



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 339 of 2024 with
WP(C). No. 9 of 2025
WP(C). No. 13 of 2025

Date of Decision: 02.06.2025

WP(C). No. 339 of 2024

Byrnihat Industries Association,
A Society registered under the
Meghalaya Societies Registration Act
Having its registered office at Upper
Baliyan, Umtru Road, Byrnihat,
Ri-Bhoi District, Meghalaya
Represented by its Executive Committee
Member, Shri. Prasanna Kumar Mishra,
S/o (L) J.B.Mishra,
R/o Dona Presidency,
Sixth Floor, B-Block VIP Road,
Six Mile, Guwahti-781002
Assam.

... Petitioner

-Versus-

1. Meghalaya State Electricity Regulatory Commission,
New Administrative Building,
1st Floor, Left Wing.
Lower Lachumiere,
Shillong-793001, Meghalaya.
2. The Secretary,
Meghalaya State Electricity Regulatory Commission,
New Administrative Building,
1st Floor, Left Wing.
Lower Lachumiere,
Shillong-793001, Meghalaya.



3. The Director,
Meghalaya Power Generation
Corporation Limited,
Lumjingshai Shillong,
East Khasi Hills District
Meghalaya.
4. The Director,
Meghalaya Power Transmission
Corporation Limited,
Lumjingshai Shillong,
East Khasi Hills District,
Meghalaya.
5. The Director,
Meghalaya Power Distribution
Corporation Limited,
Lumjingshai Shillong
East Khasi Hills District
Meghalaya.

...Respondents

WP(C). No. 9 of 2025

1. M/s. Pioneer Carbide Pvt. Ltd.
Through its authorized representative
Mr. Utkarsh Agarwal, Executive
Director, Upper Baliyan, Umtru Road,
Byrnihat – 793101,
Meghalaya.
2. Maithan Alloys Ltd. through its
Authorized representative
Mr. Prasanna Kumar Misra, A-6, EPIP,
RAJABAGAN, BYRNIHAT, DIST-
RIBHOI, MEGHALAYA- 793101.

...Petitioners

-Versus-



1. Meghalaya State Electricity Regulatory Commission,
New Administrative Building,
1st Floor, Left Wing.
Lower Lachumiere,
Shillong-793001, Meghalaya.
2. The Secretary,
Meghalaya State Electricity Regulatory Commission,
New Administrative Building,
1st Floor, Left Wing.
Lower Lachumiere,
Shillong-793001, Meghalaya.
3. The Director,
Meghalaya Power Generation
Corporation Limited,
Lumjingshai Shillong,
East Khasi Hills District,
Meghalaya.
4. The Director,
Meghalaya Power Transmission
Corporation Limited,
Lumjingshai Shillong,
East Khasi Hills District,
Meghalaya.
5. The Director,
Meghalaya Power Distribution
Corporation Limited,
Lumjingshai Shillong
East Khasi Hills District
Meghalaya.

...Respondents

WP(C). No. 13 of 2025

M/s. Shyam Century Ferrous Limited
Represented by Mr. Venkata Krishna
Nageswara Rao Majji, Director having
Its registered office at Lumshnong,



P.O. Khliehriat, East Jaintia Hills,
Meghalaya – 793210.

...Petitioner

-Versus-

1. Meghalaya State Electricity Regulatory Commission,
New Administrative Building,
1st Floor, Left Wing.
Lower Lachumiere,
Shillong-793001, Meghalaya.
2. The Secretary,
Meghalaya State Electricity Regulatory Commission,
New Administrative Building,
1st Floor, Left Wing.
Lower Lachumiere,
Shillong-793001, Meghalaya.
3. The Director,
Meghalaya Power Generation
Corporation Limited,
Lumjingshai Shillong,
East Khasi Hills District,
Meghalaya.
4. The Director,
Meghalaya Power Transmission
Corporation Limited,
Lumjingshai Shillong,
East Khasi Hills District,
Meghalaya.
5. The Director,
Meghalaya Power Distribution
Corporation Limited,
Lumjingshai Shillong
East Khasi Hills District
Meghalaya.

...Respondents



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

In WP(C). No. 339 of 2024

For the Petitioner(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Chanda, Adv.

For the Respondent(s) : Mr. S. Venkatesh Adv. with
Mr. A. Nangia, Adv.
Mr. A. Nigotia, Adv.
Mr. A. Singh, Adv.
Ms. F. Langbnang, Adv.
Ms. G.C. Marboh, (For R 1&2)
Mr. A. Kumar, Sr. Adv. with
Ms. S. Laloo, Adv. (For R 3-5).

Appearance:

**In WP(C). No. 9 of 2025 and
WP(C). No. 13 of 2025**

For the Petitioner(s) : Mr. P.K.Tiwari, Sr. Adv. with
Mr. R.J.Das, Adv.
Ms. A.Pradhan, Adv.

For the Respondent(s) : Mr. S. Venkatesh Adv. with
Mr. A. Nangia, Adv.
Mr. A. Nigotia, Adv.
Mr. A. Singh, Adv.
Ms. F. Langbnang, Adv.
Ms. G.C. Marboh, (For R 1&2)
Mr. A. Kumar, Sr. Adv. with
Mr. A.S.Pandey, Adv.
Ms. S. Laloo, Adv. (For R 3-5).

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No



JUDGMENT AND ORDER

1. The petitioners in the lead case i.e. WP(C). No. 339 of 2024, who are stated to belong to a Society known as the Byrnihat Industries Association constituting of different industrial units, are before this Court assailing an order dated 23-08-2024, passed by the Respondent Commission, which is arrayed herein as respondent No.1, whereby certain intervention applications were allowed and orders dated 05-06-2024 and 06-06-2024 withdrawn, while fixing the entire matter for hearing afresh, for fixation of tariff for the financial years 2024-2025 and 2026-2027, under Section 62 and 64 of the Electricity Act, 2003. The said orders dated 05-06-2024 and 06-06-2024 were the subject matter of challenge before this Court in WP(C). No. 216 and 217 of 2024, which had been preferred by the MePDCL, MePGCL and MePTCL who have been arrayed herein as party respondents. The grounds that were taken was that the said two orders had been passed by the Regulatory Commission without proper quorum and in violation of Regulation 18(3) of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007.

