

# The Power of Central Electricity Regulatory Commission to Refer Disputes to Arbitration Under Electricity Act, 2003

GUVNL v Tata Power Ltd & Ors

12 March 2026

## Introduction and Background

- The Appellate Tribunal for Electricity (APTEL) in Gujarat Urja Vikas Nigam Ltd v Tata Power Ltd & Ors (Judgment), passed a common judgment in a batch of appeals arising out an order dated 19.11.2025 (Impugned Order) passed by the Central Electricity Regulatory Commission (CERC) and set aside CERC's direction referring disputes under long-term power purchase agreements (PPAs) to arbitration.
- The appeals were filed by Gujarat Urja Vikas Nigam Limited, Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited and Punjab State Power Corporation Limited (Procurers), against Tata Power Company Limited (earlier Coastal Gujarat Power Limited) (TPCL) and CERC, among others.
- The underlying disputes arose in a competitively bid PPA of 2007 and claims were raised in the context of alleged short-supply or non-supply, declarations of availability, scheduling and despatch, capacity charge deductions, and levy of penalties (including disputes around availability below contractual thresholds during the contract year 2022–23).
- The Procurers sought (among other reliefs) specific performance of supply obligations under the PPAs, compensation/damages for short or non-supply, refund of alleged excess amounts paid, and directions to Western Regional Load Despatch Centre (WRLDC) to schedule power supply in accordance with contracted capacity.
- CERC, by its Impugned Order, held that the disputes were "non-tariff" contractual disputes and therefore, "must be" referred to arbitration, relying primarily on APTEL's view in MP Power Management Company Limited v Damodar Valley Corporation, 2024 SCC OnLine APTEL 75 (DVC Judgment) which was affirmed by the Supreme Court (see Damodar Valley Corporation v MP Power Management Company Ltd, 2024 SCC OnLine SC 2936).
- APTEL while setting aside the Impugned Order dealt with the following core issues:

## Findings and Ratio

### A. Section 79(1)(f): Scope of adjudication and referral to arbitration

APTEL held that CERC's adjudicatory jurisdiction under Section 79(1)(f) of the Electricity Act, 2003 (Electricity Act) is limited to disputes involving generating companies or transmission licensees "in regard to matters connected with" clauses (a) to (d) of Section 79(1). In the present case, the relevant jurisdictional anchor would be Section 79(1)(b) (regulation of tariff of generating companies with a composite scheme for generation and sale of electricity in more than one State). APTEL reiterated that regulatory commissions are statutory tribunals of limited jurisdiction and must operate within the four corners of the statute.

### B. CERC has discretion to adjudicate disputes or refer disputes (within jurisdictional limits)

Applying the reasoning of Hon'ble Supreme Court vide judgment in *Gujarat Urja Vikas Nigam Ltd v Essar Power Ltd, (2008) 4 SCC 755* (GUVNL Judgment) (rendered in the context of Section 86(1)(f)), APTEL held that the word "and" in Section 79(1)(f) should be read as "or", because CERC cannot simultaneously adjudicate a dispute and refer the same dispute to arbitration. Accordingly, CERC has discretion either to adjudicate a dispute within its remit, or refer the dispute to arbitration, subject to statutory constraints and non-arbitrability principles.

#### C. **CERC cannot refer a dispute to arbitration over which it lacks jurisdiction to adjudicate**

APTEL rejected the interpretation that CERC can refer "any dispute", to arbitration even where it lacks adjudicatory jurisdiction. APTEL noted that reading "any dispute" as wholly independent would lead to unacceptable outcomes and would effectively confer an open-ended referral jurisdiction. APTEL relied on *Hindustan Zinc Ltd. v Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82*, where the Supreme Court clarified that arbitration referral under the Electricity Act cannot extend beyond disputes the commission is statutorily empowered to deal with.

#### D. **Non-arbitrability: Regulatory Functions and Tariff Impact**

Relying on the DVC Judgment, APTEL reiterated that disputes concerning the **regulatory functions** of the commission, and disputes which **impact tariff directly or indirectly**, are **non-arbitrable**. APTEL also explained that "tariff" is not confined to a bare numerical rate and also includes items related to tariff such as billing, payment consequences, availability and related capacity charge linkages.

#### E. **Limitation period prescribed for referring a dispute to arbitration**

APTEL held that the timelines prescribed in Section 8 of the Arbitration and Conciliation Act, 1996 are applicable where the commission is inclined to refer the matter to arbitration. In the fact situation before APTEL, TPCL did not seek reference of the disputes to arbitration within the timelines prescribed in Section 8 of the Act and had already filed pleadings on merits. Further, TPCL itself invoked CERC's jurisdiction. On this basis, APTEL held that CERC ought not to have referred the disputes to arbitration.

#### F. **No bifurcation: WRLDC-related reliefs cannot be split**

APTEL applied well-established principles on the splitting of claims and held that CERC's attempt to refer the TPCL-Procurement disputes to arbitration while leaving WRLDC reliefs to be pursued separately is impermissible since the claims were integrally connected (including identical joint and several monetary claims), and splitting of claims would result in multiplicity of litigation and inconsistent outcomes from multiple forums.

## Outcome and Directions

APTEL allowed all three appeals, setting aside CERC's Impugned Order and restored the petitions to CERC to examine whether the disputes fall within the scope of Section 79(1)(b) (i.e., connected with regulation of tariff).

## Conclusion

The APTEL judgment clarifies interplay between the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996; however, several important questions remain open. While reiterating that "tariff" and "regulation of tariff" are concepts of wide amplitude (extending beyond a mere price to the "terms and conditions" of supply), APTEL did not lay down a test to identify when an alleged breach or non-supply or availability and penalty-related dispute under a subsisting PPA is sufficiently "tariff-connected" (directly or indirectly) to fall within CERC's exclusive domain and be non-arbitrable.

The larger doctrinal tension also remains unresolved between the Commission's discretion under Section 79 or Section 86 (as recognised in GUVNL Judgment), and the mandatory reference regime under Section 8 of the Arbitration and Conciliation Act, 1996 especially in electricity-sector disputes implicating regulatory functions and consumer-facing public interest.

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