

**BEFORE THE TELANGANA ELECTRICITY REGULATORY COMMISSION  
HYDERABAD**

**O.P.No.30 OF 2024**

**IN THE MATTER OF:**

Filing of Annual Tariff (MYT) Petition for FY 2025-26 in respect of 2x600 MW Singareni Thermal Power Project containing proposal for revised tariff for FY 2025-26 in accordance with Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC (Multi Year Tariff) Regulation 2023 and True up of FY 2023-24 in terms of Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC Tariff Regulation 2019.

Between:

M/s. Singareni Collieries company Limited (SCCL)

..... **Petitioner**

AND

1. Southern Power Distribution Company of Telangana Limited
2. Northern Power Distribution Company of Telangana Limited

..... **Respondents**

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V.   
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**BEFORE THE TELANGANA ELECTRICITY REGULATORY COMMISSION  
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Between:

M/s. Singareni Collieries company Limited (SCCL)

..... **Petitioner**

AND

1. Southern Power Distribution Company of Telangana Limited
2. Northern Power Distribution Company of Telangana Limited

..... **Respondents**

**REPLY FILED BY THE RESPONDENTS**

I, V.Prabhakar, S/o. V. Narayanappa, aged about 58 years, Occ: Chief Engineer/IPC/TGSPDCL, Mint Compound, Hyderabad, resident of Hyderabad, do hereby solemnly affirm and state as under-

  
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1. The Petitioner, M/s. SCCL [being the owner of Singareni Thermal Power Project (STPP)] has filed the present Petition, under the Section 62, Section 86 (1)(a) of the Electricity Act, 2003, praying for the following reliefs:

- .....
- a) Consider the submissions made by SCCL in this Annual Tariff Petition for FY 2025-26 and the truing up of tariff/expenditure for the period FY 2023-24.
  - b) Approve revised Tariff for FY 2025-26 and allow to recover additional trued up expenditure for FY 2023-24 in respect of 2x600 MW Singareni Thermal Power Plant (STPP).
  - c) .....
- .....

2. As could be seen from the basic prayer made by the Petitioner, the Petitioner is seeking the Hon'ble Commission to determine the revised tariff in respect of its STPP project for FY 2025-26 in terms of TGERC MYT regulation 2023, by considering the truing up of tariff/ expenditure for the year FY2023-24, basing on the TGERC Tariff Regulation 1 of 2019.

**Brief history of M/s SCCL:**

3. M/s SCCL was allotted Naini captive coal mine in Orissa State in respect of 2x600 MW STPP by the Ministry of Coal, GoI on 13.08.2015.
4. In order to facilitate immediate requirement of coal to STPP project, a short-term linkage was granted from M/s. SCCL mines under bridge linkage policy for a fixed period of 3 years i.e., from 13.08.2015 to 12.08.2018.

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5. The Hon'ble TGERC vide orders dated 19.06.2017 & 28.08.2020 issued directions to M/s SCCL to actively pursue with the Ministry of Coal for swapping of coal allocation from Naini coal blocks in Odisha to own mines of M/s.SCCL which are closer to its generating station so that the cumbersome task of transportation of coal from Odisha and associated losses in quantity and GCV could be mitigated.
6. In pursuance thereof, TGDISCOMs addressed letter to M/s.SCCL requesting to pursue with the Ministry of Coal for swapping of coal allocation from Naini coal blocks in Odisha to own mines of M/s.SCCL.
7. M/s. SCCL neither commenced the production from its captive coal block nor swapped coal allocation to the mines of M/s. SCCL, even after lapse of 8 years. M/s.SCCL got bridge linkage coal extension initially till March 2021. Subsequently, got further extension up to 2024.
8. As a result of which various bridge linkage coal MoUs entered for supply of bridge linkage coal to STPP from M/s. SCCL mines up to 2024 with additional premium of 10% to 30% on notified basic price of coal, which resulted increase in Energy charge Rate(ECR)/ Variable Cost(VC)/unit, burdened the TGDISCOMs and ultimately the end consumers.
9. Thereby, TGDISCOMs filed Petition in OP No. 13 of 2023 before the Hon'ble TGERC praying ***"to issue directions to M/s SCCL to charge the Coal at the Notified Basic Price corresponding to the Coal grade, without any additional charge/premium, for the period from FY 2021-22 to till the date of operationalization of Naini Coal Block and later to adopt the CERC Input Price determination methodology, in the interest of end Consumers"***.

10. The Hon'ble TGERC after hearing the arguments of both parties, allowed the petition O.P No. 13 of 2023 filed by TGDISCOMs by order dated 01.04.2024 (Copy of the order is enclosed as annexure-I). The relevant portion of the order is extracted below: -

**" .....the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers."**

11. Thereafter, M/s.SCCL in the petition OP No. 4 of 2024 filed on dated 30.01.2024 for true up of Aggregate Revenue Requirement for FY 2022-23 and for Multi Year Tariff for the control period FY 2024-25 to FY 2028-29, M/s. SCCL claimed Energy charge rate (ECR) for **FY 2022-23 with additional premium of 20% over and above the notified basic price of coal** and for **FY 2024-25 with 30% additional premium over and above the notified basic price of coal** and the same has been projected for the control period FY2024-25 to FY 2028-29 also.

12. Hon'ble TGERC vide order dated 28.06.2024 in OP No. 4 of 2024 approved AFC for FY 2024-25 to FY 2028-29 after taking into account truing up of expenditure of STPP for FY 2022-23 and approved ECR/unit includes 20% additional premium on notified basic price of coal for FY

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2022-23 and 30 % additional premium for FY 2024-25 (i.e., as claimed by SCCL), which is contrary to the Hon'ble TGERC order in OP No.13 of 2023 and this resulted into not only increase in ECR but also increase in Annual Fixed charges (AFC) for FY 2022-23 & for the control period 2024-29 as this approved additional premium coal price was considered in the computation of interest on working capital ( which is one of the Annual fixed charge component). As such, this burdened the TGDISCOMS and ultimately end consumers.

13. Thereafter, TGDISCOMs, the respondents herein filed review petition R.P S.R No. 53 of 2024 in O.P No. 4 of 2024 and Hon'be TGERC vide order dated 28.10.2024 , at para 7 of the order stated that "No doubt in the instant case the Commission had taken different stands and consequently there arose a dichotomy in the calculation of coal price, but however it is for the review petitioners to act in a manner whereby they have to give effect to both the orders and implement payment mechanism over coal price in a way which is beneficial to them" and Hon'ble TGERC also stated that the issues raised in the review petition may be grounds for appeal but not worth consideration in a review petition and dismissed the review petition as not maintainable( copy of the order enclosed as annexure-II).
14. Thereby, TGDISCOMs filed appeal DFR No. 498 of 2024 before APTEL challenging the TGERC order dated 28.06.2024 in OP No. 4 of 2024 to this extent of ECR approval contrary to TGERC order dated 01.04.2023 in OP No. 13 of 2023 and also challenged the R& M expenses approval ( part of O& M expenses) with K factor considered as 1.08 % instead of

1.04 % as there is no change in the GFA approval (Copy of the appeal is enclosed as annexure-III).

15. The Petitioner is obligated to file the True-up Petition for the FY 2023-24 in pursuance of the Mid-term Review order dated 23.03.2023 in OP No. 77 of 2022 , TGERC order dated 01.04.2024 in OP No. 13 of 2023 filed by TGDISCOMs wherein Hon'ble TGERC directed SCCL to charge notified basic price of coal ( i.e ECR/unit and in the computation of interest on working capital –AFC component) and also as per MYT order dated 28.06.2024 in OP No. 4 of 2024 for true up and also for revised Tariff determination for FY2025-26, since the closing balances of outstanding Debt and Equity (as approved in the said order) as on 31<sup>st</sup> March 2024 would become the opening balances on 1<sup>st</sup> April 2025 and closing balance of outstanding Debt and Equity (as approved in the MYT order for FY 24-25 to FY 2028-29) as on 31<sup>st</sup> March 2025 would become the opening balances on 1<sup>st</sup> April 2025 for revised Tariff determination for FY2025-26. However, since the financial year FY 2024-25 is yet to be completed and audited figures for FY 2024-25 would not be available to the Petitioner, as such, the exercise of Tariff determination for FY 2025-26, basing on the actual audited figures of expenditure for FY 2023-24 subject to prudence check at the time of truing up of expenditure for FY 2024-25 may be taken up subsequently in the next year Annual Tariff Petition/Mid-Term Performance Review.
16. As stated at para 15, the gist of various approvals/direction of Hon'ble TGERC are as follows:

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- i. Vide order dated 28.08.2020 in O.P.No.5 of 2019 & batch approved provisional Annual Fixed Charges (AFC) for the control period FY 2019-20 to FY 2023-24 and capital cost approved is Rs. 7745.32 Cr ( cut - off date was 31.03.2019).
  - ii. Vide order dated 23.03.2023 in OP No. 77 of 2022 approved **revised** AFC for FY 2022-23 & FY 2023-24 , after taking into account the truing up of expenditure of STPP upto FY2021-22 and final capital cost approved is Rs. 7745.32 Cr .
  - iii. Vide order dated 01.04.2024 in OP No. 13 of 2023 (filed by TGDISCOMs) directing SCCL to charge notified basic price of coal ( i.e ECR/unit and in the computation of interest on working capital –AFC component)
  - iv. Vide order dated 28.06.2024 in OP No. 4 of 2024 approved AFC for FY 2024-25 to FY 2028-29 after taking into account truing up of expenditure of STPP for FY 2022-23 and final capital cost approved is Rs. 7745.32 Cr .
17. In light of the above, before taking up the exercise of tariff determination for STPP Project for the FY 2025-26, the Hon'ble Commission is required to undertake the Truing-up of tariff/ expenditure claimed by the Petitioner for the FY 2023-24, vis-a-vis the Tariff approved/ directions by the Hon'ble Commission under the aforesaid orders explained at para 16.
18. Further, the Hon'ble Commission is also required to take into account, the order dated 29.12.2023 in the Capital Investment Plan & Business Plan Petitions O.P.No.25 of 2023 & O.P.No. 26 of 2023 filed by the

petitioner for the Control period (FY2024-29) and also the order dated 28.06.2024 in the MYT petition OP No. 4 of 2024 filed by the petitioner as any Additional Capitalization, if approved in the said Petitions, would add to the outstanding Debt and Equity as on 1<sup>st</sup> April, 2025, which parameters will be used in the Tariff computation for FY 2025-26.

19. In this connection, the directions of the Hon'ble TGERC in the aforesaid orders on additional capitalization claims of SCCL are as follows:

- i. Vide order dated 29.12.2023 in OP Nos. 25 of 2023 & 26 of 2023 deferred the SCCL additional capitalization claim of Rs. 776 Cr towards FGD and In-Furnace modifications for NOx mitigation duly stating that the prudence check of the execution cost shall be carried out in true-up for the relevant year after commissioning of the same and granted in principle approval for the said works towards the compliance of emission norms notified by MoEF&CC.
- ii. Vide order dated 28.06.2024 in OP No. 4 of 2024 deferred the SCCL additional capitalization claim of Rs. 20.77 Cr for FY 2024-25 towards implementation of CEA Regulation on flexible operation Scheme duly stating that the same will be taken into consideration at the time of the true up of the relevant year and granted in principle approval for the said works towards the compliance of CEA regulations.

20. From the above orders, it is to conclude that there is no change in the capital cost approved earlier in Midterm review order dated 23.03.2023 vis-a-vis in the MYT order dated 28.06.2024 i.e Rs. 7745.32 Cr for

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computation of true-up for FY 2023-24 and revised tariff for FY 2025-26.

21. It is pertinent to submit that some of the important details of Capital Cost approved in respect of 2x600 MW STPP Project and the outstanding Debt and Equity approved by the Hon'ble Commission in the MYT order dated 28.06.2024 in OP No. 4 of 2024 /Mid-term Review order dated 23.03.2023 in O.P.No. 77 of 2022 are extracted below, which are essential for examining the Petitioner's claim of True-up expenditure for FY 2023-24.

**A) Basic Costs approved by TGERC in respect of 2 x 600 MW STPP**

Sl. No.	Details	Amount (Rs. Cr.)
1.	Total Capital Cost approved (GFA : Gross Fixed Asset)	<b>7745.32</b>
2.	Equity Base approved (30% of GFA)	<b>2323.60</b>
3.	Return on Equity (RoE @15.5% without MAT gross-up)	<b>360.158</b>
4.	ROE <b>grossed up</b> with Minimum Alternate Tax (MAT) @ 17.472%	<b>436.40</b>
5.	Depreciation approved year-wise @ 5.169% of GFA for the period FY 2022-23	<b>400.36</b> <i>(Table-4-3 of MYT order dated 28.06.2024)</i>
6.	Approved Rate of Interest on Loan after Loan Refinancing	<b>7.16% p.a</b>
7.	Income Tax /MAT Rate approved	<b>17.472%</b>
8.	<b>Outstanding Loan</b> (year-wise)	<b><i>Separate table is provided below as <u>Item-B</u></i></b>

**B) Outstanding Loan Balances approved by TGERC**

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**Table 56: For the period from FY 2022-23 to FY 2023-24**  
(as extracted from MYT order dated 28.08.2020 in O.P.No.5 of 2019 & batch)

Sl. No.	Financial Year	Approved		Average Loan = (Opening Loan + Closing loan)/2
		Opening Loan	Closing Loan	
1.	2022-23	3330.33	2929.97	3130.15
2.	2023-24	2929.97	2529.61	2729.79

**Table 5-10: For the period FY 2024-25 to FY 2028-29**  
(as extracted from MYT order dated 28.06.2024 in O.P.No.4 of 2024)  
Rs. in crore

Particular	2024-25	2025-26	2026-27	2027-28	2028-29
Opening Loan	2529.61	2129.25	1728.89	1328.53	928.17
Addition during the Year	0.00	0.00	0.00	0.00	0.00
Repayment during the Year	400.36	400.36	400.36	400.36	400.36
Closing Loan	2129.25	1728.89	1328.53	928.17	527.81
Interest rate	8.24%	8.24%	8.24%	8.24%	8.24%
Interest on loan	191.85	158.88	125.90	92.93	59.96

22. Further, to arrive at the Additional Fixed Charges for the FY 2023-24, the Petitioner has once again sought this Hon'ble Commission to approve the Additional Capitalization of Rs.49.29 Cr for FY 2023-24, Rs.25.00 Cr for FY 2024-25 in respect of certain Capital works proposed after the Cut-off date (31.03.2019), which was disallowed by this Hon'ble Commission in its previous orders dated 23.03.2023 and 28.06.2024 since the works were beyond the original Scope of work and also after the Cut-off date.

23. In the additional capitalization claim of Rs.49.29 Cr for FY 2023-24, the major claim is of Rs. 38.31 Cr towards Generator exciter assembly (with PMG) and repair of Unit-2 Generator Rotor, which claim was already



disallowed by the Hon'ble TGERC vide orders dated 23.03.2023 in mid term review petition OP No. 77 of 2022 & vide order dated. 17.11.2023 (Copy of the order enclosed as annexure-IV ) in review petition RP. SR No. 79 of 2023 in Mid- Term review petition OP No. 77 of 2022, since the claim was beyond the Original Scope of Works. Hence, the claim is not tenable again in the present petition.

24. Despite the categorical disallowance of the aforesaid Capital Investment works, the Petitioner is trying to re-claim the additional Capitalization works, after the Cut-off date by furnishing the year-wise Audited Annual Accounts Statement and prayed the Hon'ble Commission to admit the said works to the extent of discharge of liabilities by actual payments.
25. Further, Petitioner has also sought this Hon'ble Commission to approve the Additional Capitalization of Rs. 20.77 Cr for FY 2025-26 towards implementation of flexible operation Scheme notified by CEA for which Hon'ble Commission vide order dated 28.06.2024 in MYT petition OP No. 4 of 2024 of petitioner, deferred the said claim duly stating that the same will be taken into consideration at the time of the true up of the relevant year and granted in principle approval for the works towards the compliance of CEA Regulations.Hence, this claim is not acceptable in the present petition.
26. Apart from the Additional Capitalization claim, the Petitioner has also claimed Additional O&M Expenses over and above the O&M expenses (component of Fixed Charge) approved by the Commission on the ground of uncontrollable factors which will be discussed in the subsequent Paras.

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27. Now the individual components of Fixed charges ( (i) to (vi) ) claimed by the Petitioner are discussed below:

**(i) Computation of Return on Equity–**

The Respondents submit that the Petitioner has claimed the Return on Equity (RoE) at the base rate of 15.5% on enhanced Equity (after considering **Additional Capitalization of Rs.49.29 Crore** (30% as equity @ **Rs.14.79 Crore**) for FY 2023-24, **Rs.25.00 Crore** (30% as equity @ Rs.7.50 Crore) for FY 2024-25 and Rs.20.77 crore (30% as equity @ Rs.6.23 Crore) , thereby raising the Base Equity to **Rs. 2338.38 Crore for FY 23-24 and Rs.2352.12 Crore for FY 2025-26 as against the approved Base equity of Rs.2323.60 Crore, even without obtaining the approval of the Hon'ble Commission.** Further, the Petitioner grossed up the simple RoE with the regular income tax rate @ 25.168% (rate applicable for the SCCL Company as a whole for Coal and Power business) as against the **concessional MAT rate of 17.472%** allowed by Hon'ble commission for STPP Power generation business, which has led to higher RoE claim of Rs. 482.82 Crore for FY 2023-24, Rs. 485.13 Crore for FY 2024-25 & Rs. 486.55 Crore for FY 2025-26 as against the **approved RoE of Rs.436.40 Crore.** In fact, this Hon'ble Commission disallowed the grossing up of RoE with higher Income Tax rate in the Mid-term Review order dated 23.03.2023 (Table 3.37 of TGERC order) and also in the Multiyear Tariff order dated 28.06.2024 ( Table 4-15 & Table 5-15 of TGERC order), since the Petitioner's claim was not in consonance with the Tariff Regulations No. 11.3.4 & 11.3.5 (stipulated exclusion of the income of non-



generation business for Income Tax computation) of Regulation No.1 of 2019 and this will also burden the consumers. Despite that, the Petitioner continued the truing up with enhanced Equity besides grossing up of RoE with higher income tax rate, which is not permissible. Further, the Petitioner is seeking the enhanced Equity and higher RoE grossing up based on **Audited figures** for FY 2023-24.

In this regard, the Hon'ble Commission in the Mid-term Review order 23.03.2023/ MYT order 28. 06.2024, has already relied on the ratio decided in the Case law in Ld. APTEL's judgment dated 10<sup>th</sup> August 2010 in **Appeal No.37 of 2010 (Meghalaya State Electricity Board vs. Meghalaya State ERC) (copy of order enclosed as annexure-V)**, wherein it was held that the State Commission has to make Prudence Check of the expenditure and is not bound by the Certificates of Auditors. In view of the above, the Hon'ble Commission is requested to restrict the claim of RoE to the approved figure of Rs. 436.40 Crore.

**(ii) Interest and financing charges on loan –**

The Petitioner stated that the Hon'ble Commission in the Mid-term Review order dated 23.03.2023 has allowed refinancing of loan in respect of STPP and allowed interest on loan accordingly. Therefore STPP claims the sharing of gains accrued due to refinancing in the truing up of FY 2023-24 by applying Regulation 12 of TGERC **Regulation No.1 of 2019**. Further, the Petitioner stated that the interest and financing charges on loan for period

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FY 2025-26 have been computed as given in **Clause 31 of Regulation 2 of 2023.**

In this regard, the Respondents submit that as already submitted in the RoE computation reply, the Petitioner has added the additional loan component of Rs.34.51 Cr. for FY 2023-24 for the additional Capitalization of Rs. 49.29 Cr (i.e. 70% of Rs.49.29 Cr) & additional loan component of Rs. 17.50 Cr. for FY 2024-25 (i.e. 70% of Rs. 25.00 Cr) to the outstanding loan balances approved in the Mid term order dated 23.03.2023/ MYT order dated 28.06.2024 (**Table-5-10:MYT order dated 28.06.2024**)), **even without obtaining the approval of this Commission** and worked out higher interest sums arbitrarily by applying the rate of interest @ 8.43% to 8.83% (claims as Audited) as against the rate of interest approved @ 7.16% p.a for FY 2023-24 and @ 8.24 % P.a for FY 2025-26., which claim is not in accordance with the Mid-term Review order dated.23.03.2023/ MYT order dated.28.06.2024. If there is a change in the interest rate on outstanding loan, then the Net Savings have to be re-worked out. Further, the Petitioner has also claimed one-third share of Savings of interest amount accrued due to loan refinancing while truing up for FY 2023-24 and also for the FY 2024-25 (provisional)& FY 2025-26,by simply citing the relevant Clause (No.31) of Regulation No.2 of 2023.

With regard to loan refinancing taken up by the Petitioner during the previous Control period viz. FY 2019-24, it is submitted that though there was a saving in interest rate (@ 1.36%) after loan

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refinancing, yet the cost associated with such loan refinancing was significant at Rs. 77.84 Cr., which was entirely passed on to the Respondents upfront. Therefore the Hon'ble Commission in its Mid-term order allowed the one-third share of gains of Net Saving to the STPP/ SCCL **as a one time basis** during FY 2020-21 and allowed the Respondents to retain the Net savings for subsequent years without any sharing. Disregarding the set procedure, the Petitioner has trued-up the expenditures by claiming the one-third share of gain of loan refinancing even for the balance period of the previous control period, which is not permissible.

Further, the Petitioner has continued to claim the one-third share of gains of loan refinancing even to FY 2024-25 (provisional) & FY 2025-26, by referring to the Clause 31 of Regulation 2 of 2023. In this regard, the Respondents have extracted the provision of Loan Refinancing (Clause-31) of new Tariff Regulation vis-à-vis the similar provision of Regulation No.1 of 2019 as below, for critical examination by the Hon'ble Commission.

.....

**TGERC Regulation No.1 of 2019 (Tariff Regulation):**

**12.6: Refinancing**

12.6.1: The Generating Entity shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such refinancing shall be borne by the beneficiaries and the net savings shall be shared between the Beneficiaries and the Generating Entity in the ratio of 2:1 respectively subject to Prudence Check by the Commission.

.....

TGERC Regulation No.2 of 2023:

31. Interest and Finance Charges on Loan

.....

31.10: The generating entity or the licensee or the SLDC, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event, the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and them in the ratio of 2:1, subject to prudence check by the Commission.

.....

Provided also that **the net savings in interest shall be calculated as an annuity for the term of the loan**, and the annual net savings shall be shared between the entity and Beneficiaries in the specified ratio.

.....

It could be seen from the above provisions that in the New tariff Regulations, it is specifically prescribed that the Net Savings in interest shall be calculated as an Annuity for the term of the Loan, whereas such methodology was not prescribed in the Previous Tariff Regulation (No. 1 of 2019). In the Annuity computation methodology, the **Present Values** of interest cost saving before and after loan refinancing have to be worked out by considering the discount rate at the interest rate of Post refinancing. This exercise has to be done to examine whether the claim of loan refinancing is beneficial to the TGDISCOMs even after



passing on the Costs associated with loan refinancing to them. Apparently, the Petitioner has not carried out such exercise. Also, if further Loan Refinancing is taken up by the Petitioner in the FY 2024-25 & FY 2025-26, then the Regulation No.2 of 2023 allows the Petitioner to make such a claim. Without making any such effort, the Petitioner is not entitled to make a claim on sharing of gains of Loan Refinancing. The Petitioner has failed to distinguish the Loan Refinance Provisions in the aforesaid two Tariff Regulations. As such, the Petitioner's claim for unilaterally adjusting the one-third share of gain to it, is legally not permissible.

The Hon'ble Commission is requested to disallow the same and restrict the rate of Interest on Loan @ 7.16%( as approved by Hon'ble TGERC in Midterm review order dated 23.03.2023) besides disallowing the sharing of one-third share of gain on Loan Refinancing for FY 2023-24, restrict the rate of Interest on Loan @ 8.24 % for FY 2024-25 (Provisional) and also for FY 2025-26 (as approved by Hon'ble TGERC in MYT order dated 28.06.2024) besides disallowing the sharing of one-third share of gain on Loan Refinancing , as the claim is not in accordance with Clause 31 of Regulation 2 of 2023.

**(iii) Claim for Depreciation –**

The Petitioner has claimed higher depreciation sums for FY2023-24 of Rs. 401.03 Cr., for FY 2024-25 of Rs. 402.81 cr.& FY 2025-26 of Rs.403.85 Cragainst approval of the Hon'ble Commission at a constant Value of Rs. 400.36 Cr in the Mid term review order dated

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23.03.2023/ MYT order dated 28.06.2024 (**Table 5-8**) . Since no additional Capitalization was allowed to STPP in the Mid term review /MYT order and there would be no change in the GFA (Gross Fixed Asset) of STPP Project, the Hon'ble Commission is requested to restrict the recovery of Depreciation by the Petitioner to the already approved figure of Rs. 400.36 Crore.

**(iv) Interest on Working Capital –**

The Petitioner computed the Working Capital requirement by summing up the individual components, such as Coal Stock requirement for 20 days /30 days for generation corresponding to Target availability (85%) etc based on regulation 1 of 2019 for FY 2023-24 and based on Regulation 2 of 2023 for FY 2025-26, but the Price considered for Cost of Coal is Bridge Linkage Pricing, which will be high priced than the Notified Price of Coal, higher by 20 to 30% (Rs. 5860 to 5930 per Ton). By considering high price of Coal being supplied to STPP under Bridge Linkage Policy, the Working Capital gets increased and consequently the Interest claimed on Working Capital would be higher ( i.e Rs.116.28 crs for FY 2023-24 against approval of Rs. 85.63Cr and claimed amount of Rs.89.81 Cr for FY 2025-26). The said claim is not in consonance with the Hon'ble Commission order dated: 01.04.2024 in OP No.13 of 2023, wherein this Commission clearly disallowed the levy of additional premium by SCCL on the basic price of coal for the corresponding coal grade.



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- i) Interest on Working Capital computation in line with TGERC order dated 01.04.2024 in OP 13 of 2023 for FY 2023-24 would be approximately

(Rs. Crores)

Particulars	Approved in MTR Order 23.03.2023	SCCL claim in True-up for FY 2023-24	To be considered in line with TGERC order dated 01.04.2024 in OP 13 of 2023
Cost of Coal		267.83	225.34
Cost of Coal Generation		267.83	225.34
Cost of secondary fuel Oil		1.55	1.55
O&M expenses		26.19	18.76
Maintenance spares		62.86	45.01
Receivables		796.70	673.9
less			
Payables for fuel		268.61	226.12
Total Working Capital		1154.35	963.74
Rate of Interest		10.07%	10.07%
<b>Interest on Working Capital</b>	<b>85.63</b>	<b>116.28</b>	<b>97.05</b>

- ii) Interest on Working Capital computation in line with TGERC order dated 01.04.2024 in OP No. 13 of 2023 for FY 2025-26 would be approximately:

(Rs. Crores)

Particulars	Approved in MYT Order 28.06.2024	SCCL claim in for FY 2025-26	To be considered in line with TGERC order dated 01.04.2024 in OP 13 of 2023
Cost of Coal	172.97	173	142.16
Cost of Coal Generation	259.45	259.50	213.24
Cost of secondary fuel Oil	2.46	2.49	2.46
O&M expenses	21.54	29.18	21.54

Maintenance spares	77.45	78.20	77.45
Receivables	557.98	579.05	490.88
less			
Payables for fuel	261.90	261.99	215.70
Total Working Capital	829.95	859.42	730.32
Rate of Interest	10.15 %	10.45 %	10.15%
<b>Interest on Working Capital</b>	<b>84.24</b>	<b>89.81</b>	<b>74.13</b>

Hence, the Hon'ble Commission is requested to restrict the working capital claim considering notified basic price of coal in line with Hon'ble TGERC order dated 01.04.2024 in OP No. 13 of 2023, else it translates into higher fixed charges and ultimately burden on the end consumers.

**(v) Operating and Maintenance (O&M) Expenses –**

The Petitioner has claimed higher O&M charges in the truing up of expenditure as against the approved / trued up figures as below:

**Approved in Mid-Term Review order dt.23.03.2023**

(Rs. Crores)

Particulars	REVISED O&M			REVISION APPROVED based on true-up for FY 2019-20 to FY 2021-22	
	FY2019-20	FY2020-21	FY2021-22	FY2022-23	FY2023-24
Employee Expenses	76.348	74.55	87.85		
R&M Expenses	82.833	80.77	80.46		
A&G Expenses	32.115	33.27	33.99		
<b>Total O&amp;M Expenses</b>	<b>191.30</b>	<b>188.59</b>	<b>202.30</b>	<b>220.09</b>	<b>225.07</b>

V. P. [Signature]

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Approved by TGERC in the MYT order dated 28.06.2024

(Rs. Crores)

Particulars	FY 2024-25	FY2025-26	FY2026-27	FY2027-28	FY2028-29
Employee Expenses	121.17	128.22	135.68	143.57	151.92
R&M Expenses	87.89	92.23	96.78	101.55	106.56
A&G Expenses	40.41	42.41	44.50	46.70	49.00
<b>Total O&amp;M Expenses</b>	<b>249.48</b>	<b>262.85</b>	<b>276.95</b>	<b>291.82</b>	<b>307.48</b>

Actually Claimed (Audited/Estimated) by the Petitioner in the present petition

(Rs. Crores)

Particulars	FY2023-24	FY2024-25	FY2025-26
Employee Expenses	171.86	180.90	<b>190.40</b>
R&M Expenses	90.49	95.85	101.52
A&G Expenses	51.93	55.00	58.26
<b>Total O&amp;M Expenses</b>	<b>314.28</b>	<b>331.75</b>	<b>350.19</b>

### Observations :

1. The Employee Cost has increased significantly (in the range of 48-49%) during FY 2024-25& FY 2025-26 (Estimated) vis-a-vis previous ERC approved cost.
2. Even the R&M Expenses and A&G Expenses have also gone up considerably.
3. The O&M Expenses for STPP Project were approved by the Hon'ble Commission on **Normative basis** as per the TGERC Regulation No. 1 of 2019. The Truing up procedure has to be

based on **Point to Point change** (means Current month inflation rate over same month of last year as per MOSPI) in the WPI & CPI-IW Inflation factors as published by the Ministry of Commerce & Industry and Ministry of Statistics & Programme Implementation (MoSPI), Govt. of India, and the computation shall be as per the formula given for Employee Cost, R&M Expenses and A&G Expenses at Regulation No. 19. The Base values already approved in the MYT order will not change. However, the Petitioner has overlooked the prescribed procedure and claimed higher O&M Expenses stating that the claims are audited actual expenditure, which is not in consonance with the methodology specified in the Regulation No.1 of 2019. As such, the Petitioner's claim of O&M expenses has to be restricted to figures already approved, with the truing up with actual WPI/CPI-IW Inflation factors only.

4. Though the Petitioner's claim is based on Audited figures, yet the Hon'ble Commission is not bound by the Auditors Certifications and the Commission has to undertake the Prudence Check of the Expenses claimed in terms of Ld. APTEL's judgment dated 10<sup>th</sup> August 2010 in **Appeal No.37 of 2010**.
5. The Hon'ble Commission is also requested to restrict the O&M claims for FY 2025-26 duly taking into consideration the



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methodology stipulated at Regulation 45 of the TGERC Regulation No.2 of 2023.

6. Further, it is to state that, in the computation of R&M expenses, SCCL has claimed K factor as 1.34% by revising the GFA Claim to Rs.7794.61 Cr (including the additional capitalization claim) for FY 2024-25, &Rs. 7819.62 Cr for FY 2025-26 against Hon'ble TGERC approval of 'K' factor of 1.08% for the approved GFA of Rs.7745.32 Cr vide orders dated 23.03.2023 & 28.06.2024.
7. In this connection, it is to submit that, K is a constant factor, which is fixed depending on the GFA approved. WPI inflation is only varying component and is taken average of last 5 years. Whereas, in the order dated: 28.06.2024, Hon'ble commission has considered the K factor as 1.08 % instead of 1.04 % though there is no change in the GFA approved for the control period from FY 2019-2020 to FY 2023-2024 vis a vis GFA for FY 2024-25 to FY 2028-29 and the same was challenged by TGDISCOMs before APTEL vide DFR No. 498 of 2024 and is under subjudice.
8. Hence, it is requested to restrict 'K' factor in the computation of R&M expenses to 1.04% as approved in Previous order dated 23.03.2023 in mid Term review Petition as their revised GFA claim is not tenable after cut off-date as explained at para 6 & 7 and as per Hon'ble TGERC orders dated 23.03.2023 & 28.06.2024.



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**(vi) Non-Tariff Income**

The Non Tariff income claimed by the petitioner for the True up for FY 2023-24 is Rs. 5.16 Cr only against the Hon'ble commission approval of Rs. 13.33 vide Midterm review order dated 23.03.2023. This claim is very less than the approval due to which the annual fixed charges claim increased. Hence, the Hon'ble commission is requested to do prudence check of the same.

**(vii) Operating Norms –**

The Operational Norms as stipulated in the TGERC Tariff Regulation 2 of 2023 is binding on the Parties and the Petitioner has to claim the Energy Bills as per the Norms prescribed.

**(viii) Energy Charges –**

The Petitioner has been claiming the Energy charges in respect of the power supplied from STPP Project, basing the Coal pricing under the Bridge Linkage Policy wherein additional premium of 20 to 30% has been charged over and above the SCCL Notified Price of Coal, (Rs. 5.86 to 5.93 per Kg), By considering high price of Coal, the Energy charges claimed are higher which is not tenable, since Hon'ble TGERC vide order dated 01.04.2024 in OP No. 13 of 2023 clearly disallowed the levy of additional premium by SCCL on the notified basic price of coal for the corresponding coal grade.

Further, the delay of commissioning of the NAINI Captive Coal Mine to SCCL/STPP Project is entirely attributable to SCCL and the



Respondents cannot be burdened for long under the Bridge Linkage Coal Pricing, which is a Short term linkage but the Petitioner is taking undue advantage of the same and charging coal supply to STPP at additional 20-30% price over and above the Notified Price of corresponding grade of coal.

*The computation of Energy charges in line with TGERC order dated 01.04.2024 in OP 13 of 2023 for FY 2023-24 against SCCL claim would be approximately*

Description	Unit	Energy Charge for Ensuing Period			
		SCCL claim for FY 2023-24 (Truing up based on actual)	To be approved in line with TGERC order dt.01.04.2024 in Op No. 13 of 2023 for FY 2023-24 (approx)	SCCL claim for FY 2024-25 & FY 2025-26 (Revised)	To be approved in line with TGERC order 01.04.2024 in OP. 13 of 2023 for FY 2024-25 & FY 2025-26 (approx)
Auxiliary Consumption	%	6.13	5.75	5.75	5.75
Gross Station Heat Rate	Kcal/kWh	2314.73	2303.88	2300.00	2300.00
Secondary Fuel oil consumption	ML/kWh	0.15	0.15	0.50	0.50
Calorific Value of Secondary Fuel	Kcal/ml	10.01	10.01	10.00	10.00
Landed Price of Secondary Fuel	Rs./ml	0.07	0.07	0.07	0.07
Gross Calorific Value of Coal	Kcal/kg	3836.04	3836.04	3808.80	3808.80
Landed Price of Coal	Rs./kg	5.93	5.046	5.86	4.8186
Specific Coal Consumption	Kg/kWh	0.603	0.60	0.60	0.60
Rate of Energy Charge from Primary Fuel	Rs.kWh	3.806	3.211	3.749	3.081
Rate of Energy Charge from Secondary Fuel	Rs./kWh	0.011	0.011	0.036	0.036
<b>ECR</b>	<b>Rs.kWh</b>	<b>3.817</b>	<b>3.222</b>	<b>3.785</b>	<b>3.117</b>

Therefore, the Hon'ble Commission is requested to restrict the pricing of Coal Supply to STPP at Notified Prices published by SCCL from time to time in terms of Hon'ble TGERC order dated 01.04.2024 in OP No. 13 of 2023 and in terms of the **Regulation 50.4** of TGERC Tariff Regulation No. 2 of 2023, else it translates into higher Energy Charges and burden the end consumers.

**(ix) Incentive –**

The Incentive stipulated in the TGERC Tariff Regulation 2 of 2023 is binding on the Parties and the Petitioner has to claim the Energy Bills including Incentive as prescribed. But the Petitioner may not be allowed to claim Incentive for power generation beyond the Target PLF, by using high priced Bridge Linkage Coal, as this will burden the Respondents with higher Energy Charges and is against to the Hon'ble TGERC order dated 01.04.2024 in OP No. 13 of 2023 as well as additional payment of Incentive. Both claims will be a loss proposition to TGDISCOMs.

**(x) Other charges:**

1. Further, M/s. SCCL claimed Rs. 33.97 Cr towards water charges by submitting the copies of Irrigation Department, GoTG letters dated 21.05.2024 which are as follows:

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**i. Arrears of water royalty charges**

a) For 1 TMC water drawn from River Godavari for the period from April 2017 to March 2023 (including HTTC & O&M Charges) - **Rs.25.18 Cr.**

b) For 2 TMC water from river Pranahitha for the period from October-2022 to March 2023 - **Rs.0.089 Cr**

**ii. Water Royalty charges for FY 2023 - 24**


a) For 1 TMC water from River Godavari (including HTTC & O&M Charges ) - **Rs. 8.52 Cr**

b) For 2 TMC water from river pranahitha - **Rs. 0.184 Cr**

2. As could be seen from the above, it has been observed that the water charges and arrears claimed in respect of 1 TMC water, not only includes water royalty charges and Arrears (Rs. 14.60 Crs) but also HTTC & O&M Charges for Laxmi PH & Barriage and Saraswathi PH & Barriage (Rs. 19.097 Cr). There was no such claim in respect of 2 TMC water.

3. It is to bring to your kind notice that, the water charges for the period from FY 2016-17 to FY 2018-19 of Rs. 4.69 Cr was already approved by Hon'ble TGERC in various orders. In the FY 2022-23, the water charges claimed and approved is of Rs. 2.24 Cr.

4. The claim for FY 2023-24 has increased abnormally to Rs.33.97 Cr ( includes arrears for FY 2017-18 to FY 2022-23 )

  
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whereas for FY 2022-23 it is only Rs. 2.24 Cr. Hence, the abnormal increase in water charges claim is not tenable and Hon'ble Commission is requested to restrict the claim in line with previous approved values.

**(xi) Tariff for FGD system:**

Hon'ble Commission Vide order dated 29.12.2023 in OP Nos. 25 of 2023 & 26 of 2023 directed that the prudence check of the execution cost shall be carried out in true-up for the relevant year after commissioning of the same.

**(xii) Integrated Mine (Naini) –**

The Petitioner has stated that since SCCL is working on the swapping of coal from Naini coal mines, Odissa, it is not submitting any proposal for determination of input cost of coal from Naini Mines.

As per Regulation 2 of 2023, SCCL has to file the proposal for determination of input cost of coal from Naini Mines, though SCCL is under proposal for swapping of naini mine in order to compare the input price of Naini coal mine with SCCL coal mine prices.

The Respondents submit that SCCL has been repeatedly submitting before the Hon'ble Commission that it is working on swapping of coal from Naini Coal Mines to Telangana, but even after **7 years** of commissioning of STPP project there is no progress in this regard.

