

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4169 of 2015

Access Solar (Pvt.) Ltd. and 2 others
Vs
Federation of Pakistan and 3 others

DATES OF HEARING: 03-06-2016, 06-10-2016, 19-10-2016,
23-11-2016, 18-01-2017 and
10-02-2107.

PETITIONER BY: M/s Aitzaz Ahsan and Gohar Ali Khan
Advocates.

RESPONDENTS BY: M/s Asghar Khan and Faisal Atta
Advocates, for the respondent No. 2.
Syed Mudassir Ali Rizvi Advocate, for the
respondent No. 3.
M/s Munawar-us-Salam and Ajmal
Ghaffar Toor Advocates, for the
respondent No. 4.

ATHAR MINALLAH, J.- Through this
consolidated judgment, I shall decide the instant petition
along with W.P. No. 4170 of 2015, re: " Access Electric
(Pvt.) Ltd. and 2 others v. Federation of Pakistan and 3

others" since common questions of law and facts are involved.

2. The facts, in brief, are that the petitioner no. 2 is a juridical person incorporated under the laws of the United Arab Emirates. It is the main sponsor of the project launched by the petitioners for developing and commissioning a power generation facility, pursuant to representations made and incentives offered to the interested parties under the Policy for Development of Renewable Energy for power Generation, 2006 (hereinafter referred to as the "**Policy of 2006**"). The petitioners' project falls in the category described as 'Unsolicited Project' under the Policy of 2006. On 30-07-2011 the Alternate Energy Development Board (hereinafter referred to as the "**Board**") while acting pursuant to the role ascribed to it under the Policy of 2006, issued two separate letters of intent in favour of the petitioner (hereinafter referred to as "**LOI**") for the purposes of commissioning a Solar power project. In 2012 the interconnection study was carried out and the same was approved on 19-09-2012. The petitioners were advised to seek tariff determination from the National Electric Power Regulatory Authority (hereinafter referred to as the "**Authority**"). The interconnection study was

approved by the Board on 19-10-2012. The petitioners settled financial arrangements with the financial institutions on 23-01-2013. An agreement with an engineering, procurement and construction contractor was also executed on 28-01-2013. The petitioners filed an application before the Authority for issuance of a generation license. A petition for the determination of tariff was also filed. On 19-08-2013 the Authority approved the issuance of a generation license in favour of the petitioners. The generation license, valid for 30 years, was granted on 22-08-2013. On 21-01-2014 the Authority announced the 'Upfront Generation Tariff for Solar PV Power Plant' (hereinafter referred to as the "**Upfront Tariff-2014**"). The said tariff was meant for Solar Power Plants in general and was not specific to a particular power generation company. The terms and conditions were specified in the said tariff. On 28-03-2014 the Upfront Tariff-2014 was approved in case of the petitioners by the Authority and they were required to achieve financial close by 31-03-2015. The petitioners submitted bank guarantees. The date for the financial close was subsequently extended to 31-12-2015. The Board issued a letter of support (hereinafter referred to as the "**LOS**") on 22-12-2014. The respective Governments of Punjab and Sindh requested the Authority to determine

fresh upfront solar tariff for the projects which were being commissioned within their jurisdictions. The Authority, therefore, on 22-01-2015 determined the second Upfront Tariff (hereinafter referred to as the "**Upfront Tariff-2015**"). On 22-09-2015 the petitioners made a request to the respondent No. 4, i.e. the Central Power Purchasing Agency (Guarantee) Limited (hereinafter referred to as the "**Power Purchasing Company**") for the issuance of a power acquisition consent i.e. a letter of consent for the purposes of purchasing electricity. The Power Purchasing Company, vide letter dated 22-09-2015, advised the petitioners to opt for the Upfront Tariff-2015 so as to further process the case of the petitioners. On 14-04-2015 the Authority sought an explanation from the Power Purchasing Company and directed the latter to finalize the power purchase agreement. It was observed in the said letter that the Power Purchasing Company was unauthorizedly and as an unwarranted practice delaying the execution of the power purchase agreement with the power generation companies. Since the Power Purchasing Company was delaying the issuance of the letter of consent, the petitioners, vide letter dated 19-11-2015, requested the Authority to extend the cutoff date for financial close. The petitioners had also referred to the letter, dated 22-09-2015, of the Power Purchasing

