

**ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNOKOLI, SAILASHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751021**

Case No. 129/2021

GRIDCO Ltd.

.....Petitioner

Vrs.

M/s. Vedanta Ltd. & others

.....Respondents

In the matter of: **Application under Section 94 (1)(f) of the Electricity Act, 2003 read with Order 47 Rule-1 of the Civil Procedure Code, 1908 and regulation 70 of the OERC (Conduct of Business) Regulations, 2004 seeking review of order dated 05.10.2021 of the Commission passed in Case No.34 of 2018.**

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

For Respondents : Shri Lakshya Bagdwal, Advocate & Shri Sanjay Sen, Sr. Advocate on behalf of M/s. Vedanta Limited, Shri B. B. Mehta, CLD, SLDC, Shri K. C. Nanda, GM (Fin.) of TPWODL, Shri Bijay Das, GM (RT&C), OPTCL Ms. Sonali Patnaik, ALO I/c., DoE, GoO and Shri P.K.Pradhan are present.

ORDER

Date of hearing: 30.08.2022

Date of order: 28.10.2022

Present application has been filed by the Petitioner-GRIDCO, under Section 94(1)(f) of the Electricity Act, 2003 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 and Regulation 70 (Chapter XIII) of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking for review of the order dated 05.10.2021 passed by this Commission in Case No.34 of 2018.

2. The petition has been vehemently opposed by the Respondent No.1-M/s. Vedanta Ltd. whereas the Respondents No.2, 3, 4, 5 & 6 have supported the case of the Petitioner.
3. At the outset, a reference may be made to the order dated 05.10.2021 passed in Case No.34/2018 which is sought to be reviewed. The extracts of the said order which are felt to be relevant for the present purpose, are stated hereunder:

- “1. The petitioner M/s. Vedanta Ltd. is a generating company having a thermal power plant of 2400 MW capacity (4 x 600 MW) and also a 1215 MW capacity (9 x 135 MW) Captive Power Plant (Vedanta CPP) in Jharsuguda District of Odisha. It has a 0.5 Million Metric Tonne Per Annum (MMTPA) aluminum smelter unit (Smelter-II) in the licensed area of TPWODL and another 1.1 MMTPA smelter unit (Smelter-I) in Odisha Special Economic Zone. The Commission vide its order dated 27.01.2016 in Case No. 21 of 2015 had allowed conversion of units –I, III and IV of the power plant as captive generating units based on the assurance of M/s. Vedanta Ltd. that in case of low or no generation in Unit-II (the Unit which continues as IPP after conversion of 3 Units as CGP), the petitioner shall meet its commitment in the PPA from the converted CGP units for supplying state entitlement of power to GRIDCO. Now M/s. Vedanta Ltd. has filed the present petition seeking declaration of the IPP-Unit-II as a CGP Unit which will supply power to its Smelter-I & Smelter-II.
2. The petitioner has submitted that it has been fulfilling the obligations as per PPA and directions of the Commission by supplying power from the IPP Unit-II. However, due to shortage and grade slippage of coal the petitioner is able to just maintain the power requirement of its smelter units from CGP units keeping one unit in standby mode so that freezing of pots can be avoided. Now the petitioner has got approval from the State Government for expansion of the smelter from existing 1.6 MMTPA to 1.8 MMTPA. The operation of both the smelter units at optimum capacity, by availing power generated also from IPP-Unit-II, would be in public interest since it will result in economic development of the State.
3. The petitioner has submitted that as per the LGBR of CEA, Odisha has no deficit of power during peak demand hours for FY 2015-16 and 2016-17. Thereafter Odisha is surplus in power. Now, after commissioning of 2 x 660 MW project of OPGC, the availability of power for the state would further improve and being a peat head station it would have much lower energy charge and higher dispatch priority. Further, as per the Notice Inviting Tender (NIT) dated 04.02.2021 issued by GRIDCO it will have surplus power of 1000-1500 MW at least for a period of next 5-6 years for trading. Hence it is expected that there would be a very low schedule of power from Vedanta-IPP resulting in low PLF which would cause burden of annual fixed charges on GRIDCO and thereby on consumers' tariff under the existing PPA dated 19.12.2012. Further, as per Ministry of Environment and Forests (MoEF) emission norms notification dated 07.12.2015, installation of FGD has to be implemented by the thermal power plants before 2022 and the petitioner has submitted the feasibility report to CEA in this regard. After installation of FGD, the cost of power would further increase by approximately Rs.1- 1.25 per kWh in fixed cost. The additional fixed cost burden to the end consumer may be avoided through surrender of power purchase contract with the Vedanta-IPP.

Further as per the Commission's order the power supply obligation of the petitioner is limited to the quantum of linkage coal received by it and from the present allocation of linkage coal to Vedanta, it can supply only 340 MW of power. However, GRIDCO has off-taken only 230 MW on an average in last five years without any issue in power evacuation. In view of the above, in the interest of both GRIDCO and M/s. Vedanta Ltd. the IPP unit-II may be declared as CGP by the Commission. The present petition is filed for this purpose.

