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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment reserved on: 03.05.2025*

*Judgment pronounced on: 21.05.2025*

+ W.P. (C) NO. 4527/2017, CM APPL. 19776/2017 (Direction)  
& CM APPL. 28389/2024 (Direction)

CHHATTISGARH STATE POWER DISTRIBUTION CO.  
LTD. ....Petitioner

Through: Mr. Arun Bhardwaj, Sr. Adv. with  
Ms. Suparna Srivastava and Mr. Nitai  
Agarwal, Advs.

versus

MINISTRY OF NEW AND RENEWABLE ENERGY, GOVT.  
OF INDIA & ORS. ....Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr.  
Saxena, Mr. Mukesh Kr. Tiwari, Ms.  
Poonam Shukla & Ms. Reba Jena  
Mishra, Advs. for R-1.  
Mr. Sangram Patnaik, Mr. Varun  
Raghavan, Mr. Swayam Sidha Patnaik  
& Mr. Ravkirat Singh Mann, Advs.  
for R-2.  
Mr. Raunak Jain, Adv. for R-6 and R-  
7.

**CORAM:**  
**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**  
**SHANKAR**

**J U D G M E N T**

**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Writ Petition seeks the following reliefs: -

“a. Issue a writ of mandamus or any other writ, order or direction in the nature thereof to the Respondent Nos. 1 & 2 to pay Generation Based Incentive to the Petitioner as per the GBI Policy



dated 16.06.2010, that is, by computing GBI as the difference between the tariff determined by the CERC vide order dated 26.04.2010 in Petition No. 53/2010 (i.e. Rs. 17.91/kWh) and the Base Rate (i.e. Rs. 5.665/ kWh), including for captive consumption of solar power generated (to be measured on AC side of the inverter), with effect from the date of commissioning of the solar power plants established by the Respondent Nos. 6 & 7 respectively, and to pay the balance GBI due as a result of such computation along with interest thereon at the rate of 1.25 per cent per month;

b. In the alternative, issue a writ of mandamus or any other writ, order or direction in the nature thereof to the Respondent Nos. 1 & 2 to pay Generation Based Incentive to the Petitioner on the basis of the difference between the tariff determined by the CSERC vide order dated 26.04.2010 in Petition No. 53/2010 (i.e. Rs. 17.91/ kWh) and the Base Rate (i.e. Rs. 5.665/ kWh), including for captive consumption of solar power generated (to be measured on AC side of the inverter), with effect from the date of commissioning of the solar power plants established by the Respondent Nos. 6 & 7 respective, and to pay the balance GBI due as a result of such computation along with interest thereon at the rate of 1.25 per cent per month;

c. Pass any other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

2. At the outset, the Ld. Senior Counsel for the Petitioner clarified that though Prayer “a” also sought to include the aspect of captive consumption of solar power, the same was not being pressed and that he would only be concentrating his efforts on the computation of **“Generation Based Incentive”**<sup>1</sup>.

3. Resultantly, the present Judgment would be limited only to a determination on the manner in which the GBI is to be computed.

4. The concept of GBI finds its genesis in the policy dated 16.06.2010, titled **Jawaharlal Nehru National Solar Mission**<sup>2</sup> (hereinafter referred to as “Policy”) also referred to as the **Rooftop PV & Small Solar Power Generation Programme**<sup>3</sup> Scheme

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<sup>1</sup>GBI

<sup>2</sup>JNNSM

<sup>3</sup>RPSSGP



(hereinafter referred to as “Scheme”) setting out the guidelines for Rooftop and Other Small Solar Power Plants connected to Distribution Network (Below 33 kV). The same are used interchangeably herein as “Policy” or “Scheme”. The relevant paragraphs of the Policy pertaining to the same are as follows:

*“1. About the Programme*

.....

- Generation Based Incentive (GBI) will be payable to the distribution utility for power purchased from solar power project selected under these guidelines, including captive consumption of Solar Power generated (to be measured on AC side of the inverter). The GBI shall be equal to the difference between the tariff determined by the Central Electricity Regulatory Commission (CERC) and the Base Rate, which will be Rs 5.50 per kWh (for Financial year 2010-11), which shall be escalated by 3% every year.

**Explanation:** Base Rate of Rs 5.50/unit to be considered for the purpose of computation of GBI, shall remain constant over duration of 25 years. Thus, GBI determined for a project (which is the difference of CERC determined tariff and Base Rate) shall remain constant for entire duration of 25 years.

