Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 52 of 2026

In the matter of:

Petition under Section 86(1)(b) of the Electricity Act, 2003 read with Regulations 12 and 53 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-Fossil Fuel Based Co-generating Stations) Regulations, 2023, Regulation 59 of the UERC (Conduct of Business) Regulations, 2014 and the applicable Ministry of Power Guidelines, seeking removal of the regulatory difficulty arising on account of revision of the benchmark Capacity Charge after conclusion of the competitive bidding process and issuance of the Letters of Award, and for permitting implementation of the concluded procurement process under the benchmark Capacity Charge determined by the Commission vide Order dated 06.01.2026.

In the matter of:

Uttarakhand Power Corporation Ltd. … Petitioner

CORAM

Shri M.L. Prasad	**Chairman**
Shri Anurag Sharma	**Member (Law)**
Shri Prabhat Kishor Dimri	**Member (Technical)**

Date of Hearing: July 09, 2026

Date of Order : July 27, 2026

Uttarakhand Power Corporation Limited has filed a Petition dated 30.06.2026 under Section 86(1)(b) of the Electricity Act, 2003 read with Regulations 12 and 53 of the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-Fossil Fuel Based Co-generating Stations) Regulations, 2023 Regulation 59 of the UERC (Conduct of Business) Regulations, 2014 and the applicable Ministry of Power Guidelines, seeking removal of the regulatory difficulty arising on account of revision of the benchmark Capacity Charge after conclusion of the competitive bidding process and issuance of the Letters of Award (loA), and for permitting implementation of the concluded procurement process under the benchmark Capacity Charge determined by the Commission vide Order dated 06.01.2026 for Battery Energy Storage System.

1. Background

1.1 The Commission in exercise of the powers vested in it under Section 61(h) and Section 86(1)(e) read with Section 181(2)(zd) of the Act, notified the UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2023 on 16.08.2023 as amended from time to time(hereinafter referred to as "RE Regulations, 2023"). In accordance with the provisions of Regulation 12 of RE Regulations, 2023, the Commission vide Order dated 04.06.2026 determined the generic tariff for solar energy-based power plants and Battery Energy Storage System (BESS) on Suo-moto basis based on the norms specified in the RE Regulations, 2023.

1.2 The Commission, as deliberated in the Order dated 04.06.2026, had decided to consider the benchmark capital cost for BESS of Rs. 1.60 Crore/MW and worked out Capacity Charges of Rs. 2,59,244/MW/month for the BESS projects to be commissioned within 18 months from the date of Impugned Order dated 04.06.2026.

1.3 During the proceedings Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL" or "Distribution Licensee") had submitted its comments on the matter contesting that the benchmark capacity charges considered by the Commission has been reduced significantly from the earlier benchmark capacity charges of Rs. 3,96,747/MW/month for BESS projects and does not adequately reflect prevailing market conditions or the actual cost of BESS projects. It was contended that the proposed capacity charges fail to account for rising battery input costs, lifecycle expenses, balance-of-system components, and the higher implementation costs associated with deployment in Uttarakhand. UPCL had further submitted that the lower benchmark may adversely affect project viability, financing, and investor participation. Accordingly, UPCL had requested the Commission to adopt a more realistic and cost-reflective benchmark by incorporating dynamic cost adjustments, augmentation and replacement costs, State-specific deployment considerations, and alignment with prevailing market-discovered prices and ongoing procurement processes.

1.4 In the matter, the Commission decided to keep the benchmark capital cost amounting to Rs. 1.60 Crore/MW and capacity charges of Rs. 2,59,244/MW/month observing that recent standalone BESS tenders in India demonstrate a declining trend in discovered tariffs, particularly for projects supported by Viability Gap Funding (VGF). It was noted that SECI's December 2025 tender for 125 MW/500 MWh standalone BESS projects in Odisha resulted in one of the lowest discovered tariffs of Rs. 3,04,000/MW/month, with the successful bidder, Coal India Limited, responsible for arranging charging power. Similarly, UPPCL's 375 MW/1500 MWh BESS tender discovered tariffs of around Rs. 6.45/kWh, with developers also bearing the cost of charging power. While acknowledging the logistical and geographical challenges associated with BESS deployment in Uttarakhand, the Commission observed that the proposed projects by UJVN Ltd. and UPCL are 2.5-hour duration systems, requiring lower battery capacity than the 4-hour systems considered in recent tenders by UPPCL, SJVNL, and NVVN. The Commission further held that issues relating to distributed deployment and site-specific execution are project development aspects that should ordinarily be addressed through competitive bidding and efficient project planning.

