

# Bses Yamuna Power Ltd. & Anr vs The Secretary Delhi Electricity ... on 25 May, 2026

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)

APPEAL NO.21 OF 2020

Dated: 25.05.2026

Present: Hon'ble Ms. Seema Gupta, Officiating Chairperson  
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

1. BSES Yamuna Power Ltd.  
Shakti Kiran Building, Karkardooma  
Opposite Karkardooma Courts,  
Delhi - 110032
2. BSES Rajdhani Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi - 110019

... Appellants

Versus

1. The Secretary  
Delhi Electricity Regulatory Commission  
Viniyamak Bhawan, 'C' Block, Shivalik,  
Malviya Nagar, New Delhi - 110017
2. Indraprastha Power Generation Company Ltd.  
Through its Managing Director  
Having its registered office  
Himadri, Rajghat Power House Office Complex,  
New Delhi - 110002
3. State Load Despatch Center  
Through its Secretary  
Delhi Transco Limited

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Appeal No.21 of 2020  
33 KV Sub-Station Building,  
Minto Road, New Delhi - 110002

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... Respondent(s)

Counsel on record for the Appellant(s) : Hasan Murtaza  
For App.1&2

Counsel on record for the Respondent(s) :

Shantanu Singh  
For Res. 1

Anand K. Ganesan  
Swapna Seshadri  
Ashwin Ramanathan  
Utkarsh Singh  
For Res. 2

Sangeeta Bharti  
Ashish Kumar  
Anju Shree Nair  
Sushil Kumar Singh  
Krishanu Adhikary  
Anubha Dhulia  
Shakti Verma  
Roja Raphael  
Jordan Rohminthanga  
Mehak Kanwar  
For Res. 3

#### JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The BSES Yamuna Power Limited and BSES Rajdhani Power Limited, the two distribution licensees operating in the NCT of Delhi, have come up in appeal against the order dated 10.12.2019 passed by the 1st respondent Delhi Electricity Regulatory Commission (hereinafter referred to as the Commission) wherein the Commission while holding that the

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PPAs executed by the appellant with the 2nd respondent M/s Indraprastha Power Generation Company Limited for purchase of power from its Rajghat Power House had expired in the months of May, 2015 and July, 2015, held the appellants liable to pay energy bills raised by the 2nd respondent till 31.12.2015 i.e. the date when the said Rajghat Power House was finally closed as per the directions of Delhi Pollution Control Committee (in short DPCC).

2. The main ground upon which the appellants have assailed the impugned order of the Commission is that once the PPAs entered by them with respondent no.2 have expired and were not renewed, they cannot be made liable to pay capacity charges beyond the date of expiry of the PPAs.

3. The facts of the case, briefly stated, are that the Delhi Government issued policy directions under Section 108 of Electricity Act, 2003 on 28.06.2006 to the Commission for making power arrangements in Delhi beyond 01.04.2007. Accordingly, vide order dated 30.03.2007 the Commission reassigned all the existing PPAs from Delhi Transco Limited to the distribution licensees operating in the NCT of Delhi including the appellants. Hence, the responsibility for

arranging power in their respective areas of distribution with effect from 01.04.2007 was vested in

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the concerned distribution licensees including the appellants. Consequently, the appellants executed PPAs with the 2nd respondent on 16.07.2012 for purchase of power from its Rajghat Power House on mutually agreed terms and conditions as contained in the PPAs. Clause 13.1 of the PPAs provide that the validity of the agreements is till completion of 25 years from the date of commercial operation of last unit/GT/module of the power house unless it is specifically extended on mutually agreed terms.

4. Since, according to the appellants, the PPAs expired in the months of May, 2015 (in respect of BRPL) and July, 2015 (in respect of BYPL) and were not extended thereafter, they apprised the 2nd respondent that they do not have any intention to extend the PPAs, with further request not to schedule as well as dispatch any power from the Rajghat Power House to them. It appears that despite such communication from the appellant, 2nd respondent continued to schedule and dispatch power from the Rajghat Power House to them and accordingly, continued to raise energy bills for the months of June, 2015 till December, 2015 and January to February, 2016.

5. Accordingly, the appellants approached the Commission by way of two separate petitions bearing nos.24/2016 and 28/2016 with the following prayers: -

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"a) Direct RPH to withdraw the energy bills raised upon the petitioner w.e.f. August 2015 for BYPL and June 2015 for BRPL;

b) Restrain RPH from raising any energy bills as the petitioner is not purchasing nor scheduling any power RPH and RPH is not entitled to recover any cost from the petitioner; and

c) Pass appropriate orders direct RPH and SLDC not to schedule and dispatch power."