Base Rate for projects to be commissioned during each subsequent year shall also be modified at escalation factor of 3% p.a. and such escalated Base Rate shall remain constant over duration of 25 years.

- GBI shall be payable to the distribution utility for period of 25 years from the date of commissioning of the project.
- IREDA has been designated as ‘Programme Administrator’ by the Ministry of New and Renewable Energy for administering the generation based incentive programme for rooftop PV and other small solar power plants.”

*(emphasis supplied)*

5. The said Policy/Scheme envisions participation by various entities, *inter alia*, Distribution Utilities, Solar Power Producers (Project Proponents) etc. and the manner in which the same was to be done for the purpose of availing the benefit of GBI.

6. Without elaborating too much on the details, for the present



purposes, in addition to the concept of GBI as explained earlier, what needs to be kept in mind are the existence of two different types of Agreements, as defined in the Scheme and termed as MoU-1 and MoU-2.

7. Eligible Solar Power Producers/ Project Proponents (as defined in Clause 4.4 of the Policy) would apply for pre-registration at the State level and upon so doing, would, based on a tariff already determined by the State, enter into an Agreement with a Distribution Utility, like the Petitioner herein, on the tariff determined by the **State Electricity Regulatory Commission**<sup>4</sup>. This Agreement between a Project Proponent and a Distribution Utility is referred to as the MoU-1 and defined as such in Clause 4.2 of the Policy/ Scheme. This would form one of the preliminary limbs of a series of steps which would entitle a Distribution Utility like the Petitioner herein (“**Distribution Utility**”) to claim the benefits of the GBI.

8. MoU-2, as defined in the second paragraph of Clause 4.2 of the Policy/Scheme, is the further Agreement between the Distribution Utility and Respondent No.2 and is solely for availing the benefit of GBI.

9. Having already set out the relevant Clause in respect of GBI in the Policy, this Court also believes it necessary to extract Clause 1.4 of the MoU-2, which provides for computation of GBI and reads as follows: -

**“1.4 PREMISE FOR GBI COMPUTATION:** Applicable rate for the purpose of GBI computations, payable to the GBI APPLICANT for Solar Power purchase shall be computed as difference between (a) Applicable CERC Tariff Rate (ACTR) and (b) Applicable Bate rate (BR), as defined below:

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<sup>4</sup>SERC



(a) Applicable CERC tariff rate (ACTR) shall mean the Tariff Rate as determined by the Central Electricity Regulatory Commission (CERC) for Solar PV or Solar Thermal Power Projects, as the case may be, and shall be linked to financial year of commissioning of the Solar Power Project as per relevant **Tariff Order of CERC**. In case accelerated depreciation is claimed by the Project Proponent, the applicable tariff rate shall be in accordance with CERC determined tariff for projects claiming accelerated depreciation as per the relevant **Tariff Order of CERC**. The ACTR shall be confirmed by concerned distribution utility for each project while claiming reimbursement of GBI from PROGRAMME ADMINISTRATOR, and

(b) Applicable Base Rate (BR) shall mean rate of Rs. 5.50 per kWh for projects to be commissioned in financial Year 2010-11. The Applicable Base Rate shall be escalated at 3% per annum for each year for projects commissioned in subsequent financial years. The Applicable Base Rate once determined for each solar project shall remain constant over the duration of 25 years and in no event either the Project Administrator or MNRE assumes any liability over and above the GBI as calculated above either to the GBI Applicant or any other person.”

**(emphasis supplied)**

10. The bone of contention herein is the tariff rate on the basis of which GBI is to be calculated.

11. While it is the contention of the Petitioner that the calculation and payment of the GBI will be governed by the Guidelines/Scheme/Policy and the Agreement between the Petitioner and Respondent No.2 (MoU-2) which provide for calculation on the basis of the applicable **Central Electricity Regulatory Commission<sup>5</sup>** tariff rate, Respondent No. 2 and Respondent No. 1/**Ministry of New & Renewable Energy<sup>6</sup>** would contend that it would be on the basis of the tariff determined by the SERC meaning thereby that the GBI computation would not be on the basis of the “Tariff order of CERC” [**@ Rs. 17.91 per unit**] but would be on the basis of the “Tariff order of SERC” [**@Rs. 15.84 per unit**].