Further, the delay of commissioning of the NAINI Captive Coal Mine to SCCL/STPP Project is entirely attributable to SCCL and the Respondents cannot be burdened for long under the Bridge






Linkage Coal Pricing, which is a Short term linkage but the Petitioner is taking undue advantage of the same and charging coal price with additional 20-30% premium over and above the Notified Price of corresponding grade of coal.

Unless the price of bridge linkage coal being supplied to STPP is regulated in term of Hon'ble TGERC order dated 01.04.2024 in OP No. 13 of 2023 in the interest of end consumers, no swapping of coal can be expected from SCCL.

28. In light of the above, the Hon'ble Commission is prayed to take into account the aforesaid submissions in the true up of ARR for FY 2023-24 and Tariff determination for FY 2025-26 for STPP Project in the present Petition, else it translates into higher fixed charges and energy charges, burden the TGDISCOMs and ultimately consumers of the state.

  
**Deponents / Respondents**  
CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.

**BEFORE THE TELANGANA ELECTRICITY REGULATORY COMMISSION  
HYDERABAD**

**O.P.No.30 OF 2024**

**IN THE MATTER OF:**

Filing of Annual Tariff (MYT) Petition for FY 2025-26 in respect of 2x600 MW Singareni Thermal Power Project containing proposal for revised tariff for FY 2025-26 in accordance with Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC (Multi Year Tariff) Regulation 2023 and True up of FY 2023-24 in terms of Section 62 and 86.1 (a) of Electricity Act 2003 read with TGERC Tariff Regulation 2019.

Between:

M/s. Singareni Collieries company Limited (SCCL)

..... **Petitioner**

AND

1. Southern Power Distribution Company of Telangana Limited
2. Northern Power Distribution Company of Telangana Limited

..... **Respondents**

**AFFIDAVIT**

I, V.Prabhakar, S/o. V. Narayanappa, aged about 58 years, Occ: Chief Engineer/IPC/TGSPDCL, Mint Compound, Hyderabad, resident of Hyderabad,, do hereby solemnly affirm and says as follows:

  
**CHIEF ENGINEER**  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.



I am the Chief Engineer/IPC/TGSPDCL, I am competent and duly authorized by the Respondents 1 & 2 to affirm, swear, execute and file this Reply.


I have read and understood the content of the accompanying Affidavit drafted pursuant to my instructions. The statements made in the accompanying affidavit now shown to me are true to my knowledge derived from the officials records made available to me and are based on information and advice received which I believe to be true and correct.

  
**Deponents / Respondents**

### VERIFICATION

The above named Deponent solemnly affirm at Hyderabad on <sup>th</sup> 09 January, 2025 that the contents of the above affidavit are true to my knowledge no part of it is false and nothing material has been concealed there from.

Solemnly affirmed and signed before me.

  
**Deponents / Respondents**  
CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 13 of 2023

Dated 01.04.2024

**Present**

Sri. T. Sriranga Rao, Chairman  
Sri. M. D. Manohar Raju, Member (Technical)  
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

1. Southern Power Distribution Company of Telangana Limited,  
# 6-1-50, Corporate Office, Mint Compound, Hyderabad,  
Telangana State 500 063.
2. Northern Power Distribution Company of Telangana Limited,  
Corporate Office, H. No.2-5-31/2, Vidyut Bhavan,  
Nakkalagutta, Hanamkonda, Warangal 506 001.

... Petitioners

**AND**

M/s Singareni Collieries Company Limited,  
Kothagudem Collieries,  
Bhadradri Kothagudem District 507 101.

... Respondent

The petition came up for hearing on 05.06.2023, 10.07.2023 and 21.08.2023. Sri. D. N. Sarma, OSD/TSDISCOMs representing for petitioners has appeared on 05.06.2023, 10.07.2023 and 21.08.2023. Sri. G. V. Brahmananda Rao, Advocate for respondent has appeared on 05.06.2023, Sri. P. Shiva Rao, Advocate along with Sri. G. V. Brahmananda Rao, Advocate for respondent has appeared on 10.07.2023 and 21.08.2023 and having stood over for consideration to this day, the Commission passed the following:

**ORDER**

Southern Power Distribution Company of Telangana Limited (TSSPDCL) and  
Northern Power Distribution Company of Telangana Limited (TSNPDCL)



(TSDISCOMs) (petitioners) have filed a petition under Sections 86(1)(b) and (f) of the Electricity Act, 2003 (Act, 2003) seeking directions to M/s Singareni Collieries Company Limited (respondent) in respect of procurement of power pricing charged by Singareni thermal power plant (STPP) towards procurement of power from 2x600 MW for FY 2021-22 to till the date of operationalization of Naini coal block and later to adopt the Central Electricity Regulatory Commission (CERC) input price determination methodology in the interest of end consumers. The averments in the petition are extracted below:

- a. It is stated that the present petition is filed by petitioners against the unilateral imposition of additional charge of 20% on the notified basic price of coal applicable to power sector, being supplied by respondent to its own STPP under the memorandum of understanding (MoU) dated 16.04.2021 and supplementary MoU dated 28.03.2022, subsisting between respondent and STPP, without seeking the consent of petitioners or the Commission and which has been causing additional financial burden on the petitioners and consequently burdening the end consumers, in violation of the mandate of Section 61(d) of the Act, 2003, safeguarding of consumers' interest as explained below:
- b. It is stated that the background of the coal supply arrangement under the MoUs between STPP and respondent, coal supplier is as below:
  - i. It is stated that petitioners had entered into a long term PPA with respondent on 18.01.2016 for supply of electricity generated by respondent from its 2x600 MW coal based STPP.
  - ii. It is stated that respondent declared the commercial operation date (COD) of STPP project on 02.12.2016.
  - iii. It is stated that the long term PPA entered by petitioners with respondent was based on long term fuel supply agreement (FSA) under which the respondent's project, STPP, would get the coal supply from the coal supplier, respondent itself at the notified price of coal applicable to power sector for the corresponding grade of coal being supplied whereas the Ministry of Coal (MoC), Government of India (GoI) had allocated captive coal block/mine (NAINI) to STPP/respondent in the year 2016. The coal produced from the Naini block in the state of Odisha would be utilized at STPP being the specified end use plant.
  - iv. Since the policy of granting long term coal linkages was dispensed with, the MoC, GoI, had allocated a captive coal block at Naini in the state of Odisha to the respondent/STPP on 13.08.2015. To facilitate the immediate requirement of coal to STPP, a short term linkage was

- granted under the policy of bridge linkage, till the commencement of coal supply to STPP from its captive coal block (Naini).
- v. The bridge linkage policy guidelines dated 08.02.2016 stipulated that 'bridge linkage' shall act like a short-term linkage to bridge the gap between the requirement of coal of a specified end use plant of central and state PSUs and the commencement of production from the linked allotted coal block.
- vi. The bridge linkage guidelines further stipulated that the bridge linkage would be granted for a fixed period of 3 years from the date of allotment of coal mine/block and further extension would not be granted under normal circumstances. It was also stipulated that  
*"The shorter duration of bridge linkage shall act as an incentive for allottees to expedite production from coal mines/block"*  
and FSA shall not be signed between the end use plant (EUP) and coal company and coal would be supplied under bridge linkage on best effort MoU basis.
- vii. It is stated that respondent estimated the normative coal requirement of 5.0256 million tons (MMT) under G-11 grade as submitted to the MoC. As per the minutes of standing linkage committee (SLC) under the MoC, Gol dated 18.03.2016, the bridge linkage granted to respondent/STPP would be valid from 13.08.2015 till 12.08.2018. The expected date of production of coal from the captive coal block Naini was December, 2020.
- viii. It is further stated that respondent could not commence coal production from its captive coal block even after 3 years of bridge linkage allocation, which is a clear violation of bridge linkage guidelines. Instead, respondent had requested the MoC for further extension of bridge linkage till March 2021, stating that the mining plan for the Naini block would be submitted during May 2018 and production from Naini Block was scheduled to start in February 2021 and also the peak rated capacity (PRC) of the Naini block shall be achieved by the year 2023, which shall be on tapering basis from 2021 to 2023 as per the approved plan, implying that as the production and supply of quantum from Naini coal block increases, the corresponding bridge linkage quantity shall have to be reduced and the corresponding additional financial burden of bridge linkage pricing on petitioners gets reduced.
- ix. It is stated that as per the bridge linkage granted to it, respondent entered MoU with STPP dated 01.11.2017 for supply of 6.00 million metric tons of coal (MMT) per annum to STPP with the price initially charged with additional 20% of the notified basic price applicable for power sector for 100% requirement and subsequently vide supplementary MoU dated 06.04.2018 the respondent revised the coal price making it applicable to non-power sector, for the quantity required beyond 75% of requirement applicable for the period FY 2018-19 to FY 2019-20, without seeking consent of petitioners or the Commission, thus caused additional financial burden on petitioners.
- x. It is stated that the unilateral action of respondent in revising the price with additional 20% on the notified basic price applicable to non power sector for the quantity required beyond 75% of requirement, was



opposed by petitioners and respondent contested the same in the petition, O.P.No.8 of 2021 and the Commission vide order dated 21.11.2022 held that generation of power using high priced coal is not permissible as extracted below:

*"Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. Propriety would require that the parties should adhere to the act, 2003, rules, regulation and the clauses in the PPA to the extent they are applicable".*

- xi. It is stated that subsequently the respondent revised its MoU dated 30.03.2020 vide supplementary MOU-I dated 12.11.2020 by limiting the coal price to the notified basic price without any premium applicable to power sector during FY 2020-21 from 01.06.2020 to 31.03.2021 upto 100% agreed quantities.
- xii. It is stated that however, respondent vide MoU amendment dated 16.04.2021 once again revised the coal price applicable for entire FY 2021-22, by levying with additional charge of 10% initially on the notified basic price of coal for power sector and further revised the coal price by additional 20% over and above the notified basic coal price, vide supplementary MoU dated 28.03.2022, making it applicable for entire FY 2022-23, causing additional financial burden on petitioners for the two years that is for FY 2021-22 and FY 2022-23 which act is against the TSERC Generation Tariff Regulations, 2019 (Regulation No.1 of 2019), wherein the energy charge computation formula at clause 21.6.1 stipulated the basic price of coal including statutory taxes and transportation applicable to the corresponding grade of coal but not stipulated to levy additional 20% premium on the basic coal price. This additional coal pricing leads to higher payment of energy charges to respondent/STPP.
- xiii. It is stated that under the pretext of bridge linkage extension, respondent attempted to enrich itself at the cost of petitioners by enhancing the coal price with additional 20% price over and above the notified basic price applicable to power sector, without seeking the consent of petitioners or the Commission, and also the MoU was made for a full quantity of 6.00 MMT, without linking it to the tapered production from Naini block where the coal production was scheduled to commence from February 2021, as claimed by respondent, which is also against the bridge linkage guidelines.
- xiv. It is stated that in this context, it is pertinent to state that as per the project status reported in the website of Ministry of Statistics and Programme Implementation (MoSPI), Gol being the report for January 2023, the Naini coal mine execution work achieved a meager progress of 30% as on 13.12.2022, that is, even after 7 years of grant of bridge linkage, which clearly establishes that respondent could not achieve the operationalization of Naini block by February 2021 nor can it achieve the PRC by the year 2023 as submitted by respondent to SLC of MoC. The respondent failed to adhere to its own mining plan to commence production at Naini coal block by February 2021.

- xv. It is stated that the abnormal delay in operationalization of Naini coal block is solely attributable to respondent since it has failed to commence production at the Naini captive coal block by February 2021 and reduce the equivalent quantum of coal from bridge linkage, which would partially reduce the additional 20% charge levied on coal being supplied by respondent under the bridge linkage.
- xvi. It is stated that respondent has taken undue advantage of the delay in operationalization of its captive Naini coal block by revising the price under the MoU with STPP, initially with 10% additional price over and above the notified basic price for FY 2021-22 and further revising to 20% additional price over and above the notified basic price for FY 2022-23, without seeking the consent of petitioners or the Commission, since levying additional 20% price on basic coal price being supplied to STPP is also not in consonance with Regulation No.1 of 2019.
- xvii. It is stated that as already submitted, the bridge linkage shall act as a short term linkage but respondent has rendered it into a long term linkage under MoUs with additional 20% pricing over and above the notified basic coal price since the project COD that is 02.12.2016, which has been causing additional financial burden by Rs. 430 Crore per annum approximately.
- xviii. It is stated that by revising the coal price with additional 20% on notified basic price under MoU with STPP through bridge linkage, The respondent has ensured the profitability of its coal business as well as its power business by generating power with high plant load factor (PLF) that is around 90% at the cost of petitioners and eventually burdening the end consumers, which is also in violation of the mandate of Section 61(d) of the Act, 2003, that is the Section 61(d) emphasized the safeguarding of consumers' interest while the recovery of cost of generation in a reasonable manner.
- xix. It is stated that for the abnormal delay caused beyond the normative date of operationalization of its captive coal mine at Naini by February 2021, the respondent ought to supply coal to its power project, STPP, at the notified price of coal, since the abnormal delay in commissioning of its captive mine/block is solely attributable to itself and petitioners have no role in it. Thus, respondent's action of charging of additional 20% pricing of coal under the bridge linkage has deprived petitioners of the benefit of lower cost of captive coal and at the same time burdened petitioners with additional coal pricing of 20% over and above the notified basic price of coal applicable to power sector. Under the pretext of obtaining extension of bridge linkage, it is not justifiable for respondent to charge the coal supplied to its own power plant, STPP with additional 20% charge on the notified basic coal price. In fact, it is a violation of the bridge linkage guidelines beyond 3 years, which had stipulated to expedite the coal production at the captive coal block, within 3 years of sanction.
- xx. It is stated that the additional financial burden on petitioners on account of additional 20% charge of coal supplied works out to approximately 50-80 paise/kWh, considering coal cost per metric ton at the rate of Rs. 5539.78 as claimed by respondent in the monthly energy bills and the



additional financial burden would be around Rs. 430 crores per annum for the annual energy of 8629 MU at the rate of 87% PLF, which levy is solely intended to enrich the respondent at the cost of petitioners/consumers and therefore not tenable.

- xxi. It is stated that respondent had claimed the increase in coal prices at the rate of 7% per annum in the MYT petition vide O.P.No.5 of 2019 for the control period FY 2019 to FY2024, but it is now claiming at 20% additional price, which act is totally unjustified.
- xxii. It is stated that as per the MoC, the captive coal mines are earmarked for power sector, with the twin objective of increasing generation of power along with providing cheaper coal from captive coal block, for the benefit of power consumers'. The methodology prescribed by MoC vide order dated 26.12.2014 stipulated to bidders to quote lower than the ceiling of price of Coal India Limited (CIL) notified price fixed for each coal block, such that it would ensure that the benefit of lower bid price is passed onto the consumers, throughout the tenure of PPA of 25 years.
- xxiii. It is stated that contrary to the above, respondent has burdened the petitioners by way of 20% additional charge on notified basic price of coal for power sector and is continuing to burden petitioners, for its own failure to expedite the commissioning of Naini coal block under the extended bridge linkage transforming the short-term linkage into a long term linkage with additional 20% pricing on the basic coal price of the respective grade.
- xxiv. It is stated that the bridge linkage was granted to respondent only to facilitate the immediate supply of coal requirement to its STPP till the commencement of production from its captive mine at Naini, but not for undue financial gain by it, on the pretext of further extension of bridge linkage by the MoC.
- xxv. It is stated that in this context, the attention of the Commission is drawn to the CERC Tariff Regulations, 2019 (CERC regulation), wherein CERC has specifically notified that the energy charge component of tariff of the generating station having got allotted captive coal block/mine, shall be determined based on the Input price of coal from such integrated mines, computed in accordance with the regulations to be notified separately by the Commission.
- xxvi. It is stated that the CERC has further stipulated in the said regulations that till the regulation for computation of Input price of coal from integrated mines is notified, the generator shall continue to adopt the notified price of coal as fixed by the CIL, commensurate with the grade of the coal from the integrated mine.
- xxvii. It is stated that the CERC had also stipulated that after it notified separate regulation for computation of input price of coal, the same shall be applicable from 01.04.2019 or the date of commercial operation of the integrated mine, whichever is later and the difference between the input price of coal so determined and the input price of coal for the quantity already billed, shall have to be adjusted in accordance with the regulations to be notified.

xxviii. It is stated that subsequently, CERC has notified a separate regulation vide dated 19.02.2021, prescribing the procedure for determination of input price of coal supplied from the integrated mines under CERC (terms and conditions of Tariff) (Second Amendment) Regulations, 2021 (CERC amendment regulation).

xxix. It is stated that the relevant portions of CERC regulation are extracted as below:

“ ...  
CHAPTER-9 COMPUTATION OF INPUT PRICE OF COAL AND LIGNITE FROM INTEGRATED MINE

“36(1) Input Price of coal and lignite for energy charges: (1) Where the generating company has the arrangement for supply of coal or lignite from the integrated mine(s) allocated to it, for use in one or more of its generating stations as end use, the energy charge component of tariff of the generating station shall be determined based on the input price of coal or lignite, as the case may be, from such integrated mines computed in accordance with the regulations to be notified separately by the Commission.

(2) Till the regulation for computation of input price of coal is notified, the generating company shall continue to adopt the notified price of Coal India Limited commensurate with the grade of the coal from the integrated mine:

Provided that after notification of the regulation for input price of coal, the same shall be applicable from 1.4.2019 or the date of commercial operation of the integrated mine, whichever is later, and the difference between the input price of coal so decided and the input price of coal for quantity billed shall be adjusted in accordance with the regulations to be notified. ... ..”

xxx. It is stated that as could be seen from the aforesaid CERC regulation, till the regulation for computation of input price of coal is notified the energy charge rate (ECR) computation formula shall adopt the notified price of coal as fixed by CIL for the relevant grade from integrated coal mine.

xxxi. It is stated that in the present case, since Regulation No.1 of 2019 has not prescribed the procedure for determination of input price of coal obtained from integrated coal mines, therefore the Commission is requested to adopt the methodology prescribed by CERC regulation and CERC amendment regulation, in terms of Section 61(a) of the Act, 2003 for applying the coal price to calculate the energy charges.

c. It is stated that summing the above, the petitioners state that the coal mine allocations by the MoC as well as the CERC regulation stipulated that the coal price to be considered shall be either at notified basic coal price as fixed by CIL for the corresponding grade of coal of coal mine or the input price of coal determined for the coal mine, for the purpose of ECR computation after COD of integrated mine but not the arbitrary, high pricing under the bridge linkage as claimed and billed by respondent.



d. It is stated that the Commission may note that if the coal production from Naini coal block had commenced by February/March 2021 considering it as normative date/month, then the price of coal supplied would have been at the notified basic price of coal of the relevant grade of respondent but not at the additional 20% price as claimed by respondent. It is only due to abnormal delay in commissioning of the Naini captive block, respondent is taking undue advantage of the delay which was caused for its own failure but respondent hiked the coal price by 20% over and above the notified basic coal price for the corresponding coal grade, which act is absolutely untenable as it leads to unjust enrichment of respondent and therefore not to be allowed, since it is impacting the consumer tariff.

e. It is stated that in this context, the attention of the Commission is drawn to the petition filed by respondent under petition O.P.No.8 of 2020 relating to business plan along with other petitions, filed for MYT tariff determination for the period FY 2019-20 to FY 2023-24, respondent had submitted before the Commission, that it was also considering the possibility of swapping of Naini coal block with its coal mines in the State of Telangana, considering its distance from STPP. The Commission in its order dated 28.08.2020 in O.P.No.4 of 2019 and O.P.No.5 of 2019 had reiterated its earlier directive that

*"SCCL should actively pursue the issue of coal allocation for its generating station with the Ministry of Coal so that the cumbersome task of transportation of coal from Naini coal block in Odisha and associated losses in quantity and GCV could be mitigated by procuring coal from its own mines which are closer to its generating station."*

However, till date, respondent has not initiated any steps for swapping of coal mines in the State of Telangana, despite the specific direction by the Commission in the order in O.P.No.9 of 2016, as well as the specific recommendation of the Comptroller and Audit General (CAG) Report, in their Report No.1 of 2020.

f. It is stated that the petitioners would like to extract the observations of the Hon'ble Supreme Court in the case of a civil appeal in C.A.No.5881-5882 of 2016 in the matter of All India Power Engineer Federation and others. Vs. Sasan Power Limited and others, as below:

" ... .."

25. on the facts of this, it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interests gets affected. .... "
- g. It is stated that as could be seen from the above, the ratio decidendi of the above judgment equally applies to this case also for the reason that by increasing the fuel cost that is coal price by 20% over and above the notified basic price of coal under the bridge linkage, the ECR or the variable charge, which is a component of tariff, gets increased by additional 50 paise/kWh and consequentially the energy charges payable to respondent also increases by around Rs.430 crore per annum, which eventually burdens the consumers at large.
- h. It is stated that further, the additional 20% levy on coal price by respondent till the bridge linkage extension period also leads to unjust enrichment of respondent for its own failure to adhere to its own mining plan and is against the mandate of Section 61(d), which stipulated the safeguarding the consumers' interest while the recovery of cost of generation shall be in a reasonable manner.
- i. It is stated that in view of the above, the interference of the Commission is warranted in terms of the Section 86(1)(b) to regulate the power purchase cost and Section 86(1)(f) of the Act, 2003 to adjudicate, in order to safeguard the interests of consumer at large.
2. Therefore, the petitioners have sought the following relief in the petition.
- "To direct SCCL to change the coal supply being made to its Thermal Power Plant (STPP) at the notified basic price corresponding to the coal grade being supplied, without any additional charge/premium, for the period FY 2021-22 to till the date of operationalization of Naini Coal Block and later to adopt the CERC input price determination methodology, in the interest of end consumers."*
3. The respondent has filed counter affidavit as extracted below:
- a. It is stated that at the outset, the issue involved in the instant matter is whether or not the petitioners are liable to pay the cost of the bridge linkage coal being utilised by the generator STPP for the period FY 2021-22 until the expiry of the extended bridge linkage period which was granted by MoC.



- b. It is stated that both petitioners and respondent are aware of the bridge linkage of coal to the project from source of undeveloped Naini coal block in the state of Orissa until the said mine is brought into stage of full coal production, considering the interest of the petitioners/State of Telangana as was being done in similar circumstances where bridge linkage coal was granted by the MoC to power plants where the linked mines could not coal production. Further, as per the orders of SLC/MoC, the respondent had determined the price of the bridge linkage coal for supply of such coal to power sector that is STPP project at Mancheril and other projects of Maharashtra Generation corporation (MAHAGENCO), National Thermal Power Corporation (NTPC). Therefore, respondent from time to time since 2016 has been determining the price of such category of coal to STPP and other projects of MAHAGENCO, NTPC.
- c. It is stated that the petitioners cannot project their innocence of supply of such category of coal to STPP or the price that is being determined in general by respondent for such category of coal. Having had the benefit of availing the power from STPP under the approved terms of PPA including the condition of change in law clause, the claim of the petitioners seeking orders to direct the respondent to supply coal of the linkage coal category with the notified price is not tenable, in particular considering the change in law clause having regard to the additional price for such category of coal.
- d. It is stated that the Hon'ble Supreme Court of India in the Civil Appeal No.2908 of 2022 between Uttar Haryana Bijli Vitran Nigam Limited Versus Adani Power (Mundra) Limited has held that CIL is an instrumentality of the Gol and price notifications of CIL to be considered as change in law. Similar considerations need to be made for the coal pricing of bridge linkage made by respondent.
- e. It is stated that the respondent being public sector undertaking jointly owned by the state government and central government, the notification of determining price of coal time to time comes under change in law and the petitioners as long as they are intending to procure power from STPP under the PPA is bound to pay the price of coal as is being decided by respondent for such category of coal which is applicable to all power projects which are availing such bridge linkage coal. Therefore, the petition is not maintainable at law, facts on record, and deserves to be dismissed at threshold.

- f. It is stated that further, the Commission in STPP's midterm review order dated 23.03.2023 has ordered the following in respect of energy charge:  
*"3.15.11 Any variation in fuel prices on account of change in the GCV of coal or gas or liquid fuel shall be billed in accordance with the provisions under clause 21.10 and 21.11 of Regulation No.1 of 2019."*
- g. It is stated that MoC, Gol has allocated captive coal block/mine, Naini to STPP/respondent in the year 2016. The coal produced from the Naini block in the state of Odisha would be utilized at STPP, being the specified end use plant. To facilitate the immediate requirement of coal to STPP, a short term Linkage was granted under the policy of bridge linkage, till the commencement of coal supply to STPP from its captive coal block of Naini.
- h. It is stated that respondent supplies coal to STPP as per recommendation of SLC, MoC, Gol by entering into memorandum of understanding (MoU). The extension of bridge linkage will be decided by SLC, MoC after deliberation in the meeting and after careful observations and recommendations from Ministry of Power (MoP).
- i. It is stated that the respondent is supplying coal to power sector, bridge linkage and non-bridge linkage holders by regulating supplies to non power (NRS) customers. Sales realization from NRS is more by Rs.1,628/T than sales realization from bridge linkage and non bridge linkage supplies. Therefore, by foregoing revenues, respondent is supplying coal to bridge linkage and non bridge linkage customers considering the request, recommendation of MoP, MoC and importance of the power sector in Telangana and India.
- j. It is stated that as per the instructions of SLC given in the bridge linkage allotment order of 2016, the respondent has to decide the source of coal supply for meeting the bridge linkage quantity that is the mines, coal grade and the quantity along with the price there from. Further, in the most recent order of SLC it was clearly stated that the price of such bridge linkage supply has to be solely decided by the respondent/CIL. The relevant portion is quoted below:  
*"Recommendations: In view of the recommendation of Ministry of Power and the Nominated Authority, SLC (LT) recommended for extension of Bridge Linkage to Singareni Thermal Power Plant (2 x 600 MW) of SCCL for a period of 1 year on tapering basis from SCCL. The rate for coal supplies against extended Bridge Linkages would be decided by CIL/SCCL."*



Accordingly, time to time price changes of bridge linkage coal has to be considered as 'change in law' event.

- k. It is stated that the PPA entered between petitioners and respondent contains the provision for coal supply based on FSA, which is not correct and hence denied.
- l. It is stated that the delay in production of Naini coal had various legitimate uncontrollable factors and hence the delay is not attributable to STPP/respondent.
- m. It is stated that the pricing of coal supplied through bridge linkage to any generator is made in accordance with the terms and conditions contained in the MoU entered between the coal producer, the respondent and the power generator.
- n. It is stated that all the MoU's and supplementary MoU's entered by respondent and STPP from FY 2020-21 to FY 2022-23 were forwarded to Telangana State Power Coordination Committee (TSPCC) containing the pricing structure of coal at the starting of respective financial years of power supply for the year. The petitioners never raised this objection about the pricing structure as per MoU entered between respondent and STPP from FY 2020-21 to FY 2022-23.
- o. It is stated that the respondent and STPP MoU contains provisions similar to the provisions contained in other MoUs of similar nature entered by respondent with other power generators. The said fact can be verified from the MoU entered between NTPC and the respondent for bridge linkage coal.
- p. It is stated that it is clear that neither the pricing structure as claimed by petitioner, nor the terms of MoU are discriminatory against petitioners. Further, it is stated that respondent/STPP followed the same pricing methodology as being followed with other DISCOMs. Therefore, submissions of the petitioners lack merit.
- q. It is stated that the Commission in any part of order dated 21.11.2022, did not mention that it has disallowed the claim of STPP towards payment of bills towards additional cost of coal for FY 2018-19 as claimed by petitioners. In contrast, para 12 (m) provides that petitioners are liable to pay cost of coal for the quantum of power generated up to scheduled generation, without deducting

any amount for premium pricing. The relevant part of the final para 12 (m) of the Commission's order dated 21.11.2022 is quoted below:

"12(m)

... ..  
*the petitioner is eligible for payment of energy charges for ex-bus charges sent out corresponding to schedule generation. ... ..*

*The liability of the respondents to pay shall be only to the extent of coal cost corresponding to schedule generation and not for the energy generated over and above of the scheduled generation.*

... ..  
*the Petitioner is not entitled to receive additional coal cost beyond scheduled generation."*

Therefore, the submissions of the petitioners are refuted.

- w. It is stated that many companies which were allotted mines in year 2016 could not start coal production due to different uncontrollable factors.
- r. It is stated that the reasons for delay in materializing coal supply from Naini coal block were seriously deliberated in the SLC under MoC, and the committee after considering the representation made by the respondent had recommended extension of bridge linkage of STPP up to 2023 in the form of tapering linkage in synchronization with production from Naini coal block. This fact proves that the delay in production of Naini coal had various legitimate uncontrollable factors and hence the delay is not attributable to the respondent/STPP. The submission of petitioners in this respect lacks merit.
- s. It is stated that the MoU premiums, time to time, are determined based on the prevailing market condition and implemented through MoU amendments of pricing structure. When such revision happens, it happens for all the consumers and not for any specific consumer.
- t. It is stated that for the FSA customers, coal will be supplied on notified price as per the linkage given by MoC and there will be a penalty on both seller and buyer on short supply or short lifting as per FSA. However, for the bridge linkage customers there will not be any price regulation and the supply of coal is on best effort basis. There will not be any penalty on both the parties regarding supply and lifting in bridge linkage coal supply. However, the quantity will be decided by MoC, GoI.



- u. It is stated that respondent is supplying coal to power sector, bridge linkage and non bridge linkage holders, by regulating supplies to non power (NRS) customers. Sales realization from NRS is more by Rs. 1,628/T than sales realization from bridge linkage and non bridge linkage supplies. Therefore, by foregoing revenues, respondent is supplying coal to bridge linkage and non bridge linkage customers considering the request, recommendation of MoP, MoC and importance of the power sector in Telangana and India.
- v. It is stated that the petitioner submission that respondent failed to adhere to its own mining plan to commence production at Naini coal block by February 2021. It is stated that the delay in production of Naini coal had various legitimate uncontrollable factors as stated above.
- x. It is stated that the petitioners have canvassed a financial burden of Rs.430 crore per annum due to charging of premium. However, it is submitted that whenever the coal price increases the impact of that comes in the merit order and consequently the scheduled energy of the plant gets affected. In essence when coal prices go up, the generating plant get lesser schedule thereby automatically neutralize the effect of such price increase. However, nothing of this sort is observed in the case of 2x600 MW STPP. In fact, STPP was always among the top positions in merit order among the state thermal generators.
- y. It is stated that respondent/STPP, as per the direction of the Commission vide order dated 28.08.2020, is making efforts to swap the Naini coal mines with Tamil Nadu Generation and Distribution Company (TANGEDCO) and NTPC to minimise the energy charge and to mitigate the problem of coal supply from long distance.
- z. It is stated that however, the proposal for swapping is kept in abeyance by TANGEDCO and NTPC as the production from Naini coal block is yet to start and further, the swapping has to be granted by MoC/MoP on establishing the optimum utilisation of coal mine, cost efficiencies and public interest.
- aa. It is stated that coal production from Naini coal block is yet to be started. Once the production has commenced a petition for determination input price of coal will be filed.

- ab. Accordingly, the objections raised by the petitioners lacks merit and deserves to be rejected.
  - ac. Therefore, the respondent prays the Commission to dismiss the petition under reply with costs.
4. The petitioners have filed rejoinder as extracted below:
- a. It is stated that the subject petition has been filed before this Commission for the reason that the respondent/SCCL has been taking undue advantage of the bridge linkage facility granted to its power plant by the SLC for coal linkages of the MoC, Gol, in the year 2016, which was granted to facilitate the coal supply to STPP on short term basis, till the coal production commences from its captive coal mine/block, Naini coal block, which was expected to be in commercial production of coal by 2020.
  - b. It is stated that since, the bridge linkage is a short term linkage prescribed for 3 years fixed period, unlike the regular long term linkage, as per the bridge linkage guidelines dated 08.02.2016, no FSA would be required to be signed between the parties that is coal supplier and generator to be known as MoU need to be signed.
  - c. It is stated that as stated in the foregoing paragraphs, the purpose of bridge linkage is to bridge the coal supply demand gap and to expedite the coal production from the captive coal mine, by ramping up the production and reduce the equivalent quantum from bridge linkage coal supply, so that there will not be additional burden of coal pricing on the thermal power plant.
  - d. It is stated that the respondent had entered into MoU with its STPP on 01.11.2017, for supply of 6 million tons of coal per annum to STPP, with the price initially charged with additional 20% over and above the notified basic price applicable for power sector for 100% coal requirement.
  - e. It is stated that however, respondent modified the MoU with STPP, within 6 months on 06.04.2018, revised the coal price by creating two slabs that is upto 75% coal requirement with additional 20% pricing over and above the notified basic price applicable for power sector and for above 75% coal requirement, the additional 20% pricing over and above the notified basic price applicable for



non-power sector and made applicable for the period FY 2018-19 and FY 2019-20, without seeking the prior consent of petitioners or the Commission.

- f. It is stated that this arbitrary modification of MoU with additional 20% pricing of coal applicable to non-power sector has caused additional financial burden on petitioners by way of increased energy charges for the power supplied, which has been resisted by the petitioners in the earlier petition filed by the respondent that is O.P.No.8 of 2021 and the Commission was pleased to issue orders disallowing the claim of respondent by recording at paragraph 12(h) as below:

“... ..  
*Utilization of additional coal beyond the agreed quantum at a higher rate is neither permissible nor within the ambit of the agreed conditions between the parties. ... ..*”

- g. It is stated that the respondent having realized that the charging of coal pricing by additional 20% over and above the notified basic price of coal applicable to non-power sector, above 75% coal requirement was not justified, since its STPP is supplying power to power sector, dispensed the non power sector pricing and revised the MoU vide dated 30.03.2020, with pricing of coal of 100% requirement at the notified basic price applicable to power sector, without any additional premium, for the part of FY 2020-21, from 01.06.2020 to 31.03.2021 comprising of 10 months. This pricing of coal at notified basic price without premium applicable to power sector, is the stipulation in the PPA.
- h. It is stated that however, respondent did not continue the aforesaid pricing and further revised the MoU on 16.04.2021, with additional 10% price over and above the notified basic price applicable to power sector for the year FY 2021-22 and again revised the MoU on 28.03.2022 for FY 2022-23, by levying 20% additional price over and above the notified basic price for power sector for 100% coal requirement and thus caused additional financial burden on the petitioner. Recently, the respondent vide MoU dated 29.03.2023, for FY 2023-24 again created two slabs, that is upto 75% coal requirement priced at additional 20% premium over the notified basic price and for coal requirement above 75%, priced at additional 30% premium over the notified basic price, applicable to power sector.
- i. It is stated that the respondent has been taking undue advantage of its dominant position as a coal supplier and collecting the additional premium of

20% and 30% over and above the notified basic price applicable to power sector, from its own power plant, STPP and claiming the monthly energy bills based on high priced coal, which would be eventually passed on to the end consumers.

- j. It is stated that this arbitrary pricing of coal with additional premium under the bridge linkage scheme, is not only contrary to PPA provisions, tariff regulations, but also a violation of the Act, 2003 provision under Section 61(d) that is safeguarding of consumer's interest, since power sector is a regulated sector.
- k. It is stated that the only defence put forth by respondent is that it is not discriminating against petitioners and it is treating all the bridge linkage consumers like NTPC, MahaGenco etc., on equitable basis. This is not a plausible justification. The real issue is whether respondent is entitled to levy additional premium of 20% and 30% over and above the notified basic price, contrary to PPA provisions as well as provisions regulations and the Act, 2003.
- l. It is stated that the Commission may kindly consider that the additional coal pricing adopted by respondent under the pretext of bridge linkage, has to be dispensed forthwith, otherwise it would cause serious financial implications on the petitioners.
- m. It is stated that the Naini captive coal mine, which was supposed to be operationalized by February 2021, has just completed 30% of its construction work, as per the status report of MoSPI, Gol, even after 7 years of allotment of coal mine to respondent.
- n. It is stated that instead of expediting the construction work of Naini coal block, the respondent is obtaining regular extensions of bridge linkage coal from the MoC and thus causing additional financial burden on petitioners by way of increased energy charges, which act is absolutely not tenable.
- o. It is stated that the PPA entered by petitioners with the respondent was for 25 years of duration from COD of the project that is from 02.12.2016. The long term PPAs normally allow the usage of concessional coal, applicable for power sector, for generating power with least cost, since power sector is a regulated sector and power generation is given priority over other sectors. The Commission may consider that the pricing notifications issued by CIL or its



subsidiaries and the respondent being the coal supplier notifies separate coal prices for power sector and non-power sector and the coal prices for power sector are invariably lesser than the non-power sector by 20% to 30%.

- p. It is stated that the Gol allocated captive coal mines to PSU thermal power plants, through which cheaper priced coal would be available to power producers so that the power generation will be affordable. However, the respondent has failed to operationalize the Naini coal block even after 7 years of allotment and continue to collect additional premium of 20% and 30% on the notified basic price of coal under the extended bridge linkage, which act tantamount to enrichment at the cost of petitioners.
- q. It is stated that regarding the coal price regulation from integrated captive coal mine, the CERC has notified its tariff regulations for FY 2019-24, 2<sup>nd</sup> amendment dated 19.02.2021, wherein it has stipulated to adopt the notified price of CIL, for the corresponding coal grade in the computation of monthly energy charges, till the captive coal mine commences production and then it would determine the input price of coal from the captive coal mine. Since the Regulation No.1 of 2019, did not provide for such consideration of coal price from integrated coal mine, the petitioners urged the Commission to adopt the aforesaid CERC tariff regulations 2<sup>nd</sup> amendment dated 19.02.2021 in terms of Section 61(a) of the Act, 2003, for adjudicating the matter.
- r. It is stated that with the aforesaid background, the question that emerges is whether the respondent is justified in levying additional 20%/30% price over the notified basic price on STPP, even for the extended bridge linkage period from FY 2021-22 to till date, duly considering the provisions of the Act, 2003.
- s. It is stated that the respondent has already violated the Act, 2003 provisions, particularly the clause (d) of Section 61, tariff regulations as notified by CERC or TSERC, under the shelter of extended bridge linkage and interference of the Commission as a tariff regulator is warranted in the coal price regulation, in the interest of consumers.
- t. Now coming to the counter affidavit filed by the respondent, each of the statement made is analyzed based on factual and legal position as below:

- i. It is stated that both petitioners and respondent are aware of the bridge linkage to STPP, which was granted by the MoC, till the linked mine is brought into the stage of full coal production.
- ii. It is stated that as per the orders of the SLC and MoU, the respondent has determined the price of bridge linkage coal for supply of such coal to power sector such as STPP project, MAHAGENCO, NTPC etc.
- iii. It is stated that the respondent has been determining the price of such category of coal to STPP and other projects.
- iv. It is stated that PPA contains the change in law condition. The claim of petitioners seeking orders to direct the respondent to supply linkage coal of notified price is not tenable, particularly considering the change in law clause, having regard to the additional price for such category of coal.
- v. It is stated that the respondent referred to a cases decided by Hon'ble Supreme Court vide Civil Appeal No.2908 of 2022 in the matter of Uttar Haryana Bijli Vitaran Nigam Limited., VS Adani Power (Mundra) Limited wherein it was held that the CIL is an instrumentality of Gol and the price notifications of CIL are to be considered as change in law.
- vi. It is stated that the statement of the respondent that similar considerations need to be given for the coal pricing of bridge linkage made by the respondent, since the respondent is jointly owned by Government of Telangana (GoTS) and Gol and the price notifications issued by the respondent come under change in law and petitioners are bound to pay the price of coal as decided by the respondent for such category of coal, applicable to all power projects, which are availing bridge linkage coal.
- u. It is stated that as could be seen from the counter affidavit filed by the respondent, it is stated that the respondent has filed this reply as a coal supplier, oblivious of its role as a generator/power seller under the PPA with petitioners.
- v. It is stated that the respondent as a coal supplier may be right in justifying that it is also a government instrumentality and its price notifications would also come under the provisions of change in law, analogous to CIL.
- w. It is stated that however, the respondent is also a generator selling power to petitioners under the PPA, which would automatically come under the jurisdiction of the Commission and is bound by the provisions of the Act, 2003, regulations made by the Commission or CERC on tariff etc. Whereas, CIL is not a generator unlike SCCL. Therefore, the decision cited by the respondent is not relevant in this case.
- x. It is stated that the SLC's MoC recommendation, while granting extension of bridge linkage stated that



*"The rate for coal supplies against extended bridge linkage would be decided by CIL/SCCL",*

is not a mandatory direction, since it does not contain the word 'shall', without which, the claim of the respondent as a generator is not legally sustainable.

