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ENERGY WATCHDOG AND THE LIMITS OF TARIFF REVISION

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I. Power, Prices, and Promises

The Supreme Court of India rendered a significant ruling in Indian electricity law in Energy Watchdog v. Central Electricity Regulatory Commission[2]. It elucidated the constraints of regulatory intervention in competitively bid power purchase agreements (PPAs) and the implications of significant contractual principles such as force majeure, frustration under Section 56 of the Indian Contract Act, 1872[3], and the "change in law" clause. The decision is significant not only for the energy sector but also for commercial agreements and regulatory oversight across the board.

The central issue in the case was whether the significant increase in coal prices resulting from alterations in Indonesian export regulations could warrant an elevation of tariffs established by long-term Power Purchase Agreements (PPAs) or absolve performance under contractual or statutory principles.

The ruling addressed:
(a) the Central Electricity Regulatory Commission's (CERC) jurisdiction under Section 79 of the Electricity Act, 2003[4].
(b) the extent to which CERC could modify tariffs established through Section 63[5] competitive bidding
(c) the feasibility of circumventing contractual risk allocation provisions during adverse business conditions.

II. Coal, Contracts, and Contention

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[2] Energy Watchdog v Central Electricity Regulatory Commission (2017) 14 SCC 80.
[3] Indian Contract Act 1872, s 56.
[4] Electricity Act 2003, s 79.
[5] Electricity Act 2003, s 63.

Adani Power Ltd. executed Power Purchase Agreements with state-owned distribution licensees in Gujarat and Haryana following a competitive bidding process pursuant to Section 63 of the Electricity Act[6]. These Power Purchase Agreements (PPAs) were fixed-rate contracts predicated on the coal-based generation of the Mundra power project. Adani opted to procure coal from Indonesia due to its consistently low and stable export prices.

In 2010, the Indonesian government instituted a regulation mandating that coal exports be evaluated against international indices. The price of Indonesian coal significantly increased due to this alteration. Adani stated that this abrupt alteration in the regulations rendered the project financially unfeasible under the fixed tariff stipulated in the Power Purchase Agreements (PPAs). Adani and Tata Power, which encountered a comparable issue with another Ultra Mega Power Project, approached the CERC for assistance on two grounds:

(i) that the occurrence constituted force majeure or contract frustration

(ii) that the regulatory alteration qualified as a "change in law" as delineated by the Power Purchase Agreements (PPAs).

Despite CERC rejecting both legal claims, it exercised its authority under Section 79(1)(b) of the Electricity Act[7] to grant compensatory tariffs. A committee was assigned the responsibility of determining the appropriate compensation amount. The purpose of this assistance was to ensure the continuity of the power project and prevent any interruptions in the power supply.

The Appellate Tribunal for Electricity (APTEL) annulled the decision of the Central Electricity Regulatory Commission (CERC) upon appeal. It stated that once a tariff was established under the Section 63[8] framework, it could not be altered. It stated that neither force majeure nor changes in law were applicable, and that CERC could not alter the contract terms or tariffs unless specific provisions permitted such modifications. However, APTEL indicated that the Indonesian regulation may be encompassed by the PPA's force majeure clause, thus remanding the case to CERC for a restricted examination.

Adani and Tata petitioned the Supreme Court for additional assistance. The Energy Watchdog, a consumer advocacy group, and the distribution companies both submitted

[6] Electricity Act 2003, s 63.
[7] Electricity Act 2003, s 79(1)(b).
[8] Electricity Act 2003, s 63.

appeals opposing any tariff increases. The Supreme Court addressed CERC's jurisdiction, the constraints of its tariff-setting authority, and the application of contract law.

III. Law, Bids, and Boundaries

The Electricity Act of 2003 establishes the regulations governing the oversight of the electricity sector by commissions in India. Section 63[9] stipulates that the Appropriate Commission "shall adopt" tariffs determined through a fair bidding process in accordance with Central Government regulations. The objective is to foster competition and regulation within the market, while simultaneously safeguarding the final tariff from any additional alterations.

Section 79(1)(b)[10] empowers CERC to regulate generating companies that possess a "composite scheme" for the generation and sale of electricity across multiple states. Section 86[11] empowers State Electricity Regulatory Commissions (SERCs) to regulate generation and supply within an individual state.

The pertinent PPAs contained a comprehensive force majeure clause explicitly stating that occurrences such as escalating fuel prices or increased performance costs were excluded. The change-in-law clause permitted the seller to receive a reduction in tariffs if a "governmental instrumentality" modified a "law" or regulation that significantly affected the seller's operational costs.

Section 56 of the Indian Contract Act, 1872[12] elucidates the doctrine of frustration. Contracts become invalid if an event occurs that renders it impossible for either party to meet their obligations.

IV. Issues Before the Court

The Supreme Court examined four primary aspects:

(i) If the supply agreement satisfied the criteria for a "composite scheme" as delineated in Section 79(1)(b)[13], then CERC would possess exclusive jurisdiction.

[9] Electricity Act 2003, s 63.
[10] Electricity Act 2003, s 79(1)(b).
[11] Electricity Act 2003, s 86.
[12] Indian Contract Act 1872, s 56.
[13] Electricity Act 2003, s 79(1)(b).