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<sup>5</sup>CERC

<sup>6</sup>MNRE



### **ARGUMENTS BY THE PETITIONER:**

12. The Ld. Senior Counsel for the Petitioner would commence his arguments by referring to the said Policy dated 16.06.2010, which, he states, is the foundational document forming the basis for various Agreements entered into by distribution utilities like the Petitioner herein and parties being owners of Solar Generation Projects (Respondent Nos. 6 & 7) as well the as the **Indian Renewable Energy Development Agency Limited**<sup>7</sup> (Respondent No. 2). The entities governed by this Policy are set out at Clause 4 of the said guidelines.

13. The Ld. Senior Counsel for the Petitioner would contend that one of the basic eligibility criteria for claiming benefits under the Scheme was that the Distribution Utility would sign a Power Purchase Agreement with a Project Proponent such as Respondent Nos. 6 and 7 herein at a tariff determined by the appropriate **SERC** and as set out in Paragraph 4.2 of the said guidelines. In line with the same, the Petitioner herein entered into the **Memorandum of Understanding dated 13.07.2010**<sup>8</sup> (MoU-1) with Respondent Nos. 6 and 7, thereby fulfilling a criterion for availing benefits under the scheme. The Ld. Senior Counsel for the Petitioner would contend that the entering into the Agreement was to fulfil the eligibility criteria for the MoU-2 as per the Scheme.

14. The Ld. Senior Counsel thereafter would refer to the Agreement being the **Memorandum of Understanding dated 26.04.2011**<sup>9</sup> (MoU-2), entered into by the Petitioner with Respondent No. 2 in

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<sup>7</sup> IREDAL

<sup>8</sup> MoU-1

<sup>9</sup> MoU-2



terms of sub-paragraph 2 of paragraph 4.2 of the JNNSM policy.

15. The Ld. Senior Counsel for the Petitioner would also refer to the relevant portion in respect of the GBI which was payable to the Petitioner herein for power purchase from solar power projects selected under the said guidelines, more particularly, the paragraph relating to the calculation of GBI, as set out hereinbefore.

16. In fine, the Ld. Senior Counsel for the Petitioner would contend that the GBI was payable at the CERC Tariff rate and not at the SERC tariff rate. He states that the SERC tariff rate was only for the purpose of entering into the MoU-1, which was one of the primary steps for fulfilling the eligibility criteria for availing the benefit of GBI under the scheme, but was not the basis on which GBI was to be paid. He further states that the GBI was to be paid on the basis of the CERC rate, which is what has been set out in the Policy and in the express terms of MoU-2.

### **ARGUMENTS OF THE RESPONDENTS:**

17. By way of a preliminary objection, Ld. Counsel for Respondent No. 2 would state that the dispute raised herein stood resolved as between the parties by virtue of the Clauses of the Policy and the MoU-2 and in view of the said resolution, nothing survives and therefore the present Petition is not maintainable.

18. In support of the same, Ld. Counsel for the Respondent relies upon Clause 8 of the Policy which provides for the power to remove difficulties and reads as follows: -

“8. Power to remove difficulties  
If any difficulty arises in giving effect to any provision of these guidelines or interpretation of the guidelines, the Committee to be constituted by Ministry of New and Renewable Energy shall meet and take decision, which will be binding on all parties.”



19. Ld. Counsel for Respondent No. 2 would also refer to and rely upon Paragraph 3.9 of the MoU-2, wherein the dispute resolution mechanism is set out as follows: -

**“3.9 DISPUTE RESOLUTION MECHANISM:** If any difficulty arises in giving effect to any provision of this MoU or RPSSGP guidelines or interpretation of the terms of this MoU and/or RPSSGP guidelines, the Committee to be constituted by Ministry of New and Renewable Energy shall meet and take decision, which will be binding on all parties.”

20. It would be the contention of Ld. Counsel for the Respondent No. 2 that the tariff applicable for the payment of GBI would be the tariff at the “time of registration of the project” and the same is pegged to the tariff as determined by the CSERC to be Rs. 15.84/kWh.

21. Ld. Counsel for Respondent No. 2 would rely upon the pre-registration application form submitted by Respondent Nos. 6 and 7 to contend that the tariff @Rs. 15.84 per unit was the rate at which the said Respondents signed up for the scheme and the same being the tariff “at the time of registration”, the applicable rate would be the SERC rate and thus the GBI would have to be calculated accordingly on the basis of the same.