Company, wherein the latter had shown its willingness to execute the power purchase agreement provided the petitioners accepted the Upfront Tariff-2015. The petitioners, therefore, conveyed their consent to the Authority to opt for the Upfront Tariff-2015. The Authority, vide letter dated 17-12-2015, accepted the offer made by the petitioners regarding opting for the Upfront Tariff-2015. The petitioners, vide letter dated 17-12-2015, informed the Power Purchasing Company that the Authority had accepted its offer to opt for Upfront Tariff-2015. The petitioners, thereafter, made several attempts to approach the Power Purchasing Company for executing the power purchase agreement but the latter refused to do so. Hence, the instant petition. The petitioners have sought a writ by way of directing the Authority and the Board to ensure that the Power Purchase Agreement is executed on the basis of the Upfront Tariff-2015. Further prayer has been sought for declaring the refusal on part of the Power Purchasing Company as arbitrary, illegal and in violation of the fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**").

3. The learned counsel for the petitioners has contended that; the Power Purchasing Company is under an obligation and bound to execute the power purchase agreement; a vested right has accrued in favour of the petitioners since the latter has fulfilled all the requirements prescribed in the Policy of 2006 and the relevant laws and regulations. Reliance has been placed on the cases of "Human Rights Case No. 14392 of 2013 and other cases" [2014 PTD 243], "Human Rights Cases No. 7734-B/2009, 1003-G/2010 and 56712 of 2010" [2012 SCMR 773]; the representations made by the Federal Government vide the Policy of 2006 are binding on the Power Purchasing Company; the security package mentioned in the Policy of 2006 was extended by the Economic Coordination Council on 02-02-2013; the Policy of 2006 has the force of law and is binding on all the parties; the petitioners have invested considerable amount of funds and have acted to their detriment and, therefore, decisive steps taken are protected; the petitioners had relied on the representations made in the Policy of 2006 and in good faith; the delay in executing the power purchase agreement on the part of the Power Purchasing Company is without lawful authority; reliance has been placed on section 7 of the National Electric Power Regulatory Authority Act 1997; the petitioners

have a right and the Power Purchasing Company has the liability under the principles of legitimate expectation, promissory estoppel and the principle of locus poenitentiae to execute the power purchase agreement; the Federal Government is bound by its policy and it is under a duty to act fairly, impartially; the petitions are maintainable since the actions and decisions or refusal to act is perverse; reliance has been placed on the case law cited in the written submissions and rebuttal.

4. The learned counsel appearing on behalf of the Power Purchasing Company has argued that; the petitions are not maintainable since a writ cannot be issued compelling the latter to execute the power purchase agreement; the LOI issued by the Board has expired and, therefore, no right vests in the petitioners; the LOS has also expired; proceedings are pending before the Authority and, therefore, the instant petition is not maintainable; the Power Purchasing Company is wholly owned by the Federal Government and, therefore, it is its duty to negotiate with the generation companies and to ensure that the tariff is based on *least cost basis* by observing prudence; the petitioners profit is ensured and it cannot insist on opting for the Upfront Tariff-2015; the Authority has not directed the Power Purchasing

Company to execute an agreement; the deadline for achieving financial close has not been extended and, therefore, the petitioners cannot claim a right; the claim of the petitioners is in violation of the provisions of Upfront Tariff Regulations, 2011; the tariff being sought by the petitioners is contrary to the public interest and detrimental to the consumers; the petitioners are claiming tariff which would result in unjustified enrichment at the cost of the consumers; the Federal Government has not notified a tariff under section 31(4) of the Act of 1997 in favour of the petitioners; on the basis of an expired LOS a writ cannot be sought for the purposes of the execution of the power purchase agreement; reliance has been placed on the case law mentioned in the written submissions.

5. The learned counsel for the Authority has argued that; the sole and exclusive regulatory power and jurisdiction vests in the Authority; three determinations regarding solar tariff were made by the Authority i.e. Upfront Tariff-2014, Upfront Tariff-2015 and Upfront Tariff-2016; the Authority has initiated proceedings against the Power Purchasing Company for its refusal to comply with the decisions taken by the regulator.