2. This Court on taking up the aforementioned two writ petitions vide order dated 25-06-2024, stayed the orders dated 05-06-2024 and 06-06-2024, passed by the Regulatory Commission, which was then



immediately taken on appeal by the Petitioner Association. However thereafter, on 23-07-2024, these two writ petitions were withdrawn by the MePDCL, MePGCL and MePTCL with liberty to reagitate the matter before the Commission. Applications were then accordingly filed by the MePDCL, MePGCL and MePTCL under Sections 62 and 64 of the Electricity Act, 2003 before the Commission for rehearing of applications filed by the three Corporations for fixation of tariff, and for recall of the orders dated 05-06-2024 and 06-06-2024. Notices were issued to the parties concerned by the Commission which also came to be challenged, but however, by order dated 23-08-2024 which is sought to be interfered with in the instant writ application, the Regulatory Commission on a finding that a patent error had occurred in issuance of the orders dated 05-06-2024 and 06-06-2024, withdrew the same and fixed the matter for rehearing on the fixation of tariff. On these set of circumstances, the instant writ petition is therefore before this Court.

3. Mr. K.Paul, learned Sr. counsel assisted by Mr. S.Chanda, learned counsel on behalf of the petitioner has submitted that the respondent No.1 MSERC, does not possess the inherent power or jurisdiction to recall an order once passed, and that the Electricity Act, 2003, and the Regulation does not vest the Commission with the power of recall. It is submitted that the recall of the orders dated 05-06-2024 and 06-06-2024, was not a suo moto action on the part of the Commission, but had been



undertaken on the basis of an application filed by the Electricity Corporations. The learned Sr. counsel contends that the recall of the orders was not in exercise of powers arising from the discovery of an error apparent on the face of the record, or a palpable mistake in the orders dated 05-06-2024 and 06-06-2024. It is argued that it cannot be a case of the exercise of inherent powers vested in the Commission as per Regulation 26 thereof, as this provision does not confer any independent power of recall to the Commission, and would only operate as a savings clause to powers that are already provided, or made available to it under the Act, which he submits, does not arise in the instant matter. It is also further submitted that Regulation 21, which pertains to the power of review, mandates that such a review may only be exercised upon application made by an aggrieved party. In support of this argument, the learned Sr. counsel has placed reliance in *Special Reference No. 1 of 1964 reported in (1965) 1 SCR 413*.

4. The learned Sr. counsel has impressed upon this Court, the contention that the fundamental issue for determination, is whether the Commission acted without jurisdiction in recalling the orders dated 05-06-2024 and 06-06-2024, which he submits is not available to the Commission. The recall of the orders he submits, is wholly without jurisdiction and in such cases where a Regulatory Body or a Tribunal



lacks jurisdiction, an appeal as provided by statute would be rendered nugatory as the Appellate Tribunal for Electricity (APTEL) does not possess the authority to validate an action which is totally without jurisdiction. It is further submitted that though it is not disputed that the Commission is empowered to fix tariffs within the State of Meghalaya, the power to recall an order however, is not expressly conferred under the relevant statutory framework. He therefore, submits that the availability of an appellate remedy under Section 111 of the Electricity Act does not bar the invocation of the writ jurisdiction of this Court. Learned Sr. counsel has placed reliance on the case of *Whirlpool Corporation vrs. Registrar of Trade Marks, Mumbai & Ors.* reported in *(1998) 8 SCC 1* to further his argument that the existence of alternative remedy does not operate as an absolute bar to the exercise of powers under Article 226 of the Constitution.

5. On other points, it has been submitted that the Commission having exercised its powers under Section 62 and 64 of the Electricity Act, 2003, with regard to the fixation of tariff, it had become *functus officio* and had no further jurisdiction or authority to re-adjudicate or rehear the function which it had already discharged. The learned Sr. counsel has also sought to distinguish the facts of the case from the directives contained in order dated 05-09-2022, passed by the Division Bench of this Court in



MC(WA). No. 13/2022 arising from WA. No. 33/2022, by submitting that the said order dealt with the fixation of special tariff and the validity of termination of an MOU between the petitioner and the respondents and had nothing to do with a challenge to the jurisdiction of the Commission. In the instant case, he reiterates the issue is with regard to jurisdiction of the Commission in recalling the orders dated 05-06-2024 and 06-06-2024. It is also submitted that the petitioner had in the first instance challenged the jurisdiction of the Commission in passing the order dated 23-08-2024 before this Court in WP(C). No. 274 of 2024, wherein this Court by order dated 08-08-2024, had given liberty to the petitioner to raise the objections including jurisdiction before the Commission. He lastly submits that the impugned order dated 23-08-2024, being bad in law and without jurisdiction is liable to be set aside and quashed.

6. Mr. S.Venkatesh, learned counsel appearing on behalf of the respondents No. 1 & 2, at the outset has submitted that the impugned order has been passed in accordance with law i.e. the Electricity Act of 2003 and the Rules and Regulations framed thereunder, whereas the orders dated 05-06-2024 and 06-06-2024 were not signed as per law in terms of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007, inasmuch as, it is necessary



that orders are to be signed by Members who heard the matter. The Conduct of Business Regulations, it is submitted, at Regulation 10 thereof, which deals with the quorum of the Commission and Regulation 18(3) mandates that all orders of the Commission shall be signed and dated by the Chairperson and Members hearing the matter and shall not be altered except to correct any apparent error. In the present case, he submits, the orders dated 05-06-2024 and 06-06-2024, were signed by a single Member even though the matter was heard by two Members, which makes them invalid in view of the operation of the Electricity Act and the Conduct of Business Regulations.

7. The Commission, he contends, has not exercised *sou moto* power but upon the application made by the respondents No. 3, 4 & 5 (MePDCL, MePGCL and MePTCL), but has exercised its inherent powers under Regulation 111 of the Meghalaya State Regulatory Commission Multi Year Tariff Regulations, 2014 (MYT Regulation) 2014. Adverting to the facts, learned counsel has submitted that on 31-07-2024, the respondents No. 3, 4 & 5 had filed an application under Sections 62 and 64 of the Electricity Act before the Commission seeking rehearing of earlier petitions filed by the respective utilities for fixation of tariff and true up and consequently for recall of the orders dated 05-06-2024 and 06-06-2024 and for passing fresh orders. After notices were



issued vide notice dated 02-08-2024, the petitioner he submits, challenged the same by way of WP(C). No. 274 of 2024 before this Court which was disposed of by order dated 08-08-2024, on the ground that the notice was not a suo moto action but had been made on the basis of applications filed by respondents No. 3, 4 & 5. The petitioner he further submits, had themselves acknowledged this position in view of the order dated 08-08-2024, and that there is no prohibition in law which restricts the Commission's exercise of its inherent powers even on sou moto basis.