22. In support of this contention, Ld. Counsel for Respondent No. 2 would refer to and rely upon two letters. Firstly, the letter dated 19.03.2014 issued by Respondent No.1 to the Petitioner, which reads as follows:

“  
42/10/2013-14/GSP  
Executive Director (Comml)  
Chhattisgarh State Power Distribution Co. Ltd.  
“Vidyul Seva Bhawan”,  
Danganya,  
Dated .....  
19.03.2014



Raipur, Chhattisgarh-492013.

**Sub: CSPDCL's Request to MNRE for payment of GBI to RPSSGP SPV projects in Chhattisgarh considering the revised tariff of Rs. 17.91/kWh issued by CSERC Instead of the original tariff of Rs. 15.84/kWh**

Ref: CSPDCL's Letter No 02-02/ACE-I/4151 dated 10.02.2014

Dear Sir,

With reference to your above referred letter, the undersigned is directed to state that as per the guidelines of the RPSSGP Scheme, one of the four eligibility conditions for the registration of the project was "Issuance of relevant Tariff order from concerned SERC". At the time of registration, the levelised tariff fixed as per Chhattisgarh State Electricity Regulatory Commission (CSERC) order for solar PV power plants was Rs. 15.84/kWh feed for 25 years, on the basis of which only the projects were selected and the GBI support for them from Central Government was determined and fixed for 25 years. Though the CSERC is well within its powers to review and revise the tariff subsequently, the revised tariff should not apply from retrospective effect to previously selected projects to the detriment of the GBI outgo from Central Government as it appears that only the two projects selected under the RPSSGP scheme are affected by this Order. If the State Government decides to provide a higher revised tariff to the initially selected projects, the increase will have to be met only by the State Utility/Discom and not by the Central Government. The tariff at the time of registration of the project (i.e. Rs. 15.84/kWh) shall alone be considered for payment of GBI and it shall remain constant for a period of 25 years,

2. In view of the position explained above, It is regretted that your request for an upward revision of tariff for payment of GBI to projects under RPSSGP Scheme can't be accepted."

23. Secondly, the letter dated 29.04.2013 issued to the Petitioner by Respondent No. 2, which reads as follows: -

"Ref: 232/107/SPV/2011/IREDA

Date: April 29, 2013

The Chief Engineer (Commercial),  
M/s. Chhattisgarh State Power Distribution Company Ltd.  
Vidyut Sewa Bhawan,  
4<sup>th</sup> Floor, Dagania,  
Raipur – 492 013  
Chhattisgarh.



**Sub: “Issue of revised grid solar PV power tariff for RPSSGP projects in Chhattisgarh as per tariff order issued by Chhattisgarh State Electricity Regulatory Commission (CSERC)”**

Dear Sir,

This has reference to the request for the consideration of revised solar PV power tariff for RPSSGP projects in Chhattisgarh @ Rs. 17.91/ kWh. Accordingly, the issue of revised grid solar PV power tariff as per tariff order issued by CSERC is discussed in the 6<sup>th</sup> Meeting of the Committee to remove difficulties in implementation of RPSSGP Scheme held at MNRE on 15.03.2013 and the Committee recommended that –

“The tariff at the time of registration of the project (i.e. Rs. 15.84/kWh) shall alone be considered for payment of GBI and it shall remain constant for a period of 25 years.

However, if the State Government decides to provide a higher revised tariff to the initially selected projects, the increase will have to be met only by the State Utility/Discom and not by the Central Government.

In this regard, it is to inform you that the tariff @ Rs. 15.84/ kWh is considered for the payment of GBI towards RPSSGP Projects and it shall be constant for a period of 25 years.”

24. Ld. Counsel for Respondent No. 2 would thereafter refer to the letter dated 28.06.2013, preferred by the Petitioner to Respondent No. 2, asserting that the Petitioner herein accepts that the GBI would be calculated on the basis of the tariff rate as fixed by the SERC, which would be @Rs. 15.84 per unit and not as per the CERC @Rs. 17.91 per unit. In view of such acceptance by the Petitioner, it is contended that the Petitioner is estopped from raising any dispute in this regard. The Respondent thus argues that the present Petition is also barred by the principles of Estoppel.

25. Ld. Counsel for Respondent No.2 would contend that the same is also in line with both the MoUs and in particular Clause 1.8 of



MoU-1 and Clause 1.3 of MoU-2.