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5. *Based on the above, in order to be considered as CGP as per Rule 3 (1)(a) of Electricity Rules, 2005, the power plant is required to satisfy the following: a) Not less than 26% of the ownership must be held by the captive user(s), and b) Not less than 51% of the aggregate total electricity generated in the plant, determined on an annual basis, is consumed for the captive use. M/s. Vedanta has submitted that the power from IPP-Unit-II shall be consumed by the petitioner itself to qualify under Rule 3 demonstrating more than 51% of consumption of power. Since the petitioner owns the entire plant and the smelter units, the entire power generated from Unit-II would be consumed by its smelters. Therefore, the consumption of power from Unit-II would satisfy both the criteria for captive consumption.*
6. *During pendency of present petition the petitioner has filed an application before this Commission seeking interim directions in the present case. The petitioner has stated that they have got in-principle approval from IPICOL, Government of Odisha to provide 300 KTPA molten metal from its smelters units to downstream industries in the newly set up Aluminium Park at Jharsuguda. The progress on the same is being reviewed by the Chief Secretary through IDCO. The said park and expansion of its aluminium smelter unit would provide economic value addition to the State as well as provide livelihood opportunities to more than four lakh people which would also add in the 'Make in Odisha' initiative. The issue of conversion of IPP Unit-II to CGP unit was also discussed in the review meeting chaired by the Chief Secretary of Odisha on 18.02.2021 wherein M/s. Vedanta Ltd. apprised that such conversion will enable the petitioner to utilise cheaper power from CGP for the smelter.*
7. *In view of the above, the petitioner has prayed the Commission to declare IPP Unit-II (600 MW) of its power plant as a CGP unit and also to declare that there is no obligation of the petitioner to supply power under the PPA dated 19.12.2012 and the terms of PPA comes to an end.*
8. *The respondent-GRIDCO has submitted that the consolidated PPA dated 19.12.2012 executed between GRIDCO and M/s. Vedanta Ltd. has already been approved by the Commission vide its order dated 12.06.2013. Since Unit II of the IPP was the first Unit to be commissioned and connected to the state grid, the entire power generated from this unit is to be supplied to GRIDCO as per PPA.*

Further, this Unit II has an assured/guaranteed coal supply for its power generation since it is dedicated to the State consumers. The petitioner had filed an application under Section 42 and Section 86(1)(f) read with Rule 3 of the Electricity Rule 2005 before this Commission which was admitted as Case No. 21 of 2015, wherein the petitioner had prayed for declaring all the four Units of the IPP as CGP and inter alia solemnly affirmed that, “Notwithstanding the conversion of CGP, the petitioner will comply with the requirement of the supplying power to GRIDCO under the terms of the PPA dated 19.12.2012.” However, the Commission in its order 27.01.2016 in Case No. 21 of 2015, allowing Units I, III and IV as CGP Units, has pronounced as under:

- 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 exbus 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.*
- 9. GRIDCO has submitted that there is no cause of action for the petitioner to move the present petition before this Commission on the face of the above order dated 27.01.2016. In this order the Commission has emphatically directed that the*

quantum of power supply to GRIDCO towards state entitlement should not be disturbed at any point of time. Therefore the rights of GRIDCO as state designated entity to avail power from petitioner's thermal power plant ought not be compromised at the cost of the benefits to the state consumers. The petitioner's contention to avail more power in future for expansion of aluminium smelter unit has no place to be considered here. Further in spite of the aforesaid specific directions of the Commission, there has been consistently short supply of power by the petitioner. Moreover the petitioner's contention regarding receipt of bad quality of coal for its CGP units to meet the smelter load is not liable to be considered in the present case of conversion of state dedicated IPP-unit II to a CGP unit. Further, the petitioner's contention that ash pond issue is a constraint for generation at full ex-bus capacity is not acceptable.

- 10. GRIDCO further submitted that the contention of the petitioner that the cost of power of its IPP is the costliest power among the IPPs in Odisha is not correct. The provisional per unit rate fixed by the Commission for this IPP unit of the petitioner is less in comparison to the per unit rate of power from other IPPs under cost plus tariff. Had the rate of power from petitioner's IPP been the costliest; the Commission would not have directed GRIDCO in various orders to procure full entitlement of power from the petitioner. Further regarding increase in cost of its power due to installation of FGD system by 2022 as per notification of MoEF, GRIDCO has submitted that not only the petitioner, it would be applicable for all thermal stations and this inevitable cost will have universal implications. Therefore the contention of the petitioner is not tenable. Moreover, being green field projects, the upcoming thermal stations in the state will have higher fixed cost per unit. However, the cost and/or availability of power from upcoming projects cannot be presumed by the petitioner to go out of its contract to supply the state share of power from its IPP-Unit-II. Regarding surplus availability as per LGBR of CEA, GRIDCO has stated that LGBR is nothing but an estimation of availability and demand of power which cannot be said to be real time power availability/requirement in absolute manner. The availability of power to meet the state demand gets affected substantially when there is non-supply of power by the petitioner in compliance to the Commission's order dated 27.01.2016. The petitioner being a generator and bound by its promises to supply the state share of power has no reason to cite the coming up of OPGC Units-III & IV and to assess the surplus/deficit of power in the state.*
- 11. GRIDCO has further stated that as per the projection/estimation by them there will be some surplus power for a couple of years from now and then there will be deficit in the power availability from FY 2024-25 mainly due to phasing out of old thermal power stations on account of completion of their useful life. The uncertainty of operationalisation of upcoming power projects coupled with aggressive intervention of RE in the energy mix may not cater to the peak demand of the state in future. GRIDCO has submitted that in the above projection they have considered*

entire power procured from Vedanta shall be utilised only to meet the state demand as per MOD principle. Now GRIDCO endeavours to sell surplus power (i.e. high variable cost power) through DAM, TAM and RTN to optimise fixed cost burden on account of high cost power from certain power plants.

12. *Therefore, conversion of IPP-Unit-II to CGP would seriously affect the availability of power in the state and hence GRIDCO does not agree for surrendering the power from the IPP-Unit-II of the petitioner. Further, GRIDCO has executed PPA with the petitioner based on the MoU executed between the petitioner and the Govt. of Odisha and the PPA has already been approved by the Commission. The PPA is valid for 25 years and mandated the petitioner to supply state entitlement power to GRIDCO. Therefore, GRIDCO has prayed the Commission to reject the present application filed by the petitioner-M/s. Vedanta Ltd. and direct the petitioner to comply the Commission's order dated 27.01.2016 by supplying state entitlement of power to GRIDCO and also to comply with the clause 14.1(d) of the Fuel Supply Agreement and make payment of all the outstanding dues to GRIDCO.*