8. The learned counsel has then submitted that Regulation 111 of the MYT Regulation, 2014 has invested the Commission with such powers to recall its orders in the interest of justice. The learned counsel has also refuted the stand of the petitioner that the *Greater Noida Industrial Development Authority vrs. Prabhjit Singh Soni & Anr.* reported in *(2024) 6 SCC 767* would have no application on the ground that the inherent powers granted to the National Company Law Tribunal are distinct from the inherent powers granted to the respondent Commission under the MSERC (Conduct of Business) Regulations, 2007. This is because he contends the Supreme Court while deciding the issue and holding that the NCLT had powers to recall its order had examined Rule 11 of the NCLT Rules which dealt with inherent powers and that Rule



11 of the NCLT Rules being akin to Regulation 111 of the MYT Regulation, 2014, the Greater Noida case would be applicable to the instant case.

9. On the other contention of the petitioner that neither the Electricity Act nor the MSERC (Conduct of Business) Regulations, 2007 and MYT Regulations, 2014 provide that the respondent Commission can recall its orders, he submits that in the absence of any express position, the respondent Commission can resort to its inherent powers especially, considering the fact that the earlier order was *non est*. In support of this submission, reliance has been placed upon the case of ***K.K. Velusamy vrs. N.Palanisamy (2011) 11 SCC 275*** and ***Durgesh Sharma vrs. Jayshree (2008) 9 SCC 648***. The learned counsel has also placed a judgment passed by ***APTEL in Jindal India Thermal Power Limited vrs. Odisha Electricity Regulatory Commission (2024 SCC Online APTEL 7)*** and submits that was held that where one of the Members who demits office before passing of the final order, it is not permissible for the remaining Members to sign the order. In this context, the respondent Commission he submits, had exercised its inherent powers to recall its earlier orders and that the exercise of determination of tariff/truing up of tariff is to be done annually in a timely manner as it would otherwise be detrimental to the utilities and consumers' interest.



10. The learned counsel has lastly submitted that the petitioner's contention that there is no alternative remedy available by way of appeal, on the ground that the respondent Commission lacked the jurisdiction to issue an order of recall is fallacious, inasmuch as, Regulation 111 of the MYT Regulations, 2014 provides that all orders passed by the State Commissions are appealable before APTEL.

11. Mr. A.Kumar, learned Advocate General assisted by Ms. S.Laloo, learned counsel appearing for the respondents No. 3-5, has in his submissions also supported the arguments and contentions of the learned counsel for the respondents No. 1 & 2 and has further submitted Regulation 21 and Regulation 26 of the MSERC (Conduct of Business) Regulations, 2007 provide for review of the decisions and orders of the Commission and has also conferred the Commission with inherent powers. Learned Sr. counsel has also submitted on the aspect of Regulation 111 of the MYT Regulations, 2014 and has emphasised that the Regulation has invested the Commission with inherent powers and further, also clothed it with the discretion that the Commission may deal with such matters, in a manner it thinks fit in the public interest. It is further submitted Section 95 of the Electricity Act has also provided that all proceedings before the appropriate Commission shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of



the Indian Penal Code and that the Commission be deemed to be a Civil Court for the purposes of *Sections 345 and 346 of the Code of Criminal Procedure*. As such, he submits all proceedings before the Commission are deemed to be judicial/adjudicatory proceedings and that it is a settled position of law that the tariff orders are quasi-judicial orders.

12. In the instant case, learned Sr. counsel submits, the recall proceedings were initiated on the basis of the application of the respondent, and WP(C). No. 216, 217 and 218 of 2024, were withdrawn on the basis of the undertaking of the Commission before this Court that the Commission will look afresh at the matter which was accordingly done upon the respondent filing the applications. As such, he submits, the impugned recall order dated 23-08-2024 and subsequent tariff order dated 24-10-2024 passed by the Commission, cannot be said to be a case of an action without jurisdiction. It is also submitted that the members of the Byrnihat Industries Association in gross abuse of the process of law, have also individually preferred several writ petitions challenging the aforementioned orders that is, 23-08-2024 and the fixation of tariff order dated 24-10-2024.

13. Learned Advocate General has then placed before this Court a series of judgments showing that the order passed by the Commission



are all appealable under Section 111 of the Electricity Act, 2003, and has heavily relied upon a judgment of the Division Bench of this Court in WP(C). No. 515 of 2022, wherein by order dated 16-12-2022, it was held that APTEL is an efficacious alternative remedy under Section 111 of the Electricity Act, 2003 and that the writ Court would exercise self-restraint when statutory remedy is available. The learned Advocate General has also cited the following cases in support of this argument:

- (i) ***Order dated 31-07-2024, passed in WP(C). No. 191 of 2024 Meghalaya Steels Pvt. Ltd. v. MePDCL.***
- (ii) ***PHR Invent Educational Society vs. UCO Bank & Ors. (2024) 6 SCC 579 - Paras 22 to 28.***
- (iii) ***Jaipur Vidyut Vitran Nigam Ltd. & Ors. vs. MB Power (Madhya Pradesh) Ltd. & Ors. (2024) 8 SCC 513 - Paras 128-133.***

14. Learned Advocate General then submits that the impugned recall order dated 23-08-2024 and subsequent tariff order dated 24-10-2024, passed by the Commission is not a case of the orders being wholly without jurisdiction, and contends that the heading of Regulation 26 which states ‘inherent power’ allows the Commission to do any act which is not part of the Regulation in order to subserve the spirit of the Act. Section 92 of the Act, he submits, specifically speaks about quorum and Regulation 10 of the MSRC (Conduct of Business) Regulations, 2007, lays down the requirement of two Members as a valid quorum. The



orders dated 05-06-2024 and 06-06-2024, he submits, were passed contrary to the Act and Regulations, inasmuch as, a Chairperson is necessary and that all who hear must decide, these orders therefore being without any jurisdiction, were *non est* and *void ad initio*. Even otherwise, it is contended, the exercise of jurisdiction of recall and passing of subsequent tariff order by the Commission is not an incorrect exercise of power, in view of the fact that the orders dated 05-06-2024 and 06-06-2024, suffered from a patent error due to the non-signing of the tariff order by the Chairperson who heard the tariff proceedings, which is in contravention of the Electricity Act, 2003, MSERC (Conduct of Business) Regulations, 2007, as well as settled law by the Supreme Court and APTEL.