6. The learned counsels have been heard and the record perused with their able assistance.

7. The existence and validity of the Policy of 2006 and the steps taken by the petitioners pursuant to the representations made therein is not denied. It is also not denied that the petitioners had offered to accept the Upfront Tariff-2015 despite its earlier offer to opt for the Upfront Tariff-2014 having been accepted by the Authority. The conditions prescribed under the Policy of 2006 and the LOI issued by the Board have been fulfilled by the petitioners and the delay is due to the issuance of a notification by the Federal Government regarding tariff and execution of an energy or power purchase agreement. The controversy essentially stems from refusal on the part of the Power Purchasing Company to give its consent of power purchase. The latter has refused to accept the tariff approved by the Authority in the case of the petitioners. The questions involved in these petitions essentially relate to the scope of the functions and powers of the Power Purchasing Company. More precisely, the extent of its role in the determination of tariff. Whether it can refuse to accept the letter dated 17-12-2015, whereby the Authority has accepted the offer of the petitioners in respect of opting for the Upfront

Tariff-2015. In a nut shell, it is the case of the petitioners that in matters relating to the determination of tariff the exclusive power and jurisdiction vests in the Authority and the same cannot be questioned by the Power Purchasing Company. The latter has taken a stance that it is entitled and empowered to negotiate and settle a tariff before giving consent of power purchase. In order to appreciate the controversy and the questions arising there from, it would be beneficial to survey the relevant legal framework in this regard.

8. Pursuant to the reform process, which was undertaken by the Government of Pakistan in relation to restructuring Water and Power Development Authority, the legislature enacted the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the "Act of 1997"). The said statute was promulgated with the object and purposes stated in its preamble i.e to provide for the regulation of generation, transmission and distribution of electric power and matters connected therewith. Section 2(vi) defines 'Distribution Company' as meaning a person engaged in the distribution of electric power, while section 2(xii) defines a 'Generation Company' as meaning a person engaged in the generation of electric power.

Authority is defined in section 2(i) as meaning the National Electric Power Regulatory Authority established under section 3 of the Act of 1997. The power and functions of the Authority are described in section 7. Sub section (3) of section 7 starts with a non obstante clause and, inter-alia, explicitly provides that the determination of tariff, rates, charges and other terms and conditions for the supply of electric power service by the generation, transmission and distribution companies and making recommendations in this regard to the Federal Government for notification exclusively vests in the Authority. Sub section (6) of section 7 provides that in the performance of its functions under the Act of 1997 the Authority shall, as far as practicable, protect the interests of the consumers and companies providing electric services. Chapter III relates to the powers and jurisdiction vested in the Authority to grant licenses. Section 31 unambiguously reaffirms the power of the Authority to determine and prescribe the procedure and standards for determination , modification or revision of tariff. The provisions of sub section (2) of section 31 are in the nature of legislative guidelines which are required to be considered by the Authority while determining tariff. Sub section (4) of section 31 provides that the notification of tariff approved by the Authority, inter alia,

for the supply of electric power by a generation company 'shall' be published by the Federal Government in the official Gazette upon 'intimation'. The legislature has expressly used the expressions 'shall' and "intimation" in section 31(4). The proviso to section 31(4) contemplates a statutory remedy to the Federal Government for seeking reconsideration of the approved tariff within the time specified therein. Sections 46 and 47 of the Act of 1997 empowers the Authority to make rules and regulations. The Act of 1997 is, therefore, a comprehensive self contained statute in respect of regulating the energy or power sector. The power and jurisdiction to determine tariff exclusively vests in the Authority and in this regard statutory guidelines have also been provided. The exclusivity of this power is evident from a plain reading of section 31, particularly sub section (4) and its proviso. The notification of the Authority regarding approval of tariff etc upon 'intimation' to the Federal Government is published in the official Gazette. However, the proviso to subsection 4 of section 31 provides for a remedy to the Federal Government before publishing the notification in the official Gazette. The legislature has specified the time for availing the remedy and also for the Authority to reconsider the approved tariff. It is obvious from reading section 31 as a

whole that if the Authority intimates its decision after reconsideration then it becomes mandatory for the Federal Government to publish the notification of the Authority in the official Gazette. The Power Purchase Company, therefore, has no role in the context of the stages envisaged under section 31(4) and the proviso thereof. However, this would become obvious after examining the relevant sub legislation.

9. In the exercise of powers conferred under section 46 of the Act of 1997 the Authority, with the prior approval of the Federal Government, has made the National Electric Power Regulatory Authority (Tariff Standards and Procedure) Rules, 1998 (hereinafter referred to as the "**Rules of 1998**"). Tariff is defined in clause (m) of Rule 2 as meaning the rates, charges, terms and conditions for generation of electric power, transmission, inter-connection, distribution services and sales of electric power to consumers by a licensee. The procedure for making a determination has been prescribed under the Rules of 1998. Rule 6 provides that any interested person who desires to participate in any proceedings may file an intervention request for leave to intervene.