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22. *Heard the arguments and counter arguments of parties and their written note of submissions are taken into record. One of the functions of the State Commission under Section 86 (b) of the Electricity Act is to 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. The approval of Power Purchase Agreement (PPA) between M/s. Vedanta and GRIDCO comes under this provision. While doing so the Commission is to ensure that such procurement of power is based on sound economic and commercial principle. Unnecessary and avoidable cost should not be passed on to the consumers. The whole episode of power purchase from M/s. Vedanta should be scrutinised from this angle.*

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26. *Let us analyse commercial and economic impact if there is no drawal from IPP of M/s. Vedanta as prayed for by them. It is to be mentioned here that there has been no drawal from another IPP M/s. JITPL for last several years. Therefore, we analyse the state availability of power from different sources excluding drawal from M/s. Vedanta and another IPP (JITPL) in the table below:*

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27. *From the above table we find that the State availability of power is around 38,402.29 MU whereas the State requires 28791.61 MU to meet its demand as per approved ARR of GRIDCO for FY 2021-22. If GRIDCO does not draw power from*

M/s. Vedanta the availability shall be 32,387.12 MU which is 3500 MU more than the State requirement. GRIDCO is required to draw the State requirement as per the merit order principle. It is observed that even after surrendering the power from M/s. Vedanta IPP, GRIDCO requires no drawal of power from TSTPS-I, FSTPS-III, KhSTPS-II and partial drawal of power of 750MU only out of GRIDCO share of 1346 MU from TSTPS-II for state consumption. In addition to that GRIDCO may not require this partial drawal also from TSTPS-II since another 2300MU shall be available from IBTPS stage-II when 100% of its generation will be available to GRIDCO after 01.04.2023.

28. *Even if GRIDCO does not draw power from the above mentioned power stations at margin, still GRIDCO has to pay full fixed cost to the NTPC stations as per existing PPAs. In future, if GRIDCO needs more power than the present estimated State requirement, then it may draw the unscheduled power from those power stations, which are presently beyond the merit order, i.e., TSTPS-II(partially), KHSTPS-II, FSTPS-III. For these central stations, fixed costs are to be paid irrespective of drawal from them. However, if GRIDCO surrenders M/s Vedanta power, they won't have to pay the fixed cost of Rs. 399.42 crores at 85% of availability. We are giving a comparative table to show the benefit of drawing power from these power stations without drawing power from M/s Vedanta*

Power Station	Availability in MU	Incremental Drawal in MU beyond the present drawl	Variable Charge in paise/unit	Total Cost of drawing incremental power(Rs. Cr)	Vedanta Cost (Rs. Cr) including fixed cost for same power per Annum	Saving (Rs.Cr) for not drawing from M/s Vedanta per Annum
TSTPS-II	1346.00	596.00	205.49	122.47	617.93 (399.42 +143.75X1.52)	277.70
KHSTPS-II	264.99	264.49	220.59	58.34		
FSTPS-III	577.10	577.10	276.22	159.41		
Total	2188.09	1437.59		340.22		

In the extreme situation, if GRIDCO purchases further 1400 MU from the market beyond the availability of above power at a price of 350 paise per unit, GRIDCO would still save Rs.1.15 Crores (277.70-(3.50X1400-1.525X1400)).

29. *In addition, GRIDCO has tied up with cheaper renewable power sources to procure power in near future. Therefore, if GRIDCO has flexibility to surrender its entitlement as proposed by M/s. Vedanta it will have more economical and commercial sense. However, GRIDCO has a long term PPA with M/s. Vedanta. The future power demand cannot be forecast so much in advance. Hence, it will be prudent if GRIDCO has flexibility in operating its PPA depending upon its power requirement. This will be helpful to GRIDCO because it will give sufficient latitude to GRIDCO to play around the sources to optimise its power purchase cost.*

30. Accordingly, considering the submission of parties and basing on the above analysis we allow GRIDCO to operate its PPA without losing its entitlement under the same.

- a) *The Unit-II of M/s. Vedanta shall normally operate as CGP. If in any quarter, GRIDCO requires power from M/s. Vedanta for State consumption they can avail the same giving three months prior notice to M/s. Vedanta and avail the same for a period of at least three months. During that period the CGP will operate as IPP and GRIDCO will be required to pay fixed cost for the said period in addition to energy charge and other charges.*
- b) *During IPP mode of operation, 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) *During IPP mode of operation, the coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- d) *If M/s. Vedanta fails to supply power after requisition by GRIDCO within the stipulated period, M/s. Vedanta will compensate GRIDCO by paying the differential cost incurred by GRIDCO for such drawal at margin over and above the cost of normal power purchase from M/s. Vedanta IPP Unit-II.*
- e) *If at any time it is found that M/s. Vedanta has failed to supply IPP power after requisition by GRIDCO and is trading the same, M/s. Vedanta will have to pay, in compensation, two times the differential cost incurred by GRIDCO at margin over and above the IPP power cost from M/s. Vedanta.*
- f) *In order to prevent dislocation in the current supply of power, the Unit-II will continue as IPP for the current quarter. GRIDCO has to exercise its option to avail IPP power from M/s. Vedanta for the next quarter within one month of this order failing which the IPP Unit –II of M/s. Vedanta shall operate as CGP with effect from the 1st of January, 2022. Thereafter, as stated in sub-para (a) above, GRIDCO will have to give three months prior notice for availing power in any quarter.*
- g) *The option of GRIDCO to avail IPP power shall be prudently exercised in order to minimize the total power purchase cost and shall be scrutinized by the Commission at any time.”*