15. Before proceeding further, at this juncture in the considered view of this Court, it would be expedient to also examine two subsequent writ petitions which are tagged together with the instant matter i.e. WP(C). No. 339 of 2024 namely, WP(C). No. 9 of 2025 (M/s Pioneer Carbide Pvt. Ltd. vrs. MSERC) and WP(C). No. 13 of 2025 (M/s. Shyam Century Ferrous Ltd. vrs. MSERC) which are common and similar to WP(C). No. 339 of 2024, wherein the submissions of the respective parties have been recorded. In WP(C). No. 9 of 2025 the same order impugned in WP(C). No. 339 of 2024, i.e. order dated 23-08-2024 has been assailed and in



WP(C). No.13 of 2025, the resultant tariff order dated 24-10-2024 has been impugned.

16. Mr. P.K.Tiwari, learned Sr. counsel assisted by Mr. R.J.Das, learned counsel for the petitioner has also placed submissions on the questions of alternative remedy, inherent powers of the Commission, and in brief they are as follows:

- (i) The impugned order dated 23-08-2024 was not made by the Commission under any provision of the Electricity Act and hence, no alternative remedy of appeal under Section 111 is available.
- (ii) The order of recall made by the Commission in exercise of inherent powers is not provided under any provisions of the Act.
- (iii) Though under Section 94(f) of the Act, the Commission has a power to review its decisions, directions and orders, the power of review is not power to recall and mentioning of inherent powers in the heading or title of Regulation 26 of the MSRC (Conduct of Business) Regulations, 2007, has a very limited role to play in the construction of Regulation 26, as Regulation 26(1) only declares that nothing in the Regulation shall prevent the Commission from exercising its powers under the Act for which provisions have not been



made or have been made inadequately, to subserve the spirit of the Act. There is no question therefore of exercise of a non-existent power by the Commission to recall the order as it is controlled by statute and cannot act beyond the limits of the statute.

- (iv) The Commission thus has no inherent power to recall its tariff order and to rehear the matter involving determination of tariff. Hence, the recall order dated 23-08-2024 is without jurisdiction and is a nullity. As such, the remedy of appeal under Section 111 of the Electricity Act against an order of the Commission which has not been passed under any provision of the Act is not available.

17. Submissions have also been advanced by the learned Sr. counsel on the scope of writ of certiorari and the rule of exhaustion of alternative remedy which he submits, that even if alternative remedy of appeal is available, then the petitioner cannot be denied relief against the impugned order under certiorari jurisdiction of this Court. Learned Sr. counsel has referred to the following judgments in support of this argument.

- (i) ***South Indian Bank Limited & Ors. vrs. Naveen Mathew Philip & Anr. 2023 SCC OnLine SC 435 (Para 14).***
- (ii) ***Hari Vishnu Kamath vrs. Syed Ahmad Ishaque & Ors. :: (1954) SCC OnLine SC 8 (Para 24, 24.3)***



(iii) *T.C.Basappa vrs. T.Nagappa :: 1955 SCR 250.*

(iv) *State of U.P. vrs. Mohd. Nooh :: AIR 1958 SC 86.*

18. On another limb of submission, learned Sr. counsel has submitted that the petitioners in the instant two writ petitions did not submit itself to the jurisdiction of the Commission and never participated in a proceeding which culminated in the impugned order dated 23-08-2024, by which the earlier tariff order was recalled. According to the learned Sr. counsel, during the pendency of writ petitions filed by the public utilities challenging the tariff order passed by a single Member, on the Commission expressing its readiness to re-examine the matter, the writ petitions were withdrawn and applications were then filed before the Commission for recall of the tariff order. The Byrnihat Industries Association (petitioner in WP(C). No. 339 of 2024) then challenged the said action on the ground that the Commission had no jurisdiction to hear the matter suo moto and the writ application being WP(C). No. 274 of 2024, was then disposed of by this Court by allowing the BIA to raise objections before the Commission. Thus, he submits, it was only the BIA that appeared before the Commission and raised the issue of inherent lack of jurisdiction.

19. On the submission of the learned Advocate General that the petitioners having participated in the proceedings before the Commission are now estopped from challenging the order on the point of inherent lack



of jurisdiction, Mr. P.K.Tiwari, learned Sr. counsel has reiterated his submissions that it was the BIA that raised the question of inherent lack of jurisdiction before the Commission and the petitioners themselves never participated in the proceedings which culminated in the impugned order dated 23-08-2024, by which the earlier tariff order was recalled. The learned Sr. counsel has also denied the assertion made in the counter affidavit of the respondents, wherein it has been stated that the petitioners by their own letters dated 20-12-2024, 23-12-2024 and 24-12-2024, agreed to make payment in terms of the impugned tariff order and as such, had waived their rights to challenging it. It is submitted that the letters were protest letters wherein, the petitioners had pointed out infirmities in the electricity bill, as to the energy charges being calculated as per the Commission's tariff order dated 24-10-2024. It is further submitted that the allegation in the counter affidavit that the petitioners had suppressed material facts in not disclosing certain letters dated 18-01-2025 and 21-01-2025 is incorrect, as the said letters are neither relevant nor had any material bearing on the merits of this case, inasmuch as, in the said letters, the petitioners have only sought for copies of the revised bills after making necessary corrections. He therefore submits, the allegation of suppression of facts, not being material, would have no effect on the adjudication of the case.



20. The learned Sr. counsel has also contended that the doctrine of resjudicata, or constructive resjudicata, can only be invoked when the petition filed by the petitioner is either withdrawn or disposed of, and on the same cause of action, a different petition is filed by the same petitioner, which is not the situation in the present case, inasmuch as, the earlier writ petition was filed by BIA, an umbrella of organisation of which the petitioners are also members. The cause of action, he submits for the petitioners became complete when the consequential tariff order dated 24-10-2024, was issued and that the fundamental and legal rights of the petitioners are different from the rights of the BIA. He further asserts that there is no legal bar which prohibits the filing of a second writ petition by a petitioner when the first writ petition on a subsequent cause of action is pending.