6. The Commission, in the impugned order, holds that the PPAs executed between the appellants and the 2nd respondent expired in the months of May, 2015 and July, 2015 but also held the appellants liable to pay energy bills raised by the 2nd respondent till 31.12.2015 i.e. the date when the power house was finally closed as per the direction of DPCC, on the following reasons: -

"b) The only issue remains to be adjudicated is about energy bills of RPH till 31.12.2015. In normal circumstances the power stations are not entitled to raise bills after expiry of the PPA. The contention of the

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petitioners is that even after expiry of PPAs, the RPH continues to bill the fixed charges. The Respondent IPGCL has submitted that the plant was kept in operational mode and availability was indicated to SLDC

c) It is noted that a meeting was held on 05.06.2015 at the State Government level attended by Petitioner also, wherein, it was decided that allocation of power from RPH would continue for at least six months after the stabilization of 400 KV grid sub-station, under construction by Central Sector, under Inter-State Transmission System Scheme.

The RPH was closed as per the directions of DPCC and no further scheduling of the power was done thereafter. A plant/station available for scheduling of power is entitled for the fixed charge even if no energy is drawn from the station. On the issue of scheduling of power from RPH despite PPA being expired, SLDC has clarified that once the generating station declares capacity, SLDC is bound to schedule power and dispatch the same to the distribution licensee for making it available within the state from that station, and it was not its duty to verify whether there exist a valid PPA under which scheduling is being done.

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d) Keeping in view the fact that in wake of the stabilization of the 400 KV grid sub-station it was decided by the Government of Delhi to continue the allocation of power from RPH till at least 6 months after the stabilization of the 400 KV grid sub-station under construction at RPH by Central Sector under ISTS Scheme and allocation of power was made for the petitioner as well, the Petitioners are liable to pay the bills in respect of RPH till 31.12.2015 i.e. the date the RPH was finally closed as per the direction of DPCC."

7. Accordingly, the appellants, feeling aggrieved by the said order of the Commission, are in appeal before us.

8. We have heard Mr. Buddy Ranganadhan, learned senior counsel appearing on behalf of the appellant, Mr. Shantanu Singh, learned counsel for the 1st respondent, Shri Anand Ganesan, learned counsel for the 2nd respondent, and Ms. Anju Shree Nair, learned counsel appearing for the 3rd respondent. We have also perused the written submissions filed by the learned counsels.

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9. The impugned order, *ex facie*, does not appear to be legally sound and acceptable. It is not in dispute that power was being supplied by the 2nd respondent to the appellants in accordance with the terms and conditions contained in the PPAs dated 16.07.2012 executed between the parties.

10. Clause 13.1 of the PPAs is with regards to the duration of these agreements and is extracted hereinbelow: -

"13.1 The validity of the agreement shall be upto completion of twenty five (25) years from the date of commercial operation of last Unit/GT/Module of the station unless it is specifically extended on mutually agreed terms."

11. Taking the same into consideration, the Commission held that the PPAs expired in the months of May, 2015 and July, 2015. It is nowhere the case of any of the parties that PPAs were renewed or extended after their expiry. Therefore, the Commission ought to have accepted the contention of the appellants that the scheduling or dispatch of power from the Rajghat Power House to them by SLDC, even after the expiry of PPAs, was unlawful and they were not liable to pay the energy bills post the expiry date of the PPAs.

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12. A Power Purchase Agreement between a power generator and a distribution licensee is like any other commercial agreement whereunder a generator agrees to sell power to the distribution licensee and the distribution licensee agrees to purchase power from the generator on mutually agreed terms which are mentioned in the PPAs. Of course, as envisaged under Section 86(1)(b) of the Electricity Act, 2003, the PPA needs to be approved by the concerned Regulatory Commission, which is not the case with normal commercial contracts. However, it is equally true that once approved, a PPA becomes akin to any other commercial contract and rights and obligations of the parties are governed by the terms and conditions contained therein. Duration of a PPA is an essential term and binds the parties. Once the duration of the Power Purchase Agreement comes to an end by efflux of time, the obligations on the respective parties under the agreement also come to an end. In other words, after the expiry of a PPA, the generator is no longer bound to supply power to the distribution licensee any further and the distribution licensee is not bound to receive power from the generator and to pay for it. Thus, the rights and obligations of the parties to the PPA cease to exist after its date of expiry unless the same is renewed or extended on mutually agreed terms.