10. In exercise of powers conferred under section 47 of the Act of 1997 the Authority has made the National Electric Power Regulatory Authority Up-front Tariff (Approval & Procedure) Regulations, 2011 (hereinafter referred to as the "**Regulations of 2011**"). Upfront Tariff is defined in clause (j) of Regulation 2 as meaning tariff developed, declared, determined, or approved by the Authority on a petition moved by any relevant agency or in exercise of suo moto powers by the Authority. The relevant agency has been defined in clause 2(h) as meaning any agency or body set up or established by the Federal Government or any Provincial Government as a one window facilitator for setting up the electricity generation facility. Regulation 4 provides for a mechanism regarding acceptance or approval of upfront tariff in the case of an applicant. An applicant has been defined in Regulation 2 (b) and, inter-alia, includes a person, entity applying for accepting of an upfront tariff which has been issued a letter of intent/letter of support by a relevant agency for the construction of a generation facility. Regulation 4(3) lists the documents which are required to be accompanied with the application filed by an applicant. Clause (v) sub regulation 3 of Regulation 4 refers to 'consent of power purchase' issued by the Power Purchasing Company or any distribution company or bulk

power consumer for the procurement of electricity. It is, therefore, obvious that consent of the Power Purchasing Company i.e. the respondent No. 4 is a precondition for filing an application by an applicant to the Authority for the purposes of opting for an upfront tariff. Sub regulation (7) of Regulation 4 provides that the decision of the Authority on an application for the upfront tariff shall be conveyed to the applicant within the specified time and that it shall also be intimated to the Federal Government for notification in the official gazette.

11. The Authority, with prior approval of the Federal Government and pursuant to the powers conferred under section 46 of the Act of 1997, has made the National Electric Power Regulatory Authority (Market Operator Registration, Standards and Procedure) Rules, 2015 (hereinafter referred to as the "**Rules of 2015**"). The Central Power Purchasing Agency (Guarantee) Limited has been defined in Rule 2(d) and has reference to the respondent No. 4 i.e. the Power Purchasing Company. Rule 3 makes it mandatory for a market operator to be registered with the Authority so as to be authorized to conduct market operations. The expression "market operations" is defined in Rule 2(h) as meaning the functions, operations and responsibilities to be

performed and discharged by the market operator, as specified in Schedule-II. The Schedule-II of the Rules of 2015, inter-alia, includes procurement of electric power on behalf of the DISCOs i.e. the distribution companies, including import of power from other countries. The Power Purchasing Company and its functions and activities are regulated by the Authority. It would also be pertinent to refer to Rule 11 which empowers the Authority to give instructions and guidelines to a market operator such as the Power Purchasing Company. Rule 16 provides that any dispute or disagreement between the market operator and market participant relating to any matter arising out of or in connection with the activities covered under the rules shall be submitted for decision to the Authority. Market participant has been defined in Rule 2(i) and, inter alia, includes a generation company.

12. Lastly, it would be beneficial to examine the Policy of 2006 so as to properly appreciate the controversy involved in the instant petitions. The 'Forward' of the said Policy, signed by the then Minister for Water and Power, explicitly represents that it envisages mainstreaming of renewable energy in the development plans of the country and that it lays down very liberal and attractive incentives to attract

investment, so as to put Pakistan on the renewable energy map of the world. It has been declared that electricity purchase by the Power Purchasing Company from qualifying renewable energy based generation projects has been made mandatory. It promises to the investors that the policy laid down is premised on simplified and transparent principles of tariff determination. The power sector Institutions have been described in clause 2 of the Policy of 2006. In the context of the Authority, an unequivocal representation has been made to the investors that it functions as an independent regulator and ensures a transparent, competitive, commercially oriented power market in Pakistan. Moreover, amongst its functions the determining of tariff has been explicitly highlighted. The Board has been described as an autonomous body established with an aim to promote and facilitate the exploitation of renewable energy resources in Pakistan so as to achieve the targets set by the Policy. The Board has been held out as the focal entity tasked with implementing the Government's policies and plans, developing projects and that it has been designated as a one-window facility for processing the renewable energy power generation projects. The scope of the Policy of 2006 has been described in clause 6 thereof and includes the projects for

which the petitioners have opted for. The Policy covers both solicited as well as unsolicited projects. The proposal of the petitioners falls within the ambit of the unsolicited projects i.e. projects which are to be set up at any location at the choice of the investors. As already noted, mandatory purchase of electricity power has been guaranteed to the investors. The Policy also makes unambiguous representations regarding timelines for the purposes of expediting and facilitating the execution of the projects. The obligations of the Government of Pakistan are also guaranteed and described therein.