1.5 Aggrieved by the Commission’s Order dated 04.06.2026, the present Petition has been filed by UPCL.

2. Petitioner’s Submission

2.1. The Petitioner, UPCL, submitted that the present Petition has been filed under Section 86(1)(b) of the Electricity Act, 2003 (the Act) read with Regulations 12 and 53 of RE Regulations, 2023, Regulation 59 of the UERC (Conduct of Business) Regulations, 2014 (hereinafter referred to as “CBR, 2014”) and the applicable Guidelines issued by the Ministry of Power, Government of India, seeking removal of the regulatory difficulty arising on account of revision of the benchmark Capacity Charge after conclusion of the competitive bidding process and issuance of the LoAs, and for permitting implementation of the concluded procurement process under the benchmark Capacity Charge determined by the Commission vide Order dated 06.01.2026.

2.2. The Petitioner submitted that Section 86(1)(b) of the Act empowers the State Commission to regulate electricity purchase and procurement processes of distribution licensees, including the price at which electricity is procured from generating companies or other sources for distribution and supply within the State, and that the present Petition, being concerned with the regulatory treatment of a concluded procurement process for BESS capacity, falls squarely within the said statutory mandate.

2.3. The Petitioner placed reliance upon Regulation 53 i.e *Power to Remove Difficulties* of the RE Regulations, 2023, which empowers the Commission, of its own motion or otherwise, to make such provisions, not inconsistent with the said Regulations, as may appear necessary for removing any difficulty arising in giving effect thereto, after affording reasonable opportunity to those likely to be affected. The Petitioner further placed reliance upon Regulation 59(1) of the CBR, 2014, which preserves the inherent power of the Commission to pass such orders as may be necessary for the ends of justice or to prevent abuse of its process, and contended that the present Petition is maintainable in exercise of these provisions, read with the general regulatory power of the Commission under Section 86(1)(b) of the Act.

2.4. The Petitioner submitted that the State of Uttarakhand had been recognised as an eligible entity under the Viability Gap Funding ("VGF") Scheme of the Ministry of Power dated 09.06.2025 for development of BESS capacity through tariff-based competitive bidding under Section 63 of the Electricity Act, 2003, and that, under the said Scheme, the State had been allocated 500 MWh of BESS capacity, supported through the Power System Development Fund ("PSDF"), for grid balancing and renewable energy integration.

2.5. The Petitioner submitted that the Commission, vide notification dated 16.08.2023, had introduced the RE Regulations, 2023, which came into force from the date of notification and, unless reviewed earlier or extended by the Commission, were to remain in force for a period of five years. It was further submitted that the Commission had subsequently introduced the first amendment to the RE Regulations, 2023 vide notification dated

20.06.2024, and the second amendment vide notification dated 27.11.2025, the latter incorporating provisions aligned with the Ministry of Power Guidelines for procurement and utilisation of BESS capacity under the tariff-based competitive bidding framework.

2.6. The Petitioner submitted that the regulatory framework evolved by the Commission had consistently sought to enable structured procurement of BESS capacity through competitive bidding, while ensuring cost efficiency, transparency and regulatory certainty for all stakeholders, including distribution licensees and implementing agencies.

2.7. The Petitioner submitted that the Commission, vide Order dated 06.01.2026 had determined the benchmark Capacity Charge for Standalone BESS at Rs. 3,96,747/ MW/month, and that the said benchmark Capacity Charge formed the regulatory basis on which the Petitioner undertook the procurement process in question.

2.8. The Petitioner submitted that, acting upon the said regulatory framework, it issued tenders dated 04.02.2026 for procurement of 100 MW/250 MWh Standalone BESS capacity under the VGF Scheme, and that the bidding process was conducted in a transparent, competitive and structured manner in accordance with the applicable procurement guidelines and regulatory requirements.

2.9. The Petitioner submitted that the technical bids were opened on 21.04.2026 and, upon completion of technical evaluation, the financial bids were opened on 18.05.2026, resulting in discovery of market-based competitive tariffs. It was further submitted that the consultant appointed for bid evaluation, M/s AHAsolar Technologies Limited, submitted its recommendations dated 20.05.2026 for issuance of LoA to the successful bidder.

2.10. The Petitioner submitted that, acting upon the said recommendations and upon completion of the competitive bidding process, it issued LoAs on 01.06.2026, and that the procurement process accordingly stood concluded prior to issuance of the subsequent order revising the benchmark Capacity Charges.

2.11. The Petitioner submitted that the successful bidder had participated in the bidding process and submitted its financial bid relying upon the benchmark capacity charge approved by the Commission vide Order dated 06.01.2026, and that the Petitioner had likewise completed the evaluation process and issued the LoAs based on the same regulatory framework, thereby giving rise to legitimate commercial expectations warranting regulatory certainty.

2.12. The Petitioner submitted that the Commission, vide Order dated 04.06.2026 revised the benchmark capacity charge for Standalone BESS projects to Rs. 2,59,244/MW/month, and that the said revision, coming into existence only after completion of the competitive bidding process and issuance of the LoAs, had created a regulatory implementation difficulty in its application to the procurement process already concluded.

2.13. The Petitioner submitted that UPCL, vide letter dated 12.06.2026, requested the Commission for appropriate facilitation and regulatory directions to enable execution of the Battery Energy Storage Purchase Agreement (BESPA) under the concluded procurement framework, and that the Commission, vide letter dated 23.06.2026, advised the Petitioner to file an appropriate Petition under the Conduct of Business Regulations, 2014, thereby necessitating the filing of the present Petition.

2.14. The Petitioner submitted that the cause of action for the present Petition arose upon completion of the competitive bidding process and issuance of the LoAs dated 01.06.2026 under the regulatory framework then prevailing, and further arose upon issuance of the Order dated 04.06.2026 revising the benchmark Capacity Charge, and that the cause of action continues to subsist inasmuch as execution of the BESPA and implementation of the concluded procurement process remain pending on account of the regulatory difficulty so arising.

2.15. The Petitioner submitted that it had acted bona fide and in complete compliance with the statutory framework, the Regulations framed by the Commission and the applicable Guidelines issued by the Ministry of Power, and that at no stage had it deviated from the regulatory framework then in force.

2.16. The Petitioner clarified that the present Petition does not seek modification or reconsideration of the benchmark capacity charge determined by the Commission vide Order dated 04.06.2026, and that the limited issue requiring consideration is whether the said revised benchmark ought to govern a procurement process which had already culminated in issuance of LoAs under the earlier regulatory framework.

2.17. The Petitioner contended that retrospective application of the revised benchmark capacity charge to an already concluded procurement process would fundamentally alter the basis on which the bids were invited, submitted, evaluated and accepted, thereby disturbing the sanctity of a transparent competitive bidding process undertaken under the supervision of the then prevailing regulatory framework.

2.18. The Petitioner further contended that application of the revised benchmark capacity charge to an already concluded procurement process is likely to result in avoidable contractual disputes, claims, arbitration proceedings and prolonged litigation between the contracting parties, thereby delaying implementation of strategically important BESS projects in the State.

2.19. The Petitioner submitted that the projects in question are being implemented under the VGF Scheme of the Ministry of Power, which prescribes strict timelines for execution of BESPAs, and that any delay arising on account of regulatory uncertainty may jeopardise the availability of financial assistance under the Scheme, causing prejudice not merely to the Petitioner but to the State of Uttarakhand as a whole. It was further submitted that the Ministry of Power has been continuously monitoring progress of implementation of BESS projects sanctioned under the VGF Scheme, that execution of BESPAs constitutes an important milestone under the implementation schedule, and that any delay may adversely affect the State's eligibility for continued financial support thereunder.

2.20. The Petitioner submitted that the procurement undertaken by it relates to an important grid-balancing infrastructure project intended to facilitate renewable energy integration, improve grid reliability and strengthen power system security in the State of Uttarakhand, and that delay in implementation would adversely affect these larger public interest objectives.

2.21. The Petitioner reiterated its reliance upon Regulation 53 of the RE Regulations, 2023, contending that the present case squarely falls within its scope inasmuch as the regulatory difficulty has arisen solely on account of the timing of revision of the benchmark capacity charge after completion of the procurement process, and upon Regulation 59 of CBR, 2014, contending that the present circumstances warrant exercise of the Commission's inherent jurisdiction thereunder to remove the uncertainty affecting implementation of a procurement lawfully undertaken under the earlier regulatory framework.

2.22. The Petitioner submitted that issuance of appropriate directions by the Commission would neither prejudice consumer interest nor disturb the regulatory framework governing BESS projects, and would merely facilitate implementation of the procurement process undertaken and concluded in accordance with the benchmark Capacity Charge approved vide Order dated 06.01.2026.

2.23. The Petitioner further submitted that regulatory certainty and predictability constitute essential principles governing public procurement in the electricity sector, and that once a competitive bidding process has been completed under a valid regulatory framework, subsequent regulatory changes ordinarily operate prospectively unless specifically made applicable to concluded transactions.

2.24. The Petitioner submitted that the balance of convenience, public interest, and the larger objective of timely implementation of BESS projects overwhelmingly favour issuance of appropriate clarification and consequential directions permitting the Petitioner to execute the BESPA in accordance with the benchmark capacity charge prevailing at the time the procurement process was initiated and concluded.

2.25. The Petitioner prayed the Commission to:

a) admit the present Petition;

b) condone any error or omission and grant opportunity to rectify the same;

c) permit the Petitioner to make further submissions, additions and alterations to the Petition as may be necessary from time to time;

d) hold that the competitive bidding process undertaken by the Petitioner for procurement of 100 MW/250 MWh Standalone BESS capacity, which culminated in issuance of Letters of Award prior to the Order dated 04.06.2026, shall be governed by the benchmark Capacity Charge determined by the Commission vide Order dated 06.01.2026;

e) permit the Petitioner to execute and finalise the BESPA with the successful bidder(s) in terms of the procurement process concluded under the benchmark Capacity Charge determined vide Order dated 06.01.2026;

f) exercise powers under Regulation 53 of the RE Regulations, 2023 and issue consequential directions to remove the difficulty arising from revision of the benchmark Capacity Charge vide Order dated 04.06.2026 after completion of the procurement process; and

g) pass any such further or other order(s) as the Commission may deem fit and proper in the facts and circumstances of the case, in the interest of justice, consumer interest, grid reliability and public interest.

3. Commission's Analysis and Findings

3.1. The present Petition has been filed by UPCL on 30.06.2026 seeking removal of the regulatory difficulty arising on account of revision of the benchmark capacity charges for BESS projects after conclusion of the competitive bidding process and issuance of the LoAs and for permitting implementation of the concluded procurement process under the benchmark capacity charge determined by the Commission vide Order dated 06.01.2026 under Section 86(1)(b) of the Electricity Act, 2003 read with Regulations 12 and 53 of RE Regulations, 2023, Regulation 59 of CBR, 2014 and the applicable Ministry of Power Guidelines.

3.2. The Commission has considered the pleadings, and reliefs contained in the Petition, as also the record of proceedings relating to determination of the benchmark capital cost and levelized capacity charges for BESS applicable for FY 2026-27. The Commission observes that two questions require analysis -

(a) whether the Petitioner has made out a case for exercise of the Commission's power under Regulation 53, i.e. *Power to Remove Difficulties,* of the RE Regulations, 2023, so as to permit the procurement process undertaken by it, culminating in the LoAs dated 01.06.2026, to be governed by the levelized/ceiling capacity charge of Rs. 3,96,747/MW/month determined vide Order dated 06.01.2026, notwithstanding the subsequent revision of the said levelized/ceiling charges to Rs. 2,59,244/MW/month vide Suo-moto Order dated 04.06.2026 passed in Petition

No. 18 of 2026, and

(b) whether, in the alternative, the Petitioner has made out a case for the same relief in exercise of the inherent power of the Commission under Regulation 59 of the Conduct of Business Regulations, 2014.

3.3. The Petitioner has placed reliance on Section 86(1)(b) of the Act, Regulation 12 and Regulation 53 of RE Regulations, 2023. Section 86(1)(b) of the Act empowers the State Commission to regulate the electricity purchase and procurement process of distribution licensees, including the price at which electricity is procured from generating companies, licensees or other sources through power purchase agreements for distribution and supply within the State. The relevant provision of Section 86(1)(b) is reproduced below:

Section 86. Functions of State Commission

(a)

(b) Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power from distribution and supply within the State.

(c)

…"

Further, Regulation 12 of RE Regulations, 2023 as amended from time to time specifies as follows:

"12. Control Period or Review Period

(1) The Control Period or Review Period under these Regulations shall be of five years, of which the first year shall be the financial year 2023-24.

Provided that the benchmark capital cost of Solar PV, Canal Bank & Canal Top Solar PV, Solar Thermal, Municipal Solid Water based power projects, Refuse Derived Fuel based power projects, Battery Energy Storage System and Grid interactive Roof Top and Small Solar PV projects may be reviewed annually by the Commission.

Provided further that the tariff determined as per these Regulations for the RE projects commissioned during the Control Period, shall continue to be applicable for the entire Tariff Period.

…."

Further, Regulation 53 of RE Regulations, 2023 specifies as follows:

"53. Power to Remove Difficulties

If any difficulty arises in giving effect to these regulations, the Commission may, of its own motion or otherwise, by an order and after giving reasonable opportunity to those likely to be affected by such order, make such provisions, not inconsistent with these regulations, as may appear to be necessary for removing the difficulty.

Provided that for BESS projects, for the purpose of adoption and removal of any discrepancy, difficulty in implementation or requiring clarification due to or giving effect to the Government policies issued from time to time, technologies changes in the BESS technologies or any such related reasons, the Commission may also by Order provided for the same."

Furthermore, as discussed in preceding paragraphs of this Order, the Petitioner has also relied upon Regulation 59 of the CBR, 2014 which specifies as follows:

"59. Inherent power of the Commission

1) *Nothing in these Regulations shall be deemed to limit of otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.*
2) *Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Central Act or State Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient for dealing with such a matter or class of matters.*
3) *Nothing in these Regulations shall, expressly or impliedly bar the Commission to deal with any matter or exercise any power under the Central Act or State Act, for which no Regulations have been framed, and the Commission may deal with such matters or exercise such powers and functions in a matter it thinks fit."*

3.4. Regulation 53 of the RE Regulations, 2023 provides that in case of any difficulty in giving effect to the provisions of the Regulations, the Commission may, by order, specify the measures to remove such difficulty, provided that such order is consistent with the Regulations and is passed after giving a reasonable opportunity of hearing to the parties likely to be affected by such order. The provision is intended to enable smooth implementation of the Regulations by addressing minor operational or procedural difficulties and is not intended to be a substitute for amendment of the Regulations themselves, in this regard, it is relevant to refer to the judgement in which Hon'ble APTEL has construed identically worded "power to remove difficulties" provisions found in other State Commissions' Regulations. The Hon'ble APTEL in its judgement dated 30.08.2024 in the matter of *Uttar Pradesh Power Corporation Limited & Ors. v. Uttar Pradesh Electricity Regulatory Commission & Ors*., while examining an identically structured "power to remove difficulties" clause under the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019, held that such power is neither uncontrolled nor unfettered, that the existence of a difficulty in giving effect to the provisions of the Regulations is the sine qua non for its exercise, and that the power cannot be used to address "an extraneous difficulty." APTEL further held that the exercise of such power is limited to what is necessary for applying or giving effect to the Regulations, and that in exercising it, the Commission concerned cannot change, disfigure or do violence to the Regulations themselves, and cannot give the Regulations a go-by or seek to amend them under the guise of removing a difficulty. Relevant extract of the said judgement is reproduced below:

> *"**D. REGULATION CONFERRING POWER ON THE COMMISSION TO REMOVE DIFFICULTIES: ITS SCOPE:***
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> *Regulation 2 of the 2019 Regulations relates to the scope and extent of the 2019 Regulations. Regulation 2(viii) stipulates that, if any difficulty arises in giving effect to the 2019 Regulations, the Commission may, on its own motion or otherwise, by an Order and after giving a reasonable opportunity to those likely to be affected by such Order, make such provisions, as may appear to be necessary, for removal of the difficulty so arisen.*
>
> *…*

E. ANALYSIS:

The power, conferred by Regulation 2(viii), of the 2019 Regulations, is neither uncontrolled nor unfettered. It is circumscribed, and its use is conditioned and restricted. The existence or arising of a "difficulty" is the sine qua non for the exercise of the power, and the "difficulty" contemplated by the said provision is a difficulty arising in giving effect to the provisions of the Regulations, and not an extraneous difficulty. Exercise the power thereunder is limited to the extent it is necessary for applying or giving effect to the Regulations. In the exercise of such power, the Commission cannot change, disfigure or do violence to the Regulations itself.

…"

The above analysis/observation/view of the Hon'ble APTEL applies with equal force to Regulation 53 of the RE Regulations, 2023. Applying the aforesaid principles, the difficulty pleaded by the Petitioner being one relating to the implementation of their procurement process, and not one arising in giving effect to any provision of the RE Regulations, 2023, does not fall within the scope of Regulation 53. The Petitioner has, accordingly, failed to make out any case for exercise of the Commission's power under Regulation 53 of the RE Regulations, 2023.

3.5. On a plain reading of Regulation 53, it becomes apparent that the difficulty contemplated therein is a difficulty arising in giving effect to the provisions of the RE Regulations, 2023 themselves, that is, a difficulty in the application, operation or interpretation of the Regulations. It is not a provision dealing with difficulties arising from a subsequent Order passed by the Commission in exercise of its distinct regulatory or tariff-determination powers. In the present case, the benchmark capacity charge was determined, in kWh terms, by the Commission through second amendment to RE Regulations, 2023 which was subsequently translated to Rs. 3,96,747/MW/month vide suo-moto Order dated 06.01.2026 and thereafter revised by subsequent Order of the Commission dated 04.06.2026, passed in exercise of the Commission's regulatory and tariff-determination jurisdiction in accordance with RE Regulations, 2023. The difficulty raised by the Petitioner is a difficulty in the implementation of the Order dated 04.06.2026 vis-a-vis a concluded procurement process and not a difficulty in giving effect to any provision of the RE Regulations,

2023. Such difficulty is outside the plain language and apparent scope of Regulation 53 of RE Regulations, 2023.

3.6. Further, with regard to the inherent powers under Regulation 59 of the UERC (Conduct of Business) Regulations, 2014, the Commission observes that these powers are intended to be used only in exceptional situations to secure the ends of justice, prevent abuse of the Commission's process, or address genuine regulatory gaps where no specific provision exists. They are not an independent source of substantive relief and cannot be invoked to overcome difficulties created by a party's own actions or omissions.

It is well settled that although the Commission performs several functions, including administrative, supervisory, advisory, legislative and adjudicatory functions, each power must be exercised only within its prescribed limits. The mere existence of different powers does not permit the Commission to exercise one power in a manner that effectively amounts to exercising another. This principle has been upheld by Hon'ble APTEL in Judgement dated 06.05.2011 in the matter of *Madhya Pradesh Power Generation Company Limited v. Madhya Pradesh Electricity Regulatory Commission and Ors,*. Relevant extract of the Judgement dated 06.05.2011 is as follows:

62. With regard to exercise of inherent power which we have noticed in regulation 59.2 it can fairly be stated that this inherent power which is akin to Section 151 of the Civil Procedure Code is exercisable only in adjudicatory jurisdiction, not in legislative jurisdiction. The law is very clear on the subject. In Vinod Seth v/s Devinder Bajaj & Anr. (2010) 8 SCC 1 the Hon'ble Supreme Court refers to the decision in Padam Sen Vs. State of U.P. reported in AIR 1961 SC 218, Manohar Lal Chopra vs Seth Hira Lal reported in AIR 1962 SC 527, Nain Singh Vs Koonwarjee reported in (1970) 1 SC 732 and held that Section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interest of justice requires the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any substantive relief. This power is exercisable not with reference to any matter duly covered by a statute, nor any such order under inherent jurisdiction can be passed contrary to the provision of the law. When the law is silent and adjudicatory process demands that a particular order is necessary to prevent the abuse of the Court then and then only Court's inherent jurisdiction expressed *in Section 151 can be invoked. This is the essence of the decisions quoted above and we find that regulation 59.2 has been drafted exactly in line with Section 151 of the CPC."*

In order to consider whether interest of justice requires the Commission to exercise its inherent power or it is a fit case for exercising such power, let us first consider certain factual matrix in the matter which has led to filing of the present Petition so as to assess whether such circumstances exists where there has been miscarriage of justice or abuse of the process, requiring such exceptional exercise of power. In this regard, it is to be noted that the process of determination of the benchmark capital cost and levelized capacity charges for BESS projects to be commissioned during FY 2026-27 was undertaken by the Commission in a transparent manner. A draft Order was issued on 07.04.2026 and comments were invited from all stakeholders by 04.05.2026, including the Petitioner. The Petitioner did participate in the said proceedings and submitted detailed comments on the proposed benchmark capital cost and levelized capacity charges for BESS vide its letter dated 02.05.2026.

3.7. The Commission notes that the Petitioner was well aware of its own procurement process much before filing the said comments, and this fact is of considerable significance. The Petitioner had floated tenders for procurement of 100 MW/250 MWh Standalone BESS capacity on 04.02.2026. Thereafter, on 10.04.2026, the Petitioner itself filed a separate Petition before the Commission seeking approval of the draft BESPA to be executed with successful bidders, wherein it was stated that it had floated tenders for development of BESS projects in the State of Uttarakhand. It is thus evident that the Petitioner was completely aware of its ongoing tendering process well before it filed its comments dated 02.05.2026 in the proceedings relating to the review of the benchmark capital cost and capacity charges for BESS. In fact, the Petitioner had such knowledge even prior to the opening of Technical Bids on 21.04.2026.

3.8. Notwithstanding the aforesaid, the Petitioner, while filing its comments dated 02.05.2026 in the proceedings for review of benchmark capital cost and capacity charges for BESS, has neither, at any stage, brought to the notice of the Commission, in those proceedings that the tenders for BESS procurement had already been issued and were at an advanced stage nor informed that Technical Bids had already been opened on 21.04.2026 and the procurement process was progressing towards financial evaluation and completion.

3.9. The Commission notes that the sequence of events demonstrates that the Petitioner was well aware of its own procurement process, and had even submitted limited information before the Commission through Petition for approval of draft BESPA, before the BESS's capacity charges review proceedings culminated in the Order dated 04.06.2026. The tenders were floated on 04.02.2026, the Petition for approval of draft BESPA disclosing the fact of the tenders was filed on 10.04.2026; Technical Bids were opened on 21.04.2026, the Petitioner's comments in the tariff review proceedings were filed on 02.05.2026; Financial Bids were opened on 18.05.2026; the bid evaluation consultant's recommendations were furnished on 20.05.2026; LoAs were issued on 01.06.2026; and the Commission's Order revising the benchmark capacity charge for BESS projects to be commissioned in FY 2026-27 was passed on 04.06.2026.

3.10. The Commission is unable to accept that a party which was possessed of material facts bearing directly upon a pending proceedings i.e. review of benchmark capital cost and capacity charges of BESS to be applicable for FY 2026-27, and which yet abstained from placing those facts on the record of the proceedings in which they were directly relevant, can thereafter invoke the inherent power of the Commission under Regulation 59 of CBR, 2014 to seek insulation.

3.11. Inherent power of the nature conferred by Regulation 59 of UERC (Condict of Business) Regulations, 2014 is intended to secure the ends of justice and to prevent abuse of the process of the Commission; it cannot be pressed into service to rectify a situation of a party's own making, nor to relieve a party of the consequences flowing from its own failure to exercise the diligence and candour expected of it. That is not the purpose for which the inherent power has been conferred upon the Commission, and it cannot be exercised contrary to, or so as to override, the statutory and regulatory framework, nor so as to confer upon a party a benefit or dispensation that arises solely from that party's own lack of diligence.

3.12. Applying the above principle as stated in the judgement above, the Commission is of the view that the inherent powers under Regulation 59, being residuary in nature, cannot be used to grant a relief which is not available under the specific provisions of the Regulations. Therefore, where the removal of difficulty provision under Regulation 53 is itself does not apply to the facts of the present case, the Petitioner cannot seek the same relief indirectly by invoking the inherent powers under Regulation 59 of CBR, 2014.

3.13. Based on the above discussions, the Commission is of the view that no exceptional circumstances exist in the facts of the present case warranting exercise of either Regulation 53 of the RE Regulations, 2023 or the inherent power of the Commission under Regulation 59 of CBR, 2014. As held above, the difficulty pleaded does not, on its own terms, fall within the scope of Regulation 53 of RE Regulations, 2023, which is confined to difficulties in giving effect to the provisions of the RE Regulations, 2023 and not to difficulties in the implementation of the Petitioner's procurement process.

Further, the alleged regulatory difficulty is not one arising from any lacuna, ambiguity or hardship inherent in the regulatory framework; it is the direct consequence of the Petitioner's own failure to disclose, in the proceedings in which it was material, a set of facts that were, on the Petitioner's own showing, within its knowledge. The invocation of Regulation 59 of CBR, 2014 in these circumstances would amount to converting the Commission's residuary and equity-based inherent power into an instrument for according relief that is, in substance, sought on account of the Petitioner's own lack of diligence and candour, and cannot be accepted.

3.14. However, considering the matter with respect to the applicability of RE Regulations, 2023, and the benchmark capital cost for BESS determined thereunder to the projects being presently considered for the development under the VGF scheme notified by GoI, it is relevant to note that the Capacity Charge of Rs. 2,59,244/MW/month determined in the Impugned Order dated 04.06.2026 was fixed as a benchmark ceiling under Regulation 12 of the RE Regulations, 2023. Moreover, the BESS projects can have a different operation cycle such as 2 hours, 2.5 hours as proposed by UPCL and UJVN Ltd. and 4 hours which will carry different costs and different efficiencies. Further, there are various other factors and commercial terms that will impact the prices, including the technology and the location and, hence, it would be not be logical to apply similar norms on them as specified under the Regulations. Further, the BESS projects proposed by the Petitioner are of different capacities and are at different locations. UPCL has proposed to install BESS at distribution level whereas UJVN Ltd. has proposed to install the same at generation end, both serve different purposes and have different financial implications and different criteria for assessment and therefore, cannot be equated. Furthermore, these projects are proposed to be installed through tariff-based competitive bidding under Operational Guidelines for the Viability Gap Funding (VGF) Scheme issued by the Ministry of Power, Government of India, as amended from time to time. These Guidelines requires the discovery of tariff through competitive bidding and submitting the same before the Commission for adoption as per Section 63 of the Electricity Act, 2003. Accordingly, for the reasons stated above, BESS ceiling capacity charges determined by the Commission for the standalone BESS projects under the RE Regulations cannot be applied to the projects to be installed under present VGF Scheme. Therefore, even otherwise no prejudice or injustice is being caused to the Petitioner, due to determination of the benchmark capital cost, as the tariff discovered for these projects through competitive bidding is to be adopted by the Commission taking into consideration of relevant aspects.

3.15. However, in order to obviate any confusion or difficulty in applying the RE Regulations in such matters, the Commission deems it necessary to clarify that benchmark Capacity Charge of Rs. 2,59,244/MW/month determined in the Impugned Order under the RE Regulations, 2023 applies to BESS projects other than those constituting monetary assistance under present VGF Scheme notified by GoI.

3.16. Further, the Petitioner, upon completion of the ongoing tariff-based competitive bidding process, shall approach the Commission by filing an appropriate Petition under Section 63 of the Electricity Act, 2003 for adoption of the tariff discovered through the bidding process in accordance with the UERC (Conduct of Business) Regulations, 2014 and also consequent agreements, if any.

3.17. In view of the above, the Commission is of the view that the Petitioner has failed to establish any valid ground for invoking the power under Regulation 53 of RE Regulations, 2023, or the inherent power under Regulation 59 of CBR, 2014. The

Petition is therefore rejected being devoid of merit. Accordingly, Miscellaneous Application no. 52 of 2026 stands disposed off.

4. Ordered Accordingly.

(Prabhat Kishor Dimri) **Member (Technical)**	**(Anurag Sharma)** **Member (Law)**	**(M.L. Prasad)** **Chairman**