- y. It is stated that as per the MoC, coal pricing was de-controlled in the year 2000 by the Gol and coal companies can directly fix the prices of different coal grades, depending on its sustainability and the role of MoC/SLC is limited to the extent of granting coal linkages only.
- z. It is reiterated that the respondent has ignored that there is a separate coal pricing for power sector in its own price notifications, wherein prices for power sector are lesser than coal prices for non power sector, to enable power generation to be cheaper and affordable.
- aa. It is stated that regarding the claim of the respondent that its price notifications would amount to change in law, it is stated that petitioners are also praying the Commission to direct the respondent to charge the coal being supplied to STPP at the notified basic prices, without additional premium of 20% or 30%. The respondent should accept the same.
- ab. It is stated that even the PPA defined the cost of coal as '*cost of coal means at which coal is transported and priced for respective grades, as per the respondents' coal marketing department*'. This clearly demonstrates that only notified basic price shall be considered, without any additional premium.
- ac. It is stated that the arbitrary levy of additional premium on the notified basic coal price by the respondent on STPP/petitioners under the pretext of bridge linkage is absolutely not tenable.
- ad. It is stated that the counter affidavit filed by the respondent is not reflecting the factual and legal position and lacks merit.
- ae. It is stated that in the earlier paragraph that the respondent achieved meager progress of Naini coal block at 30% of total works, as per the MoSPI, Gol, even after 7 years of mine allotment.
- af. It is stated that the PPA's duration is 25 years, out of which nearly 7 years have already been completed without availing concessional coal, which is a basic

requirement as per PPA and petitioners are deprived of the benefit of concessional coal.

- ag. It is stated that the respondent is the owner of Naini coal mine/block. If the delay occurred in operationalization of Naini captive mine is not attributable to the respondent, then to whom it is attributable? Whether to petitioners? The respondent ought to have persuaded with the MoC, Gol for granting regular coal linkage to its STPP project on similar lines of NTPC Telangana STPS Phase-I, which was granted regular linkage from the respondent under the SHAKTI scheme.
- ah. It is stated that the respondent under the pretext of extended bridge linkage is enriching at the cost of petitioners by arbitrarily levying additional premium of 30% over the basic coal price, which need to be regulated, in terms of Section 61(d) of the Act, 2003.
- ai. It is stated that the respondent has failed to distinguish its role as a coal supplier and a generator under the PPA, whose arbitrary levy of coal pricing need to be regulated by the Commission u/s 61(d) and 86(1)(b) of the Act, 2003.
- aj. It is stated that in paragraph 18 of the respondent's counter affidavit "... .. The petitioner has canvassed a financial burden of Rs.430 crore per annum due to changing of premium. However, it is to kindly state that whenever the coal price increases the impact of that comes in the merit order and consequently the scheduled energy of the plant gets affected. In essence when coal prices go up, the generating plant get lesser schedule thereby automatically neutralize the effect of such price increase. However, nothing of this sort is observed in case of 2x600 MW STPP. In fact, STPP was always among the top positions in merit order among the state thermal generating stations.  
... ..
- ak. It is stated that as could be seen from the respondent's counter affidavit, the Commission may consider that the respondent has not disagreed on the financial burden of Rs. 430 crore per annum worked out by petitioners on account of additional premium of coal pricing at 20% over and above the notified basic price of coal for power sector, which construes, upon the



converse reading that the respondent has accepted that there will be additional financial burden on petitioners.

- al. It is stated that the only point put forth by the respondent is that "... .. *In essence coal prices go up, the generating plant get lesser schedule thereby automatically neutralize the effect of such price increase*".
- am. It is stated that in this regard that state power grid of Telangana being state periphery receives power from generating plants, like the respondent, Power Generation Corporation of Telangana Limited (TSGENCO) located within the state, also called intrastate generators and also from generators like NTPC, Madras Atomic Power Station, NLC etc., located outside the state also called interstate generators.
- an. It is stated that for intrastate generators, like the respondent/STPP, TSGENCO, there will not any levy of point of connection (POC) losses payable to Power Grid Corporation of India Limited (PGCIL) for usage of interstate transmission lines for power conveyance from one state to another state, since these plants are supplying power directly to state grid, therefore the energy charges billed by intrastate generators are relatively cheaper than interstate generators, where there will be additional POC losses on the energy charges, despite the price hike of coal by 20% to 30% charged by the respondent. Therefore, TSSLDLDC will schedule the power from Intrastate generators at first, followed by interstate generators, to meet the assessed demand/load.
- ao. It is stated that considering the zero PoC losses for intrastate generator, the respondent is confident that its STPP power will be fully scheduled despite its levy of additional premium on coal prices and therefore claims that "*STPP was always among the top positions in the merit order among the state thermal generating stations. ... ..*" But this does not authorize the respondent to levy additional premium on the notified basic price under the pretext of bridge linkage, which is getting extended periodically.
- ap. It is stated at paragraph 14(c) and (d) of the respondent's counter affidavit
- "....."
- (c) *All the MoU's and supplementary MoU's entered by SCCL and STPP from FY 2020-21 to FY 2022-23 were forwarded to TSPCC containing the pricing structure of Coal at the starting of respective financial years*

of power supply for the year. ... The petitioners never raised the objection about the pricing structure as per MOU entered between SCCL-STPP from FY 2020-21 to FY 2022-23.

- (d) The SCCL-STPP MOU contains provisions similar to the provisions contained in other MoUs of similar nature entered by SCCL with other power generating company. The said fact can be verified from the MOU entered between NTPC and SCCL for bridge linkage coal. ... .."

aq. It is stated by the petitioners as below:

- i) The petitioners from time to time have been vehemently objecting to the arbitrary charging of additional premium. The latest pleadings were in petition, O.P.No.8 of 2021 and even this Commission also recorded the version of TSDISCOMs, opposing such hike.
- ii) Further, in the recent MoU dated 29.03.2023 for FY 2023-24, levying additional 30% price over the notified basic price, has also been opposed by the petitioners.
- iii) Regarding the claim that that respondent entered similar MoUs with MAHAGENCO and NTPC, which contained similar provisions on bridge linkages, it is stated that if additional price is levied on NTPC projects in the State of Telangana, then NTPC would simply pass on the same to petitioners and the ultimate burden will be on petitioners but not on NTPC. Therefore, NTPC would be least impacted by such additional levy of coal pricing.
- iv) If there is a price increase of basic price of coal under the respondent's notification, then petitioners will not have any objection on such price increase in notified basic price.
- v) The objection of the petitioners is only on the additional premium (20%/30%) priced by the respondent over and above the notified basic price of coal, under the extended bridge linkage.

ar. It is stated that the respondent has failed to justify the additional premium being levied on the notified basic coal price and there is no valid legal point stated by the respondent in its counter affidavit.

as. In light of the above, the petitioners pray the Commission to allow the prayer made in the petition and pass necessary orders in the matter.

5. The Commission has heard the representative of the petitioners as also counsel for the respondent. It has also considered the material available on record. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 05.06.2023:

"... The representative of the petitioners stated that the matter is coming up for the first time and counter affidavit has to be filed in the matter. The advocate representing the counsel for respondent stated that he needs four weeks time



to file counter affidavit. The matter may be posted in the month of July, 2023. The representative of the petitioners stated that an opportunity may be given to the petitioners to file rejoinder after filing of the counter affidavit. The Commission observed that the respondent shall file counter affidavit as expeditiously as possible and not later than the next date of hearing. If required further time will be given for filing rejoinder. In view of the above, the matter is adjourned."

Record of proceedings dated 10.07.2023:

"... The representative of the petitioner has sought time for filing the rejoinder in the matter. The counsel for respondent has no objection. The Commission has directed the representative of the petitioner to file rejoinder on or before 21.08.2023 by serving a copy of the joinder to the respondent. Accordingly, the matter is adjourned."

Record of proceedings dated 21.08.2023:

"... The representative of the petitioner has stated and explained the need for filing the present petition. The petitioners are mainly aggrieved by the non-application of CERC Regulation of 2019 and the changes effected thereof. The representative of the petitioners has explained in detail the sourcing of coal, the cost involved therein as also the benefits of applying the proper regulation and thereby considering proper price for the coal.

The representative of the petitioners stated that the respondent has been allocated captive coal mine in Naine block, which is exclusively meant for generation of power by the respondent herein. It is treated as captive coal mine insofar as respondent herein. Though allocation was made in the year 2017 as the production has not been started from the said mine, bridge linkage facility has been allowed to the respondent to draw coal from the western coal fields initially and later its own coal production. The respondent has not been taking effective steps for getting the coal mine into operation for the past several years.

The representative of the petitioners stated that the respondent has been postponing the drawl coal from the captive coal mine which would be cheaper than the coal price being paid towards bridge linkage. Such coal cost would be much less even after including the transportation charges also. The coal cost of such coal mine is in accordance with the CERC Regulation and would be beneficial to the petitioners. In fact, the present coal price being paid is more than three times the coal price accepted as normative by the CERC, which is burdening the end consumer with additional cost. The petitioners are at the receiving end for the reason at the coal price being the fuel cost is a pass through and has to be paid for under the PPA.

The representative of the petitioners brought to the notice of the Commission that the coal price having been deregulated is subject to the whims and fancies of the coal companies. It has been provided that the coal price that has been notified by the coal company would be the price for power sector and non-power sector consumption. The respondent through its marketing wing had notified the coal price at more than three thousand rupees which is far in excess of the accepted normative of Rs. 1,100/- as approved by the CERC. As stated earlier, if the transportation cost from the captive coal mine is also included to the CERC normative, the cost of coal would be much less than the present cost of fuel demanded by the respondent. It could be only 30% of the present cost and



thus, the petitioners would be making substantial savings towards fuel cost and also reduce the burden of the end consumer of electricity.

The representative of the petitioners stated that the attitude of the respondent seems to be to enrich itself at the cost of the power consumers. It has not been making efforts to start production in the captive coal mine and draw coal for generation of power. The petitioners seek to rely on Section 61 of the Act, 2003, which provided that reasonable cost of generation be made available to the generators and at the same time, the interest of the consumers be protected. Due to exorbitant fuel cost, the consumers of the power are being mulcted with unnecessary cost.

The representative of the petitioners, therefore, sought favourable orders from the Commission by determining the coal price that is payable to the generator towards draws from the bridge linkage or from the captive coal mine allotted to it, thereby reducing the overall impact of fuel cost. The Commission may consider adopting the CERC Regulation in this regard, as no similar provision is made in the regulation made by the Commission in its regulation.

The counsel for respondent vehemently opposed the petition by stating that the Commission has no authority to tinker with the coal price or to determine the same. No provision in the Electricity Act, 2003 has enabled the Commission to interfere with the coal price as notified by the concerned department that is the Ministry/Department of Coal. The coal prices have been deregulated and it is for the coal companies to notify the same towards power sector consumption and non-power sector consumption.

The counsel for respondent stated that the determination of market price of coal has been left to the coal companies and as such, the marketing wing of the respondent also notified the coal price for both power and non-power sector consumption. Pursuant to the notification, the petitioners' power unit has entered into MoU for drawl of coal at the rates notified. Such MoU has been entered in the year 2017 for the first time and brought to the notice of the petitioners also. Subsequently in the year 2018, the MoU was amended to include coal cost at non-power consumption tariff. This aspect has been objected by the petitioners and therefore, another amended MoU has been entered for FY 2019-20 onwards, wherein the coal price required to be considered has been limited to power consumption coal rate along with premium in case of additional quantum of capacity.

The counsel for respondent stated that the MoU entered by the respondent with its marketing division is similar to all the MoUs entered with NTPC and others and any modification by the Commission in this case would gravely affect the said MoUs also. The other entities have no query on the said MoU, as also they have not questioned the respondent on the coal pricing. In such a situation, the petitions cannot allege any discrimination contrary to the PPA. It is strange that the petitioners have chosen to raise the issue of coal pricing after lapse of 7 years of the project becoming operational, they having derived the power without any demur and accepted the invoices raised by the respondent.

The respondent had been achieving excellent PLF and supplying energy to the petitioner at a PLF of 94% for installed capacity of 1200 MW. Despite keeping the DISCOMs in a safe condition of not losing energy and not being required to shut down supply, the petitioners are now seeking to denigrate the capacity. It is also strange that the petitioners are due to the respondent about Rs. 20,000



crores on several counts and yet are seeking to relieve themselves from coal cost which is agreed to under the PPA and is liable to be paid to the respondent. In fact, the petitioners have already lost some amount of revenue due to limitation imposed by the Commission by the charges are payable to the extent of scheduled energy and not the actual energy delivered and thus, it has lost amount to the tune of 1.6% which is achieved beyond the PLF and the scheduled capacity allowed in the tariff order.

The counsel for respondent stated that the petitioners have not shown any authority under law by which the Commission could have interfered with the coal pricing and determine the same to the detriment of the liberty given to the coal companies to notify the coal price under the policy of the Government of India. Inasmuch as even the Government of India did not make any rules or regulation conferring such powers to the Commission on the coal pricing.

The counsel for respondent stated that the tariff is neither static nor specific, but it is dynamic be it the case of coal pricing or energy charges. The only limitation for energy charges is that it has to be in accordance with the PPA, where specific methodology of computation or formula for arriving at tariff for generation has been set out. The respondent is required to enter into FSA for procuring the coal and the tariff is subject to such agreement only. The petitioners have an issue with regard to coal pricing over and above the 75% of the coal required for generation of power beyond the PLF. In any case, the petitioners cannot now, having agreed to fuel cost as pass through in the tariff, allege that onerous charges are being imposed on them. If they had any issue with the coal pricing, nothing precluded them from raising an issue at the earliest point of time and settle the matter.

The counsel for respondent stated that at any rate having suffered orders at the hands of the Commission with regard to the tariff, it is now not open to the petitioners that the coal pricing and the consequential tariff are burdening the end consumers. In the guise of the above grievance, they cannot put the clock behind to the detriment of the respondent. The alleged cost escalation and imposing of higher coal price are misconceived as the respondent is at liberty to fix the coal price under the policy of the Government of India. Therefore, the petitioners have not made out any case for interference by the Commission on the issue.

The representative of the petitioners sought to emphasize that the thermal power plant of the respondent is not a separate entity so as to concede that it has separate expenditure towards fuel procurement. It is part and parcel of the respondent only. Contrary to the CERC normative the coal pricing is pegged at very high rate for the quantum upto 75% of the energy scheduled to be generated and beyond that at a rate of 20% premium higher than the normal rate of power consumption coal price as notified by the respondent. Instead, if the coal is drawn from the captive mine at the normative rate of the CERC and adding 40% premium thereof along with transportation charges, the coal cost would be a third of the coal price that is being levied by the respondent. The respondent is seeking to misinterpret the provisions of CERC Regulation, thereby denying the benefit of cheaper coal price to the petitioners. It is strange that the respondent being a state entity would attempt to enrich itself at the cost of other state entity in the name of commercial operation.

The representative of the petitioners stated that the allegation of no jurisdiction cannot be sustained as the coal price being levied by the respondent would be part of the tariff payable for the generation by the petitioners and they have every right to question and seek to minimize such cost. It is not appropriate on the part of the respondent to secure coal from its own choice despite the fact that it has been specifically allotted captive coal mine for generation of power and since the said mine has not been brought into operation by the respondent, it is being provided with bridge linkage. The coal pricing under bridge linkage is much higher than the production cost and transportation of coal from its own captive mine. Thus, the petitioners are now seeking determination of the coal price so as to off set the onerous cost involved thereon at present.

The representative of the petitioners on a questioned by the Commission regarding the maintainability of the petitioner as having without jurisdiction, stated that the fuel cost is part of the O&M expenses of the generator and for the petitioners it is a variable cost paid by them to the respondent. As such, these components being part of the tariff, any of the ingredients also would attract the jurisdiction of the Commission to entertain such issues upon filing of the appropriate petition thereof. Since, the Commission had provided in the regulation itself that the tariff would be regulated based on the several components, fuel being one of them, the Commission would invariably step in to set right any condition which would amount to onerous situation. The representative of the petitioners thoroughly explained the various material documents being relied upon by them. Thus, he sought complete relief to the petitioners by rejecting the contentions of the respondent.

*Having heard the parties to the petition, the matter is reserved for orders."*

6. The respondent has filed written submissions and the same are extracted below:
  - a. It is stated that the issue involved as per the prayer sought in the instant matter is to direct that the respondent shall supply coal by charging the cost of coal of the bridge linkage coal being utilized by the generator STPP, during the period FY 2021-22 until the expiry of the extended bridge linkage period, as per notified price of linkage of coal without charging additional charges/premium.
  - b. It is stated that at the outset that at first instance it has to be decided that whether the Commission has jurisdiction to give such direction to a coal supplier which comes directly under the MoC in the matter of coal pricing to supply coal at a particular price to a generator which supplies the power to state DISCOMs?
  - c. It is stated that admitted facts are that PPA by STPP with the petitioners was approved much later than allocation of bridge linkage to STPP by the Commission. As per condition in said PPA that the coal price shall be as may be decided by marketing department of the respondent. Further it was made



clear to petitioners by then that there is no linkage coal available for this project and it is to be operated with bridge linkage coal and that the linkage coal will be made available only after development of Naini coal block in Odissa by the respondent, which was expected in three years to come.

d. It is stated that at the time of procurement of power during FY 2016-17 and FY 2017-18 the coal price of such bridge linkage was decided by the marketing department of the respondent as 20% more of notified price of linkage coal to power sector. The petitioners accepted the same without demur.

e. It is stated that after considering that the real difficulties in commencing the coal production in Naini block the SLC (LT), MoC extended the bridge linkage time to time to the subject project, which establishes that the delay in bringing Naini block to operation is not attributable to the respondent. It is infact a force majeure, not attributable to any party to PPA. SLC (LT) also stated in minutes that rate for bridge linkage coal supplies would be decided by CIL/the respondent. The relevant part of minutes of meeting is quoted below:

*"The rate for coal supplies against extended Bridge Linkages would be decided by CIL/SCCL".*

f. It is stated that in compliance of said directions of MoC the respondent has been supplying bridge linkage coal to STPP so as to ensure regular coal supplies from the respondent to cater the needs of electricity consumers in the State of Telangana. As STPP is already allocated Naini mine, it is disentitled to apply for long term linkages under Shakthi B (II) scheme of 2017. Therefore, in absence of bridge linkage coal/dispensing the bridge linkage, the STPP requires to obtain coal from e-auction basket which will be more costly than bridge linkage coal.

g. It is stated that assuming without admitting that the bridge linkage coal as is charged by marketing department of the respondent is dispensed with, there will be no other category of coal available for supply to STPP. Supply of coal under normal linkage is not in the domain of the respondent. Although the respondent is owner of land having the coal mine, but extraction of coal from it and supply of coal is, as per the directions of MoC in particular the linkage of coal. But MoC has given only bridge linkage coal to this STPP project.

- h. It is stated that both petitioners and respondent are aware of the bridge linkage of coal to this project is from the sources of the respondent mines in State of Telangana until the mine in Naini block is brought into stage of full coal production, This decision was taken by MoC considering the interest of the petitioners/State of Telangana, as was being done in similar circumstances where bridge linkage coal was granted by the MoC to power plants in other states where the linked mines could not commence the coal production.
- i. It is stated that further, as per the orders of SLC, MoC, the respondent had determined the price of the bridge linkage coal for supply of such coal to power sector viz. STPP project at Mancherial, other projects of MAHAGENCO and NTPC. Therefore, the marketing department of the respondent from time to time since 2016 has been determining the price of such category of coal to STPP and other projects of MAHAGENCO, NTPC. Since the respondent being company owned by GoTS and Gol, and the Board of Directors of the respondent comprised of representatives from both governments, it is too much for petitioners to plead that price decided by the marketing department of the respondent charging premium over notified basic price of coal is arbitrary.
- j. It is stated that the petitioners cannot portray their innocence of supply of such category of coal to STPP or the prices that are being determined in general for such bridge linkage coal by the respondent. Having had the benefit of availing the power from STPP under the approved terms of PPA including the condition that coal price as may be decided by marketing department of the respondent and the change in law clause, the claim of the petitioners seeking orders to direct the respondent to supply the bridge linkage coal with the notified price is not only not tenable, in particular considering the change in law clause having regard to the additional price for such category of coal, it amounts to anticipatory breach of PPA as per Section 39 of Indian Contract Act. Section 39 contract reads as under.
- "When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promise may put an end to the contract, unless he has signified by words or conduct his acquiescence in its continuance".*
- k. It is stated that considering the condition of price of coal as may be charged by the marketing department of the respondent and change in law clause the



respondent is in absolute compliance of terms of PPA and there is no iota of material to show that charging of coal price time to time by the respondent from FY 2021-22 is in violation of PPA. Further, the petitioner although obliged under PPA to open letter of credit for payment mechanism of monthly bills, miserably failed to do so, whereas the petitioners have opened LC in favour of NTPC. As such said acts/defaults of petitioners amounts to utter violation of terms of PPA.

- I. It is stated that the Hon'ble Supreme Court of India in the Civil Appeal No.2908 of 2022 between Uttar Haryana Bijli Vitran Nigam Limited Versus Adani Power (Mundra) Limited has held that CIL is an instrumentality of the GoI and price notifications of CIL to be considered as change in law. Therefore, the said proposition of law needs to be applied for the coal pricing of bridge linkage made by the respondent as change in law.
- m. It is stated that considering the said proposition of law and the terms of PPA that coal price shall be as per the decisions of marketing department of the respondent being public sector undertaking jointly owned by the GoTS and GoI, the notification of determining price of coal time to time comes under change in law. Therefore, petitioners as long as they are intending to procure power from STPP under the PPA is bound to pay the price of coal as is being decided by marketing department of the respondent for such category of coal which is applicable to all similar power projects that are availing such bridge linkage coal. Therefore, the petition is not maintainable at law and facts on record and deserves to be dismissed at threshold.
- n. It is stated that the respondent is a government company and adopts uniform policy on coal pricing across all generators. The premium charges over notified price for bridge linkage to MAHAGENCO are also applicable to STPP having bridge linkage with the respondent. Any differential treatment between generators will be hit by article 14 of Constitution of India.
- o. It is stated that CIL is charging a bridge linkage coal with a premium of flat 40% to all its bridge linkage customers. Memo showing the MCL (CIL subsidiary) charging 40% flat premium for bridge linkage consumers is submitted in this regard during hearing on 21.08.2023 before the Commission.

- p. It is stated that for starting coal production from Naini coal block, all approvals have been obtained including stage - I and stage - II of forest clearances. The respondent is only awaiting handing over of forest land by the state government of Odisha. As and when forest land is handed over, grounding of mine and coal production will start. Efforts are on at the highest level to get forest land from the state government of Odisha. There is no default on the part of the respondent, which fact is established by the extension of bridge linkage by the MoC.
  - q. It is stated that regarding Naini block coal swapping, as per the directives of the Commission, the respondent has been actively pursuing the issue of coal allocation for STPP from its own mines in Telangana, due to various factors involved, such swapping process is delayed.
  - r. It is stated that a proposal for swapping of coal with TANGEDCO/NTPC has already been formulated and is kept in abeyance as the coal production from Naini coal block is yet to start. On acceptance of the said proposal by TANGEDCO/NTPC, the application for swapping arrangement will be submitted to MoC, GoI for their approval.
  - s. It is stated that primarily clause 15 of CERC regulation enables the CERC to decide adhoc price after COD of coal mine and before deciding input price. Further, scope of subjects to issuing regulations by CERC is different to that of State Commissions. The input price of coal for captive use is an exclusive jurisdiction of CERC, but not to Commission. Further to state that even though Tadicherla coal block is allotted to TSGENCO and though COD of said mine is over, never the TSGENCO sought for decision of input price of such coal, with this Commission. The reason is obvious that this Commission has no jurisdiction.
  - t. It is stated that accordingly, as the grounds canvassed by the petitioners lacks merit and deserves to be rejected. In view of the above facts, the respondent prays the Commission to dismiss the petition filed by petitioners with costs.
7. The petitioners have filed additional written submissions and the same are extracted below:



- a. It is stated that before adverting to the issues raised by the respondent in the written submissions filed now, the petitioners would like to submit reply to the query raised by this Commission during the hearing held on 21.08.2023, as to *"Whether this Commission has the jurisdiction to determine the input price of coal produced at NAINI coal block in Odisha"*. In this regard, it is stated that the MoC, Gol had allotted the Naini captive coal block located in state of Odisha STPP in the State of Telangana designated as specified end use plant, whereunder the coal produced from Naini coal block is transferred to the respondent's STPP power plant in Telangana and power would be produced by consuming coal from Naini captive mine. Since the coal produced at Naini captive coal mine is dispatched to State of Telangana for consumption by STPP, therefore this Commission is having jurisdiction to determine the input price of coal from integrated captive mine of Naini block, since Naini block is dedicated to STPP only. Even the respondent in its counter filed on 06.07.2023 has confirmed the jurisdiction of this Commission on Naini captive coal as extracted below:

" ... .."

20) Re :Sl. No.2 (XXV) to (XXXI)

*It is to submit that coal production from Naini coal block is yet to be started. Once the production is commenced a Petition for determination input price of coal will be filed. ... .."*

- b. It is stated that now coming to the written submissions filed by the respondent after the conclusion of the arguments on the date of hearing that is 21.08.2023, the respondent has raised a fundamental question as to *"Whether this Hon'ble TSERC has jurisdiction to give such a direction to a coal supplier, which comes directly under the MoC in the matter of coal pricing to supply coal at a particular price to a generator, which supplies the power to state DISCOMs"*.
- c. It is stated that adverting to the aforesaid issue raised by the respondent, the petitioners state that though the respondent is a coal supplier company in the State of Telangana, yet it is also a generator supplying power to the petitioners under a long term PPA dated 18.01.2016 and has been raising monthly invoices on petitioners for the power supplied by its thermal power plant.
- d. It is stated that since the generating plant/STPP is not a legal entity but owned by the respondent, the coal supplier/respondent has been raising monthly

invoices on petitioners and also filing petitions before the Commission for determination of multiyear tariff as well as for dispute resolutions under the various provisions of the Act, 2003, tariff regulations issued by this Commission and also the CERC.

- e. It is stated that it has already been submitted that the respondent is performing dual functions, being as a coal supplier and also a generator. Since STPP, not being a legal entity, therefore it cannot be made a party in the proceedings before the Commission. As such, the respondent has been made party in the present petition, as a generator cum coal supplier.
- f. It is stated that the Regulations No.1 of 2019 has not provided for computation of input price of coal from integrated coal mines. Hence, the petitioners have prayed the Commission to adopt the CERC Tariff Regulations, 2019, for 2019-2024, in terms of Section 61(a) of the Act, 2003 in regard to computation of input price of coal and lignite from integrated mine provided in Chapter-9. The clause 36(2) of CERC Tariff Regulation, 2019, stipulated that "*Till the regulation for computation of input price of Coal is notified, the generating company shall continue to adopt the notified price of Coal India Limited commensurate with the grade of the Coal from the Integrated mine. ... ..*".
- g. It is stated that as could be seen from the said CERC Tariff Regulations, 2019, the price of coal supplied to a generating station, is also being regulated, which parameter will be used in the energy charges rate (ECR) computation formula for computing the energy charges during the previous month as a part of tariff.
- h. It is stated that as STPP is not a legal entity, therefore, the Commission cannot give a direction to STPP for adopting the notified prices of coal issued by the respondent in the ECR computation for STPP generation, as such, the petitioners prayed the Commission to give a direction to the respondent being the owner of STPP to charge the coal supply under bridge linkage at notified price of the coal for the corresponding grade.
- i. It is stated that whereas the respondent is trying to insulate itself under the pretext of coal supplier, so as to circumvent the jurisdiction of the Commission by stating that "*The respondent comes directly under the MoC in the matter of coal pricing to supply coal at a particular price to a generator which supplies the*



power to state DISCOMs". This averment of the respondent is misleading. It is stated that the MoC only accords coal linkages, be it long-term or short-term, to consumers as per the recommendations of the SLC, but coal pricing exercise is in the exclusive domain of coal companies CIL/the respondent and the MoC, Gol, has no powers on coal price fixations, since the coal prices were decontrolled by the Gol in the year 2000. The coal supply companies are permitted to fix the coal prices for power sector, regulated sector and non-regulated sector being, steel, cement etc. based on its sustainability.

- j. It is stated that since the respondent is also a generator having entered into a long term PPA with petitioners, it would automatically come under the jurisdiction of the Commission, which the Commission can exercise powers under Section 86(1)(b) of the Act, 2003, that is regulation of power purchases including the price at which the electricity shall be procured from the generating company through agreements. Therefore, the issue raised by the respondent on jurisdictional aspect regarding giving directions to a coal supplier in the matter of coal pricing, is absolutely misleading and lacks merit.
- k. It is stated that further, the respondent in its written submissions stated that for the period FY 2016-17 to FY 2017-18, the petitioners had accepted the price of bridge linkage as decided by the marketing department of the respondent at the rate of additional 20% over and above the notified basic price of linkage coal price applicable to power sector without demur and therefore expecting petitioners not to raise any objection now.
- l. It is stated that adverting to the aforesaid statement of the respondent, it is stated that initially petitioners were of the view that the price of coal produced from Naini captive coal mine would be cheaper since the respondent projected in the detailed project report (DPR) that the operational efficiency parameter, viz. stripping ratio of Naini captive block open cost coal would be 2.58 Cum/ton, very low compared to other mines, and high quality grade of coal would be produced viz. G-10 grade at the Naini block high quality coal results in lesser consumption of coal for power generation and consequent savings in energy charges and the cost of Naini coal works out to Rs. 1034 per ton, as per the respondent's price notification) for G-10 grade cheaper coal vis-à-vis the respondent's G-10 grade coal priced at the rate of Rs. 2910 per Ton. Even after

factoring transportation cost from state of Odisha to State of Telangana, the Naini coal will be still cheaper, which would help reduce the energy charges of STPP considerably and reduce the burden on petitioners. Since the period of bridge linkage was strictly 3 years from the date of allotment that is 13.08.2015, hence petitioners had allowed the additional 20% cost over the notified price for power sector. However, the respondent could not commence the Naini captive mine coal production, even after its normative date of operationalization, which was projected as December 2020. The respondent has been periodically obtaining extensions of bridge linkage till the year 2024, which is on tapering basis only, which means that, as the Naini coal production gets ramped up, the equivalent quantum of high cost bridge linkage coal utilization shall get reduced.

- m. It is stated that whereas the progress of Naini captive coal block even after 8 years of allotment is 30% only, as per the MoSPI, Gol. STPP plant (2x600 MW) requires 6.00 million tons per annum for 100% PLF generation, while Naini coal block production is estimated at the rate of 10 Million tons per annum. Due to its own failure, the respondent could not commence Naini captive coal production even after 8 years of allotment, but the respondent is continuing the charging of additional 20% to 30% premium on notified basic price for STPP, which is nothing but unjust enrichment at the cost of petitioners/end consumers, which is violation of Section 61(d) of the Act, 2003 that is safeguarding of consumers' interest. Therefore, petitioners are praying the Commission to give a direction to the respondent u/s 86(1)(b) of the Act, 2003 to charge the coal price at notified price of the coal, in terms of the relevant CERC Tariff Regulations, 2019, after adopting the same by the Commission.
- n. It is stated that the Commission may appreciate that bridge linkage was granted to the respondent/STPP by Gol, which is a short-term linkage for 3 years, to facilitate coal supply to the respondent/STPP project, till the production commences from the Naini captive mine, otherwise the STPP project would become '*stranded*' and leads to investment loss to the respondent. However, the respondent has been taking undue advantage of this short term linkage and charging additional 20% to 30% premium on STPP, initially on the price applicable to non-power sector, the basic price of coal for non-power sector is



very high and now on power-sector, instead of charging at notified prices, which need immediate intervention of the Commission, to curb the profiteering by the respondent in the name of additional pricing on bridge linkage coal.

- o. It is stated that now, the individual issues replied by respondent in the written submissions are discussed below:
- p. It is stated that delay in coal production in Naini block is not attributable to the respondent. It is a force majeure event not attributable to any party to PPA. SLC (LT) also stated in minutes that rate for bridge linkage coal supplies would be decided by CIL/the respondent.
- q. It is stated that if bridge linkage coal is dispensed with there will be no other category of coal available for supply to STPP and STPP requires to obtain coal from e-auction basket, which will be more costlier than bridge linkage, hence MoC has given only bridge linkage coal to this STPP project.
- r. It is stated that the respondent contended that abnormal delay in Naini coal block operationalization is a force majeure event and not attributable to any party to PPA. The respondent though being the owner of Naini captive mine, is absolving itself from the delay in commercial operation of Naini coal block and the respondent further averred that it is not attributable to any party to PPA. The respondent has rightly accepted that the delay of production from Naini block is also not attributable to petitioners who are also a party to the PPA. Then respondent should desist from levying additional premium of 20%/30% on the notified price of coal for the grade supplied, applicable to power sector.
- s. It is stated that further, the respondent's version that SLC (LT) recorded in the minutes "*to decide the rate for coal supplies against extended bridge linkage by CIL/SCCL*" is misleading and need to be construed conversely that SLC (LT) would not decide the rate for coal supplies against bridge linkages and the discretion of fixation of coal price has been given to the respondent/CIL only. However, the respondent has misinterpreted this statement in its favour and averred that it is fixing rate of coal supplies against bridge linkages as per SLC (LT), which is absolutely false. As already stated in the foregoing paragraphs, price fixation is in the exclusive domain of coal companies and the GoI has no role in it, since the coal prices were decontrolled in the year 2000.

- t. It is stated that the respondent further averred that if bridge linkage coal is dispensed with, there will be no other category of coal available for supply to STPP and STPP is required to obtain coal from e-auction basket, which is still costlier. Even in this case also, the respondent tried to mislead the Commission. The petitioners are seeking directions to the respondent to dispense the additional coal pricing of 20%/30% over and above the notified price but not seeking to dispense with the entire bridge linkage coal.
- u. It is stated that since the delay in commissioning of Naini coal block is entirely attributable to the respondent, being the owner, the respondent cannot be permitted to shift its inefficiency on to petitioners by not adhering to the completion schedule in respect of Naini coal block.
- v. It is stated that the respondent can still continue to supply coal supplies to STPP under the bridge linkage but dispense the additional charging of 20%/30% premium over and above the notified price of the corresponding coal grade for power sector. This act would be in consonance with the provisions of the u/s 61(d) of the Act 2003. It is once again stated that the MoC only accords granting of linkages to consumers from Coal companies, but it has no role in price fixation of coal.
- w. It is stated that the respondent had determined the price of bridge linkage coal for supply of such coal to power sector viz., STPP, MAHAGENCO and NTPC.
- x. It is stated that the respondent's marketing department has been determining the price of such category of coal to STPP and other projects since 2016.
- y. It is stated that the respondent's Board of Directors comprised of representatives from GoTS and Gol. Therefore, petitioners pleading that *"the price decided by the SCCL's marketing department, charging premium over notified basic price of coal is arbitrary"* is not tenable.
- z. It is stated that the respondent stated that the approved PPA contained the condition that coal price as may be decided by marketing department read together with change in law clause particularly with regard to the additional price for bridge linkage category of coal, hence the claim of petitioners amounts to anticipating breach of PPA as per Section 39 of Indian Contract Act, which reads that when a party to a contract has refused to perform or disabled himself



from performing his promise in its entirety, the promise may put an end to the contract, unless he has signified by words or conduct his acquiescence in its continuance.

- aa. It is stated that the respondent is ignorant of the modifications taken up by the Commission while according consent to the PPA entered between petitioners and the respondent, vide order dated 22.10.2021 in O.P.No.8 of 2016, whereunder the Commission directed for deletion of annexure-IV of PPA, which contained the definition of cost of coal as per the respondent's coal marketing department. Consequently, the respondent's reliance on the condition of "*price as may be charged by SCCL marketing department*" is no longer valid and not sustainable.
- ab. It is stated that the respondent has attempted to invoke the Section 39 of the Indian Contract Act. As per the said Section, when a party to a contract has refused to perform its promise in its entirety, the promisee may put an end to the contract. The respondent has contended that parties agreed to the condition in the PPA that "*coal price as may be decided by marketing department of SCCL*", but now petitioners are seeking orders to the respondent to supply bridge linkage coal at notified price is not tenable, particularly, considering the change in law clause in the PPA having regard to the additional price for such category of coal, therefore, averred that the prayer of petitioners amounts to anticipatory breach of PPA as per Section 39 of Indian Contract Act.
- ac. It is stated that the respondent is misconceived in invoking the Section 39 of Indian Contract Act, as the power generation activity under a PPA is regulated activity, the terms and conditions of the PPA including the tariff have been regulated by the Commission u/s. 86(1)(b) and also in terms of the Regulation No.1 of 2019 as well as CERC tariff regulations.
- ad. It is stated that under the Section 39 of the Indian Contract Act, there will be two parties to a contract, a promisor and promisee whereas in case of a PPA, though there will be two parties to the PPA, viz. a buyer and a seller, there will be a third party also, that is the Commission, which will exercise powers for tariff determination u/s 62 regulatory powers under Section 86(1)(b)) and also adjudicatory powers u/s 86(1)(f) of the Act, 2003.

- ae. It is stated that the Hon'ble Supreme Court in Civil Appeal No.1843 of 2021 in the matter of M/s Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulator Commission and Others had observed that *"The Regulatory Commissions continue to exercise continuous regulatory supervision over the parties (Licensees) especially over Tariff. ... .."*. In the present case, the respondent, being the generator supplying power to petitioners under a long term PPA, would also be treated as a regulated entity, since the Commission has been determining the multiyear tariff payable to the respondent by petitioners from time to time in respect of its STPP.
- af. It is stated that further, the PPA at preamble stipulated that *"The terms and conditions of the Power Purchase Agreement are as per prevailing TSERC Regulations any changes in TSERC regulations that may occur in future shall be applicable for all operating norms or any other parameters. ... .."*.
- ag. It is stated that since fuel cost being coal cost is recovered through energy charges by the generator, which is a component of tariff, CERC tariff regulations, 2019 have also put a cap on the coal price to be considered in the energy charge rate (ECR) computation formula. By adopting the relevant CERC Regulation for integrated mine coal price determination, the energy charges payable to the respondent can also be regulated by the Commission.
- ah. It is stated that in terms of the aforesaid provision, the respondent is bound by the tariff regulations issued by this Commission, since tariff comprises of two components, viz., capacity charges being fixed charges and energy charges being variable charges/fuel cost. The Commission has prescribed a methodology for computing ECR per kWh, at clause 21.6 of the Regulation No.1 of 2019, wherein the price of primary fuel being coal has to be substituted in the formula stipulated. Since the Regulation No.1 of 2019 have not provided for integrated captive mine coal price determination, the petitioners urge the Commission to adopt the relevant clauses of CERC Generation Tariff Regulations, 2019. The CERC tariff regulations stipulated only two cases in respect of generating stations having been allotted captive mine, viz. (i) prior to COD of captive coal mine, adoption of notified price of coal for the corresponding coal grade of Coal India Limited (CIL), (ii) After COD of captive coal mine, CERC determined price of coal from captive coal mine.