13. It has been noted above, that the two LOIs were issued in favour of the petitioners and later merged into one, vide letter dated 07-09-2012. The LOIs, inter-alia, provide as follows:

"The Sponsor(s) is therefore required to complete the feasibility study and achieve the LOI Milestones for the subject project within the validity of this LOI. The Sponsor(s) is also required to submit quarterly progress reports. Provided the Sponsor(s) meets the LOI Milestones on the stated dates, the Expiry Date of this LOI shall be extended on a day-for-day basis for the number of days of delay by

which the approval or review by the relevant public sector entity listed in the LOI Milestones is delayed beyond the corresponding period stated in the LOI Milestones."

It is further provided:

"The Sponsor(s) shall apply to NEPRA for award of tariff within the period of validity of this LOI. Upon tariff being given, the Sponsor(s) shall forthwith submit a new Performance Guarantee in the sum of US Dollars Twelve Thousand Five Hundred (USD 12,500) and obtain the Letter of Support ("LOS") from AEDB within the validity period of this LOI, provided, if the award of the tariff is delayed beyond the initial validity of the LOI, the Sponsor(s) shall extend the bank guarantee for a period of six(6) months and the Expiry Date shall be extended ipso facto for a further period of six(6) months and the Sponsor(s) shall obtain the LOS and submit a Performance Guarantee within the extended period afore-said. "

14. The LOS issued by the Board in favour of the petitioners has expressly acknowledged that the latter has received from the Authority tariff determination, dated 28-03-2014 as well as a generation license. It further confirms that in case of conflict the LOS shall govern and prevail over the provisions of the project agreement. It has been expressly mentioned in the LOS as follows:

*"Electricity produced by the Complex shall be sold to the Islamabad Electric Supply Company Ltd./ National Transmission and Despatch Company Limited (through its Central Power Purchasing Agency) on behalf of ex-WAPDA distribution companies (the "**Purchaser**") in accordance with the Generation License, Tariff Determination and the provisions of the Energy Purchase Agreement ("EPA") to be entered into between the Project Company and the Purchaser."*

15. The survey of the above discussed legislation and instruments manifests that there is no conflict between the Policy of 2006 and the provisions of the Act of 1997 and the rules or regulations made there under.

The representations made by the Federal Government in the Policy of 2006 are explicit. These representations are in the nature of guarantees given to the investors on behalf of the State of Pakistan. Sanctity is, therefore, attached to the representations made through the Policy of 2006 and rights definitely accrue in favour of investors who fulfill the conditions prescribed therein. In the instant case it is not disputed that the petitioners, after fulfilling the prescribed requirements, had filed an application for determination of tariff. The Authority had also approved the Upfront Tariff of 2014. However, the Power Purchasing Company, vide letter dated 22-09-2015, advised the petitioners to opt for the Upfront Tariff of 2015. Under the Policy of 2006, purchase of power has been made mandatory in case of an investor who achieves the prescribed conditions. It is one of the functions of the Power Purchase Company to issue consent of power purchase as required under Regulation 4(3)(v) of the Regulations of 2011. The legal framework discussed above does not envisage any role of the Power Purchasing Company regarding tariff determination nor empowers it to negotiate the tariff with a generation company which has become eligible under the Policy of 2006. The letter, dated 22-09-2015, whereby the Power Purchasing Company had asked the petitioners to opt for the Upfront

Tariff 2015 could only have been treated as an advice and had no binding effect since the latter had neither the power nor jurisdiction in this regard. After the approval was given by the Authority regarding the petitioners option in respect of Upfront Tariff of 2015 vide letter dated 17-12-2015, then upon intimation the Federal Government was either required to publish the same in the official Gazette or to have exercised the remedy available under the proviso to the Act of 1997. There is nothing on record to show that the Authority had sent an intimation in this regard to the Federal Government, as has been prescribed under section 31(4) of the Act of 1997 read with Regulation 4(7) of the Regulations of 2011. The Power Purchasing Company, therefore, had no power or jurisdiction to negotiate tariff with the petitioners and thus delay the entire process. This conduct on the part of the Power Purchase Company was in violation of the Policy of 2006 and the provisions of the Act of 1997.