21. The learned Sr. counsel has then stressed upon the requirement of following the mandate given in the MSERC (Conduct of Business) Regulations, 2007, and submits that the Regulation which is made under Section 182 (2) (zl) and Section 92 (1) of the Electricity Act, 2003, does not provide for any quorum of the Commission for making Regulations and that Regulation is only made in the meeting of the Commission as envisaged in Section 92 of the Act. He submits that the heading prefixed to Section 92 i.e. proceedings of appropriate Commission and the provisions of Section 92 (1) to (5) are related to meetings of the



Commission for transaction of business for which Regulation provides for quorum. The heading, initiation of proceedings prefixed to Regulation 12, he submits, covers proceedings under Section 94 and 95 of the Act. The expression proceedings used in Section 94 and 95 of the Act, he submits, has the trappings of a judicial proceeding and are different from proceedings under Section 92 which only deal with transaction of business in a meeting of the Commission.

22. Regulation 18 (3) it is then submitted, is linked to the meetings of the Commission within the meaning of Section 92 of the Act and provides that, decisions and orders of the Commission shall be signed and dated, but however, it cannot be construed to mean that if the Chairperson hearing the matter retires, the hearing by the Chairperson and Members hearing the matter cannot be completed by the Member present, or that such Member alone cannot sign the order. Such interpretation, he argues, would be in violation of Section 93 of the Act of which Regulation 18 (3) is subject to, and that this Regulation only underlines the principle that one who decides must hear, or vice versa and cannot be expanded to mean that all those who hear must collectively decide. The learned Sr. counsel has again emphasised that Regulation 18 (3) is linked to meetings of the Commission under Section 92 for transaction of business and cannot be interpreted to mean that it provides a quorum for the Commission to initiate proceedings under Section 86,



94, 95 etc. and is relatable only to proceedings ‘of the Commission’ and not to proceedings ‘before the Commission’. Section 93, it is submitted, is a saving clause and widely worded and it protects proceedings ‘of the Commission’ as well as proceedings ‘before the Commission’ from getting invalidated on the ground of vacancy or defect in the constitution of the Commission. He finally submits that when the Act does not provide for quorum and only the Regulation under the Act provides the same, it would mean that there is no requirement of quorum in the Commission while making Regulations under Section 181 of the Act. Hence, he submits, quorum is not a mandatory requirement for discharge of functions of the Commission under Sections 94, 95, 86 and 181 of the Act.

23. This Court having heard the respective counsels in these three writ petitions notes that the issues in question is with regard to the jurisdiction of the Commission to recall its own orders in exercise of its inherent powers and whether the writ petitions on the availability of alternate statutory remedy will be maintainable in an application under Article 226 of the Constitution. As noted earlier, the counsels for the petitioners have contended that the statutory appellate remedy available would not serve to address the grievances of the petitioners, inasmuch as, the impugned order of recall dated 23-08-2024 and the subsequent tariff order dated 24-10-2024 are wholly without jurisdiction and patently illegal on the



face of the record. This Court therefore, would examine as to whether the statutory alternate remedy provided under Section 111 of the Electricity Act, 2003 would not be efficacious as contended by the petitioners.

24. Section 111 of the Electricity Act, 2003, has provided for appeal against orders made by the appropriate Commission, in this case, the MSERC which is established under Section 82 of this Act, and by powers conferred by Section 181 (2) (zl) read with Section 92 (1) also the authority to make Regulations consistent with the Act. The impugned orders in question revolve around the challenge that the Regulation as framed under Section 181 (2) (zl) by the Commission, does not contemplate such action which has been impugned in the current proceedings i.e. the recall of order dated 05-06-2024 and 06-06-2024. Further, the next question is that the Commission having exercised its powers under Section 62 and 64 of the Electricity Act, 2003, and having fixed the tariff, whether it still possessed the jurisdiction or authority to re-hear or re-adjudicate the said re-fixation of tariff as has been done by the Commission.

25. In this context, the relevant provisions of the Electricity Act, 2003, MSERC (Conduct of Business) Regulations, 2007 and Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulation, 2014



which will be necessary for this discourse are reproduced herein below for the sake of convenience:

“The Electricity Act, 2003 –

Section 92. (Proceedings of Appropriate Commission): - (1) *The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.*

(2) *The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.*

(3) *All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*

(4) *Save as otherwise provided in sub-section (3), every Member shall have one vote.*

(5) *All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.*

Section 93. Vacancies, etc., not to invalidate proceedings.- *No act or proceeding 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.*



Section 111. Appeal to Appellate Tribunal: - (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.



(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Section 181. (Powers of State Commissions to make regulations): -

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely :-

(zl) rules of procedure for transaction of business under sub-section (1) of section 92.

MSERC (Conduct of Business) Regulations, 2007 –

10. Quorum

Where the Commission has also one Member or more the quorum of any meeting shall be two including the Chairperson.

12. Initiation of proceedings

(1) Proceedings shall be initiated on a petition filed by an affected person before the Commission:



Provided that the Commission may suo moto initiate a proceeding on a matter that may come to its notice if it is satisfied that it is necessary to do so in public interest.

(2) If a petition is admitted, notices shall be issued for filing of replies by the parties concerned as the Commission may direct:

Provided that before admission of a petition the Commission may, if it considers it necessary, direct that the facts of the subject matter of the petition be examined or enquired into by an officer or any other person it deems fit.

(3) The Commission may, if it considers necessary, order publication of the petition or reply inviting comments from members of the public on the substantial issues involved.

18. Decision and orders of the Commission

(1) On completion of a hearing or consideration of a matter the Commission shall give its decision with reasons therefor and shall pass orders, including orders with regard to costs.

(2) The Commission may also pass interim orders as may be necessary from time to time.

(3) All orders of the Commission shall be signed and dated by the Chairperson and Members hearing the matter and shall not be altered except to correct any apparent error.

(4) In any proceeding the decision taken by the majority shall be the decision of the Commission and in case of dissent the dissenting Member shall give his views separately.

21. Review of the decisions and orders of the Commission

(1) A person aggrieved by a decision or order of the Commission from which no appeal is preferred, or is



not allowed to be preferred, can seek a review of the order if new and important facts which, after the exercise of due diligence, were not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent on the face of record or for any other sufficient reason, by making an application within 60 days of the date of the order.

(2) The procedure for filing a review application shall be the same as in case of filing of a petition.