4. The petitioner-GRIDCO has based his prayer for review primarily on the following grounds:-

- I. The Commission has not even noticed much less considered the submissions made by GRIDCO which were duly argued during the hearing held on 04.05.2021;
- II. The Commission has not considered in the correct perspective the submissions of GRIDCO with regard to the issue of importance of IPP power from Unit # 2 (600 MW) of Vedanta as noticed in Para 8 to 12 of the Order dated 05.10.2021.
- III. The order dated 05.10.2021 in effect amounts to a Review/ Modification of the Order dated 27.01.2016 which has attained finality;
- IV. By effect of the order dated 05.10.2021 the very basis and foundation of the order dated 27.01.2016 has been obliterated;
- V. The action of Vedanta by not supplying full entitlement of power to GRIDCO from July, 2017 to December, 2019 in willful and flagrant violation of the Commission's order dated 27.01.2016 which was based on the assurance/undertaking of Vedanta, amounts to gross contempt of the Commission's order and consequently Petition No. 34 of 2018 filed by Vedanta was not maintainable;
- VI. In view of the settled position of law that a party which is in contempt cannot seek any further relief unless it purges itself of the contempt;
- VII. The grant of the prayer of Vedanta would render the MOU as well as the duly approved Long Term PPA between Vedanta and GRIDCO redundant and nugatory;
- VIII. Not only GRIDCO but also the Consumers of the State at large will suffer irreparable loss and injury if they are deprived of the cheaper power from Unit II of M/s. Vedanta Ltd.;
- IX. The proposal of M/s. Vedanta Ltd. to set up an Aluminium Park is not relevant for the present case in view of the Commission's order dated 27.01.2016 by which three of the IPP Units of Vedanta were permitted to be converted into CGP Units with the following pre-conditions:
 - (a) Unit-II of the 4X600 MW Power Plant of Vedanta Ltd will continue to remain as IPP;
 - (b) Unit-II must remain connected to STU as State Dedicated Unit and 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;
- (c) Such quantum of power supply should not be disturbed at any point of time;
 - (d) In case of low or no generation in Unit-II, Vedanta shall meet its commitment in the consolidated PPA from the CGP units;
 - (e) The above decisions are based on the basis of the assurance of the Petitioner that it shall honor all the conditions as stipulated in the existing PPA in spite of conversion of some IPP Units to CGP;
- X. The Commission erred in not considering the fact that M/s. Vedanta Ltd. can utilize the power from its three converted CGP Units in the proposed Aluminum Park but cannot encroach upon GRIDCO's right to the share of power in Unit II which has attained finality by virtue of the order dated 27.01.2016;
 - XI. The Commission has not considered the fact that Vedanta is obliged to supply uninterrupted power to the State/ GRIDCO as per the conditions laid down by the Commission in the order dated 27.01.2016;
 - XII. The Commission has not appreciated the fact that for the last 10 years GRIDCO has been making payment of the Fixed Charges under the long term PPA dated 19.12.2012 which is valid till 2037 for the benefit of the Consumers of the State and therefore Consumers of the State should not be deprived of the said benefit;
 - XIII. The Commission has not considered the fact that the Department of Energy, Government of Odisha has also disapproved of any such annulment of long term PPA under which cheaper power is being procured by GRIDCO to meet State demand;
 - XIV. The order dated 05.10.2021 completely wipes out the rights of GRIDCO to procure IPP power from Unit #II by allowing it to normally operate as CGP;
 - XV. The order dated 05.10.2021 overrides the State Thermal Policy dated 08.08.2008 and subsisting contract/PPA dated 19.12.2012 to procure 5% power at Variable /Energy Charge Rate (ECR) irrespective of whether Unit #2 operates as IPP or CGP;
 - XVI. The Commission has completely ignored the advantages of drawing IPP power from Unit # 2 (600 MW) at STU network without payment of POC Charges and Losses even after bearing the high Fixed Charges for the first 10 years of operation since COD of Unit #2 in November, 2010;

XVII. The Commission has not considered the fact that in view of availability of Vedanta Power, GRIDCO is pursuing for de-allocation of high cost power from BARH-I and KBUNL (NTPC) with Ministry of Power;

XVIII. The Commission erred in working out the purported/ estimated savings to GRIDCO in Para 28 of the impugned order as quoted below which were not deliberated during the hearing of the Case No. 34 of 2018.

Power Station	Availability in MU	Incremental Drawal in MU beyond the present drawl	Variable Charge in paise/unit	Total Cost of drawing incremental power(Rs. Cr)	Vedanta Cost (Rs. Cr) including fixed cost for same power per Annum	Saving (Rs.Cr) for not drawing from M/s Vedanta per Annum
TSTPS-II	1346.00	596.00	205.49	122.47	617.93 (399.42 +143.75X1.52)	277.70
KHSTPS-II	264.99	264.49	220.59	58.34		
FSTPS-III	577.10	577.10	276.22	159.41		
Total	2188.09	1437.59		340.22		

The petitioner-GRIDCO has raised that in the above table, the following incorrect assumptions have been made:

- Fixed Charges of Rs.399 Crore, assuming full entitlement (25%) of 4,200 MU. Whereas, Fixed Charge for 1,437.59 MU amounting to Rs.136.71 Crore would have been considered.
- OERC has approved 2,956 MU of power from Vedanta IPP against entitlement of 5,039 MU (4,200 MU at full cost + 1,109 MU at V.C) for the State consumers. At least, alternate supply for 2,956 MU would have been considered for savings computation.
- TSTPS II power has been allowed in ARR of GRIDCO for FY 2021-22. Therefore, the same is not available for replacement of Vedanta power.
- The summary of Fixed Charges paid by GRIDCO to Vedanta since commissioning of Unit #2(600 MW) is as mentioned below:

FY	Quantum of Power Supplied by Vedanta(IPP) (in MU)	Amount of Fixed Charges (in Rs.Crores)	Annual Fixed Charges Approved by OERC in Tariff Orders (in Rs.Crores)
2010-11	486.18	34.12	205.3527
2011-12	2,043.01	197.46	464.5255
2012-13	3,053.99	301.71	471.7376
2013-14	2,860.74	293.24	480.4150
2014-15	3,096.38	271.86	434.1144
2015-16	3,414.16	253.73	410.5925

2016-17	3,216.84	281.99	406.6725
2017-18	1,061.52	62.45	402.8950
2018-19	978.11	48.28	399.4325
2019-20	747.84	45.78	399.4325
2020-21	2,806.01	218.87	399.4325
2021-22 (upto Nov'21)	1,314.35	127.97	399.4325
Total	25,079.12	2,137.46	4,874.04
Average	2,089.93	178.12	406.17
Note: AFC for FY:2010-11 is from Nov-2010 to March-2011. AFC for entire year shall come to be Rs.492.84 Crores.			