26. Clause 1.8 of MoU-1 reads as under:

**“1.8.APPLICABLE TARIFF:** Chhattisgarh State Electricity Regulatory Commission in its order dated 08.09.08 read with order dt.09.07.10 passed in Suo Motu petition No. 16/2008 (T) has determined the applicable tariff of Small Solar power generation plant for sale (including captive consumption of solar power generated) of electricity generated from such Solar Power Projects valid for a period of 25 years.”

Clause 1.3 of MoU-2 reads as follows:

**“1.3. APPLICABLE TARIFF:** The applicable tariff rate for purchase of Solar Power (including deemed purchase corresponding to the captive consumption met from Solar generation) generated from Solar Project of Project Proponent shall be as determined by the Chattisgarh State Electricity Regulatory Commission.”

27. Ld. Counsel for Respondent No. 1 would by and large parrot the arguments of Respondent No. 2 and also refer to and rely upon the same documents and Clauses as relied upon by the Ld. Counsel for Respondent No. 2.

28. In addition, Ld. Counsel for Respondent No. 1 would refer to and rely upon a letter dated 01.04.2013, which encloses therein the approved minutes of the sixth meeting of the Committee to remove difficulties in implementation of the Scheme through IREDA and MNRE. Ld. Counsel would also refer to the pre-registration application form as referred to by Respondent No.2 and contend that in view of Clause (iii) of the clarification issued by the Committee in the sixth meeting, the applicable tariff rate for calculating GBI would be Rs. 15.84 per unit and not Rs. 17.91 per unit.

29. The said Clause (iii) reads as under: -

**“iii. Issue of revised grid solar PV power tariff for RPSSGP projects in Chhattisgarh as per tariff order issued by**



**Chhattisgarh State Electricity Regulatory  
Commission(CSERC)**

The committee noted that as per the guidelines, one of the four eligibility conditions for the registration of the project was “Issuance of relevant Tariff order from concerned SERC”. At the time of registration, the levelised tariff fixed as per Chhattisgarh State Electricity Regulatory Commission (CSERC) order for solar PV power plants was Rs. 15.84/kWh fixed for 25 years, on the basis of which only the projects were selected and the GBI support for them from Central Government was determined and fixed for 25 years. Though the CSERC is well within its powers to review and revise this tariff subsequently, the revised tariff should not apply from retrospective effect to previously selected projects to the detriment of GBI outgo from Central Government as it appears that only projects under this scheme are affected by this order. If the State Government decides to provide a higher revised tariff to the initially selected projects, the increase will have to be met only by the-State Utility/ Discom and not by the Central Government. IREDA may also obtain legal opinion on this and file appeal if required.

**The Committee accordingly recommended that the tariff at the time of registration of the project (i.e. Rs. 15.84/kWh) shall alone be considered for payment of GBI and it shall remain constant for a period of 25 years.”**

30. Ld. Counsel for Respondent Nos. 6 and 7 also would make their submissions, but the same primarily revolved around the *inter-se* issues as between the Petitioner and themselves and for the purpose of establishing their claim(s) *qua* the Petitioner. The same is not pertinent for the purpose of determining the issues raised herein.

**ANALYSIS & DECISION:**

31. In a nutshell, the challenge by the Petitioner is to the decision of the Committee in exercise of its power under Clause 8 of the Scheme/ Policy, which Clause is mirrored with a few modifications in Clause 3.9 of the MoU-2 as entered into between the Petitioner and Respondent No. 2. The said clauses have already been extracted



hereinabove and are not being reiterated to avoid prolixity.

32. Admittedly, the said RPSSGP Guidelines have not been amended. Clause 3.3 of MoU-2 states as follows: -

“3.3 **GOVERNING:** The parties recognize and acknowledge that the premise for operation of the GBI is based on RPSSGP Guidelines as published by MNRE, GoI and as amended from time to time. The parties hereby agree to abide by the terms and conditions as outlined under the said RPSSGP Guidelines as amended from time to time. This MoU shall stand automatically modified with the amendment in the RPSSGP guidelines to the contrary without further amendment in this MoU.”

33. A reading of the said Clause makes it evident that the computation of the GBI is based on the JNNSM policy as published by the MNRE (as amended from time to time).

34. The MoU-2 also provides that it would stand automatically modified with any amendment to the said guidelines without any further amendment to the said MoU.