26. Inherent powers of the Commission and removal of difficulties.

(1) Nothing in these regulations shall be construed as barring the Commission from exercising its power under the Act for which provisions have not been made or have been made inadequately, in order to subserve the spirit of the Act.

(2) If the Commission is satisfied that there are genuine difficulties in the implementation of any of the provisions of these regulations it may relax the provisions to such extent and subject to such conditions as it may by reasoned orders decide.

Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulation, 2014 –

111.1 Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission”.

26. The Commission by the impugned order dated 23-08-2024 had addressed the multiple issues that had arisen and had taken into consideration the fact that WP(C). No. 216, 217 and 218 of 2024 were withdrawn and by order of this Court dated 23-07-2024, allowed the



utilities to reagitate the matter afresh before the Commission. On the Commission having issued notice for hearing, the petitioner Association (BIA) had approached this Court on the question of jurisdiction of the Commission for hearing on suo moto basis by way of WP(C). No. 274 of 2024 which was disposed of by order dated 08-08-2024 granting liberty to the BIA to raise whatever objections as deemed necessary before the Commission. As it was clear that it was not on the basis of suo moto action, the Commission by the impugned order, at para 62 thereof, had observed and directed as follows:

“62. Based on the submissions made by the parties, the Judgements of Hon’ble APTEL, various other Judgements of High Courts and Supreme Courts as quoted above in regard to the question in matter, and in line with the provisions of the COB, the Commission pronounce that

- a) A patent error had transpired in issuing the orders dated 05.06.2024 and 06.06.2024.*
- b) it is appropriate to withdraw the order dated 05.06.2024 and 06.06.2024 and hear the matter afresh.*
- c) The dates of the rehearing shall be announced through separate notification.”*

27. A perusal of the above quoted order shows that the Commission in passing the impugned order, had invoked its inherent powers in revisiting and recalling the orders dated 05-06-2024 and 06-06-2024, which as observed earlier, had been contested by the petitioner to be a



power that the Commission no longer possessed, having once passed the earlier orders. At this juncture, it would be apposite to refer to the judgment in the case of ***Greater Noida Industrial Development Authority vrs. Prabhjit Singh Soni & Anr.*** reported in (2024) 6 SCC 767 wherein at paras 37, 47 and 48, the Supreme Court has held as follows:

37. Per contra, on behalf of the respondents, it was urged that:

(a) the appellant had pressed its case only on the ground that it was a financial creditor, once this plea is found unsustainable, no relief can be granted to the appellant, as commercial wisdom of the CoC is not justiciable;

(b) NCLT has no power to recall its order of approval, the remedy for the appellant was to file an appeal within the time provided by the statute; and

(c) there has been inordinate delay on the part of the appellant in questioning the order of approval.

47. In Budhia Swain v. Gopinath Deb [Budhia Swain v. Gopinath Deb, (1999) 4 SCC 396], after considering a number of decisions, a two-Judge Bench of this Court observed: (SCC p. 401, para 8)

“8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party, or



(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.”

48. *The law which emerges from the decisions above is that a tribunal or a court is invested with such ancillary or incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice between the parties and, in absence of a statutory prohibition, in an appropriate case, it can recall its order in exercise of such ancillary or incidental powers.*

28. By applying the analogy of the above noted case, the same will run true to the facts of the instant case, inasmuch as, the Commission also has inherent powers under Regulation 26 of the MSERC (Conduct of Business) Regulations, 2007 and Regulation 111 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulation, 2014, which have both been quoted earlier, as the said provisions are similar to Rule 11 of the NCLT Rules. As observed by the Supreme Court, inherent power can be exercised by a Court or a Tribunal in the absence of any provision to the contrary, to recall an order to secure the ends of justice and/or to prevent abuse of the process of the Court. Similarly, there being no express provisions in the Electricity Act, 2003,



MSERC (Conduct of Business) Regulations, 2007 or the Meghalaya State Electricity Regulatory Commission (Multi Year Tariff) Regulation, 2014, it therefore cannot be assumed that the Commission in the instant case, could not have exercised its inherent powers.

29. The other question that deserves consideration is whether the earlier orders met with the requirements as prescribed by extant law, considering the fact that both the members who had heard the matter had not signed the orders. In this regard, reference can be made to orders passed by APTEL, wherein similar circumstances have arisen, such as in the case of ***Global Energy Private Limited vrs. Karnataka Electricity Regulatory Commission (2016 SCC Online APTEL 118)*** wherein at paras 15, 22 - 26, it has been held as follows:

“15. Regulation 31 speaks about orders of the Commission. It lays down a strict procedure. It is clear and unambiguous and puts certain restraint on the Members obviously to secure that all orders of the Commission meet with the accepted principles underlying judicial decision-making. Regulation 31(1) states that no Member shall exercise his vote on a decision unless he was present during all substantial hearings of the Commission on the matter. This provision forbids a Member who has not participated in hearings and not applied his mind to the issue involved from voting. Regulation 31(2) is more explicit. It states that the Commission shall pass orders on the petition in writing and the Members of the Commission who heard the matter and voted on the decision will sign the orders. Regulation 31(3) states that the reasons given by the Commission in support of the orders, including those by a dissenting Member shall form part of the order and shall be



available for inspection and supply of copies in accordance with these Regulations. Thus those who hear the matter have a joint responsibility to conclude it. Only they can vote on the decision as having participated in the substantial hearings, it is obvious that they have applied their mind to the matter. The Commission has to pass orders in writing and those who heard the matter and voted on the decision will sign the orders. Thus the responsibility to sign the orders is fixed. As per Regulation 31(3), the orders have to be reasoned orders. The reasons form part of the order. Regulation 31(3) takes care of a situation where a Member dissents. In that event the dissenting Member has to give reasons for his dissent and these reasons shall form part of the order. Section 31(3) requires that the reasons given by the Members shall be available for inspection and supply of copies in accordance with the said regulations. It is clear from Regulation 31 that signing of order by those who heard the matter and voted on the decision is a must. Even a dissenting Member must give reasons for his dissent and sign the reasons for the dissent. They form part of the order. No Member can avoid the responsibility of signing the order. It is implicit in Regulation 31 that all those who heard the matter must be present in the meeting. This is in tune with the principle that all those who heard the matter must sign the order. The order may be unanimous or there may be a dissenting voice. But the requirement is that all the Members who heard the matter have to sign the order. The conclusion is that an order which is not signed by all the Members who heard the matter will be non est.