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13. Concededly, in the instant case, the Power Purchase Agreements executed between the appellants and the 2nd respondent were neither renewed nor extended beyond the months of May, 2015 and July, 2015. Therefore, the appellants were not under any obligation to receive power from the power house of 2nd respondent as scheduled and dispatched by SLDC (the 3rd respondent) and to pay for it.

14. The energy bills raised by 2nd respondent to the appellants post the expiry of the PPAs are manifestly unlawful and contrary to the terms and conditions as contained in the PPAs and thus not payable by the appellants.

15. Learned counsel for the 2nd respondent has vehemently argued that the Commission has erred in counting the period of 25 years, as mentioned in clause 13.1 of the PPAs, from May, 1990, when the Rajghat Power House was commissioned. It is submitted that even though initial commissioning of the power house had taken place in the month of May, 1990, a period of around 6 to 9 months was required for its stabilization and declaring it commercially operational. It is further submitted that since the date of actual commercial operation of the power house is not available in their records, the period of 25 years ought to be reckoned from December, 1990 for the reason that as per clause 13.1 of the PPA, it is

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up to completion of 25 years from the date of commercial operation of the last unit/GT/module of the power station.

16. It is, thus, argued that even if the contentions of the appellants in the appeal are accepted, then also the PPAs shall be taken to have expired in the month of December, 2015 and therefore, energy bills raised by the 2nd respondent till December, 2015 are payable. It is, thus, argued that the impugned order does not call for any interference from this Tribunal in this regard.

17. On behalf of the appellants', it is argued that since the 2nd respondent has accepted the impugned order of the Commission as it has not filed any appeal against it, it is precluded from challenging any findings contained in the same in this appeal filed by the appellants. The submission of the learned counsel for the appellants is that in case, the 2nd respondent felt aggrieved by any finding contained in the impugned order, it ought to have filed a separate appeal impugning those findings and cannot be heard to contend in this appeal that any finding given by the Commission in the impugned order is perverse and not tenable.

18. Relying upon the judgments of the Hon'ble Supreme Court in Banarsi & Ors. v. Ram Phal (2003) 9 S C C 606 and Rattan India Power

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Ltd. v. Maharashtra State Electricity Distribution Company Limited and Anr. in Civil Appeal No.8232 of 2023 decided on 10.12.2025, learned counsel for the 2nd respondent argued that even though the 2nd respondent has not filed any separate appeal against any finding contained in the impugned order, it is still competent to support the impugned order of the Commission to the extent it is already in its favour by assailing any finding recorded in the impugned order which is against it.

19. In the case of Banarsi & Ors. (supra) the Hon'ble Supreme Court has observed and held as under: -

"9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of

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the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging the finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of the defendant- appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross-objection. A right to file cross-objection is the exercise of right to appeal though in a different form. It was

observed in *Sahadu Gangaram Bhagade v. Special Dy. Collector, Ahmednagar* that the right given to a respondent in an appeal to file cross-objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross-objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross-objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and

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needs to neither prefer an appeal nor take any cross-objection though certain finding may be against him. Appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was the well-settled position of law under the unamended CPC."

(Emphasis supplied)

20. Thus, where a court passes a decree against a party but the judgment contains certain findings against that party, he may assail those findings in an appeal filed by the opposite party and is not required to file any cross-objections in that appeal or a separate appeal.

21. In the instant case, the 2nd respondent was not aggrieved by the impugned order of the Commission as the same has been passed in its favour. Therefore, there was no cause or occasion for it to either prefer a separate appeal against the impugned order or to file cross objections in the present appeal of the appellants, even though the 2nd respondent was not happy about certain findings in the impugned order namely reckoning of period of 25 years, as provided in clause 13.1 of the P P A s , f r o m M a y ,

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1990 when the Rajghat Power House was commissioned. Therefore, as correctly submitted by learned counsel for the 2nd respondent, the 2nd respondent is competent to support the impugned order of the Commission by assailing the findings of the Commission on the above noted aspect, in case, the finding of the Commission in the impugned order on other aspects is reversed by this Tribunal in this appeal.

