 and requested GRIDCO to intimate whether corresponding quantum of power has been supplied by M/s. Vedanta Limited during FY 2017-18, so as to ensure proper utilization of coal by the IPP and to enable them to consider the resumption of coal supply to Unit-II. Further, till receipt of the letter dated 06.05.2019 of MCL, GRIDCO was not aware of the fact that FSA of Unit-II was likely to be terminated since M/s. Vedanta Limited had violated the FSA condition of lifting minimum 30% of SEQ of linkage coal in a financial year i.e. FY 2018-19.
- g) The linkage coal supply was suspended from 29.03.2018. The quantum of power from Unit-II during FY 2018-19 (i.e. November, 2018 to March, 2019 and April, 2019) totalling to 604.53 MU could have been supplied in FY 2017-18, which was supplied by M/s. Vedanta Limited belatedly utilizing the same linkage coal lifted during July, 2017 to December, 2017. The linkage coal availed under Unit-II during FY 2017-18 was mis-utilized by M/s. Vedanta Limited for generation and consumption at its smelter plants at VAL-SEZ, is a self-proclaimed submission of M/s. Vedanta Limited.
- h) M/s. Vedanta Limited has surrendered linkage coal quantum corresponding to 5% energy sent out (i.e. about 90-100 MW) at variable cost, by surrendering the FSA of Unit-I&III, without informing GRIDCO, Department of Energy and OERC. Further, it has not also disclosed this fact during the hearing of Case No.68 of 2018 in connection with dispute regarding amendment of PPA for short supply of power. M/s. Vedanta Limited may be directed to arrange such quantum of linkage coal/commercially cheaper coal at its own cost for supply of power to GRIDCO. The FSAs could be executed between M/s. Vedanta Limited and MCL based on the long term PPA dated 28.09.2006 and 19.12.2012 between GRIDCO and M/s. Vedanta Limited for supply of power to the State consumers for a period of 25 years. Annual Certificate of consistent supply of power utilizing linkage coal is being issued by GRIDCO every year as per the

provision of FSA. In case any issue or concern is raised by M/s. Vedanta Limited regarding coal supply by MCL, GRIDCO and DoE, Government of Odisha make recommendation to MCL/CIL based on the request of M/s. Vedanta Limited. In case FSAs were to be surrendered, M/s. Vedanta Limited ought to have first intimated its intention to GRIDCO, DoE, Government of Odisha and also to the Commission since GRIDCO is entitled to avail 5% of energy sent out at the variable cost. However, M/s. Vedanta Limited has surrendered the FSAs for Units-I&III of its own on 12.05.2015 i.e. well ahead of passing of the order dated 27.01.2016 by the Commission i.e. prior to conversion of Units-I, III&IV to CGP.

- i) M/s. Vedanta Limited was not furnishing required data/information pertaining to 'as billed' GCV of linkage coal in spite of several request made by GRIDCO and so also the consolidated statement of CIMFR Reports. As per the OERC (Generation of Tariff) Regulations, M/s. Vedanta Limited is required to submit the said data/information for computation of ECR. Therefore, GRIDCO had prayed the Commission to implead MCL as a necessary party. After MCL being made a party to the present case, M/s. Vedanta Limited was compelled to submit data in the present proceeding and also submitting the information along with the current monthly bills. It is not open to M/s. Vedanta Limited to deny the supporting documents of GRIDCO.
- j) The original petition was filed in September, 2019 under Section 142 of the Electricity Act, 2003 for non-compliance of order dated 27.01.2016 passed in Case No. 21 of 2015 by M/s. Vedanta Limited for a long period from July, 2017 to September, 2019. After issue of Commission's order dated 22.06.2020 in Case No.68 of 2019, relating to resolution of disputes regarding revised PPA including the issue of short supply of power, the Commission, vide its interim order dated 27.01.2020 in the present case, directed GRIDCO to file the modified petition after taking note of the order dated 22.06.2020. Accordingly, GRIDCO has filed the modified petition which may be treated as an independent petition. Subsequently, by interim order dated 04.05.2021, the Commission directed MCL to assist the Commission in the present case by supplying required data/information. The regulatory power of the Commission under 86 (1) (a) & (b) of Electricity Act, 2003 is very wide and available to the

Commission to do complete justice to the parties. The present case under Section 142 of the Electricity Act, 2003 is not only for wilful violation of order dated 27.01.2016 but also for implementation of the said order in future in letter and spirit.