22. *In our opinion the judgments of the Supreme Court referred to by us, make it clear that the work of the Commission which is of a quasi-judicial nature is one of joint responsibility of all Members. The Commission as a body should sit together and the order of the Commission has to be the result of the joint deliberations of all Members of the Commission acting in a joint capacity. All Members of the Commission who heard the matter should sign the order. If the order is not signed by all Members who*



heard the matter it will be invalid as it will not be order of the Commission. This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order.

23. Thus Section 92 of the said Act, Regulation 31 of the said Regulations and the judgments of the Supreme Court which we have referred to, lead us to conclude that the impugned order is non est and void as the matter was heard by three Members and order was signed by two Members. This is against the basic principle that one who hears the matter should sign the order.

24. We must also note that all the counsel except the counsel for the State Commission have supported the view taken by us though some of them have strongly urged that on merits the Appellant has no case. In this regard we clarify that we have not gone into the merits of the case as the preliminary point raised by the Appellant goes to the root of the matter. We therefore leave the contentions of the parties on the merits of the case open.

25. Before parting we must express our extreme dissatisfaction about the manner in which the State Commission has functioned in this matter. It has ignored the fundamental principle of judicial decision-making which applies to quasi judicial bodies as well that one who hears the matter must sign the order. We are told that the Member who heard the matter could not sign the order dated 01/09/2016 because he was out of the country from 31/08/2016 to 02/09/2016 (both days inclusive) in connection with a workshop on 'Smart Grid'. We are shocked at this explanation. Writing of a judgment is a serious matter. Judgments deal with rights and obligations of parties. In the power sector in most cases huge stakes are involved and each matter has commercial implications. But even if a matter does not involve high stakes all the same it decides rights



and obligations of parties. Consumers are affected by such orders. Ideally workshops held on holidays should be attended by Members so that the Commission's work does not suffer. But it is quite possible that in a given case the workshop may be of great significance and may make valuable addition to the knowledge of the Member. In such a case if the Member proceeds to attend a workshop signing of orders must be deferred. Undoubtedly, this Tribunal had fixed a time limit for deciding the instant matter. But an appropriate prayer could have been made to this Tribunal to extend the time limit. Signing of order is more important than attending a workshop.

26. In the circumstances we set aside the impugned order. We remit the matter to the State Commission for a de novo hearing. The State Commission shall hear the parties afresh and deliver its judgment independently and in accordance with law. We make it clear that we have upheld the preliminary objection raised by the appellant that the matter was heard by three members and the order was signed only by two members. We further make it clear that the impugned order is set aside only on that ground. The appeal is disposed of in the afore-stated terms.”

30. Similarly, in the case of ***Jindal India Thermal Power Limited vrs. Odisha ERC (2024 SCC Online APTEL 7)*** at paras 15, 17 and 23, it has been held as follows:

“15. Regulation 20(1) refers to the orders to be passed by the State Commission and lays down very strictly that the Chairperson as well as Members of the Commission who heard the matter, shall sign the orders. Regulation 20(2) goes further to provide that the reasons given by the Commission in support of the orders, including those by a dissenting Member, shall form part of the order and shall be available for inspection and supply of copies in accordance with these Regulation. Therefore, it is mandatory that all the Members of the Commission who hear the matter



shall sign the order thereby concluding the proceedings of the case before the Commission. Even the opinion of a dissenting Member shall have to form part of the final order of the Commission. No member has the option of avoiding to sign the order. It is must for all the Members of the Commission who heard the matter, to sign the order. The order may be unanimous or there may be a dissenting opinion also but the requirement is that even the dissenting Member shall also sign the order. What can be deduced from the meaningful perusal of Regulation 20 is that Members of the Commission who hear the case shall sit together and the final order has to be a result of their joint deliberations acting in a joint capacity. If, for any reason whatsoever, one of these Members is not available for the deliberations and the final order is prepared and signed by only remaining Members of the Commission, it would not be valid and proper order of the Commission. Such an order would be in violation of the legal proposition enunciated by the Hon'ble Supreme Court in the case of Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation, and reiterated in Rasid Javed v. State of U.P. that a person who hears must decide and the divided responsibility is destructive of the concept of judicial hearing.

17. The argument that the opinion of the third Member in the present case, who retired before the order could be signed, would not have been material at all for the reason that the impugned order is signed by the majority of the Members of the Commission who had heard the matter, is devoid of any force. It is for the reason that even the dissenting opinion by a Member shall have to form part of the final order of the Commission in view of the above noted Regulation 20(2) and shall have to be available for inspection etc. Further, such an order cannot be treated to be outcome of joint deliberations of all the Members of the Commission who heard the matter. It is often seen that Members of a Commission/Tribunal, come to the joint deliberations over a matter with their own view which they put



forward before the other Members and sometimes even the majority of the Members having a contrary view get convinced with the reasoning put forward by the Member in minority and the minority view becomes the final order of the Commission/Tribunal. In the instant case also, the third Member of the Commission, if consulted during joint deliberations (had he been still in service at the time of preparation of order) he may have convinced the remaining two Members, who have signed the impugned order, to take a contrary view. This actually is the advantage of having joint deliberations between the Members of the Commission at the time of preparing of final order of the Commission.

23. We clarify and reiterate the legal principle that where one of the Members of the Commission who hear a matter, demits office by reason of superannuation, death etc. before passing of the final order, it is not permissible for the remaining Member/Members of the Commission to sign the order. In such a situation, the matter shall be heard de novo and final order be passed / signed accordingly.

31. In the context of the above noted decisions, as can be seen from the quoted provisions of the Regulations governing the conduct of business of the Commission, Regulation 10 had provided for a quorum, but more importantly Regulation 18(3) has categorically provided that all orders of the Commission shall be signed and dated by the Chairperson and Members hearing the matter and shall not be altered except to correct any apparent error. By operation of Regulation 18(3), it is incumbent therefore, upon the Commission that all the orders have to be signed by the Chairperson and Members hearing the matter for the



same to be valid. This principle holds true in all judicial or quasi-judicial proceedings, as is evident from the pronouncements of the Supreme Court on this aspect, a case in point being the case of ***Gullapalli Nageswara Rao & Ors. vrs. Andhra Pradesh State Road Transport Corporation & Anr. (1958 SCC Online SC 49)*** wherein at para 31, it has been held as follows:

“31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

32. On this same principle, the case of ***Union of India & Ors. vrs. Shiv Raj & Ors. (2014) 6 SCC 564***, has apart from referring to the above noted judgment, has at paras 17, 18 and 19 given as follows:

“17. This Court in Gullapalli Nageswara Rao held: AIR 1959 SC 308 p.327, para 31.