35. In the present case, the “power to remove difficulties” which Clause, as already stated earlier, is mirrored in the “Dispute Resolution Mechanism” Clause of the MoU-2, and has been exercised in a manner such as to amend the guidelines/ Scheme itself.

36. This is evident from the pleadings and arguments of Respondent Nos. 1 and 2, wherein it is repeatedly asserted that the applicable tariff rate for calculating the GBI, as per the Committee’s clarification or decision, would be the tariff prevailing “...at the time of project registration” (i.e., Rs. 15.84/KWh). This tariff, for the purposes of MoU-1, is the rate determined by the SERC. However, this position directly contradicts the express provisions of both the GBI guidelines and MoU-2, which stipulate that the GBI must be computed based on the tariff determined by the CERC.



37. This Court is of the opinion that the “Power to remove difficulties” Clause of the Scheme, read in conjunction with the “Dispute Resolution Mechanism” Clause in MoU-2, cannot be exercised in a manner such as to amend the foundational policy.

38. Such an interpretation of the Clause would, in the opinion of this Court, permit one party to have exclusive power to bring about a unilateral change in the relationship. This change would be a clear departure from the initial premise on the basis of which various parties have entered into Agreements and it would constitute a material change in the entire scheme of things.

39. The interpretation sought to be canvassed by the Respondents also seems to be against the express wording employed in both, the Policy as well as the MoU-2. The wording as employed in the clauses is reiterated once again, “*if any difficulty arises in giving effect to any provision of this MoU or RPSSGP Guidelines....*”

40. The power given to the Committee is to alleviate any difficulty that arises “*in giving effect to any provision of this MoU*”, meaning thereby that the provision of the MoU would remain as it is and the committee would have to work within the express confines of the Policy and the MoU, “*as is*”, for the purpose of resolving any difficulties in effectuating the MoU.

41. The Hon’ble Supreme Court in *W.B. v. Anindya Sundar Das*<sup>10</sup> made the following observation *qua* the scope and ambit of removal of difficulty clauses:

55. A “removal of difficulty clause” has been construed in *Madeva Upendra Sinai v. Union of India* [*Madeva Upendra Sinai v. Union of India*, (1975) 3 SCC 765 : 1975 SCC (Tax) 105] , which reads as follows : (SCC pp. 775-76, para 39)

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<sup>10</sup>(2022) 16 SCC 318



“39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well-nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the “removal of difficulty clause”, once frowned upon and nick-named as “Henry VIII clause” in scornful commemoration of the absolutist ways in which that English King got the “difficulties” in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-Independence era.”

(emphasis in original)

**56.** The State Government chose the incorrect path under Section 60 by misusing the “removal of difficulty clause” to usurp the power of the Chancellor to make the appointment. A Government cannot misuse the “removal of difficulty clause” to remove all obstacles in its path which arise due to statutory restrictions. Allowing such actions would be antithetical to the rule of law. Misusing the limited power granted to make minor adaptations and peripheral adjustments in a statute for making its implementation effective, to sidestep the provisions of the statute altogether would defeat the purpose of the legislation.

**57.** Accordingly, the High Court in our view was justified in coming to the conclusion that “in the guise of removing the difficulties, the State cannot change the scheme and essential provisions of the Act”.

(*Emphasis supplied*)



42. Similarly, a 5-Judge bench of the Hon'ble Supreme Court in *Pratap Singh v. State of Jharkhand*<sup>11</sup> observed as follows:

***“Model Rules***

**107.** We, however, do not agree that the Model Rules have been framed in terms of the provisions of the Act so as to attract the principles that rules validly framed are to be treated as part of the Act. It is one thing that the rules validly framed are to be treated as part of the Act as has been held in *Chief Forest Conservator (Wildlife) v. Nisar Khan* [(2003) 4 SCC 595] and *National Insurance Co. Ltd. v. Swaran Singh* [(2004) 3 SCC 297 : 2004 SCC (Cri) 733] but the said principle has no application herein as in terms of the provisions of the said Act, the Central Government does not have any authority to make any rules. In the absence of any rule-making power it cannot refer to the omnibus clause of power to remove difficulty inasmuch as it has not been stated that framing of any model rule is permissible if a difficulty arises in giving effect to the provision of the Act. The Central Government is a statutory functionary. Its functions are circumscribed by Section 70 of the Act only. It has not been authorised to make any rule. Such rule-making power has been entrusted only to the State. The Central Government has, thus, no say in the matter nor can it exercise such power by resorting to its power “to remove difficulties”. Rule-making power is a separate power which has got nothing to do with the power to remove difficulty. By reason of the power to remove difficulty or doubt, the Central Government has not been conferred with any legislative power. The power to remove doubt or difficulty although is a statutory power but the same is not akin to a legislative power and, thus, thereby the provisions of the Act cannot be altered. [See *Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union* [(1967) 1 SCR 15 : AIR 1967 SC 691], AIR at p. 703.]”