XIX. The Commission has not considered the alternate cost of full entitlement of power from Unit #2 of M/s. Vedanta Ltd. in the saving computation.

XX. As per GRIDCO's Assessment/Estimates, huge financial loss will be caused to GRIDCO if Vedanta power is not procured during FY 2021-22 as explained below:

ASSESSMENT OF FINANCIAL LOSS/GAIN TO GRIDCO

Alternate Sources	Power Not Allowed by OERC in ARR order of GRIDCO	Incremental drawal in MU beyond the present drawal	Actual Variable Cost (VC) (Paise/kWh)	Total Cost of drawing power from alternate source (Rs. in Cr)	Vedanta Cost (Rs. Cr) including fixed cost for same per Annum	Annual Loss (Rs. Cr) for not drawing from M/s. Vedanta per annum
	[1]	[2]	[3]	[4]	[5]	[5]-[4]
KHSTPS II	171.14	171.14	220.29	37.70	845.99 (287.34+ (3003.48*1.86/ 10))	-155.48
FSTPS III	373.42	373.42	276.22	103.15		
Power Exchange #	2,458.92	2,458.92	350.00	860.62		
TOTAL	3,003.48	3,003.48		1,001.47		
Assumptions:	Market Rate		350 P/U	Based on present market scenario.		
	FSTPS III & KSTPS II PLF		55%	Technical Minimum as taken in ARR order		

The above analysis is based on State requirement and availability of power for FY 2021-22 and with following considerations:

- Data are taken from OERC ARR Order of GRIDCO for FY 2021-22;
- OERC approved 3,003.48 MU of power from Vedanta for State against share of 5,039 MU;

- c) Fixed Charges allowed for supply of 3,003.48 MU is Rs.287.34 Crore. Alternate arrangement has to be made for the said quantum;
- d) OERC has considered Variable Cost of Vedanta power @ 152 P/kWh whereas actual cost is 186 P/kWh. (as per Current Bill of Vedanta);
- e) In case of meeting State Demand from existing PPAs, the cost including opportunity cost, will be the market price;
- f) Vedanta power is delivered at STU Network, so no ISTS Charges & Losses payable;
- g) Assuming Vedanta power is not available, Estimated Annual Loss in FY 2021-22 will be **Rs. 155.48 Cr.** as detailed above.

XXI. The Commission has not addressed an important aspect i.e. supply of Linkage Coal under Fuel Supply Agreement (FSA) of M/s. Vedanta Ltd. with MCL, if Unit # 2(600 MW) shall operate as CGP since the FSA was signed for availing concessional Coal for Unit # 2 as IPP;

XXII. Prior requisition three months ahead of power requirement in a Quarter may not address following practical issues in view of the dynamic power situation:

- i. Forced Shut Down/Forced Scheduling of Generating Stations;
- ii. Change in Market Prices;
- iii. Change in State Demand.

The estimated LGBR based on which the Requisition shall be made three months ahead, would not address the sudden Outages of other large size Thermal Units (i.e. 660 MW) supporting the base load during peak hours / power requirement during high demand periods;

XXIII. The Commission has not considered that in view of Revenue Gap left in the ARR Orders of GRIDCO, the opportunity to reduce the gap shall not be available with GRIDCO on certain occasions if IPP power from Unit # 2 is not availed;

XXIV. In the impugned order dated 05.10.2021, the Commission has not laid down conditions to avail/ withdraw power after giving requisition three months ahead in case of any exigency / dynamic situation which is quite normal in case of Power Load Generation Balance Scenarios;

XXV. The Commission has not clarified whether GRIDCO will be entitled to avail its share from other CGP Units as per OERC order dated 27.01.2016 during outage /low generation of Vedanta Unit #II;

XXVI. The Commission has also not clarified whether compensation will be calculated as per OERC Order dated 22.06.2020 in Case No. 68/ 2018 or not.

XXVII. The Commission has also not clarified whether GRIDCO can requisition IPP power during selective hours in a day i.e. for instance during morning / evening peak hours only.

XXVIII. The Commission has not dealt with the submission of GRIDCO that Vedanta cannot be allowed to make profit by violating the orders of the Commission and the provisions of the PPA to the prejudice of the Consumers of the State;

XXIX. Had full entitlement of State share of IPP power been supplied by M/s. Vedanta Ltd. to GRIDCO, it would have brought down the overall Bulk Supply Price (BSP) / Truing up Gap of GRIDCO in the respective years which in turn would have benefited the ultimate consumers of the State. M/s. Vedanta Ltd. should not be allowed any relief by being allowed to normally operate as CGP and thereby freeing it from the obligation of supplying power to the State. This will be against the well settled principle that “no one can take advantage of its own wrong”. M/s. Vedanta Ltd. cannot be allowed to avail unjust enrichment at the cost of consumers of the State.

5. According to the petitioner-GRIDCO, this Commission while passing the order dated 05.10.2021 in Case No.34/2018 has not taken into consideration the specific facts pleaded or the contentions raised by its written statement dated 21.05.2021 filed in the said case. The same being the errors apparent on record, the impugned order calls for a review. It is further submitted that there are sufficient grounds to allow the review for removal of misconception manifesting the said order for the ends of justice. The facts pleaded and the contentions raised by the petitioner-GRIDCO in its written submissions/objections filed in the Case No.34/2018, which according to it, were overlooked or not considered by this Commission are stated hereunder:

“3. Case No. 21 of 2015 was filed by Vedanta with the prayer for conversion of all the 4 IPP Units into CGPs.