(ii) If CERC possessed the legal authority to alter tariffs established and accepted through competition pursuant to Section 63[14].
(iii) Whether the increase in coal prices due to the Indonesian regulation constitutes a force majeure event or a frustration under Section 56 of the Indian Contract Act[15].
(iv) Whether the Indonesian regulation constituted a "change in law" under the PPA.

V. The Verdict on Voltage and Validity

The Court concurred with the determination that Adani's Power Purchase Agreements constituted a "composite scheme" due to electricity being generated in one state and distributed to multiple states. This perspective clarified that CERC possessed the authority to manage the case pursuant to Section 79(1)(b)[16]. The Court clarified that a "composite scheme" does not require functional integration of contracts or generation capacity. It suffices that there is generation and supply to multiple states.

The Court stated that once a tariff is established via competitive bidding and sanctioned under Section 63[17], the regulator cannot alter it unless the Power Purchase Agreement or bidding documents permit such modification. The Court rejected the notion that CERC should possess a general "residual" authority to intervene and modify such contracts. The bidding process enables risk sharing by allowing you to propose tariff components that may fluctuate. Adani provided a non-escalable tariff, indicating their acceptance of the volatility in input costs. Permitting ex post tariff modifications would undermine the purpose of competitive bidding, diminish market discipline, and ultimately disadvantage consumers. The order for a compensatory tariff issued by CERC was unlawful.

The Supreme Court reiterated that force majeure clauses require meticulous interpretation. The Indonesian law did not invoke force majeure, as Clause 12 of the PPA specified that fuel price escalations and financial difficulties were excluded.

[14] Electricity Act 2003, s 63.
[15] Indian Contract Act 1872, s 56.
[16] Electricity Act 2003, s 79(1)(b).
[17] Electricity Act 2003, s 63.

The Court examined Satyabrata Ghose v. Mugneeram Bangur[18] and Alopi Parshad & Sons v. Union of India[19] to illustrate that commercial hardship does not render a contract void. Performance is not excused due to a deal becoming excessively costly or unprofitable, unless it becomes physically or legally impossible to fulfill. The Court referenced the English case Tsakiroglou & Co. Ltd. v. Noblee Thorl[20], which determined that a contract remained valid despite the closure of the Suez Canal, as alternative means of execution existed.
The contract remained intact as electricity supply was still feasible, albeit at a higher cost. The existence of a specific force majeure clause rendered Section 56[21] inapplicable.

The Court rejected Adani's assertion that the Indonesian law fell under the change-in-law clause. It was believed that "any law" referred to Indian law, as both the Indian electricity regulations and the Indian jurisdiction of the contracting parties were applicable. A modification in foreign legislation that lacks specificity would be deemed inconsequential.
The Court, conversely, stated that this differed from alterations in Indian policy. The Government of India's 2013 amendment to the New Coal Distribution Policy (NCDP), which restricted coal supply in India, may be regarded as a legal alteration. The CERC may provide relief for such modifications within the PPA, contingent upon evidence demonstrating their impact.

VI. Legal Ripples and Industry Waves

The court's ruling unequivocally stated that business contracts, particularly those established in competitive environments, must be adhered to. Regulatory intervention is minimal, and modifications to the contract post-signature due to hardship are prohibited. This is particularly crucial for capital-intensive industries, such as energy, where legal certainty is paramount.

The ruling clarifies that Indian courts will not readily absolve individuals from their responsibilities due to frustration. Contracts that allocate business risk will be upheld as

[18] Satyabrata Ghose v Mugneeram Bangur & Co AIR 1954 SC 44.
[19] Alopi Parshad & Sons Ltd v Union of India AIR 1960 SC 588.
[20] Tsakiroglou & Co Ltd v Noblee Thorl [1962] AC 93 (HL).
[21] Indian Contract Act 1872, s 56.

articulated, and courts will not substitute the contract terms with equitable alternatives. Section 56[22] typically does not apply in the presence of force majeure clauses.

The Court clarified CERC's jurisdiction by interpreting "composite scheme" broadly. Generators supplying power to multiple states are not required to obtain authorization from each State Commission, thereby reducing regulatory fragmentation.

Individuals drafting Power Purchase Agreements must be prepared for fluctuations in fuel prices and regulatory changes, particularly those originating from foreign jurisdictions. To incorporate such scenarios into force majeure or change-in-law clauses, explicit articulation is necessary. Generic language will be interpreted in a highly specific manner.

The Court clarified that the Electricity Act and the contracts constrain CERC's authority. No overarching authority exists to modify tariffs for the public benefit. Section 63[23] serves as a comprehensive framework for identifying and adopting tariffs, and the integrity of the established tariff must be safeguarded.

VII.Conclusion

The Supreme Court's ruling in Energy Watchdog[24] represents a significant advancement in Indian electricity regulation and the enforcement of commercial contracts. It is a doctrinally rigorous reaffirmation of contractual freedom, statutory interpretation, and regulatory oversight. The Court's denial of relief for a clearly assumed commercial risk bolsters India's competitive bidding framework and enhances investor confidence. It also maintains the stability of long-term tariff commitments and safeguards customers from unforeseen cost pass-throughs. This case is now a crucial reference for comprehending the constraints of force majeure, frustration, and regulatory intervention in commercial infrastructure contracts.

[22] Indian Contract Act 1872, s 56.
[23] Electricity Act 2003, s 63.
[24] Energy Watchdog v Central Electricity Regulatory Commission (2017) 14 SCC 80.