22. Having said so, we hasten to add that the argument on behalf of 2nd respondent that the period of 25 years, as mentioned in clause 13.1 of the PPAs ought to be reckoned from December, 1990 and not from May, 1990 as done by the Commission in the impugned order, has been raised for the first time in this appeal. No submissions in this regard were made on behalf of 2nd respondent during the hearing of the petition by the Commission. The contentions raised by the 2nd respondent IPGCL before the Commission, as noted in the impugned order, were as under: -

"4. Per contra the Respondent IPGCL made the following submissions:

a) The actual Date of commercial operation (COD) of the Plant is not certain and in the original PPA signed between the parties the expiry date of the PPA was in

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2017 whereas in the supplementary PPA signed between the parties the expiry of the PPA was in 2015.

b) The Petitioner has sought to project as if the present matter only involves the interpretation of Article 13 of the Supplementary PPA and needs to be adjudicated as a Section 86(1(f) dispute under the Electricity Act, 2003. However, this is not the case.

c) The Petitioner is selectively relying on certain communications of SLDC/DTL to contend that there is no requirement to operate the RPH to provide grid security and stability. However, SLDC, DTL has at several points of time taken the position that the Islanding Scheme implemented for NCT of Delhi requires substantial embedded generation including the generation from RPH. This has also been concurred with by the Central Electricity Authority (CEA). Also, the SLDC has been scheduling the power RPH on a regular basis.

d) In the Meeting held on 05.06.2015, the State Government had directed as under:-

" 2 . N o n - s c h e d u l i n g o f p o w e r o f R a j g h a t P o w e r H o u s e

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The total share of NDMC and MES from 285 MW BTPS which has been reallocated to UP was about 70MW, so as to meet the power requirement and better flexibility and since it is a generation at the load centre which may be handy in case of any trouble or bottleneck in the grid, the same quantity of power is allocated to NDMC and MES from RPH and the balance power of RPH is reallocated to other three DISCOMs in the same ration as allocated earlier. Based upon the new allocation of Power to different DISCOMs shall be as under:-

|      |                    |
|------|--------------------|
| I)   | NDMC - 37.41%      |
| II)  | MES - 14.96%       |
| III) | BRPL - 20.67%      |
| IV)  | BYPL - 11.75%      |
| V)   | TPDDL - 14.37%     |
| VI)  | IP Station - 0.84% |

The above allocation of power from RPH shall

continue till atleast 6 months after the stabilization of the 400 KV grid substation under construction at RPH by Central Sector under ISTS Scheme.

DISCOMs & IPGCL are accordingly requested to take necessary actions for renewal of PPAs."

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e) The petitioner's contention that Article 13.1 of the PPA refers to station wise expiry of 25 years from the commercial date is not correct. Till the time there is a clear direction from the Government of NCT of Delhi, the power allocation cannot be stopped or done away with.

f) Further the power of scheduled by SLDC/availability certified by SLDC during the period beyond alleged expiry of PPA cannot be unilaterally decided by the petitioner as illegal. The RPH power station of the Respondent is situated as an embedded power station in the National Capital grid. The power station is must to operate for supply of power in the walled city of National Capital. It is also one of the important elements of islanding schemes of Delhi which has been finalized by DTL in line with the recommendations of CEA to avoid recurrence of the impact of the grid collapse incidents on 30th and 31st July, 2012 leading to complete darkness to National Capital. It is not merely an interpretation of one terms of the PPA as being

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contended by the Petitioner. The contentions and averments to the contrary are wrong and are denied."

23. It was nowhere the case of the 2nd respondent before the Commission that in view of requirement of stabilization period of around 6 to 9 months from the power house from the date of initial commissioning, the date of commercial operation of the power house as contemplated under clause 13.1 of the PPAs ought to be taken as December, 1990 and accordingly the period of 25 years as stipulated in the said clause of the PPAs ought to be reckoned from December, 1990. It is for this reason that there is no finding on this aspect by the Commission in the impugned order. Since, the said plea has been raised for the first time in this appeal, the same cannot be entertained or considered. It is a settled principle of law that a party cannot be permitted to raise a fresh plea for the first time during the hearing in the appeal when the same was not raised or agitated before the original forum against the order of which the appeal has been preferred.

24. Hence, we decline to consider the said plea raised on behalf of the 2nd respondent.

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25. Even otherwise also, it is evident that the said argument on behalf of 2nd respondent is only based upon conjectures. Concededly the 2nd respondent itself also does not know the actual date of commercial operation of the power house. It has nowhere been explained as to whether the stabilization period of 6 to 9 months from the date of commissioning of the power house is mandatory for every power house or in some cases the commercial operation of the power house could be achieved within a lesser period from the date of commissioning. Therefore, the submissions of the 2nd respondent in this context also lack merit and cannot be countenanced.

26. On behalf of the 2nd respondent, a reference is also made to meeting convened by the Department of Power, Govt. of Delhi on 05.06.2015 wherein the representative of the appellants was also present and wherein the decision about fresh allocation of power from the Rajghat Power House to NDMC, MES, BRPL, BYPL, TPDDL and IPGCL was taken and it was further decided that such allocation of power shall continue till at least six months after the stabilization of 400kV grid substation under construction at the power house under ISTS scheme. It is argued that thus, the appellants consented to such allocation of power from Rajghat Power House for period of six months i.e. till December, 2015 and therefore, they are liable to pay the energy bills till December, 2015.