3.1 By order dated 27.01.2016, Hon'ble Commission allowed conversion of three IPP Units into CGPs on the condition that Unit No. II will continue as IPP. The said order was passed on the basis of assurance and undertaking of Vedanta that in case of low or no generation in Unit-II, Vedanta shall meet its commitment under the consolidated PPA with GRIDCO from the CGP units.

3.2 The order dated 27.01.2016 of the Commission in Case No. 21 of 2015 has attained finality.

3.3 The present case has been filed by Vedanta once again with the very same prayer to allow conversion of IPP Unit II CGP (which was directed by order dated

27.01.2016 of the Hon'ble Commission in Case No. 21 of 2015 to continue as IPP) into a CGP.

- 3.4 *The main petition filed by Vedanta with the very same prayer for conversion of IPP Unit II to CGP is, therefore, not maintainable and is barred by the principle of Res-judicata in view of order dated 27.01.2016 of the Commission in Case No. 21 of 2015 by which the said prayer of Vedanta was rejected and which has attained finality.*
- 4.1 *Orders which have attained finality, cannot be given a go by as a Court is bound to act within the four corners of the statute while exercising its statutory power.*
- 4.2 *It is a settled principle of law that what cannot be done directly, cannot be done indirectly. Reliance was placed on the following judgments:*
- i) N. Birendra Singh Vrs. L. Priyokumar Singh, (2006) 9 SCC 650:*
- ii) Rashmi Rekha Thatoi Vrs. State of Orissa (2012) 5 SCC 690:*
- iii) State of T.N. Vrs. K. Shyam Sunder, (2011) 8 SCC 737*
- iv) Sant Lal Gupta Vrs. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336*
5. *Orders of the Commission are meant to be respected and implemented. Orders of the Commission are not meant to be violated with impunity.*
- 5.1 *Undertaking/Assurance given to the Commission must also to be respected and obeyed.*
- 5.2 *Reliance has been made on the judgment of the Hon'ble Supreme Court in the case of Commissioner, Karnataka Board Vrs. C. Muddaiah (2007) 7 SCC 689 (Para 32).*
- 5.3 *Reliance may also be made on the judgment of the Hon'ble Supreme Court in the case of Noorali Babul Thanewala Vrs. K.M.M. Shetty [(1990) 1 SCC 259]*
- 5.4 *In the present case, there has been gross, flagrant and willful violation of the order dated 27.01.2016 by Vedanta and the undertaking/assurance of Vedanta on the basis of which the said order was passed. The present application is, therefore, liable to be rejected summarily.*
6. *Vedanta is in contempt of Commission's order dated 27.01.2016 as it has stopped supply of power on Unit II to GRIDCO since July, 2017 to December, 2019 in gross and flagrant violation of order dated 27.01.2016.*

- 6.1 *It is the settled position of law that the party which is in contempt cannot seek any further relief unless it purges itself of the contempt.*
- 6.2 *It is thus submitted that unless Vedanta complies with the order dated 27.01.2016 as well as the undertaking on the basis of which the said order was passed, the present petition/ application filed by Vedanta is not maintainable.*
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8. *Case No. 62 of 2019 which has been filed by GRIDCO for violation of the order dated 27.01.2016 (which was passed on the undertaking of Vedanta) and for implementation of the said order in future in letter and spirit is pending before the Commission.*
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- 8.2 *It is thus submitted that the proceedings of the present should be deferred until the disposal of Case No. 62 of 2019.”*
- 6 Respondent No.1 M/s. Vedanta Ltd has resisted the application at hand mainly on the following grounds:
- (i) The prayer of the petitioner-GRIDCO if allowed, would amount to reversal of the entire order dated 05.10.2021 in Case No.34/2018 and hence, the present petition is liable to be rejected in limine inasmuch as the Commission cannot act as a forum of appeal in respect of its own order
 - (ii) In view of authoritative pronouncement of the Hon’ble Supreme Court of India in the case of Parsion Devi and Others Vrs. Sumitri Devi and others reported in (1997) 8 SCC 715 and Meera Bhanja Vrs. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170, the application at hand deserves to be dismissed inasmuch as there is no error apparent on record. There being a clear distinction between an erroneous decision and error apparent on record, and the grounds taken by the petitioner having not disclosed that there is any error apparent on record, if at all there is any erroneous decision, the appropriate forum for seeking redressal is that of Appeal but not the present Commission.
 - (iii) The contention raised by the petitioner-GRIDCO that the Commission has not taken into consideration order dated 27.01.2016 in Case No.21/2015 is factually incorrect inasmuch as the Commission was very much alive to the said order as would reveal from the interim orders passed on 05.01.2021, 04.05.2021 etc. in Case No.34 of 2018.
 - (iv) The contention of the petitioner-GRIDCO that the Case No.34 of 2018 is not maintainable being barred by the principle of res-judicata is not sustainable in view of the dynamic development of the power situation of the state in aftermath of order dated 27.01.2016

(v) The respondent No.1 M/s. Vedanta Ltd. has refuted the allegation of the Petitioner-GRIDCO that it is in contempt of the order dated 27.01.2016 of the Commission, on the following grounds:-

- a) There is no breach/contravention on the part of M/s. Vedanta Ltd. qua the directions imparted by this Commission contained in the order dated 27.01.2016 or obligations under the PPA dated 19.12.2012 executed between GRIDCO and M/s. Vedanta Ltd.
- b) In terms of the provisions of the PPA, M/s. Vedanta Ltd. has either to supply power or in case of any shortfall to make payment in terms of compensation qua any shortfall. Hence there cannot be any breach/contravention of either PPA or the said order dated 27.01.2016.
- c) The issue of alleged shortfall in supply of power and the issue of compensation is pending adjudication before APTEL in DFR 296 of 2020. Since the matter is sub-judice, GRIDCO cannot agitate the same in an indirect manner as done in the present case.
- d) The protocol for computation of compensation on account of any shortfall of power has been agreed between GRIDCO and M/s. Vedanta Ltd. through MoM dated 07.06.2019 held at OERC. However, even after agreeing to the aforesaid protocol GRIDCO tried to wriggle out of the same. GRIDCO in order to create prejudice against M/s. Vedanta Ltd. intentionally suppressed the material facts and documents from the knowledge of the Commission.