16. The emphasis of the learned counsel for the Power Purchasing Company regarding the importance of protecting the interests of the consumers and the observations of the august Supreme Court in the case titled "Human Right Cases nos. 7734-G/2009, 1003-

G/2010 and 56712 of 2010, dated 30-03-2012" [2012 SCMR 773] is misplaced in the facts and circumstances of the these petitions. There is no cavil to the proposition that while determining tariff the Authority has a statutory duty to strike a balance between protecting the interests of the consumers as well as the companies providing electric power services, as mandated under section 7(6) of the Act of 1997. In the context of determination of tariff, it is a statutory duty of the Authority to, inter alia, give opportunity to customers and other interested parties to participate meaningfully in the tariff approval process, as provided under section 31(3)(b) of the Act of 1997 read with Rule 6 of the Rules of 1998. The Power Purchasing Company itself is regulated by the Authority under the Act of 1997 and the Rules of 2015. The latter is also an adjudicating authority under Rule 16 of the Rules of 2015 in disputes arising between the Power Purchasing Company and a power generation company. Orders passed by the Authority are binding on the Power Purchasing Company and violation thereof can expose it to the imposition of a penalty under Rule 19 of the Rules of 2015. The Power Purchasing Company has no jurisdiction whatsoever to question the determination made by the Authority on the ground that the rights of the consumers have been ignored. At best, the latter can

seek meaningful participation in the determination process or the Federal Government may seek reconsideration of the approved tariff under the proviso of sub section 4 of section 31 of the Act of 1997. The Power Purchasing Company is definitely not empowered to act as a forum of review or appeal in relation to determination of tariff made by the Authority. It is settled law that an act has to be done and performed in the manner prescribed under the law. Reliance is placed on '*Muhammad Anwar and others vs. Mst. Ilyas Begum and others*' [PLD 2013 SC 255].

17. There is no force in the argument advanced by the learned counsel for the Power Purchasing Company that since the LOI and LOS have expired, therefore, rights of the petitioners have also extinguished. The relevant portions of the LOS and LOI have been reproduced above. The LOS and LOI unambiguously provides, and it is implicit therein, that if the delays are on the part of the Government or its executing agencies then their validity would stand extended. In the facts and circumstances of these petitions, the delay obviously cannot be attributed to the petitioners. The learned counsel has, however, rightly pointed out that the process has not been completed, since a notification has not been published in the official Gazette as required under section

31(4) of the Act of 1997. As already noted above, it appears from the record that the Authority had not intimated its approval given vide letter dated 17-12-2015 to the Federal Government.

18. These petitions are maintainable since they seeks judicial review of the conduct of the respondents. It is settled law that constitutional jurisdiction would be maintainable where rights are based on statute and rules or regulations framed thereunder or when the grievance is in respect of obligations or duty vested in public functionaries or a statutory body. In the instant case the petitioners have sought judicial review of violation of statutory provisions and deprivation of valuable rights on account of acts and omissions which are without jurisdiction. The case law relied upon by the learned counsel for the respondents is, therefore, distinguishable and not attracted in the facts and circumstances involved in this case.

19. For what has been discussed above, it is declared that valuable rights have accrued in favour of the petitioners for giving effect to the approval of the Authority, vide letter dated 17-12-2015. The Authority, after issuing a notification, shall intimate the same to the

Federal Government for publication in the official Gazette. In case the latter decides not to avail the remedy provided under the proviso of section 31(4) then it shall cause the notification to be published in the official Gazette. In the event that it elects to file a petition for reconsideration within the specified time prescribed under the provision of section 31(4), the Authority is then expected to complete the proceedings, having regard to the time mentioned *ibid*. The interested parties, including the Power Purchase Company, shall be afforded a meaningful participation. On completion of the proceedings under section 31(4) or the proviso thereto, as the case may be, the notification regarding approval of the Authority shall be published in the official Gazette and thereafter the Power Purchase Company shall execute the agreement by incorporating the tariff notified under Section 31(4) of the Act of 1997.

20. The petitions are, therefore, ***allowed*** and ***disposed of*** in the above terms.

(ATHAR MINALLAH)
JUDGE

Announced in open Court, on 09th May, 2017.

JUDGE
Approved for reporting.