***(Emphasis supplied)***

43. Thus, in the present case, the power given to the Committee is to interpret the terms of the MoU and the Scheme. A power to interpret a provision cannot be expanded to include within it the power to amend. The power exercised by the Committee is clearly in excess of what is contemplated by the Scheme as well as the MoU.

44. This Court would now examine the basic premise of the policy

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<sup>11</sup>(2005) 3 SCC 551



on the basis of which the MoU came to be signed. The guidelines in paragraph 1 expressly recognize two types of tariffs i.e., (a) the tariff determined by the appropriate SERC which would govern the Power Purchase Agreement of the Distribution Utility with a Project Proponent and which would be the tariff at which the project is registered and, (b) the tariff determined by the CERC which would form the basis for the calculation/determination of the GBI. This aspect is echoed in further clauses of the Policy, *inter alia*, Clause 4.2 and Clause 4.3 of the guidelines. This aspect is also echoed and captured in the recitals as well as in Clauses 1.3 and 1.4 of the MoU-2, which is the Agreement between the Project Proponent and the Distribution Utility.

45. At the time when Respondent No. 2 entered into an Agreement with the Petitioner, the MoU-1 (which was on the basis of a tariff determined by SERC), was known and in fact formed a part of it as Schedule-1 of the said MoU.

46. The reliance by Respondent No. 1 on the decision of the Committee dated 15.03.2013 which was communicated by the letter dated 01.04.2013 is erroneous since the decision of the Committee is premised on the basis that the payment of GBI was to be made on the basis of the tariff at the time of registration, which was Rs.15.84/kWh. The Committee also states that the revised higher tariff by the State would be met by the State itself.

47. The Committee's decision is based on the flawed understanding that the GBI is to be paid on the basis of the "tariff at the time of registration" and not on the CERC rate. The CERC rate remained the same on the date of signing of both MoU-1 and MoU-2, and the upward revision of the State Tariff if at all, *qua* purchase of power



from Project Proponents has no bearing on the obligation on the part of Respondent No.2 to disburse GBI in accordance with the Policy and the agreed terms of the MoU.

48. Respondent No. 2 has entered into express Agreements with various distribution agencies, including the Petitioner herein, with an express condition that GBI would be paid on the basis of computation derived from the tariff rate determined by the CERC. This is also in consonance with the Policy, which forms the foundational document for the said agreement.

49. This Court is of the firm opinion that the assertions of Respondent Nos.1 & 2 are contrary to the Policy as well as the expressly agreed-upon terms. The reliance upon the decision/clarification by the Committee, purportedly in exercise of “power to remove the difficulties”, or by way of exercising its powers under the “Dispute Resolution Mechanism” Clause, results in an amendment to the foundational policy, leading thereby, to an automatic amendment to the MoU-2 and the same being in excess of the powers of the committee and against the express terms of the scheme and the MoU, is unsustainable.

50. This Court turns now, to the contentions of the Respondent, laying emphasis on Clauses 1.8 of the MoU-1 and 1.3 of MoU-2. These Clauses operate in a different field. They deal only with the “Applicable Tariff” for the purchase of solar power and are distinct from the Clauses which deal with computation of GBI. This Court is of the opinion that the said Clauses cannot be applied for the purpose of calculating the GBI.

51. For the reasons aforementioned, the present petition is allowed and Respondent Nos. 1 and 2 are directed to pay the Generation-Based



Incentive to the Petitioner, calculated as the difference between the tariff rate determined by the CERC (Rs. 17.91/kWh) and the Base Rate (Rs. 5.665/kWh), along with interest at the rate of 9% per annum, within 12 weeks.

52. The present petition, along with the pending applications, stands disposed of in the above terms.

53. No order as to costs.

**HARISHVAIDYANATHANSHANKAR, J.**

**MAY 21, 2025/nd/sm/sj**