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held by the Commission in the impugned order. We do not find any force in these submissions. In the concluding Paragraph of the minutes of the said meeting, it has been stated that the discoms and IPGCL (the 2nd respondent) are requested to take necessary action for renewal of PPAs. This is indicative of the fact that renewal of PPAs was necessary in order to give effect to such reallocation of power as decided in the said meeting. Undisputedly, the 2nd respondent did not take any steps to get the PPAs with the appellants renewed in pursuance to minutes of this meeting. No correspondence appears to have been exchanged between 2nd respondent and the appellants in this context after the said meeting. Clause 13.1 of the PPAs, which has already been extracted in Paragraph No.11 hereinabove, also mandates that the validity of the agreement shall be 25 years from the date of commercial operation of the last unit/GT/module of the power house unless it is specifically extended on mutually agreed terms. So, the parties had never agreed for automatic extension of PPAs. There had to be a fresh meeting of minds between the parties in order to agree upon the terms and conditions to be specified in the extended PPAs. In the absence of such meeting of minds between the parties for extension of the PPAs, it cannot be said that the reallocation of power decided in the meeting dated 05.06.2015 was accepted by the appellants.

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27. Strange and incongruous submission has been made on behalf of the 3rd respondent SLDC to the effect that SLDC is not required to independently examine the extensions or validity of the PPAs before undertaking scheduling and dispatch of power. It is argued that the functions of SLDC are operational as well as technical in nature and are not governed by contractual arrangements entered into between generating companies and distribution licensees. It is further submitted that SLDC cannot stop scheduling merely on the basis of unilateral assertion by the distribution licensee before the expiry or the termination of the Power Purchase Agreement.

28. In our view, these assertions made on behalf of SLDC are fallacious, to say the least. Section 32 of the Electricity Act, 2003 specifies the functions of SLDC and the same is extracted hereinbelow: -

"Section 32. (Functions of State Load Despatch Centres): --

- (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Despatch Centre shall -

(a) be responsible for optimum scheduling and despatch of electricity within a State,  
i n a c c o r d a n c e w i t h t h e c o n t r a c t s

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entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission."

29. Sub-section 2(a) of Section 32 clearly provides that the SLDC is responsible for scheduling and dispatch of electricity within a state in accordance with the contracts entered into between the licensees and the generating companies. Therefore, the existence of a PPA between a generating company and a distribution licensee in a state forms the basis

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upon which scheduling and dispatch of power is to be made by SLDC. Therefore, it does not lie in the mouth of SLDC to state that its functions are not governed by the contractual arrangements between generating companies and distribution licensees. The contention on behalf of the SLDC that scheduling cannot be refused merely on the basis of unilateral assertion by a distribution licensee regarding the expiry or termination of the PPA is not legally tenable. Once a distribution licensee informs SLDC that PPA executed by it with a generating company has already expired, it can, at best, verify the factum of expiry of PPA from the concerned generating company and upon such verification stop forthwith scheduling and dispatch of power from the generating station of the generating company to the distribution licensee. Since this scheduling and dispatch of power is to be done by SLDC in accordance with the PPA executed between the distribution licensee and a generating station, it cannot close its eyes and continue such scheduling and dispatch of power even when it is informed by a distribution licensee or a generating company that the PPA has expired. The judgment dated 05.09.2014 in appeal no.171/2013 Ravikiran Power Projects Pvt. Ltd. v. SLDC & Ors., which has been relied upon by learned counsel for the 3rd respondent SLDC, has been rendered in a different context and is not applicable to the facts of the instant case. Conclusion: -

30. Considering the above discussion, we are unable to sustain the impugned order of the Commission. The same is hereby set aside. We hold that the appellants are not liable to pay any energy charges to 2nd respondent beyond May, 2015 (in case of appellant no.2 BRPL) and July, 2015 (in case of appellant no.1 BYPL). Accordingly, we further hold that the energy bills raised by 2nd respondent to the appellants beyond the months of May, 2015 (in case of BRPL) and July, 2015 (in case of BYPL) are unlawful and not legally tenable. The same are hereby quashed.

31. The appeal stands allowed in above terms. Pending IAs, if any, stand disposed of accordingly.

Pronounced in the open court on this the 25th day of May, 2026.

(Virender Bhat)  
Judicial Member

(Seema Gupta)  
Officiating Chairperson

REPORTABLE / NON-REPORTABLE

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