“31. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party



appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

18. *This Court in Rasid Javed v. State of U.P. AIR 2010 SC 2275 following the judgment in Gullapalli Nageshwara Rao (supra) held that (Rasid Javed case SCC p. 796, para 51)*

“51. a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted”.

19. *A similar view has been reiterated by this Court in Automotive Tyre Manufacturers Association v. Designated Authority & Ors., (2011) 2 SCC 258, wherein this Court dealt with a case wherein the Designated Authority (DA) under the relevant statute passed the final order on the material collected by his predecessor-in-office who had also accorded the hearing to the parties concerned. This court held that the order stood vitiated as it offended the basic principles of natural justice.*

33. The earlier orders therefore, suffering from a patent lack of jurisdiction, considering the procedural errors that occurred i.e. the non-signing by both Members, the Commission in exercising its inherent powers to correct these errors or irregularity, cannot be said to be without jurisdiction, or that once the orders had been passed, the Commission was estopped from exercising its inherent powers, more so, taking into account the absence of any express provision barring such exercise of inherent power. In the case of ***Budhia Swain & Ors. vrs. Gopinath Deb***



& Ors. (1999) 4 SCC 396 at para 8, the Supreme Court has held as follows:

“8. In our opinion a tribunal or a court may recall an order earlier made by it if

- (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,*
- (ii) there exists fraud or collusion in obtaining the judgment,*
- (iii) there has been a mistake of the court prejudicing a party or*
- (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.*

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.”

In the instant case, the condition given in para 8 (i) above would apply.

34. In the case of ***SREI Infrastructure Finance Limited vrs. Tuff Drilling Private Limited (2018) 11 SCC 470*** at para 24 and 25 thereof, the powers of the Commission to recall its orders, can also be traced to the inherent powers of Courts to undertake review when the order suffers from procedural irregularity.



“24. It is true that power of review has to be expressly conferred by a statute. This Court in Para 13 has also stated that the word “review” is used in two distinct senses. This Court further held that when a review is sought due to a procedural defect, such power inheres in every tribunal. In Paragraph 13, the following was observed:-

*“13. The expression “review” is used in the two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case (1971) 3 SCC 844, held that no review lies on merits unless a statute specifically provides for it. **Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.**”*

25. In Kapra Mazdoor Ekta Union Vs. Birla Cotton Spg. & Wvg. Mills Ltd. (2005) 13 SCC 777, this Court again held that a quasi-judicial authority is vested with the power to invoke procedural review. In Paragraph 19 of the judgment, the following was laid down:-

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has



committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal 1980 Supp SCC 420, it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”



35. As such, as per the discussions and observations made herein above, the fact that the earlier orders 05-06-2024 and 06-06-2024, are incompetent and *non est* in law having been established, the exercise of the inherent powers of the Commission therefore, cannot be said to be without jurisdiction.

36. The submissions of the learned Sr. counsel for the petitioners in WP(C). No. 9 and 13 of 2025, that Section 92 and 93 of the Electricity Act, 2003, to which Regulation 18 (3) is subject to, only underlines the principle that one who decides must hear, and cannot be expanded to mean that all those who hear must collectively decide, and that further it cannot be construed to mean that if the Chairperson retires, the hearing cannot be completed by the Member present, or that such Member alone cannot sign the order, and that quorum was not a mandatory requirement for discharge of functions of the Commission, but is only for proceedings of the Commission under Section 92 and not for the proceedings before the Commission under Sections 94, 95 etc., these arguments in view of the prior discussions, cannot be accepted. In this context, it is important to note that the Commission has been constituted under Section 82 of the Electricity Act, 2003, which specifically mentions that it consists of a Chairperson and two Members and the object of Section 93 as can be clearly understood, is only to provide that vacancy cannot invalidate proceedings of the Commission, in order to avoid situations where the



Commission is not able to function due to vacancy. Section 93 thus cannot be read in isolation, as this would militate against the very purpose of Section 82 of the Electricity Act. It may not be out of place to add herein, that the Commission as per Section 92 read with Section 181 (2) (zl) can frame its own Regulations for conducting its business which has been done so in the form of MSERC (Conduct of Business) Regulations, 2007. Reading these provisions together, the contention that in view of Section 93, the order passed by the Commission is invalid, therefore, is rejected.

37. On the issue of quorum and vacancy which has also been canvassed by the learned Sr. counsel for the petitioner by placing reliance on an order dated 02-12-2013, passed by a three Member Bench of APTEL in OP. No. 1 of 2011, to buttress his arguments that Regulations with regard to quorum cannot be framed against the substantive provisions of the Electricity Act, 2003, it is to be noted that the directions contained in the order dated 02-12-2013, passed in OP. No. 1 of 2011, does not deal with the scenario where final orders were passed by a single Member even though the proceedings were heard by two or more Members. Moreover, the issue involved in the instant case is distinct from the issue involved in OP. No. 1 of 2011, and the MSERC (Conduct of Business) Regulations, 2007, having clearly provided that all orders of the Commission should be signed by the Chairperson and Members



hearing the matter, the Commission is thus also bound by its own Regulations.

38. The legality of the impugned order has been deemed necessary by this Court to be deliberated and merits of the case discussed, is also to discern as to whether exceptional circumstances such as, breach of the principles of natural justice, or lack of jurisdiction exists, or that there is patent illegality present in the face of the impugned order itself, that would render statutory alternate remedy nugatory or futile, but as per the discussions and observations made in this judgment, none exists. As such, the impugned order will surely be amenable to an appeal under Section 111 of the Electricity Act, 2003.

39. In the totality of circumstances, therefore, the impugned order dated 23-08-2024 cannot be held to be illegal and without jurisdiction and the writ petitioners having recourse to alternate efficacious remedy under Section 111 of the Electricity Act, 2003, no case has been made out to warrant any interference under Article 226 of the Constitution of India and the writ petitions are accordingly dismissed.

Chief Justice (Acting)

Meghalaya
02.06.2025
"Samantha-PS"