(vi) The Commission vide order dated 27.01.2016 directed that the state entitlement of power has to be supplied by M/s. Vedanta Ltd. by utilizing linkage coal only. There is no fault on the part of M/s. Vedanta Ltd. inasmuch as under utilization of coal on account of breach of ash pond-dyke that occurred on 28.08.2017 resulted in adverse effect on supply of power by M/s. Vedanta Ltd. from March 2018 to December, 2019. Further due to non-payment of monthly energy bills of M/s. Vedanta Ltd. by M/s. GRIDCO it became difficult on the part of M/s. Vedanta Ltd. for operation of power plant. Hence it is not open to GRIDCO to allege contempt against Respondent No.1-M/s. Vedanta Ltd.

(vii) There being no apparent error on the face of record and the petitioner GRIDCO having no valid grounds to seek for a review of the order dated 05.10.2021 passed in Case No.34 of 2018, the application at hand deserves to be dismissed.

7 Before advertng to the grounds taken by the petitioner-GRIDCO and the points of resistance raised by the contesting Respondent No.1 M/s. Vedanta Ltd., we have posed ourselves to a question whether it would be competent and proper on our part to entertain the present application for review of an order which was passed by the Full

Bench of this Commission comprising the then Chairperson and two Members, inasmuch as no regular Chairperson has been appointed in this Commission ever since the Ex-Chairperson demitted the office after completion of his tenure, and the present forum consists of the Officiating Chairperson and one Member. In this context, a reference may be made to the observations of the Hon'ble APTEL in Appeal No. 38 of 2022 and IA Nos. 256, 257 & 258 of 2022 dated 11.03.2022. It has been held by the Hon'ble APTEL vide Para 6 & 7 of the said order in the following words:-

- “6. During the hearing, it was brought out that there is a vacancy in the office of the Chairperson of the State Commission, though, hopefully it is expected to be filed up in near future. Be that as it may, it is admitted on all sides that on the relevant dates the Commission comprised only of two Members, the Member (Law) being senior having been officiating as Chairperson. Undoubtedly, Section 9(4) of Odisha Electricity Reforms Act, 1995, has prescribed the quorum of all three Members of the Commission sitting in review jurisdiction, but it cannot be ignored that on the relevant date(s) the Commission comprised only of two Members. In these circumstances, the doctrine of necessity would allow the Commission to continue discharging its statutory functions rather than abdicating its responsibility.
7. In our considered view, Section 93 of the Electricity Act expressly saves and protects the impugned order from criticism of the kind levelled by the appellant here, the provision reading thus:

“Section 93. (Vacancies, etc. not to invalidate proceedings):

No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission”.

In view of the pronouncement as above and for the reasons to be gathered from the discussions to follow, the Commission presently functioning with the Officiating Chairperson and one Member do not feel that it would be either incompetent or improper to entertain or dispose of the application for review at hand.

- 8 In course of the proceedings, we heard all the sides in extenso with reference to their respective written submissions. Although both the petitioner and the contesting respondent No.1 (M/s. Vedanta Ltd.) have advanced their submissions and arguments touching mostly the basic stands respectively taken by them qua the subject matter of

the Case No.34 of 2018, we remain conscious that neither we hear any appeal nor do we resort to a re-hearing of the aforesaid case now. The core question which we are called upon to determine in the present proceeding is, whether the petitioner has been able to make out a case for review of the order dated 05.10.2021 passed in the aforesaid case so as to allow the said case to be reopened for hearing afresh. Keeping in view the provisions under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule-1 of the Code of Civil Procedure, 1908 and Regulation 70 of Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, it needs to be seen as to if there is any error apparent in the order dated 05.10.2021 in Case No.34 of 2018 and/or if there are other sufficient grounds for review of the said order.

- 9 In the case of M/s. Lily Thomas Vrs. Union of India (2000) 6 SCC 224 (Para 52), the Hon'ble Supreme Court of India held as follows:

*“52. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi Vrs. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. **It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.**”*

- 10 The Hon'ble Apex Court in the case of Board of Control for Cricket vs. Netaji Cricket Club (2005) 4 SCC 741 also held that an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of record, but also if there exists sufficient reasons therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” are wide enough to include a misconception of facts or law by a Court/Tribunal. An application for review may be necessitated by way of invoking the doctrine of “actus curiae neminem gravabit”.
- 11 Reverting to the case at hand, the present exercise is integrally connected to the order dated 27.01.2016 passed by this Commission in Case No.21/2015 on the application

dated 17.06.2015 filed by M/s. Vedanta Ltd. (present Respondent No.1) seeking for a declaration of its 4 x 600 MW power plant at Jharsuguda as Captive Generating Plant (CGP) or in the alternative for declaration of the Unit-IV of the same power plant as CGP. This Commission disposed of the said application registered as Case No.21/2015 vide its order dated 27.01.2016. Paragraphs 26 & 28 of the said order may be relevantly quoted herebelow:-

“26. The issue has been made simpler in this case because in their original petition and also subsequently affirmed by their affidavit dtd.17.06.2015 and 27.07.2015, the petitioner has stated that notwithstanding the conversion to CGP of its units, it will continue to comply with the requirement to supply power to GRIDCO under the terms of PPA dtd.19.12.2012 as IPP. This was also reaffirmed by the Petitioner during hearing.