- ai. It is stated that the respondent's claim that "*charging of additional price for bridge linkage customers amounts to change in law*" is totally misleading as the price notifications issued by the respondent do not provide the coal pricing for bridge linkage customers. The Commission may kindly verify the same. petitioners have no objection for adopting notified basic prices of coal supplied to STPP but objecting only on the additional premium of 20 to 30% on the notified basic price by the respondent.
- aj. It is stated that further, for claiming change in law benefit, the PPA at Article 8.1 has stipulated certain conditions to be followed by the respondent such as issuing a notice in writing to petitioners regarding the change in law event and both parties should agree to an amendment to the PPA to pass the impact of such an event to petitioners within the timelines prescribed therein. It is on record that the respondent has never fulfilled the conditions stipulated under the change in law provision. As such, the claim of the respondent is not sustainable even in terms of PPA provisions.
- ak. It is stated that in view of the above, the submissions of the respondent in bringing parity to a general agreement under Section 39 of the Indian Contract Act vis-à-vis the regulated PPA, governed under the Act, 2003 is not appropriate and also not tenable. As such, the submission of the respondent claiming anticipatory breach of PPA under Section 39 of the Indian Contract Act is not relevant in case of regulated PPAs.
- al. It is stated that in view of the above legal position, the respondent's submissions, including invoking of Section 39 of the Indian Contract Act lacks merit.
- am. It is stated that the respondent stated that considering the condition of price of coal as may be charged by the marketing department of the respondent under the approved terms of PPA and also the change in law clause, there is no material to show that changing of coal price time to time by the respondent from FY 2021-22 is violation of PPA.
- an. It is stated that the respondent further stated that although the petitioners are obliged under the PPA, to open letter of credit (L.C) for payment mechanism of monthly bills, petitioners failed to do so but opened LC in favour of NTPC. The

respondent contended that the said acts/defaults of petitioners amount to utter violation of terms of PPA.

- ao. It is stated that the respondent is firmly relying on the condition stipulated at annexure-IV of PPA that the coal price shall be as may be decided by marketing department of SCCL, together with change in law clause of PPA, to justify its action of charging additional 20%/30% premium on the notified basic price of coal for bridge linkage customers like STPP etc.
- ap. It is stated that the respondent is ignorant of the modifications taken up by the Commission while according consent to the PPA entered between petitioners and the respondent vide order dated 22.10.2021 in O.P.No.8 of 2016, whereunder the Commission directed for deletion of annexure-IV of PPA, which contained the definition of cost of coal as per the respondent's coal marketing department.
- aq. It is stated that consequently, the respondent's reliance on the conditions of "*Price as may be charged by SCCL marketing department*" is not sustainable.
- ar. It is stated that the respondent is also relying that its price notifications would become change in law, therefore it can levy any additional premium of 20%/30% on the notified basic prices of coal for bridge linkage customers, is also not sustainable, since price notifications issued by the respondent as a coal supplier may come under change in law but not the additional premium charged on bridge linkage customers.
- as. It is stated that the MoU between the respondent and STPP on charging additional premium of 20%/30% is an internal arrangement within the respondent and the bridge linkage prices are not published in the price notifications issued by the respondent from time to time.
- at. It is stated that to counter the prayer of petitioners in the present petition, the respondent has made a counter allegation that petitioners act of not opening L.C in favour of the respondent amounts to utter violation of terms of PPA. This issue raised by the respondent has no relevance to the present dispute raised by petitioners. The respondent is at liberty to seek remedies in accordance with law, in case it is aggrieved.



- au. It is stated that the respondent referred to a case law of the Apex court under Civil Appeal No.2908 of 2022 between Uttar Haryana Bijli Vitran Nigam Limited vs Adani Power (Mundra), wherein it was held CIL is the instrumentality of Govt and price notifications of CIL to be considered as change in law. Applying the said proposition of law, the respondent's coal pricing of bridge linkage would also become change in law.
- av. It is stated that applying the proposition of law and considering the terms of PPA that coal price shall be as per the decisions of the marketing department of the respondent, the price notifications issued by the respondent will also come under change in law. The petitioners are bound to pay the price of coal as being decided by the marketing department of the respondent for such category of coal, which is applicable to all similar power projects availing bridge linkage coal.
- aw. It is stated that the respondent averred that the petition is not maintainable at law and facts on record.
- ax. It is stated that the respondent further stated that it being a government company, adopts a uniform policy on coal pricing across all GENCOs, including STPP. The respondent averred that any differential treatment between GENCOs will be hit by Article 14 of the Constitution of India.
- ay. It is stated that the petitioners have already submitted that the price notifications issued by the respondent may come under the change in law but the additional premium 20%/30% being charged by the respondent for coal supplied to STPP under bridge linkage do not come under change in law, since the price notifications issued by the respondent do not publish coal prices applicable for bridge linkage customers.
- az. It is stated that the respondent is relying on the terms of PPA that "*Coal Price shall be as per the decisions of SCCL marketing department*" for binding the petitioners on STPP to pay price of coal as is being decided by the marketing department of the respondent is misleading, since the Commission had already deleted the annexure-IV of the PPA, which contained the aforesaid condition that the marketing department's decision of the respondent on coal pricing, vide Commission's order dated 22.10.2021 in O.P.No.8 of 2016.



- ba. It is stated that the respondent is comparing with CIL, which is a coal supplying company owned by GoI and CIL has no other business. Whereas SCCL being a coal company as well as a power generator, under the PPA with petitioners is also bound by the Commission's tariff regulations, which override the PPA provisions.
- bb. It is stated that the respondent since performing dual functions and STPP having no legal identity, is obligated to supply coal to STPP at notified basic prices of coal in terms of CERC Tariff Regulations, 2019 since the respondent has failed to operationalize Naini captive block even after 8 years of allotment and the respondent should not be permitted to enrich at the cost of petitioners by charging additional pricing under the bridge linkage scheme.
- bc. It is stated that the respondent is trying to invoke the Article 14 of the Constitution of India, which mandates the principles of equality among equals. However, the very concept of equality requires providing differentiation for persons not situated equally. Apart from being a coal supplier, the respondent is also a generator, unlike CIL and is bound by the tariff regulations issued by the Commission and can adopt CERC tariff regulations to the extent of requirement.
- bd. It is stated that petitioner allowed the additional premium on notified prices of coal on STPP for almost 7 years despite burdensome coal pricing, in anticipation of cheaper coal to be produced from Naini captive mine but after having noted the meagre progress of Naini captive block at the rate of 30% even after 7 years of CoD of the STPP project, would not like to continue to bear the burden of additional charging of coal being supplied to STPP by the respondent under the bridge linkage, hence filed the present petition seeking intervention of the Commission under its regulatory powers. The respondent having got benefitted for considerable period under the bridge linkage scheme with additional pricing of coal, cannot now be permitted to invoke Article 14, since it is against the principle under Section 61(d) of the Act, 2003 that is safeguarding of consumers' interest.
- be. It is stated that CIL is charging bridge linkage coal with additional premium of flat 40% on the notified price of coal to all its bridge linkage customers.



- bf. It is stated that a memo showing MCL (CIL subsidiary) charging additional premium of 40% flat premium for bridge linkage consumers was submitted during hearing on 21.08.2023 before the Commission.
- bg. It is stated that the respondent has tried to mislead the Commission by averring that MCL, a subsidiary of CIL is charging additional 40% premium flat on the notified price of coal for bridge linkage customers, whereas it is charging only 20% premium on the notified price of coal, by which SCCL is trying to make believe the Commission that it is charging lesser premium on the notified coal price, thereby lesser burden is imposed on petitioners.
- bi. It is stated that the respondent has simply stated about MCL's 40% flat premium on notified coal price which is an absolute figure, without mentioning the CIL/MCL notified coal prices for similar grades of coal for power sector. The petitioners submit the MCL/CIL's notified coal prices vis-à-vis the SCCL's notified coal prices for G-9 to G-12 grade of power sector which are as below:

**MCL/CIL Prices Notification dated 31.05.2023**

Grade of Coal (a)	MCL/CIL Notified Basic Price for Power Sector (Regulated Sector) Rs. per Ton (b)	Premium levied by MCL/CIL @ 40% flat (c) = (b) x 40%	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector (d) = (b) + (c)
G-9	1240.00	496.00	Rs.1736.00
G-10	1120.00	448.00	Rs.1568.00
G-11	965.00	386.00	Rs.1351.00
G-12	896.00	358.40	Rs.1254.40

**SCCL's Prices Notification dated 29.04.2023**

Grade of Coal	SCCL Notified Basic Price for Power Sector (Regulated Factor) Rs. Per Ton	Premium levied by SCCL @ 20% flat	Premium levied by SCCL @ 30% flat	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector @ 20% Premium	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector @ 30% premium
G-9	3050.00	610/-	915/-	Rs.3660/-	Rs.3965/-
G-10	2910.00	582/-	873/-	Rs.3492/-	Rs.3783/-

Grade of Coal	SCCL Notified Basic Price for Power Sector (Regulated Factor) Rs. Per Ton	Premium levied by SCCL @ 20% flat	Premium levied by SCCL @ 30% flat	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector @ 20% Premium	Total Price of Coal Applicable to Bridge Linkage Customers of Power Sector @ 30% premium
G-11	2420.00	484/-	726/-	Rs.2904/-	Rs.3146/-
G-12	2150.00	430/-	645/-	Rs.2580/-	Rs.2795/-

- bj. It is stated that as could be seen, the CIL/MCL notified basic prices are cheaper vis-à-vis the respondent's notified coal prices by Rs.1800 to Rs.1254 per metric ton and even after adding 40% flat premium on MCL's notified prices, the CIL/MCL prices for bridge linkage customers are still cheaper whereas the respondent's basic notified prices for respective coal grades are exorbitant and additional 20% and 30% premium on the notified prices would be still higher and burdensome on petitioners and hence, the claim of the respondent is misleading and not in consonance with Section 61(d) of the Act, 2003 that is safeguarding consumers' interest, hence not tenable and not sustainable.
- bk. It is stated that the respondent is awaiting the handing over of forest land by the state of Odisha and efforts are on at the highest level to get forest land from Government of Odisha. It is stated that as and when forest land is handed over, grounding of mine and coal production will start. It is stated that there is no default on the part of the respondent, which fact is established by the extension of bridge linkage by the MoC.
- bl. It is stated that the Commission may see the submission of the respondent in paragraph 4 of the written submissions, which is extracted below:
- Para-4 (SCCL Written Submissions)*  
*"... it is, infact, a force majeure, not attributable to any party to PPA.*  
*... "*
- bm. It is stated that since the respondent itself has admitted that the delay in bringing Naini Block to operation is not attributable to any party to PPA, which means that delay is also not attributable to petitioners. Therefore, the respondent is not



justified in penalizing petitioners with additional 20% premium on notified basic coal price for corresponding grade of coal on STPP, as petitioners are in no way connected to this abnormal delay. Based on this the respondent's averment alone, the Commission can regulate the pricing of coal supplied to STPP by the respondent under the bridge linkage scheme and dispense the additional pricing being charged by the respondent.

- bn. It is stated that the other justification given by the respondent that extension of bridge linkage to the respondent's STPP established the fact that there is no default on the part of the respondent, also lacks merit, since extension of bridge linkage given to the respondent/STPP is only to facilitate the coal supply to the respondent/STPP, till the coal production is commenced from Naini coal block, otherwise the the respondent's STPP project would become stranded asset. This extension of bridge linkage by the SLC (LT) ought not to be seen as an endorsement of additional pricing of coal by the respondent.
- bo. It is stated that further the respondent itself has committed that forest land was not handed over to it by the Government of Odisha, inspite of efforts put in by highest level. As already submitted the progress of Naini coal block as per MoS&PI is 30% as on date even after 8 years of captive mine allotment to the respondent. At this pace of works progress, Naini coal block operationalization cannot be achieved even in next 5 years. Till such time, SCCL appears to enrich itself at the cost of petitioners by continuing the additional levy of 20%/30% on the notified basic price for power sector, which is not permissible in terms of the Act, 2003.
- bp. It is stated that the respondent has been actively pursuing the issue of coal allocation to STPP from the respondent mines as per the directions of the Commission. It is stated that the respondent has already formulated a proposal for swapping of coal with TANGEDCO/NTPC but kept in abeyance as the coal production from Naini coal block is yet to start. It is stated that on acceptance of the said proposal by TANGEDCO/NTPC, the application for swapping arrangement will be submitted to MoC for their approval.

- bq. It is stated that though the respondent claims to have been actively pursuing the issue of coal allocation to STPP from the respondent's mines, it has not resulted in any tangible benefit/relief to STPP.
- br. It is stated that the respondent appears to have been comfortable with the bridge linkage, since it can sell coal to STPP at an additional premium of 20%/30%, so long as the bridge linkage is continued and it can also generate power upto the normative level, as approved by the Commission in the multi-year tariff order and achieve highest PLF. Thus, the respondent is ensuring profitability both in coal business and power business, which is nothing but profiteering and the respondent should not be allowed to continue with the additional pricing under the bridge linkage scheme.
- bs. It is stated that the CERC regulation enables the CERC to decide adhoc price after COD of coal mine and before deciding input price. It is stated that the scope of subjects for issuing regulations by CERC is different to that of the State Commissions. It is stated that the input price of coal for captive coal is in exclusive jurisdiction of CERC, but not to the Commission.
- bt. It is stated that even though Tadicherla coal block is allotted to TSGENCO and though COD of said mine is over, TSGENCO never sought for decision of input price of such coal, with the Commission. It is stated that respondent averred that the reason why TSGENCO not sought for Input price computation of Tadicherla mine, is obvious that the Commission has no jurisdiction.
- bu. It is stated that the respondent contended that the Commission has no jurisdiction to decide the Input price of Naini captive coal mine by citing the case of TSGENCO, which was allotted Tadicherla captive coal block, but claimed that TSGENCO never sought decision of the Commission for Tadicherla coal, hence SCCL inferred that this Commission has no jurisdiction. It is stated that petitioners would like to state that the counter filed by the respondent in the present petition at paragraph 20 as extracted below:
- "... .. It is sated that coal production from NAINI Coal block is yet to be started. Once the production is commenced a Petition for determination input price of Coal will be filed. ... .."*
- bv. It is stated that as could be seen from the above, the respondent is blowing hot and cold simultaneously, which is contrary to the settled law that a party cannot



be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands Reference may be paid to 2018 (10) SCC 707 in the matter of SUZUKI Parasrampur Private Limited vs. Official Liquidator of Mahendra Petrochemicals Limited and Others.

- bw. It is stated that on one side, the respondent is averring that the Commission is not having jurisdiction but on the other side it is submitting that it would file a petition before the Commission for determination of input price of coal once production is commenced at Naini block. The respondent is contradicting its own submissions, which is not tenable in law.
- bx. It is stated that since electricity is a concurrent subject of central government and state governments, the generation tariff regulations are being issued by CERC and other state ERCs under Sections 178 and 181 of the Act, 2003 respectively. However, Section 61(a) of the Act, 2003 mandated that state ERCS shall be guided by the principles and methodologies specified by the CERC for determination of tariff applicable to generating companies and transmission licensees.
- by. It is stated that in view of the aforesaid legal position, the Commission is also empowered to determine the tariff of generators, which include energy charge rate, in terms of its tariff regulations. Since, the Regulation No.1 of 2019 have not provided for computation of coal price from integrated captive mine, therefore, petitioners are urging the Commission to adopt the relevant CERC tariff regulations, 2019 for applying the methodology in determination of input price of coal from captive mine. It is stated that the statement of the respondent is misconceived on the legal position.
- by. It is stated that the CERC Tariff Regulations, 2019 regulates the primary fuel cost, coal cost for computation of ECR by stipulating the price of coal to be considered in the ECR formula, before CoD and after CoD of the integrated coal mine, such as adopting the notified basic coal price before CoD of the captive mine and after CoD of mine, to consider the actual price of coal from captive mine as determined by the CERC. No other price of coal has to be considered in the ECR computation.

- bz. It is stated that since this CERC methodology, adoption of the notified basic price of coal till the CoD of the integrated mine in the ECR formula, is not favouring the respondent for considering the bridge linkage coal price in the ECR computation, obviously the respondent is opposing the same, which is not tenable in law.
- ca. It is stated that the submission regarding the Tadicherla coal mine, since the Regulation No.1 of 2019 has not provided for computation of input price of coal from Integrated captive mine, therefore, TSGENCO might not have sought for input price determination in respect of Tadicherla coal block but not the jurisdictional aspect, as alleged by the respondent. The Commission can still direct TSGENCO, being a regulated entity under long term PPAs signed with the petitioners, to submit the details of Tadicherla coal block under its regulatory powers u/s 86(1)(b) of the Act, 2003.
- cb. It is stated that the respondent's contention that only CERC has jurisdiction to compute the input price of coal from Naini captive coal block is a misconception. The respondent might be under the impression that since the Naini coal block is located in Odisha outside the State of Telangana, therefore, the Commission may not have jurisdiction, to decide the input price of coal from captive coal mine.
- cc. It is stated that in this regard, the MoC, GoI, had allotted captive coal mines to central and state PSUs for achieving twin objectives, that is firstly to augment power generation in the country, Secondly, to generate power at cheaper prices, since the price of Naini captive coal produced will be cheaper, as compared to the coal supplied by the respondent/CIL, especially the respondent's notified prices of coal grades.
- cd. It is stated that since, the Naini coal block was allotted to the respondent's STPP project, STPP is designated specified end use plant (SEP), whereunder the coal produced from Naini coal block is transferred from state of Odisha to State of Telangana and consumed by STPP project. As the coal produced from Naini coal block would be consumed by STPP project in Telangana and tariff for the power delivered by STPP is being decided by the Commission, therefore even Orissa State ERC will not have jurisdiction, much less CERC, since there is no



Interstate power transmission from state of Odisha to State of Telangana and STPP is generating power in Telangana and petitioners are totally consuming power generated in the State of Telangana only. As such, the Commission will have jurisdiction to decide the input price of coal transferred from Naini coal block to STPP.

ce. It is stated that in the light of the above, there is no valid justification given by the respondent in its written submissions. The petitioners pray the Commission to allow the petition and issue necessary directions to the respondent as prayed for.

8. Before advertng to the rival contentions, it is appropriate to notice the provisions of the PPA. The appropriate provisions of the PPA are extracted below:

"4.1 Terms and Conditions

4.1.1 The tariff for the electricity supplied from the Project would be as determined under the tariff regulations of TSERC and tariff order thereof from time to time.

4.1.2 Tariff for sale of electricity from the Project would be based on prevailing TSERC Regulations time to time.

...

6.1 Billing

6.1.1 All charges for supply of electricity under this agreement shall be billed by SCCL as determined time to time by the TSERC and of any other Competent Authority and the same shall be paid by TSSSPDCL and TSNPDCL in accordance with the following provisions.

6.1.2 SCCL shall present the bills for electricity supplied to TSSPDCL and TSNPDCL from the project for the previous month based on Energy Account issued by Telangana State Load Dispatch Centre or any other competent authority as per TSERC regulations applicable from time to time.

...

8.1 Change in law: In the event of any new law, regulation or tax or in the event of any change, amendment, modification or repeal of any law, regulation or tax (including without limitation, any withholding taxes, cess, duties, environmental taxes, sales taxes, property taxes, import fees or assessments) of any Government Authority after the date of effectiveness of this agreement, detrimentally or beneficially affects SCCL, then SCCL shall send a notice in writing to TSSSPDCL and TSNPDCL regarding such an event and both parties shall meet and endeavour to agree to an amendment to this agreement to pass o0n the impact of such an event to TSSPDCL and TSNPCL, which shall be settled through supplementary invoice. If within 90 (ninety) days after such notification, the parties are unable to reach agreement on such amendment, or in the event that an agreement to amend has been

reached but no amendment has been executed within 30 (thirty) days after reach of such agreement to amend, either party shall have the right to commence the dispute resolution procedures set forth in Article 12 to determine the appropriate amendment to this agreement.

.....

#### Annexure – IV

1. ....

2. Cost of Coal: Total Cost of Coal\* delivered at each Thermal Power Station shall constitute the price paid to the coal supplier, all incidental duties and taxes paid to the State or Central Government and cost of optional transportation.

\* Cost of coal means at which Coal is transported and priced for respective grades as per SCCL's Coal Marketing Department.

.....”

The above provisions have bearing in deciding the matter upon the prayers of the petitioners.

9. The core issue based in the present petition is with regard to determination coal price by the respondent in the petition as also collecting additional charges over and above the coal price at 20% or 30% depending on the quantum of coal supplied to the generator. The PPA was originally signed in the year 2016, consent was sought from the Commission on 27.01.2016. Public consultation process was initiated on 28.03.2016. Ultimately after thorough examination, an order according consent has been passed on 22.10.2021 suggesting some amendments to the PPA. The clauses relating to amendments have been identified at Table – 1 of paragraph - 13 in the order dated 22.10.2021.

10. It is appropriate to state here that the clauses referred above did not undergo amendment except for the clauses, which are extracted below along with amendments.

“Annexure-IV	Computation of delivered cost of coal-Thermal Plant	To be deleted”
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This clause is the crux of the case and it has been deleted by the Commission, based on which the respondent is claiming the charges.

11. The petitioners have entered into PPA to avail power supply from the project established by the respondent under STPP for a capacity 2x600 MW. The said project became operational in FY 2016-17. The respondent had obtained coal linkage for undertaking generation of power from the project. Though, it itself is coal company, necessary permission had been obtained from MoC. The MoC had allotted Naini coal



block to the respondent and since it is a captive mine and has to be established, bridge linkage of coal has been provided with coal supply from the respondent's mines itself.

12. The coal supply has been allowed under the policy of the GoI providing bridge linkage till the captive mine for coal production becomes operational for supply of coal. For this purpose, a notification had been issued in office memorandum No.23021/3/2015-CPD of MoC dated 08.02.2016. It is appropriate to notice the conditions set out in the policy for better appreciation of the matter.

- "(i) 'Bridge Linkage' shall act like a short-term linkage to bridge the gap between requirement of coal of a specified end use plant of Central and State PSUs and the start of production from the linked allotted coal mine/block.*
- (ii) 'Bridge Linkage' may be granted for a fixed period of three years from the date of allotment of coal mine/block. No further extension thereafter will be entertained under normal circumstances. The shorter duration of Bridge Linkage shall act as an incentive for allottees to expedite production from coal mines/blocks.*
- (iii) Only Schedule-III coal mines and coal blocks allotted under MMDR Act will be considered. Since mines included in Schedule-II of the CM(SP) Act, 2015 are "producing" or "ready to produce" coal mines, no 'Bridge Linkage' shall be granted to specified EUPs of such mines under any circumstances.*
- (iv) Specified end use plants which have been allotted coal mines/blocks under 'Allotment' route to Central and State PSUs only shall be eligible for grant of 'Bridge Linkage'.*
- (v) No 'Bridge Linkage' shall be provided to specified end use plants of private sector which have won coal mines/blocks after bidding under auction route since it would amount to change in bid conditions of coal mines/blocks and there was no such condition to provide tapering linkages in bidding documents of coal mines/blocks auctioned.*
- (vi) 'Bridge linkage' shall come to an end after a period of three years from the date of allotment of coal mine/block. (It is presumed that as per the present situation, speedier clearances will result in expeditious commencement of production from coal mines/blocks within the stipulated timeframe).*
- (vii) As there are constraints in availability of coal and in view of negative coal balance, CIL/SCCL shall endeavour to supply 75% of 'Agreed Requirement' of coal where 'Agreed Requirement' is calculated at 90% of normative requirement of the plant at 85% PLF. There shall be no minimum assured quantity. Coal will be supplied on "best effort basis" after meeting existing contractual obligations of coal companies.*
- (viii) There shall be no penalty for supply of coal below Agreed Requirement.*
- (ix) Fuel Supply Agreement (FSA) shall not be signed between the EUP and coal company. The coal will be supplied on best effort MoU basis.*

PROCEDURE:

- (i) Every plant desirous of availing 'Bridge Linkage' shall be required to apply to Ministry of Coal (MoC) in the prescribed format (enclosed) along with prescribed processing fee. The prescribed application fee should be paid through a Demand Draft amounting to Rs. 2000/- (Two thousand only) per Mega Watt, subject to a maximum of Rs. 5,00,000/- (Rs. Five Lakh only), in favour of "Pay and Accounts Officer, Ministry of Coal" payable at New Delhi. The application fees/processing fees once remitted and deposited would be "Non Refundable", whether the application/request is accepted or rejected by the Competent Authority for grant of 'Bridge Linkage'. If a particular End Use Plant has already submitted an application with processing fee in the Ministry of Coal for grant of normal coal linkage in respect of that particular unit for which bridge linkage is requested, then this unit would not be required to pay processing fee again. It will simply apply in the prescribed format to Ministry of Coal without payment of application fee. After receipt of application, the existing procedure of getting reports/recommendation from concerned Ministries etc. in each individual case, similar to the normal procedure for authorizing LoA, would be followed by the Ministry of Coal.
- (ii) After receipt of application for 'Bridge Linkage' and before sending it to the concerned Ministry, a certification shall be obtained from CA-III Section of MoC regarding allotment of coal mine/block to the applicant and specified end use plants (EUPs) thereof.
- (iii) On receipt of recommendation from the concerned Ministry, the request shall be placed before the Standing Linkage Committee (Long Term) [(SLC(LT))] meeting for each individual case. The recommendation of SLC (LT) shall be submitted for approval by the Competent Authority. Thereafter, CIL/SCCL shall be intimated accordingly who shall decide the grade, source, etc. The quantification shall be done by Coal Controller Organisation (CCO) and informed to CIL/SCCL and applicant allottee company.
- (iv) Coal Controller shall be responsible for quantification and regularization of 'Bridge Linkage' in consultation with CIL/SCCL. Based on approval by SLC (LT), Ministry of Coal shall intimate details of the approved schedule to CIL/SCCL, which shall be duly incorporated in the MoU to be concluded between concerned coal company and allottee company."

There is nothing in the office memorandum of MoC, which would enable the coal company to notify the schedule of tariff for the coal supply particularly in respect of bridge linkage. The coal companies may have authority otherwise under the relevant Acts and Rules on coal to notify the price for the sale of coal. It is not clear from the record as to whether the respondent has been authorized to notify the tariff, even for bridge linkage coal supplied to the end use plants this aspect is considered elsewhere in this order.



13. The Commission notices that prior to providing bridge linkage coal supply, the MoC, Gol by order dated 26.12.2014 in Memorandum bearing No.13016/9/2014-CA-3 had specified the 'Methodology for fixing Floor/Reserve Price for Auction and Allotment of Coal Mines/Blocks'. The relevant clause is extracted below:

"1. For generating capacity having cost plus PPAs or generation capacity to be contracted through cost plus PPAs in future:- For the purpose of determining the fuel cost for cost plus PPAs, the Appropriate Commission will allow bid price of coal along with subsequent escalation as provided in coal block bid document as being equivalent to the Run of Mine (ROM) cost of coal together with other allowable expenses and levies, provided that it shall not lead to higher energy charge throughout the tenure of PPA than that which would have been obtained as per the terms and conditions of the existing PPA."

This methodology may be applicable in the present case.

14. It is noticed that the pleadings set out by the parties would show that the respondent had, upon obtaining bridge linkage of coal, been determining the coal price in accordance with the authority vested in it. It is also entering into MoU with its unit undertaking generation of power. In the said understanding, it appears that the respondent had factored in the coal price that is to be paid by the generating unit to the respondent for the supply of coal under bridge linkage formula. In this context, it is noticed that the respondent had entered MoU with its generating unit on 01.11.2017 for the period from 01.11.2017 to 31.03.2020 towards supply of coal under the bridge linkage scheme. It provided for the tariff as below:

- "3.1 For G5 to G8 grades coal shall be at notified price of power sector.
- 3.2 Washery grade G9 coal shall be at notified price of power sector as per price notification.
- 3.3 For G9 to G15 grades, the price shall be notified basic price plus 20% of the notified basic price for power sector.
- 3.4 Coal supplied from cost plus mines/blended coal shall be at notified price of the mine/CHP as the case may be, for power sector.
- 3.5 All the above prices shall be as per SCCL price notification.

... ..

#### Annexure

#### PRICING STRUCTURE FOR THE FY 2018-19

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 75% Agreed Quantity	20% over notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Up to 75%	Notified Price of the Mine/Blended/CHP/washed coal or 20% over notified

Sl. No.	Type of customer	Mine	Quantity	Price
			Agreed Quantity	basic price of the power whichever is higher
		Normal	Beyond 75% Agreed Quantity	20% Over and above notified basic Price of Non-Power Sector.
		Cost Plus Mine/Blended CHP/Washery	Beyond 75% Agreed Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the non-power whichever is higher
2	Non - Bridge Linkage/MOU customer	Normal	Upto MOU Quantity	20% over notified basic price of non-power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Upto MOU Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the non-power whichever is higher

The respondent further extended the understanding for the period from 01.04.2020 to 31.03.2021 and provided in the MoU as below:

"3.0 The purchaser agrees to pay the prices for supply of coal as per the price structure enclosed as annexure. The notified basic prices of power & non-power are as per SCCL price notification.

**PRICING STRUCTURE FOR THE FY 2020-21**

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 100% Agreed Quantity	20% over notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Up to 100% Agreed Quantity	Notified basic Price of the Mine/Blended/CHP/washed coal or 20% over notified basic price of the power whichever is higher
		Normal	Beyond 100% Agreed Quantity	20% Over and above notified basic Price of Non-Power Sector.
		Cost Plus Mine/Blended CHP/Washery	Beyond 100% Agreed Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the non-power whichever is higher
2	Non - Bridge Linkage/MOU customer	Normal	Upto MOU Quantity	20% over notified basic price of non-power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Upto MOU Quantity	Notified basic Price of the Mine/Blended CHP/washed coal or 20% over notified basic price of the same grade of raw coal of non-power sector whichever is higher



However, there is an amendment to the above fixation as shown in the table below:

**"PRICING STRUCTURE FOR COAL SUPPLIES TO STTP DURING FY 2020-21 W. E. F. 01.06.2020**

Sl. No.	Total coal quantity drawn by STTP	Mine	Price
1	Upto 4.52 MT	Normal	**Entire quantity at 10% over notified basic price of power sector For G 15 grade it shall be notified basic price of mine/CHP of power sector.
		Cost Plus Mine/Blended CHP/Washery	**Entire quantity at notified price of the mine/blended CHP/washed coal or 10% over the notified basic price of the same grade of raw coal of power sector whichever is higher. For G 15 grade it shall be notified basic price of mine/CHP of power sector.
2	Beyond 4.52 MT	Normal	**Entire quantity at notified basic price of power
		Cost Plus Mine/Blended CHP/Washery	

\*Total quantity is reckoned from 01.04.2020 to 31.03.2021

\*\*Entire quantity is reckoned from 01.06.2020 to 31.03.2021

Note Billing shall be done at notified basic price of power with effect from 01.06.2020 and reconciliation will be done at the end of the year against the total supplied/drawn quantity of coal as per the pricing terms mentioned above.

The other terms and conditions of MoU dated 30.03.2020 remain unchanged

The respondent further extended the understanding for the period from 01.04.2021 to 31.03.2024 and provided in the MoU as below:

"3.0 The purchaser agrees to pay the price for supply of coal as per the price structure enclosed as annexure – I. The notified basic prices of power & non-power are as per SCCL price notification.

**PRICING STRUCTURE FOR STTP IN THE FY 2021-22**

Type of customer	Mine	Price
Bridge Linkage/MoU	Normal	10% over notified basic price of power for all grades of coal
	Cost plus Mine/Blended CHPO/Wastery	Notified basic price of the Mine/Blended/CHP/Washed coal or 10% over notified basic price of power whichever is higher

15. It is not clear from the record as to and under what authority, the respondent had been fixing the tariff for the coal supply made by it to its generating unit. It is relevant to state that the proceedings notified by the MoC on coal linkage did not specify the method or the factors which need to be considered for such determination

and if so, it had discretion to factor any premium charges. Even the MoU on a cursory reading would not divulge any of the aspects in this regard. The respondent appears to have overstepped its authority in determination of the tariff and not only fixed the tariff for the coal supplied but also added the premium to be paid for supply of such coal.

16. The petitioners on their part having come across the determination of the tariff and also levy of premium ought to have raised an issue at first instance with regard to determination of tariff as also the premium provided by the coal company being the respondent. Having suffered imposition of premium over tariff for the period FY 2017-18 to FY 2020-21, now the petitioner has turned to the Commission when the respondent sought to levy premium on the original quantity and extended quantity of coal also for the period FY 2021-22 onwards. Nothing prevented the petitioners to agitate the issue before the Commission even prior to the said period also.

17. A strange argument has been set forth that the petitioners were awaiting operationalization of the Naini coal block allotted to the respondent for power generation and thereby, the generator would avail cheaper coal by producing the same from the said captive mine. But, according to the pleadings set out by the parties, the said captive coal mine did not come into operation even till the time the matter was heard by the Commission. It is noticed that the SLC (LT) of MoC had twice extended the bridge linkage of coal to the respondent's generating unit for the reason that the captive coal mine has not become operational. The petitioners failed to recognize or take remedial measures forth right upon the knowledge of non-operation of the coal mine within the initial stipulated period wherein it has been specifically mentioned at clause 2 of office memorandum dated 08.02.2016 as extracted above, '*for a fixed period of three years from the date of allotment of coal mine/block*'. That being so, also the petitioners were not prevented from raising their concern as to the fuel price aspect for generation.

18. Another argument has been made by the petitioners by placing material on record that the tariff determined by the respondent towards coal supplies is excessive compared to the other coal companies in the country. The petitioners were not prudent enough to agitate this aspect at the first instance as this information is accessible as and when the respective companies have notified the coal price in terms of the



authority vested in them under the relevant Act and rules. Having not done so, turning to the Commission at this point of time and basing their argument that the coal price is excessive as determined by the respondent and further adding premium to it would amount to unjust enrichment at their cost and that too after it has happened for a period of five years prior to April 2023, has to be deprecated. Thus, the petitioners could have only claimed relief of levying premium prospectively and not otherwise.

19. While placing a gamut of correspondence, the parties have sought to rely upon the judgments of the Hon'ble Supreme Court as well as regulations of the CERC. Insofar as applicability of regulations of CERC, the Commission is of the firm opinion the same are to be applied only to the extent where the regulations made by the Commission itself is silent or does not provide for the methodologies/parameters to be considered. The petitioners have extensively relied upon Section 61 particularly clause (d) of the Act, 2003. Section 61 itself has provided that State Commission shall be guided by the principles and methodologies enumerated therein. The words 'guided by' had been interpreted by the Hon'ble High Court and the Hon'ble ATE to mean a non-binding advice, which the State Commission may or may not follow. The interpretation set out in this regard need not be elaborated for the reason that it has no bearing on the prayer sought in the petition.

20. Reference has been made to a judgment rendered by the Hon'ble Supreme Court in Civil Appeal Nos.5881-5882 of 2016 in the matter of '*All India Power Engineer Federation and others. Vs. Sasan Power Limited and others*'. The point raised for consideration is that the movement the tariff gets affected, the consumer interest comes in and public interest gets affected. This observation is clearly acceptable in this case as there is increase in tariff consequent upon increase in variable cost in the form of coal supply cost by addition of premium to the same. This contention has been accepted by the Hon'ble Supreme Court in the above said judgment. Fixing of higher tariff for coal supplied would naturally impact the end tariff payable by the consumer and thereby the consumer interest gets affected. Thus, the petitioners have made out a case in support of their claim that higher coal cost is affecting them and through them the end consumers.

21. The respondent sought to draw attention of the Commission to the judgment of the Hon'ble Supreme Court in Civil Appeal No.2908 of 2022 in the matter of '*Uttar*

*Haryana Bijli Vitran Nigam Limited and another Vs. Adani Power (Mundra) Limited and another*'. The central issue that is relied upon in this judgment is with regard to inter plant transfer of coal permitted by CIL would amount to change in law. The Hon'ble Supreme Court was considering the action of the CIL in allowing inter plant transfer of coal supplies from one generating unit to another generating unit of the same company. It has held as follows:

"23. It will be relevant to refer to the definition of "Law" as defined under the PPA, which reads thus:

*"Law means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code; rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission."*

24. It can, thus, clearly be seen that the definition of "Law" is wide enough to include all rules, regulations, orders, notifications by the Governmental instrumentalities.

34. We, therefore, find that the present appeal deserves to be partly allowed. Though the issue with regard to allowing 'Change in Law' compensation on the basis of ACQ – actual 18 supply deserves to be upheld, the issue with regard to IPT not being 'Change in Law' deserves to be set aside.

35. In the result, we partly allow the appeal and pass the following order:

(i) The finding of the APTEL to the effect that the communication dated 19<sup>th</sup> June 2013 providing for IPT does not amount to 'Change in Law' is set aside;

(ii) We hold that IPT amounts to 'Change in Law'."

Though the respondent has placed reliance on this judgment, this judgment was rendered in the context of there being a specific definition of 'law' and that the proceeding issued by CIL would, therefore, constitute 'change in law'. Similar perspective is not found in the PPA between the petitioners and respondent. What all it provided for is 'change in law' as extracted above. Therefore, this judgment is of no benefit to the respondent.

22. The petitioners have referred to a judgment rendered by the Hon'ble Supreme Court in Civil No.1843 of 2021 in the matter of '*Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulatory Commission and others*'. The core issue that had been decided by the Hon'ble Supreme Court is that



the procurer is liable for payment of LPS, which had arisen due to the action of banking regulator that is Reserve Bank of India, changing the base rate system to marginal cost of funds based lending rate. The Hon'ble Supreme Court, having examined the entire case law, had concluded as below:

- “ ... ..
158. The questions of law raised by Mr. Vikas Singh, which have been set forth hereinabove in Paragraph 15, would not have a material bearing on the decision in this appeal, for the reasons discussed hereinafter.
159. The only issue in this appeal is, whether the change applicable in respect of interest charged by banks and financial institutions from the Prime Lending Rate to Base Rate and then to MCLR amounts to change in law in terms of the Power Purchase Agreement, and if so, whether there is any substantial question of law involved in this appeal, as argued by Mr. Singh, on behalf of the Appellant. It is not for this Court 36 (1996) 6 SCC 166 81 to reanalyze evidence adduced before the forums below or to sit in appeal over concurrent findings of facts.
160. There can be no doubt that a notification issued by the Reserve Bank of India constitutes law. A Reserve Bank of India notification which alters, modifies, cancels or replaces an earlier notification would tantamount to a change in law. However the notification relating to alteration of the lending rates chargeable by banks and financial institutions are not laws which relate to the Power Purchase Agreements in question, and therefore do not attract, as the case may be, Article 13 of the Stage 1 Agreements or Article 10 of the Stage 2 Agreements.
161. The RBI circulars/guidelines referred to above are admittedly instructions issued to banks and financial institutions and are not applicable to the Appellant or to the Respondent-Power Generating Companies, who are engaged in the business of production, sale/purchase and/or distribution of electricity and not of advancing loans. Moreover, SBAR as defined in the Power Purchase Agreements is admittedly not linked to any RBI guidelines or circulars. The guidelines/circulars are thus not relevant to the issues involved in this appeal.
162. As rightly argued by the counsels appearing for the Power Generating Companies, the RBI circulars/guidelines to banks, advising the banks to follow certain norms, while setting their benchmark reference rates for loans, and the amendments thereto, have no legal consequence on the contract between the parties. This has been correctly appreciated by both the forums below:
- ... ..
206. ... .. Moreover, State Regulatory Commissions exercise continuous regulatory supervision as affirmed by this Court in *All India Power Engineering Federation & Ors. v. Sasan Power Limited & Others*, cited by Mr. Mukerjee.
207. MERC acted within the scope of its power of regulatory supervision in directing the Appellant to make payment of LPS within the time stipulated

*in the order of MERC. The APTEL rightly upheld the direction. In any case, such a direction cannot be interfered with in exercise of powers under Section 125 of the Electricity Act which corresponds to the power of Second Appeal under Section 100 of the CPC, since the sine qua non for entertaining an appeal is the existence of a substantial question of law."*

An inference can be drawn from the findings of the Hon'ble Supreme Court that notifications/circulars issued by the competent authorities without reference to any statutory power would not constitute a binding direction and thereby, would not read into the PPA. In the instant case also, the tariff is payable as agreed by the parties and approved by the Commission, which is incorporated in the PPA. Nothing more can be read into such arrangement beyond what is accepted by the parties. Therefore, the action of the respondent in determining not only the coal price but also including premium to the said price is beyond the agreement. As such, the petitioners have rightly pointed out that the respondent is acting beyond the agreed terms of the PPA. This is more so in the context of the amendment made to the relevant annexure in the PPA by the Commission.

23. The petitioners have also relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.10322 of 2018 in the matter of '*Suzuki Parasrampur Private Limited Vs. The Official Liquidator of Mahendra Petrochemicals Limited (In Liquidation) and others*'. The said case arises under SARFAESI Act, 2002. The main finding in the said case is with regard to the shifting of stand by the parties. It has been observed at paragraphs 12 and 13 as extracted below:

- "12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate or reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in *Amar Sing vs. Union of India*, (2011) 7 SCC 69, observing as follows.
- "50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands law. He cannot prevaricate and take inconsistent positions."
13. A similar view was taken in *Joint Action Committee of Air Line Pilots' Assn. of India vs. DG of Civil Aviation*, (2011) 5 SCC 435, observing:
12. The doctrine of election is based on the rule of estoppel - the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity.



*Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."*

Though, this principle would apply to a certain extent insofar as averments of the respondent, the Commission would not wish to dwell into the said aspect for the reason that certain unrelated aspects have been canvassed by the respondent in such a fashion that it would approbate or reprobate according to the line of argument. The main prayer is no way affected by the submissions of the respondent for the moment as the facts and circumstances lay out in the matter. Therefore, the submissions of the petitioners to this extent are not considered appropriate.

24. An issue with regard to determination of input cost relating to the captive coal mine has been addressed by the parties. The contentions set out in the pleadings would establish that the petitioners take the plea that the Commission has authority to determine the input cost of coal, as coal is the fuel and is part of the variable cost to be determined by the Commission. On the other hand, the respondent would state that the Commission has no jurisdiction over determination of input cost as it relates to exclusive jurisdiction of the CERC being an interstate mine in case of the respondent, which is located in the State of Odisha. In support of its contention, it has relied on the regulations notified by the CERC in exercise of power under Section 178 read with Section 61 of the Act, 2003 vide notification dated 7<sup>th</sup> March 2019 and amendment regulation dated 19.02.2021. The original regulation is titled as Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2019 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulation, 2021. Clause 7 of the original regulation relating to sale of infirm power has been further strengthened by insertion of clause 7A, which is as follows.

- "7A. *Supply of Coal or Lignite prior to the Date of Commercial Operation of integrated Mine: The input price for supply of coal or lignite from the integrated mine(s) prior to their date of commercial operation shall be:*
- (a) *In case of coal, the estimated price available in the investment approval or the notified price of Coal India Limited for the corresponding grade of coal supplied to the power sector, whichever is lower:*
- (b) *... .."*

This clause would not state or put any restriction on determination of input price for supply of coal from the integrated mine by the Commission. Also, there is no restriction

on CERC that it should alone determine the input cost of coal in respect of the interstate mine or mine allocated to the central undertakings only. On the other hand, it also does not restrict the State Commissions from undertaking the determination of input cost of coal of an integrated mine. In the instant case, since the respondent as well as its generating unit are located in the State of Telangana only, this Commission would naturally be the authority to decide the input cost of coal. However, this view of the Commission is not final at this point of time as this issue is not germane to the issue that is to be decided in this petition and at this point of time.

25. The Commission is now concerned with the notification of price undertaken by the respondent vide its communication dated 10.06.2023, whereby it had notified the price of different grades of coal for power and nonpower sector. Earlier, the respondent had entered into a supplementary memorandum of understanding to the MoU dated 16.04.2021, wherein the price structure for FY 2023-24 has been indicated, which is as follows:

**"PRICING STRUCTURE FOR THE FY 2023-24**

Sl. No.	Type of customer	Mine	Quantity	Price
1	Bridge Linkage	Normal	Up to 75% Agreed Quantity	20% over and above notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Up to 75% Agreed Quantity	Notified basic price of the Mine/Blended/CHP/washed coal or 20% over and above notified basic price of the power whichever is higher
		Normal	Beyond 75% Agreed Quantity	30% Over and above notified basic Price of Power Sector.
		Cost Plus Mine/Blended CHP/Washery	Beyond 75% Agreed Quantity	Notified basic price of the Mine/Blended CHP/washed coal or 30% over notified basic price of the power whichever is higher
2	Non - Bridge Linkage/MOU customer	Normal	Upto MOU Quantity	30% over and above notified basic price of power for all grades of coal
		Cost Plus Mine/Blended CHP/Washery	Upto MOU Quantity	Notified basic price of the Mine/Blended CHP/washed coal or 30% over and above notified basic price of the same grade of raw coal of power sector whichever is higher

*The other terms and conditions of MoU dt.16.04.2021 remain unchanged."*

This notification by the respondent through the MoU has triggered the present petition. By this notification, the respondent had imposed premium on the coal price under the bridge linkage and non-bridge linkage supply. This notification or the amendment to the MoU does not specify under which rule or regulation the premium is sought to be imposed. At this stage, it may be relevant to notice the minutes of the SLC (LT) dated



10.04.2023, whereby the topic for consideration was 'Additional Agenda Item No.8: Bridge Linkage extension for Singareni Thermal Power Plant 2x600 MW of SCCL'.

The recommendation thereof is extracted below:

*"Recommendations: In view of the recommendation of Ministry of Power and the Nominated Authority, SLC (LT) recommended for extension of Bridge Linkage to Singareni Thermal Power Plant (2x600 MW) of SCCL for a period of 1 year on tapering basis from SCCL. The rate for coal supplies against extended Bridge Linkages would be decided by CII/SCCL."*

As seen from the above, the respondent is having authority to fix the coal price, but it cannot be said that it has also the authority to fix the premium thereof. Thus, the respondent could not have imposed premium of 20% on the original quantum of coal supply and 30% on the quantum beyond the agreed quantity of 75%. It is strange that the respondent being a partly a State Government entity would undertake fleecing of another State Government undertaking in the name of price fixation for the coal supply. The Commission is in agreement with the contention of the petitioners that the respondent is seeking to get itself unjustly enriched in the name of price fixation of the coal supply.

26. Having considered the material on record, the Commission is of the view that pricing of coal is the exclusive fort of the respondent. However, it cannot without exercising the statutory or regulatory mechanism overstep and fix premiums also contrary to the agreement entered by it with the petitioners. There is no such liberty provided to the respondent in the PPA and as such, it cannot go beyond the provisions of the PPA. The petitioners were absolutely right in their submissions that the respondent had the authority being a coal company to determine the tariff for the sale of coal but that itself would not mean that it has liberty to act beyond such authority by seeking to impose premium on the coal price by 20% or 30% as the case may be. To this extent, the petitioners would succeed and respondent is estopped from collecting any premium over the coal price fixed by it.

27. It is also appropriate to state here that the respondent had obtained coal linkage in the form of captive coal mine at Naini in the State of Odisha. The allotment made thereof had required the respondent to establish the coal block within a period of 3 years from the date of allotment. The respondent did not pay any interest in establishing the captive coal mine expeditiously and went before the SLC (LT) seeking

extension of time repeatedly. This attitude of the respondent smacks of ulterior intention to continue the bridge linkage of coal obtained pending establishment of the captive coal mine, which was initially for three years and now continued upto March 2024. The review of the establishment of the coal mine as done by MoSPI, Gol shows a tardy progress according to the submissions of the respondent itself. Thus, in the name of continuing the power project which has achieved COD in FY 2016-17, the respondent is seeking to continue bridge linkage of coal whereby it gets power to determine the coal price according to its whims and fancies and burdening the end consumer. This Commission would invariably interfere with the actions of the respondent to safeguard the interest of all the stakeholders and more particularly the consumers, who will bear the variable cost paid by the petitioners for supply energy upon procurement from the respondent's generating unit, which includes price of coal. On this count also, the petitioners have a case and should succeed.

28. It is the case of the respondent that it has been entering into similar MoUs with other GENCOs as is being done with respect to its unit STTP. Alas the Commission is neither impressed nor would appreciate the same, as the said GENCOs are not before it or the Commission is having jurisdiction over them. This Commission is concerned with the petitioners who are its licensees and have to follow the Act, 2003 and regulation made by it. It is also concerned with stakeholders in the State of Telangana and not elsewhere. Therefore, this argument would not aid in any the respondent in this case.

29. The Commission would be abdicating its responsibility if it does not consider the factual matrix with regard to premium on coal price fixed by the respondent over the years from FY 2017-18 onwards. However, the Commission is conscious of the fact that the petitioners themselves have approached the Commission only in the year 2023 when they have been burdened with 20% and 30% premium over the coal for the agreed quantum as well as additional quantum over and above 75%. Though the respondent did not canvass the aspect of the attitude of the petitioners as to the challenge made now, it is incumbent upon the Commission to take a view as to what relief it could give since the issue had arisen way back in the year FY 2017-18.

30. In these circumstances, the Commission would like to place its displeasure about the petitioners' attitude towards abdicating the responsibility of consumer



interest in whose favour they have to function being the State instrumentalities. From the pleadings, it is clear that the MoU between the respondent and the generating unit thereof had been entered for specific periods as identified above supra and if any grievance was perceived, nothing estopped the petitioners from approaching the Commission for appropriate relief at the first instance. Having knowledge of the actions of the respondent even now, the petitioners have approached the Commission in the year 2023 when MoU for the period FYs 2021-24 had already been entered on 16.04.2021 and they had intimation of the same, which provided for premium against the coal price. Nothing prevented the petitioners from approaching the Commission at the earliest point of time in the year 2017 itself or in the worst case in the year 2020, when the report of the Comptroller and Auditor General on India has been made public.

31. Keeping in view the circumstances and factual matrix and the Commission having the onerous responsibility to balance the interest of all the stakeholders and to ensure (a) the generation, transmission, distribution and supply of electricity are conducted on commercial principles and (b) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner, the Commission has taken an equitable stand in the matter of coal pricing resorted to by the respondent. As such, the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers.

32. For elaborated discussion and extensive understanding of the pleadings and facts, the petition filed by the petitioners stands allowed, without any costs.

**This Order is corrected and signed on this the 1<sup>st</sup> day of April, 2024.**

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

**//CERTIFIED COPY//**



**TELANGANA ELECTRICITY REGULATORY COMMISSION**  
 'Vidyut Niyantran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

R.P.(SR) No.53 of 2024

in

O.P.No.4 of 2024

Dated 28.10.2024

**Present**

Sri. T. Sriranga Rao, Chairman  
 Sri. M. D. Manohar Raju, Member (Technical)  
 Sri. Bandaru Krishnaiah, Member(Finance)

Between.

1. Southern Power Distribution Company of Telangana Limited,  
 Corporate Office, 6-1-50, 1<sup>st</sup> floor, Mint Compound,  
 Hyderabad, Telangana 500 063.
2. Northern Power Distribution Company of Telangana Limited,  
 Corporate Office, Vidyut Bhavan,  
 Nakkalagutta, Warangal 506 001.

...Petitioners

**AND**

M/s Singareni Collieries Company Limited (SCCL),  
 Kothagudem Collieries, Bhadradi Kothagudem District,  
 Telangana 507 101.

...Respondent

The review petition came up for hearing on 09.09.2024. Sri. Mohammad Bande Ali, Law Attaché being the representative of the petitioner along with Sri. H. T. Vivekananda, Superintending Engineer TGPCC, Sri. K. Vijay Kumar Divisional Engineer, TGPCC, Smt. P. Sowjanya, Assistant Divisional Engineer, TGPCC, Smt. B. Sandhya Rani, Assistant Engineer, TGPCC, Smt. N. Malathi, Assistant Divisional Engineer, TGSPDCL, Smt. Swetha, Assistant Engineer and Sri. Eshwardas Divisional Engineer, TGSPDCL being representatives of the petitioner have appeared in the matter. The petition having been heard and having stood over for consideration to this day, the Commission passed the following:



## ORDER

Southern Power Distribution Company of Telangana Limited (TGSPDCL) and Northern Power Distribution Company of Telangana Limited (TGNDPDCL) (together TGDISCOMs or review petitioners) have filed a petition under Section 94(1)(f) of the Electricity Act, 2003 (Act, 2003) read with clause 32 of the TGERC conduct of business Regulations 2015 (Regulation No.2 of 2015) and also read with Order 47 Rule 1 of the Code of Civil Procedure 1908 seeking review of order dated 28.06.2024 in O.P.No.4 of 2024.

- a. It is stated that the review petitioners entered into a power purchase agreement (PPA) with the respondent M/s Singareni Coal Company Limited (SCCL) for supply of power from its 2x600 MW Singareni Thermal Power Project (STTP) for a period of 25 years from the COD of the project that is 02.12.2016 at a tariff decided by the Commission.
- b. It is stated that M/s SCCL was allotted Naini captive coal mine in the state of Orissa in respect of 2x600 MW STTP by the Ministry of Coal (MoC), Government of India (GoI) on 13.08.2015. As per the letter dated 30.08.2016 of MoC and as per minutes of special meeting of the standing linkage committee (SLC) (long term-LT) held on 18.03.2016, Naini coal block was expected to start production of coal from in the month of December 2020.
- c. It is stated in order to facilitate immediate requirement of coal to STTP project, a short-term linkage was granted from M/s SCCL mines under bridge linkage policy for a fixed period of 3 years that is from 13.08.2015 to 12.08.2018. The Commission vide orders dated 19.06.2017 and 28.08.2020 passed directions to M/s SCCL to actively pursue with the MoC for swapping of coal allocation from Naini coal blocks in Odisha to own mines of M/s SCCL which are closer to its generating station so that the cumbersome task of transportation of coal from Odisha and associated losses in quantity and GCV could be mitigated.
- d. It is stated that in pursuance thereof, TGDISCOMs addressed letter to M/s SCCL requesting to pursue with the MoC for swapping of coal allocation from Naini coal blocks in Odisha to own mines of M/s SCCL. M/s SCCL neither commenced the production from its captive coal block nor swapped coal allocation to the mines of M/s SCCL, even after lapse of 3 years. M/s SCCL got bridge linkage coal extension initially till March 2021. Subsequently, M/s SCCL got further extension up to 2024.

- e. It is stated that as a result of which various MoUs came to be entered for supply of bridge linkage coal to STPP from M/s SCCL mines up to 2024 with additional premium of 10% to 30% on notified basic price of coal. Consequently, variable cost/unit increased, which burdened the TGDISCOMs and ultimately the end consumers.
- f. It is stated that the review petitioners filed petition in O.P.No.13 of 2023 before the Commission praying
- "to issue directions to M/s SCCL to charge the Coal at the Notified Basic Price corresponding to the Coal grade, without any additional charge/premium, for the period from FY 2021-22 to till the date of operationalization of Naini Coal Block and later to adopt the CERC Input Price determination methodology, in the interest of end Consumers",*
- g. It is stated that the Commission after hearing the arguments of both parties, allowed O.P.No.13 of 2023 by order dated 01.04.2024. The relevant portion of the order is extracted below:
- "... the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers."*
- h. It is stated that in the month of January in 2024 when the order in O.P.No.13 of 2023 filed by TGDISCOMs was not pronounced since the same was reserved for order, M/s SCCL filed a petition in O.P.No.04 of 2024 on multi year tariff (MYT) approval for the control period FY 2024-25 to FY 2028-29 and true-up for FY 2022-23 matter, taking the premium coal price into consideration instead of notified basic coal price as prayed by TGDISCOMs in O.P.No.13 of 2023. The Commission finally passed order dated 01.04.2024 in O.P.No.13 of 2023, in favour of TGDISCOMS, directing M/s SCCL not to levy premium coal price.
- i. It is stated that the Commission disposed of O.P.No.4 of 2024 by order dated 28.06.2024 approved energy charge rate (ECR), fixed charge taking the premium coal price into consideration instead of notified basic coal price, in spite of the objection raised by the petitioners herein that premium coal price cannot be taken into consideration. Apart from this, R&M expenses (part of



O&M expenses) approved are contradictory to the Commission's earlier orders dated 28.08.2020 and 23.03.2023.

- j. It is stated that by the date of final hearing in O.P.No.4 of 2024 and reservation of the matter for orders, order dated 01.04.2024 in O.P.No.13 of 2023 was not pronounced. The Commission in O.P.No.13 of 2023 has categorically held that M/s SCCL is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of PPA. Hence, the petitioners herein could not cite the order dated 01.04.2024 in O.P.No.13 of 2023 at the time of hearing. It is stated that after disposal of O.P.No.13 of 2023, the petitioners discovered the new and important evidence of prohibiting the M/s SCCL from levying premium on the coal price. Since the said new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner, the same could not be produced before the Commission. Hence, the present review petition is being filed for rectification of error in computation of ECR, interest on working capital and fixed charges in the true-up for FY 2022-23 and also for the control period FY 2024-25 to FY 2028-29 in the order dated 28.06.2024 in O.P.No.04 of 2024 by reviewing the same in line with TGERC order dated 01.04.2024 in O. P. 13 of 2023, apart from this it is also requested for rectification of the error in computation of R&M expenses by reviewing the order dated 28.06.2024 in O.P.No.4 of 2024. The said errors are apparent on the face of record.

2. The review petitioner has stated about the present petition is on the following lines.

- A) **Error in the ECR approved in the true-up for FY 2022-23 and for the control period FY 2024-25 to 2028-29**
- i) It is stated that Commission has dealt with the approval of ECR for FY 2022-23 in paragraph 4.1.52 of the order dated 28.06.2024.
  - ii) The Commission in the aforesaid paragraph stated that Commission has recomputed the ECR for FY 2022-23 based on the details placed by M/s SCCL.
  - iii) It is stated that however, in the petition O.P.No.4 of 2024 filed by M/s SCCL, dated 30.01.2024 before the Commission for true up of aggregate revenue requirement (ARR) for FY 2022-23 and for Multi Year Tariff (MYT) for the control period FY 2024-25 to FY 2028-29, M/s SCCL claimed ECR for FY 2022-23 based on the MOU entered with M/s SCCL wherein additional premium of 20% over and above the notified basic price of coal has been levied. Further, M/s SCCL in the petition O.P.No.4 of 2024, stated that the estimated energy charge for the first year of the

control period FY 2024-25 has been worked out based on coal and oil data for September 2023, October 2023 and November 2023 wherein additional premium of 30% over and above the notified basic price of coal has been levied and the same has been projected for the control period FY 2024-25 to FY 2028-29 also.

- iv) It is stated before the Commission that TGDISCOMs vide their reply dated 14.03.2024, in O.P.No.4 of 2024, has already objected the high priced coal claimed by M/s SCCL that additional premium over and above the notified basic price of coal being used by M/s SCCL for power generation in the STPP project, by filing a petition, O.P.No.13 of 2023 before the Commission, which was heard and orders were reserved at the time of filing of counter by TGDISCOMS in O.P.No.4 of 2024 and the same was recorded at para 3.1.42 of the order dated. 28.06.2024 in O.P.No.4 of 2024.
- v) It is stated that after concluding the arguments of both the parties, the Commission vide order dated 01.04.2024 in O. P No.13 of 2023 has allowed the prayer of TGDISCOMs by stating the following:  
 "... ... the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers."
- vi) It is stated in this connection that the landed price of coal approved by Commission vide its subsequent order dated 28.06.2024 in O.P.No.4 of 2024 filed by M/s SCCL includes additional premium of 20% over and above the notified basic price of coal for the FY 2022-23 and 30% additional premium for the control period FY 2024-25 to FY 2028-29, due to which approved ECR is very high. The ECR approved by Commission in O.P.No.4 of 2024 for FY 2022-23 and for the control period FY 2024-25 to FY 2028-29 are as stated in the table below:

Table 4-21: ECR approved for FY 2022-23

Particulars	Units	Approved in MYT order 28.08.2020		Claimed in true-up petition	Approved in true-up order
Auxiliary consumption	%	5.75		6.05	5.75
Gross station heat rate	kcal/kWh	2303.88		2305.47	2303.88
Secondary fuel oil consumption	ml/kWh	0.5		0.19	0.19
Calorific value of secondary fuel	kcal/ml	9.97		10.01	10.01
Landed price of secondary fuel	Rs/ml	0.04		0.07	0.07
Weighted average. gross calorific value of coal	kcal/kg	3866.17		4002.83	4002.83
Landed price of	Rs/kg	3.68		5.44	5.44



Particulars	Units	Approved in MYT order 28.08.2020	Claimed in true-up petition	Approved in true-up order
coal				
Specific coal consumption	kg/kWh	0.59	0.58	0.58
ECR	Rs/kWh	2.345	3.343	3.332

Table 5-25: Base ECR approved for the period FY 2024-25 to FY 2028-29

Particulars	Units	Claimed by SCCL in MYT	Approved for base year FY
Auxiliary Consumption	%	5.75	5.75
Gross station heat rate	kcal/kWh	2300	2300
Secondary fuel oil consumption	ml/kWh	0.5	0.5
Calorific value of secondary Fuel	kcal/ml	10.00	10.00
Landed price of secondary fuel	Rs/ml	0.07	0.07
Weighted average gross calorific value of coal	kcal/kg	3719	3719
Landed price of coal	Rs/kg	5.867	5.86
Specific coal consumption	kg/kWh	0.617	0.60
ECR	Rs/kWh	3.876	3.785

vii) It is stated that as could be seen from the above, it has been observed from the Commission order dated 28.06.2024 that the landed price of coal approved includes 20% additional premium on notified basic price of coal for FY 2022-23 and 30% additional premium for FY 2024-25, that is as claimed by SCCL, which is contrary to the Commission order in O.P.No.13 of 2023 and TGDISCOMs assume this as an apparent error. This resulted into increase in ECR ultimately. Further, it is to submit that TGDISCOMs requested M/s SCCL vide letter dated. 15.04.2024 to revise the bills without any additional premium from FY 2021-22 onwards to till that dated and also requested not to levy premium henceforth until production from the Naini coal block allotted to it is started, by referring Commission order dated 01.04.2024.

viii) It is stated that in response M/s SCCL filed Appeal No.256 of 2024 before Hon'ble Appellate Tribunal for Electricity (ATE) challenging the Commission order dated 01.04.2024 in O.P.No.13 of 2023 and M/s SCCL in the hearing dated 29.07.2024 before ATE averred that

"Commission has now allowed the pass through of the entire cost of coal vide order dated 28.06.2024, it follows that the order 01.04.2024 in O.P.No.13 of 2023 is contradictory to the stand taken by the Commission itself in the tariff proceedings vide order dated 28.06.2024. To this extent as well, the order dated 01.04.2024 in O.P.No.13 of 2023 deserves to be set aside."

In this connection, it is to stated that the additional premium on coal prices allowed by Commission in the subsequent order dated 28.06.2024 in O.P.No.4 of 2024, actually is an error that crept into this order as per TGDISCOMs and needs a review by this Commission.

- ix) It is stated that M/s SCCL vide letter dated 26.07.2024 stated that tariff of STPP is to be determined by the Commission as per clause 4.1.1 of the PPA and will revise the bills as per the pricing methodology approved by the Commission in MYT order dated 28.06.2024 in O.P.No.4 of 2024. It is pertinent to state that the Appeal No.256 of 2024 filed by M/s SCCL against the Commission order dated 01.04.2024, is listed for next hearing on 20.08.2024 before APTEL. In light of the above, TGDISCOMs earnestly request the Commission to correct the order dated 28.06.2024 in O.P.No.4 of 2024 in line with the Commission order dated 01.04.2024 at the earliest, else, the ATE order may translate into higher energy charges and may ultimately burden the end consumers.
- x) It is stated that the ECR to be approved as per the Commission in order in O.P.No.13 of 2023, vis-a-vis ECR approved in O.P.No.4 of 2024 is tabulated below:

Parameter	Approved by the Commission vide order dated 28.06.2024 in O.P.No.4 of 2024	To be approved in line with the Commission order dated 01.04.2024 in O.P.No.13 of 2023	Variation
Landed price of coal for FY 2022-23 (Rs/kg)	5.44	4.755	0.685
ECR for (Rs/kWh) FY 2022-23	3.332	2.913	0.42
Landed price of coal for FY 2024-25 (Rs/kg)	5.86	4.818	1.04
ECR for (Rs/kWh) FY 2024-25	3.785	3.118	0.67

From the above, it is stated that, the financial burden on TGDISCOMs in the energy charges for FY 2024-25 will be approximately Rs.562 crore/annum for the generation corresponding to NAPAF and for FY 2022-23 will be approximately Rs.364 crore/annum for 8721.47 MU generation admitted by TGDISCOMs. This will ultimately burden the end consumers of the state. It is stated that the approved ECR with additional premium over and above the notified basic price of coal not only resulted in increased energy charge rate but also increased annual fixed charges and is as detailed below.

**B) Fixed charges approved in the true up for FY 2022-23**

- i) It is stated that the interest on working capital, which is one of the fixed charge component comprise of the following as per Commission's Regulation No.1 of 2019:
- Cost of coal towards stock corresponding to 30 days generation corresponding to target availability (NAPAF).
  - Cost of coal for 30 days of generation at the rate of NAPAF.
  - Cost of secondary fuel oil for two months of generation at the rate of NAPAF.
  - Maintenance spares at the rate of 20% of the O&M expenses.
  - O&M expenses for one month.



- f. Receivables equivalent to two months of FC and VC charges for sale of electricity calculated on target availability.
- g. Minus payables for fuel (including secondary fuel oil) to the extent of thirty days of the cost of fuel computed at target availability as shown at Table 4-7: Interest on Working Capital as approved for FY 2022-23 in the order dated 28.06.2024.

Table 4.7: Interest on working capital computation in line with Commission's order dated 01.04.2024 in O.P.No.13 of 2023 for FY 2022-23 would be approximately

(Rs.crore)			
Particulars	Approved in MTR order 23.03.2023	Claimed in true-up petition	Approved in true-up Order
Cost of coal		233.62	229.71
Cost of coal generation		233.62	229.71
Cost of secondary fuel oil		1.83	1.83
O&M expenses		25.58	19.11
Maintenance spares		61.38	45.87
Receivables		726.24	699.15
Minus: payables for fuel		234.54	230.62
Total working capital		1047.73	994.75
Rate of Interest		9.42%	9.30%
Interest on working capital	83.51	98.65	92.50

Interest on working capital computation in line with TGERC order dated 01.04.2024 in O.P.No.13 of 2024 for FY 2022-23 would be approximately

Particulars	Approved in MTR order 23.03.2023	Approved in true-up order 28.06.2024	Ought to have been approved in line with order dated 01.04.2024 in O.P.No.13 of 2023
Cost of coal		229.71	200.83
Cost of coal generation		229.71	200.83
Cost of secondary fuel oil		1.83	1.83
O&M expenses		19.11	19.11
Maintenance spares		45.87	45.87
Receivables		699.15	628.88
Minus: payables for fuel		230.62	201.75
Total working capital		994.75	895.6
Rate of interest		9.30%	9.30%
Interest on working capital	83.51	92.50	83.29

- ii) It is stated as could be seen from the above, it is very clear that Commission computed the working capital requirement with bridge linkage coal pricing, which is higher priced compared to the notified price of coal, by 20% for FY 2022-23 and 30% for the control period FY 2024-25 to FY 2028-29. By considering this high price of coal, the working capital got increased and consequently the Interest claimed on working capital got higher, which in turn translated to increase in annual fixed charges (AFC) for FY 2022-23 and also for the next control period FY 2024-25 to FY 2028-29.
- iii) It is stated that the AFC approved by the Commission is as detailed below:



**Table 4-22: Annual Fixed Charge (AFC) approved for FY 2022-23**

Sl. No	Item particulars	Approved in MTR order 23.03.2023	Claimed in true-up petition	Approved in true up petition	Variation over MTR order
1	Depreciation	400.36	400.54	400.36	0
2	Interest and finance charges on loan	224.24	266.65	239.65	15.41
3	Interest on working capital	83.51	98.65	92.5	8.99
4	O&M expenses	220.09	304.61	229.33	9.23
5	Return on equity	436.40	481.81	436.40	0
6	Less non-tariff income	13.33	9.27	9.27	-4.06
7	Total AFC	1351.27	1542.99	1388.97	37.69
8	Other charges (water charges, audit fees tariff filing fee)	--	2.30	2.30	2.30
9	Total AFC including other charges	1351.27	1545.3	1391.27	39.99

- iv) It is stated that the huge variation in interest on working capital in the true up for FY 2022-23 in the order dated 28.06.2024 is mainly due to consideration of additional premium of 20% over and above the notified basic coal price in the computation of working capital which actually was disallowed by the Commission in order dated 01.04.2024 in O.P.No.13 of 2023, filed by TGDISCOMs.
- v) It is stated that, this increase in working capital resulted into high variation in total AFC and other charges to the tune Rs.39.99 crore and these charges are to be shared between TGDISCOMS that is Rs.27.84 crore and M/s SCCL for Rs.12.15 crore in the form of sharing of gains/losses as detailed below:

**Approved sharing of gains/losses**

Sl. No.	Item Particulars	Variation of AFC with MTR order	Sharing of gains/losses
1	Depreciation	0.00	0.00
2	Interest and finance charges on Loan *	15.41	15.41
3	Interest on working capital	8.99	3.00
4	O&M expenses	9.23	3.8
5	Return on equity	0.00	0.00
6	Less non-tariff income	-4.06	-4.06
7	Other charges (water charges, audit fee and tariff filing fee)	2.3	2.3
Sharing of gains/losses (+/-)			27.84

- vi) It is stated that the Commission directions to M/s SCCL in O.P.No.4 of 2024 at para 4.1.56 to bill the claim to the beneficiaries' viz., TGDISCOMs towards total sharing/passing through of gains/losses approved in the order as per the AFC and other charges approved after truing-up, for FY 2022-23, is contrary to the Commission's own orders dated 01.04.2024 in O.P.No.13 of 2023. In view of the above



submissions, the approved sharing of gains/losses of Rs.27.84 crore for FY 2022-23 needs to be revised in line with TGERC order dated 01.04.2024 in OP 13 of 2023.

**C) Annual fixed charges approved in the MYT for FY 2024- 25 to FY 2028-29**

i) It is stated that the interest on working capital, one of the fixed charge component, applicable for the control period for FY 2024-25 to FY 2028-29 has been dealt by the Commission at para 5.1.32 and 5.1.33 of the order dated 28.06.2024 and is comprise of the following components as per MYT Regulation No.2 of 2023:

- (a) Cost of coal towards stock, if applicable, for ten (10) days for pit-head generating stations and twenty (20) days for non-pithead generating stations, for generation corresponding to target availability, or the maximum coal stock storage capacity, whichever is lower;
- (b) Cost of coal for thirty (30) days for generation corresponding to target availability;
- (c) Cost of secondary fuel oil for one (1) month corresponding to target availability;
- (d) Normative operation and maintenance expenses for one (1) month;
- (e) Maintenance spares at one percent (1%) of the opening gross fixed assets for the year; and
- (f) Receivables for sale of electricity equivalent to forty five (45) days of the sum of annual fixed charges and energy charges approved in the tariff order, computed at target availability and excluding incentive, if any.
- (g) Minus payables for fuel, including oil and secondary fuel oi, to the extent of thirty (30) days of the cost of fuel computed at target availability, depending on the modalities of payment:

ii) It is stated that the interest on working capital approved by the Commission based on the claims of M/s SCCL is tabulated below:

**Table 5-12: Interest on working capital as approved for the period FY 2024-25 to FY 2028-29**

Particulars	2024-25	2025-26	2026-27	2027-28	2028-29
Cost of coal	172.97	172.97	172.97	172.97	172.97
Cost of coal generation	259.45	259.45	259.45	259.45	259.45
Cost of secondary fuel oil	2.46	2.46	2.46	2.46	2.46
O&M expenses	20.79	21.54	22.34	23.18	24.07
Maintenance spares	77.45	77.45	77.45	77.45	77.45
Receivables	560.44	557.98	555.61	552.89	551.16
Minus: payables for fuel	261.90	261.90	261.90	261.90	261.90
Total working capital	831.65	829.65	831.65	831.65	831.65
Rate of interest	10.15%	10.15%	10.15%	10.15%	10.15%
Interest on Working	84.41	84.24	84.08	83.89	83.80

Table 5-19: Annual Fixed Charges as approved for the period FY 2024-25 to FY 2028 – 29

Particulars	2024-25		2025-26		2026-27		2027-28		2028-29	
	Claimed	Approved	Claimed	Approved	Claimed	Approved	Claimed	Approved	Claimed	Approved
Operation maintenance expenses	356.29	249.48	376.17	262.85	397.25	276.95	419.52	291.82	443.05	307.48
Depreciation	403.52	400.36	404.17	100.36	404.17	400.36	404.17	400.36	404.17	400.36
Interest and finance charges on loan	217.44	191.85	181.14	158.88	144.14	125.90	107.15	92.93	70.15	59.96
Interest on working capital	96.66	84.41	96.59	84.24	96.49	84.08	96.66	84.41	96.59	84.24
Return on equity	485.68	436.40	486.33	436.40	486.33	436.40	485.68	436.40	486.33	436.40
Less: Non-tariff income	3.90	3.90	4.09	4.09	4.29	4.29	4.51	4.51	4.73	4.73
Annual Fixed Charges	1555.60	1358.60	1540.30	1338.63	1524.09	1319.40	1509.04	1300.88	1495.35	1238.26

- iii) It is stated that similarly, from the above table, it is noticed that landed price of coal with 30% additional premium claimed by M/s SCCL was considered while approving the ECR of Rs.3.785/kWh in O.P.No.4 of 2024 for the control period FY 2024-25 to FY 2028-29 and the same was taken into consideration while arriving the interest on working capital in the Multi Year Tariff for the control period FY 2024-25 to FY 2028-29 due to which FC charges was also increased as explained above and this approval is not in consonance with the Commission order dated: 01.04.2024 in O.P.No.13 of 2023, wherein the Commission clearly disallowed the levy of additional premium by M/s SCCL on the basic price of coal for the corresponding coal grade.

**D) Errors in computation of R&M expense that is part of operation and maintenance expenses:**

- i) It is stated that the Commission has dealt with the issue of the operation and maintenance expenses in paragraphs 5.1.7 to 5.1.12 of the order dated 28.06.2024.
- ii) The O&M expenses comprise of
- Employee cost (EMP<sub>n</sub>)
  - Administrative and general expenses (A&G)
  - Repairs and maintenance expenses (R&M)
- iii) In regard to R&M expenses, the Commission has computed the k factor based on the approved R&M expenses for previous control period. The normative R&M expenses of each financial year for the period FY 2024-25 to FY 2028-29 is computed by multiplying the opening GFA, with k factor and average WPI inflation factor of last 5 financial years which is being escalated for each year of the period FY 2024-25 to FY 2028-29, subject to truing up in accordance with regulation.



Table 5-4: Normative R&M expenses as approved for the period FY 2024-25 to FY 2028-29

(Rs.crore)

Particular	K	GFA <sub>n</sub>	WPI Inflation	R&M <sub>n</sub>
	(a)	(b)	(c)	(a*b*c)
FY 2024-25	1.08%	7745.32	1.049	87.89
FY 2025-26	1.08%	7745.32	1.101	92.23
FY 2026-27	1.08%	7745.32	1.155	96.78
FY 2027-28	1.08%	7745.32	1.212	101.55
FY 2028-29	1.08%	7745.32	1.272	106.56

- iv) It is stated that it has been observed in the computation of the R&M expenses ( $k \times \text{GFA} \times \text{WPI inflation}$ ) (that is part of O&M expenses) for the control period FY 2024-25 to FY 2028-29 "k" factor has been considered as 1.08%.
- v) In this regard, it is stated that the R&M expenses approved by the Commission in the previous orders dated 28.08.2020 & 23.03.2023 are as detailed below

Table 61: R&M expenses computed for FY 2019-20 to FY 2023-24 (order dated 28.08.2020)

(Rs.crore)

Year	K <sub>n</sub>	GFA <sub>n</sub>	WPI Inflation	R&M <sub>n</sub>
FY 2019-20	1.04%	7745.32	1.04	83.67
FY 2020-21	1.04%	7745.32	1.09	97.26
FY 2021-22	1.04%	7745.32	1.13	91.00
FY 2022-23	1.04%	7745.32	1.18	94.90
FY 2023-24	1.04%	7745.32	1.23	455.79

Table 3.29: R&M expenses computed by the Commission for MTR order dated 23.03.2023.

(Rs.crore)

Year	K <sub>n</sub>	GFA <sub>n</sub>	WPI Inflation	R&M <sub>n</sub>
FY 2019-20	1.04%	7745.32	1.04	83.67
FY 2020-21	1.04%	7745.32	1.02	81.59
FY 2021-22	1.04%	7745.32	1.01	81.27

- vi) It is submitted that as could be seen from the above, the 'K' is a constant factor, which is fixed depending on the GFA approved. WPI inflation is only varying component and is taken average of last 5 years. Whereas, in the order dated: 28.06.2024, the Commission has considered the 'K' factor as 1.08% instead of 1.04% though there is no change in the GFA approved for the control period from FY 2019-2020 to FY 2023-2024 vis a vis GFA for FY 2024-25 to FY 2028-29.
- vii) It is stated that in the computation of R&M expenses ( $k \times \text{GFA} \times \text{WPI inflation}$ ) (that is part of O&M expenses) for the control period FY 2024-25 to FY 2028-29 'K' factor has been considered as 1.08% instead of 1.04% though there is no change in the GFA approved, due to which approved R&M expenses increased which resulted into increase in O&M expenses and consequently increase of annual fixed charges approved for the control period FY 2024-25 to FY 2028-29, as explained in the order.

- viii) It is stated that from the above, it can be seen that the allowance of R&M expenses in the order dated 28.06.2024 was made contrary to the procedure in vogue and as a result TGDISCOMs are going to suffer financially with this order, if suitable review is not taken up by the Commission.
- ix) It is stated that considering the above facts, the Commission is requested to review the 'K' factor approved in the computation of R&M expenses and consequently result into review of annual fixed charges for the control period FY 2024-25 to FY 2028-29 in the order dated 28.06.2024 in line with the Commission orders dated 28.08.2020 and 23.03.2023 in view of the submissions made and in the interest of end consumers.

Hence, it is prayed that the Commission may be pleased to review the order dated 28.06.2024 in O.P.No.4 of 2024 in line with its order dated 01.04.2024 in O.P.No.13 of 2023 which was issued to regulate the pricing of coal supply to STPP at notified prices, in terms of regulatory powers under Section 86(1)(b) of the Act, 2003, and also to review the R&M expenses by considering the submissions made by TGDISCOMs, else, it translates into higher energy charges and fixed charges and burden TGDISCOMs, ultimately the end consumers.

**E. Summary of impact on TGDISCOMs:**

*The following table shows the summary of year-wise impact on TGDISCOMs due to erroneous order dated 28.06.2024 in O.P.No.4 of 2024.*

(Rs.crore)						
Particulars	2022-23	2023-24	2024-25	2026-27	2027-28	2028-29
a. Impact with ECR	364	562	562	562	562	562
Fixed Charges						
i. Impact with error R&M in computation	-	3.4	3.53	3.73	3.92	4.0
ii. Impact on working capital	3	10	10	10	10	10
b. Impact on annual Fixed Charges (i+ii)	3	13.4	13.53	13.73	13.92	14.00
Total impact on tariff approximate (a+b)	353	513.4	513.53	513.73	513.92	514.00

2. The review petitioner have sought the following prayer before the Commission:

- To admit review petition.
- Review the order dated 28.06.2024 passed in O.P.No.4 of 2024 by rectifying the error in computation of (a) energy charge rate (ECR), (b) interest on working capital, (c) annual fixed charges in the true-up for FY 2022-23 and also for the control period FY 2024-25 to FY 2028-29



by reviewing the same in line with Commission's order dated 01.04.2024 in O.P.No.13 of 2023.

- iii. To rectify the error in computation of R&M expenses and consequently to review the annual fixed charges for the control period FY 2024-25 to FY 2028-29 in the order dated 28.06.2024 by allowing submissions made above in the interest of consumers.

3. The Commission has heard the review petitioners and also perused the material available on record. The submissions made on the date of hearing are extracted herein below for ready reference.

Record of proceedings dated 09.09.2024

"... The representatives of the review petitioner stated that the Commission has considered the MYT filing of M/s Singareni Collieries Company Limited towards its generating plant of 2x600 MW power plant while doing so did not consider the aspect of premium on coal which was decided in favour of the review petitioner in O.P.No.13 of 2023. The said issue is causing hinderance to the review petitioners. Since the Commission has taken view in earlier matter some other Commission may consider revisiting the order to facilitate incorporation of the findings in the matter of petition filed by the TGDISCOMs in O.P.No.13 of 2023 in the matter of MYT petition of M/s SCCL. Thus, the Commission would be bringing uniformity in the matter. Having considered submissions of the representatives of the review petitioner, the Commission reserved the matter for orders."

4. The Commission notices that the present review petition stems from the fact that the Commission has taken a view that the generator cannot undertake levy of premium over the notified price of coal, which was not followed while determining the petition filed by the generator towards true up and ARR for the control periods FYs 2019-24 and FYs 2024-29 respectively for the 2x600 MW STPP.

5. While it is the fact that the Commission had decided the grievance raised by the review petitioners in O.P.No.13 of 2023 by its order dated 01.04.2024, the Commission also undertook determination of the Multi Year Tariff in respect of M/s SCCL being the generator. This order came to be passed subsequently on 28.06.2024. The petition filed by the review petitioners is in exercise of the right to raise dispute under Section 86(1)(f) read with 86(1)(b) and other connected provisions, on the other hand the MYT petition of the generator is in exercise of regulations relating

to tariff determination read with the provisions on tariff under the Act, 2003. The parameters of the regulation would come into play while undertaking determination of MYT of the generator including true up.

6. The review petitioners appear to be under a misunderstanding that the issue relating to charging of premium over notified coal price has to be uniform across all the matters. It is not correct understanding of the review petitioners merely because the Commission has considered the dispute raised by them in their favour in the earlier proceedings, it is not necessary that the same principle can be applied to a proceeding involving the implementation of the regulation along with the provisions of tariff in the Act, 2003. It is also worth mentioning that the petition for dispute resolution is dependent on actual difficulty perceived by one party and refused by other party. On the other hand, proceeding initiated for determination of tariff based on the regulation does not involve any dispute and have to be in conformity with the regulation. Moreover, the consideration shown in the MYT petition is based on preponderance of probabilities which cannot be sanctified to be facts as the background of the same is certain assumptions and certain presumptions are taken into consideration.

7. Basically, as the review petitioners and the generator have entered into an agreement for undertaking power purchase/sale inter se, they are bound by the clauses of the agreement. Suffice it to state any issue which runs contrary to the regulation would invariably fall in line with the regulation as it is settled by the Hon'ble Supreme Court. No doubt in the instant case the Commission had taken different stands and consequently there arose a dichotomy in the calculation of coal price, but however it is for the review petitioners to act in a manner whereby they have to give effect to both the orders and implement payment mechanism over coal price in a way which is beneficial to them.

8. Turning to the present petition, the review petitioners have raised not only the issue of coal price but also sought review of ECR, interest on working capital, annual fixed charge in the true ups and connected issues. At any rate the contentions of the review petitioners that new and vital information has been discovered subsequent to the passing of the impugned order to bring it into the realm of review cannot be sustained. The commission is of the view that the subtle distinctions between both the orders have not been understood by the review petitioners.



9. At this stage, it may be appropriate and relevant to notice the ingredients of review under the Code of Civil Procedure which are provided under Section 94(1)(f) of the Act, 2003. The review petitioner has not been able to show as to the following aspects for undertaking a review of the order.

- a. *Where there is a typographical mistake that has crept in the order;*
- b. *When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;*
- c. *When there is a mistake committed by the Commission, which is apparent from the material facts available on record and/or in respect of application of law;*
- d. *When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given;*
- e. *If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;*

10. The Commission does not find any infirmity in the order passed by it nor it calls for interference by way of review. None of the ingredients of reviewing an order as set out in Order 47 of Civil Procedure Code, 1908 have been satisfied. In this case the review petitioner while presenting the objections to the original petition and making submissions thereof had sought to presume and assume that the orders passed by the Commission would be considered while determining the MYT petition of the generator. Such understanding appears to be an afterthought and not borne on record. At best the issues raised in the present review petition may be grounds for appeal but not worth consideration in a review petition.

11. In view of the failure to satisfy the ingredients of review, the Commission is constrained not to entertain the review petition even though and assuming that there was a bonafide impression on part of the review petitioner that the Commission ought to have considered its earlier view with regard to notified coal price while determining the MYT petition of the generator.

12. For the foregoing reasons and discussion, the Commission finds no valid grounds for entertaining the review petition worth admitting the same. Accordingly, the review petition is rejected as not maintainable but in the circumstances without any costs.

This order is corrected and signed on this the 28<sup>th</sup> day of October, 2024.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

//CERTIFIED COPY//



## IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

## APPELLATE JURISDICTION

DFR No. 498 of 2024  
 APPEAL NO. OF 2024

IN THE MATTER OF:-

Southern Power Distribution Company of Telangana ...Appellants  
 Limited & Anr.

## VERSUS

Telangana State Electricity Regulatory Commission & Anr. ... Respondents

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FILED BY:-



(MSA PARTNERS)  
ADVOCATES FOR THE APPELLANTS  
D-246, DEFENCE COLONY,  
NEW DELHI - 110024

DATE: 18.11.2024  
PLACE: NEW DELHI



SYNOPSIS

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against Order dated 28.06.2024 passed by the Telangana Electricity Regulatory Commission (hereinafter called the "State Commission") in O. P. No. 4 of 2024 (hereinafter referred to as "Impugned Order") whereby the State Commission had trued up the financials of M/s. Singareni Collieries Company Limited, Respondent No. 2 herein, for FY 2022 - 23 and approved MYT for the control period FY 2024 - 25 to FY 2028 - 29. The Impugned Order has been passed by the State Commission in direct contravention of its earlier Order dated 01.04.2024 in O.P. No. 13 of 2023.

The Impugned Order is contradictory to the State Commission's earlier order dated 01.04.2024 in O.P. No. 13 of 2023, which held that levying any premium on the notified base price of coal is impermissible. The State Commission's decision to permit premium coal pricing is arbitrary, unreasonable, and disregards regulatory consistency and increases the financial burden of the Appellants, which costs are ultimately passed on to the consumers of the State of Telangana.

The State Commission has also overlooked the fact that SCCL has, since 2015, relied on a temporary Bridge Linkage, with subsequent extensions, to supply coal to STPP, even as it delays operationalizing the Naini coal block. SCCL, taking undue advantage of the same, introduced premium pricing through a series of amendments to the Memoranda of Understanding (MoUs) from 2017 onwards, which increased the variable charges in the PPA by creating artificial distinctions.

This pricing was challenged by the Appellants in O.P. No. 13 of 2023 wherein vide Order dated 01.04.2024 the State Commission held levying premiums on

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the notified base price of coal cannot form part of the landed cost of coal. Contrary to the above settled position intra-parties, the Impugned Order now allowed premium on coal prices as part of SCCL's True-up and ARR, increasing costs by approximately Rs.367 Crore/annum for FY 2022-23 and Rs.572 crore/annum for FY 2024 - 25 to FY 2028 - 29.

The State Commission having held that the premium pricing is not aligned with either the PPA or the TGERC Tariff Regulations, the State Commission's failure to adhere to its Order dated 01.04.2024 undermines regulatory clarity and unjustly penalizes the Appellants and end consumers.

The Appellants have thus filed the present Appeal, seeking to set aside the Impugned Order dated 28.06.2024 to the extent that it permits premium coal pricing and in so far as it runs contrary to the earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O. P. No. 77 of 2022) in the computation of R & M expenses.

**LIST OF DATES**

18.01.2016	Power Purchase Agreement was entered into between the Appellants and SCCL
18.03.2016	Bridge Linkage was granted to STPP for the period between 13.08.2015 to 12.08.2018
01.11.2017	MoU was signed between SCCL and STTP setting the pricing structure for coal, including premium charges for different coal grades for the period between 01.11.2017 to 31.03.2020
06.04.2018	Supplementary MoU signed, modifying the pricing structure with premium charges for coal supplies beyond certain percentages of agreed quantum (Modified w.e.f 01.04.2018 to 31.03.2020)
10.04.2018	Extension of Bridge Linkage for an additional five years (2018-2021), with coal to be supplied on a tapering basis between 2021-2023.



- |            |   |
|------------|---|
| 30.03.2020 | New MoU signed between SCCL and STPP, adjusting premium pricing on coal with varying charges based on agreed quantities (01.04.2020 to 31.03.2021).   |
| 12.11.2020 | Supplementary MoU removing non-power sector premium pricing from June 2020, with modifications on premiums for specific quantities of G15 grade coal. |
| 16.04.2021 | Third MoU signed, setting a 10% premium on the base coal price for a 6 MMTPA coal supply, valid through 31.03.2024.                                   |
| 28.03.2022 | Supplementary MoU revised premium to 20% over base price for the 6 MMTPA coal supply, applicable until 31.03.2023.                                    |
| 21.02.2023 | Extension of Bridge Linkage for a further period of 1 year from 2023 to 2024, on a tapering basis.  |
| 29.03.2023 | Supplementary MoU signed, applying a 20% premium on coal prices up to 75% of the agreed quantity and a 30% premium for supplies beyond 75%.           |
| 02.05.2023 | Appellants file O.P. No. 13 of 2023 with TSERC, seeking relief from SCCL's premium pricing of coal.   |
| 14.02.2024 | Public notice issued for objections regarding SCCL's MYT petition for FY 2024-29 (O.P. No. 4 of 2024), with an objection deadline of 05.03.2024.      |
| 01.04.2024 | TSERC issues order in O.P. No. 13 of 2023, holding that SCCL cannot levy any premium on the notified base price of coal                               |
| 22.05.2024 | Amended PPA signed by SCCL and STPP, implementing State Commission's directive to calculate variable charges as per TGERC Tariff Regulations, 2019.   |
| 28.06.2024 | Impugned Order was passed   |
| 28.10.2024 | State Commission dismissed the Appellants' review petition, upholding the premium pricing approved in the MYT order dated 28.06.2024.                 |
| 18.11.2024 | Aggrieved by the Impugned Order, the Appellants are filing the present Appeal   |

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
APPELLATE JURISDICTION  
APPEAL NO. \_\_\_\_ OF 2024

IN THE MATTER OF:

Southern Power Distribution Company of Telangana ...Appellants  
Limited & Anr.

VERSUS

Telangana State Electricity Regulatory Commission & Anr. ... Respondents

MEMO OF PARTIES

IN THE MATTER OF:-

1. Southern Power Distribution Company of Telangana ...Appellants  
Limited  
Through its Chairman and Managing Director,  
Corporate Office #6-1-50,  
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Email: [cmd@tgsouthernpower.org](mailto:cmd@tgsouthernpower.org)  
Phone No.: 040-23431018
2. Northern Power Distribution Company of Telangana  
Limited  
Through its Chairman and Managing Director,  
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Vidyut Bhawan, Nakkalgutta, Hanamkonda,  
Warangal, Telangana - 506 001.  
Email: [cmd@tgnpdcl.com](mailto:cmd@tgnpdcl.com)  
Phone No.: 0870-2461501

VERSUS

1. Telangana Electricity Regulatory Commission  
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Hyderabad - 500 045.



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Email: [chairman@TGERC.gov.in](mailto:chairman@TGERC.gov.in)

Phone No.: 040-23311127

2. Singareni Collieries Company Limited  
Through its Deputy General Manager,  
Kothagudem, Collieries  
Bhadadri Kothagudem District,  
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Email: [fad\\_stpp@scclmines.com](mailto:fad_stpp@scclmines.com)  
Phone No.: 9903097168

... Respondents

FILED BY:-



(MSA PARTNERS)  
ADVOCATES FOR THE APPELLANTS  
D-246, DEFENCE COLONY,  
NEW DELHI - 110024

DATE: 18.11.2024  
PLACE: NEW DELHI

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
APPELLATE JURISDICTION  
APPEAL NO ..... OF 2024

IN THE MATTER OF:

Appeal against the Order dated 28.06.2024 passed by the Telangana Electricity Regulatory Commission in O. P. No. 4 of 2024.

AND

IN THE MATTER OF:

Southern Power Distribution Company of Telangana  
Limited & Anr.

...Appellants

VERSUS

Telangana State Electricity Regulatory Commission & Anr.

...Respondents

APPEAL UNDER SECTION 111(1) OF THE ELECTRICITY ACT, 2003

MOST RESPECTFULLY SHOWETH:

1. DETAILS OF APPEAL

The present Appeal is being filed under Section 111 of the Electricity Act, 2003 against Order dated 28.06.2024 passed by the Telangana Electricity Regulatory Commission (hereinafter called the "State Commission") in O. P. No. 4 of 2024 (hereinafter referred to as "Impugned Order") whereby the State Commission had trued up the financials of M/s. Singareni Collieries Company Limited, Respondent No. 2 herein, for FY 2022 - 23 and approved MYT for the control period FY 2024 - 25 to FY 2028 - 29. The Impugned Order has been passed by the State Commission in direct contravention of its earlier Order dated 01.04.2024 in O.P. No. 13 of 2023. A copy of the Impugned



Order dated 28.06.2024 is attached hereto and marked as Annexure A.

2. DATE OF COMMUNICATION OF IMPUGNED ORDER

The Impugned order was communicated to the Appellants on 08.07.2024.

3. THE ADDRESS OF THE APPELLANT FOR SERVICE IS SET OUT HEREUNDER:

- i) Southern Power Distribution Company of Telangana Limited  
Through its Chairman and Managing Director,  
Corporate Office #6-1-50,  
Mint Compound,  
Hyderabad, Telangana - 500 063.  
Email: [cmd@tgsouthernpower.org](mailto:cmd@tgsouthernpower.org)  
Phone No.: 040-23431018
- ii) Northern Power Distribution Company of Telangana Limited  
Through its Chairman and Managing Director,  
H. No. 2-5-31/2, Corporate Office,  
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Email: [cmd@tgnpdcl.com](mailto:cmd@tgnpdcl.com)  
Phone No.: 0870-2461501
- iii) Name and Address of the Counsel,  
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Email: [anand@msapartners.in](mailto:anand@msapartners.in), [swapna@msapartners.in](mailto:swapna@msapartners.in)

4. THE ADDRESS OF THE RESPONDENTS FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:

(i) Telangana Electricity Regulatory Commission  
Through its Secretary,  
Vidyut Niyamtran bhavan , G.T.S. colony,  
Kalyan Nagar,  
Hyderabad - 500 045.  
Email: [chairman@TGERC.gov.in](mailto:chairman@TGERC.gov.in)  
Phone No.: 040-23311127

(ii) Singareni Collieries Company Limited  
Through its Deputy General Manager,  
Kothagudem, Collieries  
Bhadrachalam Kothagudem District,  
Telangana State - 507 101.  
Email: [fad\\_stpp@scclmines.com](mailto:fad_stpp@scclmines.com)  
Phone No.: 9903097168

**5. JURISDICTION OF THE APPELLATE TRIBUNAL**

The Appellants declare that the subject matter of the appeal is within the jurisdiction of this Tribunal.

**6. LIMITATION**

The Impugned Order dated 28.06.2024 was communicated to the Appellants on 08.07.2024. The Appellants declares that the present appeal is filed with a delay of 88 days and the Appellants have filed a separate application seeking condonation of delay in filing the present appeal. The delay has occurred mainly due to the pendency on a review petition filed by the Appellants before the State Commission before approaching this Hon'ble Tribunal.

**7. FACTS OF THE CASE**

A. The Appellants, namely Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited are distribution licensees within the meaning of Section 2(17) of the Electricity Act, 2003 and are entrusted with the



function of distribution of electricity in their respective areas of operation in the State of Telangana.

- B. The Respondent No. 1, the State Commission, is the Electricity Regulatory Commission of the State of Telangana exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
- C. The Respondent No. 2, M/s. Singareni Collieries Company Limited (hereinafter referred to as "SCCL") is a coal mining company incorporated under the Companies Act, 1956. SCCL has established Singareni Thermal Power Plant (STPP) and the entire power generated from STPP is sold to the Appellants under the Power Purchase Agreement dated 18.01.2016 (hereinafter referred to as "PPA"). A copy of the PPA is annexed hereto and marked as Annexure - B. It is pertinent to mention that STPP is not an independent legal entity and wholly owned and managed by the SCCL.
- D. SCCL was allotted NAINI coal block in the State of Odisha to meet the coal requirements of STPP. As an interim measure, until the operationalization of the coal mine by SCCL, STPP applied for and obtained Bridge Linkage, being short term linkage for a fixed period of three years, from the Standing Linkage Committee of Ministry of Coal. The Bridge Linkage provided that, for supply to STPP, the source from which coal may be procured was to be decided by SCCL in consultation with the Railways. The initial Bridge Linkage was granted for the period between 13.08.2015 to 12.08.2018, as it was anticipated that coal production from NAINI coal block would commence in December 2020. A copy of the Office Memorandum dated 08.02.2016 providing Bridge Linkage is annexed hereto and marked as Annexure - C.

- E. Pursuant to the Bridge Linkage, SCCL executed a Memorandum of Understanding (MoU) dated 01.11.2017 with STPP. The MoU was in essence an agreement executed between two wings of the same company. Notably, the MoU mentions that the coal is being supplied to STPP as part of the mandate to sell 10% of production under e-auction as New Coal Distribution Policy (NCDP). The MoU does not make any reference to the Bridge Linkage and the Appellants were neither parties nor privy to the MoU. The MoU impacted the Appellants as it had a cascading effecting on the calculation of variable charges under the PPA in the following manner:

*For any Billing Month, the Variable Charge component of the Tariff (comprising cost of Coal and Secondary Fuel Oil) shall be determined as per annexure-III. Variable Charges consists of cost of coal & oil. Landed cost of coal and oil shall include Transit and handling charges, royalty on coal, taxes, duties as applicable. Transportation cost by rail/road or any other means and energy charges shall be arrived after considering transit & windage losses as given in Annexure-IV. Variable charges shall be paid based on the computation as per Annexure-III. Variations, if any, in delivered cost of coal & oil consequent to raising of initial bill shall be adjusted. For claiming such revision, SCCL will raise supplementary Bills.*

- F. While the PPA initially contained Annexures III & IV which provided for computation of variable charges, the State Commission by its Orders dated 22.10.2021 in O.P. No. 08 of 2016, directed for the above clauses to be deleted and replaced as under:

*"For any billing month, the variable charges shall be determined as per TGERC Regulations".*

Accordingly, amended PPA was entered on 22.05.2024. Therefore, SCCL can claim variable charges only in terms of the Telangana Electricity Regulatory Commission (TGERC) Tariff Regulations, 2019. A



		<ul style="list-style-type: none"> <li>• Notified price for entire quantity, if coal supplies are beyond 4.52 MT</li> </ul>	
3rd MoU	16.04.2021	For 6 MMTPA quantum of coal - 10% over notified basic price of Power for all grades of coal.	01.04.2021 to 31.03.2024
Supplementary MoU	28.03.2022	For 6 MMTPA quantum of coal - 20% over notified basic price of Power for all grades of coal.	01.04.2022 to 31.03.2023
Supplementary MoU	29.03.2023	<ul style="list-style-type: none"> <li>• Upto 75% agreed quantity - 20% over notified power sector price</li> <li>• And beyond 75% agreed quantity - 30% over notified power sector price</li> </ul>	01.04.2023 to 31.03.2024

\*Agreed quantity- 4.52 MMTPA

- J. Thereafter, when SCCL raised a supplementary invoice after completion of F.Y. 2018-19 (when power had already been scheduled and utilized based on merit order), claiming 20% additional premium on the notified prices applicable to the non-power sector for supply of coal beyond 75% of agreed quantity, Appellants objected to such levy, the same being contrary to the TGERC/CERC Tariff Regulations.
- K. SCCL in the above background had filed O.P. No. 8 of 2021 and same came to be disposed off vide Order dated 21.11.2022. SCCL subsequent thereto had filed an application seeking clarification of the Order dated 21.11.2022 and the same came to be disposed off vide Order dated 01.04.2024. Vide the clarification Order dated 01.04.2024, the State Commission despite recording that the earlier order suffered from an ambiguity, held that SCCL has an alternate remedy under Section 111 of the Electricity Act.
- L. On an appeal being filed by SCCL, this Hon'ble Tribunal holding that the remedy of an appeal is not an alternative to the remedy availed by

SCCL seeking clarification, vide Order dated 30.07.2024 in DFR No. 252 of 2024, set aside the clarification order and has remanded the matter to the State Commission for passing appropriate orders in the clarification petition. The remanded petition for clarification is pending adjudication by the State Commission.

- M. The Appellants had independently filed O. P. No. 13 of 2023 questioning the premium pricing of coal in the Supplementary MoU dated 29.03.2023. The prayer of the Appellants in O. P. No. 13 of 2023 was as under:

*".....TSDISCOMs humbly pray the Hon'ble Commission to direct SCCL to charge the Coal supply being made to its Thermal Power Plant (STPP) at the Notified Basic Price corresponding to the Coal grade being supplied, without any additional charge/ premium for the period FY 2021-22 to till the date of operationalisation of Naini Coal Block and later to adopt the CERC Input Price Determination methodology, in the interest of end consumers."*

- N. While the Orders in O. P. No. 13 of 2023 were reserved, SCCL had filed a petition in O.P. No. 04 of 2024 seeking approval of Multi Year Tariff (MYT) for the control period FY 2024-25 to FY 2028-29 and True-up for FY 2022-23. In the petition filed, SCCL had taken into consideration the premium coal price instead of the notified basic coal price, its entitlement to the same pending adjudication by the State Commission in O. P. No. 13 of 2023.

- O. The timeline of the proceedings in O. P. No. 13 of 2023 and O. P. No. 4 of 2024 are as under:

Particulars	O.P. No. 13 of 2023	O.P. No. 4 of 2024
Details of Petition	Petition of the Appellants seeking direction to SCCL not to levy premium coal price from FY 2021-22	SCCL's petition for truing up of ARR for FY 2022 - 23 and MYT for control period 2024 - 29, claiming bridge linkage coal price (i.e.,



Particulars	O.P. No. 13 of 2023	O.P. No. 4 of 2024
		notified base price along with premium)
Date of Filing	02.05.2023	30.01.2024
First Hearing	05.06.2023	-
Public Notice	-	Published on 14.02.2024 to file objections by 05.03.2024
Date of Filing of Counter	08.07.2023	Time extension was granted until 14.03.2024 for filing of counter. The Appellants has brought to the notice of the State Commission that the levy of premium on notified base price of coal was sub judice in O. P. No. 13 of 2023 and the same is reserved for orders. The same is recorded at Para 3.1.42 of the Impugned Order.
Date of Filing of Rejoinder	14.08.2023	19.03.2024
Last Hearing	21.08.2023	19.04.2024
Date of Filing of Written Submissions by Appellants	11.09.2023	27.04.2024 (Appellants had mentioned the Order of the State Commission in O. P. No. 13 of 2023 dated 01.04.2024)
Date of Order	01.04.2024	28.06.2024

P. The Hon'ble Commission disposed off O.P. No. 13 of 2023, in favour of the Appellants, categorically holding as under:

*... the petitioners are entitled to the relief as prayed for, whereby the respondent is estopped from levying any premium on the coal price for whatever quantities agreed to be supplied in terms of the PPA. The respondent also shall continue to desist from levying any premiums henceforth until it has started production from the Naini coal block allotted to it as it is denuding the petitioners the benefit of cheaper coal availability through the variable cost paid by the petitioners, which is ultimately beneficial to the end consumers.*

A copy of the Order of the State Commission dated 01.04.2024 is annexed hereto and marked as **Annexure - E**. SCCL has preferred an appeal against the above order in A. No. 256 of 2024 and the same is pending adjudication by the Hon'ble Tribunal.

- Q. The State Commission vide the Impugned Order disposed off O. P. No. 4 of 2024 approving energy charge rate and fixed charges taking into consideration premium coal price instead of notified basic coal price contrary to its own Order dated 01.04.2024 in O. P. No. 13 of 2024. Further, the R & M expenses approved by Impugned Order were contradictory to its earlier orders dated 28.08.2020 (MYT Order) and 23.03.2023 (mid-term review order in O. P. No. 77 of 2022). The relevant portions of the Order dated 28.08.2020 and 23.03.2023 are annexed hereto and marked as **Annexure - F**.
- R. The Appellants, in view of the error apparent on the face of the record, had filed a petition seeking review of the Impugned Order in R.P.(SR) No.53 of 2024 in O.P.No.4 of 2024. The pleadings in the review petition are attached and marked as **Annexure - G**.
- S. The review petition of the Appellants came to be dismissed vide Order dated 28.10.2024, wherein the State Commission had held as under:

*"5. While it is the fact that the Commission had decided the grievance raised by the review petitioners in O.P.No.13 of 2023 by its order dated 01.04.2024, the Commission also undertook determination of the Multi Year Tariff in respect of M/s SCCL being the generator. This order came to be passed subsequently on 28.06.2024. The petition filed by the review petitioners is in exercise of the right to raise dispute under Section 86(1)(f) read with 86(1)(b) and other connected provisions, on the other hand the MYT petition of the generator is in exercise of regulations relating to tariff determination read with the provisions on tariff under the Act,*



2003. The parameters of the regulation would come into play while undertaking determination of MYT of the generator including true up.

6. The review petitioners appear to be under a misunderstanding that the issue relating to charging of premium over notified coal price has to be uniform across all the matters. It is not correct understanding of the review petitioners merely because the Commission has considered the dispute raised by them in their favour in the earlier proceedings, it is not necessary that the same principle can be applied to a proceeding involving the implementation of the regulation along with the provisions of tariff in the Act, 2003. It is also worth mentioning that the petition for dispute resolution is dependent on actual difficulty perceived by one party and refused by other party. On the other hand, proceeding initiated for determination of tariff based on the regulation does not involve any dispute and have to be in conformity with the regulation. Moreover, the consideration shown in the MYT petition is based on preponderance of probabilities which cannot be sanctified to be facts as the background of the same is certain assumptions and certain presumptions are taken into consideration.

7. Basically, as the review petitioners and the generator have entered into an agreement for undertaking power purchase/sale inter se, they are bound by the clauses of the agreement. Suffice it to state any issue which runs contrary to the regulation would invariably fall in line with the regulation as it is settled by the Hon'ble Supreme Court. No doubt in the instant case the Commission had taken different stands and consequently there arose a dichotomy in the calculation of coal price, but however it is for the review petitioners to act in a manner whereby they have to give effect to both the orders and implement payment mechanism over coal price in a way which is beneficial to them."

A copy of the Order dated 28.10.2024 passed in R.P.(SR) No.53 of 2024 in O.P.No.4 of 2024 is annexed hereto and marked as Annexure - H.

- T. In the above background, the Appellant aggrieved by the Impugned Order on the issues of fixation of energy charge rate and annual fixed charges in so far as the same runs contrary to the Order dated 01.04.2024, and the approval of R & M expenses contradictory to its

earlier orders dated 28.08.2020 and 23.03.2023, had preferred the present Appeal.

8. (i) **FACTS IN ISSUE**

- (1) Whether the State Commission having decided that SCCL is not entitled to any premium on the coal price from FY 2021 – 22 onwards, could have allowed passthrough of the same in the truing up proceedings for FY 2022-23 and MYT proceeding for the control period FY 2024-25 to FY 2028-29 ?
- (2) Whether the State Commission has considered the specific submissions of the Appellants in the true up proceedings?
- (3) Whether the State Commission can undertake determination of tariff / truing up in direct contravention of its previous orders?
- (4) Whether the State Commission has verified the actual landed price of coal in deeming the same uncontrollable and allowable as actually incurred?

(ii) **QUESTIONS OF LAW**

The following questions of law arise in the present appeal:

- a. Whether the State Commission could have undertaken an interpretation of the PPA between the Appellants and SCCL in contravention of its Regulations?
- b. Whether the State Commission, despite its decision to the contrary on the entitlement of SCCL to premium on coal price, could have allowed the same for the purposes of determination of Energy Charge Rate and Annual Fixed Charges?



- c. Whether the State Commission, having interpreted the PPA between the Appellants & SCCL and its Tariff Regulations as not permitting SCCL to charge a premium from FY 2021-22 onwards by a judicial order dated 01.04.2024 can feign ignorance of the same while deciding the truing up for the year FY 2022-23 and MYT proceeding for the control period FY 2024-25 to FY 2028-29?
- d. Whether both the Impugned Order and the Order dated 01.04.2024 can be given effect to when there is a completely contrary conclusion reached by the State Commission in both Orders?
- e. Whether the State Commission has erred in not taking into consideration the objections of the Appellants and that the Order dated 01.04.2024 was specifically adverted to by the Appellants in their written submissions filed on 27.04.2024 in the truing up proceedings?
- f. Whether the State Commission, being a quasi-judicial authority, can pass conflicting orders between the same parties on the same issue, merely because there are two proceedings, one for dispute adjudication and the other for truing up?

**9. GROUNDS RAISED WITH LEGAL PROVISIONS**

- A. BECAUSE the Impugned Order merely allows and adopts the figures claimed by SCCL stating that the same has been recomputed in terms of the methodology provided under TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019. However, the Impugned Order fails to deal with the contentions of the Appellants and does not provide a reasoning for adopting and allowing a premium over the notified price of coal for the purposes of computation of Energy Charges Rate (ECR), Annual Fixed Charges (AFC) and R & M Expenses.

- B. Because the landed price of coal approved vide the Impugned Order includes 20% additional premium on notified basic price of coal for FY 2022-23 and 30 % additional premium for the period FY 2024-25 to FY 2028-29 (i.e., as claimed by SCCL), contrary to its Order dated 01.04.2024 in OP No. 13 of 2023. The State Commission having categorically disallowed the same from FY 2021-22 onwards, should not have allowed for pass through of the same in the true – up proceedings and inclusion of the same in the tariff for the subsequent period. It was the State Commission which had observed in its Order dated 01.04.2024, that the Appellants by not approaching the State Commission earlier have abdicated the responsibility of consumer interest. The relevant portion of the Order dated 01.04.2024 reads as under:

*"30. In these circumstances, the Commission would like to place its displeasure about the petitioners' attitude towards abdicating the responsibility of consumer interest in whose favour they have to function being the State instrumentalities. From the pleadings, it is clear that the MoU between the respondent and the generating unit thereof had been entered for specific periods as identified above supra and if any grievance was perceived, nothing estopped the petitioners from approaching the Commission for appropriate relief at the first instance. Having knowledge of the actions of the respondent even now, the petitioners have approached the Commission in the year 2023 when MoU for the period FYs 2021-24 had already been entered on 16.04.2021 and they had intimation of the same, which provided for premium against the coal price. Nothing prevented the petitioners from approaching the Commission at the earliest point of time in the year 2017 itself or in the worst case in the year 2020, when the report of the Comptroller and Auditor General on India has been made public."*

- C. Because the State Commission had failed to consider its own order dated 01.04.2024 in the determination of ECR and Annual Fixed charges (AFC) for FY 2024-25 in the order dated 28.06.2024 in OP No.



4 of 2024 will result in an additional financial burden of approximately Rs.572 crore/annum( i.e ECR burden of Rs. 562 crore/annum and AFC burden of Rs. 10 Crore/annum) for the generation corresponding to NAPAF and for FY 2022-23 of Rs. Rs.367 Crore/annum (i.e ECR of Rs.364 Crore/annum and impact in AFC of Rs. 3 Crore/annum) for 8721.47 MU generation admitted by the Appellants. This will ultimately burden the end consumers of the State for the fault of SCCL having not operationalized its NAINI coal block and simply relying on the bridge linkage to charge additional premiums at will.

- D. Because the State Commission in its Order dated 01.04.2024 had held that SCCL has no liberty under the PPA to fix premiums and it cannot go beyond the provisions of the PPA. Annexure - III & IV of the PPA were deleted and replaced with "*For any billing month, the variable charges shall be determined as per TGERC Regulations*" in terms of the Order of the State Commission dated 22.10.2021. The State Commission had thus interpreted both the PPA and its Tariff Regulations to hold that SCCL was estopped from levying premium over the coal price fixed by it. The State Commission had also directed that henceforth SCCL will not be entitled to levy such premia. The relevant portion of the Order of the State Commission dated 01.04.2024 reads as under:

*26. Having considered the material on record, the Commission is of the view that pricing of coal is the exclusive fort of the respondent. However, it cannot without exercising the statutory or regulatory mechanism overstep and fix premiums also contrary to the agreement entered by it with the petitioners. There is no such liberty provided to the respondent in the PPA and as such, it cannot go beyond the provisions of the PPA. The petitioners were absolutely right in their submissions that the respondent had the authority being a coal company to determine the tariff for the sale of coal but that itself would not mean that it has liberty to act beyond such*

*authority by seeking to impose premium on the coal price by 20% or 30% as the case may be. To this extent, the petitioners would succeed and respondent is estopped from collecting any premium over the coal price fixed by it.*

The above being the finding of the State Commission on the entitlement of SCCL to premium on coal price, the same could not have been allowed to be passed on to the Appellants and ultimately the end consumers, reading the very same Tariff Regulations.

- E. Because the authority to levy premium on notified base price for coal being sold through bridge linkage is relevant as to what will be the notified price of the coal that the buyer must accept because coal allocation and pricing are according to policy of the Government of India. The bridge linkage policy does not specify any particular pricing mechanism. Therefore, the default practice must be considered which would mean taking into consideration the notified base price of coal.
- F. Because the provisions of variable charge in PPA and the TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019 are explicit. Neither enable SCCL to include premium on the notified base price of coal/ cost of coal as the case may be. The State Commission thus should not have undertaken recomputation in accordance with the TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019 taking to consideration the notified base price along with a premium of 20/30% additional premium and should have undertaken a prudence check in determining the actual cost of coal.
- G. Because even in terms of Regulation 21.9 of TGERC (Terms and Conditions of Generation Tariff) Regulations, 2019, in case of procurement of fuel from sources other than as agreed by the generator and the beneficiary, the State Commission is entitled to



make a prudence check in approving the price of alternative fuel and if there is an increase in price of fuel above the stated threshold then prior consultation with the beneficiary is required.

- H. Because the additional coal cost would not have been allowed to SCCL had the State Commission undertaken a prudence check in right earnest. The State Commission vide orders dated 19.06.2017 and 28.08.2020 issued directions to SCCL to actively pursue with the Ministry of Coal for swapping of coal allocation from Naini coal blocks in Odisha to own mines of SCCL which are closer to its generating station so that the cumbersome task of transportation of coal from Odisha and associated losses in quantity and GCV could be mitigated. In pursuance thereof, the Appellants even addressed letters to SCCL requesting to pursue with the Ministry of Coal for swapping of coal allocation from Naini coal blocks in Odisha to own mines of SCCL. SCCL neither commenced the production from its captive coal block nor swapped coal allocation, even after lapse of 3 years. It was in this background that the Bridge Linkage kept getting extended. It is evident that SCCL taking advantage of its own wrong is charging a premium on the cost of coal and is seeking to unduly benefit at the instance of the consumers of the State.
- I. Because the impact of taking into consideration 20% over and above the notified basic price of coal for the FY 2022-23 and 30% additional premium for the control period FY 2024-25 to FY 2028-29, despite the same having been disallowed has resulted in a substantial increase in ECR and the same is depicted hereinunder:

Period	ECR approved in True Up/MYT Order, dated.28.06.2024	ECR in line with TGERC's Order dated 01.04.2024
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FY 2022 - 23	3.332	2.913
FY 2024 - 25 to FY 2028-29	3.785	3.118

- J. Because the State Commission has computed the working capital requirement with Bridge Linkage coal pricing by taking into consideration 20% over and above the notified basic price of coal for FY 2022-23. Consequently, the interest claimed on working capital increased resulted in an increase in annual fixed charges (AFC). The impact of the same is as under:

Component	Approved in MTR Order for FY 2022 - 23	Allowed in True Up Order for FY 2022 - 23	Variation	Impact on TGDISCOMs
Interest on Working Capital	83.51	92.5	8.99	3.00
AFC impact with additional premium	1351.27	1391.27	8.99	3.00

Similarly, the landed price of coal with 30% additional premium claimed by SCCL was considered while approving the ECR of Rs.3.785/kWh for the control period FY 2024-25 to FY 2028-29 and the same was taken into consideration while arriving the interest on working capital in the Multi Year Tariff for the control period FY 2024-25 to FY 2028-29 resulting in a substantial increase in AFC.

- K. Apart from the above issue, in approving R&M expenses the Commission has computed the k factor based on the approved R&M expenses for previous Control Period. The formula for computation of the R & M expenses in as provided under the TGERC Tariff Regulations, 2019 is as under:



*19.3. Repairs and Maintenance Expens ( $R\&M_n$ )*

*The expense shall be calculated as percentage (as per the norm defined) of Opening Gross Fixed Assets for the Year governed by following formula:*

$$R\&M_n = K_n \times GFA_n \times WPI \text{ Inflation}$$

*Where:*

*R&M: Repairs & Maintenance expense for  $n^{th}$  Year*

*GFA<sub>n</sub>:*

*Opening Gross Fixed Assets for  $n^{th}$  Year*

*$K_n$ : 'K' is the immediate preceding Control Period average (expressed in %) governing the relationship between R&M and Gross Fixed Assets (GFA).*

*WPI inflation: point to point change in Wholesale Price Index (WPI) for immediately preceding Year.*

*Provided that in case WPI inflation is a negative number, the escalation/ change shall be 0%.*

*Source for WPI - As published by Office of Economic Adviser - GOI*

The normative R&M expenses of each financial year for the period FY 2024- 25 to FY 2028-29 is computed by multiplying the opening GFA, with k factor and average WPI inflation factor of last 5 financial years, which is escalated for each year of the period FY 2024-25 to FY 2028-29. K' is a constant factor, which is fixed depending on the GFA approved. WPI inflation is only varying component and is taken average of last 5 years. In the Impugned Order the State Commission had considered the 'K' factor as 1.08% instead of 1.04% though there is no change in the GFA approved for the control period from FY 2019-2020 to FY 2023-2024 vis-a-vis GFA for FY 2024-25 to FY 2028-29, resulting in an increase in O & M expenses.

- L. The Appellant craves leave to add to the grounds mentioned above and submits that the contentions are in the alternate and without prejudice to one another.

10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The Appellant has not filed any other suit, appeal or has initiated any other legal proceeding against the impugned order dated 28.06.2024 passed by the Commission.

**11. GROUNDS FOR SUCH RELIEF (S) AND THE LEGAL PROVISIONS, IF ANY, RELIED UPON**

As stated in para 9 above

**12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.**

- i. Application seeking condonation delay in filing the appeal
- ii. Application seeking interim Directions

**13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIUBNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL.**

NO

**14. DETAILS OF INDEX**

An index containing the details of the documents to be relied upon is enclosed.

**15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF POWER, NEW DELHI.**

In respect of the few of appeal.

Name of the Bank. SBI Branch Hyderabad payable at Delhi. DD No.- 083413 Date 14.11.2024, Amount Rs. 100000/-

**16. LIST OF ENCLOSURES.**

As per the Index



17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED.

Yes

18. WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS.

Yes

19. WHETHER THE COPY OR MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.

No

20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT DEEMS NECESSARY TO SET OUT:

No

21. RELIEFS SOUGHT.

In view of the facts mentioned in para 7 above, points in dispute and questions of law set out in para 8 and the grounds of appeal stated in para 9, the Appellant prays for the following reliefs:

- (a) Allow the appeal and set aside the order dated 28.06.2024 in O. P. No. 4 of 2024 passed by the Telangana Electricity Regulatory Commission to the extent challenged in the present appeal.

(b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

Dated at Hyderabad this 17<sup>th</sup> day of November, 2024

S. Ail  
Counsel for Appellant

V. Prabhakar  
Appellant  
CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.

**DECLARATION BY APPELLANT**

The Appellant above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original.

Verified at Hyderabad on this 17<sup>th</sup> day of November, 2024

S. Ail  
Counsel for Appellant

V. Prabhakar  
Appellant  
CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.

**VERIFICATION**

I, Sri, V.Prabhakar, S/o V.Naraynappa, aged about 58 years, working as Chief Engineer/IPC in the office of Southern Power Distribution Company of Telangana Limited, resident of Hyderabad, authorized on behalf of Appellants herein, do hereby verify that the contents of paras 1 to 7 and 10 to 20 are based on the records of the Appellant maintained in the ordinary course of business and believed by me to be true and paras 8, 9 and 21 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 19.11.2024  
Place: Hyderabad

V. Prabhakar  
Appellant/Authorized Officer  
- CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.



**ATTESTED**  
A.B. Narsing Rao  
eDMS No: 2326/11 T.S. B.SC., LL.B.  
ADVOCATE & NOTARY  
A No. 1-7 63112/E, Gemini Colony, Ramnagar  
Musheerabad, Hyderabad-500 048 T.S. India

11 4 NOV 2024



IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
APPELLATE JURISDICTION  
APPEAL NO ..... OF 2024

IN THE MATTER OF:

Southern Power Distribution Company of Telangana  
Limited &Anr.

...Appellants

VERSUS

Telangana State Electricity Regulatory Commission &Anr.

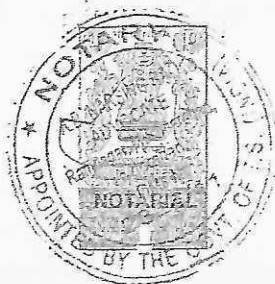
...Respondents

AFFIDAVIT

I, Sri, V.Prabhakar, son of Sri V.Naraynappa, aged about 58 years, resident  
of Hyderabad, do hereby solemnly affirm and state as under:

1. I say that I am Chief Engineer/IPC in the office of Southern Power  
Distribution Company of Telangana Limited, authorized on behalf of  
Appellants herein and am competent to swear the present affidavit.
2. I say that I have read the contents of the above appeal filed by the  
Appellant against the order dated 28.12.2024 passed by the State  
Commission and I have understood the contents of the same.
3. I say that the contents of the above appeal filed by the Appellant are  
based on the information available with the Appellant in the normal  
course of business and believed by me to be true.
4. I say that the Annexures to the Memorandum of appeal are the true  
and correct copies of their original.

V. Prabhakar  
DEPONENT  
CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.



ATTESTED  
A.B. NARSING RAO  
#GMR No: 2326/11 T.S. B.SC., LL.B.  
ADVOCATE & NOTARY  
No. 1-7 631/2/E, Gendur Colony, Ramnagar,  
Hyderabad, Hyderabad-500 048, T.S. India


14 NOV 2024

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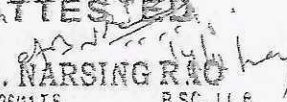
VERIFICATION

I, the deponent above-named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at <sup>Hyderabad</sup> on this <sup>14<sup>th</sup></sup> day of November, 2024

  
DEPONENT  
CHIEF ENGINEER  
(IPC), TGSPDCL,  
Corporate Office, 6-1-50,  
Mint Compound, Hyd-500004.



ATTESTED  
  
A.B. NARSING RAO  
Notary No. 2326/11 T.S. B.SC., LL.B.  
ADVOCATE & NOTARY  
J.No. 1-1 631/2/E, Gemini Colony, Ramnagar  
Musheerabad, Hyderabad-500 048, T.S., India

14 NOV 2024





**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

R. P. (SR) No. 79 of 2023

in

O. P. No. 77 of 2022

Dated 17.11.2023

Present

Sri. T. Sriranga Rao, Chairman  
Sri. M. D. Manohar Raju, Member (Technical)  
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s. Singareni Collieries Company Limited,  
Kothagudem Collieries,  
Bhadradri Kothagudem District – 507 101.

.... Review Petitioner / Petitioner.

AND

1. Southern Power Distribution Company of Telangana Limited,  
# 6-1-50, Corporate Office, Mint Compound, Hyderabad,  
Telangana State – 500 063.
2. Northern Power Distribution Company of Telangana Limited,  
Corporate Office, H. No. 2-5-31 / 2, Vidyut Bhavan,  
Nakkalagutta, Hanamkonda, Warangal – 506 001. ... Respondents / Respondents.

The review petition came up for hearing on 31.07.2023, 21.08.2023, 21.09.2023 and 15.11.2023. Sri. J. Dutta, DGM (R & C) for the review petitioner is present on 31.07.2023, Sri. P. Shiva Rao, counsel for review petitioner is present on 21.08.2023 and 15.11.2023 and Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, counsel for review petitioner is present on 21.09.2023. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

### ORDER

M/s. Singareni Collieries Company Limited (SCCL) (review petitioner / original petitioner in the original petition) has filed this review petition under section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with clause 32 of Conduct of Business Regulation, 2015 and read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 seeking review of order dated 23.03.2023 passed in O. P. No. 77 of 2022 filed by it. The contents of the review petition are extracted below:

- a. It is stated that the Singareni Collieries Company Limited (SCCL) is a coal mining company incorporated under the companies Act 1956. The petitioner is owned by the Government of Telangana (GoTS) with 51.096% shareholding.
- b. It is stated that SCCL has entered in the business of power generation by setting up a 2 X 600 MW coal based thermal power plant, namely Singareni Thermal Power Plant (STPP) at Jaipur of Mancherial District. The units of STPP achieved COD during financial year 2016-17 in the dates as mentioned below.
  - (i) COD Unit-I: 25.09.2016
  - (ii) COD Unit-II: 02.12.2016
- c. It is stated that SCCL had entered into a power purchase agreement (PPA) with two distribution companies of Telangana for the power generated from STPP which will be sold to them at a tariff decided by the Commission. The PPA shall remain valid for a period of 25 years from the COD of the last unit (unit-II).
- d. It is stated that the Commission vide its tariff order dated 28.08.2020 trued up the capital cost and annual fixed charges for 2 x 600 MW STPP up to 31.03.2019 and determined the tariff for STPP during MYT period of FY 2019-24. The Commission also directed STPP to file midterm review petition by 30.11.2022. The relevant portion is quoted below. In fact said petition is not review but of revision of tariff in mid course of MYT 2019-2024. The following is the said order.

"5.2.7.....In accordance with Clause 27 of the Regulation No.1 of 2019, SCCL is required to file the Mid-Term Review Petition by 30.11.2022....."



- e. It is stated that accordingly, STPP filed midterm review petition before this Commission. The Commission issued tariff order on midterm review (MTR) truing up the aggregate revenue requirement for FY 2019-22 and revising the tariff for FY 2022-23 and FY 2023-24. The Commission passed order dated 23.03.2023 in the said review petition.
- f. It is stated that however, there occurred some errors in calculation, errors in considering actual facts and errors in application of regulation in computing the tariff, which are apparent on the face of the record of the MTR order dated 23.03.2023. Therefore, this application is now filed before the Commission seeking review and to modify suitably by correcting the mistakes apparent on the face of record that crept in the MTR order dated 23.03.2023 to meet the end of justice.
- g. It is stated that errors apparent on the face of record are found in the following issues in the MTR order dated 23.03.2023.
- h. The Commission has dealt with the issue of the discharge of liability in para 3.4 of the impugned order dated 23.03.2023.
- j. The Commission stated in the aforesaid para that

“The capital cost approved for BTG at Rs.4815.52 crore and for BOP at Rs.922.01 crore as on 31.03.2019 are without any further leftover or balance undischarged liabilities and has attained finality.”

In fact, the said part of order is factually incorrect. It is stated that as capital cost in tariff on multiyear tariff order dated 28.08.2020 was approved based on the concept of ‘expenditure incurred’ which is the fund actually deployed and paid in cash. Therefore, though the capital cost in respect of BTG and BoP were Rs. 4849.48 crore and Rs.1007.27 crore respectively, the allowed capital cost on cash basis became Rs. 4815.52 and Rs. 922.01 crore respectively after deduction of undischarged liabilities of Rs. 33.96 crore and Rs. 85.26 crore respectively. These were then considered for tariff determination on the principle of ‘expenditure incurred’.

- k. The audited statement showing year wise capital expenditure and liabilities for STPP during FY 2019-22 which was placed before the Commission with the MTR. This statement is evidence of the fact that

these liabilities, in fact was discharged in 2019-20. The details of year wise liability discharged is given below:

STPP BTG cost liability discharged year wise (Rs.crores)						
S. No.	Actual as on date	Actual capital cost	Liability	Amount disbursed by STPP	Approved by TSERC	Remarks
1	31.03.2017	4772.14	416.39	4355.75	4355.75	-
2	31.03.2018	4772.14	179.3	4592.84	4592.84	-
3	31.03.2019	4849.48	33.96	4815.52	4815.52	-
4	31.03.2020	4849.48	0	4849.48	4849.48	Rs. 33.96 crores liability discharged in FY 2019-20 escaped the attention of TSERC
STPP BOP cost liability discharged year wise (Rs.crores)						
S.no	Actual as on date	Actual capital cost	Liability	Amount disbursed by STPP	Approved by TSERC	Remarks
1	31.03.2017	877.1	4.3	872.8	872.8	-
2	31.03.2018	977.42	31.12	946.3	946.3	-
3	31.03.2019	1007.27	85.26	922.01	922.01	-
4	31.03.2020	1007.27	0	1007.27	1007.27	Rs 85.26 crores liability discharged in FY 2019-20 escaped the attention of TSERC

- I. It is stated from the above table, it can be seen that the allowed capital cost in BTG and BoP vide order dated 28.08.2020 arrived at and leftover liabilities amounting Rs. 33.96 crore and Rs. 85.26 crore respectively, but the said fact was missed by the Commission while passing the order review.



- m. These liabilities totalling Rs. 119.22 crore were discharged during FY 2019-20 which is required to be allowed under revised capitalization as per clause 7.19.1(j).
- n. Since this is an error of fact on the face of record in the Commission's MTR order dated 23.03.2023 the same is required to be reviewed and modified and a total discharge of liability amounting Rs. 119.22 crore is required to be allowed in capital cost of the project.
- o. The computed additional impact of the above after gain / loss sharing mechanism is Rs. 84.88 Crores for FY 2019-20 to FY 2023-24.
- p. It is stated that the Commission has dealt with the issue of the spill over works in para 3.5 of the impugned order dated 23.03.2023.
- q. It is stated that the capitalization for generator rotor which was made in FY 2019-20 under BTG package had missed from the consideration of Commission. Thus, occurred mistake apparent on the face of record and deserves to be reviewed.
- r. It is stated that the generator rotor in case of similar unit and with similar history of failure for 1 x 600 MW KTPP-II station, though primarily not approved in generation tariff order dated 05.06.2017, was finally approved in the capital cost given in table 32 of TSGENCO's tariff order dated 22.03.2022.
- s. It is stated that the Commission has correctly allowed the generator rotor amounting Rs. 35.4 crore to be capitalize for 1 x 600 MW KTPP-II. However, for STPP's case, capitalization of generator rotor amounting Rs. 35.59 crore is not taken into consideration by mistake.
- t. It is stated that the Commission is requested to review the said omission and to allow capitalization of Rs. 35.59 crore for generator rotor procured.
- u. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 25.34 Crores for FY 2019-20 to FY 2023-24.
- v. It is stated that the Commission has dealt with the issue of the operation and maintenance expenses in para 3.11 of the order under review dated 23.03.2023.

- w. It is stated that the Commission had taken two important decisions in respect of O and M expenditure. The first is not to treat the O and M expenses as controllable item (para 3.11.25) and the second one is to apply clause 19 of Regulation 1 of 2019 (para 3.11.22 and para 3.11.34) for determination of O and M expenses.
- x. It is stated that however, while doing necessary calculation of O and M expenses, which otherwise ought to have been strictly as per the above decisions, several errors had crept in. These errors are the error of facts, error of application in formula, error in computation and error in application of regulation.
- y. It is stated that accordingly, the following are stated indicating the various errors before this Commission for appropriate remedy.
- z. It is stated that among the three parts of O and M expenses, employee cost and Administrative and General (A and G) expenses are derived by escalating previous years allowed expenditure. However, the R and M expenditure unlike the other two (employee cost and A and G) requires usage of cumulative wholesale price index (WPI) inflation instead of yearly WPI data as R and M expenditure is not derived by escalating previous years normative expenditure. For the calculation of R and M expenditure, the parameter Kn and GFAn remains same and the cumulative WPI is multiplied to get the R and M expenses for nth year.
- aa. It is stated that this was correctly implemented in the MYT tariff order dated 28.08.2020. Table 61 of the above order along with computation in Table 3.29 of order dated 23.03.23 is reproduced one after another to illustrate the issue:

**Table 61: R and M expenses computed for FY 2019-20 to FY 2023-24 (Order dated 28.8.2020)**

(Rs. Crore)

Financial Year	Kn	GFAn	WPI Inflation	R & Mn
2019-20	1.04%	7745.32	1.04	83.67
2020-21	1.04%	7745.32	1.09	87.26
2021-22	1.04%	7745.32	1.13	91.00



Financial Year	Kn	GFA <sub>n</sub>	WPI Inflation	R & Mn
2022-23	1.04%	7745.32	1.18	94.90
2023-24	1.04%	7745.32	1.23	98.96
<b>Total</b>	-	-	-	<b>455.79</b>

**Table 3.29: R and M expenses computed by the Commission for MTR (Order dated 23.03.23)**

(Rs. Crore)

Financial Year	Kn	GFA <sub>n</sub>	WPI Inflation	R & Mn
2019-20	1.04%	7745.32	1.04	83.67
2020-21	1.04%	7745.32	1.02	81.59
2021-22	1.04%	7745.32	1.01	81.27

- ab. It is stated that it can be seen from the above that in earlier MYT order cumulative WPI of 1.09 was considered for FY 2020-21 which was the total inflation effect of FY 2019-20 and FY 2020-21. In the MTR order under review, the WPI figures for FY 2020-21 was taken only as 1.02 even if the FY 2019-20 figure alone was 1.04. This shows cumulative WPI inflation was used in table 61 in the MYT order which erroneously gets changed to yearly inflation (that is inflation with respect to previous year) in table 3.29 of the midterm review order.
- ac. Therefore, the Commission is requested to allow the review on this computational error.
- ad. It is stated that it was noticed that in all calculations requiring inputs of CPI and WPI inflation had even for the purpose of truing up of first three financial years that is from FY 2019-22 used the inflation data which do not belong to the respective financial years for which truing up was done. In fact, the inflation data for immediately preceding years were used for truing up.
- ae. It is stated that the clause 19 of Regulation No. 01 of 2019 provides for using inflation data for immediately preceding years for computation of O and M expenditure which was required to be applied for determination of multiyear tariff at the beginning of the control period but not for the

purpose of truing up considering the fact that clause 3.12.2 provides specific provision of midterm review which should have been a comparison between actual operational and financial performance and the approved forecast. Thus, there occurred mistake apparent on the face of record and deserves to be rectified.

af. Therefore, the Commission is requested to review this aspect of computation using preceding years inflation data for truing up which otherwise could have been correct to use for projection purposes in absence of actual data but should not have been applied for truing up.

ag. It is stated that it has been observed that the O and M expenses were finally allowed as per clause 19.1 of the Regulation No. 1 of 2019 which provides that O and M expenses for each year of the control period shall be approved based on the formula shown below:

$$O \& M_n = (R \& M_n + EMP_n + A \& G_n) \times 99\%$$

ai. It is stated that further, the O and M expenses claimed and approved for MTR was given in table 3.33. The table 3.33 is reproduced below:

**Table 3.33: O and M expenses at actuals as claimed and approved for MTR**

FY	Rs. in crore				Rs. in crore			
	Claimed				Approved			
	Employee cost	R and M expenses	A and G expenses	Total	Employee cost	R and M expenses	A and G expenses	O and M expenses approved
2019-20	77.12	101.90	48.63	227.65	77.12	83.67	32.44	191.30
2020-21	75.30	116.07	58.57	249.95	75.30	81.59	33.61	188.59
2021-22	88.74	126.95	66.07	281.76	88.74	81.27	34.34	202.30

**Table 3.28: Employee cost at actuals claimed, computed and approved for MTR**

Financial Year	Rs. in crore		
	Actuals claimed by the petitioner	As computed on normative basis	Approved by the Commission
2019-20	77.12	91.91	77.12



2020-21	75.30	97.92	75.30
2021-22	88.74	101.87	88.74

- aj. It is stated that it can be seen from the above tables that under the employee cost of 'Approved' column in table 3.33 actual claim of the petitioner was considered by resorting to a strange methodology of considering least of recomputed expenses and actual expenses (ref: table 3.28) instead of considering EMPn as to be derived according to prescribed formula even if the same was not provided anywhere in the regulation and as such the methodology was not only alien / foreign to the regulation 1 of 2019 but also contrary to it's principle.
- ak. It is stated that this is a case of applying new formula / principles not contemplated earlier in the original tariff regulation and at the same time not following the definitive process set out in the regulation which was declared in force by this Commission.
- al. It is stated that it is not denied that at times the Commission depending on the circumstances may amend the rule to meet the end of justice. However, it is stated that the following table of approved O and M expenditures for generating stations owned by the state and also central generating stations in the state of Telangana.

Comparison of O&M expenses of TSGENCO thermal power plant, STPP in Midterm review orders and NTPC Ramagundam approved O&M as per CERC 2019-24 norms

Station	Capacity	FY 2019-20		FY 2020-21		FY 2021-22	
		Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs. Crores)	Per MW cost (Lakh / MW)
KTPS-V	2x250	159.42	31.88	162.43	32.49	183.53	36.71
KTPS-VI	500	159.42	31.88	162.43	32.49	183.17	36.63
KTPS-VII	800	136.29	17.04	443.3	55.41	388.93	48.62
RTS-B	62.5	75.57	120.91	81.66	130.66	86.71	138.74
KTPP-I	500	145.11	29.02	142.24	28.45	155.32	31.06
KTPP-II	600	161.5	26.92	162.32	27.05	175.59	29.27

Comparison of O&M expenses of TSGENCO thermal power plant, STPP in Midterm review orders and NTPC Ramagundam approved O&M as per CERC 2019-24 norms							
Station	Capacity	FY 2019-20		FY 2020-21		FY 2021-22	
		Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs.Crores)	Per MW cost (Lakh / MW)	Approved (Rs. Crores)	Per MW cost (Lakh / MW)
STPP	2x600	191.30	15.94	188.59	15.72	202.30	16.86
NTPC Ramagundam	4x500	450.20	22.51	466.00	23.30	482.40	24.12
NTPC Ramagundam	3x200	197.76	32.96	204.72	34.12	211.86	35.31

- am. It is stated that from the above table, it can be seen that the allowance of O and M expenditures for STPP was made contrary to the procedure in vogue as applied to other similar projects, which is unreasonably low and as such STPP is going to unduly suffer financially.
- an. It is stated that considering the above facts, the Commission is requested to review the implementation of the formula provided in clause 19.1 of Regulation No. 1 of 2019.
- ao. It is stated that in fact, the comparison of O and M expenses after computing O and Mn is required to be made with actual O and M expenditure placed before the Commission and thereafter the gains / losses could be ascertained to be shared between the parties.
- ap. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 56.47 Crores for FY 2019-20 to FY 2023-24.
- aq. It is stated that the Commission has dealt with the issue of the Interest and financing charges on loan in para 3.9 of the impugned order dated 23.03.2023.
- ar. It is stated that there is error in computation of interest and financing charges of loan. The Commission had stated that the interest and financing charges on loan was approved in accordance with clause 12 of the regulation no.1 of 2019.



- as. It is stated that accordingly, the Commission has decided to allow the refinancing of loan as per clause 12.6 which provides for detailed regulation for loan refinancing. This clause 12.6 comes under the clause 12 of Regulation No. 1 of 2019.
- at. It is stated that the refinancing clause provides that the costs associated with the refinancing shall be borne by the beneficiaries whereas the net savings shall be shared between the beneficiaries and the generating entity in the ratio of 2:1 subject to prudence check by the Commission.
- au. It is stated that in this case, the Commission after considering the facts allowed refinancing. However, during computation, it inadvertently missed to implement the sharing ratio of 2:1 on the gains of this loan restructuring beyond the financial year of loan restructuring that is 2020-21.
- av. It is stated that the regulation 12.6 is very clear about sharing of net savings in the ratio of 2:1 between the beneficiary and the generating entity and as such any ratio other than the given ratio of 2:1 cannot be implemented to pass the total benefit of loan restructuring to the beneficiary from FY 2021-22 onwards.
- aw. It is stated that once the Commission decided to allow refinancing by applying prudence check, it cannot deviate from the stipulated ratio of benefits sharing between the beneficiaries and generating entity, by applying anything not contemplated under regulation 12.6.
- ax. It is stated that in fact, when a definitive prescription for handling an issue is unambiguously provided in the tariff regulation, no reason is stated by the Commission as to why it is resorted to apply differently.
- ay. It is stated that accordingly, the Commission is requested to review computation of interest and financing charges on loan to meet the end of the justice.
- az. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 95.03 Crores for FY 2019-20 to FY 2023-24.
- ba. It is stated that the Commission has dealt with the issue of taxation to be considered in return on equity in para 3.12.10 of the impugned order dated 23.03.2023. The Commission has only considered MAT rate

instead of regular income tax rate as commission opines that otherwise it would lead to higher return on equity (RoE) and consequential burden on the consumers.

bb. It is stated that here, in fact the clause 11.3 was not applied with the words and spirit attached to it. The regulation provides for considering 'effective tax rate' in the respective financial years and the Commission choose to apply MAT rate for the benefit of the consumers. However, the benefit that the Commission desired to pass to the consumer at the expense of generating company, that is SCCL. This has resulted permanent cash loss of Rs.185.84 Crore. The Commission is requested to review the application of the regulation 11.3 in midterm review order and to allow the RoE considering effective tax rate.

bc. It is stated that the computed additional impact of the above after gain / loss sharing mechanism is Rs. 185.84 Crores for FY 2020-21 to FY 2023-24.

bd. It is stated that the following table shows the summary of year wise claim in this review petition:

STPP year wise claim in review petition of MTR (Rs. Crores)						
Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Total
Impact of disallowed discharged liability Rs. 119.22 Cr	10.43	21.06	18.23	17.80	17.36	84.88
Impact of disallowance in additional capitalizations due to generator rotor Rs. 35.59	3.11	6.29	5.44	5.31	5.18	25.34
O and M expenses share	8.61	8.19	12.38	12.81	14.48	56.47
Interest on Loan refinancing share	0.00	0.00	35.73	31.68	27.62	95.03
Tax impact	0.00	46.44	46.44	46.47	46.49	185.84
<b>Total</b>	<b>22.16</b>	<b>81.98</b>	<b>118.22</b>	<b>114.07</b>	<b>111.14</b>	<b>447.55</b>



2. The review petitioner has sought the following prayer in the petition.
  - “(a) To admit review petition.
  - “(b) To review the order dated 23.03.2023 passed in O. P. No. 77 of 2022 and to modify it suitably by rectifying the errors that crept in the said order by allowing the claims made above.”

3. The Commission has heard the parties and also considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 31.07.2023:

“...The representative of the review petitioner stated that Sri. P. Shiva Rao, counsel for review petitioner is out of station, hence he sought adjournment of the review petition to any other date. Accordingly, the matter is adjourned.

Record of proceedings dated 21.08.2023:

“....The counsel for review petitioner has stated that he would like to submit arguments in the matter on any other day. In view of the request of the counsel for review petitioner, the matter is adjourned.

Record of proceedings dated 21.09.2023:

“....The advocate representing the counsel for review petitioner has sought adjournment of the matter, as the counsel for review petitioner is out of station. Considering the request of the advocate representing the counsel for review petitioner, the matter is adjourned.

Record of proceedings dated 15.11.2023:

“...The counsel for review petitioner has stated that the review petition is filed against the order passed on 23.03.2023 in O. P. No. 77 of 2022 filed by the review petitioner itself. The original petition was filed for undertaking revision of the tariff upon undertaking trueing up exercise in the middle of the control period. The heading in the regulation states that ‘mid-term review’ is to be carried out is irrelevant and is a misnomer. The original order passed by the Commission is not an order undertaking the review of any other proceedings but is an original consideration of the aspects of trueing up for the 1<sup>st</sup> three years of the control period and projection for the remaining two years of the same control period. Therefore, this review petition is maintainable.

The counsel for review petitioner stated that a review against an order reviewing the earlier proceedings would not lie and cannot be entertained by the Commission. In that event, the Commission will be right in its questioning the maintainability of such review petition. However, the present petition is not against any order reviewing any other proceedings and it is filed for reviewing the general order. Even the present original proceedings have its roots in the order dated 28.08.2020 in the matter of capital investment and business plans along with tariff. Therefore, the present review petition is prima facie maintainable before the Commission.

The counsel for review petitioner stated that certain aspects in the original proceedings did not find attention of the Commission and there are incomplete or inadequate findings. The question of considering the ingredients of the review would arise once the petition is taken on file of the Commission.

The counsel for review petitioner stated that the Commission may, in the interest of justice, consider the case of the review petitioner. He stated that the headings and side headings for the Act or Rule or Regulation would not make sense and they cannot be considered for decision making in the matter. The entire provision made thereof should be considered for arriving at any decision on a particular aspect. He would like to place the relevant decisions of the Hon'ble Supreme Court on this aspect by next working day. Having heard the counsel for review petitioner, the matter is reserved for orders."

4. The review petitioner sought to raise issues, which are primarily within the knowledge of the review petitioner as on the date of hearing original petition by the Commission on 01.02.2023. The contentions raised by the review petitioner do not constitute any material, which would be discovered after the disposal of the original proceedings. Inasmuch as, the various parameters considered by the Commission are based on the submissions of the parties and nothing exterior is considered by the Commission.

5. The Commission does not find any infirmity in the order passed by it nor it calls for interference by way of review. None of the ingredients of reviewing an order as set out in Order 47 of Civil Procedure Code, 1908 have been satisfied in this case. The



review petitioner has not been able to show as to the following aspects for undertaking a review of the order.

- a. Where there is a typographical mistake that has crept in the order;
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;
- c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of law;
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given;
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;

6. It is noteworthy to state that the principles of review are not satisfied in respect of the contentions raised by the review petitioner. None of the contention would attract the ingredients of review so as to allow the Commission to revisit the order.

7. The counsel for review petition argued extensively on the maintainability of the review petition by presuming that the Commission had considered the original petition as a review proceeding and as such the present review petition is not maintainable. To support his case, he has relied on the provision in the Regulation No. 1 of 2019 at clauses 3.8.2 and 3.12 and stated that the headings are irrelevant and they need not be taken to literal construction. It is his case that the heading of the clauses is a misnomer. Though the heading says that it is 'midterm review' but it is not a review and is revisional action as provided therein.

8. In order to contend that the headings are a misnomer, he has relied on the judgment reported in 1990 (1) SCC 400 in the matter of M/s. Frick India Limited Vs. Union of India and others. Reference has been made to paragraph 8 of the judgment and the same is extracted below.

"It is well-settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplied the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub-item (3) of Item 29A."

No doubt the finding of the Hon'ble Supreme Court cannot be brushed aside. However, it has to be stated here that the Commission had placed the matter on maintainability due to the absence of ingredients inviting a review and not on the presumption as understood by the review petitioner. Inasmuch as, the Commission had initiated the proceedings not as a review but as original proceeding at first instance, which order is now sought to be reviewed. Assumptions and presumptions cannot be the basis for filing review petitions or that maintainability cannot be decided on such basis. Therefore, the argument set out in this regard is rejected.

9. Be that as it may, the review petitioner has raised the following points on which it is seeking review of the order dated 23.03.2023. The issues have been answered in the light of the powers vested for undertaking review by the Commission.

- a. **Discharge of liabilities:** Regarding undischarged liabilities, the Commission has dealt the matter at para 3.4.8 of the MTR order dated 23.03.2023 stating that *the capital cost approved for BTG at Rs. 4815.52 crore and for BOP at Rs. 922.01 crore as on 31.03.2019 are without any further leftover or balance undischarged liabilities and has attained finality.* As such, the review petitioner has not made out any case for review as none of the ingredients are satisfied.



- b. **Spill over works:** Regarding the aspect of spill over works, the Commission has dealt with the matter at paragraphs 3.5.13 and 3.5.14 of the order dated 23.03.2023. In view of the above, the Commission does not find any infirmity so as to revisit the order in the light of the contentions of the review petitioner.
- c. **O and M expenses:** Insofar as O and M expenses, the Commission had extensively dealt with the matter at paragraphs 3.11.22 to 3.11.35 of the order dated 23.03.2023. The Commission has computed the normative employee expenses, normative R and M expenses and normative A and G expenses in terms of the Regulation No. 1 of 2019. The computed normative O and M expenses were compared with the actual expenses as claimed by the review petitioner and thus approved the least of the computed normative expenses and actual expenses as claimed. This contention of the review petitioner does not satisfy the requirement of review as the finding of the Commission is emphatic and clear.
- d. **Interest and Finance charges on loans:** The aspect of the interest and finance charges on loans had been considered by the Commission and it has dealt with the matter at paragraphs 3.9.12 and 3.9.18 of the order dated 23.03.2023. The Commission had considered the reduced interest on loan from FY 2020-21 to FY 2023-24. The said aspect was clarified at paragraph 3.9.16 that, *though there is reduction in interest rate due to loan refinancing and after sharing of gains / loss as per clause 12.6 of Regulation No. 1 of 2019, the net interest on loan for FY 2020-21 has increased as the refinancing charges are to be passed on to beneficiaries as per Regulation No. 1 of 2019. The benefit of reduced rate of interest on loan due to loan refinancing is passed on to beneficiaries from FY 2021-22 to FY 2023-24.* The Commission does not find any error for review.
- e. **MAT rate instead of regular IT rate:** Adverting to the aspect of MAT rate instead of regular IT rate, the Commission had dealt with the matter at paragraph 3.12.10 of the order dated 23.03.2023. The Commission had explained in detail in the above paragraph that *the petitioner availing regular income tax rate instead of concessional MAT rate would lead to*

higher RoE and burden on the consumers. Hence the Commission had considered concessional MAT rate instead of regular income tax rate as claimed by the petitioner. Accordingly, consideration of the issues for review would not arise as there is no infirmity in such consideration.

In the light of the above discussion, the review petition has not been able to demonstrate that there is a case for review of the order dated 23.03.2023.

10. In view of the above, the Commission is not inclined to review the order dated 23.03.2023 in O. P. No. 77 of 2022 and accordingly the present review petition is rejected as non-maintainable.

This order is corrected and signed on this the 17<sup>th</sup> day of November, 2023.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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APPELLATE TRIBUNAL FOR ELECTRICITY  
(APPELLATE JURISDICTION)

Appeal No. 37 of 2010

Dated 10<sup>th</sup> August, 2010

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,  
Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member

Appeal No. 37 of 2010

In the matter of:

Meghalaya State Electricity Board  
Lumjingsghai, Short Round Road,  
Shillong-793 001  
Meghalaya

... Appellant

Versus

1. Meghalaya State Electricity Regulatory Commission  
New Administrative Building, 1<sup>st</sup> Floor, Left Wing,  
Lower Lachumiere,  
Shillong-793 001  
Meghalaya

... Respondent-1

2. Byrnihat Industries Association  
13<sup>th</sup> Mile, Tamulikuchi,  
Byrnihat-793 101  
Ri Bhoi District, Meghalaya

... Respondent-2

Counsel for Appellant

Mr. Amit Kapoor &  
Ms. Poonam Verma  
Mr. Abhishek Munot

Counsel for Respondent -1

Mr. Mr. S.N.Mitra for Res.1  
Ms Payal Chawla for R.1

Counsel for Respondent-2

Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan and  
Ms. Swapna Seshadri for  
Byrnihat Industries Association  
Ms Ranu Gupta and Mr. Gaurav

### JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON

1. Meghalaya State Electricity Board is the Appellant herein. Meghalaya State Electricity Regulatory Commission (State Commission) is the Respondent-1. Byrnihat Industries Association is the Respondent-2.

2. The Appellant has filed the present Appeal as against the order impugned dated 10.09.2009 passed by the State Commission, truing up the Appellant's account for the FY 2007-08 and FY 2008-09.



3. The relevant facts that are required for the disposal of this Appeal are as follows.
4. The Appellant Board is a distribution licensee. It filed the Petition before the State Commission for determination of the distribution tariff for the FY 2007-08. The State Commission passed the order on 17.12.2007 on the projected Annual Revenue Requirement (ARR).
5. Thereupon, Appellant filed the Petition for determination of distribution tariff for the FY 2008-09. Accordingly, the State Commission by the order dated 30.09.2008 passed the tariff order determining the distribution tariff for the said year.
6. As against this order dated 30.09.2008 passed by the State Commission, Byrnihat Industries Association (R-2) the consumer association filed an Appeal before this Tribunal in Appeal No. 132 of 2008. After hearing the parties, the Tribunal passed the final order in the said Appeal on 09.02.2009

remitting the matter to the State Commission by giving a direction to undertake the true up exercise in respect of FY 2007-08.

7. In pursuance of the said order, the State Commission directed the Appellant by the order dated 06.07.2009 to submit its report for the truing-up exercise in respect of FY 2007-08 to enable it to comply with the orders of the Tribunal. Accordingly, the Appellant submitted the report in respect of the truing-up exercise of account for FY 2007-08 and the relevant documents before the State Commission on 09.07.2009. On 13.07.2009, the State Commission intimated the Appellant as well as Byrnihat Industries Association (R-2) that the Remanded proceedings would be heard on 29.07.2009 by the State Commission.

8. After receipt of the said intimation, Byrnihat Industries Association (Respondent-2) filed the reply on 28.07.2009 before the State Commission requesting the State Commission to take up the true-up exercise in respect of both FY 2007-08 as well as



for FY 2008-09. However, the Appellant raised objection to this course stating that the State Commission cannot go into the true-up exercise in respect of FY 2008-09 and it should confine itself to true-up exercise for the FY 2007-08 alone as per the order of the Tribunal dated 09.02.2009. Despite this objection the State Commission directed the Appellant to submit the break up of the power purchase relating to the period for FY 2008-09 as well. Accordingly same was submitted. Ultimately, the State Commission passed the impugned order on 10.09.2009 and gave finding on the following 2 aspects:-

- (i) The truing-up in the Appellant's account for the FY 2007-08 and FY 2008-09.
- (ii) The downward revision of electricity tariff for the FY 2008-09 was retrospectively given effect to w.e.f. 01.10.2008.

9. On being aggrieved, the Appellant has filed this Appeal.

10. The following are the grounds urged by the Learned Counsel for the Appellant.

(i) The order impugned is beyond the scope of Remand Order dated 09.02.2009. The Tribunal remitted the matter back to the State Commission, with a specific direction to undertake the truing-up exercise of the Appellant's accounts for the FY 2007-08 only but, contrary to this direction, the State Commission carried out the truing-up exercise not only for the FY 2007-08 but also for FY 2008-09.

(ii) It is settled law that it is mandatory for the State Commission to follow and adopt the financial statements, duly audited by the Comptroller & Accountant General. But on the other hand, the State Commission disallowed the various amounts of net prior period charges, such as employee's cost, depreciation, income-tax, administrative



expenditure, etc., after ignoring the certificate issued by the Comptroller & Accountant General and included the amount as revenue gain by 2% reduction of AT&C losses for the FY 2007-08 which is not in consonance with the financial statement duly audited by the Comptroller & Auditor General.

- (iii) The State Commission has wrongly given retrospective effect for adjustment of FY 2008-09 by revising the tariff downwards for the FY 2008-09.

11. In elaboration of the above grounds, the Appellant has made detailed submissions as given below:

- (A) The Tribunal by the order dated 9.2.2009, remitted the matter with a specific direction to undertake truing up exercise in respect of FY 2007-08 only. The said order did not direct the State Commission to simultaneously

undertake truing up exercise for the FY 2008-09. In violation of this order, the State Commission has done the truing up for the FY 2008-09.

(B) Actually, the Appellant abstained from filing any submissions relating to the truing up of the account for the FY 2008-09. As a matter of fact, the Appellant in his statement filed before the State Commission on 12.08.2009 specifically mentioned that the Electricity Board craves liberty not to reply to the respondent's contention since it refers to the allegations of the objectors relating to the FY 2008-09 since the issue before the State Commission is relating to truing up exercise for the FY 2007-08 only.

(C) Further, even in the impugned order the State Commission has recorded that the Remand proceedings were restricted to the extent of truing up of the accounts for the FY 2007-08. In the impugned order, State Commission itself recorded that the



Electricity Board, the Appellant, had not made any submissions with regard to the truing up of the accounts for the FY 2008-09, either in its reply dated 12.08.2009 or in its oral submissions during the hearings conducted on 29.07.2009 and 26.08.2009. Despite this factual position as admitted by the State Commission in the impugned order, it has wrongly gone ahead and trued up the Appellant's accounts not only for the FY 2007-08 but also for the FY 2008-09. There is neither a finding in the impugned order nor any interim order passed by the State Commission giving the reasonings as to why it undertook the truing up for the FY 2008-09 also.

- (D) When a matter is remanded by the Appellate Court to a lower court or the lower authority, with a limited direction, the scope of adjudication shall be limited to the directions as prescribed in the Remand Order. It is not open to such authority to do anything which is

beyond the scope of the Remand. This is well settled law laid down by this Tribunal, the High Courts and Supreme Court.

(E) The truing up exercise is a post-facto verification of actual expenses and revenues as against the projected expenses and revenue in tariff order. Therefore, the truing up exercise of the actual financial data for FY 2008-09, i.e. from 01.04.2008 to 31.03.2009 could be made only when the tariff for the next financial year is determined separately. Therefore, the impugned order, exercising the truing up both in respect of the FY 2007-08 and other year i.e. FY 2008-09 is not sustainable.

(F) The State Commission has failed to follow the accounts, duly audited by the CAG. It is mandatory for the State Commission to adopt and follow the figures which have been duly audited by the CAG. But in this case the State Commission while truing up of the



Appellant's financial accounts in respect of the FY 2007-08 has disallowed an amount of Rs. 8.54 crores on account of net prior period charges even though the same has been duly acknowledged and found legitimate in the accounts, duly audited by the CAG and wrongly included an amount of Rs. 17.26 crores as revenue gains by 2% reduction of AT&C loss which is not in consonance with the financial statement audited by the CAG. The total amount which has been acknowledged and audited by the CAG is Rs. 21.96 crores but the State Commission has allowed only Rs. 13.42 crores and disallowed the balance amounts. In doing so, the State Commission has wrongly classified the net prior period charges into 2 categories namely, controllable charges and uncontrollable charges. There is no basis for such a wrong calculation of prior period charges into 2 categories.

(G) Further, the amount of Rs. 17.26 crores has been wrongly included under the head "Revenue Gain for reduction of AT&C losses", even though no such accounts were projected by the Appellant in the ARR petition filed in June 2007 and the CAG did not recognize the said amount in the audited accounts. It is true that in the decision of the Hon'ble Supreme Court in 2002 (8) SCC 715 (*West Bengal Regulatory Commission vs. CESC Ltd.*) it is held that audited accounts are not binding upon the Commission. However, in the very same judgment, the Hon'ble Supreme Court specially observed that the State Commission is bound to give due weightage to the audited accounts. Admittedly, this has not been done in this case. Further, the Tribunal in the judgment dated 04.05.2009 reported in 2009 ELR (APTEL) 538 (*Indian Tea Association vs. Assam State Commission*) has clarified about the binding nature of audited accounts in the absence of any reasonings.



given by the State Commission for its deviance.

Therefore, the impugned order is wrong in this respect.

- (H) The State Commission in the impugned order revised the tariff downward for the FY 2008-09 and directed the same to be given retrospective effect from 01.10.2008. It also directed that such retrospective adjustment be implemented against future energy charges of all affected consumers with a view to ensure that all excess amounts recovered by the Appellant are fully adjusted by 31.03.2010. The State Commission by the impugned order directed the Appellant to take effective steps to adjust the excess amount billed and collected during the tariff period between 01.10.2008 and 31.03.2010. Thus, it is clear that this is a specific direction that the Appellant has to give effect to the adjustment by 31.03.2010. The Appellant being a public body, will not retain any

amount which is unjustified and shall account for any surplus amount. The State Commission itself in its order dated 24.02.2010 in the Review Petition has observed that each time the financial accounts are trued up, the tariff may not be revised from a retrospective date. Since the Appellants audited accounts for the FY 2008-09 are now available, the State Commission may be directed to conduct the true up in respect of the FY 2008-09 to be done on the basis of the CAG's Report. Consequently any revenue surplus be adjusted while working out the ARR of the prospective year FY 2010-11.

- (I) In fact, the State Commission, while truing up for the FY 2007-08 has adopted the right approach of comparing the Appellant's expenditure as well as the revenue earned during the FY 2007-08. After considering the 2 heads, i.e. revenue and expenditure, the Learned State Commission in that order concluded



that it is not necessary to revise the tariff for the FY 2007-08 retrospectively. However, the State Commission while truing up in respect of the FY 2008-09 has wrongly considered the trued up expenditure as well as the ARR approved by the State Commission through the tariff order dated 30.09.2008. Therefore, this Tribunal may direct the State Commission to consider the audited data of Appellant's accounts for the FY 2008-09 and to true up the same in accordance with law.

12. In reply to the above submissions made by the Appellant, the learned counsel appearing for the Byrnihat Industries Association (R-2) has made the following submissions:

- (i) It is true that the truing up was to be done by the State Commission in pursuance of the order passed by the Tribunal by the order dated 09.02.2009 directing to exercise truing-up for the year 2007-08

only. However, the said order did not prohibit the State Commission to undertake truing up exercise in respect of FY 2008-09 also. Actually the proceedings were initiated by the State Commission in the month of July 2009 as per the Remand order dated 09.02.2009 passed in the Appeal filed by the R-2 herein challenging the tariff order in respect of FY 2008-09. During the said proceedings, the State Commission found that the provisional accounts with the actual data for the FY 2008-09 were very much available to enable the State Commission to re-determine the tariff. On that basis, the Appellant was directed by the State Commission to submit its report for truing up for both the years namely FY 2007-08 and FY 2008-09.

(ii) Even though the Appellant mentioned in his reply objecting to the request of the Respondent to true-up in respect of the FY 2008-09 also, the



Appellant mentioned in the said reply agreeing that it would provide the details for true-up exercise in respect of FY 2008-09 also, if so ordered. This reply was filed on 12.08.2009. In pursuance of the same, the State Commission on 21.08.2009 directed the Appellant to submit the report in respect of the FY 2008-09 as well. Accordingly, the Appellant submitted such report. As such, the Appellant did not raise any objection before the State Commission, while submitting the said report. In such circumstances, the State Commission has done the true up exercise in respect of both the years. There is nothing wrong in it.

- (iii) The Appeal proceedings before the Tribunal in Appeal No. 132 of 2008 filed by R-2 was against the tariff order in respect of the FY 2008-09. The order remitting the matter is for re-determination of the revenue requirement and tariff for the FY

2008-09. In the said order dated 09.02.2009, the Tribunal observed that it was noticed that the tariff for the FY 2008-09 has been finalized by the State Commission without subjecting the estimates claimed by the Electricity Board with prudent check and validation of data. It was in that background, the directions were given for trueing up for the FY 2007-08. The directions given by this Tribunal was to complete the true up exercise by 31.05.2009. The compilation of the accounts of FY 2008-09 was expected to take some more time beyond May 2009. Since the State Commission could not take up the matter before 31.05.2009, the State Commission had to consider the provisional accounts which were made available then for FY 2008-09. Therefore, the true up exercise was done by the State Commission for both the years. This is not wrong.



(iv) It is well settled that the truing up process is only comparing estimated figures at the beginning of the year with the actual figures at the end of the year. Since the actual data are available, the State Commission is required to undertake the truing up exercise. It is not necessary for the State Commission to wait for the audited accounts for which it may take a long time.

(v) The Appellant's contention that the State Commission ought not to have given retrospective adjustments in the tariff is misconceived. In the Appeal No. 132 of 2008 filed by the R-2, the challenge in the said appeal was against the tariff for the year 2008-09. The prayer in the Appeal was for re-determination of the tariff for the FY 2008-09. When the matter was remitted by the Tribunal to the State Commission with the direction to consider the grievance of the Appellant and to pass order in

accordance with law, the State Commission was required to consider the revenue requirement and determination of tariff for the FY 2008-09 also.

- (vi) According to the Appellant, the State Commission disallowed the prior period charges. The ground of challenge is that the State Commission is bound by the audited accounts of the Appellant. This contention is also misconceived. The audited account is only to verify whether the expenditure has been actually incurred or not. The auditor does not deal with the prudence of the expenditure. Whether the said expenditure is to be allowed or not is only after prudent check by the State Commission. The auditor will only verify and certify whether the expenditure of such accounts has been actually incurred or not. However, the State Commission is required to apply prudent check to verify whether the expenditure is to be allowed or not. In the present case, the prior



period charges are expenditure incurred by the Appellant during the year 2002-03. This was never claimed to be allowed in the past. In such circumstances, it is not open for the Appellant to claim such expenditure at the time of truing up especially when the said claim was not made at the time of tariff petition. So, claiming the same for the first time in the truing up process is wholly unjustified.

In addition to the above points, the learned counsel for Respondent 2 urged the other grounds also mentioned filed by it in IA No. 82/2010 seeking for the cross claim.

13. The Learned Counsel for the State Commission also argued in detail in justification of the impugned order.

14. The following questions have arisen for consideration in the light of rival contentions urged by the respective counsel for the parties as referred to above in the main Appeal.

- i) Whether in the proceedings initiated in terms of the order passed by this Tribunal dated 09.02.2009 in Appeal No. 132 of 2008 titled as *Byrinhat Industries Association vs. Meghalaya State Electricity Regulatory Commission and Another*, directing to take up the true up exercise in respect of the FY 2007-08, the Meghalaya State Commission should not have gone beyond the scope of the Remand to undertake truing up exercise of the Appellant's accounts for FY 2008-09 also?
- ii) Whether the State Commission was right in not following and adopting the financial statement, duly audited by the Comptroller & Auditor General in spite of the principle of truing up?
- iii) Whether the State Commission was right in disallowing the expenses relating to employees cost,

depreciation, income-tax, administrative expenditure and other expenses related to entire prior period charges as claimed by the Appellant in spite of AS-5 issued by the Council of the Institute of Chartered Accountants of India?

- iv) Whether the State Commission could pass the impugned order dated 10.09.2009 to give effect to the trued up tariff with retrospective effect from 01.10.2008?

15. We have heard the learned Counsel for the parties on these questions and have given our thoughtful consideration.

16. We will now discuss on each of the issues.

17. With reference to the first issue, it has been contended on behalf of the Appellant, that the State Commission has gone beyond the scope and remand order by having erroneously trued-up the financial accounts of the Appellant for FY 2008-09,



when the Remand Order dated 09.02.2009 passed by this Tribunal in Appeal No. 132/2008 directed the State Commission only with regard to truing-up of FY 2007-08. With regard to Remand order, the Hon'ble Supreme Court as well as various High Courts in various authorities cited by the learned counsel for Appellant have laid down the various principles to be followed by the lower court or lower authority while dealing with the issue of limited Remand. Those decisions are as follows:

1. *Mohan Lal vs. Anandibat* (1971) 1 SCC 813
2. *Paper Products Ltd. vs. CCE* (2007) 7 SCC 352
3. *Smt. Bidya Devi vs. Commissioner of Income Tax, Allahabad* AIR 2004 Calcutta 63
4. *K.P. Dwivedi vs. State of U.P.* (2003) 12 SCC 572
5. *Mr. Muneswar and Ors. vs. Smt. Jagat Mohini Des* AIR (1952) Calcutta 368
6. *Amrik Singh vs. Union of India* (2001) 10 SCC 424
7. *Union of India & Anr. Vs. Major Bhadur Singh* (2006) 1 SCC 3670
8. *Prakash Singh Badal & Anr. Vs. State of Punjab and Ors.* (2007) SCC 1

The principles laid down in those authorities are given below:-

- (i) *The Court below to which the matter is remanded by the Superior Court is bound to act within the scope of remand. It is not open to the Court below to do anything but to carry out the terms of the remand in letter and spirit.*
- (ii) *Ordinarily, the Superior Court can set aside the entire judgment of the Court below and remanded to the subordinate court to consider all the issues afresh. This is called 'open Remand'. The subordinate court can decide on its own afresh on the available materials.*
- (iii) *The Superior Court can remand the matter on specific issues with a specific direction through a "Remand Order". This is called*

*'Limited Remand Order'. In case of Limited Remand Order, the jurisdiction of the Court below is confined only to the extent for which it was remanded".*

18. Keeping these principles in mind, we can now refer to the specific directions in the Remand order issued by this Tribunal in Appeal No. 132 of 2008. The relevant paras of the directions are as follows:

*"6. ....*

*7. In view of the above, we remit the matter to the Commission with the direction to undertake truing-up exercise of financial year 2007-08 with the financial data ending March, 2008 and examine the submissions and contentions of the Appellant in accordance with law. The Commission shall provide the opportunity to Appellant for being heard along with the Affected Parties before arriving at the determination in the truing-up exercise. Truing-up*



*exercise for financial year 2007-08 shall be undertaken by the Commission expeditiously so as to conclude it by end of March, 2009. On completion of the truing-up exercise the Commission shall act in accordance with law for giving effect to the same”.*

19. The above direction would make it clear that the State Commission was asked to undertake truing-up exercise of FY 2007-08 alone with the financial data ending March, 2008 and to conclude it by the end of March, 2009. As such, this is ‘Limited Remand Order’. Admittedly, the State Commission carried out the exercise not only for FY 2007-08 but also for FY 2008-09. There is no dispute in the fact that when the Appellant filed its Report relating to the truing-up of the accounts for FY 2007-08, as directed by this Tribunal, it is R-2 who prayed the State Commission to take up truing-up both in respect of FY 2007-08 and FY 2008-09. The Appellant in his reply filed before the State Commission on 12.08.2009 objected

to the same, and requested the State Commission to confine itself to the truing-up exercise in respect of FY 2007-08 alone and that alone would be in conformity with the order of the Tribunal. As a matter of fact, the reply filed on 12.08.2009 before the State Commission would show that the Appellant (Electricity Board) specifically mentioned that the Appellant would not propose to reply to the truing-up exercise in respect of FY 2008-09 since the issue before the State Commission, as per the order of the Tribunal, is relating to the truing-up exercise for FY 2007-08 only. Even in the impugned order, the State Commission has referred to the said stand taken by the Appellant.

20. Despite this, the State Commission in the impugned order has trued-up the Appellant's accounts not only for FY 2007-08 but also for FY 2008-09. Admittedly, there is no reasoning given in the impugned order as to why the State Commission undertook truing-up exercise for FY 2008-09 as well. It is

settled law, as indicated above that when a matter is remanded or remitted by the superior court to the subordinate court or subordinate authority, with a limited direction, the scope of adjudication shall be limited to such direction alone and it is not open to such authority to do anything which is beyond the scope of the Remand.

21. However, the Learned Counsel appearing for the Respondent submitted that this is not a case of remand and this is only an order remitting the matter, directing for the true-up exercise for 2007-08 and the State Commission, being the authority to undertake the truing-up exercise, it has resorted to the said exercise in respect of the next year also as there is no bar or restriction to do so either under the Act or under the order passed by the Tribunal. In the light of the said stand taken by the Learned Counsel for the Respondent-2, it would be appropriate to deal with this issue.



22. It is not disputed that the Remand Order remitting the matter to the State Commission was passed by this Tribunal on 09.02.2009 in the Appeal No. 132/08 filed by the Byrnihat Industries Association, Respondent-2 herein challenging the determination of the distribution tariff for the FY 2008-09. It cannot also be debated that the Tribunal, specifically mentioned in para 7 of the said order that the matter is remitted to the State Commission with the specific direction to undertake the truing up exercise in respect of the FY 2007-08 with the financial data ending March 2008. In other words, the said order did not direct or permit the State Commission to simultaneously undertake the truing-up exercise for the FY 2008-09.

23. In the proceedings in the Appeal No. 132/08 filed by the R-2, it was represented by the Board, the Appellant herein before the Tribunal that the financial data of the Board from 01.04.2007 to 31.03.2008 would be produced before the State Commission to true-up the financial for the FY 2007-08. Endorsing the said contention, the Tribunal had remitted the

matter back to the State Commission only for carrying out the truing-up of Appellant's financial for the FY 2007-08. Thus, the order of Remand is very clear. The order remitting the matter to the State Commission was only restricted to the truing-up for the FY 2007-08. In pursuance of the said order, the State Commission also directed the Appellant, namely the Board, to submit the report and the materials for exercising the truing-up in respect of FY 2007-08 in order to comply with the order passed by the Tribunal. Further, the State Commission itself has recorded in the impugned order that the Appellant had not made any submissions with regard to truing-up for the FY 2008-09 either in its reply dated 12.08.2009 or in the oral submissions made by the Appellant during hearings on 29.07.2009 and 26.08.2009. On the other hand, the Appellant raised his objection in its reply dated 12.08.2009 for truing up in respect of next year. When such being the case, there is no reason as to why the State Commission went ahead for truing up Appellant's financial not only for the FY 2007-08 but also for the FY 2008-09. In fact, there is no reason neither in the impugned

order nor in any interim order by the State Commission referring to the reply made by the Appellant for rejecting the objection of the Appellant for objecting truing-up in respect of the FY 2008-09 and for justifying as to why it undertook the truing-up exercise in respect of the FY 2008-09 as well.

24. It is a well settled principle of law as mentioned earlier that when a matter is remanded by the appellate forum to the lower court or the lower authority, with a limited direction, the said lower court or the lower authority shall restrict itself to the extent as prescribed in the order of "Limited Remand". In other words, it is not open to the court below to do anything but to carry out the terms of the Remand remitting the matter in letter and spirit.

25. As a matter of fact, when the proceedings, in pursuance of the Remand order had started, the State Commission has specifically stated in the communication dated 06.07.2009 sent to the Appellant and in the order passed on 29.07.2009 that the



State Commission will take up the truing-up exercise in respect of the FY 2007-08 only. In other words, in the above communication/order there is no reference for the proposal about undertaking of the truing-up exercise in respect of the FY 2008-09. When the R-2 filed a petition requesting the State Commission to undertake the truing-up exercise in respect of the next year also, the specific objection was raised by the Board in its reply dated 12.08.2009 as indicated earlier and the following is the statement made by the Appellant in this regard.

*“28. MeSEB craves liberty to not to reply to para 24 to 40 since it relates to the allegations of Objector relating to the FY 2008-09. It is reiterated that the issue before the Hon’ble Commission is relating to the truing-up exercise for FY 2007-08. The Objector has unnecessarily raised objections relating to FY 2008-09. If the Hon’ble Commission so desires, MeSEB shall provide the details as and when required.”*

26. The above statement of the Appellant would indicate that the Appellant has taken a specific stand raising objection to the exercise of the truing-up in respect of FY 2008-09 as it is not in consonance with the order of Remand passed by the Tribunal. When such was the stand taken through the statement made by the Appellant before the State Commission objecting to the proposal to take up the truing-up exercise in respect of FY 2008-09, there is no justification for the State Commission to undertake the truing-up for the FY 2008-09 as well.

27. It is contended by the Learned Counsel for the R-2 that the Appellant itself has produced the documents/report before the State Commission to enable the State Commission to take up the truing-up exercise in respect of FY 2008-09. Mere submission of the records before the State Commission as directed by the State Commission, would not amount to withdrawal of its stand of objection taken before the State Commission that the State Commission should not take up the true-up exercise in respect of FY 2008-09.

28. According to the Appellant, even though such a specific stand was taken before the State Commission, the Appellant was constrained to submit the report for the next year in pursuance of the direction issued by the State Commission or otherwise the non-compliance of the said directions by the State Commission would result in adverse consequences against the Appellant.

29. In spite of the fact that the specific stand taken by the Appellant, objecting to the truing up exercise for the next year, there is no specific reasoning given by the State Commission in the impugned order dated 10.09.2009 either with regard to the rejection of the said objection raised by the Appellant or with regard to the circumstances, under which for undertaking truing-up of the Appellant's financial for the FY 2008-09 was taken up along with the truing-up exercise for the FY 2007-08.

30. It is contended by the Learned Counsel for the Respondent that the order passed by the Tribunal is not a Remand and it is



only an order remitting the matter for truing-up exercising the process and in the absence of any prohibition referred to in the said order by the Tribunal for exercising the truing-up process in respect of FY 2008-09, it cannot be said that the order passed by the State Commission is wrong. This contention, in our view, cannot be sustained for the following reasons.

31. Even though the distribution tariff order in respect of FY 2008-09 had been challenged by the R-2 in Appeal No. 132/2008, the Tribunal had not entered into the merits of the tariff order which was passed by the State Commission in respect of FY 2008-09 and on the other hand, it thought it fit to direct the State Commission to finish the truing up process in respect of the FY 2007-08 as, in their view, the true-up exercise must be completed in time in respect of FY 2007-08 before passing the tariff order relating to FY 2008-09. The Appellant also submitted before the Tribunal that the Audited Accounts were available for truing up for the year 2007-08. In that view only the Tribunal remitted the matter with direction through the

order of remand. Therefore, it cannot be contended that it was not a Remand order. In our view, the same is a limited Remand Order remitting the matter to the State Commission with a specific direction to State Commission to exercise and pass the order of truing-up process in respect of the year 2007-08. Under those circumstances, the State Commission ought to have complied with the directions of the Tribunal by deciding the issue relating to truing-up exercise in respect of FY 2007-08 only. It is proper for the State Commission to take up the true-up exercise for the FY 2008-09 separately since the materials to decide the issue in that case would be entirely different. Therefore, the order passed by the State Commission truing up in respect of FY 2008-09, clubbing with the truing-up exercise for FY 2007-08 is wrong and the same is liable to be set aside.

32. The second issue is relating to the State Commission not following and adopting the financial statement, duly audited by the Comptroller & Auditor General. On this issue, it has been argued by the Learned Counsel for the Appellant that the State

Commission should not have disallowed the revenue requirement and accounts without considering the audited accounts of the Electricity Board in the truing-up exercise. While elaborating this point, it is contended on behalf of the Appellant that the State Commission while truing-up the Appellant's financial accounts in respect of FY 2007-08 has disallowed an amount of Rs. 8.4 crores even though the same had been duly acknowledged and found legitimate in the accounts duly audited by the Comptroller & Auditor General (CAG) and wrongly included an amount of Rs. 17.26 crores as revenue gain by 2% reduction of AT&C losses which is audited by the Comptroller & Auditor General. It is also contended on behalf of the Appellant that even though the total amount which had been acknowledged and audited by the CAG is Rs. 21.96 crores, the State Commission has allowed only Rs. 13.42 crores. In doing so, it is argued that the State Commission has wrongly classified the net prior period charges into 2 categories namely "controllable charges" and "uncontrollable charges". This contention, in our view, is not



tenable. The audited account is only to verify as to whether the expenditure has been actually incurred or not. The auditor does not deal with the prudence of the expenditure. The question whether the said expenditure is to be allowed or not has to be considered only by the State Commission after prudence check. The auditor will only verify and certify whether the expenditure on such account had been actually incurred or not. On the other hand, the State Commission is bound to apply its mind to make a prudence check in order to verify whether the expenditure is to be allowed or not and the State Commission is not bound by the opinion of the auditors as laid down by the Hon'ble Supreme Court in AIR 2002 SC 358 = AIR 2002 (8) SCC 70.

33. The State Commission has disallowed certain expenditure in the ARR of the Appellant which are controllable. However, 6 uncontrollable expenditures have been allowed by the State Commission despite the failure on the part of the Appellant to claim the revenue requirement at the appropriate time. The claim which were rejected were only of controllable

expenditure. Since the Appellant have failed in its duty by not controlling the same, the State Commission has rightly disallowed the same as the burden cannot be passed on to the consumers. Segregating the prior period charges into controllable expenditure and uncontrollable expenditure is a well-recognized principle. This has been recognized in the National Tariff Policy. It is imperative for the State Commission to be guided by the National Electricity Policy and National Tariff Policy as mandated under section 61 of the Electricity Act, 2003. In this context, it would be proper to refer to Section 5.3 (h)(iii) of the National Tariff Policy. The same is as follows:

*“Uncontrollable cost should be recovered speedily to ensure that future consumers are not burdened with past cost. Uncontrollable cost would include fuel cost, cost on account of inflation, tax and cesses, variation in power purchase unit costs including on account of hydro thermal mix in cases of adverse natural events”.*

34. It is noticed that the prior period charges claimed by the Appellant are expenditure incurred by it during the FY 2002-03. This was never claimed in the past. Admittedly, the same was not claimed at the time of tariff proceedings also. In such circumstances, it is not open for the Appellant to claim such expenditure at the time of truing-up exercise for the year 2007-08. It is settled law that the stage of truing up as mentioned earlier is not to reopen the basis of redetermination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figures at the end of the year. It is not open to the Appellant to raise such an issue for the first time after many years. These principles have been laid down by the Hon'ble Supreme Court in 2009(6) SCC 235 in *UP Power Corporation Limited vs. NTPC* and this Tribunal in 2007 ELR APTEL 193 in *North Delhi Power Limited vs. DERC*. Therefore, the contention on this issue urged by the Learned Counsel for the Appellant is misconceived and consequently the



same is rejected. Consequently, the finding on this issue by the State Commission is correct and so the same is upheld.

35. The next issue is relating to the retrospective effect given to the revised tariff. According to the Appellant the State Commission ought not to have given retrospective adjustment in the tariff as this finding by the State Commission relating to the retrospective effect is neither tenable in law nor in fact. In this context, it is noteworthy to point out that the Appellant caters to a consumer base of more than 2 lakhs consumers. The Appellant is functioning on manual accounting system. In addition to the above, the Appellant is in the process of corporatization and unbundling. In view of the above, it is claimed by the Appellant that it is extremely difficult to give effect to all the directions relating to retrospective effect.

36. The perusal of the impugned order would reveal that the State Commission directed the Appellant to take effective steps to adjust the amount collected during the tariff period between

01.10.2008 and 31.03.2010. Thus, there is a specific direction to the effect that the Appellant has to give effect to the adjustment by 31.03.2010. The Appellant being a public body, will not retain any amount which is unjustified and shall account for any surplus amount.

37. In fact, while truing-up for FY 2007-08, the State Commission has adopted the right approach of comparing the Appellant's expenditure as well as the revenue earned during the FY 2007-08 after considering the two heads i.e. revenue and expenditure and concluded that it is not necessary to revise the tariff for FY 2007-08 retrospectively. Having held so, the State Commission, while truing-up in respect of 2008-09, has wrongly considered the trued-up expenditure as well as the ARR by giving retrospective effect. This is not a correct approach.

38. At this stage, one other factor has to be noticed. As against this impugned order dated 10.9.2009 in respect of the retrospective effect, the Appellant has filed this appeal. Actually

this Appeal has been filed as early as on 23.10.2009 and the same has been numbered as Appeal No. 37/10. At that stage R-2 filed a Review Petition No. RP-1/10 on 10.01.2010 seeking for suitable directions to the Appellant for implementation of the impugned order in respect of the FY 2008-09. After hearing the parties, this Petition for Review has been disposed of by the order dated 24.2.2010. In the said order, the State Commission while referring to the contention of the Appellant urged before the State Commission with regard to retrospective effect passed the following order:

*“Noting the contention of the Appellant that giving retrospective effect to true up is not possible, direct that the ARR for the Accounting Year 2008-09 be finally trued up on the audited statement of accounts as duly audited by the CAG, as soon as it is received from the Appellant. Consequently, the revenue deficit or revenue surplus in the trued up ARR for the Financial Year 2008-09 would be adjusted while*



*working out and fixing the ARR of the perspective year i.e. Financial Year 2010-11.”*

39. In this context, it is also worthwhile to note the other observations made by the State Commission in the Review Petition No. 1/10 dated 24.02.2010.

*“11 (b). The Commission has noted the contention of the Respondent in para 9(i) of their affidavit in response dated 22.02.2010 that inter alia, the fixation of tariff depends upon the estimated ARR after truing up the Accounts of preceding years. Truing up exercise has to be necessarily taken up against each ARR approved by the Commission wherein any excess or shortfall of trued ARR, over the approved ARR is adjusted in the subsequent tariff order. However, for each time the accounts are trued up, the tariff may not be revised with retrospective effect. This is because the consumer base of distribution utilities in general is of the order of 10 to*

*50 lakh consumers and retrospective revision of bills for such a large number of consumers, every time the accounts are trued up is not possible. Retrospective revision of bills will also entail revision of all the monthly commercial data and correction of the Statement of Accounts 2008-09". The aforesaid contention has merit. Therefore, let the ARR of the accounting year 2008-09 be finally trued up on the basis of the Audited Statement of Accounts for that year, and the C&AG's Audited Report thereon, as soon as it is received from the Respondent. Consequently, Revenue deficit or Revenue surplus in the trued-up ARR for the accounting year 2008-09, will be adjusted while working out and fixing the ARR of the perspective year 2010-11."*

40. The above observation would make it clear that the State Commission has taken a view that for each time the financial accounts are trued up, the tariff may not be revised with

retrospective effect. To carry out retrospective revision of vast base of consumer every time the financial accounts are trued up is not possible. The Revenue deficit or Revenue surplus in the trued up in the ARR ought to be adjusted in the prospective year 2010-11.

41. In this context, the Appellant has prayed that since the Appellant's audited accounts (duly audited by the Comptroller & Accountant General) for the FY 2008-09 are now available, the State Commission may be directed to true up the Appellant's accounts on the basis of C&AG's report and consequently any revenue surplus or deficit be adjusted while fixing the ARR of the prospective year, i.e. 2010-11. It is also brought to our notice that the audited accounts, duly audited by the C&AG of the Appellant for the FY 2008-09 have already been submitted on 28.04.2010 before the State Commission and, therefore, this Tribunal may direct the State Commission to consider the audited data of the Appellant's accounts for the FY 2008-09.



42. In the light of this prayer, it would be appropriate to refer to the judgment of this Tribunal in Appeal No. 100/07 (Karnataka Power Transmission Corporation Limited V/s Karnataka Electricity Regulatory Commission and Others. The relevant observation with reference to retrospective effect has been given in paragraph 28, which is reproduced below:-

*"28. We have heard contentions of the rival parties. Basic issue that has to be decided is: whether or not the Commission was correct in carrying out the truing up of revenue requirements and revenues of KPTCL for the tariff period 2000-01 to 2005-06. Invariably, the projections at the beginning of the year and actual expenditure and revenue received differ due to one reason or the other. Therefore, truing up is necessary. Truing up can be taken up in two stages: Once when the provisional financial results for the year are compiled and subsequently after the audited accounts are available. The impact of truing up exercises must be reflected in the tariff calculations for*

*the following year. As an example; truing up for the year 2006-07 has to be completed during 2007-08 and the impact thereof has to be taken into account for tariff calculations for the year 2007-08 or/and 2008-09 depending upon the time when truing up is taken up. If any surplus revenue has been realized during the year 2006-07, it must be adjusted as available amount in the Annual Revenue Requirement for the year 2007-08 or/and 2008-09. It is not desirable to delay the truing up exercise for several years and then spring a surprise for the licensee and the consumers by giving effect to the truing up for the past several years. Having said that, truing up, per se, cannot be faulted, and, therefore, we do not want to interfere with the decision of the Commission in this regard to cleans up accounts, though belatedly, of the past. It is made clear that truing up stage is not an opportunity for the Commission to rethink de novo on the basic principles, premises and issues involved in the initial projections of revenue requirements of the licensee".*

43. It is laid down in the said judgment that the impact of truing-up exercises must be reflected in the tariff calculations for the following year and not to be given retrospective effect. If any surplus/deficit has been realised during the financial year, it must be adjusted in the ARR of the utility in subsequent years. The aforesaid principle of provisional truing-up leads to the conclusion that the State Commission cannot give any retrospective downward revision to the Appellant's tariff for the FY 2008-09 since any surplus/deficit ought to have been adjusted in the ARR of the Appellant in the subsequent year.

44. Therefore, in view of the above settled law and factual position, the State Commission is directed to take into consideration above aspects while the process of truing-up exercise is taken up in respect of the FY 2008-09.

45. Let us now come to the cross claim of the Association, R-2 made in IA No. 82 of 2010. In this application, the R-2 urged



that the State Commission did not give due adjustment and credit to the consumers of the State of Meghalaya for the surplus profit earned by the Appellant in the FY 2007-08. According to R-2, even the State Commission acknowledged the fact that the Appellant had earned surplus of Rs. 63.69 crores for the FY 2007-08 which was over and above the revenue requirement as determined by the State Commission and that even then the State Commission has failed to pass a consequential order for the surplus earned by the Appellant to be adjusted in the tariff of the consumers.

46. According to the Appellant, the Appellant has not earned a surplus of Rs. 63.69 crores during FY 2007-08 but in fact it has incurred a deficit of Rs. 26.95 crores and, therefore, the State Commission cannot allow any amount to be passed on to the consumers in order to give any due adjustment as claimed by the Respondent.

47. We have carefully considered this issue in the light of the submissions made on behalf of the Appellant and the State Commission. As per the calculations of the R-2, the revenue earned by the Appellant in the year 2007-08 is Rs. 383.34 crores. As per the calculations of the R-2 in the truised ARR as decided by the State Commission is Rs. 319.65 crores. Thus, the difference of the revenue earned and the ARR is Rs. 63.69 crores. According to R-2, the State Commission has come to a finding that there is excess revenue of Rs. 63.69 crores but has not given any adjustment in favour of the consumer for the above surplus amount. The admitted surplus of Rs. 63.69 crores as found by the State Commission ought to be passed on to the consumers with carrying cost.

48. According to the Appellant Board, the total revenue earned by the Board for the financial year 2007-08 from sale of power was Rs. 318.15 crores which has also been confirmed by the audited statement of accounts, but the Commission has wrongly added an amount of Rs. 65.19 crores qua subsidising and grants

and other income in concluding that the total revenue of the Appellant for FY 2007-08 was Rs. 383.34 crores since the same had already been deducted by the Commission while truing up the ARR of the Appellant for the FY 2007-08. As such the Appellant has not earned any surplus but has suffered a deficit of Rs. 26.95 crores ( i.e. Rs. 345.10 Cr. as per audited account - 318.15).

49. We have examined the issue. In the order dated 10.9.2009 the Commission in para 21.1.7 has indicated revenue from sale of power during 2007-08 as 318.15 Cr. and further noted that the Board has revenue of Rs. 32.80 crores as subsidies and grants and Rs. 32.39 crores as other income. Adding subsidies and grants and other income of Rs. 65.19 crores, the Commission has held that the total income during the year 2007-08 was Rs. 383.34 crores. On the other hand, the Commission while working out the ARR has also deducted the income on account of subsidies and grants and other income totalling to Rs. 65.19 crores to arrive at a figure of net ARR of



Rs. 319.65 crores. Thus the other income and subsidies and grants totalling to Rs. 65.19 crores has been accounted for twice. When other income and subsidies and grants totalling to Rs. 65.19 crores has been deducted from the ARR, the same cannot be added to the income. Against the net ARR of Rs. 319.65 crores approved by the Commission in the true-up for 2007-08, the total income is Rs. 318.15 crores. Thus, there is actual deficit of Rs. 1.5 crores on the true up of FY 2007-08 taking into the true-up ARR approved by the Commission in the impugned order and there is no surplus as claimed by Respondent-2.

50. So, in the light of the above fact, the contention of the Respondent 2 that the Appellant has earned a surplus of Rs. 63.69 crores is not correct. On the other hand, the Appellant has a deficit and in fact, the State Commission has to adjust the deficit and to pass the consequent orders in future years. Therefore, there is no merit in the cross Appeal. Accordingly the claim made in the Cross Appeal is rejected

Summary of our findings:

51. (i) The order passed by this Tribunal dated 09.02.2009 is the order of Remand with a limited direction to the State Commission to take the true up exercise only in regard to FY 2007-08. In our view this is a limited Remand order remitting the matter to state Commission with a specific direction to the State Commission to pass the order by truing up process in respect of FY 2007-08. Therefore, the State Commission ought to have complied with these directions by deciding the issue relating to truing up exercise in respect of FY 2007-08 alone. It is open to the State Commission to take up the truing up exercise in respect of FY 2008-09 separately on the basis of materials placed by the parties and decide the

issue. Therefore, the order passed by the State Commission clubbing truing up the FY 2008-09 is wrong and is liable to be set aside.

(ii) The second issue relates to the State Commission not adopting the financial statement of audited accounts by the Comptroller and Auditor General of India. This contention is untenable. The audited accounts is followed specifically as to whether the expenditure has been actually incurred or not. The audited accounts do not deal with the prudence of the expenditure. The question whether expenditure is allowed or not has to be considered only by the State Commission while truing up. The Auditor will verify whether the expenditure has been actually incurred or not. On the other hand the State Commission is bound to apply its mind to make a prudence check whether the



expenditure is to be allowed or not. Therefore, the State Commission is not bound by the certificate of the Auditors.

(iii) The State Commission has correctly disallowed certain expenditure, ARR of the Appellant which may be rejected only on controllable expenditure. Since the Appellant has failed in its duty by not controlling the same and so the State Commission cannot pass the burden on to the consumers. Segregating the prior period charges into controllable expenditure and un-controllable expenditure is well recognised principle. Further, the prior period charges claimed by the Appellant are expenditure incurred by it during

FY 2002-03. This was never claimed in the past. It is a settled law that the stage of truing up is not to reopen the basis of re-

determination of tariff and it is only comparing the estimated figures at the beginning of the year with the actual figure at the end of the FY. It is not open to the Appellant to raise such an issue for the first time after many years.

(iv) The State Commission ought not to have given retrospective adjustment in the tariff as this finding relating to the retrospective effect is neither tenable in law nor in fact. While going through the order passed by the Commission in the Review Petition No. 1 of 2010 dated 10.01.2010, the State Commission itself has taken the view that for each time the accounts are trued up, the tariff may not be revised with retrospective effect. The impact of trued up exercise must be in the tariff calculation for the following year and the same shall not be given retrospective effect.

The surplus/deficit in revenue in the trued up ARR has to be adjusted in the ARR during the subsequent years. Therefore, the State Commission is directed to consider the said issue on the basis of the Appellant account duly audited by the C&AG for the FY 2008-09 which is now available and adjust in the ARR of the Appellant in the subsequent year.

(v) The contention of the Respondent-2 that the Appellant has earned surplus money of Rs. 63.69 crores is not correct. On the other hand the Appellant has deficit of Rs. 26.95 crores during 2007-08 as per the audited accounts of the Appellant and about Rs. 1.5 crores as per the trued up ARR decided by the Commission in the impugned order. In fact the State Commission has to adjust this deficit and pass the consequent orders in future years. Accordingly the claim made by the



**Respondent 2 in the cross para in IA No. 82 of 2010 is rejected.**

52. In view of our above findings, the impugned order is set aside to the extent as indicated above. Consequently, we direct the State Commission to consider taking up the true-up process separately in respect of the FY 2008-09 taking into account the observations made by this Tribunal with reference to the aspects contained therein and pass appropriate orders.

53. The Appeal is partly allowed. No costs.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

**REPORTABLE/NOT REPORTABLE**

Dated: 10<sup>th</sup> August, 2010