- k) The Commission has the inherent power to ensure implementation of its orders in letter and spirit. It cannot be said that the order dated 27.01.2016 passed in Case No. 21 of 2015 will not be implemented because compensation is provided in another order dated 22.06.2020 passed in Case No.68 of 2019. Compensation is for bonafide inability to supply power beyond the control of M/s. Vedanta Limited and not for wilful and intentional default in supply of power for its own benefits.
- l) In view of the above, the petitioner-GRIDCO has prayed the Commission to direct M/s. Vedanta Limited to;
 - i. Supply full Ex-bus entitlement of 564 MW of power to GRIDCO on RTC basis as per PPA and order dated 27.01.2016 of the Commission in Case No.21 of 2015 from Unit-II (600 MW). In case Linkage coal is short due to slippage in grade of GCV, M/s. Vedanta Limited is getting Credit/Debit Notes, they must arrange Coal from other sources such as under the 'SHAKTI Policy' for concluded PPAs. State/GRIDCO needs power and not compensation.
 - ii. Arrange commercially cheaper coal for 5% of ESO (i.e. about 90 MW to 100 MW) at its own cost since it did not consult or inform GRIDCO/DoE, GoO/OERC before surrendering corresponding concessional coal in 2015 and 2016 and is getting compensation under the FSA for poor grade of linkage coal.
 - iii. Submit all data to GRIDCO as and when requested, pertaining to coal procurement under FSA and 3rd party sampling of GCV of linkage coal along with monthly energy bills and maintain accountability and transparency. This is as per the Regulations 27 (11) and 27 (15) of OERC Tariff Regulation, 2020.
 - iv. Direct M/s. Vedanta Limited not to misinterpret the direction of the Commission that power to be supplied to the extent of linkage coal in the

order dated 22.06.2018 and restrict supply of State entitlement of power to GRIDCO.

12. The respondent M/s. Vedanta Ltd. has submitted the following:

- a) The present petition has been filed by GRIDCO under Section 142 of the Electricity Act, 2003 which empowers the Commission to penalize a person for contravening the provisions of the said Act, Regulations and/or any directions issued by the Commission. In its petition GRIDCO seeks compensation for non-supply of power as per the direction of the Commission dated 22.06.2020 in Case No. 68 of 2018.
- b) The Commission, in its order dated 22.06.2020 in Case No. 68 of 2018, has set up a mechanism of compensation in case of short supply of power under PPA dated 19.12.2012. This does not make a case for a petition under Section 142 of the Electricity act, 2003 as the same can only be granted under Section 86 (1) (f) for recovery of money.
- c) The prayers of the petitioner fail to make out a case for proceeding under Section 142 of the Electricity Act, 2003 as it could not demonstrate under which Rules and Directions, M/s. Vedanta Limited is required to furnish the information as requested by the petitioner and those Rules and Directions have been contravened by M/s. Vedanta Limited.
- d) The Commission vide its order dated 27.01.2016 passed in Case No.21 of 2015 and also in the order dated 22.06.2020 passed in Case No.68 of 2018 have directed that the obligation of M/s. Vedanta Limited to supply power is restricted to the extent of power that can be generated from available linkage coal.
- e) After conversion of the Units-I, III&IV as CGPs, vide order dated 27.01.2016 with direction of the Commission that the coal used for supplying State entitlement of power shall be linkage coal/coal mines allocated for State use, M/s. Vedanta Limited informed the Ministry of Coal for conversion of IP Units-I, III&IV to CGP Units and also requested M/s. MCL for stoppage of linkage coal supply against FSAs dated 19.09.2011 and 20.01.2012 pertaining to the Units-I&III. M/s. Vedanta Limited had no option but to surrender said FSAs as these were not meant for supply of coal to captive units. Since the obligation of

M/s. Vedanta Limited is to supply power only to the extent of linkage coal available which gets exhausted in Unit-II itself, and thus there is no requirement to supply power from the Units-I, III&IV.

- f) Under the FSA dated 27.08.2013, Annual Contracted Quantum (ACQ) of linkage coal is to the tune of 2.57 MTP at the range of G-8 (5200 ~ 4900 Kcal/Kg) to G-13 (3700 ~ 3400 Kcal/Kg) for the purpose of supplying power to the petitioner under PPA. However, actual receipt of coal was 94.24% of ACQ. However, the quality of coal received by M/s. Vedanta Limited on the basis of annual average GCV is about 3000 Kcal/Kg. This degradation of coal quality causes the short supply of power from Unit-II.
- g) During FY 2016-17, GRIDCO alleged a shortfall of 4462 MU and vide its letter dated 22.03.2018 informed MCL that M/s. Vedanta Limited has not supplied State entitlement of power during FY 2017-18 (upto January, 2018). Based on this information, MCL, vide its letter dated 29.03.2018, intimated M/s. Vedanta Limited that IPP Unit-II did not generate power from July, 2017 to December, 2017 resulting in short supply of 1680 MU of state entitle power to GRIDCO and despatch of linkage coal under FSA was kept in abeyance on the alleged apprehension of misutilization of linkage coal. Based on the above information of GRIDCO coal supply is kept in abeyance from March, 2018 till December, 2019.
- h) As per the letters dated 27.03.2019 and 30.04.2019 of the petitioner to MCL, M/s. Vedanta Limited has supplied 1938.70 MU during the year 2017-18 & 2018-19 (upto February, 2019) which was in commensuration with the linkage coal received. Thus, it is admitted that there was no short supply of power by M/s. Vedanta Limited during the year 2017-18 & 2018-19. Hence, there is nothing survives for the present petition, as M/s. Vedanta Limited has supplied power as per its obligation in terms of the orders dated 27.01.2016 and 22.06.2020 of the Commission to supply power to the extent of linkage coal available in terms of FSA for Unit-II.
- i) Pursuant to the above, MCL vide its letter dated 18.12.2019 informed M/s. Vedanta Limited that suspension of linkage coal supply and notice of FSA termination stood withdrawn and coal supply to Unit-II was being resumed w.e.f. 18.12.2019. Subsequently, M/s. Vedanta Limited declared full capacity

towards State share in January, 2020 but the same was not scheduled by the petitioner which was the subject matter of Case No.25 of 2020, in which final order dated 25.01.2021 was passed by the Commission, wherein the petitioner was directed to make payment of fixed charges to M/s. Vedanta Limited for failure to off-take power which was declared as available by M/s. Vedanta Limited.

j) In view of the above, the Respondent -M/s. Vedanta Limited has prayed the Commission to dismiss the present petition filed by GRIDCO.

13. Heard the parties through virtual mode and their written notes of submissions are taken into consideration. Basing upon the same, we observe that;

i. The petitioner-GRIDCO has filed the petition under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's order dated 27.01.2016 passed in Case No.21 of 2015 with regard to short supply/no supply of State entitlement power by M/s. Vedanta Limited to GRIDCO.

ii. The Commission, vide its order dated 27.01.2016 passed in Case No.21 of 2015, had directed as follows:

a) "xxxxxx.

b) *Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*

c) *Unit-I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.*

d) *The coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*

e) x xxxxxx.

f) x xxxxxx .

g) x xxxxxx. "

iii. Admittedly, M/s. Vedanta Limited has not supplied State entitlement power to GRIDCO as per the above order of the Commission. As per the Petitioner-

GRIDCO, the quantum of shortfall was about 4462 MU during the period from October, 2016 to March, 2019 and as per the Respondent-M/s. Vedanta Ltd. the shortfall in supply of the State entitled power is to the tune of 4054.67 MU during FY 2017-18 and FY 2018-19. The reasons for such short supply of power as submitted by M/s. Vedanta Limited are due to inadequate supply of linkage coal by MCL, grade slippage of GCV of coal supplied by MCL as compared to the grade contracted for and suspension of supply of linkage coal during the FY 2018-19 which was resumed in December, 2020 and also the accidental breach of ash pond at Lagoon-2 of the power plant for which power generation from all four units was stopped from 29.08.2017 to 08.01.2018.

- iv. As per submission of MCL, coal supply to M/s. Vedanta Ltd. was kept in abeyance by MCL from 29.03.2018 to November, 2019 to prevent mis-utilisation of linkage coal on account of short lifting of coal by M/s. Vedanta Ltd. and otherwise, there was no shortage of coal supply. The supply of linkage coal has been resumed by M/s. MCL from December, 2019.
- v. As per M/s. Vedanta Limited, the Commission's order dated 27.01.2016 in Case No.21 of 2015 and 22.06.2020 in Case No.68 of 2018 stipulates that supply of power to GRIDCO is restricted to the extent of power that can be generated from available linkage coal.
- vi. During the pendency of the present case before this Commission, the order dated 22.06.2020 in Case No.68 of 2018 has been issued wherein, the issues of short supply/no supply of power by M/s. Vedanta Limited, period of such short supply/no supply and compensation towards short supply/no supply of power have been adequately addressed. Further, in the said order, the issue regarding utilization of linkage coal for captive uses has also been addressed. Regarding utilization of linkage coal the observation of the Commission in its order dated 22.06.2020 in Case No.68 of 2018 is given below:

“The Commission observed that as per the allegation of GRIDCO M/s. Vedanta Limited has availed linkage coal from MCL during the FY 2017-18 but had not supplied State entitlement of power to GRIDCO to the extent of linkage coal availed. But as stated by M/s. Vedanta Limited underutilization of coal during the FY 2017-18 was on account of the breach of ash pond and stoppage of operations of Unit-2 & 3. The linkage coal availed by M/s. Vedanta Ltd. has been utilized in converted CGP units 1 & 4 during stoppage of unit-2 due to breach of ash pond. From the existing PPA it is observed that the capacity

*allocated to GRIDCO shall be upto 25% + 7%/5% of the installed capacity of the thermal power station of M/s. Vedanta Ltd. GRIDCO might have received less power from M/s. Vedanta Ltd. than the contractual quantum. Therefore, GRIDCO is entitled for compensation for less availability of power from M/s. Vedanta during the breach of ash pond. This compensation shall be computed as per the procedure mentioned in this order for less or no supply of power by M/s. Vedanta to GRIDCO. **GRIDCO is entitled to purchase power from the IPP of M/s. Vedanta Ltd. to the extent of power generated from the linkage coal since it is supplied to M/s. Vedanta for State use and GRIDCO may purchase power beyond that upto the state entitlement if it is commercially cheaper.** GRIDCO is directed to plan accordingly sufficiently ahead intimating the same to M/s. Vedanta Ltd. Further, the Commission directs M/s. Vedanta Limited to supply State entitlement of power to the extent of linkage coal availed from MCL in future without fail.”*

- vii. From the above order dated 22.06.2020 passed in Case No.68 of 2018, it is clear that GRIDCO is entitled to procure power from M/s. Vedanta Limited upto the State entitlement of power as per PPA. However, M/s. Vedanta Limited must supply power to the GRIDCO to the extent of power generated from the linkage coal. In case the power generated from the linkage coal falls short of the State entitlement power, GRIDCO may purchase power beyond the generation from linkage coal upto the State entitlement of power, if it is commercially viable to it and in such eventualities M/s. Vedanta Ltd. has to supply power to GRIDCO beyond the generation from linkage coal upto the State entitlement of power, under requisition from GRIDCO in this regard. GRIDCO has to plan accordingly and intimate M/s. Vedanta Limited if it desires to purchase such power beyond the generation from linkage coal.
- viii. The issues raised by GRIDCO in the present petition have been addressed in the aforesaid order dated 22.06.2020 in Case No. 68 of 2018 and modalities for compensation towards short supply/no supply of power for the claimed period have been defined. However, it is understood that the said order dated 22.06.2020 passed in Case No. 68 of 2018 has been challenged by both M/s. Vedanta Limited and GRIDCO before the Hon'ble APTEL vide Appeal No.107 of 2022 and Appeal No.312 of 2022 respectively, which are now pending for adjudication. In such a scenario, further adjudication in respect of the prayers adverted in the present application is undesirable. Moreover, the Petitioner-GRIDCO, in its prayers in the instant petition, has not asked for imposition of penalty on the Respondent-M/s. Vedanta Limited as per the provisions under Section 142 of the Electricity Act, 2003. Further, at one stage, during the

pendency of this proceeding, GRIDCO had opted for treating the present petition as an application under Section 86(1)(f) of the Electricity Act, 2003.

14. In view of the above observations, we are of the opinion that the present Petition filed by the GRIDCO is not tenable under Section 142 of the Electricity Act, 2003. However, on the issue of furnishing relevant data/information by M/s. Vedanta Limited to GRIDCO along with the monthly energy bills, as raised in the present petition, M/s. Vedanta Limited is directed to submit the relevant coal data pertaining to quantum, rate and GCV of coal etc. including analysis/report of CIMFR to GRIDCO along with the monthly energy bills in accordance with the OERC Generation Tariff Regulations, 2020. Further, M/s. Vedanta Limited shall also claim compensation on MCL/CIL in case of slippage in grade of GCV of coal procured by it and intimate GRIDCO about any credit/debit notes received by it due to grade slippage of coal.
15. Further, M/s. Vedanta Ltd. is directed to supply State entitlement of power to GRIDCO as per the existing PPA and subsequent orders of the Commission. M/s. Vedanta Ltd. shall honour the provisions of PPA in letter & spirit in respect of supply of State entitlement of power from its 4x600 MW thermal power plant and shall not escape from its obligations to supply State entitlement of power deliberately and purposefully, under the plea of paying compensation to GRIDCO for short supply of power.
16. With the above observations and directions, the case is disposed of.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Officiating Chairperson