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28. The Commission has already taken a view as per our findings recorded in para 26 that while granting the request of the petitioner it has to be ensured that the contractual obligations of the petitioner as enumerated in the PPA dtd. 19.12.2012 should not be violated. Unit-II of the power plant consisting of 600 MW is dedicated to the state and the tariff for this unit has been determined on cost plus basis as IPP. Since this is already dedicated for supply to GRIDCO, power from this unit obviously cannot be utilised for self consumption. There is nothing in the Act to grant CGP status to a power generating unit in a conditional manner. Once CGP status is conferred on a particular generating unit it has full rights under the Electricity Act to use the entire power for self consumption. Since the Commission holds that the provisions of PPA regarding 100% supply of power to GRIDCO from unit II has to be ensured; therefore the prayer of the petitioner to grant CGP status to unit II cannot be allowed and status of this unit shall continue to remain as an IPP.”

12 The Commission, vide Paragraph 35 of the order dated 27.01.2016 issued the following directions while disposing the said application (Case No.21/2015):-

- 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.”*

13 Thus, this Commission vide the aforesaid order while allowing conversion of Units-I, III and IV of the power plant of M/s. Vedanta Ltd. to CGP with effect from 01.04.2015, directed that Unit-II to be continued to remain as IPP and connected to the State Grid. The conversion of the said three numbers of units to CGP was allowed on the basis of the affirmation made/assurance given by M/s. Vedanta Ltd. through affidavit dated 17.06.2015 and 27.07.2015 that notwithstanding such conversion, it will continue to comply with the requirement to supply power to the petitioner-GRIDCO under the terms of the PPA dated 19.12.2012 as IPP. In that backdrop, this Commission observed in Paragraph 30 of the order dated 27.01.2016 that the interest of the consumers of the State was in no way affected by the grant of CGP status to the Units I, III and IV of the Power Station. That apart, the Commission vide the direction (f) of Paragraph 30 of the order emphasized that conversion was allowed on the assurance given by M/s. Vedanta Ltd. that it shall honor all the conditions as stipulated in the existing PPA in spite of the conversion.

14 Needless to mention that the order dated 27.01.2016 passed by this Commission in Case No.21/2015 referred to above, has attained finality inasmuch as neither M/s. Vedanta Ltd. (Petitioner therein) nor any other party challenged the same. M/s. Vedanta Ltd., however, filed a case bearing No.34/2018 seeking declaration of the IPP Unit –II as a CGP, to facilitate power supply therefrom to its Smelter I and Smelter II, and this Commission, vide impugned order dated 05.10.2021, allowed the same, of course, with certain conditions, and the same is now sought to be reviewed at the instance of the Petitioner-GRIDCO.

- 15 It is the contention of the petitioner-GRIDCO being echoed by the Respondents No.2 to 6 that the relief which was directly declined by this Commission, vide the order dated 27.01.2016 in Case No.21 of 2015, could not have been granted indirectly to M/s. Vedanta Ltd. as per the impugned order, inasmuch as the same was not permissible in law. To put in otherwords, according to the Review Petitioner the impugned order being an outcome of misconception of law deserves to be reviewed in view of the settled principle of law. Reliance has been placed on *Noorali Babul Thanewala Vrs. K.M.M. Shetty [(1990) 1 SCC 259]*, wherein the Hon'ble Apex Court held as follows:-

*"11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. **It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.**"*

Reliance has also been placed on *Commissioner, Karnataka Board Vrs. C. Muddaiah (2007) 7 SCC 689*. In paragraph 32 of the decision, it was held by the Hon'ble Apex Court as follows:-

"32. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

- 16 The learned Counsel for the Petitioner-GRIDCO submits that although the well settled proposition of law as quoted supra had been placed before the Commission through the written note of submissions as well as in course of hearing of the Case No.34 of 2018, the same were not taken into consideration while the impugned order was passed, and that, had the issue raised in the said case been duly appreciated with reference to the settled position of law, the result would have been different.

- 17 It is further submitted by the Learned Counsel for the Petitioner-GRIDCO that the facts assumed by the Commission while analyzing the commercial and economic impact vide paragraphs 26 to 29 of the impugned order dated 05.10.2021 had never been deliberated upon during course of hearing of the Case No.34/2018, and hence the computation made under paragraphs 26 and 28 of the order cannot be said to be based upon correct much less admitted factual analysis. According to GRIDCO, the real/anticipated scenario was different, and had there been due deliberation during hearing giving opportunity to GRIDCO to express its view on the contentious issue, the impugned order would not have been occasioned.
- 18 It is the unequivocal submission of the petitioner-GRIDCO and the Respondents 2 to 6 that the conclusion arrived at vide the impugned order on the basis of erroneous assumptions is opposed to public policy inasmuch as the same, if stands as it is, will cause serious prejudice and is detrimental to the interest of the State Consumers. This Commission, vide the order dated 27.01.2016 in Case No.21 of 2015, had emphasized that the Unit-II of the power plant of M/s Vedanta Ltd. being dedicated to the State, power from the said unit cannot be utilized for self consumption.
- 19 Although in the case at hand, it is argued by M/s. Vedanta Ltd. that while passing the impugned order, this Commission was conscious on the finding and conclusion recorded in the order dated 27.01.2016 in Case No.21/2015, yet we now find merit in the application at hand. Without expressing any opinion on the contentious issues, and having regard to the points raised by Petitioner-GRIDCO and on testing the same with the touchstone of the settled principles of law, and in order to rule out any possible prejudice to either side, the Commission feels it expedient to re-hear the Case No.34 of 2018.
- 20 In view of the above, the application for review is allowed directing the Case No.34 of 2018 to be re-heard. Both the sides are hereby given opportunity of re-hearing with reference to their pleadings/written submissions already filed in the said case. No new pleading or written submissions shall be filed by either side without leave of the Commission. In view of this order, the rights and liabilities of both the sides stand relegated to the stage that prevailed prior to the order dated 05.10.2021 passed in Case

No.34 of 2018. Both the sides be noticed fixing Case No.34 of 2018 to 20.12.2022 for re-hearing.

21 Accordingly, the Review Petition is disposed of.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson